BEFORE THE KITTITAS COUNTY BOARD OF COUNTY COMMISSIONERS

IN RE SEGREGATION APPEALS: ANSELMO LAND ORPHAN GIRL NEVERSWEAT LAND,	NO. SG-12-00002 SG-12-00003 SG-12-00004 **APPELLANTS' BRIEF**

I. INTRODUCTION

Anselmo Land Company, LLC, a Washington limited liability company, Neversweat Land Company, LLC, a Washington limited liability company, and Orphan Girl Land Company, LLC, a Washington limited liability company, (collectively, the "Appellants") appealed three decisions made by the County's Staff Planner. Appellants respectfully request that the Board of County Commissioners reverse the County Staff Planner's decisions to declare "null and void" the Appellants' applications for three administrative segregations (the "Applications"), and request that the Board direct Staff to continue processing the Applications under the County codes in effect on June 21, 2012, which was the date a complete application was filed for each administration segregation.

II. STATEMENT OF FACTS

On June 21, 2012, Appellants submitted the Applications, each of which sought preliminary approval of an administrative segregation, as authorized by the then applicable

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Kittitas County Code ("KCC") 16.06.020 and 16.06.030(2). *See* former Chapter 16.06 KCC, Orphan Girl Appeal Record ("Orphan Girl AR"), pp. 37-38.[1]

Anselmo Land Company, LLC ("Anselmo") submitted an application to divide its 597.32 acre property, Tax Parcel No. 756935, into seven lots ranging from approximately 80-93 acres in size each. Anselmo Appeal Record ("Anselmo AR"), pp. 33-60. In connection with this application, Anselmo provided a unified site plan of the existing and proposed lot lines, signatures of all property owners, and a narrative project description. *Id.* pp. 47-51. With its application materials seeking "preliminary approval" of the Administrative Segregation, Anselmo also: (1) provided an aerial depiction of the property to illustrate boundary lines, dimensions, existing buildings, well heads, and drain fields; (2) provided a preliminary survey; (3) provided legal descriptions for each proposed tax parcel; and (4) paid an application fee totaling $875.00. *Id.*, pp. 33-38, 41, 47, 53-60, and 61. As evidenced by internal County email correspondence, the County engaged in review of this application. Anselmo AR, pp. 29-32 (email correspondence between Jeff Watson, Christina Wollman, Brenda Larsen, Jan Ollivier, Holly Duncan and Joe Gilbert, August 7-24, 2012). The County Staff review involved an evaluation of the preliminary survey and the conclusion that "there are no existing structures, wells or septic systems to be concerned about." *Id.*

Neversweat Land Company, LLC ("Neversweat") followed the same application procedures as Anselmo and submitted similar materials. More specifically, Neversweat sought to divide its 620.17 acre property, Tax Parcel No. 269434, into seven lots ranging from approximately 80-139 acres each. Neversweat Appeal Record ("Neversweat AR"), pp. 32-54, 56-80. A completed application with numerous accompanying materials was submitted and another $875.00 fee was paid. *Id.* and Neversweat AR, p. 55 (receipt). Again, and as evidenced by internal County email correspondence, the County engaged in review of this application.

[1] All citations to the appeal record are to the paginated records prepared and certified by County Staff Planner, Jeff Watson.

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Neversweat AR, p. 31 (email correspondence between Jeff Watson, Christina Wollman, Brenda Larsen, Jan Ollivier, Holly Duncan and Joe Gilbert, August 8, 2012). In addition, on August 21, 2012, the Kittitas County Department of Public Works sent Neversweat a Memorandum indicating it reviewed the Neversweat application and requiring that prior to "final approval" inquiry should be made to the City of Cle Elum to determine whether any improvements to a specific private road would be required and that easements for cul-de-sacs should be shown on the final survey prior to recording and final approval. Neversweat AR, pp. 29-30. The Memorandum did not request additional information related to the request for "preliminary approval" under KCC 16.06.030(2). *Id.* The Memorandum also variously described the Application as a "Request for Parcel Segregation Application," and as "the proposed plat," and noted that "any further subdivision or lots to be served by proposed access may result in further access requirements." *Id.*

Orphan Girl Land Company, LLC ("Orphan Girl") also followed an identical application process and submitted similar materials. Orphan Girl sought to divide its 485.70 acre property, Tax Parcel No. 599434, into six lots ranging from approximately 80-83 acres each. Orphan Girl AR, pp. 29-36, 39-60, and 62-64. Once again, a completed application with extensive materials was submitted along with another $875.00 fee paid. *Id.* and Orphan Girl AR p. 61 (receipt).

All of the applications were exempt from review under the State Environmental Policy Act ("SEPA"), Ch. 43.21C RCW. The County's record includes no documentation of this exemption, because, by law, actions such as minor construction of up to 20 dwelling units are categorically exempt from SEPA review under KCC 15.04.090 and WAC 197-11-800(1). Consistent with that exemption, the County's administrative records for the Applications includes no requests for any environmental information under SEPA. Similarly, the County's administrative records include no requests for any other additional materials or analysis related to the requested "preliminary approvals," including no requests made within 28 days of the filing of the applications on June 21, 2012. By operation of law, the Applications were deemed

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complete as of July 19, 2012.[2] KCC 15A.03.040, RCW 36.70B.070. Finally, as to all three Applications, the County's administrative record includes no indication that any code standard was not met.[3]

On September 18, 2012, the County adopted Ordinance 2012-006 amending the county code language regarding administrative segregations (the "Ordinance"). A copy of the Ordinance is at Anselmo AR, pp. 19-22. The Ordinance eliminated the administrative segregation process from the County's subdivision codes. *Id.* While the Ordinance made provisions for existing applicants that had already received preliminary approval to seek final approval or to convert their applications to another form of subdivision, the Ordinance was silent as to pending applications like Anselmo, Orphan Girl, and Neversweat that had not yet received preliminary approval. *Id.*

On June 12, 2013, the County sent Appellants three nearly identical letters stating the County Staff Planner's administrative decision for each application (the "Administrative Decisions"). The Administrative Decisions are at Anselmo AR, p. 18, Neversweat AR, p. 18, and Orphan Girl AR, p. 18. The delayed issuance of these Administrative Decisions failed to meet the required 120-day decision timeline set by KCC 15A.03.090(7). The Administrative Decisions indicated that the "Prosecuting Attorney's Office has determined that the lack of provisions for pending applications without preliminary approval in Ordinance 2012-006 renders them null and void." Thus, because each of the Anselmo, Orphan Girl, and Neversweat applications "was not given preliminary approval prior to September 18, 2012," the Kittitas County Community Development Services deemed the Applications to be "null and void" as of June 12, 2013. No analysis or report from the Prosecuting Attorney's Office was provided to Appellants in support of this determination.

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[2] The County's internal permit processing records, entitled "SEG Application Process Sheets," also reflect that the Applications were deemed complete. Anselmo AR, p. 62, Neversweat AR, p. 81, Orphan Girl AR, p. 65.

[3] The same internal County documents referenced in Footnote 2 show that "Application Processing" was "Done" in August 2012, and that no comment period applied.

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Pursuant to KCC 15A.07.010 and the instructions stated in the County's Administrative Decisions, Appellants timely appealed all three decisions and paid a $500.00 fee for each appeal on June 25, 2013. Anselmo AR, pp. 10-16, Neversweat AR, pp. 10-16, and Orphan Girl AR, pp. 10-16.

III. ARGUMENT

A. The Ordinance is inapplicable to the Applications because the Applications vested to the codes in effect on June 21, 2012, and should have been processed and approved under that version of the Code.

Washington has one of the nation's strongest and most protective vested rights rules. Unlike the overwhelming majority rule that development is not immune from subsequently adopted regulations until a building permit has been obtained and substantial development has occurred in reliance on the permit, in Washington, the courts have adopted what is known as the "date of application" vested rights rule. Under the rule, vested rights accrue at the time an application is made. *See State ex rel. Ogden v. City of Bellevue*, 45 Wn.2d 492, 496, 275 P.2d 899 (1954). The guiding case on the rule is *Hull v. Hunt*, 53 Wn.2d 125, 331 P.2d 856 (1958).

In *Hull v. Hunt*, the applicant applied for a building permit shortly before the adoption of a zoning code change that would have made the proposed structure illegal. The court held that the application vested rights to build, setting forth the general rule as follows:

> The more practical rule to administer, we feel, is that the right vests when the party, property owner or not, applies for his building permit, if that permit is thereafter issued. This rule, of course, assumes that the permit applied for and granted be consistent with the zoning ordinances and building codes in force at the time of application for the permit.

Id. at 130. Since *Hull v. Hunt*, courts have clarified that a permit application is adequate to vest rights if it "1) is sufficiently complete, 2) complies with existing zoning ordinances and building codes, and 3) is filed during the effective period of the zoning ordinances under which the developer seeks to develop." *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 638 733 P.2d 182 (1987).

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Originally, case law only applied the vested rights rule to building permit applications, but in 1987 the legislature codified the rule and also extended it to applications for subdivisions. *See* RCW 19.27.095 (vesting of building permits) and RCW 58.17.033 (vesting of subdivision applications), as adopted in Laws of 1987 c 104 § 1 and § 2 respectively.

The Revised Code of Washington sets forth the precise time of vesting for proposed subdivisions:

> (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.
>
> (2) The requirements for a fully completed application shall be defined by local ordinance.

RCW 58.17.033(1)-(2). Accordingly, so long as the Applications qualify as subdivisions, the Applications are vested to the subdivision, zoning or other land use control ordinances in effect in Kittitas County as of June 21, 2012.

In general, any division of land resulting in new parcels of land qualifies as a subdivision; for example, the definition of "subdivision" is "the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except [for short subdivisions up to nine lots] as provided in subsection (6) of this section." RCW 58.17.020(1). However, some forms of division of land are expressly exempted from the protections and the requirements of subdivision law. The exemptions include:

> The provisions of this chapter shall not apply to . . .
>
> (2) **Divisions of land into lots** or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or **five acres or larger** if the land is not capable of description as a fraction of a section of land,[4] **unless the governing authority of the** city, town, or **county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions**...

[4] Because a section of land is 640 acres, one-one hundred twenty-eighth of a section of land is five acres.

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RCW 58.17.040 (emphasis added). Here, the Applications seek to divide land into lots that exceed five acres in size. However, Kittitas County adopted and applied a subdivision ordinance requiring plat approval of divisions of land that exceed five acres in size.

As of June 21, 2012, the County's Code included both a Large Lot Subdivision chapter governing subdivisions of land into two or more lots the smallest of which is 20 acres or greater in size, together with chapter 16.06 KCC governing Administrative Segregations to create fewer than ten lots the smallest of which is 20 acres or greater in size. *See*, KCC 16.08.100, 16.06.010 (repealed September 18, 2012). As set forth in KCC 16.06.020 and .030,[5] the process for approval of an Administrative Segregation required applications be filed on forms prescribed by the Community Development Services department, including preliminary surveys for preliminary approvals and final surveys for final approvals, as well as the payment of review fees. Compliance was required with KCC 16.06.020(1-5) and 16.06.030(1), including the need to comply with KCC 17.57.040 for minimum lot size requirements in in the Commercial Forest Zone, compliance with irrigation water delivery requirements pursuant to KCC 16.18.030, meeting OSDS location per KCC 13.04.080, assuring compliance with wellhead protection area requirements of KCC 17A.08.025, and compliance with the road standards set by KCC Title 12. Oddly, the County Code, at KCC 16.04.020, also purported to "exempt" Administrative Segregations from the subdivision code even though, as it existed on June 21, 2012, chapter 16.06 KCC was codified in the County's Subdivision Code, Title 16. Moreover, as evidenced by materials like the August 21, 2012 Memorandum in the Neversweat file, the County plainly viewed each Administrative Segregation as a "proposed plat" and "subdivision." Neversweat AR, pp. 29-30.

Most importantly, as the County Code existed on June 21, 2012, a detailed and time-consuming process including both preliminary and then final plat approval of the Administrative Segregation Applications was required. Therefore, on its face, the Administrative Segregation

[5] *See*, former code at Orphan Girl AR, pp. 37-38.

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process was a subdivision process that met the exclusion to the exemption stated in RCW 58.17.040. The Applications for the Anselmo, Orphan Girl, and Neversweat Administrative Segregations were subdivision applications, vested to subdivision, zoning and other land use control ordinances in effect in Kittitas County as of June 21, 2012.

If Kittitas County had wanted to exempt Administrative Segregation land divisions like the Applications at issue in this appeal from the vesting protections of State subdivision law, then the County needed to truly **exempt** such requests from County processes and procedures. Truly exempt subdivisions allow a landowner, like Anselmo, Orphan Girl, or Neversweat, to simply divide its land by conveying the subdivided lots, with no County process or approval whatsoever. For example, in *West Hill, LLC v. City of Olympia*, 115 Wn. App. 444, 63 P.3d 160 (2003), a landowner divided a parcel into four lots, by simply conveying the four lots via four real estate contracts all dated in 1980. Each of the four lots exceeded five acres. *Id.* at 447. No approvals were sought or obtained from the City of Olympia. Twenty years later, in response to a further subdivision request, the City of Olympia argued the 1980 subdivision was illegal. *Id.* The Court held the 1980 division was legal, because it fell under the exemption of RCW 58.17.040 for a subdivision of lots greater than five acres. *Id.* at 448-49. Similarly, in *Friends of Ebeys v. Bd. of Cnty. Comm'rs. of Island Cnty.*, 27 Wn. App. 54, 55, 614 P.2d 1330 (1980), the court upheld landowners' subdivision of their property achieved via simple conveyance of five-acre tracts to themselves, to family members, and to a third party. Thus, a truly exempt subdivision of lots exceeding five acres in size can be achieved simply by execution of private real estate contracts selling the subdivided portions of the land, or by drafting and conveying deeds to the subdivided lots.

The Attorney General has explained that the intent of the legislature was to confer upon the various cities, towns, and counties the broadest discretion in deciding whether or not, and

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when, to enact an ordinance requiring that a subdivision of land containing no dedication[6] and no lots or tracts smaller than five acres in size to be subject to the provisions of RCW 58.17. AGO 1970 No. 14. If a County wishes to have some input on an exempt subdivision, but not subject the application to a County subdivision process, then, the farthest a County can go is likely what was described in *Zunino v. Rajewski*, 140 Wn. App. 215, 220, 165 P.3d 57 (2007).[7] There, the Court of Appeals explained that Spokane County's "certificate of exemption ordinance" authorized the County to issue a "certificate of exemption" from County subdivision processes for the large lot exemption of RCW 58.17.040, so long as the landowner provided documentation of access to the new parcels. *Id.* at 220-21. Here, Kittitas County imposed far more regulatory burdens in the Administrative Segregation process of former KCC 16.06.

Kittitas County had a choice to either: allow landowners such as Anselmo, Orphan Girl, and Neversweat to subdivide their lands into 80-acre or larger lots[8] simply by deed of conveyance and entirely exempt them from both the burdens and protections of RCW 58.17 and the County's local subdivision codes, or require landowners to obtain a subdivision approval using a subdivision process like that set forth in Chapter 16.06 KCC, labeled an Administrative Segregation. No landowner or developer is allowed to cherry pick from different sets of regulations. *East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 437, 105 P.3d 94 (2005) (holding that a developer cannot selectively waive portions of its vested rights so as to benefit from parts of newly-enacted regulations without having to comply with other parts of those same new regulations). Likewise, Kittitas County is not allowed to cherry pick which portions of the benefits and burdens of the subdivision statutes apply to any application. Once the County made the choice to subject Administrative Segregations to an extensive subdivision

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[6] Earlier versions of the exemption now found in RCW 58.17.040 exempted subdivisions into five-acre or larger lots, only so long as the division also did not include a dedication, such as a dedication of a public road.

[7] The legal issue presented in the *Zunino* case was what was necessary to create an access easement, not the exemption from the subdivision statute or the scope of County authority.

[8] Separate provisions of County Code call for a minimum lot size of 80 acres for lands. Appellants are not challenging those provisions.

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review process, the County was required to assure that the vesting protections of RCW 58.17.033 also applied.

Subdivision of lots exceeding five acres in size conducted via private real estate contracts and deeds are afforded the luxury of not having to jump through administrative hoops in order to complete their subdivisions, and do not need the vesting protections of subdivision law. In contrast, subdivision of lots that are required to undergo a local review process must bear the burdens of that process, and once those burdens are imposed, the benefits of the vesting protections found in RCW 58.17 must also be provided. The County cannot declare Administrative Segregations exempt from the protections governing subdivisions – including vested rights – while simultaneously subjecting the applications to an exhaustive regulatory subdivision review and approval process.

Ordinance 2012-006 was adopted several months after the complete Applications were submitted, and the Ordinance is entirely inapplicable to the Applications because, under RCW 58.17.033, the Applications vested to the subdivision, zoning and other land use control ordinances in effect in Kittitas County as of June 21, 2012. The Board should reverse the Administrative Decisions and direct County Staff to continue processing the Applications under those vested regulations.

B. The Applications are complete project permit applications and pursuant to KCC 15A.10.030 and RCW 36.70B required continued processing under the original codes, not the newly adopted Ordinance.

The Applications are project permits pursuant to RCW 36.70B and KCC Title 15A. Pursuant to the express language of County Code, project permit review of the Applications was required to continue under the subdivision, zoning and other land use control ordinances in effect in Kittitas County as of June 21, 2012.

RCW 36.70B governs project permit applications and affords applicants various protections for continued review by local governments: "A project permit application is complete for purposes of this section when it meets the procedural submission requirements of the local

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government and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently." RCW 36.70B.070(2). KCC Title 15A governs numerous land use permits, including all permits under Title 16, and provides that it specifically controls the permitting process in the event of any conflict with other county codes. KCC 15A.01.030.

KCC 15A.10.030 states:

> If, during the project permit review, Kittitas County identifies deficiencies in county plans or regulations, the project permit review shall continue, and the identified deficiencies shall be docketed for possible future amendments pursuant to KCC Title 15B. For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation…

Here, the County Ordinance 2012-006 plainly admits that the County had identified a perceived deficiency in its regulations and sought to cure that deficiency by repealing the process for Administrative Segregations. Specifically, the recitals to the Ordinance state that: the County "is seriously concerned with protecting its rural character and the environment," and that the County's "administrative segregation process does not provide for the level of review required legally and fails to protect rural character and the environment." Under KCC 15A.10.030, the County was authorized to make note of that purported deficiency in the code so as to remedy it in later legislation, but the County also was required to ensure that: "project permit review shall continue."

The County violated KCC 15A.10.030 when it adopted the Ordinance, stopped processing the Applications, and ultimately issued the Administrative Decisions declaring the Applications to be "null and void." The plain language of KCC 15A.10.030 required the County to continue processing the Applications under the codes in effect on June 21, 2012. The Board should reverse the Administrative Decisions and direct County Staff to continue processing the Applications under those vested regulations.

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C. The County erred in failing to provide a timely preliminary approval of the Applications and thereby violated Appellants' reasonable expectation of adequate due process and a fair determination with respect to the Applications.

Appellants expended time, effort, and financial resources to submit completed applications to the County, expecting that the applications would be processed and approved as many such applications had been in the past. Unfortunately, the County failed to timely review and process the Applications within a reasonable timeframe.

The County's decision-making process must operate within the reasonable limits of due process owed to all applicants. In *Norco Const., Inc. v. King County*, 97 Wn.2d 680, 685, 649 P.2d 103 (1982), the Washington Supreme Court found that King County unreasonably delayed action on Norco's preliminary plat application for subdivision beyond the permitted 90-day statutory period. The court stated the County is limited by due process protections in the decisions they make and that unreasonable delay in approving the plat applications may be just as much an exclusionary device as an unconstitutional exclusionary zoning plan itself. *Id.* The court further held "the unreasonable lapse of time alone, without an express showing of coercion, can prove unconstitutionally detrimental to a developer harmed by this action." *Id.* at 686.

The record establishes no just cause for delaying the decision to grant Appellants' preliminary approval. The unreasonable delay by the County harmed Appellants. As described in the County administrative record summarized in the facts section of this brief, the Applications were filed on June 21, 2012. No requests for additional information were made by the County. By operation of law, the Applications were deemed complete on July 19, 2012. *See* KCC 15A.03.040 (setting 28-day period for notice of completion), RCW 36.70B.070 (stating an application is deemed complete if after 28 days the local government does not provide a written determination to the applicant that the application is incomplete). Pursuant to RCW 36.70B.080 and KCC 15A.03.090(7), the County was required to issue decisions on the Applications within

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120 days of the application date, or by October 19, 2012.[9] The County missed this deadline by a wide margin, not issuing the Administrative Decisions until June 2013.

The County's review comments were complete in August 2012, including confirmation that there were no identified concerns regarding the properties and proposed subdivisions. The Appellants jumped through every hoop raised by the County and the County's review was complete well before the September 18, 2012 passage of the Ordinance on which the County Staff now bases its June 2013 determinations that the Applications were "null and void." As shown by the County's review notes, the County could have easily granted preliminary approval to the Applications in August 2012. Instead, and with full knowledge that delay would significantly affect Appellants' success in this endeavor, the County delayed action on the Applications until June 2013 and then applied the Ordinance that was adopted in September 2012.

Appellants filed the Applications with a reasonable expectation that if they followed the process established by the County and in place at that time, they would be subject to the same consistent standards and laws with respect to obtaining preliminary approval. Unjustifiably, however, Appellants received inadequate due process contrary to the long established standard. The County's apparent deliberate delay in granting preliminary approval to the Applications is an unconstitutional violation of Appellants' due process rights. The Board should reverse the Administrative Decisions and instruct County Staff to complete processing of the Applications.

D. The Ordinance is vague because it does not specifically address pending applications and therefore the County's declaration that the Applications are "null and void" was invalid and beyond its authority.

The September 2012 Ordinance is wholly inapplicable to the Applications because they should be governed by the laws in operation on the date of submission. However, even assuming

[9] The County's internal "SEG Application Process Sheets" also reflect "Decision Due 10/19/2012." Anselmo AR, p. 62, Neversweat AR, p. 81, Orphan Girl AR, p. 65.

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for the sake of argument that the Ordinance does apply, the County's application of the Ordinance to the Applications was illegal and must be reversed.

Courts have long held that when confronted with an apparently incomplete or vague ordinance, the court must look at not only "the face of the ordinance but also at its application to the person who has sought to comply with the ordinance and/or who is alleged to have failed to comply." *Anderson v. City of Issaquah*, 70 Wn. App. 64, 75, 851 P.2d 744 (1993). At issue in *Anderson*, was whether a statute regarding approval of building permits that listed parameters based on general aesthetics was too vague to provide a meaningful guide for the decision-making officials. *Id.* at 75-76. Although the statute contained an actual list of these features to consider, the court held the code void for vagueness because it did not give effective or meaningful guidance to the decision makers or to the applicant seeking to conform with the regulation. *Id.* at 76.

The code in *Anderson* was held void for vagueness even though it contained language that attempted to describe the applicable design standards, while the Ordinance at issue here does not contain any language that attempts to guide the County's handling of matters such as the Applications. There is absolutely nothing in the Ordinance that references pending unapproved applications, let alone authorization to the County to declare them "null and void." Therefore, the County's Administrative Decisions that the Applications were null and void was beyond the authority granted to the County in the Ordinance. In addition, because the Ordinance lacked meaningful guidance as to how to treat pending applications that had not yet received preliminary approval, the Ordinance is void as applied to the Applications.

To the extent County Staff defends any of this argument by asserting a right to gap fill the holes in the Ordinance, the County's declaration that the Applications are "null and void" was not a proper exercise of such authority. The provisions that are set forth in the Ordinance for applications with preliminary approval but still awaiting final approval are the analogous and instructive provisions of the Ordinance to the case presented in this appeal. Just like any

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application that had been granted preliminary approval was allowed to proceed to final approval, matters such as the Applications that had not yet received preliminary approval should have continued to be processed under the codes in effect on the date of application.

Even if Ordinance 2012-006 is found to apply to the Applications, the Board should reverse the Administrative Decisions and direct County Staff to continue processing the Applications under the subdivision, zoning and other land use control ordinances in effect in Kittitas County as of June 21, 2012.

IV. CONCLUSION

The Administrative Decisions to declare the Anselmo, Neversweat, and Orphan Girl Administrative Segregation Applications "null and void" were illegal. First, the Administrative Decisions violated the vested rights doctrine. Second, the Administrative Decisions violated the express mandate of County Code requiring continued processing of the Applications, regardless of any alleged deficiencies in County Codes. Third, delays in processing and approving the Applications violated County Code, State law, and Appellants' due process rights. Fourth, even if the County was authorized to apply its September 2012 Ord. No. 2012-006 to the June 2012 Applications, the Ordinance was applied incorrectly. For each of these reasons, the Board of County Commissioners should reverse the Administrative Decisions and direct County Staff to complete processing and approval of the Anselmo, Neversweat, and Orphan Girl Administrative Segregation Applications under the codes in effect on June 21, 2012.

DATED this 6th day of August, 2013.

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Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on August 6, 2013, pursuant to an email exchange between counsel approving filing and service by email, I caused a copy of the document to which this is attached to be filed with the County and served on the following individual(s) via email:

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DATED this 6th day of August, 2013, at Seattle, Washington.

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