

FILED  
Court of Appeals  
Division II  
State of Washington  
9/25/2024 4:51 PM  
No. 58881-1-II

---

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON  
DIVISION II

---

SAVE THE DAVIS-MEEKER GARRY OAK,  
Appellant,

v.

DEBBIE SULLIVAN, in her capacity of Mayor of Tumwater,  
Respondent.

---

RESPONDENT MAYOR DEBBIE SULLIVAN'S MOTION  
TO STRIKE

---

Jeffrey S. Myers, WSBA #16390  
Jakub Kocztorz, WSBA # 61393  
Law, Lyman, Daniel, Kamerrer &  
Bogdanovich, P.S.  
P.O. Box 11880  
Olympia, WA 98508  
T: (360) 754-3480  
F: (360) 357-3511  
Email: [jmyers@lldkb.com](mailto:jmyers@lldkb.com)

*Attorneys For Respondent*

## **I. INTRODUCTION / MOTION TO STRIKE**

The Court of Appeals is an appellate body which reviews the trial court's rulings, which in this case is its May 31, 2024 order dissolving an improvidently issued temporary restraining order (TRO). This Court's review is based on the record, created before the trial court and designated pursuant to RAP 9.1. Appellant's Reply Brief confuses the role of appellate courts and trial courts by (1) repeatedly asking the appellate court to usurp the role of the trial court by issuing an injunction; and (2) by submitting materials not designated as part of the record pursuant to RAP 9.1.

Respondent Debbie Sullivan, Mayor of the City of Tumwater moves to strike the Appellant's Reply Brief or alternatively, all parts of the Reply Brief relying on material which is not part of the record designated in this case. Said materials include Appendices C-F of the Reply Brief.

## **II. FACTS RELEVANT TO MOTION**

Appellant Save The Davis-Meeker Garry Oak (SDMGO) filed its reply brief on September 23, 2024 containing multiple references to material not contained within the record designated pursuant to RAP 9.1. SDMGO did not obtain permission to include such materials, nor are such materials authorized to be submitted as an appendix by RAP 10.3 (a)(8).

SDMGO makes repeated references to declarations which were not submitted to the trial court and are not part of the clerk's papers. These references permeate the Reply Brief's Reply to Statement of the Case, pages 2-9, and its arguments at pages 15-16, 19-24, 27-28 and 30-31 of the Reply Brief.

## **III. GROUNDS FOR MOTION**

As an appellate court, this Court reviews decisions of the trial court based on the record that was before the trial court. *State v. Monfort*, 179 Wn.2d 122 (2013); RAP 9.2. An appellate court may only examine the record which was before the trial court, no more, no less. *American Universal Insurance Co. v. Ranson*, 59

Wn.2d 811, 370 P.2d 867 (1962); *Kataisto v. Low*, 73 Wn.2d 341, 438 P.2d 623 (1968); *Gaupholm v. Aurora Office Bldgs., Inc.*, 2 Wn. App. 256, 257, 467 P.2d 628, 629 (1970).

The Rules of Appellate Procedure further require citation of factual statements to the record in a party's briefs. RAP 10.3(a)(5), (6); RAP 10.4(f). The record designated pursuant to RAP 9.1 generally consists of (1) a "report of proceedings", (2) "clerk's papers", (3) exhibits, and (4) a certified record of administrative adjudicative proceeding. Affidavits created after the trial court's order that is the subject of the appeal that are submitted after the appeal cannot be considered as evidence in a case because they are not a part of the record on appeal. *State v. Harvey*, 5 Wn. App. 719, 721, 491 P.2d 660 (1971).

SDMGO's Reply Brief relies almost exclusively on newly submitted declarations not contained in the record. These declarations were not submitted to the trial court in its consideration of the TRO and are not properly considered by an appellate court. The improper Reply Brief should be stricken.

Finally, a party may properly attach certain material, such as local ordinances as an appendix to a brief to assist the court. However, under RAP 10.3(a)(7), “an appendix may not include materials not contained in the record on review without permission from the appellate court.” *Hill v. Cox*, 110 Wn.App. 394, 409, 41 P.3d 495 (2002). Appellants attach Appendices C-F which are declarations not contained in the record without permission from this Court. These appendices should be stricken.

I certify that this brief contains words as determined by computer word count in conformity with RAP 18.17.

DATED this 25<sup>th</sup> day of September, 2024.

LAW, LYMAN, DANIEL,  
KAMERRER & BOGDANOVICH, P.S.



---

Jeffrey S. Myers, WSBA #16390  
Law, Lyman, Daniel, Kamerrer &  
Bogdanovich, P.S.  
P.O. Box 11880  
Olympia, WA 98508  
(360) 754-3480  
[jmyers@lldkb.com](mailto:jmyers@lldkb.com)

*Attorney for Respondent Debbie Sullivan*

## CERTIFICATE OF SERVICE

I hereby certify, under the penalty of perjury, under the laws of the State of Washington that I have caused a true and correct copy of the foregoing document all to be served to the below listed party by the Washington State Court of Appeals e-filing system as well as by electronic mail per service agreement upon the following person(s):

**Appellant's Attorneys:**

Ronda Larson Kramer  
LARSON LAW, PLLC  
P.O. Box 7337  
Olympia, WA 98507-7337  
[ronda@larsonlawpllc.com](mailto:ronda@larsonlawpllc.com)

Bryan J. Telegin  
Telegin Law PLLC  
175 Parfitt Way SW, Ste. N270  
Bainbridge Island, WA 98110  
[bryan@teleginlaw.com](mailto:bryan@teleginlaw.com)

DATED this 25th day of September, 2024.

*/s/ Lisa Gates*

---

Lisa Gates, Legal Asst.

**LAW LYMAN DANIEL KAMERRER & BOGDANOVICH**

**September 25, 2024 - 4:51 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 58881-1  
**Appellate Court Case Title:** Save the Davis Meeker Garry Oak, Appellant v. Debbie Sullivan, Respondent  
**Superior Court Case Number:** 24-2-01895-3

**The following documents have been uploaded:**

- 588811\_Motion\_20240925165100D2121965\_5406.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was Motion to Strike Reply Brief.pdf*

**A copy of the uploaded files will be sent to:**

- bryan@teleginlaw.com
- jkocztorz@lldkb.com
- lisa@lldkb.com
- ronda@larsonlawpllc.com

**Comments:**

---

Sender Name: Lisa Gates - Email: lisa@lldkb.com

**Filing on Behalf of:** Jeffrey Scott Myers - Email: jmyers@lldkb.com (Alternate Email: lisa@lldkb.com )

Address:

P.O. Box 11880  
OLYMPIA, WA, 98508  
Phone: (360) 754-3480

**Note: The Filing Id is 20240925165100D2121965**