

NO. 43076-2-II

COURT OF APPEALS, DIVISION II OF THE STATE OF
WASHINGTON

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,

Appellant,

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

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

RESPONDENT KITSAP COUNTY'S REVISED STATEMENT OF
ADDITIONAL AUTHORITIES

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Pursuant to RAP 10.8, Respondent KITSAP COUNTY respectfully submits the following additional authorities for the Court's consideration¹:

1. *Matter of Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1995) (discussing adherence to RAP 10.3); *In re Estate of Palmer*, 145 Wn. App. 249, 265, 187 P.3d 758 (Div. 2 2008) (discussing unchallenged findings of fact) (citing *Lint*, 135 Wn.2d at 533).

2. *In re Guardianship of Lamb*, 173 Wn.2d 173, 183, n. 8, 265 P.3d 876 (2011)² (discussing incorporation by reference of trial court brief arguments) (citing *US West Communications, Inc. v. Wash. Util. and Transp. Comm'n*, 134 Wn.2d 74, 111-12, 949 P.2d 1337 (1997)); *Multicare Health Sys. v. Dep't of Soc. & Health Servs.*, 173 Wn. App. 289, 299, 294 P.3d 768 (Div. 2 2013) (similar discussion) (citing *Kwiatkowski v. Drews*, 142 Wn. App. 463, 499-500, 176 P.3d 510, *review denied*, 164 Wn.2d 1005 (2008)).

3. *Trotzer v. Vig*, 149 Wn. App. 594, 611 n.13, 203 P.3d 1056, *review denied*, 166 Wn.2d 1023 (2009) (discussing implicit credibility

¹ Kitsap County respectfully re-submits authorities numbered 1-9, rewritten to comport with the Court's June 18, 2014 order granting KRRC's motion to strike the County's original statement of additional authorities.

² See KRRC's Reply Brief ("Reply") at 8 (discussing briefing filed with the trial court); Reply, App. 30, 31 (KRRC's trial memorandum and KRRC's response to County's motion to strike affirmative defenses).

findings); *Matter of Estate of Lint*, 135 Wn.2d at 532-33 (discussing conflicting evidence in evaluating a challenged finding) (citing *Miller v. Badgley*, 51 Wn. App. 285, 753 P.2d 530, review denied, 111 Wn.2d 1007 (1988)); See also *Miller*, 51 Wn. App. at 290 (similar discussion); *In re Marriage of Lutz*, 74 Wn. App. 356, 371-72, 873 P.2d 566 (1994) (citing trial court's findings reflecting witness credibility determinations).

4. *State v. McCrorey*, 70 Wn. App. 103, 114, 851 P.2d 1234, review denied, 122 Wn.2d 1013 (1993), abrogated on other grounds by *State v. Head*, 136 Wn.2d 619, 623, n. 2, 964 P.2d 1187 (1998) (discussing deference to trial court's weighing of evidence and evaluating witness credibility)(citing *State v. Cyrus*, 66 Wn. App. 502, 506, 832 P.2d 142 (1992), review denied, 120 Wn.2d 1031 (1993)); *In re Sego*, 82 Wn.2d 736, 739-40, 513, P.2d 831 (1973) (similar discussion).

5. *Johnston-Forbes v. Matsunaga*, 177 Wn. App. 402, 311 P.3d 1260, 1263 (Div. II 2013) (discussing weighing of expert testimony (citing *In re Marriage of Sedlock*, 69 Wn. App. 484, 491, 849 P.2d 1243, review denied, 122 Wn.2d 1014 (1993)); *Sedlock*, 69 Wn. App. at 491 (similar discussion).

6. *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936) (discussing superior court injunctive powers under Const. art. 4, § 6) (citation omitted); *United Steelworkers v. United States*, 361

U.S. 39, 60, 80 S.Ct. 177, 4 L.Ed.2d 169 (1959) (noting historical use of injunctions to abate public nuisances) (Frankfurter, J., concurring)); *McInnes v. Kennell*, 47 Wn.2d 29, 286 P.2d 713 (1955) (discussing issuance of a mandatory injunction by a court of equity) (citation omitted).

7. RCW 64.06.013, 64.06.010(4): Statutory disclosure requirements for commercial real estate sellers,³ and exceptions to chapter 64.06 RCW (including transfer of real property to a buyer holding a leasehold interest in the property within two years of date of the transfer).

8. *Nickell v. Southview Homeowners Ass'n*, 167 Wn. App. 42, 54, 271 P.3d 973, *review denied*, 174 Wn.2d 1018 (2012) (discussing requirements for “mere silence” to establish “act” element of equitable estoppel) (citing *Codd v. Westchester Fire Ins. Co.*, 14 Wn.2d 600, 606–07, 128 P.2d 968 (1942) (citing *Blanck v. Pioneer Mining Co.*, 93 Wash. 26, 34, 159 P. 1077 (1916))).

9. Kitsap County Code definitions and processes for permit review⁴ (Appendices, and Selected Provisions and Citations):

³ See Reply at 56 (for equitable estoppel discussion, asserting that a local government land seller is subject to a duty to disclose “material facts” and should not “be held to a lower standard than a commercial seller”), 56 n. 125 (citing RCW 18.86.010(9) for definition of a “material fact”).

- a. Former chapter 21.04 KCC⁵ (Land Use and Development Procedures) (appended hereto as Appendix A);
- b. Current chapter 21.04 KCC (Project Permit Application Procedures) (appended hereto as Appendix B);
- c. Current chapter 21.02 KCC (Definitions) (appended hereto as Appendix C);
- d. Current and former definitions for “open record hearing”:

⁴ See Reply at 1 (“Kitsap County asks this Court to ... trust the County with the power to impose virtually any condition on the Club through a Conditional Use Permit ...”), 60 (“There is no guarantee the County will ever issue such a [conditional use permit]”), 64 n. 137 (citing “KCC 17.420.020 (CUP Ordinance) (App. 6)”).

⁵ Former chapter 21.04 KCC was in effect at the time of trial. Title 21 KCC (land use and development procedures) governs the process for reviewing conditional use and other permit applications. Title 21 KCC was revised by Kitsap Co. Ord. 490 (2012), effective 7/1/2012. The current chapter 21.04 KCC governs processing of new applications, with definitions at chapter 21.02 KCC. Both before and after the rewriting of Title 21 KCC, the “hearing examiner conditional use” permit process would apply to a shooting range applicant, per KCC 17.381.010 and Table 17.381.040E (Respondent’s Brief, App. 15) (defining categories of uses for the Code’s land use tables, and Table E classifying “private recreational facilities” as land use requiring a hearing examiner conditional use permit in the rural residential zone), and per KCC 17.421.020 (Resp. Br., App. 16) (providing that “the hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit through a Type III process as set forth in Title 21 of [the Kitsap County Code]”). Kitsap County Code is available online at <http://www.codepublishing.com/wa/kitsapcounty> (last visited on June 20, 2014).

“Open record hearing” means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government’s record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution.

Current KCC 21.02.235.

“Open Record Hearing” means a hearing, conducted by a single hearing body or officer authorized by Kitsap County to conduct such hearings, that creates Kitsap County’s public record through testimony and submission of evidence and information, under procedures prescribed by Kitsap County by ordinance or resolution.

Former KCC 21.04.020(F).

- e. Current KCC 21.04.100 and former KCC 21.04.030: Tables classifying permit applications into "Types", of which "Conditional Use Permit - Hearing Examiner" is a Type III application.
- f. Current KCC 21.04.080 and former KCC 21.04.080: Providing the quasi-judicial review process for a Type III application, with one open record public hearing.

10. *Lincoln Shiloh Assoc., Ltd. v. Mukilteo Water Dist.*, 45 Wn. App. 123, 131, 724 P.2d 1083 (1986) (discussing construction of findings of fact vis a vis the trial court's conclusions of law).

11. *Jensen v. Lake Jane Estates*, 165 Wn. App. 100, 267 P.3d 435 (Div. 2 2011) (citing *White v. Wilhelm*, 34 Wn. App. 763, 771, 665 P.2d 407 (1983) (discussing threshold for a restrictive covenant to be "ambiguous").

12. *Hanson Indus., Inc. v. County of Spokane*, 114 Wn. App. 523, 531, 58 P.3d 910 (2002), *review denied*, 149 Wn.2d 1028 (2003) (discussing construction of ambiguous deed provision as to drafter) (citing cases).⁶

13. *Tiegs v. Boise Cascade Corp.*, 83 Wn. App. 411, 418, 922 P.2d 115 (1996), *affirmed*, 135 Wn.2d 1 (1998) (quoting *Branch v. W. Petroleum, Inc.*, 657 P.2d 267, 276 (Utah 1982)) (discussing "'the issue of the reasonableness of the defendant's conduct and the weighing of the relative interests of the plaintiff and defendant'" for nuisance per se analysis) (emphasis in the *Tiegs* opinion)).


⁶ See Reply at 47 (reciting that former KRRC attorney Regina Taylor drafted the "improvement clause" of the Bargain and Sale Deed with Restrictive Covenants ("2009 Deed") conveying the subject property from Kitsap County to KRRC). The 2009 Deed is App. 2 to Respondent's Brief.

14. *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972) (J. Stewart) (discussing the right to enjoy property as a fundamental civil right) (citing cases).

15. *Johnson v. Cont'l West*, 99 Wn.2d 555, 560-61, 663 P.2d 482 (1983) (discussing reliance on affidavits or comments of individual legislators to establish legislative intent) (citing *Woodson v. State*, 95 Wn.2d 257, 623 P.2d 683 (1980)).

Respectfully submitted this 20th day of June, 2014.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney


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Senior Deputy Prosecuting Attorney,
Attorney for Respondent Kitsap County

CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Brian D. Chenoweth	<input checked="" type="checkbox"/>	Via U.S. Mail
Brooks Foster	<input checked="" type="checkbox"/>	Via Email: As Agreed by the Parties
The Chenoweth Law Group	<input type="checkbox"/>	Via Hand Delivery
510 SW Fifth Ave., Ste. 500		
Portland, OR 97204		

David S. Mann	<input checked="" type="checkbox"/>	Via U.S. Mail
Gendler & Mann LLP	<input checked="" type="checkbox"/>	Via Email
936 N. 34 th St. Suite 400	<input type="checkbox"/>	Via Hand Delivery
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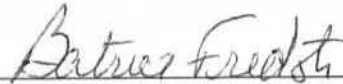
Matthew A. Lind	<input checked="" type="checkbox"/>	Via U.S. Mail
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SIGNED in Port Orchard, Washington this 20th day of June, 2014.



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