

**WILLIAM G. PARDEE**

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February 23, 2006

**VIA FACSIMILE ONLY**

Mr. Steve Banham  
City of Blaine Public Works Director  
1200 Yew Avenue  
Blaine, WA 98230

**RE: Drainage Issue - Seascape Project - 1300 Peace Portal Dr.**

Dear Mr. Banham:

We invite you to come prepared to testify on the issue, which is the subject of the e-mail attached hereto as Exhibit A, at the March 3, 2006 hearing for the Seascape Stop Work Order Appeal currently ongoing. However, Harbor Lands feels your action on this matter needs to be immediate.

Harbor Lands discovered on or about November 16, 2005 while installing a sewer line that historic ground water runoff sources were secretly interrupted per your approval. This parallels the action taken with request to the property line issue along Fourth Street. Harbor Lands takes the position that it borders on "sabotage." Ground water is evident throughout the vicinity of the Seascape site. Mr. Hergesheimer stated to Joel Douglas of Harbor Lands that in fifteen (15) years with the City of Blaine he never witnessed or had knowledge of such an action taken against a private party, and knew of no code or written provision which authorized such city action. This was based on his assessment of conditions prior to your assuming a position with the City of Blaine.

Surface water is waters of a casual or vagrant character (produced by rain, melting snow, or springs) having a temporary source, and which *diffuse themselves over the surface of the ground*, following no definite course or channel. *Pruitt v. Douglas County*, 116 Wash.App. 547, 554, 66 P.3d 1111, 1115 (Div. 3 2003); *Currens v. Sleek*, 138 Wash.2d 858, 861, 983 P.2d 626, 628 (1999). The runoff from surface waters is dissipated in two ways: by spreading broadly and diffusely or by following a natural drain course. *Pruitt*, 116 Wash.App. at 554. A natural drain is that course, formed by nature, which waters naturally and normally follow in draining from higher to lower lands. *Id.*

Governmental entities are immune from liability for surface water damage on two bases:



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- (A) The common enemy doctrine; and
- (B) RCW 8.12.550 – which provides some protection to governmental entities from liability for surface water damage caused by road construction, and applies only to consequential damages caused by the *original grading* of streets (i.e. the first change from the natural contour of the ground).

The common enemy doctrine provides that surface water is an outlaw and a common enemy against which anyone may defend himself, even though by doing so injury may result to others. *Pruitt*, 116 Wash.App. at 554. There are, however, three recognized grounds for liability despite the common enemy doctrine:

- (1) blockage of a natural drain or waterway;
- (2) collection and discharge of water onto adjoining lands in quantities greater than, or in a manner different from, its natural flow; and
- (3) failure to exercise due care in preventing unnecessary damage.

*Pruitt*, 116 Wash.App. at 554-55 [Citing to *Currens v. Sleek, supra*, for these exceptions].

Generally, municipal rights and liabilities as to surface waters are the same as those of private landowners within the city. *Rothweiler v. Clark County*, 108 Wash.App. 91, 101, 29 P.3 758, 764 (Div. 2 2001). Therefore, all exceptions to the common enemy doctrine (listed above), including the due care exception, apply to municipalities. *Id.* at 101-02.

Under exception (1) above, a municipality that dams up a stream, gully, or natural drainway will not be shielded from liability for resulting damage. *Rothweiler v. Clark County*, 108 Wash.App. 91, 98, 29 P.3 758, 762 (Div. 2 2001).

Harbor Lands considers the City's action, in the context of Exhibit A attached hereto, to be another secret inexcusable action which could result in severe problems with water in their crawl space, regardless of efforts for surface runoff. The prior lines had pea gravel around them and provided a reasonable incidental flow of ground water which is obvious.

Harbor Lands feels your actions warrant an apology from you and feel that immediate corrections should occur. This constitutes yet another blatant instance of abuse of Joel Douglas' civil liberties which Harbor Lands has paid dearly for. Six months ago Harbor Lands bonded and to date have been denied release from the bond by Sandy Petersen, even though most items were completed months ago or paid for.

Sincerely,



William Pardee  
Harbor Lands Co.

cc: Mr. Jon Sitkin, Esq., Blaine City Attorney

Steve Banham

854  
9697

354-0611

From: Rod Smith  
Sent: Wednesday, November 16, 2005 9:04 AM  
To: Steve Banham; Sandy Petersen; Leroy Dougall  
Subject: 05-11-15InspectionReport.doc FYI

Ria Nickerson

647-9061

Stopped with her

Rea recommends that we inspect the Seascope Villas on site sewer and storm drain. JD said he plans to use the sanitary sewer trench and main to help drain his project site. I told Randy Knutzen the Honcoop forman to install a clay dam in the sewer trench at the property line before they backfilled the main. This should keep the site runoff and ground water from flooding the sewer trench down stream but won't prevent him from using the sewer main as a storm water drain.

**WILSON ENGINEERING  
INSPECTOR'S DAILY REPORT**

**CITY OF BLAINE-SEASCAPE VILLAS INSPECTION**

**JOB NO. 2005-127**

INSPECTOR:..... Ria Nickerson  
PROJECT ENGINEER..... Neil Latta, Web Engineering  
CITY ENGINEER..... Sandy Petersen  
DEVELOPER..... Joel Douglas  
CONTRACTOR:..... Len Honcoop Gravel, Inc.  
SUPERINTENDENT/FOREMAN..... Randy Knutzen



Bright Sun	Clear	Clouds	Rain	Snow
To 32°	33-50°	51-70°	71-85°	86°-Up
DATE: November 15, 2005 Weather: Wet/Dry Temperature:				Dusty

Site Conditions:

**TYPE OF WORK:**

Walk-through with Randy Knutzen.

**WORK DESCRIPTION:**

I arrived at Seascope Villas at 1:00.

Randy and I checked both manholes. Both are leaking between the base and riser/cone. He said he had told his crew to grout the outside of at least the one on the owner's property, but he was unable to confirm if it had been done. I recommended the Kryton Industries Krystol products for repair from inside.

We lamped the new sewer and most of it (all of the City's main) was fine. The last 18-20' at the south end changed grade slightly up into the owner's manhole. That manhole had ~2" of sand and gravel in the channel. Apparently the City had put a plug in the pipe out to prevent water and sediment entering the City system, but the plug was deflated. There was minimal water running into the pipe and not much dirt in the new sewer. The owner should flush before tie-in.

The owner had installed a storm catch basin ~30 feet east of the manhole. Randy was suspicious that the owner might have run a pipe from it into the pea gravel around the manhole to run site water out through the sewer trench. He said Joel was unaware that a trench dam had been

installed at the property line.

I left at 1:45 and went to Public Works. I advised Rod of the problems and recommended that they check the CB and TV the side sewers to find where the dirt and water are entering the system.