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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 OPPOSITION  
TO DELUXE MOTION TO STRIKE  
DECLARATION OF ROB SIMPSON**

Deluxe seeks to strike the Declaration of Rob Simpson, submitted by Skagit County in support of its Motion to Clarify Record, Etc. Deluxe argues that the Simpson Declaration "has no probative value or relevance to this motion." **Skagit County submitted the Declaration of Rob Simpson in support of two concepts:**

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1           1. The idea that Deluxe and City Supervisor Berg worked hand in hand for  
2 many months before Deluxe submitted a building permit to the City, which is relevant to  
3 the underlying motion because it makes it more likely that Berg would be inclined to  
4 tamper with the SEPA record to Deluxe's benefit, and also goes to Berg's possible  
5 motive for doing so. In its original motion papers, the County argued as follows:

6           The implausible idea that [the disappearance of the Jacobs letter  
7 from the SEPA files] was all some collegial misunderstanding  
8 between Berg and Jacobs also fails to reflect the reality of everything  
9 that has transpired around this project. The record reflects that the  
10 City Administration has gone to extraordinary lengths to assist,  
11 facilitate and pave the way for Deluxe, starting well before Deluxe  
even submitted a building permit application on December 18,  
2007....The disappearance of expert commentary from the SEPA file  
is entirely consistent with the overall appearance that the Deluxe  
proposal was a foregone conclusion...

12 County Motion to Clarify Record, etc., at 10:16-11:8. Among other evidence in support  
13 of the proposition that the "City Administration has gone to extraordinary lengths to  
14 assist, facilitate and pave the way for Deluxe," the County cited Simpson Declaration ¶ 2,  
15 in which Mr. Simpson testifies under oath as follows:

16           I met in late October 2007 to discuss the project with City personnel  
17 including City Supervisor Eron Berg, City Planning Director John  
18 Coleman, as well as Deluxe permit consultants John Abenroth and  
19 Marianne Manville-Ailes, and Deluxe principal Steve Snell. At this  
meeting, City Supervisor Eron Berg suggested that we quickly  
submit a building permit in order to vest ahead of regulations likely  
to be changing in the near future.

20  
21           2. To explain the highly significant effects of the City's removal of critically  
22 relevant expert commentary from the SEPA record i.e., the February 5, 2008 Leo  
23 Jacobs letter, and, in particular, the notion that the SEPA process was irrevocably  
24 tainted from its very outset by the removal of the Jacobs letter from the SEPA file.

25 The discussion from the County's initial briefing bears quoting in full here:

26           //

1 The accompanying Declaration of Rob Simpson underscores the  
2 ultimate reason that [the removal of the Leo Jacobs letter from the  
3 SEPA record] is so important. Mr. Simpson, who is one of Deluxe's  
4 project managers, recently testified by declaration as follows:

5 [Deluxe's] basic strategy was to quickly obtain a  
6 hastily drafted MDNS, and then later exploit loopholes  
7 in various instances where the conditions were  
8 arguably vague or unenforceable. This latter strategy  
9 Deluxe has actually pursued, and has taken  
10 measures to defeat what I understood to be the City's  
11 intent.

12 ...  
13 It is my opinion, based on my experience working on  
14 this project, that Deluxe has little intention to comply  
15 with the City's intent in the MDNS conditions. It is  
16 also my view that Deluxe has little regard or concern  
17 for the High School and its students, nor for the City  
18 and its citizens.

19 Simpson Dec. ¶ 5. Simpson goes on to explain with great  
20 specificity how Deluxe is already in the process of attempting to roll  
21 over the top of the City's MDNS conditions and ignore the City's  
22 basic intent. Simpson Dec. ¶ 4 and Exh. A. Perhaps if City  
23 planning staff had been operating with the benefit of comments in  
24 the record from the Solid Waste Division Manager (i.e., the City's  
25 resident expert on solid waste matters), City planning staff might  
26 have felt sufficiently emboldened to write specific and enforceable  
27 MDNS conditions notwithstanding the City Administration's clearly  
28 expressed desire to push the Deluxe project through on greased  
rails. If constrained to the record presented to this Court by the  
City, we will never know.

County Motion to Clarify the Record, etc., 12:14-13:11.

While Deluxe may find the Declaration of Rob Simpson damaging to its case and potentially embarrassing, no legal authority supports Deluxe's motion to strike. The question on a motion to strike is not whether evidence offered by the County comports with Deluxe's preferences and theories. Rather, the operative question is whether there are legally permissible grounds for striking evidence submitted by the County.

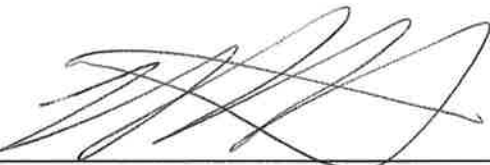
Deluxe cites ER 401 as legal authority in support of its argument, which provides that relevant evidence is that which "has a tendency to make the existence of any fact

1 that is of consequence to the determination of the action more probable or less probable  
2 than it would be without the evidence.” But ER 401 sets a very low bar, which perhaps  
3 explains why Deluxe cites no decisions interpreting ER 401. See, e.g., *State v.*  
4 *Brown*, 132 Wn.2d 529, 579-80 (1997)(evidence of defendant’s preparation for trip to  
5 Seattle where crime was committed was relevant to establish background). Professor  
6 Tegland writes that ER 401 “requires only a showing of minimal logical relevance –  
7 that is, any tendency to make the existence of a fact more or less probable.” Tegland,  
8 5D Washington Practice Series, Handbook on Washington Evidence, ER 403 (2008  
9 Ed.) at ¶3(a)(citing *State v. Bebb*, 44 Wn. App. 803(1986), *aff’d* 108 Wn.2d 515  
10 (1987)(emphasis in original).

11 The County has more than satisfied the burden of relevance in introducing and  
12 relying upon the Declaration of Rob Simpson as part of its underlying motion.  
13 Deluxe’s motion to strike should be denied.

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

15 SKAGIT COUNTY PROSECUTING ATTORNEY

16  
17  
18 By 

19 Stephen Fallquist, WSBA No. 31678  
20 William Honea, WSBA No. 33528  
21 Attorneys for Skagit County