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COURT OF APPEALS
DIVISION II

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NO. 49836-7-II

STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

EDNA ALLEN, an individual,

Petitioner,

and

WASHINGTON STATE ATTORNEY GENERAL,

Petitioner,

v.

DAN & BILL'S RV PARK,

Respondent.

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STATE OF WASHINGTON
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BRIEF OF PETITIONER EDNA ALLEN

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I. INTRODUCTION

This appeal arises out of the Manufactured/Mobile Home Landlord-Tenant Act, RCW ch. 59.20 (the “MHLTA”). The case is about whether people who permanently reside in their recreational vehicles in residential communities such as Dan & Bill’s so-called RV Park should be treated under the law as vacationers or campers, or whether they should be afforded the protections of the MHLTA. Petitioner Allen contends that the legislature intended to capture parks such as Dan & Bill’s RV Park (“the Park”) within the ambit of the MHLTA through its provisions relating to *park models*. The Park claims that the MHLTA does not apply to it. The central issue giving rise to the parties’ differing positions is the proper interpretation of the definition of *park model*, which is defined as:

“Park model” means (1) a recreational vehicle (2) intended for permanent or semi-permanent installation and (3) is used as a primary residence.

RCW 59.20.030(14) (*numbering added*).

The term *recreational vehicle* is also defined within the statute in such a way that it conflicts with the other provisions of *park model*. This has given rise to multiple approaches to resolving the inconsistency and coming to a reasonable interpretation that the legislature must have intended.

Once the interpretation of *park model* is established, it can be readily determined whether the Park rents spaces on a year-round basis to two or more *park models*, a sufficient level of activity for the Park to come under the provisions of the MHLTA.¹

The administrative law judge (“ALJ”) who heard the case determined that the Park contained only one *park model*, that of petitioner Edna Allen. With respect to the ALJ’s interpretation of *park model*, Petitioner Allen disagrees specifically with his interpretation of the second element, *intended for permanent or semi-permanent installation*. Because of the frequency that this second element occurs in this brief, it will sometimes be referred to in shorthand as the “key phrase.”

On a petition for review of the ALJ’s decision to the superior court, the superior court determined that the Park contained two or more *park models* (but that petitioner Allen did not live in a *park model*), and therefore the Park came within RCW ch. 59.20. The

¹The Park comes under the MHLTA if the Park is “real property which is rented . . . for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such property is rented . . . for seasonal recreational purpose only and is not intended for year-round occupancy.” RCW 59.20.030(10).

superior court reversed the ALJ's decision and entered a judgment to such effect (CP 217).

The superior court also awarded costs and attorney's fees to petitioner Allen under RCW 59.20.110, and entered a corresponding judgment in her favor for such amounts (CP 213). The Park now appeals the superior court's ruling regarding what constitutes a *park model*, and the attorney's fees awarded to petitioner Allen.

Petitioner Allen contends that the superior court's ruling was correct insofar as it determined that there were two or more *park models* in the Park, and that petitioner Allen's attorney fee request was properly evaluated by the superior court and was within the range of the superior court's discretion. It follows that petitioner Allen also contends that the ALJ erred in his interpretation of *park model*.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignments of Error

Petitioner assigns error to the following conclusions of law entered by the ALJ:

1. The ALJ erred in construing the definition of *park model* (COL 5.21-5.23 at AR 868-869).

2. The ALJ erred in concluding that “the Park contains only one ‘park model’” (COL 5.24 at AR 869).

3. The ALJ erred in concluding that the Park was not a mobile home park under RCW 59.20.030 (COL 5.25 & COL 5.26 at AR 869).

Petitioner assigns error to the following findings of fact entered by the ALJ:

4. The ALJ erred in entering FOF 4.8 to the effect that “. . . numbers are assigned to units, not lots. * * * No one rents a specific lot [in the park]” (AR 858).

5. The ALJ erred in entering FOF 4.9 to the effect that “Because the Park occupies a flood zone, Mr. Haugsness will not allow any unit to be permanently installed” (AR 859).

6. The ALJ erred in entering FOF 4.11 to the effect that “The Park requires all residents to be ready to move anytime” [sic] (AR 859).

7. The ALJ erred in entering FOF 4.16 to the effect that “. . . [N]one of the units have anything permanent attached to them, by order of the landlord and in compliance with county code” (AR 859).

8. The ALJ erred in entering FOF 4.18 to the effect that “None of the units in the Park are [sic] hardwired for electricity or plumbed

for septic and water” (AR 859).

9. The ALJ erred in entering FOF 4.53 to the effect that “Mr. Bordernick’s [sic] motor home is not permanently installed at the Park and he has no intention of permanently installing it” (AR 863).

B. Issues Pertaining to Assignments of Error

1. Did the ALJ Misinterpret the Legal Definition of *Park Model* Under RCW 59.20.030(14) (Assignments 1, 5-9)?

- a. Does the Statutory Definition of *Park Model* Contain Embedded Conflicting Provisions (Assignment 1) ?
- b. Did the ALJ Err by Improperly Importing Language Inconsistent with the Statutory Definition of *Park Model* (Assignments 1, 5-9)?
- c. Did the ALJ Err by Failing to Give the Key Element *Intended for Permanent or Semi-Permanent Installation* Its Plain and Ordinary Meaning (Assignments 1, 5 to 9)?
- d. Did the ALJ Err in Failing to Give Effect to the Intent of the Legislature Regarding Its Inclusion of *Park Model* within the Scope of the MHLTA (Assignment 1)?

2. Did the ALJ Err in His Application of His Definition of *Park Model*, Mistakenly Concluding That There Was Only One *Park Model* in the Park (Assignment 2)?

3. Did the ALJ Err in Concluding That the Park is Not Subject to the MHLTA (Assignment 3)?

C. Issues Not Pertaining to Assignments of Error

1. Did the Superior Court Properly Award Attorney’s Fees to Petitioner Edna Allen?

III. STATEMENT OF THE CASE

The Park is located in Puyallup, Pierce County, Washington and abuts the Puyallup River (FOF 4.9 at AR 859). The Park rents space to a number of recreational vehicle homes, which include fifth-wheels, travel trailers, motorhomes and trailer homes (FOF 4.12 at AR 859; AR 363-402).

Petitioner Edna Allen has lived in a trailer home located in the Park since January 3, 2014 (FOF 4.19 at AR 860). The trailer was given to Ms. Allen on January 3, 2014, and she began living there on the same day (AR 961-962). Dan Haugsness, the owner of the Park, did not offer her a written rental agreement (AR 974-975). Mr. Haugsness did provide Ms. Allen with the rules and regulations for the Park (AR 359, 975). Around April of 2014, at a time when Ms. Allen was going to hand her rent check to Mr. Haugsness, he told her that her rent went up by \$20 (AR 977-978). In reaction to the lack of notice of the rent increase, Ms. Allen asked Mr. Haugsness to provide her with a written rental agreement (AR 976-977). Despite repeated requests by Ms. Allen, Mr. Haugsness never provided her with one (AR 977).

On May 7, 2014, Ms. Allen filed with the Manufactured Housing Dispute Resolution Program (“MHDRP”) of the Consumer

Protection Division of the Office of the Attorney General a request for dispute resolution alleging that the Park refused to provide her with a written rental agreement and improperly increased her rent (FOF 4.1 at AR 858).

On November 17, 2014, the MHDRP served on the Park a Notice of Violation (FOF 4.2 at AR 858). The notice alleged that the Park violated the MHLTA by not having a written rental agreement, by failing to provide a statutorily-required notice of rent increase, and by failing to provide receipts for payments made in cash.² The Park appealed the Notice of Violation on December 10, 2014 (FOF 4.3 at AR 858).

On February 26, 2015, the MHDRP issued to the Park an Order to Cease and Desist under the authority of RCW 59.30.040(7) (FOF 4.4 at AR 858). The MHDRP alleged that the Park attempted to raise Ms. Allen's rent again on February 2, 2015, without the proper notice period and for the retaliatory purpose of covering the

² The MHLTA requires the owner of a mobile home park to have a written rental agreement, signed by the parties. RCW 59.20.060(1). The MHLTA also requires park owners to provide three months' written notice of an increase in rent. RCW 59.20.090(2). The Park must provide receipts for cash rent payments. RCW 59.20.134(1).

Park's attorney's fees.³ The order required the Park to cease and desist from such conduct.

On March 19, 2015, the Park filed with the AGO its Appeal of the AG's Order to Cease and Desist (FOF 4.5 at AR 858). The two matters were ordered consolidated (FOF 4.6 at AR 858).

An administrative hearing was held on September 28 and 29, 2015 (AR 873, 1121). The ALJ found that "[p]redicate to determining whether the Park violated the MHLTA is determining whether the Park is subject to the MHLTA" (COL 5.13 at AR 867).

In its prehearing briefing memorandum, the MHDRP argued that that the Park is subject to the MHLTA because it is a mobile home park as defined in the MHLTA:⁴

"Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means *any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.*

³ The MHLTA prohibits mobile home park landlords from increasing rent in retaliation for a tenant's good faith filing of a complaint with a state agency or requesting the landlord to comply with the law. RCW 59.20.060(5)(a) and (b).

⁴ This brief uses the term "mobile home park" as shorthand for the term "[m]obile home park", "manufactured housing community," or "manufactured/mobile home community" of RCW 59.20.030(10)

RCW 59.20.030(10) (AR 749).

In its pre-hearing brief, the Park asserted that it is not subject to the MHLTA, but instead is an “RV Park” (AR 762-763).

Both parties acknowledge that the Park contains neither mobile homes nor manufactured homes (COL 5.14 at AR 867). The parties also seem to agree that many residents of the Park use their units as their primary residences, and have lived in the Park for many years. The ALJ found that the key issue before him in determining whether the Park is subject to the MHLTA is whether the Park contains two or more *park models* (COL 5.14 at AR 867).

Following the hearing, the ALJ determined that the unit in which Ms. Allen lived was the only *park model* in the Park (COL 5.23 at AR 869). He reached this conclusion on the basis of how the unit in question was physically installed on the lot, i.e., how it was physically connected to the water, electricity and sewer lines in the park and whether the unit could be easily moved out of the park (COL 5.23 at AR 869).

The AG represented the Office of Attorney General operating under the MHDRP (AR 874). Ms. Allen was not represented at the hearing before the ALJ (AR 34, 874). Following the ALJ’s ruling, Ms.

Allen retained her current counsel, who filed a petition for review before the Thurston County Superior Court (CP 3). The AG also filed a petition for review (CP 251).

Following opening briefs, responsive briefs and reply briefs, the Thurston County Superior Court reversed the ALJ's determination that the Park was not a mobile home park (CP 217). After interpreting the statutory definition of *park model*, the Superior Court specifically found that the Park "hosts two or more park model units on its premises[,]” and therefore Dan & Bill's Park was a statutorily-defined manufactured home community within the scope of the MHLTA (CP 225).

Subsequently, Ms. Allen's counsel filed a motion for attorney's fees under RCW 59.20.110, which authorizes the award of attorney's fees to the prevailing party in any action arising out of the MHLTA (CP 161-166). The Park objected to the fee request on the basis that various specific itemized fees requested involved unnecessary, duplicative or excessive work, or work for which Ms. Allen's counsel should not be compensated, and that Ms. Allen's counsel's hourly rate was excessive (CP 182-197). The superior court reduced the fee request to some extent and awarded a multiplier on the fee request, on the basis that the case was a contingent one (CP 228-230). The

superior court then entered a judgment in favor of Ms. Allen for costs and attorney's fees in the amount of \$41,895.25 (CP 213).

The superior court also remanded the case to the ALJ to determine the relief to be awarded Ms. Allen (CP 217). The Park filed the present appeal of the superior court's decision (CP 231).

IV. LEGAL ARGUMENT

A. This Court Sits in the Same Position as the Superior Court, Reviewing the Standards of the Washington Administrative Procedure Act, Chapter 34.05 RCW, Directly to the Record Established Before the Agency.

This case began as a challenge to an administrative order; therefore, review is governed by chapter 34.05 RCW. *Cougar Den, Inc. v. Dep 't of Licensing*, 2017 WL 1192119, ___ Wn.2d ___, 392 P.3d 1014, No. 92289-6, decided 3-16-17 (*Slp Opn* at 3). RCW 34.05.570(3) specifies nine grounds for relief from an administrative agency order in adjudicative proceedings, including where the order (1) erroneously interpreted or applied the law, RCW 34.05.570(3)(d); (2) is not supported by substantial evidence, RCW 34.05.570(3)(e); or (3) is arbitrary or capricious, RCW 34.05.570(3)(i). *Cornelius v. Department of Ecology*, 182 Wn.2d 574, 614, 344 P.3d 199 (2015). These three grounds are applicable here.

Generally, an “agency decision is presumed correct and the challenger bears the burden of proof.” *King County Public Hospital District No. 2 v. Department of Health*, 178 Wn.2d 363, 372, 309 P.3d 416 (2013) (quoting *Providence Hospital of Everett v. Department of Social & Health Services*, 112 Wn.2d 353, 355, 770 P.2d 1040 (1989)). However, this case involves an interpretation of the term *park model* in the Manufactured/Mobile Home Landlord-Tenant Act, which is a legal question reviewed de novo. *Chicago Title Insurance Co. v. Office of Ins. Comm'r*, 178 Wn.2d 120, 133, 309 P.3d 372 (2013) (“The agency’s interpretation of pure questions of law is not accorded deference . . .” (citing *Hunter v. University of Washington*, 101 Wn. App. 283, 292, 2 P.3d 1022 (2000))). The court of appeals sits in the same position as the superior court, reviewing the standards of the Washington Administrative Procedure Act, chapter 34.05 RCW, directly to the record established before the agency. *Cougar Den, supra, Slp. Opn.* at 4.

B. The Statutory Definition of Park Model Contains Imbedded Conflicts in Its Provisions Which are Resolvable Through Principles of Statutory Interpretation.

The definition of *park model* is a nested definition in that it is defined in terms of another term, namely *recreational vehicle*, as follows:

“Park model” means (1) a recreational vehicle (2) intended for permanent or semi-permanent installation and (3) is used as a primary residence.

RCW 59.20.030(14) (*numbering added*).

A recreational vehicle in turn is defined as follows:

“Recreational vehicle” means a travel trailer, motor home, truck camper or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.

RCW 59.20.030 (17).

Substituting the definition of *recreational vehicle* into that of *park model* yields the following more particularized definition that is helpful for analysis:

“Park model” means (1) a *recreational vehicle* (i.e., a travel trailer, motor home, truck camper or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot) (2) intended

for permanent or semi-permanent installation and (3) is used as a primary residence.

Read literally, there never could be a *park model* under these definitions, as a recreational vehicle would have to be, at the same time, (a) both *not occupied as a primary residence* and *used as a primary residence*, (b) both *used as temporary living quarters* and *used as a primary residence*, and (c) both *transient* and *intended for permanent or semi-permanent installation*. Also, the provisions *not immobilized or permanently affixed to a mobile home lot* and *intended for permanent or semi-permanent installation*, are incompatible and cannot be applied at the same time.⁵ The definition of a *park model* therefore does not reflect one of the finer examples of legislative drafting and requires judicial interpretation to correctly construe.

⁵ For example, if the owner of a travel trailer *permanently affixes* the trailer to a mobile home lot, then it is undoubtedly intended for *permanent installation* as a *park model*, yet it does not qualify as a *park model* because it is excluded from the literal definition of *recreational vehicle*, which cannot be *permanently affixed*. Similarly, if the owner of a camper sets up the camper as a permanent residence at a park and places the camper on cinder blocks to *immobilize* it, then the camper is undoubtedly intended for *permanent or semi-permanent installation* as a *park model*, yet again it does not qualify as a *park model* because it is excluded from the literal definition of a recreational vehicle, which cannot be *immobilized*.

Principles of statutory interpretation help to resolve these conflicts. “Generally, provisions of a specific more recent statute prevail in a conflict with a more general predecessor.” *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 37, 785 P.2d 447 (1990). Because the statute defining *recreational vehicle* was introduced before the statute defining *park model*,⁶ the earlier contradictory provisions in element (1) should yield, resulting in an interpretation more in line with what the legislature must have intended.

Applying this principle first to the provisions relating to the requirement of primary residency, it is clear that a *park model* must be “used as a primary residence.” Under this reasoning, the definition of *park model* reduces to the following:

“Park model” means (1) a *recreational vehicle* (i.e., a travel trailer, motor home, truck camper or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, ~~is transient, is not occupied as a primary residence,~~ and is not immobilized or permanently affixed to a mobile home lot) (2) intended for permanent or semi-permanent installation and (3) is used as a primary residence (~~strikethrough added to indicate superseded provisions~~).

⁶ The definition of *recreational vehicle*, RCW 59.20.030 (17), was introduced in 1993 (Laws of 1993, ch. 66, § 15), whereas the more specific definition of *park model*, RCW 59.20.030(14), was first introduced in 1999 (Laws of 1999, ch. 359, § 2), and later amended in 2003 (Laws of 2003, ch. 127, §1).

Secondly, with respect to the provisions *not immobilized or permanently affixed to a mobile home lot and intended for permanent or semi-permanent installation*, the same principle, whereby provisions of a specific more recent statute prevail in a conflict between two statutes, should be used in harmonizing these meanings. That is, any meaning of the language *not immobilized or permanently affixed to a mobile home lot* that is contrary to what the legislature meant by *intended for permanent or semi-permanent installation* should yield to the latter.

The plain and ordinary meaning of these phrases from the online dictionary of *Merriam-Webster* are as follows:

Immobilize: to make immobile

Immobile: 1) incapable of being moved; 2) not moving;
motionless;

Affix: 1) to attach physically; 2) to attach in any way

Permanent: continuing or enduring without
fundamental or marked change

Semi-permanent: lasting or intended to last for a long
time but not permanent

Installation: something that is *installed* (i.e., set up)
for use

Intend: to have in mind as a purpose or goal

<http://www.merriam-webster.com/dictionary> (date accessed: May 10, 2017).

As to the meaning of the key phrase *intended for permanent or semi-permanent installation*, the word *installation* thus says nothing about the permanency of what is installed, but refers only to *something that is set up for use*.⁷ The word *installation* also does not denote any requirement of physical connection or ability to move the object within a specific time period, e.g., within two hours.

Thus, as applied to a recreational vehicle, the key phrase *intended for permanent or semi-permanent installation* has the plain and ordinary meaning *to have in mind to set up [the recreational vehicle] for long-term use*. This key provision cannot reasonably be read to preclude an installation that permanently affixes a recreational vehicle to a mobile home lot. For this reason, the provision *not permanently affixed to a mobile home lot* found in the definition of *recreational vehicle* must yield to the later, more specific definition of *park model*.

⁷ Thus, when referring to the *installation* of software on a computer, or the *installation* of a machine in a factory, or the *installation* of a barrier on a highway, there is no connotation about how the object is attached or the permanency of the attachment. The software, the machine, or the barrier, as the case may be, are merely *set up for use*.

As to the word *immobilized*, the dictionary provides two options as to its meaning: (i) *made motionless*, and (ii) *made incapable of being moved* or, more simply, *incapable of being moved*. These definitions suggest a spectrum of immobility, from a temporary state, e.g., a flat tire, to a more permanent condition, such as removing the axles or securing the recreational vehicle to a foundation. The drafter of the definition of *recreational vehicle* could not have reasonably intended for a *recreational vehicle* to cease being one simply because it was temporarily immobilized. Therefore, the only reasonable meaning that *immobilized* can assume is one relating to more permanent conditions of immobility.

More permanent conditions of immobility are analogous to the condition of being *permanently affixed*, in that they are a form of permanent installation. For these reasons, the words *not immobilized* should yield to the later provision *intended for permanent or semi-permanent installation* in the more specific definition of *park model*.

Applying the appropriate principles of statutory interpretation discussed above, the definition of *park model* can ultimately be expressed more simply as:

“Park model” means (1) a *recreational vehicle* (i.e., a travel trailer, motor home, truck camper or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, ~~is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot~~) (2) intended for permanent or semi-permanent installation and (3) is used as a primary residence (~~strikethrough~~ *added to indicate superseded provisions*).

Ms. Allen urges the court to resolve the conflicts in the statutory language in the manner ultimately set forth above.

C. The ALJ Erred in His Interpretation of the Statutory Definition of Park Model.

1. When Interpreting the Key Phrase *Intended for Permanent or Semi-Permanent Installation*, The ALJ Improperly Imported a Conflicting Phrase into the Statutory Definition of *Park Model*.

When interpreting a statute, the court first looks to the ordinary meaning of the words used by the legislature. The court adopts the interpretation of statutes which best advances the legislative purpose and avoids unlikely, absurd, or strained consequences. *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990); *Thurston County v. City of Olympia*, 151 Wn.2d 171, 175, 86 P.3d 151 (2004).

In this case, the ALJ found the key phrase at issue, *intended for permanent or semi-permanent installation*, to be “vague,” and

found the words used to define *recreational vehicle* to “shed light” on what the “vague” phrase must mean (COL 5.21 at AR 868). Following this line of thinking, the ALJ took the phrase *not immobilized or permanently affixed* from the definition of *recreational vehicle* and, omitting the word *not*, imported that phrase into the definition of *park model*, in order to give meaning to the key phrase *intended for permanent or semi-permanent installation* (COL 5.21 at AR 868). The ALJ’s approach has the effect of supplanting certain words of the legislative definition of *park model* with words that directly conflict with other already-existing words of the definition, resulting in the following combined definition:

“Park model” means (1) a *recreational vehicle* (i.e., a travel trailer, motor home, truck camper or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot) (2) ~~intended for permanent or semi-permanent installation~~ [immobilized or permanently affixed] and (3) is used as a primary residence (*underlines added to show new conflict due to ALJ interpretation*).

In effect, the ALJ’s interpretation created a definition of *park model* devoid of any members, as *park model*, as interpreted by the ALJ, would have to be, at the same time, both *not immobilized or*

permanently affixed and immobilized and permanently affixed. Such an antinomy cannot embody the legislative intent in enacting the statute.

Principles of statutory construction are normally applied to resolve conflicting terms or phrases in statutory language. But here the conflict arises not solely in statutory language, but in language the ALJ imported into the definition of *park model*, and therefore the principle of statutory interpretation, whereby language of an earlier statute that is in conflict with later language is superseded, is not available, and with good reason.

Furthermore, the ALJ's interpretation of *park model* produces an absurd result that the legislature could not have intended, and therefore is clearly erroneous. *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983).

Accordingly, the ALJ erroneously construed the definition of *park model* in the MHLTA.

2. The ALJ Erred by Not Giving the Key Element Intended for Permanent or Semi-Permanent Installation Its Plain and Ordinary Meaning.

The ALJ also erred in his interpretation of the key phrase *intended for permanent or semi-permanent installation* in RCW

59.20.030(14) by not parsing the phrase in order to give all the words effect and their plain and ordinary meanings as was discussed Section B above.

A further problem with the ALJ's interpretation of the statutory definition of *park model* is that the ALJ has rendered meaningless or superfluous the two words *intended for* by giving those words essentially no effect.⁸ Interestingly, the legislature at one point entertained an amendment to RCW 59.20.030(14) that would have dropped the word *intended* from the definition of *park model* but ultimately did not adopt the change.⁹ Especially in light of the legislature's explicit decision to retain the words *intended for*, those words must be given effect.

⁸ Just as courts cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language, courts may not delete language from an unambiguous statute: Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318. (2003) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)). (Citations and quotation marks omitted).

⁹ When enacted in 1999, the definition of *park model* read "a recreational vehicle intended for permanent or semi-permanent installation and habitation." Laws of 1999, ch. 359 § 2. A proposed amendment in 2003 would have eliminated the word *intended* and replaced the word *habitation* with the words *used as a residence*." (See Bill Analysis – HB 1786, Trade & Economic Development Committee dated 2/20/2003.) In the end, another 2003 amendment retained the word *intended* and replaced *habitation* with *used as a primary residence*, resulting in the language of the current definition of *park model* in RCW 59.20.030(14).

Perhaps what the ALJ found “vague” is the passive-voice aspect of the words *intended for*, as it is not immediately clear whose intention is being referred to. It could be argued that it is a park’s intent to which the phrase *intended for* refers, but this fails because a park controls only whether it *allows* a recreational vehicle owner to install his or her unit in its park.¹⁰ A park cannot control the ultimate use of someone else’s personal property. Practically speaking, then, it can be only through ownership of a recreational vehicle that the vehicle can be intended for any particular purpose. The owner could be either a pre-sale owner (e.g., the manufacturer or distributor), or a post-sale owner such as a tenant at the Park. But manufacturers of recreational vehicles must be immediately ruled out as having any such intention of permanent or semi-permanent installation of their products, because they currently enjoy an exemption from the Housing Construction and Safety Standards Act provided, among other things, that their products are “[d]esigned primarily not for use as a permanent dwelling but as temporary living

¹⁰ If the park does not intend to allow long-term tenants, it can simply make those terms known up front. This way, prospective tenants who are looking to set up their recreational vehicles for long-term residential use can choose a park that will accommodate their long-term tenancies.

quarters for recreational, camping, travel, or seasonal use.” 24 CFR §3282.8(g).¹¹

Therefore, the key phrase *intended for permanent or semi-permanent installation* can be interpreted only as relating to the tenant owner of a recreational vehicle and his or her intention to set up the vehicle for long-term use.

Accordingly, the key phrase *intended for permanent or semi-permanent installation* has the following meaning if phrased in the active voice: *the recreational vehicle owner intends to set up the recreational vehicle for long-term use*. This analysis leads to a plainer language version of the definition of *park model*, namely *a recreational vehicle whose owner intends to set it up for long-term use as a primary residence*, which Petitioner Allen urges this Court to adopt, as such definition flows from the ordinary meaning of the words involved in the statute.

¹¹ Thus, manufacturers of recreational vehicles do not intend for their vehicles to be used as primary residences, because such recreational vehicles do not meet the safety standards required of primary residences.

3. The ALJ’s Interpretation of the Definition of *Park Model* Fails a Reasonability Check Against the Legislature’s Intent.

“When a question of law requires interpretation of a statute, our objective is to carry out the legislature’s intent.” *Kitsap Bank v. Denley*, 177 Wn. App. 559, 580, 312 P.3d 711 (2013). Statutory interpretation is used “to determine and give effect to the intent of the legislature.” *State v. Reeves*, 184 Wn. App. 154, 158, 336 P.3d 105 (2014) (internal quotation marks omitted) (quoting *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013)).

The term *park model*, RCW 59.20.030 (14), was first added to the MHLTA in 1999. Previous to 1999, the MHLTA used the generic term “mobile home” without definition. The 1999 amendments updated the terminology, defining terms for three types of dwelling units within the scope of the MHLTA: (i) *mobile home*, RCW 59.20.030(8);¹² (ii) *manufactured home*, RCW 59.20.030(7); and (iii) *park model*, RCW 59.20.030(14). *Park model* was initially defined as “a recreational vehicle intended for permanent or semi-permanent installation and habitation.” Laws of 1999, ch. 359, § 2.

¹² A mobile home is a factory-built dwelling built prior to June 15, 1976. See App. A for a fuller definition.

That initial definition was amended in 2003 to replace “habitation” with “is used as a primary residence.” Laws of 2003, ch. 127, §1.

The intent of the legislature with the introduction of *park model* into the MHLTA is clear: The legislature intended for a subset of the universe of recreational vehicles used as primary residences to come within the ambit of the MHLTA. The ALJ’s interpretation, apart from its contradictory nature, would have that subset be nearly non-existent – only those recreational vehicles used as primary residences that are somehow permanently affixed to a property or somehow immobilized. It is highly unlikely that the legislature intended to so severely limit the set of recreational vehicles that would qualify under the MHLTA, particularly when there is a broader need for such protection.

4. The ALJ Erred in Not Sufficiently Considering Legislative Hearing Records Supporting the Plain and Ordinary Meaning of *Park Model* Understood Among the Various MHLTA Stakeholders.

The AG provided legislative testimony from relevant legislative hearing records of an unequivocal and common understanding across the spectrum of MHLTA stakeholders,

including park owners and tenants, and their advocates,¹³ as to the scope of the MHLTA (AR 751-755). The legislative hearing records show the stakeholders' understanding is that non-transient recreational vehicles used as primary or permanent residences come within the scope of the MHLTA (AR 764). That the legislature has not made any corrective amendments in the definition of *park model* since 2003, confirms that the plain-meaning interpretation adopted by the stakeholders is the interpretation that the legislature intended. Nevertheless, the ALJ deemed the legislative hearing records presented by the AG as selective and unpersuasive (COL 5.14 at AR 867).

Petitioner Allen submits that the ALJ erred by not more carefully considering legislative hearing records of MHLTA stakeholder testimony. The stakeholders are the ones who give the MHTLA practical effect, and the legislature has shown no concern that these stakeholders are misunderstanding that tenants of non-transient recreational vehicles used as primary residences are afforded the protections of the MHLTA. Had the legislature been

¹³ One advocate represented over 200 park owners across the state (AR 752).

concerned, it could have amended the definition of *park model*. But the legislature has not amended the definition of *park model* since 2003, which is strong evidence that legislature is satisfied that the definition is being properly understood.

D. The ALJ Erred in the Application of His Definition of *Park Model*, Mistakenly Concluding There is Only One *Park Model* in the Park.

Notwithstanding the ALJ's interpretation of *park model* that literally applied would yield the empty set, the ALJ's flawed application of his interpretation of the definition of *park model* led him to identify one *park model* in the Park.¹⁴ In his analysis, the ALJ considered the testimony of only six tenants of the Park, each of whom live there in a recreational vehicle (AR 960, 1013, 1027, 1055, 1081, 1260), because "[t]he record does not provide information about all of the residents" of the Park (COL 5.21 at AR 868).

In distinguishing whether any of the six subject recreational vehicles qualify as a *park model*, the ALJ analyzed (i) whether the

¹⁴ The ALJ found that Ms. Allen's recreational vehicle, which is supported by blocks, to be immobilized, despite the evidence that "[her unit] has wheels and a tow-bar, and . . . can be *moved*" (italics added, COL 5.22 at AR 869). The ALJ, however, found Ms. Helmick's recreational vehicle not to be immobilized, despite it's also being on blocks (COL 4.30 at AR 861).

recreational vehicle *is used as a primary residence* and (ii) whether the recreational vehicle is *intended for semi-permanent or permanent installation*. The ALJ readily concluded that each of the six subject recreational vehicles is used as a primary residence¹⁵ (COL 5.22, 5.23 at AR 869). It is in the second part of his analysis, however, where the ALJ's commits his error, finding there to be one *park model* when, technically speaking, under his own interpretation he should find none at all.

1. The ALJ Erred by Giving His Imported Words *Permanently Affixed or Immobilized* a Meaning Not Intended by the Legislature and Incompatible with Their Intended Meaning in the Definition of *Recreational Vehicle*.

In order to determine whether a recreational vehicle is *intended for semi-permanent or permanent installation*, the ALJ

¹⁵ The ALJ found that the Park tenant witnesses live in recreational vehicles as primary residences: "When Ms. Allen moved into [the trailer] in January 2014, she intended to live there permanently" (FOF 4.26 at AR 860); "Ms. Hamrick lives in a recreational vehicle" which she "considers . . . her permanent home" (FOF 4.30, 4.31 at AR 861); "Mr. Niquette lives in his 36-foot travel trailer" and "plans to reside at the park for an indefinite period of time" (FOF 4.35, 4.39 at AR 861-862); "Mr. Shinkle owns . . . a 40-foot travel trailer" and "has no plans to leave the Park" (FOF 4.41, 4.42 at AR 862); "Roy Bordernick has lived in the Park in a motor home for approximately nine years" (FOF 4.47 at AR 863).

examined the six subject recreational vehicles against his imported criteria of (i) *permanently affixed* or (ii) *immobilized* separately.

In applying the criterion *permanently affixed*, the ALJ found none of the six subject recreational vehicles to be so. The ALJ's basis for this finding was whether a given recreational vehicle was "affixed to, for example, a foundation" (COL 5.22 at AR 869) and whether tenant improvements such as "storage sheds, small decks, stairs and landscaping . . . are affixed to the unit" (COL 5.23 at AR 869). As noted earlier, whether a *recreational vehicle* is affixed to the lot or not has been superseded by the definition of a *park model*, and is thus irrelevant.

On the other hand, the ALJ also improperly applied the criterion of *immobilized* and thereby erroneously concluded that one of the recreational vehicles in the Park is *immobilized*. The ALJ improperly considered whether there were any tenant improvements that "restrict the units' mobility" and whether the connections to electricity and plumbing "are simple connections that can be unplugged or disconnected with no more effort than unplugging a lamp or disconnecting a garden hose" (COL 5.23 at AR 869). Under this line of thinking, the ALJ found that the subject recreational vehicles other than Ms. Allen's "are movable and able to be relocated

with[in] as little as 15 minutes and with no more than two hours of preparation” (COL 5.23 at AR 869). The ALJ reasoned that these attributes of mobility are “not evidence that anyone intends that the units be permanently or semi-permanently installed” (COL 5.23 at AR 869).

In contrast, the ALJ found Ms. Allen’s recreational vehicle, which has wheels and a tow-bar, to be *immobilized*, even though it “can be moved – but only after being jacked up so as to remove the [cinder] blocks” (COL 5.22 at AR 869). The ALJ found, of the six subject recreational vehicles at Dan & Bill’s RV Park, only one was *immobilized* and accordingly there was only one *park model* in the Park.

The ALJ’s conclusion is arbitrary and capricious. The ALJ developed a threshold for what it means for a recreational vehicle to be *not immobilized* that is not only arbitrary but irrelevant as well. The ALJ appears to have focused on certain characteristics of Ms. Allen’s unit for his description of *immobilized*, but overlooked aspects of other units that would suggest a degree of *immobility* as well. For example, the ALJ found that Ms. Allen’s unit, which is on cinder blocks and requires being jacked up to move it, to be *immobilized* (COL 5.22 at AR 869), while finding Ms. Hamrick’s

unit, which is also on cinder blocks albeit with jacks in place already, to be *not immobilized* (COL 4.30 at AR 861). Also, without addressing how long it would take for Ms. Allen to remove her unit from the park, the ALJ found that all of the other subject units could be moved from the Park with no more than two hours of preparation time (COL 5.23 at AR 869). He appears to set the threshold between *immobilized* and *not immobilized* at two hours of preparation time to move out of the park (COL 5.23 at AR 869). How long it takes to move a recreational vehicle from the park is clearly not relevant to the statutory definition of *park model* under RCW 59.20.030(14).

Essentially, the ALJ has converted the statutory language of *intended for semi-permanent installation* into a test of readiness to move the recreational vehicle from the Park, a test that is clearly far afield from the plain and ordinary meaning of the statutory language. The ALJ should have considered the intentions of tenants as to how long they intended to have their units at the Park, and not whether or not the recreational vehicle itself was readily movable. The ALJ thus additionally erred in constructing his definition of *park model*.

2. The ALJ's Definition of *Park Model* is at Odds with the Superior Court's Definition, Thus Corroborating Ms. Allen's Assertion that the ALJ Erred in His Definition.

The ALJ determined that there is only one *park model* in the Park and that it belongs to Ms. Allen, reasoning that her unit is the only "immobile" unit in accordance with the evidence (COL 5.22, COL 5.23 at AR 869). In notable contradistinction, the superior court suggested that Ms. Allen's recreational vehicle is not a *park model*, because "it may be immobilized and unable to move," and also found that other units in the Park are *park models* (CP 157- 158). This contradiction in conclusions is precisely due to the ALJ's improperly importing words that conflict with the intended definition of *park model*.

3. A Statutory Interpretation of *Park Model* That Attempts to Simultaneously Give Effect to the Phrase *Permanent or Semi-Permanent Installation* and the Phrase *Immobilized or Permanently Affixed* Would Undermine the Legislature's Intent.

The analysis of the superior court properly took into account that *park model* is a nested definition, one which is defined in terms of a *recreational vehicle*. As pointed out above, the two statutes RCW 59.20.030(14) and RCW 59.20.030 (17) together provide that:

"Park model" means (1) a *recreational vehicle* (i.e., a travel trailer, motor home, truck camper or camping trailer that is primarily designed ~~and used~~ as temporary

living quarters, is either self-propelled or mounted on or drawn by another vehicle, ~~is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot~~ (2) intended for permanent or semi-permanent installation and (3) is used as a primary residence. (*strikethrough added to indicate superseded provisions*)

The superior court's identification of a *park model* as a unit which "must be installed on a permanent or semi-permanent basis, but not immobilized or permanently affixed to the lot," concluded that "Allen's unit may be immobilized" due to the risk of damage if moved (CP 158). Ms. Allen cautions such an interpretation of the word "immobilized" in the context of *recreational vehicles* would lead to undesirable consequences not intended by the legislature. If *immobilized* is taken to include broken-down or other disabling conditions, parks such as the Park could easily circumvent the MHLTA's requirements by having their tenants remove the wheels from their units or take some other action to "immobilize" their recreational vehicles. This would provide a technical argument that such dwelling units are not *recreational vehicles*, and hence not *park models*.¹⁶ This in turn would allow a park to claim it is not a mobile

¹⁶ As discussed earlier, the definition of *recreational vehicle* includes the requirement that the recreational vehicle be *not immobilized* and *not permanently*

home park, when the legislature intended that it be so considered. The tenants of such parks would thus lose the panoply of protections provided by the MHLTA.

Therefore, Ms. Allen urges the court to construe the ambiguous statutory language to arrive at the following definition of *park model*:

“Park model” means (1) a *recreational vehicle* (i.e., a travel trailer, motor home, truck camper or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot) (2) intended for permanent or semi-permanent installation and (3) is used as a primary residence. (*strikethrough added to indicate superseded provisions*)

E. There is Substantial Evidence that Five of the Six Recreational Vehicles Considered by the ALJ in His Analysis are *Park Models*.

Using the plain and ordinary meanings of the words *intended for permanent or semi-permanent installation*, there is substantial

affixed to a mobile home lot. RCW 59.20.030(17). Such provisions are incompatible with the requirement that a *park model* be *intended for permanent or semi-permanent installation.* RCW 59.20.030(14). These incompatibilities must give way to the later-enacted, more specific statute, which is RCW 59.20.030(14).

evidence that five of the six *recreational vehicles* considered by the ALJ's are *park models*.¹⁷ That evidence is in the actions, or lack of actions, of the owners of those *recreational vehicles*. Their actions indicate that they intend for their *recreational vehicles* to be permanently or semi-permanently installed at the Park and to be used as primary residences.

Edna Allen has been living in her trailer home (a *recreational vehicle*) since January, 2014 (AR 961-962). Her home is depicted in the Hearing Exhibits 11-13 (AR 370, 372, 374). The trailer home does not have a license plate or valid registration tabs (AR 965-966). Ms. Allen's unit sits on cinder blocks and has skirting around the base, and owing to its condition she does not plan to move it (AR 988-991). Ms. Allen testified that when she moved into the Park, she intended to live there permanently (AR 992-993). It is clear based on Ms. Allen's testimony that she intends to keep her trailer unit in place with no immediate plans of moving it, and that she is using it as her primary residence year-round, i.e., her trailer is intended for

¹⁷ There was not enough evidence with respect to one of the six *recreational vehicles* to determine one way or the other whether it was a *park model*.

permanent or semi-permanent installation. Ms. Allen's unit is therefore a *park model* under the definition in RCW 59.20.030(14).

Barbara Hamrick lives in a fifth wheel recreational vehicle at the Park (AR 1013). Her home is depicted in Hearing Exhibits 24-26 (AR 396, 398, 400). She has lived in the Park since 2003 (AR 1013). She drives her recreational vehicle away from the park at least twice a year and is gone for anywhere from a day up to two weeks (AR 1014). Ms. Hamrick describes her recreational vehicle as her permanent home (AR 1016). With respect to living in the Park, she said "[she]'d probably die there" (AR 1016). Her recreational vehicle is parked in space number 38 (AR 1021). She subscribes to cable TV service for her recreational vehicle, which service is billed to her at the Park (AR 1022-1023). From Ms. Hamrick's testimony it is clear that she intended for her fifth-wheel recreational vehicle to be set up for long-term use as a primary residence at the Park, i.e., her recreational vehicle is intended for permanent or semi-permanent installation. The fact that she makes some occasional short-term trips away has no bearing on this intent, as she does return to her space in the Park. Ms. Hamrick's unit is therefore a *park model* under the definition in RCW 59.20.030(14).

Matthew Niquette lives in his 36-foot travel trailer in the Park the year-round (AR 1027-1028). The only reason he ever moves his trailer is in the event that the river floods the Park (AR 1028). He has no plans to move out of the park (AR 1030). The ALJ found that Mr. Niquette “plans to reside at the park for an indefinite period of time”¹⁸ (FOF 4.35, 4.39 at AR 861-862). Mr. Niquette does not keep his tabs current because “I don’t hardly ever move [the trailer], and only go to higher ground or whatever, or if we were to move out” (AR 1037-1038). From Mr. Niquette’s testimony it is clear that he intended for his travel trailer to be set up for long-term use as a primary residence at the Park, i.e., his travel trailer is intended for permanent or semi-permanent installation. The fact that he may be forced to move his trailer on a short-term basis due to flooding clearly has no bearing on this intention. Mr. Niquette’s unit is therefore a *park model* under the definition in RCW 59.20.030(14).

Edward Shinkle has lived in the Park for approximately five years (AR 1055). His home is depicted in Hearing Exhibits 19-21 (AR 386, 388, 390). He describes his home as a 40-foot recreational

¹⁸ Mr. Nick has lived in the Park for five years and the only time he has moved his recreational vehicle is when the river floods (CP 1028).

vehicle (AR 1056). He has not had to move his unit when the river floods (AR 1057). He has landscaped his yard with flowers, trees, stones, a rock wall, and a statue of Sasquatch, and he also has a deck (AR 1058). The tabs on his recreational vehicle are not current (AR 1059). He says he has no plans to leave the Park (AR 1059). From Mr. Shinkle's testimony it is clear that he intended for his recreational vehicle to be set up for long-term use as a primary residence at the Park, i.e., his recreational vehicle is intended for permanent or semi-permanent installation. Mr Shinkle's unit is therefore a *park model* under the definition in RCW 59.20.030(14).

Roy Bordenik has lived at the Park in a motorhome for approximately nine years (AR 1081). He leaves several times a year for a couple of days each time, although he has not had to leave due to flooding (AR 1082). The motorhome is his primary residence (AR 1082). Mr. Bordenik has a small deck and maintains the grass around his motorhome (AR 1082-1083). When Mr. Bordenik visits campgrounds he does not maintain the grass at the campground (AR 1092-1093). From Mr. Bordenik's testimony it is clear that he intends for his motorhome to be set up for long-term use as a primary residence at the Park, i.e., his motorhome is intended for permanent

or semi-permanent installation. Mr. Bordenik's unit is therefore a park model under the definition in RCW 59.20.030(14).

Therefore, substantial evidence leads to the determination, using the plain and ordinary meaning of the words in RCW 59.20.030(14), that at least five Park recreational vehicles are *park models* under that definition. In contrast, the analysis of the ALJ erroneously did not consider the foregoing evidence relevant because his flawed interpretation of the statutory definition of *park model* led him to focus narrowly and improperly on whether the unit was affixed or immobilized and how fast the unit could be disconnected and moved.

F. The ALJ Erred in His Conclusion That Dan & Bill's RV Park is Not a Mobile Home Park and Therefore Not Subject to the MHLTA.

In 1999, the MHLTA was renamed from "Mobile Home Landlord-Tenant Act" to "Manufactured/Mobile Home Landlord-Tenant Act" in order to reflect later terminology. Throughout the MHLTA, the term *mobile home* was replaced with "mobile home, manufactured home, or park model." Laws of 1999, ch. 359 §§ 2-8, 10-14. Definitions for these three dwelling types were also introduced: A *manufactured home* was defined as "a single family

dwelling built according to the HUD manufactured home construction and safety standards act . . .” RCW 59.20.030(6); a *mobile home* was defined as “a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code . . .” RCW 59.20.030(8); and a *park model* was defined at that time as “a recreational vehicle intended for permanent or semi-permanent installation and habitation” (Laws of 1999, ch. 359, § 2).

The introduction of the term *park model* recognized that trailer homes and the like would continue to be used as primary residences, despite not being designed (particularly in light of the then-new HUD safety standards) for use as a primary residence. By putting *park models* within the ambit of the MHLTA, the legislature specifically meant to afford the protections of the MHLTA to individuals who live in recreational vehicles. Recreational vehicles designed for transient use, but which are actually used as primary residences, therefore come within the scope of *park models*.

The legislative intent can also be gleaned from legislative pronouncements on the subject. For example, the legislature has clearly stated its intent in the following enactments:

RCW 59.22.010 provides:

“(1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

* * *

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market.”

RCW 59.30.010:

“(1) The legislature finds that there are factors unique to the relationship between a manufactured/mobile home tenant and a manufactured/mobile home community landlord. Once occupancy has commenced, the difficulty and expense in moving and relocating a manufactured/mobile home can affect the operation of market forces and lead to an inequality of the bargaining position of the parties. Once occupancy has commenced,

a tenant may be subject to violations of the manufactured/mobile home landlord-tenant act without an adequate remedy at law. This chapter is created for the purpose of protecting the public, fostering fair and honest competition, and regulating the factors unique to the relationship between the manufactured/mobile home tenant and the manufactured/mobile home community landlord.”

Washington courts have also acknowledged the policies underlying these statutes. For example, the Washington Supreme Court has noted:

The most difficult problem currently experienced by the mobile home plot tenant is eviction from a lot with insufficient notice and without cause. Eviction can often be more devastating for a mobile home plot tenant than for the traditional residential tenant because the tenant of a mobile home plot must not only move all of his or her personal possessions, but must also expend in the vicinity of \$1,000-\$2,000 to move his or her mobile home and, what is sometimes even more difficult, find a mover and a new lot.

Western Plaza LLC v. Tison, 184 Wn.2d 702, 715, 364 P.3d 76 (2015) (quoting Staff Report on Landlord-Tenant Relationship Problems in Mobile Home Parks (1975)); *Little Mountain Estates Tenants Ass'n v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 270, 236 P.3d 193 (2010) (“first [legislative purpose of the MHLTA] is to maintain low-cost housing to benefit the elderly”); see also *Holiday Resort Cmty. Ass'n v. Echo Lake Assocs.*, 134 Wn. App. 210,

224, 135 P.3d 499 (2006) (legislative purpose in enacting the MHLTA was to regulate and protect mobile home owners by providing stable, long-term tenancy for homeowners living in a mobile home park).

This clear legislative intent supports the interpretation of the definition of a *park model* to be what it appears to be: a recreational vehicle which is the primary residence of the tenant and in which the tenant intends to live on a permanent or semi-permanent basis.

The Park has vociferously objected to its being designated as a mobile home park instead of an RV Park. However, there is no Washington State statute that defines an RV park. There is no reason why a mobile home park, as defined in RCW 59.20.030(10), containing two or more *park models*, could not also be an RV park, as *park models* are by definition recreational vehicles.

Another problem with the Park's argument, of course, is the existence of the Pierce County Code, which defines recreational vehicle parks. The occupancy standards for "all recreational vehicle parks" in Pierce County per the Pierce County Code are that "[n]o recreational vehicle shall be used as a permanent place of abode, or dwelling, for more than 180 calendar days." Pierce County Code 18J.15.210.D.3. Several Park tenants testified that they live in the

Park year-round and have done so for many years (AR 961, 1013, 1055, 1081). Thus, the Park does not qualify as an RV park under the requirements of Pierce County.

Accordingly, because the Park contains two or more *park models*, the Park comes within the ambit of the MHLTA (RCW 59.20.030(14)). It is irrelevant that the Park may or may not also be considered an RV park for other purposes.

G. The Superior Court Properly Awarded Attorney's Fees to Ms. Allen as Allowed by the MHLTA.

RCW 59.20.110 provides that in any action arising out of the MHLTA, "the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.110.

When an award of attorney fees is authorized by statute, the court of appeals leaves to the trial court's discretion whether to award fees and that ruling will not be disturbed "'in the absence of a clear showing of abuse of discretion.'" *Fluke Capital & Mgmt. Servs. Co. v. Richmond*, 106 Wn.2d 614, 625, 724 P.2d 356 (1986) (quoting *Marketing Unlimited Inc. v. Jefferson Chem. Co.*, 90 Wn.2d 410, 412, 583 P.2d 630 (1978)). Discretion is abused if it is exercised without tenable grounds or reasons. *State ex rel. Carroll v. Junker*,

79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527, 528, 151 P.3d 976 (2007).

Here there was no abuse of discretion. The superior court carefully reviewed Ms. Allen's fee application, considered the Park's numerous objections to the amount of the fees claimed (CP 228-230), and decided to reduce the fee application from \$43,091.75 to \$41,655.25 (CP 228-230). The Park cannot meet its burden to show any abuse of the trial court's discretion.

H. Petitioner Allen is Entitled to Attorney's Fees on This Appeal.

Where a statute authorizes fees to the prevailing party, they are available on appeal as well as in the trial court. *Eagle Point Condominium Owners Association v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000). RCW 59.20.110 accordingly authorizes the award of attorney's fees and costs in this case.¹⁹ This court should therefore order that Ms. Allen is entitled to attorney's fees and costs on this appeal.

¹⁹ RCW 4.84.350(1) also independently authorizes attorney's fees and costs to the prevailing party in an administrative appeal, and therefore that statute is an alternative basis for the award of attorney's fees and costs to petitioner Allen in this appeal.

V. CONCLUSION

For the reasons set forth above, this Court should adopt Ms. Allen's interpretation of the term "park model," uphold the superior court's subsequent judgment for attorney's fees, and award to Ms. Allen her attorney's fees and costs incurred in this appeal.

RESPECTFULLY SUBMITTED this 11th day of May, 2017.

Law Offices of Dan R. Young

By Dan R. Young
Dan R. Young, WSBA # 12020
Attorney for Petitioner Allen

Appendix A

RCW 59.20.030**Definitions.**

For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Eligible organization" includes local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations;

(3) "Housing authority" or "authority" means any of the public body corporate and politic created in RCW 35.82.030;

(4) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(5) "Local government" means a town government, city government, code city government, or county government in the state of Washington;

(6) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(7) "Manufactured/mobile home" means either a manufactured home or a mobile home;

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

(9) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

(10) "Mobile home park," "manufactured housing community," or "manufactured/mobile home community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(11) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(12) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(13) "Notice of sale" means a notice required under RCW 59.20.300 to be delivered to all tenants of a manufactured/mobile home community and other specified parties within fourteen days after the date on which any advertisement, multiple listing, or public notice advertises that a

manufactured/mobile home community is for sale;

(14) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(15) "Qualified sale of manufactured/mobile home community" means the sale, as defined in RCW **82.45.010**, of land and improvements comprising a manufactured/mobile home community that is transferred in a single purchase to a qualified tenant organization or to an eligible organization for the purpose of preserving the property as a manufactured/mobile home community;

(16) "Qualified tenant organization" means a formal organization of tenants within a manufactured/mobile home community, with the only requirement for membership consisting of being a tenant;

(17) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

(18) "Tenant" means any person, except a transient, who rents a mobile home lot;

(19) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

(20) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot.

[**2008 c 116 § 2; 2003 c 127 § 1; 1999 c 359 § 2; 1998 c 118 § 1; 1993 c 66 § 15; 1981 c 304 § 4; 1980 c 152 § 3; 1979 ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.**]

NOTES:

Findings—Intent—Severability—2008 c 116: See notes following RCW **59.20.300**.

Severability—1981 c 304: See note following RCW **26.16.030**.

Severability—1979 ex.s. c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1979 ex.s. c 186 § 30.**]

Appendix B

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WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

CONSUMER PROTECTION DIVISION
SEATTLE

In The Matter Of:

Dan & Bill's RV Park,

Appellant.

Docket Nos. 2014-AGO-0001 &
04-2015-AGO-00001

FINAL ORDER

Agency. Office of the Attorney General
Program: Manufactured Housing Dispute Resolution
Program
Agency No. MHDRP #447862

1. ISSUES

- 1.1. Did Dan & Bill's RV Park violate chapter 59.20 RCW by failing to provide a written rental agreement?
- 1.2. Did Dan & Bill's RV Park violate chapter 59.20 RCW by improperly increasing rent on or about April 2, 2014?
- 1.3. Did Dan & Bill's RV Park violate chapter 59.20 RCW by failing to comply with Pierce County codes and variances?
- 1.4. Did Dan & Bill's RV Park violate chapter 59.20 RCW by failing to register as a manufactured/mobile home community with the Department of Revenue?
- 1.5. If any of the foregoing violations occurred, as alleged in the Notice of Violation, what are the appropriate corrective actions and fine(s)?
- 1.6. On February 2, 2015, did Dan & Bill's RV Park violate RCW 59.20.070(5) when it increased Edna Allen's rent?
- 1.7. If Dan & Bill's RV Park violated RCW 59.20.070(5), was issuing a Temporary Order to Cease and Desist correct under RCW 59.30.040(7)?

2. ORDER SUMMARY

- 2.1. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, when it failed to provide Edna Allen, or apparently any other occupant, with a written rental agreement.

2.2. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, when it increased Edna Allen's rent on or about April 2, 2014.

2.3. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate the Manufactured/Mobile Home Landlord-Tenant Act when it allegedly violated one or more county land use codes.

2.4. Only the Department of Revenue may register manufactured/mobile home community landlords and collect registration fees and only the Department of Revenue may enforce those provisions. Therefore, the Attorney General's Office lacks authority to enforce registration and related fees. Thus, the alleged failure of Dan & Bill's RV Park to register and pay fees cannot be raised by the Attorney General's Office and this issue should be dismissed for lack of jurisdiction.

2.5. None of the foregoing violations, as alleged in the Notice of Violation, occurred. Accordingly, no corrective actions or fines are appropriate and the Notice of Violation should be set aside.

2.6. Given that Dan & Bill's RV Park is not subject to the Manufactured/Mobile Home Landlord-Tenant Act, Dan & Bill's RV Park did not violate chapter 59.20 RCW, the Manufactured/Mobile Home Landlord-Tenant Act, when it increased Edna Allen's rent again on February 2, 2015

2.7. The foregoing violation, as alleged in the Temporary Order to Cease and Desist, did not occur. Accordingly, no corrective actions or fines are appropriate and the Temporary Order to Cease and Desist should be set aside.

3 HEARING

3.1. Hearing Date: September 28-29, 2015

3.2. Administrative Law Judge: Terry A. Schuh

3.3. Appellant: Dan & Bill's RV Park

3.3.1. Representative: Seth Goodstein, Attorney, Goodstein Law Group PLLC

3.3.2. Witnesses:

3.3.2.1. Matthew Niquette, resident at Dan & Bill's RV Park

- 3.3.2.2. Daniel E. Haugsness, owner, Dan & Bill's RV Park
- 3.3.2.3. Chad Crummer, consumer protection investigations mgr., AGO
- 3.3.2.4. Michael Dewey, resident at Dan & Bill's RV Park

3.4. Agency: Office of the Attorney General

3.4.1. Representative: Jennifer Steele, Assistant Attorney General

3.4.2. Witnesses:

- 3.4.2.1. Edna Allen, complainant
- 3.4.2.2. Barbara Hamrick, resident at Dan & Bill's RV Park
- 3.4.2.3. Matthew Niquette, resident at Dan & Bill's RV Park
- 3.4.2.4. Edward Shinkle, resident at Dan & Bill's RV Park
- 3.4.2.5. Roy Bordernick, resident at Dan & Bill's RV Park
- 3.4.2.6. James W. Howe, code enforcement officer, Pierce County
- 3.4.2.7. Chad Crummer, consumer protection investigations mgr., AGO

3.5. Exhibits: Exhibits 1 through 2, 4 through 34, A through L, and N through S were admitted.

3.6. Court Reporter. Anita W. Self, RPR, CRR, Buell Realtime Reporters, served as court reporter.

3.7. Observer. Chris Bunger, legal assistant, attended the hearing to assist Ms. Steele.

3.8. Post-hearing briefs: By agreement with the parties, the record remained open until 5:00 p.m. Pacific Time on October 9, 2015, for the submission of optional post-hearing briefs.

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4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence.

Jurisdiction

- 4.1. On May 7, 2014, Edna Allen filed with the Consumer Protection Division of the Office of the Attorney General ("AGO") a Request for Dispute Resolution. Ex. 1; Testimony of Allen.
- 4.2. On November 17, 2014, the AGO served on Dan and Bill's RV Park ("the Park") a Notice of Violation. Ex. A, Testimony of Haugsness.
- 4.3. The Park filed its Appeal of Notice of Violation dated December 10, 2014.
- 4.4. The AGO issued to the Park an Order to Cease and Desist dated February 26, 2015. Ex. B; Testimony of Haugsness.
- 4.5. On March 19, 2015, the Park filed with the AGO its Appeal of Order to Cease and Desist.
- 4.6. The parties requested the two matters be consolidated. By oral order at a Status Conference on April 9, 2015, and by written order, Notice of Hearing and Status Conference issued April 10, 2015, Administrative Law Judge Leslie Birnbaum ordered the two matters consolidated. However, the two matters were not consolidated under one docket number. Instead, each matter retained its original docket number.

General Conditions of the Park

- 4.7. Mail for all of residents is delivered to a common mail box. Testimony of Allen; see Ex. 28. The owner sorts the mail and delivers it to the residents. Testimony of Allen.
- 4.8. Each unit in the Park has a number. Testimony of Allen; Testimony of Hamrick. This characteristic of the Park has developed only recently. Testimony of Hamrick. The numbers attach to the unit. Testimony of Hamrick. Ms. Hamrick has not relocated her unit since she was assigned a number so she does not know whether the number is assigned to her location or to her unit. Testimony of Hamrick. The numbers are assigned to units, not lots. Testimony of Haugsness. The purpose of the numbers is so that the Park knows where its residents are and for facilitating the delivery of mail. Testimony of Haugsness. No one rents a specific lot. Testimony of Haugsness.

- 4.9. The Park abuts the Puyallup River. Testimony of Niquette. Residents must be prepared to move to higher ground about once a year or so to avoid flooding. Testimony of Niquette. The Park occupies a flood zone. Testimony of Haugsness; see Ex. P (showing water running through the Park). Because the Park occupies a flood zone, Mr. Haugsness will not allow any unit to be permanently installed. Testimony of Haugsness. Nevertheless, he allowed the Allen unit to be installed by the occupant prior to Edna Allen and he told Ms. Allen when she moved into the unit that it was permanently installed. Testimony of Allen.
- 4.10. Most of the residents upgrade their locations during the summer, but not during the winter. Testimony of Niquette.
- 4.11. The Park requires all residents to be ready to move anytime. Testimony of Niquette.
- 4.12. The units in the Park are predominantly trailers in different sizes, shapes, and conditions. See, generally, Exs. 8-27. Many of the residents have personalized their unit with outdoor plants and furniture. See, generally, Exs. 8-27.
- 4.13. One unit in the Park was protected by a shelter. Exs. 9, 14. However, this unit is no longer located in the Park. Testimony of Crummer.
- 4.14. At least two units in the Park are fenced. Exs. 17, 18, 33, and 34.
- 4.15. One unit in the Park has a raised deck that parallels the entire length of the unit, and also has a storage shed. Exs. 22-23. However, that deck is not attached to the unit and the unit can be readily moved and relocated. Testimony of Haugsness.
- 4.16. Moreover, none of the units have anything permanent attached to them, by order of the landlord and in compliance with county code. Testimony of Haugsness.
- 4.17. Residents can and do move fences, stairs, and other improvements to their unit. Testimony of Haugsness.
- 4.18. None of the units in the Park are hardwired for electricity or plumbed for septic and water. Testimony of Haugsness, Testimony of Niquette. All of the electrical connections are by plug-in and all water and septic are connected like a garden hose is connected to a faucet. Testimony of Haugsness. All of the hook-ups are basically the same. Testimony of Bordernick. All of the hook-ups resemble those used in campgrounds and parks. Testimony of Haugsness.

Moreover, the amperage is only 30, except for a couple of connections that are 50-amp. Testimony of Haugsness.

Allen Unit

- 4.19. Edna Allen has lived in her unit at the Park since January 3, 2014. Testimony of Allen.
- 4.20. Ms. Allen owns her unit. Testimony of Allen. It was a gift. Testimony of Allen. The previous owner signed over the title in Ms. Allen's presence. Testimony of Allen; Ex. 2. Ms. Allen has not transferred the title into her own name because she cannot afford the fees for doing so. Testimony of Allen.
- 4.21. Ms. Allen's unit does not have a holding tank. Testimony of Allen. She is hooked up to the Park's septic system. Testimony of Allen. It was hooked up when she moved in. Testimony of Allen.
- 4.22. Ms. Allen's unit does not have a generator. Testimony of Allen. She receives electricity by plugging into the electricity offered by the Park. Testimony of Allen.
- 4.23. Ms. Allen has never moved the unit since she occupied it. Testimony of Allen. The unit was already installed in the Park before she moved into it. Testimony of Allen. Perhaps it could be lifted onto a flatbed truck and moved. Testimony of Allen. It can be towed. Testimony of Ms. Allen. However, it lacks registration and tabs, so the unit could not presently be lawfully towed. Testimony of Allen. Moreover, the unit is fragile and likely could not be moved without damaging it. Testimony of Allen. In particular, the roof and floor are damaged at the end where the tow-bar is located. Testimony of Allen.
- 4.24. Nevertheless, Ms. Allen has investigated moving the unit to a mobile home park. Testimony of Allen. However, she failed to find a park willing to take it given its age – it is a 1995 model – and its condition. Testimony of Allen.
- 4.25. The unit has wheels and is installed on large cinder blocks surrounded by decorative rock. Testimony of Allen; Exs. 11-13. Ms. Allen has never tried to jack the unit. Testimony of Allen. The unit does not have jacks. Testimony of Allen.
- 4.26. When Ms. Allen moved into the unit in January 2014, she intended to live there permanently. Testimony of Allen. At that time, Mr. Haugsness told Ms. Allen that the unit was permanently installed and that she could add on to it if she wished to do so. Testimony of Allen.

4.27. In July 2014, Mickey, the Park manager, gave Ms. Allen written notice that her tenancy would be terminated in July 2015. Testimony of Allen; Ex. 31. However, she has not yet been evicted from the Park. Testimony of Allen.

4.28. Ms. Allen prefers to continue her residency at the Park if her issues with the Park are resolved. Testimony of Allen.

Hamrick Unit

4.29. Barbara Hamrick has lived in the Park since at least 2003. Testimony of Hamrick.

4.30. Ms. Hamrick lives in a recreational vehicle. Testimony of Hamrick. It is licensed and she can drive it away anytime. Testimony of Hamrick. At least twice a year she needs to temporarily relocate, either within the Park, or outside of the Park, to avoid flooding. Testimony of Hamrick. It takes Ms. Hamrick approximately two hours to prepare to relocate. Testimony of Hamrick. She needs to disconnect from the Park's utilities and remove the blocks and jacks. Testimony of Hamrick.

4.31. Ms. Hamrick considers her recreational vehicle to be her permanent home. Testimony of Hamrick. She resides at the Park because that is where she can afford to live. Testimony of Hamrick.

4.32. Ms. Hamrick places potted plants around her unit. Testimony of Hamrick.

4.33. Ms. Hamrick is hooked up to the Park's electrical system. Testimony of Hamrick.

4.34. Nothing is permanently attached to the Hamrick unit. Testimony of Haugsness.

Niquette Unit

4.35. Matthew Niquette lives in the Park in a 36-foot travel trailer, which he owns. Testimony of Niquette. He has lived in the Park "off and on" for approximately five years. Testimony of Niquette. The only time Mr. Niquette moves is to avoid flooding. Testimony of Niquette. It takes him approximately 35-40 minutes to prepare to move. Testimony of Niquette. Preparing to move consists of readying the interior contents, disconnecting electricity, water, and septic, and hooking up to his truck. Testimony of Niquette. Mr. Niquette can be ready to move anytime. Testimony of Niquette.

- 4.36. When moving, if Mr. Niquette does not have the unit licensed and tabbed, he can purchase a 3-day trip permit to allow him to move the unit on public streets and highways. Testimony of Niquette.
- 4.37. Mr. Niquette does not fence his location. Testimony of Niquette. He has a small deck. Testimony of Niquette. The deck is unattached to Mr. Niquette's unit. Testimony of Niquette.
- 4.38. Mr. Niquette's installation is not permanent. Testimony of Niquette. He does not want a permanent installation. Testimony of Niquette.
- 4.39. Mr. Niquette plans to reside at the Park for an indefinite period of time. Testimony of Niquette.
- 4.40. Mr. Niquette has never lived in an RV campsite. Testimony of Niquette.

Shinkle Unit

- 4.41. Mr. Shinkle has lived at the Park for approximately five years. Testimony of Shinkle. This is his second term of residence at the Park. Testimony of Shinkle. Mr. Shinkle has no plans to leave the Park but he could if he wanted to. Testimony of Shinkle.
- 4.42. Mr. Shinkle owns his unit, which is a 40-foot travel trailer. Testimony of Shinkle. Approximately three days before this hearing Mr. Shinkle installed a different travel trailer than the one photographed as Exhibits 19-21. Testimony of Shinkle. The landscaping in those photographs remains. Testimony of Shinkle.
- 4.43. Mr. Shinkle has planted flowers around his unit. Testimony of Shinkle; Exs. 19-21. He has placed decorative stones, built a rock wall, placed a Sasquatch statue, and installed a free-standing deck below his door. Testimony of Shinkle; Exs. 19-21.
- 4.44. Since locating at the Park in approximately 2010, Mr. Shinkle has never relocated, not even when the lower part of the Park was threatened with flooding. Testimony of Shinkle.
- 4.45. Mr. Shinkle's travel trailer bears a license plate but the tabs are not current. Testimony of Shinkle. Nevertheless, he could move the travel trailer if he purchased a trip-permit. Testimony of Shinkle. It would take him an hour or two to prepare to move. Testimony of Shinkle.
- 4.46. Nothing is permanently attached to the Shinkle unit. Testimony of Haugsness.

Bordernick Unit

- 4.47. Roy Bordernick has lived in the Park in a motor home for approximately nine years. Testimony of Bordernick. It is his primary residence. Testimony of Bordernick. Mr. Bordernick plans to stay indefinitely. Testimony of Bordernick.
- 4.48. The motor home is licensed to be driven. Testimony of Bordernick.
- 4.49. Mr. Bordernick leaves the Park several times a year for a couple of days or so each time. Testimony of Bordernick. Mr. Bordernick visits campgrounds in his motor home. Testimony of Bordernick. At campgrounds, his hook-up for utilities is the same as the hook-up at the Park. Testimony of Bordernick.
- 4.50. Mr. Bordernick has never had to move to avoid flooding. Testimony of Bordernick.
- 4.51. Mr. Bordernick can be ready to relocate within 15-20 minutes. Testimony of Bordernick. He simply needs to disconnect his utility hook-ups and he is ready to go. Testimony of Bordernick.
- 4.52. Mr. Bordernick has a small, portable deck, with chairs, a table, and a barbeque. Testimony of Bordernick. He maintains grass around his unit. Testimony of Bordernick.
- 4.53. Mr. Bordernick's motor home is not permanently installed at the Park and he has no intention of permanently installing it. Testimony of Bordernick.
- 4.54. Mr. Bordernick's motor home is self-contained and includes a generator. Testimony of Bordernick. He could live in his motor home without utility hook-ups for a couple of weeks if he wanted to do so. Testimony of Bordernick.

Dewey Unit

- 4.55. Michael Dewey's unit is a motor home. Testimony of Dewey.
- 4.56. The Dewey unit is hooked up to electricity with a power cord like at an RV campground. Testimony of Dewey.
- 4.57. Mr. Dewey installed a fence around his unit but the fence can be removed if he wishes to leave. Testimony of Dewey.
- 4.58. Mr. Dewey does not plan on having his unit permanently installed. Testimony of Dewey.

- 4.59. Mr. Dewey could remove his unit from the Park in approximately 15 minutes. Testimony of Dewey.

Written Rental Agreement

- 4.60. The Park does not provide residents with a rental agreement. Testimony of Allen. The Park provides only park rules. Testimony of Allen; see Ex. 6. Ms. Allen asked Dan Haugsness, owner of the Park, for a written rental agreement at least three times. Testimony of Allen. The Park has never provided one. Testimony of Allen.
- 4.61. Ms. Allen first asked Mr. Haugsness for a rental agreement when he raised her rent. Testimony of Allen. Mr. Haugsness told Ms. Allen that the Park did not provide rental agreements. Testimony of Allen.

Rent Increases

- 4.62. When Ms. Allen moved in to the Park on January 3, 2014, her monthly rent was \$460.00. Testimony of Allen.
- 4.63. Ms. Allen always pays her rent on time and always receives a receipt. Testimony of Allen; see, e.g., Ex. 30.
- 4.64. The cost of utilities is included in the monthly rent. Testimony of Allen.
- 4.65. On April 2, 2014, Mr. Haugsness informed Ms. Allen verbally that her monthly rent would increase by \$20.00. Testimony of Allen; Ex. 1, p. 2. Ms. Allen objected. Testimony of Allen. Mr. Haugsness told her that this was how they did things at the Park. Testimony of Allen. She asked for written notice. Testimony of Allen. On April 3, 2014, Mr. Haugsness provided Ms. Allen written notice of the rent increase effective May 1, 2014. Testimony of Allen, Ex. 1, p. 2; see Ex. 4.
- 4.66. On February 2, 2015, Mr. Haugsness gave Ms. Allen written notice that her rent would increase an additional \$10.00 per month effective April 1, 2015. Testimony of Allen; Ex. 5. Mr. Haugsness told Ms. Allen that the purpose of the rent increase was to recover the cost of his attorney fees. Testimony of Allen. Mr. Haugsness offered her a copy of his attorney's bill. Testimony of Allen.
- 4.67. When Mr. Haugsness told Ms. Allen about the second rent increase, he knew she wanted notice in writing because she complained about lack of written notice when he told her about the first rate increase. Testimony of Allen.

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Code Violations

- 4.68. Ms. Allen has no knowledge of any alleged violations of Pierce County land use codes by the Park. Testimony of Allen. Ms. Allen did not complain to the Manufactured/Mobile Home Dispute Resolution program about any such code violations. Testimony of Allen; Testimony of Crummer
- 4.69. Pierce County asserted in 2004 and re-asserted in 2014 that Mr. Haugsness is operating a recreational vehicle park without a conditional use permit in violation of county regulations. Testimony of Howe; Ex. 7.

Registration with Department of Revenue

- 4.70. The Park is not registered with the Department of Revenue as a manufactured/mobile home park. Testimony of Haugsness.
- 4.71. Ms. Allen did not complain to the Manufactured/Mobile Home Dispute Resolution Program about the Park's failure to register with the Department of Revenue. Testimony of Allen.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions of law.

Jurisdiction

- 5.1. I have jurisdiction over the parties and subject matter herein under RCW 59.30.040, and more generally under chapter 59.30 RCW, chapter 59.20 RCW, chapter 34.12 RCW, and chapter 34.05 RCW.

Motions

- 5.2. The Park presented three motions in limine: Appellant's Motion in Limine re: Unwarranted Searches; Appellant's Motion in Limine re: Howe/County Testimony, and Appellant's Motion in Limine re: Cumulative and Telephonic Testimony. I denied the first two motions, as explained on the oral record. The Park withdrew the third motion.

Does the AGO have authority regarding registration with the Department of Revenue

- 5.3. During the evidentiary hearing, the Appellant moved for dismissal of the "charge" that the Appellant failed to register and pay fees as a mobile home park. The Appellant argued that the AGO lacks jurisdiction over that issue. I took the motion under advisement.

5.4. Chapter 59.20 RCW, entitled the Manufactured/Mobile Home Landlord-Tenant Act ("MHLTA"), governs the relationship between landlords and tenants in manufactured/mobile home communities.

5.5. The only process the MHLTA contemplates for resolving disputes is private legal action. See RCW 59.20.110 and RCW 59.20.120. RCW 59.20.110 provides: "In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs." RCW 59.20.120 provides: "Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located."

5.6. However, the legislature promulgated chapter 59.30 RCW, entitled Manufactured/Mobile Home Communities – Dispute Resolution and Registration, with two intentions: (1) "to provide an equitable as well as less costly and more efficient way for manufactured/mobile home tenants and manufactured/mobile home community landlords to resolve disputes" and (2) "to provide a mechanism for state authorities to quickly locate manufactured/mobile home community landlords." RCW 59.30.010(3)(a). In other words, the legislature produced chapter 59.30 RCW for two purposes, to establish a dispute resolution program (in addition to the private action contemplated by the Act) and to provide a means of readily identifying landlords. Although there is a relationship between finding landlords and providing dispute resolution, they are nevertheless distinct responsibilities.

5.7. The legislature authorized the Department of Revenue to register manufactured/mobile home communities and collect a registration fee RCW 59.30.010(3)(b). The legislature authorized the AGO to administer the dispute resolution program. RCW 59.30.010(3)(c). Therefore, the legislature specifically designated different state agencies to administer the two distinct responsibilities. Moreover, the legislature did so in the same statutory section.

5.8. Further, the legislature expanded its instructions to the AGO about the dispute resolution program in RCW 59.30.030 and RCW 59.30.040. Whereas the legislature separately gave the Department of Revenue its instructions in RCW 59.30.050. Once again, the legislature distinguished the responsibilities.

5.9. The legislature further clarified this distinction by providing that "unless context clearly requires otherwise", a reference to "department" in the chapter "means the department of revenue" and a reference to "'director' means director of revenue." RCW 59.30.050(2)-(3).

5.10. The instructions regarding the registration process and collection of fees are directed to "the department", meaning the Department of Revenue. See RCW 59.30.050.

5.11. Finally, the legislature authorized the Department of Revenue to enforce registration and fees against non-compliant landlords. RCW 59.30.050(4); RCW 59.30.050(5); and RCW 59.30.090.

5.12. Therefore, the Department of Revenue, and only the Department of Revenue may register manufactured/mobile home community landlords and collect registration fees and only the Department of Revenue may enforce those provisions. Thus, the AGO lacks authority to enforce registration and related fees. Accordingly, the Appellant's alleged failure to register and pay fees cannot be raised by the AGO and that issue should be dismissed for lack of jurisdiction.

Is the Park Subject to the Manufactured/Mobile Home Landlord Tenant Act

5.13. Predicate to determining whether the Park violated the MHLTA is determining whether the Park is subject to the MHLTA.

5.14. The AGO argued that the legislature intended to include, under the MHLTA, RVs intended to be primary residences. However, the AGO relied upon selected testimony to legislative committees, which arguably summarizes what the legislature heard and what selected citizens thought but is not persuasive evidence of what the legislature thought or intended. The Appellant argued that the characterization of the Park had already been resolved by other courts. However, those resolutions are not binding on this tribunal and, more to the point, occurred several years ago in legal proceedings with different postures, with facts this tribunal is not privy to, and, perhaps, with different versions of the relevant statutes. Accordingly, those arguments are not persuasive. However, both parties acknowledged that the Park does not contain either mobile homes or manufactured homes. Accordingly, both parties observed and argued that whether the MHLTA applies here is dependent upon whether the Park contains two or more park models. I am persuaded that this issue is the key.

5.15. To that effect, the parties collectively referred me to three cases that discussed, directly or by implication, the definition of "park model". However, for the following reasons, I fail to find those cases to be helpful. The court in *Brotherton v. Jefferson County*, 160 Wn.App. 699, 249 P.3d 666 (2011) operated within the context of land use regulations, and specifically not regarding landlord-tenant relations. There was no landlord or tenant, and the unit in question was a guest house on a residential property. The characterization of the unit was not at issue. The court in *Lawson v. City of Pasco*, 144 Wn.App. 203, 181 P.3d 896 (2008) determined whether the MHLTA clashed with a local code. That court found the unit in question to be a park model, but the court's order offered no details as to why. The court in *United States v. 19.7 Acres of Land More or Less in Okanogan*

County, 103 Wn.2d 296, 692 P.2d 809, addressed whether the units at issue constituted personal or real property for purposes of condemnation. In short, none of these cases offered circumstances and facts sufficiently analogous to this case to provide guidance, much less precedence. Given that two experienced attorneys researched and briefed this issue and did not find anything else in terms of case law means that I must rely on the statutes themselves.

- 5.16. The MHLTA regulates landlord-tenant relations regarding mobile home parks. RCW 59.20.040.
- 5.17. A "mobile home park" is real property rented for profit for placement of two or more mobile homes, manufactured homes, or park models, unless such rentals are for "seasonal recreational purposes" and "not intended for year-round occupancy". RCW 59.20.030(10). Here, the residents pay money for the privilege to place their units in the Park and live in them continuously. The units at issue are undeniably neither manufactured homes nor mobile homes. So, again, key is whether there are two or more park models in the Park.
- 5.18. A "park model" is "a recreational vehicle intended for permanent or semi-permanent installation *and* is used as a primary residence." RCW 59.20.030(14) (emphasis added).
- 5.19. A "recreational vehicle", on the other hand, is a unit that, among other things, "is not occupied as a primary residence, *and* is not immobilized or permanently affixed to a mobile home lot." RCW 59.20.030(17) (emphasis added).
- 5.20. The MHLTA makes reference to governing "recreational vehicles used as a primary residence", but that reference addresses only the issue of eviction. See RCW 59.20.030(3). Eviction is not at issue here.
- 5.21. The record does not provide information about all of the residents. However, those who testified have all lived in the Park and used their units as their primary residences. Clearly, the Park hosts many more than two residents who use their unit as their primary residence. The AGO makes much of this. However, primary residency (or not) is only half of the conjunctive definition of both "park model" and "recreational vehicle", the dispositive choice for characterizing the units contained in the Park. The phrase "intended for permanent or semi-permanent installation", which is part of the definition of "park model", is vague. However, as provided above, the legislature defined a recreational vehicle as one that "is *not* immobilized or permanently affixed" (emphasis added). That phrase sheds light, especially given the juxtaposition comparing "park model" to "recreational vehicle". First of all, "immobilized" and "permanently affixed" are not the same thing, given that they are phrased as alternatives. Moreover, I suggest that "immobilized"

describes "semi-permanent installation" and "permanently affixed" describes "permanent installation".

5.22. Ms. Allen's unit sits upon cinder blocks, yet has wheels and a tow-bar, and apart from its condition, can be moved – but only after being jacked-up so as to remove the blocks. It is not permanently affixed to, for example, a foundation. Nor is it directly wired to its source of electricity or nor is it directly plumbed for water or waste disposal. But it is immobile in its present state. It is semi-permanently installed. It is Ms. Allen's primary residence. Ms. Allen's unit is park model.

5.23. The other units in the Park described by the evidence are not affixed. Their connections for electricity, water, and waste disposal, are simple connections that can be unplugged or disconnected with no more effort than unplugging a lamp or disconnecting a garden hose. The evidence is that they are movable and able to be relocated with as little as 15 minutes and no more than two hours of preparation. Although all of them are apparently primary residences, none of them is immobile or affixed, none of them is permanently or semi-permanently installed. The AGO argued that many of the units have storage sheds, small decks, stairs, and landscaping. At least a couple have fences. But none of those attributes are affixed to the unit. None of those attributes restrict the units' mobility. For example, a few days before the hearing, MR. Shinkle installed a different travel trailer and left his landscaping as it was. Those attributes are evidence that the units are primary residences. Those attributes are not evidence that the units are immobile or affixed. Those attributes are not evidence that the units are permanently or semi-permanently installed. Those attributes are not evidence that anyone intends that the units be permanently or semi-permanently installed. Therefore, none of the units other than Ms. Allen's constitute "park models".

5.24. Thus, the Park contains only one "park model".

5.25. Accordingly, the Park is not a mobile home park

5.26. Therefore, the Park is not subject to the MHLTA.

Written rental agreement

5.27. Given that the Park is not subject to the MHLTA, the Park did not violate the MHLTA when it failed to provide Ms. Allen, or apparently any other occupant, with a written rental agreement.

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Rent increases

- 5.28. Given that the Park is not subject to the MHLTA, the Park did not violate the MHLTA either time when it raised Ms. Allen's rent.

Code violations

- 5.29. Given that the Park is not subject to the MHLTA, the Park did not violate the MHLTA when it allegedly violated one or more county land use codes.

Summary

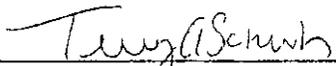
- 5.30. Accordingly, the Notice of Violation and the Temporary Order to Cease and Desist should both be set aside.

6. FINAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1 The actions of the Attorney General's Office are REVERSED.
- 6.2. The Notice of Violation is set aside.
- 6.3. The Temporary Order to Cease and Desist is set aside.

Issued from Tacoma, Washington, on the date of mailing.


Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Reconsideration:

Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470(1)

Mail such petition for reconsideration to:
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402

No petition for reconsideration may stay the effectiveness of an order. RCW 34.05.470(2).

If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the Office of Administrative Hearings (OAH) disposes of the petition for reconsideration. RCW 34.05.470(3). OAH is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, OAH does not either dispose of the petition, or serve the parties with a written notice specifying the date by which it will act on the petition. *Id.*

Unless the petition for reconsideration is deemed denied under RCW 34.05.470(3), the petition shall be disposed of by the same person who entered the order, if reasonably available. RCW 34.05.470(4). The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing. *Id.*

The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. RCW 34.05.470(5). An order denying reconsideration or a notice specifying the date by which OAH will act on the petition is not subject to judicial review. *Id.*

Judicial Review:

This order is the final agency order of the Attorney General Manufactured Housing Dispute Resolution Program and may be appealed to the Superior Court under chapter 34.05 RCW. RCW 59.30.040(10)(c). Such petition for judicial review must be served on the agency, the office of the attorney general, and on all parties of record. RCW 34.05.514 and RCW 34.05.542.

CERTIFICATE OF MAILING IS ATTACHED

Appendix C

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EXPEDITE
No hearing set
X Hearing is set
Date: 12/16/2016
Time: 9:00 am
Judge/Calendar: Judge Anne Hirsch

FILED

DEC 16 2016

Superior Court
Linda Myrre Enlow
Thurston County Clerk

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

EDNA ALLEN,

Petitioner,

v.

WASHINGTON STATE ATTORNEY
GENERAL,

Respondent.

NO. 15-2-02446-34

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

(Clerk's Action Required)

This matter was heard on September 23, 2016, before the above-entitled court pursuant to the Washington Administrative Procedure Act, RCW 34.05. Edna Allen was represented by Dan R. Young; the Washington State Attorney General (AGO), Manufactured Housing Dispute Resolution Program, was represented by Jennifer S. Steele, Assistant Attorney General; Dan Haugsness d/b/a Dan & Bill's RV Park (Dan & Bill's) was represented by Seth Goodstein. The Court, having reviewed the administrative record, pleadings on file, and having heard argument of counsel, and being otherwise fully advised, issued a letter ruling on October 7, 2016 (attached as Attachment 1), which is incorporated into this Order. Consistent with and supplemental to that letter ruling, the Court hereby makes the following:

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FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER - 1

ORIGINAL

Appendix C - page 1

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7745

1 I. FINDINGS OF FACT

2 1.1 The AGO issued a Notice of Violation determining, among other things, that Dan
3 & Bill's is a manufactured/mobile home park subject to the Manufactured/Mobile Home
4 Landlord-Tenant Act, RCW 59.20. Dan and Bill's appealed the Notice of Violation to the Office
5 of Administrative Hearings.

6 1.2 Following an administrative hearing, an Administrative Law Judge from the
7 Office of Administrative Hearings ruled that Dan & Bill's was not a manufactured/mobile home
8 park subject to RCW 59.20 and thereby entered a Final Order setting aside and reversing the
9 AGO's Notice of Violation.

10 II. CONCLUSIONS OF LAW

11 2.1 The Court has jurisdiction over the parties and subject matter pursuant to RCW
12 59.30.040(10) and RCW 34.05.

13 2.2 Edna Allen is an aggrieved party and has standing to petition for judicial review
14 pursuant to RCW 34.05.530.

15 2.3 The AGO is an aggrieved party and has standing to petition for judicial review
16 pursuant to RCW 34.05.530.

17 2.4 Dan & Bill's is a manufactured/mobile home park subject to the
18 Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20.

19 2.5 Edna Allen is a prevailing party and is entitled to reasonable attorney fees and
20 costs pursuant to RCW 59.20.110.

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1 From the foregoing Findings of Fact and Conclusions of Law, the Court enters the
2 following:

3 ORDER

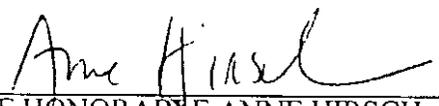
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 The final order issued by the Administrative Law Judge is REVERSED.

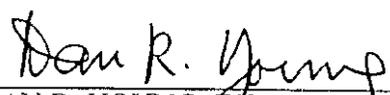
6 The matter is REMANDED to the Office of Administrative Hearings for proceedings
7 consistent with this order and the Court's letter opinion.

8 Dan & Bill's must pay Edna Allen's reasonable attorney fees and costs.

9
10 DATED this 16th day of December, 2016.

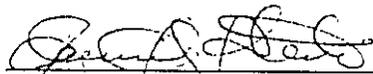
11
12 
13 _____
14 THE HONORABLE ANNE HIRSCH

15 Presented By:
16 LAW OFFICES OF DAN R. YOUNG

17 
18 _____
19 DAN R. YOUNG, WSBA #12020
20 Attorney for Edna Allen

Approved For Entry, Notice of Presentation
Waived:

ROBERT W. FERGUSON
Attorney General

21 
22 _____
23 JENNIFER S. STEELE, WSBA #36751
24 Assistant Attorney General
25 Attorneys for State of Washington

Approved For Entry, Notice of Presentation
Waived:

GOODSTEIN LAW GROUP, PLLC

26 _____
SETH GOODSTEIN, WSBA #45091
CAROLYN LAKE, WSBA #13980
Attorneys for Dan & Bill's RV Park

1 From the foregoing Findings of Fact and Conclusions of Law, the Court enters the
2 following:

3 ORDER

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 The final order issued by the Administrative Law Judge is REVERSED.

6 The matter is REMANDED to the Office of Administrative Hearings for proceedings
7 consistent with this order and the Court's letter opinion.

8 Dan & Bill's must pay Edna Allen's reasonable attorney fees and costs.

9
10 DATED this _____ day of _____, 2016.

11
12
13 THE HONORABLE ANNE HIRSCH

14 Presented By:
15 ROBERT W. FERGUSON
16 Attorney General

Approved For Entry, Notice of Presentation
Waived:
LAW OFFICES OF DAN R. YOUNG

17
18 JENNIFER S. STEELE, WSBA #36751
Assistant Attorney General
19 Attorneys for State of Washington

DAN R. YOUNG, WSBA #12020
Attorney for Edna Allen

20 Approved For Entry, Notice of Presentation
21 Waived:
22 GOODSTEIN LAW GROUP, PLLC

23 
24 SETH GOODSTEIN, WSBA #45091
CAROLYN LAKE, WSBA #13980
25 Attorneys for Dan & Bill's RV Park
26

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing on the following parties via the following methods:

Edna Allen c/o Law Offices of Dan R. Young 1000 2nd Ave., Ste. 3200 Seattle, WA 98104 dan@truthandjustice.legal camille@truthandjustice.legal	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email <input type="checkbox"/> E-filed with Clerk
Seth Goodstein Deena Pinckney Goodstein Law Group, PLLC 501 South G Street Tacoma, WA 98405 sgoodstein@goodsteinlaw.com dpinckney@goodsteinlaw.com	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email <input type="checkbox"/> E-filed with Clerk

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

DATED this 22nd day of November, 2016, at Seattle, Washington.


 P. JOSEPH DROUIN
 Legal Assistant

Superior Court of the State of Washington For Thurston County

Gary R. Tabor, *Judge*
Chris Wickham, *Judge*
Anne Hirsch, *Judge*
Carol Murphy, *Judge*
James Dixon, *Judge*
Christine Schaller, *Judge*
Erik Price, *Judge*
Mary Sue Wilson, *Judge*



Indu Thomas,
Court Commissioner
Jonathon Lack,
Court Commissioner
Pamela Hartman Beyer,
Court Administrator

2000 Lakeridge Drive SW • Building Two • Olympia WA 98502
Telephone: (360) 786-5560 Website: www.co.thurston.wa.us/superior

October 7, 2016

Dan Young
1000 2nd Ave Ste 3200
Seattle, WA 98104

Leslie Owen
711 Capitol Way S #704
Olympia, WA 985101

Jennifer Steele
800 Fifth Ave Ste 2000
Seattle, WA 98104

Seth Goodstein
501 S G St
Tacoma, WA 98405

COURT'S LETTER RULING

**Edna Allen v. State Attorney General,
Thurston County Cause No. 15-2-02446-34 consolidated with 15-2-02663-34**

Re: Defendant Motion for Interim Attorney Fees

Dear Counsel:

This court heard oral argument on this administrative law review on September 23, 2016. The court considered the entire contents of the court files, as well as the administrative record. In this letter opinion, the court reverses the final order and remands for further proceedings consistent with this opinion.

Background

Dan & Bill's RV Park is a residential setting next to the Puyallup River in Pierce County. It hosts several recreational vehicles on the grounds in exchange for monthly rent. Edna Allen resides in one RV in the park. Her RV has not been moved for years and it would be difficult to move it. Other RVs in the park could be moved within a couple of hours. From time to time, some RVs must move upland within the park due to high water and flooding conditions on the river. Some residents have lived at the park for several years, year-round, and many of the residents have installed items around their RV such as fencing, plants, stairs, and other improvements. Some residents have not moved their vehicle for years despite being in a flood plain.

(360) 786-5560 • TDD (360) 754-2933 or (800)737-7894 • accessibilitysuperiorcourt@co.thurston.wa.us
It is the policy of the Superior Court to ensure that persons with disabilities have equal and full access to the judicial system.

Edna Allen complained about activities in the park. The Attorney General's Office issued a notice of violation and order to cease and desist to Dan & Bill's RV Park for several violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW. The Park allegedly did not register under that Act, did not provide written rental agreements, increased rent with only verbal warnings, and failed to comply with Pierce County codes and variances.

The matter was heard by the Office of Administrative Hearings. The administrative law judge (ALJ) issued a final order, concluding that the MHLTA did not apply to the park. This decision focused on whether the park contained two "park models" under RCW 59.20.030(14). The specific legal and factual requirements for a "park model" appears to be a novel issue of law in Washington. If the MHLTA does not apply to the park, the Attorney General's Office does not have authority to issue a violation. Thus, the ALJ did not reach the merits of whether the Notice of Violation was supported by the facts of the case.

Allen appealed under cause number 15-2-2446-34. Dan & Bill's RV Park filed an unsigned cross appeal in that case, for which it has not apparently paid a filing fee. The Attorney General's Office separately appealed under cause number 15-2-2663-34. The court consolidated the two matters. The court allowed the Northwest Justice Project to file an amicus brief.

Analysis

1. Do Edna Allen and the Attorney General's Office have Standing to Appeal?

As a threshold issue, the RV Park argues that Allen and the AGO do not have standing to appeal the final order. This court concludes that Allen is an aggrieved party under RCW 34.05.530. This court also concludes that the AGO is an aggrieved party under that statute. *See also Snohomish County v. Hinds*, 61 Wn. App. 371, 377 (1991). Those appellants have standing.

2. Is the Park Subject to the Manufactured/Mobile Home Landlord Tenant Act?

The primary issue in this appeal is whether the park is a "mobile home park." If it is, the MHLTA applies to it. If it isn't, the MHLTA does not apply and the notice of violation issued is void. This court concludes that Dan & Bill's RV Park is a mobile home park under de novo review of the law and under the facts that the ALJ found.

A. Legal Requirements

There is some confusion in this case about what qualifies as a mobile home park. A park is a "mobile home park," and thus subject to the MHLTA, if it is:

any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models, for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purposes only and is not intended for year-round occupancy.

RCW 59.30.020 (emphasis added). There is no dispute here about the majority of requirements in this statutory definition. The sole dispute is whether the park rents to two or more park models.

“Park model means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence.” RCW 59.30.020(11). This definition, standing alone, seems very straightforward.

The parties all agree that, under ordinary language, the vehicles that occupy Dan & Bill’s are recreational vehicles. Some of the vehicles are what we would informally call RVs, which have engines and can be driven, while others are fifth wheels or other types of trailers. Likewise, there is no dispute about whether the recreational vehicles are being used as primary residences. Some occupants have lived there for several years, year-round, with the intention to stay for the foreseeable future.

The parties discuss what “installation” means, but simply turning to the dictionary answers this question. “Install” means “to make (a machine, a service, etc.) ready to be used in a certain place.” Merriam-Webster Online Dictionary, “Install,” (www.merriam-webster.com/dictionary/install) (last visited 9/9/16). Here the recreational vehicles are installed in the premises because they are settled down there, attached to water, electrical, and sewer. They are ready to be used for their purpose (occupancy) in a certain place (Dan & Bill’s RV Park).

A problem arises, however, due to a special statutory definition of “recreational vehicle” in the MHLTA. It defines the term as:

a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a manufactured/mobile home lot.

RCW 59.30.020(12). This causes two potential conflicts.

The first potential conflict regards the residency requirement. The “park model” definitions discusses recreational vehicles and requires that it *is* used as a primary residence. But the definition of “recreational vehicle” says that it is used as “temporary living quarters” and it *is not* occupied as a primary residence. Those two phases are mutually exclusive.

The petitioners and amici in this case offer several complicated solutions to try to resolve these conflicts. The ALJ took great pains to read the two definitions in harmony. This court holds that these definitions cannot be harmonized as they relate to the residency requirement. A recreational vehicle cannot simultaneously be defined as “used as a primary residence” and “not occupied as a primary residence.” This conflict potentially exists in several statutes:

(1) “This chapter governs the eviction of mobile homes, manufactured homes, park models, and **recreational vehicles used as a primary residence** from a mobile home park.” RCW 59.20.080(3).

(2) “A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a **recreational vehicle used as a primary residence** in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles.” RCW 36.01.225(3).

(3) “[A] code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.” RCW 35A.21.312.

(4) “[A] city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.” RCW 35.21.684.

(Emphases added.) These four statutes, along with the statutory definition of “park model,” conflict with the MHLTA’s statutory definition of recreational vehicle regarding the residency requirement. The statutes before the court today – the definitions of “park model” and “recreational vehicle” -- cannot be harmonized regarding the residency requirement.

“Generally, provisions of a specific more recent statute prevail in a conflict with a more general predecessor.” *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 37 (1990). Here, the specific issue before the court is whether the vehicles are “park models.” It is not genuinely disputed whether the vehicles are recreational vehicles. The definition of “park models” is the more specific statute regarding the dispute in this case. Further, the law that was enacted more recently is the statutory definition of “park models.” See 1999 Laws of Washington, Ch. 359, s. 2 (enacting the definition of “park models”) and 1993 Laws of Washington, Ch. 66 s. 15 (enacting the definition of “recreational vehicles”). Thus, the definition of “park model” prevails in this conflict regarding the residency requirement. For this reason, the legal requirement that applies in this case is that the vehicle “is used as a primary residence.”

The second potential conflict relates to the permanency requirement. The “park model” definition requires that the vehicle is “intended for permanent or semi-permanent installation.” In contrast, the “recreational vehicle” definition requires that the vehicle “is not immobilized or permanently affixed to a manufactured/mobile home lot.” These provisions can be harmonized. Although there are conflicts within these two statutory definitions regarding residency, this court is required to effect and harmonize every word of the statute if possible. This can be done here.

Again, “install” means “to make (a machine, a service, etc.) ready to be used in a certain place.” Merriam-Webster Online Dictionary, “Install,” (www.merriam-webster.com/dictionary/install). Making an RV ready to be used can simply mean hooking it up to utilities and settling it down in a location. Under the statute, that installation must also be intended to be on a permanent or semi-permanent basis. However, the RV *cannot* be immobilized or permanently affixed to the lot under the definition of recreational vehicle. There is actually no conflict here – the vehicle must be installed on a permanent or semi-permanent basis, but not immobilized or permanently affixed to the lot.

B. Factual Requirements

At least two vehicles in this park meet the definition of “park model,” under the facts found by the ALJ.

The ALJ found:

Barbara Hamrick has lived in the Park since at least 2003. Ms. Hamrick lives in a recreational vehicle. It is licensed and she can drive it away anytime. At least twice a year she needs to temporarily relocate, either within the Park, or outside of the Park, to avoid flooding. It

takes Ms. Hamrick approximately two hours to prepare to relocate. She needs to disconnect from the Park's utilities and remove the blocks and jacks. Ms. Hamrick considers her recreational vehicle to be her permanent home. She resides at the Park because that is where she can afford to live.

FF 4.29 – 4.31 (citations to testimony omitted).

The ALJ also found:

Mr. Shinkle has lived at the Park for approximately five years. This is his second term of residence at the Park. Mr. Shinkle has no plans to leave the Park but he could if he wanted to. Mr. Shinkle owns his unit, which is a 40-foot travel trailer. . . . Since locating at the Park in approximately 2010, Mr. Shinkle has never relocated, not even when the lower part of the Park was threatened with flooding. Mr. Shinkle's travel trailer bears a license plate but the tabs are not current. Nevertheless, he could move the travel trailer if he purchased a trip-permit. It would take him an hour or two to prepare to move.

FF 4.41 – 4.45 (citations to testimony omitted).

There are other findings about other residents, but the findings outlined above are sufficient to prove that Dan & Bill's RV Park rents to two "park models." Both Hamrick and Shinkle use a vehicle as a primary residence. Those vehicles are intended for permanent or semi-permanent installation on the premises, and they are not immobilized or permanently affixed to the lot.

Much has been made about the flooding situation at the park and the fact that some residents had to move their vehicles as a result. This is legally irrelevant, however, because the statute discusses both permanent and semi-permanent installation. Further, simply needing to move to another space in the same park would constitute an intention to install the RV "on the premises," the premises being the park, for a permanent or semi-permanent basis.

The ALJ found that Allen's unit was the only RV that qualified as a "park model". However, Allen's unit may be immobilized and unable to move. It sits on top of cinder blocks, and it may be destroyed or severely damaged if it is moved. That error does not have any bearing on this case, though, because Allen and all residents of the park obtain rights under the MHLTA, and the park bears responsibility under the MHLTA, if it hosts two park units on its premises. It does. The final order is reversed on this ground.

3. Issues Raised by the Park

The park raises five issues that this court will address only briefly, concluding that they have no merit.

First, the park asserts that the statutes are void for vagueness because they do not give a reasonable person notice of whether it is subject to the MHLTA in this situation. The Park has not met the very high burden to show that it is vague beyond a reasonable doubt, and that the statute is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 738 (1991) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70

L.Ed. 322 (1926)). Simple textual analysis, coupled with one dictionary definition, yields a straightforward result. This law is not void for vagueness.

Second, the park asserts that this court is bound by a Pierce County Superior Court decision, in the context of an unlawful detainer proceeding, finding that it was not subject to the MHLTA. The park has not briefed the doctrines of res judicata or collateral estoppel, and this court will not apply those complex doctrines in the absence of evidence.

Third, the park claims that the Attorney General's Office has violated the prohibition on conducting warrantless searches. This issue was apparently the subject of a motion in limine regarding whether certain testimony could be received, if that testimony was derived from an unlawful search. This issue was not raised by either of the appellants, Allen and the AGO. The Park did not properly file a cross appeal. The document entitled "cross appeal" is not signed, and the park did not provide a necessary filing fee to raise its own issues on appeal. Nevertheless, in an abundance of caution this court has reviewed the briefing on this issue and concludes that, had this issue been properly perfected on appeal, it has no merit. The court adopts the reasoning offered by the AGO in its briefing on this issue.

Fourth, the park asserts that the Notice of Violation improperly exceeds the scope of the complaint. This issue was not resolved by the ALJ, and can be adjudicated below on remand.

Finally, the park asserts that there is no right to appeal because Allan did not seek a stay of the final order. It provides no law for this proposition and a stay is not a legal requirement to preserve appeal rights under the APA. Each of the issues raised by the park are without merit.

4. Attorney Fees

Allen asks for attorney fees for pursuing this appeal. The prevailing party to any action arising under the MHLTA is entitled to reasonable attorney fees and costs. RCW 59.20.110. Allan is the prevailing party and is entitled to reasonable fees and costs. She should submit a declaration detailing her fees and costs and either present an agreed order or note the matter on the Court's Friday civil motion calendar.

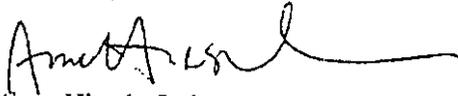
5. Conclusion

This court has been tasked with a fairly routine and straightforward legal job of engaging in statutory construction. This court must do so in an objective and neutral manner, under well-established rules, and has done so. The court would be remiss, however, if it did not acknowledge the important human interests at stake here. The Northwest Justice Project participated in this case because its clients, the poorest residents of this state, are directly affected by whether they gain protections under the MHLTA. As it explains, the ability to live cheaply in a recreational vehicle is a crucial safety net for those who would otherwise be homeless. The problems of homelessness and inadequate low income housing are major policy concerns for lawmakers, and major personal concerns for countless people living in Washington. Our Legislature was informed that people living permanently or semi-permanently in RV parks needed additional protections, and it set forth to protect them by including those living situations in the MHLTA. The Legislature may not have done a perfect job of crafting these statutes, but this court must give effect to every word that the Legislature set out in statute, unless doing so is impossible. The Legislature's intention here is clearly written into law, and that intention is that

RV parks such as Dan & Bills cannot operate as if it is hosting people on vacation. Its tenants have protection under the MHLTA because these parks are their homes.

The Court reverses the decision of the ALJ and as stated at the outset, remands for further proceedings consistent with this letter opinion. Either Allen or the State should prepare an order reflecting the ruling of the Court and note the matter for presentation on the Court's Friday civil motion calendar.

Very Truly Yours,



Anne Hirsch, Judge
Thurston County Superior Court

cc: Thurston County Clerk for Filing

Appendix D

FILED

DEC 16 2016

Superior Court
Linda Myhre Enlow
Thurston County Clerk

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

EDNA ALLEN, an individual.

Petitioner,

No. 15-2-02446-34

vs.

JUDGMENT

OFFICE OF THE ATTORNEY GENERAL,
STATE OF WASHINGTON,

Respondent.

JUDGMENT SUMMARY

- 1. Judgment Creditor: Edna Allen
- 2. Judgment Debtor: Dan Haugsness, d/b/a Dan & Bill's RV Park
- 3. Principal Judgment Amount: 0
- 4. Interest to Date of Judgment: 0
- 5. Attorney's Fees: ~~\$43,091.75~~ ^{41,655.25} *(circled)* *DRM*
- 6. Costs: \$240.00
- 7. Attorney's Fees, Costs and other Recovery Amounts shall bear Interest at 12% per annum
- 8. Attorney for Judgment Creditor: Dan R. Young

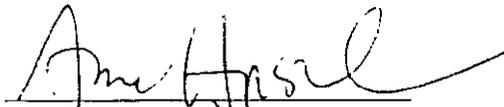
JUDGMENT - 1

LAW OFFICES OF DAN R. YOUNG
ATTORNEY AT LAW
1000 SECOND AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98104
(206) 292-8181
(206) 641-3208 (fax)

1 This matter coming before the undersigned this date following consideration of the
2 petition for review filed in this case, and the court having entered Findings of Fact and
3 Conclusions of Law regarding the petitioner's request for attorney's fees, it is hereby

4 ORDERED, ADJUDGED and DECREED that judgment be and hereby is entered in
5 favor of petitioner Ms. Edna Allen against Dan & Bill's RV Park, in the amount of \$43,331.75,
6 plus interest from this date on the judgment at the rate of 12% per annum.
7

8 DONE IN OPEN COURT this 16th day of December, 2016.

9 
10 Judge Anne Hirsch

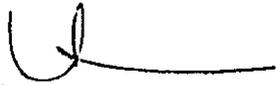
11
12 Presented by:
13 LAW OFFICES OF DAN R. YOUNG

14
15 By Dan R. Young
16 Dan R. Young, WSBA #12020
Attorney for Petitioner

Approved for Entry, Notice of Presentation
Waived:
ATTORNEY GENERAL FOR THE
STATE OF WASHINGTON

By _____
Jennifer Steele, WSBA #36751
Assistant Attorney for Dan Haugsness

17
18 ~~Approved for Entry, Notice of Presentation~~
19 ~~Waived:~~
GOODSTEIN LAW GROUP, PLLC

20 
21 By _____
22 Seth Goodstein, WSBA #45091
23 Attorney for Dan Haugsness
Carryn Locke WSBA #13980

Handwritten initials and a circled 'P' in the right margin.

FILED
COURT OF APPEALS
DIVISION II

2017 MAY 17 AM 11:27

STATE OF WASHINGTON

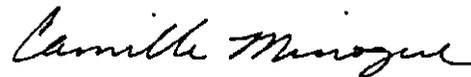
DECLARATION OF SERVICE

BY  _____
DEPUTY

I, Camille Minogue, declare to be true under the penalty of perjury under the laws of the State of Washington that I am over the age of 18, not a party to this action, and have served a true and correct copy of the Brief of Petitioner Edna Allen upon the individuals listed according to the methods noted below and properly addressed as follows:

Counsel for MHDRP: Amy Tang Attorney General of Washington Consumer Protection Division 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 jennifers3@atg.wa.gov	Method used: Email on May 11, 2017
Counsel for Respondent: Seth Goodstein, Esq. Goodstein Law Group, PLLC 501 South G Street Tacoma, WA 98405 sgoodstein@goodsteinlaw.com	Methods used: Email on May 11, 2017 and U.S. First Class mail, posted on May 11, 2017
Amicus Curiae: Leslie Owen Northwest Justice Project 711 Capitol Way S Ste 704 Olympia, WA 98501-1237 Leslico@nwjustice.org	Method used: Email on May 11, 2017

Date this 11th day of May, 2017, at Seattle, Washington.



Camille Minogue
Law Clerk, Law Office of Dan R. Young