

FILED
Court of Appeals
Division II
State of Washington
9/14/2018 12:27 PM

No. 51500-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JEFFERSON COUNTY

Respondent

v.

MICHAEL ANDERSON

Appellant

APPELLANT'S OPENING BRIEF

Joan Best
WSBA #7247
Attorney for Appellant

Law Office of Joan Best
2072 Victoria Avenue
Port Townsend, WA 98368
(360) 385-1122

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Cancer takes Judge Craddock Verser

By Tristan Hiegler of the Leader Sep 11, 2013

Attorney and former judge Craddock D. Verser died Sept. 7, 2013 in Port Townsend after a 26-month battle with pancreatic cancer. He was 64, and he passed peacefully with family present. A celebration of life and potluck is planned for 12:30 to 4:30 p.m. Sunday, Sept. 15 at Elks Lodge 317, 555 Otto St., outside Port Townsend. In lieu of flowers, the family asks for donations to your favorite cancer research charity.

Verser has been a fixture in the Jefferson County legal community for more than 30 years. He is remembered as a well-prepared defense attorney, an excellent mentor for high school Mock Trial students, and a serious but understanding judge. He was honored at the Sept. 9 Jefferson County Board of Commissioners (BOCC) meeting with a moment of silence. Several members of the public, as well as all three commissioners, praised his work as a lawyer and judge. "People could recognize there was justice in his decisions," BOCC Chair John Austin said.

Since 1980, Verser worked in a variety of capacities, including as an attorney in private practice, as a public defender, and for the Port of Port Townsend as that agency's attorney from 1991 to 1998. Between 2002 and 2004, Verser worked with attorney Peggy Ann Bierbaum, and an associate attorney, Molly Mulvaney, in a local legal partnership.

Verser became Jefferson County Superior Court judge in March 2004, when then-Gov. Gary Locke appointed him to the post following the death of Judge Thomas J. Majhan in January of that year. In September 2004, voters elected Verser to serve a short term until the end of 2004, plus a four-year term. He was re-elected unopposed in 2008.

"I like thinking, and the various areas of law you have to think in," Verser said of his continued interest in the position. "It's great being a superior court judge where you hear all types of cases. It's not like I'm just doing criminal, just doing domestic or just doing civil. You hear them all, so

you're thinking all the time, it keeps you thinking. It's really, really intellectually challenging. It's fun." While he had a couple key decisions reversed by higher courts, Verser said from those reversals he learned not to make the same mistake twice.

ILLNESS FOUND

Stomach pains during a vacation in Montana sent him to the hospital in July 2011, and soon after, he was diagnosed with pancreatic cancer. According to the American Cancer Society, the one-year survival rate is 20 percent and the five-year survival rate is 4 percent.

The disease caused him to be off the judicial bench from August through December 2011 but working some from home. His absence was filled by court commissioners, the district court judge and visiting superior court judges who stepped up to help their colleague. Verser started hearing cases again in January 2012, and continued on the bench even while undergoing radiation therapy. Although in April 2012 he said he intended to file for a third term as judge, by early May he had reconsidered. At the time, he said he did not want his health to become a campaign issue. Instead, he endorsed Keith Harper to be the next superior court judge. In November 2012, Harper bested Bierbaum at the polls. In January 2013, Verser passed the gavel to Harper in a superior courtroom packed with friends and associates of both men.

As it became clear this summer that the cancer was in control, friends – from the golf course and the courtroom – bid their farewells in person and on the phone.

FAMILY THOUGHTS

Verser was at home when he died quietly about 9 p.m., Sept. 7, with family at his side. He is survived by his wife, Joyce; two adult daughters: Lindsey and Yvonne; a grandson; and a sister. "He was one of the strongest men I have ever known," said Lindsey Verser. "I was blessed to have him as a father." Joyce Verser said she hopes the people whose lives

Verser touched have a chance to remember him Sunday afternoon for the celebration of life at the Elks Lodge.

“He was just important to a lot of people and I want to make sure everybody has an opportunity to be a part of it,” she said. “I have a feeling it’s probably going to be quite full. He was a political person, as well as just a good man.” She said while she and Verser had a short time together [they were married in 2011], he had a profound impact on her life as well as many others over the years. “He did not care about people’s status or place in life, he was not judgmental in that respect,” Joyce Verser said. “He extended himself to anyone who needed him. He was very, very caring that way and sincere.”

COLLEAGUES REACT

Judge Keith Harper said Verser was a kind and humble person and that Harper appreciated him on a personal level. “He was a very good lawyer and judge,” Harper said.

Michelle Lorand, who worked with Verser as the Superior Court administrator, said he was “very compassionate and caring and thorough,” and that he made sure everyone understood his rulings.

Ruth Gordon, Jefferson County clerk, reflected on her office’s close relationship with Verser as an attorney and judge. The clerk, an elected position, manages the records from Jefferson County Superior Court. “I think [Verser] was an attorney who truly had a passion for the law. As a judge, he balanced that with common sense and compassion and brought his humanity to the bench,” Gordon said. “He loved the law, but he wasn’t a heartless stickler.” She added that “as a colleague, [Verser] did not sweat the small stuff, he was very easy to work with. He was a pleasure to work with ... he was very warmly regarded by my staff and myself.”

Verser was a good problem solver for his clients while an attorney, Gordon said, and he put up a “terrific fight” against his cancer. “He was very stoic about it, he continued to try to survive,” she said. “What I saw was a lot of dignity.”

After speaking with Verser on Aug. 29, County assessor Jack Westerman III said the former judge was still mentally sharp, if physically frail. “He was a very passionate practitioner of the law, that’s how I could describe him,” Westerman said. “He had a really sharp legal mind ... you probably couldn’t get a much better defense. I always admired his legal mind, plus his passion.”

Westerman said the two discussed Westerman’s impending retirement after more than 30 years in the assessor's office. “He perked right up and said, ‘That’s great, Jack, you need to retire while you’re still physically capable of enjoying it.’”

Marianne Walters, a former county clerk and court administrator who said she worked with Verser for 16 years, called Verser professional and respectful as both an attorney and a judge. “He was just an incredible defense attorney, always prepared, always passionate about his cases, always fighting for his clients to the last minute,” Walters said.

They maintained their friendship when she retired after Verser’s first year on the bench, she said. “He was always above board, he was always honest, and he took that to the bench. He was extremely honest and fair,” Walters said. “It’s just a big loss, he is just so wonderful.”

Elena Canavor, Port Townsend High School Class of 2009 and a former Mock Trial student, posted this message along with thoughts from other students who recalled Judge Verser as a mentor. "We won't forget the time and dedication you gave us. We won't forget the look you gave us when we nailed a closing speech, cross examination, or whenever we found some crazy inconsistency in a witness's testimony. You had a very subtle way of saying 'good job' that meant so much and carried a great deal of weight. A lot of my high school years were spent in your courtroom, and I am grateful to have those memories. Rest in Peace, friend, coach, and mentor."

From: Joan Best [<mailto:joanbest@earthlink.net>]
Sent: Sunday, July 22, 2018 4:06 PM
To: 'Philip Hunsucker'; 'Kathleen Kler'; 'Kate Dean'; 'David Sullivan'
Cc: 'Philip Morley'; 'Michael Haas'; 'Stuart Whitford'; 'Roger Parker'
Subject: Michael Anderson Property at 890 Old Hadlock Road

I am happy to report that Mr. Anderson and friends met the deadline, as promised, and have now removed the remaining vehicles. As a result all 98 vehicles listed in Exhibit 11, attached to the Warrant of Abatement issued as ordered in the January 26, 2018 , case No. 06-2-00348-8 are now off of the property and Mr. Anderson has now completed the requirements under the Court order. Although not required to by the Court, Mr. Anderson is continuing to clean and organize the property: the farmhouse is being refurbished and plans are underway for repurposing the rest of the property, including fencing to provide a more pleasing face to the public.

I wish to thank the Board of Commissioners for delaying the abatement process so that Mr. Anderson could remove the offending vehicles himself. I also wish to thank Phil Morley for producing the photo documentation of the particular vehicles referred to by Exhibit 11, as requested in my first appearance at the BOC meeting a few weeks ago. It made it so much easier to make sure the right vehicles were removed. Once we had the visual identification the remainder of the removal went fairly smoothly. It was a lot of hard work by Mr. Anderson and his associates, but I know they are grateful for the chance to do this themselves.

Joan Best
Friend of the Mike Anderson family
Jefferson County citizen

INTRODUCTORY STATEMENT

This case concerns the use of five acres [hereinafter SP] situated in the outskirts of unincorporated Port Hadlock in Jefferson County, bound on the east by Old Hadlock Road and on the west by Chimacum Creek, owned by Michael Anderson and his wife. Jefferson County Department of Health cited Mr. Anderson for breach of a 2012 order which prohibited:

depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other personal property which fits within the statutory definition of solid waste. CP 129 @ p.11

The Court did not find any solid waste on SP other than junk vehicles. RP 80 (L23)-83. Mr. Anderson points out that the state definition of “solid waste” includes “abandoned vehicles” but not “junk vehicles.” Jefferson County code’s definition of “solid waste” changed “abandoned vehicles” to “junk vehicles” and also adopted the State’s definition of “junk vehicle” but modified it by additional qualifiers. Mr. Anderson contends that the RCW legislative definitions should prevail over Jefferson County Code, with the result that the only junk vehicles that can be considered “solid waste” are junk vehicles that have also been abandoned, which is not true of any of the vehicles listed by the County in their 2018 order of abatement. CP 342.

A. ASSIGNMENTS OF ERROR

1. The Superior Court erred in denying Anderson non-conforming use of his property.

2. The Superior Court erred in not adhering to the Washington State legislative scheme defining solid waste and delegation of control over junk vehicles.

3. The Superior Court erred in finding Anderson in contempt of court because it failed to interpret the prior order in compliance with state law.

Issues Pertaining to Assignments of Error

Assignment of Error 1: The Superior Court erred in denying Anderson non-conforming use of his property.

Issues Pertaining to Assignment of Error 1

The Superior Court erred in denying Anderson non-conforming use of his property as a vehicle storage yard, ruling that a court order in this case six years earlier denying a non-conforming use as an unlicensed wrecking yard or scrap processor extinguished his right to claim a different non-conforming use. CP 194, RP 48-50.

Judge Brian P. Coughenour ruled on December 15, 2017, RP 3-45, CP 194, reconsideration denied on January 26, 2018, RP 48-50, that he was precluded from acknowledging the subject property [SP]'s long time use as a vehicle storage yard because of the previous ruling in this case during

2011-2012 solid waste removal proceedings under Judge Craddock Verser, where the Court ruled that “Defendant Michael Anderson cannot be and is not “grandfathered” as a legal non-conforming use for scrap processing or as a wrecking yard at the SP because those uses occurring at or upon the SP have never been legal, lawful or licensed by the State of WA” even though at the same time Judge Verser allowed Mr. Anderson to continue to keep 115 vehicles on the SP, thus appearing to acknowledge SP’s use as a vehicle storage yard. CP 129 (P10, L1)

Assignment of Error 2: The Superior Court erred in not adhering to the Washington State legislative scheme defining solid waste and delegation of control over junk vehicles.

Issues Pertaining to Assignments of Error 2.

It is legal to own junk vehicles in Washington. Most of the vehicles Michael Anderson repairs or rebuilds would be classified as junk vehicles until he gets them road ready again. Junk vehicles are regulated under Title 46 RCW, Motor Vehicles. Jefferson County attempted to regulate the junk vehicles found on SP under its health department powers, contrary to state law RCW 46.55.230(1)(a), which only grants them the power to handle abandoned junk vehicles.

On January 26, 2018 The Court held Mr. Anderson in *contempt* CP 341 of the November 2, 2012 *Amended Permanent Injunction* which prohibited Mr. Anderson from:

depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other personal property which fits within the statutory definition of solid waste. CP 129 (P.11, L13)

In Title 70 RCW the Washington state legislature enacted the rules and regulations relating to Public Health and Safety. In Chapter 70.05 RCW the legislature delegates to local health departments the task of carrying out these mandates. Chapter 70.95 describes the rules and responsibilities regarding solid waste management. The definition of solid waste lists categories of items which constituted solid waste, including “abandoned vehicles.” The only mentions of “junk vehicles” found in all of Title 70 are found in RCW 70.93 and RCW 70.95 which discuss junk vehicles that have been **abandoned** and references RCW 46.55.230 concerning the process of removal of an abandoned junk vehicle. This statute grants to an “officer of a jurisdictional health department acting pursuant to RCW 70.95.240” the authority to dispose of an **abandoned** junk vehicle. *[Emphasis added]* Jefferson County adopted code that changed the definition of “solid waste” so it read “junk vehicles” instead of “abandoned vehicles” and expanded the definition of “junk vehicles” to include more items such as boats and trailers, and also made it easier to define a vehicle as junk. Judge Coughenour, CP 341, implicitly adopted the Jefferson County code definitions and authority when he determined that

the County had the authority to abate not only those vehicles that were abandoned, if any, but also all other vehicles found on SP that the County determined to be junk under its expanded definition adopted in 2014, two years after Judge Verser's 2012 order, CP 129, that Mr. Anderson was charged with breaching.

Assignment of Error 3. The Superior Court erred in finding Anderson in contempt of court because it failed to interpret the prior order in compliance with state law.

Issues Pertaining to Assignments of Error 3.

The Court held Mr. Anderson in contempt, CP 341, of the November 2, 2012 *Amended Permanent Injunction*, CP 129, which prohibited Mr. Anderson from “depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other personal property which fits within the statutory definition of solid waste.” The Court specifically limited the breach to 98 Jefferson Department of Health identified junk vehicles, CP 342, Exhibit 11, including 23 junk vehicles which had previously been permitted to remain as part of the 2012 order, CP 129 referencing CP 107. *An Order Directing Issuance of Warrant of Abatement*, CP 342, was issued on January 26, 2018. Thereafter Mr. Anderson removed all of the offending vehicles from SP. Should this Appeals Court find the *Contempt of Court Order*, CP 341, void and the subsequent *Order*

of Abatement, CP 342, erroneously issued, the fine and award of attorney fees to the County should be reversed and Mr. Anderson should be compensated for the harm done to his business and awarded attorney fees and costs.

B. STATEMENT OF THE CASE

(1) Statement of the Case Regarding Non-conforming Use

This case concerns the use of five acres [hereinafter SP] situated in the outskirts of unincorporated Port Hadlock in Jefferson County, bound on the east by Old Hadlock Road and on the west by Chimacum Creek, owned by Michael Anderson and his wife. CP159.

Jefferson County has not disputed the following:

(1) CP 159 & CP 162. Mr. Anderson started repairing and rebuilding vehicles on SP, which was his family's home, in 1975 at the age of 16. He first registered his business, Michael's Custom Rebuild & Towing, with the state on January 1, 1981 at age 21 at the SP location, and has continuously maintained his business license to the present day [tax registration number and UBI: 600389787]. Mr. Anderson changed the primary location of his business and home when he purchased an established auto body shop at 270 W. Maude Street, Port Hadlock, about two miles from SP on May 25, 1984. With his mother's permission, he continued to use the SP location to store vehicles and equipment overflow

and to work on larger projects at the SP location. After her death in 1991, Michael Anderson bought out his brother, Robert's, interest in SP, making him sole owner. He rented out the family home but continued to use the rest of the property to store vehicles and equipment overflow and to work on larger projects. Jefferson County has provided periodic aerial photographs of the property since 1981 showing an increasing number of vehicles placed around the property consistent with this information, CP 159 exhibit.

(2) CP 162. Mr. Anderson is a sole proprietor who rarely employs assistants. He described his work as follows:

(A) He repairs various types of vehicles on behalf of individuals who either bring the vehicle to him or he picks up the vehicle and brings it to his business for repair. Occasionally he does minor repairs at the location of the inoperable vehicle. Mr. Anderson's expertise is in understanding the integrate workings of engines and other components of various vehicles including but not limited to automobiles, motor boats, motorcycles, small various purpose engines, large equipment such as trucks, dozers, etc. Sometimes these jobs are urgent repairs and some may be designated by the owner as a "when you can get to it" type of job.

(B) At the request of an individual he will tow vehicles, boats, etc. He does not advertise towing to the general public nor has he made himself

available to law enforcement or others to tow abandoned vehicles because of the extensive bookkeeping and premises requirements for registered tow truck operators under RCW chapter 46.55.

(C) He buys or trades or is given vehicles that are usually currently not road worthy but are either (a) a potentially antique or collector vehicle that will have value once it is restored, or (b) is an inoperable vehicle that is missing a part or in need of a repair that will be financially worth the effort to make operable again. Mr. Anderson stores these vehicles on his property while he looks for the needed parts, some of which may be rare and difficult to find, and/or stores them until he has the time to rebuild them. He also has parts cars that match one or more of his repairable vehicles, which will be recycled once the parts are removed.

(D) In the past other rebuilders or neighbors who needed a part might come by his place looking for a part for their project. If he had the part and did not need it for his project he would sell it. He did not advertise parts either locally, online, or in trade journals.

(E) Periodically, when vehicles have no further value and other scrap metal had accumulated, Mr. Anderson would prepare the material as required by law and load it onto one of his large trucks and haul it to a licensed scrap processor in Bremerton or Tacoma. He has never owned or maintained a hydraulic baler and shears, or a shredder, which is the

definition of a scrap processor RCW 46.79.010 (2) although from 1996 through September 2003 he held a hulk hauler license [RCW 46.79.010(3)] which allowed him to haul not only his own scrap metal, but others as well. He prepared the vehicles for transport to the scrap processor at both the SP and the Maude Street business locations prior to the 2011-2012 litigation. He presently hauls only scrap vehicles that he owns as permitted under RCW 46.79.110 and only prepares them for hauling at the business location on Maude Street.

Prior Finding:

Judge Craddock Verser,¹ found in this case on March 9, 2011 in his *Order Granting Plaintiff Partial Summary Judgment*, CP 74, and reiterated in the November 2, 2012 *Amended Permanent Injunction*, CP 129, that Mr. Anderson had licensed his business only at his Maude Street location; that the only specialty license he'd held was as a hulk hauler, which had expired, and that he had never held specialty licenses in the State of Washington as a scrap processor or a wrecking yard at any time in Jefferson County. Judge Verser, further found that “Michael Anderson

¹ In July 2011 Judge Verser was diagnosed with pancreatic cancer. The disease caused him to be off the judicial bench from August through December 2011 but working from home. His absence was filled by court commissioners, the district court judge and visiting superior court judges who stepped up to help their colleague. Verser started hearing cases again in January 2012, and continued on the bench even while undergoing radiation therapy. He did not run for another term, leaving office in January 2013. He died Sept. 7, 2013. [Obituary p. vi-ix this document]

had been operating an illegal and unlawful scrap processing facility at the SP.” He also ruled that “Michael Anderson had been operating an illegal and unlawful wrecking yard at the SP,” apparently referencing the definition of a “vehicle wrecker” in RCW 46.80.101(5) which includes a person who deals in secondhand vehicle parts. In the November 2, 2012 Judgement, CP 129, Judge Verser noted that these operations had ceased and that solid waste code violations has “apparently ceased or reduced in frequency” since the March 2011 order CP 74. He also made note of the May 9, 2012 *Declaration of Alison Petty*, CP 107, in which Jefferson County Public Health provided photographs of the 110-120 items being allowed to stay on the property.

Judge Verser ruled, in the November 2, 2012 *Permanent Injunction*, CP 129 @ p 10, that “Defendant Michael Anderson cannot be and is not “grandfathered” as a legal non-conforming use for scrap processing or as a wrecking yard at the SP because those uses occurring at or upon the SP have never been legal, lawful or licensed by the State of WA.”

(2) Statement of the Case regarding junk vehicles as solid waste

On January 26, 2018 the Superior Court heard the *County’s Motion for Order to Show Cause Re: Contempt*, CP 184, 185, of the November 2,

2012 *Amended Permanent Injunction Granting Continuing Jurisdiction* CP 129 @ p 11. The *Amended Permanent Injunction* prohibited Mr. Anderson from “depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other personal property which fits within the statutory definition of solid waste.”² The County listed approximately 98 vehicles, which they identified as breaching the injunction, referred to as Exhibit 12 in the Court’s oral ruling, RP @ p 82, but labelled Exhibit 11 and attached to the *Order Directing Issuance of Warrant of Abatement*, CP 342, signed the same day. The County had also claimed that a pile of wood and a group of small metal tanks were solid waste CP 190, but the Court rejected that claim, stating “I am going to sign an Order. But we need to make sure that No. 3 on the Direction to the Issue Warrant of Abatement is only going to refer to junk vehicles, and not all these other things.” RP p80, L23 – p83, L23.

Pursuant to *Order Directing Issuance of Warrant of Abatement* CP 342, the County created a Warrant of Abatement in March 2018 and put it out for bid and a bid was accepted. However, Mr. Anderson removed all

² It also prohibited crushing motor vehicles, parting (disassembling or cannibalizing) motor vehicles or processing scrap metal, but the County did not claim that Mr. Anderson had violated these provisions.

of the vehicles listed in Exhibit 11/12 from SP before the bidder could execute the bid. [email to Board of Commissioners, P x, this document]

(3) Statement of the Case Regarding Contempt of Court

The Court held two hearings [RP, December 15, 2017, p 1-45; January 26, 2018, p,46-91] and considered the pleadings in this matter and granted the County's *Motion for Order to Show Cause Re: Contempt*, CP 341, The Order granted Jefferson County attorney fees of \$9,425 and a fine of \$6,000 totaling \$15,425.00. The *Contempt of Court Order* should be reversed, the monetary charges should be reversed and Mr. Anderson awarded attorney fees, costs, and compensation for expenses relating to actions he undertook to comply with the *Warrant of Abatement* CP 342. before the County granted the bid in execution of the Warrant, including any loss therefrom.

C. SUMMARY ARGUMENT

(1) Summary Argument Regarding Non-conforming Use

Judge Brian Coughenour concluded, CP 194, that all of Mr. Anderson's legal non-conforming uses were extinguished when Judge Craddock Verser ruled, in the November 2, 2012, CP 129@10, that

“Defendant Michael Anderson cannot be and is not “grandfathered” as a legal non-conforming use for scrap processing or as a wrecking yard at the SP because those uses

occurring at or upon the SP have never been legal, lawful or licensed by the State of WA.”

Mr. Anderson disputes this conclusion and argues that the legal non-conforming use of vehicle storage yard, which was the primary use of the property since 1984 when he moved his repair and rebuild business to another location, CP 159, should be allowed to continue as described in Jefferson County Code 18.20.280.

(2) Summary Argument Regarding Junk Vehicles as Solid Waste

On January 26, 2018 the Superior Court heard the *County’s Motion for Order to Show Cause Re: Contempt* of the November 2, 2012 *Amended Permanent Injunction Granting Continuing Jurisdiction*, CP184, 185. The *Amended Permanent Injunction*, CP 129@11, prohibited Mr. Anderson from

“depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other personal property **which fits within the statutory definition of solid waste.**”³

The County listed approximately 98 vehicles, with pictures, which they identified as breaching the injunction, referred to as Exhibit 12 in the Court’s oral ruling, RP 82, and attached to the subsequent *Order Directing*

³ It also prohibited crushing motor vehicles, parting (disassembling or cannibalizing) motor vehicles or processing scrap metal, but the County did not claim that Mr. Anderson had violated these provisions.

Issuance of Warrant of Abatement, CP 342. signed the same day. The County had also claimed that a pile of wood and a group of small metal tanks were solid waste, but the Court rejected that claim, stating “I am going to sign an Order. But we need to make sure that No. 3 on the Direction to the Issue Warrant of Abatement is only going to refer to junk vehicles, and not all these other things.” RP 80, L23-83,L23.

Mr. Anderson contends that this ruling does not conform with Washington state laws regulating solid waste and junk vehicles because the state statute, RCW 70.95.030, defining “solid waste” includes “abandoned vehicles,” but not “junk vehicles” which are regulated under a different section of the law. RCW Title 46. Judge Verser’s order CP 129, must be read in a way that will conform with the law, which says that only junk vehicles that are abandoned could be considered “solid waste,” under the jurisdiction of the County Health Department, RCW 46.55,230. The junk vehicles found on Mr. Anderson’s property, described and photographed in Exhibit 12, were not abandoned and should not have been labeled “solid waste” with the subsequent consequence of being considered to have breached the Judge Verser’s order.

Jefferson County changed their ordinance to include “junk vehicles” in the definition of “solid waste.” JCC 8.10 & JCC 18.10.180. Mr. Anderson contends that those portions of the county ordinances regarding solid waste and junk vehicles which are at variance with state statute are

void because they contradict and cannot be reconciled with state law and the Washington State constitution, Article XI, section 11. *Weden v. San Juan County*, 135 Wash.2d 678, 958 P. 2d 273, 279. (1998), *Snohomish County v. Pollution Control Hearings Board*, 46378-4, Wash. Ct.App. (2016)

Mr. Anderson also contends that he should not be held in contempt of court for any aspect of the November 2012 Order, CP 129, that is based on Jefferson County Code passed after November 2012.

(3) Summary of Argument Regarding Contempt of Court

If the Court finds that Mr. Anderson was not in contempt of court he should be made whole. The order, CP 341, requiring him to pay the County's attorney fees and a fine totaling \$15,425.00 should be rescinded. He should be compensated for his time and expense he incurred removing the vehicles identified as "junk vehicles from SP.

D. ARUGMENT

(1) Argument Regarding Non-conforming Use

Michael Anderson raised the issue of nonconforming use of SP during this litigation prior to the March 2011 Partial Summary Judgment, CP 74, claiming his vehicle repair and rebuild business on SP started in 1984 when he first obtained his business license. The Washington Court of Appeals ruling in *Jefferson County v. Lakeside Industries*, 106 Wn.App.

380, 385, 23 P.3d 542 (2001) determined the date the Jefferson County zoning code was effective was 1992 and also spelled out the criteria for finding a legal non-conforming use:

I. Establishing a Legal Nonconforming Use

Lakeside argues that its asphalt batching at the Cape George pit is a legal nonconforming use. To establish such use, a landowner must show that (1) the use began before the applicable zoning ordinance was adopted, (2) the use was lawful before the ordinance was adopted, (3) the landowner did not abandon the use after the ordinance was adopted, and (4) the use was continuous, not occasional or intermittent. [cite omitted]

Jefferson County code 1.01.170 gives November 27, 1995 as its effective date.

The March 2011 *Partial Summary Judgment* CP 74, reflects that there was no dispute regarding continuous use of the SP for various activities with used vehicles since 1984 or disputes concerning abandonment of this use by Anderson. Thus the County and the Court acknowledged that Anderson had met the burden of the nonconforming use before the zoning was adopted in 1992/1995 and that he'd never abandoned that use.

However, Judge Verser determined that two uses required special licenses from the state of Washington, scrap processing, RCW 46.79 [license first required in 1971], and wrecking yard, RCW 46.80 [license first required in 1947] and that Mr. Anderson, who started his auto rebuild

activity at age 16 in 1981, could not claim a nonconforming use for these activities, since both had required licenses before he began his vehicle activities on SP, and, therefore, he did not establish a legal non-conforming right to continue using the property for scrap processing or as a wrecking yard.

However, Judge Verser allowed and the County agreed to allow a number of junk vehicles to stay on SP, demonstrating an acknowledgment that Mr. Anderson had a continuing right to store junk vehicles that he intended to repair or rebuild on SP. Judge Verser found, CP 129 @p7#53 that Jefferson County Public Health consented to leaving proximately 110-120 items identified by the County in the May 9, 2012 Declaration by Alison Petty, CP 107 on SP, almost all of which were motor vehicles, but also included boats on trailers.

Regarding Scrap Processing. Mr. Anderson had been licensed as a “hulk hauler” CP 129@p2#5, from 1996 through September 2003. CP 177. He used his auto repair business address [Maude Street] for the license. Mr. Anderson was unaware that he should have also referenced his property on Old Hadlock Road within the license. Under the hunk hauler license he prepared vehicles for transport at both addresses and then transported them to a scrap processor. A "Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a

shredder for recycling salvage,” [RCW 46.79.010], license first required in Mr. Anderson never owned or used the required equipment to be a scrap processor. He did prepare vehicles for transport at the SP under the Hulk Hauler’s license, including removing parts that are not accepted by scrap processors, without listing SP as a second business location.

The Court, in 2012, CP 129 enjoined him from crushing vehicles [Anderson assumed he was referencing scrap processing as the only use of the word “crushing” in the RCWs is to crushing rocks or seeds, not vehicles] and ruled that SP could not be grandfathered in as a non-conforming use,. Mr. Anderson did not object because he believed this ruling was limited to scrap processing on SP, which includes consolidating the scrap metal which could be seen as crushing. He acknowledged that he had processed scrap metal to prepare it for hauling to the scrap processor at SP, not realizing that his hulk hauler’s license applied only to the Maude Street location because that was the only address given in the license. He has not held a hulk hauler’s license since 2003 and no longer performs those services. Therefore, he did not contest this ruling. He continues to transport vehicle hulks that are licensed in his name which is permitted to any citizen under RCW 46.79.110.

Regarding Wrecking Yard. Mr. Anderson did not want to be or try to be a “vehicle wrecker” as defined in RCW Chapter 46.80. Although he

believed that he had not crossed the line into vehicle wrecker territory, he readily acknowledged that he occasionally sold parts from his parts vehicles and collections to neighbors and other rebuilders. Mike Anderson has no criminal record and has never been accused of dealing in stolen vehicles or parts. However, Washington has a history of auto theft and chop shops as a major criminal activity. Chapter RCW 46.80 outlines the major bookkeeping and business practices required of vehicle wreckers and parts dealers in an effort to stem this illegal activity. These requirements, however, make it impossible for one man operations, like Mr. Anderson's, to be a vehicle wrecker under this statute, leaving the business of legitimate parts dealer to large business operations that can afford the staff and infrastructure needed to conform to the law. The legislature has recognized the problem created by the needs of rebuilders and classic car collectors and has made various attempts at creating exceptions for car collectors with special license plates and other efforts, but has found it difficult to create legislative language that permits parts exchanges between individual collectors and rebuilders that does not open a window for chop shops. After the Court enjoined Mr. Anderson from "parting (disassembling or cannibalizing) motor vehicles at, upon or within the boundaries of" SP CP 129 he did not object. He had not thought of himself as nor requested to be grandfathered in as a "vehicle wrecker"

and therefore did not object when he was enjoined from claiming to be one.

Regarding Vehicle Storage Yard. The fact that Mr. Anderson cannot, since the 2012 ruling, CP 129, continue to do some of the peripheral activities that he once did on SP, believing that he was doing legal activity in a legal way, should not preclude him from continuing to do his primary activity on SP, store vehicles, including large equipment, such as bulldozers, and repairable vehicles, some of which fit the definition of “junk vehicle,” as an adjunct to his business of repairing and rebuilding motor vehicles. A vehicle storage yard is and always has been legal because, unlike wrecking yard and scrap processor, it does not require a special license. The Court in *Johnson v. City of Seattle*, 184 Wn.App. 8, (2014) references a ruling in the case that determined that:

“Johnson was cited by the City for parking more than three vehicles on his single-family lot. He subsequently established that he had a vested right to a legal nonconforming use to park five additional cars on his lot.

Judge Verser was aware that Mr. Anderson stored vehicles on SP as described in various declarations and documents presented to the court prior to his 2012 ruling CP 129. Judge Verser, in that same ruling referenced the County’s listing of the 110-120 vehicles it was allowing to remain on SP, CP 107, so he clearly was aware of Mr. Anderson’s continuing use of SP to store used vehicles. Mr. Anderson contends that

Judge Verser acknowledged by omission, that is by not including “vehicle storage yard” in his list of activities that could not continue at SP, that storage yard is, therefore, a vested legal non-conforming use. Mr. Anderson’s right to have a vested non-conforming use of the SP as a vehicle storage yard should be acknowledged by this court.

(2) Argument Regarding Junk Vehicles as Solid Waste

On January 26, 2018 Judge Coughenour heard the *County’s Motion for Order to Show Cause Re: Contempt of the November 2, 2012 Amended Permanent Injunction Granting Continuing Jurisdiction* CP 184.

The *Amended Permanent Injunction* prohibited Mr. Anderson from

“depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other personal property which fits within the statutory definition of solid waste.” CP 129@p.11.

The County identified approximately 98 vehicles, with pictures, which they claimed breached the injunction, referred to as Exhibit 12 in the Court’s oral ruling, RP 82, and attached as Exhibit 11 to the subsequent *Order Directing Issuance of Warrant of Abatement*, CP 342, signed the same day. The County had also claimed that a pile of wood and a group of small metal tanks were solid waste, but the Court rejected that claim, stating “I am going to sign an Order. But we need to make sure that No. 3

on the Direction to the Issue Warrant of Abatement is only going to refer to junk vehicles, and not all these other things.” RP p80, L23 – p83, L23.

This *Order Directing Issuance of Warrant of Abatement* CP 342, is different from previous Warrants in this case. Mr. Anderson, previously had a habit of collecting items that could be repurposed in future projects, leaving them on SP. Over the years many found a new home or a new use, but some simply sat where dropped and eventually were no longer useful. Those materials legitimately constituted “solid waste” as defined by state law at RCW 70.95.030(22):

"Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, **abandoned vehicles** or parts thereof, and recyclable materials. {Emphasis added.}

However, the current order recognizes that Mr. Anderson realized his previous problem of accumulating material that eventually, with neglect, becomes “solid waste,” As a result the Court affirmatively recognized that this time no solid waste, as defined above, was present, only specific, listed “junk vehicles.” RP p80, L23 – p83, L23. CP 341, 342.

To find Mr. Anderson in contempt of court, is to find that he disobeyed the November 2, 2012 order prohibiting him from

“depositing, or leaving at or bringing or hauling to [SP] any solid waste, including but not limited to junk vehicles, vehicle hulks,

*vehicle parts, tires and/or any other personal property **which fits within the statutory definition of solid waste.***” CP 129@11.

[Emphasis added]

This prohibition is not against anything that the personnel at Jefferson County Public Health believes is solid waste. It only prohibits what is within the bounds of the **statutory definition** of solid waste.

Mr. Anderson’s points out that junk vehicles, unless abandoned, are not solid waste as defined by Washington state law and therefore are exempt from the warrant in this case unless they were abandoned. Junk vehicles are regulated under Title 46 RCW. The only junk vehicles over which local health departments have jurisdiction are ones that have been abandoned as described in RCW 46.55.230:

(1)(a) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or **officer of a jurisdictional health department acting pursuant to RCW 70.95.240**, or any person authorized by the director shall inspect and may authorize the disposal of an **abandoned junk vehicle**. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the parts. *[Emphasis added]*

None of the vehicles listed in Exhibit 11/12 as junk vehicles were abandoned. They were either owned by Mr. Anderson [most of them] or

on SP by permission granted to friends or relatives or owned by the tenant of the farmhouse on the property.

However, Jefferson County went off on a frolic of its own and created a different definition of solid waste to include junk vehicles. Originally Jefferson County Code used the state definition of solid waste including “abandoned vehicles” as shown in Ordinance 09-0715-04, effective July 15, 2004, but in Ordinance 09-1020-05, effective October 20, 2005 the definition was changed by one word: “abandoned” became “junk.”

In the current Health Department section of the Jefferson County Code, section 8.10, is found the following definition of solid waste:

Solid Waste: All putrescible and non-putrescible solid and semi-solid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, animal wastes, construction and demolition wastes, land clearing wastes, contaminated soils, contaminated dredged spoils, **junk vehicles** or parts thereof (including waste tires), and discarded commodities. This includes all liquid, solid and semi-solid, materials that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste also includes, but is not limited to, wood waste, dangerous waste, yard waste, bulky waste, biomedical waste, animal waste, waste tires, recyclable materials, and problem wastes. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, Criteria for Municipal Solid Waste Landfills, Chapter 173-308 WAC, Biosolids Management, and a solid waste handling permit issued by the Health Officer. [*Emphasis added*]

Note that Jefferson County Health Department uses the state's definition of solid waste and then elaborates with details found in other parts of the state statutes *except* the County changed one phrase: They replaced “abandoned vehicles” with “junk vehicles.”

The Section of Jefferson County Code, Title 18 Unified Development Code, defines “solid waste” slightly differently at 18.10.190:

“Solid waste” means all putrescible and nonputrescible solid and semi-solid wastes, except wastes identified in WAC 173-304-015, including, but not limited to, **junk vehicles**, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, **abandoned vehicles** or parts thereof, and discarded commodities, but excluding agricultural wastes and crop residues returned to the soil at agronomic rates. This includes all liquid, solid and semi-solid materials which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste includes but is not limited to sludge from wastewater treatment plants and septage from septic tanks, wood waste, dangerous waste, and problem wastes. Unrecovered residues from recycling operations shall be considered solid waste. [*Emphasis added*]

In this version Jefferson County kept the state law version, “abandoned vehicles” but added “junk vehicles” at the beginning of the list.

County health departments only have authority to dispose of junk vehicles that have been abandoned. RCW 46.55.230. They **do not** have authority to declare junk vehicles which are not abandoned to be solid waste and thus to be handled under the statutory rights and responsibilities

conferred by the state on the counties health departments relating to solid wastes as described in RCW Chapter 70.95, as Jefferson County Health Department did in this case.

Under state law junk vehicles **do not** fit within the statutory definition of solid waste. RCW 46.55.230. The Washington State regulatory scheme deals with vehicles under Title 46. Definitions are found at RCW 46.55.010:

The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for one hundred twenty consecutive hours.

(5) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

RCW 46.80.101(6) defines

"Wrecked vehicle" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has

sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state.

The March 2011 *Order Granting Plaintiff Partial Summary*

Judgment, CP 74,p3#11, gives the definition of “junk vehicle” as it is defined in RCW 46.55.010(5) above. Since then Jefferson Code writers and or the Jefferson County Health Department frolicked again. After Judge Verser entered his *Injunction* on November 2, 2012, CP129, Jefferson County decided to change their definition of “junk vehicle.” On November 1, 2014 they redefining “junk vehicle” to encompass a lot more stuff people had on their property that the County deemed unsightly such as campers, boats and boat trailers or anything else used by humans for transportation. And now extensive damage is not the criteria, but moss growing on it or surrounded by weeds is enough to allow Jefferson Health Department to give the owner a \$513 violation ticket JCC 810.025(3)(a) and maybe take it to the dump at the owner’s expense. This new definition was used by Jefferson County Health Department personnel in determining which of Mr. Anderson’s vehicles to order removed:

Jefferson County Code 8.10.100 Definitions

Junk Vehicle: A junk vehicle includes campers, boats, boat trailers or any other type of vehicle used for human transportation which may exhibit any of the following:

- *Build-up of debris, moss or weeds on, in, under, or around the vehicle that obstructs use;*
- *Damage to the frame;*
- *More than one missing or shattered window or windshield;*
- *More than one inoperable or missing headlight or taillight;*
- *More than one flat tire;*
- *A missing or inoperable engine or transmission.*
- *A missing wheel, license plate, driver-side mirror, tire, body panel, door, hood or other obvious body part, not including a bumper.*
- *A license plate that has been invalid for more than 60 days.*
- *Evidence that the vehicle has not been moved in at least 60 days.*

A vehicle certified under RCW 46.55.230 as meeting at least three of following requirements shall be considered a junk vehicle:

- 1. Three (3) years old or older;*
- 2. Extensively damaged, such damage including but not limited to the following: a broken window or windshield, or missing wheels, tires, motor, or transmission;*
- 3. Apparently inoperable; and/or*
- 4. Has approximate fair market value equal only to the approximate value of the scrap in it.*

For enforcement purposes, possessing three (3) or more junk vehicles on a single property of any size is not allowed under this regulation.

Under state law junk vehicles on private property with permission of the property owner **do not** fit within the statutory definition of solid waste.

RCW 70.95.030(22). Under Jefferson County ordinance junk vehicles **do** fit within the statutory definition of solid waste. Jefferson County Code 8.10.100

Definitions Junk Vehicle. Thus there is a conflict of law. Jefferson County

Code 18.10.001 and 18.10.005 gives preference to the state statute when

there is a conflict of law. [Emphasis added]:

JCC 18.10.001 Scope. This chapter contains definitions of technical and procedural terms used throughout this code. [Ord. 8-06 § 1]

JCC 18.10.005 Interpretations.

(1) For the purpose of this code, all words shall have their normal and customary meanings, unless specifically defined otherwise in this chapter. In general, words used in the present tense shall include the future; the singular shall include the plural; and the plural the singular. The words “shall,” “must,” “will,” “may not,” and “no... may” are always mandatory. The word “should” indicates that which is recommended but not required. The word “may” indicates a use of discretion in making a decision. The word “used” includes “designed, intended, or arranged” to be used. The masculine gender includes the feminine and vice versa. References to “distance” means distance as measured horizontally unless otherwise specified.

(2) All definitions which reference the Revised Code of Washington (RCW), Washington Administrative Code (WAC), and International Building Code (ICODE) are intended to mirror the definitions in these codes at the effective date of the ordinance codified in the Unified Development Code (this code) or as amended. If the definition in this code conflicts with a definition under state law or regulation, the state definition shall control over this definition. [Emphasis added]

(3) These definitions are not intended to establish regulations. [Ord. 8-06 § 1]

The Court in *Snohomish County v. Pollution Control Hearings Board*,

46378-4 (Wash. Ct. App. 2016) stated:

An administrative regulation that conflicts with a statute is invalid. *See Cannabis Action Coal. v. City of Kent*, 180 Wn. App. 455, 481, 322 P.3d 1246 (2014). Such a conflict exists when an ordinance permits what state law forbids or forbids what state law permits.

Id. at 482 “ ‘The conflict must be direct and irreconcilable with the statute, and the ordinance must yield to the statute if the two cannot be harmonized.’ ” *Id.* (quoting *City of Tacoma v. Luvene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992)).

It is Mr. Anderson’s contention that the ordinance under which he was cited [JCC 18.10.005(2)] conflicts with the controlling Washington state statute [RCW 70.95.030(22)] regarding the definition of “solid waste” thus that portion of the ordinance which differs from the state statute should be declared invalid. Further the definition of “solid waste” should be consistent throughout the Jefferson County Code and consistent with the state law. Therefore, it follows that the definition of “*solid waste*” wherever it is found within the Jefferson County Code, should include the term “*abandoned vehicles or parts thereof*” and not use the term “*junk vehicles or parts thereof*” or otherwise include “*junk vehicle*” within its definition.

Further, that portion of the county ordinance that defines “junk vehicle,” [JCC 8.10.100] should reflect only the state definition [RCW 46.55.010(5)] and delete all extraneous parts of the ordinance.

Case law favors state law unless the subject matter is local. *Weden v. San Juan County*, 135 Wash.2d 678, 958 P. 2d 273, 279, 294 (1998).

Issues relating to solid waste and junk vehicles are found across the state.

Consistency is important, particularly with easily movable vehicles.

The Court of Appeals should recognize that Jefferson County erred in redefining “solid waste” and “junk vehicles.” When Judge Verser ordered Mr. Anderson not to deposit or leave or bring or haul onto the property “*any solid waste, including but not limited to junk vehicles, vehicle hulks, vehicle parts, tires and/or any other property which fits within the statutory definition of solid waste.*” [emphasis added] the only interpretation that fits within the law is that abandoned junk vehicles can be disposed of by the designated person within the county department of health and thus would be considered “solid waste” by the county, but junk vehicles that are not abandoned cannot be dispatched with a violation of county code. Instead a county or municipality must use the public nuisance route, with more stringent safeguards for the property owner. Since none of Mr. Anderson’s junk vehicles were abandoned, none fit the definition of solid waste.” Thus the Court did not have grounds to order them to be removed under an *Order of Abatement*. CP 342.

(3) Argument Regarding Contempt of Court

If the Court finds that Mr. Anderson was not in contempt of court he should be made whole. The order requiring him to pay the County’s attorney fees and a fine totaling \$15,425.00 should be rescinded. He should be compensated for his time and the expense he incurred removing

the vehicles identified as “junk vehicles from SP and any loss due to short sale and his attorney fees and costs of litigation.

E. CONCLUSION

Michael Anderson should be granted a nonconforming use as a vehicle storage yard with no conditions except those requirements for all vehicle storage yards in Jefferson County as detailed in Jefferson County Code. As long as his vehicles are kept within the designated yard he should be left alone and this case closed. Any further action starts a new case.

Michael Anderson should be found to have complied with state law and the Court Orders in this matter reversed.

Jefferson County should be required to conform its Code to harmonize with State law [RCW].

Jefferson County should reverse the order granting a fine and attorney fees and compensate Mr. Anderson for his losses and attorney fees.

DATED this 13 day of September, 2018.

/s/ Joan Best
Joan Best, WSBA #7247
Attorney for Appellant

F. APPENDICES

Appendix 1

DATE OF ADOPTION OF APPLICABLE LAND USE CODE

The court in *Jefferson County v. Lakeside Industries*, 106 Wn.App. 380, 382, 23 P.3d 542 (2001) ruled on when the Jefferson County first had an enforceable code as follows:

Jefferson County adopted its first land use code in 1989. The trial court ruled that the code was illegal, but we held that the code was not illegal, simply unenforceable because it was incomplete--the code referred to maps that were never adopted. Instead of completing the 1989 code, the County adopted a new land use code in 1994.

The Jefferson County Code states:

1.01.010 Code adopted.

(1) The compilation and codification of county laws, resolutions, and ordinances of a general and permanent nature, including all such laws, resolutions, and ordinances approved on or before October 24, 1994, including ordinances through Ordinance No. 14-94, is adopted as the official code of Jefferson County to be known hereafter as the "Jefferson County Code." Ordinances of a general and permanent nature adopted after October 24, 1995, and numbered from Ordinance No. 15-94, remain valid and subsist in the law of Jefferson County. Such ordinances shall be made part of the Jefferson County Code in the manner provided by JCC 1.01.030.

1.01.170 Effective date.

This code shall become effective November 27, 1995. [Ord. 20-95 § 17]

JEFFERSON COUNTY CODE REGARDING NONCONFORMING USE

18.10.140 N definitions.

“Nonconforming” means a use, structure, site, or lot which conformed to the applicable codes in effect on the date of its creation but which no longer complies because of changes in code requirements. Nonconformity is different than and not to be confused with illegality (see “Illegal use”). Legal nonconforming lots, structures, and uses are commonly referred to as “grandfathered.”

“Nonconforming lot” means a lot of record in existence prior to the effective date of the ordinance codified in this Unified Development Code and any amendments thereto, which does not meet the minimum lot size and other requirements as set forth in this code.

“Nonconforming structure” means a structure which does not conform to the dimensional regulations, including but not limited to setback, height, lot coverage, density, and building configuration regulations of the land use district in which it is located due to changes in code requirements. (See also “Alteration, nonconforming structures.”)

“Nonconforming use” means a use of a structure or of land which does not conform to the regulations of the land use district in which the use exists due to changes in code requirements. (See also “Alteration, nonconforming use.”)

18.22.080 Nonconforming uses.

(1) Any legal use or legal structure in existence on the effective date of the ordinance codified in this chapter that does not meet the buffer requirements of this chapter for any designated critical area shall be considered a legal nonconforming use.

(2) Any use or structure for which an application has vested or for which a permit has been obtained prior to the effective date of the ordinance codified in this chapter, that does not meet the buffer requirements of this chapter for any designated critical area, shall be considered a legal nonconforming use.

(3) A legal nonconforming use or structure may be maintained or repaired without limitation by this chapter.

(4) A legal nonconforming use or structure that has been damaged or destroyed by fire or other calamity may be restored and its immediately previous use may be resumed. [Ord. 3-08 § 1]

18.20.260 Nonconforming uses and structures.

A legal nonconforming use or structure is one that conformed to all applicable codes in effect on the date of its creation, but no longer complies due to subsequent changes in the code. Nonconformity is different than and is not to be confused with illegality (see the definitions of “nonconforming,” “nonconforming use,” and “illegal use” in Chapter 18.10 JCC). Legal nonconforming uses and structures are commonly referred to as “grandfathered.”

(1) Nonconforming uses of land are uses which currently exist and were lawfully established prior to the enactment of this code. Legally established uses may continue as long as they remain otherwise lawful, provided:

(a) The nonconforming use of land is not discontinued or abandoned for a period more than two years. A property owner may be allowed three years if they demonstrate a bona fide intention to sell or lease the property. For purposes of calculating this time period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

(i) On the date when the land was physically vacated;

(ii) On the date the use ceases to be actively involved in the sale of merchandise or the provision of services; or

(iii) On the date of termination of any lease or contract under which the nonconforming use has occupied the land.

(b) A legal existing nonconforming use can be expanded up to 10 percent subject to a Type I permit approval process.

(c) A nonconforming use may be expanded beyond 10 percent through the approval of a Type II C(d) discretionary conditional use permit process. In addition to meeting the criteria set forth through the conditional use permit process, the department shall determine the expansion proposal has met the following:

(i) The proposed area for expansion is contiguous to the nonconforming use;

(ii) The area for expansion of the use complies with all applicable bulk and dimensional standards, performance provisions, and environmental and shoreline (WAC 173-27-080) regulations;

(iii) The area for expansion shall not increase the land area devoted to the nonconforming use by more than 100 percent of that use at the effective date of the nonconformance;

(iv) The expansion shall not be granted if it would result in a significant increase in the intensity of the use of the nonconformity (e.g., hours of operation, traffic).

(d) A nonconforming use of land may be changed to another nonconforming use; provided, that the proposed use is equally or more appropriate to the district than the existing nonconforming use. Such change shall not be more intensive or have greater impacts than the existing use. The proposed change shall be required to undergo a Type III conditional use approval process. If the proposal encompasses structural or use expansion, refer to subsections (2) and (3) of this section.

(2) Nonconforming structures are those that are out of compliance with the development standards set forth through this code or other applicable federal, state or local regulation.

(a) Any legally established nonconforming structure is permitted to remain in the form and location in which it existed on the effective date of the nonconformance.

(b) Nonconforming structures may be structurally altered or enlarged only if all applicable environmental and development standards are met.

(c) Repairs to existing nonconforming structures including ordinary maintenance or replacement of walls, fixtures, or plumbing shall be permissible so long as the exterior dimensions of the structure are not increased.

(d) Nonconforming structures under the jurisdiction of the Shoreline Master Program shall be subject to the nonconforming provisions stipulated through WAC 173-27-080.

(e) A legal existing nonconforming structure damaged or destroyed by fire, earthquake, explosion, wind, flood, or other calamity may be completely restored or reconstructed. A structure shall be considered destroyed for purposes of this section if the restoration costs exceed 75 percent of the assessed value of record when the damage occurred. A structure can be completely restored or reconstructed if all the following criteria are met:

(i) The restoration and reconstruction shall not serve to extend or increase the nonconformance of the original structure or use with existing regulations; and

(ii) The reconstruction or restoration shall, to the extent reasonably possible, retain the same general architectural style as the original destroyed structure, or an architectural style that more closely reflects the character of the surrounding area; and

(iii) Permits shall be applied for within one year of damage, an extension for permit application may be requested from the administrator. Restoration or reconstruction must be substantially completed within two years of permit issuance; and

(iv) Any modifications shall comply with all current regulations and codes (other than use restrictions) including, but not limited to, lot coverage, yard, height, open space, density provisions, or parking requirements unless waived by the appropriate county official through the granting of a variance.

(f) A legal existing nonconforming structure can be expanded up to 10 percent subject to a Type I permit approval process.

(g) A legal existing nonconforming structure may be expanded beyond 10 percent through the approval of a Type II C(d) discretionary conditional use permit. The expansion shall not increase the structure by more than 100 percent of total square footage calculated from the effective date of the nonconformance. Proposals for expanding structures which house or contain a nonconforming use are subject to subsection (3) of this section.

(3) Nonconforming uses of structures apply to structures, whether conforming or nonconforming, that house or contain nonconforming uses;

(a) A structure which houses or contains a nonconforming use cannot be expanded or enlarged if the structure (in its enlarged or expanded state) does not meet all applicable performance and use standards, or environmentally sensitive area requirements for the land use district in which it is located.

(b) A structures housing an existing legal nonconforming uses can be expanded up to 10 percent or 200 square feet, whichever is greater, subject to a Type I permit approval process.

(c) Substantial expansions which exceed either 10 percent or 200 square feet shall be subject to a Type III conditional use permit approval process. The expansion cannot increase the structural portion of the nonconforming use by more than 3,999 square feet. The expansion is calculated from the effective date of the nonconformance. Public purpose facilities shall not be subject to the building cap limitations of this section.

(d) A legal existing structure containing a nonconforming use may be repaired or maintained subject to all applicable building and health codes.

(e) A nonconforming use contained within a nonconforming structure which is damaged or destroyed by fire, earthquake, explosion, wind, flood, or other calamity may be reestablished pursuant to subsection (2)(e) of this section.

(f) Nonconforming uses contained or housed in a structure cease to retain their legal nonconforming status if the use is discontinued or abandoned for any reason for a period more than two years. A property owner may be allowed three years if they demonstrate a bona fide intention to sell or lease the property. For purposes of calculating this time period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

(i) On the date when the use was physically vacated;

(ii) On the date the use or activity ceases to be actively involved in the sale of merchandise or the provision of services; or

(iii) On the date of termination of any lease or contract under which the nonconforming use has occupied the structure.

(4) A nonconforming use of a structure may be changed to another nonconforming use; provided, that the proposed use is equally or more appropriate to the district than the existing nonconforming use. Such change shall not be more intensive or have greater impacts than the existing use. The proposed change shall be required to undergo a Type III conditional use permit approval process. [Ord. 10-12 § 1; Ord. 8-06 § 1]

JEFFERSON COUNTY CODE REGARDING STORAGE YARDS

18.20.280 Outdoor storage yards.

(1) All outdoor storage for vehicles, equipment, materials or products used in production, for sale on premises, awaiting shipment, or otherwise in conjunction with commercial or industrial use, shall be conducted so as to ensure public safety, health, and welfare and to minimize detrimental visual impact upon neighboring property and public rights-of-way.

(2) Every reasonable effort shall be made by persons operating a commercial or industrial business to store vehicles, equipment, materials and products within an enclosed building, except:

(a) Where such enclosed storage is not practical or desirable for reasons related to health, fire or safety requirements;

(b) Where outside storage of merchandise, manufactured products, or raw materials is normal and standard practice, such as in the sale of automotive equipment, farm machinery, lumber, gardening materials, nursery stock, manufactured homes, and similar products, or on the site of construction projects; or

(c) When materials or products are temporarily stored outside incidental to shipping, delivery, loading or unloading thereof.

(3) Materials and products may be stored outside subject to the provisions of these performance standards and applicable development standards, but shall comply with the landscaping and screening requirements of JCC 18.30.130, as applicable. [Ord. 8-06 § 1]

Appendix 4

**JEFFERSON COUNTY CODE REGARDING HEALTH BOARD
AUTHORITY**

8.01.010 Purpose.

It is the express purpose of this chapter to provide for and promote the health of the general public and not to create or otherwise establish or designate a particular class or group of people who will or should be especially protected by the terms of this chapter.

It is the specific purpose of this chapter to place the obligation of complying with its requirements upon persons, businesses or companies required to meet provisions of the health regulations. Enactment of this chapter and its terms and provisions does not impose any duty upon the Jefferson County public health department or any of its officers or employees unless a duty is imposed on such officers or employees by the express terms of this chapter. Implementation or enforcement of this chapter by county officers or employees shall be discretionary and not mandatory. [Ord. 6-15 § 1]

8.01.020 Authority.

This chapter is promulgated under the police power granted to the Jefferson County board of health, including, but not limited to, authority granted to them by Chapters 7.48, 7.80 and 70.05 RCW to protect the public health, safety, and welfare of the people in Jefferson County, including those county residents residing within the city of Port Townsend. [Ord. 6-15 § 2]

8.01.030 Applicability.

Provisions of this chapter apply to violations of the following statutes, regulations and/or ordinances as they now exist or as they may hereafter be amended:

Chapter 70.95 Solid Waste Management

Chapter 173-304 WAC

JCC 8.10

8.01.040 Conflict.

In case of a conflict between this chapter and the chapters of the county code relating to food service sanitation, solid waste and/or on-site sewage, as currently enacted or as may in the future be amended or recodified, the text of those three chapters shall control except that the local health officer shall have discretion to interpret and implement any county code sections enforced by public health (or its successor agency or division) which are at variance with one another in a manner that best protects and furthers public health. [Ord. 6-15 § 4]

8.01.050 Designation of civil infractions.

Any violation of the laws, regulations and ordinances specified in JCC 8.01.030 (including any future amendments to those statutes, regulations and ordinances) shall constitute a civil infraction.

Each 24-hour period when a violation is found to exist shall constitute a separate and distinct violation.

The owner or lessor of any real property shall be and is jointly and severally liable with any tenant, occupier or user of real property for any violation alleged against that property or alleged to have occurred on the owner's property. The legality or illegality of the use or occupancy of the land by a person or entity shall not be a defense available to the owner of said property if it is alleged a violation of this chapter occurred on that property.

A first violation shall be a Class 3 civil infraction as established in Chapter 7.80 RCW.

A second violation shall be a Class 2 civil infraction as established in Chapter 7.80 RCW.

A third violation shall be a Class 1 civil infraction as established in Chapter 7.80 RCW. [Ord. 6-15 § 5]

8.01.060 Processing and adjudicating civil infractions.

Such violations shall be adjudicated and any related fines determined in accordance with the procedures established in Chapter 7.80 RCW, the Jefferson County district court rules for Infractions and the Washington State Rules for Courts of Limited Jurisdiction, which shall have precedence over the terms and obligations of this chapter if this chapter conflicts with state statutes or court rules.

Upon a determination that the county has met its burden of proof regarding any contested violation alleged against a person or entity pursuant to this chapter, the county may seek to obtain attorney's fees against the violating party or entity pursuant to RCW 7.80.140.

Utilization of the procedures and penalties laid out in this chapter and the underlying state statutes shall not prohibit this county from utilizing any other lawful means or seeking any other lawful remedies against the person or entity that has allegedly violated the terms of this chapter.

Nothing in this chapter shall prevent the judge hearing these civil infraction matters from reducing or mitigating the monetary fines that would otherwise be imposed. [Ord. 6-15 § 6]

8.01.070 Enforcement officers. The board of health, or its designated health officer, may authorize one or more persons to serve as an "enforcement officer," duly authorized to enforce this chapter. [Ord. 6-15 § 7]

8.10.010 Authority and purpose.

These solid waste rules and regulations are promulgated under the authority of RCW 43.20.050, Powers and Duties of State Board of Health, Chapters 70.05, Local Health Departments, Boards, Officers – Regulations, and 70.95, Solid Waste Management – Reduction and Recycling, in the Revised Code of Washington (RCW), and Chapters 246-203, General Sanitation, 173-304, Minimum Functional Standards for Solid Waste Handling, 173-350, Solid Waste Handling Standards, and 173-351, Criteria for Municipal Solid Waste Landfills, in the Washington Administrative Code (WAC), to protect the public health and the environment, and promote the safety and welfare of the citizens of Jefferson County. All references to these RCWs and WACs, and all other RCWs, WACs, and other federal, state, and local regulations, refer to the cited chapters and paragraphs, as amended. The rules and regulations herein govern the handling, storage, collection, transportation, treatment, utilization, processing and final disposal of all solid waste within Jefferson County, including the issuance of permits and enforcement. These regulations shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the federal government or recognized Native American nations and tribes.

It is expressly the purpose of these rules and regulations to provide for and promote the health of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of these rules and regulations.

It is the specific intent of these rules and regulations to place the obligation of complying with its requirements upon waste generators, haulers, and/or operators of solid waste handling sites, and no provision of, nor term used in these rules and regulations is intended to impose any duty whatsoever upon public health nor any of its officers or employees,

for whom the implementation or enforcement of these rules and regulations shall be discretionary and not mandatory.

Nothing contained in these rules and regulations is intended to be, nor shall be construed to create or form the basis for any liability on the part of public health or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of public health. [Ord. 9-14]

8.10.015 Adoption by reference.

Pursuant to and by the authority of Chapter 70.95 RCW, Jefferson County public health hereby adopts Chapter 173-350 WAC, Solid Waste Handling Standards, and Chapter 173-304 WAC, Minimum Functional Standards for Solid Waste Handling. As provided for by RCW 70.95.160 public health makes the following amendments to Chapter 173-350 WAC. To the extent that any state statute or regulation listed in this section is amended or revised subsequent to the adoption of this chapter, that amendment or revision is deemed incorporated into this chapter upon its effective date and is applicable to any activity regulated by this chapter. [Ord. 9-14]

8.10.025 Owner responsibility for solid wastes.

WAC 173-350-025 is revised as follows:

1. General.

The owner, operator, or occupant of any premise, business, establishment, or industry shall be responsible for the satisfactory and legal arrangement for the solid waste handling of all solid waste generated or accumulated by them on the property. An owner is not relieved of the duties and obligations imposed by this Chapter because the owner has leased the property or premises to another or permitted others to occupy the premises or operate there.

2. Removal.

It shall be the responsibility of the owner, operator or occupant of any premise, business, establishment or industry to remove solid waste from the premises where it was generated to a permitted solid waste handling facility at a frequency that does not create a nuisance or litter problem, or at a frequency otherwise approved by the Health Officer. The Health Officer may require any person who

does not store, remove, transport, or dispose of solid waste consistent with these regulations, or who stores solid waste so as to create a nuisance or litter problem, to remove solid waste from the premises where it was generated, or collected, by that person to a permitted solid waste handling facility no less frequently than once per week.

8.10.030 Effective dates.

WAC 173-350-030, Effective Dates, is hereby adopted by reference. The effective date of these regulations is November 1, 2014. [Ord. 9-14]

8.10.100 Definitions.

Terms used in this regulation shall have the meanings provided in WAC 173-350-100, 173-351-100 and 173-304-100, hereby adopted in their entirety by reference herein except as revised or altered by the definitions provided below.

Abate: Repair, replace, remove, destroy, or otherwise remedy a condition(s) which constitutes a nuisance or a violation of these regulations by such means, in a manner, and to such an extent as the Health Officer determines is necessary in the interests of the general health, safety and welfare of the community.

Board of Health: The Jefferson County Board of Health.

Buffer Zone: That part of a facility that lies between the active area and the property boundary. Junk cars are not allowed in a Buffer Zone as defined in Title 18 of Jefferson County Code.

Bulky Waste: Large items of refuse, such as appliances (white goods), furniture, junk vehicles, and other oversize wastes which would typically not fit into reusable or disposable containers.

Decision: Any writing authored by Jefferson County Public Health (JCPH), the Local Health Officer or any employee or representative of JCPH or the Local Health Officer that serves to represent the official position of the JCPH or the LHO including, but not limited to, a decision to deny a permit application, a decision to allege permit violation(s), issuance of an Abatement Order, transmittal to a person or entity of a Notice and Order to Correct Violation, or a decision to suspend or revoke an existing or issued permit.

Environmentally Sensitive Areas or “ESA”: shall be as defined at RCW 36.70A.030(5) (or as hereafter amended) to include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife

habitat conservation areas, frequently flooded areas and geologically hazardous areas (and buffers for all such areas) as those terms are defined and described in Title 18 of the Jefferson County Code in its current form or as it may be in the future, amended, supplemented or replaced. **Junk cars** are not allowed in an ESA as defined in Title 18 of Jefferson County Code.

Health Officer: The Health Officer or the Health Officer's representative, of the Jefferson County Public Health.

Junk Vehicle: A junk vehicle includes campers, boats, boat trailers or any other type of vehicle used for human transportation which may exhibit any of the following:

- Build-up of debris, moss or weeds on, in, under, or around the vehicle that obstructs use;
- Damage to the frame;
- More than one missing or shattered window or windshield;
- More than one inoperable or missing headlight or taillight;
- More than one flat tire;
- A missing or inoperable engine or transmission.
- A missing wheel, license plate, driver-side mirror, tire, body panel, door, hood or other obvious body part, not including a bumper.
- A license plate that has been invalid for more than 60 days.
- Evidence that the vehicle has not been moved in at least 60 days.

A vehicle certified under RCW 46.55.230 as meeting at least three of following requirements shall be considered a junk vehicle:

1. Three (3) years old or older;
2. Extensively damaged, such damage including but not limited to the following: a broken window or windshield, or missing wheels, tires, motor, or transmission;
3. Apparently inoperable; and/or
4. Has approximate fair market value equal only to the approximate value of the scrap in it.

For enforcement purposes, possessing three (3) or more junk vehicles on a single property of any size is not allowed under this regulation.

Nuisance: Consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the repose, health or safety of others; or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the

use of property. To the extent applicable, the County adopts the definitions of nuisance found in Ch. 7.48 RCW.

Owner: The person, business entity or partnership that is the title owner of record with the Jefferson County Auditor for the parcel or parcels where the violation is allegedly occurring.

Person responsible: The owner, lessee, occupant or operator of the premises, business, activity or action that is allegedly a violation of this Chapter.

Public Health: Jefferson County Public Health or any person acting on behalf of or employed by Jefferson County Public Health.

Solid Waste: All putrescible and non-putrescible solid and semi-solid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, animal wastes, construction and demolition wastes, land clearing wastes, contaminated soils, contaminated dredged spoils, **junk vehicles or parts thereof (including waste tires)**, and discarded commodities. This includes all liquid, solid and semi-solid, materials that are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste also includes, but is not limited to, woodwaste, dangerous waste, yard waste, bulky waste, biomedical waste, animal waste, waste tires, recyclable materials, and problem wastes. Municipal sewage sludge or septage is a solid waste when placed in a municipal solid waste landfill subject to the requirements in Chapter 173-351 WAC, Criteria for Municipal Solid Waste Landfills, Chapter 173-308 WAC, Biosolids Management, and a solid waste handling permit issued by the Health Officer.

[Ord. 9-14]

**JEFFERSON COUNTY CODE REGARDING UNIFIED DEVELOPMENT
CODE [current]**

18.10.001 Scope. This chapter contains definitions of technical and procedural terms used throughout this code. [Ord. 8-06 § 1]

DEFINITIONS

18.10.001 Scope.

This chapter contains definitions of technical and procedural terms used throughout this code. [Ord. 8-06 § 1]

18.10.100 J definitions. 

“Junk vehicle” means a vehicle certified under RCW [46.55.230](#) as meeting at least three of the following requirements: (a) three years or older; (b) extensively damaged, such damage including, but not limited to, the following: a broken window or windshield, missing seats, wheels, tires, motor, or transmission; (c) apparently inoperable; and/or (d) has approximate fair market value equal only to the approximate value of the scrap in it.

“Junk yard” means a primary or accessory use of structures or land for storage, recycling, dismantling or selling of cast-off, unused, scrap, or salvage material of any sort. [Ord. 8-06 § 1]

18.10.190 “Solid waste” means all putrescible and nonputrescible solid and semi-solid wastes, except wastes identified in WAC [173-304-015](#), including, but not limited to, junk vehicles, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities, but excluding agricultural wastes and crop residues returned to the soil at agronomic rates. This includes all liquid, solid and semi-solid materials which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste includes but is not limited to sludge from wastewater treatment plants and septage from septic tanks, wood waste, dangerous waste, and problem wastes. Unrecovered residues from recycling operations shall be considered solid waste.

18.10.005 Interpretations.

(1) For the purpose of this code, all words shall have their normal and customary meanings, unless specifically defined otherwise in this chapter. In general, words used in the present tense shall include the future; the singular shall include the plural; and the plural the singular. The words “shall,” “must,” “will,” “may not,”

and “no... may” are always mandatory. The word “should” indicates that which is recommended but not required. The word “may” indicates a use of discretion in making a decision. The word “used” includes “designed, intended, or arranged” to be used. The masculine gender includes the feminine and vice versa. References to “distance” means distance as measured horizontally unless otherwise specified.

(2) All definitions which reference the Revised Code of Washington (RCW), Washington Administrative Code (WAC), and International Building Code (IBUILDING) are intended to mirror the definitions in these codes at the effective date of the ordinance codified in the Unified Development Code (this code) or as amended. If the definition in this code conflicts with a definition under state law or regulation, the state definition shall control over this definition.

(3) These definitions are not intended to establish regulations. [Ord. 8-06 § 1]

September 14, 2018 - 12:27 PM

Transmittal Information

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