IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BLUE LINE, INC., a Washington Corporation,	)	**No. 28152-3-III**
Appellant,	)	**Division Three**
v.	)	
	)	**UNPUBLISHED OPINION**
CITY OF UNION GAP, a Washington Municipal Corporation,	)	
Respondent.	)	

Brown, J. ─ Appellant Blue Line, Inc., a developer, obtained a judgment against the City of Union Gap (City) for reimbursement of disputed sewer and water connection fees and assessments based on the trial court's ruling that certain City ordinances were enacted after Blue Line "connected" to the City's sewer and water system. We do not reach Blue Line's appeal contentions that the trial court erred in not granting additional relief, because we agree with the City in its cross-appeal that the trial court erred in concluding Blue Line was "connected" to the City's lines before passage of the City's ordinances. We hold that the City's stubbing of their lines at Blue Line's property does

not constitute a connection. Accordingly, we reverse.

FACTS

The facts derive from the trial court's findings of fact, which are unchallenged and, therefore, verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980). Blue Line is a Washington corporation doing business in Yakima County, Washington. The City enacted ordinances 2209, 2209A, 2345 and 2346, relating to sewer and water infrastructure/connection fees after it constructed water and sewer lines, stubbing them at Blue Line's property within the City of Union Gap. Blue Line later developed duplex rental dwellings on separate lots included in a plat application known as the Blue Line Estates Plat with the exception of properties located at 2116-2118 and 2202-2204 Landon Avenue.

The City required Blue Line to pay both sewer and water infrastructure/connection fees for properties developed by Blue Line within the plat after passage of the disputed ordinances. Blue Line refused, arguing the stubs installed by the City constituted a connection to Blue Line's property before the ordinances were effective. Blue Line refused to make some payments and paid others under protest: $8,628.00 for sewer connection fees and $29,508.16 for water connection fees. It then filed claims for fee refunds and for other allegedly related damage claims including unreimbursed sewer expenses (latecomer payments) by

property owner Nellie Burke and certain disputed water meter expenses.

When the City refused to reimburse Blue Line for its claims, Blue Line sued in the Yakima County Superior Court for improper fee collections and damages. The pivotal issue was whether Blue Line was "connected" to the City's sewer and water lines prior to the enactment of ordinances 2209, 2209A, 2345 and 2346, relating to sewer and water infrastructure/connection fees. The court concluded the City's stubs that ended near Blue Line's property line were a sufficient connection thereby exempting Blue Line from payments stemming from the City's ordinances. The court concluded the City improperly collected fees and assessments from Blue Line and Blue Line was liable for some, but not all damages.

The trial court entered judgment in favor of Blue Line and awarded it $79,220.42 plus $200 in attorney fees. Blue Line appealed the judgment amount as inadequate and the City cross-appealed the court's conclusion there was a connection and the court's award of attorney fees.

ANALYSIS

The pivotal issue in this case is whether the trial court erred in concluding Blue Line was connected to the City's services prior to the enactment of the ordinances in question. The City on cross-review argues stubbing did not constitute a connection; thus, the trial court erred in entering judgment in favor of Blue Line.

We review a trial court's conclusions of law de novo. *Sunnyside Valley Irrigation*

Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). The court concluded the City wrongly collected sewer and water infrastructure/connection fees because Blue Line was connected to the City's systems prior to the enactment of ordinances 2209, 2209A, 2345 and 2346. The court reasoned the City could not legally require the fee payments and Blue Line should be reimbursed the fees and certain damages. The court based its decision on *Hatley v. City of Union Gap*, 106 Wn. App. 302, 24 P.3d 444 (2001).

In *Hatley,* Luke Hatley owned a piece of land with a mobile home on it in Union Gap. He applied to connect his property to the Union Gap municipal water system and paid the service connection charge of $661.91. Union Gap installed a 3/4-inch pipe and a meter that connected the property to the city water supply. *Id.* at 305. Mr. Hatley, however, did not have the City turn the water on. *Id.* The City later enacted a new ordinance that required an additional infrastructure charge over and above the previous service connection charge. Approximately 18 months later, Mr. Hatley rented the mobile home. *Id.* at 305-06. The new tenant asked the City to turn the water on. *Id.* at 306. The City demanded Mr. Hatley first pay the new infrastructure fee. Mr. Hatley refused. And Union Gap refused to turn on his water. Mr. Hatley sued for declaratory judgment and damages. *Id.*

The *Hatley* court held that water does not have to be flowing for there to be a connection. *Id.* at 308. The court also noted that the ordinance in question defined "connecting" as a "service connection from the main truck line to the property line." *Id.*

The trial court, here, relied on this language to conclude the stub provided by the City off its main line amounted to a connection. But, the court applied *Hatley* too broadly.

The *Hatley* court referenced a definition from an ordinance not in question here. Furthermore, "Connect" means, "to join, fasten, or link together usu[ally] by means of something intervening." Webster's Third New Int'l Dictionary 480 (3d ed. 1993). Here, unlike in *Hatley*, no pipe was installed between Blue Line's property and the City's main trunk line other than a short stub installed as a courtesy for future customers who wanted to "connect" to the City's systems in the future. Compare *Holmes Harbor Sewer Dist. v. Holmes Harbor Home Bldg. LLC*, 155 Wn.2d 858, 860, 23 P.3d 823 (2005) where sewer lines were constructed throughout a subdivision in the right of way adjacent to each lot, with a stub to each property line. Our Supreme Court held the sewer district was not authorized to impose monthly charges against unimproved lots that were not "connected" to the sewer system; therefore, sewer service was not available to allow charges. *Id.* at 866.

Considering all, we conclude Blue Line was not connected to the City's systems before ordinances 2209, 2209A, 2345 and 2346 were enacted. Thus, the trial court erred in deciding Blue Line was not required to pay the City's later enacted fees and assessments. Consequently, Blue Line's request for further damages is now moot. Moreover, Blue Line fails to cite any legal authority in its opening brief to support its further damage arguments. *See* RAP 10.3(a)(6) (appellant must provide "argument in

support of the issues presented for review, together with citations to legal authority.")

Regarding the Nellie Burke Claim, the trial court found, "There is no mechanism by which the City of Union Gap can compel Nellie Burke to make any payments to Plaintiffs for an alleged 'latecomer' connection to the City's water and sewer systems." Findings of Fact 12; CP at 12. This unchallenged finding is a verity on appeal. *Davis*, 94 Wn.2d at 123. We defer to the trial court's fact-finding discretion regarding the denial of the separate water meter claims.

Finally, we deny the City's request to remand to the trial court for an award attorney fees because the City, fails to provide a basis for such award. "Argument and citation to authority are required . . . to advise us of the appropriate grounds for an award of attorney fees." *Wilson Court Ltd. Partnership v. Tony Maroni's*, *Inc.*, 134 Wn.2d 692, 710, 952 P.2d 590 (1998).

Reversed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Korsmo, A.C.J.

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Siddoway, J.