

The Hon. Ronald Castleberry  
1:00 p.m. September 9, 2008

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT**

ANNIE JANICKI,

Petitioner,

v.

CITY OF SEDRO-WOOLLEY, a municipal corporation; DELUXE RECYCLING AND DISPOSAL LLC, a Washington limited liability company; and FIRE RIDGE LLC, an Oregon limited liability company,

Respondents,

v.

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

Intervenor.

No. 08-2-01130-8

**SKAGIT COUNTY’S MOTION TO STRIKE AND REQUEST FOR TERMS**

**I. MOTION**

For the reasons set forth below, Skagit County moves to strike **Exhibit A** from the “Declaration of Phil Serka in Support of Deluxe Recycling and Disposal LLC’s Objection to Skagit County’s Motion to Clarify Record, Vacate Hearing Examiner Decision and Remand Proceedings” dated September 8, 2008 (“**Serka Declaration**”).

1           **1. Exhibit A Is Inadmissible Hearsay and Should Be Stricken.**

2           Exhibit A to the Serka Declaration is a newspaper article published in the Skagit  
3 Valley Herald on August 28, 2008. The newspaper article inaccurately claims that  
4 Mr. Jacobs "softened his allegations" in this matter, based on a characterization  
5 coined by a reporter who called Mr. Jacobs.

6           Mr. Jacobs' testimony before this Court has never changed. Mr. Jacobs has  
7 testified under oath that he submitted a letter into the SEPA record that he intended to  
8 become part of the SEPA record. Mr. Jacobs has testified that his letter was removed  
9 from the SEPA file, an allegation admitted by City Planner John Coleman. City  
10 Supervisor Berg has testified that he thereafter gave Mr. Jacobs a very public "tutorial"  
11 regarding SEPA comments. Jacobs has testified that Berg told him he lacked  
12 authority to write his SEPA letter. This is consistent with Jacobs' statement reported  
13 in the Exhibit A newspaper article. The newspaper article's claim that Jacobs  
14 somehow changed his story is inaccurate, and, more importantly, is not reflected by  
15 any sworn testimony before this Court from anyone.

16           Having little else to present to this Court, Deluxe offers a newspaper article as  
17 purported evidence that Mr. Jacobs changed his story from his sworn statement. In  
18 other words, Deluxe blatantly and without excuse offers a newspaper article as  
19 evidence in support of the truth of matters asserted. The newspaper article is an  
20 unsworn second hand statement, and is therefore hearsay. The Court should strike  
21 Serka Dec. Exh. A and 7:1-2 from the Deluxe's response brief.

22           **2. There Is No Good Faith Basis In Fact Or Law For Deluxe's Effort To**  
23 **Introduce The August 28, 2008 Newspaper Article For The Truth Of**  
24 **Matters Asserted. The Court Should Award Terms Against Deluxe For**  
**Introducing Evidence That Deluxe Knows To Be Inadmissible Hearsay.**

25           Deluxe is fully aware that newspaper articles introduced for the truth of the  
26 matter asserted are inadmissible hearsay. In opposing Deluxe's recent motion to  
27 dismiss the Petitioner's claim (denied by this Court on July 29, 2008), the County

1 introduced a Skagit Valley Herald newspaper article for the proposition that additional  
2 discovery may be needed since Deluxe was making statements in the media that  
3 directly and blatantly contradicted sworn testimony to this Court. Although the County  
4 made abundantly clear in its briefing that the newspaper article in question was being  
5 introduced for purposes other than the truth of the matters asserted and cited  
6 extensive legal authority in support of this proposition, Deluxe nevertheless filed a  
7 motion to strike the newspaper article which this Court granted. A copy of the  
8 Declaration of Phil Serka dated July 23, 2008, on which Deluxe's motion to strike was  
9 based, is attached hereto as **Exhibit 1**. See, Exhibit 1 July 23, 2008 Serka Dec. at  
10 3:5-7 ("newspaper article published in the Sedro-Woolley Skagit County Herald [sic]  
11 on July 3, 2008 which should be excluded as it is hearsay not admissible under any  
12 grounds"); *Id.* at 4:21 ("The newspaper article is clearly hearsay and is not  
13 admissible."); *Id.* at 4:23-25 ("Based on the foregoing, Deluxe would respectfully  
14 requests [sic] that the Court strike the listed exhibits in support of Skagit County's  
15 [opposition brief].")

16 Deluxe has no excuse for attempting to introduce the August 28, 2008 Skagit  
17 Valley Herald article in an effort to impeach Mr. Jacobs' sworn testimony. Deluxe  
18 knows better. There is no good faith basis in fact or law for Deluxe's attempt to  
19 introduce a newspaper article in support of the truth of matters that Deluxe asserts.  
20 Accordingly, the County respectfully requests terms against Deluxe pursuant to CR  
21 11. A proposed form of order accompanies this motion.

22 DATED this 8<sup>th</sup> day of September, 2008.

23 SKAGIT COUNTY PROSECUTING ATTORNEY

24 By \_\_\_\_\_

25 Stephen Fallquist, WSBA No. 31678  
26 William Honea, WSBA No. 33528  
27 Attorneys for Skagit County

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT

<p>ANNIE JANICKI, Petitioner, v. CITY OF SEDRO WOOLLEY, a municipal corporation, and DELUXE RECYCLING AND DISPOSAL LLC, a Washington Limited Liability Company, Respondents, vs. SKAGIT COUNTY, a political subdivision in the State of Washington, Intervenor.</p>	<p>NO. 08-2-01130-8 DECLARATION OF PHILIP A. SERKA</p>
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I, Philip A. Serka, declare as follows:

1. That I am the attorney for Deluxe Recycling and Disposal, LLC ("Deluxe").
2. That Deluxe and the City of Sedro Woolley have filed a Motion to Dismiss Petitioner's Complaint for failure to list the property owner as an indispensable party defendant within the 21-day appeal period. However, Skagit County's response in opposition includes numerous

EXHIBIT 1

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documents that are either inadmissible or not relevant to the narrow legal issue to be considered by this Court.

3. Steve Fallquist Declaration - Steve Fallquist lists Exhibits A – P attached to his declaration in Skagit County’s opposition to the Motion to Dismiss. Deluxe requests that Exhibits A, D, F, G, J, K, L, M, N, O, P be stricken.

a. Exhibit A - Janicki’s response to staff report submitted at the Hearing Examiner level. Exhibit A is not relevant at all as to whether or not Petitioner has properly perfected the appeal before Superior Court.

b. Exhibit D - Email chain.

c. Exhibit F - City of Sedro Woolley’s Staff Report.

d. Exhibit G - Comment letters from citizens to the Hearing Examiner.

e. Exhibit J - Comparison analysis of City of Sedro Woolley Codes related to SEPA appeal are not documents that are relevant whatsoever to the issue whether or not Petitioner properly perfected the Land Use Petition appeal with the Superior Court.

f. Exhibit K - City of Sedro Woolley Resolution No. 76508 - has nothing whatsoever to do with the legal issues related to this motion.

g. Exhibit L - Email chain

h. Exhibit M - Invoices related to Annie Janicki for appeal fees or payment of legal services to the Hearing Examiner.

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i. Exhibit N - City of Sedro Woolley Notice of a Public Hearing – does not provide any evidence that is relevant to Deluxe’s motion to dismiss.

j. Exhibit O - Paraphrased reference to a newspaper article published in the Sedro Woolley Skagit County Herald on July 3, 2008 which should be excluded as it is hearsay not admissible under any grounds.

k. Exhibit P - Screen print of Sedro Woolley’s web site which has no relevance to the issues at hand.

The above listed exhibits are not relevant and should be excluded and stricken from the record.

4. Skagit County’s Memorandum in Opposition – The following pages and lines of Skagit County’s Memorandum in Opposition should be stricken from the record as it has no relevance to the procedural issues at hand. Nor do these facts have any relevance or evidence for the Court to consider in reaching a decision on the pending motion:

a. Evidence Predates Filing of Application:

- Page 4, Lines 12 through 22
- Page 5, Lines 1 through 16
- Page 6, Line 1 –

The facts cited in Skagit County’s Opposition to Motion to Dismiss supported by the page and line items listed allege facts that pre-date even the filing of an application for building permit by Deluxe.

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The facts provide no assistance whatsoever and should not be considered in deciding whether or not to grant Deluxe's Motion to Dismiss.

b. Appeal Fees:

- Page 7, Lines 2 through 11 – These are facts related to an ordinance that increased appeal fees to be paid in order to appeal an administrative decision to Hearing Examiner. It has no relevance to the pending motion.

c. Credibility of the Sedro Woolley Hearing Examiner:

- Page 7, Lines 18 through 20
- Page 8, Lines 1 through 4

The facts are not relevant to the issue of whether or not Petitioner complied with the Land Use Petition Act rules for perfecting appeals.

d. Hearsay:

- Page 8, Lines 7 through 14
- Page 9, Lines 16 through 20

The newspaper article is clearly hearsay and not admissible.

Based on the foregoing, Deluxe would respectfully requests that the Court strike the listed exhibits in support of Skagit County's Declaration in Opposition and excerpts from the Statement of Facts of the Skagit County's Memorandum in Opposition as set forth herein.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23 day July, 2008.

  
\_\_\_\_\_  
PHILIP A. SERKA