

MOSES LAKE CITY COUNCIL

Todd Voth
Jason Avila
Jon Lane

Dick Deane
Mayor



Joseph K. Gavinski
City Manager

David Curnel
Karen Liebrecht
Bill Ecret

August 26, 2014

AGENDA

Sophia Guerrero, Executive Secretary

Civic Center - Council Chambers
7:00 p.m.

1. **ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **IDENTIFICATION OF CITIZENS WANTING TO DISCUSS AGENDA ITEMS**
IDENTIFICATION OF CITIZENS WANTING TO DISCUSS NON-AGENDA ITEMS
4. **PRESENTATIONS AND AWARDS - None**
5. **CONSENT AGENDA**
  - A. Approval of Minutes - August 12, 2014
  - B. Approval of Bills and Checks Issued
  - C. Accept Work - Sewer Force Main Project - 2013
6. **COMMISSION APPOINTMENTS**
  - A. Reappointments - Lodging Tax Advisory Committee
7. **CONSIDERATION OF BIDS AND QUOTES - None**
8. **PETITIONS, COMMUNICATIONS, OR PUBLIC HEARINGS**
  - A. Communication - Denial of Business License Application - The Hydrofarmer
  - B. Communication - Request an Extension & Approve Easement - Penhallurick
9. **ORDINANCES AND RESOLUTIONS**
  - A. Ordinance - Amend MLMC 13.12 Water, Sewer, Stormwater Rates - 2nd Reading
  - B. Ordinance - Amend MLMC 2.48 - Planning Commission - 1st Reading
  - C. Ordinance - Amend MLMC 3.30 - Utility Occupational Tax - 1st Reading
  - D. Ordinance - Amend MLMC 8.28 - Noise Control - 1st Reading
  - E. Resolution - Request to Build on Unplatted Property - Perdue
  - F. Resolution - Nuisance Abatement Costs - Pence
  - G. Resolution - Repealing Resolution No. 3396 & Adopting New Resolution
  - H. Resolution - Abandon Easement - 1625 Filmore - Keranov
  - I. Resolution - Nuisance Abatement - 2404 W. Lakeside Dr. - Gibson
10. **REQUEST TO CALL FOR BIDS - None**

Finance W. Robert Taylor	Municipal Services Gary Harer	Police Chief Dave Ruffin	Parks & Recreation Spencer Grigg	Fire Chief Tom Taylor	Community Development Gilbert Alvarado	City Attorney Katherine L. Kenison

- 11. REFERRALS FROM COMMISSIONS - None**
- 12. OTHER ITEMS FOR COUNCIL CONSIDERATION**
  - A. Request for Annexation - Desert Golf, LLC**
- 13. NON-AGENDA ITEMS AND PUBLIC QUESTIONS AND COMMENTS**
- 14. COUNCIL QUESTIONS AND COMMENTS**
- 15. CITY MANAGER REPORTS AND COMMENTS**
  - A. Request to Improve Block Street to Community Standards - Maiers Dev.**
  - B. Staff Reports**
    - 1. Draft Shoreline Master Program - Responsiveness Summary**

Executive Session - Labor Relations

Finance W. Robert Taylor	Municipal Services Gary Harer	Police Chief Dave Ruffin	Parks & Recreation Spencer Grigg	Fire Chief Tom Taylor	Community Development Gilbert Alvarado	City Attorney Katherine L. Kenison

MOSES LAKE CITY COUNCIL
August 12, 2014

Council Present: Dick Deane, Bill Ecret, Karen Liebrecht, Jason Avila, Jon Lane, and David Curnel Absent: Todd Voth

The meeting was called to order at 7 p.m. by Mayor Deane.

PLEDGE OF ALLEGIANCE: Officer Tufte led the Council in the pledge of allegiance.

PRESENTATION AND AWARDS

SERVICE AWARDS

Years of Service pins for 10 years of service with the City were given to Todd Schanze, James Whitmore, and Thomas Tufte. Years of Service pins for 15 years of service with the City were given to Lori Moholt-Phillips and Virginia Kennedy-Novak. Years of Service pins for 20 years of service with the City were given to Mike Moro and Manuel Moreno. A Years of Service pin for 25 years of service with the City was given to Dave Thompson. A Years of Service pin for 35 years of service with the City was given to Joseph K. Gavinski.

CONSENT AGENDA

Minutes: The minutes of the July 22 meeting were presented for approval.

Approval of Claims, Prepaid Claims, Checks, and Payroll: Vouchers audited and certified by the Finance Director as required by RCW 42.24.080, and those expense reimbursement claims, certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the Council for approval and is retained for public inspection at the Civic Center. As of August 12, 2014 the Council does approve for payment claims in the amount of \$958,897.78; prepaid claims in the amounts of \$66,365.62, \$5,186.71, \$12,828.50, and \$96,057.00; claim checks in the amount of \$1,385,543.60; and payroll in the amounts of \$5,264.82 and \$387,797.19.

Resolution - Accept Easement - Maiers Development Corporation: A resolution was presented which accepts a utility access easement from Maiers Development Corporation for Desertpoint Major Plat, Lot 1, Block 2, Commercial Binding Site Plan 2nd Amendment.

S. L. & A. No. 1 Major Plat - Final Plat and Findings of Fact: Mike Lee, of Sam Lee & Associates, has submitted a final plat application to divide 11.58 acres into two lots. The site is zoned C-2, General Commercial, and abuts Central Drive north of Valley Road. The Planning Commission recommended that the final plat be approved with conditions. The Council's approval of this decision incorporates and adopts the Findings, Conclusion and Decision of the Planning Commission.

Action Taken: Dr. Curnel moved that the Consent Agenda be approved, seconded by Mr. Lane, and passed unanimously.

COMMISSION APPOINTMENTS - None

CONSIDERATION OF BIDS AND QUOTES

HERON BLUFF TRAIL PROJECT

The City received four bids for the Heron Bluff Trail Project. The project includes constructing a 3,000' long activity trail starting at the west end of Neppel Trail and extending through the Blue Heron Park, then along the lakeshore and ending at the existing activity trail that was constructed as part of the Bluff West Plat. There will be benches and trash receptacles at three locations.

Action Taken: Mr. Ecret moved that the bid be awarded to Kelaye Concrete in the amount of \$239,980, seconded by Mrs. Liebrecht, and passed unanimously.

CLOVER DRIVE LIFT STATION PROJECT

The City received six bids for the Clover Drive Lift Station Project. This project consists of rehabilitating the existing lift station and other site work.

Action Taken: Mr. Lane moved that the bid be awarded to POW Contracting in the amount of \$288,486.84, seconded by Mr. Avila, and passed unanimously.

PETITIONS, COMMUNICATIONS, OR PUBLIC HEARINGSORDINANCE - EXTEND MORATORIUM ON MEDICAL MARIJUANA GARDENS - 2ND READING/PUBLIC HEARING

An ordinance was presented which extends the moratorium on the establishment of "collective gardens" for the medical use of marijuana.

The ordinance of the City of Moses Lake extending a moratorium on the establishment of medical marijuana collective gardens, defining "medical marijuana collective gardens", providing for a public hearing establishing an effective date, and providing that the moratorium, unless extended, will sunset within six (6) months of the date of adoption was read by title only.

Joseph K. Gavinski, City Manager, pointed out that the extension of the moratorium continues the City's wait and see position on the medical marijuana issue. He mentioned that the legislature is considering measures that may eliminate the collective gardens and incorporate them into the recreational marijuana regulations.

The public hearing was opened. There were no comments.

Action Taken: Dr. Curnel moved that the public hearing be closed, seconded by Mr. Lane, and passed unanimously.

Joseph K. Gavinski, City Manager, stated that the legislature is considering merging some of the medical marijuana issues with the recreational marijuana issues in order to address some of the conflicts between the two.

Action Taken: Mrs. Liebrecht moved that the second reading of the ordinance be adopted, seconded by Mr. Avila, and passed unanimously.

RESOLUTION - SIX YEAR STREET PLAN - PUBLIC HEARING

A resolution was presented which adopts the amended Six Year Transportation Improvement Program.

The resolution to amend Resolution 2695 Transportation Improvement Program for 2015-2020 was read by title only.

The public hearing was opened. There were no comments.

Action Taken: Dr. Curnel moved that the public hearing be closed, seconded by Mr. Lane, and passed unanimously.

Action Taken: Mr. Lane moved that the resolution be adopted, seconded by Mr. Avila, and passed unanimously.

ORDINANCES AND RESOLUTIONSORDINANCE - AMEND 13.08 - WATER AND SEWER CONNECTIONS - 1ST READING

An ordinance was presented with amends Chapter 13.08, Water and Sewer Connections, by establishing a reimbursement for the installation of the sewer main on Randolph Road to serve AstaReal.

The ordinance amending Chapter 13.08 of the Moses Lake Municipal Code entitled "Water and Sewer Connections" was read by title only.

Action Taken: Mrs. Liebrecht moved that the first reading of the ordinance be adopted, seconded by Dr. Curnel, and passed unanimously.

ORDINANCE - AMEND 13.12 - WATER, SEWER, AND STORMWATER RATES - 1ST READING

An ordinance was presented which increases the rate for the delinquent service charge and for turn-ons or turn-offs after 4 p.m. and before 8 a.m.

The ordinance amending Chapter 13.12 of the Moses Lake Municipal Code entitled "Water, Sewer, and Stormwater Rates" was read by title only.

Action Taken: Dr. Curnel moved that the first reading of the ordinance be adopted, seconded by Mr. Avila, and passed unanimously.

REQUEST TO CALL FOR BIDS

BIOSOLIDS LAND APPLICATION PROJECT - SAND DUNES WWTP

Staff requested authorization to call for bids for the 2014 Biosolids Land Application Project. This project consists of loading, hauling, and land applying approximately 400 dry tons of biosolids from the Sand Dunes Wastewater Treatment Plant to agricultural land in the Mae Valley area.

Action Taken: Mr. Lane moved that staff be authorized to call for bids, seconded by Mr. Avila, and passed unanimously.

REFERRALS FROM COMMISSIONS - None

OTHER ITEMS FOR COUNCIL CONSIDERATION

TIB GRANT APPLICATIONS - SIDEWALK AND STREET IMPROVEMENTS

Staff requested authorization to apply for two Transportation Improvement Board (TIB) grants. The grant would pay 75% of the project costs. The projects would be for construction of a sidewalk along the west side of Stratford Road between SR-17 and Maple Drive and for the construction of Lark Avenue from Pioneer Way to Kiefer Drive.

Gary Harer, Municipal Services Director, gave some background on the two projects.

Action Taken: Mr. Ecret moved that staff be authorized to apply for the grants, seconded by Dr. Curnel, and passed unanimously.

REQUEST FOR CITY SERVICES - 2107 WESTSHORE DRIVE

Chris Hansen requested permission to connect 2107 Westshore Drive to City sewer without annexing the property into the City. It would be impractical for the property to be annexed at this time since there are no properties in the area with Extra Territorial Utility Extension Agreements or property owners that want to annex.

Mick Hansen, representing the property owner, stated that a new home is being built on this lot and they would like to connect to City services. There is a community water system so City water is not needed at this time.

Action Taken: Dr. Curnel moved that the request for City services be granted with the stipulation that an Extra Territorial Utility Extension Agreement be required, seconded by Mr. Avila, and passed unanimously.

CODE ENFORCEMENT

A letter from the City Attorney provided information on different methods of code enforcement, including voluntary cooperation, civil infraction, abatement, summary abatement, and administrative enforcement. The

City uses the administrative enforcement process which has been found to be too limiting and lacks the flexibility needed to respond to the variety of code enforcement issues encountered by staff. There are also several provision in the code that are inconsistent and/or in direct conflict. Examples were provided of other code enforcement regulations that include both a consolidation of code enforcement into a single chapter and also provide a greater degree of flexibility for staff in implementing the code enforcement process.

Katherine Kenison, City Attorney, stated that current code enforcement regulations result in the remedy not accomplished in a timely fashion and complaints are still received, and some of the current code provisions are in conflict with each other which confuses staff on how to enforce the code violation. The current administrative code enforcement mechanism is not providing a satisfactory result. She provided several examples of how the administrative code enforcement process does not work.

There was some discussion and it was the consensus of the Council that staff proceed with changes to the code enforcement process.

BLOCK STREET - TRAFFIC CONTROL AND CONSTRUCTION

Gary Harer, Municipal Services Director, stated that Bob Fancher requested that the stop signs on Block Street be relocated to Penn Street and that Block Street be improvement from Fifth Avenue to Wheeler Road. The change of location of the stop signs is simple and will allow better flow of traffic. The request to improve Block Street would include 41' of asphalt and a 10' wide sidewalk on one side and a 6' wide sidewalk on the other side. The estimated cost for the street improvements is \$150,000. The reason for the requested street improvements is the increased traffic because of the new kidney dialysis facility on Elder. Block Street would be used by these patients to access the hospital on Wheeler Road. He mentioned that the street improvement costs could be partially reimbursed by calling in an existing covenant and setting up a reimbursement schedule for when the unplatted property is platted. The existing platted property could not be required to participate in the street construction.

Joseph K. Gavinski, City Manager, pointed out that the City has not been doing many street projects due to budget constraints but the request for street improvements could be discussed during budget sessions.

It was the consensus of the Council that the street improvements be discussed during budget sessions.

DRIVEWAY VARIANCE - 343 GIBBY ROAD

Carly Jansen, Managing Member of Smoothery, LLC, requested a deviation to the driveway standards to allow the driveway to be constructed approximately 15' from the interior lot line at 343 Gibby Road. A driveway cannot be installed along Broadway Avenue in accordance with the setbacks required by the Community Standards. The existing power poles along Gibby Road are located such that a driveway cannot be installed in the window that meets the Community Standard setbacks. The proposed location encroaches into the required 20' setback by approximately 5'.

Gary Harer, Municipal Services Director, stated that the location of the driveway is the best possible for this lot and staff has no issues with it.

There was some discussion by the Council.

Action Taken: Mr. Lane moved that the requested deviation be granted seconded by Dr. Curnel, and passed unanimously.

NON-AGENDA ITEMS AND PUBLIC QUESTIONS AND COMMENTS

BUSINESS LICENSE - APPEAL

Alan Heroux, on behalf of Brent Heroux, stated that he is appealing the denial by the City of a business license for a marijuana medicinal and botanical manufacture business at 1450 Wheeler Road, which is in a Light Industrial Zone. He stated that their business plan allows them to sell live plants to other producers, which is an allowable use and in the Light Industrial zone includes the manufacturing, processing, or packaging of food products. He provided information supporting his contention that the City was in error by not approving the business license.

Joseph K. Gavinski, City Manager, stated that the statute supplied by Mr. Heroux is a taxing statute and does not apply to the current situation. He pointed out that agricultural uses are not allowed in any of the City's zones and that the business license was for the growing of plants. He mentioned that staff had discussed the application and it was felt that the business was for the harvesting and processing of the product and selling it instead of selling the live plants.

Gilbert Alvarado, Community Development Director, stated that he had requested clarification from Brent Heroux about the description of his business and he only talked about production and nothing about selling potted plants or edibles.

There was some discussion by the Council and it was recommended that the business license application be resubmitted with a clarification of the description of the business.

COUNCIL QUESTIONS AND COMMENTS - None

CITY MANAGER REPORTS AND COMMENTS

SHORELINE MASTER PLAN UPDATE

Gilbert Alvarado, Community Development Director, stated that the staff is working on the cumulative response to the comments from the Department of Ecology on the Shoreline Master Program. The response will be provided to the Council in the near future. When the cumulative response is approved by the Council it will be forwarded to the Department of Ecology. The Department of Ecology will review the response and provide comments.

AMBULANCE REPORT

The cash report on the ambulance operations for the month of July was provided.

BUILDING ACTIVITY REPORT

The July Building Activity Report was provided.

INVESTMENT REPORT

The City received \$15,196.81 in investment income for May 2014.

SALES TAX/TRANSIENT RENTAL INCOME

The City received \$454,949.89 in sales tax and \$53,058.98 in transient rental income in July.

The regular meeting was adjourned at 8:45 p.m.

ATTEST

_____
Dick Deane, Mayor

_____
W. Robert Taylor, Finance Director

DATE 8/14/14
TIME 13:56:03

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
BRANDON BURNS	00005507			
		0000070810	23.08	REIMB FOR FUEL, FILTERS
		0000070810	94.75	REIMB FOR FUEL, FILTERS
		=====		
		TOTAL:	117.83	
CITY OF MOSES LAKE	00008107			
		0000070680	160,897.22	REPAY INTERFUND LOAN
		0000070680	17,172.37	REPAY INTERFUND LOAN
		=====		
		TOTAL:	178,069.59	
DATABAR	00007974			
		0000070818	855.25	MAIL UTILITY BILLS
		0000070818	676.24	MAIL UTILITY BILLS
		0000070818	380.09	MAIL UTILITY BILLS
		0000070818	125.27	MAIL UTILITY BILLS
		0000070818	104.49	MAIL UTILITY BILLS
		=====		
		TOTAL:	2,141.34	
HOME DEPOT CREDIT SERVICES	00007824			
		0000070816	38.66	MISC SUPPLIES
		0000070816	229.35	MISC SUPPLIES
		0000070816	193.36	MISC SUPPLIES
		0000070816	20.38	MISC SUPPLIES
		0000070816	71.02	MISC SUPPLIES
		0000070816	12.26	MISC SUPPLIES
		0000070816	76.39	MISC SUPPLIES
		0000070816	12.90	MISC SUPPLIES
		0000070816	10.74	MISC SUPPLIES
		0000070816	13.44	MISC SUPPLIES
		0000070816	59.23	MISC SUPPLIES
		0000070816	79.07	MISC SUPPLIES

DATE 8/14/14
TIME 13:56:03

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR	VENDOR NO	Expenditure Account		
Department	Object Description	P.O. Number	P.O. Amount	Purpose of Purchase
		0000070816	10.23	MISC SUPPLIES
		=====		
		TOTAL:	827.03	
LOWES	00003886			
		0000070837	203.00	MISC SUPPLIES
		0000070837	26.13	MISC SUPPLIES
		0000070837	28.63	MISC SUPPLIES
		0000070837	45.06	MISC SUPPLIES
		=====		
		TOTAL:	302.82	
PUD OF GRANT COUNTY	00001501			
		0000070826	672.78	ELECTRIC SERVICE
		0000070826	16.80	ELECTRIC SERVICE
		0000070826	5,144.84	ELECTRIC SERVICE
		0000070826	596.06	ELECTRIC SERVICE
		0000070826	1,214.46	ELECTRIC SERVICE
		0000070826	35.34	ELECTRIC SERVICE
		0000070826	1,528.80	ELECTRIC SERVICE
		0000070826	19.01	ELECTRIC SERVICE
		0000070826	1,326.12	ELECTRIC SERVICE
		0000070826	237.89	ELECTRIC SERVICE
		0000070826	45.48	ELECTRIC SERVICE
		0000070826	19.27	ELECTRIC SERVICE
		0000070826	776.25	ELECTRIC SERVICE
		0000070826	159.34	ELECTRIC SERVICE
		0000070826	844.66	ELECTRIC SERVICE
		0000070826	38,510.44	ELECTRIC SERVICE
		0000070826	12,828.05	ELECTRIC SERVICE
		0000070826	86.25	ELECTRIC SERVICE

DATE 8/14/14
TIME 13:56:03

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
PUD OF GRANT COUNTY	00001501	0000070826	1,757.88	ELECTRIC SERVICE
		0000070826	598.99	ELECTRIC SERVICE
		0000070826	1,249.22	ELECTRIC SERVICE
		0000070826	941.88	ELECTRIC SERVICE
		TOTAL:	68,609.81	
UNITED PARCEL SERVICE	00005456	0000070838	45.20	SHIPPING CHARGES
		0000070838	26.36	SHIPPING CHARGES
		0000070838	7.67	SHIPPING CHARGES
		TOTAL:	79.23	
		REPORT TOTAL:	250,147.65	

DATE THU, AUG 14, 2014, 1:56 PM
TIME 13:56:04

TOTALS PAGE
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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

TOTALS BY FUND

FUND NO	FUND NAME	AMOUNT
000	GENERAL FUND	190,542.28
116	STREET	1,004.00
410	WATER/SEWER	52,985.40
490	SANITATION	380.09
493	STORM WATER	125.27
495	AIRPORT	86.25
498	AMBULANCE FUND	104.49
517	CENTRAL SERVICES	7.67
519	EQUIPMENT RENTAL	117.83
528	BUILD MAINTENANCE	4,794.37
	TOTAL	250,147.65

CHANGES TO BE MADE SHOULD BE LISTED BELOW

VEND NO.	P.O. NO.	AMT LISTED	CORRECTED AMT	ACTION TO BE TAKEN

.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

CORRECT AMOUNT TO BE PAID .....

*****
*
* CLAIMS APPROVAL *
*
* WE, THE UNDERSIGNED COUNCILMEN OF THE CITY OF MOSES LAKE, WASHINGTON, DO HEREBY CERTIFY THAT THE MERCHANDISE *
* OR SERVICES SPECIFIED HAVE BEEN RECEIVED AND THAT ABOVE CLAIMS ARE APPROVED, AS NOTED, FOR PAYMENT *
* IN THE AMOUNT OF \$250,147.65 THIS 26TH DAY OF AUGUST, 2014 *
*
* ..... *
* COUNCIL MEMBER COUNCIL MEMBER *
*
* ..... *
* COUNCIL MEMBER FINANCE DIRECTOR *
*****

DATE 8/21/14
TIME 13:15:28

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
CASCADE NATURAL GAS CORP	00000203	0000070917	3,362.26	SNS/LRC GAS USAGE
		0000070917	10.60	SNS/LRC GAS USAGE
		0000070911	63.71	NATURAL GAS SERVICE
		0000070911	11.55	NATURAL GAS SERVICE
		TOTAL:	3,448.12	
DATABAR	00007974	0000070928	592.51	MAIL UTILITY BILLS
		0000070928	468.49	MAIL UTILITY BILLS
		0000070928	263.32	MAIL UTILITY BILLS
		0000070928	86.79	MAIL UTILITY BILLS
		0000070928	72.40	MAIL UTILITY BILLS
		TOTAL:	1,483.51	
IRON HORSE REAL ESTATE	00004874	0000070950	600.00	PROCESSING FEE/APPLICATION
		TOTAL:	600.00	
UMPQUA BANK	00007077	0000070825	145.96	BLOOD PRESS MONT, EXCER BIKE
		0000070825	147.98	BLOOD PRESS MONT, EXCER BIKE
		0000070813	25.04	OFFICE SUPPLIES
		0000070906	10.00	TRAVEL
		0000070915	65.41	COMPUTER, BREAKROOM SUPPLIES
		0000070809	151.95	MISC SUPPLIES
		0000070825	233.02	BLOOD PRESS MONT, EXCER BIKE
		0000070825	780.44	BLOOD PRESS MONT, EXCER BIKE
		0000070808	29.46	MISC SUPPLIES
		0000070890	50.34	MISC SUPPLIES/REGIS
		0000070809	308.79	MISC SUPPLIES

DATE 8/21/14
TIME 13:15:28

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
UMPQUA BANK	00007077			
		0000070809	98.82	MISC SUPPLIES
		0000070809	109.75	"
		0000070809	12.35	"
		0000070809	10.00	"
		0000070809	239.09	"
		0000070809	495.40	"
		0000070809	745.22	"
		0000070809	204.49	"
		0000070809	173.54	"
		0000070809	2,410.30	"
		0000070809	74.69	"
		0000070809	8.40	"
		0000070809	139.51	"
		0000070809	77.40	"
		0000070836	167.85	MISCELLANEOUS
		0000070836	193.50	MISCELLANEOUS
		0000070836	1,331.35	MISCELLANEOUS
		0000070817	46.66	MISC SUPPLIES, POSTAGE, FUEL
		0000070817	323.65	MISC SUPPLIES, POSTAGE, FUEL
		0000070817	279.00	MISC SUPPLIES, POSTAGE, FUEL
		0000070915	18.96	COMPUTER, BREAKROOM SUPPLIES
		0000070809	13.75	MISC SUPPLIES
		0000070836	186.52	MISCELLANEOUS
		0000070809	332.92	MISC SUPPLIES

DATE 8/21/14
TIME 13:15:28

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
		0000070809	234.65	
		0000070890	3.17	MISC SUPPLIES/REGIS
		0000070890	752.37	MISC SUPPLIES/REGIS
		0000070890	120.79	MISC SUPPLIES/REGIS
		0000070890	590.00	MISC SUPPLIES/REGIS
		0000070890	1,180.00	MISC SUPPLIES/REGIS
		0000070808	61.99	MISC SUPPLIES
		0000070808	16.17	MISC SUPPLIES
		0000070890	49.71	MISC SUPPLIES/REGIS
		0000070817	105.59	MISC SUPPLIES, POSTAGE, FUEL
		0000070915	1,322.19	COMPUTER, BREAKROOM SUPPLIES
		0000070915	99.00	COMPUTER, BREAKROOM SUPPLIES
		0000070915	274.06	COMPUTER, BREAKROOM SUPPLIES
		0000070915	209.97	COMPUTER, BREAKROOM SUPPLIES
		0000070890	556.17	MISC SUPPLIES/REGIS
		0000070836	371.20	MISCELLANEOUS
		0000070890	77.56	MISC SUPPLIES/REGIS
		0000070890	28.60	MISC SUPPLIES/REGIS
		TOTAL:	15,694.70	
		REPORT TOTAL:	21,226.33	

DATE THU, AUG 21, 2014, 1:15 PM
TIME 13:15:30

TOTALS PAGE
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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

TOTALS BY FUND

FUND NO	FUND NAME	AMOUNT
000	GENERAL FUND	13,144.89
102	TOURISM	13.75
103	GRANTS AND DONATIONS	754.09
410	WATER/SEWER	3,707.33
490	SANITATION	263.32
493	STORM WATER	164.95
495	AIRPORT	49.71
498	AMBULANCE FUND	177.99
517	CENTRAL SERVICES	1,905.22
519	EQUIPMENT RENTAL	927.37
528	BUILD MAINTENANCE	117.71
	TOTAL	21,226.33

CHANGES TO BE MADE SHOULD BE LISTED BELOW

VEND NO.	P.O. NO.	AMT LISTED	CORRECTED AMT	ACTION TO BE TAKEN

.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

CORRECT AMOUNT TO BE PAID .....

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*
* C L A I M S A P P R O V A L *
*
* WE, THE UNDERSIGNED COUNCILMEN OF THE CITY OF MOSES LAKE, WASHINGTON, DO HEREBY CERTIFY THAT THE MERCHANDISE *
* OR SERVICES SPECIFIED HAVE BEEN RECEIVED AND THAT ABOVE CLAIMS ARE APPROVED, AS NOTED, FOR PAYMENT *
* IN THE AMOUNT OF \$21,226.33 THIS 26TH DAY OF AUGUST, 2014 *
*
*
* ..... *
* COUNCIL MEMBER COUNCIL MEMBER *
*
*
* ..... *
* COUNCIL MEMBER FINANCE DIRECTOR *
*****

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CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
A & H PRINTERS	00000001	0000070815	412.92	BLDG INSPECTION RECORDS
		0000070918	300.73	VOLLEYBALL FLYERS
		TOTAL:	713.65	
AAA READYMIX INC	00000027	0000070842	168.86	SHORT LOAD CONCRETE
		TOTAL:	168.86	
AFFORDABLE AUTO REPAIR INC	00007734	0000070843	897.57	REPROGRAM ECM SIGNAL
		TOTAL:	897.57	
AG WEST DISTRIBUTING CO INC	00006842	0000070801	7.45	MISC PVC SUPPLIES
		0000070801	5.90	MISC PVC SUPPLIES
		TOTAL:	13.35	
AMERIGAS	00007048	0000070844	20.91	PROPANE
		TOTAL:	20.91	
AMSAN GENERAL SUPPLY	00003053	0000070845	1,180.10	MISC CLEANING SUPPLIES
		TOTAL:	1,180.10	
APWA	00000004	0000070841	830.00	APWA MEMBERSHIP DUES
		TOTAL:	830.00	
ARCADIA PUBLISHING	00003841	0000070804	138.44	MAC RESALE - BOOKS
		TOTAL:	138.44	
BASIN BARK	00006621	0000070846	62.04	RED LAVA ROCK
		TOTAL:	62.04	
BASIN LOCK & SECURITY	00003714	0000070756	32.37	LEVER-HANDLE ONLY (AIRPORT)
		TOTAL:	32.37	
BATTERY SYSTEMS	00004673	0000070848	14.34	BATTERY
		TOTAL:	14.34	
BESSE MEDICAL SUPPLY	00006688			

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
BESSE MEDICAL SUPPLY	00006688	0000070901	531.03	AMBULANCE SUPPLIES
		TOTAL:	531.03	
BIO SYSTEMS INC	00005488	0000070847	1,198.00	MISC SUPPLIES
		TOTAL:	1,198.00	
BLUE LINE TRAINING LLC	00007468	0000070830	129.00	REGISTRATION
		TOTAL:	129.00	
BLUMENTHAL UNIFORM CO INC	00000133	0000070904	617.08	UNIFORM PANTS
		TOTAL:	617.08	
BOUND TREE MEDICAL LLC	00006022	0000070819	2,048.69	MISC AMBULANCE SUPPLIES
		TOTAL:	2,048.69	
BUD CLARY CHRYSLER DODGE JEEP	00005449	0000070852	276.98	DIAGNOSE CHECK ENG LIGHT
		TOTAL:	276.98	
BUD CLARY FORD	00006454	0000070850	349.52	TENSIONER, V-BELT
		TOTAL:	349.52	
BUD CLARY TOYOTA CHEVROLET	00000150	0000070851	244.07	WHEEL ALIGNMENT, SUPPLIES
		0000070851	322.44	WHEEL ALIGNMENT, SUPPLIES
		0000070851	228.80	WHEEL ALIGNMENT, SUPPLIES
		TOTAL:	795.31	
BUSBY INTERNATIONAL	00005008	0000070849	205.01	ALUMINUM BOXES
		TOTAL:	205.01	
CASCADE ANALYTICAL INC	00005014	0000070860	1,471.86	SAMPLE TESTING
		0000070860	694.00	SAMPLE TESTING
		TOTAL:	2,165.86	
CASCADE DIESEL INC	00003551	0000070853	7.82	RADIATOR CAP

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount	Purpose of Purchase
		=====	
		TOTAL: 7.82	
CASCADE FIRE CORPORATION	00003644	0000070854 203.64	SEAT BELT
		=====	
		TOTAL: 203.64	
CEDAR STREET CLEANERS	00004655	0000070831 711.58	UNIFORM MAINTENANCE
		0000070829 2.43	UNIFORM MAINT
		=====	
		TOTAL: 714.01	
CENTRAL MACHINERY SALES INC	00002779	0000070941 24.36	JET SET OILSHED
		0000070855 453.18	EXCAVATOR RENTAL
		=====	
		TOTAL: 477.54	
CENTRAL MANUFACTURING INC	00005478	0000070858 1,243.66	SUPPLIES
		=====	
		TOTAL: 1,243.66	
CHS INC	00000249	0000070862 34,633.51	FUEL FOR VEHICLES
		=====	
		TOTAL: 34,633.51	
CIT GROUP/COMM SRVCS IN	00005316	0000070805 716.82	SNS MERCHANDISE RESALE - SHOES
		=====	
		TOTAL: 716.82	
CITY OF MOSES LAKE	00008107	0000070943 9.55	EXCISE TAX
		=====	
		TOTAL: 9.55	
	00008201	0000070839 310.82	WATER SERVICE
		=====	
		TOTAL: 310.82	
	00008107	0000070943 48.34	EXCISE TAX
		=====	
		TOTAL: 48.34	
	00008201	0000070839 284.25	WATER SERVICE
		0000070839 2,212.89	WATER SERVICE
		=====	
		TOTAL: 2,497.14	
	00008107		

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount	Purpose of Purchase
		0000070943 19.14	EXCISE TAX
		0000070943 1,156.11	EXCISE TAX
		=====	
		TOTAL: 1,175.25	
00008201		0000070839 8,421.99	WATER SERVICE
		=====	
		TOTAL: 8,421.99	
00008107		0000070943 2.91	EXCISE TAX
		0000070943 270.08	EXCISE TAX
		=====	
		TOTAL: 272.99	
00008201		0000070839 907.89	WATER SERVICE
		=====	
		TOTAL: 907.89	
00008107		0000070943 72.85	EXCISE TAX
		0000070943 9.29	EXCISE TAX
		=====	
		TOTAL: 82.14	
00008201		0000070839 2,357.06	WATER SERVICE
		0000070839 405.61	WATER SERVICE
		0000070839 353.20	WATER SERVICE
		0000070839 4,160.53	WATER SERVICE
		0000070839 171.08	WATER SERVICE
		0000070839 505.05	WATER SERVICE
		0000070839 424.58	WATER SERVICE
		0000070839 1,753.61	WATER SERVICE
		0000070933 1,550.42	WATER SERVICE
		=====	
		TOTAL: 11,681.14	
00008107		0000070943 51.07	EXCISE TAX
		=====	
		TOTAL: 51.07	

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
CITY OF MOSES LAKE	00008201	0000070839	137.97	WATER SERVICE
		=====		
		TOTAL:	137.97	
	00008107	0000070943	5.52	EXCISE TAX
		0000070943	9.72	EXCISE TAX
		0000070943	1.29	EXCISE TAX
		0000070943	4.34	EXCISE TAX
		0000070943	51.49	EXCISE TAX
		0000070943	63.56	EXCISE TAX
		=====		
		TOTAL:	135.92	
	00008201	0000070839	246.69	WATER SERVICE
		0000070839	258.41	WATER SERVICE
		0000070933	5,220.72	WATER SERVICE
		0000070839	2,457.09	WATER SERVICE
		0000070839	83.75	WATER SERVICE
		=====		
		TOTAL:	8,266.66	
	00008107	0000070943	131.56	EXCISE TAX
		0000070943	60.37	EXCISE TAX
		=====		
		TOTAL:	191.93	
	00008201	0000070933	4,146.17	WATER SERVICE
		=====		
		TOTAL:	4,146.17	
	00008107	0000070943	31,623.95	EXCISE TAX
		0000070943	7,612.34	EXCISE TAX
		0000070943	2,584.20	EXCISE TAX

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount		Purpose of Purchase
		0000070907	230,000.00	DEBT SERVICE PAYMENTS
		0000070907	230,000.00	DEBT SERVICE PAYMENTS
		0000070907	25,818.75	DEBT SERVICE PAYMENTS
		0000070907	25,818.75	DEBT SERVICE PAYMENTS
		0000070907	145,000.00	DEBT SERVICE PAYMENTS
		0000070907	145,000.00	DEBT SERVICE PAYMENTS
		0000070907	73,906.25	DEBT SERVICE PAYMENTS
		0000070907	73,906.25	DEBT SERVICE PAYMENTS
		=====		
		TOTAL:	991,270.49	
00008102		0000070840	5,747.50	BUILDING PERMIT FEE
		=====		
		TOTAL:	5,747.50	
00008107		0000070943	13,463.65	EXCISE TAX
		=====		
		TOTAL:	13,463.65	
00008201		0000070839	1,667.95	WATER SERVICE
		=====		
		TOTAL:	1,667.95	
00008107		0000070943	1,033.59	EXCISE TAX
		=====		
		TOTAL:	1,033.59	
00008201		0000070839	527.25	WATER SERVICE
		=====		
		TOTAL:	527.25	
00008107		0000070943	25.48	EXCISE TAX
		0000070943	2,830.76	EXCISE TAX
		0000070943	46.00	EXCISE TAX
		0000070943	53.13	EXCISE TAX
		0000070943	3,334.54	EXCISE TAX
		=====		
		TOTAL:	6,289.91	

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount		Purpose of Purchase
CITY OF MOSES LAKE	00008201	0000070839	276.17	WATER SERVICE
		0000070839	897.36	WATER SERVICE
		0000070839	425.51	WATER SERVICE
		0000070933	255.10	WATER SERVICE
		0000070839	355.97	WATER SERVICE
		0000070839	1,146.00	WATER SERVICE
		0000070839	95.70	WATER SERVICE
		0000070839	95.70	WATER SERVICE
		=====		
		TOTAL:	3,547.51	
	00008107	0000070907	145,000.00	DEBT SERVICE PAYMENTS
		0000070907	18,332.50	DEBT SERVICE PAYMENTS
		=====		
		TOTAL:	163,332.50	
COLUMBIA BASIN DAILY HERALD	00000210	0000070800	285.12	PROGRAM ADVERTISING
		0000070800	285.13	PROGRAM ADVERTISING
		0000070832	80.00	ADVERTISING
		=====		
		TOTAL:	650.25	
COLUMBIA BASIN MACHINE	00000211	0000070856	206.04	FABRICATE EXTENSION
		=====		
		TOTAL:	206.04	
COLUMBIA BEARING BDI	00000274	0000070939	36.00	GAT BELT
		=====		
		TOTAL:	36.00	
COMMERCIAL TIRE	00005968	0000070859	1,776.13	NEW TIRES
		0000070859	4,287.50	NEW TIRES
		=====		
		TOTAL:	6,063.63	
CONCESSIONS SUPPLY	00006286	0000070909	122.19	LRC RESALE

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
=====				
		TOTAL:	122.19	
CONSOLIDATED ELECTRIC DIST	00000819	0000070938	69.98	BROAN
		0000070861	25.52	MISC SUPPLIES
		0000070861	7.74	MISC SUPPLIES
		0000070861	1,381.12	MISC SUPPLIES
=====				
		TOTAL:	1,484.36	
CROWN PAPER & JANITORIAL	00007120	0000070857	1,099.51	TOWELS, CLEANING SUPPLIES
=====				
		TOTAL:	1,099.51	
D & L SUPPLY COMPANY INC	00006974	0000070865	982.70	MONUMENT CASINGS
=====				
		TOTAL:	982.70	
D L T SOLUTIONS INC	00004305	0000070623	4,356.88	AUTOCAD SFTWRE SUBS UPGRD
=====				
		TOTAL:	4,356.88	
DB SECURE SHRED	00003144	0000070908	5.51	RECORDS DESTRUCTION
		0000070908	5.51	RECORDS DESTRUCTION
		0000070908	13.78	RECORDS DESTRUCTION
		0000070908	13.78	RECORDS DESTRUCTION
		0000070908	13.78	RECORDS DESTRUCTION
		0000070908	5.51	RECORDS DESTRUCTION
		0000070908	5.51	RECORDS DESTRUCTION
		0000070908	5.51	RECORDS DESTRUCTION
=====				
		TOTAL:	68.89	
DEPT OF ECOLOGY	00003221	0000070949	3,132.50	ANNUAL STORMWATER PERMIT
=====				
		TOTAL:	3,132.50	
DOG-ON-IT-PARKS	00005386	0000070922	164.37	DOI ROLL BAGS

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account		Purpose of Purchase
		P.O. Number	P.O. Amount	
		0000070922	164.37	DOI ROLL BAGS
		0000070922	164.36	DOI ROLL BAGS
		=====		
		TOTAL:	493.10	
E F RECOVERY	00007244			
		0000070944	5,009.50	AMBULANCE BILLING
		0000070944	120.54	AMBULANCE BILLING
		=====		
		TOTAL:	5,130.04	
EASTERN CASCADE DIST	00006909			
		0000070834	34.50	DRINKING WATER
		=====		
		TOTAL:	34.50	
EMPLOYMENT SECURITY DEPT	00005914			
		0000070833	30.00	SERVICES
		=====		
		TOTAL:	30.00	
FABER INDUSTRIAL SUPPLY	00000501			
		0000070866	47.13	BROOMS, HANDLE
		=====		
		TOTAL:	47.13	
FASTENAL COMPANY	00007372			
		0000070867	1,074.97	MISC SUPPLIES
		0000070867	106.45	MISC SUPPLIES
		=====		
		TOTAL:	1,181.42	
FOOD SERVICES OF AMERICA	00007168			
		0000070925	6,165.82	SNS RESALE
		=====		
		TOTAL:	6,165.82	
GRAINGER PARTS OPERATIONS	00002755			
		0000070868	469.78	MISC SUPPLIES
		0000070868	258.03	MISC SUPPLIES
		=====		
		TOTAL:	727.81	
GRANT CO SOLID WASTE DEPT	00000640			
		0000070923	23,828.87	LANDFILL DUMPING FEES
		=====		
		TOTAL:	23,828.87	
GRANT COUNTY ECON DEV COUNCIL	00005738			
		0000070811	36.00	LUNCHEON/AEROSPACE OPPOR
		=====		
		TOTAL:	36.00	
HACH COMPANY	00000712			
		0000070871	159.61	PH TESTING SUPPLIES

CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
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NAME OF VENDOR	VENDOR NO	Expenditure Account		
Department	Object Description	P.O. Number	P.O. Amount	Purpose of Purchase
=====				
HACH COMPANY	00000712			
		0000070871	1,705.10	PH TESTING SUPPLIES
		=====		
		TOTAL:	1,864.71	
HELENA CHEMICAL COMPANY	00006809			
		0000070932	820.04	PROMATE
		=====		
		TOTAL:	820.04	
HOCHSTATTER ELECTRIC	00000705			
		0000070934	336.68	DEFROST TERMINATION SWITCH
		0000070897	192.70	HVAC LABOR/POLE SEQUENCER
		=====		
		TOTAL:	529.38	
IBS INC	00004860			
		0000070872	661.26	STOCK SUPPLIES
		=====		
		TOTAL:	661.26	
INLAND PIPE & SUPPLY COMPANY	00003727			
		0000070696	951.60	MISC SUPPLIES
		=====		
		TOTAL:	951.60	
IRRIGATORS INC	00003840			
		0000070873	58.27	OIL DRIPPER
		=====		
		TOTAL:	58.27	
JERRYS AUTO SUPPLY	00005835			
		0000070822	29.20	FUEL FOR CHAIN SAW
		0000070875	44.26	MISC SUPPLIES/LABOR
		0000070875	428.35	MISC SUPPLIES/LABOR
		=====		
		TOTAL:	501.81	
KATHERINE L KENISON	00006980			
		0000070812	5,725.00	PROF SERVICE/CITY ATTY
		=====		
		TOTAL:	5,725.00	
KONICA MINOLTA BUSINESS SOL	00007194			
		0000070924	136.51	MAINT AGREE/CH COPIER
		=====		
		TOTAL:	136.51	
MARX OVERHEAD DOOR	00006724			
		0000070877	304.28	REPAIR DOOR
		=====		
		TOTAL:	304.28	
MCMaster CARR SUPPLY COMPANY	00005385			
		0000070878	1,708.48	CHECK VALVES

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount	Purpose of Purchase
		=====	
		TOTAL: 1,708.48	
METRON POWDER COATING	00006872	0000070879 323.70	POWDER COAT GATE
		=====	
		TOTAL: 323.70	
MOSES LAKE SOCCER TOTS	00007063	0000070931 376.00	HOOPSTERTOTS INSTRUCTION
		=====	
		TOTAL: 376.00	
MOSES LAKE STEEL SUPPLY	00001268	0000070940 23.76	MISC SUPPLIES
		0000070880 26.22	MISC SUPPLIES
		0000070880 14.70	MISC SUPPLIES
		=====	
		TOTAL: 64.68	
MSI MARTIAL ARTS ACADEMY	00007322	0000070921 108.00	KICKBOXING INSTRUCTION
		0000070921 408.00	KICKBOXING INSTRUCTION
		=====	
		TOTAL: 516.00	
NORTHSTAR CHEMICAL INC	00006113	0000070881 2,083.15	SODIUM HYPO
		=====	
		TOTAL: 2,083.15	
OASIS AUTO SPA	00004834	0000070820 708.00	CAR WASHES-APRIL & JULY 2014
		=====	
		TOTAL: 708.00	
OGDEN MURPHY WALLACE INC	00006727	0000070946 372.55	PROF SERVICE/AT & T CLAIM
		=====	
		TOTAL: 372.55	
OU PRESS DISTRIBUTION CENTER	00006745	0000070802 18.14	MAC RESALE - BOOKS
		=====	
		TOTAL: 18.14	
OXARC INC	00001412	0000070942 365.01	MISC GASES/SUPPLIES
		0000070942 36.28	MISC GASES/SUPPLIES
		0000070942 106.56	MISC GASES/SUPPLIES
		0000070882 141.16	MISC SUPPLIES

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount	Purpose of Purchase
		0000070882 103.69	MISC SUPPLIES
		=====	
		TOTAL: 752.70	
PUD OF GRANT COUNTY	00001501	0000070912 1,381.10	ELEC SERVICE/ST LIGHTS
		0000070912 34,947.83	ELEC SERVICE/ST LIGHTS
		=====	
		TOTAL: 36,328.93	
QCL INC	00006542	0000070898 50.50	PRE-EMPLOY DRUG TESTING
		=====	
		TOTAL: 50.50	
QUILL CORPORATION	00004811	0000070916 378.66	ENVELOPES, BREAKROOM SUPPLIES
		0000070916 28.98	ENVELOPES, BREAKROOM SUPPLIES
		0000070821 56.42	COFFEE, FILTERS
		0000070884 133.77	FLOOR MATS
		0000070821 56.42	COFFEE, FILTERS
		=====	
		TOTAL: 654.25	
RAINBOW FLYING SERVICE	00003974	0000070886 400.00	LAWN CARE
		=====	
		TOTAL: 400.00	
RAMADA MOSES LAKE	00006884	0000070920 3,439.62	CONCERT PEFORMER LODGING
		=====	
		TOTAL: 3,439.62	
REDDY ICE	00004329	0000070807 555.00	ICE RESALE/CASCADE CAMPGROUND
		=====	
		TOTAL: 555.00	
REFLEX TRAFFIC SYSTEMS	00004837	0000070930 15,507.87	PROF SERV/RED LIGHT TICKETS
		=====	
		TOTAL: 15,507.87	
ROYAL ORGANIC PRODUCTS	00007187	0000070913 4,233.45	TIPPING FEES
		=====	
		TOTAL: 4,233.45	
ROYCE ROLLS RINGER	00004390	0000070900 309.53	MASTER LOCK
		=====	
		TOTAL: 309.53	

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NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount	Purpose of Purchase
SAMARITAN HEALTHCARE	00001836	0000070903 15.60	AMBULANCE SUPPLIES
		=====	
		TOTAL: 15.60	
SHERWIN-WILLIAMS	00006229	0000070948 285.94	PAINT/SUPPLIES
		0000070948 126.80	PAINT/SUPPLIES
		0000070887 30.09	PAINT
		=====	
		TOTAL: 442.83	
SHIRTBUILDERS INC	00004022	0000070814 223.05	HARDEN/RODRIGUEZ SHIRTS
		=====	
		TOTAL: 223.05	
SMITH SPORT OPTICS INC	00008016	0000070806 220.20	SNS MERCHANDISE RESALE-GLASSES
		=====	
		TOTAL: 220.20	
SPECTRUM COMMUNICATIONS	00002691	0000070888 48.02	REPAIR RADIO, HEADSET, CAMERA
		0000070888 268.57	REPAIR RADIO, HEADSET, CAMERA
		=====	
		TOTAL: 316.59	
STATE AUDITORS OFFICE	00003249	0000070929 1,155.72	PROF SERV/AUDIT
		=====	
		TOTAL: 1,155.72	
SWANK MOTION PICTURES INC	00008015	0000070919 645.26	MOVIES IN PARK (RV & ET)
		=====	
		TOTAL: 645.26	
T O ENGINEERS	00005176	0000070824 231.56	PROF SERV AIRPORT OVRLY 2014
		0000070824 12.19	PROF SERV AIRPORT OVRLY 2014
		=====	
		TOTAL: 243.75	
TERESA WAKKURI	00004588	0000070926 328.00	KINDERMUSICK INSTRUCTION
		=====	
		TOTAL: 328.00	
THOMSON REUTERS - WEST	00004968	0000070899 959.12	LEGAL BOOKS
		=====	
		TOTAL: 959.12	
TIM RICH CONSULTING LLC	00003351		

DATE 8/22/14
TIME 09:52:51

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XAPPRVD

CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number	P.O. Amount	Purpose of Purchase
		0000070889	420.00	SERVICE CALL
		=====		
		TOTAL:	420.00	
UMPQUA BANK	00006670	0000070910	658.83	BANKING FEES
		=====		
		TOTAL:	658.83	
UTIL UNDRGRND LOCATION CENTER	00004598	0000070835	55.90	UNDERGROUND LOCATES-JULY 2014
		0000070835	55.90	UNDERGROUND LOCATES-JULY 2014
		0000070835	55.90	UNDERGROUND LOCATES-JULY 2014
		=====		
		TOTAL:	167.70	
VALLEY ATHLETICS	00006626	0000070896	568.85	PAINT
		=====		
		TOTAL:	568.85	
VERIZON WIRELESS	00002107	0000070914	269.39	MONTHLY USAGE
		=====		
		TOTAL:	269.39	
WALTER E NELSON CO	00006267	0000070891	209.97	CARPET CLEANER
		=====		
		TOTAL:	209.97	
WATER GEAR INC	00004417	0000070803	2,345.67	SNS MERCHANDISE RESALE
		=====		
		TOTAL:	2,345.67	
WEAVER EXTERMINATING SERVICE	00004290	0000070893	69.06	RODENT CONTROL
		=====		
		TOTAL:	69.06	
WEINSTEIN BEVERAGE COMPANY	00005990	0000070927	1,014.67	LARSON/LAUZIER/SNS RESALE
		0000070927	572.07	LARSON/LAUZIER/SNS RESALE
		0000070927	2,275.54	LARSON/LAUZIER/SNS RESALE
		0000070927	732.60	LARSON/LAUZIER/SNS RESALE
		0000070927	752.10	LARSON/LAUZIER/SNS RESALE
		0000070927	174.00	LARSON/LAUZIER/SNS RESALE
		0000070927	572.08	LARSON/LAUZIER/SNS RESALE

DATE 8/22/14
TIME 09:52:51

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XAPPRVD

CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

NAME OF VENDOR Department	VENDOR NO Object Description	Expenditure Account P.O. Number P.O. Amount	Purpose of Purchase
=====			
		TOTAL: 6,093.06	
WEST COAST FIRE & RESCUE	00006789	0000070828 90.20	HYDRAULIC FLUID
		TOTAL: 90.20	
WESTERN EQUIPMENT DIST INC	00004582	0000070892 489.85	CAPS, FILTERS
		TOTAL: 489.85	
WESTERN PETERBILT INC	00006802	0000070894 19.20	REPLACE SENSOR
		0000070894 556.10	REPLACE SENSOR
		TOTAL: 575.30	
ZIGGYS #13	00006567	0000070895 8.34	PREMIX CONCRETE, STAPLES
		TOTAL: 8.34	
=====			
		REPORT TOTAL: 1,427,951.82	

CITY OF MOSES LAKE
TABULATION OF CLAIMS TO BE APPROVED
COUNCIL MEETING OF 08/26/2014

TOTALS BY FUND

FUND NO	FUND NAME	AMOUNT
000	GENERAL FUND	82,984.26
102	TOURISM	4,084.88
103	GRANTS AND DONATIONS	115.05
116	STREET	44,397.68
410	WATER/SEWER	60,418.74
450	2011 BOND FUND	511,637.50
452	2004 BOND FUND	437,812.50
477	WATER SEWER CONSTRUCTION	5,747.50
490	SANITATION	41,531.48
493	STORM WATER	5,981.33
495	AIRPORT	1,203.37
498	AMBULANCE FUND	10,907.41
517	CENTRAL SERVICES	235.64
519	EQUIPMENT RENTAL	50,826.04
528	BUILD MAINTENANCE	170,068.44
	TOTAL	1,427,951.82

CHANGES TO BE MADE SHOULD BE LISTED BELOW

VEND NO.	P.O. NO.	AMT LISTED	CORRECTED AMT	ACTION TO BE TAKEN

.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

CORRECT AMOUNT TO BE PAID .....

*****

C L A I M S   A P P R O V A L

WE, THE UNDERSIGNED COUNCILMEN OF THE CITY OF MOSES LAKE, WASHINGTON, DO HEREBY CERTIFY THAT THE MERCHANDISE OR SERVICES SPECIFIED HAVE BEEN RECEIVED AND THAT ABOVE CLAIMS ARE APPROVED, AS NOTED, FOR PAYMENT IN THE AMOUNT OF \$1,427,951.82 THIS 26TH DAY OF AUGUST, 2014

.....

COUNCIL MEMBER	COUNCIL MEMBER
.....	.....
COUNCIL MEMBER	FINANCE DIRECTOR

*****

August 19, 2014

TO: City Manager
For City Council Consideration

FROM: Municipal Services Director

SUBJECT: **Accept Work**
Sewer Force Main Project – 2013

Pegram Construction, Inc. has completed the Sewer Force Main Project – 2013. The project included installing 12,500 feet of 20-inch sewer force main and installing air relief valves along Base Line Road and Road K. This project completed the installation of a parallel force main from Nelson Road to the Sand Dunes Treatment Plant.

This work was awarded in the amount of \$1,226,486. The final contract amount is \$1,224,653.

The contract work is physically complete and ready for acceptance by City Council. Upon acceptance of the contract, we will enter into the 60-day lien period as required by Washington State Law.

Respectfully Submitted,



Gary Harer, PE/PLS
Municipal Services Director

DATE: August 19, 2014

FROM: Project Engineer



TO: Municipal Services Director

SUBJECT: **PEGRAM CONSTRUCTION, INC.
SEWER FORCE MAIN PROJECT - 2013 ACCEPT WORK**

Pegram Construction, Inc. has completed work for the above project.

This project consists of a base bid installing 12,500 lineal feet of 20" C-900 PVC Sewer Force Main including installing connecting to existing 20" AC sewer force main and installing Air Relief Valves. The bid also includes restoring the trench area.

This work was awarded in the amount of \$1,226,486.39. The final contract amount for the work is \$1,224,653.37. Pegram Construction did an exceptional job on this project, finishing slightly below the original contract amount and almost a month ahead of the original schedule. They were also very cooperative and worked with City Staff to come up with field modifications that saved both time and money.

The contract work is physically complete and ready for acceptance. Upon acceptance of the contract, we will enter into the 60 day lien period as required by Washington State Law, prior to release of the contractor's retainage.

c: City Engineer/ Assistant Municipal Services Director
Inspector

August 19, 2014

TO: City Manager for City Council Consideration

FROM: Parks and Recreation Director



SUBJECT: Lodging Tax Advisory Committee Reappointments

As the current terms of all members of the Lodging Tax Advisory Committee are set to expire September of 2014, it seems like the appropriate time to suggest reappointments.

Additionally, with a change in employment, Laura Susserman appears to have left the community for employment away from her past position as the General Manager of the Comfort Inn and Suites Hotel. We have attempted to contact her in writing without success. At this point, it seems logical to assume that with her departure from the community, she is no longer able to serve on the Lodging Tax Advisory Committee. We have been in contact with the new General Manager of the Holiday Inn and Suites and her name is Kim Kirkbride. Kim has expressed a desire to serve on the committee in the position that Laura previously held.

This group will be meeting in the future to provide a recommendation to the City Council regarding 2015 Lodging Tax Funding support.

Thank you for your consideration.

Spencer Grigg

Subject: FW: Lodging Tax Advisory Committee Interest

-----Original Message-----

From: Kim Kirkbride [<mailto:kimk@lincolnandassociates.com>]

Sent: Wednesday, July 30, 2014 2:09 PM

I am writing this to express my interest in filling the vacancy that there is on the Lodging Tax Advisory Committee for the City of Moses Lake.

If I should need to do/send anything further to be able to fill this position please let me know!

Thank you

Kim Kirkbride
General Manager
Comfort Suites, Moses Lake
509-765-3731

August 21, 2014

RECEIVED

AUG 21 2014

**COMMUNITY DEVELOPMENT
PLANNING & BUILDING
CITY OF MOSES LAKE**

Mr. Gilbert Alvarado
Community Development Director
321 S. Balsam St.
Moses Lake, WA 98837

RE: August 19, 2014, Denial of Business License Application-The Hydrofarmer

Dear Mr. Alvarado:

Per our discussion on the topic of the letter you sent denying the above referenced Business License Application, I request to be placed on the agenda at the next City Council meeting to discuss the matter with the City Council.

Sincerely,



Alan Heroux
509-750-0072



August 19, 2014

Brent Heroux
220 Beal
Moses Lake, WA 98837

SUBJECT: Business License Application - The Hydrofamer

Dear Mr. Heroux:

The Community Development Department has receipted your business license application submitted on August 15, 2014 for "the manufacture of marijuana for food products". Prior to receiving your application, I spoke with Alan Heroux who clarified the intent of your proposed business. See attached letter. It is still clear to me that your business license application is intended for the production, or growing, of marijuana.

Under the description portion of the business license application, you used the terms "manufacture of marijuana". The definition of "Manufacture" contained within Initiative Measure No. 502 includes the following excerpt:

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, . .

Again, it is production of marijuana that is the intent of your business as I read your City of Moses Lake business license application and your Marijuana License Application with the Washington State Liquor Control Board (Board) which is for a Marijuana Producer Tier 3. The Board's web-page has a producer license description for this type of license. The description is as follows:

"To produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Tier 3 allows for between ten thousand square feet and thirty thousand square feet of dedicated plant canopy".

Based on my conversation with Alan Heroux, the production, or growing of marijuana, would be part of your business. The City considers the production of marijuana, if they are plants, an agricultural use. Our current zoning scheme does not allow agriculture uses, which are prohibited in all zoning districts. Consequently, we cannot process your business license application which is for a prohibited use.

As we cannot process your business license application, I have enclosed a refund for the business license application you submitted to the City of Moses Lake. Please find the enclosed \$40 dollar refund.

If you have any questions, please do not hesitate to contact me at your convenience. I can be reached at (509) 764-3745.

A handwritten signature in black ink, appearing to be 'G. Alvarado', written in a cursive style.

Gilbert Alvarado
Community Development Director

GA:jt

Enclosure

August 15, 2014

Mr. Gilbert Alvarado, City of Moses Lake Community Development Director
321 S. Balsam St
Moses Lake, WA 98837

RE: Business License Application, The Hydrofarmer, 1450 Wheeler Rd.

Dear Mr. Alvarado:

I'm writing this letter to accompany a new Business License Application made by My Brother. We changed the description portion of the application to clarify the business intent. We have also attached a list of definitions, which show why the description of the intended use does conform to the current zoning regulations.

It is our belief that if the City of Moses Lake looks at this application reasonably taking into consideration the wording in the Light Industrial Zoning Ordinance along with the attached definitions, the application will be approved without further delay.

Please contact me if you have any questions.

Respectfully Submitted,



Alan Heroux

509-750-0072

RECEIVED

AUG 15 2014

COMMUNITY DEVELOPMENT
PLANNING & BUILDING
CITY OF MOSES LAKE

RECEIVED

AUG 15 2014

COMMUNITY DEVELOPMENT
PLANNING & BUILDING
CITY OF MOSES LAKE

BUSINESS LICENSE APPLICATION

CITY OF MOSES LAKE

321 South Balsam - P.O. Drawer 1579

Moses Lake, Washington 98837

(509) 764-3750 Fax(509) 764-3758

Type of license:

☒ New Business ☐ Ownership Change ☐ Name Change ☐ Location Change ☐ Exempt
☐ Non-profit

Is this a Home Occupation? ☐ Yes ☒ No Is the business located outside of city limits? ☐ Yes ☒ No

WA State Uniform Business Identifier (UBI) 603 040 341

Non-Profit No. _____

WA State Contractors No. _____

Expiration Date: _____

BUSINESS NAME: The Hydrofarmer

DESCRIPTION: The manufacture of marijuana for food products.

Business Owner: Brent Heroux

Home Phone: _____

Business Phone: 509-750-0072

Cell Phone: _____

Business Address: 1450 Wheeler Rd.

City: Moses Lake

State: WA

Zip: 98837

Mailing Address (if different): 220 Beale

City: Moses Lake

State: WA

ZIP: 98837

(NOT APPLICABLE FOR BUSINESSES LOCATED OUTSIDE CITY LIMITS)

Property Owner: Wheeler Cooperator LLC (Jay)

Phone: W: 509-765-0555
C: 509-431-3229

Address: 1450 Wheeler Rd.

City: Moses Lake

State: WA

ZIP: 98837

REPORT SALES OR USE TAX WITH LOCATION CODE 1309

IT IS THE RESPONSIBILITY OF THE APPLICANT TO SCHEDULE AN INSPECTION WITH THE MOSES LAKE FIRE DEPARTMENT AT (509)765-2204, BEFORE THIS APPLICATION CAN BE ISSUED

Receipt Number 174907 Date 8/15/14 Amount 40.00

Received by Community Development: _____

ZONE: _____

Building Official: Inspection Scheduled For: _____

Approved by: _____ Date: _____

Occupancy Type _____

Fire Marshal/Inspector Date Routed: _____ Approved by: _____ Date: _____

Water Department Date Routed: _____ Approved by: _____ Date: _____

Home Occupation: Property owner notice mailed: _____ End of Comment Period: _____

Approved: _____

Community Development Director approval: _____ Date: _____

Industrial User Survey Required? ☐ Yes ☐ No

Survey form given on (Date): _____

NOTES: _____

SIGN AND DATE BACK PAGE UNDER APPROPRIATE CATEGORY

BUSINESS LICENSE FEE SCHEDULE-5.04 (Prorated Quarterly)

If Purchased: Jan 1-Mar 31
FEE: \$80.00

If Purchased: Apr 1-Jun 30
FEE: \$60.00

If Purchased: Jul 1-Sep 30
FEE: \$40.00

If Purchased: Oct 1-Dec 31
FEE: \$20.00

NAME CHANGE/LOCATION CHANGE EXEMPT/NON-PROFIT APPLICATION PROCESS STILL APPLIES - NO CHARGE	HOME OCCUPATION - 18.55 BUSINESS LICENSE FEE PER SCHEDULE ABOVE APPLICATION PROCESS APPLIES City required to notify adjacent neighbors of proposed use of property. Ten day comment period must be satisfied before issuance of license

SOLICITORS(5.36), TAXI(5.40), SECONDHAND DEALER, PAWNBROKER(5.22)

If your company is one of the above, each employee, including the owner (if he/she is participating).

***EACH PERSON MUST DO A BACKGROUND INVESTIGATION APPLICATION. See application for fees.

HOME OCCUPATION-18.55

I hereby acknowledge that I have read and understand fully the above sections of the Municipal Code on zoning concerning home occupations and I agree to comply with all applicable city and state ordinances.

SIGNATURE _____ DATE _____

EXEMPT-5.04.090

Business License Exemption Certification: I do not anticipate annual sales for _____ (year) of more than \$2,000. The gross annual sales for _____ (previous year) were \$ _____. I understand that the business license exemption must be renewed annually. If sales of more than \$2,000 are made in any calendar year, I understand that I must report these sales to the City of Moses Lake and obtain a City of Moses Lake business license. I have read, or have had read to me, the above and declare under penalty or perjury of the laws of the State of Washington that the foregoing is true and correct.

SIGNATURE _____ DATE _____

ALL OTHER LICENSES-5.04 (Standard)

I certify that the information I have provided to the city is correct. I agree to comply with all federal, state, county and city laws applicable to the establishment, construction, operation, and maintenance of the use herein identified. I further agree to replace or repair to current community street and utility standards any damage to city streets and/or utilities resulting from the establishment construction, operation, or maintenance of the use herein identified. I certify that I have received a copy of the zoning regulation consistent with designated location and MLMC Chapter 5.04, that I understand the requirements of the zone, and that the use herein identified will be established, operated, and maintained in compliance with those regulations.

SIGNATURE Bret Heery DATE 08/15/2014

City of Moses Lake Zoning Ordinance Allowed Use:

Manufacturing, processing, or packaging of food products, excluding meat products, seafood products, distilling, fermenting, canning, slaughtering, rendering, curing, and tanning.

DEFINITIONS BY:

Chapter 82.04.213 RCW
Business and Occupation Tax

Chapter 69.50 RCW
Uniform Controlled Substances Act

Washington State
Retail Food Code
Chapter 246-215
Washington Administrative Code (WAC)

University of Washington, Alcohol & Drug Abuse Institute

Wikipedia, the free encyclopedia

DEFINITIONS:

"Agricultural Product" does not include marijuana, useable marijuana, or marijuana-infused products, or animals defined as pet animals under RCW 16.70.020.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Food" means a raw, cooked, or processed edible substance, ice, BEVERAGE, or Ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules.

"Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

"Plant Propagation" is the process of creating new plants from a variety of sources: seeds, cuttings, bulbs and other plant parts.

"Marijuana" or "marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Marijuana edibles" means food items made with marijuana or infused with Marijuana extracts.

"Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

"Cannabis Consumption" Among the variety of ways cannabis is consumed; forms of smoking or oral consumption are most common.

RECEIVED

AUG 15 2014

COMMUNITY DEVELOPMENT
PLANNING & BUILDING
CITY OF MOSES LAKE

Richard Penhallurick
905 Stratford Rd
Moses Lake, WA 98837

August 20, 2014

Honorable Mayor and City Council:

On July 8, 2014, the City Council considered and granted my request to build on unplatted property. The permission granted had a thirty day period in which to provide an easement and apply for a building permit.

I have been working with staff on an easement recorded and then submitted to staff on Wednesday July 23, 2014. I was informed that I do not have a legal description of the easement and since the 30 days has passed, I will have to submit another request. I would like the City Council to grant an extension and approve the easement since it was submitted timely. I have met legal requirements for an easement as stated in the following.

However, in the case of an easement, a "deed [of easement] is not required to establish the actual location of an easement, but is required to convey an easement" which encumbrances a specific servient estate. Smith v King, 27 Wash.App. 869, 871, 620 P.2d 542, 24 A.L.R. 4th 1049 (1980) (citing cases). The servient estate must be sufficiently described. See Seattle v. Nazarene, 60 Wash.2d 657, 660-61, 374 P.2d 1014 (1962).

I am attaching various case law to substantiate that I do indeed have an easement, it was presented within the time allowed, it should be accepted and time should be allowed to complete the application for a building permit.

The last time the City Council considered my request there were concerns about access. This has now been addressed. I restate the following for information to facilitate discussion.

1. **Utilities:** The project I have proposed for this unique property will only require water for fire suppression. There is no need for sewer. The issue of my access to Walmart's fire hydrants for fire suppression will need to be confirmed with the Fire Chief no matter if I am required to plat or not. The easement regarding this access is recorded in Grant County and fire flow was judged sufficient on Walmart's plans on record with the City. There is no argument with this requirement.

- 2. Platting:** As a Planning Commissioner, I have always understood that when we review plats, a few factors drive the platting requirement. Staff wants to make sure adequate utilities exist to serve the site and adjacent property if that is the case. Platting also confirms property ownership – where does my property begin/end? Easements are also considered.

In my case I would argue that there is no need to plat, if there is no need to extend utilities given there is no additional properties to extend “to and through”. To the West, Walmart is served along with the commercial strip malls further West. To the North is SR-17. To the South is the water body of Moses Lake. To the East is the water body Moses Lake.

The issue of property ownership could be confirmed without the platting requirement. Walmart has property pins adjacent to my property. The construction I propose does not require more than that to figure the location of my property lines. This is the same idea for example when city Building Inspectors do an inspection. The requirement to verify the property pins is not the City’s responsibility but rather the contractor who submits a site plan with their permit. Areas like Knolls Vista and the Lower Peninsula are great examples where areas exist that over time property pins have been removed, covered, etc. The inspections occur with the responsibility of the accuracy of information submitted with the building permit falling on the contractor.

Also, I would ask that the City Council consider their previous actions with similar requests to build on unplatted property that were not required to plat. Recently the City Council was presented with a request from Mick Hansen for property South of I-90. City staff mentioned that because of the location of the property, platting would not be beneficial. Mr. Hansen’s is similar to mine: State Highway/Route to the North; State of Washington natural resource to the South and West.

- 3. Land Use:** A question was raised about the use of my property. This property is zoned Commercial. Given its unique location there is not much I can do with it. Do I wish I could build something more along the lines of my strip mall? Yes, but what business wants to have a view of the back of Walmart and minimal exposure to public travel. If a future use is proposed, City Code requires review before any change can be made and necessary changes can be made to address the City Code at that time. The mini-storage I propose is low impact development that does not require prime location. This is true of most mini-storage facilities that have already been built in town.

Please consider my request for an extension of time to build on unplatted property.

125 Wash.2d 544, 886 P.2d 564

[View Washington Reports version](#)
[Briefs and Other Related Documents](#)
[Judges and Attorneys](#)

Supreme Court of Washington,
En Banc.
Norman BERG and Marjorie Berg, husband and wife, Respondents,
v.
Robert Y. TING and Kathy Ting, and their marital community, Petitioners,
and
First Nationwide Bank, a federal savings bank; the City of Seattle; John L. Cahill and
Beverly J. Cahill, husband and wife, and the marital community composed thereof,
Defendants.

No. 60928-4.
Jan. 5, 1995.
Reconsideration Denied March 29, 1995.

Property owners brought action to quiet title to purported easement across neighbors' property. The Superior Court, King County, [George A. Finkle](#), J., granted summary judgment for neighbors. The Court of Appeals, [850 P.2d 1349](#), reversed, and neighbors sought review. The Supreme Court, Brachtenbach, J., held that: (1) grant of easement did not sufficiently describe location of easement to satisfy statute of frauds; (2) conveyance would not be reformed to include proper description of easement; (3) property owners' withdrawal of opposition to subdivision was not part performance of agreement to convey easement and thus did not take agreement out of statute of frauds; and (4) neighbors did not judicially admit location of easement.

Court of Appeals reversed; Superior Court judgment reinstated.

[Durham](#), J., filed opinion concurring in part and dissenting in part, in which [Madsen](#), J., concurred.

West Headnotes

[1] [KeyCite Citing References for this Headnote](#)

-  [141](#) Easements
  -  [141I](#) Creation, Existence, and Termination
    -  [141k12](#) Express Grant
      -  [141k12\(1\)](#) k. In General. [Most Cited Cases](#)

Grant of easement must describe specific subservient estate.

[2] [KeyCite Citing References for this Headnote](#)

-  [141](#) Easements

- ⇒ [141I](#) Creation, Existence, and Termination
- ⇒ [141k1](#) k. Nature and Elements of Right. [Most Cited Cases](#)

Although it is incorporeal right, easement is interest in land.

[3] [KeyCite Citing References for this Headnote](#)

- ⇒ [185](#) Frauds, Statute Of
- ⇒ [185VI](#) Real Property and Estates and Interests Therein
- ⇒ [185k60](#) Creation of Easements
- ⇒ [185k60\(1\)](#) k. In General. [Most Cited Cases](#)

Express grant of easement is "conveyance" within meaning of statute of frauds. West's RCWA [64.04.010](#), [64.04.020](#).

[4] [KeyCite Citing References for this Headnote](#)

- ⇒ [141](#) Easements
- ⇒ [141I](#) Creation, Existence, and Termination
- ⇒ [141k12](#) Express Grant
- ⇒ [141k12\(2\)](#) k. Sufficiency of Words of Conveyance in General. [Most Cited Cases](#)

Deed of easement is not required to establish actual location of easement, but is required to convey easement which encumbrances specific servient estate; servient estate must be sufficiently described.

[5] [KeyCite Citing References for this Headnote](#)

- ⇒ [185](#) Frauds, Statute Of
- ⇒ [185VIII](#) Requisites and Sufficiency of Writing
- ⇒ [185k105](#) Contents of Memorandum
- ⇒ [185k110](#) Description of Lands
- ⇒ [185k110\(1\)](#) k. Sufficiency in General. [Most Cited Cases](#)

Grant of easement which stated that location of easement was to be determined by reference to future finally approved short plat application did not satisfy statute of frauds, as description of servient estate referred to nonexistent instrument and did not refer to any instrument which contained appropriate description.

[6] [KeyCite Citing References for this Headnote](#)

- ⇒ [185](#) Frauds, Statute Of
- ⇒ [185VIII](#) Requisites and Sufficiency of Writing
- ⇒ [185k105](#) Contents of Memorandum
- ⇒ [185k110](#) Description of Lands
- ⇒ [185k110\(1\)](#) k. Sufficiency in General. [Most Cited Cases](#)

Description of parcel over which easement was to be located which was appended to grant of easement was not sufficient to describe specific location of easement for purpose of statute of frauds, as parties clearly intended that less than entire parcel comprise servient estate; recognizing easement from description of entire parcel would undermine recording statute. [West's RCWA 65.08.070](#).

[7] [KeyCite Citing References for this Headnote](#)

⇒ [141](#) Easements

⇒ [141I](#) Creation, Existence, and Termination

⇒ [141k12](#) Express Grant

⇒ [141k12\(2\)](#) k. Sufficiency of Words of Conveyance in General. [Most Cited](#)

[Cases](#)

Grant of easement was such that it would not have been entitled to be recorded pursuant to statute where grant described location of easement by referring to and relying entirely on description of lots in short plat to be later approved and recorded. [West's RCWA 65.04.030\(1\)](#).

[8] [KeyCite Citing References for this Headnote](#)

⇒ [328](#) Reformation of Instruments

⇒ [328I](#) Right of Action and Defenses

⇒ [328k10](#) Matters Subject to Reformation

⇒ [328k13](#) Matter of Description

⇒ [328k13\(1\)](#) k. In General. [Most Cited Cases](#)

Reformation of grant of easement which inadequately stated that location of easement was to be determined by reference to future finally approved short plat application to include specific legal description of easement would be inappropriate, absent any evidence that mutual mistake or scrivener's error caused inadequate description.

[9] [KeyCite Citing References for this Headnote](#)

⇒ [358](#) Specific Performance

⇒ [358II](#) Contracts Enforceable

⇒ [358k27](#) Certainty

⇒ [358k29](#) Description of Subject-Matter

⇒ [358k29\(2\)](#) k. Description of Lands in General. [Most Cited Cases](#)

⇒ [358](#) Specific Performance [KeyCite Citing References for this Headnote](#)

⇒ [358II](#) Contracts Enforceable

⇒ [358k40](#) Part Performance of Oral Contracts

⇒ [358k41](#) k. In General. [Most Cited Cases](#)

Conveyance instrument containing inadequate description may be subject to specific performance under doctrine of part performance, which takes agreement out of statute of frauds, if all terms of contract are proved.

[10] [KeyCite Citing References for this Headnote](#)

⇒ [358](#) Specific Performance

⇒ [358I](#) Nature and Grounds of Remedy in General

⇒ [358k18](#) Persons as Against Whom Performance May Be Enforced

⇒ [358k22](#) k. Purchasers in General. [Most Cited Cases](#)

Specific performance of agreement conveying easement may be granted with respect to subsequent purchasers of property which would be subservient estate, where subsequent purchasers have notice of rights of another under contract conveying interest in land.

[11] [KeyCite Citing References for this Headnote](#)

⇒ [185](#) Frauds, Statute Of

⇒ [185IX](#) Operation and Effect of Statute

⇒ [185k129](#) Part Performance in General

⇒ [185k129\(3\)](#) k. Agreements Relating to Real Property in General. [Most Cited](#)

[Cases](#)

⇒ [358](#) Specific Performance [KeyCite Citing References for this Headnote](#)

⇒ [358II](#) Contracts Enforceable

⇒ [358k40](#) Part Performance of Oral Contracts

⇒ [358k41](#) k. In General. [Most Cited Cases](#)

Under doctrine of part performance, agreement to convey estate in real property which is not in writing, in compliance with statutes, may be proved without writing, and specifically enforced, if there is sufficient part performance of agreement. [West's RCWA 64.04.010, 64.04.020](#).

[12] [KeyCite Citing References for this Headnote](#)

⇒ [185](#) Frauds, Statute Of

⇒ [185IX](#) Operation and Effect of Statute

⇒ [185k129](#) Part Performance in General

⇒ [185k129\(3\)](#) k. Agreements Relating to Real Property in General. [Most Cited](#)

[Cases](#)

Property owners' withdrawal of opposition to subdivision proposal of neighbors, which constituted consideration for grant of easement to owners across portion of subdivision, was not "part performance" sufficient to remove agreement from statute of frauds; tender of consideration did not supply necessary terms to conveyance agreement.

[13] [KeyCite Citing References for this Headnote](#)

⇒ [185](#) Frauds, Statute Of

⇒ [185IX](#) Operation and Effect of Statute

⇒ [185k129](#) Part Performance in General

⇒ [185k129\(3\)](#) k. Agreements Relating to Real Property in General. [Most Cited Cases](#)

Court would decline to follow restatement section purporting to set forth part performance doctrine for taking contracts for transfer of interest in land out of statute of frauds, as section was inconsistent with state's part performance test which examined factors of delivery and assumption of actual and exclusive possession, payment or tender of consideration, and making of permanent, substantial and valuable improvements, referable to contract. [Restatement \(Second\) of Contracts § 129](#).

[14] [KeyCite Citing References for this Headnote](#)

⇒ [185](#) Frauds, Statute Of

⇒ [185XII](#) Evidence

⇒ [185k158](#) In General

⇒ [185k158\(4\)](#) k. Sufficiency. [Most Cited Cases](#)

⇒ [358](#) Specific Performance  [KeyCite Citing References for this Headnote](#)

⇒ [358IV](#) Proceedings and Relief

⇒ [358k118](#) Evidence

⇒ [358k121](#) Weight and Sufficiency

⇒ [358k121\(5\)](#) k. Part Performance of Contract Within Statute of Frauds. [Most Cited Cases](#)

Where specific performance of oral agreement to convey interest in land or agreement which does not adequately define terms of agreement is sought, party relying on part performance doctrine must prove by clear and unequivocal evidence existence and all terms of contract, in addition to establishing that there has been part performance.

[15] [KeyCite Citing References for this Headnote](#)

⇒ [185](#) Frauds, Statute Of

⇒ [185IX](#) Operation and Effect of Statute

⇒ [185k144](#) k. Waiver of Bar of Statute; Estoppel. [Most Cited Cases](#)

Defendant owners of alleged servient estate did not admit location of easement claimed by adjacent property owners, in adjacent owners' action to quiet title to easement; defendants stated in answer that servient estate was not locatable, described what grant of easement "purports to grant," and referred to grant of easement "claimed by" plaintiff.

**566 *546 Betts, Patterson & Mines, P.S., Bruce H. Hurst, Karen J. Summerville, Thomas F. Peterson, Seattle, for petitioners.

Davis, Wright & Tremaine, Stephen M. Rummage, Seattle, for respondents.

BRACHTENBACH, Justice.

Neighboring residential property owners dispute whether a grant of easement complies with the statute of frauds, and, if not, whether the easement is nevertheless enforceable under the doctrine of part performance.

Norman and Marjorie Berg (the Bergs) and Robert Y. and Kathy Ting (the Tings) are owners of adjacent waterfront parcels on Lake Washington in Seattle. The Bergs brought an action to quiet title to an easement across the Tings' property. The trial court granted summary judgment in favor of the Tings on the basis that the grant of easement did not comply with the statute of frauds, and was void and unenforceable. The Court of Appeals reversed, holding that although the grant of easement did not comply with the statute of frauds, it was enforceable under the doctrine of ***547** part performance. We reverse the Court of Appeals, and reinstate summary judgment in favor of the Tings.

The Tings' property is located directly northeast of and adjacent to the Bergs' property. The Tings purchased their property in October 1988 from John and Beverly Cahill. In 1983, the parcel directly northeast of and adjacent to the Cahills' property was owned by Dr. and Mrs. Kenneth Hanson, who had signed a contract to sell the parcel to Mr. and Mrs. Stuart Young. Later in 1983, the Cahills and the Youngs submitted an application to the City of Seattle for a short plat which would allow them to subdivide the Cahill and Young properties. They proposed dividing the two parcels into seven lots, five on the Hanson property and two on the Cahill property.

The Bergs publicly opposed the short plat application. They wrote letters to the City of Seattle and neighboring property owners, and expressed opposition at neighborhood ****567** meetings. In 1984, the Cahills, the Youngs and the Bergs met, and agreed that the Bergs would withdraw their opposition to the short plat application in exchange for an easement down the subdivision's driveway and across the Cahill property to the Berg property. On March 3, 1984, the parties executed their written agreement and a grant of easement. The Bergs dropped their opposition to the application.

The next month, the City gave conditional approval to the short plat application. Although the plan still contained seven lots, they were reconfigured. Consequently, on June 8, 1984, the parties executed an updated agreement prepared by the Bergs' attorney. On the same day, they executed the grant of easement which is at issue in this case. The grant of easement provides in part that the

[g]rantors have combined their respective properties for the purpose of subdividing them and have applied to the City of Seattle for approval of a Short Subdivision, Variance, Shoreline Substantial Development Permit and a SEPA-Environmental Determination, under Master Use Permit Application No. 83-549 (the "Application").

Clerk's Papers, at 202-03.

*548 Paragraph 5 of the grant then provided:

5. *Grant of Easement.* For value received, the receipt of which is hereby acknowledged by Grantors, Grantors hereby grant, convey and warrant to Grantees and their licensees, invitees, heirs, successors and assigns a perpetual, nonexclusive easement in, under and over the following tracts:

TRACT A: The area designated as the private driveway across Lots A, B, C, and F, the exact location of which shall be determined by reference to the conditionally granted Application when the same is finally approved and recorded; and

TRACT B: That portion of Lots F and G of the Short Subdivision applied for under the Application as the same is finally approved and recorded situated between the private driveway referred to in *TRACT A* above and the shore of Lake Washington, the upland boundary of which portion shall be a line commencing at the northwest corner of Lot G and running southerly to the point of intersection with the southerly boundary of the private driveway referred to in *TRACT A* above, thence westerly 50 feet along the southerly boundary of said private driveway, thence southerly, in a line parallel to the westerly boundary of Lot G, to the southerly boundary of Lot F;

to provide ingress and egress and for utilities to and for the benefit of the Berg Property, subject to the following terms and conditions:

A. With respect to *Tract B*, Grantees shall have the right, but not the obligation, to locate and construct a 20-foot road across *Tract B* between any point on the private driveway referred to in *Tract A* and Grantees' property line

....

Clerk's Papers, at 203. The grant also provided that the Cahills could construct a 20-foot-wide road from the private driveway to provide access to the beachfront of lot F or G, and that if they did, the Bergs could not locate their own road, but could locate and construct a 20-foot road from such road constructed by the Cahills to the Bergs' property line. Clerk's Papers, at 203-04. The grant provided that once a road was constructed to the Bergs' property line, it was to be surveyed and the agreement modified to limit the scope of easement over the surveyed road, but that prior to such a survey and modification, "the easement shall encompass all of *Tract B*." Clerk's Papers, at 204.

*549 Appended to the document were the legal descriptions of the Berg, Cahill (Ting) and Young properties.

The grant provided that in the event of litigation, the prevailing party would be entitled to costs and attorney fees.

The grant of easement was recorded on June 18, 1984. The Youngs' interest in the Hanson property expired, and they did not purchase it. Thus, the grant of easement (which was not signed by the Hansons) involves only the Cahill property.

**568 Final approval of the short plat application did not occur until May 2, 1988.

As finally approved, the application contained six, not seven lots, and the lots were reconfigured and redesignated.

[1] ✓ As discussed hereafter, a grant of easement must describe a specific subservient estate; that is an absolute. Here, the grant of easement attempts to describe the subservient estate by reference to a future "finally approved" short plat application. That document did not exist until almost 4 years after the grant.

Examination of the finally approved short plat discloses beyond question the fatal error of the attempted description of the subservient estate. The most glaring deficiency is the description of tract B as part of the subservient estate. It describes the easement as being over a portion of lots F and G as in the finally approved short plat. There is no lot G in the finally approved short plat. Equally fatal is the fact that in the finally approved short plat the purported easement appears (so far as it affects Tings' property) to be located entirely on lot E, but the grant describes no easement over lot E.

The finally approved application was recorded on May 6, 1988, several months before the Tings purchased the Cahill property in October. The deed from the Cahills to the Tings does not mention the easement. The Bergs never used or improved any of the Cahill property for an easement. Shortly after the Tings purchased the property, Mr. Berg mentioned the easement to the Tings. The Tings have refused to acknowledge the easement.

*550 In March 1990, the Bergs brought this action to quiet title in the easement across the Tings' property. The parties filed cross motions for summary judgment. The Tings argued that the grant of easement was invalid because it did not adequately describe the servient estate and therefore violated the statute of frauds. The Tings pointed out that the grant of easement provided that the location of tracts A and B would be determined with regard to the finally approved and recorded short plat application.

The trial court granted the Tings' motion. The trial court said in its oral ruling that the grant did not sufficiently describe the servient estate, but instead referred to a future document with uncertain terms and uncertain legal descriptions. The trial court also commented, in response to the Bergs' claim that the statute of frauds should not be applied to work a fraud, that it found no evidence of fraud on the Tings' part, noting particularly that the Bergs' attorney drafted the grant of easement. The trial court awarded the Tings costs and attorney fees.

The Bergs appealed. The Court of Appeals reversed, holding that the grant of easement violated the statute of frauds, but is enforceable under the doctrine of part performance. The court also reversed the award of attorney fees in favor of the Tings, and directed the trial court to award fees in favor of the Bergs. The court awarded the Bergs costs and attorney fees on appeal. In a motion for reconsideration, the Tings argued for the first time that they are bona fide purchasers. The Court of Appeals denied the motion for reconsideration.

The Tings' petition for review was granted.

The trial court and the Court of Appeals both held that the grant of easement is void on its face and does not comply with the statute of frauds. However, while the trial court granted summary judgment to the Tings on this basis, the Court of Appeals held that the grant of easement is enforceable under the doctrine of part performance. The Bergs maintain that, contrary to the holdings of the trial court and the Court of Appeals, the grant of easement does comply with the statute of frauds.

[2] ✓ [3] ✓ *551 Under RCW 64.04.010, "[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed ...". Every deed "shall be in writing, signed by the party bound thereby, and acknowledged ...". RCW 64.04.020. Although it is an incorporeal right, an easement is an interest in land. See Perrin v. Derbyshire Scenic Acres Water Corp., 63 Wash.2d 716, 388 P.2d 949 (1964). An express grant of easement is a conveyance within the meaning of the statute of frauds. **569 E.g., Ormiston v. Boast, 68 Wash.2d 548, 550, 413 P.2d 969 (1966).

[4] ✓ To comply with the statute of frauds, "a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description." Bigelow v. Mood, 56 Wash.2d 340, 341, 353 P.2d 429 (1960). However, in the case of an easement, a "deed [of easement] is not required to establish the actual location of an easement, but is required to convey an easement" which encumbrances a specific servient estate. (Some italics ours.) Smith v. King, 27 Wash.App. 869, 871, 620 P.2d 542, 24 A.L.R.4th 1049 (1980) (citing cases). The servient estate must be sufficiently described. See Seattle v. Nazareus, 60 Wash.2d 657, 660-61, 374 P.2d 1014 (1962).

[5] ✓ Here, the writing describes the interest conveyed as "a perpetual nonexclusive easement in, under and over" two tracts of land, tract A and tract B. These tracts are described as certain portions of the lots of the conditionally granted short subdivision application "when the same is finally approved and recorded" and "as the same is finally approved and recorded ...". Clerk's Papers, at 203. The granting clause thus refers to a description of the encumbered property as the same is approved in the future, and refers to a then *nonexistent instrument* as defining the servient estate. The grant thus did not contain a sufficient description of the land nor did it reference an instrument which did contain such a description.

[6] ✓ *552 The Bergs argue, however, that the grant of easement complies with the statute of frauds in accord with the analysis in Netherlands Am. Mortgage Bank v. Eastern Ry. & Lumber Co., 142 Wash. 204, 252 P. 916 (1927). They argue that the grant was of a "floating easement" and rely on the principle that the easement's location need not be exactly established in the conveyancing instrument. They point out that appended to the grant of easement were legal descriptions of the three parcels—the Young and Cahill parcels (which were originally intended to be encumbered by the easement) and the Berg parcel. They reason that the Cahill property was thus sufficiently described and the location of the easement on that property could be established in the future.

In *Netherlands*, the granting clause conveyed strips of land between parallel lines on each side of the grantee's railroad

as the same may be laid out and built on and across sections numbers seven (7) seventeen (17) twenty-one (21) and twenty-three (23) all in township number fourteen (14) north of range one (1) west of the Willamette Meridian, to be used ... for railroad right of way or other railroad purposes....

Netherlands, at 205, 252 P. 916. The court held the grant of easement granted the railroad the right to select the location of the easement over the described sections. However, the servient estate-the sections which were encumbered by the floating easement-were specifically described in the granting clause. Here, in sharp contrast, the granting clause only describes tracts A and B, and does not describe the entire Cahill parcel. If the granting clause had described the entire Cahill parcel as the servient estate, the case might be analogous to *Netherlands*. *Netherlands* does not support the Bergs' argument.

Moreover, accepting the Bergs' argument would require that we ignore language in the granting clause which clearly shows the parties' intent that less than the entire Cahill property comprise the servient estate. Paragraph 5 of the grant, titled "Grant of Easement", does not refer to the entire Cahill property. Nothing in the granting clause even hints that the ***553** entire Cahill property is the servient estate; instead the granting clause contains a description of tracts which, while inadequate as a description of the servient estate, obviously shows that less than the entire Cahill property was intended as the servient estate. Where it is manifestly apparent that the parties' granting language was clearly *not* intended to define the entire Cahill (and Young) parcels as the servient estate, we will not substitute the appended legal description of the Cahill parcel for the description in the granting clause in order ****570** that the Bergs may be saved from the statute of frauds problem which the grant of easement presents.

It is essential to the integrity of the recording system and the stability of real estate titles that we reject the contention that it was adequate to append the description of the entire Cahill tract. We have recognized that the legislative purpose in enacting RCW 65.08.070 was "to give greater stability to land titles, by authorizing prospective purchasers or encumbrancers to rely upon the title *as disclosed by the record*." (Italics ours.) *Adams v. Mignon*, 197 Wash. 293, 298, 84 P.2d 1016 (1938); accord *Lazov v. Black*, 88 Wash.2d 883, 886, 567 P.2d 233 (1977).

[7] ✓ The Legislature has recognized the vital importance of being able to determine the exact legal description from the record. RCW 65.04.030(1) provides in part: "[D]eeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record". Under that provision, the grant of easement was not entitled to be recorded because it described lots in a short plat not yet in existence, much less approved and recorded. The grant itself contains its own fatal deficiency by referring to and relying entirely on the description of lots in a short plat to be later (almost 4 years in fact) approved and recorded.

[8] ✓ The Bergs maintain, however, that the agreement should be reformed to reflect the parties' intent (and they rely on parts of the record supporting their view of that intent), and then the agreement's validity should be assessed under the statute of frauds, citing **554 Snyder v. Peterson*, 62 Wash.App. 522, 527, 814 P.2d 1204 (1991), where the court reformed a contract before assessing its validity. The Tings maintain, to the contrary, that under *Howell v. Inland Empire Paper Co.*, 28 Wash.App. 494, 624 P.2d 739, review denied, 95 Wash.2d 1021 (1981) and cases cited therein, an agreement containing an inadequate legal description to be conveyed is void and is not subject to reformation or specific performance.

As to reformation, in *Williams v. Fulton*, 30 Wash.App. 173, 176 n. 1, 632 P.2d 920, review denied, 96 Wash.2d 1017 (1981), the court addressed the flat statement in *Howell* that an agreement containing an inadequate legal description is void and is not subject to reformation. The court in *Williams* said the statement was sufficient in the fact pattern in *Howell*, but correctly added that *Howell* should not be construed so as to prevent reformation in an appropriate factual setting. See, e.g., *Lofberg v. Viles*, 39 Wash.2d 493, 236 P.2d 768 (1951) (conveyances of real property may be reformed on the ground of mutual mistake where mistake is indicated by clear and convincing evidence); see generally Warren L. Shattuck, *Contracts in Washington, 1937-1957: Part II*, 34 Wash.L.Rev. 345, 360-61 (1959). *Snyder v. Peterson*, *supra*, cited by the Bergs, is in accord, and stands for the proposition that where there a scrivener's error or mutual mistake leads to the deficient description, the contract may be reformed. *Snyder*, 62 Wash.App. at 527, 814 P.2d 1204.

Here, however, there is no evidence of any mutual mistake or scrivener's error resulting in an inadequate description, and reformation of the agreement prior to assessing the sufficiency of the description for statute of frauds purposes is not appropriate.^{FN1} Again we note that the grantees' (Berg) attorney drafted the grant relying on a nonexistent document*555 as the sole source of the description of the subservient estate.

^{FN1}. There are cases permitting a correct legal description of land to be inserted by an agent subsequent to an earnest money agreement or option to purchase, without violating the statute of frauds. See 2 Washington State Bar Ass'n, *Real Property Deskbook* § 37.36, at 37-24 (2d ed. 1986). Those cases are not relevant in this case, which does not involve either an earnest money agreement or option to purchase and where there was no authorization for an agent to insert a correct legal description at a later time.

[9] ✓ As to the statement in *Howell* that an instrument containing an inadequate description is not subject to specific performance, the case which is cited for the proposition did not address the part performance doctrine. **571 Herrmann v. Hodin*, 58 Wash.2d 441, 364 P.2d 21 (1961), cited in *Howell*, 28 Wash.App. at 496, 624 P.2d 739. Given that the part performance doctrine may be applicable in the case of an oral agreement, which of course would entail an inadequate written description (none at all), it follows that the doctrine may apply in a case involving an inadequate written description. Under the doctrine of part performance, both this court and the Court of

Appeals have specifically enforced agreements containing inadequate descriptions. Stephens v. Nelson, 37 Wash.2d 28, 35, 221 P.2d 520 (1950) (later the conclusion in *Stephens* that a description is defective if it omits the county and state was reversed in *Lofberg v. Viles*, *supra*); Dunbabin v. Allen Realty Co., 26 Wash.App. 660, 665, 613 P.2d 570 (1980). However, as discussed below, all the terms of the contract must be proved.

[10] ✓ Another issue exists in this case with regard to whether the agreement may be specifically enforced under the doctrine of part performance. The Tings were not parties to the agreement. However, specific performance may be granted with respect to subsequent purchasers where the subsequent purchasers have notice of the rights of another under a contract conveying an interest in land. Baird v. Knutzen, 49 Wash.2d 308, 311, 301 P.2d 375 (1956). A significant question in this case, therefore, is whether the Tings are bona fide purchasers for value; if so, specific performance should not be granted. In their motion for reconsideration by the Court of Appeals, the Tings for the first time argued that they are bona fide purchasers of the Cahill property who took without actual or constructive notice of the easement claimed by the Bergs, and therefore they took free of the encumbrance.

The Tings never raised the issue in the trial court, though, and under well-settled principles we will not address *556 the issue. RAP 2.5(a); Kramarevsky v. Department of Social & Health Servs., 122 Wash.2d 738, 750, 863 P.2d 535 (1993).

Our refusal to address the bona fide purchaser question does not prevent resolution of this case, however. Even if the doctrine of part performance is otherwise applicable, its requisites are not satisfied in this case.

[11] ✓ Under the doctrine of part performance, an agreement to convey an estate in real property which is not in writing in compliance with the requisites of RCW 64.04.010 and .020 may be proved without a writing, and specifically enforced, if there is sufficient part performance of the agreement. Miller v. McCamish, 78 Wash.2d 821, 826, 479 P.2d 919 (1971) (citing cases).

The part performance doctrine "is based on the premise that in certain situations it would be fraudulent to permit a party to escape performance of his [or her] duties under an oral contract after ... [permitting] the other party to perform in reliance upon the agreement." 2 Washington State Bar Ass'n, *Real Property Deskbook* § 37.40, at 37-27 (2d ed. 1086) (citing *Miller v. McCamish*, *supra*).

This court has identified three factors, or elements, which are examined to determine if there has been part performance of the agreement so as to take it out of the statute of frauds:

- (1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.

Kruse v. Hemp, 121 Wash.2d 715, 724-25, 853 P.2d 1373 (1993); Powers v. Hastings, 93 Wash.2d 709, 717, 612 P.2d 371 (1980). In addition, where specific performance of

the agreement is sought, the contract must "be proven by evidence that is clear and unequivocal and which leaves no doubt as to the terms, character, and existence of the contract." Miller, 78 Wash.2d at 829, 479 P.2d 919 (quoting Granquist v. McKean, 29 Wash.2d 440, 445, 187 P.2d 623 (1947)); see Williams v. Fulton, 30 Wash.App. 173, 178, 632 P.2d 920, review denied, 96 Wash.2d 1017 (1981); Powers, 93 Wash.2d at 713-17, 612 P.2d 371 ("clear and unequivocal" evidence standard *557 applies where specific performance sought, but lesser standard applies where damages sought); 8A George W. Thompson, *Real Property* § 4463, at 361 (1963 repl.). [FN2](#)

[FN2](#). In *Kruse v. Hemp, supra*, we declined to address whether there was part performance, because there was insufficient evidence of a contract. Here, the trial court did not reach the part performance issue and thus did not assess whether there is sufficient evidence of a contract under the clear and unequivocal evidence standard for specific performance of the contract. We also do not reach this issue.

**572 [12]  As to whether there is sufficient evidence of part performance, the issue is whether consideration alone is sufficient part performance of the grant of easement. There is no dispute that of the three factors set forth above, the only performance alleged here is the Bergs' withdrawal of their opposition to the subdivision proposal. The Tings maintain that consideration alone is not enough to show part performance.

In Richardson v. Taylor Land & Livestock Co., 25 Wash.2d 518, 529, 171 P.2d 703 (1946), the court observed that there is a wide diversity of opinion about the relative importance of the three factors. Where all are found, the strongest case is generally presented, and conversely, where none is found, there is little to warrant a decree of specific performance. Richardson, at 529, 171 P.2d 703. There is a conflict as to whether any single one of the factors is either indispensable or all-sufficient, and the payment of consideration is the least convincing of the three. Richardson, at 529, 171 P.2d 703. The court said "no positive rule has been, or can be, formulated for the government or decision of all cases indiscriminately, but that the determination of each case must depend upon the particular facts and circumstances involved therein." Richardson, at 529, 171 P.2d 703. The court noted: "This court has uniformly held that payment of the purchase price, in whole or in part, is not of itself a sufficient part performance to remove an oral agreement for the sale of land from the operation of the statute" of frauds. Richardson, at 530, 171 P.2d 703.

More recently, in an opinion handed down after the Court of Appeals issued its opinion in this case, this court said that ***558** the doctrine of part performance "requires at least two" of the three factors. Kruse v. Hemp, 121 Wash.2d 715, 724-25, 853 P.2d 1373 (1993). This statement is dictum, since the court held that the doctrine of part performance did not apply because the parties never agreed on the material and essential terms of a contract. Kruse, at 725, 853 P.2d 1373. As a definite statement, the statement is also somewhat inaccurate, because in prior cases where the doctrine of part performance was addressed, the court never set forth a rigid requirement that two of the three factors be present. In general, though, the court's dictum accords with the observation that usually where part performance is found, two

of the three factors are present; however, there is no absolute rule that two of the three factors must be present for the doctrine of part performance to take a real estate conveyancing agreement out of the statute of frauds. This clarification of the language in *Kruse* necessarily requires rejecting the Tings' argument that because only one, rather than two, of the three factors is present in this case, the doctrine of part performance does not apply.

We agree with the Tings, however, that consideration alone is insufficient evidence of part performance to take the grant of easement out of the statute of frauds. In [Miller, 78 Wash.2d at 828-29, 479 P.2d 919](#), the court said: "As evidenced by the test required in this state to successfully assert part performance, the court's overriding concern is *precisely directed toward and concerned with a quantum of proof certain enough to remove doubts as to the parties' oral agreement*". The court said that where relief is granted from the statute of frauds, it is for "the specific reason that *to enforce the statute would be to defeat the very purpose for which it was enacted-i.e., the prevention of fraud arising from uncertainty inherent in oral contractual undertakings.*" [Miller, at 829, 479 P.2d 919](#).

The Tings aptly point out that while the nonmonetary consideration in this case may provide some evidence of the existence of some kind of contract, it reveals nothing about the character or terms of any contract. We agree. In this case the evidentiary function of the doctrine of part performance is not satisfied by consideration alone.

*559 The Bergs urge, however, that where a grant of easement is concerned, the three ****573** factors of part performance will have diminished probative value because possession will never be exclusive, and making valuable improvements will often be inconsistent with limited rights granted. While this observation may have some validity, it does not follow that consideration alone should be sufficient part performance to take a grant of easement out of the statute of frauds. Although the part performance doctrine, as recognized in *Richardson*, is a flexible doctrine, its evidentiary function must be preserved, and we will not abandon that function simply because the doctrine may be difficult to apply in certain situations.

[\[13\]](#)  In reaching its conclusion that the doctrine of part performance is satisfied in this case, the Court of Appeals relied upon the [Restatement \(Second\) of Contracts § 129 \(1981\)](#). The court said [§ 129](#) is consistent with the Washington approach discussed in *Richardson* and *Powers*, i.e., that the determination whether there has been part performance depends upon the facts and circumstances of each case.

Contrary to the Court of Appeals' reasoning, [§ 129](#) is not consistent with the part performance doctrine recognized by this court.

Under § 129:

A contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific enforcement.

Restatement (Second) of Contracts § 129 (1981). Comment *a* to this section states that it restates what is widely known as the part performance doctrine. The Court of Appeals found comment *d* to the section particularly apt:

"[T]he making of the promise [must be] admitted or ... clearly proved [,] [t]he promisee must act in reasonable reliance on the promise, before the promisor had repudiated it, and the action must be such that the remedy of restitution is inadequate. If these requirements are met, neither the taking of possession nor payment of money nor the making of improvements is *560 essential. Thus, the rendering of peculiar services not readily compensable in money may justify specific performance, particularly if the promisee has also taken other action in reliance on the promise."

Berg v. Ting, 68 Wash.App. 721, 732, 850 P.2d 1349 (1993) (quoting Restatement (Second) of Contracts § 129 cmt. *d* (1981)), *review granted*, 123 Wash.2d 1013, 871 P.2d 599 (1994).

Section 129 is a specific application of § 139, which provides that promissory estoppel may serve as a substitute for compliance with the statute of frauds. Comment *a* to § 139 states expressly that "[s]ections 128 and 129 state particular applications of the same principle [as section 139] to land contracts". Restatement (Second) of Contracts § 139 cmt. *a*.^{FN3}

^{FN3.} Section 139 has not been adopted in this state. Cases where the section has been urged have been resolved on other grounds. See Family Med. Bldg., Inc. v. Department of Social & Health Servs., 104 Wash.2d 105, 702 P.2d 459 (1985); Lectus, Inc. v. Rainier Nat'l Bank, 97 Wash.2d 584, 647 P.2d 1001 (1982); Lige Dickson Co. v. Union Oil Co., 96 Wash.2d 291, 635 P.2d 103 (1981); Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wash.2d 255, 616 P.2d 644 (1980). Recently, the court heard oral argument in a case where the Court of Appeals applied § 139 in the context of an employment contract. Greaves v. Medical Imaging Sys., Inc., 124 Wash.2d 389, 879 P.2d 276 (1994).

Section 129, and in particular comment *d* as applied by the Court of Appeals, requires none of the three factors which we have recognized as evidence of part performance. The Court of Appeals cited two cases in support of its application of § 129. In one of these cases, Kirk v. Tomulty, 66 Wash.App. 231, 237, 831 P.2d 792, review denied, 120 Wash.2d 1009, 841 P.2d 47 (1992), the court said that part performance of a contract on one side and an acceptance of benefit by the other can take a conveyance out of the statute of frauds. The court in *Kirk* added: "Equity should intervene to deny one party what would clearly be an unjust enrichment **574 as long as the character, terms and existence of the contract can be clearly and unequivocally established to the satisfaction of the court." Berg, 68 Wash.App. at 732, 850 P.2d 1349 (quoting Kirk, 66 Wash.App. at 237, 831 P.2d 792). The court in *Kirk* said that the critical inquiry is whether there was intent to create an easement. Kirk, at 237, 831 P.2d 792. However, unlike the case now before the court, in *Kirk* the part

performance consisted of both consideration and improvements, as at least part of the *561 easement area at issue there was improved with an access road in accord with the easement agreement. *Kirk*, at 237-38, 831 P.2d 792. Also, the court in *Kirk* did not address the 3-factor formulation set out in *Kruse v. Hemp*, 121 Wash.2d 715, 853 P.2d 1373 (1993), *Powers v. Hastings*, 93 Wash.2d 709, 612 P.2d 371 (1980), and *Richardson v. Taylor Land & Livestock Co.*, 25 Wash.2d 518, 171 P.2d 703 (1946).

In *Garbrick v. Franz*, 13 Wash.2d 427, 431, 125 P.2d 295 (1942), also cited by the Court of Appeals, the court said that the test for the part performance exception is: "Have the acts of one of the parties changed his situation to such an extent that he cannot be adequately compensated in damages or placed in his original position?" This language must not be read out of context, though. The court in *Garbrick* proceeded to discuss the kind of acts which constitute part performance, payment, possession, and improvements, and specifically in that case found that significant improvements by a lessor in possession constituted sufficient part performance of a lease in excess of 1 year. On its facts and in its analysis, *Garbrick* is distinguishable from the Restatement (Second) approach which the Court of Appeals used.

[14]  We decline to follow § 129 in this case. Application of § 129, and in particular comment d, to enforce the grant of easement would run counter to the evidentiary function underlying this state's part performance doctrine. The agreement does not contain an adequate description of the servient estate. Nothing about the consideration given, unique or otherwise, reveals anything about any real property transaction, and certainly nothing about the servient estate. We point out that where specific performance is sought, the party relying on the part performance doctrine must prove by clear and unequivocal evidence the existence and all the terms of the contract. However, that proof is *in addition to* establishing that there has been part performance. The three factors we have recognized have independent evidentiary import apart from the extrinsic evidence which must be presented to establish the existence and terms of the contract. Applying § 129 would require abandoning the evidentiary function of the *562 part performance doctrine in this case, and leave the establishment of the servient estate to extrinsic evidence alone—a result at odds with the statute of frauds.

In summary on this point, § 129 does not reflect Washington law, and we decline to depart from the protections which the statute of frauds and the part performance doctrine lend to real estate transactions.

The Bergs maintain that failure to order specific enforcement of the agreement will work a fraud, and injustice will result. It must be remembered, however, that the Bergs' attorney drafted the grant of easement, and could have properly included a legal description of the servient estate which would have satisfied the statute of frauds, for example, a metes and bounds description, or a description with incorporation of the then-existing plat application. Any harshness ^{FN4} of the result of requiring compliance with the statute of frauds (or, alternatively, sufficient part performance to meet the evidentiary function of the doctrine of part performance) could easily have been avoided. Moreover, there is no evidence that the Tings, who were not parties to the agreement, have committed fraud.

FN4. This record does not definitely establish whether, absent the Bergs' withdrawal of their opposition to the short plat, the subdivision would have been approved.

[15]  Finally, the Bergs argue that the Tings have admitted the existence and location of the easement in their answer to the complaint, and therefore have made a judicial admission which constitutes an exception to ****575** the statute of frauds. We have not previously recognized such an exception, and do not do so here. However, even if such an exception exists, there was no judicial admission in this case. As the Tings note, the Bergs allege in their complaint that the Tings have asserted that the servient estate is not locatable, and in their answer the Tings affirmatively state the servient estate is not locatable. The Tings also describe what the grant of easement "purports to grant" in their answer, referring to the grant of easement "claimed by plaintiff Berg". Clerk's Papers, at 54. Given these circumstances, we reject ***563** the Berg's contention that a judicial admission has been made.

The Tings ask this court to reinstate their attorney fees awarded by the Superior Court, and to award them attorney fees on appeal, including those fees incurred in the Court of Appeals, based upon an attorney fees and costs provision in the grant of easement. We grant the Tings' request.

In summary, we hold that the grant of easement does not comply with the statute of frauds and that the doctrine of part performance does not apply in this case to take the grant of easement out of the statute of frauds. We reinstate the summary judgment and attorney fees award in favor of the Tings and direct awards of attorney fees on appeal and discretionary review in their favor. See RAP 18.1. We reverse the attorney fees awards in favor of the Bergs.

ANDERSEN, C.J., and UTTER, DOLLIVER, SMITH, GUY and JOHNSON, JJ., concur.

DURHAM, Justice (concurring in part, dissenting in part).

While I concur with the majority that the grant of the easement failed to conform with the statute of frauds, I disagree with the majority's rigid application of the doctrine of part performance. The majority effectively precludes a court from ever finding part performance in the grant of an easement. This is contrary to both the equitable nature of part performance, and the court's tradition of weighing the unique circumstances of each case to determine the enforceability of an agreement not in compliance with the statute of frauds. Because the facts of this case have not been fully resolved, I would deny both parties' motions for summary judgment and remand for trial.

The dispute before the court concerns whether a grant of an easement conforms with the statute of frauds, and if not, whether there was sufficient part performance to remove the agreement from the statute of frauds. While complicated, the relevant facts are as follows. In 1983, the Cahills submitted ***564** a short plat application FN1 to the City of Seattle. The Bergs, whose property lies directly adjacent to the Cahill property, publicly opposed this application. Fearing this would slow or thwart the application's

approval, the Cahills offered the Bergs an easement across their property in return for their cessation of opposition. In 1984, the parties executed this agreement in writing.

[FN1.](#) Approval of a short plat application gives the property owner permission to subdivide his or her property.

It is undisputed that the Bergs dropped their opposition to the short plat application upon signing the grant of the easement. In 1988, Seattle approved a modified version of the original short plat application.[FN2](#) Shortly after Seattle's approval, the Cahills sold their property to the Tings. It is unclear whether the Tings knew of the easement when they bought the property. In any event, when the Bergs mentioned the easement to the Tings, they denied its existence. In response, the Bergs brought this action to quiet title in the easement.

[FN2.](#) In the initial short plat application, the property was divided into seven lots. By 1988, the lots had been reconfigured slightly and reduced to six.

In determining the enforceability of an agreement granting an easement, the court first considers whether the agreement conforms with the statute of frauds. If it does not, the court determines whether there is sufficient part performance to remove the agreement from the statute of frauds. [Kruse v. Hemp](#), 121 Wash.2d 715, 724-25, 853 P.2d 1373 (1993); [Powers v. Hastings](#), 93 Wash.2d 709, 717, 612 P.2d 371 (1980); **576 [Richardson v. Taylor Land & Livestock Co.](#), 25 Wash.2d 518, 528-29, 171 P.2d 703 (1946). Even if sufficient part performance exists, there must be "clear and unequivocal" evidence of the terms, character and existence of the agreement to compel its enforcement. [Miller v. McCamish](#), 78 Wash.2d 821, 829, 479 P.2d 919 (1971) (quoting [Granquist v. McKean](#), 29 Wash.2d 440, 445, 187 P.2d 623 (1947)).

By insisting on a written deed, the statute of frauds mitigates the possibility of perjury or fraud in agreements for the conveyance of real property. [RCW 64.04.010](#), .020. The *565 statute of frauds reflects a recognition that fraud or perjury is more apt to occur when an agreement is based only on the strength of a handshake, rather than on the specifics of a written instrument. In contracts for the purchase or sale of real property, the statute of frauds precludes reliance on oral testimony by requiring that a written agreement meticulously describe the location of the property, or refer to another instrument that describes the location. [Herrmann v. Hodin](#), 58 Wash.2d 441, 443, 364 P.2d 21 (1961). By requiring the clear delineation of property boundaries, the statute of frauds ensures a systematic and organized transfer of property.

In contrast, an easement merely allows one property owner to use the property of another. Since it is often both unnecessary and difficult to describe the exact boundaries of an easement, the statute of frauds does not require a description of the precise location of an easement. Instead, the statute of frauds dictates that a deed locate the easement on a specific servient estate. [Smith v. King](#), 27 Wash.App. 869, 871, 620 P.2d 542, 24 A.L.R.4th 1049 (1980) (citing [Rhoades v. Barnes](#), 54 Wash. 145, 102 P. 884 (1909)).

By its terms, the written agreement between the Bergs and Cahills granted an

easement to the Bergs in consideration for their discontinuation of public opposition to the short plat application. For the grant of the easement to have satisfied the statute of frauds, it needed to locate the easement on a specific servient estate. *Smith v. King, supra*. The agreement used the conditionally approved short plat application as the basis for describing the location of the easement, but simultaneously stated that the location of the easement could be found by referring to the "finally approved" short plat application. As the Court of Appeals held, the grant of the easement could be reasonably read either as fixing the location of the easement, or as providing the method for locating the easement in the future. *Berg v. Ting*, 68 Wash.App. 721, 729, 850 P.2d 1349 (1993). As a result, it failed to refer to a specific servient estate, and thus did not comply with the statute of frauds.

*566 This court has recognized, however, that there are instances where an inequitable result would follow from the failure to enforce an agreement that has not met the requirements of the statute of frauds. Where the repudiating party would reap a windfall, this court has developed the doctrine of part performance to remove such agreements from the statute of frauds and allow their enforcement.^{FN3} See *Richardson v. Taylor Land & Livestock Co., supra* 25 Wash.2d at 529, 171 P.2d 703. In these circumstances, sufficient part performance of the agreement overcomes the failure to conform with the statute of frauds. *Richardson, at 528-29, 171 P.2d 703; Powers v. Hastings, supra; Kruse v. Hemp, supra*.

^{FN3}. Furthermore, where evidence of an agreement "leaves no doubt as to [its] terms, character, and existence", it becomes unnecessary to apply the statute of frauds since the statute was developed to combat fraud resulting from uncertainty in agreements. *Miller v. McCamish*, 78 Wash.2d 821, 829, 479 P.2d 919 (1971) (quoting *Granquist v. McKean*, 29 Wash.2d 440, 445, 187 P.2d 623 (1947)).

Given that the grant of the easement between the Cahills and Bergs failed to conform with the statute of frauds, the next step is to determine whether there was sufficient part performance of the agreement to remove it from the statute of frauds.

This court originally developed the doctrine of part performance to allow enforcement of oral agreements for the purchase/sale of real property.^{FN4} ****577** *Richardson v. Taylor Land & Livestock Co., supra; Powers v. Hastings, supra; Miller v. McCamish, supra*. We examined three elements or circumstances to determine whether sufficient part performance occurred:

^{FN4}. *Kruse v. Hemp*, 121 Wash.2d 715, 853 P.2d 1373 (1993) applied the doctrine of part performance to written agreements that failed to conform with the statute of frauds. *Kruse, at 725, 853 P.2d 1373*.

(1) delivery and assumption of actual and exclusive possession of the land; (2) payment or tender of the consideration, whether in money, other property, or services; and (3) the making of permanent, substantial, and valuable improvements, referable to the contract.

Richardson, 25 Wash.2d at 528-29, 171 P.2d 703, cited in *Kruse*, 121 Wash.2d at 724, 853 P.2d 1373; *Powers*, 93 Wash.2d at 717, 612 P.2d 371. We acknowledged

some general, but flexible, guidelines. ***567** First, evidence of all three elements provided the strongest case for invoking the doctrine of part performance, whereas the total absence of these elements provided the weakest. Richardson, 25 Wash.2d at 529, 171 P.2d 703. Second, of the three elements, evidence of consideration provided the least support for a finding of part performance. Richardson, at 529, 171 P.2d 703. Third, generally two elements needed to be present for a finding of part performance, but as the majority admits the "court never set forth a rigid requirement that two of the three factors be present." Majority, at 572. Finally, when making a part performance determination, courts are not limited to considering solely the three elements outlined in the doctrine of part performance. See Richardson, 25 Wash.2d at 528-29, 171 P.2d 703.

In applying the doctrine of part performance, we emphasized that "no positive rule has been, or can be, formulated for the government or decision of all cases indiscriminately". Richardson, at 529, 171 P.2d 703. Rather, the facts and circumstances of each case must be considered on their own merits. Richardson, at 529, 171 P.2d 703. The court applied a flexible analysis to determine whether an agreement existed. See Richardson, at 529, 171 P.2d 703.

Today, however, the majority sets forth a rigid application of the doctrine of part performance which holds that it will not invoke the doctrine of part performance without a showing of actual possession or improvement of the property by the nonrepudiating party. In other words, of the three elements comprising the part performance doctrine, evidence of consideration alone will never result in a finding of part performance.

This approach ignores the context in which the doctrine developed. In purchase/sale agreements, actual possession and improvement of property, along with consideration, are likely indicators of a purchase/sale transaction. By definition, however, the grantee of an easement does not take actual possession of property. Whether the recipient of the grant of an easement may make improvements to the property depends on the terms of the easement. As a result, consideration often is the only element of the doctrine of part performance applicable to a grant of an easement.

*568 This is not to say that the doctrine of part performance has no relevant application to a grant of an easement that fails to conform with the statute of frauds. But it must remain flexible for it to be adaptable. Just as the statute of frauds recognizes the distinction between the grant of an easement and the purchase/sale of property, so must the doctrine of part performance. The majority's holding, which categorically rejects a finding of part performance based on consideration, effectively prohibits a court from ever finding part performance of a grant of an easement.

The majority defends its position by arguing that consideration "reveals nothing about the character or terms of any contract." Majority, at 572. The majority appears to believe that a finding of sufficient part performance will lead the court to immediately order specific performance of the agreement. For a court to order specific performance, however, there must be "clear and unequivocal" evidence as to the terms, character, and existence of the agreement.^{FN5} ****578** Miller v. McCamish, 78 Wash.2d 821, 829, 479 P.2d 919 (1971) (quoting Granquist v. McKean, 29 Wash.2d 440, 445, 187 P.2d 623 (1947)). The majority engages in a significant departure from

our precedent by arguing that the doctrine of part performance provides the sole evidentiary basis for determining the terms, character, and existence of an agreement.

FN5. Where a party seeks damages, as opposed to specific enforcement, the terms, character, and existence of an agreement must be proven by a preponderance of the evidence. Powers v. Hastings, 93 Wash.2d 709, 716-17, 612 P.2d 371 (1980).

Specific performance is appropriate where there is "substantial evidence of the terms, character and existence of the agreement, *and* of part performance". (Italics mine.) Powers, 93 Wash.2d at 713, 612 P.2d 709. While we require evidence of part performance, we do not require that the part performance itself elucidate the terms of an agreement. Powers, at 722, 612 P.2d 371. Instead, we insist on a "quantum of proof" to demonstrate the exact terms of an agreement. (Italics omitted.) Miller, 78 Wash.2d at 828-29, 479 P.2d 919. The elements comprising the doctrine of part performance can illuminate fully the terms, character, and existence of an agreement, or they can work in conjunction with other evidence. Their *569 relevance will depend on the facts and circumstances of each case. In general, the evidentiary function of the doctrine of part performance will differ depending on whether the disputed agreement was oral or written.

When no written instrument exists to identify the terms and character of an agreement, the doctrine of part performance has greater evidentiary value. The elements of part performance-actual possession of the property, consideration, and improvements on the property-elucidate the terms and conditions of an agreement. In instances where there is no written instrument, the majority's position may be defensible. Under these circumstances, consideration has the weakest evidentiary value because the only term of the agreement it describes is payment.

Where there is a written agreement, however, it is necessary to consider the probative value of the writing. It is imperative to ask whether the writing dispels doubts as to the terms, character, and existence of the agreement. In the present case, the majority chooses to ignore the written agreement between the Bergs and Cahills which specifically grants an easement across the Cahills' former property. By ignoring a written instrument of significant evidentiary value, the majority thwarts its own attempt to discover the terms and conditions of the agreement.

Accordingly I would deny both parties' motion for summary judgement, and would remand for a trial on the merits to determine whether there was sufficient part performance to remove the agreement from the statute of frauds, and whether the evidence taken as a whole left no doubt as to the terms and character of the agreement.

MADSEN, J., concurs.