FILED
FEB 12, 2013
Court of Appeals
Division III
State of Washington

No. 30996-7-III

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

VERN THOMPSON,

Appellant,

v.
KITTITAS COUNTY,

Respondent.

BRIEF OF RESPONDENT KITTITAS COUNTY

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February 12, 2013

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INTRODUCTION

The junkyard on Mr. Thompson's property has been a nuisance in Kittitas County since at least 2008. His property has been declared a nuisance by the Kittitas County District Court in 2009 and most recently by both the Kittitas County Hearing Examiner and Superior Court. In this appeal Mr. Thompson misrepresents the record, applicable law, and standard of review, all seemingly in an effort to avoid abating the nuisance upon his property. There is little or no evidence in the record to support any of the positions Mr. Thompson takes in this appeal and numerous of his arguments are outright frivolous. Mr. Thompson's own testimony admits the presence of the unlicensed and inoperable vehicles upon his property that constitute a nuisance under applicable county code. The Court must affirm the finding of a public nuisance by the Hearing Examiner and Superior Court and award Kittitas County all of its attorney fees and costs related to this appeal.

ASSIGNMENTS OF ERROR

The Superior Court did not err in affirming the Hearing Examiner's affirmance of the Notice of Violation and Abatement. All evidence, not merely substantial evidence, supports the determination by both the Hearing Examiner and Superior Court that Mr. Thompson's

vehicles are inoperable and unlicensed and so "junk" and a nuisance under Kittitas County Code. All evidence, not merely substantial evidence, supports the determination by both the Hearings Examiner and the Superior Court that Mr. Thompson's property is a "junkyard" under Kittitas County Code. All evidence, not merely substantial evidence, supports the determinations by both the Hearing Examiner and the Superior Court that Mr. Thompson's vehicles are neither "farm exempt" nor exempt from Kittitas County's regulations regarding the storage of vehicles. Substantial evidence supports the determination by the Superior Court that Mr. Thompson failed to establish the presence of a legal non-conforming use. There is no evidence in the record that would support Mr. Thompson's claim that the Hearings Examiner "prohibited" him from examining the code enforcement officer, and this claim is therefore frivolous.

STATEMENT OF THE CASE

Kittitas County code enforcement officer Lisa Iammarino visited Mr. Thompson's property several times, beginning in 2008, and observed unlicensed and inoperable vehicles on the premises. HR #1 pg 2.[1] Ms.

[1] The Certified Hearing Examiner's Record was designated as part of the Clerk's papers as Sub. No. 9 by the Appellant. It was indexed by the Hearings Examiner and sent to the Superior Court which, in turn, sent it to the Court of Appeals separately. The Index to Appellant's Clerk's Papers created by the Superior Court does not list this record because it was sent separately, and so the County will cite to the Hearing Examiner's

Iammarino filed a notice of infraction in 2009. HR #1 pg. 3. After a contested hearing, Mr. Thompson was found to have maintained a junkyard, was ordered to pay a fine of $500, and to remove all unlicensed and inoperable vehicles from his property. HR #1 pg. 3; HR #10 pg.1, 2. Ms. Iammarino visited Mr. Thompson's property again in early October of 2009 and early February of 2010 and observed the same unlicensed and inoperable vehicles. HR #1 pg. 3, 4. Ms. Iammarino continued to perform site visits on almost a monthly basis through January of 2011 consistently observing the same unlicensed and inoperable vehicles in the same locations. HR #1 pg. 4, 5.

In early January of 2011, Ms. Iammarino filed a Notice of Violation and Abatement. HR #1 pg. 6. The Notice of Violation and Abatement specifically described the violation as consisting of the presence of unlicensed and inoperable vehicles on the premises and that such vehicles constituted "junk" and a "junkyard" that violated KCC 17.28.020 and the International Property Maintenance Code, both of which constituted a public nuisance. HR #23 pg. 2, 3.

At the hearing, the evidence that was admitted consisted of the Declaration of code enforcement officer Lisa Iammarino and a series of

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Record (HR) by the index number from the index to that record and the page of the specific document. Hence, the second page of the Iammarino declaration is cited as HR #1, pg.2 .

communications regarding continuances. CP 3. The declaration of Ms. Iammarino described her numerous site visits from 2008 through 2011 and contained photographic evidence of those visits. CR 4; HR #1, 3-19, 21. The declaration also contained descriptions of the various unlicensed and inoperable vehicles observed. *Id.* The declaration stated that the code enforcement officer, after consulting the Assessor's database, determined these vehicles had been on the property since 2000. HR #20. The declaration lists twenty seven (27) unlicensed and/or inoperable vehicles whose licenses had expired from 1996 to 2010. HR #12 pg. 1. None of these twenty seven vehicles could be started and the code enforcement officer noted that "Vehicles without batteries or dead batteries may have additional items that render them inoperable." *Id.*

At the hearing, Mr. Thompson stated he would not be presenting any evidence "Just a little testimony to rebut what [the code enforcement officer] had in her paperwork." CR 5. Mr. Thompson testified that "they all run when batteries are in them" yet testified that in 2009, during the prior enforcement action, he had put fifteen batteries in the approximately twenty vehicles involved in that action and was only able to start "about seven or eight." *Id.* When the Hearing Examiner asked Mr. Thompson if the vehicles in question in this matter were operable, Mr. Thompson responded "Yes. If I want them to be." CR 6. Mr. Thompson stated that

he has had a license to restore cars since 1981, but did not testify that he had conducted such activity on this property since that time, nor that such activity had continued uninterrupted since. *Id.* Mr. Thompson testified that the various trucks were used only to store animal feed rather than transport it because he has the feed brought to him. *Id.* Mr. Thompson testified that he has unlicensed vehicles on his property by saying "They were all licensed at one time. Most of them are licensed now." CR 5.

Mr. Thompson presented two witnesses who were instructed by the Hearing Examiner to limit their testimony to factual testimony about which they had personal knowledge rather than opinion or argument. CR 7, 9. The first witness testified that he had known Mr. Thompson for about twenty years as a collector. CR 8. The second witness, after offering some opinions that the Hearing Examiner rejected, insisted that he was some sort of expert and could offer opinion without demonstrating any expertise or any reason why the tribunal would be in need of such expertise. CR 9. Mr. Thompson was then asked, by the Hearings Examiner "Anything else Mr. Thompson?" to which Mr. Thompson responded "No." CR 9, 10. That concluded Mr. Thompson's presentation of his case.

The Hearing Examiner issued his Final Order Affirming Violation on May 6, 2011, a true and correct copy of which is attached hereto as

Exhibit "A." On page 5 of the order, the Hearing Examiner found that "Mr. Thompson offered no photographic evidence to verify his testimony that the trucks on his Property, including those shown in photographs as being a Coors truck, a U-Haul truck and a Rainier Beer truck were being used to store hay and oats...Mr. Thompson offered no documentary evidence of any vehicles being licensed on the Property." On pages 7 and 8 of that order, the Hearing Examiner made the following findings of fact.

> The Kittitas County Code declares a public nuisance of one who fails to maintain their property in a clean, safe, secure and sanitary condition, including the presence of unlicensed/inoperative motor vehicles on the property in violation of the International Property Maintenance Code. (Kittitas County Code)[2]
> A junkyard is defined as "[A]ny lot, parcel, building, structure or portion thereof, used for the storage, collection, processing, purchase, sale, exchange, salvage or disposal of scrap materials, unlicensed or inoperable vehicles, vehicle parts, used appliances, machinery or parts thereof."[3] Officer Iammarino has observed multiple vehicles over multiple dates of unlicensed and inoperable vehicles being stored and collected upon the Property at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington. See Declaration of Lisa Iammarino with Exhibits C, F, K, L, M, N, O, Q, R, and T. Based upon the storage and collection of inoperable and unlicensed vehicles on the Property at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington, the Hearing Examiner finds that said Property is a junkyard as defined by Kittitas County Code.
> The existence of the junkyard in an AG-3 Zone is prohibited and is a public nuisance pursuant to the Kittitas

[2] KCC 14.04.010(7) adopts International Property Maintenance Code and §301.3 so provides.
[3] KCC 17.08.330

> County Code. (Kittitas County Code)[4]
> There are no "farm exempt" licensed vehicles on the Property located at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington. None of the vehicles stored and collected on the subject Property meet the definition within RCW 46.16.010(5)[5]. (See Declaration of Lisa Iammarino)
> Mr. Thompson's claim that these unlicensed and inoperable vehicles are part of his hobby "collection" do not make him immune from his Property being declared to be a junkyard because of the existence of unlicensed and inoperable vehicles on the Property over the course of time of the investigation of Lisa Iammarino.
> The photographs contained as Exhibits within the Declaration of Lisa Iammarino demonstrate a violation of Section 302.8 of the International Property Maintenance Code which has been adopted by Kittitas County pursuant to KCC 14.04.010(7). Over the course of Ms. Iammarino's investigation of the subject Property, there are multiple inoperable vehicles kept or stored, in various states of repair with some being inoperable (Declaration of Lisa Iammarino, Exhibits C, F, K, L, M, N, O, Q, R and T).
> A violation of International Property Maintenance Code 302.8 is hereby found. This violation is a public nuisance in violation of Kittitas County Code Title 14.[6]

The Hearing Examiner then, on pages 9 and 10 of the Order, affirmed the Notice of Violation and Abatement, ordered Mr. Thompson to pay a fine of $500, remove all unlicensed and/or inoperable vehicles from his

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[4] KCC 17.28.020; 17.28.130; 17.08.330; 18.01.010(1)(8).

[5] Former RCW 46.16.010(5) defined an exemption to the requirement for vehicles that are operated along public highways of the state to be licensed. The specific exemption cited by the Hearing Examiner read "Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law." (emphasis added) None of Mr. Thompson's vehicles are operated, drawn, or used to transport, but rather are only used as storage.

[6] KCC 14.04.010(7); 18.01.010(1)(5).

property, and demonstrate to the code enforcement officer that any vehicle left on the property was both operable and licensed.

Mr. Thompson appealed to the Superior Court. On the Friday before the Monday hearing, and a few minutes before the Monday morning hearing, Mr. Thompson filed requests for judicial notice which were violations of RALJ 6.1(a) as not being part of the record of proceedings, and were rejected by the Superior Court as untimely. These documents are not properly a part of the record in this matter and must be disregarded. Mr. Thompson takes no issue with that rejection in this matter as he has assigned no error to it nor argued it.

The Superior Court issued its Final Order on June 11, 2012, a true and correct copy of which is attached hereto as Exhibit "B." The Superior Court found, on page 2 of the Order, that the Hearings Examiner's findings of fact were supported by substantial evidence and that the Hearings Examiner committed no errors of law. The Court found that the subject property met the definition of a "junkyard" which is not allowed in the Ag-3 zone and is therefore a public nuisance. The Court found that the subject property violated the International Property Maintenance Code and was therefore a public nuisance. The Court found that the vehicles involved do not meet the definition of "farm exempt" under the RCW because they are used for storage rather than transport and any licensing

ability to move them on public roads is irrelevant to the requirements for their storage while they are not being used for transport. The Court was not persuaded that Mr. Thompson engaged in the use of his property prior to the County adopting the regulation involved herein. The Court found that there was no taking and that there had been no deprivation of due process. The Court ordered the removal of all inoperable and/or unlicensed vehicles, at a minimum those vehicles listed on Exhibit "K" of the Iammarino Declaration, and that operability and proper licensure must be demonstrated to the code enforcement officer regarding any vehicles remaining upon the property, and that he must pay a fine of $500.

ARGUMENT

Standard of Review

Findings of fact are reviewed under the substantial evidence standard and conclusions of law de novo. *Isla Verde Intern. Holdings, In. v. City of Camas,* 99 Wn.App. 127, 134, 990 P.2d 429 (1999). Substantial evidence exists when the evidence in the record is of sufficient quantity to persuade a fair-minded rational person of the truth of the finding. *Hilltop Terrace Homeowner's Ass'n v. Island County,* 126 Wn.2d 22, 34, 891 P.2d 29 (1995). Under the substantial evidence standard, the reviewing court will not substitute its judgment for that of the fact finder. *Id.* Instead, the reviewing court accepts the fact finder's views regarding the

credibility of witnesses and the weight accorded to reasonable but competing inferences. *Id.* Whether something constitutes a nuisance has long been a question of fact in Washington. *Hardin v. Olympic Portland Dement Co.,* 89 Wash. 320, 325, 154 P. 450 (1916); *Washington Chocolate Co. v. Kent,* 28 Wn.2d 448, 454, 183 P.2d 514 (1947); *Peterson v. King County,* 45 Wn.2d 860, 864, 278 P.2d 774 (1954).

The Finding of Public Nuisance is Supported by Substantial Evidence.

Kittitas County has the "power to declare by ordinance what shall be deemed a nuisance within the county [and] to prevent, remove, and abate a nuisance at the expense of the parties creating, causing, or committing the nuisance." RCW 36.32.120(10). Kittitas County has done so by declaring a nuisance to include the violation of any "Kittitas County ordinances and codes, related to building [and] zoning," including Title 14 KCC: Building and Construction, and Title 17 KCC: Zoning. KCC 18.01.010(1). There are two public nuisance violations that are both alleged by the January 7, 2011 Notice of Violation and Abatement, and found to be nuisance violations by the Hearing Examiner. The two violations are: 1) the existence of a junkyard is not a permitted or conditional use in an AG-3 zone, and 2) failure to maintain property in a clean, safe, secure and sanitary condition, including the presence of

unlicensed and/or inoperative motor vehicles on the property in violation of the International Property Maintenance Code. (Mr. Thompson argues, at pages 10 and 11 of his brief, that the Notice of Violation and Abatement did not enunciate the nature of the alleged violations, but that Notice (HR #23 pg.2) clearly identifies the code provisions that he was violating.)

The Hearing Examiner properly found that there was substantial evidence that a junkyard existed on Appellant's property, and that this junkyard was a violation of KCC Title 17.[7] A junkyard is not an approved or a conditional permitted use in an AG-3 Zone. KCC 17.28.020-030. A "junkyard" is defined as "any lot, parcel, building, structure or portion thereof, used for the storage, collection, processing, purchase, sale, exchange, salvage or disposal of scrap materials, unlicensed or inoperable vehicles, vehicle parts, used appliances, machinery or parts thereof." KCC 17.08.330. In this case, Officer Iammarino observed an orange Chevy van, U-Haul truck, Coors truck and multiple other vehicles haphazardly stored on the Property on 10 different dates over a twenty six month period. HR #4, 7, 12, 13, 14, 15, 16, 18, 19, 21. Additionally, Officer Iammarino performed a site inspection where the vehicles were demonstrated to be inoperable and unlicensed. HR # 12. The Property is obviously being used for the storage of inoperable vehicles.

[7] Final Order, Findings of Fact #25 -26, Conclusions of Law #3, 4, and 5.

Mr. Thompson's own testimony before the Hearing Examiner confirms the presence of unlicensed and inoperable vehicles. In describing his response to a prior code enforcement action three years previous, he said he had put fifteen batteries in the twenty cars involved in that enforcement action (CR 6), all of which are still there and part of this action (HR #1 pg. 5), and was only able to start seven or eight. CR 6. In other words, the vast majority of them, even with batteries were still inoperable. When asked by the Hearing Examiner if the vehicles involved in this matter are operable, Mr. Thompson relied "Yes. If I want them to be." CR 7. In other words, no they are inoperable now, but some undisclosed or unknown amount of repair could possibly render them operable. Similarly, Mr. Thompson's testimony admitted that there are unlicensed vehicles on his property. He stated "They were all licensed at one time. Most of them are licensed now." CR 6. In other words some are currently unlicensed.

The Hearing Examiner properly concluded that the property is a junkyard as seen in the placement of the inoperable and unlicensed vehicles on the Property. Junkyards are not a permitted or conditional use in an AG-3 Zone. KCC 17.08.330; 17.28.020; 17.28.130. Therefore, a violation of KCC Title 17 is a public nuisance per Section 18.01.010 KCC. A finding of a nuisance is a question of fact. *Hardin v. Olympic*

Portland Dement Co., 89 Wash. 320, 325, 154 P. 450 (1916); *Washington Chocolate Co. v. Kent,* 28 Wn.2d 448, 454, 183 P.2d 514 (1947); *Peterson v. King County,* 45 Wn.2d 860, 864, 278 P.2d 774 (1954). Not only does substantial evidence support this finding of fact, there is no evidence in this record to support Mr. Thompson's contrary position. His own testimony admits the presence of unlicensed and inoperable vehicles. As the Hearing Examiner correctly found on page 5 of his Order, Mr. Thompson offered no documentary evidence that any of his vehicles were licensed. The County asks that the Hearings Examiner's and Superior Court's orders be affirmed.

The Hearing Examiner properly found that there was substantial evidence that inoperable and unlicensed vehicles existed on Mr. Thompson's Property and that these inoperable and unlicensed vehicles were a violation of KCC Title 14.[8] KCC 14.04.010(7) adopts the International Property Maintenance Code ("IPMC"). The IPMC states that:

> 301.3 Vacant structures and land: All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health and safety.
>
> 302.1 Sanitation: All exterior property and premises shall

[8] Final Order, Findings of Fact #29-30, Conclusions of Law #6

be maintained in a clean, safe and sanitary condition.

> 302.8 Motor Vehicles: Except as provided in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at anytime be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.

In this case, there are multiple unlicensed vehicles kept or stored, in various states of repair and inoperability. HR # 3, 7, 12, 13, 14, 15, 16, 18, 19, 21. Officer Iammarino had determined that these unlicensed vehicles were inoperable during a site visit to the Property as most of the vehicles had no battery, many had flat tires, and could have had any number of other mechanical problems rendering them inoperable. HR # 12. As explained above, Mr. Thompson's testimony admitted the presence of unlicensed and inoperable vehicles. Therefore, the failure to maintain the Property in compliance with the International Property Maintenance Code is a violation of KCC 14.04.010, and a violation of KCC Title 14 is a public nuisance per Section 18.01.010 KCC. The finding of a nuisance is a question of fact. *Hardin v. Olympic Portland Dement Co.,* 89 Wash. 320, 325, 154 P. 450 (1916); *Washington Chocolate Co. v. Kent,* 28 Wn.2d 448, 454, 183 P.2d 514 (1947); *Peterson v. King County,* 45 Wn.2d 860, 864, 278 P.2d 774 (1954). Not only does substantial evidence support this finding, but there is no evidence in this record contradicting the finding that Mr. Thompson has unlicensed and

inoperable vehicles on his property. Even his own testimony admits it. The County asks that the Hearings Examiner's and Superior Court's orders be affirmed.

Mr. Thompson tries to argue (pages 12-17 of his brief) that operability somehow requires more than not having a battery. As has been argued and cited above, the finding that a vehicle is inoperable (or unlicensed), and therefore a nuisance, is a question of fact in this State, and that finding is supported by substantial evidence in this matter. At page 14 of Thompson's brief they point out that Black's defines "inoperative" (not the word involved in this case) as, among other things, "not operative." He argues that, even though the lack of a battery renders a vehicle inoperative, being inoperative must be more than that because simply by installing a battery would render the car operative. This misses the point. The question of operability is asking "does the vehicle run right now?" not "could it be made to run with some amount of repair or replacement?" Currently the Titanic is inoperable. Some amount of repair and replacement could make it operable again, but it is still currently inoperable.

The *Smelter* case, cited by Mr. Thompson on pages 15 and 16 of his brief is inapplicable to this case. It is a case concerned with determining if a vehicle that has run out of gas is operable for purposes of

a charge of DUI. 36 Wn.App. 439, 440, 674 P.2d 690 (1984). The court specifically held that it was not ruling upon anything beyond that which would be related to charging under RCW 46.61.504. *Id.* A car that has run out of gas on a highway presumably arrived of its own power and, with the addition of gasoline, would leave on its own power.[9] A vehicle that has been sitting in a field since at least 2000 (HR #1 pg. 5) cannot be presumed to have gotten there under its own power nor can it be presumed that by a simple replacement it could start and move from that location under its own power. There is no evidence in the record supporting the notion that any of these vehicles came to their place of final rest upon Mr. Thompson's property under their own power, that they run now, that the addition of a functional battery would allow any of them to start, or that any that could start would be able to drive down a road.

Similarly, Mr. Thompson's argument that operability is a question of law and subject to de novo review fails. As argued and cited above, whether a vehicle is operable or inoperable, and hence whether it is or is not a nuisance, is a question of fact in Washington and that finding of inoperability and nuisance is supported by substantial evidence in this matter. This makes sense because the question of operability is simply

[9] This is essentially what the *Smelter* court was saying at 445 where it said "Where, as here, circumstantial evidence permits a legitimate inference that the car was where it was and was performing as it was because of the defendant's choice..."

asking does the vehicle run or not. That is a fact question just like determining if a traffic light was red or green. It either starts and can move or it cannot.

This case is based upon Mr. Thompson's violation of Chapters 14 and 17 of the Kittitas County Code, and that such violation constitutes a nuisance. Despite that, Mr. Thompson argues at pages 8-10 of his brief that the vehicles do not meet the definition of "junk vehicle" found in KCC 18.01.010(2)(r). Even if that were the code provision under which this action is governed, which it is not, Mr. Thompson would still fail. That code provision requires that at least two of the five criteria be met, and three are-(i) the vehicles are over three years old as admitted by Mr. Thompson, (iii) the vehicles are without valid licenses as admitted by Mr. Thompson in his testimony and as demonstrated by all evidence in this matter, and (iv) the vehicles are apparently inoperable, also as admitted by Mr. Thompson is his testimony and as demonstrated by all evidence in this matter.

The Orders Correctly Found No "Farm Exempt" Vehicles.

The Hearing Examiner and Superior Court orders correctly found no "farm exempt" vehicles in this matter. The then-current statute, RCW

46.16.010(5)(d),[10] created an exemption to the licensure requirement for a vehicle to operate upon Washington's roads for vehicles that "operated," were "operating or drawn upon the public highways," or were used "to transport."[11] Mr. Thompson, by his own admission, only uses these vehicles for storage. CR 7. Even that is something he merely asserted in the hearing and the Hearing Examiner (Finding of Fact #17) pointed out that Mr. Thompson had offered no photographic evidence that his trucks were used to store hay or oats. But even assuming he does store animal feed in them, a "farm exempt" vehicle, under the plain meaning of the statute, is one that is used for transport, not something that is permanently parked and whose only function is as a container. Said another way, the exemption is for vehicles that transport, not containers that sit.[12] The orders of the Hearing Examiner and Superior Court finding that Mr. Thompson has no "farm exempt" vehicles involved in this matter must be affirmed.

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[10] Cited by the Hearing Examiner on page 7 of the May 6, 2011 Order.

[11] Mr. Thompson, on pages 3 and 18-21, for some reason, argues RCW 46.16A.080 which was not yet law at the time, and RCW 46.04.181 which was never mentioned by the Hearing Examiner. The Hearing Examiner's findings and the County's arguments are still correct because even those statutes define a "farm vehicle" as something "used primarily...for the purpose of transporting." All evidence in this matter, including Mr. Thompson's own testimony, demonstrates that the vehicles in question are only used for storage and not for transport. So even if these statutes were relevant to this matter, Mr. Thompson's vehicles would not fit their definition.

[12] Even if the Court finds some of Mr. Thompson's vehicles farm exempt, they are still inoperable, and hence a nuisance subject to abatement.

Mr. Thompson Has Not Established a Non-Conforming Use.

The Superior Court correctly found that Mr. Thompson had failed to prove the existence of a legal non-conforming use.[13] Mr. Thompson argues, on pages 21-25 of his brief, that he has a legal non-conforming use despite any evidence in the record that would meet such a threshold showing. The Superior Court's determination that no non-conforming use exists must be affirmed.

There is no evidence in the record sufficient to establish a legal non-conforming use in this matter. In *McMilian v. King County*, 161 Wn.App. 581, 591, 255 P.3d 739 (2011), the Court of Appeals in Division I set forth the initial showing needed to prove the existence of a legal non-conforming use.

> Generally, a nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance, although it does not comply with the current zoning restrictions applicable to the district in which it is situated. A particular non-conforming use is defined in terms of the property's lawful use established and maintained at the time the zoning causing nonconformance was imposed. The use of the property must actually be established prior to the adoption of the zoning ordinance to qualify as a nonconforming use thereafter...The landowner bears the burden of establishing that a valid nonconforming use exists. The landowner asserting a prior legal, nonconforming use bears the initial burden to prove (1) the use existed before the county enacted the contrary zoning

[13] Superior Court Order (Exhibit "B"), pg. 2.

> ordinance; (2) the use was lawful at the time; and (3) the applicant did not abandon or discontinue the use for over a year prior to the relevant change in the zoning code. Moreover, to establish a valid nonconforming use, the use must have been more than intermittent or occasional prior to the change in the zoning legislation. (internal citations omitted)

Establishment of a legal nonconforming use is a question of fact and must be established by a preponderance of the evidence. *McQuillin, Municipal Corporations* §25.186; §25.188.50.

Mr. Thompson has not met this threshold and the finding of the Superior Court must be affirmed. The only thing in the record that could support Mr. Thompson's assertion that he has a legal non-conforming use is his assertion before the Hearing Examiner that he has had a license to restore cars since 1981. CR 7. "Courts have repeatedly found that licensing and other regulations unrelated to land use approval, whether business licensing, business and occupation tax regulations, or building permits, are not per se determinative of the continuance of a non-conforming use." *Van Sant v. City of Everett,* 69 Wn.App. 641, 651, 652, 849 P.2d 1276 (1993). There is no evidence in the record as to when this use ever began on the subject property, only an assertion that he had a license beginning in 1981. There is no evidence in the record showing that this alleged use was legal under the County's previous zoning. There is no evidence in the record that Mr. Thompson has neither abandoned nor

discontinued the alleged use. There is no evidence in the record that this alleged use was neither intermittent nor occasional. The burden for showing all of this to establish a legal nonconforming use is upon the person asserting such. By only asserting that he has had a license of some sort since 1981 does not prove any of these prerequisites, much less by the preponderance of evidence that is required. The establishment of a legal nonconforming use is a question of fact and substantial evidence exists in the record to support the Superior Court's determination that this use has not been established. Even if the Court found the existence of a legal nonconforming use, such use is still subject to later-enacted health, safety, and welfare regulations (such as zoning or the International Property Maintenance Code) that would allow the use to continue so long as it is enclosed. *Rhod-A-Zalea & 35th, Inc. v. Snohomish County,* 136 Wn.2d 1, 10, 959 P.2d 1024 (1998). The finding of the Superior Court that Mr. Thompson does not have a legal nonconforming use must be affirmed.

Kittitas County Code is Not Unconstitutionally Vague.

On pages 25-27 Mr. Thompson argues that Kittitas County Code is unconstitutionally vague because it does not define "apparently inoperable" or "unlicensed." This argument fails under the laws of this state.

"When a legislative enactment is challenged on vagueness

grounds, the issue is whether the two requirements of procedural due process are met: adequate notice to citizens and adequate standards to prevent arbitrary enforcement." *City of Seattle v. Huff,* 111 Wn.2d 923, 929, 767 P.2d 572 (1989). Under the due process clause, an "ordinance is unconstitutional when it forbids conduct in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application." *Burien Bark Supply v. King County,* 106 Wn.2d 868, 871, 725 P.2d 994 (1986). This test does not require strict specificity of an ordinance; an ordinance is not vague if persons of ordinary intelligence can understand it "notwithstanding some possible areas of disagreement." *Huff,* 111 Wn.2d at 929. "The fact that some terms in an enactment are undefined does not automatically mean that the enactment is unconstitutionally vague" *City of Spokane v. Douglas,* 115 Wn.2d 171, 180, 795 P.2d 693 (1990). Statements of law contained in statutes and in court rulings are "presumptively available to all citizens." *State v. Smith,* 111 Wn.2d 1, 7, 759 P.2d 372 (1988). RCW 7.48.010 defines actionable nuisance as "whatever is injurious to health or indecent or offensive to the senses…so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance." Moreover, the term "offensive is not an inherently subjective term that requires persons of ordinary intelligence to guess as to its meaning. *See, e.g.,* Black's Law Dictionary 1113 (8th ed.

1999)(defining offensive as "unpleasant or disagreeable to the senses"). Similarly, the terms "apparently inoperable" and "unlicensed" are not phrases that the ordinary person has to guess at the meaning. A person of ordinary intelligence can understand the words "inoperable," "apparently," and "unlicensed" even though there may be some possible areas of disagreement. Under the laws of this Sate, the want of a definition of these words does not render Kittitas County's code unconstitutionally vague.

The Hearing Examiner Did Not Prohibit Mr. Thompson From Examining Ms. Iammarino.

Mr. Thompson frivolously argues, on pages 27-29, that the Hearing Examiner violated Mr. Thompson's Due Process rights by "prohibiting" him from cross-examining the code enforcement officer. There is no evidence whatsoever in the record to support this argument and it is frivolous. In the hearing before the Hearing Examiner, after Mr. Thompson and his two witnesses had testified, the Hearing examiner asked him "Anything else Mr. Thompson?" CR 10. To which Mr. Thompson simply responded "No." CR 11. Nowhere did Mr. Thompson indicate any desire to question the code enforcement officer. Nowhere did Mr. Thompson indicate that he wanted to ask her anything or get her to clarify or explain anything. Nowhere is there any indication that Mr.

Thompson subpoenaed, or sought to subpoena the code enforcement officer. Nowhere is there any indication that the Hearing Examiner did anything whatsoever to thwart such inquiry. Nowhere is there any indication that the Hearing Examiner prevented Mr. Thompson from pursing some line of inquiry he voiced a desire to pursue. The argument that the Hearing Examiner prohibited cross-examination and thereby violated Mr. Thompson's constitutional rights is completely without support in this record, and therefore frivolous.[14]

Kittitas County is Entitled To All Its Attorney Fees.

Kittitas County is entitled to all of its attorney fees pursuant to several rules and regulations. First, Kittitas County is entitled to its attorney fees pursuant to RAP 18.9(a) for having to respond to frivolous arguments in a frivolous appeal. An appeal or argument is frivolous if there are no debatable issues upon which reasonable minds can differ and is so totally devoid of merit that there was no reasonable possibility of reversal. *In re Recall of Feetham,* 149 Wn.2d 860, 872, 72 P.3d 741 (2003). The Court resolves all doubts against finding an appeal frivolous after considering the record as a whole." *Delany v. Canning,* 84 Wn.App. 498, 510, 929 P.2d 475 (1997).

[14] Additionally, at page 28 of his brief, Mr. Thompson asserts that the code enforcement officer's declaration was hearsay despite the fact that it was made based upon her site visits, photographs, and personal observations. This assertion of hearsay is without support in the record and frivolous.

At least the last three issues the County has had to argue in this brief are frivolous. There is no evidence in the record to support Mr. Thompson's accusation that the Hearing Examiner prevented him from examining the code enforcement officer, thereby violating his rights. This argument of his is totally devoid of merit and, given this record, reasonable minds cannot disagree that this argument is frivolous. The argument that lacking a definition of words like "inoperable" or "unlicensed" is unconstitutionally vague is also totally devoid of merit and reasonable minds cannot differ as to the argument's frivolity. The argument that Mr. Thompson had established a legal nonconforming use when all he presented was the assertion of having some license since 1981, rather than make the showing outlined in *McMilian v. King County* is totally devoid of merit and reasonable minds cannot differ as to the argument's frivolity.

Second, the County is entitled to recover attorneys' fees and costs if it is the substantially prevailing party on appeal. RCW 4.84.370 provides, in part, as follows:

> (1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs *shall be awarded* to the prevailing party or substantially prevailing party on appeal before the court of appeals ... of a decision by a county, ...to issue, ...a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land

> use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:
>
> (a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town ...; and
>
> (b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

The County prevailed before the Hearing Examiner and the Kittitas County Superior Court. The Notice of Violation and Abatement has been affirmed in each instance and, if affirmed again on appeal, would entitle the County to fees under the statutory structure. See *Feil v. Eastern Washington Growth Management Hearings Board*, 153 Wn. App. 394, 417, 220 P.3d 1248 (2009); *Julian v. City of Vancouver*, 161 Wn. App. 614, 633, 255 P.3d 763 (2011) (Property owner was the substantially prevailing party because they received approval of their short plat even though the hearing examiner modified the approval by placing conditions on it); *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 383-84, 223 P.3d 1172 (2009) (awarding applicant fees against neighborhood group challenging cell tower). A code enforcement action is a land use decision eventually entitling the County attorney fees and costs should the County be successful before the Hearing Examiner, Superior Court, and Court of Appeals. *Mower v. King County,* 130 Wn.App. 707, 721, 125

P.3d 148 (2006). Because this provision applies to all parties that succeed on appeal, the County is entitled to attorney fees.

CONCLUSION

Kittitas County's Notice of Violation and Abatement must be affirmed as was done by the Hearing Examiner and the Kittitas County Superior Court. Additionally, Kittitas County is entitled to all of its attorney fees and costs related to this appeal.

Respectfully submitted this 12th day of February, 2013.

Neil A. Caulkins, WSBA#31759
Attorney for Kittitas County

Kittitas County Prosecutor
MAY 09 2011
Civil Division

EXHIBIT "A"

5/2/2011

COPY

KITTITAS COUNTY
LAND USE HEARING EXAMINER

IN THE MATTER OF THE JUNKYARD LOCATED AT	)	**No. CDS 11-0001**
	)	**FINAL ORDER AFFIRMING VIOLATION**
5241 Upper Peoh Pt. Rd, Cle Elum, Washington, 98922	)	

THIS MATTER having come on regularly for hearing this 28th day of April, 2011, on the Appellant's (Vern Thompson) motion for appeal; and Kittitas County having appeared through Suzanne Becker, Deputy Prosecuting Attorney, and the Appellant, Vern Thompson, having appeared; and the Hearing Examiner having considered the Declaration of Lisa Iammarino along with attached Exhibits A through Z, having heard testimony from Mr. Vern Thompson and other witnesses, having taken additional evidence at the open record public hearing and having heard oral argument;

NOW THEREFORE THE HEARING EXAMINER MAKES THE FOLLOWING:

FINDINGS OF FACT

1. The subject property is located at 5241 Upper Peoh Pt. Rd., Cle Elum, WA 98922, which is in Kittitas County, Washington (hereafter the "Property").

2. The Hearing Examiner admitted the following items into the record:

   2.1 February 17, 2011, Declaration of Lisa Iammarino with attached Exhibits A through Z.

2.2 Kittitas County motion to Affirm Notice of Violation and Abatement dated February 16, 2011.

2.3 Kittitas County motion to Exclude Non-Attorney from Representing Appellant dated February 16, 2011.

2.4 March 15, 2011, letter from the Hearing Examiner to Appellant Vern Thompson.

2.5 March 21, 2011, email from Rick Spence to the Hearing Examiner regarding continuance.

2.6 March 21, 2011, email from the Hearing Examiner to Kittitas County reference the request for continuance.

2.7 March 21, 2011, email from Kittitas County to the Hearing Examiner regarding the request for continuance.

2.8 March 22, 2011, letter from Vern Thompson to the Hearing Examiner.

2.9 March 22, 2011, Hearing Examiner Decision on motion to exclude non-attorney representation and Vern Thompson's motion for continuance.

2.10 March 22, 2011, letter from the Hearing Examiner to Vern Thompson.

2.11 March 25, 2011, Hearing Examiner Decision/Order of Continuance.

2.12 March 25, 2011, letter from Hearing Examiner to Kittitas County and Vern Thompson.

2.13 April 22, 2011, email from Attorney Powers to the Hearing Examiner.

2.14 April 22, 2011, series of emails from the Hearing Examiner to Attorney Powers; email from Kittitas County to the Hearing Examiner and Attorney

Powers; and email from Attorney Powers to the Hearing Examiner and Kittitas County.

2.15 April 25, 2011, Hearing Examiner Decision denying request by Attorney Powers for a continuance.

2.16 April 25, 2011, letter from the Hearing Examiner to Kittitas County, Attorney Powers and Vern Thompson enclosing Decision denying request for a continuance.

3. Mr. Vern Thompson is the owner of the Property and the Appellant.

4. The Property is located in an AG-3 Zone.

5. As of November 25, 2008, and continuing through January 7, 2011, there existed on the Property the following: multiple vehicles both operable and inoperable in various states of repair.

6. As of January 7, 2011, Officer Iammarino had a reasonable belief that a violation of KCC Title 14 and 17 occurred due to the existence of a Junkyard on the Property.

7. On January 7, 2011, Officer Iammarino issued Mr. Thompson a Notice of Violation and Abatement (NOVA) which included: 1) the street address of the property; 2) a description of the alleged violation and that the violation was observed on January 7, 2011; 3) that the alleged violation was of KCC Title 17 and the International Property Maintenance Code; 4) the fine of $500 issued to Mr. Thompson was payable to Kittitas County Code Development Services due thirty days from the end of the appeals period; 5) a description of the abatement action necessary; 6) a statement that Mr. Thompson could request an administrative hearing or must correct the violation

and pay the penalty; and 7) a statement that the costs of abatement incurred by the County may be assessed against the person named in the NOVA or the property.

8. That on January 7, 2011, Officer Iammarino issued Mr. Thompson a Notice of Violation and Abatement (NOVA) by sending the NOVA through both first-class and certified mail on January 7, 2011, with a 5-day return receipt requested to the last known address of Mr. Thompson.

9. That on January 28, 2011, Mr. Thompson submitted a written request for appeal of the Notice of Violation and Abatement, alleging that "the hole (sic) process is wrong" and "I'm signing this under duress."

10. That on January 28, 2011, the appeals fee was paid.

11. That on January 31, 2011, Officer Iammarino issued a Notice of Hearing for February 10, 2011, to Mr. Thompson by sending the Notice of Hearing through both first-class and certified mail on January 31, 2011, with a 5-day return receipt requested to the last known address of Mr. Thompson.

12. That on February 4, 2011, Mr. Thompson requested a continuance of the February 10, 2011, hearing.

13. That on February 14, 2011, Officer Iammarino issued a Notice of Hearing for March 24, 2011, to Mr. Thompson by sending the Notice of Hearing through both first-class and certified mail on February 14, 2011, with a 5-day return receipt requested to the last known address of Mr. Thompson.

14. At the March 24, 2011, hearing, no personnel were present with the ability to run the recording equipment to record this open record public hearing. Therefore, the

Hearing Examiner continued this matter to April 28, 2011, and issued a written order on March 25, 2011.

15. At the open record public hearing on April 28, 2011, the Hearing Examiner admitted into the record those items set forth in Findings of Fact No. 2.1 through 2.16, as well as the entire planning staff file of record.

16. Kittitas County relied upon the Declaration of Lisa Iammarino as well as Exhibits A through Z as their evidence in this matter. Kittitas County Deputy Prosecuting Attorney Suzanne Becker provided oral argument at the hearing.

17. Providing testimony at the hearing was Appellant Vern Thompson, 11023 26th Avenue SW, Seattle, Washington. Mr. Thompson denied the violations claiming that he is a car collector and that the vehicles located on his Property were either a part of his hobby in collecting cars and restoring them or they were farm vehicles used to store hay and oats. Mr. Thompson offered no photographic evidence to verify his testimony that the trucks on his Property, including those shown in photographs as being a Coors truck, a U-Haul truck and a Rainier Beer truck were being used to store hay and oats.

18. Mr. Thompson testified that most of the vehicles on his Property were licensed and that when batteries are put into the vehicles, the vehicles do run. Mr. Thompson offered no documentary evidence of any vehicles being licensed on the Property.

19. Mr. Thompson orally requested the matter to be continued so that he could seek an attorney. The Hearing Examiner denied this request for a continuance. The rationale for denying this request for continuance is contained in the Hearing Examiner

Decision dated April 22, 2011. The Hearing Examiner believes that Mr. Thompson has had several months to obtain legal representation and it is only either in the days prior to a scheduled hearing or, on this occasion, at the actual hearing itself, that Mr. Thompson requested a continuance to obtain legal counsel. The Hearing Examiner would specifically note that the Hearing Examiner denied a continuance of the March 24, 2011, hearing that was ultimately continued due to a personnel issue at that open record public hearing. Even so, apparently Mr. Thompson took no action to obtain an attorney until April 22, 2011, just six days prior to the scheduled hearing, when the Hearing Examiner was contacted by Attorney Powers.

20. Mr. Thompson admitted that there were approximately 20 cars on his Property as of the date of the hearing. Mr. Thompson did not deny that he was the owner of the Property located at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington.

21. Also testifying at the hearing was Gary Wivag of Cle Elum. Mr. Wivag testified that he has known Mr. Thompson for 20 years and has sold him cars as part of Mr. Thompson's hobby of collecting cars. He has also sold him older farm machinery.

22. Also testifying at the hearing was Mr. Rick Spence. Mr. Spence testified that Mr. Thompson is a collector and is not a junkyard operator. He testified that Mr. Thompson does not sell car parts.

23. The Kittitas County Code prohibits operation of a junkyard in an AG-3 Zoning District.

24. The Kittitas County Code declares a public nuisance for one who fails to maintain their property in a clean, safe, secure and sanitary condition, including the presence of unlicensed/inoperative motor vehicles on the property in violation of the International Property Maintenance Code. (Kittitas County Code)

25. A junkyard is defined as "[A]ny lot, parcel, building, structure or portion thereof, used for the storage, collection, processing, purchase, sale, exchange, salvage or disposal of scrap materials, licensed or inoperable vehicles, vehicle parts, used appliances, machinery or parts thereof." Officer Iammarino has observed multiple vehicles over multiple dates of unlicensed and inoperable vehicles being stored and collected upon the Property at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington. See Declaration of Lisa Iammarino with Exhibits C, F, K, L, M, N, O, Q, R and T. Based upon the storage and collection of inoperable and unlicensed vehicles on the Property at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington, the Hearing Examiner finds that said Property is a junkyard as defined by the Kittitas County Code.

26. The existence of the junkyard in an AG-3 Zone is prohibited and is a public nuisance pursuant to the Kittitas County Code. (Kittitas County Code)

27. There are no "farm exempt" licensed vehicles on the Property located at 5241 Upper Peoh Pt. Rd., Cle Elum, Washington. None of the vehicles stored and collected on the subject Property meet the definition within RCW 46.16.010(5). (See Declaration of Lisa Iammarino)

28. Mr. Thompson's claim that these unlicensed and inoperable vehicles are part of his hobby "collection" do not make him immune from his Property being declared to be a

junkyard because of the existence of unlicensed and inoperable vehicles on the Property over the course of time of the investigation of Lisa Iammarino.

29. The photographs contained as Exhibits within the Declaration of Lisa Iammarino demonstrate a violation of Section 302.8 of the International Property Maintenance Code which has been adopted by Kittitas County pursuant to KCC 14.04.010(7). Over the course of Ms. Iammarino's investigation of the subject Property, there are multiple inoperable vehicles kept or stored, in various states of repair with some being inoperable (Declaration of Lisa Iammarino, Exhibits C, F, K, L, M. N, O, Q, R and T).

30. A violation of International Property Maintenance Code 302.8 is hereby found. This violation is a public nuisance in violation of Kittitas County Code Title 14.

31. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

FROM THE FOREGOING FINDINGS OF FACT, THE HEARING EXAMINER DETERMINED THE FOLLOWING:

CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.

2. That this administrative hearing has the authority to perform an adjudication appeal over the Notice of Violation and Abatement issued by Kittitas County per KCC 18.02.030.

3. That the vehicles placed on the Property is a junkyard as defined by KCC 1708.330.

4. That there is more than one inoperable vehicle on the Property.

5. That the existence of a junkyard in an AG-3 Zone is a violation of KCC Title 17, and is a nuisance as defined by KCC Title 18.

6. That the multiple vehicles both operable and inoperable out in the open in an AG-3 Zone is a violation of the International Property Maintenance Code, KCC Title 14, and is a nuisance as defined by KCC Title 18.

7. The Kittitas County has established both violations are a nuisance by a preponderance of the evidence which included the declaration of Officer Iammarino as to the existence of multiple vehicles both operable and inoperable on the Property.

8. That Kittitas County has properly prepared and served the Notice of Violation and Abatement on the Appellant.

9. That the January 7, 2011, Notice of Violation and Abatement is affirmed.

10. That the Appellant, Mr. Thompson, is the owner of the Property and is therefore personally liable for the costs of abating the nuisance.

11. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

FINAL ORDER

IT IS HEREBY ORDERED that Kittitas County's motion to affirm the Violation is **GRANTED.**

As the owner of the Property, Mr. Thompson is ordered to:

1. Remove the following from the Property: Any inoperable or unlicensed vehicles and any other items that are not stored in a clean, safe, secure and sanitary manner. Removal of the above items shall be done within 30 days from the date of this Order.

At a minimum, those vehicles identified in Exhibit K shall be removed from the Property. Any and all other inoperable and/or unlicensed vehicles shall also be removed from the Property pursuant to this Order.

2. Demonstrate to Officer Iammarino that any remaining vehicles on the Property are operable and have current registration and license tags. This abatement review shall be scheduled at a date and time convenient to both Officer Iammarino and Mr. Thompson, but shall be no later than 60 days from the date of this Order.

3. Pay the $500 penalty assessed in the Notice of Violation and Abatement. The $500 penalty is due 30 days from the date of this Order.

Dated this 6th day of May, 2011.

KITTITAS COUNTY HEARING EXAMINER

Andrew L. Kottkamp, WSBA # 18741

EXHIBIT "B"

FILED

JUN 11 2012

JOYCE L. JULSRUD, CLERK
KITTITAS COUNTY, WASHINGTON

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

VERN THOMPSON, Appellant, v. KITTITAS COUNTY, Respondent.	NO.: 11-2-00228-7 FINAL ORDER

This matter came before the Court on the Appellant's appeal of an order from the Kittitas County Hearings Examiner. The Court, finding no just cause, denied a motion for continuance made at the time of oral argument by Appellant Thompson. The Court heard the oral argument of counsel for Respondent Kittitas County, Neil A. Caulkins, and Pro Se Appellant Vern Thompson. The Court considered the following documents:

1. Administrative Record before the Kittitas County Hearing Examiner; and
2. Transcript of proceedings before the Kittitas County Hearings Examiner; and
3. Appellant's brief; and

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KITTITAS COUNTY PROSECUTOR
KITTITAS COUNTY COURTHOUSE - ROOM 213
ELLENSBURG, WASHINGTON 98926-3129
TELEPHONE 509 962-7520

4. Respondent's brief; and

5. All other pleadings filed in this matter, with the exception of two untimely requests for judicial notice filed respectively on May 18th and May 21st, 2012.

Based on the argument of counsel and the evidence presented, the Court finds that the Hearings Examiner's findings of fact were supported by substantial evidence and that the Hearings Examiner committed no errors of law. The Court finds that the subject property meets the definition of a "junkyard" which is not allowed in the Ag-3 zone and is therefore a public nuisance. The Court finds that the subject property violates the International Property Maintenance Code and is also therefore a public nuisance. The Court finds that the vehicles involved here do not meet the definition "farm exempt" under the RCW because they are used for storage rather than transport and any licensing ability to move them on public roads is irrelevant to the requirements for their storage while they are not being used for transport. The Court is not persuaded that Mr. Thompson engaged in this use of his property prior to the County adopting the regulation involved herein. The Court finds that "grandfathering" is not applicable anyway to preexisting uses prohibited by regulations enacted to promote the public health, safety, and welfare, which both the zoning code and the International Property Maintenance Code were adopted to promote. The Court finds that no taking has occurred nor has there been a deprivation of due process because the regulation does not deny all uses of the property. The Court affirms the

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January 7, 2011 Notice of Violation and Abatement. The Court finds that Mr. Thompson is the owner of the subject property and is therefore personally liable for the costs of abating the nuisance.

Based on the above findings, It Is Ordered:

1. The Hearings Examiner's Order of May 6, 2011 is affirmed.

2. The findings of fact and conclusions of law found in the Hearings Examiner's Order of May 6, 2011 are incorporated herein by reference.

3. Mr. Thompson is ordered to:

   A. Remove the following from the property: any inoperable or unlicensed vehicles and any other items that are not stored in a clean, safe secure and sanitary manner. Removal of the above items shall be done within 30 days from the date of this Order. At a minimum, those vehicles identified in Exhibit K in the record before the Hearings Examiner shall be removed from the subject property. Any and all other inoperable and/or unlicensed vehicles shall also be removed from the subject property pursuant to this Order.

   B. Demonstrate to the Code Enforcement Officer that any remaining vehicles on the Property are operable and have current registration and license tags. This abatement review shall be scheduled at a date and time convenient to both the Code Enforcement Officer and Mr.

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Thompson, but shall be no later than 60 days from the date of this Order.

C. Pay the five hundred dollar ($500) penalty assessed in the Notice of Violation and Abatement. The $500 penalty is due 30 days from the date of this Order.

4. Appellant's motion for a continuance is denied.

Dated this 11th day of June, 2012.

FRANCES P. CHMELEWSKI

Superior Court Judge

Presented by:

Neil A. Caulkins, WSBA#31759
Deputy Prosecuting Attorney
Attorney for respondent Kittitas County

Approved as to form
Notice of presentation waived

Vern Thompson, Pro Se
Appellant

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THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

No. 30996-7-III

VERN THOMPSON,

Appellant,

v.

KITTITAS COUNTY,

Respondent.

AFFIDAVIT OF MAILING

ANGELA T. BUGNI, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of 18 years, not a party to the above-entitled proceeding and competent to be a witness therein.

On February 12, 2013, I filed via electronic transmission, the BRIEF OF RESPONDENT KITTITAS COUNTY, via the Court of Appeals Party Web Portal for:

Ms. Renee Townley
Clerk/Administrator
Court of Appeals, Division III
500 North Cedar Street
Spokane, WA 99201-1905

GREGORY L. ZEMPEL
KITTITAS COUNTY PROSECUTOR
Kittitas County Courthouse - Room 213
Ellensburg, WA 98926
(509) 962-7520

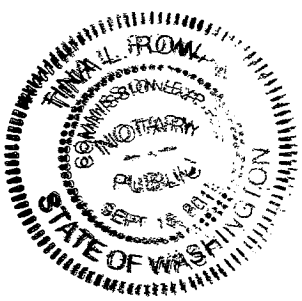
On February 12, 2013, I sent via US mail one copy of the BRIEF OF RESPONDENT KITTITAS COUNTY to the following individual(s) at the specified address(s):

Mr. W. Forrest Fischer
Groen Stephens and Klinge LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004-4405

placing said copies in a sealed envelope with postage prepaid thereon.

Angela T. Bugni
Legal Secretary

SUBSCRIBED AND SWORN to (or affirmed) before me this 12th day of February, 2013.



NOTARY PUBLIC in and for the
State of Washington.
My Commission Expires: 09/15/2013

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