

WASHINGTON STATE COURT OF APPEALS,
DIVISION I

POTALA VILLAGE KIRKLAND,)
LLC, *et al.*,)
Plaintiffs/Respondents,)
vs.)
CITY OF KIRKLAND,)
Defendant/Appellant.)

MOTION OF WASHINGTON
STATE ASSOCIATION OF
MUNICIPAL ATTORNEYS
AND FUTUREWISE FOR
PERMISSION TO FILE AN
AMICI CURIAE BRIEF

**I. IDENTITY OF MOVING PARTIES AND STATEMENT OF
RELIEF SOUGHT**

Applicants the Washington State Association of Municipal Attorneys (“WSAMA”) and Futurewise respectfully ask this Court for permission to file an *amici curiae* brief. Applicants have filed the proposed brief with this motion.

II. GROUNDS FOR RELIEF AND ARGUMENT

A. Applicants’ interest and the groups applicants represent.

WSAMA is an association of attorneys for Washington’s cities and towns. These local jurisdictions must adopt and apply development regulations in accordance with Washington law. In counseling and defending their clients, members of WSAMA have been frustrated by competing claims from developers

and their opponents about a key question under Washington's vested rights doctrine: what actions enable a developer to freeze in time the law governing the decision on any given land use permit application?

Futurewise, a non-profit corporation, is a statewide organization focused on the efficient management of growth in Washington and responsible implementation of Washington's Growth Management Act. Because growth management disputes often involve vested rights issues, Futurewise and its counsel and staff have struggled to navigate Washington's often muddled vested rights doctrine.

Applicants and their members share the goal of fostering a clear, consistent message from the judiciary regarding the vested rights doctrine: that the doctrine is purely statutory and any reform must come from the Legislature. That is the message of *Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 218 P.3d 180 (2009).

B. Applicants' familiarity with the issues involved in the review and with the scope of the argument presented by the parties.

Applicants have reviewed the briefs submitted by the parties. Applicants are familiar with Washington land use law generally and Washington's vested rights doctrine in particular.

Roger D. Wynne is the Director of the Land Use Section of the Seattle City Attorney's Office and an adjunct professor at the Seattle University School

of Law. He is the author of *Washington's Vested Rights Doctrine: How We Have Muddled a Simple Concept and How We Can Reclaim It*, 24 SEATTLE U.L.REV. 851 (2001). *Abbey Road* cites Mr. Wynne's article repeatedly and favorably—the decision even ends by quoting the article's call for reform from the Legislature rather than the judiciary. *See Abbey Rd.*, 167 Wn.2d at 261. Mr. Wynne analyzed *Abbey Road's* implications for the vested rights doctrine in *Abbey Road: Not a Road Out of Our Vested Rights Thicket*, 36(3) ENVTL. & LAND USE LAW NEWSLETTER 7 (WSBA, Dec. 2009). Mr. Wynne is a frequent speaker on vested rights and other Washington land use law issues, and has served on the Executive Committee of the WSBA Environmental and Land Use Section. Prior to commencing his public service, Mr. Wynne was a land use and environmental attorney in private practice representing private and public clients.

Jeffrey M. Eustis is a member of Aramburu & Eustis LLP, where a large part of his practice over more than three decades has involved representing citizens and environmental organizations in land use and environmental disputes. He is an adjunct professor at the Seattle University School of Law and a frequent speaker and writer on matters of Washington land use law. Among his speaking engagements was a 2012 seminar for Washington State Supreme Court justices and staff on land use appeals in Washington, which he presented with Mr. Wynne. Mr. Eustis is a founding and current board member of Futurewise.

Tim Trohimovich is the Director of Planning & Law for Futurewise. He has been a professional planner in Washington for over twenty-five years and has practiced land use and environmental law for over ten years. He is a member of the American Institute of Certified Planners, serves on advisory committees for local governments and Washington State, and litigates land use cases before administrative tribunals and in Washington courts. In 2012, Mr. Trohimovich was named one of three instructors of the year for the University of Washington's Professional and Continuing Education Program.

C. Specific issue to which the *amici curiae* brief will be directed.

The specific issue to which the *amici curiae* brief will be directed is whether Washington's vested rights doctrine is purely statutory.

D. Applicants' reasons for believing that additional argument is necessary on this specific issue.

Applicants argue that Washington courts must consistently repeat the lessons of *Abbey Road* that: (1) the common law vested rights doctrine is dead in Washington; (2) absent circumstances not presented by this case, the only action triggering a vested right is the filing of a complete building permit application; and (3) any request to change that rule must be directed to Legislature.

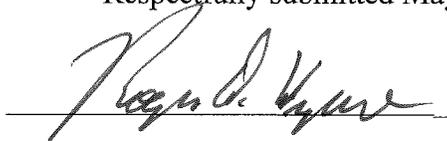
Applicants urge this Court to repeat those lessons and apply them by expressly holding a four-decade-old, pre-vesting-statute decision extending the vested rights doctrine to a shoreline permit application was superseded by the 1987 vesting statute. *See Talbot v. Gray*, 11 Wn. App. 807, 525 P.2d 801 (1974).

Applicants' additional argument is necessary to: analyze the historical context chronologically in a manner not presented by the parties; explore how legislative intent is consistent with *Abbey Road*'s conclusion that Washington's vested rights doctrine is now purely statutory; and stress the importance of taking the same step taken by *Abbey Road*—to respond to an argument based on a pre-statute decision by ruling it “has been superseded” by the statute. *Abbey Rd.*, 167 Wn.2d at 254.

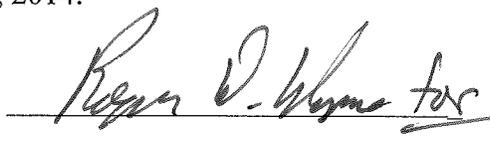
III. CONCLUSION

Because their brief would assist this Court to understand and bring additional clarity to the complex issue of Washington vested rights law, applicants respectfully ask this Court for permission to file an *amici curiae* brief.

Respectfully submitted May 6, 2014.



Roger D. Wynne, WSBA # 23399
*Attorney for Washington State
Association of Municipal Attorneys*



Jeffrey M. Eustis, WSBA # 9262
Tim Trohimovich, WSBA # 22367
Attorneys for Futurewise

CERTIFICATE OF SERVICE

I certify that on May 7, 2014, I sent a copy of this document to the following parties via email & U.S. Mail:

Duana Kolouskova and Robert Johns
Johns Monroe Mitsunaga
Kolouskova, PLLC
1601 114th Avenue SE, Suite 110
Bellevue, WA 98004
kolouskova@jmmlaw.com
Johns@JMMLAW.com
char1ot57TB @jmmlaw.com
Attorneys for Plaintiff/Respondent
Potala Village Kirkland, LLC, *et al.*

Robin S. Jenkinson
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
RJenkinson@kirklandwa.gov
Attorney for Defendant/Appellant
City of Kirkland

Jeffrey M. Eustis
Aramburu & Eustis LLP
720 3rd Ave., Ste. 2000
Seattle, WA 98104-1860
eustis@aramburu-eustis.com
Attorney for *Amicus Curiae*
Futurewise

Stephanie E. Croll
Keating, Bucklin & McCormack,
Inc., P.S.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175
SCroll@kbmlawyers.com
Attorney for Defendant/Appellant
City of Kirkland

Tim Trohimovich
Futurewise
816 2nd Ave., Ste. 200
Seattle, WA 98104-1535
Tim@futurewise.org
Attorney for *Amicus Curiae*
Futurewise

the foregoing being the last known address of the above-named parties.


ROSIE LEE HAILEY