

Chalkline 08/25/97

Legal Corner by Jay Goldstein

Recently a Washington appellate court handed down the decision for Cobb v. Snohomish County, 935 P.2d 1384 (Wn. App. Div. 1 1997). The court in Cobb held that the doctrine of avoidable consequences applied to a developer's claim for damages based on Snohomish County's denial of the developer's application for preliminary plat approval.

The doctrine of avoidable consequences is really just a fancy way of stating the obvious. If you are somehow being injured, you should try to lessen the injury whenever possible. The doctrine creates a duty for an injured party to act "reasonably" to "minimize" damages. Failure to do so could result in an injured party being prevented from recovering damages that could have been avoided through reasonable efforts.

In the Cobb case, R/L Associates submitted a preliminary plat application to subdivide real property on Highway 99 in Snohomish County. The projected profits from the development were \$960,000.

Under the then-existing Snohomish County Code, developers must share in the cost of improving road systems affected by their proposed development projects. R/L was to pick one of four options to mitigate the development's traffic impact. A dispute arose as to which option was chosen and the amount of money that it would cost R/L.

A Snohomish County employee told R/L that constructing a left-turn lane would be acceptable, at a cost of \$10,000.00. Instead, R/L offered to pay \$12.50 (yes, \$12.50) under a different option. The County rejected the \$12.50 offer. Consequently the County denied the preliminary plat, and all development stopped.

At this point R/L could have paid the \$10,000 under protest, continued the developing, and brought suit against the county to recover the \$10,000. Instead, R/L did nothing and brought suit for over \$700,000.

The appellate court found that a "reasonable" developer would have agreed to pay the \$10,000 under protest in light of the projected profits and the county's willingness to approve the preliminary plat if the \$10,000 was paid.

The moral of the story is always try to mitigate damages.