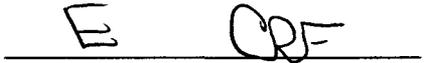


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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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KITSAP COUNTY, a political subdivision of the State of Washington,

Respondent,

vs.

KITSAP RIFLE AND REVOLVER CLUB, a not-for-profit corporation  
registered in the State of Washington, and  
JOHN DOES and JANE ROES I-XX, inclusive,

Petitioner,

and

IN THE MATTER OF NUISANCE AND UNPERMITTED  
CONDITIONS LOCATED AT one 72-acre parcel identified by  
Kitsap County Tax Parcel ID No. 362501-4-002-1006 with street address  
4900 Seabeck Highway NW, Bremerton, Washington

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PETITIONER'S ANSWER TO RESPONDENT'S  
CONTINGENT CROSS-PETITION FOR REVIEW

---

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 ORIGINAL

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APPENDIX NO. 6

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APPENDIX 7

Trial Exhibit 143

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Trial Exhibit 144

## I. IDENTITY OF ANSWERING PARTY

Petitioner Kitsap Rifle & Revolver Club (the “Club”) provides this answer to the contingent cross-petition for review presented on pages 4, 17, and 18 of Respondent Kitsap County’s *Answer to Amended Petition for Discretionary Review* (filed April 15, 2015) (“Cross-Pet.”). In support of this answer, the Club incorporates Appendices 1 and 2 attached to its *Amended Petition for Review* (filed March 12, 2015) (“Petition”) and Appendices 6–8, filed herewith.

## II. INTRODUCTION

The County presents two issues in its contingent cross-petition for review. The body of its brief then identifies a third issue. As will be shown below, these issues present no grounds to reverse any portion of the Court of Appeals’ *Published Opinion* (“Opinion”).

The County’s first issue is whether the Court of Appeals erred in reversing the trial court’s declaratory judgment that terminated the Club’s nonconforming land use right. The County’s second issue is whether the Court of Appeals erred in finding that the Club’s abandoned 300-meter range project was located outside the Club’s historical eight acres of active use. The County’s third issue is whether the Court of Appeals erred in concluding the Club’s abandonment of that project in 2006 meant it was

not a geographic expansion of the nonconforming shooting range at the time of trial in 2011.

The County's issues are unavailing because the Court of Appeals decided each of them correctly in its Opinion. Its decisions are supported by Kitsap County Code, case law, the trial court's findings, trial exhibits, and the testimony of the County's own chief building official.

Moreover, the County fails to explain why any of its three issues warrant review. The County identifies no constitutional questions, nor any conflicts with existing case law from the Washington Court of Appeals or Supreme Court. The Club generally considers this case, and the Court of Appeals' reinstatement of its nonconforming use right, to be of substantial public importance. In the absence of other considerations, however, none of the County's issues warrant review by this Court.

### **III. ARGUMENT**

#### **A. The Court of Appeals Correctly Reversed the Trial Court's Termination Remedy.**

In its first cross-petition issue, the County argues the Court of Appeals erred in reversing the trial court's declaratory judgment terminating the Club's nonconforming use right. Cross-Pet. at 4, 17-18. The County asks for the declaratory judgment to be reinstated, along with

the trial court's first injunction, which prohibited the Club from operating without a conditional use permit (CUP). *Id.*

The Club refers to the declaratory judgment of termination and the first injunction, together, as the "termination remedy." For the reasons discussed below, the Court of Appeals correctly reversed the termination remedy.

***1. The Court of Appeals Reversed the Termination Remedy Because It Was Not Authorized by Kitsap County Code or Common Law.***

In reversing the termination remedy, the Court of Appeals wrote:

"we reverse the trial court's ruling that terminating the Club's nonconforming use status as a shooting range is a proper remedy for the Club's conduct. Instead, we hold that the appropriate remedy involves specifically addressing the impermissible expansion of the Club's nonconforming use and unpermitted development activities while allowing the Club to operate as a shooting range. Accordingly we vacate the injunction precluding the Club's use of the property as a shooting range and remand for the trial court to fashion an appropriate remedy for the Club's unlawful expansion of its nonconforming use and for the permitting violations."

Op. at 3 (Appx. 1). As a result of the Court of Appeals' decision, the Club retains its right to operate as a nonconforming shooting range, regardless of its property's zoning designation that would have otherwise required it to obtain a CUP. In addition, the issues affirmed by the Court of Appeals regarding expansion of the nonconforming use and unpermitted development will be addressed through specific remedies on remand.

The Court of Appeals' summary of the facts emphasizes that the Club has continuously operated as a shooting range since 1926 at its 72-acre property, which features eight acres of active shooting ranges surrounded by a 64-acre buffer and safety zone. *Id.* The Opinion also highlights the County's written acknowledgement of the Club's nonconforming use right in 1993. *Id.* The acknowledgement was prompted by concern over a proposed ordinance limiting the location of shooting ranges. *Id.* The County conceded that, as of 1993, the Club's use of the property as a shooting range constituted a lawful nonconforming use. *Id.*

After summarizing the facts supporting the Club's nonconforming use right, the Court of Appeals explained why Kitsap County Code and Washington common law did not support the trial court's termination of that right in this case. *Id.* at 40–45. The Opinion specifically addresses the County's argument, repeated in its cross-petition, that KCC 17.460.020 requires termination of any nonconforming use associated with an unpermitted condition or public nuisance. *Id.* at 41–42. According to the Opinion, the County's interpretation of that code was in conflict with the purpose of the code stated in KCC 17.460.010: "to permit nonconforming uses to continue." *Id.* at 41. It was also in conflict with the code's definition of "use," which means "the nature of occupancy,

type of activity or character and form of improvements to which land is devoted.” *Id.* The Club’s “use” was that of a shooting range. *Id.* Because shooting ranges are not outright prohibited under State or local law, the Club’s shooting range use remains lawful. *Id.*

The Opinion also notes that the code provides certain penalties for a violation of the KCC 17 zoning title, and termination of a nonconforming use is not among them. *Id.* at 42. The code provides for a “less drastic remedy,” and the County’s chief building official confirmed this when he testified a landowner may come back into conformity by retracting a prohibited expansion of a use. *Id.*<sup>1</sup>

The Opinion reasons that if any expansion of use, permitting violation, or nuisance activity could terminate a nonconforming use right, that would “eviscerate the value and protection provided by a legal nonconforming use.” *Id.* at 42. Nonconforming use status “would have little value,” which is contrary to the code’s purpose of permitting nonconforming uses to continue. *Id.*

Finally, the Court of Appeals explained how the common law of Washington and other states supported reversal of the termination remedy. *Id.* at 43–44. It discussed *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, where this Court did not impose a termination remedy on a

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<sup>1</sup> The Court of Appeals used the word, “retracing,” but presumably it meant “retracting.” *See Op.* at 42.

nonconforming peat mining operation, even though it had failed to obtain a grading permit required by local code.<sup>2</sup> The Court of Appeals also cited a Missouri case, where the remedy for expansion of a nonconforming use was to discontinue the expansion, not the use itself.<sup>3</sup> The court observed that modern jurisprudence emphasizes abatement as a remedy for nuisance, not termination of the use.<sup>4</sup>

In sum, the Opinion reverses the trial court's declaratory judgment and first injunction because there is no basis in Kitsap County Code or common law to terminate the Club's nonconforming use. It orders remand for the trial court to fashion specific remedies for affirmed permitting violations and expansions "while allowing the Club to operate as a shooting range." Op. at 45–46, 3.

**2. *The County Fails to Present Grounds for Reversal of the Court of Appeals' Thorough and Sound Decision to Reverse the Termination Remedy.***

The County suggests the Court of Appeals erred:

"in concluding that [the Club's] expanded and illegal land uses and its unpermitted range development activities on

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<sup>2</sup> See Op. at 19–20 (discussing *Rhod-A-Zalea*, 136 Wn. 2d 1, 5, 959 P.2d 1024, 1027 (1998)).

<sup>3</sup> *Id.* at 43 (discussing *Dierberg v. Bd. of Zoning Adjustment of St. Charles County*, 869 S.W.2d 865, 870 (Mo. App. 1994)).

<sup>4</sup> Op. at 44 (citing 8 THOMPSON ON REAL PROPERTY, SECOND THOMAS ED. § 73.08(d) at 479–80 (David A. Thomas ed. 2013); RCW 7.48.200 (providing "[t]he remedies against a public nuisance are: Indictment or information, a civil action, or abatement")).

the Property did not act to terminate the nonconforming 'shooting range' use as a matter of declaratory judgment under the Kitsap County Code's nonconforming use provision allowing continuation of a use only 'so long as it remains otherwise lawful.'"

Cross-Pet. at 4. The County's argument appears to be that it was entitled to the termination remedy under a code provision allowing continuation of a nonconforming use "so long as it remains otherwise lawful." *Id.* (citing KCC 17.460.020).

The County describes this issue as arising from the Court of Appeals' failure to "affirm expanded and illegal use findings under KCC 17.460.020's prohibition on nonconforming uses of land not remaining 'otherwise lawful'." Cross-Pet. at 17. KCC 17.460.020 provides: "Where a lawful use of land exists that is not allowed under current regulations, but was allowed when the use was initially established, that use may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use." KCC 17.460.020.<sup>5</sup>

The County cites three out-of-state cases and a 1986 zoning law treatise for the general proposition that zoning provisions allowing nonconforming uses should be strictly construed while zoning provisions restricting them should be liberally construed. Cross-Pet. at 17–18 fn. 38. The County implies the Court of Appeals should have applied this general

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<sup>5</sup> The Kitsap County Code is accessible at the County's website. See Kitsap County Code, <http://www.codepublishing.com/wa/kitsapcounty/> (last visited May 14, 2015).

proposition to conclude the Club's nonconforming use right was terminated under KCC 17.460.020 because of code violations and public nuisance conditions affirmed by the Court of Appeals. *See id.*

The County further argues the Court of Appeals' interpretation of KCC 17.460.020 is "not consistent with other provisions of KCC Title 17." *Id.* at 17–18. In support of this argument, the County gives only one example, KCC 17.100.030. This provision makes it "unlawful" to "alter" or "enlarge" any "use of premises contrary to the provisions of Title 17." *Id.* at 18, fn. 39.

As explained in Section 1.A above, the Court of Appeals fully addressed the County's argument that KCC 17.460.020 authorized the trial court to terminate the Club's nonconforming use right. *Op.* at 42. There is no error in the Court of Appeals' decision to reverse the termination remedy. The County's arguments to the contrary are inconsistent with the Opinion, Washington common law, and the testimony of County officials.

The Opinion addresses the surrounding context of KCC 17.460.020, which includes the code definition of "use," the express purpose of the nonconforming use Chapter, KCC 17.460, and the remedies provided by KCC Title 17. The Opinion correctly interprets KCC 17.460.020 according to its plain language and context, without reference to any out-of-state case law requiring strict or liberal construction of the ordinance—

whatever that means. The Opinion's interpretation of KCC 17.460.020 is consistent with the testimony of the County's own chief building official regarding the ability of a nonconforming use to retract if it expands. *See Op.* at 42 (referencing testimony). The Opinion's interpretation of KCC 17.460.020 is consistent with the common law of Washington and other states, which protects nonconforming uses against termination and provides other, less drastic remedies for permitting violations, expansions of a nonconforming use, and public nuisances. *See id.* at 43.

The County makes two additional arguments as to why termination is supported by Kitsap County Code. First, the County argues the Court of Appeals' conclusion that the Club is a public nuisance due to excessive sound and safety concerns means the Club's "core 'shooting range' use" is an "illegal use." *Cross-Pet.* at 18. According to the County, the Court should therefore "restore declaratory judgment that [the Club] must obtain land use approval to continue its 'shooting range' use." *Id.* at 18. The Club understands this to be a request for reinstatement of the trial court's first injunction, which prohibited the Club from operating without a conditional use permit (CUP). Yet, the Court of Appeals properly reversed the first injunction when it reversed the declaratory judgment that terminated the Club's nonconforming use status. *Op.* at 41–42. So long as the Club retained its nonconforming use status, there was no basis to

prohibit it from operating without a CUP. *Id.* at 40. As the Court of Appeals explained, the remedy for a nuisance is to abate the nuisance, not to terminate all of the land use rights associated with a property. *Id.* at 42.

Second, the County argues the Court of Appeals' interpretation of KCC 17.460.020 is not consistent with KCC 17.100.030. The County never cited this provision in its response brief to the Court of Appeals.<sup>6</sup> According to the County, this provision makes it "unlawful" to "alter" or "enlarge" any "use of premises contrary to the provisions of Title 17." Cross-Pet. at 18, fn. 39. A provision that deems an alteration or enlargement unlawful, however, does not deem an entire use unlawful, let alone provide for termination of a nonconforming use.

The Club's use and occupancy of its property has long consisted of eight acres of active shooting ranges surrounded by a 64-acre buffer and safety zone. Op. at 3. The Club has never abandoned or terminated its nonconforming use, and Kitsap County Code is intended "to permit nonconforming uses to continue." *Id.* at 11 (quoting KCC 17.460.010). The Court of Appeals instructed the trial court to fashion specific remedies on remand for permitting violations and expansions of the Club's nonconforming use. *Id.* at 44–45. The County would prefer to terminate the Club's land use rights, wipe out its entire history at the property, and

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<sup>6</sup> See *Br. of Respondent Kitsap County* at vii–viii (table of authorities), 54–58 (discussing this issue without reference to KCC 17.100.030) (filed July 1, 2013).

prohibit it from operating without a CUP, but the law does not support that remedy. The Court of Appeals was correct to reverse the termination remedy, reinstate the Club's nonconforming use status, and allow it to continue operating without a conditional use permit.

**B. The Court of Appeals Did Not Find the Club's Abandoned 300-Meter Range Was Outside the Club's Historical Eight Acres of Active Use; But If It Had Done So, It Would Have Been Correct.**

The County's second cross-petition issue argues the Court of Appeals erred in finding the Club's abandoned 300-meter range project was located outside the Club's historical eight acres of active use. Cross-Pet. at 4, 18. According to this issue, the Court of Appeals described the abandoned project as being "outside" the Club's historical eight acres of active use, which was in error. The Court of Appeals, however, made no such finding, and if it had done so, it would have been correct. The abandoned 300-meter range project was located entirely outside the Club's historical eight acres of active use.

There is only one passage in the Opinion that discusses the abandoned 300-meter range project. It states:

"The one possible violation of KCC 17.460.020 involved the Club's work on the proposed 300 meter range. It is unclear whether the proposed 300 meter range was outside the historic eight acres. The trial court made no factual finding on this issue, although the parties imply that this

project went beyond the existing area. In any event, when the County objected the Club discontinued its work in this area. Because the project was abandoned, at the time of trial the Club no longer was in violation of KCC 17.460.020. Apparently the Club currently is using this area for storage but is willing to move the items if a court determines it is outside its historical use area.”

Op. at 12, fn. 4 (emphasis added). According to this passage, it was “unclear” whether the abandoned project was outside the Club’s historical eight acres of active use, although the parties both implied that it was, and the trial court made no factual findings on the issue.

Considering the passage quoted above, the County’s argument that the Court of Appeals erred in finding the abandoned project was outside the historical eight acres of active use is incomprehensible. The Court of Appeals made no such statement. Moreover, if the Court of Appeals had described the abandoned project as being located outside the Club’s historical eight acres, that would have been correct. *See Amended Brief of Appellant* (“Club’s Opening Br.”) at 37–38 (filed March 18, 2013) (describing the abandoned project as “outside the historical eight acres”). The County has never before disputed this fact.

The Opinion contains no “finding” regarding the location of the abandoned 300-meter range project. If there is any mistake, it is in the County’s presentation of the issue.

**C. The Court of Appeals Correctly Concluded the Club's Abandonment of the 300-Meter Range Project in 2006 Meant the Project Was Not a Geographic Expansion of the Nonconforming Shooting Range at the Time of Trial in 2011.**

In the body of its cross-petition, the County raises a separate issue related to the Club's abandoned 300-meter range project. Cross Pet. at 18. The County suggests the Court of Appeals erred in concluding the Club's abandonment of its 300-meter range project in 2006 meant the project was not a geographic expansion of the nonconforming shooting range at the time of trial in 2011. The Court of Appeals, however, correctly decided that issue, and the County provides no reason to reverse its decision.

The County presents this issue in the body of its cross-petition:

"If this Court grants review, the County would also respectfully petition for review of Division II's mistaken ruling that the 300-meter range project was not subject to KCC 17.460.020(C)'s prohibition on geographic expansion of nonconforming uses."

Cross-Pet. at 18 (citing Op. at 11–12). So stated, the issue is whether the project was, at the time of trial, a geographic expansion prohibited by KCC 17.460.020(C).

KCC 17.460.020(C) provides, in pertinent part:

"If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of

such use may not be expanded, nor shall the use or any part thereof, be moved to any other portion of the property not historically used or occupied for such use[.]”

KCC 17.460.020(C). The County accurately describes this provision as prohibiting the geographic expansion of a nonconforming use.

The Court of Appeals concluded the Club was not in violation of KCC 17.460.020(C) at the time of trial because by then the Club had abandoned the 300-meter range project. Op. at 12, fn. 4 (text set forth above). The Court of Appeals made it clear that this conclusion did not depend on where the project was located. *Id.* In reaching this conclusion, the Court of Appeals correctly summarized the trial court’s findings regarding the Club’s abandonment of the project. *Id.*

The trial court found that the Club once planned to develop a 300-meter shooting range on part of its property. CP 4062–4064 (FOF 39–46) (Appx. 2). Around March 2005, the Club did some exploratory clearing in an area in the eastern portion of its property, which had been logged in 1991. CP 4056 (FOF 13); CP 4063 (FOF 40–41). The Club then did some grading, trenching, surface water diversion, and vegetation removal in the area. CP 4063 (FOF 41). The County ordered the Club to stop work and not proceed without first obtaining a conditional use permit (CUP) for its entire property. CP 4063–4064 (FOF 42, 44, 45). The Club stopped work in 2005, abandoned the project in 2006 to avoid any need

for a CUP, and re-planted the area in 2007. CP 4063–4064 (FOF 42, 46, 48). At the time of trial in late 2011, the Club’s shooting activities were confined within its historical eight acres, while the Club’s remaining acreage—including the area of the abandoned range project—was “passively utilized.” CP 4054–55 (FOF 8). The trial court made no finding that the Club ever completed the abandoned project or used the area as a shooting range.

According to the Opinion (page 12, fn. 4), even if the 300 meter range area was outside the Club’s historical area of active use, the Club’s abandonment of the project meant the project could not have been a geographic expansion at the time of trial in violation of KCC 17.460.020. The Club presented this argument in its briefing, and the conclusion is well supported by Washington case law. Club’s Opening Br. at 37–38; *see Rosema v. City of Seattle*, 166 Wn. App. 293, 301, 269 P.3d 393 (2012) (affirming right to maintain nonconforming duplex where landowner had previously expanded historical duplex into a triplex but had retracted that expansion prior to trial).

The conclusion that there was no geographic expansion at the time of trial is also supported by trial testimony and exhibits. The County’s chief building official testified that the Code allows a landowner to retract

a prohibited expansion and return the use “back into nonconformity.”<sup>7</sup> After the County learned of the Club’s abandonment of the project, the County sent the Club two letters saying it was closing its file and the project was “cancelled.”<sup>8</sup>

The facts, findings, and law refute the County’s argument that abandonment of the Club’s 300-meter range project was not an option. The Opinion correctly concludes there was no geographic expansion of the Club in violation of KCC 17.460.020 at the time of trial, regardless of whether the abandoned project was located inside or outside the Club’s historical eight acres of active use.

**D. Although This Case Raises Issues of Substantial Public Importance, None of the County’s Cross-Petition Issues Warrant Review.**

The County does not attempt to explain how its cross-petition issues satisfy RAP 13.4(b). RAP 13.4(b) lists the four considerations governing acceptance of review:

“(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the

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<sup>7</sup> Appx. 6 (VT 187:1–18, 278:17–279:15); Op. at 42 (referencing testimony).

<sup>8</sup> Appx. 7–8 (trial exhibits 143–144); *Amended Reply Brief of Appellant* at App. 24–25 (filed Oct. 21, 2013) (discussing letters).

State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.”

RAP 13.4(b). In its petition for review, the Club showed that its issues satisfied several of these criteria. In contrast, the County does not even attempt to satisfy them.

None of the County’s three issues identify any conflict between the Opinion and any other published opinion of the Washington Court of Appeals or Supreme Court. The County does not attempt to characterize any of its issues as constitutional questions. Therefore, the considerations in RAP 13.4(b)(1)–(3) do not apply.

The County must believe at least one of its issues is of sufficient public interest pursuant to RAP 13.4(b)(4) to warrant its cross-petition for review. The Club agrees the County’s first issue regarding the termination remedy is an issue of public importance. In the absence of any other considerations, however, none of the County’s issues warrant review under RAP 13.4.

Three criteria determine whether an issue is of substantial public interest: “(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future

guidance to public officers; and (3) the likelihood that the question will recur.”<sup>9</sup>

The issue regarding termination of the Club’s nonconforming use right is of the utmost public interest because it pertains to the rights of a large class of landowners with vested rights protected by the Washington Constitution; it pertains to the rights of local governments to strip landowners of valuable land use rights; and it pertains to whether any illegality at a property—even so minimal as an unpermitted electrical socket—can allow a local government to shut down a historical land use that pre-dated zoning laws and treat it the same as any new development.

The termination issue is also of a public nature. The County is a government subdivision of the State of Washington, and is therefore a “public” entity in every sense of the word. When the County deeded the Club its property in 2009, it included a covenant requiring the Club to provide public access to its shooting range. CP 4088–89 (¶¶ 3–5). This reflects the public’s interest in access to the Club’s facility. Still further, the Club has hundreds of members, and the amicus briefs filed by the National Rifle Association and the Kitsap Alliance of Property Owners, not to mention the Court of Appeals’ 47-page published opinion, prove the

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<sup>9</sup> *Matter of McLaughlin*, 100 Wn.2d 832, 838, 676 P.2d 444 (1984) (accepting review of moot issues of substantial public importance); *City of Bellingham v. Chin*, 98 Wn. App. 60, 988 P.2d 479 (1999).

critical issue of whether the Club retains its nonconforming use right is of substantial public interest.

Thus, the Club recognizes the substantial public importance of this case in general and the termination issue in particular. Nevertheless, in the absence of additional considerations, and for the reasons discussed above, none of the issues presented by the County warrant review by this Court.

#### IV. CONCLUSION

For the forgoing reasons, the Court should deny Petitioner Kitsap County's contingent cross-petition for review and decline to review any of the three additional issues presented by the County. In the alternative, if the Court grants review, it should:

- (a) affirm the Court of Appeals' reversal of the trial court's declaratory judgment remedy and first injunction, which terminated the Club's nonconforming use right and prohibited it from operating without a conditional use permit;
- (b) make no changes to the Court of Appeals' Opinion regarding the facts surrounding the Club's former 300-meter range project because the Court of Appeals did not find the project was located outside the Club's historical eight acres of active use and, if it had done so, it would have been correct; and

///

(c) affirm the Court of Appeals' decision that the Club's abandonment of its 300-meter range project in 2006 meant the project was not an expansion of the Club's nonconforming shooting range at the time of trial in 2011, regardless of whether it was located outside the Club's historical eight acres of active use:

DATED: May 14, 2015

CHENOWETH LAW GROUP, PC



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*(pro hac vice)*

510 SW Fifth Ave., Fifth Floor

Portland, OR 97204

Phone: (503) 221-7958

*Of Attorney for Appellant*

**APPENDIX NO. 6**

1 Q. Will you please state and spell your full name?

2 A. Jeffrey L. Rowe; J-e-f-f-r-e-y L. R-o-w-e.

3 Q. Mr. Rowe, earlier in this litigation did you go by a  
4 hyphenated name of Jeffrey Rowe-Hornbaker?

5 A. I did.

6 Q. H-o-r-n-b-a-k-e-r?

7 A. Correct.

8 Q. So if there was a deposition, for instance, or any  
9 prior correspondence in which that name appeared, is that  
10 also you?

11 A. Correct.

12 Q. Sir, what is your professional address?

13 A. 614 Division Street, Port Orchard, Washington.

14 Q. Who is your employer?

15 A. Kitsap County's Department of Community Development.

16 Q. What is your position?

17 A. I'm an assistant director, chief building official, and  
18 floodplain administrator.

19 Q. How long have you worked -- wait, let me start at the  
20 start, if you will.

21 In terms of a career, have you always worked as an  
22 employee of municipal government in the area of planning or  
23 development?

24 A. No, I've not.

25 Q. Where did you start?

1 THE COURT: Overruled. You may answer that question  
2 and then we're going to break for the lunch hour. Go ahead.

3 THE WITNESS: Normal uses, have we made an  
4 assumption of normal uses at the gun club, yes.

5 THE COURT: Why don't we break now. We'll resume at  
6 1:30.

7 THE JUDICIAL ASSISTANT: All rise. Court's at  
8 recess.

9 (Lunch recess.)

10 P.M. SESSION

11 THE COURT: Thank you. Please be seated. Good  
12 afternoon.

13 Mr. Foster, please continue.

14 MR. FOSTER: Thank you, Your Honor. Just a few more  
15 questions.

16 BY MR. FOSTER:

17 Q. Now, Mr. Rowe, is the County's position that the Club  
18 has lost its nonconforming use right because it has expanded  
19 its area of active use?

20 A. An expansion would -- well, I'd say an option for a  
21 nonconforming use would be to go back to the original  
22 footprint as an element of coming back into nonconformity, if  
23 you will. An expansion would create a situation where  
24 additional approval, where it wasn't previously necessary,  
25 would be required for that expansion.

1 Q. Would an additional permit or approval be necessary to  
2 accomplish a retraction back to a conforming scope of use?

3 A. In the current condition, yes, there are things that  
4 would have to -- you know, grading permits are first to come  
5 to mind, perhaps even critical areas.

6 Q. So do I correctly understand that in order to continue  
7 -- that the County's position is that in order for the Club  
8 to continue in its current area of active use, it would need  
9 a conditional use permit?

10 A. An expansion of the footprint as it currently exists  
11 would require a conditional use permit.

12 Q. And if the Club were to withdraw and retract this  
13 alleged expansion then it would not need a conditional use  
14 permit but it might need other permits; is that correct?

15 A. Correct.

16 Q. And if the Club were to apply for a conditional use  
17 permit, would it also have to apply for some other permits  
18 under the County's view?

19 A. Yes.

20 Q. Can you tell me exactly what those permits are?

21 A. Site development activity permit is the one for the  
22 land shaping. I'm not certain about the inventory of  
23 structures whether or not they've all been covered, so there  
24 might be building permits associated with that. And then  
25 there could be critical areas that would be folded in with

**APPENDIX NO. 7**

143

ADMITTED

FILED  
DEPT 14  
IN OPEN COURT

OCT 05 2011

Clarence County Clerk  
BY [Signature]  
DEPT 14

PLAINTIFF'S  
EXHIBIT  
143

8-3-10-1-2-01



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

614 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98368-4682 Larry Keaton Director  
(360) 337-7181 FAX (360) 337-4925 HOME PAGE - [www.kitsapgov.com](http://www.kitsapgov.com)

September 7, 2007

Kitsap Rifle & Revolver Club  
4900 Seabeck Hwy NW  
Bremerton WA 98312

RE: Kitsap Rifle & Revolver Club  
# 05 27231

Dear Sirs:

Your pre-application file for the above named project has remained inactive for an additional six months or more. Due to the volume of pre-applications requests, DCD periodically purges inactive files.

If you wish to have your pre-application file remain open and active, please submit a **written statement** of your intentions for this project before September 28, 2007. If DCD receives no reply from you by the above date, your project will be closed and the pre-application file will be archived.

If you intend to proceed with your project, you may wish to contact a Planner, as many of the rules, regulations and/or fees your proposal may be subject to, may have changed since the time of your pre-application meeting.

If you have any questions, please contact a Planner at (360) 337-7181, or me at (360) 337-4487.

Thank You,

Karen Ashcraft  
Clerk for Hearing Examiner

KA: dc

**APPENDIX NO. 8**

ADMITTED

FILED  
DEPT. 14  
IN OPEN COURT  
OCT 06 2011  
Pierce County Clerk  
By: *CA*  
DEPUTY

10-2-10913-3

PLAINTIFFS  
EXHIBIT  
144



**KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT**

814 DIVISION STREET MS-36, PORT ORCHARD WASHINGTON 98366-4682  
(360) 337-7181 FAX (360) 337-4925 HOME PAGE - www.kitsapgov.com

Larry Keeton Director

April 1, 2008

Kitsap Rifle & Revolver Club  
4900 Seabeck Hwy NW  
Bremerton WA 98312

RE: Kitsap Rifle & Revolver Club  
# 05 27231 25867

Dear Sirs:

Your pre-application file for the above named project has remained inactive for an additional six months or more. Due to the volume of pre-applications requests, DCD periodically purges inactive files.

If you wish to have your pre-application file remain open and active, please submit a **written statement** of your intentions for this project before April 16, 2008. If DCD receives no reply from you by the above date, your project will be cancelled, and the pre-application file will be archived.

If you intend to proceed with your project, you may wish to contact a Planner. Many of the rules, regulations and/or fees your proposed project may be subject to, might have changed since the time of your pre-application meeting.

If you have any questions, please contact a Planner at (360) 337-7181, or me at (360) 337-4664.

Thank You,

Dana Crompton  
Office Assistant II

**CERTIFICATE OF FILING AND SERVICE**

I, Lisa A. Heath, declare under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned have been a resident of the State of Oregon, over the age of eighteen years, not a party to or interested in this cause of action, and competent to be a witness herein.

On the date stated below **Petitioner's Answer to Respondent's Contingent Cross-Petition for Review** was electronically filed with the Washington Supreme Court and served upon the following individuals by e-mail and U.S. Mail, postage prepaid, at Portland, Oregon:

Christine M. Palmer  
Kitsap County Prosecutor's Office  
Civil Division  
614 Division St., MS-35A  
Port Orchard, WA 98366

C.D. Michel  
Michel & Associates, PC  
180 E. Ocean Blvd., Suite 200  
Long Beach, CA 90802

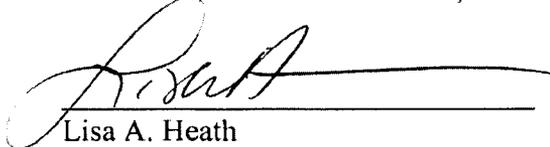
David S. Mann  
Gendler & Mann, LLP  
936 N. 34<sup>th</sup> St., Suite 400  
Seattle, WA 98103-8869

Matthew A. Lind  
Sherrard McGonagle Tizzano, PS  
Post Office Box 400  
Poulsbo, WA 98370-0400

Richard B. Sanders  
Goodstein Law Group  
501 South G St.  
Tacoma, WA 98405-4715

DATED: May 14, 2015

CHENOWETH LAW GROUP, PC



Lisa A. Heath  
Chenoweth Law Group, PC  
510 SW Fifth Ave., Fifth Floor  
Portland, OR 97204  
(503) 221-7958

DECLARATION OF SERVICE

## OFFICE RECEPTIONIST, CLERK

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**To:** Lisa Heath  
**Cc:** 'Batrice Fredsti'; 'C.D. Michel'; 'Carrie A. Bruce'; 'Christine M. Palmer'; 'David S. Mann'; 'Matthew A. Lind'; 'Neil R. Wachter'; 'Richard B. Sanders'; Brooks Foster; Patrick Graves; Brian Chenoweth  
**Subject:** RE: Kitsap County v. Kitsap Rifle and Revolver Club / Email Filing Request

Received 5-14-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Lisa Heath [mailto:lheath@northwestlaw.com]  
**Sent:** Thursday, May 14, 2015 4:47 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** 'Batrice Fredsti'; 'C.D. Michel'; 'Carrie A. Bruce'; 'Christine M. Palmer'; 'David S. Mann'; 'Matthew A. Lind'; 'Neil R. Wachter'; 'Richard B. Sanders'; Brooks Foster; Patrick Graves; Brian Chenoweth  
**Subject:** Kitsap County v. Kitsap Rifle and Revolver Club / Email Filing Request

Case Name: Kitsap County v. Kitsap Rifle and Revolver Club, et al.

Case No.: 91056-1

Document  
for Filing: Petitioner's Answer to Respondent's Contingent Cross-Petition for Review

Filer: Brian D. Chenoweth, WSB No. 25877  
Brooks M. Foster (*pro hac vice*)  
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Portland, OR 97204  
Phone: (503) 221-7958  
Email: [brianc@northwestlaw.com](mailto:brianc@northwestlaw.com); [bfoster@northwestlaw.com](mailto:bfoster@northwestlaw.com)

Thank you,

*Lisa A. Heath*  
Paralegal

**C H E N O W E T H**    L A W   G R O U P   P C

510 SW FIFTH AVENUE FIFTH FLOOR PORTLAND OREGON 97204  
T 503.221.7958 F 503.221.2182 [NORTHWESTLAW.COM](http://NORTHWESTLAW.COM)  
Please Consider the Environment. Think Green.

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