

COURT OF APPEALS
DIVISION II

NO. 37660-I-II

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

STATE OF WASHINGTON
BY *[Signature]*
TERRY

JOHN BURNELL

Appellant.

v.

THURSTON COUNTY,
a municipal corporation,

Respondent,

BRIEF OF APPELLANT

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1 **Burnell was charged in the district Court with an
unadopted code,
full warrant to search from unadopted rule,
conditions found on site then used to adopt a new rule
banning the conditions found before the rule was adopted,
Burnell likely first to be charged under new rule. 28**

2 **That downzone of Aug _____ 2001, to 1 home to 5
acres, In the growth area, After the county refused to
accept the application in Jan 2000 and down zoned the
same day as the application was "accepted" denies all
rights to that land use the R 4/8 land use allows, and yet
Requires Burnell to build to all road, aesthetic and
development standards required for the R 4/8 zone while
only allowing 1 home to 5 acres. is in violation of the
comprehensive plan, the joint city county plan and the
State growth management act.[*Berschuer v Tumwater*
2002 western Wa. growth management board No. 94-02-
0002] see page 10 **And the single most proximate cause
of the continuing conflict.7 - 33****



3 To this day Burnell continues to be denied and refused all applications for any use whatsoever. even a R 1/5 use despite the county having removed and "abated" any possibility of violation, with any and all lawful uses including but not limited to the two well houses, what said destruction and not "legal abandonment" constitutes a criminal violation of environmental law. RCW 18.104.155b[i,iv]25

Result; no home on any of four residential lots each of which had one or more lawful homes, no power, no water, no R V, no tent, no out house, etc., on \$512,000 assessed value land.

4 The use of one home per address, or parcel has never been judged a nuisance, and indeed is the only use other than agricultural [principal use of the R 4/8 zone and the R1/5 zone remains agricultural] allowed

evidence of long term agricultural use includes the "canary grass" prevalent, and the horse drawn sickle bar mower [john deere #26] present before any zoning and remaining lawful now, however all agricultural equipment other than the steel bands used on wooden spoke wheels, Burnell was able to recover, have been confiscated and sold for profit, by the county. these include but not limited to plows, disks, feed grinders, etc. these all speak to the over 100 years of agricultural and residential uses on this land.

5 However, prior to work commencing, Burnell succeeded in removing approximately 3/4 ths of the vehicles, and had demolished and loaded half of one home into a dumpster, from the Property, drastically reducing the amount of work the contractor had to do under the contract.

HOWEVER., the contractor ignored the list, and proceeded to remove not only those items photographed and with narrative, but those pictured but not decried as solid waste, AND ALL MATERAIL NOT VISIBLE IN ANY PHOTOGRAPHS including every free standing water tank under 300 gallons allowed under the building code without permit one of which was a stainless steel tank never alledged as solid waste and sold for likely \$1,800.....42

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1 Burnell first attempted to obtain permits in 1988 and 1989, for an accessory dwelling unit [ADU], and shops sheds garage or ANY type of structures. county refused to accept them in the very same way it refused to accept the application to develop in 2000.....28

2 During the five years of delay and refusal to grant those lawful permits applied for, for three single acre lots in 1990, Burnell told the commissioners at many hearings that they would be sold and Burnell would leave the county 18 years ago now..... 30

3 Despite \$60,000.00 over eight years spent on "land use" attorneys, and \$70,000.00 spent in support of the 2000 application for subdivision, including permit fee's,[2001] and Burnell's position that withholding permits obstructs the timely redevelopment of these parcels NOT ONE PERMIT HAS ISSUED OTHER THAN THE 1995 PERMITS THAT HAVE BEEN CANCELED. [IN 2008]. and the fence permit county required Burnell to pay for [did not actually require a permit], was confiscated any way, without any complaint to Burnell or court order to remove or "repair"

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A. 1 Statutes Governing Nuisances Place the Burden on the county of Proving That Any Actions Beyond "Removal" of Property Were Necessary..... 43

2 The ordnance cited is limited to the growth area and removal to any location out side the limited area constitutes abatement. *yet all vehicles removed to commercial zones in the city and well out in the county were harassed and recovery of licensed vehicles and half of the vehicles*

ordered lawful but taken anyway, were prevented from recovery outside the growth area.. 44

B No Statute Authorized the county or contractor To Assume "Ownership" of Equipment and Other Property Removed in the Abatement Process; to the Contrary, the Statute Required the county To Account for the Proceeds of Property Sold Under execution. 44

C 1 Summary judgment on "unpermitted mobile homes" does not specify all mobiles do not have permits or would have have needed them at the time of installation, and the

County shows no evidence or argument that the 1958 Safeway mobile home NEVER shown as "unpermitted mobile" [or any of the older mobiles] were installed in violation of County ordinance _____ 1975, the first ordinance requiring permits for mobile homes. or any other home installed by the previous owner. county tax record show as on this land approximately 40 years..... 48

2 Appellant asserts all federal fourth amendment rights to have a home on each and every of the four lots, including my home "**safe and secure from unlawful search and seizure...without a sworn affidavit of probable cause**"[to a criminal charge] This remains a civil issue and no criminal probable cause has been sworn. Also due process and equal treatment laws apply and demand that an application for lawful use be accepted and processed according to law, with a use granted barring *actual* limitations. 14

3 The mobile home in unpermitted structure BV 10 shows in the application for home permit [not to reconsider]as a "manufactured home" [built after 1976 _____] under all federal HUD standards and state and local laws,and is not subject to the "unpermitted mobile home" reference in summary judgment.

- 4 County is barred or esstopped from arguing that Burnell's home is in violation after [for the purpose of] entering and reaching half way, a mitigated agreement to allow development and certifying parcel 009370052001 "free of violations" then revoking the agreement, based in part on this home remaining, "without permit"
- 5 Because my home has had applications on file but no action beginning in 1997, all unlawfully denied, refused, revoked, canceled and "taken in", not "accepted" as required by due process and equal treatment laws, County can say "no permit", and yet must be considered part of the reason no permits have been issued since 1970, the same year County sued to take the south properties for eminent domain.
- 6 County on notice that simply not having a permit, does not constitute a nuisance. *Sager appellant Vs. thurston county*, July 20 2004 amended August 17 2004 No.30614-0-II
- 7 All County records show the land use on Burnell's home lot No.09370052001, as "mobile home" and assessor's records show 2 taxable mobiles connected to a taxable septic and are all lawful uses, and the health official Dale Tahja _____ said "no health dept violations"

D 1 All allegations of : "solid waste" for items not listed in usual definitions, are barred from being alleged, as not actually solid waste, in particular items listed as having some use, whether primary or secondary in thurston county's complaint. {example "**steel beams commonly used in construction" and the "lead acid batteries commonly used in power systems"**} is not solid waste; [MONTE R. LITTLETON, ET AL appellants Vs. Whatcom county No. 52094-6-1] see page 10

Indeed, those 35, \$800 each replacement value [in 1988] **were the first items to be removed from the shed and "taken" to use or sell by the contractor**, Burnell was at that time removing items and allowed to move the J V 115 Alfa Romeo to an indicated "safe" area, that then the county taped off and without a word impounded that running, licensed vehicle, and all other "safe" tools and equipment there.

2 The administrative hearing judge in 1997 thurston county v Burnell _____ ruled "construction material lawful"

E 1 Thurston county repeatably asserts as violations and further as nuisance, Items and systems over which it has no authority. To wit, temporary and permanent Electrical wiring, including the "batteries commonly used in power systems", and additions or alterations to mobile homes and manufactured homes.

these are the exclusive jurisdiction of the *Wa. State dept. of labor and industries.*

The one photographed electrical box is a hastily constructed PLUG IN TO AN OUTLET distribution after a major fire consumed two mobile homes and county refused all applications to replace or other wise improve this property. [same as the attempted replacements of 1997] additional facts

On the basis of one photograph of wiring that the county has no jurisdiction over, every piece of wire and electrical was confiscated and sold for \$3.00 to \$4.00 a pound,. hundreds of pounds, not a nuisance not solid waste, just profit to the contractor.

The county also ordered the removal of the overhead supply wire from the pole in the street to a part of the incoming box not accessible to the owner, in a manner "never seen before" by the electric company, and interfering with a lawful contract to provide power, and resulting in no power any where on four lawful parcels.

F All vehicles were hauled off as R C W 46.55.010 Hulk vehicles... It is important to recognize this is not the county growth area code. and not the county code ruled on by the Court.

It should be noted that both arrests of Burnell were the direct result of the deputy saying "thats a hulk and we are taking it later"

despite no marking, list, or truck in view to impound it " and Burnell asserting that there was no determination of hulk in any order and to confiscate as a hulk was not lawful under the order'

indeed. every thing or vehicle Burnell attempted to remove after the first week was interfered with, and Burnell arrested and ordered to "not go any where on your land and do not enter your home to retrieve you papers and personal effects"

It was this first week where Burnell removed the 48 mack and the 46 mack designated as restoration, and parts vehicle for, But county refused to allow the provision permitting said uses, and ordered them removed.

G No standard rules for impound and redemption under private or public land rules, that require notification of sale and opportunity to recover all impounded vehicles for the cost of impound, were followed, allowing the hulk hauler to take "ownership" of licensed vehicles and many ordered lawful by Judge Tabor, with out any problems of notice of sale or to the owner etc vehicles and many ordered lawful by Judge Tabor,

H The "notarized hulk affidavits ready for the bidder" [in the contract offering the the public] { *attached to the motion to increase the bill*} _____ in allow the transfer of interest to the bearer, and were required for the county to provide to Burnell the agreement to settle, [*attached to the motion for mitigation in No. 01871-3-_____*] but not provided to Burnell at the time required by the agreement to settle. In addition ,county never provided any *notorized* affidavits at all, causing delay and expense to Burnell during the agreement.

I That downzone of Aug _____ 2001, to 1 home to 5 acres, In the growth area After the county refused to accept the application in Jan 2000 and down zoned the same day as the application was "accepted" denies all rights to that land use the R 4/8 land use allows and yet Requires Burnell to build to all road, aesthetic and development standards required for the R 4/8 zone while only allowing 1 home to 5 acres.

J In down zoning Burnell's land inside the growth area to 1 home to 5 acres, **county retained all regulations of the 4/8 zone, and growth area and denied all density uses for which they are intended.**

Indeed the only change is as if county "taped over" R 4/8 and wrote R 1/5 , "1 home to 5 acres"

When searching the county code one cannot even find the R 4/8 listed in the growth area.

This has the county requiring Burnell to follow the limitations of the R 4/8 but the limitations of the R 1/5.

there was in fact no said designation as R 1/5 in the growth area and also does not match the rural 1/5 on the south and east of the Burnell



land, in violation of spot zoning rules ____ and matching adjacent zone rules _____

K This also violates the comprehensive plan, and the joint city county planing, and the state growth management act. *[Berschuer v Tumwater 2002* _____

L Even under the 1/5 zone, Burnell continues to be denied and refused on all applications for any use whatsoever.

M In contracting to remove 18 structures, where th order says 15, county went well beyond the order or concept of nuisance and in destroying and
in leaving the two well houses, open to the weather, committed a misdemeanor criminal act of unlawful abandonment with out capping the well

R C W 18.104.155

(b) A serious violation is a violation that poses a critical or serious threat to public health, safety, and the environment. Serious violations include, but are not limited to:

- (i) Improper well construction;**
- (ii) Intentional and improper location or siting of a well;**
- (iii) Construction of a well without a required permit;**
- (iv) Violation of decommissioning requirements;**

"Any person who shall violate any provision of this chapter, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than two hundred fifty dollars, or imprisonment in a county jail for a term not to exceed thirty days, or both."

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I

A

**ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO
ASSIGNMENTS OF ERROR**

1. Whether the trial court erred in the Burnell Action in granting the City's motion for entry of judgment and judgment lien and subsequently in entering judgment thereon, For items not directly in the summary judgment, or clearly not a violation by the evidence submitted .

This includes every item added after the 28 county employees that took part in the big search for "alleged" violations, [not direct or actual nuisance] as required in the abatement laws. *error #1*

2. Whether the court erred in ordering Burnell's residence removed as no judgment says it is a nuisance, only that it has no permit even though the application "taken in but not accepted" by the development counter, is for a lawful use and complete other than the counter refusing to accept the fee {unlawfully per due process and equal treatment] .The prosecutor in Court said "Burnell never made a complete application" *BECAUSE THE PROSSECUTOR TOLD THE DEVELOPMENT COUNTER TO REFUSE TO ACCEPT A COMPLETE APPLICATION.* *error # 2*

A Appellant asserts all federal fourth amendment rights to have a home on each and every of the four lots, including

**one home "safe and secure from unlawful search
and seizure..."**

B As shown in the application for my home [Motion to
restrain abatement] Received feb12 2008, shows as a 1979, it is by law a
"manufactured home" L I _____ not a "mobile home", nor an
"unpermitted mobile home" as in the summary judgment.

This is not a minor, nor unimportant distinction, nor an oversight,
as the application is on file with the county and all information is in their
hands, and indeed, in the mitigated agreement to settle, with the county
required to allow permits paid for as far back as 1998, and including that
application to develop at the minimum 4 units per acre in the R 4/8 zone
first presented for permitting in Jan 2000.

3. Whether the Court erred in ordering all "agricultural exempt"
structures for which permits were applied for and issued in 1995 removed,
as county said "we canceled these permits", And Burnell un-canceled them
by "renewing" the applications, paying all new fees and the **supervisor of
submissions, WITHHELD THE NEW PERMITS IN
CONTRADICTION TO THE AGRICULTURAL USE AND
EXEMPT STATUS, [NO INSPECTION REQUIRED, AND PERMITS
ISSUED AT THE TIME OF PAYMENT, AS WERE ISSUED IN
1995, AND EVEN NOW TO ANY AND ALL APPLICANTS OTHER
THAN BURNELL]**

The county said "these were all canceled and showed no documentation whatsoever, and in fact, Burnell showed documentation in the county records that these were in fact in force and attached to the proper parcels, on a record search in 2007. If these were canceled county regulations would cancel them in one year after application, and they would not show as in force 10 years later. These applications accepted in **1995, ONLY BECAUSE BURNELL ENTERED THE OFFICE LATE ON A FRIDAY BEFORE A THREE DAY WEEKEND KNOWING FEW STAFF WOULD BE AVAILABLE AND THE CHANCE OF RECIEVING THE LAWFUL PERMITS WAS BETTER.** Indeed the counter staff had filled out and issued the permits BEFORE director fred knostman saw me, came over and attempted to interfere with these permits. Also the accusation that an agricultural structure is a nuisance is prohibited by

R.C.W. R.C.W.7.48.300 through7.48.310 and 7.48.905:

The legislature finds that agricultural activities conducted on farmland and forest practices in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses and timber production. It is therefore the purpose of RCW 7.48.300, through7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland and forest practices be **protected from nuisance lawsuits.**

In addition, the renewed applications, complete, accepted, and paid for "uncanceled" any action by the county and allow the storage

and assembly of the structures. They are NOT CANCELLED,
EXPIRED, REVOKED DENIED, or any other than lawful permit
applications, VESTED AND LEGAL. see also
[sager app. v thurston county No. 30614-0-II, 2004] in part;
*"Sager does not dispute he is in violation of the building and
sanitary codes" and "now must determine if abatement was the
appropriate remedy"*

[Burnell however does dispute he "failed to obtain permits"
and he submitted evidence that the county has obstructed his applications]
[error #3]

4 Whether the court erred by never applying any Judicial
review to any statement as to "junk" status were the "evidence" presented
by the county [guy jaque] many clearly did not meet the requirements of
the code enforced .
meet the code as junk in any way, and "jv 46" says "contains toys" [in
November? is it a violation for a vehicle to contain toys? December? all
of these are laid out and refuted by Burnell in the spreadsheet attached to
the motion to restrain. [error #4]

5 whether the Court erred in never reviewing any allegation
of solid waste, or construction debris. in every case where a structure or
vehicle was described as "full of solid waste" and yet the photo showed
new milled lumber, or a Baldwin piano, or a Hammond organ or otherwise
undamaged items not normally taken to the dump, or considered garbage.
Indeed, the largest of the "unpermitted" structures clearly contain tools
and production equipment such as drill presses, lathes, and in particular,

the lead acid batteries are not cited as illegal or a violation of any sort in fact county said "used in power systems"

Also the random or malicious accusation of solid waste for any thing with a use remaining is barred by the Wa. State Court of appeals determination in [Littleton v Whatcom County

No. 52094-6-I 2004]in part;

"relying on DOE's definition, Whatcom County and the trial court interpreted chicken manure as being solid waste, thus requiring Littleton to obtain a permit."

"Littleton argues that, despite the DOE regulations, agricultural manures used for agricultural purposes are not solid waste under RCW 70.95. Littleton argues that the word "waste" in the "solid waste" definition implies that the material is useless and intended for disposal. Therefore, agricultural manures used in agricultural operations are not "waste" because they are still intended for .The dictionary defines "waste" as a "damaged, defective, or superfluous material . . . material not usable for the ordinary or main purpose of manufacture . . . SCRAP . . . **worthless material**... removed in mining or digging operations . . . refuse from places of human or animal habitation . . . GARBAGE, RUBBISH . . . EXCREMENT . . . SEWAGE." n17 This definition of "waste" means that it is, as Littleton argues, something superfluous and incapable of reuse. DOE's regulations state that agricultural manures constitute waste, presumably in spite of its ability to be reused."

WE AGREE... AND REVERSE] [error #5]

7 Whether the Court erred in granting the additional costs to the contractor for work actually performed after the end of the contract and for removal of items not ever cited as unlawful under the order, and contrary to the order itself, indeed the contractor began dismembering and damaging the fence two weeks before the completion of the contract and **on the last day of the contract significantly damaged a portion just in front of cedrona and where Burnell had posted a copy of the fourth amendment**, VIOLATION OF THE FIRST AMMENMENT, and county staff were there to say "fence damaged" and had a letter IN HAND ordering the removal[the same day the major damage occurred] the county returned after the expiration of the contract and without a court order and unlawfully removed all remaining agricultural and special use equipment and the 900 foot cedar fence never cited as a violation under the order. *This all violates the Courts order to make all allegations several months before the contract began and involved the county on the last day of the contract searching and seizing without any order whatsoever*, for the search and new allegations, and no court order for the subsequent seizure. The prosecutors letter citing "this is in reality an administrative action " does nothing to alter the fact that the same contractor and the same deputy occupation force were out to seize unauthorized [for seizure]equipment and the fence . There is no administrative action that allows this and indeed the county said in the newspaper "the fence must go" and that "county will go to Court for the additional expense" and indeed despite the fraudulent filing showing and incorrect date for the additional expense, that the additional expense derives from at least in part the return after the fact for unauthorized removal. The only other possibility is that the contractor did not charge

anything to remove "all remaining equipment deemed to be *solid waste* under the abatement order". Solid waste has no value and by law must be taken to a licensed solid waste handling facility, and yet all this "solid waste "was taken and sold for profit, Unlawfully converted to the benefit of the county and contractor.

In addition the calling for the hearing six months after the contract was complete violates state law requiring the an accounting of expenses and credits be given to Burnell within 14 days of the completion. It should be noted that in supposedly sending notice of the hearing to an address destroyed by the county and for a hearing date and time where Burnell is required to be in a different Court, [Burnell never received said notice [timely]and could not have attended.]

Also in addition to endless damage and removal of unauthorized material, including but not limited to all of the plants in the green house [agricultural building] "bv 7" and "bv8" [same bldg.] Also for consideration of costs is the fact that as the contractor removed the "structural steel commonly used for construction " there was the operator of the equipment, one employee helping to not damage the "debris" and three employees watching.[at prevailing wage}.and end less documentation of slow and inefficient operations, including an excavator sat running [and billed by hour] for 1/2 hour. The Court never reviewed the contract or approved its terms. error #7

8 Whether the Court erred in allowing such redefinitions of commonly used words to allow "structural steel commonly used for construction" to be considered "solid waste" or "construction debris " for the purpose of removal, then not taken to the dump but to private property

for the use of the contractor. "s w 6b" shows the steel for the permit to my home and garage called "construction debris". In an engineered steel structure there are no pieces left over or "debris" from the construction as every part has a number and a location.

All laws relating to allowed storage of material for construction, in particular when a permit application is on file.

error 8

9 Whether the Court erred in allowing the removal of homes built in 1930, BV 3 and 1935 BV as unpermitted or unsafe when when the summary judgment DOES NOT specify unpermitted or unsafe structures but for unsubstantiated allegations of unsafe or not meeting code.[not in the summary judgment] BV 3, shows none of the alledged faults in the narrative, and BV 11 was cleaned up well before the action. At no time were these judged a nuisance and do not meet the criteria. All permits to repair or replace BV have been refused or denied or "tabled" error # 9

10 Whether the Court erred in not allowing any "antique or Restoration vehicles" as permitted by the code and or the "two junk vehicles allowed if they are screened from view" _____error #10

11 Whether the Court erred in allowing allegations of "unpermitted structures" to be added to the determination of nuisance granted in summary judgment *when the summary judgment DOES NOT SPECIFY UNPERMITTED STRUCTURES, OTHER THAN MOBILE HOMES. IT SHOULD BE NOTED THAT ALL MOST ALL ORIGIONAL MOBILE HOMES WERE PLACED BY THE PREVIUS OWNER AND AT A TIME WHEN PERMITS WERE NOT REQUIRED [contrary to the testimony of*

enforcement that they were a violation] BECAUESE THEY HAD NO PERMIT. WHEN IN FACT THEY ARE LEGAL WITHOUT A PERMIT AND IN ANY EVENT A PROPER EVEDENTARY HEARING SHOULD HAVE BEEN REQUIRED. error #11

12 Whether the Court erred in allowing the removal of Burnell's home, BV 10 what clearly is a 1979 "**manufactured home**" not an "unpermitted mobile home" as in the summary judgment, In any case where the question of the county refusing to accept a lawful application, complete but for the fee that county refused to accept, should require a hearing on the facts. Also the code clearly allows use of an RV or mobile/ manufactured home, assotiate with the permit application made in 1997 and attempted renewed and "taken in" not accepted Feb 11 2008 .but obstructed. Of note is the prosecutors remark that this application was only made months after the order, and yet we=as in fact first applied for in 1997. *error 12*

13 Whether the Court erred in disregarding the motion to restrain portion that reads "Any vehicles in substantially similar condition as those ruled on directly as lawful, are lawful" *error #13*

14 Whether the Court erred in allowing additional costs for additional "work" or "expense" for work clearly shown as a separate item on the "bill" that shows no accounting for tonnage at the dump, or tonnage at the recyclers, for which the contractor was paid often \$200 a ton, and should pay all that to Burnell. *error 14*

15 Whether the Court erred [or the county willfully failed to provide the 200 square foot or less exemption to the code] in ordering the abatement of any structure under 200 sq. ft.[BV 12 and several others not listed as BV , and not in the order, but these additional lawful structures are listed in the contract ,18 where, the BV list shows 14 as there are two photos of BV 7-8 [same bld] Also the code provides that these no permit required structures "are allowed to exist in the buffer area", and this provision was also not submitted to the Court by the county, which has falsely alleged that they are unlawful. error 15

16 Whether the Court erred in granting a broad search for violations, [regardless of whether they are nuisance] most of which had never been alleged before and none of which constitute a nuisance under the law.

In part, as Burnell has shown repeated and corroborated [by the previous owner, No. 03-2 01871-3 affidavit of Jack Franks], evidence that the county has engaged in some level of obstruction to permits and development of any kind, and that Burnell has indeed attempted to obtain permits repeatedly, and doggedly, short only of Court action to enforce said applications, and that if indeed the only violation is no permits then

1 simply not having permits does not constitute a nuisance,

2 as this is an abatement of a nuisance action, no warrant for any thing other than a public nuisance should be issued and then only on probable cause. Simply having the alleged nuisance of junk vehicles including running porsches [no dents no criteria under the code] licensed alfa romeo, many that do not meet the code as "Junk" and allegations of out door storage of "solid waste" that include all of the construction

material on site for the assembly of those very structures applied for and suitable for the lawful storage of said "solid waste" indoors, do not meet the requirements of probable cause for searching to find unrelated and mostly invalid allegation.

Indeed the county has turned this into a witch hunt and everything the county encountered was interpreted and alleged as a witch, and condemned to die a violent and painful and expensive [to Burnell] death.

3 As there are previously no building violation allegations other than unpermitted mobile homes, [even these are shown to have evidence of obstruction by the county] nor any affidavit of probable cause,

No search for anything should happen, or for other than actual nuisance [and then requiring an affidavit of probable cause] should take place, or A full and proper hearing on the permits is called for, and the appeals Court should reverse and end the searches, or remand for said hearing. *error 16*

17 Other than summary judgment on certain issues, manufactured homes and alleged [falsely] zoning or buffer or stream [where the "stream" is in fact a ditch or canal and shows on the wetland report in *[Burnell's affidavit in support of motion to restrain]* are not alleged or supported by affidavits of probable cause, and no warrant to search is lawful for any thing not so supported.

None of these additional allegations are a nuisance and The county does not even assert that any other nuisance may exist with out any attempt to identify an enumerated nuisance.

The county has failed to show actual damage or injury to the surrounding property by the manufactured homes or the site built homes,

or any other structures. The home on 09370043000 may not look great as it was ordered unoccupied and all attempts to repair or replace have been obstructed since 1994, but in not a nuisance, or violation of any kind.

There is a genuine issue of fact as to whether simply not having permits is a nuisance, and no summary judgment has been granted in these issues.

The search is un warranted and should be reversed. [*Sager app. v thurston county*] *In part;*

there was evidence sager was violating the building code... But whether there is evidence to satisfy the administrative warrant requirements should be decided upon each application for a warrant to enter sager's property.

error 17

17 Did the Court err in ordering "JV 078, then "J V 006",[motion to restrain], removed. substantially simalar to all others ordered lawful, after the Judge said "appears to be photographed in a manner intended to misrepresent its condition". one time the Court says trick or manipulated view, and the result is a lawful licenced running [driven off the land after the deputy said "I will arrest you if you take it off" but then NOT ARRESTED]. If the photos of Burnell failed to show paint in poor condition, the paint is not a lawful criteria for junk and cannot be considered a criteria. Also please look through the photos submitted by county for close up and or other angles chosen to high light alleged criteria, and not a veiw that shows any good aspect. JV, 115 shows a dented bumper and yet no other criteria shown, and the screening has bean manipulated the show only the bumper and not any other view. This was moved to an agreed "safe area, licensed, and running yet taken as hulk any way. It also was repurchased for Burnell at a closed door private sale with no title for \$600, approximately ten times the value of scrap,

after several dents incurred in the confiscation, and several parts illegally taken or sold by hulk hauler, and never allowed recoverable to the actual owner, Burnell. Also the JV 44 has a good paint, tires, running, one taped window in not a criteria, and the view appears manipulated to show only the window. many others such as the semi trailers, JV 71 and JV 94 have no dents, and the view appears to show only a very small amount of the trailers and the criteria do not meet the code and the tires were replaced on JV 94. more of JV 94 is visible in JV 93 than in 94 and no dents etc.also the photo of JV 69 shows only one tiny portion, no dents etc. lists "full of plywood" when no plywood exists and the contents are not a criteria, This bus was freed of moss, painted, licenced and show to be running, and inside can be seen more "lead acid batteries commonly used in power systems". Resulting in the contractor going out of sequence, moving a huge bus ordered lawful, Jv111, damaging it in the process, and confiscating the \$10,000 dollars of batteries and inverters and assotiated tools. this had no dents no flat tires neve had criteria as junk, yet taken for the profit of the contractor. so many other veiws are likely manipulated, I invite your review. *error 18*

19 Did the Court err[or the county provide known false affidavit] in ordering "BV 2" removed as an "unpermitted mobile" when it is in fact a "manufactured home" and was on 09370053000, the second lot certified "free of violations" by the county in the agreement to settle.

also the "BV 4" is clearly located on the same parcel "free of violations".
and JV 12 Bruce Ginn's Toyota motor home is on the same parcel, and
the code allows temporary housing after a fire _____ and substandard
agricultural residences _____. the JV 16 Winnebago is on the same lot and
does not meet the criteria. And never shown as a JV at all, is the later
identified residence of Monica Ginn in a motor home that does not meet
the criteria for junk, not listed as junk only as a residence. Residential use
of a motor home is lawful in this zone but requires a permit for 5 square
feet of concrete pad for the tires, applications refused and NO MOTER
HOME HAS BEEN CALLED ANY THING BUT AN R V, WHICH IS
REGULATED BY THE CODE, WHERE LIVING IN A MOTOR HOME
IS NOT.

error 20

21 Whether the Court erred in disregarding the letter from the
prosecutors office soliciting complaints and stating "we will force John
Burnell to sell his land".attachment to _____.

This is not a lawful goal for a municipality, and my show bias
sufficient to motivate them to obstruct permits, and deny avery possible
land use including but not limited to agricultural, residential, farm type
light industrial use and the licensed operating commercial business known
as J and B repai, lawfully continuing on this land, but all assets, projects
tools equipment etc. removed and destroyed or used or sold for profit by
the contractor. .

II.
STATEMENT OF THE CASE

A. Introduction.

In the actions below, respondent Thurston county moved for entry of judgment and a judgment lien against four parcels of defendants' property, where the District Court only judged one parcel in violation of a growth area code, not as a nuisance. Judge Stilts also made several open court determinations that "any vehicle there as of before 1980 was lawful" and that the "extensive moss was evidence they had been there since before 1980", and "vehicle license tabs expired before 1981 were evidence they were there before 1980."

In the testimony of david farr, county inspector "you don't see moss like that very often" and "you can not see much from the road" detracts from the possibility of a nuisance. Indeed, only after an unlawful entry by david farr were he searched and seized evidence without a warrant, did send a "determination of violation" , to an unadopted code adjudging me guilty and requiring me to remove all vehicles for compliance. After discussion of lawful uses, and some removal, and that they mostly had been there since before adoption of any zoning and in particular that Burnell found no code as charged in the county,

1 **Burnell was charged in district court with an unadopted code.**

full warrant to search from unadopted rule,
conditions found on site then used to adopt a new rule

banning the conditions found before the rule was adopted,
Burnell likely first to be charged under new rule.

In Jan 2000 Burnell appeared in Court and made a motion to dismiss, as there was no such code, to which the prosecutor [Jeff Fancher in this and only this hearing] said it was "part of an older code book and the Court refused to dismiss. after hiring and suffering the failures of allen miller to gain dismissal for an unadopted code and failure to appear at a hearing to amend to a code adopted three days before the hearing, and 361 days after I was charged. This allowed the county to proceed while not allowing any appeal of the "determination of violation" from mr. farr . This also meant that after a warrant less search, and then a full search based on a warrant to an unadopted code and the photos taken in the warrant less search led to adoption of a code that specified the conditions found before the adoption as a violation.[extensive moss and or vegetation around the vehicle] Even then Judge Stilts ruled that " extensive moss was evidence of them having been there since before 1980" and "license Tabs expired before 1981 a s evidence they were there as of before 10980 and as such "were lawful" That included 70 vehicles. And despite the code allowance of a nonconforming use "to expand by up to 50 % " the prosecutor refused to agree that the Judge was correct and that all other vehicles were then the violation. There were 30 with tabs expired after 1981 most all were removed before the onset of the superior court filing. But despite the attachment of the Superior Court to the lower Court's, no open Court rulings meant anything, although Burnell relied on the Judge having more authority than the prosecutor.

The Superior Court later entered orders declaring a nuisance on each property, directing appellant to abate the nuisance, and permitting the

county to enter and abate and to recover the costs of such abatement, not subject to giving any "salvage credit" for vehicles, equipment, and materials removed, in violation of R C W _____ No party had asked that the court enter judgment or otherwise declare the applicable "cost" or "salvage credit" even when the county presented its motion.[direct willful failure of attorney kalicow] In so denying any credit to Burnell. and the Judge never reviewing any allegation for actual violation, the door was open to taking any and all property, and using, selling or scraping to the profit of the county and its contractor. It should be noted that at the time of the action the hulk haulers paid cash on pickup for any and all vehicles, and Burnell was charged for the action of the contractor in calling the hauler, and denied any credit. Also any alleged "solid waste" that in reality was either valuable tools or equipment was hauled off at cost to Burnell and sold for profit, vehicles often exceeding the scrap value by 500% or more. Just one example is the "jv 115 " licensed months before the action and Judge Tabor said "licensing was a strong indication that it was not junk", was sold for \$600.00 after the county declared it to be a "hulk vehicle" under R.C.W.46.55.010 which states

"a junk vehicle MUST meet three of the following; must be more than three years old, Must be extensively damaged, Must be apparently inoperable, or Must have no value greater than the approximate value of the scrap in it.

It is very important to note that this is not the county code ruled on by the Court

and that a "Hulk hauler".cannot take it without this affidavit of R.C.W. hulk status, and by then selling it for more than scrap, shows that

not only is it not a hulk but clearly has value well beyond scrap and CANNOT LEGALY BE REMOVED UNDER THE R.C.W. and the COUNTY SIGNED A FALSE AFFIDAVIT not only to profit from taking Burnell's property but then denying any opportunity to recover said vehicle as required by state abatement law at an auction or by paying the haul fee. One more consideration is the Judge only ruled on a growth area county code that does not apply to the parcel south of me or the parcel east of me [both a 1/5 zone that allows 1/5 zone uses]

This means as soon as the vehicle passes out of the growth area, It is not unlawful.

According to the county, all it had to do to establish a judgment and lien against the Burnell was to add up the alleged costs in fact incurred by the county under its contract with its abatement contractors, despite that the contract was let as to a sum certain and then increased, [putting any competition at a disadvantage] despite undisputed evidence that the Burnell was not to receive the credits due him pursuant to state law. In the one late billing to show there was cause for additional payment for their work there is no accounting for tonnage of solid waste, or sale of "scrap metal" for salvage but a bill for one day of pre work testing, one for the actual contract showing only some "cubic yards" hauled to dump and for sale, but no tonnage as billed by the dump and no tonnage as paid for the scrap metal. This renders any comparison of costs impossible and salvage incalculable. In contrast the contractor hired by Burnell hauled far more tons and yards for much less cost.

The problem with the county's argument, and the trial Courts' judgment, is that the orders the county and the trial court relied upon, simply do not shield the county under established law. In fact, the county vastly exceeded the authority granted by the court order by entering into a contract with advance environmental inc., and in administering that contract, in a way that utterly deprived Burnell of the substantial value of materials and equipment the contractor hauled away. To date, the county and its contractor have failed to render any accounting of that value, which has been converted by the county through the acts of its contractor.

Attorney kailcow failed to argue that the trial court should require the county to account for property removed before allowing the county to recover any sum whatsoever. In the alternative, kalicow should have asked the trial court to deny each motion because the county failed to present to the court the true costs of abatement because the county utterly failed or refused to account or to credit the Burnell with the value of property removed. Finally, the contractor damaged the Burnell's property in performing the abatement work; the Burnell is entitled to a setoff for the cost of restoring the property to its pre-abatement condition. The trial court never considered any of these issues because kalicow failed to raise any requirement that the county follow state law. Consequently, if the Court of Appeals reverses, it should remand this case to allow the trial court to consider each of the issues to damage offset and salvage value.

In any case the county reviewed only one bid to abate Burnell. This bid and the contract allowed no salvage value to Burnell and this same contractor does all the abatements for the county. With no apparent competition whatsoever. This contractor never stopped at what was alleged as junk or nuisance and indeed removed almost every thing

including but not limited to 3 t v antennas, two running lawnmowers with mower decks [leaving only the one that had no mower deck] and a very expensive Stihl brush cutter, but left one they ran over and one that was broken. In any event of the 115 "junk vehicles indicated by the county all but 30 were removed by Burnell before the action began, but the cost to abate only went up by \$11,000.plus the cost of on average 2 deputies and several county persons who only interfered with the speedy removal of items and vehicles by Burnell after he was hooked up to and ready to remove a vehicle, saying "oh no we are going to take that one later and if you do not stop removing we will arrest you" and indeed Burnell was arrested twice for following the Judges order to remove them. [at no time does the Court order Burnell to stop removing vehicles.

2 That downzone of Aug _____ 2001, to 1 home to 5 acres, In the growth area After the county refused to accept the application in Jan 2000 and down zoned the same day as the application was "accepted" denies all rights to that land use the R 4/8 land use allows and yet Requires Burnell to build to all road, aesthetic and development standards required for the R 4/8 zone while only allowing 1 home to 5 acres. is in violation of the comprehensive plan, the joint city county plan and the State growth management act. And the single most proximate cause of the continuing conflict.

[Berschuer v Tumwater 2002 western Wa. growth management board] in part; "After review of the record and considering the arguments of counsel, we conclude that the SRLUPO area designations of 1 DU/Acre and 2-4 DU/Acre are not in compliance with the Act".[GMA]

3 *To this day* Burnell continues to be denied and refused all applications for any use whatsoever, even a ***R 1/5 use*** despite the county having removed and "abated" any possibility of violation, with any and all lawful uses including but not limited to the two well houses, what said destruction and not "legal abandonment" constitutes a criminal violation of environmental law. _____

Result; no home on any of four residential lots each of which had one or more lawful homes, no power, no water, no R V, no tent, no out house, etc., on \$512,000 assessed value, land.

B Background.

1 Burnell first attempted to obtain permits in 1988 and 1989, for an accessory dwelling unit [ADU], and shops, sheds, garage, or ANY type of structures. county refused to accept them in the very same way it refused to accept the application to develop in 2000.

At the time the only limitation on an ADU was that it "be less square feet than the primary unit, now however they are limited to 800 sq.ft.

The "steel beams commonly used in construction" shown on the trailer ordered lawful in the order to restrain abatement, J V 70in 1988 are for use in one of the permits attempted, and not solid waste. county however took and destroyed the lawful trailer and the construction material any way.[a tree has fallen on the load, obscuring the view, and county says "solid waste".

3 Despite \$60,000.00 over eight years spent on "land use" attorneys, and \$70,000.00 spent in support of the 2001 application for subdivision, including permit fee's, and Burnell's position that withholding permits obstructs the timely redevelopment of these parcels NOT ONE PERMIT HAS ISSUED OTHER THAN THE 1995 PERMITS THAT HAVE BEEN CANCELED. [IN 2008].

And the fence permit county required Burnell to pay for [did not actually require a permit], was confiscated any way, without any complaint to Burnell or court order to remove or "repair".

At all relevant times, appellant owned one parcel from 1987 and four properties after 1994 situated in the county of thurston: First, a three-acre property at 2923 Kaiser Rd. Purchased in 1987, second, a six acre

property including three separate parcels at 2930, 2932, 2934, 2936, 2940 Kaiser Rd. purchased in 1994. The home on the north parcel was condemned after a minor chimney fire in 1994 and all attempts to repair, replace or rebuild, refused, THIS INCLUDES THE STEEL BUILDING APPLICATION FIRST MADE IN 1998, AND RENEWED [with more fees paid] in 2007

At all times, Burnell has either had lawful applications for conversion or redevelopment to lawful uses, in "process" or as of 1988, as Burnell attempted to make applications for accessory dwelling units or accessory structures, only to have the county refuse to even accept an application. The county represented that it would in no way comply with due process or equal treatment, and that Burnell would "NEVER RECEIVE PERMITS OF ANY KIND". This includes the refusal to accept an application to develop 27 lots as required by the R 4/8 [homes per acre zone], county refused to accept the application in Jan 2000 and then only after "forcing" the issue did they accept an application, a year and a half later, on the same day of down zoning to allow only 1 home to five acres, in defiance of the joint City county plan and the comprehensive plan, where growth is to be directed to the growth area at densities considered "urban", 1 home to five acres is not an urban density and the regulations applied to Burnell REMAIN THE HIGH DENSITY RULES NOT THE 1 HOME TO FIVE ACRES RULES OF ALL OTHER 1/5 ZONES.

It is a violation of the joint plan and the comprehensive plan and the GMA to create an ENTIRELY **new zone** of low density in the urban growth area, and indeed, the rural zone of 1 home to 5 acres is in fact the very same zone as the R 4/8 with a new name.

All development requirements as to roads , setbacks access and the use of accessory structures, and any uses, are of the R 4/8, and NO R1/5 USES ARE PERMITTED TO BURNELL TO THIS DAY.

It should be noted that in destroying my one home on a 3/4 acre lot, county has disregarded even the most minimum use allowed by the code 1/5 and violated the 4th amendment to the constitution of the United States of America.

My then attorney miller, had delayed my application until the day of the down zone and failed to appeal the rezone or take any action to enforce the joint plan or comprehensive plan.

It should be noted that in the down zone ALL uses have been denied including the one home per lot as allowed.

Not any of the lots are as large as five acres making the 1/ 5 impossible achieve, and indeed Burnell testified at public hearings on the area plans that "at currant zone R 4/8 all uses on my land are lawful nonconforming uses as my lots are TO LARGE to be 4 to 8 homes per acre, and down zoning to 1 home to 5 acres makes all uses nonconforming as they would now be TO SMALL for the R 1/5 zone,IF *THE COUNTY ALLOWED ANY LAWFUL USE TO BE PERMITTED THAT WOULD DISPLACE AND REMOVE ALL OTHER USES* . the commissioners asked "if there were any other applications that would be affected" and as there were none, chose to go ahead with the rezone, as Burnell was the only affected persons[s].

3 During the five years my application to develop from 1990 to 1995 [SS 2435] was delayed and denied and expired, [After director fred knostman insisted that I will never see these permits] I

appeared at all joint plan and comprehensive plan and area plan hearings to advocate lawful process of these applications, and I indicated the on receipt of these lawful permits I would SELL THE LAND AND LEAVE THE COUNTY now 16 years ago. Burnell also testified that as "the cedrona development was very different and incompatible with present uses,[CITY DENSITY OUT SIDE THE CITY LIMMITS] and that allowing my applications to proceed lawfully, would prevent the very conflicts that have arisen.

The superior court entered findings and conclusions and judgment granting injunctive relief, which included an order that all "junk vehicles" and objects [identified by county submissions], NOT EVERYTHING ALTOGETHER, be removed from the Property including all those associated with the lawful residential use of the property.

4 The use of one home per address, or parcel has never been judged a nuisance, and indeed is the only use other than agricultural [principal use of the R 4/8 zone and the R1/5 zone remains agricultural] allowed

evidence of long term agricultural use includes the "canary grass" prevalent, and the horse drawn sickle bar mower [john deere #26] present before any zoning and remaining lawful now, however all agricultural equipment other than the steel bands used on wooden spoke wheels, Burnell was able to recover, have been confiscated and sold for profit, by the county. these include but not limited to plows, disks, feed grinders, etc. these all speak to the over 100 years of agricultural and residential uses on this land

Following entry of the order, Burnell continued removing objectionable vehicles from the parcels.. The abatement of the Property was scheduled to commence and Burnell was never ordered to stop and indeed nearly any and all efforts to continue were prevented by the county including calling all equipment or trailers used to do so as new violations.

despite the letter from guy jack before the abatement began stating "the wood boat j v 28 had been abated " as to nuisance, it was destroyed any way. By state law, a boat in not a vehicle, and this did not meet the definition of junk under the code, and was indicated by the county as "abated" but was destroyed any way. In addition it was lawfully in one of the permitted structures and legal there.

As indicated in Burnell's affidavits,[to enter mediation No.03-2-01871-3] and the record Burnell and the county entered into an agreement "to allow development" and "dismiss both lawsuits" despite Burnell meeting the first two deadlines [of four] and the county violating the agreement to accept the application as if it were 2001, the county changed the requirements to force 2 applications rather than one, this resulted in not only the expense of new fee's to the county, but much more to be spent on the new applications.

In that two applications were now required and Burnell was certified as half way through the agreement, one might think that one application could be allowed and Burnell had a buyer, BUT NO, not only was Burnell refused the ability to sell an "accepted application", in order to pay for further improvement, but all the definitions and requirements changed as to render further compliance impossible.

Not only attorney kalicow's failure to tell the development designer to have it ready on the due date, but when the application was received late, [granted extension for the application], ***BEFORE THE 28 DAY PERIOD TO RESPOND WITH ANY ISSUES AS TO COMPLETENESS, COUNTY SENT A LETTER STATING "LOGGING ON PARCELS 009370052001,[my home residence parcel] AND 09370052000 IS AN ILLEGAL CONVERSION OF FOREST LAND TO RESIDENTIAL AND YOU ARE SUBJECT TO A SIX YEAR MORATORIUM ON DEVELOPMENT"*** issued by mike kain, who then later swore the false affidavit of my home being in the buffer and near the creek, I T IS CLEARLY CONTRIDICTORY TO ALLEDGE A CONVERSION OF FOREST LAND BY LOGGING AND THEN TO FIND LATER THAT IT WAS NOT A VIOLATION AND TO THEN FURTHER SAY THAT THIS AREA IS IN A BUFFER, OR NEAR THE CREEK,

IT WOULD HAVE BEEN A VIOLATION TO LOG THE BUFFER , BUT NO SUCH ALLEGATION WAS MADE AS IT IS NOT IN THE BUFFER.

Further mike kain indicated that a sawmill was "in the buffer" but the buffer was logged and clearcut and a building site created, [with no violation.] never mind that these allegations were found to be false by the county six months later, the moratorium, succeeded in preventing a complete application, but was also used to stop Burnell from building the steel structure, *despite the fact the moratorium was applied after the application [for the building] was vested, and does not apply to the lawful*

one home per lot, and accessory units, permitted. It is important to note that the county had required by letter that this building "must have storage for junk cars" [not a lawful requirement] and refused it anyway.

BUT THIS WOULD HAVE PROVIDED A LAWFUL PLACE FOR MOST TOOLS, LARGE LEAD ACID BATERIES AND ANY OF THE BOATS AND PORSCHES, ALFA ROMEO, JAGUAR, MERCEDES BENZ, ETC. AND PREVENTED THE HUALING OFF FOR THE USE OF THE CONTRACTOR THE ACTUAL MATERIAL FOR THE BUILDING. and of course the permit was refused unlawfully.

The county entered into a contract with advanced environmental inc. the contract was for a sum certain, although the Contract price changed, as noted below. Although the abatement order only authorized the City and its contractor to "remove" various vehicles, equipment, and materials, the Contract in fact did not declare that property to be removed or salvage value would belong to contractor..It did in fact say that "this is to comply with all applicable laws"

Although the trial court's abatement order only authorized the City and its contractor to "remove" the subject vehicles, equipment, and materials, and even though Burnell had the right (indeed the obligation) to remove that property, county interfered both during the mitigated agreement by failing to provide to Burnell dozens of the "hulk permits" required by the agreement to be provided, [and other actions] The contract specifications state "notarized "hulk permits are ready from compliance" [NO NOTARIZED "HULK PERMITS WERE EVER

PROVIDED TO BURNELL", And included an inventory of items to be removed from the property. This inventory appears to be any item with photographs and narration, AND all Contractor presumably based its bid upon that inventory – both in terms of the costs of abatement and the resulting salvage windfall.

5 However, prior to work commencing, Mr. Burnell succeeded in removing approximately 3/4 ths of the vehicles, and had demolished and loaded half of one home into a dumpster, from the Property, drastically reducing the amount of work the contractor had to do under the contract. HOWEVER as the contractor ignored the list, and proceeded to remove not only those items photographed and with narrative, but those pictured but not decried as solid waste, AND ALL MATERAIL NOT VISIBLE IN ANY PHOTOGRAPHS. including every free standing water tank under 300 gallons allowed under the building code without permit one of which was a stainless steel tank never alledged as solid waste and sold for likely \$1,800.

This and the criminal destruction of all wells and underground plumbing has rendered this now solely agricultural land [in the residential growth area], without water for any use.

Rather than congratulate Mr. Burnell on his compliance with the court's order, the county concluded that Mr. Burnell's actions deprived the contractor of a portion of its expected windfall, only approximately 1/4 th of the vehicles, remained for contractor to remove. including half of what the Judge ordered lawful, But the county's "solution" was to keep the "base bid" originally made by contractor (despite having to do only half

the work). This contract specifies 18 structures to remove although the order is 15.

Many pieces of heavy equipment were taken to Allens Hulk yard. Burnell personally visited the yard and photographed many pieces of equipment formerly located on his Property there. They were not scrapped but indeed witnesses indicate some are in use by the operator. In all of these cases, the Burnell received no credit, and the county failed to account for what now can be characterized as nothing other than stolen property.

Damage to the property committed by contractor has not been repaired.

Nowhere did the county point to an order of any court that addressed these issues, among others:

- The Authority of contractor or the county to convert property removed from the owners land.
- Whether such property should be disposed of pursuant to RCW 6.21 (see below);
- Whether the county or contractor, in converting removed property, exceeded the scope of the court's prior orders;
- Whether Burnell was given full credit for the "salvage value" of property removed; and
- Whether the county properly managed the abatement contract, given that the Burnell had removed most of the vehicles, prior to commencement of abatement activities.

ARGUMENT

A

1 Statutes Governing Nuisances Place the Burden on the County of Proving That Any Actions Beyond “Removal” of Property Were Necessary.

Statutes applicable to nuisances are set forth in chapter 7.28 of the Revised Code of Washington. They strictly limit what any actor, including the City, may do to abate a nuisance. The statute makes one abating a nuisance liable for acts causing unnecessary harm. RCW 7.48.230 permits anyone to “abate” a public nuisance only “by *removing, or if necessary, destroying* the thing which constitutes [a nuisance], *without ... doing unnecessary injury.*” See also *Nystrand v. O’Malley*, 60 Wn.2d 792, 375 P.2d 863 (1962) (finding defendant had no reasonable necessity to remove hedge; consequently, defendant held liable for unnecessary injury under RCW 7.48.230); *Kaler v. Puget Sd. Bridge & Dredging Co.*, 72 Wash. 497, 130 P. 894 (1913); *Rhyne v. Town of Mount Holly*, 112 S.E.2d 40, 46 (N.C. 1960) (“Where a municipal corporation, in the exercise of its governmental power to abate nuisances, enters upon and damages private property by the destruction of trees, buildings, etc., thereon, it is liable for the payment of just compensation unless its acts were in fact necessary to remove or abate a nuisance.”); *City of Forney v. Mounger*, 210 S.W. 240 (Tex. App. 1919) (abatement of nuisance by city must be limited by its necessity; no unnecessary damage to property must be permitted); *J.G. Miller v. Burch*, 32 Tex. 208, 1869 WL 4801 (Tex. 1869) (same); *Sings v. City of Joliet*, 86 N.E. 663, 666 (Ill. 1908); *City of Orlando v. Pragg*, 11 So. 368, 371 (Fla. 1893). Specifically, the statute

does not authorize “destruction” unless “removal” is insufficient. Further, the statute does not permit one who abates a nuisance to convert items removed.

That any of the misdeeds alleged by Burnell were performed by contractor, and not county employees, is irrelevant. Where, as here, the county enters into a contract to abate a nuisance, the contractor is deemed the county’s agent, and the county is liable for the acts of the contractor. *Kaler v. Puget Sd. Bridge & Dredging Co.*, 72 Wash. 497, 130 P. 894 (1913).

B. No Statute Authorized the county To Assume “Ownership” of Equipment and Other Property Removed in the Abatement Process; to the Contrary, the Statute Required the City To Account for the Proceeds of Property Sold Under Execution.

As evidenced by the "Solid waste" in _____ and the "construction debris" in _____ all appearing, after confiscation, on private property, outside the growth area, this is now in the possession of the contractor and not considered "solid waste" any more, nor even scrap, or debris.

RCW 7.48 did not authorize the county to convert or assume “ownership” of property removed from this property. To appellants’ knowledge, no other statute grants the county such power.

RCW 7.48.280 does permit an officer abating the nuisance to “levy upon and sell” property that may be removed as a nuisance to offset expenses incurred in the process of abatement. No Washington decision has ever construed this section. The section reads in full:

The expense of abating a nuisance, by virtue of a warrant, can be collected by the officer in the same manner as damages and costs are collected on execution, except that *the materials of any buildings, fences, or other things that may be removed as a nuisance, may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon*, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof.

(Emphasis added.) This statute only authorized the county to “levy upon and sell” materials removed from the property – not to convert or assume ownership.

There are three important things to note about RCW 7.48.280’s “levy upon and sell” authority. First, although that section is silent as to the manner of sale, RCW 7.48.030 states that the levying of the costs of abatement upon property of the defendant is “deemed an *execution against property*.” (Emphasis added.) Second, RCW 7.48.280 explicitly requires *the officer to account to the owner of the property levied upon*; specifically, the officer must pay the owner the balance of proceeds. Third, the statute nowhere limits an owner’s entitlement to the “salvage value” of the property.

Although the nuisance statute equates the levying of the costs of abatement upon property of the defendant as “an *execution against property*,” the County made absolutely no effort to comply with RCW 6.21, which governs sales under execution. RCW 6.21 provides certain minimum protection to a property owner whose property is sold at execution:

- RCW 6.21.020 requires the creditor (in this case the county) to provide notice both to the debtor (Burnell) and to the public generally as to the time and place of sale. Public notice is required for a period of not less than four weeks prior to the day of sale. Proof that such notice has been given is required.
- RCW 6.21.070 requires that personal property capable of manual delivery be “within view of those who attend the sale and shall be sold in such parcels as are likely to bring the highest price.”
- RCW 6.21.110 provides a process by which the sale is confirmed upon the sheriff’s return of sale; sale is confirmed only if “there were [no] substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting.”
- RCW 6.21.110(5) requires that proceeds of sale in excess of the judgment be returned to the judgment debtor.

Clearly, the county did none of these things. Rather, it bid the abatement work by asking bidders, in the same contract, (a) to abate or remove the listed personal property;

What the county should have done was bid the abatement (removal) separately. And sell directly from the property, hastening the removal and reducing liability. Once items of personal property were removed from either property, the county should have then conducted an execution sale pursuant to RCW 6.21 to assure that the sale price was maximized and that Burnell's rights were not violated. Rather than designing this process to bring the highest price, however, the county's chosen method actually placed interested buyers at an extreme disadvantage, in that no sale ever occurred.

If the Appeals Court remands the matter to the trial Court the following should be required:

- **Accounting:** That the trial court should require the county to render an account of its disposition of property removed from the Property;
- **Failure To Give Credit:** That the Contract, as performed and as administered by the county, failed to give the Burnell the credit required by State law
- **No Ownership:** That the county or contractor and hauler had no authority to assume ownership of the items removed from the Property;
- **Avoidable Consequences:** That the county's claims should be barred by the doctrine of avoidable consequences; and
- **Damage To Property:** For recovery of an offset for the cost of repairing damage caused by the abatement contractor.

Neither the trial court nor this court ever approved the contract entered into between the county and advanced environmental inc.. No

court's orders authorized the county to destroy or to deprive the Burnell of any property, only to remove it FROM HIS PROPERTY *in the growth area*. The county simply cannot claim the protection of the court's orders for the damage inflicted upon Burnell by the manner in which the county chose to pursue abatement.

What the trial court authorized the county (and its contractors) to do was to *remove* items from the Property. ***The court's order did not divest the Burnell of the ownership interest in the property. The court did not rule that the property became the county's property, or contractor's property, or otherwise indicate what was to happen to the property.***

2 The ordinance cited is limited to the growth area and removal to any location outside the limited area constitutes abatement. yet all vehicles removed to commercial zones in the city and well out in the county were harassed and recovery of licensed vehicles and half of the vehicles ordered lawful but taken anyway, were prevented from recovery outside the growth area..

At all times Burnell was refused the ability to pay the haul fee and reclaim his property outside of the growth area.

Where the only order stems from a growth area regulation, county construed that to mean anywhere in the county, and indeed, the owners of commercial property in the city and well out in the county were all harassed by county employees if any of my property were to be stored there.

show 2 taxable mobiles connected to a taxable septic and are all lawful uses, and the health official Dale Tahja _____ said "no health dept violations"

D 1 All allegations of "solid waste" for items not listed in usual definitions, are barred from being alleged, as not actually solid waste, in particular items listed as having some use, whether primary or secondary in thurston county's complaint. {example "**steel beams commonly used in construction" and the "lead acid batteries commonly used in power systems"**} is not solid waste; [MONTE R. LITTLETON, ET AL appellants Vs. Whatcom county No. 52094-6-I]

Indeed, those 35, \$800 each replacement value [in 1988] **were the first items to be removed from the shed and "taken" to use or sell by the contractor**, Burnell was at that time removing items and allowed to move the J V 115 Alfa Romeo to an indicated "safe" area, that then the county taped off and without a word impounded that running, licensed yehicle, and all other "safe" tools and equipment there.

2 The administrative hearing judge in 1997 thurston county v Burnell _____ ruled "construction material lawful"

E 1 Thurston county repeatably asserts as violations and further as nuisance, Items and systems over which it has no authority. To wit, temporary and permanent Electrical wiring, including the "batteries commonly used in power systems", and additions or alterations to mobile homes and manufactured homes.

these are the exclusive jurisdiction of the **Wa. State dept. of labor and industries.**

The one photographed electrical box is a hastily constructed PLUG IN TO AN OUTLET distribution after a major fire consumed two mobile homes and county refused all applications to replace or other wise improve this property. [same as the attempted replacements of 1997] additional facts

On the basis of one photograph of wiring that the county has no jurisdiction over, every piece of wire and electrical was confiscated and sold for \$3.00 to \$4.00 a pound, hundreds of pounds, not a nuisance not solid waste, just profit ti the contractor.

The county also ordered the removal of the overhead supply wire from the pole in the street to a part of the incoming box not accessible to the owner, in a manner "never seen before" by the

electric company, and interfering with a lawful contract to provide power, and resulting in no power anywhere on four lawful parcels.

F All vehicles were hauled off as R C W 46.55.010 Hulk vehicles... It is important to recognize this is not the county growth area code. and not the county code ruled on by the Court.

It should be noted that both arrests of Burnell were the direct result of the deputy saying "that's a hulk and we are taking it now" despite no marking, list, or truck in view to impound it " and Burnell asserting that there was no determination of hulk in any order and to confiscate as a hulk was not lawful under the order'

indeed. every thing or vehicle Burnell attempted to remove after the first week was interfered with, and Burnell arrested and ordered to "not go anywhere on your land and do not enter your home to retrieve your papers and personal effects"

It was this first week where Burnell removed the 48 mack and the 46 mack designated as restoration, and parts vehicle for, But county refused to allow the provision permitting said uses, and ordered them removed.

G No standard rules for impound and redemption under private or public land rules, that require notification of sale and opportunity to recover all impounded vehicles for the cost of impound, were followed, allowing the hulk hauler to take "ownership" of licensed vehicles and many ordered lawful by Judge Tabor, without any problems of notice of sale or to the owner etc vehicles and many ordered lawful by Judge Tabor,

H The "notarized hulk affidavits ready for the bidder" [in the contract offering to the public] { *attached to the motion to increase the bill* } _____ in allow the transfer of interest to the bearer, and were required for the county to provide to Burnell the agreement to settle, [*attached to the motion for mitigation in No. 01871-3-* _____] but not provided to Burnell at the time required by the agreement to settle. In addition, county never provided any notarized affidavits at all, causing delay and expense to Burnell during the agreement.

I That downzone of Aug _____ 2001, to 1 home to 5 acres, In the growth area After the county refused to accept the application in Jan 2000 and down zoned the same day as the

application was "accepted" denies all rights to that land use the R 4/8 land use allows and yet Requires Burnell to build to all road, aesthetic and development standards required for the R 4/8 zone while only allowing 1 home to 5 acres.

J In down zoning Burnell's land inside the growth area to 1 home to 5 acres, **county retained all regulations of the 4/8 zone, and growth area and denied all density uses for which they are intended.**

Indeed the only change is as if county "taped over" R 4/8 and wrote R 1/5 , "1 home to 5 acres"

When searching the county code one cannot even find the R 4/8 listed in the growth area.

This has the county requiring Burnell to follow the limitations of the R 4/8 but the limitations of the R 1/5.

there was in fact no said designation as R 1/5 in the growth area and also does not match the rural 1/5 on the south and east of the Burnell land, in violation of spot zoning rules ____ and matching adjacent zone rules _____

K This also violates the comprehensive plan, and the joint city county planing, and the state growth manag ment act. **[Berschuer v Tumwater 2002 _____**

L **Even under the 1/5 zone, Burnell continues to be denied and refused on all applications for any use whatsoever.**

M In contracting to remove 18 structures, where th order says 15, county went well beyond the order or concept of nuisance and in destroying and

in leaving the two well houses, open to the weather, committed a misdemeanor criminal act of unlawful abandonment with out capping the well

R C W 18.104.155

(b) A serious violation is a violation that poses a critical or serious threat to public health, safety, and the environment. Serious violations include, but are not limited to:

(i) Improper well construction;

- (ii) **Intentional and improper location or siting of a well;**
- (iii) **Construction of a well without a required permit;**
- (iv) **Violation of decommissioning requirements;**

ADDITIONAL FACTS

No review of this case should overlook the repeated and negligent or willful failures of the attorneys :

Barnett kalicow, Also his previous representation of the cooper point association, [major opponents to defendant Burnell's land uses and applications to re-develop this property], has resulted in a major conflict of interest in his part.

Also the first attorney **allen miller** failed to gain dismissal of a non-existent code, then failed to appear to argue against amendment to a code adopted 361 days after I was cited, this allowed the county to get a warrant to search for facts, then adopt a rule that states the observed facts are a [now] violation, [vehicles with moss growing are a violation] with no opportunity for appeal of the determination by the county inspector, even then Judge Stilts ruled in open Court that "the moss was evidence that they had been there before 1980 and were legal".

allen miller then went to WORK FOR THE COUNTY six months later.

As to kalicow, A partial list follows:

1. The most important failure is the willful, and with malice aforethought, failure to pursue the appeal of service. This was done without the knowledge of the appellant Burnell, and not made known until months after all due dates, and indeed the dismissal of said appeal. kalicow said "I only filed the appeal to delay the action".

This is a willful failure of duties and responsibility of the attorney, and prejudiced this case. After this Court remanded the issue of service, attorney kalicow failed to note the issue for hearing for several years, allowing the deputy's repeated "I don't remember" statements. and in combination with Judge Tabor "I will always believe the deputy" when the deputy had NO memory of the service at all, and relied on the affidavit saying "I must have done it because I signed the affidavit". Indeed, the deputy could not find the date of service, requiring the prosecutor to go to stand and show the deputy the date of service.

This combined with the Judge saying "all the affidavits are signed in the same color, and therefore defendant Burnell has entered into a scheme to defraud the Court" has resulted in extreme prejudice against the defendant.

In this hearing the document was the sole source of evidence against defendant Burnell, other than the deputy saying "whenever I go to that area I go to the burned out mobile homes" and "I must get someone to get Burnell". Under the law the "Witness must support the document" not the document support the witness. It should be noted that I [Burnell] do not live in or near the burned out mobile homes, and the deputy's statement that "I must get

someone to get Burnell" clearly indicate that this area is not my home as the deputy swore in the affidavit that he served me at my home.

the failure of kalicow to question the third defense witness, or make any questions or observations about the contradictions between the deputy and the document, or to have me show on the prepared [but not used] map of the area, and the deputy's inability to distinguish between a 6 foot 2 , 300 pound dark hair and beard, man and myself, 5 foot 11, 150 pounds and blond hair, no beard, all contributed to the failure to show service had not been done. This led to extreme difficulty in communication and may have contributed to the willful failure to prosecute the appeal

2. On the day of filing the response to allegations, attorney kalicow was present in the courtroom and had agreed to represent Burnell in this matter, however he failed to even look at the documents prepared by defendant Burnell or make any observation or step forward to represent Burnell, allowing the document to be reviewed without the proper sworn "under the penalty of perjury in the state of Washington". resulting in the loss of all evidence and defenses.
3. Burnell repeatedly requested this matter be moved out of Thurston County and / or petition the Court for prejudice against this Judge, but kalicow refused
4. only one time did kalicow permit affidavits supporting my position, and some time was gained by that. All other times, affidavits from persons with personal knowledge and expertise in their fields, were refused. The picture of "construction debris",

that in fact is the "structural steel commonly used in construction" is also a product that had several bids for the purchase, that kalicow failed to allow affidavits to show they indeed had value and were legal stored on site, and or used in the permit application, for construction of my home. Also many alleged "junk vehicles" were running and did not meet the definition of junk under the ordinance and had affidavits available from several sources that showed for example; "jv 44", a running and valuable '66 Porsche, even the county's evidence does not meet the code.

5. In the mitigated agreement to dismiss all allegations from both sides kalicow willfully failed to have the land designer produce the design as required and timely deliver it to the County. I attempted to request a pre submission conference in the first week of the mitigated agreement to allow development, but kalicow interfered and said "Robert Patrick is a capable designer and let him do his job" and despite repeated meetings with the designer, NEVER told him to produce the document. This was a principal cause of the breakdown of the agreement, Indeed Burnell had offers for the south side land with an accepted application in Jan 2005, and the north side in March 2005, which would result in the sale of this land four years ago and the willing exit from the county of the defendant Burnell.
6. Despite Burnell supplying Attorney kalicow with the verbatim record of the District Court hearing, were Judge Stilts said "all vehicles on the land that have moss growing have been there since before 1980 and are legal" kalicow "lost these papers and refused to allow them any way. This matter is "attached to the District

Courts action" and the Judges open Court determinations are relevant.

7. County says "all permits from 1995 are canceled" Burnell renewed these application, paid new fee's and provided kalicow with the documents and kalicow "lost" them and the applications for all other uses, and failed to include them in the motion to restrain abatement, then failed to have a hearing on reconsideration until the abatement was half over.
8. The hearing to restrain abatement was brought VERY late and the failure to include any permits or applications for lawful use were not submitted despite the fact that kalicow had them.
9. The "jv 44" kalicow spoke of as "pristine and did not meet the requirement as junk in the code" however he failed to include it in the motion to restrain.
10. The "jv 115" was the first relicensed vehicle and kalicow "lost " the evidence of license and failed to include it in the motion to restrain. indeed it was the first vehicle removed, and then sold for profit [\$600.00] beyond its value as designation of "junk"
11. As the abatement proceeded, and County removed half of the few vehicles that Judge Tabor had said were to remain, kalicow refused to make any effort to oppose the removal or seek their recovery, and indeed withdrew before any accounting for the costs of the action could be analyzed of rebutted, and or make any effort to obtain offset of costs for damage done and removal beyond the order. Indeed the county simply removed everything other than 7 of the 13 lawful by the order. Including 5 structures not in the order, but in the contract.

12. kalicow failed to restrain against removal of operating commercial vehicles that after the alfa romeo, were the first to be removed. This led to the discussion of junk vs. hulk as to the Mack semi tractor that ultimately resulted in my arrest for asking "why is it a hulk",and attempting to show it as operable. The Court only ruled as to "junk" under a very restrictive growth area county code NOT the State of Wa ."hulk" vehicle R.C.W. 46.55.010 applied and used for its removal, states:

MUST meet three of the following", 1 must be 3 years old, 2 must be extensively damaged, 3 must be apparently inoperable, 4 must have a market value equal to approximate value of scrap in it. The alfa "jv 115" and many others were sold [without title or compliance with state law] for \$600.00, far more than the scrap value.\$ 100.00.

13. At no time did kalicow resist or refute the county using State of Wa. R.C.W. 46.55.010 for removal of every vehicle and trailer and boat, and refusal to allow salvage credit to Burnell R.C.W. 6.21.010

Before the sale of personal property under execution, order of sale or decree, notice thereof shall be given as follows:

(1) The judgment creditor shall, not less than thirty days prior to the day of sale, cause a copy of the notice of sale to be transmitted both by regular mail and by certified mail, return receipt requested, to the judgment debtor at the debtor's last known address, and by regular mail to the attorney of record for the judgment debtor, if any. The judgment creditor shall file

an affidavit with the court showing compliance with the requirements of this subsection.

(2) The sheriff shall post typed or printed notice of the time and place of the sale in three public places in the county in which the sale is to take place, for a period of not less than four weeks prior to the day of sale.

14. The County in all cases used the State R.C.W. 46.55.010 although this is not in the order and indeed is completely different from and more restrictive than that ordered by the Judge.
15. The permit application for the accessory dwelling unit [MY ONE HOME SAFE AND SECURE FROM SERCH AND SEIZURE WITHOUT AN AFFIDAVIT OF PROBABLE CAUSE{TO A CRIME] AND A LIST OF PARTICULARS TO BE SEIZED] has been "on hold" allowing the county to say "no permits" and seize my materials, charge me for the work, and use the material for their own [contractors] use. THE PURCHASE OR USE of said "salvage" by the county or the contractor is not allowed :R.C.W. 6.21.060 Amount of property to be sold — Officers and deputies may not purchase. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his or her deputy shall become a purchaser or be interested in any purchase at the sale.

No connection to the material and the permit application was made by kalicow, and with an application accepted and paid, Burnell has a vested right to storage, operations, and construction of this building.

16. In the several RENEWAL applications for "agricultural EXEMPT structures", they also were withheld by the county with no objection by kalicow, [this type of permit is handed to the proponent at the time of application as there is no inspection required of the structure. and are PROHIBITED FROM ALLEGATIONS OF NUISANCE by R.C.W.7.48.300 through7.48.310 and 7.48.905:

The legislature finds that agricultural activities conducted on farmland and forest practices in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses and timber

production. It is therefore the purpose of RCW 7.48.300, through7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland and forest practices be protected from nuisance lawsuits.

17 kalicow had every opportunity to show that "new" allegations of nuisance [all allegations made after the granting of summary judgment] did not even violate any code or exist in the summary judgment. i. e. structures under 200 square feet do not require a permit and are not a nuisance or violation at all. also no reasonable effort was made to refute that all items whatsoever are solid waste Indeed, after summary judgment was granted ALL definitions were changed to be "unpermitted" or solid waste. The mitigated agreement certified: "no violations on lot #1" [#09370052001] and:"no violations on lot #2" [09370053000], while my home was on #1 and another mobile on lot #2 this would esstop any allegation that this is a violation.

18 by failing to note a hearing to restrain abatement until just before the action and failing to include critical documents, kalicow prevented any chance of removal of valuable material before the county and not filing permits and applications to refute the "no permits" required a reconsideration that occurred two weeks after the action commenced and prevented the possibility of appeal BEFORE the action was complete .On questioning by Burnell kalicow responded "the Court would require \$200,000.00 bond [does not appear to be true].

19 kalicow never made any objection to the calculation of costs or require the county to follow the law and give "salvage credit" to Burnell

20 kalicow failed to even begin to argue against rescinding the mediation agreement

conclusion

If this Appeals Court finds any indication of actual bias or false statements under penalty of perjury used to prosecute this action, or possibility of actual obstruction in the granting of lawful permits, this extermination of all possible land uses, should not be allowed to stand.

It is my position that Judge Tabor has failed to review this matter without extreme bias, not only for the county, but also against the defendant, and the Judge has not even denied said bias, indeed stating clearly that the disputes are always infallible, and by never questioning any presentation by the county's other officials, shows the extension of this bias to all parts of the county enforcement.

This Appeals Court, has previously ruled that I, Burnell have failed to provide any evidence because of a clerical oversight in the sworn under penalty of perjury required in the response to allegations.

In case after case the county has only presented the affidavits of officials with no further evidence to support, and indeed in case after case, the affidavits appear to not meet the facts and/or not meet the code cited.

I beg the Court to require review of any affidavit or photograph that appears lacking in the code criteria, or other fact.

In that the first attorney went to work for the county almost directly from failing even to gain dismissal for an unadopted code, and the second willfully failing my appeal of service, and failed to allow me to present affidavits of others who would support the fact of many items are not junk or solid waste, leaving only my affidavits after the judge indicated he will not believe me,

The previous representation by Kalicow for the Cooper Point Association, a group that has continually lobbied the county to destroy me AND deny every application for new lawful land use may have influenced his willingness to be effective in my case, and he withdrew before the end of this matter.

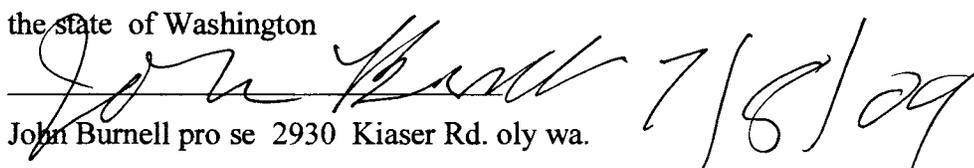
I ask the Court to consider my representation may not have met the minimum required for a fair hearing, and indeed for most issues, no hearing ever occurred.

If remanded to the same Judge, there may never be an end to bouncing back and forth between these two Courts.

While I may not want to depend on the concept of manifest justice, if it does not appear to be reached in this matter, I beg the Court to consider more far-reaching action than may be usual.

This is not limited to the possibility of remanding for a re-hearing on service, as the deputy in question has had his memory influenced by his assignment to my statement, and has clearly admitted "What I said in Court could not possibly be true" and "If I had gone all the way to your [Burnell's] home I would have remembered it".

I swear the foregoing to be true under the penalty of perjury in the state of Washington


John Burnell pro se 2930 Kiaser Rd. Oly wa. 7/8/09

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NO 3766-I-II

CERTIFICATE OF SERVICE

certificate

I, John Burnell, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on July 8 2009 I caused a copy of the foregoing document to be served upon the following office of the counsel of record in the manner indicated: Hand delivered to

Prosecuting attorney's office

At 2000 lakeridge dr. .S.W.

Olympia

John Burnell 7/8/09

John Burnell

COURT OF APPEALS
DIVISION I

00 JUL -9 PM 4:57

STATE DEPARTMENT
BY *[Signature]*

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IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION II

THURSTON COUNTY
respondent

No 37660-I-II

JOHN BURNELL
appellant

]

Mr Ponzoha, and whom it may concern, owing to the incomplete and haphazard manner the papers were given to me by former attorney kalicow, these few corrections will be needed:

In the possible error #21 page 26 the letter from the prosecutors office is attached to declaration of Burnell oct 24 2007 exhibit C

All references to business license, assessors reports, and letter confirming mobile can be replaced, are attached to declaration of Burnell feb 21 2008

pictures of the allowed vehicles in the motion to restrain including o78/006 not allowed are attached to declaration 3/7/08

All references to building applications are attached to declaration 3/19/08

any reference to attachment to the motion to restrain are on the declaration Burnell 3/7/08
Thank for your consideration.

any reference to attachment to the motion for reconsideration are attached to declaration Burnell3/19/08
