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

ANNIE JANICKI,

Petitioner,

vs.

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,

vs.

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

Intervenor.

No. 08-2-01130-8

**DECLARATION OF PATRICK M.
HAYDEN**

I, Patrick M. Hayden, hereby declare, under penalty of perjury under the laws of the
State of Washington, that the following is true and correct:

1 1. I have a private law practice at Post Office Box 454, 109 Warner Street,
2 Sedro-Woolley, Washington. I have been admitted to practice in Washington State since
3 1980, following graduation from University of Washington Law School. I have worked in
4 private or public practice in Sedro-Woolley since 1981.

5 2. I was appointed City Attorney for the City of Sedro-Woolley in March, 1994,
6 and served in that capacity until I resigned in July, 2006.

7 3. While I was City Attorney I worked on solid waste issues with Leo Jacobs,
8 who was in charge of the Sedro-Woolley Solid Waste Department. Mr. Jacobs was an
9 aggressive department head, and ran his department with the same competitiveness as
10 would a private business. This is not a criticism of Mr. Jacobs, but only an observation. In
11 general, this enthusiasm served the City well, though it created a few problems.

12 4. In particular, Mr. Jacobs was in competition with Waste Management of
13 Washington, which had the UTC franchise for ^{IN} ~~incorporated~~ Skagit County adjacent to the
14 City of Sedro-Woolley. Mr. Jacobs' goals for his department conflicted with the goals and
15 franchise rights of Waste Management at times, and this conflict was personally observed
16 by me when the City of Sedro-Woolley negotiated an agreement with Waste Management's
17 attorney, Polly McNeill, regarding Waste Management's rights in areas being incorporated
18 into the City of Sedro-Woolley.

19 5. In negotiations, the City of Sedro-Woolley agreed to not compete with Waste
20 Management for commercial recycling, and the City granted Waste Management an
21 exclusive right to collect residential recyclables and promised to "use best efforts to protect
22 that right". In exchange Waste Management relinquished or reduced a right to
23 compensation upon annexation into the City of areas included in its UTC franchise, as part
24 of a larger comprehensive agreement. (Commercial recycling is not regulated by the city
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1 franchise authority. The city does not regulate private commercial recycling businesses, but
2 only agreed to not compete in that activity. However, it assumed an affirmative duty
3 regarding residential recycling, which it did control.)

4 6. In the Fall of 2005 it came to my attention that Mr. Jacobs was representing a
5 private recycling / solid waste company, Tri-County Recycling, in a competitive bid for the
6 Town of Concrete solid waste contract. The primary competition was between Tri-County
7 Recycling and Waste Management. I learned at that time that Mr. Jacobs was an owner of
8 Tri-County Recycling.

9 7. Following Mr. Jacobs' bid for the Concrete solid waste contract, Polly
10 McNeill contacted me and informed me that Mr. Jacobs was in competition with Waste
11 Management on behalf of a private business, and was also competing with them as a
12 representative of the City of Sedro-Woolley. Her concern was that Mr. Jacobs would use
13 the authority of his City position to obtain an advantage for Tri-County Recycling in
14 competition with her client, Waste Management. The obvious implication of this issue was
15 potential liability of the City for abuse of its regulatory authority for benefit of a private
16 enterprise. Ms. McNeill went so far as to make a public disclosure request for Mr. Jacobs'
17 computer records relating to these topics.

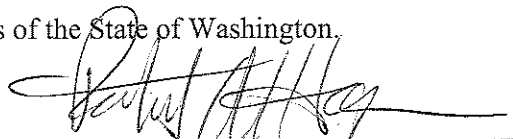
18 8. Following my investigation of this matter, the City took the position that it
19 could not restrict Mr. Jacobs' activities outside of the City, on his own time, on behalf of a
20 private company in competition with Waste Management. However, Mr. Jacobs would not
21 be permitted to be involved in City issues concerning Waste Management, given the
22 conflict of interest created by his dual role as a representative of a private company in
23 competition with Waste Management and as the supervisor of City Solid Waste
24 Department. Ms. McNeill agreed that this position appeared to protect the City from a
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1 claim by Waste Management for abuse by the City of its regulatory authority or for breach
2 of contract, and adequately addressed her concerns at the time. This policy was
3 communicated to Mr. Jacobs.

4 9. It is my understanding that Mr. Jacobs still serves as a representative or
5 consultant for Tri-County Recycling. I saw him driving a Tri-County truck a month ago,
6 and he stated that he was a "consultant" for that company in his recent campaign for the
7 Democratic nomination for 1st District County Commissioner (which I supported). As
8 such, the same policy that prohibited Mr. Jacobs' involvement with Waste Management's
9 activities on behalf of the City of Sedro-Woolley would also prohibit Mr. Jacobs from
10 involvement in the Deluxe Recycling application on behalf of the City of Sedro-Woolley,
11 including any comments on the SEPA MDNS application of Deluxe on behalf of the City
12 Solid Waste Department.

13 10. Please note that I am not saying that Mr. Jacobs has used his City position to
14 benefit his private company. My point is only that his dual role creates an actual or
15 potential conflict of interest when he makes comments in his official capacity concerning
16 another recycling or solid waste business while also owning or working for a private
17 business engaged in the same enterprise. I was genuinely surprised that Mr. Jacobs was
18 permitted to comment on the Deluxe Recycling SEPA application on behalf of the City of
19 Sedro-Woolley Solid Waste Department. Such comment would represent a change in the
20 City's policy.

21 EXECUTED at Sedro-Woolley, Washington, this 24 day of Sept 2008,
22 under penalty of perjury under the laws of the State of Washington.

23 
24 Patrick M. Hayden, WSBA #11061