

Gregory F. Cromwell
Gregory L. Girard
Brian J. Hanis
Michael M. Hanis
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Jennifer R. Hill
Cynthia A. Irvine*
Erik R. Olsen
Florian D. Purganan
Brittan E. Schwartz

Dennis J. Shanlian**
Mary Beth Sheehan
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*Also admitted in VA
**CPA/LLM

Mark W. Prothero – 1956-2014

May 18th, 2016

Mr. Brenden Elwood
City Council Member
P.O. Box 896
North Bend, WA. 98045

Mr. Alan Gothelf
City Council Member
P.O. Box 896
North Bend, WA. 98045

Mr. Jonathan Rosen
City Council Member
P.O. Box 896
North Bend, WA. 98045

Ms. Jeanne Pettersen
City Council Member
P.O. Box 896
North Bend, WA. 98045

Mr. Trevor Kostanich
City Council Member
P.O. Box 896
North Bend, WA. 98045

Mr. Martin Volken
City Council Member
P.O. Box 896
North Bend, WA. 98045

Mr. Ross Loudenback
City Council Member
P.O. Box 896
North Bend, WA. 98045

Re: Forster Woods Homeowners Association/
City responsibility for trees and sidewalks maintenance
and repairs

Dear Honorable Council Members:

I am the Association's attorney. I am writing to address the issues pending between the City and the Association regarding responsibility for removal of trees and their root systems, and for maintenance and repair of the sidewalks within the planter strips in the community of Forster Woods. The Association regrets the need to involve me, but the position recently taken by the City that the abutting lot owners or the Association is responsible left them with no choice but to seek legal assistance to resolve these issues.

I have been informed that the City's position is the Association or the owners of the lots abutting the planter strips are responsible and must bear the costs of removing trees/roots and repairing sidewalks. Apparently the City's position is based on its interpretation of Section 4.07.18 of the Association's Declaration of Covenants (CCRs), with the City believing that section means everything within the planter strips are the responsibility of the abutting lot owner. I and the Association respectfully disagree with that interpretation. The information below shows why the City's position is incorrect.

Sidewalks: Consider the following points and facts that show the City owns and is responsible for maintaining and repairing the sidewalks:

- The developer of Forster Woods installed the sidewalks. The plat approved by the City addressed sidewalks and accordingly the City approved their installation.
- The city has, since their installation, exercised control over the sidewalks including repairing them (eg. patching uneven joints with asphalt) and otherwise doing maintenance on them from time to time without prior notice to or consent of the abutting lot owner or the Association. In other words, the City has exercised total control over them, including their maintenance, since the establishment of the community by periodically trimming trees or removing them as needed. Having exercised such control and undertaking their repairs clearly indicates the City recognized the sidewalks as their responsibility. It is improper and not legally supportable that after such conduct over that period of time the City suddenly unilaterally reverses its position and attempts to make the lot owners responsible.
- Public nature and safety factors: the sidewalks are not just for or used by owners within Forster Woods. They are public sidewalks and used by anyone who chooses to stroll through the community. If owners in Forster Woods banned the public from using the sidewalks the City would certainly oppose that and claim they are public in nature and for the public's use. Accordingly, the City, as municipalities always do, has municipal power and control over public sidewalks. Given that power and control, the City also has the responsibility of maintaining and repairing them as the need arises. The sidewalks were installed so the public would not have to walk in the streets (owned and maintained by the City). Sidewalks are an important safety factor or service the City provides so citizens can avoid having to walk in the streets and risk pedestrian/vehicle accident.
- The City has removed trees for the purpose of correcting tree root issues with sidewalks. The City's position on the tree roots is addressed in detail below, but pertinent at this point regarding sidewalks is the history of the

City's unilateral removal of trees (again without prior notice to or consent from abutting lot owners or the Association). Removing trees and roots to correct and repair sidewalk issues proves the City has always assumed control over and taken the position it has the duty of protecting and maintaining the sidewalks including the removal of trees and roots where that is necessary.

- Section 4.07.18 of the CCRs does not make the owners responsible for maintenance and repair of the sidewalks. It addresses "landscaping" and uses language clearly indicating the intent to make owners responsible for maintaining small landscape improvements such as shrubs, grass, beauty bark and the like. Sidewalks, especially when installed for the benefit of the public, are not "landscaping" within the reasonable meaning and interpretation of that word. The word "sidewalks" or an equivalent is nowhere to be found in this section. It does not apply to sidewalks at all.
- The planter strips are in the City's right of way regarding the streets. The abutting lot owners do not own the planter strips. They are required to maintain landscaping but their responsibility does not include maintaining the sidewalks or the trees.
- There is a Bill of Sale executed by the developer and the City, recorded March 1st, 1999. A copy is enclosed. The language in this document expressly provides that the City is purchaser of the "... sidewalks, ... street trees, and other right of way improvements as listed on the following attachments: A, B, C, D, E, & F." It also states: "... the City accepts and agrees to maintain the sidewalks, street trees,.... and other miscellaneous improvements that lie in the Public Right of Way, in the same manner as though they had been constructed by the City." Attachments C and F to the Bill of Sale specifically refer to and describe the sidewalks and streets trees. This Bill of Sale was executed and recorded after the Association's Declaration of Covenants and the Plats for the community were recorded. This is the most definitive information on these issues, and it clearly establishes that the City owns and is responsible for maintaining the sidewalks and trees.

Trees/roots issues: The City's position is that owners are responsible for tree maintenance and that tree roots are causing the damage and need for sidewalk repairs, so therefore the owners are responsible for removal of the trees and their roots. The City's position is without merit and is contrary to the history of tree and sidewalks maintenance. It is also contrary to the Bill of Sale referenced above. The following points regarding trees/roots clearly show the City is responsible for maintaining them, including removing them and their roots, at least insofar as they adversely impact the sidewalks:

- The developer installed the trees used in the planter strips. During the approval and inspection process for development of Forster Woods, the City exercised control over the choice of trees to be used. The reference to trees in the relevant documents even indicates they had to be trees suitable for planter strips. The City took into consideration which type of trees would be used, with the idea of choosing a type that would not impact nearby improvements such as sidewalks. The city exercised approval power over the type of trees used. The wrong type trees were chosen. At this point, the City has primary responsibility for the trees used, as they turn out to be inappropriate for narrow planter strips and sidewalks nearby.
- The owners had no say in the type of trees used. Owners are not arborists or horticulturists. They never knew the roots would be a problem for the sidewalks until the sidewalks actually started to buckle. You have to be able to foresee a problem before you have responsibility for the result. The owners had no way to foresee that the trees used (ones they did not choose or plant) would be the wrong type of trees. The City personnel handling oversight of developments, however, are supposed to know such things.
- Since they were planted, the City has maintained and exercised complete control over the trees. Owners report City employees have cut down and removed trees without prior notice or asking for the abutting lot owner's or the Association's consent. Based on the documents involved and decades of the City conduct of maintaining the trees in the planter strips, owners and the Association have always reasonably viewed the City as being responsible for them. The City has, by its conduct, admitted and assumed responsibility for the trees.
- The Bill of Sale expressly provides that the trees belong to and are the responsibility of the City.

The City is responsible for both sidewalks and tree maintenance and repairs.

Urgent need for tree/root removal and sidewalks repairs: Mr. Mark Rigos, the City's Public Works Director, kindly attended the annual owners' meeting of the Association in March. He reported there are currently at least 78 "trip hazards" regarding the condition of the sidewalks. Accordingly, there is a very real risk of people falling and injuring themselves because of the sidewalk conditions. The Association is already aware of incidents where people have fallen and been hurt. Enclosed are photos of some of the asphalt repairs done by the City on the sidewalks, which also show the large gaps or buckling that has occurred resulting in extremely uneven sidewalk surfaces.

During the meeting Mr. Rigos also pointed out that the number of trip hazards will greatly increase in the future. As tree and sidewalk conditions age, more hazards will arise due to other trees continuing to grow and expanding their root systems which will impact other sidewalk areas not yet in need of repair.

It must be emphasized there are over two hundred (200) trees in the community which are part of this situation. Those trees, in addition to the other seventy eight (78) or so in critical need of attention now, must also be addressed to avoid development in the future of the same dangerous and expensive sidewalk issues in other planter strip areas. It is much less expensive for the City to address removal and replacement of all of the trees now. Delay will result in additional sidewalk areas deteriorating and buckling. This is aside from the fact that waiting exposes the City, the owners and the Association to further risk of personal injury claims by persons injured while using the sidewalks, due to their increasingly deteriorating condition.

Action needs to be taken as soon as possible to remove problem trees and their roots and to repair the damaged sidewalks. And, it will benefit the City and protect persons using the sidewalks to remove all of the planter strip trees and to replace them with trees compatible with those locations to avoid other sidewalk areas from damage.

Please understand that if the owners and/or Association are sued due to an injury resulting from condition of the sidewalks, they will have no choice but to add the City as third party defendant and seek liability or contribution from the City. That is the last thing they want to happen, but under the historical and factual circumstances of these issues, the City has the responsibility to correct them.

Requests by the Association: The Association asks the City to swiftly and diligently take all necessary action to correct these conditions and pay for them. However, it is willing to discuss making some contribution to the costs of the project because, if for no other reason, that might expedite resolution. To make sure these serious issues are promptly addressed, the Association Board:

1. demands a written response from the City within thirty (30) days from date of this letter, acknowledging the City is responsible for maintenance of the planter strip trees and sidewalks including the removal of trees and roots and repair of the damaged sidewalks; and
2. demands a meeting be scheduled between the City and the Board members within thirty (30) days, to discuss how these issues will be resolved. The meeting will be to discuss, among other things, what will be done, the timing of action by the

City Council Members
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City, the scope of the work including how many trees and sidewalk areas will be addressed by the project, and the City's payment of the costs. . Every day that goes by with no action taken is another day that someone may be injured, leading to liability claims and litigation between all involved. Lastly, please understand that if the City maintains its present position and refuses to accept responsibility for removal of trees/roots and repairing the sidewalks, it will leave the Association with no choice but to file a lawsuit asking for declaratory judgment and an order requiring the City to take these actions at its cost.

Thank you for your time and consideration.

Sincerely,
Hanis Irvine Prothero PLLC



Gregory F. Cromwell
Attorney at Law

Enclosures

cc: Board of Directors
Forster Woods Homeowners Association

Mr. Dennis Howard
Property Manager for the Association

Sale of detention ponds

FILED FOR RECORD AT REQUEST OF:

CITY CLERK
CITY OF NORTH BEND
P O BOX 896
NORTH BEND, WA 98045



99051140

16.00

509

10:27:00 AM KING COUNTY RECORDS

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the sum of One Dollar (\$1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Seller, Forster Woods Limited Partnership, does by these presents hereby convey, set over, assign, transfer and sell to the City of North Bend (the "City"), King County, Washington, a municipal corporation, the following described water distribution system, wastewater collection system, storm drainage system, curbs, sidewalks, street paving, street trees, and other right of way improvements as listed on the following attachments: A, B, C, D, E, & F.

Commonly known as: Improvements provided as a part of the plats of **FORSTER WOODS DIVISIONS 1, 2, 3, 4, AND 4A.**

Seller warrants that they are the sole owners of all the property described in the attachments and have full power to convey all rights herein conveyed and agree to hold the City of North Bend harmless from any and all claims which might result from execution of this document.

Seller warrants that the property above described is free from all liens and encumbrances and Seller warrants and will defend the property hereby sold to City and its successors and assigns against the lawful claims and demands of all persons.

By accepting and recording this instrument, the City accepts and agrees to maintain the water distribution system including booster stations and reservoir, wastewater collection system, storm drainage system (except detention ponds owned by the Home Owners Association), curb and gutter, sidewalks, street trees, street signage, street paving, street lights, and other miscellaneous improvements that lie in the Public Right of Way, in the same manner as though they had been constructed by the City.

Unofficial Instrument

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Joan M. Simpson is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument on oath that (he/she) was authorized to execute the instrument and acknowledge it as the Mayor of the City of North Bend to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/16/98

Dolores M. Beauchene
(Signature)

Dolores M. Beauchene
(Print Name)

NOTARY PUBLIC in and for the State of Washington residing at: North Bend



9903011140

BILL OF SALE - WATER
ATTACHMENT A

DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: **FORSTER WOODS DIVISION I
AND OFFSITE WATER SYSTEM.**

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
NORTH BEND BLVD	STA 2 (+/-)	STA 12 (+/-)	16"	1000 LF
RIBARY WAY	STA 87+40	STA 92+04	16"	433 LF
RIBARY WAY	STA 92+04	STA 106+60	12"	1618 LF
FORSTER BLVD	STA 0	STA 4 +00	12"	371 LF
FORSTER BLVD S.W.	STA 17+20	STA 35+22	8"	1802 LF
HEMLOCK AVE S.W.	STA 17+89	STA 12+00	8"	589 LF
SW 11 TH COURT, 402 ND COURT SE, SW 11 TH PLACE, AND MISC.			8"	263 LF

THE ABOVE WATER SYSTEM INCLUDES ALL MAINLINE PIPES, WATER SERVICES,
FIRE HYDRANTS, BLOW-OFFS, PRESSURE REDUCING STATIONS, AND OTHER
APPURTENANCES ASSOCIATED WITH THE WATER SYSTEM

APPROXIMATE VALUE OF WATER SYSTEM FOR FORSTER WOODS
DIVISION I INCLUDING OFFSITE WORK: **\$440,000**

990301140

BILL OF SALE - SEWER
ATTACHMENT B

DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: **FORSTER WOODS DIVISION I
AND OFFSITE SANITARY SEWER SYSTEM.**

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
NORTH BEND BLVD.	STA 2 (+/-)	STA 12 (+/-)	8"	1049 LF
RIBARY WAY	STA 87+60	STA 94+35	10"	675 LF
FORSTER BLVD	STA 17+19	STA 34+04	8"	1685 LF
HEMLOCK AVE. S.E.	STA 12+72	STA 17+28	8"	456 LF
SW 11 TH COURT, 402 ND COURT S.E., SW 11 TH PLACE, AND MISC.			8"	931 LF

THE ABOVE SANITARY SEWER SYSTEM INCLUDES ALL MAINLINE PIPES, SIDE SEWERS TO PROPERTY LINES, MANHOLES, CLEAN-OUTS, AND OTHER APPURTENANCES ASSOCIATED WITH THE SANITARY SEWER SYSTEM.

APPROXIMATE VALUE OF SANITARY SEWER SYSTEM FOR FORSTER WOODS DIVISION I INCLUDING OFFSITE WORK: **\$460,000**

9903011140

**BILL OF SALE - STREETS AND STORM DRAINAGE
ATTACHMENT C**

**DESCRIPTION OF SYSTEM FOR DEVELOPER EXTENSION AGREEMENT PROJECT:
FORSTER WOODS DIVISION I.**

1. Approximately 4638 lineal feet of storm drainage pipe.
2. Approximately 44 storm drainage catch basins.
3. One arch culvert stream crossing.
4. Approximately 5761 lineal feet of curb and gutter.
5. Approximately 5761 lineal feet of sidewalk.
6. Approximately 11,822 square yards of asphalt pavement.
7. Approximately 235 miscellaneous street trees.

Together with miscellaneous improvements such as street lights, fencing, monuments, that have been constructed within public rights of way and public easements.

**APPROXIMATE VALUE OF STREET AND STORM SYSTEMS FOR
FORSTER WOODS DIVISION I: \$527,000**

9903011140

**BILL OF SALE - WATER
ATTACHMENT D**

**DESCRIPTION OF SYSTEM FOR
DEVELOPER EXTENSION AGREEMENT PROJECT: FORSTER WOODS
DIVISIONS 2, 3, 4, AND 4A.**

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
FORSTER BLVD	STA 34+08	STA 46+80	8"	1272 LF
SW 10 TH STREET	STA 1-50	STA 16-50	12"	1500 LF
SW 12 TH COURT	STA 0	STA 2+00	16"	143 LF
HEMLOCK AVE SE, HEMLOCK AVE SW, 14 TH PLACE SW, 13 TH PLACE SW, SW 12 TH PLACE, 11 TH COURT SW, SW 13 TH PLACE, SW 15 TH PLACE, 11 PLACE SW, SW 14 TH PLACE AND MISC.			8" & 12"	6065 LF

THE ABOVE WATER SYSTEM INCLUDES ALL MAINLINE PIPES, WATER SERVICES, FIRE HYDRANTS, BLOW-OFFS, PRESSURE REDUCING STATIONS, THE 710 AND 780 ZONE BOOSTER PUMP STATIONS, THE WATER TANK RESERVOIR, AND OTHER APPURTENANCES ASSOCIATED WITH THE COMPLETE WATER SYSTEM

APPROXIMATE VALUE OF WATER SYSTEM FOR FORSTER WOODS
DIVISIONS 2, 3, 4, AND 4A: **\$1,393,000**

9903011140

9903011140

BILL OF SALE - SEWER ATTACHMENT E

DESCRIPTION OF SYSTEM FOR DEVELOPER EXTENSION AGREEMENT PROJECT: FORSTER WOODS DIVISIONS 2, 3, 4, AND 4A.

<u>IN</u>	<u>FROM</u>	<u>TO</u>	<u>SIZE</u>	<u>LENGTH</u>
FORSTER BLVD	STA 37+04	STA 46+80	8"	976 LF
SW 10 TH STREET	STA 1+75	STA 17+19	8"	1544 LF
HEMLOCK AVE SE, HEMLOCK AVE SW, SW 12 TH COURT, 14 TH PLACE SW, 13 TH PLACE SW, SW 12 TH PLACE, 11 TH COURT SW, SW 13 TH PLACE, SW 15 TH PLACE, 11 PLACE SW, SW 14 TH PLACE AND MISC.			8"	6138 LF

THE ABOVE SANITARY SEWER SYSTEM INCLUDES ALL MAINLINE PIPES, SIDE SEWERS TO PROPERTY LINES, MANHOLES, CLEAN-OUTS, AND OTHER APPURTENANCES ASSOCIATED WITH THE SANITARY SEWER SYSTEM.

APPROXIMATE VALUE OF SANITARY SEWER SYSTEM FOR FORSTER WOODS DIVISIONS 2, 3, 4, AND 4A: \$373,000

**BILL OF SALE - STREETS AND STORM DRAINAGE
ATTACHMENT F**

**DESCRIPTION OF SYSTEM FOR DEVELOPER EXTENSION AGREEMENT PROJECT:
FORSTER WOODS DIVISIONS 2, 3, 4, AND 4A.**

1. Approximately 8847 lineal feet of storm drainage pipe.
2. Approximately 72 storm drainage catch basins.
3. One arch culvert stream crossing.
4. Approximately 16,144 lineal feet of curb and gutter.
5. Approximately 78,812 square feet of sidewalk.
6. Approximately 35,728 square yards of asphalt pavement.
7. Approximately 120 miscellaneous street trees.

Together with miscellaneous improvements such as street lights, fencing, and monuments, that have been constructed within public rights of way and public easements.

**APPROXIMATE VALUE OF STREET AND STORM SYSTEMS FOR
FORSTER WOODS DIVISIONS 2, 3, 4, AND 4A: \$762,309**

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