

FILED
COURT OF APPEALS

06 SEP 25 AM 9:48

NO. 33823-8

STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE
OF WASHINGTON

JM
CLERK

DIVISION II

WASHOUGAL MOTOCROS, LLC
& MOSS & ASSOCIATES,

Appellants,

v.

EUGENE GREER, JIM TASKA, and CLARK COUNTY,

Respondents

REPLY BRIEF OF APPELLANTS

JAMES L. SELLERS
Attorney for Appellants

415 E. Mill Plain Blvd.
Vancouver, WA 98660
(360) 695-0464

PM 9/22/06

TABLE OF CONTENTS - REPLY ARGUMENT

	<i>page</i>
A. THE ISSUE IN THIS CASE IS WHETHER OR NOT WASHOUGAL MX MUST OPERATE UNDER A CONDITIONAL USE PERMIT THAT WAS ISSUED PURSUANT TO AN APPLICATION THAT WAS WITHDRAWN AND REPUDIATED BECAUSE OF THE IMPOSITION OF APPROVAL CONDITIONS RELATING TO SOUND THAT WERE NOT PROPOSED AS A PART OF THE APPLICATION FOR THE PERMIT.	20

B. THERE ARE NO COUNTY POLICE POWER REGULATIONS THAT ARE AT ISSUE OR THAT WASHOUGAL MX ATTACKS.	4

C. WASHOUGAL MX HAS ESTABLISHED AN ABUSE OF DISCRETION.	8

D. MORRIS V. CLACKAMAS COUNTY DOES NOT SUPPORT THE CONTENTION THAT THE ISSUANCE OF A PERMIT DISCONTINUES A NONCONFORMING RIGHT.	11

F. REPLY BRIEF APPENDIX A	-----

REPLY BRIEF TABLE OF AUTHORITIES

Table of Cases from Washington State

	<i>page</i>
<i>Durocher v. King County</i> , 80 Wn.2d 139, 155-156, 492 P.2d 547 (1972)	5, n.16
<i>Ford v. Bellingham-Whatcom County District Board of Health</i> , 16 Wash. App. 709, 716, 558 P.2 nd 821 (1977)	9, n.25
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)	10, n.27
<i>Leonard v. Bothell</i> , 87 Wash.2d 847, 849- 850, 557 P.2d 1306 (1976)	5, n.16
<i>Lybbert v. Grant County</i> , 141 Wn.2d 29, 1 P.3d 1124, 1127 (2000)	9, n.26
<i>Wilhelm v. Beyersdorf</i> , 100 Wash. App. 836, 847-848, 999 P.2d 54 (2000)	9, n.25

Case from Oregon State

<i>Morris v. Clackamas County</i> , 27 Or. LUBA 438 (1994)	11, & n.30
---	------------

State of Washington: Constitutional Provisions

Wash. St. Const, Art. XI, § 11	4
--------------------------------------	---

State of Washington: Statutes

Ch. 36.70C RCW	2, n.5; 8, n.23
RCW 36.70C.120	2, n.5; 8, n.23
RCW 36.70C.130	2, n.5; 8, n.23

Regulations and Rules

State of Washington:

Ch. 173-60 WAC	4, n.13; 7
WAC 173-050(3)(g)	4, n.12; 6, n.18
WAC 173-60-040	6, n.20; 7
.....	

Clark County:

CCC 18.404.060	4, n.10
CCC 40.510.030	4, n.11
CCC 20.05.025(3)(g)	6, n.20

Superior Court Rules:

CR 41(a)(2)	10, n.28
-------------------	----------

Secondary Authorities

6A McQuillin <i>Mun Corp</i> § 24.02 (3 rd Ed.)	5
<i>WABar: Appellate Practice Deskbook</i> (2005)§18.5	9

Note on Citations to the Record

The County's Certified Appeal Board Record (the County record of the proceedings and documents on the conditional use permit application) are in a box identified as number 2 in the County Clerk's Index of Exhibits. The documents in the box are from hearings before Larry Epstein, the Clark County Hearings Examiner, and from the closed-record appeal hearings before the Board of Clark County Commissioners that followed each of two decisions by the Examiner on the matter of the conditional use permit application. The Examiner conducted hearings beginning on May. 9, 2002 and rendered a 1st decision, which was appealed to the Board, which conducted a closed record appeal hearing beginning on August 20, 2002. From that appeal hearing, the Board then remanded the case back to the Examiner for further hearings before the Examiner. The Examiner's second decision from hearings commencing on Sept. 9, 2003, was again appealed to the Board. Documents from the Examiner's first set of hearings are numbered and tabbed consecutively, beginning with the number "1". Some of the documents unique to each of the appeal hearings to the Board that followed the Examiner decision are tabbed and numbered consecutively, beginning "1A", "2A", etc. Other documents in the Board's record from each of the appeal hearings are not identified except by title, date and author; these documents precede the tabbed documents. Unfortunately, the documents and tabs for the second set of hearings before the Examiner also are numbered consecutively beginning with the number "1". The documents unique to the Commissioners' appeal hearings in the appeal of the second decision are also numbered beginning "1A, "2A", etc., although again, some of the

Board's documents are only identifiable by title, date and author; again, these documents precede the tabbed documents. The Examiner's exhibits (documents) are listed in two "Hearing Examiner Exhibits" lists for each set of hearings. Citation to the Examiner's hearing exhibits will be by reference to the Examiner's exhibit number, preceded by "A" for the exhibits for the hearings beginning on May 9, 2002 before the Examiner's first decision, and preceded by "B" for the exhibits for the second set of hearings beginning on Sept. 9, 2003 for the second decision. The "A" and "B" will be followed by an "E". So for example, exhibit 33 of the second set of hearings will be "BE-33". Documents from the corresponding Board record will be identified in the same way, except "B" will be used instead of "E"; and except that if the documents have not been otherwise identified in the Board's record by number or tab, the documents will be identified by title and date, preceded by "App-1" for the first appeal hearing or "App-2" for the second appeal hearing. When the documents are not on paper with numbered lines, the citation will usually contain reference to the part in which the referenced material can be found. "page 3, part A.1.a" is an example. The Examiner's exhibit list for his hearings beginning on May. 9, 2002 are appendix A. The Examiner's exhibit list for his hearings beginning on Sept. 9, 2003 are appendix B.

REPLY ARGUMENT

- A. THE ISSUE IN THIS CASE IS WHETHER OR NOT WASHOUGAL MX MUST OPERATE UNDER A CONDITIONAL USE PERMIT THAT WAS ISSUED PURSUANT TO AN APPLICATION THAT WAS WITHDRAWN AND REPUDIATED BECAUSE OF THE IMPOSITION OF APPROVAL CONDITIONS RELATING TO SOUND THAT WERE NOT PROPOSED AS A PART OF THE APPLICATION FOR THE PERMIT.**

Greer makes several arguments that proceed under the erroneous proposition that Washougal MX has stated a challenge to the conditional use permit that was issued, or some of its conditions, or the authority of the County to issue it.¹ Washougal MX makes no such arguments. Rather, Washougal MX has clearly taken the position that it is not obligated to accept the permit, and that Washougal MX can continue to operate under its prior nonconforming use rights.²

In mischaracterizing Washougal MX's legal position, Greer asserts that the Board of County Commissioners rejected Washougal MX's withdrawal of the conditional use permit application and involuntarily

imposed the permit on Washougal MX.³ Judge Bennett apparently shared Greer's view of what occurred in that regard.⁴ However, the Court was either sitting in an appellant capacity pursuant to LUPA⁵ or as a trial court hearing a motion for summary judgment, and the trial court took no testimony from any witnesses.⁶ Judge Bennett ruled from documents, based on the same written record that is now before the Court of Appeals. The trial judge's opinion is not based on any factual findings supported by facts adduced by him. Rather, they represent Judge Bennett's characterization of what appears in the written record on appeal, or before him on summary judgment.

The Board of County Commissioners did not overrule or even directly address Washougal MX's withdrawal and repudiation of the conditional use permit.⁷ Rather the Board merely acted to render a decision on the appeal of Examiner Epstein's decision on the permit application, as recommended by the Board's counsel, in order to bring the appeal proceedings to a conclusion. In fact, Mr. Lowry, the Board's

¹ Respondent's Opening Brief ("Greer Brief"), beginning on page 11 & 12.

² opening Brief of Appellants.

³ Greer Brief, page 7, and pages 13-16.

⁴ Greer Brief, page 7 and note 27.

⁵ See Ch. 36.70C RCW generally and RCW 36.70C.120-130 specifically.

⁶ opening Brief of Appellants, page 20.

⁷ See opening Brief of Appellants, pages 13, 40 and 41.

counsel, advised the Board at the time that a party could “abandon, reject, not take advantage of a permit that the county issues if they chose to do so.”⁸ These facts are covered on page 13 of the opening Brief of Appellants, which are based upon: CP 33, Page 3, Lines 6-9; BB-1A; CP 34, page 2, lines 21-22; CP 34, page 3, lines 6-10, 10-14, & 20-25; CP 34, page 4, lines 1-2 and lines 15-17; CP 34, page 5, lines 19-22; and App-2, Board of County Commissioners Resolution No. 2004-2-10.

The issue is not whether the permit issuance was *ultra vires* as Greer argues on page 12 of Respondent’s Opening Brief. Nor is there a defect in the appeal because Washougal MX failed to appeal the Board’s decision on the permit.⁹ There is no collateral attack on the Examiner’s and Board’s decision to approve a conditional use permit. There was nothing to appeal or collaterally attack because Washougal MX abandoned the permit application and declined the permit. Washougal MX has merely appealed Judge Bennett’s involuntary imposition of the permit under the Doctrine of Estoppel, and his interpretation that the permit decision caused the uses at Washougal MX to become conforming, thereby extinguishing Washougal MX’s prior nonconforming use rights.

⁸ CP 34, page 4, lines 15-17.

⁹ Greer so contends at page 12 of his brief.

B. THERE ARE NO COUNTY POLICE POWER REGULATIONS THAT ARE AT ISSUE OR THAT WASHOUGAL MX ATTACKS.

Greer argues at page 15 of his brief that Washougal MX challenges “the application of police power regulations to the Motocross’ noise impacts”, which “(t)he Hearing Examiner and the BOCC rejected”.

There are really only two police power enactments at issue. One is the adopted regulation under which the Hearing Examiner is empowered to act on conditional use permit applications¹⁰, which the Board of Commissioners can hear on appeal¹¹. The other is the “existing authorized facilities exemption”¹² of the “State sound standards”.¹³ Washougal MX challenged neither. Rather Washougal MX challenged the imposition of Examiner Epstein’s own sound standards¹⁴, which he imposed as permit conditions.¹⁵ Those conditions are not police power enactments.

The County’s source of its police power is found in Wash. St. Const., Art. XI, § 11, which provides that “(a)ny county, . . . may make

¹⁰ CCC 18.404.060 (Appendix A, page 4 of 6, Greer Brief)

¹¹ CCC 40.510.030, but specifically subsection H.3. *See* this Reply Brief Appendix A, pages 8 & 9..

¹² WAC 173-60-050(3)(g)

¹³ Ch. 173-60 WAC

¹⁴ App-2: Applicant’s And Landowners’ Amended Appeal, James L. Sellers

¹⁵ App-2: Final Order On Remand, Dated Nov. 4, 2003, page 38, C (Also CP 2, Ex C)

and enforce . . . local police, sanitary and other regulations”

[underlining added for emphasis].

“The power, moreover, can be exercised only by a legislative body or directly by the electorate in a democracy where all legislative power is vested in the people or their legislature. The conclusion necessarily follows that the police power is inseparable from legislative power.” 6A McQuillin *Mun Corp* § 24.02 (3rd Ed.)

Although the conditions imposed by Examiner Epstein may have been imposed pursuant to a police power enactment of the county legislative authority, the imposition of those conditions was an administrative rather than a legislative act.¹⁶

Greer argues on page 18 of his brief that Washougal MX “would have this Court assume” that Washougal MX’s nonconforming use rights protected a right to cause “significantly detrimental” noise impacts notwithstanding the “County’s validly-adopted police power regulations that were otherwise applicable”. Epstein’s sound limiting conditions of approval, as upheld by the Board of Commissioners on appeal, were not police power regulations; the conditions were not “enactments”¹⁷. The police power regulation applicable to sound was the “existing authorized

¹⁶ *Durocher v. King County*, 80 Wn.2d 139, 155-156, 492 P.2d 547 (1972); *Leonard v. Bothell*, 87 Wash.2d 847, 849-850, 557 P.2d 1306 (1976).

¹⁷ The conditions are at: App-2: Final Order On Remand, Dated Nov. 4, 2003, page 38, C (Also CP 2, Ex C)

facilities exemption”¹⁸ that exempted the racing activity at Washougal MX.

In note 60 of Greer’s brief he argues that the Examiner disagreed with the availability of the “existing authorized facilities exemption”. The Examiner did not disagree with the availability of the exemption, which he actually expressly determined did apply.¹⁹ In the portion of the Examiner’s decision that note 60 quotes, if one reads it in context, the Examiner is merely pointing out that the “existing authorized facilities exemption” did not pertain to sounds other than those actually exempted – that the exemption did not apply to sounds from the Washougal MX site that were not from “racing events at existing authorized facilities”.²⁰ Washougal MX has at no time contended that sounds of the site that were not related to racing events were exempt.

¹⁸ WAC 173-60-050(3)(g)

¹⁹ CP 34; App-2: Final Order On Remand, Dated Nov. 4, 2003, page 2-3, 8a.. (Also CP 2, Ex C)

²⁰ App-2: Final Order On Remand, Dated Nov. 4, 2003, page 2-3, item 8.a: “All noise from sanctioned racing events and contemporaneous related activity at the Motocross is exempt from maximum noise exposure regulations in Washington Administrative Code (“WAC”) 173-60-040. However noise is not exempt if it is from non-sanctioned racing events, non-racing events, or activity that is not part of sanctioned events (e.g., is distinct from those events in time). CCC 20.05.025(3)(g) requires noise from non-exempt activities to comply with WAC 173-60-040. Applicability of and interpretation of ambiguities in WAC 173-60-040 are questions of law.” (The Final Order On Remand also appears at CP 2, Ex. C.)

Greer further argues that Washougal MX is asserting that it would accept the permit only “if the County agreed to suspend its police power authority.” Washougal MX did not at any time take the position that it would withdraw its permit application unless the County nullified a legally enacted regulation. Washougal MX’s objections were directed to the imposition of discretionary conditions of approval that imposed the Examiners’ own sound limitations.²¹

On page 30 of Greer’s brief he argues that Washougal MX argues that its nonconforming right involves “the right to cause noise pollution in excess of the state and local standards” – the “right to cause a nuisance”. Although Washougal MX has argued that its nonconforming rights are in excess of the sound limitations that Examiner Epstein himself concocted as conditions of approval, those rights are consistent and in compliance with the “racing events at existing authorized facilities” exemption from the State noise standards of Ch. 173.60 WAC.²²

²¹ App-2: Applicant’s And Landowners’ Amended Appeal, James L. Sellers

²² CP 34; App-2: Final Order On Remand, Dated Nov. 4, 2003, page 2-3, 8.a.. (Also CP 2, Ex C)

C. WASHOUGAL MX HAS ESTABLISHED AN ABUSE OF DISCRETION.

Washougal MX should not have to establish an abuse of discretion, and certainly not in the fashion argued by Greer as he begins to argue on page 21 of his brief. Judge Bennett sat in an appellate capacity in his review of the LUPA petition.²³ His decision on estoppel, to the extent that it is based on the LUPA record, did not involve the weighing of evidence, sorting out conflicting testimony, or evaluating the credibility of witnesses. He stood in no better position to render a decision on estoppel than the Court of Appeals does now.

The Washington cases cited by Greer for the proposition that Washougal MX must show an abuse of discretion are cases in which the trial court was called upon to witness and evaluate evidence and testimony presented to the court.²⁴ The ruling that an abuse of discretion must be shown was based on the application of the substantial evidence rule to that evidence and testimony.²⁵ Further as stated in *WABar: Appellate Practice*

²³ See Ch. 36.70C RCW generally and RCW 36.70C.120-130 specifically.

²⁴ See Greer Brief, note 40.

²⁵ *Wilhelm v. Beyersdorf*, 100 Wash. App. 836, 847-848, 999 P.2d 54 (2000); *Ford v. Bellingham-Whatcom County District Board of Health*, 16 Wash. App. 709, 716, 558 P.2nd 821 (1977) – “The trial court heard as well as observed the witnesses who testified for the parties. . . .”

Deskbook (2005)§18.5, in discussing the issue of the review of equitable determinations for abuse of discretion:

“ . . . deference is appropriate where the trial court is called on to consider and weigh a number of different factors that depend heavily on the facts of the case. Thus, decisions in equity are generally reviewed for an abuse of discretion.”

* * *

“ . . . deference is appropriate for the many discretionary procedural rulings for which there is no single correct result and that are heavily fact-dependent.”

Further, to the extent to which Judge Bennett rendered his estoppel decision in ruling on Greer and Taska’s summary judgment motion, Judge Bennett was obligated to view the evidence in a light most favorable to Washougal MX, the nonmoving party.²⁶

Washougal MX argued extensively in the opening Brief of the Appellants that Judge Bennett’s estoppel ruling did not comport with the law on estoppel, arguments that Washougal MX will not repeat in this Reply Brief. Suffice to say that if the Superior Court failed to follow the law on estoppel that would constitute an abuse of discretion.²⁷

Further, the analogy to application of the court rule²⁸ on voluntary dismissal should not operate in this case. An application for a discretionary land use approval, such as a conditional use permit, is not the

²⁶ *Lybbert v. Grant County*, 141 Wn.2d 29, 1 P.3d 1124, 1127 (2000)

²⁷ *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)

same thing as a private lawsuit between parties to a dispute who are in court for an adjudication of their differences. A land use permit requests review and permission to use or develop land. In a land use permit proceeding adverse parties are not involuntarily joined to the action by a summons. Although property rights of the permit applicant are sometimes adjudicated when an administrative agency acts on a land use application, that is not an inevitable consequence of an application for a permit, the issuance of which is governed at least by constitutionally sufficient legal standards. Greer has not cited even one court decision, court rule, or statute that supports analogizing the court rule on voluntary dismissals to the withdrawal of a land use application. To do so now would inequitably saddle Washougal MX with an unforeseeable rule of first impression that contravenes principles of reliance that have always governed the application of the Doctrine of Estoppel in the decisional law of this state.²⁹

**D. MORRIS V. CLACKAMAS COUNTY DOES NOT
SUPPORT THE CONTENTION THAT THE ISSUANCE OF
A PERMIT DISCONTINUES A NONCONFORMING
RIGHT.**

²⁸ CR 41(a)(2), page 23 of Greer Brief.
APPELLANTS' REPLY BRIEF - 10

Greer makes the argument that *Morris v. Clackamas County*³⁰ is authority for the proposition that abandonment is not an issue and that the issuance of a permit for a nonconforming use automatically constitutes discontinuance of the nonconforming right. Greer substantially misconstrues that Oregon administrative decision.

In *Morris v. Clackamas County* a mobile home installed in June 1967 became a nonconforming use when the prevailing zoning district regulations were changed to disallow mobile homes. In 1976, the district regulations were again amended to allow an individual mobile home as a conditional use. In 1978 the landowner applied for and received issuance of a conditional use permit to replace the prior nonconforming mobile home, for which no conditional use permit had previously been issued. Although the conditions of approval limited the use of the parcel to but one residence, the landowner nevertheless sought and received a temporary one-year permit for the occupancy by the landowner's elderly mother of a second residence, which was the mobile home that had been replaced by the mobile home authorized by the conditional use permit. The temporary permit was renewed each year for ten years until after the death of the landowner's mother. At that time the LUBA board held that

²⁹ See opening Brief of Appellants, pages 20-30, D.1.
APPELLANTS' REPLY BRIEF - 11

the temporarily permitted mobile home enjoyed no nonconforming use status and had to be removed; that by receiving a conditional use permit for the replacement mobile home, any nonconforming use status terminated because the prior nonconforming use became a permitted use under the conditional use permit.

The facts and holding in *Morris v. Clackamas County* are clearly different from the circumstances of Washougal MX. In *Morris v. Clackamas County* the landowner replaced the prior nonconforming mobile home with another mobile home authorized by a conditional use permit for which the landowner had submitted an application and received approval; the replaced home only continued under a temporary permit because a second residence on the property was otherwise not permitted. In other words, the landowner received permission for the use for which he had submitted and received the conditional use permit, and apparently engaged in that use pursuant to the permit (occupied the replacement home) for over ten years. In that manner, the nonconforming use became a permitted use, which terminated the nonconforming use status.

Conversely, Washougal MX did not obtain approval for the uses for which it sought a permit because the conditions of the permit limited

³⁰ 27 Or. LUBA 438 (1994)

the actual uses for which approval had been sought. Further, not only did Washougal MX not operate under the permit, Washougal MX rejected the permit before the conclusion of the proceedings for its issuance³¹. Finally, Washougal MX had announced on three separate occasions during the processing of the permit application that Washougal MX would not accept a permit with sound limitations that deprived it of the benefit of the “existing authorized facilities exemption”³² of the “State sound standards”.³³ ³⁴ In other words, whereas in *Morris v. Clackamas County* the mobile home replacing a prior nonconforming mobile home became a conforming use because the landowner continued to occupy the replacement mobile home pursuant to the conditional use permit, which was the use for which the application was submitted and approved, the conditional use permit approved for Washougal MX altered the allowance of the uses for which the application was submitted and Washougal MX never accepted or operated under the permit. The prior nonconforming uses at Washougal MX never conformed to the sound limitation

³¹ CP 33, Page 3, Lines 6-9; BB-1A

³² WAC 173-60-050(3)(g)

³³ Ch. 173-60 WAC

³⁴ CP 38, page 29, lines 15-24; *Id* at page 168, lines 19-23; CP 19, attached Declaration of Richard S. Lowry; BB-2A, page 2, lines 11-13. Notwithstanding these clear citations to the record, Greer argues that Washougal MX only stated its intention once on the record, in the letter to Lowry.

conditions of the conditional use permit, and those uses therefore never became conforming or permitted.

September 21 2006

Respectfully submitted,



James L. Sellers, WSBA # 4770
Attorney for Washougal MX, Appellant

40.510.030 Type III Process – Quasi-Judicial Decisions**A. Pre-Application Review.**

1. The purposes of pre-application review are:
 - a. To acquaint county staff with a sufficient level of detail about the proposed development to enable staff to advise the applicant accordingly;
 - b. To acquaint the applicant with the applicable requirements of this code and other law. However, the conference is not intended to provide an exhaustive review of all the potential issues that a given application could raise. The pre-application review does not prevent the county from applying all relevant laws to the application; and
 - c. To provide an opportunity for other agency staff and the public to be acquainted with the proposed application and applicable law. Although members of the public can attend a pre-application conference, it is not a public hearing, and there is no obligation to receive public testimony or evidence.
2. Pre-application review is required for applications, with the following exceptions:
 - a. The application is for a post-decision review, as described in Section 40.520.060; or
 - b. The applicant applies for and is granted a pre-application waiver from the responsible official. The form shall state that waiver of pre-application review increases the risk the application will be rejected or processing will be delayed. Pre-application review generally should be waived by the responsible official only if the application is relatively simple. The decision to waive a pre-application can be appealed as a Type I decision.
3. To initiate pre-application review, an applicant shall submit a completed form provided by the responsible official for that purpose, the required fee, and all information required by the relevant section(s) of this code. The applicant shall provide the required number of copies of all information as determined by the responsible official.
4. Information not provided on the form shall be provided on the face of the preliminary plat, in an environmental checklist or on other attachments. The responsible official may modify requirements for pre-application materials and may conduct a pre-application review with less than all of the required information. However, failure to provide all of the required information may prevent the responsible official from identifying all applicable issues or providing the most effective pre-application review and will preclude contingent vesting under Section 40.510.030(G). Review for completeness will not be conducted by staff at the time of submittal and it is the responsibility of the applicant.
5. Within fifteen (15) calendar days after receipt of an application for pre-application review, the responsible official shall mail written notice to the applicant and to other interested agencies and parties, including the neighborhood association in whose area the property in question is situated. The notice shall state the date, time and location of the pre-application conference, the purposes of pre-application review, and the nature of the conference.
6. The responsible official shall coordinate the involvement of agency staff responsible for planning, development review, roads, drainage, parks and other subjects, as appropriate, in the pre-application review process. Relevant staff shall attend the pre-application conference or shall take other steps to fulfill the purposes of pre-application review.
7. The pre-application conference shall be scheduled at least five (5) calendar days after the notice is mailed but not more than twenty-eight (28) calendar days after the responsible official accepts the application for pre-application review. The responsible official shall reschedule the conference and give new notice if the applicant or applicant's representative cannot or does not attend the conference when scheduled.

8. Within seven (7) calendar days after the date of the pre-application conference, the responsible official shall mail to the applicant and to other parties who sign a register provided for such purpose at the pre-application conference or who otherwise request it in writing, a written summary of the pre-application review. The written summary generally shall do the following to the extent possible given the information provided by the applicant:
 - a. Summarize the proposed application(s);
 - b. Identify the relevant approval criteria and development standards in this code or other applicable law and exceptions, adjustments or other variations from applicable criteria or standards that may be necessary;
 - c. Evaluate information the applicant offered to comply with the relevant criteria and standards, and identify specific additional information that is needed to respond to the relevant criteria and standards or is recommended to respond to other issues;
 - d. Identify applicable application fees in effect at the time, with a disclaimer that fees may change;
 - e. Identify information relevant to the application that may be in the possession of the county or other agencies of which the county is aware, such as:
 - (1) Comprehensive plan map designation and zoning on and in the vicinity of the property subject to the application;
 - (2) Physical development limitations, such as steep or unstable slopes, wetlands, well head protection areas, or water bodies, that exist on and in the vicinity of the property subject to the application;
 - (3) Those public facilities that will serve the property subject to the application, including fire services, roads, storm drainage, and, if residential, parks and schools, and relevant service considerations, such as minimum access and fire flow requirements or other minimum service levels and impact fees; and
 - (4) Other applications that have been approved or are being considered for land in the vicinity of the property subject to the proposed application that may affect or be affected by the proposed application.
 - f. Where applicable, indicate whether the pre-application submittal was complete so as to trigger contingent vesting under Section 40.510.030(G).
9. An applicant may submit a written request for a second pre-application conference within one (1) calendar year after an initial pre-application conference. There is no additional fee for a second conference if the proposed development is substantially similar to the one reviewed in the first pre-application conference or if it reflects changes based on information received at the first pre-application conference. A request for a second pre-application conference shall be subject to the same procedure as the request for the initial pre-application conference.
10. A request for or waiver of a pre-application review for a given development shall be filed unless the applicant submits a fully complete application that the responsible official finds is substantially similar to the subject of a pre-application review within one (1) calendar year after the last pre-application conference or after approval of waiver of pre-application review.

B. Review for Counter Complete Status.

1. Before accepting an application for review for fully complete status, and unless otherwise expressly provided by code, the responsible official shall determine the application is counter complete.
2. The responsible official shall decide whether an application is counter complete when the application is accepted, typically "over the counter."
3. An application is counter complete if the responsible official finds that the application purports and appears to include the information required by Section 40.510.030(C)(3); provided, no effort shall be made to evaluate the substantive adequacy of the information in the application in the counter complete review process. Required information which has been waived by the responsible official shall be replaced by a determination from the

responsible official granting the waiver.

4. If the responsible official decides the application is counter complete, then the application shall be accepted for review for fully complete status.
5. If the responsible official decides the application is not counter complete, then the responsible official shall immediately reject and return the application and identify what is needed to make the application counter complete.

C. Review for Fully Complete Status.

1. Before accepting an application for processing, the responsible official shall determine that the application is fully complete.
2. The responsible official shall decide whether an application is fully complete subject to the following:
 - a. Within twenty-one (21) calendar days after the responsible official determines the application is counter complete; or
 - b. Within fourteen (14) calendar days after an application has been resubmitted to the county after the application has been returned to the applicant as being incomplete.
3. An application is fully complete if it includes all the required materials specified in the submittal requirements for the specific development review application being applied for and additional materials specified in the pre-application conference. If submittal requirements are not specified in the applicable code sections the application is fully complete if it includes the following:
 - a. A signed statement from the applicant certifying that the application has been made with the consent of the lawful property owner(s) and that all information submitted with the application is complete and correct. False statements, errors, and/or omissions may be sufficient cause for denial of the request. Submittal of the application gives consent to the county to enter the property(ies) subject to the application;
 - b. A written narrative that addresses the following:
 - (1) How the application meets or exceeds each of the applicable approval criteria and standards; and
 - (2) How the issues identified in the pre-application conference have been addressed, and generally, how services will be provided to the site;
 - c. A current County Assessor map(s) showing the property(ies) within a radius of the subject site as required in Sections 40.510.030(E);
 - d. A legal description supplied by the Clark County survey records division, a title company, surveyor licensed in the state of Washington, or other party approved by the responsible official, and current County Assessor map(s) showing the property (ies) subject to the application;
 - e. Unless the responsible official has waived the pre-application conference, a copy of the pre-application conference summary, and information required by the pre-application conference summary, unless not timely prepared as required by Section 40.510.030(A)(7);
 - f. A preliminary site plan or plat that shows existing conditions and proposed improvements;
 - g. The applicable fee(s) adopted by the board for the application(s) in question;
 - h. Any applicable SEPA document, typewritten or in ink and signed.
4. An application shall include all of the information listed as application requirements in the relevant sections of this code.
 - a. The responsible official may waive application requirements that are clearly not necessary to show an application complies with relevant criteria and standards and may modify application requirements based on the nature of the proposed application, development, site or other factors. Requests for waivers shall be reviewed as a Type I process before applications are submitted for counter complete review or the application must contain all the required information;
 - b. The decision about the fully complete status of an application, including any

required engineering, traffic or other studies, shall be based on the criteria for completeness and methodology set forth in this code or in implementing measures timely adopted by the responsible official and shall not be based on differences of opinion as to quality or accuracy.

5. If the responsible official decides an application is not fully complete, then, within the time provided in Section 40.510.030(C)(2), the responsible official shall send the applicant a written statement indicating that the application is incomplete based on a lack of information and listing what is required to make the application fully complete.
 - a. The statement shall specify a date by which the required missing information must be provided to restart the fully complete review process pursuant to Section 40.510.030(C)(2)(b). The statement shall state that an applicant can apply to extend the deadline for filing the required information, and explain how to do so.
 - b. The statement also may include recommendations for additional information that, although not necessary to make the application fully complete, is recommended to address other issues that are or may be relevant to the review.
6. If the required information is not submitted by the date specified and the responsible official has not extended that date, within seven (7) calendar days after that date the responsible official shall take the action in Section 40.510.030(C)(6)(a) or (C)(6)(b). If the required information is submitted by the date specified, then within fourteen (14) calendar days the responsible official shall decide whether the application is fully complete and, if not, the responsible official shall:
 - a. Reject and return the application and scheduled fees and mail to the applicant a written statement which lists the remaining additional information needed to make the application fully complete; or
 - b. Issue a decision denying the application, based on a lack of information; provided, the responsible official may allow the applicant to restart the fully complete review process a second time by providing the required missing information by a date specified by the responsible official, in which case the responsible official shall retain the application and fee pending expiration of that date or a fully complete review of the application as amended by that date.
7. If the responsible official decides an application is fully complete, then the responsible official shall, within fourteen (14) calendar days of making this determination:
 - a. Forward the application to the county staff responsible for processing it, and schedule public hearing;
 - b. Send a written notice of receipt of a complete application to the applicant acknowledging acceptance, listing the name and telephone number of a contact person at the review authority, and describing the expected review schedule, including the date of a hearing for a Type III process;
 - c. Prepare a public notice in accordance with Section 40.510.030(E).
8. An application shall be determined fully complete if a written determination has not been mailed to the applicant within twenty-eight (28) calendar days of the date the application is submitted. An application shall be determined fully complete if a written determination has not been mailed to the applicant within fourteen (14) calendar days of the date that the necessary additional information is submitted.
9. A fully complete determination shall not preclude the county from requesting additional information, studies or changes to submitted information or plans if new information is required or substantial changes to the proposed action occur.

(Amended: Ord. 2006-05-01)

D. Procedure.

1. At least one (1) public hearing before the hearing examiner is required. The public hearing should be held within seventy-eight (78) calendar days after the date the responsible official issues the determination that the application is fully complete.
2. At least fifteen (15) calendar days before the date of a hearing, the responsible official shall issue a public notice of the hearing consistent with the requirements in Section

40.510.030(E).

3. At least fifteen (15) calendar days before the date of the hearing for an application(s), the responsible official shall issue a written staff report and recommendation regarding the application(s), shall make available to the public a copy of the staff report for review and inspection, and shall mail a copy of the staff report and recommendation without charge to the hearing examiner and to the applicant and applicant's representative. The responsible official shall mail or provide a copy of the staff report at reasonable charge to other parties who request it.
4. Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing examiner, except to the extent waived by the hearing examiner. A public hearing shall be recorded electronically.
 - a. At the beginning of a hearing or agenda of hearings, the hearing examiner shall:
 - (1) State that testimony will be received only if it is relevant to the applicable approval criteria and development standards and is not unduly repetitious;
 - (2) Identify the applicable approval criteria and development standards;
 - (3) State that the hearing examiner will consider any party's request that the hearing be continued or that the record be kept open for a period of time and may grant or deny that request;
 - (4) State that the hearing examiner must be impartial and whether the hearing examiner has had any ex parte contact or has any personal or business interest in the application. The hearing examiner shall afford parties an opportunity to challenge the impartiality of the authority;
 - (5) State whether the hearing examiner has visited the site;
 - (6) State that persons who want to receive notice of the decision may sign a list for that purpose at the hearing and where that list is kept; and
 - (7) Summarize the conduct of the hearing.
 - b. At the conclusion of the hearing on each application, the hearing examiner shall announce one (1) of the following actions:
 - (1) That the hearing is continued. If the hearing is continued to a place, date and time certain, then additional notice of the continued hearing is not required to be mailed, published or posted. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing. The hearing examiner shall adopt guidelines for reviewing requests for continuances;
 - (2) That the public record is held open to a date and time certain. The hearing examiner shall state where additional written evidence and testimony can be sent, and shall announce any limits on the nature of the evidence that will be received after the hearing. The hearing examiner may adopt guidelines for reviewing requests to hold open the record;
 - (3) That the application(s) is/are taken under advisement, and a final order will be issued as provided in Section 40.510.030(D)(6); or
 - (4) That the application(s) is/are denied, approved or approved with conditions, together with a brief summary of the basis for the decision, and that a final order will be issued as provided in Section 40.510.030(D)(5).
5. Unless the applicant agrees to allow more time, within fourteen (14) calendar days after the date the record closes, the hearing examiner shall issue a written decision regarding the application(s); provided, the hearing examiner shall not issue a written decision regarding the application(s) until at least fifteen (15) calendar days after the threshold determination under Chapter 40.570 is made. The decision shall include:
 - a. A statement of the applicable criteria and standards in this code and other applicable law;
 - b. A statement of the facts that the hearing examiner found showed the application does or does not comply with each applicable approval criterion and standards;
 - c. The reasons for a conclusion to approve or deny; and

- d. The decision to deny or approve the application and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards.
6. Within seven (7) calendar days from the date of the decision, the responsible official shall mail the notice of decision to the applicant and applicant's representative, the neighborhood association in whose area the property in question is situated, and all parties of record. The mailing shall include a notice which includes the following information:
 - a. A statement that the decision and SEPA determination, if applicable, are final, but may be appealed as provided in Section 40.510.030(H) to the board within fourteen (14) calendar days after the date the notice is mailed. The appeal closing date shall be listed in boldface type. The statement shall describe how a party may appeal the decision or SEPA determination, or both, including applicable fees and the elements of a petition for review;
 - b. A statement that the complete case file is available for review. The statement shall list the place, days and times where the case file is available and the name and telephone number of the county representative to contact for information about the case.
7. Notice of Agricultural, Forest or Mineral Resource Activities.
 - a. All plats, building permits or development approvals under this title issued for residential development activities on, or within a radius of five hundred (500) feet for lands zoned agriculture-wildlife (AG-WL), agriculture (AG-20), forest (FR-40, FR-80), or surface mining (S), or in current use pursuant to Chapter 84.34 RCW, shall contain or be accompanied by a notice provided by the responsible official. Such notice shall include the following disclosure:

The subject property is within or near designated agricultural land, forest land or mineral resource land (as applicable) on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. Potential discomforts or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any twenty-four (24) hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.
 - b. In the case of subdivisions or short plats, such notice shall be provided in the Developer Covenants to Clark County; in the case of recorded binding site plans, such notice shall be recorded separately with the County Auditor.

(Amended: Ord. 2005-04-12)

E. Public Notice.

1. The notice of the application shall include the following information, to the extent known.
 - a. The project name, the case file number(s), date of application, the date of the application was determined fully complete, and the date of the notice of fully complete application;
 - b. A description of the proposed project and a list of project permits included with the application;
 - c. A description of the site, including current zoning and nearest road intersections, reasonably sufficient to inform the reader of its location and zoning;
 - d. A map showing the subject property in relation to other properties or a reduced copy of the site plan;
 - e. The name of the applicant or applicant's representative and the name, address and telephone number of a contact person for the applicant, if any;
 - f. A list of applicable development regulations;
 - g. A statement of the public comment period, that the public has the right to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A statement shall indicate that

- written comments received by the county within fifteen (15) calendar days from the date of the notice will be considered by staff in their recommendations;
- h. The date, time, place and type of hearing;
 - i. A statement of the preliminary SEPA determination, if one has been made;
 - j. A statement that a consolidated staff report and SEPA review will be available for inspection at least fifteen (15) calendar days before the public hearing, and the deadline for submitting written comments;
 - k. The deadline for submitting a SEPA appeal pursuant to Section 40.570.080(D);
 - l. The date, place and times where information about the application may be examined and the name and telephone number of the county representative to contact about the application;
 - m. The designation of the hearing examiner as the review authority, and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the hearing examiner; and
 - n. Any additional information determined appropriate by the county.
2. Where the notice of application under Section 40.510.030(E)(1) is incomplete, a separate notice of public hearing shall be provided which is consistent with Section 40.510.030(E)(3).
 3. Distribution.
 - a. The responsible official shall mail a copy of the notice to:
 - (1) The applicant and the applicant's representative;
 - (2) The neighborhood association in whose area the property in question is situated, based on the list of neighborhood associations kept by the responsible official;
 - (3) Owners of property within a radius of three hundred (300) feet of the property that is the subject of the application if the subject property is inside the urban growth boundary or to owners or property within a radius of five hundred (500) feet of the property if the subject property is outside the urban growth boundary;
 - (a) The records of the County Assessor shall be used for determining the property owner of record. The failure of a property owner to receive notice shall not affect the decision if the notice was sent. A sworn certificate of mailing executed by the person who did the mailing shall be evidence that notice was mailed to parties listed or referenced in the certificate, and
 - (b) If the applicant owns property adjoining the property that is the subject of the application, then notice shall be mailed to owners of property within a three hundred (300) or five hundred (500) foot radius, as provided in this subdivision, of the edge of the property owned by the applicant adjoining or contiguous to the property that is the subject of the application;
 - (4) Agencies with jurisdiction; and
 - (5) To known interest groups and other people the responsible official believes may be affected by the proposed action or who request such notice in writing.
 - b. The county shall publish in a newspaper of general circulation a summary of the notice, including the date, time and place of the hearing, the nature and location of the proposal and instructions for obtaining further information.
 - c. The county shall post the notice in a conspicuous place visible to the public in at least three (3) locations on or in the vicinity of the property subject to the application at least fifteen (15) calendar days before the hearing, and the applicant shall remove and properly dispose of the notices within seven (7) calendar days after the hearing.
 - (1) The notice shall be posted on a signboard provided by the responsible official for that purpose. The signboard shall state the date, time and place of the hearing; the project name; the case number(s); the nature and location of the proposal and instructions for obtaining further information and, if one is provided, the telephone number where the applicant can be contacted for more information.

- (2) The responsible official shall execute an affidavit certifying where and when the notices were posted.

F. Decision Timelines.

Not more than ninety-two (92) days after the date an application is determined fully complete, the hearing examiner shall issue a written decision regarding the application(s); provided:

1. If a determination of significance (DS) pursuant to Chapter 40.570 is issued, then the hearing examiner shall issue a decision not sooner than seven (7) calendar days after a final environmental impact statement is issued.
2. An applicant may agree in writing to extend the time in which the hearing examiner shall issue a decision. If the hearing examiner grants such a request, the hearing examiner may consider new evidence the applicant introduces with or subsequent to the request. New evidence may not be considered unless the time extension would allow for public review and response to the new evidence.
3. In determining the number of days that have elapsed after the county has notified the applicant that the application is fully complete, the following periods shall be excluded:
 - a. Any period during which the applicant has been requested by the county to correct plans, perform required studies, or provide additional required information. The responsible official shall specify a time period based on the complexity of the required information in which the required information must be submitted. The period shall be calculated from the date the county notifies the applicant of the need for additional information until the earlier of the date the county determines whether the additional information satisfies the request for information or fourteen (14) calendar days after the date the information has been provided to the county.
 - b. If the county determines that the information submitted by the applicant under Section 40.510.030(F)(3)(A) is insufficient, it shall notify the applicant of the deficiencies and the procedures under Section 40.510.030(F)(3)(A) shall apply as if a new request for studies had been made.
 - c. Any period of time during which an environmental impact statement (EIS) is being prepared; provided, that the maximum time allowed to prepare an EIS shall not exceed one (1) year from the issuance of the determination of significance unless the responsible official and applicant have otherwise agreed in writing to a longer period of time. If no mutual written agreement is completed, then the application shall become null and void after the one (1) year period unless the responsible official determines that delay in completion is due to factors beyond the control of the applicant.

G. Vesting.

1. Type III applications (other than zone change proposals) shall be considered under the land development regulations in effect at the time a fully complete application for preliminary approval is filed.
2. Contingent Vesting. An application which is subject to pre-application review shall earlier contingently vest on the date a complete pre-application is submitted. Contingent vesting shall become final if a fully complete application for substantially the same proposal is submitted within one hundred eighty (180) calendar days of the date the responsible official issues its written summary of pre-application review subject to the limitations of Section 40.510.030(A)(4).
3. Special rules apply to approved planned unit developments under Section 40.520.080 and certain nonconforming uses under Section 40.530.050.
4. For concurrency approval requirements, see Section 40.350.020.

H. Appeal Procedure.

1. A final decision may be appealed only by a party of record. Final decisions may be appealed only if, within fourteen (14) calendar days after written notice of the decision is mailed, a written appeal is filed with the board.

2. The appeal shall contain the following information:
 - a. The case number designated by the county and the name of the applicant;
 - b. The name of each petitioner, the signature of each petitioner or his or her duly authorized representative, and a statement showing that each petitioner is entitled to file the appeal under Section 40.510.030(H)(1). If multiple parties file a single petition for review, the petition shall designate one (1) party as the contact representative for all contact with the responsible official. All contact with the responsible official regarding the petition, including notice, shall be with this contact representative;
 - c. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error. A hearing examiner's procedural SEPA decision is final and not subject to further administrative appeal. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in Section 40.510.030(H)(3)(b); and
 - d. The appeal fee adopted by the board; provided, the fee shall be refunded if the appellant files with the responsible official at least fifteen (15) calendar days before the appeal hearing a written statement withdrawing the appeal.
3. The board shall hear appeals of Type III decisions on the record, including all materials received in evidence at any previous stage of the review, an electronic recording of the prior hearing(s) or transcript of the hearing(s) certified as accurate and complete, the final order being appealed, and argument by the parties.
 - a. The board's consideration of an appeal shall be scheduled as provided for in Chapter 2.51. The board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If so continued, the board shall:
 - (1) Designate the parties or their representatives to present argument, and the permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the board; and
 - (2) At least fifteen (15) calendar days before such hearing, provide mailed notice thereof to parties entitled to notice of the decision being appealed under Section 40.510.030(D)(6), which notice shall indicate that only legal argument from designated parties will be heard.
 - b. At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the board may affirm, reverse, modify or remand an appealed decision.
 - (1) A decision to remand a matter is not appealable. Appeal from a decision on remand shall be treated as any other decision.
 - (2) If the board affirms an appealed decision, then the board shall adopt a final order that contains the conclusions the board reached regarding the specific grounds for appeal and the reasons for those conclusions. The board may adopt the decision of the hearing examiner as its decision to the extent that decision addresses the merits of the appeal or may alter that decision.
 - (3) If the board reverses or modifies an appealed decision, then the board shall adopt a final order that contains:
 - (a) A statement of the applicable criteria and standards in this code and other applicable law relevant to the appeal;
 - (b) A statement of the facts that the board finds show the appealed decision does not comply with applicable approval criteria or development standards;
 - (c) The reasons for a conclusion to modify or reverse the decision; and
 - (d) The decision to modify or reverse the decision and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards.

- c. The board office shall mail notice of a board's decision on the merits of an appeal to parties entitled to notice under Section 40.510.030(D)(6) and other parties who appeared orally or in writing before the board regarding the appeal. The notice shall consist of the board decision or of a statement identifying the case by number and applicant's name and summarizing the board's decision. The notice shall include a statement that the decision can be appealed to superior court within twenty-one (21) calendar days and, where applicable, shall comply with the official notice provisions of RCW 43.21C.075 .
4. Appeal of Board's Decision. The action of the board in approving or rejecting a decision of the hearing examiner shall be final and conclusive unless a land use petition is timely filed in Superior Court pursuant to RCW 36.70C.040 (Section 705 of Chapter 347, Laws of 1995); provided, that no person having actual prior notice of the proceedings of the hearing examiner or the board's hearings shall have standing to challenge the board's action unless such person was a party of record at the hearing examiner hearing.
(Amended: Ord. 2005-04-12; Ord. 2005-10-04)
- I. Special appeal procedure applicable to uses licensed or certified by the Department of Social and Health Services or the Department of Corrections.
 1. In accordance with RCW 35.63.260 (Section 1, Chapter 119, Laws of 1998), prior to the filing of an appeal of a final decision by a hearing examiner involving a conditional use permit application requested by a party that is licensed or certified by the Department of Social and Health Services or the Department of Corrections, the aggrieved party must, within five (5) days after the final decision, initiate formal mediation procedures in an attempt to resolve the parties' differences. If, after initial evaluation of the dispute, the parties agree to proceed with mediation, the mediation shall be conducted by a trained mediator selected by agreement of the parties. The agreement to mediate shall be in writing and subject to RCW 5.60.707 . If the parties are unable to agree on a mediator, each party shall nominate a mediator and the mediator shall be selected by lot from among the nominees. The mediator must be selected within five (5) days after formal mediation procedures are initiated. The mediation process must be completed within fourteen (14) days from the time the mediator is selected except that the mediation process may extend beyond fourteen (14) days by agreement of the parties. The mediator shall, within the fourteen (14) day period or within the extension if an extension is agreed to provide the parties with a written summary of the issues and any agreements reached. If the parties agree, the mediation report shall be made available to the county. The cost of the mediation shall be shared by the parties.
 2. Any time limits for filing of appeals are tolled during the pendency of the mediation process.
 3. As used in this section, "party" does not include county, city or town.

Compile chapter

FILED
COURT OF APPEALS

06 SEP 25 AM 9:48

STATE OF WASHINGTON

BY jn
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

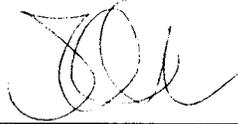
IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

EUGENE GREER, an Oregon resident, and)	Case No.: 33823-8-II
JIM TASKA, a Washington resident; and)	
CLARK COUNTY, a political subdivision of)	DECLARATION OF SERVICE BY
the State of Washington,)	MAILING
)	
Respondents,)	
vs.)	
)	
Washougal Motocross, LLC, a Washington)	
limited liability corporation; MOSS &)	
ASSOCIATES, a Washington Corporation)	
)	
Appellants.)	

STATE OF WASHINGTON)
) ss.
County of Clark)

On September 21, 2006, I deposited in the mails of the United States, a properly stamped and addressed envelope, which was addressed and directed to the attorneys of record of Respondents, Mr. Keith Hirokawa; and Mr. Richard S. Lowry, and which contained a true and correct copy of the Appellants' Reply Brief.

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

3 

4 _____
5 James L. Sellers

6 Date: September 21, 2006

7 Place: Vancouver, Washington

8
9 ATTORNEY FOR RESPONDENT CLARK COUNTY:

10
11 Mr. Richard S. Lowry
12 Clark County Prosecuting Attorneys Office
13 PO Box 5000
14 1013 Franklin
Vancouver, WA 98666-5000
fax: (360) 397-2184

15 ATTORNEY FOR RESPONDENT EUGENE GREER:

16 Mr. Keith Hirokawa
17 Erikson and Hirokawa, P.S.
18 Fourth Floor Main Place
1111 Main Street, Suite 402
Vancouver, WA 98660-2958
19 fax: (360) 737-0751
20
21
22
23
24
25
26