

WASHINGTON STATE COURT OF APPEALS,  
DIVISION I

POTALA VILLAGE KIRKLAND, )	
LLC, <i>et al.</i> , )	
)	
<i>Plaintiffs/Respondents,</i> )	<b>REPLY REGARDING MOTION</b>
)	<b>OF WASHINGTON STATE</b>
vs. )	<b>ASSOCIATION OF</b>
)	<b>MUNICIPAL ATTORNEYS</b>
CITY OF KIRKLAND, )	<b>AND FUTUREWISE FOR</b>
)	<b>PERMISSION TO FILE AN</b>
<i>Defendant/Appellant.</i> )	<b><i>AMICI CURIAE</i> BRIEF</b>

Applicants’ motion to file an *amici curiae* brief is timely. Oral argument is set for June 6. As allowed by RAP 10.1(f), applicants filed and served their motion and proposed brief on May 7, the 30th day before oral argument. Plaintiffs’ baseless slaps at applicants’ motives do not alter that fact.

The *amici curiae* brief addresses a core debate briefed by the parties—whether vesting legislation superseded the common law vested rights doctrine. The City opened by arguing how the Supreme Court (through *Erickson* and *Abbey Road*) concluded that statutes superseded the common law and limited the doctrine to subdivision and building permit applications. For example, the City contended:

“Even if *Talbot* can be read to have expanded the vested rights doctrine to shoreline permits back in 1974, it has been superseded by RCW 19.27.095(1) and the Supreme Court’s analysis limiting the vested rights doctrine to building permit applications in both *Erickson* and *Abbey Road*.” City’s Opening at 21-22.

“[T]he fact that the legislature, in 1987, applied the vested rights doctrine to only two types of permits, subdivision permits and building permits, implies that it intended not to have the doctrine apply to any other permit application.” *Id.* at 33.

“[H]ad the legislature intended for the vested rights doctrine to be expanded to conditional use permits (or any permits other than subdivision and building permits) when it enacted the state vesting statute in 1987, it would have either done so then—or at any time since.” *Id.* at 34-35.

Plaintiffs responded directly:

“RCW 19.27.095 supplemented common law vesting. [N]othing in that statute in any way changes the pre-existing common law or statutory vesting.” Resp. at 35.

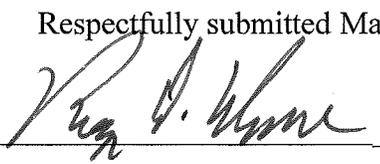
“*Erickson* and *Abbey Road* retained the existing common law vested rights doctrine without any change.” *Id.* at 36.

*See generally id.* at 35-42. The City replied in kind. *See City Reply* at 23-24. This same debate played out below. *See, e.g., CP 773, 778-81, and 783-85 (City); CP 988-990 (Plaintiffs)*. The record of this robust debate belies Plaintiffs’ assertions that this question is new.

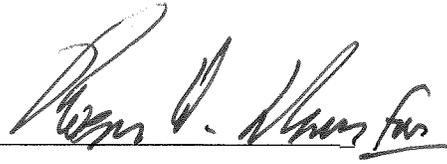
The importance of this question only underscores the value of applicants’ *amici curiae* brief. Plaintiffs’ counsel are seasoned and accomplished land use

attorneys<sup>1</sup> who have already briefed this question forcefully. If anyone is well positioned to answer the *amici* brief, they are. If they need more time to respond, they should request it rather than spend resources on meritless objections to timely and relevant *amici* briefing.

Respectfully submitted May 14, 2014.



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<sup>1</sup> See <http://www.jmmklanduselaw.com/firm-profile-johns-monroe-mitsunaga-kolouskova-a-bellevue-wa-based-law-firm/duana-t-kolouskova/>; <http://www.jmmklanduselaw.com/firm-profile-johns-monroe-mitsunaga-kolouskova-a-bellevue-wa-based-law-firm/robert-d-johns/>.

**CERTIFICATE OF SERVICE**

I certify that on May 14, 2014, I sent a copy of this document to the following parties via email (and also via U.S. Mail, where indicated):

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