

SCR

4

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 3/29/93

FURTHER:

Date of 5-Day Notice: 8 April 1993
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 12 April 1993

JUDICIARY Committee considered SCR 4

Relating to the Alaska Supreme Court's interpretation of Alaska Rule of Civil Procedure 82 and requesting that the court modify its interpretation of that rule.

and recommends:

replace with _____ CS _____ ()

same title
 new title
 technical title change
(HB only)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
Senate Judiciary	4/05/93	✓	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

Rick Halford

George Farley

OTHER RECOMMENDATIONS:

Suzanne K. Little no Rec
[Signature]

Miss L. Taylor Dubois
Chair: Signature and Recommendation

Alaska State Legislature

Senate Majority Leader
Chair, Judiciary Committee
Vice Chair, Community &
Regional Affairs

Member, State Affairs Committee
Committee on Committees
Western States Legislative Forestry Task Force
Legislative Council



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Ketchikan, Alaska 99901
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Senator Robin L. Taylor

SPONSOR STATEMENT

SCR 4

The purpose of this Resolution is to petition the Supreme Court to review the special status afforded "public interest groups" in the award of attorneys fees under Rule 82 of the Alaska Rules of Civil Procedure.

For all Alaskans except "public interest groups," Rule 82 provides for partial repayment of attorneys fees to the prevailing party by the losing party. This rule designed to discourage frivolous litigation in Alaska and it tends to reduce the judicial case load as a result.

The exception to this rule is "public interest litigation." Based on the Supreme Court's exception for public interest litigants, Rule 82 in fact provides an economic incentive for various groups to sue because full attorneys fees are paid to the public interest group if it prevails and no attorneys fees are charged if it loses. (See attached Brief Legal History of Rule 82.)

This raises a number of public policy issues which, to this point, have not been examined by the Legislature:

- 1) What is the "public interest" that the Court is protecting with its Rule 82 exception? For example, is it really in the "public interest for environmental groups to sue to close down businesses in Alaska?
- 2) How much of a legal subsidy is realized by these groups and who pays for it? For example, if the Legislature funds a particular group through the Appropriations process (such as Alaska Legal Services), is that group obtaining additional funds from the State under Rule 82? If so, to what extent?

3) Is it good public policy to encourage litigation by the groups the Supreme Court has decided to favor? How much does the Supreme Court's policy cost the State of Alaska?

In reviewing these issues the Legislature should not violate the Constitutional separation of powers by crossing into the province of the Judiciary. However, by the same token, it is worth investigating whether the Judiciary is assuming the Legislative authority of public policy determination. Certain groups are being encouraged to litigate as the State is compelled by the Court to partially fund those groups with moneys from other Alaskans, including appropriated funds from the State.

In court order number 1118, the Supreme Court reviewed certain parts of Rule 82 and reenacted the rule effective July 15, 1993 (see attached rule change). It elected not to change the public interest litigation rules (ID. at S 2.).

In summary, under Rule 82 as currently interpreted by the Court, certain parties are encouraged with significant economic incentives to bring litigation against the State. The question of whether the interest of the public is truly being served by these "public interest" parties is also at issue. Finally, the State is being directed to subsidize these questionable "public interest" litigants at great expense to the public itself. Senate Concurrent Resolution 4 urges the Supreme Court to review these issues.

BRIEF HISTORY OF PUBLIC INTEREST LITIGATION UNDER RULE 82

When the Alaska Supreme Court was established in 1960 and adopted rules under Article IV, Sec. 15, Alaska constitution, it adopted what has been known as the "English" rule with respect to the award of attorney fees and costs to successful litigants. The so-called "American" rule generally did not provide for the award of attorney fees and costs, except when specifically authorized in the statute creating the cause of action.

The "American" rule derives in part from the concepts of sovereign immunity so long upheld by the federal courts--that the federal government may not be sued unless Congress has specifically consented. Most, if not all, of the states started out with that rule. Over time, the rule has been eroded, both by the Congress and in the states, but probably no state has had the benefit of a rule such as Rule 82 that has general application in all cases and with all litigants, both private and governmental.

"Public interest" litigation, especially with respect to environmental issues, is of relatively recent origin. It has its roots, however, in the concept of the "private attorney general," best exemplified in the federal anti-trust legislation. This type of litigation began to be a chosen method of action with the passage of the Voting Rights Act of 1964 which contained a provision authorizing an award of attorney fees and costs to

successful litigants. 42 U.S.C. 2000a-3(b) provides: "In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person."

In 1968, the U. S. Supreme Court, interpreting this provision, stated in Newman v. Piggy Park Enterprises, Inc., 390 U.S. 400, 19 L.Ed. 2d 1263, 88 S. Ct. 964 (1968), that:

If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by involving the injunctive power of the federal courts. Congress therefore enacted the provision for counsel fees--not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II.

It follows that one who succeeds in obtaining an injunction under that title should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.

Although the Supreme Court in Piggy Park justified its holding in some respects by pointing out that a person litigating under the Act was entitled only to an injunction, not damages, and an award of attorney fees was particularly justified, therefore, the Alaska Supreme Court used the case to establish its own interpretation of Rule 82 as it applied to public interest litigants.

The Alaska Supreme Court had, in 1964, interpreted Alaska Civil Rule 82 to provide partial compensation for attorney fees and costs to prevailing litigants. Preferred General Agency of Alaska, Inc. v. Rafetto, 391 P.2d 951 (Alaska 1964). Much litigation followed about how much of the whole cost would be "partially" compensated. In 1973 the court had determined that partial could not be full compensation and held in Malvo v. J. C. Penney Company, Inc., 512 P. 2d 575, that it was an abuse of discretion for a court to award full attorney fees to prevailing parties unless the conduct of the losing party was egregious, holding that the purpose of Rule 82 was "to partially compensate a prevailing party for the costs and fees incurred where such compensation is justified and not to penalize a party for litigating a good faith claim. Malvo involved only private litigants.

In 1974 the Alaska Supreme Court first faced the "public interest litigant" issue in a case in which the public interest litigant lost. In reliance on Piggy Park, the court decided that

it would be an abuse of discretion to award attorneys' fees against a losing party "who has in good faith raised a question of genuine public interest before the courts." Gilbert v. State, 526 P.2d 1131 (1974). In Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alaska 1975), the court reiterated its holding in Gilbert and reversed an award to the borough, stating again that public interest litigants should not be penalized by an award of attorney fees against them.

In 1977 the Alaska Supreme Court had before it a case involving a prevailing public interest litigant, Anchorage v. McCabe et al., 568 P. 2d 986 (1977). In that case the court held that, notwithstanding the "partial compensation" rule established in Malvo, "the trial court may, in its discretion, award full attorney's fees to public interest plaintiffs." In 1990, it finally arrived at the determination that public interest litigants must be awarded full attorney fees. Anchorage Daily News v. Anchorage School District, 803 P. 2d 402.

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 1118

Amending Civil Rule 82 and Civil Rule 79 concerning award of attorney's fees and costs.

IT IS ORDERED:

1. Civil Rule 82 is repealed and reenacted to provide:

(a) Allowance to Prevailing Party.

Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

(1) The court shall adhere to the following schedule in fixing the award of attorney's fees to a party recovering a money judgment in a case:

Judgment and, if Awarded, Prejudgment Interest	Contested With Trial	Contested Without Trial	Non- Contested
First \$ 25,000	20%	18%	10%
Next \$ 75,000	10%	8%	3%
Next \$400,000	10%	6%	2%
Over \$500,000	10%	2%	1%

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's actual attorney's fees which

ORDER NO. 1118

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Effective Date: July 15, 1993
Page 2

were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

(3) The court may vary an attorney's fee award calculated under subparagraph (b)(1) or (2) of this rule if, upon consideration of the factors listed below, the court determines a variation is warranted:

- (A) the complexity of the litigation;
- (B) the length of trial;
- (C) the reasonableness of the attorneys' hourly rates and the number of hours expended;
- (D) the reasonableness of the number of attorneys used;
- (E) the attorneys' efforts to minimize fees;
- (F) the reasonableness of the claims and defenses pursued by each side;
- (G) vexatious or bad faith conduct;

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(H) the relationship between the amount of work performed and the significance of the matters at stake;

(I) the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts;

(J) the extent to which the fees incurred by the prevailing party suggest that they had been influenced by considerations apart from the case at bar, such as a desire to discourage claims by others against the prevailing party or its insurer; and

(K) other equitable factors deemed relevant.

If the court varies an award, the court shall explain the reasons for the variation.

(c) Motions for Attorney's Fees. A motion is required for an award of attorney's fees under this rule. The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment as defined by Civil Rule 58.1. Failure to move for attorney's fees within 10 days or such additional time as the court may allow, shall be construed as a waiver of the party's right to recover attorney's fees. A motion for attorney's fees in a default case exceeding \$50,000 must specify actual fees.

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Page 4

(d) **Determination of Award.** Attorney's fees upon entry of judgment by default may be determined by the clerk. In all other matters the court shall determine attorney's fees.

(e) **Effect of Rule.** The allowance of attorney's fees by the court in conformance with this rule shall not be construed as fixing the fees between attorney and client.

2. By adopting these amendments to Civil Rule 82, the court intends no change in existing Alaska law regarding the award of attorney's fees for or against a public interest litigant, see, e.g., Anchorage Daily News v. Anchorage School Dist., 803 P.2d 402, 404 (Alaska 1990); City of Anchorage v. McCabe, 568 P.2d 986, 993-94 (Alaska 1977); Gilbert v. State, 526 P.2d 1131, 1136 (Alaska 1974), or in the law that an award of full attorney's fees is manifestly unreasonable in the absence of bad faith or vexatious conduct by the non-prevailing party. See, e.g., Malvo v. J.C. Penney Co., 512 P.2d 575, 588 (Alaska 1973); Demoski v. New, 737 P.2d 780, 788 (Alaska 1987).

3. Civil Rule 79(b) is amended to provide:

(b) **Items Allowed as Costs.** A party entitled to costs may be allowed premiums paid on the expenses of posting, undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of law or on order of the court; the necessary expense of taking depositions for use at trial and producing exhibits; the expense of service and publication of summons or notices, and postage when the same are served by mail;

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Page 5

filing fees and other charges made by the clerk of the court and fees for transcripts required in the trial of a case in the superior court; and costs paid by the prevailing party's attorney for computerized legal research. In addition to the items allowed as costs by law and in these rules, a party shall be allowed any other expenses necessarily incurred in order to enable a party to secure some right accorded the party in the action or proceeding. Fees for investigators, paralegals or law clerks shall not be allowed as costs.

DATED: January 7, 1993

EFFECTIVE DATE: July 15, 1993

Daniel A. Moore Jr.
Chief Justice Moore

Justice Rabinowitz
Edward T. Burke
Justice Burke

Walter W. Matthews
Justice Matthews

John T. Compton
Justice Compton

RABINOWITZ, Justice dissenting.

I dissent from the court's adoption of the amendments to Civil Rule 82 called for in this order. In my view no compelling

case has been made demonstrating the need for these changes.¹ Further, my judicial hunch is that these amendments to Civil Rule 82, in particular the new provisions reflected in (b) (3) (A) through (K), will unnecessarily and dramatically increase litigation over attorney's fees awards both in our trial courts as well as in this court.²

¹In this regard I note that the Alaska Judicial Council is scheduled to conduct an in depth empirical study of the workings of Civil Rule 82. My preference is to await the results of the Council's study before deciding whether any of the current provisions of Rule 82 should be amended. Such a study should position this court to make a more informed assessment as to whether the current rule operates in a fashion which unjustly denies access to our courts. I further note that our Civil Rules Committee recently surveyed the Alaska Bar membership on discrete aspects of Civil Rule 82. A clear majority of those responding to the committee's questionnaire indicated: that Civil Rule 82 does not deter people of moderate means from filing valid claims; that the rule does not put excessive pressure on moderate income people to settle valid claims; and that the rule is needed to discourage frivolous litigation.

²Any attorney worth his or her salt will, pursuant to the expansive provisions of (b) (3) (A) through (K), request variations from the attorney's fees awards called for under either the monetary recovery schedule provisions of (b) (1), or the provisions of (b) (2) which apply where no money judgment is recovered by the prevailing party.

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MOSES LAKE CITIZENS CONCERNED)
ABOUT THE ENVIRONMENT, a)
not-for-profit partnership,)
and HARRY DAVIS and LUCILLE)
DAVIS, husband and wife,)
JOYCE RAE MASLEN, f/k/a)
JOYCE RAE JONES,)

Plaintiffs,)

vs.)

GRANT COUNTY, HELEN FANCHER,)
DON GOODWIN, SID WINZLER,)
members of the Board of)
Commissioners of Grant County)
and MICHAEL MOORE, d/b/a)
M. H. MOORE PROPERTIES,)
JAMES O. TALLMAN and DIANE M.)
TALLMAN, husband and wife,)

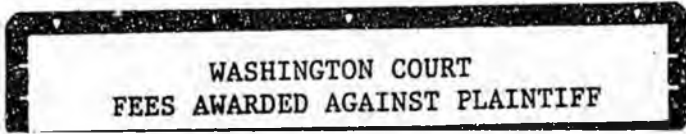
Defendants.)

No. 92 2 00442 6

MEMORANDUM DECISION
REGARDING REQUEST FOR
ATTORNEY'S FEES PURSUANT
RCW 4.84.185

I. INTRODUCTION

The defendants Moore and Tallman move the court for an award of reasonable costs and attorney's fees for defending a frivolous claim pursuant to RCW 4.84.185 and RCW 43.21C.075(9). The defendant Grant County moves for payment of its costs in producing the record for the writ of review in the amount of \$862.80. This court heard oral argument on January 19, 1993 and took these motions under advisement. The court herbelow analyzes the requests and issues its decision.



II. APPLICATION OF RCW 4.84.185

RCW 4.84.185 allows the court to award reasonable attorney's fees and costs if the court finds the action to be frivolous and advanced without reasonable cause. The defendants in this case allege that they are entitled to reasonable attorney's fees because each issue advanced by the plaintiffs is frivolous. Plaintiffs argue that the statute only provides for reasonable attorney's fees in the event the entire action is deemed frivolous, relying on Biggs v. Vail, 119 Wn.2d 121 (1992), and that at least one claim advanced has merit, so the action is not frivolous.

Biggs involved four distinct claims, three of which were deemed frivolous and one of which was unsuccessful after a trial on the merits. The defendant was awarded reasonable attorney's fees for the three frivolous claims. The Supreme Court of the State of Washington reversed, based on language in the 1983 statute that mandated the action be considered as a whole. The defendants here contend that Biggs is not dispositive as the court relied on the statute prior to its amendment in 1991, which eliminated the explicit language requiring the court to consider the action as a whole. The court in Biggs, however, did examine the legislative history behind the 1991 amendment¹. The court in Biggs also recognized the rationale underlying the frivolous claim statute as allowing attorney's fees as a method of discouraging suits brought solely for harassment, delay or nuisance. Biggs, supra at 135.

The language discussed by the Biggs court indicates the legislature intended for an allowance of attorney's fees only when the sole purpose of the action was harassment, delay or nuisance.

¹The 1991 final legislative report, 52d Legislature, at 173 (Senate Bill 5023), states: "The frivolous claim statute requires the judge to consider the entire action as a whole prior to awarding attorney's fees for a frivolous action. In 1987, the Legislature amended the frivolous claim statute to allow attorney's fees to be awarded in cases which were dismissed in summary judgment proceedings. It has been suggested that the statute should be further clarified and amended to allow attorney's fees in frivolous actions which are either voluntarily or involuntarily dismissed."

An action that contained meritorious claims is not to be discouraged. The statute, even following the 1991 amendments, still contains the language "action", implying the action is to be considered as a single item rather than one of divisible claims within an action for purposes of awarding reasonable attorney's fees for frivolous claims. It is clear that the court in Biggs did consider the effect of the 1991 statutory amendments and legislative history of the statute on the request for attorney's fees for frivolous claims. Biggs requires the action be frivolous in its entirety and this court will apply RCW 4.84.185 in that fashion as it analyzes the defendant's request.

III. DISCUSSION

The plaintiffs in this lawsuit asserted three claims:

- (1) That Grant County Commissioners violated SEPA by issuing a mitigated determination of nonsignificance without previously ordering an environmental impact statement;
- (2) That the rezone constituted an illegal spot zone; and
- (3) That the Commissioners' actions violated the doctrine of appearance of fairness.

As indicated above, the defendants as prevailing parties seek reasonable attorney's fees and costs on the basis that the plaintiff's action was frivolous and advanced without reasonable cause.² Also, as outlined above, the court needs to consider the action in its entirety in determining the frivolity of the action, which means that in order to determine the action frivolous, each claim within the action must be determined to be frivolous.

A. SEPA Violation Claim. In its contention that the Grant County Commissioners violated SEPA by issuing a mitigated determination of nonsignificance rather than requiring an

²An action is frivolous if it cannot be sustained by rational argument on the facts or the law. Rhinhart v. Seattle Times, 59 Wn.App. 132, 340 (1990).

environmental impact statement, the plaintiffs rely heavily on Norway Hill Pres. and Pro. Association v. King County Council, 37 Wn.2d 267 (1976) for the proposal that despite a mitigated determination of nonsignificance, SEPA requires an environmental impact statement before government action is taken. The Norway Hill case, decided almost a decade prior to the 1984 amendments to the State Environmental Policy Act and the regulations promulgated pursuant thereto, is simply not relevant to the SEPA process insofar as an environmental impact statement under the present SEPA law and guidelines is required only if potential significant adverse environmental impacts associated with the project contemplated cannot be mitigated. Here, the Commissioners were required to issue a declaration of nonsignificance when they determined that the environmental concerns originally raised could be mitigated and thereby chose the route of mitigation to eliminate the environmental impact concerns, resulting in the issuance of the MDNS.

Moreover, the plaintiffs argued that the Commissioners failed to consider the environmental factors in a manner sufficient to amount of a prima facie compliance with SEPA. The record, however, indicates that the Commissioners fully complied with the requirements for a checklist, alerted the necessary agencies about the proposal and acquired public input before making their decision. An appeal to the emotions is not a legal basis that overcomes the Commissioners' compliance with the laws.

Finally, the plaintiffs asserted that an environmental impact statement was necessary to evaluate whether the conditions imposed by the Commissioners in mitigation could have been implemented, would have been implemented, and would have ameliorated the environmental risk. The plaintiffs fail to cite any case law or statute that requires an environmental impact statement for these purposes. The developers are aware of the mitigating conditions imposed upon their permit and, presumably, would not have agreed to

them had they proved to be too onerous. Moreover, the conditions were imposed in response to various agencies' suggestions as to what was necessary to ameliorate the project's impact.

One is not unsympathetic to landowners' concerns about the changing character of the environment in the name of progress. It is in light of these very concerns that SEPA was created. It provides a forum in which these concerns are addressed and accounted for. However, it was not enacted to be circumscribed in effort to delay or deny development proposed within the legal parameters. Moreover, case law nearly 20 years old should alert a practitioner that, at a minimum, a cursory review of the present law is necessary to determine whether the case is compatible with today's statutes and codes. Failure to do so, even when furthering what one may consider to be a noble cause, i.e., preserving one's way of land and life, forces others to defend against frivolous lawsuits that congest the courts.

For these reasons, the plaintiffs' assertion that the Grant County Commissioners violated SEPA by issuing a mitigated determination of nonsignificance without first ordering an environmental impact statement is without a rational basis in law or fact and, therefore, is frivolous.

B. Spot Zone Claim The plaintiffs asserted that the rezoning of the project property from agriculture to planned unit development is not consistent with the Grant County Zoning Ordinance or Comprehensive Plan and that it does not bear a substantial relationship to the public health, safety and morals or welfare of the community, and therefore constitutes a spot zone. The plaintiffs relied on the argument that the 1978 amendment to the comprehensive plan was of no effect to the overall comprehensive plan of 1977 and that the property should be preserved to agriculture. The court determined that it could not ignore the 1978 amendment to the comprehensive plan, placing the property in question in a transition/buffer zone. Moreover, the

court determined that it could not ignore the record relating to the positive impact and relationship the development would have to the general community. Arguing that the court should ignore the 1978 amendment or the record with respect to the relationship that the project has to the community is not a rational argument with the basis in either fact or law. Because it is not, the argument advanced was and is frivolous.

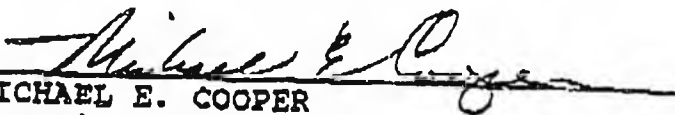
C. Appearance of Fairness Claim. This court in its memorandum decision rejected each argument advanced by the plaintiffs in support of their contention that the appearance of fairness doctrine had been violated. (See Memorandum Decision December 4, 1992, pp. 7-9). None of the concerns raised by the plaintiffs was raised until after the writ of review was sought. No challenge was made to disqualify any member of the Grant County Commissioners from participating in the decision with respect to the Moses Pointe Development until after the conclusion of the quasi-judicial proceedings, even though the information on which the challenge is made was known to the plaintiffs prior to the quasi-judicial proceedings concluding. The challenge to do so after the fact in this proceeding comes too late. Bellevue v. Boundary Review Board, 90 Wn.2d 856, 863 (1978). Because the challenge came too late here, any attempt to assert the challenge on the basis of appearance of fairness violations is without rational basis in fact or law and is therefore frivolous.

IV. CONCLUSION

The court, having determined that each claim asserted by the plaintiffs was frivolous and that, therefore, the action as a whole against the defendants was frivolous, the court concludes that the defendants now are entitled to reasonable attorney's fees and costs for defending the frivolous claim pursuant to RCW 4.84.185 and RCW

43.21C.075(9).

DATED this 26th day of January, 1993.


MICHAEL E. COOPER
Superior Court Judge

SENT BY:WK_&_G

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SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

MOSES LAKE CITIZENS CONCERNED)
ABOUT THE ENVIRONMENT, a non-for-)
profit partnership, and HARRY)
DAVIS and LUCILLE DAVIS, husband)
and wife, JOYCE RAE MASLEN, f/k/a)
JOYCE RAE JONES,)

Plaintiffs,

v.

GRANT COUNTY, HELEN FANCHER, DON)
GOODWIN, SID WINZLER, members of)
the Board of Commissioners of)
Grant County, and MICHAEL MOORE)
dba M.H. MOORE PROPERTIES, JAMES)
O. TALLMAN and DIAN [sic] M.)
TALLMAN, husband and wife,)

Defendants.

NO. 92-2-00442-5

ORDER GRANTING MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS

THIS MATTER having come on for hearing on the motion of defendants Michael Moore, James O. Tallman and Diane M. Tallman, for an award of reasonable costs and attorneys' fees for defending a

frivolous claim pursuant to RCW 4.84.185 and RCW 43.21C.075(9), ^{and b-} ~~and b-~~ ~~and b-~~ Grant County for its costs of \$962.80, and the court having considered the pleadings submitted in support of and in

opposition to the motion, and the records and files herein, and having heard argument of counsel, and having ^{determined the Plaintiffs' action} ~~made its findings of fact and~~ ~~to be frivolous~~ ~~conclusions of law~~ ^{for the reasons set forth in its Memo Decision} and being otherwise fully advised in the premises,

now, therefore, it is hereby

ORDER GRANTING MOTION FOR AWARD OF ATTORNEYS' FEES - 1

Williams, Kastner & Gibbs
Two Union Square, Suite 4100
Mail Address: P.O. Box 21324

SENT BY:WK_&G

: 1-29-93 :11:25AM :

2088288811-

120635270000

1 ORDERED that defendants' motion for award of costs and fees
 2 pursuant to RCW 4.84.185 shall be and hereby is granted, and an award
 3 of costs and fees in the respective amounts of \$2925.63 and
 4 \$ 37,662⁰⁰, including fees of one thousand (\$1,000.00) dollars pursuant
 5 to RCW 43.21C.075(9), shall be included in the judgment to be presented
 6 in this case in favor of defendants Michael Moore, James O. Tallman
 7 and Dian M. Tallman. *IT IS FURTHER ORDERED that*

Mell 8 *motion for costs of \$862.80 be and is hereby granted and*
 9 *DONE IN OPEN COURT* JANUARY 26, 1993 *awarded as*
 10 *presented*

Michael E. Long

 JUDGE

12 PRESENTED BY:
 13 WILLIAMS, KASTNER & GIBBS

14
 15 By *F. Arley Harrel*
 16 F. Arley Harrel
 17 WSBA #05170
 Dennis D. Reynolds
 WSBA #04762

18 Attorneys for Defendants
 19 Moore and Tallmans

20 COPY RECEIVED; APPROVED AS TO
 21 FORM; NOTICE OF PRESENTATION
 22 WAIVED;

23 By _____
 24 Jerry Moberg
 WSBA # _____

25 Attorneys for Plaintiffs