No: 30263-2-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

CITY OF BREMERTON, a Municipal Corporation,

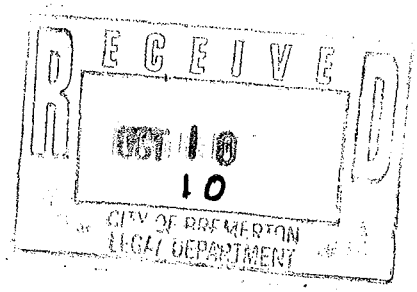
Respondent,

Vs.

WILLIAM J. SESKO and NATACHA SESKO,

Appellants,

BRIEF OF APPELLANTS



William and Natacha Sesko
Appellants, pro se
3536 Arsenal Way
Bremerton, WA 98312
(360) 377-0697

TABLE OF CONTENTS

Page

I.. ASSIGNMENTS OF ERROR.....1.

A. Assignments of Error 1
B. Issues Pertaining to Assignments of Error.....1

II. STATEMENT OF THE CASE 2

III. AGRUMENT.....4

1. **Judge Roof didn't show any necessity for granting injunction or contempt order. Shouldn't necessity be required for injunctive relief ?...**.....4

2. **The superior court erred or abused its discretion by exceeding its authority in its follow-up orders implementing the earlier order when the court ordered and allowed the City of Bremerton to remove everything from the Seskos' property. When the Court of Appeals said only junk had to be remove in the appeal of the original order. Shouldn't the Court of Appeals interpretation of a Superior Court's previous orderPrevail? Which would only allow the removal of junk and not prevent business use?**.....4

3. **The superior court did not say what Sesko should do, when Court of Appeals said that "Only junk had to be removed" in the appeal of the original order.**
Should't a Judge say exactly what his order requires before a contempt order can be issue?.....5

4. **The court erred and abuse its discretion by denying Sesko's the right to call witness to testify at the hearing.**
Shouldn't the Superior Court allow Sesko the right to call witnesses?.....11

5. **The superior court erred and abused its discretion by denying Seskos'the right to use of their property as zoning permits.**
Shouldn't the Superior Court allow Sesko the right to use their property as zoning permits? .....12.

6 **The SurperiorCourt erred by denying the Sesko's objections to each portion of the proposed order, when the court stated earlier that he would hear Seskos argument. the Court should allowed Sesko to present the argument of defendant objections**

Shouldn't a Judge follow procedures He said he would in previous hearing?.....14

7. **Did the Superior Court erred by allowing City of Bremerton to remove Sesko's property without clarify the property's boundary line and securng Sesko's property interest. ?**
Shouldn't the property's boundry line be defined and it's determined what Sesko own before contempt can be an issue......16

IV **STANDARD REVIEW**.....17
V. **CONCLUSION**.....19

TABLE OF AUTHORITIES.

TABLE OF CSES

Page

City of Bremerton Vs. Sesko

99. Wash. App. 105, 995 P.2d 1257 (2000) [at the last page}..... ..2, 5

Groen, In re (1900) 22 Wash. 53. 60P.123.....4, 12

Hector Vs. Martin. (1958) 51 Wash. 2d 707, 321 P.2d 555.....7

Interest of M.B. 101 Wn App. 425 3 P.3d 780 Civil Contempt.....7

Marriage of Nielsen Aug. 1984.38. Wn. App.586.687.P2d.877 12

Odgen Vs. Bellevue. Nov 1954 45 Wn.2nd, 492 at 495 .....14, 18

State ex rel Hardy Vs Superior Court 155 Wash 244 284 Pac 93.....14,18

City of Spokane Vs J-R Distributors, Inc. 90 Wn.2nd 722,585 P.2d 784 (1978).....18

CONSTITUTIONAL PROVISIONS

Article 1, Section 12. 14

Article 4, Section 6 17

Article 1, Section 16.....18

Amendment IV.....9,19

Amendment V 18

Amendment VI.....12

Amendment XIV Section 1.....10

STATUTES

RCW 90.58.180.....2.

RCW 7.40.150 (4). 12

RCW 2.08.010.....17

RCW.7.40.050 (5).....19

Shoreline Master Program (SMP) Definitions 8-6.....13,19

Shoreline Master Program (SMP) 5-12 Policies (6) 13,19

Bremerton Municipal Code 21.02.....19

I. A. ASSIGNMENTS OF ERROR

1. The Superior Court did not show any necessity for injunction.
2. The Superior Court erred by exceeding its authority in its follow-up orders when it allowed the City of Bremerton to remove everything from the Sesko's property. When the Court of Appeals said only junk had to be removed in the appeal of the original order.
3. The Superior Court did not say what Sesko should do when Court of Appeals said that "Only junk had to be removed" in the appeal of the original order.
4. The Superior Court erred or abused its discretion by denying Seskos' the right to call witness to testify at the hearing.
5. The Superior Court erred and abused its discretion by denying Seskos' the right to use of their property as zoning permits.
6. The Superior Court erred by denying the Sesko's objections to each portion of the proposed order when the court stated earlier that he would hear Seskos argument.
7. The Superior Court erred by allowing City of Bremerton to remove Sesko's property without clarifying the property's boundary line and securing Seskos property interest.

B. Issues Pertaining to Assignment of Error

1. Shouldn't necessity be required for injunctive relief?

2. Shouldn't the Court of Appeals interpretation of the Superior Court's previous order prevail which would only allow the removal of junk and not prevent business use?

3. Shouldn't A Judge say exactly what his order requires before a contempt order can be issue?

4. Shouldn't the Superior Court allow Sesko the right to call witnesses?

5. Shouldn't the Superior Court allow Sesko the right to use their property as Zoning permits?

6.Shouldn't a Judge follow procedures He said he would in previous hearing?

7.Shouldn't the property's boundary line be defined and it's determined what Sesko own before contempt lane be and issue?

II. STATEMENT OF THE CASE.

William and Natacha Sesko (Sesko) owned ½ acres of land in the City of Bremerton, Washington since 1990, which is the subjects of this appeal. The land is designated "Pennsylvania Avenue Property" and listed as a number one hazardous site by the State's Department of Ecology. This property combined with the Penn Plaza Self Storage yard used to be the Bremerton Gas Works and City of Bremerton Dump Site before 1935. (CP 50 CP 7, CP 8 & CP 13). The property is zoned Business Park and listed Urban Industrial in the "Shoreline Master Program" page 3-7 (CP.12)

February 6th 1997 Don Pratt, the Director of Department Community Development stated very clearly 'he is the City" and planned to destroy the Seskos. (CP52 & 62)

June 13th 1997 City filed a nuisance action against Sesko without allowing the proper appeal Procedure (CP10) The Director Don Pratt 's Statement that Sesko has no right of appeal to Ceases and Desist order which was upheld by the planning Commission and must vacate within 14 days violated RCW90.58.180.
(The Shoreline Master Program Administration and Enforcement one Page 7-7 line 1-3)

In the May 8th,1998 order, the Kitsap County superior court ordered Sesko to remove everything from Pennsylvania property. On an appeal of that order, this Court of Appeals ruled in part that the superior court's "orders for injunctive relief do not prevent uses for business purposes; they only require the removal of the junk on the sites." The City of Bremerton v. Sesko, 99 Wash. App. 1045, 995 P.2d 1257 (2000) [at the last page].

BREMERTON-004407

On January 23, 2002. City of Bremerton ordered the contractor went to Pennsylvania Avenue crushed Sesko's business use properties without providing any kind of receipt and itemized list to show exactly what they took from Sesko's property.

On January 25, 2002 and January 30, 2002 Contractor hauled two trucks loads of steel pipes, iron beams, aluminum, brass materials and metal building from Pennsylvania Avenue and dumped them inside the Arsenal Way property without Seskos permission. The city and its contractors made this action without determination of which item is or not "Junk". (CP65. CP 66, CP 67, CP 68, CP 69, CP 70 CP 71and CP72). Pictures show the action.

The material they hauled away definitely is not junk, City of Bremerton Violated the US Constitution Amendment V.

September 2001 City of Bremerton denied the request of assistance and guidance also refuse to talk with Sesko (City Council Arends letter response CP 22).

On February 8th 2002 City of Bremerton posted Cease and Desist Order on Paul McConkey's Penn Plaza self storage yard our landlord at the time at the end of Thompson Drive next to our property. (CP 25)

On February 22nd 2002 Sesko request for review of decision of Director to appeal the Cease and Desist Order. (CP 32) On March 1st 2002. City of Bremerton refunded Sesko the $132 appeal fee to terminate Sesko's appeal. (CP 33)

After the Pennsylvania Avenue Property abatement, six months later, Sesko has been forced by the City of Bremerton once again to move their business equipment and boats stored at the Paul McConkey's Self Storage yard for 18 months. Sesko did bring some of equipment that Sesko planned to use on the property and to remove the fuel storage tank.

On January 21st 2003 Sesko stated that he does not know that City of Bremerton is going to call witnesses and he did not know they were allowed. The Court ordered Sesko to take off what Sesko believed is in violation of his order and the Court of Appeals decision.

BREMERTON-004408

On February 21st 2003 Sesko remove the items that he felt needed to be removed for compliance as the court ordered. The court adopted City of Bremerton site plan review suggestion that Sesko needs permission and permit from the City of Bremerton to use their property to comply with his order of May 8, 1998 paragraph 3. The Court never looked at the pictures that Sesko presented after compliance with the clean up.

.The court did not allowing witnesses on Sesko's behalf. But, he said we may earlier (On January 21st 2003 hearing VRP Line 5-7) The Court found Sesko in contempt.

On March 28th 2003 hearing VRP Line 19-25. Sesko could not present objections. As usual the court said it allowed Sesko to present the argument but in actual process the court did not want to hear it. Again the court did not follow through it's own statement by allowing Sesko to present his argument. The Court signed the contempt order.

III. ARGUMENT

1. **Judge Roof didn't show any necessity for granting injunction or contempt order.**
   Shouldn't necessity be required for injunctive relief ?

Necessity is required. Groen, In re (1900) 22 Wash. 53. 60 P. 123.

2. The superior court erred or abused its discretion by exceeding its authority in its follow-up orders implementing the earlier order when the court ordered and allowed the City of Bremerton to remove everything from the Seskos' property. When the Court of Appeals said only junk had to be remove in the appeal of the original order.
Shouldn't the Court of Appeals interpretation of a Superior Court's previous orderPrevail? Which would only allow the removal of junk and not prevent business use?

About the legitimate use of the Pennsylvania Avenue property

Sesko's property is zoned Business Park (Bremerton Municipal Code 21.02 CP18-21) and Urban industrial under the Shoreline Management Program. (CP11-17)

BREMERTON-004409

Pier 44 Construction Mr. Robert McConkey, in his May 26, 95 letter he stated "To Our recollection, a crane has been used at the property on the end of Thompson to launch floats since 1981, Crane offloading of barges was done many years before that and the facility has had commercial usage since before 1935. (C.P. 50).

In Mr. Paul McConkey's July 17, 95 letter he stated. "In answer to your request for information about when the first use of your crane to lift boats on to our property. The first boat rental information we have, according to our records was in September of 1990. (C.P 49).

In 1995 Mr. Verl L.Long's letter (CP78) "1979.Long Engineering Inc surveyed the subject property and resurveyed portion of the property in 93. From his recollection, the property has been used for **storage** and construction yard."

The Superior Court May 8, 1998 order paragraph 3 ordered " The Sesko shall not use this property as a storage facility and cannot store objects of any kind on the property" the order itself is directly violate US. Constitutional Right. Amendment V. The Court of Appeal Said February 25, 2000 "May 8, 1998 order for injunctive relief do not prevent uses for business purpose. They only require the removal of junk on the site" The City of Bremerton v.Sesko, 99 Wash.App.1045,995 P.2d 1257(2000)[at the last page]

3. The superior court did not say what Sesko should do, when Court of Appeals said that "Only junk had to be removed" in the appeal of the original order.
Should't a Judge say exactly what his order requires before a contempt order can be issue?

On January 21st 20 03 hearing VRP page 111 Line 2-6. The Court stated to Sesko: "You can take off what you believe are violations of the order and the Court of Appeals decision. And then whatever is left, I'd like to have documented by photos. And I'll either say thumbs up or thumbs down."

On February 21st 2003 hearing VRP Page 5 Line 23-25. The Court asked the Seskos Are there some things still there? Sesko answered: "Yes, You said only to take

BREMERTON-004410

off what we felt was in violation of your court order." -On Page 5 Line 10-13. We moved a lot of stuff yesterday. Like that item there is gone completely. That item is gone. That item there is gone. That item is gone (indicating). On Page 6 Line 3 Sesko stated " We have been removing- - there was a large pile of lumber that was removed. There was - -

Sesko did what the Judge ordered to do, take off what Sesko felt was in violation of trial court order and the Court of Appeals decision.

On declaration of Mr. Allen Nowlin He Stated: "I have known Bill Sesko For many years, I am familiar with his projects and his stuff.

1. The ford Mustang belongs to me it is shown in the top picture Page 3 both pictures on page 4, and it runs. Bill Sesko does not charge me to park on his property.
2. The Steel Table shown on bottom picture Page 8 and Top Picture Page 9 belongs to a friend of mine and I put it on Sesko's property and it has been removed.
3. Tires show in both pictures page 10 belong to a tenant of Penn Plaza and were left by Cities contractor last year.
4. Silt Fencing and hay bale, lower picture page 13 belongs to Cities Contractor and were left last year.
5. Two Safes show on page 15 lower Picture were dumped over the wall from Penn Plaza and I am positive Sesko does not own them.
6. Scrap, Both pictures page 16 was dumped over the wall from Penn Plaza. (CP93)
7. Plastic flower pots both pictures page 17, top picture page 18, lower picture 24, top picture 25 were thrown over the wall from Penn Plaza. They look like the ones their flower plants came in for in front of their new storage building.
8. The forklift bottom picture page 14 and page 18 will be used on property. Sesko has parts to repair it stored in Belfair.

9. Crane show in top picture page 19 and both pictures page 21 runs and is used on the property and was left by City's contractor last year.
10. Boats show lower picture page 19 top page 20 and both page 22 were left by city's contractor last year.
11. Both trailer show in all pictures page 6,7,8, have been remove and tree shear shown in all pictures page 10, 11 has been removed
12. All trucks parked on property run.
13. I was in Court Friday, February 21, 2003 and would have testified if given an opportunity.(CP 94).

The Court refuse to recognized Seskos' efforts and did not go through the remaining items with Sesko's as the court promised early

[The inconsistency of the Court statement (evidence number 1)]

The Court is obligated to give detail guidelines to instruct the defendant how to comply with his order and the Court should follow his own words. Under the US Constitution Amendment IV "Be secure in (our) persons, houses,
Papers, and effects, against unreasonable searches and seizures, shall not be violated , and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or THINGS to be Seized."

Judge Roof didn't say what we should do, considering Court of Appeal s Statement that "Only Junk had to be removed" We should not have to decide what is required. Order should be specific.

Hector v. Martin (1958) 51 Wash. 2d 707, 321 P2d 555.

A coercive sanction is justified only when it will induce a specific act the court has the right to coerce.
"Interest of M.B. 101 Wn App. 425 3 P.3d 780 Civil Contempt"

On February 21 2003 hearing VRP Page 7 Line 1-25. Sesko said Court of Appeal said Sesko are not ceased from using the property for business purposes. The court said: "Correct." Sesko said only junk has to be removed. The Court said: "On the

business purposes requires an application for a business permit. And **the suggestion a month ago** that there had been no application made... Sesko shows the court the Bremerton zoning code, and stated: " it does not say we have to have a permit, it says right out here—**approved use**. It says the use is allowed outright as a principle use. It does not say we have to get a permit. It says the subject "S" is subject to approval of a special use permit. That requires a permit. Anything under the "A" is allowed outright. It does not require a permit

On February 21st 2003 hearing VRP page 7 Line 15-16) The Court stated: "**No. I don't care about what the zoning code is. I don't care what the law- -.**"

On March 28 2003 hearing VRP Page 3 Line 23rd. The court stated " **This is not a zoning hearing. I am not a zoning officer, I'm here to determine whether or not it is in compliance with or in violation o f the previous court order.**"

On the Same hearing VRP Page 5 Line 9. The court stated to Sesko "**This is not a licensing hearing, This is whether or not if you violated the previous order of this court that's gone up on appeal and has been upheld.**"

Sesko did exactly as the Court instructed him to do, but the Court did not follow through his order and go through the photos of remain business items with Seskos to decide which items Sesko violated the order.

Issue about the Junk on the property.

On November 8 2002 hearing VRP Page 4 Line 11-15. City of Bremerton admitted that they didn't complete the abatement work. They had not yet completed the work on the waterfront portion of the property. So that work has not yet been done,..." Contractor left lots of junk on the Pennsylvania property for nearly two years.

On March 28, 2003 hearing VRP Page 5 Line 20-25. Mr. Sesko stated " Contractor had left considerable stuff on the property. They left a crane, boats on the waterfront. They left all the silk fencing in a pile. They left tires, they left all these things, which I have pictures, and I have affidavit of Al Nolin—Allen Nowlin said that these conditions were left on the property like that. CP 93 item 6 Mr. Nowlin stated Silt fencing and hay bale, belongs to Cities Contractor and were left last year.

On November 8 2002 hearing VRP Page 14. Line 24- page 15 Line8. Sesko Stated. " All those boat s on the beach belongs to Brian Robinson. He was a tenant of Paul McMonkey. I've got this letter from him, where he says he will remove those boats. and that was several years ago."

On January 21st 2003 hearing VRP Page 102 Line 1- 4 Sesko stated: " the tenant on the other side of the property has been dumping stuff across the line. We filed a police report."(Bremerton Police Report number (B03-000660)

On VRP Page 105 Line 1-3. Sesko stated: A lot of the stuff that's been dumped on the property has been dumped over the wall All the stuff here has been thrown over the wall." Continue on Line 6-14 Sesko stated: " I have to clean it up, and I have to do that repeatedly, and it seems to me- in fact, some items were dumped over with—in fact, I might even get a criminal against. Because we have—I had the police there, they inspected it, And you can see from these photographs here, two of the items were dumped over with a forklift that were very heavy, This is looking across on the—Paul's side of the property. And this is where the tracks of the forklift came up to the wall. (indicating.)

Sesko did not create all that junk, City of Bremerton admitted that contractor had not yet completed their work, (November 8th 2002 hearing VRP Page 4 Line11-14) in another words they did not clean up their junk, they left the junk on Sesko's property. Paul McConkey's employee and tenants use their forklift to dump over two very heavy items, flower pots, etc.

In result of the contempt order, on April 21st 2003 City code enforcement officer along with the contractor cut off the chain link fence of the Sesko Pennsylvania Avenue property and took Seskos heavy equipment along with other business use things which Sesko needed to remove his underground fuel tank.

Same as the January 23rd 2002 action, no itemize list of the goods taken from the Sesko property was provided to the Seskos.

City of Bremerton's action violate the US Constitution Amendment IV. "The right of the people to be secure in their persons, houses, papers, and effcts, against

unreasonable searches and seizures, shall not be violated, and No Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or THINGS to be seized."

As Mr. Daryl Hatta stated " I don't understand why the City is so vindictive with the Sesko's. (CP 23)

The issue of the cooperation from City.

In the Department of Community Development Memorandum. The Director Don Pratt stated " For the Pennsylvania property, the "City" has penalty authority without going to court on citation. I assume I am the "City" since I am the administrative authority for the Shoreline Plan. Why do I feel like the Butch Cassidy and the Sundance kid jumping of the cliff into the canyon river not knowing if they will live or die but knowing if they don't jump they will be shot? (CP 52)

"City" left Sesko only a choice between jumping over the cliff or being shot.

All the city officials were advised by the City Attorney not to communicate with Sesko. (CP.22) City Council Carol Arends letter dated September 28th 2001.

On February 8th 2002 City of Bremerton posted Cease and Desist Order on Paul McConkey's Penn Plaza self storage yard our landlord at the time at the end of Thompson Drive next to our property. (CP 25) and **indicated to Paul McConkey if he evicted Sesko he can continue to operate his business, which allows the storage of the same type of material on their property.** (On November 8th .2002 hearing VRP page 13 Line 4- 14) (CP 34-45 shows McConkey's storage yard)

City of Bremerton violates Basic constitution equal protection of the law. (US Constitution Amendment XIV section 1.) "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without du process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Mr. Darrell Hatta stated. He rented Arsenal property from Sesko for many years to park his ten vehicles. City of Bremerton declared all Sesko's vehicles are junk including his ten vehicles. And Mr. Hatta decided to park his vehicles on the property

BREMERTON-004415

Sesko rented from Paul McConkey on Thompson Drive. City declared the property Sesko was renting from Paul McConkey as junk yard. Mr. Hatta is now renting a spot directly from McConkey at same location for the storage of his ten vehicles, Mr. Hatta does not understand why the City is so vindictive with the Sesko's (CP 23 &CP 24). City of Bremerton suggested neighbor make complaint, on December 11th ,2000 Mr. Robert McWaid the harbor master stated "A couple of years ago, someone from City hall called and asked if we had any problem with William Sesko's equipment in the adjacent area. I told "NO" as he has it behind a fence. (CP.47)

4..The court erred and abuse its discretion by denying Sesko's the right to to call witness to testify at the hearing.
Shouldn't the Superior Court allow Sesko the right to call witnesses?

Issue about the witnesses.

On January 21st 2003 hearing VRP Page 5 line 5-7 Sesko stated " I didn't know they were going to call witnesses. I didn't know they were allowed. The Court stated: " If that becomes an issue, we may—you can see how it goes from here."

On March 28 2003 hearing VRP Page 10 Line 20-Line 25 Sesko stated: " If we are in contempt, I think the ordinance or the laws require a hearing where we have a chance to present our side, if it's a contempt out of court. And it should be a full hearing where we can have witnesses. And last time, when we were having a hearing, we had witnesses that weren't allowed to even present their case".

Mr. Allen Nowlin stated I was in court Friday, February 21, 2003 and would have testified if given an opportunity. (CP 94 item 15).

[The inconsistency of the Court statement (Number 3)]

The court did not allowing witnesses on Sesko's behalf... The Court found Sesko in contempt. The Court then gave the city the authority to enter the property and remove everything, even though Court of Appeals said only junk had to be removed. Once again the Court did not follow through his own statement by going through the picture Sesko presented. The court did not follow through is own statement by allowing

BREMERTON-004416

Sesko to present his witness in support his defense. (This act is in violation of US constitution Amendment VI.) "To be informed of the nature and cause of the accusation: to be confronted with the witnesses against him; to have witnesses in his favor."

> RCW 7.40.150 (4) Party is not punishable for contempt for violating injunction, when it was granted without notice and without any showing of necessity and order failed to make any provision for notice or give opportunity for hearing. Groen, In re (1900) 22 Wash. 53, 60 P. 123.

> "Due Process, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them. We think this includes the right to call witnesses to give testimony.
> Marriage of Nielsen Aug. 1984.38.Wn.App.586.687.P2d. 877

5.The superior court erred and abused its discretion by denying Seskos'the right to use of their property as zoning permits.
Shouldn't the Superior Court allow Sesko the right to use their property as zoning permits?

Issue About the permit.

Sesko has a current City of Bremerton business license. On November 8th 2002 hearing VRP Page 9 Line 22-24 Sesko stated; " This is actually the first time that she (the City) was talking about the site plan review for our Pennsylvania Avenue property, which we never heard before".

There is no indication in the record on and before the Finding of Fact and Conclusions of Law in May 8, 1998 or before November 8 2002 that Sesko needed A "Site Plan Review" and A Permit was required.

In fact in Finding of Fact and Conclusions of the Law Item 10 statement by the City was "**The only remedy available to the City of Bremerton was requires the Seskos to Clean up Their property by remove of all junk from their land.**" As Court of Appeal decision 2000 clearly said the order for injunctive relief DO NOT prevent uses for business purposes, they ONLY require the REMOVAL OF JUNK on

BREMERTON

the sites." The order did not say Sesko need a site plan review and require permit to use his property. It was permitted use outright and all written within the Bremerton Municipal Code (BMC) 21.02 (CP 19).

On March 28, 2003 hearing, VRP Page 6 Line 20.-25 Sesko stated " you can develop the property up to $2,500 before a permit is required. The permit is only required when we change the nature of the land, if we go in there and build a building, do any structure to the land. To use an existing parking facility for parking does not require a permit.

> **Shoreline Master Program (SMP Definitions 8-6) Substantial Development: Any Development of which the total cost or fair market value, whichever is higher, exceeds two thousand five hundred dollars($2,500.00) or any development which materially interferes with the normal public use of the water or shorelines of the state.**

On February 21st 2003 hearing VRP. Page 5. Line 5 Sesko stated: "to rent real estate doesn't require permit."

> **SMP regulations 5-12 policies (6) The Port of Bremerton is encouraged to coordinate the cooperative and multiple use of port and Industrial facilities along the shoreline (CP 54)**

Port of Commissioner Bill Mahan stated: "the Port of Bremerton by Washington State statute is responsible for economic development within its boundaries. While we have no legal responsibility in the aforementioned property, It is our opinion that the Seskos should be encouraged to use and develop their property as the zoning permits. (CP 92)

To enforce the May 8,1998 paragraph 3 order in 2003 by the suggestion made one month ago that the Sesko need to apply a permit to be able to use his land, This case has already settled by the Court of Appeal ruling in 2000. That injunctive relief Do Not prevent uses for business purposes, they only require the removal of Junk on the site.

> "The discretion permissible in zoning matters is that which is exercised in adopting the zone classifications with the terms, standards and requirements pertinent thereto, all of which must be done by general ordinance applicable to

all persons alike. The acts of administering a zoning ordinance do not go back to questions of policy and discretion that were settled at the time of the adoption of the ordinance. Administrative authorities are properly concerned with questions of compliance with the ordinance, not its outright wisdom.
The Ogden V. Bellevue 45 Wn. 2nd, 492, at 495 1954

"No law shall be passed granting any citizen, class of citizen or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations."

Art 1, Sec 12. of the Washington Constitution provides.

A zoning ordinance is not retroactive, so as to affect rights that have already vested.

"A property owner has a vested right to use his property under the terms of the zoning ordinance applicable thereto. "
State ex rel Hardy v. Superior Court 155 Wash 244 284 Pac 93

In another words the City of Bremerton the last month "Site plan review" regulation adoption to the Trial Court order on May 8, 1998 violated our constitutional right.

6 The SurperiorCourt erred by denying the Sesko's objections to each portion of the proposed order, when the court stated earlier that he would hear Seskos argument. the Court should allowed Sesko to present the argument of defendant objections
Shouldn't a Judge follow procedures He said he would in previous hearing?

Issue about the five objections proposed order.

1) It is not unreasonable for Sesko to request the City to list the items in violation of judgment. It is not unreasonable for Sesko to request the City to identified the items that were left by City's contractor for an year since January 2001 Also, identify the junk that was dump over the wall from the Penn Plaza Storage yard (with police report).

2) No permit or permission was EVER REQUIRED in any past proceeding.

3). The Minutes of January 21st 2003hearing said to remove items Sesko feel needed to be removed for compliance. Sesko did exactly what the court ordered.

4) City of Bremerton does not know the correct address number, can not define the boundary line or the tide land of the property. City of Bremerton does not know what they are doing.

5) Sesko wants to verify again the Court order. Sesko does not trust the City code enforcement officer Ms Janet Lunceford, because she is not honest. Her demands are arbitrary, capricious and irrational.

The Court has never heard the argument on defendant objections to each portion of proposed order as Court said in his open statement that he would.

[The inconsistency of the Court statement (Evidence Number 3)].

Issue about the City official is not being honest.

On November 8 2002 hearing VRP.Page 3 Line 10-17. City stated:" At the time of abatement, the Sesko s were **simultaneously** removing goods and taking them next door to property that's own by Paul McConkey **Many of the goods returned to the property after the contractor left".** This statement is a twisted lie unsupported by proof.

On March 28 2003 hearing VRP Page 7 Line 1-5. Sesko stated: " I went down to the City and got numerous things out that show even a residential carport, all these things require—none of them required a hearing and all this that the City is trying to say that we're failing to get."

On March 28 2003 hearing VRP Page 10 Line 10-18 Line Sesko Stated " We have three properties within the city that were all cited within same period of time and all took us, you know to great extremes. And yet many other properties in the city that were worse than ours- - in fact, even a city property, this is a picture of a City property right on Highway 3, right in plain view - - and it's looked that way basically since all this action has occurred.

Mr. Roger Jensen. The property owner on 1702 & 1704 Pennsylvania Avenue, stated on his letter to city of Bremerton dated on July 17, 1995 " I would like to see the City work out an agreement with Mr. Sesko to maintain a Marine Industrial facility on the present site. Again I am aware that certain regulations must exist but some common sense must

BREMERTON-004420

also be incorporated in any agreement. Please reconsider your order and work out a reasonable agreement with William Sesko." (CP 46).

Mr. Robert McWaid the Harbormaster stated on his letter dated on December 11 2000. "A couple of years ago someone from City Hall called and asked if we had any problem with William Sesko's equipment in adjacent area .I told them "No" as he has in behind a fence. (CP 47)

7..Did the Superior Court erred by allowing City of Bremerton to remove Sesko's property without clarify the property's boundary line and securng Sesko's property interest. ?
Shouldn't the property's boundary line be defined and it's determined what Sesko own before contempt can be an issue?

City of Bremerton admitted that there was a problem that they can not define the Sesko's property Line.

On January 21st 03 VRP Page 8 Line 8-10 City stated " There has a question about where boundary between the DNR tideland property and the Sesko Property was."

January 21st 3. VRP Page 8 Line 15 City Stated that DNR is going to get a survey done, because there are complex boundary issue.

On VRP Page 8 Line 16-20 The City stated: "there was harbor line and there is no existing survey, which clearly shows the boundary between Bill Sesko 's property and DNR's property.

On VRP Page 8 line 24-25 & Page 9 line 1 The Court Stated: "Are not the Seskos at the same disadvantage as the City. Then, for determining the purpose of satisfying the injunction?"

Janet Lunceford can not make up her mind to define the property line.

On January 21st 03 hearing VRP Page 34 Line 13-18.The Court asked Janet Lunceford how far the Sesko property goes. She answered: "I believe that this line of concrete ecology bullocks here is the property line between Mr. Seskos' property and adjacent property owned by Mr. McConkey."

On January 21st 03 hearing VRP Page 45 line 21-22 Janet Lunceford answered: I don't know where Mr. McConkey's property line are."

On January 21st 03 hearing VRP Page 8 Line 8-9 Ms Koler stated:" There was a question about where the boundary between the DNR tideland property and the Sesko property was." On same hearing VRP Page 8. Line 15-19

DNR is going to get a survey made, there are complex boundary issues. There's a harbor line and there is no existing survey which clearly shows the boundary between the Sesko Property and the DNR property....

IV STANDARD REVIEW.

The Superior Court of the State of Washington was granted original jurisdiction in all actions to prevent or abate nuisance. Washington Constitution Article 4 Section 6 Amendment 28, 65, R.C.W. 2.08.010. It is therefore necessary that in all matters brought before the Superior Courts of the State of Washington concerning the abatement of a nuisance, the Court must make the determination whether or not contempt exists, as alleged by the opposing party.

There is no indication in the record on and before the Finding of Fact and Conclusions of Law in May 8, 1998 nor an proof was made in any language before November 8 2002 that Sesko has violated land use for lack of "Site Plan Review" and permit was required.

In fact in May 8, 1998 Finding of Fact and Conclusions of the Law Item 10 statement by the City was "The only remedy available to the City of Bremerton was requires the Seskos to Clean up Their property by remove of all junk from their land." As Feb 25, 2000 Court of Appeal decision clearly saidthe order for injunctive relief DO NOT prevent uses for business purposes, they ONLY require the REMOVAL OF JUNK on the sites." The order did not say Sesko need a site plan review and require permit to use his property. It was permitted use.

Sesko did exactly what the court ordered removed the items he felt needed to be removed in violation of Trial Court order and the Court of Appeal decision for compliance. Court decided to find Sesko in contempt base on the City of Bremerton one

BREMERTON-004422

month ago suggestion that Sesko needs to file application to the City for any permitted use.

The Ogden V. Bellevue 45 Wn. 2nd, 492, at 495 1954

A zoning ordinance is not retroactive, so as to affect rights that have already vested.

"A property owner has a vested right to use his property under the terms of the zoning ordinance applicable thereto. "State ex rel Hardy v. Superior Court 155 Wash 244 284 Pac 93

The Superior Court, in the exercise of its jurisdiction power, needs to determine with particularity which items of personal property presently on the property of the Seskos are nuisance that violate the zoning ordinance and which items are for the business use needs to be separate and that Sesko can keep. Once the court has performed its fact-finding function as to violations of the Zoning Ordinance, it would then be able to fashion a remedy, which would not only abate the nuisance but also protect the property interests of the Seskos.

City of Spokane Vs J-R Distributors, Inc., 90 Wn. 2nd 722, 585 P.2d 784 (1978) in which the City of Spokane was granted the authority by statute to define what constitutes a nuisance and abate the violation thereof. The Supreme Court stated that the grant to the City of the ability to define a nuisance did not give the City the ability to control or proscribe the rules by which the Superior Court made its decisions. This is analogues to the matter at Bar. A Bremerton City Official does not have the authority to manipulate a violation of the zoning ordinance as such under mind the Court of Appeal's order. Crushed and remove lots of Seskos personal and business possession .The determination falls directly within the scope or original jurisdiction, which is granted to the Superior Court of Kitsap County.

The Superior Court's orders are arbitrary, capricious and inconsistent with it's own orders

If a regulation diminishes a landowner's rights of use and enjoyment unusually severely, it may also violate the provisions of the federal Fifth Amendment and of article I, section 16, of the state constitution.

BREMERTON-004423

A list of remain items should state reasons that each item has to be removed. And Sesko should be able to use his property as zoning permits.

V. CONCLUSION

For the reasons indicated above, this Court of Appeals should rule that the superior court erred or abused its discretion when it ordered Seskos contempt the court without follow their order to take off what Sesko believe are violations of the order and the court of appeals decision. And then whatever is left, Court would like to have documented by photos. And the Court will either say thumbs up or thumbs down. At the same time Sesko needs to comply May 8, 1998 order to remove all the items stored at the Pennsylvania property. The order is total contradictory to each other. The May 8 1998 paragraph 3 order is violate US Constitutional rights. Under Amendment IV.

The Court realized to fine Sesko "the unconditional abatement is not the appropriate order" he decided to find Sesko in contempt by not applying for "Site Plan Review" as the City of Bremerton suggested. All the remaining item equipment machinery was for the use of the Property did not apply to his new order any more.

Ms. Sesko felt Judge Roof is prejudice against her. On November 8th 2002 VRP Page 11 line 10-11. Judge Roof Stated: " You've been in court a number of times, probably almost as many as I have." Ms Sesko felt very offensive. Judge Roof already thinks Sesko is criminal before the trial even started.

Sesko provided his current City of Bremerton business license. The Shoreline Management Program (SMP) Substantial development definition 8-6, Bremerton Municipal Zoning Code 21.02 to prove that he can legally use his land. What kind of the prove does Sesko needs to provide, besides these three state regulation and laws?

Sesko did exactly what the Court ordered to do and the Court still found Sesko in contempt. The court knows the property owner has a vested right to use his property under the terms of zoning ordinance.

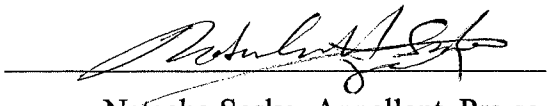
How can Sesko really satisfy the Court inconsistent order? And to avoid repeat abused by the City of Bremerton? Sesko does not deserve the punishment of losing their business inventories. RCW 7.40.050 (5)

BREMERTON-004424

As Don Pratt memorandum (CP52) City leaves Sesko only a choice between jumping over the cliff or being shot.

Therefor, Seskos are asking the Court of Appeals to remand to the superior court with instructions to obey the Court of Appeals February 25, 2000's order and allow Sesko to continue the use of their property as zoning permits.

Respectfully submitted on this 10th day of October, 2003



Natacha Sesko, Appellant, Pro se.

BREMERTON-004425