
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION NO. TWO

~~In~~ Re:

WILLIAM SESKO
AND NATACHA ,
SESKO

Appellants.

NO 35342-3-II

v.

THE CITY OF
BREMERTON,

Respondent.

BY _____
STATE OF
07 FEB 28 8
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CLERK OF COURT

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

THE HONORABLE JAY ROOF, JUDGE

BRIEF OF APPELLANT

WALTER M.HACKETT, JR
Attorney for Appellant

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Table of Statutes

RCW 35.80.030
Bremerton Municipal Code Ch. N17. 04.....

ASSIGNMENT NO. 1

The trial court held in error that the procedures for abatement and removal or destruction authorized by RCW 35.80.030 and Bremerton Municipal Code Ch. 17.04 were applicable to buildings which had never been annexed to Appellant's real property?

ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Does RCW 35.80.030 apply to buildings which have been removed from the land they were moved from and stored on cribs or wheels and not permanently annexed?

STATEMENT OF THE CASE

This is an appeal from the judgment of the Kitsap County Superior Court denying the appellant recovery of an assessment for demolition costs for three

buildings on land they owned in Kitsap County that was annexed by the City of Bremerton in January 1995(Cp. 12 Stipulated Facts 4).

There were three houses, one referred to as the yellow house was annexed to the land, and was site built and owned by the appellants. The other two houses, thee yellow and white house, and the white house had been moved onto the land temporarily and not annexed to the land but instead were placed on cribs and the wheels they were moved in on.

On March 29, 1995 the City of Bremerton issued a NOTICE OF DANGEROUS BUILDINGS regarding all three houses under Bremerton Municipal Code Ch. 17.04 and authorized by RCW 35.80.030.

A hearing was held on this matter before the City's board of building and fire code appeals, who ordered all three buildings be demolished. That board also referred the status of the yellow and white , and white houses to the city planning commission , who determined that their presence without a permit on appellant's property created an illegal junkyard.(cp12-Stip of Facts 8)

The city completed the demolition of all three houses after August 13, 1995 and placed an assessment on appellant's property. Appellants subsequently paid the full assessment under protest and brought this action to recover the assessment.

The trial court in reaching its conclusions in this case held that all three houses were buildings or structures within the language of RCW 35.80.030 which authorized the Bremerton administrative procedure as opposed to an

action to abate a public nuisance available to enforce all other land use controls.
(cp. 17 memo opinion.)

ARGUMENT

It is appellant's contention that RCE 35.80.030 was not intended to apply to houses which were temporarily stored on real property without being g annexed to the real estate itself.

The statute itself does not define building, dwelling or structure. Therefore, the words must be construed in their ordinary usage, Sandona v. City of Cle Elum 37 p. 2d.831, 226p.2d.889 (1951).

The law has always made a distinction between buildings which are annexed to the land itself and structures which are not in the area of taxation, Landlord tenant and zoning.

In the case at bar it was determined by the City planning commission that storing buildings on the appellant's property without a permit created an illegal junkyard. (Cp stip of fact #8).

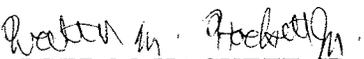
The difference is that to enforce that part of the zoning code, required judicial action and joinder of the owner of the houses, Evan Burley. Instead the entire cost of demolition and removal of the two houses, was levied on the property of the appellants.

CONCLUSION

Because RCW 35.80.030 did not apply to buildings not permanently affixed or attached to the land, the City's administrative assessment of costs to those two buildings was illegal.

The judgment of the Superior Court of Kitsap County in this case should be reversed and remanded.

Respectfully submitted,


WALTER M. HACKETT, JR.
Attorney for Appellant
WSBA No. 1055

IN THE COURT OF APPEALS, STATE OF WASHINGTON
DIVISION TWO

COURT OF APPEALS
07 MAR -2 2008

WILLIAM SESKO and,)
NATACHA SESKO,)
Husband and wife.)
)
Plaintiff,)
)
v.)
)
)
CITY OF)
BREMERTON)
)
)
Defendant.)
_____)

STATE OF WASHINGTON
BY _____
DEPT. OF _____
35342-3-II
Case No. 35342-2-II

DECLARATION OF
SERVICE

WALTER M. HACKETT, JR., hereby declares under the pains
and penalties of perjury that on February 27, 2007, he delivered one
copy of the REVISED APPELLANTS BRIEF to the Office of the
Bremerton City Attorney.

Walter M. Hackett, Jr.
WALTER M. HACKETT, JR.
WSBA #1055