

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

HON YOEUN, individually and as Guardian ad Litem for the minor SUNNIE
YOEUN,

Appellants,

v.

CHIN FAI NG and JUDITH ANN NG, husband and wife, individually, and their
marital community; CITY OF VANCOUVER, a Municipality; ESTATE OF
STAN HUDLICKY, SHIRLEY HUDLICKY and the HUDLICKY MARITAL
COMMUNITY; EVERGREEN STATE FENCE COMPANY, formerly a
Washington corporation, and "JOHN and JANE DOE," shareholders of the
dissolved corporation EVERGREEN STATE FENCE COMPANY; ROGER and
ESTELLA CHANNING, individually and as husband and wife, dba
EVERGREEN STATE FENCE,

Respondents.

REPLY BRIEF OF APPELLANTS

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BY 

Terry E. Lumsden, WSBA # 5254
Law Offices of Terry E. Lumsden
Attorney for Appellants
3517 6th Avenue, # 200
Tacoma, Washington 98406
(253) 573-1644

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Appendix

Excerpted Vancouver Ordinance M-2254 (codified as Title 20 VMC) (1981) A-1

COMES NOW Appellant Hon Yoeun, and submits for the Court's consideration this Reply Brief:

I. THE TRIAL COURT AND THE CITY RELIED UPON A LATER, INAPPLICABLE VERSION OF THE VISION CLEARANCE ORDINANCE.

The City argues that Ms. Yoeun has relied on an incorrect version of its "Vision Clearance" ordinance, VMC 20.93.240 (1981).

Conveniently, the City does **not** provide the Court with any chronological support for its argument¹—it merely lists places in the record where it repeatedly (though mistakenly) referred to a version of the ordinance that was **not enacted until after the subject fence was built.**² To assure the Court that Ms. Yoeun correctly cited the version that is applicable to her claim, Ms. Yoeun is attaching as Appendix A-1 to this Reply additional excerpts from Vancouver Ordinance M-2254, a 368-page-long document that enacted a new zoning code (including VMC 20.93.240) in 1981. The Court will note that the final page of the ordinance shows the dates on which the ordinance was voted and passed. The Court will also note that

¹ The documents appended to the City's Response Brief do not contain verification as to when "section (C)" and "subsection (C)(3)" were enacted. *See, e.g.*, Response Brief at App. 1.

² The City admits that the drawings that it submitted to "illustrate" the meaning of the ordinance were not adopted until after the subject accident occurred. Response Brief at 13. Jon Wagner, the City's expert, admits that the ordinance itself underwent significant revision over the years, with new sections being added to the original language. CP 200.

Ms. Yoeun correctly quoted VMC 20.93.240 from pages 349-50 of the Ordinance, which in 1981 (or 1986) **did not have a “section (C).”**

Ms. Yoeun continues to assert that the trial court erred in considering an incorrect version of the ordinance. The trial court should have applied the law that was **in effect at the time the fence was built**. *See Wagner v. Wagner*, 95 Wn.2d 94, 98, 621 P.2d 1279 (1980) (parties are presumed to contract with reference to existing statutes). Furthermore, because the City continues to rely on a later, inapplicable version of the ordinance and accompanying diagrams in its Response Brief (*see* pages 11-16, 21-24, and 27), its arguments based on the inapplicable version are of no consequence and must be disregarded.

II. THE CITY CONFIRMS THAT THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE NATURE OF THE DRIVEWAY THAT SHOULD NOT HAVE BEEN DISPOSED OF ON SUMMARY JUDGMENT.

The City argues at length that the driveway is not a “service drive.” Because the term is not defined in the Vancouver Municipal Code, to support its argument the City relies on **facts** relating to who used the driveway and the uses to which the driveway was put. *See, e.g.*, Response Brief at 17-20. The City’s reliance on **facts** only underscores the trial court’s error: it should not have decided factual issues on summary judgment. The issue of whether the driveway was used by members of the

public for access to a place of public use **should have been decided by a jury.**

Additionally, the City's self-serving testimony from Cindy Peterson and Jon Wagner³ regarding the meaning of the Vision Clearance ordinance is not determinative, and should not have been considered by the trial court on summary judgment.

Experts may not offer opinions of law in the guise of expert testimony. [citations omitted] Legal opinions on the ultimate legal issue are not properly considered under the guise of expert testimony and **a trial court errs if it considers those opinions expressed in affidavits.**

Terrell C. v. State Dept. of Social and Health Services, 120 Wn. App. 20, 30, 84 P.3d 899 (2004), *rev. denied* 152 Wn.2d 1018, 101 P.3d 109 (2004) (emphasis added). It is proper for a trial court to exclude the testimony of an expert who explains what a statute means. *Hyatt v. Sellen Const. Co.*, 40 Wn. App. 893, 898-99, 700 P.2d 1164 (1985).

Under the above precedent, it was error for the trial court to consider the declarations of Cindy Peterson and Jon Wagner, because they gave improper legal opinions by defining terms and explaining what the Vision Clearance ordinance meant. This Court should disregard their opinions and reverse the trial court so that a jury can properly consider the

³ CP 418-21; CP 427-33.

facts and decide whether the driveway on which Sunnie Yoeun rode his bike was a “service driveway” under the Vancouver Municipal Code.

III. THE CITY CONFIRMS THAT THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE CITY’S KNOWLEDGE OF A CODE VIOLATION ON THE SUBJECT PROPERTY.

The City argues that in spite of the fact that it issued a correction notice for the fence, the City did not have notice of a code violation. The City relies on *Moore v. Wayman*, 85 Wn. App. 710, 934 P.2d 707 (1997), *rev. denied* 133 Wn.2d 1019 (1997), for support. However, in that case, the issue was not whether the city knew about a code violation after issuing a correction notice for an **already completed** structure, but whether the city knew about a code violation **during construction** when inspections did not reveal any violations. *Id.* at 723. Unlike the city in *Moore*, the City here had actual knowledge of code violations because **it inspected the fence after it was completed**, determined that corrections were required, and **issued a correction notice** based on its inspection. CP 86; CP 93-94 (Peterson Deposition at 17:15 – 18:9). *Moore* is distinguishable and does not control on the issue of notice.

The City also relies on factual assertions to support its argument. *See* Response Brief at 33-35. However, any conflict in the facts should have resulted in denial of the City’s motion for summary judgment.

Viewing the facts in a light most favorable to Ms. Yoeun, reasonable minds could easily have concluded that the City had notice of a code violation after the fence was completed. The trial court erred in granting the City's motion.

IV. THE TRIAL COURT ERRED IN FINDING THAT THE CITY'S DUTY TO ENFORCE ITS ZONING CODE WAS DISCRETIONARY.

The City argues, without citation to authority, that its duty to enforce its zoning code was discretionary, not mandatory. Response Brief at 36. The City does not offer any legal justification as to why the word "shall," which it admits appears several times in VMC 20.04.405 (1981), does not mean what it says. Contrary to the City's argument, the City's own ordinance states in plain language that the City's enforcement of the zoning code is **mandatory**. The trial court erred in concluding otherwise.

V. THE TRIAL COURT ERRED IN FINDING THAT SUNNIE YOEUN WAS NOT WITHIN THE PROTECTED CLASS.

The City argues that Sunnie Yoeun was not within the class of people meant to be protected by the Vision Clearance ordinance. Response Brief at 37. Calling the present action "a general building code case," the City relies on *Taylor v. Stevens County*, 111 Wn.2d 159, 759 P.2d 447 (1988). There, the plaintiffs purchased a house for which Stevens County had issued a building permit. After the sale was

completed, the plaintiffs discovered that the house violated several provisions of the building code. The plaintiffs sued the County, which asserted the public duty doctrine as a defense. The plaintiffs argued that the “special relationship” exception to the doctrine should apply, but, significantly, **did not argue the “failure to enforce” exception.** *Id.* at 166. The Washington Supreme Court’s decision ultimately turned on its analysis of the “special relationship” exception. *Id.* at 172.

Because *Taylor*’s holding was not based on the “failure to enforce” exception, it is not instructive here. The case certainly does **not** stand for the proposition that a failure to enforce a city’s zoning code can never be the basis for governmental liability, as the Court noted in dicta:

As to the performance of building code inspections, a duty shall continue to be recognized where a public official knew of an inherently dangerous and hazardous condition, is under a duty to correct the problem and fails to meet this duty.

Id. at 171-72. The case is also not instructive in determining if Sunnie Yoeun was a member of the class intended to be protected by the Vision Clearance ordinance.

Sunnie rode his bicycle down the driveway through the sight triangle described in VMC 20.93.240 (1981). As such, the view of the roadway from the driveway should not have been blocked by the fence, which was too tall and made “solid” by interwoven brown slats. Sunnie

was clearly meant to be protected by the Vision Clearance ordinance, which required that the fence be no higher than 30 inches within the sight triangle. Had the City enforced the Vision Clearance ordinance, Sunnie and the oncoming motorist would have been visible to each other. With clear visibility, there would have been time to react and avoid a collision. The trial court erred in concluding that Sunnie was not within the class protected by the ordinance.

VI. THE CITY CONFIRMS THAT THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE INHERENTLY DANGEROUS AND HAZARDOUS CONDITION CREATED BY THE FENCE.

The City raises questions about how “dangerous and hazardous” the fence was, when the fence exceeded the height restriction provided in the Vision Clearance ordinance and was made “solid” by interwoven brown slats. **To the extent that the City’s questions are factual, they should have been decided by a jury and it was error for the trial court to dispose of them on summary judgment.** Viewing the evidence in a light most favorable to Ms. Yoeun, reasonable minds could easily conclude that a fence that blocked the view of both persons on the driveway and the intersecting roadway was inherently dangerous and hazardous. Furthermore, as discussed above, reasonable minds could easily conclude that the City had notice of the dangerous and hazardous

condition of the fence because **it issued a correction notice** after the fence was finished.

The City cites to cases involving electrical wires, vegetation, drunk drivers, and rotted structures to support its factual argument that the fence in question was not dangerous. Obviously, the cases cited are not on point because they do not involve fences. Ms. Yoeun is unable to locate any Washington case that holds that fences cannot be dangerous or hazardous when they obstruct visibility of an intersecting roadway. This is ultimately a factual issue that should have been preserved for trial. The trial court erred in granting summary judgment.

VII. THE CITY CONFIRMS THAT THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE CITY'S UNDERTAKING OF A DUTY TO ENFORCE ITS ZONING CODE.

Ms. Yoeun asserted as an alternative theory that the City's act of issuing a correction notice constituted an "undertaking" to enforce its zoning code which subjects the City to liability if the City was negligent in performance of its duty. In response, the City raised the public duty doctrine as a defense, without citation to any authority **that applies the public duty doctrine in an "undertaking" case.** *See* Respondent's Brief at 46-48. This is probably because the public duty doctrine is to be used to

determine to whom a governmental entity owes a duty, not to determine the actual duty owed:

Although it began its life with a legitimate purpose, the public duty doctrine is now regularly misunderstood and misapplied. **Its original function was a focusing tool that helped determine to whom a governmental duty was owed. It was not designed to be the tool that determined the actual duty.** [citations omitted] Properly, the public duty doctrine is neither a court created general grant of immunity nor a set of specific exceptions to some other existing immunity. . . .

Cummins v. Lewis County, 156 Wn.2d 844, 861-62, 133 P.3d 458 (2006) (Chambers, J., concurring) (emphasis added).

Here, the “actual duty” is to take reasonable care to enforce the City’s zoning code. Ms. Yoeun has raised genuine issues of material fact on all elements of that theory, including notice to the City, the dangerous condition created by the fence, the City’s failure to take reasonable measures to prevent injury. The public duty doctrine simply does not enter into the analysis. Because the trial court failed to preserve the issues of fact that Ms. Yoeun raised, the trial court erred and must be reversed.

Respectfully submitted,

**THE LAW OFFICES OF
TERRY E. LUMSDEN**



TERRY E. LUMSDEN, WSBA # 5254
Of Attorneys for Appellants

APPENDIX A-1

TITLE 20

ZONING

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20.02.338 VISUAL OBSTRUCTION shall mean any fence, hedge, tree, shrub, device, wall, or structure exceeding 30 inches in height above the elevation of the top of the curb, as determined by the City; and so located at a street or alley intersection as to dangerously limit the visibility of persons in motor vehicles on said streets or alleys. This does not include trees kept trimmed of branches to a minimum height of at least 8 feet.

20.02.340 WIDTH OF A BUILDING shall mean the shortest side elevation dimension measured horizontally.

20.02.342 YARD shall mean any open space on the same lot with a building or a dwelling group, which open space is unoccupied and unobstructed by any structure from the ground upward to the sky.

20.02.344 YARD, FRONT shall mean an open space extending the full width of the lot between a building and the front lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this Title.

20.02.346 YARD, REAR shall mean an open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this Title.

20.02.348 YARD, SIDE shall mean an open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified in this Title.

20.02.350 ZONE DISTRICT shall mean the same as "District or Zone".

20.02.352 ZONING ADMINISTRATOR shall mean the person employed by the City to administer this Title.

20.04 APPLICATION AND ENFORCEMENT.

20.04.100 COMPLIANCE. Except as provided in Section 20.04.200, et. seq., no building or other structure shall be constructed, improved, altered, enlarged, or moved, nor shall any use or occupancy of premises within the City be commenced or changed; nor shall any condition of or upon real property be caused or maintained, after the effective date of this Title, except in conformity with conditions prescribed for each of the several zones established hereunder. It shall be unlawful for any person, firm, or corporation to erect, construct, establish, move into, alter, enlarge, use, or cause to be used, any buildings, structures, or improvement or use of premises located in any zone described in this Title contrary to the provisions of this Title.

20.04.200 NONCONFORMING PROVISIONS.

20.04.210 PURPOSE. A use lawfully occupying a structure or site on the effective date of this Title or of amendments thereto which does not conform to the use regulations or development standards for the district in which it is located, shall be deemed to be a nonconforming use and may be continued, subject to the regulations hereinafter.

20.04.220 NONCONFORMING LOTS OF RECORD. If at the time of passage of this Title, a lot as shown on records of the County Auditor has an area, width, or depth dimension less than required for the zoning district in which the property is located, such lot shall be deemed nonconforming and may be occupied by any permitted use in the district, provided the lot was created in conformance with the rules and regulations in effect at the time of its creation.

20.04.230 NONCONFORMING USES.

- A. The Planning Commission may grant an application for a change of use if, on the basis of the application and the evidence submitted, it makes the following findings:
1. That the proposed use is classified in a more restrictive category than existing or preexisting use by the district regulations of this Title. The classifications of a nonconforming use shall be determined on the basis of the district in which it is first permitted, provided that a conditional use shall be deemed to be in a less restrictive category than a permitted use in the same category.

2. That the proposed use will not more adversely affect the character of the district in which it is proposed to be located than the existing or preexisting use.
 3. That the change of use will not result in the enlargement of the space occupied by a nonconforming use, except that a nonconforming use of a building may be extended throughout those parts of a building which were designed or arranged to such use prior to the date when such use of the building became nonconforming, provided that no structural alteration, except those required by law, are made.
- B. If a nonconforming use not involving a structure has been changed to a conforming use, or if the nonconforming use ceases, or if the building is vacant for a period of 1 year or more, said use shall be considered abandoned, and said premises shall thereafter be used only for uses permitted under the provisions in the district in which it is located. The Planning Commission may extend such use if the applicant shows good cause and makes application therefor.
- C. A nonconforming use not involving a structure or one involving a structure other than a sign having an assessed value of less than \$1,000, shall be discontinued within 2 years from the date of passage of this Title.
- D. A use which is nonconforming with respect to provisions for screening shall provide screening meeting the requirements of this Title within a period of 5 years from the date of passage of this Title.
- E. If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded, nor shall the use or any part thereof, be moved to any other portion of the property not theretofore regularly and actually occupied for such use; provided, that this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area specified in this Title for the activity carried on in the property; and provided further, that this shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this Title.

- F. No structure, the use of which is nonconforming, shall be moved, altered, or enlarged unless required by law or unless the moving, alteration, or enlargement will result in the elimination of the nonconforming use.
- G. No structure partially occupied by a nonconforming use shall be moved, altered, or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use.
- H. If any structure containing a nonconforming use is destroyed by any cause to an extent exceeding 75 percent of the appraised value of the structure as determined by the records of the County Assessor for the year preceding destruction, a future structure or use on the property shall conform to the regulations for the district in which it is located. The Planning Commission may allow rebuilding in excess of 75 percent upon good cause through the public hearing process.

20.04.240 NONCONFORMING STRUCTURES.

- A. A structure which is nonconforming to development standards shall not be altered or enlarged in any manner unless such alteration or enlargement will bring the structure into conformity with the requirements of the district in which it is located; provided, structural changes may be permitted when required to make the structure safe for occupancy or use; and, provided structural enlargements may be allowed in conformance with the setback requirements of the district in which it is located.
- B. A nonconforming structure may be maintained with ordinary care.
- C. The Planning Commission may approve a change in nonconforming uses within a nonconforming structure upon finding that the structure could not be reasonably converted to a conforming use, and that the approved use is more consistent with the zone district than the existing nonconforming use; or upon finding that the proposed use is classified in a more restrictive category than the existing or preexisting use by the district regulations of this Title. The classifications of a nonconforming use shall be determined on the basis of the district in which it is first permitted, provided that a conditional use shall be deemed to be in a less restrictive category than a permitted use in the same category.

20.04.400 ENFORCEMENT AND PENALTIES.

20.04.405 ENFORCEMENT. It shall be the duty of the Zoning Administrator to determine the applicability of this Ordinance for enforcement purposes. All departments, officials, and employees of the City vested with the duty or authority to issue permits, shall conform to the provisions of this Title and shall issue no permit, certificate, or license for any use, building, or purpose which violates or fails to comply with conditions or standards imposed by this Title. Any permit, certificate, or license issued in conflict with the provisions of this Title, intentionally or otherwise, shall be void. The Building Superintendent shall be responsible for carrying out the enforcement provisions of the Vancouver Municipal Code, at such time as a violation has been determined under the provisions of this Chapter.

20.04.410 PENALTY. Violation of any provision of this ordinance shall be a misdemeanor. Each day a violation is allowed to exist shall constitute a separate offense which, upon conviction, shall be subject to a fine of up to \$500.

20.04.415 ABATEMENT. In addition to or as an alternative to any other judicial or administrative remedy provided herein or by law, the Zoning Administrator may by written notice order a land use ordinance violation to be abated. The Zoning Administrator may order any person who creates or maintains a violation of any land use ordinance, or rules and regulations adopted thereunder, to commence corrective work and to complete the work within such time as he determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the Zoning Administrator will proceed to abate the violation and cause the work to be done. He will charge the costs thereof as a lien against the property and as both a joint and separate personal obligation of any person who is in violation.

20.04.420 CUMULATIVE CIVIL PENALTY. In addition to, or as an alternative to any other penalty, any violation shall incur a cumulative civil penalty in the amount of \$10 per violation per day from the date set for correction until the violation is corrected, plus court and attorney costs associated with collection.

20.04.425 CIVIL PENALTY SCOPE. The civil penalty shall generally be applied to first violations or other violations when deemed effective and appropriate. The criminal penalty shall be used when in the opinion of the Zoning Administrator or city attorney, the civil remedy will not be effective, timely, or for a second or subsequent violation.

20.04.430 CITATION - ASSESSMENT OF PENALTY. Whenever the Zoning Administrator determines that a continuing violation of this Ordinance is occurring, he is authorized to issue a citation prepared in compliance with statutes and court rules, directed to the person or persons permitting, committing, or causing such a violation.

20.04.435 CITATION FORM. A citation issued under these provisions shall contain the following information:

- A. The name and address of the person or persons to whom the notice of violation is directed.
- B. The street address when available or a legal description sufficient for identification of the building, structure, premises, or land upon which or within which the violation is occurring.
- C. A concise description of the nature of the violation.
- D. A statement of the action required to be taken as determined by the official and a date for correction which shall be not less than three weeks from the date of service of the citation unless the Zoning Administrator has determined the violation to be eminently hazardous.
- E. A statement that a cumulative, civil penalty in the amount of \$10 per violation per day shall be assessed against the person to whom the notice of violation is directed for each and every day following the date set for correction on which the violation continues.
- F. A statement that the Zoning Administrator's determination of violation may be appealed to the Board of Adjustment by filing with the planning department written notice of appeal within ten days of service of the notice of violation and that the per diem civil penalty shall not accrue while an administrative appeal is pending.

20.04.440 SERVICE OF CITATION. The citation shall be served upon person or persons to whom it is directed, either personally, or in a manner provided for personal service of notices of complaint in District Court, or by mailing a copy of the citation by certified mail, postage prepaid, return receipt requested, to such person at his last known address. Proof of personal service shall be made at the time of service by a written declaration under penalty of perjury, executed by the person effecting service, declaring time, date and the manner by which service was made.

20.04.445 APPEAL OF CITATION. A citation issued pursuant to this Ordinance constitutes a determination from which an administrative appeal may be taken by the filing of a notice of appeal with the building department within ten days of the service of the notice of violation. Such appeal shall be heard by the Board of Adjustment. The cumulative civil penalty provided for in this Ordinance shall not accrue while an administrative appeal is pending.

20.04.450 TIME EXTENSION. For good cause, the Zoning Administrator may extend the date for correction of the violation as stated in the citation; provided that such extension shall not affect or extend the time within which an administrative appeal may be filed.

20.04.455 COLLECTION OF CIVIL PENALTIES. The civil penalty constitutes a personal obligation of the person or persons to whom the citation is directed. The City Attorney on behalf of the City is authorized to collect the civil penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem penalties so long as the violation continues.

20.04.460 COMPROMISE, SETTLEMENT AND DISPOSITION OF SUITS. The Zoning Administrator and the City Attorney are hereby authorized to negotiate a settlement, compromise or otherwise dispose of a lawsuit with the parties or their legal representatives named in a lawsuit for the collection of civil penalties when to do so would be in the best interests of the City.

20.90

SPECIAL PROVISIONS

20.91 SPECIAL USE PROVISIONS

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- B. Nursery schools, kindergartens, and day-care centers serving more than four persons shall have a minimum site size of 10,000 square feet, and shall provide and thereafter maintain outdoor play areas with a minimum area of 100 square feet per child of total capacity. A site-obscuring fence of at least 4 feet but not more than 6 feet in height shall be provided, separating the play area from abutting lots. Adequate off-street parking and loading space shall be provided.

20.91.240 DOMESTIC ANIMALS. A minimum of one (1) acre is required for the first bovine, horse, goat, sheep, or similar large farm animal. For each additional animal, an additional 10,000 square feet must be provided. No swine are permitted. The raising and keeping of animals for commercial purposes is prohibited.

20.91.245 DRIVE-IN THEATERS. Drive-in theaters shall be located only on a major state highway or major city thoroughfare arterial, and shall provide ingress and egress so designed as to minimize traffic congestion. Said theaters shall be so screened from R districts, so that any noise shall not disturb residents or prospective residents, shall maintain signs and other lights only in such a way as not to disturb neighboring residents, and shall be so designed that the screen shall be set back from and shall not be clearly visible from any street or highway.

20.91.250 FENCES, WALLS, AND HEDGES.

- A. Fences and hedges are deemed accessory uses, and so are walls which serve the purpose of enclosing unroofed areas outside buildings. No fence and no such wall may hereinafter be constructed, and no hedge may be hereafter maintained, except as they conform to Section 20.93.240.
- B. In any Commercial or Industrial District, notwithstanding the yard requirements, a fence, wall, hedge, or other like screening device may be required by the Project Review Committee as a condition to the approval of a proposed commercial or industrial improvement on a lot abutting, or across a street or alley from, an adjacent property in a residential district, if the Committee finds that such screening is necessary to prevent an unreasonable interference with the use and enjoyment of the residential lot.

20.93 INTERPRETATIONS AND EXCEPTIONS.

20.93.100 RESPONSIBILITY. It shall be the responsibility of the Zoning Administrator to interpret and apply the provisions of this Title.

20.93.200 EXCEPTIONS.

20.93.210 LOT SIZES. If at the time of passage of this Title, a lot, or the aggregate of contiguous lots or land parcels held in single ownership has an area of dimension less than required for the zoning district in which the property is located, the lot or aggregate holdings may be occupied by any permitted use in the district subject to compliance with all other requirements of the district and reasonable setbacks thereof, provided, however, that the use of a lot in a residential district which has an area deficiency shall be limited to a single-family dwelling. All lots shall have a minimum of 20 feet of access to a public or private street.

20.93.220 HEIGHT LIMITATIONS. Height limitations set forth elsewhere in this Title shall not apply to the following: barns, silos, water towers and tanks, or other farm buildings and structures, provided they are not less than 50 feet from every lot line; chimneys, church spires, belfries, cupolas, domes, smokestacks, flagpoles, grain elevators, cooling towers, solar energy collectors, monuments, fire house towers, masts, aerials, elevator shafts, street lights, power or communication distribution lines, and other similar projections; and outdoor theater screens, provided said screens contain no advertising matter other than the name of the theater.

20.93.230 ACCESSORY BUILDINGS AND USES.

- A. A greenhouse or hothouse may be maintained accessory to a dwelling, provided there are no sales.
- B. An accessory building shall not be located within 8 feet of a principal building existing or under construction on the same lot, and no accessory building shall exceed 1 story in height.

20.93.240 VISION CLEARANCE. Nothing in this Title shall be deemed to permit a sight obstruction within any required yard area at the street intersection or service drive to a commercial, industrial, or residential development interfering with the view of the operation of motor vehicles on the streets to such an extent as to constitute a traffic hazard.

The provisions of this Section shall take precedence over any building setbacks, except in the downtown commercial districts where the Planning Commission may authorize lesser requirements upon the advice of the City Traffic Engineer.

There shall be no sight obstruction within any required yard area between 30 inches and 10 feet above the street grade within the triangular vision clearance area established as follows:

- A. In the case of street intersection, two sides of this triangle are lot lines measured 20 feet from their intersection, and the third side is a line across the corner of the lot joining the extremities of the other two sides.
- B. In the case of service drives, a triangle whose base extends 30 feet along the street right-of-way line in both directions from the centerline of the service drive with the apex of the triangle 30 feet onto the property on the centerline of said service drive.

20.93.250 YARD REQUIREMENTS.

- A. Projections into Required Yards. Certain architectural features may project into required yards or courts as follows:
 - 1. Cornices, canopies, eaves, belt courses, bay windows, sills or other similar architectural features, or fireplaces; but these may not in any case extend more than 24 inches into any required yard area.
 - 2. Fire escapes, open-uncovered porches, balconies, landing places, or outside stairways may not in any case extend more than 18 inches into any required side or rear yards, and not exceeding 6 feet into any required front yard. This is not to be construed as prohibiting open porches or stoops not exceeding 18 inches in height, and not approaching closer than 18 inches to any lot line.
- B. Exceptions to Front Yard Requirements.
 - 1. If there are structures on both abutting lots with front yards less than the required depth for the district, the front yard for the lot need not exceed the average front yard of the abutting structures.

This ordinance shall go into effect 30 days after final passage.

Read first time: November 2, 1981

PASSED by the following vote:

Ayes: Councilmembers: Hart, Pokornowski, Seidl, Lehman,
Wolf, Besserman, Justin
Nays: Councilmembers: None
Absent: Councilmembers: None

Read second time: December 7, 1981

PASSED by the following vote:

Ayes: Councilmembers: Hart, Seidl, Pokornowski, Lehman,
Nays: Councilmembers: None Besserman, Justin
Absent: Councilmembers: None
Abstained: Councilman Hagensen

SIGNED this 7th day of December, 1981.

Jim Justin
Jim Justin, Mayor

Attest:

June Rosentreter
H. K. Shorthill, City Clerk
By June Rosentreter,
Deputy City Clerk

Approved as to form:

Jerry F. King
Jerry F. King, City Attorney

FILED
COURT OF APPEALS
DIVISION II

07 MAY 16 PM 3:54

STATE OF WASHINGTON
BY SM
DEPUTY

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

8 HON YOEUN, individually and as
9 Guardian Ad Litem for the minor SUNNIE
YOEUN,

10 Appellants,

11 v.

12 CHIN FAI NG and JUDITH ANN NG,
13 husband and wife, individually, and their
14 marital community, CITY OF
VANCOUVER, a Municipality, STAN
15 HUDLICKY, deceased, ESTATE OF
STAN HUDLICKY, SHIRLEY
16 HUDLICKY and the HUDLICKY
MARITAL COMMUNITY, EVERGREEN
17 STATE FENCE COMPANY, formerly a
Washington corporation, and "JOHN and
18 JANE DOE," shareholders of the dissolved
corporation EVERGREEN STATE FENCE
19 COMPANY; ROGER and ESTELLA
CHANNING, inividually and as husband
and wife, dba EVERGREEN STATE
20 FENCE,

21 Respondents.

NO. 35722-4-II

DECLARATION OF SERVICE

22 Alexandria C. Gust states and declares as follows:

23
24
25
DECLARATION OF SERVICE - 1

LAW OFFICES OF
TERRY E. LUMSDEN
3517 6th Avenue, Suite 200
Tacoma, Washington 98406
TELEPHONE (253) 573-1644
FAX (253) 573-1744

1 That on the 16th day of May, 2007, I caused to be served a true and correct copy of
2 Reply Brief of Appellants and this Declaration of Service in the manner indicated below:

3 Alison J. Chinn
4 Assistant City Attorney
5 PO Box 1995
6 210 East 13th Street
7 Vancouver, WA 98668-1995
8 (360) 696-8250 fax

U.S. Mail, Postage Prepaid
 Facsimile Transmission

7 Norma S. Ninomiya
8 Law Offices of Norma S. Ninomiya
9 500 East Broadway, Suite 425
10 Vancouver, WA 98660
11 (866) 277-6367 and (360) 750-9326 faxes

U.S. Mail, Postage Prepaid
 Facsimile Transmission

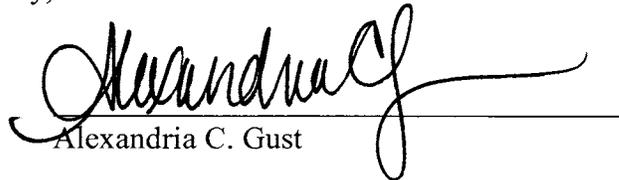
10 *Courtesy Copy to:*

11 Mr. Douglas Foley, Esq.
12 Bullivant Houser Bailey, P.C.
13 805 Broadway Street, Suite 400
14 Vancouver, WA 98660-2962
15 (360) 944-6808 fax

U.S. Mail, Postage Prepaid
 Facsimile Transmission

16 I declare under penalty of perjury under the laws of the State of Washington, that the
17 foregoing is true and correct to the best of my knowledge.

18 DATED this 16th day of May, 2007.

19 
20 Alexandria C. Gust

21
22
23
24 DECLARATION OF SERVICE - 2

25
LAW OFFICES OF
TERRY E. LUMSDEN
3517 6th Avenue, Suite 200
Tacoma, Washington 98406
TELEPHONE (253) 573-1644
FAX (253) 573-1744