

No. 42656-1-II

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

GRAYS HARBOR COUNTY,
a political subdivision of the State of Washington,
Respondent,

v.

FRANK G. TOWER and LIESEL C. TOWER, husband and wife,
d/b/a "The Riding Place Equestrian Center,"
Appellants.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE GORDON L. GODFREY, JUDGE

BRIEF OF RESPONDENT

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Excerpts from the Grays Harbor County Code

I. INTRODUCTION

The trial court properly granted summary judgment finding that the appellants' use of their property for commercial horse training and stall rentals, and offering camping sites to the public are prohibited uses under the Grays Harbor County Code ("the County Code"), and that such uses constitute a public nuisance. The trial court also properly granted injunctive relief to the County to prevent repeated violations of the zoning code by the appellants' commercial activities.

This case is not about the appellants' use of their property for their *own horses or their personal horse-related activities*. This case concerns the appellants unlawful, non-permitted commercial uses of their property for horse stall rentals, boarding, riding lessons and camping offered to the public for a fee that is not allowed in the applicable zoning use district. The trial court correctly concluded that the Towers' activities on their property involving offering recreational vehicle camping, horse stall rentals, riding and other horse-related activities to the public as a business was not in compliance with the county code and constituted a public nuisance. The trial court properly granted summary judgment and injunctive relief to the County.

II. COUNTER-STATEMENT OF THE CASE

Frank G. Tower III and Liesel C. Tower ("the Towers"), individually and as husband and wife, own real property located at 1044

Chester Avenue in an unincorporated area of Grays Harbor County (“the County”) near Grayland, Washington. The Towers’ 1044 Chester Avenue property lies in the Resort Residential (R-3) zoning use district, and consists of several individual parcels. CP 2-3, 44, 94-95. The Towers purchased this property in April 2005. CP 152.

Although the Chester Avenue property had a 10-stall horse barn, large shop area and covered indoor riding arena (CP 152), only a permit for a private riding arena has been issued for this property. The permit for the private riding arena issued to the previous owner, Marie Miller, notes that the permit is only for private use and that commercial use of the arena will require a conditional use permit. CP 96, 118. No conditional use permit has been issued allowing commercial horse boarding or horse stall rentals on the Chester Avenue property. CP 96-97, 259.

Use of recreational vehicles and camping in unincorporated areas of the county is regulated under Chapter 8.20 of the County Code. Occupancy of recreational vehicles and camping may not occur except in specified areas.¹ Sanitary facilities for camping and recreational vehicle use must be approved by the county health authority.² Occupancy of three or more recreational vehicles or camping on the same parcel of property is

¹ Grays Harbor County Code (GHCC) 8.20.020 (A). Sections of the Grays Harbor County Code cited in this brief are attached at Appendix A.

² GHCC 8.20.020.

only authorized in a licensed park.³ There is no indication the Towers ever consulted the County Environmental Health Division staff regarding recreational vehicle or camping activities on their property. CP 120, 152-153. No recreational vehicle park license or health authority approval or permit has been issued for any parcels comprising the Towers' Chester Avenue property. CP 120.

On June 5, 2006, the County notified the Towers by certified mail of zoning code violations involving their operation of a facility advertised as "The Riding Place" on the Towers' Chester Avenue property. CP 95, 99-101. An advertisement for "The Riding Place" appeared on that date on the internet at www.theridingplace.com. CP 4, 13-15, 44. The County's June 5, 2006 letter is a *Notice of County Code Violation and Order to Correct Violation* directing the Towers to either cease operating a campground and associated retail activity, including advertising "The Riding Place" horse boarding and stall rentals on their property, or alternatively, stop operating a campground and associated retail uses on their Chester Avenue property and apply for and obtain a conditional use permit allowing such use. CP 99. This letter notice required the Towers to comply by July 17, 2006. CP 100.

In response to the County's June 5, 2006 notice, Frank Tower wrote a July 16, 2006 letter to County Planning and Building Division Director Brian Shea in which he admits they board horses on this property,

³ GHCC 8.20.020(B)(4)(b).

but claims they stopped operating a campground or advertised camping. CP 103-104. Mr. Tower also claimed in his July 16 letter that “we board horses, which has been the use of this property for many years.” CP 103. In response, Director Shea sent an August 14, 2006 letter to the Towers asking for documentation of their claim that their Chester Avenue property had been used for horse boarding and camping activities prior to the Towers’ purchase of the property. CP 106.

On December 6, 2006, the County (Shea) issued a second letter *Notice of County Code Violation and Order to Correct Violation* to the Towers, again directing them to either cease operating a campground facility, including advertising its availability on the Chester Avenue property, or cease operation of the campground facility and associated retail activity, and to apply for and obtain a conditional use permit allowing operation of recreational vehicle camping and tent camping by March 1, 2007. CP 96, 112-113. In response to the Towers’ request, this deadline was later extended to May 3, 2007. CP 115-116.

In response to the County’s December 6, 2006 request, the Towers submitted an explanatory letter, but provided no documentation showing that the Towers’ Chester Avenue property was used for commercial horse boarding and camping activities prior to their purchase of the property. CP 108-110. No administrative appeals of the previously-described administrative notices and orders to correct violations issued by the County have been filed by the Towers. CP 5, 45, 96.

After a period of inactivity, recreational vehicle camping activity resumed on the Towers' property in 2008. CP 123.

After the County issued the previously-described notices and orders to correct violations, the Towers changed their internet advertisements for their horse boarding and riding facility, but continue using their Chester Avenue property for non-permitted and prohibited commercial use. CP 6, 45, 97. As one example, a web page advertisement for "The Riding Place Equestrian Center" appeared at www.theridingplace.com/The-South-Beach-Riding-Club-.html on July 22, 2010, advertising commercial horse stall rentals for advertised rates, now referring to their facility as "The South Beach Riding Club." CP 89-91. A subsequent World Wide Web page advertisement for "The Riding Place Equestrian Center" appeared on October 11, 2010 at www.theridingplace.com/The-Riding-Place-West-.html, also advertising "self-care stall rentals" and "2010 Stall Rental Rates" of \$15.00 per night. CP 40-42, 79. It was only once the County filed its enforcement action below that the Towers ceased advertising on the web. CP 123.

On October 19, 2010, the County filed a complaint in the trial court against the Towers for abatement of a public nuisance and seeking injunctive relief enjoining them from continuing their commercial activities on their Chester Avenue property in violation of the County Code. CP 1-42.

On January 11, 2011, the Towers filed their answer to the complaint. CP 43-47. The County moved for summary judgment on April 27, 2011. CP 48-77. The hearing on the County's motion took place on June 27, 2011, (CP 300), and on August 10, 2011, the trial court issued a letter decision granting the County's motion for summary judgment and requested relief. CP 289-290. Formal findings and an order granting summary judgment were entered on September 16, 2011. CP 299-306. The Towers filed their notice of appeal on September 30, 2011. CP 307-308.

III. COUNTER-STATEMENT OF THE ISSUES PRESENTED

A. Whether the County improperly raised claims relating to horse training and riding lessons on the Towers' property for the first time in its reply brief below?

B. Whether the trial court erred in granting summary judgment of its claims relating to camping activities on the Towers' property in light of appellants' claim that such activities had been discontinued?

C. Whether the trial court erred in granting summary judgment on the County's claim that the Towers' horse-stall rental activities violated the Grays Harbor County Code?

D. Whether the trial court erred in declaring that the Towers' horse-stall rental activities constitute a public nuisance?

E. Whether the trial court erred in not allowing the Towers more time under CR 56(f) to investigate the nonconforming use argument?

IV. ARGUMENT

A. Standard of review on appeal is *de novo*.

The trial court granted the County's motion for summary judgment below, finding that the Towers' activities on their Chester Avenue property constitute a public nuisance in violation of Grays Harbor County Code provisions, and that it is "beyond dispute that Mr. And Mrs. Tower are operating a rental stall business in violation of GHCC 17.36 in an R-3 zoning district," and granting injunctive relief to the County. CP 290, 303-306. On an appeal from a summary judgment, the Court of Appeals conducts the same review as the trial court. *Bainbridge Citizens United v. Washington State Department of Natural Resources*, 147 Wn. App. 365, 371, 198 P.3d 1033 (2008), citing *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). The standard for review of the trial court's summary judgment decision is *de novo*. *Id.*

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c).

The moving party bears the burden of showing there is no issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). On appeal, the Court of Appeals construes all facts and reasonable inferences in the light most favorable to the nonmoving party. *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). The Court of Appeals may also sustain a trial court's ruling on any correct ground, even if the trial court did not consider it. *Bainbridge Citizen's United, supra*, citing *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986).

B. The County's claims relating to commercial horse activities, to include horse training and riding lessons, were properly raised in the complaint and in its motion for summary judgment.

In their first assignment of error the Towers assert that the trial court below erred "in granting the County summary judgment of claims relating to horse training and riding lessons at the Property that were raised for the first time in the County's reply brief." Appellants' Opening Brief (Appellants' Br.) at 1. The Towers devote only seven lines in their statement of the case describing their "surprise" to the County's proposed order below. Appellants' Br. at 11-12. But the Towers fail to provide any real argument or supporting authorities in their brief supporting this assignment of error other than to repeat their stated objection. Appellants' Br. at 19. To the extent this assignment of error is unsupported by legal

authority, it is deemed waived and should not be considered. *Bercier v. Kiga*, 127 Wn.App. 809, 824, 103 P.3d 232 (2004), citing *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986).

However, should the Court consider this assignment of error, it lacks any merit. The Towers' expression of "surprise" in brief is unwarranted based on the record below. In its complaint filed at the beginning of this case, the County alleges that the Towers' use of their Chester Avenue property for commercial activities is not allowed in the R-3 zoning district. The complaint alleges that "GHCC chapter 17.36 prohibits commercial uses in the R-3 zoning district . . .," "[d]efendants continue using the subject property . . . to operate their business advertised as 'The Riding Place Equestrian Center' in violation of GHCC 17.36, as a commercial use not permitted or a conditional use under GHCC 17.36.020 or 17.36.030," and "[d]efendants' activities on the subject property, including but not limited to operation of 'The Riding Place Equestrian Center' and related horse boarding and/or stall rentals, constitute a non-permitted and prohibited commercial use . . ." CP 4- 7, ¶¶ 8, 17, 25. These allegations in the complaint plainly put the Towers on notice that their commercial horse-related activities, including fee-based horse training and riding, are prohibited in the R-3 district and are a focus of the County's lawsuit.⁴

⁴ Even if the County did not recite every fact and describe every possible activity the Towers charged fees for with respect to horses, discovery provides parties with the opportunity to learn more detailed information about the nature of a complaint. *See*,

In its motion for summary judgment the County further states that “[h]orse boarding, horse riding academies, or horse stall rental businesses are not identified as permitted uses in the R-3 zoning district.” CP 59. The County’s motion further states that “defendants’ activities at 1044 Chester Avenue involving commercial renting of horse stalls, boarding horses and conducting a horse riding school is incompatible with the residential neighborhood intended for the R-3 zone.” CP 60. Finally, in its motion summary, the County states:

The County asks the Court to grant its motion for summary judgment in this case, putting an end to the defendants’ unlawful horse boarding, renting horse stalls, **conducting a horse-riding school** and allowing camping and recreational vehicle occupancy in violation of the County Code at 1044 Chester Avenue, thus abating the public nuisance created and maintained by these activities. [Emphasis added.]

CP 60-61.

The Towers are simply not correct in complaining that they did not have notice that commercial horse training activities were included among the unlawful activities alleged by the County in this case. The Towers were made well-aware through the County’s complaint and its motion for summary judgment, as well as the declarations and other evidence produced below that their horse-related business is not permitted on their R-3 zoned property and that the County sought to enjoin those activities.

Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 222, 829 P.2d 1099 (1992).

C. The trial court correctly granted summary judgment enjoining camping activities that may have temporarily stopped.

In their second assignment of error, the Towers assert that the trial court may not grant summary judgment enjoining “camping activities on the property that had not occurred for five years.” Appellants’ Br. at 1. The Towers do not dispute that they allowed recreational vehicle camping on their Chester Avenue property until the summer of 2006. Appellants’ Br. at 13; CP 153. But they claim that this activity “ceased five years ago.” Appellants’ Br. at 12-13. The Towers’ assertion that recreational vehicle camping stopped five years ago is doubtful at best in light of observations by a neighboring property owner, Leonard Idso, that campers began reappearing on the Tower property after June 2008. CP 123. But as discussed below, whether non-permitted recreational vehicle camping has ceased temporarily is immaterial to whether injunctive relief may be granted by the trial court to abate this activity.

It has been the law in Washington for nearly one hundred years that temporary discontinuance of unlawful activities creating a public nuisance will not bar an abatement action and appropriate permanent injunctive relief to prevent future violations. *State v. Humphrey*, 94 Wash. 599, 601-02, 162 P. 983 (1917). The *Humphrey* Court notes that failure of the court to grant injunctive relief to prevent future violations, and resumption of activities creating a public nuisance invites defendants to simply resume their unlawful activities once this case is concluded. 94 Wash. at 601-02.

Inasmuch as the *Humphrey* court addressed injunctive relief awarded by a trial court for apparently discontinued nuisance activity (maintaining a house of prostitution), the *Humphrey* court's observation applies equally in this case:

The appellants themselves made no effort to abate the nuisance until after the commencement of the abatement action. The cause for abatement was the activity of the police officers. The appellants' activity commenced on the commencement of the abatement action. Having shown a disposition to allow the law to be avoided, it is presumable that they would have continued to do so but for the abatement action. A temporary cessation from the unlawful practices is not enough. The state has the right to resort to all the remedies afforded to make the cessation perpetual. Since, therefore, the action was necessary to arouse the owners to activity, we think the court was justified in imposing the penalties the remedy afforded.

Id.

Engaging in any business or profession in defiance of a law regulating or prohibiting the same is a nuisance per se and subject to an injunction. *Gebbie v. Olson*, 65 Wn.App. 533, 538, 828 P.2d 1170 (1992); *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135, 138, 720 P.2d 818 (1986); *State v. Boren*, 42 Wn.2d 155, 163, 253 P.2d 939 (1953).

In this case the Towers clearly violated GHCC 8.20.020 by offering recreational camping to the public without county health authority approval of sanitary facilities or licensing as a recreational vehicle park. CP 63-64, 120. The Towers only cite two cases in support of this

assignment of error, which do not involve or discuss public nuisance abatement.⁵

Injunctive relief is also available against zoning violations that are declared by ordinance to be nuisances. *Mercer Island v. Steinmann*, 9 Wn.App. 479, 485, 513 P.2d 80 (1973) (citing several cases). The Towers admittedly operated a campground for recreational vehicles on the property. CP 152-53. Aside from the Towers' failure to obtain the required recreational vehicle park license under GHCC 8.20.050 -.060, recreational vehicle parks are not permitted uses in the R-3 zone under GHCC 17.36.020. CP 67. GHCC 17.96.030 expressly declares violations of Title 17 zoning provisions to constitute a nuisance. CP 69.

If, even for the sake of argument, the Towers discontinued offering or allowing recreational vehicle camping on their Chester Avenue property after receiving written notice of violation from the County, the County is not barred from obtaining, and the trial court is empowered to grant injunctive relief to the County in this case. *Humphrey, supra*. The fact that recreational vehicle camping reappears in June 2008 (CP 123) further confirms the necessity and appropriateness of injunctive relief in public

⁵ See, *Tyler Pipe Industries v. Dep't of Revenue*, 96 Wn.2d 785, 638 P.2d 1213 (1982) (addressing a preliminary injunction against the Department of Revenue preventing the Department from taking any further action with reference to collection of business and occupation taxes), and *Federal Way Family Physicians v. Tacoma Stands Up For Life*, 106 Wn.2d 261, 721 P.2d 946 (1986) (addressing injunction against anti-abortion demonstrators).

nuisance cases discussed by the *Humphrey* court. The trial court properly granted summary judgment on this issue.

D. The Towers' horse stall rental activity on their property violates the County Code and was properly enjoined by the trial court.

1. Commercial horse boarding on the Tower property is *not* a legal nonconforming use.

In their third assignment of error, the Towers assert that “horse boarding . . . is a legal nonconforming use.” Appellants’ Br. at 14-15. But this assertion ignores the fact that the County’s complaint and motion for summary judgment seek to abate violations of the County Code prohibiting *commercial uses* in the R-3 zone and establishing that the Towers’ business of boarding horses, renting stalls, and providing riding lessons for fees. CP 1, 4-7 (¶¶ 1, 8, 17-19), 48-49. It is the Towers’ activity in operating a *non-permitted business* on their R-3 zoned property that is the violation here. It is not, as the Towers appear to emphasize, an enforcement effort to prevent them from boarding their own horses or ride their own horses on the property.

The Towers point to no evidence in the record whatsoever supporting any non-conforming *commercial use* on their property. They simply point to the previous owners of their property, the Millers, to argue that the Millers used the property “to board horses since approximately

1980.” Appellants’ Br. at 15. There are several flaws in this argument and it is not supported in the record below or under Washington law. First, the record at best only shows anecdotally that Marie Miller, the prior owner, boarded horses on her property. But there is scant mention in any declaration submitted below that Miller did so *as a commercial business or charged fees* for horse boarding or riding. CP 170, 191, 227, 229, 240. Nevertheless, the County is not precluded from enforcing its zoning regulations even where it may have failed to pursue other violations in the past. *Steinmann*, 9 Wn.App. at 483.

Neither is there any evidence in the record below establishing that Miller ever conducted commercial horse boarding or riding activities continuously or at all prior to adoption of the County’s zoning regulations. A nonconforming use is defined in terms of the property’s lawful use established and maintained at the time the zoning causing nonconformance was imposed. *McMilian v. King County*, 161 Wn. App. 581, 591, 255 P.3d 739 (2011), citing *Miller v. City of Bainbridge Island*, 111 Wn. App. 152, 164, 43 P.3d 1250 (2002). “The use of the property must actually be established prior to the adoption of the zoning ordinance to qualify as a nonconforming use thereafter.” *McMilian, supra*, citing *Anderson v. Island County*, 81 Wn.2d 312, 321, 501 P.2d 594 (1972), and *State ex rel. Smilanich v. McCollum*, 62 Wn.2d 602, 384 P.2d 358 (1963).

No declaration has been submitted in this case by the prior property owner, Marie T. Miller. Judy Miller and Ronald Miller, who submit

declarations on the Towers' behalf, are not prior owners of the property. CP 240-41, 244-45. Only Shelley Jones states in her declaration that "I remember them renting the in-door arena so that people could ride their horses." CP 170. However, Jones fails to say *when* this arena-rental activity occurred, except to state that she rented stalls in 2005 and 2006. CP 171. Melissa Caldwell states only that horses have lived on the property "for more than 20 years." CP 229. But again, no reference to commercial horse activity prior to 1969. Another declarant, Judy Miller, states that "I have always known the property as some sort of horse riding facility. The previous owner, the Millers, owned and bred horses." CP 240. Nowhere is there competent evidence establishing that the Millers operated a business on this property before the adoption of the County Code zoning requirements.

The appellants are left with only Liesel Tower's self-serving statement that Marie Miller "operated a horse breeding, training and boarding business . . ." CP 152. This unsupported statement falls far short of credible evidence supporting a nonconforming business or commercial use for horse boarding, stall rental and riding purposes. Ms. Tower's statement in this regard is further suspect in view of the clear evidence establishing that the building permit issued for construction of the indoor riding arena on the property issued on February 12, 1991, specifically identifies the structure as a "private riding arena," and that "commercial use of the structure requires CLUP [conditional land use

permit].” CP 118. None of the evidence cited by the Towers in their opening brief supports any finding that the Millers operated a horse business on the property at all, let alone since 1980.

Second, the Towers fail to note that Grays Harbor County adopted zoning regulations barring commercial use on the Chester Avenue as early as 1961 when the County adopted Ordinance 22 on interim zoning. Ordinance 22 was adopted pending development and adoption of a comprehensive zoning ordinance, later adopted as Ordinance 38. CP 259, 262. The R-3 zoning district applied to the Towers’ property came into effect with adoption of Ordinance 38 on August 11, 1969 (effective on August 18, 1969). CP 268, 271. Interim zoning adopted in 1961 via Ordinance 22 prohibited commercial uses in any residential zone. CP 259. On the record below, it is beyond dispute that commercial uses have been prohibited on the Towers’ property since at least August 1969, and likely since 1961 under interim zoning regulations barring commercial uses in residential zones. There is no genuine issue of material fact disputing that commercial activities are prohibited in the R-3 zone.

2. There is no basis for continuing the summary judgment hearing under CR 56 (f).

The Towers complain that they had no chance to respond to the County’s testimony disputing the validity of any nonconforming use. Appellants’ Br. at 15. But the County’s reply addressed the

nonconforming use argument raised by the Towers themselves in their response to the County's motion for summary judgment in accordance with CR 56 (c), which allows the moving party to file and serve rebuttal documents. The Towers cite no authority allowing further response by the nonmoving party under CR 56, but further assert that the trial court should have granted the Towers' request that they be afforded more time to respond under CR 56 (f). Appellants' Br. at 15-16. However, the Towers made no request for relief under CR 56 (f) and any action by the trial court under CR 56 (f) is discretionary in any event.

CR 56 (f) states:

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Failure of an opposing party to move to continue the summary judgment motion to allow for additional discovery waives any issue under CR 56 (f). *Avellaneda v. State*, _____ Wn. App. _____, 2012 WL 1020020 (March 27, 2012), Fn. 5, citing *Guile v. Ballard Community Hospital*, 70 Wn. App. 18, 24-25, 851 P.2d 869 (1993). A trial court's decision whether to continue a summary judgment hearing under CR 56 (f) is reviewed for abuse of discretion. *Baechler v. Beauniaux*, _____ Wn. App. _____, 2012 WL 892203 (March 8, 2012), citing *Colwell v. Holy*

Family Hosp., 104 Wn. App. 606, 615, 15 P.3d 210 (2001).⁶ A court can refuse to continue the proceedings for a number of reasons, such as: (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact. *Baechler, supra*.

Here, the Towers filed no written request to continue the summary judgment motion under CR 56 (f) to allow them to conduct additional discovery. During oral argument on the summary judgment motion, the Towers counsel asked for more time under CR 56 (f), stating “we didn’t know we were going to need that (i.e., nonconforming use facts) until we received the reply.” RP 16 (June 27, 2011). But the Towers failed to file any affidavit or otherwise show any good reason for a delay when *they themselves initially raised the issue in their response to the County’s summary judgment motion*. CP 140, 142-43. The Towers asserted in their summary judgment motion response to the trial court that they “reviewed the applicable Code sections.” CP 135.

Thus it has not been shown below that the Towers would or could establish any evidence that commercial horse activities were conducted on the property prior to adoption of the County’s zoning regulations in the 1960s barring commercial activities in residential (and in 1969, resort

⁶ Only the Westlaw citation is currently available for *Avellaneda* and *Baechler* at this time.

residential) use zones. Properly enacted county ordinances are matters of public record. *See, City of Mercer Island v. Kaltenbach*, 60 Wn.2d 105, 107, 371 P.2d 1009 (1962). Particularly in view of the Towers' assertion in their response to the trial court below that they reviewed the applicable code sections and they, not the County, raised the issue of nonconforming use, this Court should reject their claim under CR 56 (f) as untimely and unsupported.

3. Renting a horse stall is a commercial activity.

The Towers appear to make two alternative claims with respect to whether their activity in renting horse stalls to the public constitutes a commercial activity prohibited by GHCC Chapter 17.36. Appellants' Br. at 16. On the one hand, they assert that commercial uses are not prohibited in the R-3 zone. *Id.* On the other hand, they claim that their activity in renting horse stalls to the public is not a commercial activity. *Id.* They are incorrect on both counts.

With respect to whether the Towers' activity in renting horse stalls to the public constitutes a commercial activity, we have only to look to the definition of "commercial" in GHCC 17.08.010:

"Commercial" means the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, substance or commodity for livelihood or profit, or the management or occupancy of an office building, offices, recreational or amusement enterprises; or the maintenance and the use of building, offices, structures or premises by professions or trades offering services.

The purpose of the R-3 district is to permit recreational and conventional residential uses. GHCC 17.36.010. Commercial uses are not mentioned as a purpose of the R-3 district. Curiously, the Towers fail to appreciate the plain application of the “commercial” definition to their activities in renting horse stalls (as well as providing riding lessons and other horse-related services) to the public. The County strongly disputes the Towers unsupported claim in their opening brief that “[t]he uncontested evidence before the trial court was that . . . [they] are not providing any good or service to the individuals renting the stalls for their horses.” Appellants’ Br. at 16. The “good or service” provided by the Towers is the use of the rental stalls themselves (for a fee) for housing, feeding and caring for horses. As stated in the County Code, “commercial” includes any “other transaction involving the handling or disposition of any article, service, substance or commodity for livelihood or profit . . .” GHCC 17.08.010. Providing the horse stall for charge is such a transaction.

Moreover, the Towers activity in renting horse stalls to the public is plainly an activity that constitutes “management or occupancy of . . . recreational or amusement enterprises . . .” *Id.*

The Towers’ claim their activity in renting horse stalls is “exactly the same thing as renting out a room in a house to a roommate or . . . the renting of a house as a whole” is a false analogy and reflects a failure to consider other activities that are allowed as conditional uses under GHCC 17.36.030. This section allows nightly rentals and boarding houses as

conditional uses that will allow this activity where a conditional use permit is approved. Commercial horse stall rentals are not provided for either as a permitted use under GHCC 17.36.020 or as a conditional use under GHCC 17.36.030. Those uses not expressly permitted or prohibited are conditional uses - uses “allowed only when specific and special conditions on use or operation are required.” *Kelly v. Chelan County*, 157 Wn. App. 417, 426, 237 P.3d 346 (2010), citing VI Washington State Bar Association, Washington Real Property Deskbook (1996), § 97.7(2), at 97-27. Under this authority then, an argument might be made that the Towers’ activity may be a conditional use, but not that it may ever be a permitted use.⁷

4. The Towers’ commercial horse use of their property is a significantly different and more intense use than privately maintaining their own horses.

The Towers also attempt to show that their private use of their Chester Avenue property to maintain their own horses (or those of friends) is a more intense use of their property than conducting a business of offering horse boarding, riding and other services to the public for a fee.

⁷ It remains the County’s position, however, that the Towers’ horse stall rental and riding business is a prohibited use under GHCC 17.36. CP 97. In any event, whether the Towers’ activities may be conditional uses is not at issue since it is undisputed that no conditional use permit has been issued for the Towers’ Chester Avenue property to “commercially breed, train, or board horses.” CP 259.

Appellants' Br. at 18. This comparison is inaccurate and not supported by the record below.

For the reasons previously discussed, the Towers' bald assertion that "the fact that money changes hands does not change the nature of the . . . use of the Towers' property" is incorrect. *Id.* As noted, the purpose of the R-3 zoning district is to promote recreational and conventional residential uses, not commercial uses.

The enforcement of a zoning ordinance by injunction is essential if the amenities of the area sought to be protected are to be preserved. *Steinmann*, 9 Wn.App. at 486, citing 1 E. Yokley, *Zoning Law and Practices* 10-6 (3d ed. 1965), and 3 E. Yokley, *Zoning Law and Practices* 22-4 (3d ed. 1967). The County's zoning code regulates the use of property and controls the dimensions of improvements placed on property to ensure that adjacent land uses are compatible with one another. *Kelly*, 157 Wn. App. at 426.

The Towers' commercial activities on their property are incompatible with the residential neighborhood intended for the R-3 zone. Commercial activities increase vehicle traffic and other pressures on the area not compatible with residential use.⁸ Evidence below shows that increased traffic resulting from the Towers' non-permitted use on their property is disruptive and incompatible with the surrounding R-3

⁸ In addition to the neighboring property owners' testimony (the Idsos), photographs in the record below show the number of vehicles (horse trailers and recreational vehicles) present on the Towers' property in 2011. CP 125-29.

residential use, with no apparent hours of operation and vehicles coming and going at all hours.⁹ CP 132. Other impacts, while present to a lesser degree with the Towers' own private use, are *increased* with heavier commercial business use: odors and wastes from horses, as well as from a sani-can and flies attracted to them are very unpleasant, offensive, and unhealthy to surrounding residents. CP 123, 132. Horses occasionally have escaped from the Towers' property, creating a safety hazard for both traffic and persons, especially children in the neighborhood, as well as damaging the neighbors' shrubbery.¹⁰ CP 124, 130, 132.

The Towers cite no authority to support their contention that the County is acting outside its police power in enforcing the R-3 zoning regulations or that the County is somehow trying to regulate horse ownership on their property. Appellants' Br. at 18-19. The County's zoning regulation regarding the R-3 use district, GHCC 17.36, is a valid exercise of the police power if they bear a substantial relation to the public health, safety, morals or general welfare. *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978). The purpose of the County

⁹ In their statement of the case in their opening brief, the Towers claim "traffic to the property is quite limited and less than when it was owned by the prior owner." Appellants' Br. at 8. This statement finds no support in the record, however. The declaration submitted by Shelley Jones, which is cited as support for this assertion, says nothing of the kind. CP 170-72. The only reference remotely related to traffic at the Towers' property mentioned by Ms. Jones is that she *does not recollect* ever seeing any recreational vehicles parked on the Tower property overnight. CP 171.

¹⁰ It should be noted too that parcels in the R-3 district have the smallest minimum area of any residential use district in the County (7,200 sf.), which further increases detrimental impacts to R-3 properties from the Towers' commercial horse business activities. GHCC 17.04.030.

Zoning Code (Title 17) “is to promote the public health, safety and general welfare . . . , and to protect each such group of uses from the intrusion of incompatible uses . . . ” GHCC 17.04.020.

GHCC 17.36 does not regulate horse ownership on the Towers’ property as the regulation does not address horse ownership. This chapter addresses the *use of land* located in the R-3 use district. There is nothing “absurd” about reasonable zoning regulation of residential use areas to limit or preclude commercial business uses such as the Towers engage in on their property in violation of GHCC 17.36.

E. The Towers’ commercial horse boarding, stall rental, and riding activities are a public nuisance under GHCC 17.96.030.

With respect to the issue of public nuisance, the Towers state that the County argued for the first time in its reply brief below that horse training activities should be enjoined by the trial court. Appellants’ Br. at 19. As previously discussed and for the reasons set forth in Section III (B) of this brief, this assertion is incorrect; the County’s complaint, its motion for summary judgment, and declarations and other evidence submitted below substantially argue and show that the Towers’ horse-related business should be enjoined as a violation of the County’s zoning regulations.

1. The Towers' activities threaten "the comfort, repose, health, or safety of others."

The Towers next assert that their horse-related activities on the Chester Avenue property do not constitute a public nuisance under RCW 7.48.120 because the County doesn't assert such activities pose any threat to the comfort, repose, health or safety of others. Appellants' Br. at 20-21. But this assertion is incorrect. The County clearly alleges in its complaint that the Towers' "activities annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of people." CP 8, ¶ 29. The County goes on to submit substantial evidence below supporting this issue. Neighboring property owners Christopher Idso and Leonard Idso submitted declarations describing the threats the Towers' activities present to public safety, health, and comfort. CP 122-32. See also, 22-23 *infra*. In addition to the County's showing under RCW 7.48.120, the Towers' activities in engaging in commercial horse stall rentals, horse training and riding lessons and the like in violation of GHCC 17.36 and GHCC 17.96.030 establishes as a matter of law that their activities maintain a public nuisance on their property.

The evidence below also shows that the Towers' property lacks adequate public water or sanitary facilities necessary for commercial use of the property, which present a danger to public health. County Environmental Health Specialist Mike Bernheine is tasked with administering the County's on-site sewage system regulations under

GHCC 8.16. CP 119. The requirements of GHCC 8.16 are intended to protect the public health by minimizing public exposure to sewage.

GHCC 8.16.010. Bernheine notified the Towers' retained sewage system designer (Bill Hungerford of Quality Designs) by letter on September 23, 2005, that the water system on the property was inadequate for a public water system approval, and that until an adequate water supply is obtained a sewage disposal permit cannot be issued. CP 120-21. The fact that the Towers' property does not have any approved public water supply or sanitary facilities is evidence supporting a threat to public health, and a consequent public nuisance created thereby under RCW 7.48.120. The evidence considered by the trial court also substantially supports a finding that the nuisance affects the rights of the entire neighborhood under RCW 7.48.130.

2. The Towers' activities are properly determined to constitute a public nuisance under the County Code.

The Towers attempt to distinguish *Kev, supra*, cited by the County below in its motion for summary judgment, arguing that the County code "may not make a thing a nuisance, unless it is in fact a nuisance."

Appellants' Br. at 22. But the Towers lift this quotation out of context, failing to quote the entire holding of the *Kev* opinion. The Supreme Court goes on to hold that "[e]ngaging in any business or profession in defiance of a law regulating or prohibiting the same, however, is a nuisance per se."

Kev, 106 Wn.2d at 138. The Supreme Court goes on to favorably quote the Court of Appeals opinion in *County of King ex rel. Sowers v. Chisman*, 33 Wn.App. 809, 658 P.2d 1256 (1983), stating that a King County ordinance providing for injunctions against violations of its provisions “indicates a decision by the legislative body that the regulated behavior warrants enjoining, and that the violation itself is an injury to the community. It is not the court's role to interfere with this legislative decision.” 106 Wn.2d, at 139.

It is also telling that the Towers fail to mention or account for the Court of Appeals’ holding in *Steinmann*, 9 Wn. App. at 485, that “[i]njunctive relief is available against zoning violations which are declared by ordinance to be nuisances.” The *Steinmann* facts are very analogous to the facts in this case. In *Steinmann*, the owner of a single-family home applied for and was granted a building permit to construct an addition primarily above an existing garage for a “game room,” “hobby area,” and “photo dark room.” 9 Wn. App., at 480. The owner never indicated an intent to use the premises for rental purposes but indicated the remodeling was for personal use. However, the owner remodeled the house to form three separate living areas; the addition above the garage contained a living room, two bedrooms, a bathroom and a kitchen. The addition and another space were advertised and rented to tenants. *Id.* The City of Mercer Island appealed the refusal of the trial court to enjoin as a

public nuisance the alleged rental of apartment units in violation of the City's zoning code. *Id.*

In reversing the trial court and ordering the issuance of an injunction, the Court of Appeals held that a municipality is not precluded from enforcing zoning regulations even where it has been inactive in enforcing previous violations. 9 Wn. App., at 483. But on point regarding the public nuisance issue here, the *Steinmann* opinion held that “[i]njunctive relief is available against zoning violations which are declared by ordinance to be nuisances.” 9 Wn. App., at 485.

Thus, the County may obtain injunctive relief for violations of its zoning code that are declared to be public nuisances without having to show specific elements of nuisance. “The violation itself is an injury to the community.” *Chisman, Kev, supra.*

In this case, former owner Miller applied for and received a building permit to construct a *private* horse arena with no stated intention to use the arena or property for commercial horse activities, with the permit itself stating that it was for private use. CP 96, 118, 259. After Miller builds the structure and later sells the property to the Towers, the Towers proceed to rent out the horse stalls and arena for charged fees without so much as attempting to apply for a conditional use permit or inquiring whether commercial activities are allowed in an R-3 zone.¹¹ The

¹¹ The Towers were placed on notice by County Environmental Health Specialist Mike Bernheine in his September 23, 2005 letter to the Towers' septic system designer that they need to contact the planning and building department regarding commercial use of

Towers' activities in renting horse stalls and conducting commercial horse activities on their property in violation of GHCC 17.36 is a public nuisance as prescribed by GHCC 17.96.030 and the County is entitled to an injunction against continued violations.

With respect to evidence produced by the County in rebuttal below, the Towers complain that the "horse training activities" allegation is based on hearsay in the form of a newspaper article attached to Leonard Idso's rebuttal declaration. Appellants' Br. at 19. A trial court may consider only admissible evidence in ruling on summary judgment motions. *Allen v. Asbestos Corp.*, 138 Wn. App. 564, 570, 157 P.3d 406 (2007). But evidence of contradictory out-of-court statements by a witness is admissible to impeach the credibility of that witness without raising a hearsay problem because the statements are not offered for their truth. *Fraser v. Beutel*, 56 Wn. App. 725, 738, 785 P.2d 470 (1990). In this case, Elaina Tonto submitted a declaration on the Towers' behalf. CP 161-63. The statements contained in the June 22, 2011 declaration of Leonard Idso referring to a newspaper article showed that Elaina Tonto's description of the horse activities being conducted on the Towers' property are inconsistent. CP 282, 284-85. The newspaper article and Idso's statements are therefor admissible for impeachment purposes. The

this property. CP 121. Nevertheless, as the property owners, the Towers are held to have known of zoning requirements regardless of information they may have received from a county official. *Steinmann*, 9 Wn. App. at 483.

newspaper article statements also served to impeach declarations submitted by the Towers that commercial services were not offered on their property.

Greenwood v. Olympic, Inc., 51 Wn.2d 18, 315 P.2d 295 (1957), cited by the Towers in their opening brief at 23, is distinguishable. First, *Kev*, *Steinman*, and *Chisman* are far more recent Supreme Court and Court of Appeals cases addressing public nuisance than *Greenwood*. Second, *Greenwood* does not address public nuisances in the context of zoning regulations, while *Kev*, *Steinman*, and *Chisman* specifically address public nuisances as determined by application of zoning ordinances. Another distinguishing factor is that the lack of handrails in *Greenwood* only impacts persons who actively enter the building on the landowner's property, whereas the Towers' commercial horse-related business affects and impacts a greater area of the public and property owners in the R-3 zoning district who have far less ability to avoid adverse impacts of that use. As applied by the *Kev* holding, the Towers' horse-related activities in violation of the County Code, constitute a nuisance per se. *Kev*, 106 Wn.2d at 138.

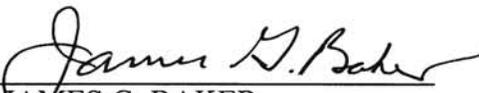
V. CONCLUSION

The Towers have consistently attempted to paint this case as one concerned solely with disgruntled neighbors and whether one likes horses or not, while unapologetically continuing to use their Chester Avenue

property for commercial activities in violation of applicable County Recreational Residential (R-3) zoning requirements. The Towers have admitted and advertise that they conduct horse boarding, stall rental and riding activities for fees, which is a commercial use of the property, and they have rented recreational camping spaces to the public in violation of the County's recreational vehicle and camping regulations. The trial court determined as a matter of law that the Towers' commercial horse and camping activities constitute a public nuisance and properly enjoined them. The County respectfully requests that this Court affirm the trial court's order granting summary judgment below.

DATED this 10 day of April, 2012.

Respectfully Submitted,

By: 
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WSBA #12446
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JGB/

APPENDIX A

Excerpts from the Grays Harbor County Code

Chapter 8.16

ON-SITE SEWAGE SYSTEM

Sections:

- 8.16.010 Purpose, objectives and authority.**
- 8.16.020 Administration.**
- 8.16.030 Definitions.**
- 8.16.040 Applicability.**
- 8.16.050 Connection to public sewer system.**
- 8.16.060 Permit requirements.**
- 8.16.070 Location.**
- 8.16.080 Soil and site evaluation.**
- 8.16.090 Design requirements—General.**
- 8.16.100 Design requirements—Septic tank sizing.**
- 8.16.110 Design requirements—Soil dispersal components.**
- 8.16.120 Design requirements—Facilitate operation, monitoring and maintenance.**
- 8.16.130 Holding tank sewage systems.**
- 8.16.140 Installation.**
- 8.16.150 Inspection.**
- 8.16.155 Record drawings.**
- 8.16.160 Operation, monitoring and maintenance—Owner responsibilities.**
- 8.16.165 Operation, monitoring and maintenance—Food service establishments.**
- 8.16.170 Repair of failures.**
- 8.16.180 Expansions.**
- 8.16.190 Existing system evaluations.**
- 8.16.200 Abandonment.**
- 8.16.210 Septage management.**
- 8.16.220 Developments, subdivisions, and minimum land area requirements.**
- 8.16.230 Areas of special concern.**
- 8.16.240 Certification of installers, pumpers, and maintenance service providers.**
- 8.16.270 Waiver of state regulations.**
- 8.16.280 Enforcement.**
- 8.16.290 Notice of decision—Adjudicative proceeding.**
- 8.16.300 Recommended standards.**
- 8.16.310 Fee schedule.**

8.16.010 Purpose, objectives and authority.

A. The purpose of this chapter is to protect the public health by minimizing the potential for public exposure to sewage from on-site sewage systems and adverse effects to public health that discharges from on-site sewage systems may have on ground and surface waters.

B. This chapter regulates the location, design, installation, operation, maintenance, and monitoring of on-site sewage systems to:

1. Achieve long-term sewage treatment and effluent dispersal; and
2. Limit the discharge of contaminants to waters of the state.

C. This chapter establishes rules and regulations governing on-site sewage disposal systems and water supplies; providing for licensing those engaged in design, construction, and maintenance of on-site sewage disposal systems; establishing licenses and fees thereof; providing for the establishment of a designer program and providing penalties for the violation thereof. (Ord. 2007-1 § 1, 2007: Ord. 233 (part), 1997: Ord. 204 § 6.20.010, 1994)

8.16.020 Administration.

The local health officer and the local board of health shall administer this chapter under the authority and requirements of Chapters 70.05, 70.08, 70.118, 70.46 and 43.70 RCW. The county health officer is authorized to charge fees for administration of this chapter. The local health officer may authorize the Environmental Health Division director and his or her designee(s) to further administer the requirements of this chapter. (Ord. 2007-1 § 2, 2007: Ord. 233 (part), 1997: Ord. 204 § 6.20.020, 1994)

8.16.030 Definitions.

A. Acronyms used in this chapter:

“ANSI” means American National Standards Institute.

“BOD” means biochemical oxygen demand, typically expressed in mg/L.

“CBOD₅” means carbonaceous biochemical oxygen demand, typically expressed in mg/L.

“FC” means fecal coliform, typically expressed in number colonies/one hundred (100) ml.

“LOSS” means a large on-site sewage system (see Chapter 246-272B WAC).

“NSF” means National Sanitation Foundation International.

“O&G” (formerly referred to as FOG) means oil and grease, a component of sewage typically originating from food stuffs (animal fats or vegetable oils) or consisting of compounds of alcohol or glycerol with fatty acids (soaps and lotions). Typically expressed in mg/L.

“OSS” means on-site sewage system.

“RS&G” means recommended standards and guidance.

“SSAS” means a subsurface soil absorption system.

“TAC” means the technical advisory committee established in WAC 247-272A-0400.

“TN” means total nitrogen, typically expressed in mg/L.

“TSS” means total suspended solids, a measure of all suspended solids in a liquid, typically expressed in mg/L.

“USEPA” means United States Environmental Protection Agency.

B. Definitions used in this chapter:

“Additive” means a commercial product added to an on-site sewage system intended to affect performance or aesthetics of an on-site sewage system.

Chapter 8.20

RECREATION VEHICLES AND CAMPING

Sections:

8.20.010	Purpose.
8.20.020	Authorized areas.
8.20.030	Definitions.
8.20.040	Minimum requirements for a licensed park.
8.20.050	Permits.
8.20.060	Licenses.
8.20.070	Inspections.
8.20.080	Notices, hearings and orders.
8.20.090	Conflict—Effect of partial invalidity.

8.20.010 Purpose.

It shall be the purpose and intent of these regulations to prevent the potential or actual occurrence of unsanitary conditions, public health and safety hazards and degradation or deterioration of the environment by controlling the location and requiring sanitary provisions for recreational vehicles and other camping. (Ord. 104 § 6.30.010, 1982)

8.20.020 Authorized areas.

A. General. No recreational vehicle shall be occupied nor other camping take place except in authorized areas.

B. Authorized Areas. The following are authorized areas for the occupancy of a recreational vehicle or for other camping:

1. Private Lot. A private lot is authorized for occupancy of two recreational vehicles or other camping when on the lot are provided sanitary facilities approved by the health authority.
2. Temporary Approved Park. The occupancy of three or more recreational vehicles or camping on the same parcel of property can be authorized by issuance of a special permit for a period of time not to exceed seven days, when the health officer has determined that adequate sanitary facilities are available on the site to effectively prevent the occurrence of public health hazards and unsanitary conditions.
3. Private Lot—As Guest. Two recreational vehicles or other camping is authorized on a private lot as a guest where a permanent dwelling is located, provided the home has an approved sewage disposal system, the guests utilize the sanitary facilities in the home, and that the period is a short term occupancy of a temporary duration for not more than fourteen (14) days within a two month period.
4. Licensed Park.
 - a. The occupancy of recreational vehicles and other camping is authorized in a licensed park.
 - b. The occupancy of three or more recreational vehicles or camping on the same parcel of property is only authorized in a licensed park.

8.20.030

5. Remote Area. The occupancy of recreational vehicles and camping is authorized in remote areas. (See definition.)

6. Private Lot—As Member. Noncommercial facility owned by a private nonprofit corporation. Limited to members only. All units must be self-contained. Adequate sanitary facilities as determined by the health officer. (Ord. 327 § 1, 2005; Ord. 212, 1995; Ord. 165 (part), 1992; Ord. 104 § 6.30.020, 1982)

8.20.030 Definitions.

A. The following are definitions of terms used throughout these rules and regulations:

“Health authority” means the legally designated health officer or his or her authorized representative of Grays Harbor health department.

“Licensed park” means a recreational vehicle parking and other camping area, meeting the requirements of Section 8.20.040 of these rules and regulations and for which there is a valid license to operate issued by the health authority.

“Occupied” means that a recreational vehicle or camping site shall be deemed occupied when it is utilized or intended to be utilized, at the place where parked, for general living activities such as sleeping, cooking, washing or other similar activities associated with dwelling or camping activities.

“Other camping” means the provisions of camping tents, station wagon tents, sleeping bags or other temporary shelters and camping activities.

“Public highway” means any federal, state, county or city road for use by the general public, which includes the ocean beaches as currently defined by state statute.

“Recreational vehicle” means a vehicle designed for short-term occupancy during travel, recreation and/or vacation purposes, including but not limited to the following types:

1. “Camping trailer (tent trailer)” means a portable, collapsible structure mounted on wheels and constructed of fabric, plastic or other pliable material which folds for towing by a motor vehicle and unfolds at the campsite.

2. “Motor home” means a portable dwelling constructed as an integral part of a self-propelled vehicle.

3. “Travel trailer” means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses. A travel trailer shall be identified by the manufacturer of the trailer and, when factory equipped for the road, it shall have a body width not exceeding eight feet, and a body length not exceeding thirty-two (32) feet.

4. “Truck camper (pick-up coach)” means a portable structure designed to be loaded onto, or mounted on the bed or chassis of a truck, having a body width not exceeding eight feet and a body length not exceeding thirty-two (32) feet.

“Recreational vehicle parking” or “other camping area” means a parcel of land in which three or more spaces are occupied or intended for occupancy by recreational vehicles or other camping for transient or recreational dwelling purposes.

“Remote area” means where located at least one mile from a public highway or a permanent dwelling, and where the density is not greater than three recreational vehicles or camping per acre and where the use is temporary only; not to exceed two weeks’ duration.

8.20.050 Permits.

A. It is unlawful for any person to construct, alter or extend any recreational vehicle parking/camping area within the limits of Grays Harbor health department, unless he or she holds a valid permit issued by the health authority in the name of such person for the specific construction, alteration or extension proposed.

B. Applications for permits shall be made to the health authority and shall contain the following:

1. Name and address of applicant;
2. Interest of the applicant in the travel trailer parking area;
3. Location and legal description of the travel trailer parking area; and
4. Complete engineering plans and specifications of the proposed parking/camping area showing:

- a. The area and dimension of the tract of land,
- b. The number, location and size of all recreational vehicle parking or camping spaces,
- c. The location of service buildings, sanitary stations and any other proposed structures,
- d. The location of water and sewer lines and riser pipes,
- e. Plans and specifications of the water supply and refuse and sewage disposal facilities,
- f. Plans and specifications of all buildings constructed or to be constructed within the recreational vehicle parking or camping area,
- g. Elevations of the land contour at ten (10) foot contour intervals, and
- h. Water table elevations.

C. When, upon review of the application, the health authority is satisfied that the proposed plan meets the requirements of these rules and regulations issued hereunder, a permit shall be issued.

D. Any person whose application for a permit under these rules and regulations has been denied may request and shall be granted a hearing on the matter before the board of health under the procedure provided by Section 8.20.080. (Ord. 327 § 4, 2005; Ord. 104 § 6.30.050, 1982)

8.20.060 Licenses.

A. It is unlawful for any person to operate any recreational vehicle parking or camping area within the limits of Grays Harbor County unless he or she holds a valid license issued annually by the health authority in the name of such person for the specific recreational vehicle parking/camping area. All applications for licenses shall be made to the health authority, which shall issue license upon compliance by the applicant with provisions of this chapter and regulations issued hereunder and of other applicable legal requirements. All licenses shall expire on December 31st of each year.

B. Every person holding a license shall give notice in writing to the health authority within seven days after having sold, transferred, given away or otherwise disposed of interest in, or control of, any travel trailer parking area. Such notice shall include the name and address of the person succeeding to the ownership or control of such travel trailer parking area. Upon application in writing for transfer of the license and deposit of a fee as required in subsection F of this section, the license shall be transferred if the parking area is in compliance with all applicable provisions of these rules and regulations issued hereunder.

C. 1. Application for original licenses shall be in writing, signed by the applicant, accompanied by the deposit of a fee as required and shall contain: the name and address of the applicant; the location and legal description of the travel trailer parking area; and a site plan of the travel trailer parking area showing all trailer spaces, structures, roads, walkways, sanitary stations and other service facilities.

2. Applications for renewals of licenses shall be made in writing by the holders of the licenses, shall be accompanied by the deposit of a fee as required and shall contain any change in the information submitted since the original license was issued for the latest renewal granted. Applications for renewal and renewal fee must be received prior to January 30th the year the license is to be renewed.

D. Any person whose application for a license under these rules and regulations has been denied, any person whose license has been suspended, or who has received notice from the health authority that his or her license will be suspended unless certain conditions or practices at the travel trailer parking area are corrected, may request and shall be granted a hearing on the matter before the board of health under the procedure provided by Section 8.20.080.

E. Whenever, upon inspection of any recreational vehicle parking/camping area, the health authority finds that conditions or practices exist which are in violation of any provision of these rules and regulations issued hereunder, the health authority shall give notice in writing to the person to whom the license was issued that unless such conditions or practices are corrected within a reasonable period of time specified in the notice by the health authority, the license will be suspended. At the end of such period, the health authority shall reinspect such recreational vehicle parking/camping area and, if such conditions or practices have not been corrected, he or she shall suspend the license and give notice in writing of such suspension to the person to whom the license is issued. Upon receipt of notice of suspension, such person shall cease operation of such recreational vehicle parking/camping area.

A temporary license, upon written request therefore, shall be issued by the health authority, for every recreational vehicle parking/camping area in existence, upon the effective date of these rules and regulations permitting the area to be operated during the period ending one hundred eighty (180) days after the effective date of these rules and regulations in accordance with such conditions as the health authority may require.

F. The board of health shall establish a fee schedule in accordance with RCW 70.05.060(7) for licenses to operate or construct a recreational vehicle parking or camping area. (Ord. 327 § 5, 2005; Ord. 165 (part), 1992; Ord. 104 § 6.30.060, 1982)

8.20.070 Inspections.

A. The health authority is authorized and directed to make such inspections as are necessary to determine satisfactory compliance with these rules and regulations issued hereunder.

B. The health authority shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of these rules and regulations issued hereunder. (Ord. 104 § 6.30.070, 1982)

Chapter 17.04

INTRODUCTORY PROVISIONS

Sections:

17.04.010	Title.
17.04.020	Purpose of ordinance.
17.04.030	Names of classifications.
17.04.040	Establishment of zones by map.
17.04.050	Division of zoning map.
17.04.060	Changes in boundaries.
17.04.070	Application of district regulations.
17.04.080	Uncertainty of boundaries.
17.04.090	Parcels divided by zoning districts.

17.04.010 Title.

This title shall be known and may be cited as the “Grays Harbor County comprehensive zoning ordinance.” (Ord. 241 § 13.01.010, 1998)

17.04.020 Purpose of ordinance.

The purpose of this title is to promote the public health, safety and general welfare, and to facilitate the adoption and enforcement of the coordinated plans which are either developed or being designed to encourage the most appropriate use of land throughout Grays Harbor County; to group as nearly as possible those uses which are mutually compatible, and to protect each such group of uses from the intrusion of incompatible uses which would destroy the security and stability of land and improvements and which would also prevent the greatest practical convenience and service to citizens of Grays Harbor County; to promote traffic safety; to provide safety from fire and other elements; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsuitable areas; and to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources; to protect and enhance the quality of the natural environment; and to provide for adequate public services. (Ord. 241 § 13.01.020, 1998)

17.04.030 Names of classifications.

In order to accomplish the purpose of this title, twelve (12) primary use classifications and combining or overlay use classifications are established, in each of which regulations are prescribed concerning permissible uses, the height and bulk of buildings, the areas of yards and other open spaces around buildings, and determining the density of population, such classifications to be known as follows:

Primary Districts

Description	Symbol	Minimum Subdivision
General Development 5	G-5	5 acres
General Development 1	G-1	1 acre
Agricultural 1	A-1	10 acres
Agricultural 2	A-2	40/20 acres
Rural Residential	RR	1 acre
Residential (Restricted)	R-1	15,000 sq. ft.
Residential (General)	R-2	10,000 sq. ft.
Residential (Resort)	R-3	7,200 sq. ft.
Residential (Lake Quinault)	LQ	2 acres
Commercial (General)	C-2	NA
Industrial Park	I-1	10 acres
Industrial	I-2	NA

Combining Districts

Description	Symbol	Minimum Subdivision
Flood Plain	-FP	Primary district
Shoreline Environment Overlay	see Shoreline	Master Program
Critical Areas	None	See Sec. 13.07.180

(Ord. 265, 1999; Ord. 264, 1999; Ord. 241 § 13.01.030, 1998)

17.04.040 Establishment of zones by map.

The location and boundaries of the various zones are such as shown and delineated on the Zoning Map of Grays Harbor County adopted under this title. (Ord. 241 § 13.01.040, 1998)

17.04.050 Division of zoning map.

The zoning map may for convenience, be divided into parts and each such part may, for purposes of more readily identifying locations within such zoning map, be subdivided into units, and such parts and units may be separately employed for identification purposes when adopting or amending the zoning map or for any official reference to the zoning map. (Ord. 241 § 13.01.050, 1998)

17.04.060 Changes in boundaries.

Changes in the boundaries of the zones shall be made by ordinance adopting an amended zoning map, or part of the map, or unit of a part of said zoning map, which the amended maps, or parts of units or parts, when so adopted shall be published in the manner prescribed by law and become a part of this title. (Ord. 241 § 13.01.060, 1998)

Chapter 17.08

DEFINITIONS

Sections:

17.08.010 Definitions.

17.08.010 Definitions.

For the purpose of this title certain terms and words are defined in this chapter. When not inconsistent with the content, words used in the present tense shall include the future, and the future the present; the singular number shall include the plural, and the plural the singular; the word "shall" is always mandatory and the word "may" denotes a use of discretion in making a decision. The words "used" or "occupied," unless the context otherwise requires, shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." Words used in this title but not defined herein shall be given the meaning defined in Webster's Third New International Dictionary.

"Accessory use, structure, or building" means a use or structure on the same lot with, and a nature customarily incidental and subordinate to, the principal use or structure.

"Agriculture" means the tilling of the soil, raising of crops, horticulture, viticulture, floriculture, small livestock farming, dairying, animal husbandry, including all uses customarily incidental thereto, but not including slaughter house, fertilizer works, bone yard or plant for the reduction of animal matter.

"Amendment" means a change in the wording, context or substance of this title or a change in the zone boundaries upon the zoning maps adopted hereunder.

"Apartment" means a room, or suite of two or more rooms, occupied or suitable for occupancy as a dwelling unit for one family.

"Automobile wrecking" means any dismantling or wrecking of used motor vehicles or trailers, or the storage, sale or dumping of dismantled or wrecked vehicles or their parts.

"Bed and breakfast" means a dwelling-unit occupied by the owner, in which not more than five guest rooms are devoted to accommodating and where meals are provided for compensation for not more than ten (10) persons other than the family. The facility is designed or primarily used, for the accommodation of short-term occupancy rentals up to thirty (30) consecutive days.

"Block" means all property abutting upon one side of a street between intersecting and intercepting streets, or between a street and railroad right-of-way, waterway, terminus of dead-end street, or city boundary line. An intercepting street shall determine only the boundary of the block on the side of the street, which it intercepts.

"Boarding house" means a dwelling unit in which not more than five guest rooms are devoted to accommodating not more than ten (10) persons. The facility is designed or primarily used for the accommodation of long-term occupancy rentals of at least thirty (30) consecutive days. Boarding house shall not include rest home or convalescent home.

"Building" means a structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of any person, animal or chattel. When any portion thereof is com-

pletely separated from every other portion thereof by a masonry division or firewall without any window, door or other opening therein, which will extend from the ground to the upper surface of the roof at every point, then each such portion shall be deemed to be a separate building.

“Building height” means the vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof. See the term “grade.”

“Building, main” “Main building” means the principal building or other structure on a lot or site used to accommodate the primary use to which the premises are devoted.

“Commercial” means the purchase, sale, offering for sale, or other transaction involving the handling or disposition of any article, service, substance or commodity for livelihood or profit, or the management or occupancy of an office building, offices, recreational or amusement enterprises; or the maintenance and the use of building, offices, structures or premises by professions or trades offering services.

“Child day care center” means a facility providing regularly scheduled care for a group of children one month of age through twelve (12) years of age for periods less than twenty-four (24) hours; except, a program meeting the definition of a “home day care.”

“Church” means an establishment for the principal purpose of religious worship and for which the main building or other structure contains the sanctuary or principal place of worship, and including accessory uses in the main building or in separate buildings or structures, including Sunday School rooms and religious education class rooms, assembly rooms, kitchen, library or reading room, recreation hall, a one-family dwelling unit and residences on-site for nuns and clergy, but excluding day care nurseries and facilities for training of religious orders.

“Clinic” means a building or portion thereof containing offices for the provision of services for the practice of the healing arts, for out-patients only.

“Classification” means a use category in the broad list of land uses in which certain uses, either individually or as to type, are identified as possessing similar characteristics or performance standards and are permitted as compatible uses in the same zone or classifications. A classification, as the term is employed in this title, includes provisions, conditions and requirements related to the location of permitted uses.

“Clustering” means a development design technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and protection of natural features. This is accomplished through the reduction of area, height, and bulk requirements while maintaining the density within the development required by the zoning district. Clustering, unless authorized by a planned unit development, shall only be allowed within zoning districts in which it is specifically authorized as a permitted or conditional use. The term clustering does not apply to the construction of more than one permitted building on one lot where the area, height, bulk and other district requirements are fully met and the lot and building remain in a single ownership.

“Commission” means the Grays Harbor County planning commission.

“Conditional use” means a use listed among those classified in any given zone but permitted to locate only after review by the board of adjustment and the granting of a conditional use permit imposing such performance standards as are contained in this title to make the conditional use compatible with other permitted uses in the same vicinity and zone.

“Conditional use permit” means the documented evidence of authority granted by the board of adjustment to locate a conditional use at a particular location. 17.08.010

“Density” means the number of dwelling units per acre including all land within the boundaries of the designated site.

“Dwelling” means a building designed exclusively for residential purposes, including single-family, two-family, and multiple families.

Dwelling, Types of.

1. “Dwelling, single,” “Single dwelling” means a detached building designed exclusively for occupancy by one family and containing one dwelling unit.

2. “Dwelling, two-family,” “Two-family dwelling” means a building designed exclusively for occupancy by two families, living separate from each other, and containing two dwelling units.

3. “Dwelling, multiple,” “Multiple dwelling” means a building designed exclusively for occupancy by three or more families living separately from each other, and containing three or more dwelling units.

“Dwelling unit” means any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family, or a congregate residence for ten (10) or less persons.

“Enlargement.”

1. As applied to uses, “enlargement” means the expansion of or addition to the use by increasing the amount of equipment or building area which is devoted to the use.

2. As applied to structures, “enlargement” means any action which increases the exterior dimensions of the structure and results in an increase in the useful floor area of the structure.

“Family” means an individual, or two or more persons related by blood or marriage, or a group of not more than five persons who are not related by blood or marriage, excluding servants, living together in a dwelling unit.

“Floor area” means the total area included within the surrounding walls of a building on a lot or building site exclusive of that area devoted to vents, shafts and courts.

“Grade” means the average of the finished ground level at the center of all walls of a building. Where walls are parallel to and within five feet of a sidewalk, the above ground level shall be measured at the sidewalks.

“Health department” means the Grays Harbor County environmental health division of the department of public services or its successor.

“Home day care.” A facility in the family residence of the childcare licensee providing regularly scheduled care for twelve (12) or fewer children, with ages ranging from birth through eleven (11) years of age, for periods less than twenty-four (24) hours. The licensed capacity of a home day care shall include the children with ages ranging from birth through eleven (11) years of age who reside at the home.

“Home occupation” means a commercial use conducted within a home environment and which is conducted entirely within the dwelling and which is clearly secondary to the use of the dwelling for dwelling purposes.

“Industrial” means those intensive commercial and industrial activities, such as shipping terminals, contractor’s yards, warehousing, utility facilities, outdoor material and equipment storage,

manufacturing, processing, assembly, fabrication, commercial and industrial equipment rental and repair, retail and wholesale sales.

“Intensification” means any action which results in an increase in the level of use or activity within a defined area of land or within a structure or portion of a structure.

“Kennel” means a building or structure or premises where four or more dogs or cats or combination thereof, at least four months of age, are kept by owners of the dogs and cats or by persons providing facilities and care, and whether or not compensation is paid.

“Light-duty truck” means a truck with an empty-scale weight of six thousand (6,000) pounds or less. It includes vehicles such as pickup trucks, vans and utility vehicles.

“Light industrial” means those commercial and industrial activities, such as warehousing, transportation-related services, industrial sales, processing, assembly, fabrication, equipment rental and servicing, retail and wholesale sales, entirely conducted and contained within a building.

“Loading space” means an off-street or off-alley space or berth for the temporary parking of a commercial vehicle while loading or unloading materials or merchandise.

“Lot,” “parcel” or “tract” means an area of land, the boundaries of which have been established by some legal instrument such as a recorded deed, description, document or map.

“Lot depth” means the shortest horizontal distance between the front lot line and a line drawn perpendicular to the front lot line through the midpoint of the rear lot line. For lots with front lot lines containing curves or angles, the measurement shall be taken from a line drawn parallel to a base line joining the front corners of the lot and lying midway between the base line and a line drawn parallel to the base line tangent to the curve or through the angle point.

“Lot width” means the distance between side lot lines measured at right angles to the lot depth at its midpoint.

“Mini-storage building” means a storage building rated as a B-2 occupancy under the Uniform Building Code divided into individual storage rooms, having a maximum building height of eighteen (18) feet exclusive of architectural features and not exceeding a maximum building length of one hundred (100) feet; provided, that buildings may exceed the maximum building length where architectural features are incorporated and approved by the zoning administrator.

“Mobile home” is defined by RCW 46.04.302.

“Mobile home park” means any tract or tracts of land under one ownership or unified management developed or used for locating three or more mobile homes, excluding the sales lot of a licensed mobile home dealer, where not more than one mobile home is used as the owners’ or care taker’s residence. This definition for mobile home park shall supersede conflicting definitions found in other county ordinances.

“Motel” means a building or group of buildings containing guest rooms or apartments, which facility is designed or primarily used for the accommodation of short term occupancy rentals up to thirty (30) consecutive days.

“Nightly rental” means a building constructed as a single-family or two-family residence and used for the accommodation of short-term occupancy rentals on a daily or weekly basis.

“Nonconforming” means a use, structure or lot which does not conform to any one or more of the requirements applicable to it under the terms of this title.

“Off-street parking space.” See Section 17.68.020.

“Outdoor advertising display” means any card, paper, cloth, metal, glass, wooden or other display or device of any kind or characteristic whatsoever placed or painted for outdoor advertising purposes on the ground or on any tree, wall, fence, rock, structure or thing whatsoever.

“Outdoor advertising structure” means a structure of any kind or character erected or maintained for outdoor advertising purposes upon which any outdoor display is, or can be placed.

“Reclassification of property” means a change in zone boundaries upon a zoning map, which map is a part of this title when adopted in the manner prescribed by law.

“Recorded,” unless otherwise stated, means filed for purpose of record with the auditor of Grays Harbor County.

“Recreational vehicle” means a vehicle designed for short term occupancy during travel, recreation, and/or vacation purposes, including the following types:

1. “Travel trailer” means a portable structure built on a chassis, having a body width not exceeding eight feet and a body length not exceeding thirty-two (32) feet.
2. “Truck camper (pick-up coach)” means a portable structure designed to be loaded onto, or mounted on, the bed or chassis of a truck, having a body width not exceeding eight feet and a body length not exceeding thirty-two (32) feet.
3. “Motor home” means a portable dwelling constructed as an integral part of a self-propelled vehicle.
4. “Camping trailer (tent trailer)” means a portable, collapsible structure mounted on wheels and constructed of fabric, plastic, or other pliable material which folds for towing by another vehicle and unfolds at the campsite.

“Recreational vehicle park and campground” means any tract of land divided into lots or spaces, under the ownership or management of one person, firm or corporation for the purpose of locating three or more recreational vehicles for transient dwelling purposes.

“Rest home,” “convalescent home,” “guest home” or “home for the aged” means a home operated similarly to a boarding house but not restricted to any number of guests or guest rooms the operator of which is licensed by the state or county to give special care and supervision to his or her charges, and in which nursing, dietary and other personal services are furnished to convalescents, invalids and aged persons, and in which homes are performed no surgery, maternity or other primary treatments such as are customarily provided in sanitariums or hospitals.

“Short-term occupancy” means the occupancy of recreational vehicles for living purposes for a temporary duration of not more than fourteen (14) consecutive days within a two-month period.

“Sign” means any outdoor advertising display or outdoor advertising structure or indoor advertising display or structure designed and placed so as to be readable principally from the outside.

“Spot rezone” means a circumstance in which a request to rezone a parcel of land, from a less intensive use zone classification to a more intensive use zone classification, that is inconsistent with the surrounding uses and the comprehensive land use plan. A request to rezone a parcel of land, from a more intensive use zone classification to a less intensive use zone classification, that is consistent with the surrounding uses and the comprehensive land use plan shall not be found to constitute a spot rezone.

“Stand” means a structure for the display and sale of products with no space for customers within the structure itself.

“Street” means a public or recorded private thoroughfare which affords the primary means of access to abutting property.

“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

“Structural alteration” means any change in the supporting members of a building or structure, such as foundations, bearing walls, columns, beams, floor or roof joists, girders or rafters, or changes in the exterior dimensions of the building or structure, or increase in floor space.

“Use” means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted.

“Variance” means an adjustment in the application of the specific regulations of this title to a particular piece of property which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges.

“Yard” means an open space, other than a court, unoccupied and unobstructed from the ground upward except for certain exceptions specified in this title.

“Zone” means an area accurately defined as to boundaries and location, and classified by this title as available for certain types of uses and within which other types of uses are excluded. (Ord. 333 (part), 2005; Ord. 306 (part), 2003; Ord. 299 § 1, 2002; Ord. 291 § 1, 2001; Ord. 242 (part), 1998; Ord. 241 §§ 13.02.010 — 13.02.980, 1998)

Chapter 17.36

R-3 RESORT RESIDENTIAL DISTRICT

Sections:

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| 17.36.010 | Purpose. |
| 17.36.020 | Permitted uses and structures. |
| 17.36.030 | Conditional uses. |
| 17.36.040 | Building site. |
| 17.36.050 | Prohibited uses and structures. |

17.36.010 Purpose.

This is a district designed to permit recreational type residential as well as conventional residential. (Ord. 241 § 13.04.130, 1998)

17.36.020 Permitted uses and structures.

- A. Single-family dwellings;
- B. Parks;
- C. Two-family dwellings;
- D. Home occupations (see Section 17.60.050);
- E. Temporary fireworks stands regulated under RCW 70.77 and WAC 122-17;
- F. Home day cares.

(Ord. 242 (part), 1998; Ord. 241 § 13.04.140, 1998)

17.36.030 Conditional uses.

- A. Multiple-family units;
- B. Motels, bed and breakfast inns, nightly rentals, boarding houses;
- C. Mobile home parks;
- D. Schools (see 17.60.030);
- E. Churches (see Section 17.60.040);
- F. Recreational vehicle parks and campgrounds;
- G. Retail sales of arts and crafts;
- H. Restaurants;
- I. Child day care centers subject to the following conditions:
 1. Child day care centers shall comply with the standards and requirements of the Grays Harbor environmental health division;
 2. Child day care centers shall comply with the licensing standards and requirements of the Washington State Department of Social and Health Services;
 3. Child day care centers shall comply with the standards and requirements of the 1994 Uniform Fire Code and its successor;
 4. Child day care centers shall comply with the standards and requirements of the 1994 Uniform Building Code and its successor;

17.36.040

5. Child day care centers shall not be established on lands designated pursuant to RCW 36.70A.170 as geologically hazardous areas, frequently flooded areas, or wetlands.

J. Convenience stores, subject to the following conditions:

1. Floor area not to exceed five thousand (5,000) square feet;
2. The convenience store shall only occur on parcels with frontage on a major arterial, a state highway, or other major road. Site access shall only be from such arterial, highway, or major road;
3. Landscape buffers shall be provided between the convenience store and any property zoned or used for residential use, such that light and glare is substantially prevented from reaching the residential property;
4. The convenience store, its signs, or other appurtenances shall not project light and glare onto adjacent residential properties;
5. Hours of operation shall be limited to seven a.m. until eight p.m.;
6. Adequate on-site parking shall be provided per county requirements;
7. If gasoline, natural gas, or other petroleum products are sold, all relevant spill containment, fire code and other related regulations from local, state and federal laws shall be strictly adhered to;
8. Best management practices and all formal regulations related to storm water shall be employed and/or met.

k. Motorcycle, all-terrain vehicle, automobile, light-duty truck, boat, motor home and recreational-vehicle repair, but not including repair of heavy trucks or larger vehicles; subject to, but not limited to the following conditions:

1. The property shall not have any frontage on a private lane.
2. The property shall be at least one acre in size. (Ord. 333 (part), 2005; Ord. 297 (part), 2002; Ord. 294, 2002; Ord. 242 (part), 1998; Ord. 241 § 13.04.150, 1998)

17.36.040 Building site.

A. Minimum lot size: seven-thousand-two-hundred (7,200) square feet for single-family, eight-thousand-four-hundred (8,400) square feet for two-family dwellings and seven-thousand-two-hundred (7,200) square feet for the first unit and one-thousand (1,000) square feet for each additional unit in an apartment or condominium, or the larger lot area required by health regulations for the intended method of sewage disposal and water system.

B. Minimum Yard Requirements:

1. Front yard: twenty-five (25) feet.
2. Side yard: Multiple-family dwellings: equal to the height of the building. Single-family dwellings: ten (10) feet or ten (10) percent of the width of the lot at the front set back line but not less than five feet.
3. Rear yard: Single-family dwellings: twenty-five (25) feet or ten (10) percent of the lot depth (as defined) but not less than ten (10) feet. Multiple-family dwellings: equal to the height of the building plus ten (10) feet. (Ord. 241 § 13.04.160, 1998)

17.36.050 Prohibited uses and structures.

All industrial uses. (Ord. 336 (part), 2005; Ord. 297 (part), 2002; Ord. 241 § 13.04.170, 1998)

Chapter 17.96**PENALTIES****Sections:**

- 17.96.010** **Civil penalty.**
- 17.96.020** **Criminal penalties.**
- 17.96.030** **Other proceedings.**

17.96.010 **Civil penalty.**

Violations of the provisions of this title as amended or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances, conditional use permits or other permits required by this title as amended, shall constitute a civil violation subject to a monetary penalty not to exceed one thousand (\$1,000) dollars. Each day such violation continues shall be considered a separate violation. (Ord. 241 § 13.17.10, 1998)

The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in, encourages or maintains such violation may each be charged with a separate violation and suffer the penalties provided above. (Ord. 241 § 13.17.10, 1998)

17.96.020 **Criminal penalties.**

Violations of the provisions of this title as amended or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances, conditional use permits or other permits required by this title as amended, shall constitute a misdemeanor. Any person who violates this title or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one thousand (\$1,000) dollars or imprisoned for not more than ninety (90) days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in, encourages or maintains such violation may each be charged with a separate violation and suffer the penalties provided above. (Ord. 241 § 13.17.20, 1998)

17.96.030 **Other proceedings.**

Violations of the provisions of this title as amended or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances, conditional use permits or other permits required by this title as amended, shall constitute a nuisance and shall be subject to abatement upon filing of a civil action by the prosecuting attorney in either the district or superior court of the state of Washington. Nothing herein contained shall prevent the county from taking such action. (Ord. 241 § 13.17.30, 1998)

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

GRAYS HARBOR COUNTY, a political
subdivision of the State of Washington,

Respondent,

v.

FRANK G. TOWER III and LIESEL C.
TOWER, husband and wife, d/b/a "The
Riding Place Equestrian Center,"

Appellant.

No.: 42656-1-II

DECLARATION OF MAILING

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 10th day of April, 2012, I mailed a copy of the Brief of Respondent to
Dianne Kathleen Conway, Attorney at Law, PO Box 1157, Tacoma, WA 98401-1157 by
depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct to the best of my knowledge and belief.

DATED this 10th day of April, 2012, at Montesano, Washington.

Barbara Chapman