

## Carla Lundgren

---

**From:** PCD  
**Sent:** Friday, January 26, 2018 10:32 AM  
**To:** Carla Lundgren  
**Subject:** FW: Crampton comment FW: Staff Recommendations to Planning Commission  
**Attachments:** Public sewer easement.pdf



**Jane Rasely**

Administrative Specialist

[www.bainbridgewa.gov](http://www.bainbridgewa.gov)

[facebook.com/citybainbridgeisland/](https://facebook.com/citybainbridgeisland/)

206.780.3758 (office) 206.780.5104

---

**From:** Hayes Gori [mailto:hayes@hayesthelawyer.com]  
**Sent:** Thursday, January 25, 2018 3:29 PM  
**To:** Kelly Tayara <ktayara@bainbridgewa.gov>  
**Cc:** PCD <pcd@bainbridgewa.gov>; Peter Corelis <pcorelis@bainbridgewa.gov>; Joe Levan <jlevan@bainbridgewa.gov>  
**Subject:** FW: Crampton comment FW: Staff Recommendations to Planning Commission

Hello Kelly,

I represent Central Highlands, Inc. and Wallace Cottages, LLC. The e-mail below from Mr. Crampton was forwarded to me by my clients. Mr. Crampton attempts to make a distinction between surface and sub-surface public easements as it relates to adverse possession. He appears to contend that a sub-surface public easement does not preclude adverse possession of the subject land, and based on this assumes he has obtained ownership by adverse possession. He is wrong on all counts.

Not only is the surface/sub-surface distinction not found in the applicable statute, RCW 7.28.090 (“[adverse possession] shall not extend to . . . lands held for any public purpose”), but also in this case the distinction is irrelevant because the public easement in question (attached, created in 1976) grants surface easement rights as well as sub-surface easement rights.

As you can see in the attached document, the easement grants to COBI “. . . a right-of-way easement for Sanitary Sewers with the necessary appurtenances, over, through, across and upon the following described property . . .” (emphasis added). The purpose of the easement is “construction, reconstruction, alteration, operation, maintenance and repair of said Sanitary Sewers and appurtenances.” All of these activities necessarily involve surface activity, which is why the easement grants easements rights “over, through, across and upon” the subject land.

By virtue of the attached easement, the subject land is indisputably held for a public purpose, both above- and below-ground, and consequently the subject land is not susceptible to adverse possession by Mr. Crampton, or anyone else. Mr. Crampton’s submission below should not cause the City to change its position and should not cause any delay in the processing of my client’s application.

Thank you,

Hayes Gori

Begin forwarded message:

**From:** Kelly Tayara <[ktayara@bainbridgewa.gov](mailto:ktayara@bainbridgewa.gov)>  
**Date:** January 25, 2018 at 10:35:26 AM PST  
**To:** Nicholas Smith <[nick.centralhighlands@gmail.com](mailto:nick.centralhighlands@gmail.com)>  
**Subject:** Crampton comment FW: Staff Recommendations to Planning Commission

From: Stephen Crampton [<mailto:SteveSings@gmail.com>]  
Sent: Tuesday, January 23, 2018 6:00 PM  
To: Kelly Tayara <[ktayara@bainbridgewa.gov](mailto:ktayara@bainbridgewa.gov)>; PCD <[pcd@bainbridgewa.gov](mailto:pcd@bainbridgewa.gov)>  
Subject: Staff Recommendations to Planning Commission

Kelly,

I was surprised to see the attached recommendations document.

In response to my comments regarding ownership of the land where my fence is, your document states, "The south 15 feet of the commenter's property, along with the north 15 feet of Lot D, are areas over which there is a public easement dedicated to the City."

Please see the attached easement, which states:

"only such rights in the land above described shall be acquired as shall be necessary for the construction, reconstruction, alteration, operation, maintenance and repair of said Sanitary Sewers and appurtenances."

"The Grantor shall retain the right to use the surface of said easement, so long as said use does not interfere with the installation and maintenance of the sewer main and so long as no permanent buildings or structures are erected on said easement."

By its plain language, the easement says it refers only to an underground sewer and it specifically does not apply to the "surface."

By what authority do you think it allows the City (or a developer) to build a road over my property?

I would request you reschedule the planning meeting, get an opinion from the City lawyer, and update your recommendations accordingly.

Best regards,  
Stephen Crampton