NO. 97530-2

SUPREME COURT
OF THE STATE OF WASHINGTON

DAN AND BILL'S RV PARK,

Petitioner,

v.

ESTATE OF EDNA ALLEN, and MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE,

Respondents.

RESPONSE BRIEF OF ESTATE OF EDNA ALLEN TO PETITION FOR REVIEW OF PETITIONER DAN & BILL'S RV PARK

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Table of Contents

TABLE OF AUTHORITIES iv

I. INTRODUCTION 1

II. ARGUMENT 2

A. The Court of Appeals Applied the Correct Legal Standard of Review (Park's Pet. for Review 6-7). 2

B. The Definition of *Mobile Home Park* Here is Based on Whether It Contains Two or More *Park Models*, Not Whether the Park has any *Lots* (Pet. for Review 8-9). 3

C. The ALJ's Erroneous Construction of the Definition of a *Park Model* Is Not Dependent Upon Any Finding of Fact (Pet. for Review 12-14). Accordingly, Deference to the ALJ is Not Appropriate. 4

1. The *Democratic Approach* is Flawed Because the Testimony of Lay Witnesses Does Not Determine the Legal Meaning of the Statutory Term *Park Model* (Pet. for Review 9) 7

2. The *Industry Approach* is Flawed Because the Industry Definition of the Term *Park Model* Was Not Used by the Legislature (Pet. for Review 9). 8

3. The *Utilitarian Approach* is Flawed Because the Permanency of the Home or Removability of the Connections to Utilities Are Not Relevant to the Definition of a *Park Model* (Pet. for Review 16). 9

D. RCW 59.20.080(3) Does Not Support the Park's Position (Pet. for Review 14-15). 11

E. Legislative Policy Supports Reversal of the ALJ Ruling (Pet. for Review 15-16). 12

F. The AG Did Not Violate Dan and Bill's Due Process Rights by Appealing the ALJ's Administrative Decision (Pet. for Review 16-17). **13**

G. The AG Did Not Violate Dan and Bill's Constitutional Privacy Rights by Its Investigative Actions (Pet. for Review 17-19). **15**

H. The Remand Order Was Not Too Broad (Pet. For Review 19-21). **16**

I. Ms. Allen's Claim Is Not Moot (Pet. for Review 19). **18**

J. Ms. Allen's Estate is Entitled to Attorney's Fees. **19**

III. CONCLUSION **19**

APPENDIX A: Selected Statutes

APPENDIX B: Pierce County Administrative Appeal Order (dated June 18, 2018)

TABLE OF AUTHORITIES

Cases

*Alexander Myers & Co. v. Hopk*e, 88 Wn.2d 449, 460, 565 P.2d 80 (1977) 5

Allen v. Dan & Bill's RV Park, 6 Wn. App.2d 349, 428 P.3d 376 (2018) 2, 10, 11, 12, 17, 19

City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 46, 959 P.2d 1091 (1998) 3

City of Vincennes v. Emmons, 841 N.E.2d 155, 161 (Ind. 2006) 15

Cooper v. Alsco, 186 Wn.2d 357, 365, 376 P. 3d 382 (2016) 9

DaVita, Inc. v. Washington State Dept. of Health, 137 Wn. App. 174, 181, 151 P.3d 1095 (2007) 2

DeFunis v. Odegaard, 84 Wn.2d 617, 628, 529 P.2d 438 (1974) 18

In re Foy, 10 Wn.2d 317, 326, 116 P.2d 545 (1941) 13

In re Marriage of Irwin, 64 Wn. App. 38, 59, 822 P.2d 797 (1992) 18

Katz v. United States, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) 15

Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984) 18

Peters v. Vinatieri, 102 Wn. App. 641, 651-52, 9 P.3d 909 (2000) 15, 16

Port of Seattle v. Pollution Control Hearings Board, 151 Wn.2d 568, 587, 90 P.3d 659 (2004) 3

Pub. Util. Dist. No. 1 of Pend Oreille County v. Dep't of Ecology, 146 Wn.2d 778, 790, 51 P.3d 744 (2002)) 3

Rauch v. Fisher, 39 Wn. App. 910, 913 696 P.2d 623 (1985) 14

Seymour v. Washington State Department of Health, Dental Quality Assurance Commission, 152 Wn. App. 156, 166-67, 216 P.3d 1039 (2009) 16

Snohomish County v. Hinds, 61 Wn. App. 371, 377, 810 P.2d 84 (1991) 13

Washington Massage Foundation v. Nelson, 87 Wn.2d 948, 952-53, 558 P2d 231 (1976) 16

Western Plaza v. Tison, 184 Wn.2d 702, 718, 364 P.3d 76 (2015) 19

Statutes

ESSB 1582, ch. 342, Laws of 2019 1

RCW 4.84.350(1) 19

RCW 59.20.030 ..... 1, 10

RCW 59.20.030(10) 1

RCW 59.20.030(11) 1

RCW 59.20.030(14) 2, 5, 6

RCW 59.20.030(17) 11

RCW 59.20.030(9) 3

RCW 59.20.050(1) 17

RCW 59.20.060(1) 17

RCW 59.20.060(1)(j) 4

RCW 59.20.080(3) 11

RCW 59.20.110 19

RCW 59.30.040 (4)(a) 16

RCW 59.30.040(10)(c) 14

RCW 59.30.040(3) 16

RCW ch. 34.05 14

RCW ch. 59.20 (MHDRP) 14, 17, 18

RCW ch. 59.20 (MHLTA) 1, 2, 3, 4, 6, 7, 11, 12, 13, 16, 17, 18

Other Authorities

Pierce County Code 18J.15.210.D.3 6

I. INTRODUCTION

The Estate of Edna Allen agrees that this case "presents a significant landlord-tenant issue that should be decided with a bright-line ruling by this Court." Pet. for Review 7. The Estate also agrees that review "is merited given the large number of living situations this case affects" and in order "to effectuate the legislature's intent." *Id.* at 15, 16.

The Park in its petition for review, however, did not address the central issue in this case, which is the applicable definition of a *park model* in the context of evaluating whether there are two or more *park models* on real property rented out to others so as to determine whether the real property in question constitutes a *mobile home park* under the definition in RCW 59.20.030(10).[1]

The Park does not like the superior court's nor the Court of Appeals' interpretation of a *park model* under the MHLTA definition because, under those interpretations, the Park contains two or more *park models* and is therefore a *mobile home park*. The Park would prefer not to be considered a *mobile home park*, so that it does not have to comply with the tenant protections built into the MHLTA. It even invents the unique term "trailer court recreational vehicle park"

[1] RCW 59.20.030(10) was amended by ESSB 1582, ch. 342, Laws of 2019, effective July 28, 2019, so as to currently become RCW 59.20.030(11). The paragraphs relating to the definitions of *recreational vehicle* and *park model* in RCW 59.20.030 were similarly changed to increase their paragraph number by one digit. The Estate will continue to refer to the superseded numbers for ease in reference to the other briefs. The changes in the numbering have no substantive effect on the legal issues addressed by the parties.

to describe itself, although that term is nowhere defined by statute and is not covered by any regulations and contains no protections for tenants. Park's Pet. at 15. The Court of Appeals correctly interpreted statutorily ambiguous language defining a *park model* under RCW 59.20.030(14) to mean "(1) a recreational vehicle fixed or intended to be fixed in position for use or lasting for an indefinite time in position for use and (2) is used as a primary residence." *Allen v. Dan & Bill's RV Park*, 6 Wn. App.2d 349, 366, 428 P.3d 376 (2018).

The Park does not challenge that interpretation here; rather the Park tries to point out alleged technical deficiencies in the Estate's and the Mobile Home Dispute Resolution Program's ("MHDRP's") briefs so that it can claim victory as a matter of law. Such efforts are to no avail.

II. ARGUMENT

A. The Court of Appeals Applied the Correct Legal Standard of Review (Park's Pet. for Review 6-7).

In an APA case, "although [the appellate court] give[s] weight to the agency's interpretation of the statutes it administers, [the court] reviews the agency's legal conclusions de novo." *DaVita, Inc. v. Washington State Dept. of Health*, 137 Wn. App. 174, 181, 151 P.3d 1095 (2007). The Estate's principal challenge in this case was to the ALJ's legal conclusion regarding the definition of a *park model* under the MHLTA, RCW ch. 59.20. Thus, review is de novo.[2]

[2] Courts "accord deference to an agency interpretation of the law where the

B. The Definition of *Mobile Home Park* Here is Based on Whether It Contains Two or More *Park Models*, Not Whether the Park has any *Lots* (Pet. for Review 8-9).

The Park's argument contains the faulty premise that since there are no marked or exclusive lots in the Park, there are no mobile home lots as defined in RCW 59.20.030(9). Pet. for Review 8-9. Since there are no mobile home lots, the argument goes, the Park is not a *mobile home park* as defined in RCW 59.20.030(10). The park overlooks the fact that a *mobile home park* is not defined in terms of whether it contains any *mobile home lots*, but whether, for purposes of this case, it contains two or more *park models*. Stated differently, a *mobile home lot* is defined as being a portion of a *mobile home park*, so cannot exist independently and apart from a *mobile home park*.

Finally, it should be observed that the MHLTA requires mobile home park owners to provide a written rental agreement, which must contain a "written description, picture, plan or map of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of the tenant's space in relation to other

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agency has specialized expertise in dealing with such issues, but [courts] are not bound by an agency's interpretation of a statute." *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998); *see also Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 568, 587, 90 P.3d 659 (2004) ("Where statutory construction is necessary, this court will interpret statutes de novo. However, if an ambiguous statute falls within the agency's expertise, the agency's interpretation of the statute is 'accorded great weight, provided it does not conflict with the statute.'" (quoting *Pub. Util. Dist. No. 1 of Pend Oreille County v. Dep't of Ecology*, 146 Wn.2d 778, 790, 51 P.3d 744 (2002))).

tenants' spaces[.]" RCW 59.20.060(1)(j). Therefore, a park owner's failure to designate a specific mobile home lot does not abrogate the finding that the lot is in a *mobile home park*, but instead constitutes a violation of the MHLTA. *Id.*

C. The ALJ's Erroneous Construction of the Definition of a *Park Model* Is Not Dependent Upon Any Finding of Fact (Pet. for Review 12-14). Accordingly, Deference to the ALJ is Not Appropriate.

The Park argues that unchallenged findings of fact are verities on appeal (Pet. for Review 7). While that is true, this case is not about contested facts. It is about the ALJ's erroneous legal construction of the statutory terms *recreational vehicle* and *park model*. The Park fails to cite a single "fact" which makes any difference to the outcome of this appeal.

Ms. Allen objected to certain of the ALJ's factual findings in large part because they contained imbedded legal conclusions, e.g., FOF 4.9 stating that "[b]ecause the Park occupies a flood zone, Mr. Haugsness will not allow any unit to be permanently installed." This statement distorts the legal meaning of the word *installed* by inserting the ambiguous term *not allow* and is contradicted by the fact that Ms. Hamrick has lived in the Park for thirteen years (AR 1013), Mr. Shinkle has lived in the Park for approximately five years (AR 1055), and Mr. Bordenik has lived in the Park for approximately nine years (AR 1081). Findings of fact which are in reality

conclusions of law are treated as conclusions of law.[3]

Another example is FOF 4.11, which states that "[t]he Park requires all residents to be ready to move anytime" [sic]. Mr. Shinkle has not had to move his unit when the river floods (AR 1057), nor has Mr. Bordenik (AR 1082). Nor is this requirement stated in the rules given to Ms. Allen (AR 359). But readiness to move is not part of the definition of *permanent or semi-permanent installation* in the definition of a *park model* under RCW 59.20.030(14). Thus any "facts" contained in FOF 4.11 are irrelevant to the outcome of this appeal.

Another example is FOF 4.53, which states that "Mr. Bordernick's [sic] motor home is not permanently installed at the Park and he has no intention of permanently installing it." However, Mr. Bordenik's motor home has been installed, i.e., made ready for use, it has been in the Park for the last nine years, he has lived in the unit for the last nine years, and he plans to stay indefinitely (FOF 4.47). FOF 4.53 contains within it the ALJ's erroneous interpretation of the word *installation*, and thus is really a conclusion of law, and an erroneous one at that.[4]

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[3] If a conclusion of law is incorrectly denominated as a finding of fact, it is reviewed as a conclusion of law. *City of Tacoma v. William Rogers Company, Inc.,* 148 Wn.2d 169,181, 60 P.3d 79 (2002) (citing *Alexander Myers & Co. v. Hopke,* 88 Wn.2d 449, 460, 565 P.2d 80 (1977)).

[4] The same analysis applies to the other challenged findings of fact:

FOF 4.8: ". . . [N]umbers are assigned to units, not lots. * * * No one rents a specific lot [in the park]." This is clearly erroneous. If a number is on a unit, the lot upon which the unit sits has the same number as the unit.

Instead of analyzing the definition of *park model* in the MHLTA, the Park reframes the statutory definition of *park model*[5] into issues of (a) what the owners of recreational vehicles consider to be *park models (*the "democratic approach"), (b) current industry usage (the "industry approach"), or (c) how the utilities are connected to the recreational vehicle (the "utilitarian approach"). All three of these approaches stray from the statutory definition of *park model* because they avoid consideration and analysis of the key terms *recreational vehicle, intended for*, *semi-permanent*, and *installation* used in the actual statutory definition of *park model* in RCW 59.20.030(14).

FOF 4.16: ". . . [N]one of the units have anything permanent attached to them, by order of the landlord and in compliance with county code." Despite the ambiguity of the word *permanent* here*,* fences, stairs and other improvements put in by tenants were intended for long-term use, i.e. at least *semi-permanent* use. The landlord's "order" cannot determine whether attachments to the home are permanent (or *semi-permanent*) within the statutory definition of a *park model.* Moreover, the Park does not comply with Pierce County Code 18J.15.210.D.3, which provides that "[n]o recreational vehicle shall be used as a permanent place of abode, or dwelling, for more than 180 calendar days." Clearly residents remain in the Park more than 180 calendar days.

FOF 4.18: "None of the units in the Park are [sic] hardwired for electricity or plumbed for septic and water." All of the units in the Park receive electricity and water and are able to dispose of sewer waste (FOF 4.18). Again, hardwiring of anything is not a requirement of *permanent or semi-permanent installation* in the definition of a *park model.*

[5] The Park has argued "the lynchpin definition – what constitutes a park model turns on whether or not the trailer was *designed* for permanent or semi-permanent installation" (italics added). App. Br. of Resp. 2). The definition of *park model* instead requires a park model to be "*intended* for permanent or semi-permanent installation" (italics added). RCW 59.20.030(14).

1. The *Democratic Approach* is Flawed Because the Testimony of Lay Witnesses Does Not Determine the Legal Meaning of the Statutory Term *Park Model* (Pet. for Review 9)

The Park seems to urge this court to rely on testimony of the park tenants in which they deny that they live in park models. App. Br. of Resp. 2, 11. Even if the tenants were well versed in the relevant law, their testimonial descriptions of park model lack consistency. For example, Ms. Hamrick testified that park models "plug into lower amperage" (AR 1024), while Mr. Haugsness stated "[t]hey require quite a bit of amperage" (AR 1214). Mr. Bordenik stated "it's got to be tied down" (AR 1085), while Mr. Haugsness stated "[t]hey're not tied to the ground" (AR 1214). Mr. Niquette said "if it's 34 feet or over it's considered a park model" (AR 1033), while Mr. Haugsness stated that park models are "about 12-by-40-foot" (AR 1214). This testimony reveals that there is no consensus as to what a park model is, so that no unambiguous definition emerged for the ALJ to consider. But more significantly, the witnesses also testified that they were unaware of the MHLTA's definition of a *park model*.[6] AR 1024-1025 (Ms. Hamrick); AR 1035, 1052 (Mr. Niquette); AR

[6] During the hearing, the AG's counsel objected to the Park's counsel's asking the witness what his or her understanding of what is a *park model* on the ground that the question called for a legal conclusion (AR 1017, 1060, 1085). The ALJ overruled the objection, but elaborated on his rationale as follows: ". . . I don't consider it a legal conclusion, because I'm more interested in what . . . the witness describes than what he characterizes, particularly since I'm obliged to use the RCW definition, which it's likely none of the witnesses are familiar with, . . . so I'm going to allow it" (AR 1061).

1063 (Mr. Shinkle); AR 1094 (Mr. Bordenik). Their testimony is thus irrelevant as to the definition of *park model* under the MHLTA.

2. The *Industry Approach* is Flawed Because the Industry Definition of the Term *Park Model* Was Not Used by the Legislature (Pet. for Review 9).

A second approach the Park has argued is the adoption of a contemporary industry definition for the term *park model*.[7] Ms. Allen's *park model* home certainly does not look like the contemporary and idealized depictions that the Park introduced into the record.[8] This disparity highlights the legally untenable aspects of using an industry definition in lieu of the statutory definition. Manufacturer specifications for what the industry refers to as a *park model* have changed over time and may well differ by manufacturer.[9] Under the Park's argument, manufacturer-naming conventions should control the statutory interpretation of *park model*. Such a

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[7] Assuming arguendo that manufacturers' designations were used to define *park model,* it is inescapable that there are at least two *park models* in the Park: (1) Ms. Allen's trailer depicted in AR 366-374 is identified as a 1995 Breckenridge Park Model (AR 351, AR 470); and (2) Mr. Niquette identifies his Jayco brand 36-foot trailer as a park model (AR 1034). Furthermore, based on Mr. Niquette's testimony that 34-feet is the threshold that distinguishes a *park model* (AR 1033), one might easily conclude that Mr. Shinkle's 40-foot home is also a manufacturer-designated park model (AR 1056). His replacement home is also a park model because he has the same intent to live in it indefinitely and it is his primary residence.

[8] For examples, see the photos attached to the end of the Park's brief (AR 293-94). The Park fails to explain, using the statutory definition of *park model*, why the units in the photos referenced by the Park are *park models*, while the photos submitted to the ALJ of recreational vehicles in the Park (AR 251-269) are not.

[9] Ms. Allen's home may well have been considered the Cadillac of park models in 1995, the year in which it was built. Also, the Park claims that "It is undisputed that Ms. Allen's former trailer was a park model, because of its design characteristics." Pet. for Review 9. Such statement <u>is</u> disputed, because a *park model* is not defined in terms of its design characteristics.

scenario would empower manufacturers essentially to rewrite the law and undermine legislative intent. In any event, the law is clear that a statutory definition controls over an intuitive or industry definition. *Cooper v. Alsco,* 186 Wn.2d 357, 365, 376 P. 3d 382 (2016).

3. The *Utilitarian Approach* is Flawed Because the Permanency of the Home or Removability of the Connections to Utilities Are Not Relevant to the Definition of a *Park Model* (Pet. for Review 16).

The third approach that the Park urged the Court to adopt is the interpretation of *park model* in terms of how moveable the RV is and how permanent and substantial are its connections to water, electricity and sewer. This is essentially the same approach the ALJ took in making his determination that there was only one *park model* in the Park. Ms. Allen has already fully briefed the ALJ's interpretation of *park model*, presenting analysis that refutes such an interpretation (Pet. Allen Ct. of App. Br. at 28 – 35). The upshot of the analysis is that the Park's approach would convert the statutory definition of *park model* into a readiness test to move the RV from the Park, a test that is clearly far afield from the plain and ordinary meaning of the words *intended for*, *semi-permanent* and *installation* in the statutory definition of a *park model*. Furthermore, it does not consider the intention of the tenants as to how long they intend to stay in the Park, and it fails to resolve the inherent inconsistency in the statutory definitions of *recreational*

vehicle and *park model* in RCW 59.20.030.[10]

The evidence before the ALJ establishes that a number of residents of the Park live in *park models* under a proper definition of the term, and the Park has not shown to the contrary.[11]

The Park does not challenge the definition of a park model as construed by the Court of Appeals. Rather, the Park asserts that the

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[10] A good example is Barbara Hamrick, who lives in a fifth wheel RV at the Park. AR 1013. Her home is depicted in Hrng. Exs. 24-26. AR 397-99 (See AR 269 for a color version of Hrng. Ex. 25). She has lived in the Park since 2003. AR 1013. She drives her RV away from the park at least twice a year and is gone for anywhere from a day up to two weeks. AR 1014. Ms. Hamrick describes her RV as her permanent home. AR 1016. (She stated she would "never be able to afford" [to rent another place], so [she'll] probably just keep buying RVs and living in an RV court." AR 1016. With respect to her living in the Park, she said "[she]'d probably die there." AR 1016. Her RV is parked in space number 38. AR 1021. She subscribes to cable TV service for her RV, which is billed to her at the Park. AR 1022-23. From Ms. Hamrick's testimony it is clear that she intended for her fifth-wheel RV to be put in place as a primary residence at the Park for long-term use, i.e., her RV is intended for permanent or semi-permanent installation ("[she]'d probably die there"). AR 1016. The fact that she makes some occasional short-term trips away has no bearing on this intent, as she does return to her space in the Park. Ms. Hamrick's unit is therefore a *park model* under the definition in RCW 59.20.030(14). *Allen, supra*, 6 Wn. App.2d 349, 366. Similarly with other tenants: The ALJ found that the Park tenant witnesses intended to live in the park a very long time, i.e., permanently or semi-permanently: "When Ms. Allen moved into [the trailer] in January 2014, she intended to live there permanently," FOF 4.26 (AR 860); "Ms. Hamrick lives in a recreational vehicle" which she "considers . . . her permanent home," FOF 4.30, 4.31 (AR 861); "Mr. Niquette lives in his 36-foot travel trailer" and "plans to reside at the park for an indefinite period of time," FOF 4.35, 4.39 (AR 861-62); "Mr. Shinkle owns . . . a 40-foot travel trailer" and "has no plans to leave the Park," FOF 4.41, 4.42 (AR 862); "Roy Bordenik has lived in the Park in a motor home for approximately nine years" FOF 4.47 (AR 863). He is on a fixed income and the rent is reasonable. AR 1110. He has no plans to move out. AR 1083. For photographs of homes in the Park, see Hrng. Exs. 8 – 27. AR 363-402.

[11] The Park clearly holds out the premises for year-round occupancy. FOF 4.19 and 4.23 (Ms. Allen has lived in the park since January 3, 2014 and has never moved the unit since she occupied it); FOF 4.29 – 4.31 (Ms. Hamrick has lived in the park since 2003, she temporarily relocates the unit at least twice per year to avoid flooding, and "considers her recreational vehicle to be her permanent home" (FOF 4.31)); FOF 4.39 (Mr. Niquette plans to reside at the park for an indefinite period of time).

Court of Appeals had to accept all the factual findings made by the ALJ, and based on those findings, there are not two *park models* in the Park. Specifically, the Park argues that Mr. Shinkle's home is not a park model, because he replaced it three days before the hearing. Pet. for Review 10. This argument is without merit. Mr. Shinkle moved into the park in approximately 2010, has never relocated and has no plans to leave the park. FOF 4.41 and 4.44. He lives in a *park model*.

The Park adds that the ALJ found that Mr. Niquette lived in a "travel trailer." Pet. for Review 10 n. 2. But a travel trailer is by definition a *recreational vehicle* as defined in RCW 59.20.030(17), so the travel trailer would be a *park model* if it were intended for permanent or semi-permanent installation and were used as a primary residence. RCW 59.20.030(14). Many other units in the Park would also be *park models* as that term was construed by the court of appeals. *Allen v. Dan & Bill's RV Park*, *supra*, 6 Wn. App.2d 349, 366.

D. RCW 59.20.080(3) Does Not Support the Park's Position (Pet. for Review 14-15).

RCW 59.20.080(3) provides that the MHLTA governs the eviction of park models and RV's used as a primary residence from a *mobile home park*, and other chapters govern the eviction of RV's used as temporary living quarters. The Court of Appeals addressed this issue but did not indicate that it had any impact on the outcome

of the case at bar. *Allen v. Dan & Bill's RV Park*, *supra*, 6 Wn. App.2d 349, 363-64.[12]

E. Legislative Policy Supports Reversal of the ALJ Ruling (Pet. for Review 15-16).

The Park wants to have it both ways: it wants to keep rental income flowing from its spaces twelve months out of the year, yet not comply with the requirements of the MHLTA. The Park could easily rent spaces for seasonal use only, say six months out of the year, but then the Park would lose potentially half of its yearly income. It can't have it both ways: if the Park is providing long-term tenancies, as the undisputed evidence shows it is doing, it has to provide the legislatively mandated protections for the tenants. The Park can choose to be an RV park by simply limiting and enforcing the duration of the tenancies it offers to occupants. In other words, the Park can provide rental space "not intended for year-round occupancy" so as to be excluded from the purview of RCW 59.20.030(10).

The Park argues that it may not cost $10,000 to move an RV, "which are designed to be extremely easy to move and relocate." Pet. for Review 16. While it may not cost as much to move a *park model* or RV as a mobile home, particularly an RV that is readily movable,

[12] The Park insinuates that a *park model* is an "RV used as a second home." Pet. for Review 15. The Park cites no authority for this statement and such argument has not been made to the superior court or the Court of Appeals. The ALJ concluded that the residents of the Park "live in [their units] continuously." COL 5.17.

cost must be viewed relative to a person's financial circumstances. A person who must resort to living in a *park model* may not have an operating vehicle with which to move the unit, may not have the funds to move the unit, and may not have an alternative place to which to move the unit. Thus, as a practical matter, the owner of a *park model* may find the prospect of having to move the home just as cost prohibitive as owners of manufactured homes. Both groups of owners are just as much in need of protection. If owners of parks having full-time, permanent residents want to continue to provide such housing options, they should comply with the protections enacted by the Legislature in the MHLTA, not try to circumvent those protections by claiming not to come within the scope of the MHLTA by calling themselves an "RV Park" or "Trailer Court Recreational Vehicle Park." [13]

F. The AG Did Not Violate Dan and Bill's Due Process Rights by Appealing the ALJ's Administrative Decision (Pet. for Review 16-17).

Administrative agencies that are charged with enforcement of a governmental program and that represent the public interest are proper parties to appeals from their adjudicative decisions. *In re Foy*, 10 Wn.2d 317, 326, 116 P.2d 545 (1941) (Commissioner of Unemployment Compensation and Placement); *Snohomish County v. Hinds*, 61 Wn. App. 371, 377, 810 P.2d 84 (1991); *cf. Rauch v.*

[13] An "RV Park" and a "Trailer Court Recreational Vehicle Park" are not defined terms under the MHLTA.

Fisher, 39 Wn. App. 910, 913 696 P.2d 623 (1985) (Director of State Department of Retirement Systems has standing to appeal Superior Court's reversal of his decision). Thus the AG has standing here to appeal the ALJ's decision.

The APA authorizes such an appeal: "The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW." RCW 59.30.040(10)(c). The statute does not preclude an appeal by the AG, and presumably any aggrieved party may appeal. The Park cites no authority prohibiting the AG from challenging an ALJ decision if the AG thinks that decision is wrong.

Moreover, as the administrator of the dispute resolution program, the AG has a very important interest in seeing that the program is properly administered. If a neutral ALJ should improperly determine that the program does not apply to thousands of people because they do not live in *park models*, the reach and salutary benefits of the program would be greatly curtailed. The AG should not have its hands tied and be forced to sit back and promote an erroneous interpretation of the law. As an aggrieved party, it should be able to appeal inappropriate decisions by appointed ALJ's.

Finally, if the AG is unable to appeal a decision of the ALJ, then park residents would not necessarily be able to obtain the benefits of the MHDRP, as they would be required to hire private counsel to correct errors of the ALJ. Such an outcome would strongly

suggest that parties to an appeal of an agency decision should be awarded attorney's fees for a successful appeal.

G. The AG Did Not Violate Dan and Bill's Constitutional Privacy Rights by Its Investigative Actions (Pet. for Review 17-19).

In *Peters v. Vinatieri*, 102 Wn. App. 641, 651-52, 9 P.3d 909 (2000) the court held that an RV park owner's expectation of privacy was not objectively reasonable, and therefore no search in the constitutional sense occurred, when government officials, ignoring a "no trespass" sign, entered the property to observe conditions there, because once the park owner "opened the RV park to the public in 1986, he had no reasonable expectation of privacy in the areas of his property on which he invited the general public for commercial purposes." *Id.* As stated in *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), "The Fourth Amendment protects people, not places. What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." There has been no showing here that the AG did anything any differently than the government officials did in *Peters,* or that government officials observed anything not open to the public.[14]

Furthermore, the AG's observations were authorized by RCW

[14] This conclusion is further supported by the decision in *City of Vincennes v. Emmons*, 841 N.E.2d 155, 161 (Ind. 2006) (landlords have no right to operate residential units in violation of housing code standards).

59.30.040(3) and (4)(a). See Appendix A.

Nor is a court order or warrant required before the AG's inspection or visual observation of the park. *Peters, supra*, 102 Wn. App. at 656. "A necessary pre-condition to enforcement of the public health laws is identification of their violation." *Id*. Thus, the AG's entry upon park property open to the public to identify any MHLTA violations does not require a warrant or a court order. *Peters, supra*, 102 Wn. App. at 656.

The case of *Washington Massage Foundation v. Nelson*, 87 Wn.2d 948, 952-53, 558 P2d 231 (1976), cited by the Park, does not mandate a different result. There the court held unconstitutional a state statutory scheme authorizing warrantless inspections without limitations on time, scope or place. As noted above, the government inspectors here, unlike in *Nelson*, could see nothing any different from what the public could see. Similarly, in *Seymour v. Washington State Department of Health, Dental Quality Assurance Commission*, 152 Wn. App. 156, 166-67, 216 P.3d 1039 (2009) the inspections took place in a dental office not open to the public in a case involving professional misconduct. *Seymour* is not apposite.

H. The Remand Order Was Not Too Broad (Pet. For Review 19-21).

The Court of Appeals remanded the case to the OAH for "determination of whether the Park violated the MHLTA" and "further proceedings consistent with this opinion." *Allen*, 6 Wn.

App.2d at 371, 373. Since the ALJ determined that the Park was not a *mobile home park* and was not subject to the MHLTA, the ALJ did not consider whether the Park violated the MHLTA. The Park may have a rental agreement with Ms. Allen, but there is no evidence of a written rental agreement, as required by RCW 59.20.060(1).[15] The resulting damages and whether the Estate is entitled to a rent refund are appropriate issues for remand.

The Park claims that "most or all of the issues in [the Park's petition for review] are abandoned, mooted by the Complainant's death, or both." Pet. for Review 19. This is incorrect. The Park cites no authority for the proposition that Mr. Allen's Estate lost any claims Ms. Allen had at the time of her death, that any such claims became moot, or that she or the MHDRP abandoned any of their claims. The remand of the Court of Appeals was purposefully broad, as the correct conclusion that the Park is a *mobile home park* and that the Park must comply with the MHLTA may well change the views of the ALJ regarding other related or subsidiary issues.

The Park claims that its LUPA lawsuit against Pierce County,

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[15] The Court of Appeals stated merely that "there is a rental agreement[,]" not that there is a written rental agreement. Allen, 6 Wn. App.2d at 370. If a park allows a tenant to move a park model "into a mobile home park without obtaining a written rental agreement for a term of one year or more . . ., the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot." RCW 59.20.050(1). See also, Notice of Violation 4 fn 1 (AR 10). The only document in the record resembling a rental agreement is Ex. 6, entitled "Dan & Bill's RV Park" and stating that the "following are the Rules and Regulations concerning all occupants." Ex. 6 does not meet the requirements of RCW 59.20.060(1), and park rules and regulations are not the rental agreement contemplated by the MHLTA.

Pet. for Review, App. 5, means something. That lawsuit, however, did not involve the MHDRP nor Ms. Allen, who had no opportunity to present evidence in the case. That action is therefore not binding on them.[16]

I. Ms. Allen's Claim Is Not Moot (Pet. for Review 19).

A case is moot "if it is deprived of its practical significance or becomes purely academic." *In re Marriage of Irwin*, 64 Wn. App. 38, 59, 822 P.2d 797 (1992). Stated another way, a case is moot when the court can no longer provide effective relief. *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). Such is not the case here. Ms. Allen's estate can still recover any excess rent she was charged through the Park's violation of the MHLTA.

Furthermore, even if an issue is moot, the "fact that an issue is moot does not divest [the] court of jurisdiction to decide it." *DeFunis v. Odegaard*, 84 Wn.2d 617, 628, 529 P.2d 438 (1974). The court there stated that it would "retain an appeal and decide issues, even though moot, if they present matters of substantial public

[16] Mr. Haugsness claimed in a previous pleading that an order declared the Park to be a recreational vehicle park. Hearing exhibit C. AR 1247. However, the order did not so declare, but merely reversed Mr. Haugsness's criminal conviction for violating county codes relating to improper septic connections. AR 440, 442. Yet in a subsequent LUPA action brought by Mr. Haugsness, when Pierce County was attempting to enforce regulations regarding RV parks, Mr. Haugsness claimed he was not operating an RV park, but a mobile home park, citing the superior court decision in the present case. Appendix B at 12X. He should be estopped or precluded from making such inconsistent arguments. Moreover, the Pierce County Code was raised many times at the hearing below, including in the testimony of the Park owner, Mr. Haugsness, and others. AR 908 (the ALJ stating that "the alleged county code violations are at issue in this hearing"); AR 1140, 1150-51, 1227-29, 1241-42.

interest . . ." *Id.* The present case presents issues of substantial public interest upon which this Court should provide its imprimatur.

J. Ms. Allen's Estate is Entitled to Attorney's Fees.

Ms. Allen's Estate is entitled to attorney's fees and costs incurred in this appeal under RCW 59.20.110 and *Western Plaza v. Tison*, 184 Wn.2d 702, 718, 364 P.3d 76 (2015). The Estate is also entitled to attorney's fees and costs under RCW 4.84.350(1), which provides in relevant part that "a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees . . . ." Ms. Allen and her Estate have prevailed here in the judicial review of agency action.

III. CONCLUSION

For the reasons set forth above, this Court should reverse the ALJ's interpretation of *park model*, affirm the Court of Appeals opinion in *Allen, supra,* 6 Wn. App.2d 349 (except for the holding regarding attorney's fees raised in the Estate's cross-petition for review), and award to Ms. Allen's Estate her attorney's fees and cost

RESPECTFULLY SUBMITTED this 9th day of September 2019.

Law Offices of Dan R. Young

By Dan R. Young

Dan R. Young, WSBA # 12020
Attorney for Respondent
Estate of Allen

Appendix A: Selected Statutes

RCW 59.20.030 – Definitions (Pre-Amendment by 2019 c 23 § 4 and by 2019 c 342 § 1, each without reference to the other, effective July 28, 2019).

(9) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(10) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(14) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(17) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

RCW 59.30.040 – Dispute resolution program – Complaint Process.

RCW 59.30.040(3) – 4(b) provide as follows:

(3) After receiving a complaint under this chapter, the attorney general shall initiate the manufactured/mobile home dispute resolution program by investigating the alleged violations at its discretion and, if appropriate, facilitating negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by (i) responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents, and (ii) providing access to the manufactured/mobile home facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

Pierce County

Office of the Pierce County Hearing Examiner
902 South 10th Street
Tacoma, Washington 98405
(253) 272-2206

STEPHEN K. CAUSSEAUX, JR.
Pierce County Hearing Examiner

June 18, 2018

Daniel and William Haugsness
15602-116th Street East
Puyallup, WA 98374

RE: ADMINISTRATIVE APPEAL
Application Number: 875094

Dear Sirs:

Transmitted herewith is my Report and Decision, as Pierce County Hearing Examiner, regarding your appeal in the above-entitled matter.

Very truly yours,

Keith M. Black

KEITH M. BLACK
Deputy Hearing Examiner

KMB/jjp
cc: Parties of Record

1X

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.:	**ADMINISTRATIVE APPEAL** **Application Number: 875094**
APPELLANTS:	Daniel and William Haugsness 15602-116th Street East Puyallup, WA 98374
AGENT:	Goodstein Law Group PLLC Attn: Carolyn A. Lake 501 South G Street Tacoma, WA 98405
PIERCE COUNTY CONTACTS:	Todd Christoph, Code Enforcement Officer Yvonne Reed, Code Enforcement Supervisor
COUNTY DEPUTY PROSECUTOR:	Cort O'Connor, Civil Division

SUMMARY OF REQUEST:

Appellants are appealing the October 30, 2017, Final Notice and Order to Correct and Notice of Violation and Abatement, for the development of a recreational vehicle park, in a Rural 10 (R10) zone classification within the Alderton-McMillin Community Plan area, without a Conditional Use Permit, as required by the Pierce County Development Regulations. The sites are located at 15612-116th Street East, 15608 116th Street East, and 15602 116th Street East, Puyallup, within Section 07 Township 19 Range 05 Quarter 24 COM AT NW COR OF GOVT LOT 4, in Council District #2.

SUMMARY OF DECISION:

Appeal granted regarding Appellant William Haugsness, pertaining to Parcels 0519072033 and 0519072024.

Appeal denied regarding Appellant Daniel Haugsness, d/b/a Dan and Bill's RV Park, Parcel 0519072700.

DATE OF DECISION: June 18, 2018

2X

PUBLIC HEARING:

After reviewing the Planning and Public Works Staff Report, and examining available information on file with this application, the Examiner conducted a public hearing on the request as follows:

The hearing convened on May 2, 2018, at 9:05 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Planning and Public Works Staff Report
EXHIBIT "2" - Application
EXHIBIT "3" - Staff Decision and Documents
EXHIBIT "4" - Additional Evidence
EXHIBIT "5" - Notice and Routing Documents
EXHIBIT "6" - Site Information
EXHIBIT "7" - Older Hearing Examiner Decisions
EXHIBIT "8" - Washington Uniform Criminal Complaint Docket
EXHIBIT "9" - Declaration of Yvonne Reed
EXHIBIT "10" - AA22-01 Decision from 2002
EXHIBIT "11" - Appellants' Pre-Hearing Brief
EXHIBIT "12" - Pierce County's Pre-Hearing Brief
EXHIBIT "13" - Pierce County's Motion for Prehearing Conference
EXHIBIT "14" - Order on Prehearing Conference dated December 20, 2017
EXHIBIT "15" - Revised Order on Prehearing Conference dated February 6, 2018
EXHIBIT "16" - Agenda/Notice
EXHIBIT "17" - Thurston County Superior Court, Edna Allen Petitioner v. Washington State Attorney General, Respondent, No. 15-2-02446-34
EXHIBIT "18" - Pierce County's Closing Brief
EXHIBIT "19" - Appellants' Post Hearing Brief

A brief summary of those who gave testimony at the Public Hearing is set forth below. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

Those Who Testified Were:

Cort O'Connor, Deputy Prosecuting Attorney
Carolyn Lake, Appellant's Attorney
James William Howe, Retired Code Enforcement Officer
Jeffrey Todd Christoph, Code Enforcement Officer

The Hearing Examiner took the matter under advisement. The hearing was concluded at 11:40 a.m.

NOTE: A complete record of this hearing is available in the office of the Pierce County Planning and Public Works Department.

FINDINGS, CONCLUSIONS, AND DECISION:

The Hearing Examiner received sworn testimony, admitted documentary evidence and exhibits into the record, heard legal arguments on behalf of the parties, and took the matter under advisement.

Having fully considered the entire record, the Examiner enters the following:

FINDINGS:

1. This Administrative Appeal is exempt from environmental review pursuant to the State Environmental Policy Act (SEPA).

2. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published on March 7, 2017, in the official County newspaper (Tacoma News Tribune).

3. Appellants, Daniel and William Haugsness, have appealed a Final Notice and Order to Correct and Notice of Violation and Abatement, dated October 30, 2017 regarding the development of a recreational vehicle park, in a Rural 10 (R10) zone classification within the Alderton-McMillin Community Plan area, without a Conditional Use Permit, as required by the Pierce County Development Regulations. The sites are located at 15612-116th Street East, 15608 116th Street East, and 15602 116th Street East, Puyallup, within Section 07 Township 19 Range 05 Quarter 24 COM AT NW COR OF GOVT LOT 4, in Council District #2.

4. Pierce County's Final Notice and Order to Correct and Notice of Violation and Abatement dated October 30, 2017 concerns alleged violations regarding Parcel 0519072700 owned by Daniel Haugsness, and Parcels 0519072033 and 0519072024 owned by William Haugsness.

5. At the conclusion of the hearing of this matter conducted on May 2, 2018, and in their subsequently submitted Post-Hearing Closing Brief, Pierce County acknowledged and conceded that they had failed to meet the requisite Burden of Proof necessary to substantiate the alleged violations regarding Parcels 0519072033 and 0519072024 owned by William Haugsness. (See Section 1.22.090(G)(2) of the Pierce County Hearing Examiner Code, regarding the Burden of Proof required in an appeal of an enforcement action.

6. **Relevant and Noteworthy Prior Case History and Background**:

The Hearing Examiner in this present matter, takes Official Notice of three (3) previous Pierce County Hearing Examiner Decisions (See County Staff Report, Exhibit 7), an appeal of those decisions to the Pierce County Superior Court via LUPA, Chapter 36.70 C RCW, an appeal to Division II of the Washington State Court of Appeals, and a petition for review to our Washington State Supreme Court. Those rulings and decisions occurred between May 23, 2003 and October 2, 2007.

7. Each of the above referenced rulings and decisions by the respective named entities, were decided in favor of Pierce County. Further, these quasi judicial and judicial determinations concerned the same appellant, Daniel Haugsness, the same described parcel of land, the same RV park known as Dan and Bill's RV Park, the same fundamental embodiment of applicable Pierce County Code provisions and regulations, and essentially much of the same established facts, correlating legal issues, and alleged violations as present in the current appeal. The Court of Appeals, Division II decision, Daniel Haugsness d/b/a Dan and Bill's RV Park, Appellant, v. Pierce County, Respondent, is an Unpublished Opinion, found at 134 Wash App. 1035 (2006).

8. The Court of Appeals decision cited above, recites certain established, uncontroverted facts, including that Daniel Haugsness owns an approximate 13 acre parcel of land along the Puyallup River. In May 2000, the County's Department of Planning and Land Services discovered that Daniel Haugsness was operating an RV park without the necessary permits, including a conditional use permit. In an unsuccessful attempt to comply with permit application requirements, Haugsness stated he then currently used the parcel as a contractor's yard and an RV park with 19 RV units. His application proposed an RV park for up to 30 RV units.

9. In response to Appellants present appeal, Pierce County's Planning and Public Works Department submitted a ten (10) page Staff Report, identified as Exhibit 7.

10. Pertinent and supportable portions of the Staff Report are adopted by reference, and incorporated herein. Relevant portions of the Staff Report important to the resolution of this appeal concerning Daniel Haugsness and Parcel

0519072700, located at 15612-116th Street East, Puyallup, WA., are as follows:

July 28, 2014: Citizen's complaint filed on 15612 116th Street East (Parcel No. 0519072700), stated there were a lot of trailers on this property, salvage business, and garbage and sanitation issues. (Exhibit 3A)

11. Pierce County's Exhibit 4, entitled, "Additional Evidence", contains numerous Pierce County Superior Court pleadings pertaining to Complaints for Unlawful Detainer, with accompanying attachments, including formal Declarations, lease agreements, final statements of Rules and Regulations for "Dan and Bill's RV Park, all brought by Daniel E. Haugsness, and Dan and Bill's RV Park against tenants of the existing RV park. All of these pleadings and formal Superior Court actions are relatively current, and in the time frame germane to this appeal.

12. The Complaints for Unlawful Detainer allege that "Plaintiff Daniel E. Haugsness, is the owner of Dan and Bill's RV Park, located at 15612 116th Street East, Puyallup, WA., and, as such, is the landlord of Defendants herein."

13. Exhibit 4D is a copy of a Craigslist ad, entitled "RV space available". The ad states, "Dan and Bill's RV Park has a few 20, 30 and 50 amp spaces available. All utilities included. We are located right off the Puyallup River. So come stay with us and enjoy a few of the amenities..."

14. Exhibit 4C is a copy of a transcript of an Administrative Hearing before Administrative Law Judge, Terry Schuh acting on behalf of the State of Washington. Daniel E. Haugsness, a primary witness in that proceeding, acknowledged he is the owner of the property at 15612-116th Street, Puyallup in Pierce County, and that he operates an RV park on that property.

October 10, 2014: Notice sent to property owner, Daniel Haugsness, with a copy of the 2004 Cease and Desist Order. (Exhibit 3E)

15. The property owners, Daniel and/or William Haugsness, are operating a Recreational Vehicle (RV) park in a Rural 10 (R10) zone within the Alderton-McMillin Community Plan, without a Conditional Use Permit, as required by the Pierce County Development Regulations.

Per PCC 18.25, a "Recreational Vehicle Park" means a tract of land under single ownership or unified control developed with individual sites for rent and containing roads and utilities to accommodate recreational vehicles or tent campers for vacation or other similar short stay purposes. (Exhibit 3S)

See PCC18A.33.270.H - use description for different types of Commercial Lodging. Recreational Vehicle parks are classified as Commercial Lodging, level 1. (Exhibit 3T)

See Use Table 18A.18.020 which allows lodging level 1 uses, including RV Parks, to be located in the R10 zone within the Alderton-McMillin Community Plan area with a conditional use permit. An RV park is not allowed at the above-listed locations without a conditional use permit. (Exhibit 3U)

16. Per PCC 18.140.030.B, the Development Regulations identify zone classification and uses allowed in various geographical areas. It is unlawful to use property contrary to those zones and use classifications unless such use is considered to be a legally nonconforming use or otherwise exempt from the Development Regulations. Operating an RV Park without a conditional use permit in an R10 zone within the Alderton-McMillin Community plan is a violation of the Pierce County Development Regulations and is prohibited by PCC18.140.030.B.

17. Daniel Haugsness continues to operate an RV Park in violation of the terms of a Cease and Desist Order issued on January 28, 2004.

18. Per PCC 8.08.050.P, property maintained in violation of the terms of a written order issued by Pierce County Planning and Public Works has been declared to be a public nuisance and a per se violation of PCC Chapter 8.08.

19. A Cease and Desist Order (C&D Order) was issued by Planning and Land Services (PALS) on January 28, 2004. Mr. Haugsness appealed the C&D order to the Pierce County Hearing Examiner. The order was upheld on appeal to the Pierce County Superior Court, and by Division II of the Washington State Court of Appeals. The record is replete with credible and substantial facts which show the Appellants have not to date complied with this order. (Exhibit 4A – C&D Order and Court of Appeals decision)

20. Any statement in this Decision deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

CONCLUSIONS:

Jurisdiction of Hearing Examiner

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.

Burden of Proof

2. Chapter 1.22 PCC sets forth the Pierce County Hearing Examiner Code. Section 1.22.090 PCC addresses appeals, and Section 1.22.090(G)(2) sets forth the Burden of Proof in an appeal of an enforcement action. Said section provides in part:

   a. When an appeal is submitted by the recipient of a final enforcement decision or order on a land use matter, the initial burden shall be on the County to prove, by a preponderance of evidence, that the use, activity, or development is not in conformance with the regulations contained in the Pierce County Code or the terms of a permit, approval, or final written order.

   Thus, Pierce County has the burden to show that the appellants' onsite activities require them to obtain a conditional use permit, as required by the Pierce County Development Regulations.

3. Both at the conclusion of the hearing of this matter on May 2, 2018, and in their Post Hearing Brief, Pierce County conceded its failure to meet the requisite burden of proof necessary to substantiate the alleged violations regarding Parcels 0519072033, and 0519072024 owned by appellant, William Haugsness. Accordingly, the Examiner finds in favor of the appellant William Haugsness regarding these two parcels, and grants his appeal.

4. After reviewing the entire record in the context of all applicable and existing law currently in effect, the Examiner concludes that Pierce County, by a preponderance of the evidence, has proven, that appellant Daniel Haugsness's business, known as Dan and Bill's RV Park continues to operate a Recreational Vehicle Park in the Rural 10 (R10) zone classification, within the Alderton-McMillan Community Plan area without a current and valid conditional use permit on Parcel 0519072700. (See, Enumerated Findings of Fact, including Exhibits 4A-4F)

Legal Analysis

As noted at the outset, the Division II, Court of Appeals decision in Daniel Haugsness d/b/a Dan and Bill's RV Park v. Pierce County, 134 Wash. App. 1035 (2006) (Unpublished), is a clear, precise, and well crafted opinion which sheds meaningful light, factual relevancy and a good historical understanding applicable to much of the appeal in the present matter.

For purposes of brevity, and to avoid repetition, the Examiner points the reader to Findings of Fact 6, 7, and 8 which capture the salient and pertinent portions of the Court of Appeals decision and its relevance to this appeal.

As pertains to Parcel 051900072700, the record in this matter is replete with substantial evidence that Appellant Daniel Haugsness, d/b/a Dan and Bill's RV Park continues to operate a Recreational Vehicle (RV) park in a Rural 10 (R10) zone within the Alderton-McMillan Community Plan without a conditional use permit, as required by the Pierce County Development Regulations, as fully and previously set forth in Findings of Fact, 15-19.

Constitutional and Equitable Challenge

Appellants have raised various constitutional issues challenging the procedural adoption, enactment, and legal efficacy and applicability of those Pierce County Development Regulations, relied upon by Pierce County, in pursuit of their enforcement action in this matter. Additionally, appellants have likewise raised issues asserting their rights under the doctrine of equitable estoppel.

The law is well established that Hearing Examiners do not have the authority to rule directly on constitutional issues (i.e., rule an ordinance unconstitutional) or to apply equitable remedies. As set forth by our Washington Court of Appeals in Chaussee v. Snohomish County Council, 38 Wn. App. 630 (1984):

> The interpretation by the hearing examiner that he was without jurisdiction to consider the issue of equitable estoppel is supported by the relevant statutory and code provisions. His determination is limited to an administrative proceeding to determine whether or not a particular piece of property is subject to a county land ordinance... He had no discretion to exempt a landowner from SCC 20A based on what he deemed equitable without regard to statutory requirements and the need for substantial evidence to meet statutory requirements....

> The Superior Court properly determined that the hearing examiner and County Council were without jurisdiction to consider equitable issues....38 Wn. App. 630 @ 638, 640

Furthermore, the Examiner does not have the authority to determine the constitutionality of properly adopted ordinances. As set forth in Prisk v. the City of Poulsbo, 46 Wn. App. 793 (1987):

> ...This is because the administrative body does not have authority to determine the constitutionality of the law it administers; only the courts have that power. 46 Wn. App. 793 @ 798

In Yakima Clean Air Authority v. Glascam Builders, Inc., 85 Wn. 2d 255 (1975), our Washington Supreme Court held:

> ...An administrative tribunal is without authority to determine the constitutionality of a statute, and, therefore, there is not an administrative remedy to exhaust. 85 Wn. 2d 255 @ 257

Statute of Limitation Challenges

Appellants also have articulated various arguments concerning Statute of Limitations challenges. They challenge the applicability and legal viability of Pierce County Code provisions, and related Pierce County Superior Court adjudications and rulings, contending they are stale under the law, and serve as a bar to the County's enforcement action.

In asserting these legal contentions, appellants argue Pierce County is barred and that their enforcement action violates a two year statute of limitations, citing to RCW 4.16.130, and RCW 4.16.160.

Having reviewed these provisions of the RCW, the Examiner is not persuaded by appellants' legal assertions. RCW 4.16 does not address land use or zoning violations. Our Washington Supreme Court in Buechel v. The Department of Ecology, 125 Wn. 2d 196 (1994) held:

> "...In Mercer Island v. Steinmann, 9 Wn. App 479, 483, 513 P.2d 80 (1973), the Court stated that a municipality is not precluded from enforcing zoning regulations if its officers have failed to properly enforce zoning regulations. The Court explained that the elements of estoppel are wanting. The governmental zoning power may not be forfeited by the action of local officers in this regard of the statute and the ordinance; the public has an interest in zoning that cannot be destroyed." 125 Wn. 2d, 196 @ 211

Furthermore, PCC 18.140.050(B)(2) provides in part:

> "Each violation or each day of continued unlawful activity shall constitute a separate violation..."

Thus, appellants commit a separate violation each day they continue to operate without a valid conditional use permit.

In their assertion of various statute of limitation arguments, appellants cite certain sections of RCW, Chapter 4.16 entitled "Limitation of Actions".

After reviewing those pertinent sections the Examiner determines the appellant's arguments to be without persuasive merit. RCW 4.16.160 concerns the application of limitations to actions by State, Counties, and municipalities. Of particular note, RCW 4.16.160 provides in part:

> "...there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state..."

It is well established that Counties, including Pierce County, are political subdivisions of the State. Further, Counties derive their power and authority to enact and adopt Comprehensive Land Use Plans, and a host of implementing regulations, including enforcement provisions, from the State of Washington. The State Planning and Enabling Act, Growth Management Act, Environmental Policy Act, Shoreline Act, and other State enactments, provide the legal basis and authority upon which a County carries out the adoption and enactment of governing laws in those arenas.

When Pierce County acts in these arenas of regulation, it does so for the benefit of the State. The County acts in its governmental capacity, and in so doing on behalf and for the State. Accordingly, for these, and all other reasons previously recited, Pierce County's enforcement action is not, in the Examiners opinion, barred by the statute of limitations.

Appellants additional attempts to gain legal traction in their statute of limitations arguments by reference to an earlier criminal enforcement proceeding, initiated by Pierce County, is not relevant to the present appeal. This appeal is centered around a civil code enforcement action, and the failure to obtain proper permits for their ongoing RV Park. The District Courts suppression of evidence in an earlier parallel criminal proceeding is not determinative of any issue in the current appeal.

Preemption

Appellant further argues that the Thurston County Superior Court decision, Edna Allen v. Washington State Attorney General, (Exhibit 17) is controlling, preemptive, supersedes and overrides the definitions and applicability of Pierce County's Development Regulations. Specifically, appellant contends that he is operating a manufactured/mobile home park, not an RV park, and therefore not required, to apply for and obtain a conditional use permit as called for by the previously recited Pierce County Development Regulations. In so arguing, appellant relies on the above cited decision which concerns a proceeding focused upon RCW, Chapter 54.30 of the Manufacture/Mobile Home Landlord Tenant Act.

Based upon a review of the entire record, the declared purposes, legislative intent, and inherent authority of all applicable state and local regulatory statutes and ordinances, the Examiner is unpersuaded by appellants contentions.

In accord with the enumerated Pierce County Code provisions set forth in Findings of Fact 15-19 herein, the record is replete with substantial evidence that Daniel Haugsness continues to operate a Recreational Vehicle Park on Parcel 0519072700. (See PCC 18.25.030)

Similarly, a reading of the purpose section of the Manufacture/Mobile Home Landlord Tenant Act (MHLTA) found in RCW, Chapter 59.50 expresses a purpose of its own, but not in conflict nor preemptive of the County's right to define and regulate a Recreational Vehicle Park on its own terms.

Even at its best, for the sake of pure argument, the Thurston County decision stands at best only for the proposition that, "Dan and Bill's RV Park rents to two "park models." (See pages 4 and 5 of the Court's Letter Ruling, Exhibit 17). Further, there is no contravening language in that Letter Ruling negating the existence of other RVs in the park which clearly qualify under the definitions contained within Pierce County's regulations.

Further, appellant, in all prior hearings, Superior Court proceedings, and upon Appellate review, although available, never chose to raise any legal challenges based on RCW, Chapter 54.30.

DECISION:

The Examiner grants the appeal by William Haugsness regarding Parcels 0519072033 and 0519072024.

The Examiner denies the appeal regarding Appellant Daniel Haugsness, as pertains to Parcel 0519072700.

In reaching this Decision, the Examiner is constrained by law to reach a Decision supportable by the entire record, and in keeping with applicable state and local laws and regulations. An Examiner, like every decision maker, is not allowed to substitute his judgment without full consideration of the established facts and controlling laws. Further, an administrative decision may not be governed by subjective considerations. See, Western Homes v. City of Issaquah, Washington State Court of Appeals (1998) (unpublished). Further, the Examiner cannot base his decision on community displeasure, (or pleasure), or for reasons not backed by policies and standards as the law requires. Maranatha Mining v. Pierce County, 59 Wn. App. 795 @ 805 (1990).

The Examiner commends each of the attorneys for their excellent presentations, professionalism, and their civility demonstrated throughout this proceeding.

ORDERED this 18th day of June, 2018.

KEITH M. BLACK
Deputy Hearing Examiner

TRANSMITTED this 18th day of June, 2018, to the following:

APPELLANTS: Daniel and William Haugsness
15602-116th Street East
Puyallup, WA 98374

AGENT: Goodstein Law Group PLLC
Attn: Carolyn A. Lake
501 South G Street
Tacoma, WA 98405

OTHERS:

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT
PIERCE COUNTY CODE ENFORCEMENT

CASE NO.: ADMINISTRATIVE APPEAL
Application Number: 875094

NOTICE

1. **RECONSIDERATION:**

Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:**

The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.

LAW OFFICE OF DAN R. YOUNG

September 09, 2019 - 4:57 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97530-2
Appellate Court Case Title:	Estate of Edna Allen v. Dan and Bills RV Park
Superior Court Case Number:	15-2-02446-6

The following documents have been uploaded:

- 975302_Answer_Reply_20190909164708SC005411_6723.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Reply Brief of Edna Allen to DBs Petition for Review.pdf

A copy of the uploaded files will be sent to:

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