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BY SUSAN L. CARLSON
CLERK
Michael B. King
Attorney

Law Offices
A Professional Service Corporation

701 Fifth Avenue, Suite 3600
Seattle, Washington 98104-7010
T (206) 622-8020
F (206) 467-8215
D (206) 607-4142

Email: King@carneylaw.com

Via e-filing

February 5, 2018

Susan Carlson, Clerk of the Court
Washington Supreme Court
Temple of Justice
Olympia, WA 98504

Re: Maytown Sand and Gravel, LLC and Port of Tacoma v. Thurston County
COA. No.: 46895-6-II
WA S. Ct. No.: 94452-1

Dear Clerk Carlson:

I am writing concerning the Statement of Additional Authority filed on February 1 by Respondents. The Statement cited this Court's decision in *Sprague v. Spokane Valley Fire Department*, No. 93300-8 (filed January 25, 2018). The Statement asserts that the decision "supports the Respondents' arguments that neither LUPA nor collateral estoppel bar their damage claims[.]" and goes on to state that those arguments "appear at pages 46-66 of Respondents' Joint Responsive Brief in the Court of Appeals."

Regarding Respondents' assertion, Petitioner refers the Court to pages 1251 through 1254 of the Verbatim Report of Proceedings of the trial in this matter, where John Hempelmann, a witness for Respondents, described for the jury and the trial court the proceeding that took place before the Hearing Examiner. A copy of these pages is enclosed.

Respectfully,

CARNEY BADLEY SPELLMAN, P.S.

Michael B. King #14405
Michael B. King

cc: Counsel of Record
Enclosure

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record via Email and first-class United States mail, postage prepaid, to the following:

Patrick John Schneider Steven J. Gillespie Foster Pepper PLLC 1111 3rd Ave Ste 3400 Seattle WA 98101-3264 Pat.schneider@foster.com Steve.gillespie@foster.com	Elizabeth Petrich Thurston County Prosecuting Attorney's Office 2000 Lakeridge Dr SW Bldg 2 Olympia WA 98502-6001 petrice@co.thurston.wa.us
Donald C. Bauermeister James A. Hertz Friedman Rubin 1126 Highland Ave Bremerton WA 98337-1828 don@friedmanrubin.com jhertz@friendmanrubin.com	John E.D. Powell Jed Powell & Associates PLLC 7525 Pioneer Way, Suite 101 Gig Harbor, WA 98335-1165 jed@jedpowell.com
Carolyn A. Lake Goodstein Law Group, PLLC 501 S G St Tacoma WA 98405-4715 clake@goodsteinlaw.com	Mark R. Johnsen Karr Tuttle Campbell 701 Fifth Ave., Ste. 3300 Seattle, WA 98104 mjohnsen@karrtuttle.com
Josh Weiss Washington State Association of Counties 206 Tenth Ave SE Olympia, WA 98501 jweiss@wsac.org	Daniel G. Lloyd Assistant City Attorney P.O. Box 1995 Vancouver, WA 98668-1995 Dan.lloyd@cityofvancouver.us
Daniel B. Heid City Attorney, City of Auburn 25 W. Main Street Auburn, WA 98001-4998 dheid@auburnwa.gov	

DATED this 5th day of February, 2018.

Patti Saiden, Legal Assistant

1 A Yes. This is the findings conclusions and decision
2 of the Thurston County Hearing Examiner in the
3 matter of the application of Maytown Sand and Gravel
4 for approval of a requested five year review of a
5 mineral extraction Special Use Permit.

6 Q This is in December 30, 2010.

7 A This decision was December 30, 2010.

8 Q Sir, I just need you to identify it.

9 A Yes.

10 MR. BAUERMEISTER: Your Honor, we would move
11 into evidence for the jury's review exhibit number 11.

12 MR. JOHNSEN: No objection.

13 THE COURT: Identification 11 is admitted as
14 Exhibit 11.

15 BY MR. BAURERMEISTER:

16 Q So this is the document. It is the Maytown SUP five
17 year review document. It is a summary of the
18 decision here. The hearing date is shown there at
19 the lower -- it says hearing date.

20 A Hearing date. The Hearing Examiner Pro tem, that's
21 a Latin legal term meaning temporary, because
22 remember Mr. Bjorgen because he had relations with
23 Friends of Rocky Prairie had immediately
24 disqualified himself from being able to hear it, so
25 this is a temporary Hearing Examiner pro tem, held

DIRECT/MR. HEMPELMANN/MR. BAUERMEISTER

1 in open record public hearing on the request on
2 December 6, 7 and 8, 2010, that lasted for 21 hours.
3 That's over three days.

4 Q That's a hearing somewhat similar to what we're
5 doing here in that there is a pro tem judge, that's
6 different than a full-time judge, but in a room
7 taking evidence, witnesses are sworn, that sort of
8 thing?

9 A Yes. It is like a trial, except Judge Rice --
10 Hearing Examiner Rice, and we call her your Honor,
11 she isn't a Superior Court judge, doesn't wear the
12 black robe, but she hears evidence. She takes
13 exhibits. They all get marked. She builds the
14 record of exhibits. She hears all the testimony.
15 It is all recorded, and if necessary transcribed.
16 Lawyers on both sides.

17 The difference is in those hearings the
18 public can participate in some ways and so Friends
19 of Rocky Prairie got to participate, the Black Hills
20 Autoban Society got to participate. They were
21 there. They got to submit some evidence. They got
22 to even ask some limited questions, the County and
23 Maytown and Friends of Rocky Prairie witnesses, so
24 the primary difference is as I said the public gets
25 some limited ability to participate.

DIRECT/MR. HEMPELMANN/MR. BAUERMEISTER

1 Q Let's go to page 2 of the exhibit. Now we're in the
2 Hearing Examiner's decision papers, and look quickly
3 if we can at the -- can we explode some of the
4 names? Mike Kain, Cindy Wells, Jeremy Davis, Tony
5 Kantas --

6 A Those were all County planners.

7 Q So she would have taken evidence from these people?

8 A All these.

9 Q County's position?

10 A These people all testified. Nadine Romero then a
11 couple of witnesses from Washington Departement of
12 Fish and Wildlife, Mr. Krane from the Department of
13 Ecology, Ecology then, you see Mr. Garrison who you
14 saw in 2005 and you will hear from next week.
15 Mr. Cortner that's Maytown. Pony Ellingson was
16 involved in that hearing like he was in 2005, like
17 he was here earlier in the week. Mr. Hooten and
18 Mr. Hedge who was here from Port of Tacoma. You see
19 Sharon Coontz from Friends of Rocky Prairie, Sue
20 Danberg from Black Hills Autoban Society.

21 Q For our purposes, at least we established through
22 this report that all those people were heard before
23 a trained legal officer on this matter?

24 A Yes.

25 Q Then, we have -- without going through them because

DIRECT/MR. HEMPELMANN/MR. BAUERMEISTER

1 I'd like to move this a little faster, the exhibits
2 listed and there's plenty of evidence there. It
3 goes on for pages.

4 A 1, 2, 3, 4, 5, 6, 7, 8, slightly over 8 pages of
5 single spaced descriptions of the titles of the
6 exhibits. The record was several binders you know
7 like this.

8 Q She's taking a lot of evidence?

9 A Yes.

10 Q Now we have the finding beginning on page 10 of 48.
11 I don't want to go through every one of them,
12 because of time concerns, but I want to hit a few.
13 Could we look at page 5 -- excuse me page 11
14 paragraph 5? Would you read for the jury the
15 highlighted portion there?

16 A This is a Finding of Fact. She says,
17 "Number 5. After full public hearing
18 process, the mining Special Use Permit was approved
19 on December 16, 2005."

20 So she's summarizing all of the key facts
21 and this was a fact there was an issued permit
22 in 2005.

23 MR. ROBINSON: Issued means valid?

24 THE WITNESS: It means it has been approved, and
25 because it wasn't appealed, it was valid. Yes.

DIRECT/MR. HEMPELMANN/MR. BAUERMEISTER

CARNEY BADLEY SPELLMAN

February 05, 2018 - 10:28 AM

Transmittal Information

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- orrico@jmmlaw.com
- pat.schneider@foster.com
- petrice@co.thurston.wa.us
- sdrobinson@karrtuttle.com
- steve.gillespie@foster.com
- swatkins@karrtuttle.com

Comments:

Sender Name: Patti Saiden - Email: saiden@carneylaw.com

Filing on Behalf of: Michael Barr King - Email: king@carneylaw.com (Alternate Email:)

Address:
701 5th Ave, Suite 3600
Seattle, WA, 98104
Phone: (206) 622-8020 EXT 149

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