

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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William and Natacha Sesko, Appellants,

v.

City of Bremerton, Respondent

---

BRIEF OF RESPONDENT CITY OF BREMERTON

---

BY \_\_\_\_\_  
STATE \_\_\_\_\_  
CLERK OF COURT  
JUL 10 2013  
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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether the statute of limitations has run regarding the status of the Seskos' houses as dwellings, buildings, structures, or premises under RCW 35.80.030 when the Seskos failed to appeal the finding that the houses were dangerous buildings.

2. Whether the Seskos' houses are dwellings, buildings, structures, or premises under RCW 35.80.030 when the plain meaning of dwellings, buildings, structures, and premises include a house and to interpret as the Seskos' argue would lead to absurd results and frustrate the legislature's intent.

## **II. STATEMENT OF THE CASE**

### **A. Statement of Facts**

On March 29, 1995, Bremerton issued a Notice of Dangerous Building to William and Natacha Sesko ("the Seskos") for dangerous buildings located on their property on Werner Road. CP 12. At that time there were three structures on the Werner Road property, one of which was a site built house (the "yellow house") and two that had been moved onto the Werner Road property (the "yellow and white house" and the "white house"). CP 13. The "yellow house" and the "yellow and white house" were located entirely on the Werner Road property. *Id.* The

“white house” was located partially on the Werner Road property and partially on the undeveloped city right of way, referred to by the Seskos as “the alley” adjacent to the Werner Road property. *Id.*

In December 1994 or January 1995 the City of Bremerton annexed the Werner Road property from Kitsap County. *Id.* On March 29, 1995 the Bremerton Building Official issued a Notice of Abatement for the three houses, which was served on the Seskos on April 11, 1995. *Id.* On April 28, 1995 the Seskos appealed the Notice of Abatement to the Board of Appeals. *Id.* On May 10, 1995, the Building and Fire Code Board of Appeals conducted a hearing to determine whether the three houses were dangerous buildings. *Id.* The Board concluded that the houses were dangerous buildings, but that the City would not take action until two days after the Seskos received notice of the Planning Commission hearing determining whether the use of the Seskos’ property as a “junkyard” is legal. CP 13-14.

On June 20, 1995, the Planning Commission determined that the Seskos use of their property as a junkyard was illegal. CP 14. On July 3, 1995 the Seskos received a letter from the Board of Appeals regarding the Planning Commission’s determination; the Board indicated that Seskos had two days from the date of receipt to apply for a permit for the demolition of the white house. *Id.* On July 5, 1995 the Seskos applied for

a permit for demolition, which was issued for a 664 square foot home (the “white house”), demolition to be completed by August 1, 1995. *Id.* On August 18, 1995 the Seskos had not demolished the white house and had not completed demolition of the other two houses and had not removed debris from the other two houses. *Id.* On August 18, 1995 the Seskos were informed by the City Building Official that due to their failure to complete the demolition, the City would proceed with the abatement of all three structures on that site. *Id.*

The City conducted an asbestos abatement and took action to demolish and remove the debris from all three houses beginning the work on October 26, 1995, completing the demolition and removal by November 16, 1995. *Id.* The cost of demolition and removal was \$18,707.20, which the parties agree was a reasonable amount for the work performed. *Id.*

On February 7, 1996 the Seskos received a Notice of Public Hearing regarding the approval of the City’s lien to recoup costs of demolition and removal at the Werner Road property; the notice stated the hearing would be held on February 21, 1996. *Id.* On February 21, 1996, the Seskos filed Objections to Request for Approval of Lien. *Id.* On February 21, 1996 the City Council held a hearing and found that the cost for demolition and removal of the dangerous buildings on the Werner

Road property was reasonable and that a lien would be properly assessed against the Seskos' property. CP 15. During the February 21, 1996 hearing the Seskos' sole argument was that the white house on cribs, was only half on their property, the other half resting in the "alley" behind their property, so the Seskos' property should not be assessed a lien for the demolition. *Id.* The Seskos did not argue at any time during that hearing that the white house was not a "dwelling, building, structure, or premise" under RCW 35.80.030. Ex. 3. On February 27, 1996 the City filed a claim of lien for building abatement. CP 15. On March 29, 1996 the Seskos filed and served a Petition to Remove Lien, commencing this action. *Id.*

B. Procedure Below

The Petition to Remove Lien sought to remove the lien on the basis that the white house was primarily on the City's alley and that the value of the demolition work done was less than the amount the City assessed against her property. CP 34. The Seskos' petition failed to allege that the three houses were not dangerous "dwellings, buildings, structures, or premises".

The City moved to dismiss the Seskos' case because the Seskos had paid the lien and sold the property that was subject to the lien. *See Sesko v. Bremerton*, WL 1081264 at \*1 (Unpublished Opinion); A-11. The Seskos then filed a motion for leave to amend their complaint. *Id.*

The trial court granted the City's motion dismissing the case, and the Seskos appealed. *Id.* In that appeal, this Court recognized that the issue in dispute in the case was a dispute regarding "whether the third house was on Sesko's (sic) land". *Id.* at n.1. This Court found that the Seskos should have been allowed to amend their complaint and remanded the case to the trial court. *Id.*

On March 20, 2006, the City filed a Motion for Partial Summary Judgment seeking an order that as a matter of law the amount of the lien was the reasonable value of materials, supplies and labor performed by the City in conducting the abatement. CP 43-47. The Seskos did not oppose the motion, and on April 21, 2006, the trial court granted the City's motion. CP 82-83. The City believed that this resolved all of the issues except one for trial: "[W]hether it was proper for the City to assess the costs of the abatement against the [Seskos'] Werner Road property". CP 4. The City asserted that any issue regarding whether the house was "dangerous" under RCW 35.80.030 had either been abandoned or was never pursued by the Seskos. *Id.* For the first time since filing their petition in 1996, the Seskos identified in its trial brief that one of the issues was whether the white house was a "building" under RCW Chapter 35.80. CP 10.

On July 18, 2006 trial was held on the Seskos' petition. CP 3. On July 26, 2006, the trial court entered an order denying the Seskos' petition for reimbursement. CP17-20. The trial court specifically found that the houses that were not attached to the real property were structures within the meaning of RCW Chapter 35.80. CP 19. This appeal followed.

### **III. SUMMARY OF ARGUMENT**

The Seskos appeal the trial court's decision denying their petition for reimbursement on one basis: That RCW 35.80.030 does not apply to houses that are not permanently affixed to the ground. First, the Seskos are barred from bringing this issue on appeal because the statute of limitations has run. Second, RCW 35.80.030 does apply to houses that have not been affixed to the ground. The plain meaning of "dwellings, buildings, structures, or premises" includes houses that have been temporarily placed on cribs. Moreover, the legislature intended to include such houses, and excluding such houses from the meaning of dwellings, buildings, structures, or premises would lead to absurd results. For all of these reasons, this Court should affirm the trial court's decision denying the Seskos' petition for reimbursement.

#### IV. ARGUMENT

##### A. Standard of Review

The issue of whether the Seskos' claim is barred by the statute of limitations is an issue of law, which is reviewed de novo. *Bennett v. Computer Task Group, Inc.*, 112 Wn.2d 102, 106, 47 P.3d 594 (2002). The issue of whether dwellings, buildings, structures, or premises under RCW 35.80.030 includes a house on cribs involves statutory interpretation, which is an issue of law, so the standard of review for that issue is also de novo. *Sleasman v. City of Lacey*, 159 Wn.2d 639, --, 151 P.3d 990, 992 (2007).

##### B. The issue of whether the houses are a dwelling, building, structure or premises under RCW 35.80.030 was abandoned and the statute of limitations has run.

The only issue on appeal is whether the abated houses were dwellings, buildings, structures or premises under the Uniform Code of the Abatement of Dangerous Buildings. RCW 35.80.030(2) governs the procedure a municipality shall follow to appeal a ruling by an appeals board that determined a building was dangerous under the Uniform Code of the Abatement of Dangerous Buildings. The statute provides that a petition to the superior court challenging the appeals board's decision that a building is dangerous must be filed within thirty days after the posting and service of the order. RCW 35.80.030(2).

In our case, the City's Board of Appeals' order finding that the houses were dangerous buildings was rendered on May 10, 1995. CP 13 at ¶7. Therefore, the Seskos' petition to the superior court challenging the Board of Appeals' order must have been filed by June 9, 1995. The Seskos did not file this petition until March 29, 1996. CP 30. As such the statute of limitations has run with respect to the issue of whether the houses were dangerous buildings under RCW Chapter 35.80. The Seskos' petition before this Court is an appeal of the City's filing a lien against the Seskos' property, not an appeal of whether the houses were in fact dangerous.

C. The houses at issue in this case are dwellings, buildings, structures or premises under RCW 35.80.030.

RCW Chapter 35.80 does not define "dwelling", "building", "structure", or "premises". In construing a statute, the Court should strive to determine the legislature's intent:

A court's objective in construing a statute is to determine the legislature's intent. If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. A statutory provision's plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. A provision that remains susceptible to more than one reasonable interpretation after such an inquiry is ambiguous and a court may then appropriately employ tools of statutory construction...to discern its meaning.

*Tingey v. Haisch*, 159 Wn.2d 652, --, 152 P.3d 1020, 1023 (2007) (internal citations and quotations omitted).

In our case, the statute's meaning is plain on its face. The context of the statute and the statutory scheme as a whole reveal that the legislature intended to include the Seskos' houses on cribs. The purpose of the statute giving authority to cities to take action to abate dangerous buildings is set out in RCW 35.80.010:

It is hereby found that there exist, in the various municipalities and counties of the state, dwellings which are unfit for human habitation, and buildings, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair, structural defects, defects increasing the hazards of fire, accidents, or other calamities, inadequate ventilation and uncleanness, inadequate light or sanitary facilities, inadequate drainage, overcrowding, or due to other conditions which are inimical to the health and welfare of the residents of such municipalities and counties.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended, and that the necessity of the public interest for the enactment of this law is hereby declared to be a matter of local legislative determination.

RCW 35.80.010.

While the legislature does not define dwellings, buildings, structures or premises, it does not require that such a dwelling, building, structure or premises be permanently affixed to the ground. The

legislature's clear intent is to ensure that cities have the ability to abate structures that are "inimical to the health and welfare of the residents". It is inherent that structures that are not permanently affixed may very well be dangerous due to "structural defects", i.e. the structure is unstable because it is not affixed to the ground.

Where terms are not defined in the statute itself, the Court may derive the plain and ordinary meaning from a dictionary definition. *McClarty v. Totem Elec.*, 157 Wn.2d 214, 225, 137 P.2d 844 (2006). It is undisputed that the item at issue in this appeal is a "house". "House" is defined in Webster's online dictionary as "a building that serves as living quarters for one or a few families: HOME." A-1. "Dwelling" is defined as "a shelter (as a house) in which people live." A-3. "Building" is defined as "a usually roofed and walled structure built for permanent use (as for a dwelling)." A-5. "Structure" is defined as "Something (as a building) that is constructed." A-7. "Premises" is defined as "a tract of land with buildings thereon...a building or part of a building usually with its appurtenances (as grounds)." A-9.

According to Webster's, a house is a "building" regardless of whether it is affixed to the ground. Moreover, a "dwelling" is a house. Structure and premises are defined very broadly to include practically anything built or constructed. None of the definitions require that the

thing be permanently affixed to the ground. Using the plain meaning of the statute, the Seskos' houses were dwellings, buildings, structures or premises.

Finally, “statutes should be construed to effect their purposes, and strained, unlikely, or absurd consequences resulting from a literal reading are to be avoided.” *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989). As stated in RCW 35.80.010 the purpose of RCW Chapter 35.80 is to authorize local governments to abate buildings that are inimical to public health and welfare. A house that is on cribs is certainly more unstable and a greater risk to public safety than the same house permanently affixed to the ground. It is undisputed that if the house had been affixed to the ground, it would have been subject to RCW Chapter 35.80. Therefore, the Seskos' interpretation is that a house permanently fixed to the ground may be declared a dangerous building, but as soon as one removes the stable foundation from that house, it suddenly loses its “dangerous building” status and may no longer be subject to RCW Chapter 35.80. Interpreting the statute as the Seskos suggest would be lead to absurd consequences. Surely, a house teetering on cribs would be precisely the kind of dangerous building the legislature contemplated in enacting RCW Chapter 35.80.

Any reasonable interpretation dwellings, buildings, structures, or premises under RCW 35.80.030 would include the Seskos' houses at issue in this case.

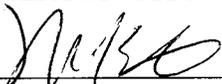
**V. CONCLUSION**

For the reasons set forth above, this Court should affirm the trial court's decision denying Ms. Sesko's petition for reimbursement.

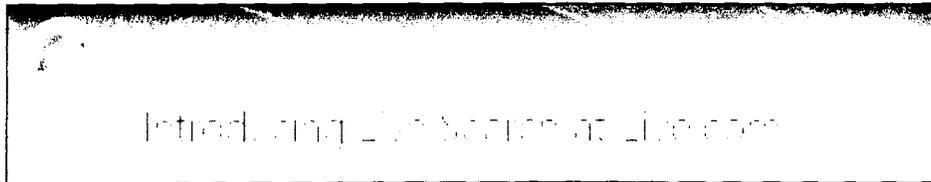
DATED this 7<sup>th</sup> day of May, 2007.

Respectfully Submitted,

ROGER A. LUBOVICH  
BREMERTON CITY ATTORNEY

By:   
Mark E. Koontz, WSBA #26212  
Attorney for Respondent  
City of Bremerton

# APPENDIX



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## house

89 entries found for **house**. The first 10 are listed below.  
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house[1,noun]	▲	Go
house[2,verb]		
House		
apartment building		
art house		
bawdy house	▼	

Main Entry: **<sup>1</sup>house**

Pronunciation: 'haus

Function: *noun*

Inflected Form(s): *plural hous-es* /'hau-z&z also -s&z/

Usage: *often attributive*

Etymology: Middle English *hous*, from Old English *hus*; akin to Old High German *hus* house

**1 a** : a building that serves as living quarters for one or a few families : **HOME**

**2 a** (1) : a shelter or refuge (as a nest or den) of a wild animal (2) : a natural covering (as a test or shell) that encloses and protects an animal or a colony of zooids **b** : a building in which something is **housed** <a carriage *house*>

**3 a** : one of the 12 equal sectors in which the celestial sphere is divided in astrology **b** : a zodiacal sign that is the seat of a planet's greatest influence

**4 a** : **HOUSEHOLD** **b** : a family including ancestors, descendants, and kindred <the *house* of Tudor>

**5 a** : a residence for a religious community or for students **b** : the community or students in residence

**6 a** : a legislative, deliberative, or consultative assembly; *especially* : one constituting a division of a bicameral body **b** : the building or chamber where such an assembly meets **c** : a quorum of such an assembly

**7 a** : a place of business or entertainment <a movie *house*> **b** (1) : a business organization <a publishing *house*> (2) : a gambling establishment **c** : the audience in a theater or concert hall <a full *house* on opening night>

**8** : the circular area 12 feet in diameter surrounding the tee and within which a curling stone must rest in order to count

**9** [from *The Warehouse*, Chicago dance club that pioneered the style] : a type of dance music mixed by a disc jockey that features overdubbing with a heavy

repetitive drumbeat and repeated electronic melody lines

- **house·ful**  /'haus-"ful/ *noun*
- **house·less**  /'hau-sl&s/ *adjective*
- **house·less·ness** *noun*
- **on the house** : without charge : FREE

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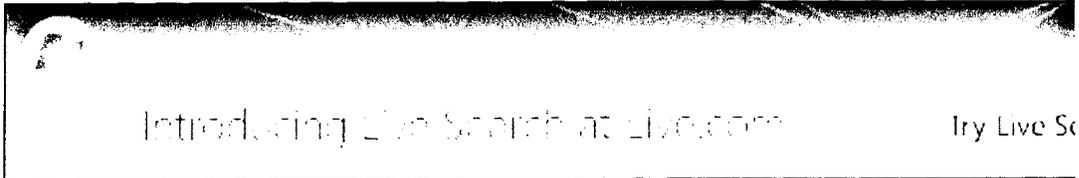
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## dwelling

4 entries found for **dwelling**.

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Main Entry: **dwel·ing**

Function: *noun*

: a shelter (as a house) in which people live

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## building

5 entries found for **building**.

To select an entry, click on it.

build[1,verb]	<a href="#">Go</a>
building	
apartment building	
building block	
sick building syndrome	

Main Entry: **building**

Pronunciation: 'bil-di[ng]

Function: *noun*

**1** : a usually roofed and walled structure **built** for permanent use (as for a dwelling)

**2** : the art or business of assembling materials into a structure

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## structure

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- |                              |   |    |
|------------------------------|---|----|
| structure[1,noun]            | ▲ | Go |
| structure[2,transitive verb] |   |    |
| crumb structure              |   |    |
| data structure               |   |    |
| deep structure               |   |    |
| fine structure               | ▼ |    |

Main Entry: **<sup>1</sup>struc·ture**

Pronunciation: 'str&k-ch&r

Function: *noun*

Etymology: Middle English, from Latin *structura*, from *structus*, past participle of *struere* to heap up, build -- more at **STREW**

**1** : the action of building : **CONSTRUCTION**

**2 a** : something (as a building) that is constructed **b** : something arranged in a definite pattern of organization <a rigid totalitarian *structure* -- J. L. Hess> <leaves and other plant *structures*>

**3** : manner of construction : **MAKEUP** <Gothic in *structure*>

**4 a** : the arrangement of particles or parts in a substance or body <soil *structure*> <molecular *structure*> **b** : organization of parts as dominated by the general character of the whole <economic *structure*> <personality *structure*> **c** : coherent form or organization <tried to give some *structure* to the children's lives>

**5** : the aggregate of elements of an entity in their relationships to each other <the *structure* of a language>

- **struc·ture·less** /-l&s/ *adjective*

- **struc·ture·less·ness** /-n&s/ *noun*

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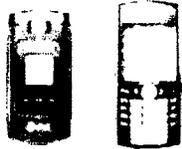
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## premise

2 entries found for **premise**.

To select an entry, click on it.

Main Entry: **1** **pre-m-ise**

Variant(s): *also* **pre-miss** /'pre-m&s/

Function: *noun*

**Etymology:** in sense 1, from Middle English *premissa*, from Anglo-French, from Medieval Latin *praemissa*, from Latin, feminine of *praemissus*, past participle of *praemittere* to place ahead, from *prae-* pre- + *mittere* to send; in other senses, from Middle English *premisses*, from Medieval Latin *praemissa*, from Latin, neuter plural of *praemissus*

**1 a :** a proposition antecedently supposed or proved as a basis of argument or inference; *specifically* : either of the first two propositions of a syllogism from which the conclusion is drawn **b :** something assumed or taken for granted :

**PRESUPPOSITION**

**2 plural :** matters previously stated; *specifically* : the preliminary and explanatory part of a deed or of a bill in equity

**3 plural** [from its being identified in the premises of the deed] **a :** a tract of land with the buildings thereon **b :** a building or part of a building usually with its appurtenances (as grounds)

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Not Reported in P.3d, 98 Wash.App. 1016, 1999 WL 1081264 (Wash.App. Div. 2)  
**(Cite as: Not Reported in P.3d)**

Sesko v. City of Bremerton  
 Wash.App. Div. 2,1999.

NOTE: UNPUBLISHED OPINION, SEE RCWA  
 2.06.040

Court of Appeals of Washington, Division 2.  
 William J. & Natacha SESKO, Appellants  
 v.  
 CITY OF BREMERTON, Respondent.  
**No. 23614-1-II.**

Nov. 24, 1999.

Appeal from Superior Court of Kitsap County,  
 Docket No. 96-2-01009-1, judgment or order under  
 review, date filed 07/27/1998; Thurman W. Lowans  
 , Judge.

William Sesko (Appearing Pro Se), Bremerton,  
 WA, for Appellants.  
 Glenna L. Malanca and Knute A. Rife, City of  
 Bremerton, Office of City Attorney, Bremerton,  
 WA, for Respondents.

#### UNPUBLISHED OPINION

MORGAN.

\*1 William and Natacha Sesko appeal the dismissal  
 of their suit to strike or reduce a lien. We reverse  
 and remand. In 1995, William and Natacha Sesko  
 owned land in Bremerton. The land was "improved"  
 with two dilapidated houses, and possibly a third as  
 well.<sup>FN1</sup>

FN1. The parties dispute whether the third  
 house was on Sesko's land.

On March 28-29, 1995, the City posted notices that  
 it would demolish the houses unless the Seskos  
 repaired or removed them. The Seskos appealed to  
 the City's Board of Appeals, but that board upheld  
 the notices. Between October 13 and November 16,

1995, the City entered the property and demolished  
 one or more of the houses. On March 1, 1996, the  
 City placed a lien on the property for \$18,707 in  
 alleged demolition costs. On March 29, 1996, the  
 Seskos filed the complaint in this action. Titled "  
 PETITION TO REMOVE LIEN," it denies "that  
 \$18,707.20 was the reasonable value of all of the  
 work performed [by the City]," and alleges that  
 some portion of that work should have been  
 charged to a person named Evan Burley.<sup>FN2</sup>

FN2. Clerk's Papers at 1-5; see particularly  
 paragraphs 5.2-5.3.

Sometime during the next year and a half, the  
 Seskos sold the land. On October 31, 1997, they  
 paid the lien. On January 5,1998, the City satisfied  
 the lien. Meanwhile, the court set trial for July 1,  
 1998. On June 25, 1998, the City filed a trial  
 memorandum asserting that the case was moot  
 because the lien had been paid and removed. On  
 June 30, 1996, the Seskos moved to amend their  
 complaint to "pray that they be awarded judgment ...  
 for their damages proven at the time of trial[.]"<sup>FN3</sup>

FN3. Clerk's Papers at 19-20.

On July 1, 1998, the City filed a written objection to  
 the proposed amendment. It claimed that "[t]he only  
 relief sought to date is the release of [the] lien," and  
 that "[t]he City will be greatly prejudiced by the  
 interjection of a new cause of action on the eve of  
 trial."<sup>FN4</sup> It also claimed that the Seskos were  
 required to comply with, but had not complied with,  
 RCW 4.96.020. Trial did not commence on July 1.  
 We cannot tell whether the trial court granted a  
 continuance or merely allowed the trial date to pass  
 without action.

FN4. Clerk's Papers at 22.

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**(Cite as: Not Reported in P.3d)**

On July 8, a week after the trial was supposed to have commenced, the trial court held a hearing on the Seskos' motion to amend. After ruling that the amendment would inject new issues in the case and that the Seskos had failed to comply with RCW 4.96.010-.020, the court denied the motion and dismissed the case. The Seskos then filed this appeal. The issue on appeal is whether the trial court erred by denying the motion to amend. The Seskos say it did (1) because they were not changing the issues and (2) because they were not required to comply with RCW 4.96.020. The City disputes both points.

### I. CHANGING ISSUES

Under the circumstances present here, a plaintiff must obtain leave to amend his or her complaint. CR 15(a). The trial court should freely grant such leave "except where prejudice to the opposing party would result." <sup>FN5</sup> The Seskos' original complaint alleged in part that that \$18,707 was not the reasonable value of the work done by the City and attributable to them; thus, it sought to reduce the lien as well as to strike it, and it put the City on notice that the City would have to justify its demolition bills at the time of trial. The motion to amend was essentially to the same effect. It did not change the issues, it did not create prejudice, and it should have been allowed, particularly if no trial date was then pending. <sup>FN6</sup>

FN5. *Herron v. Tribune Publishing Co.*, 108 Wash.2d 162, 166, 736 P.2d 249 (1987) (quoting *Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters*, 100 Wash.2d 343, 349-51, 670 P.2d 240 (1983), cert. denied, 484 U.S. 815, 108 S.Ct. 67, 98 L.Ed.2d 31 (1987)).

FN6. As noted already, we cannot tell whether a trial date was pending when the motion to amend was heard. The July 1st trial date had passed a week earlier.

### II. RCW 4.96.010-.020

\*2 RCW 4.96.010 and RCW 4.96.020 must be read together. RCW 4.96.010 provides in part:

(1) All local governmental entities ... shall be liable for damages arising out of their tortious conduct.... Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. [Emphasis added.]

RCW 4.96.020 provides in part:

(2) All claims for damages against any such entity for damages shall be presented to and filed with the governing body thereof within the applicable period of limitations within which an action must be commenced.

...

(4) No action shall be commenced against any local governmental entity for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period. [Emphasis added.]

The Supreme Court has ruled that these statutes apply to tort claims only. <sup>FN7</sup> Here, the Seskos alleged that the City violated state statutes and local ordinances by "fail[ing] and neglect[ing] to comply with the provisions of RCW 35.80.010 et seq. and the provisions of Chapters 7, 8, and 9 of the 1991 Abatement of Dangerous Buildings Code[.]" <sup>FN8</sup> These allegations state a violation of statute, not the commission of a tort, and thus the Seskos were not required to comply with RCW 4.96.010-.020.

FN7. *Wilson v. City of Seattle*, 122 Wash.2d 814, 820, 863 P.2d 1336 (1993).

FN8. Clerk's Papers at 4-5.

### III.

In an argument made for the first time on appeal, the City urges that if the Seskos are not bringing a tort action, they must be bringing a tax refund

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action to which RCW 84.68.020 applies. In our view, however, the Seskos are trying to recover allegedly improper demolition charges collected by virtue of an allegedly improper lien. Such charges are not taxes, whether or not collected by the county treasurer, and thus RCW 84.68.020 is inapplicable. The motion to amend should have been granted, and the case is not moot. Reversed and remanded for further proceedings.

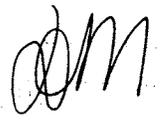
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

HOUGHTON and ARMSTRONG, JJ., concurring.  
Wash.App. Div. 2, 1999.  
Sesko v. City of Bremerton  
Not Reported in P.3d, 98 Wash.App. 1016, 1999  
WL 1081264 (Wash.App. Div. 2)

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STATE OF  
BY \_\_\_\_\_

No. 35342-3-II



COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

WILLIAM and NATACHA )  
SESKO )  
Appellants, )  
vs. )  
CITY OF BREMERTON, )  
Respondent. )  
\_\_\_\_\_ )

DECLARATION OF SERVICE

I am an Assistant City Attorney for the City of Bremerton. On the 7th day of May, 2007, and in the manner indicated below, I caused a copy of the City of Bremerton's Brief of Respondent and this Declaration of Service, to be served on the following individuals:

Walter Hackett  
509 4<sup>th</sup> Street, Suite 9  
Bremerton, WA  
98337

By Hand Delivery

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Bremerton, Washington this 7th day of May, 2007.

A handwritten signature in black ink, appearing to read 'M. Koontz', written over a horizontal line.

Mark E. Koontz