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COURT OF APPEALS  
DIVISION II

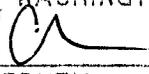
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NO. 44818-H

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

STATE OF WASHINGTON

BY   
DEPUTY

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Richard Colf,

Appellant,

vs.

Clark County, Washington,

Respondent,

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APPEAL FROM THE SUPERIOR COURT

---

HONORABLE DAVID E. GREGERSON

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APPELLANT'S OPENING BRIEF

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**Table of Contents**

ASSIGNMENT OF ERROR AND ISSUES PRESENTED.....1

STATEMENT OF THE CASE .....1

    I. Underlying Facts.....1

    II. Course of Proceedings. ....2

ARGUMENT.....4

    I. Standard of Review.....4

    II. The Court Is Not Required to Give Deference to Clark County’s  
    Decision. ....5

    III. Rules of Construction.....7

    VI. There Is No Violation Because the Second Manufactured Home  
    Is Exempt from the Requirements Clark County Seeks to Impose. ....8

    V. Conclusion. ....16

CONCLUSION.....17

APPENDIX.....18

**Table of Authorities**

**Cases**

*Asche v. Bloomquist*, 132 Wn.App. 784, 797, 133 P.3d 475 (2006) .....6

*Bayfield Resources Co. v. Western Washington Growth Management Hearings Board*, 158 Wn.App. 866, 244 P.3d 412 (2010).....4

*Boehm v. City of Vancouver*, 111 Wn.App. 711, 47 P.3d 137 (2002) .....5

*Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007) .....6

*Brown v. City of Seattle*, 117 Wn.App. 781, 790-791, 72 P.3d 764 (2003) .6

*Chinn v. City of Spokane*, 157 Wn.App. 294, 236 P.3d 245 (2010).....5

*City of Auburn v. Gauntt*, 174 Wn.2d 321, 330, 274 P.3d 1033 (2012).....7

*City of Puyallup v. Pacific Northwest Bell Telephone Co.*, 98 Wn.2d 443, 448, 656 P.2d 1035 (1982).....7

*Dowler v. Clover Park School District*, 172 Wn.2d 471, 481, 258 P.3d 676 (2011).....7

*Flight Options, LLC v. Department of Revenue*, 172 Wn.2d 487, 504, 259 P.3d 234 (2011).....7

*Hoberg v. City of Bellevue*, 76 Wn.App. 357, 360, 884 P.2d 1339 (1994) ..6

*In re J.R.*, 156 Wn.App. 9, 16, 230 P.3d 1087 (2010).....14

*Internet Community & Entertainment Corp v. Washington State Gambling Commission*, 169 Wn.2d 687, 695, 238 P.3d 1163(2010); .....14

*Manary v. Anderson*, 164 Wn.App. 569, 574-575, 265 P.3d 163 (2011)...14

*McTavish v. City of Bellevue*, 89 Wn.App. 561, 565, 949 P.2d 837 (1998).6

*Milestone Homes, Inc. v. City of Bonney Lake*, 145 Wn.App. 118, 126 (186 P.3d 357 (2008).....5, 15

<i>Peter Schroeder Architects, AIA v. City of Bellevue</i> , 83 Wn.App. 188, 191, 920 P.2d 1216 (1996).....	6
<i>Pinecrest Howeowners Association v. Glen A. Cloninger &amp; Associates</i> , 151 Wn.2d 279, 290, 87 P.3d 1176 (2004) .....	5
<i>Puget Sound Energy, Inc. v. City of Bellingham</i> , 163 Wn.App. 329, 334, 259 P.3d 345 (2011) .....	7
<i>Riofta v. State</i> , 134 Wn.App. 669, 682, 142 P.3d 193 (2006) .....	11
<i>Skagit County Public Hospital District #1 v. Department of Revenue</i> , 158 Wn.App. 426, 437, 242 P.3d 909 (2010) .....	7
<i>Sleasman v. City of Lacey</i> , 159 Wn.2d 639, 653, 151 P.3d 990 (2007) .....	7
<i>State v. Bolar</i> , 129 Wn.2d 361, 365-366, 917 P.2d 125 (1996) .....	11
<i>State v. Mitchell</i> , 169 Wn.2d 437, 443-444, 237 P.3d 282 (2010) .....	7
<b>Statutes</b>	
RCW 36.70C.....	4
RCW 36.70C.130.....	17
RCW 36.70C.130(1)(b) .....	5
RCW 36.70C.130(1)(b), (c), (d) .....	4, 17
RCW 36.70C.140.....	5, 17
<b>Other Authorities</b>	
CCC 14.32A .....	9, 12, 13, 14, 15
CCC 14.32A.130 .....	15, 16
CCC 14.32A.130(3).....	3, 10, 11, 13, 14, 15, 16
CCC 14.32A.140 .....	15, 16

CCC 14.32A.140(4).....	11, 12, 13
CCC 14.32A.220(1).....	9, 11
CCC 18.413 .....	1
CCC 18.413.020(B).....	9
CCC 40.100.070 .....	9
CCC 40.260.210 .....	3, 9, 10
CCC 40.260.210(C)(3) .....	8
CCC 40.530.010 .....	14, 15
CCC 40.530.010(e).....	14
Tegland, <i>Evidence Law and Practice</i> , 5 Wash.Prac. § 2.16.....	9
<i>Webster's Encyclopedic Unabridged Dictionary of the English Language</i> , (1994, p. 1145).....	13

## ASSIGNMENT OF ERROR AND ISSUES PRESENTED

Assignment of Error No. 1: The trial court erred in entering the Order on Judgment Affirming Clark County and Dismissing Appeal.

1. May the second mobile home stay at its current location?
2. Did Mr. Colf violate CCC 40.260.210?

## STATEMENT OF THE CASE

### I. Underlying Facts.

The facts surrounding this dispute are undisputed.

This case concerns rural property owned by Richard Colf located at 9017 NE Spurrel Road, Woodland, Washington. The parcel has an area of approximately 4.31 acres. (CP 58, 109)

Rachel Butler, then known as Rachel Cairns, purchased the property along with a 1970 Homette manufactured home in 1987. (CP 148-51) In 1993, Ms. Butler, then known as Rachel Lingafelt, obtained a permit to place a second manufactured home on the premises as a residence for her elderly father as allowed by a chapter of the Clark County Code then in existence but now repealed, CCC 18.413. The permit was approved on May 5, 1993. Ms. Butler then placed the second manufactured home on the premises. (CP 157-59) The two manufactured homes have been on the property since that time.

The permit issued to Ms. Butler shows an expiration date of May 5, 1994. (CP 157) After it expired, Clark County never took any enforcement action. It did not point out to Ms. Butler that her permit had expired. It never determined whether her father actually lived in the second manufactured home. It did not require Ms. Butler either to renew her permit or remove the second manufactured home from the premises. (CP 102-103)

Richard Colf purchased the property and both manufactured homes from Ms. Butler and her husband in July of 1998 for \$146,400.00. (CP 109, 152) The purchase price would have been lower if the second manufactured home had not been on the property. (CP 112) Mr. Colf has not moved either manufactured home since the purchase. (CP 110) He has made improvements on the newer manufactured home — the one that Ms. Butler placed on the property. He replaced the skirting; he installed a deck; he put in a concrete pad and carport; and he replaced the roof. Obviously, he would not have made those improvements had the second manufactured home not been on the property. He took all of these actions prior to October 10, 2011. (CP 111-12)

II. Course of Proceedings.

Clark County sent a notice to Mr. Colf on October 10, 2011, indicating that Ms. Butler's permit had expired. (CP 40) Mr. Colf

engaged counsel who obtained Clark County's records on the matter. (CP 43) Counsel then wrote to relevant Clark County personnel stating that Mr. Colf was not required to move the manufactured home on the basis of CCC 14.32A.130(3). (CP 44-45)

Clark County did not agree and sent a Notice and Order to Mr. Colf on June 4, 2012, charging a violation of CCC 40.260.210. The Notice and Order required Mr. Colf to either obtain a permit for the second manufactured home or move it off the premises. It also stated that Mr. Colf would be assessed daily penalties in the amount of \$250.00 should he not take the required action. (CP 48-50)

On June 8, 2012, Mr. Colf sent a Notice of Appeal. (CP 51) The Clark County's Hearings Examiner heard the matter on July 26, 2012. (CP 98) He gave his decision on September 21, 2012. He found that Mr. Colf was in violation of CCC 40.260.210 for failing to obtain a permit for the second dwelling. He ordered Mr. Colf to pay a penalty in the amount of \$750.00. He also ruled that Mr. Colf could either remove the second manufactured home or obtain a boundary line adjustment that would locate the second manufactured home on a separate parcel. (CP 31-32)

Mr. Colf filed the Amended Land Use Petition on September 25, 2012. (CP 1-16) The parties secured an agreed order establishing jurisdiction on October 5, 2012. (CP 17-18)

After it heard oral argument, the trial court issued its Memorandum Decision on March 20, 2013. (Cp 217-26) It affirmed the Hearings Examiner's decision. It ultimately entered the Order and Judgment Affirming Clark County and Dismissing Appeal on April 19, 2013. (CP 225-34) Mr. Colf then appealed. (CP 235-45)

### ARGUMENT

#### I. Standard of Review.

This action is governed by Land Use Petition Act (LUPA) contained in RCW 36.70C. As petitioner, Mr. Colf is entitled to relief if the administrative determination amounts to erroneous interpretation of the law after allowing for such deference as is due the construction of the law by a local jurisdiction with expertise; if it is not supported by substantial evidence when reviewed in light of the whole record; and if the decision amounts to a clearly erroneous application of the law to the facts. RCW 36.70C.130(1)(b), (c), (d).

The term "substantial evidence" is evidence sufficient to persuade an unprejudiced, rational person that the finding is true. *Bayfield Resources Co. v. Western Washington Growth Management Hearings Board*, 158 Wn.App. 866, 244 P.3d 412 (2010). A decision is clearly erroneous when, although there is evidence to support the decision, the

reviewing court is left with a definite and firm conviction that a mistake has been made. *Boehm v. City of Vancouver*, 111 Wn.App. 711, 47 P.3d 137 (2002); *Chinn v. City of Spokane*, 157 Wn.App. 294, 236 P.3d 245 (2010).

This case requires the Court to interpret and construe Clark County ordinances. In such a situation, the Court of Appeals stands in the same position as the trial court and reviews the administrative decision *de novo*. *Pinecrest Howowners Association v. Glen A. Cloninger & Associates*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004); *Milestone Homes, Inc. v. City of Bonney Lake*, 145 Wn.App. 118, 126 (186 P.3d 357 (2008)

If Mr. Colf is entitled to relief, the Court may reverse the decision of the Hearings Examiner. RCW 36.70C.140.

II. The Court Is Not Required to Give Deference to Clark County's Decision.

As noted, this case hinges on the proper interpretation of Clark County ordinances. Clark County is expected to argue that the Court must defer to its interpretation of its ordinance. That is not correct.

The LUPA recognizes that courts are required to give deference to agency interpretation in some situations. This notion does not apply in all circumstances, however. As RCW 36.70C.130(1)(b) states:

The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise . . .

(Emphasis added) The use of this language means that deference is not required in all circumstances. Rather, the Court is only required to give such deference “as is due.”

In our case, no deference should be given. Deference is only required when a regulation is ambiguous. An ordinance’s plain meaning controls when that ordinance is unambiguous. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007); *McTavish v. City of Bellevue*, 89 Wn.App. 561, 565, 949 P.2d 837 (1998). Furthermore, a Court will not defer to an interpretation that conflicts with the language of the ordinance. *Hoberg v. City of Bellevue*, 76 Wn.App. 357, 360, 884 P.2d 1339 (1994); *Peter Schroeder Architects, AIA v. City of Bellevue*, 83 Wn.App. 188, 191, 920 P.2d 1216 (1996); *Brown v. City of Seattle*, 117 Wn.App. 781, 790-791, 72 P.3d 764 (2003); *Asche v. Bloomquist*, 132 Wn.App. 784, 797, 133 P.3d 475 (2006).

The language of the controlling ordinance is clear and unambiguous. Therefore, the Court is not required to defer to whatever interpretation Clark County may choose to give.

### III. Rules of Construction.

Local ordinances, such as Clark County's, are interpreted under the same rules that apply to statutes. *City of Puyallup v. Pacific Northwest Bell Telephone Co.*, 98 Wn.2d 443, 448, 656 P.2d 1035 (1982); *Sleasman v. City of Lacey*, 159 Wn.2d 639, 653, 151 P.3d 990 (2007); *Puget Sound Energy, Inc. v. City of Bellingham*, 163 Wn.App. 329, 334, 259 P.3d 345 (2011). All statutes are to be construed in accordance with their plain language. The dictionary definition of a term controls when that term is not defined in the statute or ordinance. *Garrison v. Washington State Nursing Board*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976); *Sleasman v. City of Lacey, supra*, 159 Wn.2d at 643; *State v. Mitchell*, 169 Wn.2d 437, 443-444, 237 P.3d 282 (2010); *Skagit County Public Hospital District #1 v. Department of Revenue*, 158 Wn.App. 426, 437, 242 P.3d 909 (2010). Clark County's ordinances must be read as whole and in light of the entire regulatory scheme. *Dowler v. Clover Park School District*, 172 Wn.2d 471, 481, 258 P.3d 676 (2011); *City of Auburn v. Gauntt*, 174 Wn.2d 321, 330, 274 P.3d 1033 (2012). Finally, a more specific statute controls over a more general statute should any conflict exist. *Flight Options, LLC v. Department of Revenue*, 172 Wn.2d 487, 504, 259 P.3d 234 (2011).

The most important of these rules is the requirement that an ordinance be interpreted according to its plain meaning. It is clear that Mr.

Colf is not guilty of any violation of the Clark County Code when this rule is applied.

VI. There Is No Violation Because the Second Manufactured Home Is Exempt from the Requirements Clark County Seeks to Impose.

When Clark County's ordinances are viewed as a whole according to their plain meaning, it is clear that there can be no violation due to the presence of two manufactured homes at 9017 NE Spurrel Road. The ordinances specifically allow the second manufactured home to stay where it is.

Mr. Colf was charged with a violation of CCC 40.260.210(C)(3).

It provides as follows:

A temporary dwelling permit shall be valid for two (2) years, and may be renewed by the issuing body for successive two (2) year periods upon written substantiation by the applicant to the continuing hardship or need justification. Upon the expiration of the two (2) year period, or at the end of each successive two (2) year period(s), if granted, the applicant shall notify the responsible official in writing that the temporary dwelling has been removed and, further, said notice shall include a request for an inspection to determine that the temporary dwelling has, in fact, been removed in compliance with the permit.

This ordinance speaks of "temporary dwellings" and a "temporary dwelling permit." The Clark County Code contains no definition of the term "temporary dwelling." The term is absent from where it would be in

the alphabetically organized definitional section, CCC 40.100.070. (CP 202-03) A “temporary dwelling” could certainly be a manufactured home. But the term is not limited to manufactured homes in CCC 40.260.210. Under former CCC 18.413.020(B), the ordinance under which Ms. Butler obtained the permit, temporary dwellings included but were not limited to manufactured homes.<sup>1</sup> And there are many types of temporary or portable housing other than manufactured homes that are now being marketed.<sup>2</sup>

In 2003, Clark County enacted an ordinance specifically dealing with the siting of manufactured homes in Ordinance 2003-10-13 contained at CCC 14.32A. (CP 195) Its provisions govern since it is the more specific ordinance. It is more specific because it deals with manufactured homes.

The problem in this case is the presence of two manufactured homes on the property. This is generally not allowed under CCC 14.32A.220(1) which states in pertinent part:

Each manufactured home placed in unincorporated Clark County after the effective date of the ordinance codified in this chapter shall comply with the following standards:

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<sup>1</sup> This ordinance was repealed in 2003. (CP 197-99)

<sup>2</sup> These can be located at, for example, [www.acsi-us.com](http://www.acsi-us.com), [www.coolthings.com](http://www.coolthings.com), and [www.portable-housing.com](http://www.portable-housing.com). The Court may take judicial notice of these legislative facts. Teglund, *Evidence Law and Practice*, 5 Wash.Prac. § 2.16

1. Only one manufactured home shall be allowed on a lot or space, except as provided in chapter 40.260.

Therefore, there can be only one manufactured home on the lot unless the owner obtains a hardship permit to place another manufactured home on that lot under CCC 40.260.210. This conclusion follows from the notion that any ordinance must be read in light of the entire regulatory scheme.

The analysis does not stop there. The second manufactured home is exempt from this requirement and that it can remain at its existing location. As CCC 14.32A.130(3) and (4) state:

This chapter is not retroactive. All manufactured homes installed in Clark County before the date of (the) ordinance codified in this chapter which do not comply with the requirements set forth in this chapter are deemed to be nonconforming. Nonconforming manufactured homes will be allowed to remain at their existing locations without complying with placement standards enumerated herein subject to the provisions of subsection 4 below.

(4) Each person proposing to move a manufactured home, including a nonconforming manufactured home, to a new location including a new location on the same lot, if site putting locations would be different from the original location, it must first obtain a placement permit. All such manufactured homes should be made to comply with all requirements of this chapter prior to their establishment, occupancy, or use on the new site.

(Emphasis added) It is undisputed that the second manufactured home was installed prior to 2003, the year that CCC 14.32A became effective.

Under the plain language of these ordinances, the second manufactured home is exempt from the requirements of CCC 14.32A — including the requirement that there only be only one manufactured home per lot. The second manufactured home is deemed to be nonconforming since it is the second manufactured home on the lot. But it can remain at its existing location under the terms of CCC 14.32A.130(3).

This conclusion is fortified by CCC 14.32A.140(4), which reads as follows in pertinent part:

The following are exempt from requirements of this chapter:

(4) Manufactured homes legally installed, placed, or existing prior to the effective date of this chapter as described in Section 14.32A.130(3) and above.

The use of the word “or” requires a disjunctive interpretation. *State v. Bolar*, 129 Wn.2d 361, 365-366, 917 P.2d 125 (1996); *Riofta v. State*, 134 Wn.App. 669, 682, 142 P.3d 193 (2006). That means that the exemption contained in CCC 14.32A.140(4) applies if any one of its three prongs is present. Therefore, if the manufactured home was legally installed prior to 2003 or if it was legally placed prior to 2003 or if it was legally existing prior 2003, it is exempt from the requirements of CCC 14.32A.220(1), the regulation that allows only one manufactured home on a lot and need not be moved. At least two of the prongs are satisfied. The second

manufactured home was “legally placed” and “legally installed” before 2003 because Ms. Butler had obtained a permit allowing it on the premises. Therefore, the second manufactured home is exempt from the requirements of CCC 14.32A.

The Hearings Examiner dealt with these ordinances in the following way:

The appellant is correct that the plain language of CCC 14.32A.130(3) appears to state that all existing manufactured homes in the County that did not conform to the requirements of the new ordinance are nonconforming, regardless of whether they were legally established prior to the effective date of the ordinance. However, CCC 14.32A.140(4) expressly modifies the exemption provided by CCC 14.32A.130(3), limiting the nonconforming exemption to manufactured homes that were legally existing upon the effective date of the ordinance. CCC 14.32A.140(4) is clearly part of the “context” of CCC 14.32A.130(3). CCC 14.32A.140(4) expressly refers to and modifies CCC 14.32A.130(3). The Board could have phrased the ordinance better, including the term “legally” in CCC 14.32A.130(3). However the Board’s failure to do is not fatal in this case. The Board clearly expressed its intent by including CCC 14.32A.140(4). As discussed above, the second manufactured home on the Property was not legally existing on the effective date of CCC 14.32A. Therefore the exemption provided by CCC 14.32A.130(3) and 14.32A.140(4) is inapplicable.

(Emphasis added)(CP 29) The Hearings Examiner misread CCC 14.32A.140(4), the regulation that appears to be critical to his analysis. The regulation does not say that a manufactured home is exempt if it was “legally installed, placed, or existing on the effective date of CCC

14.32A” or “at the time that CCC 14.32A became effective.” It states that manufactured homes that were “legally installed, placed, or existing prior to the effective date” of CCC 14.32A are exempt. The word “prior” means preceding in time or order. *Webster’s Encyclopedic Unabridged Dictionary of the English Language*, (1994, p. 1145). Therefore, the use of the word “prior” in the regulation means that a manufactured home is exempt if at any time before the effective date of CCC 14.32A it had been legally installed, had been legally placed, or was legally existing.

The Hearings Examiner’s decision would also require that CCC 14.32A.130(3) be revised to read:

All manufactured homes installed in Clark County before the effective date of this chapter that do not comply with the requirements set forth in this chapter are deemed to be nonconforming if they were lawfully in existence upon the effective date of this statute.

(Emphasis added) It would also require the following revision to CCC

14.32A.140(4):

The following are exempt from requirements of this chapter:

(4) Manufactured homes legally on site at the time of the effective date of this ordinance.

An interpretation or construction of a regulation cannot be adopted if that interpretation requires adding language the legislative body chose to place in the provision. This rule applies even though the legislative body

intended something else but failed to express its intent accurately. *Internet Community & Entertainment Corp v. Washington State Gambling Commission*, 169 Wn.2d 687, 695, 238 P.3d 1163(2010); *Manary v. Anderson*, 164 Wn.App. 569, 574-575, 265 P.3d 163 (2011); *In re J.R.*, 156 Wn.App. 9, 16, 230 P.3d 1087 (2010). Therefore, the Hearing Examiner's construction of the ordinances is not correct.

Clark County may choose to argue that the second manufactured home does not fall within the general definition of nonconforming use contained in CCC 40.530.010, Clark County's general ordinance concerning nonconforming uses. First of all, CCC 40.530.010, as the general nonconforming use statute, must give way to CCC 14.32A.130(3) because CCC 14.32A is specific to manufactured homes while CCC 40.530.010 relates to nonconforming uses generally. In any event, the second manufactured home is a lawful nonconforming structure under the terms of CCC 40.530.010(e), which reads as follows:

A legally established building or structure may continue to be used or occupied by a use permitted in the zoning district in which it is currently located even though it does not comply with the present development standards (e.g., setbacks, lot coverage, density, height, etc.) of said zone. . .

///

The second manufactured home was legally established because Ms. Butler for it to be sited on the lot in 1993. It is therefore a lawful nonconforming use under the terms of CCC 40.530.010.

The Court's goal in construing land use ordinances is to determine and then apply the legislative purpose and intent. *Milestone Homes, Inc. v. City of Bonney Lake, supra*. The intent of the Clark County Commissioners is clearly expressed in CCC 14.32A.130 and CCC 14.32A.140. All manufactured homes that had been lawfully placed or installed would be "grandfathered in." These manufactured homes would be entitled to a sort of "amnesty" and would be exempt from the requirements of CCC 14.32A. These include the requirements that there only be one manufactured home on a lot. This enactment clearly suggests that in 2003 the Commissioners knew that manufactured homes might be in place that did not comply with the requirements of local ordinances in general and CCC 14.32A in particular. They likely also understood that Clark County Code Enforcement may not have discovered all of the manufactured homes that were out of compliance and that some of these may have been out of compliance for many years — as here. The Commissioners enacted CCC 14.32A.130(3) which begins with the sentence, "This Chapter is not retroactive." The Commissioners wanted to start fresh and not disturb existing manufactured homes.

As CCC 14.32A.130(3) states, the second manufactured home may stay at its existing location unless it was moved. Mr. Colf has not moved the second manufactured home. Therefore, it is entitled to remain. The Hearings Examiner erred by ruling otherwise.

There is no injustice in this result. If Clark County had maintained some sort of “tickler system” for hardship permits, it would have found the second manufactured home and required it to be moved before Mr. Colf bought the property. Then, Mr. Colf would not have paid for the second manufactured home or spent money improving it. There also is no land use emergency. No one has suggested that there was some problem related to the second manufactured home in the seventeen years from when Ms. Butler’s permit expired and Clark County initiated enforcement action against Mr. Colf. There is still no emergency. The Hearing Examiner noted that the problem can be cured if Mr. Colf goes through the expensive boundary line adjustment process. The moving of a boundary line, of course, will not affect anything on the ground.

V. Conclusion.

The Hearings Examiner’s decision does not correctly apply CCC 14.32A.130 and CCC 14.32A.140. The decision is therefore an erroneous interpretation of the law, a clearly erroneous application of the law to the facts, and a decision that is not supported by substantial evidence. For that

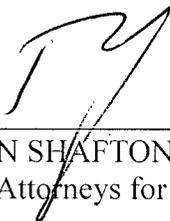
reason, Mr. Colf is entitled to relief under the terms of RCW 36.70C.130(1)(b), (c), (d).

Since Mr. Colf is entitled to relief under RCW 36.70C.130, the Court may reverse the Hearing Examiner's decision. RCW 36.70C.140. There was no violation here. Therefore, the Court should reverse that decision with directions to dismiss the citation.

CONCLUSION

The Court should reverse the decision of the trial court that affirmed the decision of the Hearings Examiner. The citation should be reversed with directions to dismiss.

RESPECTFULLY SUBMITTED this 17 day of 2,  
2013.

  
\_\_\_\_\_  
BEN SHAFTON, WSB #6280  
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APPENDIX

RCW 36.70C.130.....	19
RCW 36.70C.140.....	21
Former CCC 18.413.020.....	22
CCC 14.32A.220 .....	23
CCC 40.530.010 .....	24

C

Effective: July 26, 2009

West's Revised Code of Washington Annotated Currentness

Title 36. Counties (Refs & Annos)

Chapter 36.70C. Judicial Review of Land Use Decisions (Refs & Annos)

→→ **36.70C.130. Standards for granting relief--Renewable resource projects within energy overlay zones**

(1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct. A grant of relief by itself may not be deemed to establish liability for monetary damages or compensation.

(3) Land use decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they are in compliance with the requirements and standards established by local ordinance for that zone. However, for land use decisions concerning wind power generation

projects, either:

(a) The local ordinance for that zone is consistent with the department of fish and wildlife's wind power guidelines; or

(b) The local jurisdiction prepared an environmental impact statement under chapter 43.21C RCW on the energy overlay zone; and

(i) The local ordinance for that zone requires project mitigation, as addressed in the environmental impact statement and consistent with local, state, and federal law;

(ii) The local ordinance for that zone requires site specific fish and wildlife and cultural resources analysis; and

(iii) The local jurisdiction has adopted an ordinance that addresses critical areas under chapter 36.70A RCW.

(4) If a local jurisdiction has taken action and adopted local ordinances consistent with subsection (3)(b) of this section, then wind power generation projects permitted consistently with the energy overlay zone are deemed to have adequately addressed their environmental impacts as required under chapter 43.21C RCW.

CREDIT(S)

[2009 c 419 § 2, eff. July 26, 2009; 1995 c 347 § 714.]

#### CROSS REFERENCES

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#### LIBRARY REFERENCES

Zoning and Planning ↪ 1620, 1698.

Westlaw Topic No. 414.

#### RESEARCH REFERENCES

ALR Library

74 ALR 2nd 377, Zoning Regulations as Affecting Churches.

168 ALR 13, Construction and Application of Provisions for Variations in Application of Zoning Regulations and Special Exceptions Thereto.

**C**

**Effective:[See Text Amendments]**

West's Revised Code of Washington Annotated Currentness

Title 36, Counties (Refs & Annos)

Chapter 36.70C, Judicial Review of Land Use Decisions (Refs & Annos)

→ → **36.70C.140. Decision of the court**

The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction.

CREDIT(S)

[1995 c 347 § 715.]

LIBRARY REFERENCES

Zoning and Planning ↪ 1710, 1713, 1722.

Westlaw Topic No. 414.

RESEARCH REFERENCES

Treatises and Practice Aids

17 Wash. Prac. Series § 5.6, Judicial Review.

West's RCWA 36.70C.140, WA ST 36.70C.140

Current with 2013 Legislation effective through June 7, 2013

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END OF DOCUMENT

## Chapter 18.413

TEMPORARY DWELLING PERMITS

## Sections:

- 18.413.010 Temporary dwellings authorized  
— hardship.
- 18.413.020 Temporary dwellings —  
conditions.
- 18.413.030 Temporary dwellings —  
permits.
- 18.413.040 Revocation.

- 18.413.010 Temporary dwellings authorized  
— hardship.

Subject to the conditions and upon issuance of the permit provided for herein, one (1) or more temporary dwellings may be established and maintained on a lot, tract, or parcel if the parcel is already occupied by a principal dwelling for use only by one (1) of the following:

- A. A person who is to receive from or administer to a resident of the principal dwelling, continuous care and assistance necessitated by advanced age or infirmity, the need for which is documented by a medical physician's statement; or
- B. A caretaker, hired hand, or other similar full-time employee, working on the lot, tract, or parcel in connection with an agricultural or related use of the premises; or
- C. Relatives over sixty-two (62) years of age on a fixed or limited income, who are related by blood or marriage to a resident of the principal or temporary dwelling.  
(Ord. 1979-04-46; Sec. 18.511, Ord. 1980-06-80; Sec. 1, Ord. 1991-06-04; Sec. 17, Ord. 1992-06-04)

- 18.413.020 Temporary dwellings — conditions.

Temporary dwellings authorized herein shall be subject to the following minimum conditions:

- A. The lot, tract or parcel shall be of such size and configuration, and the temporary dwelling shall be located thereon in such a manner as to enable compliance with such zoning and subdivision regula-

tions as would be applicable but for the authorization of this chapter; provided that a temporary dwelling may be approved for a one (1)-acre site within the Agricultural, Forest, Rural Farm, Rural Estate or Rural Residential Districts if the tract or parcel of which it is a part is one (1) acre or larger in size and is otherwise in compliance with the provisions of this Title.

B. The temporary dwelling shall be a temporary structure such as a mobile home designed, constructed, and maintained in a manner which will facilitate its removal at such time as the justifying hardship or need no longer exists.

C. A current vehicular license plate, if applicable, shall be maintained on the temporary dwelling.

D. No more than one (1) temporary dwelling shall be authorized under this chapter if the primary dwelling is a mobile home.

E. Upon cessation of the hardship or need justifying the temporary dwelling permit, either such dwelling shall be removed or the owner of the lot, tract, or parcel shall comply with all applicable zoning subdivision requirements.

(Sec. 18.511, Ord. 1980-06-80; Sec. 5, Ord. 1981-01-07; Ord. 1979-04-46; Sec. 6, Ord. 1984-07-47)

- 18.413.030 Temporary dwellings — permits.

A. Applications for temporary dwelling permits shall be submitted to the Public Works Department on forms provided by the county, and shall be accompanied by a processing fee established for mobile siting permit, and shall include:

1. A site plan showing the size and boundaries of lot, tract, or parcel; the location of all existing buildings; and the proposed location of the temporary dwelling;
2. A description of the proposed temporary dwelling;
3. Documentation of approval of water supply and sewage disposal system by the appropriate governmental agency;
4. Statement signed by the applicant describing the hardship or need; provided that if the applicant is relying upon Section 18.413.010(A), a letter from a medical doctor verifying the need for continuous care and assistance shall also be submitted; and
5. A declaration to be filed with the County Auditor upon approval of the application setting forth the temporary nature of the dwelling.

B. Applications for a single temporary dwelling

Home < >

**14.32A.220 Standards.**

Each manufactured home placed in unincorporated Clark County after the effective date of the ordinance codified in this chapter shall comply with the following standards:

1. Only one (1) manufactured home shall be allowed on a lot or space, except as provided in Chapter 40.260.
2. Each manufactured home shall have an insignia of approval from the Washington State Department of Labor and Industries.
3. Installation and placement of each manufactured home shall comply with the requirements of Chapter 296-150M WAC as applicable, this Clark County Code chapter, and any other applicable regulations, provided that to the extent this chapter and the Washington Administrative Code may be or become in conflict, this chapter shall control.
4. Each manufactured home shall connect to an available, approved and operable potable water system prior to occupancy, and shall remain connected and operable as long as occupied.
5. Any driveway shall be subject to verified access approval from the Washington State Department of Transportation, Clark County public works department, and/or the Vancouver and Clark County fire marshal/fire life safety coordinator, as applicable under existing laws and codes.
6. Prior to occupancy or any other use, a manufactured home shall receive final inspection approval from the department. (Sec. 2 (Exh. A) of Ord. 2003-10-13)

Compile Chapter

**40.530.010 Nonconforming Lots, Structures and Uses**

## A. Purpose.

Lots, uses, and structures exist which were lawful when established but whose establishment would be restricted or prohibited under current zoning regulations. The intent of this chapter is to allow continuation of such nonconforming uses and structures. It is also the intent of this chapter to, under certain circumstances and controls, allow modifications to nonconforming uses and structures consistent with the objectives of maintaining the economic viability of such uses and structures while protecting the rights of surrounding property owners to use and enjoy their properties.

## B. Applicability.

All nonconforming lots, uses and structures shall be subject to provisions of this chapter.

1. If a lot, use or structure deemed legal nonconforming under past zoning regulations is brought into compliance with current standards, it shall be considered conforming.
2. The provisions in this chapter do not supersede or relieve a property owner from compliance with building, fire, health or other life safety requirements of the code.

## C. Nonconforming Status.

1. Any lot, use, or structure which, in whole or part, is not in conformance with current zoning requirements shall be considered as follows:
  - a. Legal Nonconforming. Lots, uses and structures legally created or established under prior zoning and/or platting regulations. These lots, uses and structures may be maintained or altered subject to provisions of this chapter.
  - b. Illegal Nonconforming. Lots, uses and structures which were not in conformance with applicable zoning and/or platting regulations at the time of creation or establishment. Illegal nonconforming lots, uses and structures shall be discontinued, terminated or brought into compliance with current standards.
2. It shall be the burden of a property owner or proponent to demonstrate the legal nonconformity of a lot, use, and structure.

## D. Legal Nonconforming Lots.

A legal lot of record, as defined in Section 40.100.070 and created as a building site, which does not conform to minimum lot area, width or depth requirements of the zoning district in which it is currently situated may be developed, subject to the following:

1. A permitted use or structure shall meet all existing development standards of the zoning district within which it is located including, but not limited to, required yards/setbacks, lot coverage, density, parking, landscaping, storm drainage, signage, and road standards.
2. For the purpose of establishing setbacks from property lines, any residential lot of record in the rural (R-5, R-10 and R-20), resource (FR-80, FR-40, AG-20 and AG-WL), urban reserve (UR-10 and UR 20) and urban holding (UH-10, UH-20 and UH-40) districts which has a smaller lot area, width and/or depth than that required by the zone in which it is located may use that residential zoning classification which most closely corresponds to the area or dimensions of the lot of record.

3. A legal nonconforming lot shall not be further diminished in size or dimension unless approved through a lot reconfiguration under Section 40.210.010(D) or Section 40.230.070(C)(2).
4. A legal nonconforming lot may be increased in size to bring it into closer conformance with area requirements of the zone in which it is located.
5. A legal nonconforming lot which is increased in area or dimension such that it is brought into compliance with any or all of the lot requirements for the zoning district in which it is located shall thereafter remain in compliance.
6. A legal lot of record that is reduced through governmental action or adverse possession below, or further below the required minimum size of the zoning district in which it is located shall be deemed a legal nonconforming lot, subject to review through a Type I process.

*(Amended: Ord. 2012-07-03)*

#### E. Legal Nonconforming Buildings or Structures.

A legally established building or structure may continue to be used or occupied by a use permitted in the zoning district in which it is currently located even though it does not comply with present development standards (e.g., setbacks, lot coverage, density, height, etc.) of said zone. The legal nonconforming building or structure may be maintained as follows:

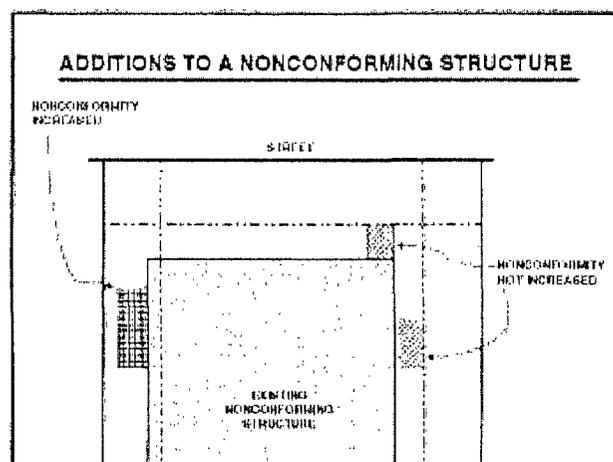
##### 1. Maintenance and Repair.

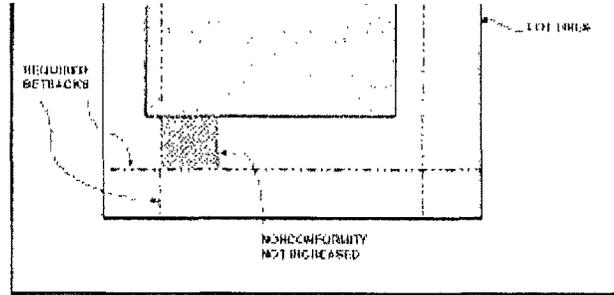
Ordinary repairs to correct deterioration or wear may be made to legal nonconforming structures. Minor maintenance and repair includes such things as painting, roof repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization.

##### 2. Expansion or Structural Alteration.

A legal nonconforming building or structure may be expanded, enlarged, or structurally altered, provided the modification meets applicable development standards for the zoning district in which it located. In no case shall said modification increase the building or structure's nonconformity. Expansion of nonresidential and multifamily buildings or structures may require site plan approval.

Figure 40.530.010-1





### 3. Restoration of Damaged Building or Structure.

A legal nonconforming building or structure that is damaged by fire, flood, explosion, wind, earthquake, war, riot, calamity or other catastrophic event may be restored or repaired as follows:

#### a. Partial Destruction.

If the extent of damage does not exceed sixty percent (60%) of either the square footage or assessed value of such building or structure as established by the most current County Assessor's tax roll, the building or structure may be reconstructed to the footprint existing immediately prior to the time of partial destruction, provided:

- (1) A building permit for said restoration shall be applied for within one (1) year of the date of damage or disaster.
- (2) Restoration/reconstruction shall be completed within two (2) years of the date of partial destruction.
- (3) Upon receiving a written request, the responsible official may, through a Type I review process, extend the above time limitations due to special circumstances beyond the control of the owner of said building or structure.

#### b. Substantial Destruction.

If the extent of damage exceeds sixty percent (60%) of either the square footage or assessed value of such building or structure as established by the most current County Assessor's tax roll, the building or structure shall not be repaired or reconstructed unless it conforms to development requirements of the zoning district in which it is located.

### 4. Relocation.

A legal nonconforming building or structure shall not be relocated on the same lot unless said move results in bringing the building or structure into compliance with requirements of the zoning district in which it is situated.

### 5. Signs.

Legal nonconforming signs are subject to provisions in Section 40.310.010(H).

## F. Legal Nonconforming Uses.

Any lawfully established nonconforming use or development may be continued at the same gross floor area or land coverage occupied on the effective date of the ordinance codified in

this title, or any amendment thereto, that made the use no longer permissible. Use of these buildings and land are subject to the following:

1. Establishment of Legal Nonconforming Status.

- a. Any person may request a determination through a Type I process regarding legal status of a nonconforming use.
- b. Evidence submitted by the applicant shall demonstrate that the use was lawfully created or established in accordance with the zoning regulations in existence at that time, and that said use has been maintained continuously since the time zoning regulations governing the land changed. Acceptable documentation may consist of, but is not limited to, such items as:
  - (1) Dated business receipts showing types of service or goods provided;
  - (2) Statements or records from utilities, such as power, water or gas, which indicate the date and type of use;
  - (3) Business licenses;
  - (4) Property rental invoices or receipts;
  - (5) Income tax records;
  - (6) Dated listings in telephone, business or Polk directories;
  - (7) Records of the County Assessor;
  - (8) Building, land use or development permits;
  - (9) Dated photographs, newspaper clippings, and other relevant documentation; or
  - (10) Notarized affidavits from neighbors or persons who have observed the nonconforming use over the required period of time may assist in substantiating its presence but shall not be the primary document upon which a determination is based.

2. Change of Ownership, Tenancy, or Management.

The legal nonconforming status of a use runs with the land, and is not dependent upon ownership, tenancy, or management, provided the nature, character, intensity or occupancy classification of the use does not change.

3. Maintenance and Repair.

Ordinary repairs and incidental alterations to correct deterioration or wear may be made to buildings containing a legal nonconforming use, provided the cost of such repairs in any twelve (12) month period does not exceed twenty-five percent (25%) of the assessed valuation of such building or structure as established by the most current County Assessor's tax roll. Minor maintenance and repair includes such things as painting, roof repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization. Incidental alterations may include construction of nonbearing walls or partitions.

4. Expansion or Alteration of Uses Established with Planned Unit Development or Site Plan Approval.

Applications for expansion or alteration of existing nonconforming uses which have been established pursuant to a valid planned unit development or site plan approval from the county may be considered, subject to the following:

- a. All applicable conditions of the planned unit development or site plan approval shall be fully complied with; and
- b. The responsible official may apply specific standards of the zoning district in which the planned unit development or site plan was approved, rather than standards of the underlying zoning district, as deemed necessary to ensure compliance with this chapter.

5. Other Expansions or Alterations.

Other than as allowed under Section 40.530.010(F)(4), a legal nonconforming use shall not be enlarged, expanded, or extended to include a portion of a structure or site it did not previously occupy on the date said use became nonconforming. For the purposes of this section, the term "enlarged, expanded, or extended" shall include, but not be limited to:

- a. Increased hours;
- b. Increased services or programs;
- c. Increased number of residential dwellings;
- d. Interior renovations or structural additions that increase the occupant load of the structure dedicated to the nonconforming use;
- e. Any new structures accessory to the nonconforming use;
- f. Expansion or replacement of the structure (or portions thereof) dedicated to the nonconforming use; or
- g. Anything beyond regular maintenance and minor repairs.

6. Change of Use.

The legal nonconforming use of a building, structure, or land may be changed through the site plan review process in Section 40.520.040, subject to the following:

a. Permitted Use in the Zone.

A conversion from a nonconforming use to a use permitted in the zone shall require site plan review under the provisions of Section 40.520.040 to ensure compliance with applicable development standards. Whether the application is a Type I or Type II will depend on the criteria in Section 40.520.040(B). Once converted to a permitted use, the nonconforming use may not be re-established.

b. Different Nonconforming Use.

A legal nonconforming use may be changed to another nonconforming use, subject to a Type II site plan review, only if all of the following conditions are met:

- (1) The proposed new use must have equal or lesser overall adverse impacts to the surrounding area considering such factors as traffic, required on-site parking, hours of operation, noise, glare, dust, odor, and vibration.
- (2) The proposed use will not introduce hazards or interfere with development potential of nearby properties in accordance with current zoning regulations.
- (3) The change in use will not result in an increase in the amount or area devoted to outdoor storage of goods or materials.
- (4) The proposed new use will not increase the amount of space occupied by a nonconforming use.
- (5) The proposed change in use will involve minimal structural alteration.
- (6) The responsible official may impose conditions to ensure compliance with subsections (F)(6)(b)(1) and (2) of this section.

*(Amended: Ord. 2012-12-23)*

7. Restoration of Damaged Building or Structure.

A building or structure containing a legal nonconforming use that is damaged by fire, flood, explosion, wind, earthquake, war, riot, calamity or other catastrophic event may be restored or repaired as follows:

a. Partial Destruction.

If the extent of damage does not exceed sixty percent (60%) of either the square footage or assessed value of such building or structure as established by the most current County Assessor's tax roll, the building or structure may be reconstructed to the footprint existing immediately prior to the time of partial destruction.

- (1) A building permit application for said restoration shall be filed for within one (1) year of the date of damage or disaster.
- (2) Restoration/reconstruction shall be completed within two (2) years from the date of partial destruction.
- (3) Upon receiving a written request, the responsible official may through a Type I review process extend the above time limitations for special circumstances beyond the control of the owner of said building or structure.

b. Substantial Destruction.

If the extent of damage exceeds sixty percent (60%) of either the square footage or assessed value of such building or structure as established by the most current County Assessor's tax roll, the building or structure shall not be repaired, reconstructed or reoccupied for any use unless such use conforms to development requirements of the zoning district in which the building or structure is located.

8. Discontinuation of Legal Nonconforming Use.

If a legal nonconforming use of land is discontinued or terminated, it shall not be re-established. Any subsequent use of the building or land shall conform to requirements of the zoning district in which it is located.

- a. A use is considered discontinued if customary operation of said use has ceased for a period of twelve (12) months or more.
- b. The responsible official may, through a Type I process, grant an extension to the timeframe identified above, provided the property owner submits documentation demonstrating there was no intent to abandon the use. Documentation may include, but is not limited to, the following:
  - (1) Requests for approvals necessary to re-establish the use or structure submitted to appropriate county, state and federal agencies within twelve (12) months after the use was discontinued;
  - (2) The property or structure has been involved in litigation;
  - (3) Disputes in insurance settlements in the case of fire or casualty;
  - (4) Delay in transferring title due to probate proceedings; or
  - (5) Attempts to lease the site are ongoing due to:
    - (a) The length of time involved for marketing the premises; or
    - (b) The structure is a specialized type of building requiring a specialized type of use due to equipment, processes or configuration.
- c. A statement from the property owner merely stating that there is no intent to abandon is not sufficient documentation without a showing of additional actions taken by the property owner to re-establish the use or structure.

G. Nonconforming Landscaping and Screening.

On a lawfully developed property which is nonconforming as to landscaping or screening, a change of use which requires site plan review under Section 40.520.040 shall be brought into compliance with landscape and screening standards in Section 40.520.040(E)(4).

(Amended: Ord. 2010-08-06)

Compile Chapter

FILED  
COURT OF APPEALS  
DIVISION II

2013 JUN 20 PM 1:38

NO. 44818-II  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON  
OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

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Richard Colf,

Appellant,

vs.

Clark County, Washington,

Respondent,

---

APPEAL FROM THE SUPERIOR COURT

---

HONORABLE DAVID E. GREGERSON

---

AFFIDAVIT OF MAILING

---

BEN SHAFTON  
Attorney for Defendant/Appellant  
Caron, Colven, Robison & Shafton  
900 Washington Street, Suite 1000  
Vancouver, WA 98660  
(360) 699-3001

STATE OF WASHINGTON )  
 )  
County of Clark ) ss.

THE UNDERSIGNED, being first duly sworn, does hereby depose and state:

1. My name is LORRIE VAUGHN. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

2. On June 17, 2013, I deposited in the mails of the United States of America, first class mail with postage prepaid, a copy of the APPELLANT'S OPENING BRIEF to the following person(s):

Mr. Lawrence Watters  
Prosecuting Attorney's Office  
PO Box 5000  
Vancouver, WA 98666-5000

I SWEAR UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED this 17<sup>th</sup> day of June, 2013.

Lorrie Vaughn  
LORRIE VAUGHN

SIGNED AND SWORN to before me this 17 day of June, 2013.

[Signature]  
NOTARY PUBLIC FOR WASHINGTON  
My appointment expires: 9-1-2015