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Court of Appeals  
Division II  
State of Washington  
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NO. 52025-7-II

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

RICHARD SORRELS, Appellant

v.

PIERCE COUNTY, Respondent

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**BRIEF OF RESPONDENT PIERCE COUNTY**

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A. INTRODUCTION

This is a land use appeal filed under the Land Use Petition Act ("LUPA") RCW 36.70C. Appellant Richard Sorrels is appealing a decision of the Pierce County Hearing Examiner (Examiner) who upheld a Notice of Violation and Abatement (NOVA) issued by Pierce County. The NOVA informed Mr. Sorrels that he was utilizing his residential property for vehicle, boat, and recreational vehicle (RV) storage in violation of Pierce County zoning regulations.

Pursuant to LUPA, this Court acts in its appellate capacity and reviews the record made before the Examiner. The appellant has the burden of proving that the Examiner's decision was not based upon substantial evidence, is an erroneous interpretation or application of the law, or is otherwise in error. Mr. Sorrels has failed to meet his burden.

B. ISSUES PERTAINING TO APPELLANTS' ASSIGNMENTS OF ERROR.

1. Has this appeal become moot where the code violations have been removed from the subject property?
2. Did Mr. Sorrels waive any objection to the lack of recording of the closing arguments when he raises this issue for the first time in this appeal?

3. Were finding no. 11 and Conclusion no. 2 included in the Examiner's written decision?
4. Was the County required to prove that Mr. Sorrels' unlawful vehicle storage activities constitute a public nuisance under state law?
5. Does Collateral Estoppel or Res Judicata apply to this case when the issues are not identical and where the causes of action are not the same?
6. Has Mr. Sorrels abandoned any challenges to the Examiner's findings and conclusions when they have not been clearly identified in the assignments of error or issues pertaining to the assignments of error and have not been briefed?
7. Should the disputed findings and conclusions be upheld where there is substantial evidence in the record to support them?
8. Is the County entitled to costs and reasonable attorney fees?

C. STATEMENT OF THE CASE

Richard Sorrels stored a large number of vehicles, boats, trailers, and recreational vehicles at a single family residence located at 3917 Key

Peninsula Highway South in the unincorporated area of Pierce County.<sup>1</sup> The legal owner of the property is RCJS Properties LLC and Richard Sorrels is the manager of the LLC.<sup>2</sup> During the time of the code enforcement proceedings, the house on the property was boarded up and appeared to be unoccupied.<sup>3</sup> Mr. Sorrels testified that he does not reside at the subject property and he has never slept there.<sup>4</sup>

Beginning in June of 2015, Pierce County received numerous citizen complaints regarding an increasing number of vehicles, boats, and trailers being moved onto the subject property.<sup>5</sup>

By March of 2016, numerous boats, vehicles, trailers and RV's were being stored on the property.<sup>6</sup> The condition of the property can be seen in photos taken on March 18, 2016, by Code Enforcement Officer Mark Luppino.<sup>7</sup> A selection of those photos is attached as Appendix A.

On June 12, 2016, Code Enforcement Officer Mark Luppino

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<sup>1</sup> CP 34 (RP 8, lines 5-14), AR 349-353.  
(CP denotes Clerk's Papers)  
(RP denotes Report of Proceedings from the hearing on November 17, 2016)  
(AR denotes Administrative Record)

<sup>2</sup> CP 82 (RP 56, lines 13-17), AR 310, 311.

<sup>3</sup> CP 76 (RP 50, lines 11-17), AR 330, 332.

<sup>4</sup> CP 82 (RP 56, lines 6-12) and CP 85 (RP 59, lines 1-3).

<sup>5</sup> AR 21-34.

<sup>6</sup> AR 278-287.

<sup>7</sup> AR 278-287.

conducted a site visit and observed an assortment of RV's, boats, and trailers were still being stored on the property.<sup>8</sup>

The property is located in an Agricultural Resource Lands (ARL) zone within the Key Peninsula Community Plan Area.<sup>9</sup> Per Pierce County Code (PCC) 18A.10.090.C.2, the ARL zone classification includes land primarily devoted to the commercial production of agricultural products and is applied to parcels outside of urban growth areas that meet certain criteria.

Per PCC 18A.33.280, salvage yards and vehicle storage are classified as industrial uses under Pierce County's zoning regulations and are not allowed in the ARL zone. PCC 18A.33.280.H describes "salvage yards/vehicle storage" as uses that involve: the salvage of wrecked vehicles, vehicle parts and appliances, and the storage of vehicles.<sup>10</sup> According to the use table contained in PCC 18A.26.020, salvage yards/vehicle storage uses are not allowed in the ARL zone within the Key Peninsula Community Plan area. A copy of the use table 18A.26.020 can be found at AR 649. Per PCC 18A.05.050.A.2.a, a blank cell in the use

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<sup>8</sup> AR 34-35.

<sup>9</sup> CP 34 (RP 8, lines 8-14).

<sup>10</sup> A copy of PCC 18A.33.280.H can be found at AR 650.

table means the use is prohibited in the zone listed at the top of the column. All levels of vehicle salvage and vehicle storage are prohibited in the ARL zone within the Key Peninsula Community Plan area.

On July 19, 2016, Officer Luppino issued a Notice of Violation and Abatement (NOVA) to Mr. Sorrels and to the property owner RCJS Properties LLC.<sup>11</sup> The NOVA provided Mr. Sorrels with notice that the current storage use was not allowed as either a principal use in the ARL zone or as an accessory use and that the storage activity was occurring without any permits or approvals from Pierce County.<sup>12</sup> The NOVA also notified Mr. Sorrels that the current use was a violation of Pierce County's public nuisance regulations found in Pierce County Code (PCC) Chapter 8.08.<sup>13</sup> The NOVA advised Mr. Sorrels that he had to remove all vehicles, trailers, and boats from the property or be subject to further legal action.<sup>14</sup>

On July 29, 2016, Officer Luppino returned to the site to see if the property had been brought into compliance.<sup>15</sup> He observed that additional vehicles and boats had been moved onto the property.<sup>16</sup> Officer Luppino

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<sup>11</sup> CP 34 (RP 8, lines 15-22), AR 326-327.

<sup>12</sup> AR 326-327.

<sup>13</sup> AR 326-327.

<sup>14</sup> AR 326-327.

<sup>15</sup> AR 36.

<sup>16</sup> AR 36.

took several photos from the County right of way which can be found at AR 332-340. A selection of those photos are attached as Appendix B. Officer Luppino observed numerous other vehicles and trailers being stored toward the rear of the property, but was not able to get good photos of them.<sup>17</sup>

On August 18, 2016, the Pierce County Sheriff's Department executed a search warrant at the property with the assistance of code enforcement officers and found 46 different vehicles, trailers, and boats on the property.<sup>18</sup> A few of the vehicles, trailers, and boats were missing vehicle identification numbers (VIN).<sup>19</sup> Some of the vehicles had a VIN, but no record was found with the State Department of Licensing.<sup>20</sup> The remainder of the vehicles, trailers, and boats were registered to 37 different owners, none of whom reside in the house on the property.<sup>21</sup> One boat trailer was reported stolen.<sup>22</sup>

Mr. Sorrels did not comply with the NOVA. Instead, he submitted an appeal to the Pierce County Hearing Examiner.<sup>23</sup> On November 17,

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<sup>17</sup> AR 337-340.

<sup>18</sup> AR 342-353.

<sup>19</sup> AR 349-353.

<sup>20</sup> AR 349-353.

<sup>21</sup> AR 349-353.

<sup>22</sup> AR 350.

<sup>23</sup> AR 43-45.

2016, an evidentiary hearing was held before Deputy Hearing Examiner Michael McCarthy (“Examiner”).<sup>24</sup> On December 12, 2016, the Examiner issued a decision denying the appeal of Richard Sorrels and RCJS Properties LLC.<sup>25</sup>

On January 3, 2017, Mr. Sorrels and RCJS Properties, LLC filed a LUPA petition in Thurston County Superior Court.<sup>26</sup> Oral argument took place on May 18, 2018, before the Honorable Christine Schaller in Thurston County Superior Court.<sup>27</sup> Mr. Sorrels represented himself at the hearing. No legal representative appeared for RCJS Properties Inc.<sup>28</sup> After hearing argument from Mr. Sorrels and Pierce County, the Court affirmed the decision of the Pierce County Hearing Examiner and ruled that Mr. Sorrels did not meet his burden under RCW 36.70C.130.<sup>29</sup> The Court also ruled that the doctrines of res judicata and collateral estoppel did not apply to this case.<sup>30</sup> Mr. Sorrels filed this untimely appeal 31 days later.

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<sup>24</sup> AR 2.

<sup>25</sup> AR 2-11.

<sup>26</sup> CP 1-17.

<sup>27</sup> CP 20-21.

<sup>28</sup> CP 20-21.

<sup>29</sup> CP 20-21.

<sup>30</sup> CP 20-21.

## D. ARGUMENT

### 1. **Standard of review in LUPA cases.**

Under LUPA, the party seeking relief of an administrative decision bears the burden of proving error.<sup>31</sup> On appeal of an administrative decision, courts review the record made before the Hearing Examiner, including the Examiner's findings of fact and conclusions of law.<sup>32</sup>

This court may grant relief to the appellant only if the appellant carries the burden of establishing that one of the standards contained in RCW 36.70C.130 has been met. Those standards are:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts;
- (e) The land use decision was outside the authority or jurisdiction of the body or officer make the decision, or;

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<sup>31</sup> RCW 36.70C.130(1), *N. Pac Union Conference Ass'n of Seventh Day Adventists v. Clark County*, 118 Wn. App. 22, 28, 74 P.3d 140 (2003).

<sup>32</sup> *Id.*

(f) The land use decision violates the constitutional rights of the party seeking relief.<sup>33</sup>

Interpretations of law are reviewed de novo.<sup>34</sup> Factual determinations are reviewed under the substantial evidence standard.<sup>35</sup> Substantial evidence is evidence of a sufficient quantity to persuade a fair-minded person of the truth the statement asserted.<sup>36</sup> Courts view the evidence and any reasonable inferences in the light most favorable to the party that prevailed in the highest forum exercising fact-finding authority.<sup>37</sup> Findings involving the application of law to facts are reviewed under the clearly erroneous standard.<sup>38</sup> Under that test, the decision may be reversed only if the court is left with a definite and firm conviction that a mistake has been committed.<sup>39</sup>

## **2. This appeal is moot.**

During the pendency of his appeals, Mr. Sorrels continued to bring more vehicles onto the subject property in violation of the terms of the

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<sup>33</sup> RCW 36.70C.130(1).

<sup>34</sup> *Milestone Homes Inc., v. City of Bonney Lake*, 145 Wn. App. 118, 126, 186 P.3d 357 (2008).

<sup>35</sup> *Cingular Wireless, LLC v. Thurston Co.*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

NOVA and Pierce County zoning regulations. The number of vehicles, trailers, and boats had swelled from 46 on August 18, 2016 to 77 on December 12, 2018, despite the NOVA being upheld by the Examiner and in Thurston County Superior Court.<sup>40</sup>

On July 23, 2018, Pierce County filed a separate public nuisance lawsuit against property owner RCJS Properties LLC and against the property known as 3917 Key Peninsula Hwy SW.<sup>41</sup> A default judgment was entered on October 12, 2018.<sup>42</sup> The judgment found that the property owner, RCJS Properties LLC, created, maintained, or permitted a public nuisance to exist on the subject property.<sup>43</sup> Mr. Sorrels was not a party to the action.<sup>44</sup> A warrant for the abatement of the public nuisance was issued in Pierce County Superior Court on December 7, 2018, and the property was abated on December 12, 2018.<sup>45</sup> The code violations were removed from the property by Pierce County in accordance with the

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<sup>40</sup> These facts were obtained from pleadings filed in Case no. 52965-3-II, specifically the Opposition to Richard Sorrels' Emergency Motion for Injunction at 6-10, and the Declaration of Chad Arceneaux in Support of Opposition to Richard Sorrels' Emergency Motion for Injunction at Exhibit 13.

<sup>41</sup> Opposition to Richard Sorrels' Emergency Motion for Injunction at 6 (52965-3-II).

<sup>42</sup> Declaration of Chad Arceneaux in Support of Opposition to Richard Sorrels' Emergency Motion for Injunction at Exhibit 5 (52965-3-II)

<sup>43</sup> *Id.* at Exhibit 5 (52965-3-II).

<sup>44</sup> *Id.* at Exhibit 5 (52965-3-II).

<sup>45</sup> Opposition to Richard Sorrels' Emergency Motion for Injunction at 6-10, and the Declaration of Chad Arceneaux in Support of Opposition to Richard Sorrels' Emergency Motion for Injunction at Exhibit 11 (52965-3-II).

warrant of abatement.<sup>46</sup> Mr. Sorrels had the opportunity to make a motion to intervene in the Superior Court proceedings but chose not to. Instead, Mr. Sorrels improperly filed a motion to vacate the default judgment which was denied on December 7, 2018.<sup>47</sup>

On December 11, 2018, Mr. Sorrels filed a notice of appeal to this court under case no. 52965-3-II, challenging the denial of his motion to vacate the default judgment.<sup>48</sup> On March 19, 2019, this court dismissed Mr. Sorrels' appeal because Mr. Sorrels did not represent the property owner, RCJS Properties LLC, and because Mr. Sorrels was not a party to the Superior Court proceedings.<sup>49</sup>

**3. Mr. Sorrels waived any objection to the lack of recording of the closing arguments.**

Mr. Sorrels points out that due to an equipment malfunction, the parties' closing arguments to the Examiner were not recorded.<sup>50</sup> Mr. Sorrels then asks that the case be remanded back to the Examiner for a new hearing. Mr. Sorrels did not raise this issue in Thurston County

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<sup>46</sup> Opposition to Richard Sorrels' Emergency Motion for Injunction at 8,9 (52965-3-II)

<sup>47</sup> Declaration of Chad Arceneaux in Support of Opposition to Richard Sorrels' Emergency Motion for Injunction at Exhibit 10 (52965-3-II).

<sup>48</sup> Notice of Appeal, (52965-3-II).

<sup>49</sup> Ruling dismissing appeal and awarding fees and costs (52965-3-II).

<sup>50</sup> Mr. Sorrels' opening brief, argument section A, at 2-3.

Superior Court, either in his LUPA petition<sup>51</sup> or in his Superior Court briefs.<sup>52</sup>

Additionally, Mr. Sorrels did not make any objection to the Examiner when notified of the equipment malfunction. Attorney Jonathan Baner represented Mr. Sorrels and RCJS Properties before the Examiner.<sup>53</sup> Pierce County was represented by Deputy Prosecuting Attorney Cort O'Connor.<sup>54</sup> On November 17, 2016, Jenny Pelesky, the legal assistant to the Examiner, sent an email to Mr. Baner and Mr. O'Connor informing them that 25 minutes of the hearing was not recorded, all of which was counsel's closing arguments.<sup>55</sup> The Examiner presented the parties with three options: 1) reconvene the hearing to present oral arguments only, 2) submit closing arguments in writing, or 3) have the Examiner use his notes from the hearing.<sup>56</sup> Both attorneys agreed that the Examiner could proceed to a decision based upon his recollection and his notes.<sup>57</sup> The Examiner then issued a written decision which contained his findings and

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<sup>51</sup> CP 1-4.

<sup>52</sup> CP 124-141, CP 180-189.

<sup>53</sup> CP 27 (RP1).

<sup>54</sup> CP 27 (RP 1).

<sup>55</sup> AR 764-765.

<sup>56</sup> AR 764-765.

<sup>57</sup> AR 764.

conclusions on December 12, 2016.<sup>58</sup>

Mr. Sorrels' claim that the unrecorded portion of the hearing also included the Examiner's oral findings and conclusions is incorrect and is not supported by the record. Per the Examiner's office, the only portion of the hearing that was not recorded was the attorneys' closing arguments.<sup>59</sup> The Examiner issued written findings and conclusions.<sup>60</sup>

Mr. Sorrels made no objection to the Examiner when he was made aware of the missing portion of the proceeding. He did not ask that the hearing be reconvened or that the Examiner schedule a new hearing. Mr. Sorrels did not make a motion for reconsideration, which he had the legal right to do under PCC 1.22.130 for irregularities in the proceedings. Mr. Sorrels did not raise this issue in his LUPA appeal in Thurston County Superior Court. Instead, Mr. Sorrels raises this issue for the first time in this appeal. Therefore, the Court should decline to review this argument pursuant to RAP 2.5(a).

Furthermore, Mr. Sorrels does not allege that any error was made during the closing arguments. Any objection to the lack of recording of

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<sup>58</sup> AR 1-12.

<sup>59</sup> AR 764-765.

<sup>60</sup> AR 1-12.

the attorneys' closing arguments is therefore harmless and does not violate the standard set forth in RCW 36.70C.130(1)(a).

**4. The Examiner's finding no. 11 and conclusion no. 2 were included in the Examiner's decision.**

Mr. Sorrels alleges that the Examiner's Finding No.11 and Conclusion No.2 were not included in the Examiner's decision.<sup>61</sup> This is an incorrect and confusing allegation. Finding No.11 and Conclusion No.2 are part of the Examiner's written decision. A copy of that decision is found on AR 1 through AR 11.

In the July 2016, NOVA, Mr. Sorrels was cited with a violation of PCC 8.08.050.I which prohibits the storage of junk vehicles where there is a threat to human health or safety or to the environment.<sup>62</sup> The Examiner held in Finding No.11 and Conclusion No.2 that the County did not meet its burden at the hearing and failed prove a violation of PCC 8.08.050.I by a preponderance of evidence. The County did not appeal these findings. Finding No. 11 and Conclusion No. 2 are clearly part of the Examiner's decision dated December 12, 2016.

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<sup>61</sup> Mr. Sorrels' opening brief, argument section B, at 3-5.

<sup>62</sup> AR 326-327.

**5. Mr. Sorrels' storage of vehicles constitutes a public nuisance under the Pierce County code.**

Mr. Sorrels argues that the decision of the Pierce County Hearing Examiner should be reversed because the County did not allege or prove a nuisance as defined in state law in RCW 7.48.120.<sup>63</sup> Mr. Sorrels relies on the 1957 Washington State Supreme Court case of *Greenwood v. Olympic, Inc.* 51 Wn.2d 18, 315 P.2d 295 (1957).

First, this argument was not raised in Mr. Sorrels' LUPA appeal in Thurston County Superior Court and therefore the Court should decline to review it pursuant to RAP 2.5(a).

In the event that the Court decides to review this argument, the County submits the following response. The Washington State Legislature expressly delegated to the Counties the ability to declare by ordinance what is and what is not a nuisance within their respective jurisdictions. RCW 36.32.120(10) states that the legislative authorities of the counties shall:

have power to declare by ordinance what shall be deemed a nuisance within the county... to prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance; and to levy a special assessment

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<sup>63</sup> Mr. Sorrels' opening brief, argument section C, at 4-5.

on the land or premises on which the nuisance is situated to defray the cost, or to reimburse the county for the cost of abating it.<sup>64</sup>

The Pierce County Council adopted PCC 8.08.050 which states:

The following specific acts, omissions, places, conditions, and things are hereby declared to be public nuisances and are per se violations of this Chapter:

...

G. Property used or maintained for the purpose of dismantling, salvaging, storing, or repairing of machinery, metals, or vehicles except where the landowner has obtained all licenses, permits, and approvals necessary to conduct such activity on the property.

...

M. Any violation of any of the following in the Pierce County Code: Title [18](#), Development Regulations – General Provisions; Title [18A](#), Development Regulations – Zoning...

In the NOVA, the County alleged that Mr. Sorrels was engaging in a use (vehicle storage) that was not allowed within the ARL zone and that the vehicle storage was not allowed as an accessory use to the single family house on the site.<sup>65</sup> The County did not allege a violation of state law in the NOVA, nor was it required to under RCW 36.32.120(10) or the Pierce County Code.

*Greenwood v. Olympic* is distinguishable. In that case, the plaintiff

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<sup>64</sup> RCW 36.32.120(10).

<sup>65</sup> AR 326-327.

filed a personal injury action after she fell down a stairway in the Olympic Hotel.<sup>66</sup> The trial court approved an instruction stating that the absence of a guardrail, as required by the Seattle 1942 building code, was an absolute nuisance.<sup>67</sup> But the State Supreme Court disagreed and pointed out that the requirement of a handrail was not in the Seattle building code in 1923 when the hotel was built.<sup>68</sup> Mr. Sorrels failed to include the following important quote in this opening brief:

We recognize that what was generally accepted as proper at one period may be a nuisance at some later time, but we are not here concerned with such a situation. Common sense and common experience indicated that a failure to have intermediate handrails on stairs which had been in constant use by the public for almost thirty years, did not constitute a public nuisance, the 1942 Seattle city ordinance to the contrary notwithstanding.<sup>69</sup>

The *Greenwood* case is simply not analogous. This is not a case where Mr. Sorrels was engaged in a decades long use on the property which was later deemed to be a public nuisance. Violations of Pierce County zoning regulations were declared to be public nuisances via Ordinance 2008-61 (effective date January 1, 2009).<sup>70</sup> The subject property was acquired by

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<sup>66</sup> 51 Wn.2d at 20.

<sup>67</sup> 51 Wn.2d at 20.

<sup>68</sup> 51 Wn.2d at 21.

<sup>69</sup> 51 Wn.2d at 21.

<sup>70</sup> A copy of Ordinance 2008-61 is attached as Appendix C.

RCJS Trust in May of 2015.<sup>71</sup> The citizen complaints about Mr. Sorrels vehicle storage use started coming into the County the following month, in June of 2015.<sup>72</sup> Therefore, violations of Pierce County's zoning regulations were declared to be public nuisances in Pierce County several years before RCJS acquired the property and before Mr. Sorrels engaged in unpermitted vehicle storage on the site.

In accordance with RCW 36.32.120(10), Pierce County declared that unpermitted vehicle storage which violates Pierce County's zoning regulations is a public nuisance. There was no burden on the County to prove that the activity also violated State law.

**6. Collateral Estoppel and Res Judicata do not apply to this case.**

Mr. Sorrels asserts that the County's code enforcement action was barred by the doctrines of collateral estoppel and res judicata.<sup>73</sup> Mr. Sorrels is wrong.

A party asserting collateral estoppel as a bar must prove four elements: (1) identical issues; (2) a final judgment on the merits; (3) the

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<sup>71</sup> AR 75-88, CP 82 (RP 56, lines 18-24).

The property was later transferred via quit claim deed to the current owner RCJS Properties LLC on March 29, 2016. See quit claim deed at AR 311 and real estate tax affidavit at AR 310.

<sup>72</sup> AR 21.

<sup>73</sup> Mr. Sorrels' opening brief, argument section D, at 5-6.

party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.<sup>74</sup>

Collateral estoppel does not apply in this case because the issues involved in the Pierce County District Court civil infraction case are not identical to the issues involved in this LUPA appeal. A copy of the notice of infraction can be found at AR 140-141. The notice of infraction cites Mr. Sorrels with a violation of Pierce County's home occupation regulations under former PCC 18A.36.070.K.<sup>75</sup> The date of violation was listed as September 29, 2015.<sup>76</sup> Mr. Sorrels submitted a copy of the judgment abstract into the record which can be found at AR 710. The judgment abstract confirms that the civil infraction was for an alleged violation of home occupation regulations with a violation date of September 29, 2015. A copy of AR 710 is shown below:

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<sup>74</sup> *City of Bremerton v. Sesko*, 100 Wn. App. 158,163, 995 P.2d 1257 (2000).

<sup>75</sup> AR 140. (A copy of former PCC 18A.36.070.K "Home Occupations" can be found at CP 166-169).

<sup>76</sup> AR 140.

PIERCE COUNTY DISTRICT COURT  
930 TACOMA AVE S RM 239, TACOMA, WA 98402  
(253) 798-7474

CASE NO: 5P0025052 VIOLATION DATE: 09/29/2015

NAME: SORRELS, RICHARD EARL

1. VIOLATION OF HOME OCCUPATIONS

Judgment:  Committed  Not Committed  Deferred  Dismissed (PF): **\$0.00**

TIME PAYMENT ADMINISTRATIVE FEE **\$0.00**  
(\$10 fee will be waived if paid in full within 30 days)

Total Amount Due: **\$0.00**



Judge James R. Heller  
(129)

Date: 3/3/2016

To pay by credit card or on-line, go to [www.officialpayments.com](http://www.officialpayments.com) and enter Jurisdiction Code 5684  
To pay by phone, call (800) 272-9829 and enter Jurisdiction Code 5684

Attorney Freeby appeared on behalf of defendant

The notice of infraction was found “Not Committed” in Pierce County District Court because the County failed to prove, by a preponderance of evidence, that Mr. Sorrels was operating a home occupation business.<sup>77</sup>

The notice of infraction did not contain any reference to Pierce County’s public nuisance regulations found in Chapter 8.08 of the Pierce County Code or the zoning/land use tables found in Chapter 18A.

In contrast, the Notice of Violation and Abatement (NOVA) dated July 19, 2016, did not allege a violation of the County’s home occupation regulations.<sup>78</sup> Instead, the NOVA states that there was an inspection on

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<sup>77</sup> AR 710.

<sup>78</sup> AR 326-327.

July 12, 2016, and during that inspection, code enforcement officer Luppino observed the property being utilized for vehicle, recreational vehicle, and boat storage as either a principal or accessory use in violation of Pierce County's zoning regulations. The issues in the NOVA and the civil infraction are not identical. There are different incident dates alleged in the infraction versus the NOVA and each document referenced a different set of code regulations and different code violations. The doctrine of collateral estoppel does not apply to this case because the issues before Judge Heller are not identical to the issues before the Pierce County Hearing Examiner.

Likewise, the doctrine of Res Judicata does not apply. Res judicata bars re-litigation of the same cause of action between the same parties to a prior judgment.<sup>79</sup> It was impossible for the County to assert a 2016 public nuisance violation in the prior 2015 civil infraction proceeding before Judge Heller.

Only certain acts in violation of the Pierce County Code have been designated as a civil infraction in Pierce County. A violation of home occupation regulations has been designated as a civil infraction under PCC

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<sup>79</sup> *Lucas v. Velikanje*, 2 Wn. App. 888, 893, 471 P.2d 103 (1970).

18.140.050.A.3. A violation of Pierce County’s general zoning regulations is a misdemeanor per PCC 18.140.050.C. A violation of Pierce County’s Public Nuisance regulation is also a misdemeanor per PCC 8.08.170. It would have been impossible for the code enforcement officer to raise criminal claims arising out of incidents in July of 2016 against Mr. Sorrels in the civil infraction proceeding for operating a home occupation in September 2015.

Moreover, each day that a public nuisance remains on the property is a separate offense. PCC 8.08.170 states: ...“Each day that a public nuisance remains unlawfully upon property shall constitute a separate offense.” Therefore, the 2016 public nuisance violation could not have been included in the 2015 civil infraction.

Contrary to Mr. Sorrels’ assertions, the causes of action in the prior civil infraction were not the same as the allegation in the NOVA. Therefore, res judicata does not apply to this case.

**7. Any challenges to the Examiner’s findings and conclusions have been waived.**

“The burden of drafting a proper assignment of error rests upon an appellant.”<sup>80</sup> Mr. Sorrels listed only one assignment of error in his

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<sup>80</sup> *Jones v. National Bank of Commerce*, 66 Wn. 2d 341,346, 402 P.2d 673 (1965).

opening brief. He wrote: “The hearing examiner erred in denying the appeal of a Notice of Violation and Abatement (NOVA).”<sup>81</sup> Mr. Sorrels’ assignment of error does not comply with RAP 10.3(a)(4) which requires “a separate and concise statement of each error.”

In the section entitled “Issues Pertaining to Assignment of Error”, Mr. Sorrels included Issue E wherein he raises several evidentiary challenges. However, Mr. Sorrels failed to identify any of the Examiner’s findings or conclusions by number and he did not brief any of the alleged evidentiary deficiencies. A party abandons an issue on appeal by failing to brief the issue.<sup>82</sup> Mr. Sorrels did not brief the errors he alleges in Issue E and therefore those issues have been abandoned.

**8. There was substantial evidence to support the disputed findings.**

In the event that the Court decides to review the errors raised in Mr. Sorrels’ Issue E, the County submits the following response. In Conclusion No. 3, the Examiner stated:

.. RCJS Properties LLC is acting as a storage facility in conflict with the uses which are allowed in the ARL zone within the Key Peninsula Community Plan area.<sup>83</sup>

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<sup>81</sup> Mr. Sorrels’ opening brief at 1.

<sup>82</sup> *Holder v. City of Vancouver*, 136 Wn. App. 104, 107,147 P.3d 641 (2006).

<sup>83</sup> AR 10

There was substantial evidence to support the Examiner's factual findings. The sheer number of vehicles, trailers, boats, and RV's and the vehicle registration data supports the Examiner's findings that the property was being used for vehicle storage. Of the 46 vehicles, boats, trailers and RV's stored on the property, none were registered to Richard Sorrels or the current property owner RCJS Properties, LLC.<sup>84</sup> Mr. Sorrels testified that he does not reside at the subject property and he has never slept there.<sup>85</sup>

Additionally, Mr. Sorrels' real estate financing documents stipulate the subject property was to be used for business or commercial purposes and not for any personal use. In Finding No. 5, the Examiner quoted from the Declaration of Business Purpose, signed by Mr. Sorrels and attached to the Deed of Trust. That Declaration stated:

As borrower(s) under that promissory note secured by this deed of trust, for the loan made by Flex Funding Group, LLC, the undersigned grantor(s) represent(s) and confirms(s) that the proceeds of the loan are to be used for commercial or business purposes.

Borrower(s) further represent(s) that the property secured by this deed of trust is non-owner occupied and **held for business or commercial purposes and not for any personal, family or household use.** Borrower additionally represents that neither borrower nor any immediate family members of borrower or

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<sup>84</sup> AR 349-353

<sup>85</sup> CP 82, 85 (RP 56, lines 6-12 and RP 59, line 1-3)

borrower's guarantors reside in or intend to reside in the secured property (emphasis added by the Examiner).<sup>86</sup>

The Examiner also found that the registration documentation for many of the vehicles, trailers, and boats contradicted Mr. Sorrels' testimony at the hearing that they were his own personal vehicles. In Finding no. 8, the Examiner stated:

Key Center Enterprises LLC, owner of many of the vehicles parked on Mr. Sorrels' property has a registered trade name of Key Center Boats, issued in 2009, and is still active under License 602935973, which indicates commercial use and is contrary to Mr. Sorrels testimony that he collected vehicles/boats on his property as part of a hobby.<sup>87</sup>

See Washington State Business Licensing Documentation at AR 243-246. A complete list of all the vehicles, boats, and trailers found on the property and any available registration information can be found at AR 349-353.

The Examiner also found that Mr. Sorrels was involved in vehicle sales which again contradicted his testimony at the hearing that he was collecting vehicles, trailers, and boats as a hobby. In Finding No. 9, the Examiner stated:

Mr. Sorrels is involved in a partnership called Sand and Sorrels with registered trade names of C&L Auto

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<sup>86</sup> AR 5,6. A copy of the declaration of business purpose can be found at AR 79.

<sup>87</sup>AR 6,7.

Sales, C&L Wholesale Auto Sales, and The Sand Lot Auto Sales. The partnership remains active. Again, Mr. Sorrels involvement in Auto Sales is contrary to his testimony at the hearing that [he] collects vehicles as a hobby.<sup>88</sup>

According to the Washington State business licensing records, the governing partners for the Sand and Sorrels partnership are Charles Sand and Richard E. Sorrels. See Washington State Business Licensing Documentation at AR 249.

The Examiner found Mr. Sorrels' testimony that the property was being used for personal use was not credible. In a LUPA appeal the appellate court must defer to the Examiner's assessment of the credibility of witnesses.<sup>89</sup> In Finding no. 5, the Examiner wrote:

...Mr. Sorrels testified at the hearing that he planned on using the parcel in question for personal use and that the vehicles on his property were his personal vehicles being parked at his residence where he has never spent the night. Mr. Sorrels' testimony and actions are inconsistent and his testimony at the hearing was lacking in credibility.<sup>90</sup>

Per PCC 8.08.050.M, any violation of Pierce County's Development/Zoning regulations has been declared to be a public

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<sup>88</sup>AR 7.

<sup>89</sup> *Friends of Cedar Park Neighborhood v. City of Seattle*, 156 Wn. App. 633, 642, 234 P.3d 214 (2010); *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992).

<sup>90</sup> AR 5,6.

nuisance and a per se violation of Chapter 8.08 of the Pierce County Code. There was substantial evidence supporting the Examiner's findings and conclusions that Mr. Sorrels' vehicle storage activity was not for personal use and was, in fact, vehicle storage which has been classified as an industrial use that is not allowed in the ARL zone within the Key Peninsula Community Plan area. Therefore, the Examiner's decision must be affirmed.

**9. The County is entitled to costs and reasonable attorney's fees.**

If the Examiner's decision is upheld, the County is entitled to costs and reasonable attorney fees pursuant to RCW 4.84.370. Under applicable law, the County, as the prevailing party, is entitled to an award of reasonable attorneys' fees and costs associated with defending this appeal.<sup>91</sup>

E. CONCLUSION

Mr. Sorrels has not met his burden of showing that the Examiner's decision is not based upon substantial evidence, or was an erroneous interpretation or application of the law. Any objection to the lack of

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<sup>91</sup> See *Gig Harbor Marina, Inc. v. City of Gig Harbor*, 94 Wn. App. 789, 973 P.2d 1081 (1999); *Bellevue Farm Owners Association v. State of Washington Shorelines Hearing Board*, 100 Wn. App. 341, 365-366, 997 P.2d 380 (2000).

recording of the attorneys' closing arguments was waived, the doctrines of collateral estoppel and res judicata do not apply, and there was substantial evidence to support the Examiner's findings. Moreover, this entire appeal is moot. Therefore, the Examiner's decision should be affirmed and the County awarded fees and costs.

DATED this 11<sup>th</sup> day of April, 2019.

MARY E. ROBNETT  
Prosecuting Attorney

By:   
CORT O'CONNOR WSBA #23439  
Deputy Prosecuting Attorney  
PH: (253)798-6201  
Attorneys for Pierce County

**DECLARATION OF MAILING**

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. On April 11, 2019, I caused a copy of this Brief of Respondent Pierce County to be served on the following parties and in the manner indicated below:

**Richard Sorrels**  
**9013 Key Peninsula Hwy N**  
**Suite E-110**  
**Lakebay WA 98349**

by United States First Class Mail  
 by Legal Messenger  
 by Electronic Mail  
 by Federal Express/Express Mail  
 by Personal Delivery

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

DATED at Tacoma, Washington, this 11 day of April, 2019.

  
DAYNA WILLINGHAM, Legal Assistant  
Pierce County Prosecutor's Office / Civil  
955 Tacoma Avenue South, Suite 301  
Tacoma, WA 98402-2160  
Ph: 253-798-6082 / Fax: 253-798-6713  
E-mail: Dayna.Willingham@piercecountywa.gov

PIERCE COUNTY  
APPENDIX A

Photo taken on March 18, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by The RCJS Trust 2, Richard Sorrels as Trustee. This photo taken from the right of way area of Key Peninsula Highway South is showing a travel trailer and a sailboat with trailer stored amongst other assorted vehicles, recreational vehicles and boats with trailer previously observed at this site. The photo is a fair and accurate representation of this address during the time of the survey.



Photo taken on March 18, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by The RCJS Trust 2, Richard Sorrels as Trustee. This photo taken from the right of way shoulder of Key Peninsula Highway South is showing a light blue Ford pickup with Washington State plate of B70933K and a blue and white sailboat that loaded on a black colored boat trailer that has no plate posted that I have not observed previously. Also this photo is showing a Chevy Astro Van, other travel trailers and other boats on boat trailers that I have observed previously. The photo is a fair and accurate representation of this address during the time of the survey.



Photo taken on March 18, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by The RCJS Trust 2, Richard Sorrels as Trustee. This photo taken from the shoulder right of way of Key Peninsula Highway South is showing travel trailers, a bus and boats on boat trailers and the Chevy Astro van I previously observed. Notice The photo is a fair and accurate representation of this address during the time of the survey.



Photo taken on March 18, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by The RCJS Trust 2, Richard Sorrels as Trustee. This photo taken from the right of way shoulder of Key Peninsula Highway South is showing an area where the some boats on trailers, and damaged pop up camp trailer were but have been removed. The photo is a fair and accurate representation of this address during the time of the survey.



Photo taken on March 18, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by The RCJS Trust 2, Richard Sorrels as Trustee. The photo taken from the right of way shoulder of 40<sup>th</sup> Street KPS is showing three boats on boat trailers and a pop up camper stored on the south portion of this site. These are the items that used to be located at the Northern portion of the property. The photo is a fair and accurate representation of this address during the time of the survey.



PIERCE COUNTY  
APPENDIX B

Photo taken on July 29, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by the RCJS Properties LLC with Richard E. Sorrels in control. This photo taken from the right of way shoulder is showing the exterior of the house is undergoing repair along the siding and window areas. The photo is a fair and accurate representation of this address during the time of the survey.



Photo taken on July 29, 2016, by Code Enforcement Officer Mark Luppino observing tax parcel 0020132010, address of 3917 Key Peninsula Highway South, owned by the RCJS Properties LLC with Richard E. Sorrels in control. This photo taken from the right of way shoulder is showing assorted recreational vehicles and boats with trailers trailer that I have observed previously at this site. The photo is a fair and accurate representation of this address during the time of the survey.



PIERCE COUNTY  
APPENDIX C

3  
4  
5 **ORDINANCE NO. 2008-61**

6  
7  
8 **An Ordinance of the Pierce County Council Repealing Chapter 8.08 of the**  
9 **Pierce County Code, "Public Nuisances," and Enacting a**  
10 **New Chapter 8.08 of the Pierce County Code, "Public**  
11 **Nuisances"; Amending Section 1.22.080 of the Pierce County**  
12 **Code to Grant the Hearing Examiner the Authority to Hear**  
13 **Contested Notices of Violation and Abatement; and Setting**  
14 **an Effective Date.**

15  
16 **Whereas**, Chapter 36.32.120(10) of the Revised Code of Washington gives to  
17 the Counties the power to declare by ordinance what shall be deemed a nuisance within  
18 the County and to prevent, remove, and abate a nuisance at the expense of the parties  
19 creating, causing, or committing the nuisance, and to levy a special assessment on the  
20 land or premises on which the nuisance is situated to reimburse the county for the costs  
21 of abating it; and

22  
23 **Whereas**, public nuisances, as defined in new Pierce County Code (PCC)  
24 Chapter 8.08, unreasonably diminish the quality of life of the citizens of Pierce County  
25 by creating conditions detrimental to the health and safety of Pierce County residents, to  
26 the environment, and to the right of all residents to use and enjoy their own property;  
27 and

28  
29 **Whereas**, previous efforts to achieve voluntary compliance from property owners  
30 by Pierce County Responds and its partner agencies, namely Public Works and Utilities,  
31 Planning and Land Services, Community Services, Pierce County Sheriff, Pierce  
32 County Prosecuting Attorney, and the Tacoma-Pierce County Health Department, have  
33 not been effective in abating public nuisances in some cases through existing remedies;  
34 and

35  
36 **Whereas**, an additional civil abatement procedure is needed to supplement the  
37 abatement and enforcement remedies contained in the Pierce County Code and the  
38 Revised Code of Washington; and

39  
40 **Whereas**, there is a need to expand Pierce County's abatement program to  
41 include nuisances created by conditions other than public nuisance vehicles which are  
42 addressed by PCC 8.10; and

43  
44 **Whereas**, the Pierce County Executive established the Pierce County Responds  
45 Program to improve the quality of life of the residents of Pierce County by coordinating  
46 the identification and clean up of properties identified as illegal dump sites; and

1 **Whereas**, new Chapter 8.08 PCC expands the authority and effectiveness of  
2 Pierce County Responds and its partner agencies by identifying public nuisances,  
3 creating an effective and efficient procedure for the abatement of public nuisances, and  
4 holding property landowners responsible for the costs of abating public nuisances found  
5 on their property; **Now Therefore**,

6  
7 **BE IT ORDAINED** by the Council of Pierce County:

8  
9 Section 1. The above recitals are hereby adopted as findings of fact.

10  
11 Section 2. Chapter 8.08 of the Pierce County Code, "Public Nuisances," is  
12 hereby repealed.

13  
14 Section 3. New Chapter 8.08 of the Pierce County Code, "Public Nuisances," is  
15 hereby adopted as set forth in Exhibit A, which is attached hereto and incorporated  
16 herein by reference.

17  
18 Section 4. Section 1.22.080 of the Pierce County Code is hereby amended as  
19 set forth in Exhibit B, which is attached hereto and incorporated herein by reference.

20  
21 Section 5. This Ordinance shall become effective on January 1, 2009.

22  
23 **PASSED** this 4<sup>th</sup> day of November, 2008.

24  
25  
26 **ATTEST:**

**PIERCE COUNTY COUNCIL**  
Pierce County, Washington

27  
28  
29  
30 Denise D. Johnson

31 **Denise D. Johnson**  
32 Clerk of the Council

Terry Lee

33 **Terry Lee**  
34 Council Chair

John W. Ladenburg

35 **John W. Ladenburg**  
36 Pierce County Executive

37 Approved  Vetoed , this  
38 18 day of NOV,  
39 2008.

40  
41 Date of Publication of

42 Notice of Public Hearing: October 16, 2008

43  
44 Effective Date of Ordinance: January 1, 2009



1  
2  
3 "NEW CHAPTER"  
4

5 Chapter 8.08

6  
7 PUBLIC NUISANCES  
8

9 Sections

- 10 8.08.010 Purpose and Intent.
- 11 8.08.020 Enforcement Authority.
- 12 8.08.030 Definitions.
- 13 8.08.040 Public Nuisance Defined.
- 14 8.08.050 Specific Public Nuisances Declared.
- 15 8.08.060 Landowner Responsibility.
- 16 8.08.070 A Nuisance Does Not Become Legal by Prescription.
- 17 8.08.080 Notice of Violation and Abatement.
- 18 8.08.090 Notice of Appeal.
- 19 8.08.100 Notice of Hearing.
- 20 8.08.110 Hearing.
- 21 8.08.120 Order of the Hearing Examiner.
- 22 8.08.130 Cooperative Abatement Agreements.
- 23 8.08.140 Cost Recovery.
- 24 8.08.150 Special Assessment
- 25 8.08.160 Additional Remedies.
- 26 8.08.170 Criminal Penalties.
- 27 8.08.180 Entry.
- 28 8.08.190 Severability.

29  
30 8.08.010 Purpose and Intent.

- 31 A. It is the purpose and intent of this Chapter to provide for the protection of the health,  
32 safety, and general welfare of the citizens of Pierce County by proscribing nuisances and  
33 establishing a procedure for the abatement of nuisances where efforts to achieve  
34 voluntary compliance have failed. The remedy provided in this Chapter shall be in  
35 addition to, and not in lieu of, other civil or criminal remedies provided by State law  
36 and/or the Pierce County Code (PCC).
- 37 B. It is the purpose and intent of this Chapter to eliminate the effects of accumulated solid  
38 waste, unpermitted septic/sewage systems, and unpermitted motor vehicle salvage,  
39 storage, or repair sites. These conditions create blight, depress land values, generate  
40 health hazards, damage the environment and wildlife habitat, provide breeding grounds  
41 for pests such as rodents, hornets, and mosquitoes, attract illegal dumping of other solid  
42 waste and hazardous substances, lead to criminal behavior, and detrimentally affect the  
43 health and safety of communities and neighborhoods in rural and urbanized areas of  
44 unincorporated Pierce County.
- 45 C. It is the purpose and intent of this Chapter to remove unpermitted buildings or structures,  
46 to rectify unpermitted development activities which damage environmentally sensitive  
47 areas of Pierce County including wetlands and shorelines, and to provide an alternative



1 enforcement remedy where the Landowner fails to comply with the terms of a cease and  
2 desist order or notice and order to correct or decision of the Pierce County Hearing  
3 Examiner.

4 D. It is the purpose and intent of the County Council to declare that abatement of public  
5 nuisances from private Property is a governmental purpose for which public funds may  
6 be spent as determined appropriate and necessary by the Executive.

7 E. It is the further purpose and intent of this Chapter to hold the Landowner responsible for  
8 the costs of abatement of nuisances that exist on his/her Property.  
9

10 **8.08.020 Enforcement Authority.**

11 The Pierce County Executive or designees, the Director of the Tacoma-Pierce County Health  
12 Department or designees, and any law enforcement officer are authorized to enforce this  
13 Chapter.  
14

15 **8.08.030 Definitions.**

16 A. "Abate" means to act to stop an activity and/or to repair, replace, remove, or otherwise  
17 remedy a condition where such activity or condition constitutes a violation of this  
18 chapter.

19 B. "Apparently Inoperable" has the same meaning as in PCC 8.10.020 A.

20 C. "Building" means any structure where person(s) reside, work, or congregate, including  
21 recreational vehicles, trailers, and mobile homes.

22 D. "County" means Pierce County.

23 E. "Extensively Damaged" has the same meaning as in PCC 8.10.020 B.

24 F. "Junk Vehicle" means a motor vehicle meeting at least 3 of the following requirements:

- 25 1. Is 3 years old or older;
- 26 2. Is extensively damaged;
- 27 3. Is apparently inoperable; or
- 28 4. Has an approximate fair market value equal only to the approximate value of the  
29 scrap in it.

30 G. "Landowner" is broadly defined to include a person(s) who legally owns real property  
31 and/or the person(s) shown on the last equalized assessment roll as the taxpayer for real  
32 property and/or any person in possession or control of Property including an occupant, a  
33 builder or business operator who is developing, building, or operating a business on the  
34 Property, or a person who has responsibility for maintaining the Property.

35 H. "Person" means a natural person, joint venture, partnership, association, club, company,  
36 corporation, business trust, or organization, or the manager, lessee, agent, officer, or  
37 employee of any of them.

38 I. "Hearing Examiner" means a Pierce County Hearing Examiner or Deputy Hearing  
39 Examiner.

40 J. "Property" means any building, lot, parcel, dwelling, rental unit, real estate, or land, or  
41 portion thereof, including Property used for residential, commercial, or other purposes,  
42 and including abandoned or unused Property.

43 K. "Public Official" means any person(s) designated by the Pierce County Executive or the  
44 Director of the Tacoma-Pierce County Health Department to carry out the purposes of  
45 this Chapter, and any law enforcement officer.

46 L. "Vehicle" shall include, but not be limited to, automobiles, motorcycles, trucks, buses,  
47 motorized recreational vehicles, campers, travel trailers, boat trailers, utility trailers, or  
48 other similar devices capable of moving or being moved on the public right-of-way.



- 1 M. "Solid Waste" means all putrescible and nonputrescible solid and semisolid items  
2 including but not limited to the following items: bagged or loose household garbage,  
3 containers of household liquids or hazardous wastes, old or unused furniture, furniture  
4 parts, machinery or appliances, household fixtures, tires, batteries, mattresses,  
5 construction debris, rotting or scrap lumber, paper and/or cardboard, rubber debris, scrap  
6 metal, vehicle parts, hardware, cut brush or wood, dead or decaying plant materials,  
7 animal carcasses or animal waste, junk vehicles, or derelict vessels.  
8 N. "Solid Waste Handling" has the same meaning as is RCW 70.95.030(24).  
9

10 **8.08.040 Public Nuisance Defined.**

11 A public nuisance consists of performing an unlawful act, or omitting to perform a duty, or  
12 permitting an action or condition to occur or exist which:

- 13 A. Unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of  
14 others; or  
15 B. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for  
16 passage any lake, or navigable river, bay, stream, canal or basin, or any public property,  
17 open spaces, parks, or public right of way in the County; or  
18 C. Renders other persons insecure in life or in the use of property, or  
19 D. Creates, maintains, or permits the existence or continuance of any of the specific public  
20 nuisances identified in this chapter.  
21

22 **8.08.050 Specific Public Nuisances Declared.**

23 The following specific acts, omissions, places, conditions, and things are hereby declared to  
24 be public nuisances and are per se violations of this Chapter:

- 25 A. The discharge of sewage, human excrement, or other wastes in any location or manner,  
26 except through approved means of sewage disposal which are constructed and  
27 maintained in accordance with the regulations of the Tacoma- Pierce County Health  
28 Department and/or the Pierce County Public Works and Utilities Division.  
29 B. Any residence, business, or place where people congregate, reside, or work that does not  
30 have an adequate and lawful source of potable water as required by state or local  
31 regulations.  
32 C. Any residence, business, or place where people congregate, reside, or work that is not  
33 serviced by a sewage disposal system constructed and maintained in accordance with the  
34 regulations of the Tacoma- Pierce County Health Department and/or the Pierce County  
35 Public Works and Utilities Division.  
36 D. Any poisonous material or poisonous thing on any Property accessible to any animal or  
37 minor children.  
38 E. Unsecured hazards accessible to and posing a danger to minor children, including  
39 unused, abandoned, or discarded refrigerators, freezers, or large appliances which are  
40 left in any place accessible to minor children, or any unsecured or abandoned  
41 excavation, pit, mine, cistern, storage tank, or shaft.  
42 F. Property where Solid Waste has accumulated or is handled, stored, treated, processed, or  
43 buried, and poses a threat to human health and/or the environment. This subsection does  
44 not apply to properly permitted Solid Waste Handling sites or facilities that are operated  
45 and maintained in full compliance with the terms of any permit, license, statute,  
46 regulation, or ordinance regulating such activity.



- 1 G. Property used or maintained for the purpose of dismantling, salvaging, storing, or  
2 repairing of machinery, metals, or Vehicles except where the Landowner has obtained  
3 all licenses, permits, and approvals necessary to conduct such activity on the Property.
- 4 H. Property used or maintained for the purpose of dismantling, salvaging, storing, or  
5 repairing of machinery, metals, or Vehicles where the Landowner is not in compliance  
6 with the conditions set forth in any permit, license, statute, or ordinance regulating such  
7 activity.
- 8 I. Property where derelict vessels, junk vehicles, or vehicle or vessel parts are stored and  
9 pose a threat to human health or safety or to the environment, except properties  
10 maintained in full compliance with the terms of any permit, license, statute, regulation,  
11 or ordinance regulating such activity.
- 12 J. Any building or structure where construction was commenced and then ceased and the  
13 building or structure was left unfinished, or any building or structure that has been  
14 constructed or modified without required permits.
- 15 K. Any Property that has been found contaminated and declared unfit for use by a local  
16 health officer pursuant to RCW 64.44.030.
- 17 L. Any violation of any of the following in the Pierce County Code: Title 17A,  
18 Construction and Infrastructure Regulations-Site Development and Stormwater  
19 Drainage; Title 17B, Construction and Infrastructure Regulations - Road and Bridge  
20 Design and Construction Standards; Title 17C, Construction and Infrastructure  
21 Regulations - Building and Fire Codes.
- 22 M. Any violation of any of the following in the Pierce County Code: Title 18, Development  
23 Regulations- General Provisions; Title 18A, Development Regulations - Zoning; Title  
24 18B, Development Regulations - Signs; Title 18D, Development Regulations -  
25 Environmental; Title 18E, Development Regulations - Critical Areas; Title 18F,  
26 Development Regulations - Land Divisions and Boundary Changes; Title 18H,  
27 Development Regulations - Forest Practices and Tree Conservation; Title 18I,  
28 Development Regulations - Natural Resources Lands; Title 18J, Development  
29 Regulations - Design Standards and Guidelines.
- 30 N. Any violation of Pierce County Code Title 20, Shoreline Management Use Regulations.
- 31 O. Property maintained in violation of the terms of a permit or authorization issued by  
32 Pierce County Planning & Land Services, the Tacoma- Pierce County Health  
33 Department, or the Pierce County Fire Prevention Bureau.
- 34 P. Property maintained in violation of the terms of a written order issued by Pierce County  
35 Planning & Land Services, the Tacoma-Pierce County Health Department, or the Pierce  
36 County Fire Prevention Bureau.

37  
38 **8.08.060 Landowner Responsibility.**

39 Every Landowner has a duty to maintain his or her Property free of public nuisances. It is  
40 not a defense to this Chapter that other persons may have caused or contributed to the nuisance.

41  
42 **8.08.070 A Nuisance Does Not Become Legal by Prescription.**

43 A nuisance does not become legal by lapse of time.  
44



1 **8.08.080 Notice of Violation and Abatement.**

- 2 A. Whenever, upon a reasonable belief, a public nuisance exists in violation of this chapter,  
3 a Public Official may issue a Notice of Violation and Abatement to the Landowner(s),  
4 containing the following:  
5 1. The street address, parcel number(s), or description of the building, structure,  
6 premises, or land in terms reasonably sufficient to identify its location;  
7 2. A description of the violation(s);  
8 3. A reference to the title, chapter, and section of the Pierce County Code or Tacoma  
9 Pierce County Health Department regulation or written order which has been  
10 violated, if applicable.  
11 4. A description of the action required to abate the public nuisance which may include  
12 corrections, repairs, demolition, removal, or any other appropriate action, and a date  
13 by which voluntary abatement must be completed;  
14 5. A statement that the person to whom a Notice of Violation and Abatement is  
15 directed may request an administrative hearing to be conducted by the Hearing  
16 Examiner. Such request (Notice of Appeal) must be in writing and must be received  
17 by the Public Official within 15 days after the Notice of Violation and Abatement  
18 has been served.  
19 6. A statement that the costs and expenses of abatement incurred by the County may be  
20 assessed against the person(s) named in the Notice of Violation and Abatement and  
21 further that failure to pay said costs may result in a lien for the costs of abatement  
22 being assessed against the property.  
23 B. The Notice of Violation and Abatement shall be served by any one or combination of the  
24 following methods:  
25 1. By both first-class and certified mail with a 5-day return receipt requested to the last  
26 known address of the Landowner of the property; or  
27 2. By posting the Notice of Violation and Abatement in a prominent location on the  
28 premises in a conspicuous manner which is reasonably likely to be discovered; or  
29 3. By personal service upon the Landowner.  
30

31 **8.08.090 Notice of Appeal.**

- 32 A. Within 15 calendar days of service of a Notice of Violation and Abatement, the  
33 Landowner may submit a written Notice of Appeal to the Public Official, along with the  
34 required appeal fee, to appeal the Notice of Violation and Abatement.  
35 B. The notice of appeal shall specify the grounds of appeal and be in the form required by  
36 PCC 1.22.090 C.  
37

38 **8.08.100 Notice of Hearing.**

- 39 A. Not later than the 15 calendar days after the receipt of one or more timely Notices of  
40 Appeal, the Public Official shall issue and serve a Notice of Hearing to the appellants.  
41 Requests from multiple parties concerning the same nuisance shall be consolidated  
42 pursuant to PCC 1.22.090 D.  
43 B. The Notice of Hearing shall be served by the same means as the Notice of Violation and  
44 Abatement.  
45 C. The Notice of Hearing shall contain the date, time, location of the hearing.  
46



1 **8.08.110 Hearing.**

- 2 A. The appeal of a Notice of Violation and Abatement shall be heard by the Hearing  
3 Examiner as a Non Land Use Matter pursuant to PCC 1.22.080 B.2.  
4 B. Unless otherwise provided herein, the provisions of PCC 1.22.080 C. through PCC  
5 1.22.120 shall govern the hearing process.  
6 C. The Hearing Examiner shall determine if the property at issue constitutes a Public  
7 Nuisance as defined in this Chapter. The Hearing Examiner shall also determine if the  
8 appellant is a Landowner as defined in this Chapter and is therefore personally liable for  
9 the costs of abating the nuisance.  
10

11 **8.08.120 Order of the Hearing Examiner.**

- 12 A. Unless mutually agreed to by the appellant and the Hearing Examiner, the order of the  
13 Hearing Examiner shall be served upon the person to whom it is directed, either  
14 personally or by mailing a copy of the order to such person at his/her last known address  
15 as determined by the designated Public Official.  
16 B. The Hearing Examiner, in affirming the public official's Notice of Violation and  
17 Abatement, may assess administrative costs and/or costs related to the abatement of the  
18 nuisance.  
19 C. The appellant may file a request for reconsideration of the Hearing Examiner's decision  
20 pursuant to PCC 1.22.130.  
21 D. If no written request for reconsideration has been received by the Public Official within  
22 7 working days of the date of the order of the Hearing Examiner, the order shall be  
23 considered final unless appealed to a court of competent jurisdiction pursuant to PCC  
24 1.22.140.  
25

26 **8.08.130 Cooperative Abatement Agreements.**

27 The Public Official and the Landowner may enter into a cooperative abatement agreement  
28 which includes a right of entry agreement and an agreement regarding the recovery of costs of  
29 the abatement.  
30

31 **8.08.140 Cost Recovery.**

- 32 A. In addition to the other remedies available under this Chapter, a Public Official may  
33 charge the costs of abatement to the Landowner(s) who received the Notice of Violation  
34 and Abatement or to the Landowner(s) who were found personally liable for the costs of  
35 abating the nuisance by an order issued by the Hearing Examiner if an appeal was filed.  
36 The costs are due and payable 30 days from mailing of the invoice. The costs shall be  
37 paid to the Department to which the Public Official is assigned.  
38 B. If more than one Landowner has been issued a Notice of Violation and Abatement or  
39 more than one appellant was found personally liable for the costs of abating the nuisance  
40 by an order issued by the Hearing Examiner, each party shall be jointly and severally  
41 liable for the costs of the abatement.  
42 C. For purposes of this section "costs" shall include but are not limited to:  
43 1. Personnel costs, both direct and indirect, including all attorney's fees and costs  
44 incurred in the investigation, documentation, and abatement of the nuisance;  
45 2. Repair, demolition, hauling, clean up, storage, disposal, and environmental  
46 mitigation expenses;  
47 3. Actual expenses and costs of the County in preparing notices, specifications, and  
48 contracts, and the costs of any required printing or mailing;



1 4. Actual expenses and costs of the County in accomplishing, contracting, or inspecting  
2 the abatement work.

3 D. Any salvage value proceeds resulting from the abatement of the Property shall first be  
4 applied to the costs of abatement. Any remaining such monies shall be paid to the  
5 Landowner as shown on the last equalized assessment roll.

6 E. The County may impose a special assessment for the costs of any abatement proceedings  
7 under this Chapter and all other related costs against the real property on which the  
8 nuisance was found or any of the work of abatement was performed.  
9

10 **8.08.150 Special Assessment.**

11 Pursuant to RCW 36.32.120(10), all costs incurred by Pierce County for the abatement of  
12 any nuisance defined by any statute or ordinance shall be a special assessment upon land or  
13 premises on which the nuisance is situated and this assessment shall constitute a lien against the  
14 property which shall be of equal rank with state, county, and municipal taxes.  
15

16 **8.08.160 Additional Remedies.**

17 When it appears to the Public Official, or Prosecuting Attorney, that the remedies provided  
18 by this Chapter are not sufficient to abate the nuisance, the Prosecuting Attorney may also pursue  
19 temporary and permanent injunctive relief, a warrant of abatement, and an order for costs and  
20 fees in Superior Court under Chapter 7.48 RCW. The provisions of this chapter are in addition  
21 to and not in lieu of any other penalty, sanction, or right of action provided by law.  
22

23 **8.08.170 Criminal Penalties.**

24 It shall be a misdemeanor, punishable as prescribed in PCC 9.02.010, for any Landowner to  
25 knowingly create or maintain a Public Nuisance on his or her Property or to knowingly omit or  
26 refuse to perform any legal duty relating to the removal of a Public Nuisance. Each calendar day  
27 that a Public Nuisance remains unlawfully upon Property shall constitute a separate offense.  
28

29 **8.08.180 Entry.**

30 Using any lawful means, the Public Official may enter upon the subject Property and may  
31 remove or correct the condition that is subject to abatement. The Public Official may seek such  
32 judicial process as the Public Official deems necessary to effect the abatement.  
33

34 **8.08.190 Severability.**

35 If any provision of this Chapter or its application to any person or Property is held invalid,  
36 the remainder of this Chapter or the application of the provision to other persons or Property is  
37 not affected.



**PIERCE COUNTY PROSECUTING ATTORNEY CIVIL DIVISION**

**April 11, 2019 - 9:07 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52025-7  
**Appellate Court Case Title:** Richard Sorrels, RCJS Properties, LLC, Appellant vs. Pierce County, Respondent  
**Superior Court Case Number:** 17-2-00016-4

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