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SUPREME COURT  
OF THE STATE OF WASHINGTON

THURSTON COUNTY, Respondent  
vs.  
MERRELL C. SAGER, Appellant

APPELLANT'S REPLY BRIEF

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STATE OF WASHINGTON  
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BY 

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**This case is NOT about arguing against the value of regulations, such as building and health codes.**

**Instead, it argues that local governments must adopt those regulations in accord with Washington law, else the regulations are invalid.**

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**“So every time you bring up (the invalid-code issue), Mr. Sager, it is going to be denied. You have to move on. If the Court is wrong in doing that and the Supreme Court happens to accept your notice of appeal as a writ for discretionary review and reverses me, then I’ll listen.”**

Judge Richard Strophy  
July 8, 2005  
Quoted on page 15 of  
appellant’s opening brief.

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## **A. Statement of the Case and Summary of the Argument**

1. Thurston County is suing Merrell Sager, because Mr. Sager built his house and a septic system in 1989 and a carport in 2000 all without building permits. The county argues that because a 2004 appellate court ruling dispensed with Mr. Sager's main defense (the codes are invalid), Mr. Sager had to challenge that issue back then, not now.
2. Mr. Sager argues that the county (a) failed to properly adopt the relevant codes and so lacks jurisdiction to sue, (b) is blocked by the fact that it delayed action for more than a decade, and (c) is also blocked, because it did not appeal the 2004 appellate court ruling which kept the code-invalidity issue alive for remand, (d) cannot successfully argue res judicata for several reasons, and that (e) the codes – being invalid – are still not effective for any Thurston County resident
3. This is a case where the local authority failed to follow required procedure, but nevertheless thought it could bulldoze a county resident. The resident was stubborn, and legally correct and has arrived at the door of the supreme court.

## **ARGUMENT**

### **B. Invalidity Of The Underlying Codes.**

1. **Introduction.** It is worth noting that San Juan County actually allows owner/builders to skip the building permit stage until the house is sold, and the Washington Supreme Court has ruled that to be a proper exercise of the county's power. See State ex rel. Graham v. San Juan County, 102 Wash.2d 311, 686 P.2d 1073 (1984). The point is, this confirms that Mr. Sager's position is not

fundamentally unreasonable, as it corresponds to the judgment of one of the counties in Washington. Whether Mr. Sager is acting in accordance with the Thurston County building codes is at issue.

2. Mr. Sager is claiming that Thurston County has **NOT** properly established such codes. He further argues that Thurston County has mishandled its own timelines, so that it is now blocked from any enforcement action on the house and septic system.
3. As the following discussion will show, it is NOT correct for the county to claim that the invalid-code issue (a) has already been litigated in the pre-appeal court, and so should be precluded, and/or (b) was decided by the appellate court on August 17, 2004, and so should be precluded and/or (c) that, because Mr. Sager did not appeal the appellate court ruling, he is therefore precluded now from arguing the invalid-code issue.
4. The basic legal reality underlying this entire case is the invalidity of the underlying codes. Once it is realized that the codes are invalid, then the chain of reason goes as follows.
  - RCW 36.32.120 (7) lists requirements for a code to be effective. The adoption of building, health, and plumbing failed to follow RCW 36.32.120 (7).
  - Therefore the building and plumbing codes never came into effect.
  - Prosecutor has no authority to enforce these codes that do not legally exist.
  - Thurston County Superior Court has no jurisdiction to hear any case based on those non-existent codes.
  - Without authority or jurisdiction, no prosecution of Mr. Sager is proper.

Otherwise summarized as “No code, no case.”

5. The importance of proper hearings in code adoption is clearly and unequivocally stated in RCW 36.32.120(7). **[EX. 1: Relevant text of RCW 36.32.120(7)]**
6. This point is also made in Fleming v. City Of Tacoma, 81 Wash.2d 292, (1972) (“Where the law expressly gives the public a right to be heard . . . the public hearing must . . . meet the test of fundamental fairness”) Fleming cited Smith v. Skagit County. <sup>1/</sup> No hearing is in any way fair if no public notice is given letting the public know of the hearing.
7. **Failure to File Code Draft in County Auditor’s Office.** Beyond the issue of the failure of the county to properly publicize the relevant hearing, the county failed RCW 36.32.120 (7) in another way: that is, by not timely filing the text of the proposed code with the county auditor. This was confirmed by County Auditor Kim Wyman. **[EX. 2: Copy of July 7, 2005 letter from the Office of the County Auditor. This letter is also found in the Declaration of Merrell C. Sager with Brief Showing Cause Why Stay of Warrant of Abatement Should Be Permanently Stayed (as Exhibit 1), at CP, 238-249.]**

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“In Smith v. Skagit County, 75 Wash.2d 715, 739, 453 P.2d 832 (1969), we said: Where the law expressly gives the public a right to be heard . . . the public hearing must, to be valid, meet the test of fundamental fairness, for the right to be heard imports a reasonable expectation of being heeded. Just as a hearing fair in appearance but unfair in substance is no fair hearing, so neither is a hearing fair in substance but appearing to be unfair. In Smith we focused our attention upon defects in the hearing itself rather than upon motives of the members who conducted the hearing. We held that hearings before the county planning commission and board of county commissioners failed to meet the test of fairness. We were particularly disturbed by the planning commission's closed executive session to which proponents were invited and opponents excluded, and by the county commissioners' refusal to allow opponents to present their views on certain occasions.

8. **County Commissioners' Records.** Ironically, the Thurston County Commissioners, the group who failed to follow the RCW 36.32.120 (7) code-adoption requirements in the first place, admitted to Mr. Sager that they do not have any record of any publication of any notice for the relevant hearing. **[EX. 3 copy of letter from the county commissioners in October 7, 2005, found in Motion for the Stay of Proceedings and Affidavit of Merrell C. Sager, also found in Exhibit C within CP 143-153.]**
9. Most conclusively, Mr. Sager has submitted photocopies of the relevant parts of the newspapers from the time at issue showing the absence of the required public notice. (Rarely can one prove a negative, but he has done it.) The county, for its part, has NEVER provided any photocopies showing that the notices were actually published. **[See May 25, 2006 Declaration and Reply to Motion for Abatement and Contempt Sanctions. Newspaper copies are in exhibit 3, found within CP 182-207.]**

### **C. Issue Preclusion in Washington Law.**

In the respondent's opening brief, on page 13 at subsection ii), the county begins arguing that Mr. Sager is time barred (res judicata/issue preclusion) from addressing the code-invalidity issue because, according to the county, Mr. Sager did not challenge the appellate court rule and because that issue "time and time again ... has been defeated." Mr. Sager showed in his opening brief that the issue was alive and kicking after the appellate court ruling and that the lower court never did address it,

but just brushed it aside on the unfortunate assumption that it had died in the appellate court. Mr. Sager elaborates on res judicata.

Res judicata (issue/claim preclusion) is an equitable doctrine and has four requirements: (1) identical issues; (2) a fully adjudicated case; (3) same party or one in privity; (4) the doctrine must not work an injustice. Southcenter Joint Venture v. National Democratic Policy Committee, 114 Wn.2d 414, 418, 780 P.2d 1382

(1989) All four requirements must be met before res judicata would apply to block the litigation of claims in a subsequent proceeding. In the Sager matter, three of the requirements are not met: (1) the issues are not identical; (2) there was no final judgment on the merits, and while (3) the parties are the same, (4) justice will be thwarted if the doctrine is applied. **[EX. 4: Excerpt from Phillip Trautman's law review article, Claim And Issue Preclusion In Civil Litigation In Washington.]**

1. Lack of Identity of Issues (#1)

- a. In 2000, Thurston County filed suit against Merrell Sager charging lack of a building permit. Mr. Sager's defense included, among other things, clear proof that the underlying codes had not been properly adopted according to RCW 36.32.120(7).
- b. In the pre-appeal phase of the superior court case, Judge Berschauer made a sweeping grant of summary judgment ruling in favor of the county, but which ruling did not specify the issues to be included.
- c. This is relevant, because, on remand, in the July 8, 2005 transcript in the post-appeal superior court case, Judge Richard Strophy was not able to determine which issues were in play. Judge Strophy, admitted in open court that he did

no know which issues Judge Berschauer included in his summary judgment ruling and which ruling was the subject of that 2004 appeal. **[EX. 5: Excerpt from page 47-48 of transcript quoting Judge Strophy's confusion, also found on page 14 of appellant's opening brief. Also found in CD from Aurora Shackell, under transcript of July 8, 2005 hearing.]**

d. This confusion by the sitting judge, together with the failure of the appellate court to dismiss Mr. Sager's code-validity claim makes it impossible to say which issue is identical to the code validity claim in either the pre-appeal case, or the appellate case, or in the post-appeal superior court trial.

e. Therefore, no identity of issues. (#1)

2. Issue Not Fully Litigated. (#2)

a. A similar analysis shows that the code-validity issue was not fully litigated. If Judge Berschauer was not clear, and if the appellate court did not rule on the code-validity issue, and if the post-appeal superior court (Judge Strophy) did not allow the issue to be presented, then there was in no way a full adjudication of the issue.

b. In Woepfel v. Simanton, 53 Wn.2d 21; 330 P.2d 321 (1958), the Washington Supreme ruled on applying res judicata to an issue inadequately presented in an earlier action. The court refused to apply res judicata. <sup>2/</sup>

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<sup>2</sup> "That in the ... Final Report ... , defendant ..., mentioned ... a trustee account ... and expressly stated that said ... account had no bearing .... That there was no evidence in the ... hearing on the ... Report ..., the Court did not consider it and the objecting guardian did not present any evidence pertaining to the said ... payment." Res judicata was not applied, because the issue had not been fully litigated. Woepfel v. Simanton, 53 Wn.2d 21; 330 P.2d 321 (1958)

- c. One cannot have a matter about which the superior court is confused and which the court refused to even entertain any consideration, and still claim that the matter was fully adjudicated.
  - d. Therefore, no full adjudication of the code-validity issue. (#2)
3. Identity of Parties (#3).
    - a. It is true that there is identity of parties throughout this case. (#3)
  4. The Doctrine Must Not Work An Injustice (#4)

In this case, any dismissal of Mr. Sager's argument based on issue preclusion would work a large injustice for the following reasons.

- Mr. Sager would be prosecuted under statutes that never had legal existence.
  - The penalties against Mr. Sager would be huge even though the county has never shown any damage in any way against any party by Mr. Sager's failure to get a building permit. (San Juan County allows non-permitted owner-built houses.)
  - Mr. Sager would be penalized for his actions by the county's law suit that was filed a decade after Mr. Sager had failed to get the permit (regarding his house and septic system), contrary to the requirements of the statute of limitations, a legal flaw Mr. Sager pled from the very outset. **[EX. 6: Copy of relevant page from Mr. Sager's April 3, 2003 second set of interrogatories and requests for production [also showing the prosecutor's response]. (Included in accordance with RAP 10.4(c).)]**
  - While the carport was timely addressed by the county, Mr. Sager found out that he was being prosecuted under a later code, TCC 14.20.012, which ALSO had not been properly adopted according to RCW 36.32.120 (7).
  - Even if Mr. Sager were to be thrown out of court for some reason, **the codes are still invalid and any other county resident would continue to have the same claim.**
5. The legal fact is that the statutes under which Sager is being penalized have no legal effect, because they were invalidly adopted. No interpretation of law allows

the government to penalize a citizen without the authority of law. In Thurston County, these underlying codes NEVER became “effective,” in the terminology of RCW 36.32.120 (7). Therefore, it is unjust for the county to take legal action against Merrell Sager based on those “non-existent” codes.

6. No code, no case.

#### **D. Clean Hands Doctrine and Issue Preclusion. Misconduct by Thurston County**

In addition to the failure of this case to meet the requirements to apply issue preclusion/res judicata, the repeated misconduct of the Thurston County prosecutor denies to him the clean hands status needed to invoke this equitable doctrine.

By “misconduct,” Mr. Sager is not referring to merely opposing legal arguments. Mr. Sager is addressing improper and unethical conduct that ran counter to court procedures and professional ethics and improperly blocked Mr. Sager’s presentation of his case

Additionally, the enforcement of the rules against Mr. Sager, and the tolerant attitude of the court to violations of the rules by the county tells of the tone in the courtroom. Here follows a list of six occurrences of misconduct, each of which hobbled Mr. Sager’s ability to present his case. The court’s toleration of this misconduct is also a disturbing factor.

1. On April 3, 2003, Sager filed a second set of interrogatories that sought answers related to the adoption of the codes. <sup>3/</sup> **[EX. 6: Copy of relevant page from Mr. Sager’s April 3, 2003 second set of interrogatories and requests for**

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<sup>3</sup> the first set was simply ignored by the county.

**production [also showing the prosecutor’s response]. (Included in accordance with RAP 10.4(c).)]** The response by the Thurston County prosecutor was to write “N/A” (not applicable) in these answers to these interrogatories, including questions about the code adoption process and about the time lapse between the construction of the house and the initiation of action by the county.

- a. On May 2, 2003, Sager filed a motion to compel discovery. **[EX. 7: Copy of the motion to compel. (Included in accordance with RAP 10.4(c).)]**
  - b. The court refused to enforce the motion to compel.
  - c. Had Mr. Sager’s discovery attempts been properly addressed – especially related to the expired limitation of action period and the failure to follow proper code adoption procedures – most of this case would have ended in 2003.
2. On July 8, 2005, Donald Peters marked a main piece of Mr. Sager’s evidence – a letter from the county auditor, Kim Wyman, stating that the building codes had not been timely filed in her office – to be destroyed. **[EX. 8: Copy of July 8, 2005 Exhibit(s) list, showing that Mr. Peters marked Mr. Sager’s exhibit to be destroyed; also found at CP 135-136.]**
  3. On September 9, 2005, in a hearing on Sager’s motion to void judgment and void ordinances, the Thurston County Court denied Sager’s objection to improper service which prevent Sager from having the pleadings before the hearing. The transcript shows Sager’s confusion and his objection, and shows that the judge trivialized Mr. Sager’s objection to not receiving the pleadings by the irrelevant

reply that mail delivery was permitted (mail delivery had not been an element), and then did not follow up enough even to ask the county for proof of service.

**[EX. 9: Copy of Transcript of September 9 hearing, pages 15-17 hearing showing court directly disregarding CR-5(b) over Sager's objections.**

**(Included in accordance with RAP 10.4(c).)]** This told Mr. Sager that, while the civil rules could be used against him, they would not be applied to protect him; in this case, meaning his right to present his case.

4. Even more blatantly in violation of the equitable demands to be fulfilled to justify issue preclusion, or to just have a proper trial, in 2005, the prosecutor actively misled the superior court precisely on the code-invalidity issue. On October 14, 2005, an assistant county prosecutor, Allen Miller, presented exhibits to the superior court as if the exhibits showed that publication had occurred; there was no other reason to introduce the exhibits.. **[EX. 10: Excerpt from October 14, 2005 transcript quoting Mr. Miller's assertions about the notices, page 25, also found at CP 147.]** What this deputy prosecutor ACTUALLY presented in court were four typewritten pages containing the text of an announcement of the relevant public hearing. **[EX. 11: Copies of the four typewritten announcement offered as exhibits to Declaration of Allen T. Miller in Support of Plaintiff's Response to Defendant's Motion to Stay of Proceedings; also found at CP., 158-174.** As mentioned above in section B, 8 (Exhibit 3), even the County Commissioners disagreed with Mr. Miller and the prosecutor's office and admitted that there was no publication of the public notice back then. Aside from the question about when those pages were actually typed,

they in no way proved actual publication, a basic requirement of RCW 36.32.120(7). This sort of intentional deception is significant. It was described in Whitmore v. Cox, 38 Wn.2d 530, (1951) <sup>4/</sup>

a. The presentation of false evidence by Mr. Miller is fundamental and serious, because it was intentional deception and it went to the heart of the code-validity issue.

5. Also at the October 14, 2005 hearing, CR 5 was again ignored, to Mr. Sager's disadvantage. Again, the county failed to provide the pleadings in advance of the hearing, and again, Mr. Sager objected. , **[EX. 12: Pages from transcript of October 14, 2006 hearing, pages 25-28. The transcript is found under its own name on the CD provided to the court by Aurora Shackell, court reporter #2439]** This time, the court DID ask if there was proof of service, only to learn that the county had none. However, the judge let that omission pass and ignored Mr. Sager's objection. At one point, the judge did offer a continuance, but did not follow up. The pleadings which were not served on Mr. Sager included the misleading "notice of publication" documents which Mr. Sager could have easily attacked, if he had had proper notice of the content of the hearing.
6. On yet another occasion, the rules did not protect Mr. Sager. On July 7, 2006, the prosecutor, after getting leave to amend a mere clerical error, improperly

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<sup>4</sup> In deciding that the executor's conduct in that case constituted extrinsic fraud we said:  
"The first question to be determined is whether the fraud charged is extrinsic or intrinsic, the reason being that some cases hold that if the fraud be intrinsic no recovery may be had. All cases hold that recovery may be had if the fraud be extrinsic.  
"Extrinsic fraud is that fraud **which denies or prevents a person his opportunity to present at the trial all of the rights or defenses he is entitled to present.**" (Emphasis added.)

submitted an amended order of abatement which amended order dropped a nuisance-based code (TCC 14.22.202 ) as grounds for abatement <sup>5/</sup>, and then inserted a different (“catchall”) Thurston County code (TCC 14.20.012) <sup>6/</sup> with expanded grounds for abatement action. The prosecutor did this without notifying Mr. Sager which resulted in Mr. Sager being surprised and unprepared.

a. This is more than a de minimis breach of the civil rules. The prosecutor’s action resulted in surprise to Mr. Sager’s adequate preparation for the hearing which he lost. Mr. Sager later found that the new code (TCC 14.20.012) had also not been properly filed with the county auditor and thus was also invalid and therefore not a proper basis for prosecution. Exhibit 2, a letter from the county auditor, lists the ordinances/codes that were not timely filed with the auditor. Mr. Sager examined this list for confirmation that these ordinances had been published, but found that most had not been published. [EX. 13: **List of relevant ordinances and source page with history of TCC 14.20.012. These ordinances had NOT been published, as shown by the newspaper attachments in Exhibit 13.**] However, by then the hearing had been lost. Again, the civil rules had not been equitably enforced. Mr. Sager showing up at the hearing (a) prepared to argue the now-dropped nuisance

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**14.22.302 Abatement of dangerous buildings.**

All buildings ... which are determined after inspection by the building official to be dangerous as defined in this code are declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Section 14.22.401 of this code. (Ord. 11762 § 20 (part), 1998) (Emphasis added.)

**14.20.012 Section (R)113 amended--Violations, civil infractions and penalties.**

Notwithstanding the existence or use of any other remedy, the Building Official may seek legal or equitable relief to enjoin any acts or practices and abate any conditions which constitute or will constitute a violation of this chapter or other regulations herein adopted. (Ord. 13178 § 2 (part), 2004)

issue but (b) lacking notice of the new code, 14.20.012, with which he was now charged with violating. Had Mr. Sager gotten proper notice of the change of codes, he could have come to court and showed that the now-operative code was not properly adopted either. That, together with the limitation of action bar to the actions related to the house and septic system, could have ended the case at that point.

7. Mr. Sager finally sent a letter to the court on July 19, 2006 complaining about the biased enforcement of the rules. **[EX. 14: July 19, 2006 letter from M. Sager to Judge Strophy.]**

a. As shown in Exhibit 2 (Wyman letter) and Exhibit 14 (list of codes not timely filed), the failure to file with the county auditor or to print public notices happened many times. The County Auditor, Kim Wyman, listed 28 codes which had not been marked as filed properly with her office. **[See Exhibit 2 above, July 7, 2005 letter from Kim Wyman.]** Additionally, the circled codes are ones that Mr. Sager confirmed had not been published in any newspaper 10 days prior to adoption. **[EX 13: List of relevant ordinances and source page with history of TCC 14.20.012. ]** Mr. Sager did not examine 100% of the listed codes, so more might also not have been published.

## **E. Issue Preclusion – Against Thurston County**

Issue preclusion should apply, but the doctrine should apply against Thurston County, not against Mr. Sager.

1. Thurston County is time barred from any action against Mr. Sager regarding his house and his septic system, because the county took no action within the limitation of action period for any building code violations related to the house or the septic system. This was well argued on page 29 in the appellant's opening brief. **[See page 29 of appellant's opening brief]**
2. The county failed to appeal the appellate court's keeping the invalid-code issue alive.
  - a. One of the foundations of the county's argument against Mr. Sager's invalid-code issue is that, whether or not the codes were invalid, the appellate court dismissed this issue and since Mr. Sager did not appeal this issue dismissal, he is barred by issue preclusion (res judicata) from arguing it thereafter. This was stated by both the superior court and by the prosecutor throughout the post-appeal case.
  - b. Mr. Sager agrees with the county – in a way. **SOMEBODY** failed to appeal a critical aspect of the appellate court's ruling. But that somebody was not Sager.
  - c. As Mr. Sager clearly showed in his opening appeal brief, it is completely incorrect to say that the appellate court dismissed the invalid-code issue. The court of appeals decision initially did rule against Mr. Sager's invalid-code issue, but then, in response to Mr. Sager's motion for reconsideration, the appellate court withdrew that ruling against the code-validity issue. **(See appellant's opening brief, page 12, section E.)** Because the appellate court rescinded its initial dismissal of the invalid-code issue, that invalid-code issue

was still alive on remand for subsequent action by the superior court. **[See this discussion starting at the bottom of page 13 in appellant's opening brief.]** Because the county failed to appeal the continuing of viability, issue preclusion should apply.

- d. Mr. Sager presented incontrovertible proof of the code-invalidity issue to the superior court (post-appeal) and the court's failure to address this issue was fatal to the county's position in many ways, and it certainly fit the LCR 59 "manifest error" criterion that the county prosecutor says it would accept as a basis for granting Mr. Sager's reconsideration, because the court continually – and improperly – rejected this basic legal issue, a principle part of Mr. Sager's defense. The resulting appellate decision left the code validity issue in tact, though it did so with a notable amount of muddle. <sup>7/</sup>
- e. Thus, because the county did not appeal this critical position of the appellate court, the county – not Mr. Sager – is time-barred from objecting to the continued viability of the code-validity issue. The county can not be heard to argue that the code validity issue is moot, because, by the county's failure to appeal the appellate court's restoration of the code invalidity issue, the issue was left alive and kicking by the appellate court, and the Thurston County Prosecutor did nothing to challenge that.

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<sup>7</sup> Mr. Sager has some sympathy for the prosecutor. As quoted on page 14 of the appellant's opening brief, both the earlier superior court decision and then the appellate court's decision were difficult to follow, and the post-appeal superior court had a hard time determining just what was and was not addressed.

## F. Subordinate Issues from Thurston County

1. The county raised the timeliness of the appeal [Stated in Thurston County's Respondent's Brief (TCCRB) after heading "C" on page 9].
  - a. The county argues that there were two motions for reconsideration and that the appeal is based on the 2nd such motion and that, since the original order was signed on May 26, the subsequent (2nd) motion for reconsideration is untimely. Therefore, according to the prosecutor, the 2nd motion for reconsideration falls more than 10 days after the signed order and so should limit the appeal to only items changed in the 2nd denial.
  - b. This is spurious. Otherwise, the county should have addressed this at the time. The attached chronology shows that this entire reconsideration motion took from May to November including some continuances and omissions by the court. **[EX. 15: Chronology.] [See also copy of October 12, 2006 "Order Denying the July 13, 2006 Motion for Reconsideration," This order – with the judge's chronology – is in the November 8, 2006 notice of appeal. Also found at CP., pages 235-237.]** Mr. Sager's resulting motion for reconsideration was filed on July 13, 2006, a mere six days after the order, and, as is obvious from its text, Sager's July 13, 2006 motion is a sweeping motion encompassing the whole case. **[See Mr. Sager's July 13, 2006 Motion for Reconsideration, found at CP. 279-329]** Thus, its denial did not merely address a few issues changed from May 26 to July 13, 2006.

- c. The denial of this July 13, 2006 motion for reconsideration is the subject of this appeal.
  - d. There is no valid argument for untimeliness.
2. The county urged the use only of LOCAL court rule 59 [(TCCRB) page 7];
- a. The prosecutor’s argument about using local court rule 59 instead of CR 59 is a smoke screen. Basically, he argues that the superior court used local rule 59 as the basis for denying Mr. Sager’s motion for reconsideration. The prosecutor elaborates by pointing that local rule 59 permits reconsideration only for (1) manifest error or (2) new facts.
  - b. Mr. Sager had argued that the regular rule, CR 59, gave nine grounds for granting reconsideration. **[EX. 16: Relevant text of CR 59]**
  - c. The prosecutor argues that LCR 59 (1) fully applies and (2) does not conflict with CR 59. Fine. If there is no conflict, then all of CR 59 would be subsumed by the two criteria in LCR 59. If any of the nine CR 59 criteria were NOT subsumed into LCR 59, then the rules conflict and CR 59 applies.
  - d. In Harbor Enterprises, Inc. v. Gunnar Gudjonsson, 116 Wn.2d 283, (1991), the Supreme summarized the principle.

“We note that even if the local rule were as plaintiffs claim, the local rule would not control because its provision conflicts with the statute. We have held that local rules must not be inconsistent with rules adopted by this court. State v. Chavez, (111 Wn.2d 548,) at 554. **The same principle negates a local rule which conflicts with a statute. The statute grants a valuable right to a litigant**; a local rule cannot restrict the exercise of that right by imposing a ... requirement different from the statute.” (Emphasis added.)

- e. Either way, Mr. Sager is correct in claiming the “valuable rights” in CR 59 as the basis for challenging the denial of his motion for reconsideration
3. The county disagreed with Mr. Sager’s claim of excessive actions and in its response brief stated on page 17 that abatement is the last resort. As pointed out by Mr. Sager in appellant’s opening brief on pages 24 and 25, the county was threatening to remove the house and carport. <sup>8/</sup>
4. That’s excessive.

## **G. Conclusion**

1. The county has no effective building, health, and plumbing codes relevant to this case.
2. The county misunderstood the appellate court ruling and has been wrongly refusing to address the code-invalidity issue.
3. The county has missed limitation periods that nullify its actions related to the house and septic system.
4. The carport is being penalized under a code that was also improperly adopted, and therefore ineffective.
5. The relevant codes are not only inapplicable to Mr. Sager, but to any resident of Thurston County – because the codes don’t have legal existence in relation to anyone.

---

<sup>8</sup> This is discussed in issue d, starting on page 24 in the appellant’s opening brief.

## **H. Request for Relief**

Mr. Sager repeats his requests for relief given at the end of his opening brief. Again, the appellant, Merrell Sager, requests that this case not be remanded for local action in the Thurston County Superior Court, because of the rampant misconduct existing (or tolerated) at that level. The court's own actions and inactions furthered the pattern of misconduct. This would be especially relevant when the question of damages arises; the superior court would be assessing penalties for its own toleration of ongoing misconduct, its one-side view of enforcement of the civil rules, and its failure to carefully read the appellate court decision.

1. Additionally, Mr. Sager requests that the Thurston County "catchall" statute (TCC 14.20.012) be ruled overly broad, because it allows seriously intrusive action, including eviction or even removal of a structure, by the county without the county showing nuisance or harm. See the text of TCC 14.20.012 in the footnote 6 on page 13 of this reply brief.

August 24, 2007

Respectfully submitted,

  
Merrell Clifford Sager, Appellant, Pro Se

# APPENDIX

for exhibits

---

**Exhibit 1:**  
**Relevant text of RCW 36.32.120(7)**

## **Relevant text of RCW 36.32.120(7)**

(County governments may) “(7) Make and enforce, ... ordinances, all such police and sanitary regulations ... relating to the construction of buildings, the installation of plumbing, the installation of electric wiring, health, or other subjects, and may adopt such codes ...: PROVIDED, That ... there shall be **filed in the county auditor's office** one copy of such codes and compilations ten days prior to their adoption by reference, ...: PROVIDED FURTHER, That **no such , code, ... shall be effective** unless before its adoption, a **public hearing** has been held thereon by the county legislative authority of which at least **ten days' notice** has been given. .... The notice shall also include the day, hour, and place of hearing and must be given by publication in the newspaper in which legal notices of the county are printed.” Excerpt from RCW 36.32.120(7). (Emphasis added.)

**Exhibit 2:**  
**[Copy of July 7, 2005 letter from the**  
**Office of the County Auditor.]**



THURSTON COUNTY  
WASHINGTON  
SINCE 1852

KIM WYMAN  
AUDITOR

July 7, 2005

Merrell Clifford Sager  
9845 Littlerock RD.  
Olympia, WA 98512

RE: Public Record Request

Dear Mr. Sager,

Thank you for your request dated July 5, 2005 for inspection and copying the public records indicated below:

Request: Document(s) by which I may determine the following codes with their compilations and reference were filed with the Thurston County Auditor's office ten (10) days prior to their adoption as required by specific mandatory statute as referenced in at RCW 36.32.120 (7).

1. TCC 14.20.011 Ordinance #13178 passed 06/28/2004
2. TCC 14.20.011 Ordinance #12463 passed 3/19/2001
3. TCC 14.20.011 Ordinance #11804 passed 10/05/1998
4. TCC 14.20.011 Ordinance #11762 passed 07/27/1998
5. TCC 14.20.011 Ordinance #11116 passed 02/05/1996
6. TCC 14.20.011 Ordinance #10973 passed 07/24/1995
7. TCC 14.20.011 Ordinance #10399 passed 08/16/1993
8. TCC 14.20.011 Ordinance #10388 passed 07/26/1993
9. TCC 14.20.011 Ordinance #10373 passed 06/07/1993
10. TCC 14.20.011 Ordinance #9699 passed 12/18/1990
11. TCC 14.20.011 Ordinance #8569 passed 03/09/1987
12. TCC 14.20.011 Ordinance #8251 passed 12/23/1985
13. TCC 14.20.012 Ordinance #12033 passed 09/16/1999
14. TCC 14.20.012 Ordinance #11398 passed 03/31/1997
15. TCC 14.20.012 Ordinance #10973 passed 07/24/1995
16. TCC 14.20.012 Ordinance #9699 passed 12/18/1990
17. TCC 14.20.012 Ordinance #8569 passed 03/09/1987
18. TCC 14.20.012 Ordinance #7965 passed 11/27/1984
19. TCC 14.20.012 Ordinance #7081 passed 10/21/1981
20. TCC 14.20.012 Ordinance #6722 passed 09/16/1980
21. Article IV Ordinance #H-2-90 passed 06/11/1990
22. Article IV Ordinance #H-1-91 passed 01/22/1991
23. Article IV Ordinance #H-2-93 passed 10/04/1993



24. Article IV Ordinance #H-2-95 passed 05/22/1995
25. Article IV Ordinance #H-4-95 passed 08/14/1995
26. Article IV Ordinance #H-1-96 passed 04/03/1996
27. Article IV Ordinance #H-3-90 passed 08/13/1990
28. Article IV Ordinance #H-1-99 passed 05/17/1999
29. Article IV Ordinance #H-2-99 passed 08/16/1999

Response: Item 1 is not on file in our office. Items 2 through 20 are on file in our office. For items 21 - 29, we do not have Ordinances with these numbers on file in our office. There are no records that are responsive to your request for compilations and reference that were filed with the Thurston County Auditor's Office ten days prior to adoption of the ordinances you listed.

Sincerely,

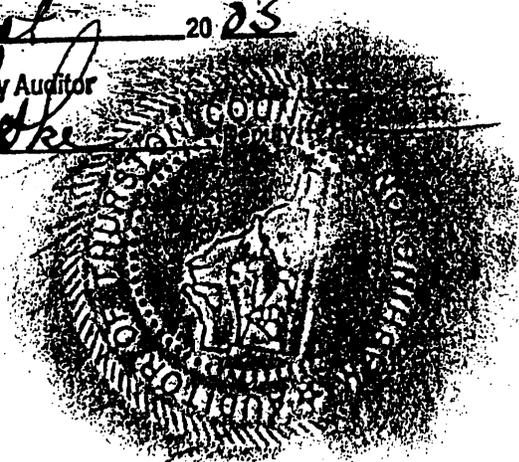
*Terra Howell*  
FOR Terra Howell  
Assistant Records Manager

State of Washington }  
County of Thurston } ss.

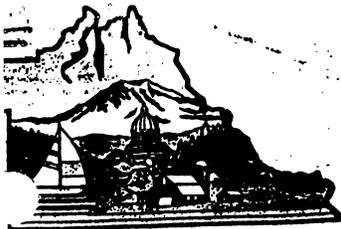
I, Kim Wyman, Thurston County Auditor, do hereby certify that the foregoing instrument is a true and correct copy of the document now on file or recorded in my office.  
In witness whereof, I hereunto set my hand and official seal

this 8<sup>th</sup> day of August, 2005

By *Kim Wyman*  
Kim Wyman, County Auditor



**Exhibit 3:  
Copy of letter from the  
commissioners in October 7, 2005,**



THURSTON COUNTY  
WASHINGTON  
SINCE 1852

COUNTY COMMISSIONERS

Cathy Wolfe

District One

Diane Oberquell

District Two

Robert N. Macleod

District Three

## BOARD OF COUNTY COMMISSIONERS

September 23, 2005

Mr. Merrell Clifford Sager  
9845 Littlerock Road SW  
Olympia, Washington 98512

Dear Mr. Sager:

On behalf of the Thurston County Board of County Commissioners, we acknowledge receipt of your request for public documents PD- TCBOC 9-19-05 in our office on September 19, 2005. We offer the following response to your request.

1. "Document or documents by which I may determine when a public hearing was held by the Thurston County Legislative Authority of which ten days notice was given to the public concerning the adoption of the Uniform Building Code, 1970 Edition, Volume 1, and the Uniform Building Code standards for Volume 1, 1970 Edition, Adopted the first day of December 1971 by Ordinance 4276 on 12/1/71."

Response: Enclosed is a copy of the November 15, 1971 Board of County Commissioners Meeting Minutes.

2. "Document or documents by which I may determine when a legal public hearing notice was published in the local newspaper, with the day, hour, place of hearing, and recordings and records of the public meeting held, concerning the adoption of Ordinance 4276, as required by mandatory statute in and referenced at RCW 36.32.120(7)."

Response: No documents exist in the form you requested.

3. "Document or document by which I may determine that allows Thurston County to supersede and by pass 42 USC 1982 AND/OR 42 USC 1441".

Response: No documents exist in the form you requested.

4. "Document or documents by which I may determine that Thurston County has a monetary or proprietary interest in Merrell Clifford Sager's real or personal property located at 9845 Little Rock Road, SW, Olympia, Washington".

Response: No documents exist in the form you requested.

Sincerely,

Robin A. Courts  
Executive Assistant

Cc: Elizabeth Petrich, Deputy Prosecuting Attorney

Building #1, Room 269, 2000 Lakeridge Drive SW, Olympia, Washington 98502-6045 (360) 786-5440  
T.D.D. (360) 754-2933



Recycled Paper

## Trautman on Preclusion

Turning to Philip Trautman for clarification of the doctrines of res judicata and collateral estoppel, we read: "More modernly, then, just as res judicata has come to be called claim preclusion, collateral estoppel has come to be called issue preclusion." <sup>1/</sup>

Trautman continues.

"Collateral estoppel applies to other claims, but precludes only those issues that have actually been litigated and determined. <sup>2/</sup> .... At ... times, it is not clear whether an issue was actually litigated. If a verdict or judgment is ambiguous or indefinite, or if there is uncertainty as to whether an issue was previously litigated, collateral estoppel will not be applied to that issue." <sup>3/</sup>

"Once again, this is as it should be. There is danger that in seeking to relieve the crowded dockets and backlog of litigation, courts will too readily turn to the rules of res judicata and collateral estoppel. It is critical to remember that the doctrines of claim and issue preclusion are court-created concepts. Accordingly, they can be adjusted to accommodate whatever considerations are necessary to achieve the final objective -- doing justice." <sup>4/</sup>

---

<sup>1</sup> **Claim And Issue Preclusion In Civil Litigation In Washington**, Philip A. Trautman, 60 Wash. L. Rev. 805, 829.

<sup>2</sup> Trautman: "The court in Davis v. Nielson, 9 Wn. App. 864, 874, 515 P.2d 995, 1002 (1973), held: 'Collateral estoppel applies only to issues which were actually decided in prior litigation and does not operate as a bar to matters which could have then been raised but were not.'" Trautman, supra, at 833.

<sup>3</sup> Mead v. Park Place Properties, 37 Wn. App. 403, 407, 681 P.2d 256, 259 (1984); Lake v. Butcher, 37 Wn. App. 228, 679 P.2d 409 (1984); Gibson v. Northern Pac. Beneficial Ass'n Hosps., 3 Wn. App. 214, 473 P.2d 440 (1970). For language to the effect that an ambiguous and inconsistent judgment should not be the basis for collateral estoppel, see Peterson v. Department of Ecology, 92 Wn. 2d 306, 313, 596 P.2d 285, 289 (1979).

<sup>4</sup> Trautman, supra at 833

**Exhibit 5:**  
**Excerpt of transcript**  
**quoting Judge Strophy's confusion.**

## **Confusion in the Court**

(The following is also found on page 14 of the appellant's opening brief and also found in CD from Aurora Shackell, under transcript of July 8, 2005 hearing)

The superior court had difficulty interpreting the appellate court's decision. In the July 8, 2005 transcript, Judge Richard Strophy admitted this in a hearing on remand. He said the following on page 47-48 in a discussion with the prosecutor about clarifying the earlier courts' rulings.

Peters: "Actually, you're partially right, Your Honor, .... The Court of Appeals did find a violation of the sanitary code.

Court: "Please show me where that is."

Peters: "I'm looking at page 5."

Court: "And before you comment further, let me tell you what's difficult for me, is Judge Berschauer's order simply grants summary judgment. It doesn't say in what way it grants summary judgment, in light of the multiple requests for relief in the County's initial complaint. But I can only assume, ..., that the effect of that summary judgment was to declare the defendant in violation of the Uniform Building Code ... (including) 14.20.011, 14.20.012, and the sanitary code ... **although the order doesn't say that.**"

"Again, I assume that the grant of summary judgment has, implicit in it, the requirement of the defendant to abate the code violations, and apparently grants permanent injunctive relief .... But the order is not specific, at least that I saw."

"So **what exactly was affirmed and what was reversed is a little bit of a moving target** ...."

(emphasis added)

**Exhibit 6:**  
**Copy of relevant part of Mr. Sager's April 3, 2003**  
**second set of interrogatories and requests for production**  
**[also showing the prosecutor's response].**

**(Included in accordance with RAP 10.4(c).)**

EXPEDITE

Hearing is set

Date \_\_\_\_\_

Time: \_\_\_\_\_

Judge/Calendar Daniel J. Berschauer

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

THURSTON COUNTY,

Plaintiff,

v.

MERRELL CLIFFORD SAGER,

Defendant.

NO: 02-2-00746-2

DEFENDANT'S SECOND SET OF  
INTERROGATORIES AND  
REQUESTS FOR PRODUCTION  
WITH ANSWERS AND RESPONSES

**INTERROGATORIES**

1. Have any agents or employees of Thurston County ever entered onto defendant's property?

**ANSWER:** Objection - The question is irrelevant. Staff has indicated that they have only observed property from County right of way.

1.(a) If the answer to No. 1 is yes please identify the persons so acting, dates and times of their entry, and the purpose for the activities taken upon entry.

**ANSWER:** N/A

2. Have you ever obtained any warrants for the search of defendant's property?

**ANSWER:** No.

1 2.(a) If the answer to No. 2 is yes please identify the date of such warrant, the cause  
2 Number it was issued in, and the issuing court, and the areas to be searched or items to be  
3 searched for.

3 **ANSWER:** N/A

4 3. Have you ever received any complaints concerning defendants property?

5 **ANSWER:** Objection. Question is vague and overbroad. Discovery previously  
6 provided. *(Handwritten: "Objection to this question is overbroad")*

7 3.(a) If the answer to No. 3 is yes please identify the date of such complaints and the  
8 persons making such complaints as well as the subject of the complaints.

8 **ANSWER:** N/A

9 4. Has any person been damaged or rendered insecure in the use of their property by  
10 defendant? *(Handwritten: "Answer 2")*

11 **ANSWER:** Move to strike. The question is moot due to summary judgment obtained  
12 on May 16, 2003. The question is unclear, vague and overboard.

13 4.(a) If the answer to No. 4 is yes please identify the date of such damage, the person or  
14 persons damaged, and the nature of such damage or insecurity.

14 **ANSWER:** N/A

15 5. Do you allege that defendant's residence or property is in any way harmful or  
16 unsafe? If so please particularly identify such harmful or unsafe condition.

16 **ANSWER:** See Complaint filed on May 6, 2002.

17 6. Do you allege that defendant has violated any valid County Ordinances? If so  
18 please identify such ordinances, cite the specific sections violated, and provide the dates of the  
19 public notice of and the promulgation and adoption by the County of any such ordinances.

19 **ANSWER:** See Complaint filed on May 6, 2002.

20 7. Do you maintain that such ordinances were duly and lawfully adopted prior to  
21 defendant's actions in violation of their terms? If so please identify any evidence to be produced  
22 to demonstrate the lawful adoption and promulgation of such ordinances prior to defendants  
23 violation of their terms, and the evidence of the date of defendant's violations.

23 **ANSWER:** Move to strike. The question is irrelevant and moot.

1 8. Has any current member of the Thurston County Commissioner's ever refused to  
2 allow the State, County or any of its officers to inspect their property or septic tank?  
3 If so please identify such commissioner, and the dates of such refusal, and identify any  
4 records or such actions.

5 **ANSWER:** Move to strike. The question is irrelevant and moot due to summary  
6 judgment obtained on May 16, 2003.

7 9. Has Thurston County received taxes from the defendant for the building and  
8 improvements in question?  
9 If so please identify any records of such receipts.

10 **ANSWER:** Move to strike. The question is irrelevant and moot due to summary  
11 judgment obtained on May 16, 2003.

12 10. Does Thurston County assert that the statute of limitations has passed in relation  
13 to any of the events related to this litigation? If so please identify which events occurred prior to  
14 the tolling of such limited period.

15 **ANSWER:** Move to strike. The question is argumentative and irrelevant.

16 11. Does Thurston County deny that the statute of limitations has passed in relation  
17 to any of the material events related to this litigation? If so please identify which such events  
18 occurred within such limitation period.

19 **ANSWER:** Move to strike. The question is argumentative and irrelevant.

20 12. Is Thurston County aware of any other persons building structures or septic tanks  
21 without permits in violation of County ordinances? If so please identify any such persons and  
22 their alleged violations.

23 **ANSWER:** Move to strike. The question is irrelevant.

24 13. Has Thurston County conducted any other enforcement actions or lawsuits to  
25 restrain violations of TCC 14.20.11 or TCC 14.20.12 in the last 3 years? If so please identify  
any such enforcement or legal action by case number, subject, and date.

**ANSWER:** Move to strike. The question is irrelevant and moot due to summary  
judgment obtained on May 16, 2003.

//

//

**Exhibit 7:  
Copy of the motion to compel. (Included  
in accordance with RAP 10.4(c).)**

**FILED**  
MAY - 2 2003  
SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

COPY RECEIVED  
THURSTON COUNTY  
PROSECUTING ATTORNEY  
MAY 02 2003  
BY \_\_\_\_\_  
TIME \_\_\_\_\_

IN THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR THURSTON COUNTY

---

THURSTON COUNTY	)	
plaintiff	)	
	)	No. 02-2-00746-2
Vs.	)	
	)	DEFENDANT'S MOTION
MERRELL C. SAGER,	)	TO COMPELL
defendant	)	

---

Comes now the defendant, Merrell Sager, and moves the court for the following relief:

1. That the plaintiff be compelled to answer defendant's 2nd set of interrogatories and requests for production.

This motion is based on the files and records of this case, CR 34-36 and the declaration below.

**DECLARATION**

I, Merrell Sager, certify the following to be true.

Over 30 days have passed since plaintiff was served with defendant's second interrogatories and requests for production. No reply has been forthcoming. I contacted plaintiff's counsel on May 1 concerning this matter and was not able to secure his agreement to answer this discovery. Plaintiff should be compelled to reply to discovery.

I certify the foregoing to be true. Done May 2, 2003.

  
**MERRELL SAGER**

**Exhibit 8:**  
**Copy of July 8, 2005 Exhibit(s) list, showing that**  
**Mr. Peters marked Mr. Sager's exhibit**  
**to be destroyed; also found at CP 135-136.**

FILED  
SUPERIOR COURT  
THURSTON COUNTY WASH

05 JUL -8 PM 5:20

CLERK

BY 2 DEPUTY

**SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY**

---

Thurston County  
Plaintiff/Petitioner,

vs

Sayer, Merrell  
Defendant/Respondent

NO 02-2-746-2

EXHIBIT LIST/STIPULATION  
AND ORDER FOR RETURN  
OF EXHIBITS (EXLST/STPORE)

JUDGE Richard Stophy

Clerk Laura Drogshud

Date 7-8-08

Bailiff \_\_\_\_\_

Type of Hearing motion

Offered By	Number of Exhibit	Admitted ?	Title or Name of Exhibit
Def	1	7/8/08 yes	Dec. of Jeff Raley (Gr C)
Def	2	7/8/08 yes	Dec. of Jeff Raley (Gr D)
Def	3	7/8/08 yes	Second Dec. of Jeff Raley (Gr D)
Def	4	7/8/08 yes	RCW 36.32.120
Def	5		letter from Kim Wynne
Def	6	7/8/08 yes	letter with attached info

Initial Only

Counsel for Plaintiff \_\_\_\_\_

Counsel for Defendant \_\_\_\_\_

**STIPULATION TO EXHIBIT LIST**

I have examined the exhibits in the above-entitled case and stipulate the exhibits noted as admitted are acceptable for review by the jury/judge

Dated \_\_\_\_\_

[Signature] WSBA 23642 [Signature]

Attorney(s) for Plaintiff

Attorney(s) for Defendant

IT IS FURTHER Stipulated that at such time as the Judgment in the above-entitled action shall become final, or upon Judgment becoming final after an Appeal, or upon the filing of a Dismissal, or sixty (60) days after the filing of a Satisfaction of Judgment, the County Clerk may return or destroy all exhibits offered and received in evidence in the above-entitled action to the party introducing said exhibits

PLEASE INITIAL:

Plaintiff  
Return \_\_\_\_\_  
Destroy X

Defendant  
Return XMA  
Destroy \_\_\_\_\_

DATED JULY 8, 2005

[Signature] WSBA 23642 [Signature]  
9845 LITTLE ROCK RD SW  
OLY WA (734-0487)

Attorney(s) for Plaintiff

Attorney(s) for Defendant

**ORDER**

IT IS SO ORDERED

DATED this 08 day of July, 2005

[Signature]  
JUDGE/COURT COMMISSIONER

*[Faint, mostly illegible text from a stamp or form, possibly containing court name and date information.]*

**Exhibit 9:**  
**Copy of Transcript of September 9**  
**hearing, pages 15-17 hearing showing court directly**  
**disregarding CR-5(b) over Sager's objections.**

**(Included in accordance with RAP 10.4(c).)**

1 is that there is no violation of that RCW  
2 36.32.120, which the defendant argues.

3 So we would ask and what we're here -- what  
4 our motion today was seeking is a show cause order  
5 to have Mr. -- and the order simply states to have  
6 Mr. Sager be ordered to appear before the Court at  
7 a date to be named by the Court so that we can  
8 show that he is in contempt for failing to abate  
9 the violations at his property, which are either  
10 obtaining permits for this residence and garage or  
11 taking them down. Thank you.

12 MR. SAGER: Your Honor, I seem to be a  
13 little bit confused here. I don't know which  
14 motions the Thurston County prosecutor is arguing  
15 here today.

16 THE COURT: He combined his argument  
17 into responding to your motion for order to show  
18 cause why the ordinance should not be held invalid  
19 with his argument that you should be required or  
20 ordered to appear later in court to show cause why  
21 you should not be held in contempt for not  
22 complying with my July 22nd, 2005 order.

23 MR. SAGER: Well, Your Honor, first  
24 off, I have a motion in here today to that because  
25 I was never -- I was never served any of these

1 documents that they're trying to address here  
2 today. One is, this plaintiff's second response  
3 to defendant's motion for show cause re: void  
4 judgment was never personally served on me.

5 THE COURT: Doesn't need to be  
6 personally served on you. It needs to be mailed  
7 to your last known address, according to the  
8 rules.

9 MR. SAGER: What rule is that, Your  
10 Honor?

11 THE COURT: The court rule.

12 MR. SAGER: CR 5? CR 5(b) states, "On  
13 attorney or party. Whenever under these rules  
14 service is required or permitted to be made upon a  
15 party represented by an attorney, the service  
16 shall be made upon the attorney unless service  
17 upon the party himself is ordered by the court.  
18 Service upon the attorney or upon a party shall be  
19 made by delivering a copy to him or by mailing it  
20 to him" --

21 THE COURT: Or by mailing it to him.

22 MR. SAGER: I'm not done, Your Honor.  
23 "... at his last known address or, if no address  
24 is known, filing with the clerk of the court an  
25 affidavit of attempt to serve. Delivery of a copy

1 within this rule means:" And delivering --  
2 "Delivery of a copy within this rule means:  
3 Handing it to the attorney or to the party; or  
4 leaving it at his office with his clerk or other  
5 persons in charge thereof; or, if there is no one  
6 in charge, leaving it in a conspicuous place  
7 therein; or, if the office is closed or the person  
8 to be served has no office, leaving it at his  
9 dwelling house or usual place of abode with some  
10 person of suitable age"--

11 THE COURT: Mr. Sager, I do not need  
12 the rule read to me. I have it. You have 30  
13 seconds to complete your rebuttal.

14 MR. SAGER: Are you denying my motion  
15 to strike the plaintiff's response?

16 THE COURT: I deny it. I conclude it  
17 is in conformity with the notice requirements of  
18 Rule 5.

19 MR. SAGER: Then I object for appeals  
20 purposes, Your Honor.

21 THE COURT: Anything further?

22 MR. SAGER: Further proof is Thurston  
23 County does not have any affidavits in support of  
24 any of their allegations in this case. They have  
25 no supporting evidence based upon any affidavits.

**Exhibit 10:  
Excerpt from October 14, 2005 transcript  
quoting Mr. Miller's assertions about the  
notices, page 25, also found at CP 147.**

1 Berschauer's order has been pending since 2003,  
2 pending the appeal that affirmed that order.

3 As to direct response to this alleged  
4 new issue that he's raised, I did submit to the  
5 Court a declaration and attached copies of the  
6 Ordinance Number 4276 which was adopting the  
7 Uniform Building Code of 1970.

8 MR. SAGER: Your Honor, I have to  
9 object because Mr. --

10 THE COURT: Do not interrupt.

11 MR. SAGER: I've never received these  
12 documents he's talking about.

13 THE COURT: This is argument.  
14 Mr. Miller, please proceed.

15 MR. MILLER: Thank you, Your Honor.  
16 Attached to that is a notice of public hearing,  
17 that there was a public hearing held on the  
18 15th day of November, 1971 at the hour of 3:00  
19 p.m. in the office of the County Commissioners  
20 and in the courthouse at Olympia, Washington,  
21 and it was dated November 1st, 1971, by the  
22 Board of County Commissioners signed by the  
23 chairman, George Yantis, I believe, at that  
24 time and Ordinance Number 4278 that's adopted,  
25 the Uniform Plumbing Code of 1970 attached to

**Exhibit 11:  
Copies of the two typewritten announcement  
offered as exhibits to Declaration of  
Allen T. Miller in Support of Plaintiff's  
Response to Defendant's Motion to Stay of  
Proceedings; also found at CP., 158-174.**

*(Prosecuting  
Attorney's Office)*

**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Thurston County will hold a public hearing on the following proposed ordinance:

AN ORDINANCE adopting the Uniform Building Code, 1970 Edition, Volume 1, and the Uniform Building Code Standards for Volume 1, 1970 Edition, regulating the erection and construction of buildings and structures in the County of Thurston, providing for the issuance of permits and the collection of fees therefor, and providing penalties.

WHEREAS, the Thurston County Planning Department and local fire departments have recommended to the Board of County Commissioners that a Uniform Building Code be adopted for Thurston County; and

WHEREAS, the Board of County Commissioners after considerable study has determined that it would be in the best interest of the residents of the county to adopt a Uniform Building Code;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THURSTON COUNTY, WASHINGTON, as follows:

SECTION I. The Uniform Building Code, 1970 Edition, Volume 1, and the Uniform Building Code Standards for Volume 1, 1970 Edition, published by the International Conference of Building Officials, three copies of which are on file in the Office of the County Auditor, is hereby adopted as the Building Code for Thurston County, for regulating the erection, construction, enlargement, repair, moving, removal, demolition, conversion, occupancy, height, and maintenance of buildings and/or structures in the County of Thurston, providing for the issuance of permits and collection of fees therefor; providing penalties for the violation of such code; declaring and establishing fire zones; and each and all of the provisions and penalties of said Building Code above referred to are hereby adopted and made a part

hereof as if fully set forth herein; except as provided in Section II herein.

SECTION II. Section 1302(b) of the Uniform Building Code, 1970 Edition, Volume 1, is amended to read as follows:

1302(b) Special Provisions. Group H Occupancies more than two stories in height or having more than three thousand (3,000) square feet of floor area above the first floor shall be of not less than one-hour fire-resistive construction throughout. All other Group H and Group I Occupancies shall have a minimum of three-quarter hour fire resistive interior construction throughout.

SECTION III. The aforesaid Uniform Building Code shall be administered in Thurston County by the Department of Public Works.

SECTION IV. This ordinance is in the best interests of good government and shall take effect immediately upon its passage.

Said hearing will be held on the 15 day of Nov., 1971 at the hour of 3:00 p. m. in the Office of the County Commissioners at the Court House in Olympia, Washington, at which time all persons interested may appear and be heard.

DATED this 1 day of November, 1971.

BOARD OF THURSTON COUNTY COMMISSIONERS

Joseph G. Guntz  
Chairman

Ken Stevens

ATTEST:

Ruth Phillips, Deputy  
County Auditor and Ex-Officio Clerk  
of the Board of County Commissioners.

*Prosecuting  
Attorney Office*

**NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Thurston County will hold a public hearing on the following proposed ordinance:

AN ORDINANCE adopting the Uniform Plumbing Code, 1970 Edition, published by the International Association of Plumbing and Mechanical Officials; regulating the installation or alteration of plumbing and drainage systems; examination and registration of persons engaged in the business of plumbing or laboring at the trade of plumbing; providing for the issuance of permits and collection of fees; and providing penalties.

WHEREAS, the Thurston County Planning Department and local fire departments have recommended to the Board of County Commissioners that a Uniform Plumbing Code be adopted for Thurston County; and

WHEREAS, the Board of County Commissioners after considerable study has determined that it would be in the best interests of the residents of the county to adopt a Uniform Plumbing Code;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THURSTON COUNTY, WASHINGTON, as follows:

SECTION I. The Uniform Plumbing Code, 1970 Edition, published by the International Association of Plumbing and Mechanical Officials, three copies of which are on file in the Office of the County Auditor, is hereby adopted as the Plumbing Code for Thurston County, for the protection of the public health, safety and welfare; providing for the examination, registration and licensing of persons engaged in the business of plumbing, or laboring at the trade of plumbing; requiring a permit for the installation of plumbing and drainage systems in Thurston County; providing for issuance of permits and collection of fees therefor; providing for inspection of all plumbing work; and each and all of the provisions and penalties of such code are hereby

units, may connect into the vertical two-inch or four-inch vent from the Tacoma fitting, provided that the wet vent interval is not more than twenty-four inches. Trap inlets shall be within the prescribed limits of this code.

(f) Where a single or two-compartment laundry tray, sink, or basin is located close to a three-inch or four-inch floor drain or catch basin, the vertical two-inch vent from the floor drain, or catch basin, may be used for a waste pipe for any one of the above two unit fixtures, provided the developed vertical length between top of floor drain, or catch basin, and the drain tee, shall not exceed twenty-four inches. Trap inlets shall be within the prescribed limits of this code.

Section 1105 Size of Building Sewer. The size of any building sewer shall be determined on the basis of the total number of fixture units drained by such sewer in accordance with Table 4-3, except that the minimum size of a building sewer supplying any building shall be four (4) inches. Separate building sewer lines are required for each building and shall extend to the public right of way where sewer lines exist.

SECTION II. This ordinance is in the best interests of good government and shall take effect immediately upon its passage.

Said hearing will be held on the 15 day of November, 1971, at the hour of 3:00 p. m. in the Office of the County Commissioners at the Court House in Olympia, Washington, at which time all persons interested may appear and be heard.

DATED this 1 day of November, 1971.

BOARD OF THURSTON COUNTY COMMISSIONERS

ATTEST:

George F. Gentry  
Chairman

Quinn Phillips, Deputy

County Auditor & Ex-Officio

Attest of the Board of County Commissioners

**Exhibit 12:**  
**Pages from transcript of October 14, 2006**  
**hearing, pages 25-28. The transcript is found under**  
**its own name on the CD provided to the court**  
**by Aurora Shackell, court reporter #2439.**

1 Berschauer's order has been pending since 2003,  
2 pending the appeal that affirmed that order.

3 As to direct response to this alleged  
4 new issue that he's raised, I did submit to the  
5 Court a declaration and attached copies of the  
6 Ordinance Number 4276 which was adopting the  
7 Uniform Building Code of 1970.

8 MR. SAGER: Your Honor, I have to  
9 object because Mr. --

10 THE COURT: Do not interrupt.

11 MR. SAGER: I've never received these  
12 documents he's talking about.

13 THE COURT: This is argument.  
14 Mr. Miller, please proceed.

15 MR. MILLER: Thank you, Your Honor.  
16 Attached to that is a notice of public hearing,  
17 that there was a public hearing held on the  
18 15th day of November, 1971 at the hour of 3:00  
19 p.m. in the office of the County Commissioners  
20 and in the courthouse at Olympia, Washington,  
21 and it was dated November 1st, 1971, by the  
22 Board of County Commissioners signed by the  
23 chairman, George Yantis, I believe, at that  
24 time and Ordinance Number 4278 that's adopted,  
25 the Uniform Plumbing Code of 1970 attached to

1           that. This is Exhibit B to my affidavit. A  
2           notice of public hearing. Again, that a public  
3           hearing was scheduled for November 15th, 1971  
4           for the purpose of hearing on that Uniform  
5           Plumbing Code Ordinance.

6                     I mean, if he's raised this issue, I  
7           guess we'll have to deal with it in the Mason  
8           Superior county court case. It appears to me  
9           Mr. Sager is abusing the court system if he's  
10          filed another lawsuit on the same issues that  
11          have been litigated here, but we'll have to  
12          deal with that if, in fact, that case has been  
13          filed in Mason County. But there's no reason  
14          to stay this matter, and to -- you should find  
15          that Mr. Sager is in contempt of this Court's  
16          order.

17                    MR. SAGER: May I speak, Your Honor?

18                    THE COURT: Just one moment. All  
19           right. Mr. Sager.

20                    MR. SAGER: Well, first off, Your  
21           Honor, I have to object here for Mr. Miller, he  
22           seems to be addressing documents into the Court  
23           record that I have not received. I'd like to  
24           have -- I'd like to have the Court show me  
25           these documents. He just addressed exhibits in

1 here that I have never seen before. He never  
2 served me.

3 THE COURT: Mr. Sager, you cited cases  
4 to me that Mr. Miller has never seen before.  
5 The Court will listen to argument and consider  
6 materials in reference to other materials  
7 submitted, as long as such is appropriate under  
8 the rules of pleading, and, in that regard,  
9 what Mr. Miller has cited is a matter of record  
10 in the particular code and books of the --  
11 ordinance books of the County.

12 MR. MILLER: I will note that, on the  
13 declaration, that it does state that on October  
14 11th, 2005, a copy of this document was  
15 forwarded to the following individuals via  
16 Legal Messenger Service for delivery no later  
17 than October 12th, 2005.

18 MR. SAGER: Your Honor, I never  
19 received it. I'd like to have proof.

20 THE COURT: Anything further?

21 MR. SAGER: Yes. What is this  
22 declaration of Alan J. Miller in support of  
23 plaintiff's response to the defendant's motion  
24 for a stay of the proceedings? For the record,  
25 Your Honor, I've never received this document.

1 And you let this Mr. Miller read hearsay  
2 evidence into the record, and I'd like to --  
3 what is this here?

4 MR. MILLER: I'll make sure that you  
5 get a copy of this.

6 MR. SAGER: Your Honor --

7 MR. MILLER: If you not already --

8 MR. SAGER: Your Honor, under Court  
9 Rule 5, I never received this document, and  
10 service made under Court Rule 5 under (a), and  
11 Court Rule 1, service, I've never received this  
12 document. And I make this an offer of proof  
13 for the record, Your Honor, in that this  
14 document should be stricken.

15 THE COURT: Do you have a return of  
16 service?

17 MR. MILLER: I do not.

18 MR. SAGER: I'd move that all his last  
19 comments be stricken.

20 THE COURT: So it's not going to be  
21 stricken. If anything, I'll give you a further  
22 continuance, Mr. Sager, if you have not  
23 received the responses referred to by  
24 Mr. Miller within the time required under the  
25 rules of procedure.

**Exhibit 13:  
History of TCC 14.20.012**

Ordinance list taken from Auditor Wyman's letter identifying these ordinances as NOT filed with her office 10 days before the related hearings.

Source: Thurston County Building Codes, chapter 14.20 showing history of TCC 14.20.012 and indicating by circling those ordinances not properly filed with the county auditor's office. **Source page attached.**

Ordinance # 12033	NOT filed with the auditor, according to Wyman letter.
Ordinance # 11398	NOT filed with the auditor, according to Wyman letter.
Ordinance # 10973	NOT filed with the auditor, according to Wyman letter.
Ordinance # 9699	NOT filed with the auditor, according to Wyman letter.
Ordinance # 8569	This WAS filed, but it relates to mobile home regulation
Ordinance # 7965	NOT filed with the auditor, according to Wyman letter.
Ordinance # 7081	NOT filed with the auditor, according to Wyman letter.
Ordinance # 6722	NOT filed with the auditor, according to Wyman letter.

Hearings for these same ordinances were not published the newspaper.

Ordinance # 12033	NOT published in any newspaper, according to research by Merrell Sager. See attached newspaper excerpts.
Ordinance # 11398	NOT published in any newspaper, according to research by Merrell Sager. See attached newspaper excerpts.
Ordinance # 10973	NOT published in any newspaper, according to research by Merrell Sager. See attached newspaper excerpts.
Ordinance # 9699	NOT published in any newspaper, according to research by Merrell Sager. See attached newspaper excerpts.
Ordinance # 8569	This WAS filed with the auditor, but it relates to mobile home regulation
Ordinance # 7965	NOT published in any newspaper, according to research by Merrell Sager. See attached newspaper excerpts.
Ordinance # 7081	NOT published in any newspaper, according to research by Merrell Sager. See attached newspaper excerpts.
Ordinance # 6722	NOT published in any newspaper, according to Research by Merrell Sager.

Ordinance H-2-90 Adopted 6/11/1990 Not in file AND Published in any newspaper, according to Merrell Sager

1420.011

required for remodeling structures described in this Subsection when work does not involve physical enlargement of a change of use or occupancy classification. Such remodeling is also exempt from the construction requirements of this Code.

(Ord. 12463 § 1, 2001; Ord. 11804 § 1, 1998; Ord. 11762 § 2, 1998; Res. 11116 § 4, 1996; Ord. 10973 § 3, 1995; Ord. 10399 § 1, 1993; Ord. 10388 § 2, 1993; Ord. 10373 § 2, 1993; Ord. 9699 § 27 (part), 1990; Ord. 8569 § 2, 1987; Ord. 8251 § 2, 1985)

**14.20.012 Section (R)113 amended--Violations, civil infractions and penalties.**

Section (R)113 is amended to read as follows:

Section (R)113.1. Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

Section (R)113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a detail statement or a plan approved thereunder, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Any person, firm, or corporation violating any of the provisions of this Code shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each day or portion thereof during which any violation of any of the provisions of this Code is committed, continued, or permitted, and upon conviction of any such violation such person shall be punished by a fine of not more than \$300 or by imprisonment for not more than 90 days, or both such fine and imprisonment for each violation.

The violation of International Construction Code (R) 105.1 (building without a permit); Thurston County Code Chapter 14.37 (grading) or International Construction Code R 110.2 and 3406 (change in use or character of occupancy) shall be designated as a class 1 civil infraction pursuant to Chapter 7.80 RCW and Chapter 14.21 Thurston County Code. Any violation of International Construction Code R 110.1 shall be designated as a class 2 civil infraction pursuant to Chapter 7.80 RCW, except for buildings classified as Group R, Division 3 occupancies under International Construction Code (R) 101 and Section 310 or Group U occupancies under International Construction Code Section 312. Each day of any such violation is a separate civil infraction. A notice of infraction may be issued for each day of any such violation; however, the enforcement officer is not required to issue a notice of infraction for each day of such violation. Civil infractions shall be heard and determined according to Chapter 7.80 RCW, Chapter 14.21 TCC as amended, and any applicable court rules.

Notwithstanding the existence or use of any other remedy, the Building Official may seek legal or equitable relief to enjoin any acts or practices and abate any conditions which constitute or will constitute a violation of this chapter or other regulations herein adopted.

(Ord. 12033 § 5, 1999; Ord. 11398 § 13 (part), 1997; Ord. 10973 § 4, 1995; Ord. 9699 § 27 (part), 1990; Ord. 8569 § 15 (part), 1987; Ord. 7965 § 2, 1984; Ord. 7081 § 1, 1981; Ord. 6722 § 2, 1980)

**14.20.13 Section (R)107 amended-- Temporary structures and uses.**

Section (R)107.1 is amended to read as follows:

(R)107.1 General. For the purposes of the Thurston County building code, temporary structures and uses will not be treated differently than permanent structures or uses. All structures and uses shall comply with the provisions of the Thurston County building code.

# Italian Police Round Up Explosion Suspects

ROME (AP) — Police staged raids here and in two other cities today and arrested 28 right-wing extremists in connection with the Aug. 2 bombing of the Bologna railroad station that took 33 lives, officials announced.

In Bologna, Prosecutor Ugo Sisti said in a statement the charges against some of the 28 included planning and carrying out the bombing, Europe's bloodiest post-war terrorist attack.

Other charges were subversive association, forming armed bands and attempting to subvert democratic order, he said.

Police sources said seven of the 28 were arrested in Rome and the others were arrested in a villa near Bolsena Lake near Viterbo, north of Rome, and in Rieti, northeast of the Italian capital.

Investigators have said they believed the bombing was the work of right-wing extremists, noting that rightist groups have claimed responsibility for similar attacks in the past.

Italy is seeking the extradition of a right-wing extremist, Marco Aflaitano, who was arrested in Nice, France, a few days after the bombing. He has not been charged in the attack, however.

# Israel Steps Up Attacks On Lebanon

BEIRUT, Lebanon (AP) — Israeli planes and helicopters struck Palestinian targets in southern Lebanon overnight, and an Israeli gunboat exchanged fire with guerrillas on the Lebanese coast, a U.N. spokesman reported today.

A military spokesman in Tel Aviv confirmed Israeli forces attacked "terrorist targets along the Lebanese coast" but he gave no further detail.

There were no reports of injuries, the U.N. spokesman said.

Israel has been stepping up its war on Palestinian outposts in southern Lebanon recently, and sent soldiers and warplanes across the border Aug. 19 in a major raid against guerrilla positions that left as many as 60 dead. It was the largest military operation since the March 1978 Israeli invasion of the south.

Within two days, Israeli warplanes struck southern Lebanon again, and last Sunday Israel jets and helicopters launched a surprise attack on a separate court house in Beirut.

The U.N. spokesman said that earlier Wednesday two separate U.N. observer teams in southern Lebanon were stopped and detained briefly, one by the Israeli-backed Christian militia of Saad Haddad and a second by troops believed to be Lebanese leftists. The U.N. troops patrol a buffer zone in southern Lebanon that was established after the 1978 invasion.

On Wednesday night, a U.N. spokesman said "considerable Israeli air activity" was observed near the Lebanese port city of Tyre and Israeli jets and helicopters dropped about 60 tons.

He said one Israeli jet fired rockets and cannon rounds at an unknown target near Tyre, and another Israeli patrol boat fired four cannon rounds at the Israeli-backed Palestinian refugee camp near Tyre, about 10 miles north of the Israeli border. He said Palestinian guerrillas responded with heavy machine-gun fire.

This morning, anti-aircraft artillery in Beirut reportedly fired at high-flying jets presumed to be Israeli, but no hits were reported.

# ANTI-SOVIET AGITATION

## Russian Dissident Gets 10 Years

MOSCOW (AP) — Dissident Russian Orthodox priest Gleb Yakunin was sentenced today to anti-Soviet agitation and propaganda and sentenced to five years in labor camp and five years of internal exile.

Yakunin, 46-year-old co-founder of a dissident group that rights of Christian believers, had declared in court Wednesday that his activities were "my religious duty as a priest," his wife reported. She said he denied his work was aimed at subverting the Soviet state.

The official Soviet news agency Tass said the four-day trial "established and proved that Yakunin fabricated, multiplied, kept and distributed slanderous materials, and engaged in anti-Soviet agitation in the Soviet Union."

Tass said Yakunin bought and sold religious books and articles which "does not accord with the halo of 'holiness' serving of religion" Yakunin.

Yakunin's wife, Irada, said after the sentencing that her husband "looked good, he looked calm."

When a green police van left the court, about 15 of Yakunin's supporters assumed he was inside. They shouted, "Gleb! Gleb!" and pulled the vehicle with pink and white flowers.

Only his wife, Irada, was in the courtroom, but several of his supporters gathered outside each day. Tass stated the trial had been "open" and said those who attended "approved the just sentence passed on Yakunin." Foreign reporters also were barred from the court.

# China

## Readies Premier

HONG KONG (AP) — China's National People's Congress will open a resolution Sunday officially naming Vice Premier Zhuo Yizhang as premier replacing Chairman Hua Guofeng, a Hong Kong Communist newspaper reported today.

The New Evening Post said the resolution will be introduced by Hua who will retain his party post.

It said Zhuo, former governor of Sichuan province, will be the third premier of the Chinese People's Republic after the late Chou En-lai and Hua.

The two-week congress, China's Parliament, will convene Saturday.

During the congress senior Vice Premier Wang Xiangping and four other vice premiers are expected to announce their resignation from their government posts, they will retain their party jobs.

Witnesses at the opening of her trial Wednesday included an official and two prisoners from a labor camp, said, apparently brought forward to deny claims in the Chronicle of poor camp conditions.

In both the Yakunin and Velikanova cases, Western reporters and members, however, were barred from the courtroom. Close family members of Yakunin and Velikanova were also barred from attending.

Mrs. Velikanova was also charged under Article 76. She was accused of spreading false information to the press and of using her position as a wife of a high official to influence the trial.

Yakunin's wife, Irada, said after the sentencing that her husband "looked good, he looked calm."

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Just Dial 754-5470  
Shelton 426-2621

2 Lines  
1 Day..... ONLY \$4.54

2 Lines 2,3 &  
4 Days..... ONLY \$6.58

2 Lines 5 & 7  
Days..... ONLY \$7.98

2 Lines  
1 Month ONLY \$22.00

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Set sold advertising  
Tues. thru Fri.  
day before D.P.  
Sat.—5 p.m. Thurs.  
Sun.—5 p.m. Friday  
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OUR TOP BUYS  
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**Legal Notices**

**REARMOOR CAR SALE**  
In compliance with Chapter 42, section 10, of the Massachusetts General Laws, the following information is being provided to the public. The following information is being provided to the public. The following information is being provided to the public.

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I, the undersigned, do hereby certify that the following information is being provided to the public. The following information is being provided to the public.

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**OLYMPIA LODGE NO. 1**

**I.O.O.F.**

8:30 P.M. Mondays

EMPLOYMENT CAR PUBLIC OFFICE

OLYMPIA LODGE NO. 1

8:30 P.M. Mondays

**REGIONAL MALL**

Excellent space is now available in new regional shopping mall units. Located in Aberdeen, just off the main highway and only 10 minutes from the city center. Call for more information.

**RESTAURANT AND COCKTAIL LOUNGE**

Open 11:00 a.m. to 1:00 a.m. daily. Full bar, live music, and dancing. Call for reservations.

**OLYMPIA LODGE NO. 1**

**I.O.O.F.**

8:30 P.M. Mondays

EMPLOYMENT CAR PUBLIC OFFICE

OLYMPIA LODGE NO. 1

8:30 P.M. Mondays

OLYMPIA LODGE NO. 1

REGIONAL MALL

RESTAURANT AND COCKTAIL LOUNGE

OLYMPIA LODGE NO. 1

**FURNITURE COSTS LESS AT BLOCK'S**

3 Miles West of Oly On The Old Shelton Factory Direct Buying Overhead Means A Savings For You

9:30 TO 7 MON SAT 12

**DOLLAR STORE**

**PHYS' WEST OLY FURNITURE**

4106 Mud Bay Rd. 86

3 Miles West of Oly On The Old Shelton Factory Direct Buying Overhead Means A Savings For You

9:30 TO 7 MON SAT 12

11. Garage	12. Garage	13. Garage	14. Garage	15. Garage	16. Garage	17. Garage	18. Garage	19. Garage	20. Garage	21. Garage	22. Garage	23. Garage	24. Garage	25. Garage	26. Garage	27. Garage	28. Garage	29. Garage	30. Garage	31. Garage	32. Garage	33. Garage	34. Garage	35. Garage	36. Garage	37. Garage	38. Garage	39. Garage	40. Garage	41. Garage	42. Garage	43. Garage	44. Garage	45. Garage	46. Garage	47. Garage	48. Garage	49. Garage	50. Garage	51. Garage	52. Garage	53. Garage	54. Garage	55. Garage	56. Garage	57. Garage	58. Garage	59. Garage	60. Garage	61. Garage	62. Garage	63. Garage	64. Garage	65. Garage	66. Garage	67. Garage	68. Garage	69. Garage	70. Garage	71. Garage	72. Garage	73. Garage	74. Garage	75. Garage	76. Garage	77. Garage	78. Garage	79. Garage	80. Garage	81. Garage	82. Garage	83. Garage	84. Garage	85. Garage	86. Garage	87. Garage	88. Garage	89. Garage	90. Garage	91. Garage	92. Garage	93. Garage	94. Garage	95. Garage	96. Garage	97. Garage	98. Garage	99. Garage	100. Garage
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## HEALTH CARE

# Seasonal workers still on outside

■ **Exception:** Seasonal workers are discouraged by the political tactics employed to get a health-care bill passed that excluded them.

By Mindy Chambers

As they left Olympia Tuesday afternoon, some of the state's seasonal workers were bitter about the politics they say were played to get the 1993 Legislature to pass a health-care reform measure and at Gov. Mike Lowry for signing the bill, which they say excluded them from coverage.

The measure — touted as a model for the nation — is designed to provide affordable health care for all state residents. The major part of the bill was signed Monday. Tuesday's action was on a companion bill that addressed some legislators' concerns over its effects on business.

"It's a matter of dignity. Everyone is included in the bill, and then they (seasonal workers) are excluded," said Adrian Morales, a medical social worker at Sea Mar Community Health Center, which has several clinics for low-income people in Western Washington. He was referring to negotiations

between Lowry and the Legislature that resulted in a directive to the Health Services Commission to study ways to cover seasonal workers, who move from job to job throughout the year.

Such workers are the only ones the commission is specifically ordered to study, which has sparked accusations of racism and exclusion. Seasonal workers wanted Lowry to veto that part of the reform measure.

"He's never felt discrimination — he's never seen his mom go to the bathroom in the fields or in the up in a farmworker's home," said a "veto would have sent the message to the Hispanic community that we are people," said Rogelio Riosas, Sea Mar executive director. Lowry Tuesday lauded the

Gov. Lowry Signs companion health-care bill

He's (Lowry) never felt discrimination — he's never seen his mom go to the bathroom in the fields or in the bushes.

Adrian Morales  
A medical social worker at Sea Mar Community Health Center

tributions of seasonal workers to the state, while acknowledging that his decision to keep the study could be perceived as just one more slap in the face.

"We must be sensitive to what they think. The history of this state of exclusion of farmworkers must be changed," Lowry said.

"I appreciate the words, but if he would have dug deep down, with the right decision," Riosas said. "Probably in his heart he does not agree (with the study) but he feels he must honor the agreement."

With agreement to help lawmakers to get the bill passed. Concerns were raised by lawmakers about how to pay for and

minister health care for seasonal workers.

Lowry said the law does require that everyone be covered by 1999, including seasonal workers. However, he ordered the study to be completed by Dec. 1, 1993, a year ahead of schedule, so the issue could be taken up by the 1994 Legislature. The law also expands health care coverage to low-income children beginning this July and provides money for community and migrant health clinics.

Riosas said the seasonal worker community doesn't want to wait, and may file a lawsuit within the next two months challenging the reform measure's constitutionality on the basis that it does not provide equal protection.

"They don't have enough protection, and they are the ones who need it the most," Morales said, of dangerous conditions for field workers who typically have no health insurance and limited access to medical care.

Lowry's guarantees that he and the Legislature will resolve the seasonal worker issue by 1995 — or see the reform measure overturned in court — aren't mentioned in Riosas. He said the difficulty in passing the bill the first time "bode well for getting language through the Legislature to help farmworkers."

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Some shockers here and there, but it'll be no surprise in the end

Before us today is that most formidable of documents, the NCAA Tournament office pool. Time to take the s--- again. But before we begin, one question for the road: Since my entry fee is always a contribution, is it tax deductible?



ON THE NCAA'S

East
■ First rounds: North Carolina over Fairfield. Here's a toast to the Stags, who ignored an 8-18 record to win their conference tournament. Indiana over Colorado. After two straight first-round losses, Bob Knight is starting to be conspicuous by his absence on the weekend. Princeton over Col. Hopesie romances always pick Princeton. Villanova over Long Island University. LIU guard Charles Jones leads nation at 30.8 points a game. Massachusetts over Middlebury. Slumping Cardinals look ripe. New Mexico over Old Dominion. Wisconsin over New Dominion. South Carolina over Coppin State. Mid-Eastern Conference is 0-15 all in NCAA Tournament.
■ Second rounds: North Carolina over Indiana. Move over Adolph. Dean Smith takes over Rupp's record for all-time victories. Villanova over Princeton. New Mexico over Old Dominion. South Carolina over Wisconsin. Gamecocks last in a regional in '73.
■ Regionals: North Carolina over Villanova. South Carolina over New Mexico, and then North Carolina over South Carolina.

Midwest
■ First rounds: Minnesota over Southwest Texas State. Gophers carry flag of Big Ten, which is at half-mast after recent showings. Temple over Mississippi. Ole Miss baseball has come a long way since the day its coach was promoted to coach freshman football. Tulsa over Boston University. Clemson over Miami (Ohio). Iowa State over Illinois State. Cincinnati over Butler. Moody Bearcats will self-destruct one day—but not on this day. Xavier over Vanderbilt. UCLA over Charleston Southern. A wee bit of a difference in pedigree. One an 11-time national champ, the other an NCAA rookie.
■ Second rounds: Minnesota over Temple. But it wouldn't take much to talk me out of this one. Tulsa over Clemson. Upset, mild. Iowa State over Cincinnati. Upset, hot.
UCLA over Xavier.
■ Regionals: Tulsa over Minnesota. Iowa State over UCLA, and then Iowa State over the regional final as one is expecting.

West
■ First rounds: Kentucky over Montana. Montana has the bears and moose. Kentucky the horses. Virginia over Iowa. Boston College over Valparaiso. St. Joseph's over Pacific. Stanford over Oklahoma. Wake Forest over St. Mary's of California. Wake's Tim Lincecum against 7-3, 345-pound Brad Millard is about 6.0 on the Richter scale. Georgetown over North Carolina-Charlotte. Utah over Navy. Utes coach Rick Majerus as big as some destroyers.
■ Second rounds: Kentucky over Virginia. Boston College over St. Joseph's. Wake Forest over Stanford and Utah over Gonzaga.
■ Regionals: Kentucky over Lake City. But the Eagles take this down to the wire. Wake Forest over Utah, and then Kentucky over Wake Forest. Wake has the best player in Duncan, but Kentucky has the better team.
Final Four
Kentucky over Iowa State. Wild-

cats get close enough to a repeat to smelt it. Or is that coach Rick Pitino's alternative they smell?
■ Kansas over North Carolina. Williams' Ben Allen makes a former star at the RICA Dome—the same as he did in 1981.
■ Kansas over Kentucky. Two programs to regard, the assistance you're asked to bow and curtsy as the teams take the floor. Nobody looks better than Kansas—and nobody deserves it more than Williams.
Mike Lopresti writes for Garnett News Service.

Dr. James Brazil
Board Certified Dermatologist
413-9292

MEDICALLY-PROVEN LASER TECHNOLOGY
ELIMINATE UNWANTED SPIDER VEINS, VARICOSE VEINS AND WRINKLES
Many common skin problems such as benign vascular and pigmented lesions, wrinkles and tattoos can be eliminated or reduced by the latest laser technology.
When considering laser surgery, be sure the treatment chosen is the best one for your condition. Our expertise in laser, surgical and medical therapeutics assures you of the finest possible care.
To learn which treatments are proven to be most effective and are best for you, call for an appointment.

NORTHWEST HOME IMPROVEMENT CO. DON'T BUY VINYL SIDING Until you talk to Bill! 352-5659

Fitness - Family - Fun Voted "The Best Place to Workout" year over year! THE VALLEY ATHLETIC CLUB 352-3400

Legals

LAPE #4807
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4808
Notice of Trustee's Sale
Pursuant to the terms of a deed of trust, the undersigned, as trustee, will sell at public auction on Monday, April 13, 1997, at 10:00 a.m. in the City of Olympia, Washington, County of Thurston, Washington, 2000 Lathrop Avenue, SW in the City of Olympia, Washington, County of Thurston, Washington, a certain parcel of land, more or less, as shown on the plat attached hereto, and all other things thereon, including but not limited to, the following described real property, situated in the County of Thurston, Washington:
Parcel ID No. 7692000000
Lot 5 of Summerland, Division 8, as recorded in Volume 18 of Plats, page 34 in the County of Thurston, Washington, Assessor's Office, Olympia, Washington, WA 98513

Legals

LAPE #4809
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4810
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4811
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4812
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4813
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4814
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4815
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4816
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4817
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4818
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4819
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4820
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4821
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4822
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4823
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

Legals

LAPE #4824
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING
GWYNNE GELMER-CULNE and JEFFREY CLINE, Petitioners, vs. V.E. POWER DOOR INC., Respondent.
A Petition for Dissolution of Marriage and a Petition for Custody of Children and a Petition for Division of Community Property.
The Petitioners pray that the Respondent be held liable for the costs of this action.

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THE MARKET

MARKETS Stocks take a dive after three-day rise

Stocks slid Wednesday and the Dow Jones industrial average snapped a three-day advance, retreating from record levels as investors found few reasons to cast

Broader indicators had posted fairly modest losses until Friday, when they started rising in the bond market at mid-afternoon. Bellwether technology shares continued to struggle, while other recent market leaders such as banks and drugmakers fell for the second straight session.

COMMUNITY BUSINESS SHOWCASE: Today is Business Showcase '97 at Saint Martin's Pavilion. The show will feature business services by more than 85 exhibitors. Hours are 11 a.m. to 5 p.m.

Admission is either \$2 or a can of food or other donation to the Thurston County Food Bank. The event is presented by the Olympia/Thurston Chamber and "The Olympian."

MARKETS BOW CHANGES: In an historic shakeup to diversify the 30-company Dow Jones industrial average, the long-time tenants.

In an historic shakeup to diversify the 30-company Dow Jones industrial average, the long-time tenants. The last changes to the Dow industrials were made in May 1991. The latest shuffle leaves the measure's average down 100 points when economic power was measured by heavy industry's might—without a steelmaker.

STABLE RATES? Less than two weeks before a key policy meeting, a Federal Reserve survey showed little evidence of wage and price pressures that would justify an immediate interest-rate increase.

Economists said the survey, covering the period from mid-January through March 3, supported the case that the Fed will maintain its wait-and-see attitude about engineering an interest-rate increase aimed at dampening economic activity and preventing an inflation outbreak. Olympian staff, news services

MARKET IN BRIEF

March 12, 1997
DOW (INDUSTRIAL) NYSE
S&P 500 AMEX
S&P MidCap NASDAQ

Vertical sidebar with various small ads and notices.



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ths.

# Neighbors!

BUY IT!  
SELL IT!  
FIND IT!

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Call one of our Classified Phone Sales Staff at 754-5470 for more information.

Specials\*  
Apple's 15 lb. while you shop.  
9 a.m. - 6 p.m.

The Olympian is your team. Common sense are the ties that we newscasters and k together and play your with some of ends. If you are 11 age or older, The plan may have a y for you (and your friends to boot). Call the Olympian Circulation Department 754-5411. Start earning money the friendly way.

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# The Olympian - Classifieds - 754-5470

BUSINESS HOURS:  
Mon.-Fri. 7:30am-6:00pm  
Sat. 9:00am-1:00pm

### ANNOUNCEMENTS

- 1 Legals
- 2 Announcements
- 8 Card of Thanks
- 3 Club Memberships
- 10 Funeral Notices

### MERCHANDISE

- 302 Antiques/Collectibles
- 401 Appliances
- 305 Automobiles
- 307 Baby Goods
- 308 Bazaars
- 310 Booklets
- 312 Building Materials
- 314 Camera Supplies
- 316 Clothing
- 318 Coins/Stamp
- 320 Computers/Supplies
- 322 Engagements
- 324 Electronics/Accessories
- 325 Fuel/Firewood
- 327 Furnishings
- 328 Garage Sales/Lace
- 329 Garage Sales/Olympia
- 330 Garage Sales/Tumwater
- 331 Garage Sales/Tru

### AGRICULTURE

- 728 Farm Equip/Machinery
- 730 Farming Supplies
- 732 Fertilizer
- 736 Hay, Feed & Grain
- 740 Insect/Plant Protection
- 746 Livestock/Sales/Service
- 755 Meat Processing

### REAL ESTATE

- 801 Buildings for Sale
- 802 Business Property
- 803 Condominiums for Sale
- 804 Duplexes for Sale
- 808 Homes for Sale - Leasing
- 809 Homes for Sale - General
- 808 Homes for Sale - Leasing
- 807 Homes for Sale - Olympia
- 810 Homes for Sale - Tumwater

### REAL ESTATE

- 816 Farm - Sale/Lease
- 817 Homes - Out of Town
- 818 Homes for Sale/VT
- 819 Income Property
- 822 Investment Property
- 823 Want to Buy
- 825 Lots & Acreage for Sale
- 826 Investment - Warehouse
- 830 Mobile Homes for Sale
- 832 Mobile Home Parks
- 834 Mobile Home Sites

### REAL ESTATE

- 835 Real Estate
- 836 Real Estate
- 838 Rental Agents - Furnished
- 840 Rental Agents - Unfurnished
- 842 Rental Buildings
- 843 Commercial Leasing
- 844 Rental Condominiums
- 845 Rental Vacations
- 846 Rental Duplexes
- 848 Rental Homes - Furnished

### EMPLOYMENT

- 219 Accounting
- 220 Agricultural
- 223 Child Care
- 228 Clerical & Office
- 229 Computer Programming
- 231 Domestic
- 233 Employment Services
- 239 Management/Adm
- 240 Medical/Dental
- 242 Miscellaneous Labor
- 243 Professional
- 245 Restaurant & Motel
- 247 Sales Agents
- 248 Technical
- 250 Work Wanted

### SERVICES

- 400 to 700

### TRANSPORTATION

- 901 Aircraft
- 904 Boats/Motors
- 905 Boat/Marine/Motors
- 907 Camper
- 908 Four Wheel Drives
- 907 Heavy Equipment
- 926 Leasing/Renting
- 935 Motorcycles
- 941 Recreation Vehicles
- 942 RV Rentals

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**Exhibit 14:  
July 19, 2006 letter from  
M. Sager to Judge Strophy.**

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**Merrell C. Sager**  
**9845 Littlerock Road**  
**Olympia, WA 98512**  
**(360) 754-0487**

**FILED**  
JUL 20 2006  
SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

THURSTON COUNTY  
SUPERIOR COURT

**Judge Richard A Strophy**  
**Bldg 2 COURTHOUSE**  
**2000 Lakeridge dr.sw**  
**OLY, Washington.**

JULY 19 2006  
COPY RECEIVED  
THURSTON COUNTY  
PROSECUTING ATTORNEY  
JUL 20 2006  
BY \_\_\_\_\_  
TIME 10:57

Case No 02-2-00746-2

Judge Strophy,

**Ongoing Problems with Service.**

Thank you for the letter of July 18. However, there's on ongoing problem related to the service of documents from the prosecutor that requires this responding letter. Namely, the process server is merely dropping the documents on my porch and making no attempt to put them into my hand. Attached is an affidavit from friends of mine testifying that I was in Centralia at the time on October the 14<sup>th</sup> 2005 when the process server swore I had received the pleadings. And this week, on July 18, 2006, the pleadings from Mr. Peters were just left on my porch, and thus never properly served on me. This error would require the rejection of Mr. Peters' pleadings as not delivered on time for the court's consideration.

**Odd Declaration of Service.**

The fact that Mr. Peter's declaration of delivery does not indicate that he delivered the pleadings, but only that he gave the pleadings to the server is odd. He is literally not confirming proper delivery, which he very well could do by using mail delivery in a timely fashion – and if he did not include any false content in his pleadings that would subject him to charges of mail fraud.

**Test the Allegation.**

Judge Strophy, you yourself can test this allegation of improper service by simply asking the process server to describe me. She can't, since she has never met me. I would encourage you to interview her – under oath – and ask her to describe me. If you do decide to have a hearing, perhaps I should call her as a witness.

**Judicial Assistant's Suggestion.**

I wondered why Kristal Poston asked me, for the Court June 13, 2006 to schedule the hearing (that became the July 7 hearing on my motion for reconsideration. It seemed quite possible that Mr. Peters wanted a new warrant to cover up the nuisance issue that had been woven into the first warrant process. I sent a public disclosure request to Kristal Poston to ask her who had asked her to suggest a hearing, but she failed to

respond in any way. I now wonder if her lack of response was the result of her not being able to speak freely, and/or if Mr. Peters ordered her to not respond.

#### **Spurious Arguments**

The arguments by Mr. Peters – besides being untimely – are a smoke screen to attempt to cover up the fact that he did not make a proper motion to amend his warrant. It is spurious for him to argue about stricken parts when he entered into the hearing with an adjusted order (beyond the supposed typographic error) without a motion to amend.

#### **Issues NOT Addressed.**

Also, the earlier ruling against the earlier motion for reconsideration as being untimely DID NOT address the issues, as Mr. Peters asserts. There is a basic principle of logic: "Something can't be, and not be, at the same time." A motion can't be denied a hearing and given a hearing at the same time. Your honor can confirm this by requiring the prosecutor to produce court rulings on the issues contained in the questions.

#### **Strict Adherence to the Rules Requires Strict Adherence to the Rules.**

Strict enforcement of the court rules for one party means that there must be strict enforcement of the court rules for the other party for there to be a fair process. My previous motion for reconsideration was rejected, because I missed the 10-day deadline, even though I had submitted the motion within 10 days of the date on which I received the copy of the ruling from the prosecutor. I regretted the dismissal of the motion, but I had to bow to the requirements of the court rule, as ordered by the court. The court should also require Mr. Peters to adhere to the court rules, and order that his pleadings are untimely.

#### **Questions in the Motion for Reconsideration.**

Your honor, I am respectfully repeating that you address the several questions contained in my motion for reconsideration. Those questions address the fundamental issues in this case that have been ignored, not ruled upon. Especially those questions that relate to jurisdiction, which is always a timely issue, must be addressed.

Respectfully submitted,

Merrell C. Sager

Pro Se

CC: Deputy prosecuting Donald R Peters

CC COURT FILE

Sincerely,



Merrell C. Sager

GENERAL AFFIDAVIT

State of Washington  
County of Thurston

BEFORE ME, the undersigned Notary,

February 2006, personally appeared \_\_\_\_\_, on this ( )

\_\_\_\_\_, known to me to be a credible person and of lawful age, who being by me first duly sworn, on \_\_\_\_\_ oath, deposes and says:

On (October 13, 2005), Merrell C Sager, a friend of ours, visited our home at (195th-Ave 7513 SW Rochester, WA 98579). Merrell Sager arrived around 4:30 PM and did not leave till after 6:00 PM o'clock in the afternoon.

1 [Signature]  
[signature of affiant] to Roy Runyon

2 Eleonore Runyon  
[signature of affiant] Eleonore Runyon

195 th av 7513 SW ROCHESTER, Washington. 98579



[Signature of affiant's, line 1 and 2]

sworn to before me, this March 1<sup>st</sup> day of February, 2006.

[Signature]  
[signature of Notary]

Karen L Lewis  
printed name of Notary]

NOTARY PUBLIC

My commission expires: August 7, 2006.

FILED  
SUPERIOR COURT  
THURSTON COUNTY WASH.

'05 OCT 19 P 4:43

BETTY J. GOULD CLERK

**SUPERIOR COURT, IN AND FOR THE COUNTY OF THURSTON, STATE OF WASHINGTON**

THURSTON COUNTY

Plaintiff/Petitioner

Cause #: 02-2-00746-2

vs.

MERRILL CLIFFORD SAGER

Defendant/Respondent

Declaration of Service of:

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS AND IN SUPPORT OF PLAINTIFF'S MOTION FOR CONTEMPT; DECLARATION OF ALLEN T. MILLER IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS AND IN SUPPORT OF PLAINTIFF'S MOTION FOR CONTEMPT

Hearing Date:

Declaration:

The undersigned hereby declares: That s(he) is now and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

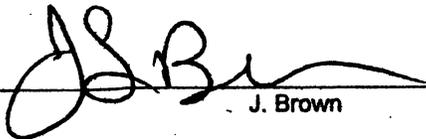
On the date and time of Oct 13 2005 5:50PM at the address of 9845 LITTLEROCK RD SW OLYMPIA, within the County of THURSTON, State of WASHINGTON, the declarant duly served the above described documents upon MERRELL CLIFFORD SAGER by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with MERRELL CLIFFORD SAGER A White male approx. 5'6"-5'8" in height weighing 160-180 lbs with brown hair.

No information was provided that indicates that the subjects served are members of the U.S. military.

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

Dated: October 18, 2005 at Olympia, WA

by

  
J. Brown

Service Fee Total: \$ 32.05

ABC Legal Services, Inc.  
(206) 521-9000  
Tracking #: 3659906



ORIGINAL  
PROOF OF SERVICE

Page 1 of 1

Pros. Atty- Thurston Civil  
2424 Evergreen Park Dr SW  
Olympia, WA 98502  
360 786-5574

**Exhibit 15:**  
**Chronology.] [See also copy of October 12, 2006**  
**“Order Denying the July 13, 2006 Motion for**  
**Reconsideration,” This order – with the judge’s**  
**chronology – is in the November 8, 2006**  
**notice of appeal. Also found at CP., pages 235-237.**

## **Chronology of Reconsideration Motions and Related Orders**

Taken from J. R. Strophy’s October 12, 2006 order denying July 13, 2006 motion for reconsideration.

May 26, 2006	Clerk authorized to issue warrant of abatement.
June 8, 2006	Sager filed motion for reconsideration.
June 23, 2006	Hearing date set for reconsideration.
July 7, 2006	Court continued the reconsideration hearing to this date.
July 7, 2006	Court denied Sager’s reconsideration motion as untimely.
July 7, 2006	Clerk authorized to issue warrant of abatement. (Am’d)
July 13, 2006*	Sager presents a full argument to reconsider county’s case and am’d July 7 order.
July 17, 2006	Court letter telling parties it would decide issue at a later date. No record of subsequent decision on July 13, 2006 reconsideration motion (until ...).
October 12, 2006*	Court signed order denying July 13 reconsideration motion.
November 7, 2006	Sager appealed October 12 denial of reconsideration.

\* Subject of appeal.

## **Relevant Text of CR 59**

The nine bases for granting a motion for reconsideration are:

- 1) **Irregularity** in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.
- 2) **Misconduct** of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;
- 3) Accident or surprise which ordinary prudence could not have guarded against;
- 4) **Newly discovered evidence**, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;
- 5) Damages so **excessive** or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;
- 6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;
- 7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;
- 8) **Error in law** occurring at the trial and objected to at the time by the party making the application; or
- 9) That **substantial justice** has not been done.



SUPREME COURT  
OF THE STATE OF WASHINGTON

2007 AUG 27 PM 1:21  
b/h

THURSTON COUNTY, Respondent  
vs.  
MERRELL C. SAGER, Appellant

APPELLANT’S REPLY BRIEF:  
SUPPLEMENT

COMES NOW, the appellant, Merrell C. Sager, and submits this two-page supplement to the August 24, 2007 reply brief from Mr. Sager.

**SUPPLEMENT FILED WITHIN DEADLINE**

The actual deadline for filing the reply brief was August 25, 2007. However, since that falls on a Saturday, the deadline is automatically extended to the next working day, which is Monday, August 27, 2007, the day of the submission of this supplement.

**ORDINANCE NULL AND VOID**

RCW 42.30 – passed earlier the same year in which the Thurston County Board of County Commissioners attempted to adopt the building codes relevant to this case – mandates openness of all meetings of, among others, all county agencies with establish ordinances, such as the Board of County Commissioners. Significantly, for this case, the code declares that any ordinances passed contrary to the requirements of this chapter shall be “null and void.” [EX. 1: Excerpts from RCW 42.30.]

This statute conclusively established the fact that a violation of the notice requirements that apply to a public agency, such as the Thurston County Board of County Commissioners means that the ordinance is null and void. In that case, such an ordinance never attains legal existence and cannot be the basis of any prosecution or civil action.

This statute also awards costs and fees to the prevailing party.

The Washington Supreme Court upheld this principle in State v. Cuzick, 85 Wn.2d 146, 530 P.2d 288 (1975) where a school board held meetings without proper notice. The court's decision stressed that violations of RCW 42.30 should not be without consequence. **[EX. 2: Excerpt from court decision.]**

Respectfully submitted,

Monday, August 27, 2007

  
Merrell C. Sager, Appellant

# Appendix

for exhibits

## Exhibit 1: Excerpts from RCW 42.30.

RCW 42.30.010

Legislative declaration.

The legislature finds and declares that all public commissions, ... councils, ... and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

[1971 ex.s. c 250 § 1.]

RCW 42.30.060.

Ordinances, ... adopted at public meetings — Notice

No governing body of a public agency shall adopt any ordinance, resolution, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

[1989 c 42 § 1; 1971 ex.s. c 250 § 6.]

RCW 42.30.120

Violations — Personal liability — Penalty — Attorney fees and costs.

(1) ....

(2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. ....

## **Exhibit 2: Excerpt from court decision**

“RCW 42.30.060 provides that any action taken at a meeting held without the required notice being given "shall be null and void." The resolution passed at the meeting of April 29 is therefore legally nonexistent and the suit for injunction was unauthorized. The parties concede, and the trial court ruled in its dismissal of the first suit, that the lack of authorization requires the dismissal of the action. Such a result is supported both by the consideration that the violation of the Open Public Meetings Act of 1971 should not be without consequence, ....”

State v. Cuzick, 85 Wn.2d 146, 530 P.2d 288 (1975)

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OF THE STATE OF WASHINGTON

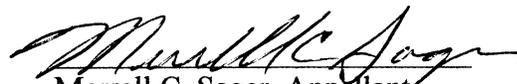
THURSTON COUNTY, Respondent  
vs.  
MERRELL C. SAGER, Appellant

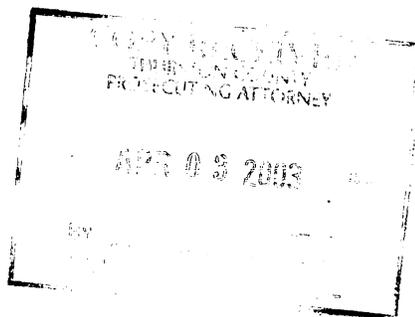
RE: MISSING PAGES FOR  
~~E~~XHIBIT # 6 (Defendant's  
second set of interrogatories and  
request for production) four pages  
APPELLANT'S REPLY BRIEF:

COMES NOW, the appellant, Merrell C. Sager, and submits missing pages for  
exhibit # 6 ( Defendants second set of interrogatories and request for production). Please  
install the pages to the August 24, 2007 reply brief from Mr. Sager.

Respectfully submitted,

Monday, August 27, 2007

  
Merrell C. Sager, Appellant



IN THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR THURSTON COUNTY

_____		
THURSTON COUNTY	)	
plaintiff	)	No. 02-2-00746-2
	)	
Vs.	)	DEFENDANT'S SECOND SET
	)	OF INTERROGATORIES AND
MERRELL C. SAGER,	)	REQUESTS FOR PRODUCTION
defendant	)	
	)	
_____		

To the plaintiff:

The following are defendant Sager's second set of Interrogatories and requests for production. Failure to answer these within the prescribed time of 30 days will result in all possible objections being waived.

**DIRECTIONS AND DEFINITIONS**

The term "you" or "Thurston County" as used in these interrogatories applies the named plaintiff and counterclaim defendants, Thurston County, and any

person or persons working for or in association with Thurston County.

The term "identify" when used in reference to a document means to describe the document, including the date and parties making and receiving it, as well as providing it's current location and custodian. When used in reference to a person, it means to give their name, job title, address, and telephone number.

If you seek to claim an exemption for any record or document, you must identify each such specific record or document, and specify what exemption you are claiming for it, and briefly describe why such exemption applies.

### INTERROGATORIES

1. Have any agents or employees of Thurston County ever entered onto defendant's property?

1.(a) If the answer to No. 1 is yes please identify the persons so acting, dates and times of their entry, and the purpose for and activities taken upon entry.

2. Have you ever obtained any warrants for the search of defendant's property?

2.(a) If the answer to No. 2 is yes please identify the date of such warrant, the cause Number it was issued in, and the issuing court, and the areas to be searched or items to be searched for.

3. Have you ever received any complaints concerning defendants property?

3. (a) If the answer to No. 3 is yes please identify the date of such complaints and the persons making such complaints as well as the subject of the complaints.

4. Has any person been damaged or rendered insecure in the use of their property by defendant?

4. (a) If the answer to No. 4 is yes please identify the date of such damage, the person or persons damaged, and the nature of such damage or insecurity.

5. Do you allege that defendant's residence or property is in any way harmful or unsafe? If so please particularly identify such harmful or unsafe condition.

6. Do you allege that defendant has violated any valid County ordinances? If so please identify such ordinances, cite the specific sections violated, and provide the dates of the public notice of and the promulgation and adoption by the County of any such ordinances.

7. Do you maintain that such ordinances were duly and lawfully adopted prior to defendant's actions in violation of their terms? If so please identify any evidence to be produced to demonstrate the lawful adoption and promulgation of such ordinances prior to defendant's violation of their terms, and the evidence of the date of defendant's violations.

8. Has any current member of the Thurston County Commissioner's ever refused to allow the State, County or any of its officers to inspect their property or septic tank?

If so please identify such commissioner, and the dates of such refusal, and identify any records of such actions.

9. Has Thurston County received taxes from the defendant for the building and improvements in question?

If so please identify any records of such receipts.

10. Does Thurston County assert that the statute of limitations has passed in relation to any of the events related to this litigation? If so please identify which events occurred prior to the tolling of such limitation period.

11. Does Thurston County deny that the statute of limitations has passed in relation to any of the material events related to this litigation? If so please identify which such events occurred within such limitation period.

12. Is Thurston County aware of any other persons building structures or septic tanks without permits in violation of County ordinances? If so please identify any such persons and their alleged violations.

13. Has Thurston County conducted any other enforcement actions or lawsuits to restrain violations of TCC 14.20.11 or TCC 14.20.12 in the last 3 years? If so please identify any such enforcement or legal action by case number, subject, and date.

14. Has Thurston County any formal or informal policies, directives, or procedures for the investigation and enforcement of the County ordinances regarding nuisances and building without permits? If so please identify any such policies, directives or procedures.

15. Has Thurston County conducted any testing to determine if the defendant's septic system is malfunctioning or discharging hazardous substances? If so please identify any such testing, and specify the laboratory conducting such tests.

16. Does Thurston County maintain that a permit is required for a private person to build on his own property? If so please identify any evidence to be produced at trial to prove that a permit is required for a private person to build on his property.

17. Please identify and describe any facts supporting the allegations made in section II.7 of your complaint.

o. Supreme Court No. 79453-7

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SUPREME COURT  
OF THE STATE OF WASHINGTON

THURSTON COUNTY, Respondent  
vs. MERRELL C. SAGER,  
Appellant

DECLARATION OF DELIVERY  
Appellant's REPLY Brief  
SUPPLEMENT , RE: MISSING  
PAGES FOR EXHIBIT #6  
(Defendant's second set of  
interrogatories and request for  
production)

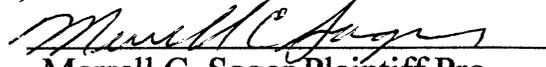
I, Merrell C. Sager, do hereby declare as follows:

1. I am over the age of 18 and competent to make this declaration;
2. On (AUGUST 27,2007), I delivered by hand (pleading/document stated above to the following parties.

Supreme Court Clerkr Temple of Justice P.O. BOX 40929 Olympia, Wa 96504-0929	Donald R. Peters, Jr. Thurston County Prosecuting Attorney 2424 Evergreen Park Dr. S.W., Suite 102 Olympia, WA 98502 (by way of main office)
---	---

I do hereby declare, under the penalty of perjury under the laws of the State of Washington, that I have read the above, and that it is true and correct.

(AUGUST 27, 2007)

  
Merrell C. Sager Plaintiff Pro  
Se Appellant