

Gregory F. Cromwell	Jennifer R. Hill	Dennis J. Shanlian**	*Also admitted in VA
Gregory L. Girard	Cynthia A. Irvine*	Mary Beth Sheehan	**CPA/LLM
Brian J. Hanis	Erik R. Olsen	Peter B. Wilburn	
Michael M. Hanis	Florian D. Purganan		
Patrick M. Hanis	Brittan E. Schwartz		

Mark W. Prothero – 1956-2014

October 17th, 2016

Mr. Michael R. Kenyon
Attorney at Law
Kenyon & Disend
11 Front Street South
Issaquah, WA. 98027

Re: Forster Woods Homeowners' Association/
City of North Bend/responsibility for
repairs & maintenance of sidewalks and
street trees

Dear Mike:

The Association is unable to accept the City offer of \$28,000, intended as a contribution for addressing the costs for maintenance of the sidewalks and street trees. The rejection is based upon further analysis of the history and documents involving the sidewalks and street trees. The Association has determined that the City is responsible for maintaining them, including removal of trees and replacement with vegetation or other trees, and repairing all of the sidewalks damaged by the trees roots. This determination also means the City has primary liability if personal injuries are suffered by Association members or the public using the sidewalks due to their condition.

The Association endeavors to maintain a good relationship with the City. It hopes that both sides can work their way through this situation while keeping intact a respectful relationship, especially since there are and probably will be other issues that exist or will arise in the future and cooperation will be needed to resolve them.

We realize the City's position is that the abutting lot owners or the association are solely responsible for maintenance on these matters because of City ordinance 10.05.010 (N). With respect, that ordinance does not protect the City from responsibility for the sidewalks and street trees due to the following:

- the Bill of Sale (copy enclosed for your easy reference) was signed by the City on September 21, 1998. It was then recorded March 1st, 1999. It clearly states that (a)

ownership of the street trees and sidewalks was conveyed to the City, and (b) 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.” (Emphasis provided.) Even more powerful and dispositive are the provisions in Attachments C and F of the contract. Attachment C deals with Division 1. Its sections 5 and 7 indicate the City is responsible for maintaining “approximately” 5,761 lineal feet of sidewalk and “approximately” 235 “miscellaneous” street trees. Attachment F is for Divisions 2 through 4A. Its sections refer to the City being responsible for “approximately” 78,812 square feet of sidewalk and “approximately” 120 “miscellaneous” street trees. The provisions in the contract can only be viewed one way, i.e., the City agreed to own and fully maintain all of the sidewalks and street trees within all divisions of the Association community.

- the ordinance you cite was adopted in 2009, well after the contract was signed and recorded. “A statute may not be given retroactive effect, regardless of the intention of the legislature, where the effect would be to interfere with vested rights. Thus, a statute may not operate retroactively where the result would be to impair the obligation of a contract (*In re Heilbron's Estate*, 14 Wash. 536, 45 Pac. 153), or deprive one of his property without due process of law (*Graves v. Dunlap*, 87 Wash. 648, 152 Pac. 532). See, also, *Bruenn v. North Yakima School District*, 101 Wash. 374, 172 Pac. 569; *State v. Natsuhara*, 136 Wash. 437, 240 Pac. 557; *Tonkoff v. Roche Fruit & Produce Co.*, 137 Wash. 148, 242 Pac. 3.” Statutes are generally presumed to operate prospectively.” *Godfrey v. State*, 84 Wn.2d 959, 530 P.2d 630 (1975). They will not be given retroactive effect where the result would be to impair the obligation of a contract. *Gillis v. King County*, 42 Wn.2d 373, 255 P.2d 546 (1953); *In re Estate of Heilbron*, 14 Wash. 536, 45 P. 153 (1896). *Scott Paper Company v. Anacortes*, 90 Wn.2d 19, 32 (1978). These cases may involve statutes rather than municipal ordinances; however, I am confident the principles equally apply to ordinances. The City cannot void or avoid its obligations under a contract by later enacting an ordinance that absolves it from contractual obligations. Aside from case law, the practical effect is that contracts with the City would be worthless if it could renege on or revoke them by legislative whim.
- even if the ordinance had been enacted before the contract (and it was not), a party has the ability to waive a right by entering into a contract in which the terms are inconsistent with a prior right. By signing the contract, the City accepted transfer of all maintenance obligations to it regardless of whether an ordinance said otherwise.
- There is logic and practical reasons behind the City signing the contract and assuming maintenance of, among other things, the sidewalks and street trees. As we stated before, the sidewalks are available for use by the general public and not restricted to use by owners within the community. Further, the history described in my first letter, that the City has for many years cut and otherwise maintained the street trees and also repaired the sidewalks. It is clear by these actions that the City assumed such responsibilities and knew it was supposed to maintain them.

- the contract was signed by a City official and you as City Attorney. The City clearly and unequivocally accepted, agreed to and understood that it was thereafter responsible for the items described in the document. It can hardly claim ignorance or avoidance under the circumstances surrounding the document and the physical things described in the contract.

Time is of the essence regarding these matters. Children have already been injured due to the condition of the sidewalks. Adults and children often go out into the streets while taking walks, in order to avoid the worst sidewalk areas. Aside from tree roots destroying the sidewalks, the roots are also growing under the street asphalt in about 10 areas, causing rippling of the asphalt. Bike riders and people walking in the streets could be injured by the condition of the street asphalt. It's important for the City Council members and other City officials to realize there is a very real risk of someone suing the City and/or the owners or the Association for injuries sustained due to the condition of the sidewalks, street trees and streets. If owners or the Association are sued in this regard, they will have no choice but to bring the City into the lawsuit as an additional defendant. If the City refuses to accept responsibility for these matters, it will be a breach or default of the contract. The Association and owners are third party beneficiaries of the contract. The nature of the contract indicates beyond doubt that it was made for the benefit of the Association and lot owners, as well as the public.

There is another risk that is an important factor in timely handling of these issues. As mentioned, the tree roots are pushing their way under the street asphalt in many locations. This invasion by the roots is evident from the visible rippling of the asphalt. These roots are most likely going to affect and possibly damage underground utilities, including natural gas, sewer, water and electrical lines as well as utility cables. The strength of the roots is obvious from the damage they have caused so far, another reason for diligent efforts to correct, repair and maintain the sidewalks and street trees with minimum delay.

Request for confirmation response/deadlines: The Association respectfully requests and demands that the City:

1. confirm in writing its acceptance of the contract and its obligations and responsibilities for maintaining the sidewalks and street trees no later than November 18th, 2016;
2. commit to creating a specific written Plan for fixing the sidewalks and removal of the street trees and planting replacement vegetation no later than December 1st, 2016; the Plan needs to include timelines/dates for implementation and needs to be provided to the Board so it can let owners know of anticipated actions.

These deadlines were determined based on the Board's understanding of the dates for City Council meetings and so are reasonable. We realize that City Council meeting agendas are

Mr. Mike Kenyon
October 17, 2016
Page - 4

decided far in advance. However, this issue involves urgent matters and so the Council needs to address it at its next meeting. There is too much at stake and the risks too great to further delay decisions on this.

The Association's property manager, Dennis Howard, obtained proposals or bids for the necessary work and will provide them to Mark Rigos, City Public Works Director.

The owners in our Association community are heavily pushing the Board for action and progress regarding these matters. The Board has a duty to pursue the City to perform its contractual obligations under the contract. The last thing the Association or owners want is to be adversarial with the City. We are small town and it is always best to cooperatively solve problems affecting so many. However, please note that if the City refuses to accept and perform its obligations under the contract it signed, the Association will have no choice but to sue the City for breach of contract/specific performance. The Association does not want it to come to this point, but it will do what is necessary to enforce the contract in order to protect its members/owners.

Thank you for your time and consideration. Please call if you have any questions.

Sincerely,

HANIS IRVINE PROTHERO PLLC



Gregory F. Cromwell

cc: Board of Directors
Forster Woods HOA

Mr. Dennis Howard
Association Property Manager

Nothing herein may be interpreted or construed as a waiver of or limit upon the Associations right and remedies; the Association expressly reserves any and all rights and remedies it may have under law and equity.

FILED FOR RECORD AT REQUEST OF:

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



9903011140

16.00

SKN 009

990301-1140 10:27:00 AM KING COUNTY RECORD

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.

IN WITNESS WHEREOF the Sellers have executed these presents this 21st of
September, 1998.

Seller: Forster Woods Limited Partnership.

Purchaser: City of North Bend

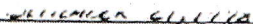

By Jeffrey Wright, President of
J Wright Development Co.,
Its General Partner



APPROVED AS TO FORM:

City Attorney

9903011140

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Jeffrey Wright is the person who
appeared before me, and said person acknowledged that he signed this instrument and
acknowledged it to be his free and voluntary act for the uses and purposes mentioned in
the instrument.


Elaine Walker


Elaine Walker

NOTARY PUBLIC in and for the
State of Washington residing at
Kirkland.
My appointment expires: 11/29/99

990301140

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

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**

9903011140

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

9903011140

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**

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

**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 17+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

9903011140

**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 76,812 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

9903011140