

**BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY**

In The Matter of an application by) No. PL23-0324
)
Tom Wenzl, Skagit County Planning and)
Development) FINDINGS, CONCLUSIONS, AND
) DECISION
for an Abandoned Use Determination)

SUMMARY OF DECISION

This decision resolves an application by Skagit County Planning and Development (hereinafter, “County”) for a determination by the Hearing Examiner that an auto wrecking yard land use, previously established at the subject property belonging to two landowners, Vadim Kasko and Sergey Kasko (hereinafter, “Kaskos,” “landowners,” or “Appellants”), had, at some point, been abandoned. The Hearing Examiner concludes that the County has met its burden to prove, by a preponderance of the evidence, that the wrecking yard land use was abandoned prior to the Kaskos’ acquisition of the subject property, and therefore the County’s application is **GRANTED**. The auto wrecking yard use is hereby deemed abandoned.

SUMMARY OF RECORD

Party Representatives: The County was represented by Jason D’Avignon, Skagit County Civil Deputy Prosecuting Attorney. The landowners were represented by David C. Cottingham, Attorney.

Prehearing Conference: The parties held a prehearing conference on September 20, 2023. At the conference, the parties agreed that the County was the “applicant” for the abandoned use determination, and therefore the County bore the burden of proof. Although an abandoned use hearing is not, properly speaking, an appeal, the parties agreed that it was an “appeal-like” process, in that the County made a preliminary determination of abandonment, and the landowners dispute that characterization. Therefore, the Hearing Examiner resolved to conduct the hearing in a manner similar to an appeal hearing, with prehearing briefing and exchange of exhibits, in addition to setting aside time for public comment. *Prehearing Order*.

Hearing Date:

The Hearing Examiner held an open record hearing on November 8, 2023.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

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Larry Iaccino
Troy Giddings, Trooper and Wrecking Yard Inspector, Washington State Patrol
Tom Wenzl, Skagit County Code Compliance Officer
Angela Jean McAdow
Vadim Kasko
Sergey Kasko

Exhibits:

The following exhibits were admitted into the record:

1. Letter re: County's Belief of Abandonment, dated March 29, 2023
2. Email from Vadim Kasko to Tom Wenzl, et al., with photos, dated March 29, 2023
3. SEPA Checklist, dated April 22, 2022
4. Email from Vadim Kasko to Tom Wenzl, dated June 1, 2023
5. County's Administrative Determination that Pre-Existing Use Was Abandoned, dated June 15, 2023
6. Kasko Reply to Administrative Determination of Abandonment, dated July 1, 2023
7. Notice of Development Application, dated July 13, 2023
8. Letter from Vadim and Sergey Kasko to Tom Wenzl, undated
9. Public Comments Received, various dates
10. Kasko Response to Public Comments, dated August 17, 2023
11. Zoning Map, dated October 4, 2023
12. Aerial Photos:
 - A. 1937 Aerial Photo
 - B. 1956 Aerial Photo
 - C. 1969 Aerial Photo
 - D. 1998 Aerial Photo
 - E. 2001 Aerial Photo
 - F. 2004 Aerial Photo
 - G. 2005 Aerial Photo
 - H. 2006 Aerial Photo
 - I. 2007 Aerial Photo
 - J. 2009 Aerial Photo
 - K. 2011 Aerial Photo
 - L. 2013 Aerial Photo
 - M. 2015 Aerial Photo
 - N. 2017 Aerial Photo
 - O. 2019 Aerial Photo
 - P. 2020 Aerial Photo
 - Q. 2021 Aerial Photo
13. Vehicle Transport/Disposal Addendum, dated October 30, 2009
14. Certification of Formation: Art's Auto Wrecking, LLC, dated July 27, 2011
15. Partial Vehicle Transport/Disposal Addendum, dated January 4, 2012

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16. Email from Angela Meadow to Troy Giddings, dated November 28, 2012
17. Motor Vehicle Wrecker Report of Inspection, with Notes and Sketch, dated February 15, 2013
18. Motor Vehicle Wrecker Report of Inspection, with Notes, dated July 10, 2014
19. Reissuance of Coverage under the Industrial Stormwater General Permit, dated December 3, 2014
20. Renewal and Annual Report for Art's Auto Wrecking, LLC, dated July 6, 2015
21. CVEB Wrecking Yard Inspection, dated July 21, 2015
22. CVEB Wrecking Yard Inspection, dated July 29, 2016
23. Email from Angela Meadow to Troy Giddings, dated December 31, 2016
24. Notice of Termination: Industrial Stormwater General Permit, dated November 17, 2017
25. Termination of Industrial Stormwater General Permit, dated January 22, 2018
26. Administrative Dissolution: Art's Auto Wrecking, LLC, dated March 4, 2019
27. Statutory Warranty Deed, AF No. 202204070092, dated April 7, 2022
28. Dep't of Ecology Cleanup Site Details, dated July 5, 2022
29. Letter from Brian Schrader to Vadim and Sergey Kasko, dated February 1, 2023
30. Email from Tawnee Clearbrook to Tom Wenzl and Brian Schrader, dated February 6, 2023
31. Certification of Formation: Arts Auto Wrecking, LLC, dated February 15, 2023
32. Secretary of State Certificate: Art's Auto Wrecking, dated February 15, 2023
33. Email from dsilbaugh50 to PDS, dated March 6, 2023
34. PermitPlus Notes CE22-0110, dated March 9, 2023
35. Email from Tawnee Clearbrook to Vadim Kasko, dated March 9, 2023
36. Email from Vadim Kasko to Tawnee Clearbrook, dated April 22, 2023
37. Business License: Arts Auto Wrecking, LLC, dated March 17, 2023
38. Initial Report: Arts Auto Wrecking, LLC, dated April 1, 2023
39. Angela Meadow Witness Statement, dated April 3, 2023
40. IRS Assignment of EIN for Arts Auto Wrecking, LLC, dated May 2, 2023
41. Emails between Vadim Kasko and Jeffrey MacDonald, dated May 8, 2023
42. Draft Letter from Tom Wenzl to Sergey and Vadim Kasko, dated June 2, 2023
43. Emails between Tory Giddings and Tom Wenzl, dated June 27, 2023
44. Emails between Jack Moore and Vadim Kasko, dated June 30, 2023
45. Statement of Reinstatement: Art's Auto Wrecking, LLC, dated September 30, 2023
46. Receipt: Reinstatement of Art's Auto Wrecking, LLC, dated September 20, 2023
47. Kasko Application, Vehicle Transport/Disposal Certification and Approval, undated

Additional Filings by the Parties and Other Papers:

- Prehearing Order, dated September 21, 2023
- Parties' Consolidated Exhibit and Witness List, dated October 17, 2023
- Kaskos' Opening Brief, dated October 30, 2023
- County's Prehearing Brief, dated October 30, 2023
- County's Response Brief, dated November 6, 2023

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The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and the admitted exhibits:

FINDINGS

County's Initial Contact with Landowners

1. On March 29, 2023, Tom Wenzl, Skagit County Code Compliance Officer, on behalf of the County, sent a letter to the landowners informing them of the County's opinion that a wrecking yard on their property had been abandoned. The letter cited Skagit County Code (SCC) 14.16.880(6) for the proposition that the landowners had 60 days to confirm abandonment or non-abandonment of the wrecking yard use. Documentation that the nonconforming use, structure, or building had been occupied, used, or maintained within the last year would be required to demonstrate non-abandonment. Failure to timely respond would result in the use being deemed abandoned. A timely response would either persuade the County that the County was mistaken and that the use was not abandoned, or else, if the County were not persuaded, the response would be treated as a Level II permit application, and the Hearing Examiner would determine whether the wrecking yard use had been abandoned. The March 29 letter identified the subject property as parcels P37628, P37619, P37600, and P37620. *Exhibit 1.*
2. On March 29, 2023, the landowners sent an email to Mr. Wenzl informing him that the use was not abandoned. The March 29 landowner email included photographs showing a junked vehicle parked in a shop and several other, apparently functional vehicles parked outside. The landowners expressed hope that this was sufficient evidence for the County to determine the wrecking yard was not abandoned. *Exhibit 2.*
3. In a further email, dated June 1, 2023, the landowners added that one of the previous property owners had died, and the auto wrecking business license had expired, but the business was never abandoned. The landowners added that they had bought the property with the intent to renew and continue the existing use and had submitted paperwork to the County to renew the "auto wrecking endorsement." The landowners hoped that, once the County approved the renewal, they could resume wrecking and dismantling cars on the property. *Exhibit 4.*

County's Determination of Abandonment

4. On June 15, 2023, the County sent a formal determination of abandonment. The June 15 determination cited two provisions of the County code:
Abandonment. For the purposes of this Subsection, abandonment shall mean:
(a) An intention to abandon; and

- (b) An overt act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use.

SCC 14.16.880(4).

If any nonconforming use of land and/or building or structure ceases for any reason whatsoever for a period of 1 year or more, any future use of such land, building or structure shall thereafter be in conformity in the zoning district in which it is located.

SCC 14.16.880(5).

The County explained its reasoning as follows:

The information reviewed by the County establishes that the pre-existing non-conforming use of Automobile Wrecking was intentionally abandoned as evidenced by overt acts implying the owner did not claim of retain an interest in retaining the right to use the property for automobile wrecking. In 2016, Angela McAdow, the then-owner of the Property and Art's Wrecking LLC (the operator), emailed the state wrecking yard inspector that she was ceasing operations as the yard as was no longer financially viable and that she was going "to sell the property for commercial use that it is zoned for after we are done cleaning." Mrs. McAdow then did just that. The wrecking yard was cleaned up and closed. Art's Wrecking LLC gave up its motor vehicle wrecker license and dissolved. Aerial photographs from 2017 to 2021 show that automobile wrecking had ceased for more than a year and had been removed from the Property.

Exhibit 5.

The June 15 determination informed the landowners that the matter would henceforth be treated as a Level II application to the Hearing Examiner, who would make the final determination regarding abandonment status. In the June 15 determination, the County identified the subject property as the following parcels: P37600, P37610, P37619, P37620, P37621, and P37628. *Exhibit 5.*

5. On June 30, 2017, Tom Wenzl on behalf of the County submitted a request to the Hearing Examiner to make a determination as to whether a pre-existing auto wrecking yard use had been abandoned on the aforementioned six parcels comprising the subject property. On July 13, 2023, the County published public notice of its application for a Hearing Examiner determination. The public notice included the following explanation of the County's reasoning:

The owners of the properties have informed Skagit County of their intent to re-establish the auto wrecking business under the same name as the

previous owners, Art’s Wrecking, LLC. It is their position that the non-conforming use was never abandoned. Pursuant to SCC 14.16.880(5) and (6), Skagit County requested documentation from them to show the continued use as an Auto Wrecker. Upon review of the provided documents, and other available information, the Department determined that the non-conforming use has been abandoned. Pursuant to SCC 14.16.880(6), this matter will now be treated as a Level II permit application and the hearing examiner will make a determination if the use has been abandonment [sic].

The notice established a public comment period ending July 28, 2023. *Exhibit 7.*

6. On July 1, 2023, the landowners sent another email or letter to the County, accusing the County of failing to respond to a public records request for all evidence in the County’s possession indicating that the auto wrecking use had been abandoned. The landowners’ June 1 letter alleged that the landowners had not been provided the emails from Angela McAdow, in which Ms. McAdow supposedly forswore further use of the property for auto wrecking. The landowners argued that mere cleaning up of the property did not constitute abandonment, and that Ms. McAdow had sold the business because she had difficulty running the business following the death of her husband, not because of any intent on her part to abandon the use of the property as a wrecking yard. The July 1 letter claimed that the landowners had provided a “witness statement” from Ms. McAdow in which she denied any intent to abandon the property. *Exhibit 8.*¹

Public Comment

7. The County received many public comments in response to the July 13 notice, which the Hearing Examiner will briefly summarize:
 - Amy Gregory wrote that the subject property is less than 1,000 feet from the Skagit River and directly adjacent to an environmentally important slough. She wrote that the auto wrecking yard, during its earlier years of operation, had created an unsightly scene, subsequently much ameliorated in the absence of a wrecking yard. She expressed concern about environmental oversight of the wrecking yard if it were to be resumed. She also wrote that one of the parcels was zoned “Rural Business” while the other five were zoned “Agriculture-Natural Resource Lands.”
 - Clayton Beagle wrote that he did not want to see a “potentially hazardous waste site continue operation” so near his property and the river. He believed the “junkyard” had been “abandoned,” since there had been no noticeable activity over the last decade—for which he was grateful.

¹ For the “witness statement” referenced in Exhibit 8, *see Exhibit 39.*

- David Reeves wrote that the property should be cleaned up and used to improve the neighborhood, not degraded with an auto wrecking yard.
- Zachary Crocker wrote that he was strongly opposed to the “rebuilding” of a “junkyard/salvage yard” in his back yard. He complained that this once-quiet property was now the scene of noisy bulldozers since the new landowners bought the property. He believed the return of a “junkyard” would lead to increased pollution and increased crime. Mr. Crocker’s understanding, when he bought his own property a year previously, was that the subject property would be treated to soil restoration and land clean up. He was upset to learn this would not happen.
- Chris and Tracie Bryant wrote in opposition to the landowners’ plan to “re-establish” an auto wrecking salvage yard. The Bryants claimed that the salvage yard had already been abandoned before the Bryants moved in and that it should not be allowed to “re-open.” The Bryants wrote that the subject property floods almost yearly, if not twice a year. They worried that a renewed auto wrecking yard would lead to pollution of adjacent properties during flood events.
- Timmy Ware wrote in opposition to the “proposed” salvage yard due to environmental impacts to nearby properties.
- Larie Pidgeon wrote that an auto wrecking yard should be not sited amidst agricultural lands and proximate to a vital salmon river and natural slough, due to the possibility of environmental contamination from junked cars.
- Jason Kosciusko wrote that an auto wrecking yard should be not sited close to valuable agricultural land, the natural slough, and the Skagit River. He worried a wrecking yard would lead to soil and water contamination. He suggested that any permit to operate an auto wrecking yard should be denied, citing the property’s “distressed and hazardous state” resulting from the “original permit” for an auto wrecking yard.
- Joel Doornenbal wrote that the auto wrecking yard had been a “polluting mess that has taken years to get cleaned up.” He complained that the new landowners were already bringing in vehicles, machinery, travel trailers, containers, and other equipment. He expected that the next flood would spread pollution to other properties.
- Samantha Shoemaker wrote that the subject property was “seemingly abandoned for years” and was an “eyesore.” She claimed there was a dilapidated house and fifth wheel on the property that had been vandalized with hate symbols. She believed an auto wrecking business this close to the river—which can and has flooded—posed a danger to the environment and the community. She wrote that there is “no business ongoing” on the subject property, nor had there been for years, but she had been hearing excavating the middle of the night. She wrote that the surrounding land is zoned agricultural, and a wrecking business would be detrimental to this use.
- Deborah Hardy wrote that she had observed floodwaters on the subject property two years previously. She observed debris from the subject property being swept

into the Skagit River. She believed that the subject property had been “completely abandoned” for over four years, until new activity by the new landowners began some six months ago, including parking of non-operational vehicles.

- Josh Wedin wrote that the business had been “abandoned for several years and should not be allowed to reopen.” He commented, too, about environmental problems flowing from the previous auto wrecking business, especially during floods.
- Brian and Sheryl Birchall wrote that, when they bought their own property nearby, they believed the previous auto wrecking use would soon end and the subject property would be cleaned up. They remarked that the subject property is close to the river and a creek and had damaged those waterbodies due to pollution.
- Doug Wedin wrote that he believed Art’s Wrecking Yard was on the State of Washington list of toxic sites. He believed vehicles and other “hazards” formerly on the property had since been removed and cleaned up, but he remained concerned about “sub-soil toxins.” During past floods, diesel oil, tires, car parts, and other waste had flowed from the subject property, although he noted that the wrecking yard had not been the only source of such pollutants.
- Nora Kammer, on behalf of the Skagit River Systems Cooperative, wrote that unspecified tribes were “interested” in the subject property due to its proximity to shorelines of the state, fish-bearing waters, and a FEMA floodway and floodplain. She commented that older aerial photos showed the former auto wrecking yard from 2011 through 2015, but photos since May 2017 and onto into April 2021 showed the subject property in “an obvious state of cleanup,” which she took as evidence that the wrecking yard use had been abandoned. She noted that areas other than the driveway had “greened up,” implying no further vehicle traffic, and that cars and buses previously stored on the property had been removed. In April 2023, aerial photos showed a new influx of vehicles, buses, and an excavator. She also noted photos in August 2022 showing that the yard had been grubbed, with most vegetation down to the soil removed. In August 2022, there were still no cars in the yard itself, but there were numerous cars parked in the driveway near the structures. From all this, she concluded that the auto wrecking use had been abandoned from 2017 until at least April 2021. She urged the Hearing Examiner to support staff’s finding of abandonment.
- Donna Hendrix wrote that an auto wrecking yard should not be allowed, because of heavy metal and chemical contamination associated with junked cars. These pollutants might flow into the nearby slough, with adverse consequences to human and environmental health.
- The landowners commented that they wished to appeal and present their views at the hearing. They noted that the County would bear the burden of proving abandonment, citing SCC 14.06.160(3).

Exhibit 9.

8. The landowners submitted a response to public comments, which the Hearing Examiner briefly summarizes as follows:
- The landowners intended to appeal.
 - The landowners did not intend to abandon the wrecking yard use.
 - A determination of abandonment would have enormous financial consequences for the landowners.
 - The seller of the land (from whom the landowners purchased it) had never received notice from the County that the County believed the use had been abandoned.
 - The County should provide copies of documents, reports, opinions, complaints, and all information which in any way supports determination of abandonment.
 - The landowners had searched County auditor records and other governmental sources of information for any declaration of abandonment and had found none. The seller had also told the landowners she had never received any notification of abandonment but rather intended to clean up the property “for continued commercial use.”
 - The County should have issued a determination of abandonment years earlier, when it detected the clean-up.
 - The death of the seller’s husband was the reason for her selling the business, but neither she nor anyone else had ever decided to abandon the wrecking yard use.
 - The clean-up did not constitute an abandonment. The clean-up had not been completed—vehicles remained onsite at the time of the landowners’ purchase.
 - Auto wrecking is a valuable social service. Any pollution at the subject property came from the previous owners, who had established the use in 1945, before any regulations or standards existed. The landowners, by contrast, intended to operate their auto wrecking yard in accordance with high standards and would be stewards of the environment.
 - The general public was unaware of the benefits offered by auto wrecking. The County had contributed to the public’s disapproval of the auto wrecking use by publicly portraying the use in a negative light—which was, in any event, irrelevant to the abandoned use hearing.
 - The Washington State Department of Ecology’s website does not state that waste and spills are unavoidable with this business, but rather that they can be unavoidable.
 - The photos showing improvements to the property were evidence of the landowners’ efforts to clean up the property, not evidence of the landowners’ intent to abandon the wrecking yard use.
 - The County’s determination of abandonment violated the landowners’ constitutional rights.

Exhibit 10.

Prehearing Briefs of the Parties

9. In its opening brief, the County argued that operations at the wrecking yard ceased in 2017 and that the site was cleaned up. Business licenses necessary to operate a wrecking yard were terminated or expired. The subject property was no longer maintained for use as a wrecking yard. The new landowners (the “Appellants”) bought the property in 2022 and seek to re-establish the auto wrecking yard, which is not an allowed use in the Ag-NRL zone or RB zone. The County provided a narrative of events, which the Hearing Examiner summarizes as follows, with all citations taken from the County’s brief:

Art’s Auto Wrecking was a use established by Ralph “Art” Hillstead in the 1940s, citing Exhibit 42. Art died in 2009, and operations were taken over by Angela McAdow and her husband, Lee. *Exhibit 42*. They established Art’s Auto Wrecking, LLC, in 2011. *Exhibit 14*. Lee died in 2012. *Exhibit 16*. The County cited the various photos in Exhibit 12 to show that, by 2013, the number of vehicles in the yard had declined. On October 23, 2016, Ms. McAdow closed the business. *Exhibit 24*. She notified the Washington State Patrol of the closure on New Year’s Eve 2016. *Exhibit 23*. She did not file an annual report to the Secretary of State, so the Secretary of State administratively dissolved Art’s Auto Wrecking, LLC, on March 4, 2019. *Exhibit 26*. She gave notice to the Department of Ecology in November 2017 to terminate her stormwater permit, telling them the business closed the previous year and “all operations ceased [on] July 30, 2017.” *Exhibit 24*. She further indicated that “no vehicles [remained] on this property, no tires, no parts or tools, fluids have all been removed.” *Exhibit 24*. Coverage under the Industrial Stormwater General Permit was terminated on January 22, 2018. *Exhibit 25*. By 2019, vegetation had regrown in the yard. *Exhibit 12-O*. Ms. McAdow sold the subject property to the current landowners, the Appellants, in April 2022. *Exhibit 27*. They moved to re-establish auto wrecking on the property in the following ways: they moved a number of vehicles onto the property, obtained a business license with a vehicle transporter endorsement, and initiated the process of applying for an auto wrecking license, and have reinstatement Art’s Auto Wrecking, LLC. *Exhibit 2; Exhibit 29; Exhibit 31; Exhibit 37; Exhibit 41; Exhibit 46*.

On the basis of the foregoing narrative, the County argued that nonconforming structures are governed by SCC 14.16.880. A *nonconforming use* is “[a]ny lot, building, structure, or use of land, legally permitted or established at the time” the regulation that the use does not conform to was adopted. *SCC 14.16.880(1)*. Although a nonconforming use is permitted to continue, SCC 14.16.880, the County may “regulate or even terminate the nonconforming use, subject to constitutional limits.” *McGuire v. City of University Place*, 144 Wn.2d 640, 648, 30 P.3d 453 (2001) (citing *Rhod-A-Zalea & 35th v.*

Snohomish Cty., 136 Wn.2d 1, 8, 959 P.2d 1024 (1998)). The continued existence of a nonconforming use is subject to strict limitations (*see* SCC 14.16.880(2)(a)), and the overarching policy is to not encourage the survival of nonconforming uses. *SCC 14.16.880(1)(a)*; *see also Seven Hills, LLC v. Chelan County*, 198 Wn.2d 371, 404, 495 P.3d 778 (2021) (stating “[t]he policy of zoning legislation is to phase out a nonconforming use.”).

Automobile wrecking is defined as “premises used for the storage and/or sale of used automobile parts, or for the storage, dismantling, or abandonment of junk, automobiles, trailers, machinery or parts thereof.” *SCC 14.04.020*. There is no dispute that Art’s Auto Wrecking was a lawful pre-existing nonconforming use. The use commenced well before the first zoning ordinance was enacted and became nonconforming in the late sixties. But the use of the property for this use ceased in 2017, and by 2022, when the property was sold to the Kaskos, it was clearly an abandoned use.

Once a nonconforming use is abandoned, any future use must comply with the current zoning regulations. *SCC 14.16.880(5)*. A use is abandoned if the owner intends to abandon the use evidenced by “[a]n overt act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use.” *SCC 14.16.880(4)*. Any right to continue the nonconforming use is forfeited if the “nonconforming use of [the] land ... ceases for any reason whatsoever for a period of 1 year or more.” *SCC 14.16.880(5)*. In determining if the use has ceased, “[t]he mere presence of a structure, equipment or material shall not be deemed to constitute a continuance of a nonconforming use unless the structure, equipment, or material are actually being occupied or employed in maintaining such use.” *SCC 14.16.880(5)*. The County argued that the removal of vehicles; expiration of licenses; and statements by Ms. McAdow during 2016 and 2017 were evidence that she had intended the auto wrecking use to cease and had taken overt acts to cease the use, and that the use had, in fact, ceased for a period of over one year before the current landowners attempted to resume the use in 2022. Therefore, the Hearing Examiner should deem the use abandoned. *County’s Prehearing Brief*.

10. The landowners gave their own narrative of events, which the Hearing Examiner will summarize as follows, with citations as they appear in the landowners’ brief:
 - On April 7, 2022, the Kaskos purchased uses, businesses, and real property from Ms. McAdow. *Exhibits 27-A and 27-B*. The purchase included residence, buildings, office files, equipment, cars, trucks, motor vehicles parts, trailers, storage containers, and junk, all related to the Art’s Auto Wrecking business. *Exhibit 42; Exhibit 44*. The new landowners began moving vehicles onto the property on or after April 7, 2022. *Exhibit 34*. All of this was consistent with a history of wrecking, hauling, and auto storage “since before 1969,” and with a residential structure on

the property still occupied as of August 31, 2022. *Exhibit 34*. Also during 2022, the previous owner (an apparent reference to Ms. McAdow) had attempted to apply for an unspecified pre-development meeting but had been rebuffed due to submitting the wrong packet. *Exhibit 34*. On April 3, 2023, in response to the initial contact by March 29, 2023, letter from Tom Wenzl regarding abandonment (*see Exhibit 1*), Ms. McAdow supplied a declaration to the effect that she sold the business and land for all its pre-existing uses, specifically including an auto wrecking business. *Exhibit 39*.

The landowners argued that, under SCC 14.08.880(6), evidence for abandonment could only be taken starting with the County’s issuance of a notice of abandonment. Any alleged abandonment that may have occurred prior to the date of the notice—and the landowners did not concede that any abandonment had ever occurred—was irrelevant. It only mattered whether abandonment had occurred on the date of the County’s notice, which was given in the determination letter of June 15, 2023. *Exhibit 5*. At no time had the County given Ms. McAdow notice of a determination of abandonment, and by the time the County gave the new landowners notice of a determination of abandonment, the new landowners had already resumed the use—to the extent the use had ever been abandoned, which, again, the landowners denied. Thus, under SCC 14.08.880(6), the Hearing Examiner was precluded from determining that the new landowners had abandoned the use.

The landowners argued that it would be “constitutionally tortious” for the County to reach back in time and inquire as to the use of the property years ago, during Ms. McAdow’s period of ownership. Instead, under SCC 14.08.800(6), the County could only start its abandonment inquiry by sending a notice to the current landowners giving them 60 days to respond. Any abandonment prior to the date of that notice was not relevant. If the County had wanted to deem the use abandoned during the McAdow era, it should have sent a notice of determination of abandonment to Ms. McAdow.

Besides their legal argument, summarized above, the landowners also argued that the County was mistaken as to the facts. The landowners argued that the aerial photographs of the McAdow-era property did not show an abandoned wrecking yard, but rather one that was functioning all too well, namely, by disassembling and removing wrecked vehicles. The fact that the number of vehicles had been reduced was only evidence of a clean-up of the property prior to sale, not abandonment of the wrecking use altogether. In any event, aerial photos could not supply the level of detail necessary to determine whether a use had been abandoned. In addition, the new landowners had been making diligent efforts to obtain all required licenses. Therefore, the Hearing Examiner should determine either that the auto wrecking use had never been abandoned or that the County had missed its chance to file a notice of determination of abandonment now that the new

landowners had resumed or attempted to resume the auto wrecking use. *Exhibits 37 through 41, and 45 through 47. Landowners' Prehearing Brief.*

11. In its response brief, the County argued that the only question before the Hearing Examiner was whether the wrecking yard use had been abandoned for at least a year at any point in its history. The County conceded there are some uses that are similar to, or overlap with, auto wrecking, such as the storage of junk vehicles or unlicensed or inoperable vehicles. *SCC 14.04.020* (definition of automobile wrecking). But the question was not whether the property had been used to store junk or inoperable vehicles but rather whether the property had been continuously used as an auto wrecking yard, which the County argued it had not. The County denied that *SCC 14.16.880(6)* imposes any time limit or deadline on the County for issuing its notice of determination of abandonment. The County had no duty to inform prospective purchasers of any property whether it believed a previously existing use on that property had been abandoned. *County's Response Brief.*

Public Testimony

12. At the November 8, 2023 hearing on the merits, Larry Iaccino testified that he purchased 34 acres of property just southwest of the subject property on December 30, 2021. When the subject property came up for sale, he explored purchasing it before the Appellant landowners came on the scene. Mr. Iaccino's understanding at the time was that the wrecking yard operation had been abandoned and its licenses allowed to lapse, which information Mr. Iaccino had learned from his own realtor. Because of that abandonment, environmental remediation of the subject property would be required. Due to the anticipated cost of remediation, he decided not to pursue purchasing the subject property. He was surprised when the Appellant landowners moved in and began moving vehicles onto the property, because he was not aware that any environmental remediation had ever taken place. He also doubted that the current operation was in compliance with environmental regulations, because the vehicles were parked near a critical wetlands area and had no drip pans beneath them. Screening and fencing had also not been installed. *Testimony of Larry Iaccino.*

County's Witness Testimony

13. Troy Giddings, Trooper and Wrecking Yard Inspector, Washington State Patrol, testified that he had been the inspector and licensing reviewer for auto wrecking yards in District Seven (which includes Skagit County) since 2003. He testified that auto wrecking yards are required, under chapter 46.80 RCW, to have licenses and maintain records of their activities, including records of vehicle inventory. He testified that he was familiar with Art's Auto Wrecking and that its operation had been closed since 2016. Prior to 2016, Trooper Giddings had been responsible for inspecting the facility, but in 2016, he

received an email (Exhibit 23)² in which Angela McAdow informed Trooper Giddings that she had closed Art's Auto Wrecking.

Trooper Giddings said his usual practice, when an auto wrecking business closes, is to ask for an email to that effect, although he could not remember whether he had asked for the Exhibit 23 email from Ms. McAdow. Following his receipt of the Exhibit 23 email, he no longer inspected the business, because it was closed.

Trooper Giddings was aware of the Appellants' desire to restart the business. He testified that Exhibit 41 was correspondence between him and the landowners about how to obtain a wrecking yard license but that the Washington State Patrol would not sign off on such a license until the local jurisdiction (in this case, Skagit County) had issued zoning approval for a wrecking yard. He pointed to Exhibit 15 as an example of the kind of zoning approval Washington State Patrol would need to see. Exhibit 15 was a 2012 license renewal for Art's Auto Wrecking when the business had changed its corporate structure following the death of Art.

On cross-examination, Trooper Giddings testified that Exhibit 16 was an email he had received in 2012 regarding the death of Art and the potential for someone to buy the property. He testified that he was aware of one other person, whom he did not name, who had been interested in buying the business at that time. Trooper Giddings testified

² In its entirety, Exhibit 23 email reads:

I have closed Art's Auto Wrecking as I can't continue to pay the high costs of insurances, bonds, licenses, fuel, machinery break downs, L&I, employment security, Ecology Stormwater permits, wages, utilities & all the other expenses. Iron is down too low & can no longer pull me out of the big bills such as property taxes. I have to sell my inventory to pay bills & lose those parts. We have never survived on what we make selling parts.

I have crushed everything & shipped out to Richmond Steel. I am not buying anymore vehicles so there will be no more wrecker reports. I will call the Wrecker Desk Monday Jan 2, 2017 & notify them. We are continuing to clean up still crushing last tires & I have called Mark in Oregon to pick them up. It will be a couple weeks before they come as they are really busy. We will be taking loads of the garbage that are the mangled motor homes that we picked up for the county to the dump.

I want to try to sell the property for commercial use that it is zoned for after we are done cleaning. I need to pay my property off here so my Mom & I have a place to live as we are both widows. Thank you for your help through the years.

God's Blessings for the New Year.
Angela McAdow.

that a business license could be transferred from one owner to another, but he said the transferability of the license had nothing to do with the transferability of a land use.

On re-direct, Trooper Giddings testified that, in order to maintain a wrecking yard business (at least for purposes of licensing), an operator would have to maintain regular business hours and regular days of business, and be open for inspection anytime during those hours, and maintain records of business transactions related to vehicles, such as vehicle identification numbers. At a minimum, there would need to be an annual inspection to maintain the license. *Testimony of Troy Giddings.*

14. Tom Wenzl, Skagit County Code Compliance Officer, testified he had held his current position for years but had been personally familiar with Art's Auto Wrecking long before because this was a historic business that had been in Skagit County for decades. Mr. Wenzl testified that Art's had been one of the businesses he monitored on behalf of Skagit County, because it was in a floodway. He had heard that the property was being purchased, so he began keeping an eye on it. At some point, during one of his visits, he noticed vehicles being brought onto the property. His observation of the vehicles had started him talking with the new landowners.

Mr. Wenzl testified that Exhibit 11 is a zoning map showing the different zoning of the parcels comprising the subject property: RB and Ag-NRL.

Mr. Wenzl looked through the aerial photographs in Exhibit 12. He testified that the photos from 2015, Exhibit 12-M, were the last time the subject property appeared to be used as a wrecking yard. From 2017 onward, as shown in Exhibit 12-N *et seq.*, the bulk of the vehicles were gone. There were a few "stray" vehicles here or there, but no indication of storage, no new inventory being brought in. He took this as evidence that business operations had ceased. He was unaware of any auto wrecking activities post-dating the 2017 aerial photo.

Mr. Wenzl stated his understanding that "auto wrecking," under the County code, meant dismantling, retail sales, salvaging things from vehicles, similar to a used auto parts shop. It would include crushing vehicles and selling them for scrap-metal value.

Mr. Wenzl testified that there was a significant increase in vehicles being brought to the property following its acquisition by the Appellant landowners. He had also had conversations with the landowners in which they indicated they would re-establish auto wrecking on the subject property and had even emailed photos showing that vehicle repairs were now underway. He believed the landowners had submitted a new wrecking yard license application to the Washington State Patrol. He was also aware, citing Exhibit 37, that the landowners had established a new LLC under the name "Art's Auto Wrecking, LLC," which had the same name as the original Art's Auto Wrecking, LLC,

but was a new entity with new owners. The original Art's Auto Wrecking had been dissolved, a proposition for which Mr. Wenzl cited Exhibit 26.

Mr. Wenzl testified that Exhibit 34 was a log of his recent involvement with the subject property, which he had started keeping in response to a public records request from one of the landowners. He testified that the date July 2022, noted in the Exhibit 34 log, was when he had started monitoring the property due to its location in a floodway.

He testified that, in February, March, or April of 2023, he had had conversations with the landowners in which he informed them that the auto wrecking use had long been abandoned. He also testified that, in 2022, he had had concerns about people living in dilapidated buildings on the subject property. In January 2023, he had noted vehicles being moved onto the property, which raised concern in his mind that the auto wrecking use might be re-established.

In all his research about the property, Mr. Wenzl had never seen any evidence that Ms. McAdow or anyone else had continued a wrecking yard use following her abandonment of it in 2016. He testified that Ms. McAdow's December 31, 2016 email with Trooper Giddings, Exhibit 23, was evidence that she affirmatively intended not to maintain a wrecking yard.

In response to his initial letter and notice of determination of abandonment, Exhibits 1 and 5, the landowners sent Mr. Wenzl a statement from Ms. McAdow, dated April 3, 2023, Exhibit 39, as well as contemporaneous photos of the subject property taken by the landowners, Exhibit 2, both purporting to show that the use had never been abandoned and was still ongoing. Mr. Wenzl testified that he was not impressed by Ms. McAdow's April 3, 2023, statement, Exhibit 39, because it was contradicted by her December 31, 2016, email, Exhibit 23, in which she explicitly stated an intent to end the use. Also, Ms. McAdow's actions subsequent to the Exhibit 23 email had, in Mr. Wenzl's mind, been consistent with ending the use, not continuing the use.

With regard to his usual practice for abandoned uses, Mr. Wenzl testified that it was not his habit to go around checking on every land use in the Rural Business zone to see which uses had been abandoned and which were still ongoing. It was not his practice to immediately send a notice of determination of abandonment to a use that had suddenly been abandoned.

On cross-examination, Mr. Wenzl testified that there are some residential structures on the property, but they did not appear to him to be occupied. He admitted that he had not done an inspection to verify that impression. He had not gone inside any of the structures. He had had no reason to attempt to enter private property, since the wrecking yard use had been abandoned. He also did not know whether the residential structures

had been used as business offices. He testified that he had never sent notice to Ms. McAdow regarding her supposed abandonment of the property.

Mr. Wenzl testified that he did not need to go on the property to determine that the wrecking yard use had been abandoned. The property was sufficiently open so that he could simply see there was no wrecking yard. The absence of wrecking yard licenses and permits was further evidence that the use had been abandoned. He was uncertain whether all storage containers had been moved off the property following the Appellant landowners' acquisition.

On re-direct, Mr. Wenzl testified that both visual evidence of cars and the absence of licenses would be factors he would look at in determining whether a use had been abandoned. *Testimony of Tom Wenzl.*

Appellants' Witness Testimony

15. Angela Jean McAdow testified that her in-laws, Art and Lois Hillstead, owned Art's Auto Wrecking. After Art's death, Ms. McAdow, Jerry McAdow, and Ms. Hillstead were the owners, and after Ms. Hillstead's death, Mr. and Ms. McAdow were the owners of the business and the property. She testified that she did the bookkeeping and office work. When Mr. McAdow died in 2012, she became sole owner and, for three and a half years, tried to keep the business open. Due to the low prices for scrap iron and auto parts, however, and the high costs for labor, insurance, permits, bonding, and clean-up, she was unable to keep up, which is why her inventory had been dwindling down. Eventually, she was forced to sell.

At the time of sale, Ms. McAdow testified there were still some vehicles on the property. She did not testify that these vehicles belonged to her or to Art's Auto Wrecking. She testified that she had allowed a "Spanish couple" to live in one of the houses on the property, and that couple had acquired 12 or more vehicles and several trailers. She testified that, as of the time of her December 31, 2016, email to Trooper Giddings, Exhibit 23, all of her inventory and vehicle parts were gone, but the Spanish couple's vehicles were still there. When she sold the property to the Appellant landowners, the Appellant landowners told her they would deal with the remaining vehicles—a task complicated by the fact that the man of the Spanish couple had lost all the titles and other paperwork for the vehicles. The Spanish couple's vehicles still had parts on them, but none of the vehicle parts remaining on the land were "inventory" parts of the auto wrecking business.

Ms. McAdow testified she had closed the wrecking business in 2016 and then continued to clean up for close to a year afterward. She noted that clean-up was an ongoing task; it had been going on even during the years of auto wrecking and had been going on since at

least 1994. She testified that clean-up and disposal of parts is an important part of the auto wrecking business.

Ms. McAdow testified that there had always been someone living on the property. But it was not her understanding that someone had to be living on the property in order to maintain the existence of an auto wrecking business.

Ms. McAdow testified that her real estate agent, in 2017, had been told by Skagit County that auto wrecking could continue under new buyers. She assumed this was true and was surprised by the current situation, in which the County said the auto wrecking use could not resume. She had never received notice from Skagit County that she had abandoned the auto wrecking use and had never intended to abandon the auto wrecking use.

On cross-examination, Ms. McAdow was asked about Exhibit 24, a November 2017 notice of termination of the Department of Ecology stormwater permit for Art's Auto Wrecking. Looking at the exhibit, she testified that she closed to customers on October 23, 2016, and ceased all operations on July 30, 2017, when she was finished with the clean-up. It was around this time that her conversation with the County and realtor occurred. She testified that she had cleaned up the property to give potential purchasers a chance to start over new.

She testified that she couldn't remember whether she had filed the annual report for the LLC with the Secretary of State. She testified that she had received the notice of dissolution from the Secretary of State in 2019, Exhibit 26. Prior to that, she had already contacted the Secretary of State and told them she intended to close down the business. She had not anticipated, however, that any of these actions related to her business would lead the County to deem the auto wrecking yard an abandoned land use. She had no one to advise her about the legal ramifications of her actions and had never looked at the County's land use code herself. She simply trusted the 2017 representations from her real estate agent that the new buyers could continue the auto wrecking use. The real estate agent died in 2022.

Ms. McAdow testified that she had not engaged in any auto wrecking on the property after 2017 and had not accepted any new cars after that point. She testified that no one else was engaged in auto wrecking on the property after 2017, either. She testified that she had given the new landowners her blessing to resurrect the old name Art's Auto Wrecking, LLC, even though she had no formal involvement with the landowners' new LLC. She saw it as a way to honor her late father-in-law.

On re-direct, Ms. McAdow testified that clean-up can be one component of running of auto wrecking business, but she testified that the clean-up she had been doing post-2016 was not part of any auto wrecking business. She testified that any auto parts still on the

property after 2017 were not inventory parts and were not likely anything that anyone would have wanted to buy. The final time she sold auto parts or scrap metal would have been in approximately November 2017. *Testimony of Angela McAdow.*

16. Vadim Kasko, one of the two landowners, testified that he is a civil engineer. He testified that the subject property consists of six parcels, which he purchased in April 2022. Prior to his purchase, he had discussed potential uses of the property with his realtor, including cutting up, storing, and selling used cars and their parts, plus maintaining offices on the property. At the time of his purchase, there were still two signs up on the property identifying it as an auto wrecking yard. Ms. McAdow was still cleaning up the property as of 2022, but not all vehicle parts had been removed. Engines and axels remained on the subject property, and these remained valuable.

Besides the remaining vehicle parts, there also remained a fifth wheel trailer, a pop-up trailer, and structures. Some of the structures still contained auto parts. Parts remained in a storage building and a dismantling shop, and parts were scattered about the property, overgrown with weeds.

At the time of Mr. Kasko's purchase of the property, a Spanish-speaking gentleman still remained on the property. He had been charged by the previous owner with maintenance and cleanup. This gentleman kept cars on the property and told Mr. Kasko that Mr. Kasko could keep the cars because their titles were unclear. Additional old cars were buried completely under brush on the property, including an Econoline van and an F-150.

Mr. Kasko testified that he intended to continue auto wrecking as soon as all his licenses and permits were issued, and that he had already sank some 1,600 hours of labor into the property. During his labors, he had removed scrap metal from the property and had received at least some money for it. He testified that he had, indeed, brought old vehicles onto the property, both before and after his receipt of the County's notice of determination of abandonment.

Mr. Kasko testified he had submitted paperwork for the reformation of Art's Auto Wrecking, with a new unified business identifier number.

On cross-examination, Mr. Kasko testified that his realtor, who had told him he could have a wrecking yard, had been informed of the same by someone at Skagit County. His first time on the property was sometime in late 2021 or early 2022.

On re-direct, he affirmed that auto parts remained inside and outside the buildings.
Testimony of Vadim Kasko.

17. Sergey Kasko, the other of the two landowners, testified that he is also an engineer. He testified that his sole interest in the property was its use as an auto wrecking yard. He argued that the absence of any notice of abandonment prior to 2023 meant that the use was not abandoned prior to 2023 and certainly had not been abandoned since 2023. He testified that at least one structure on the property had been used as an office and still had office equipment inside, as well as auto parts.

On cross-examination, he testified that his first time on the property was a few months prior to the 2022 purchase, perhaps late 2021. He testified that Ms. McAdow had told the Kaskos that operations had not ceased and that she was also continuing clean-up work. Ongoing work on the property included maintenance on the buildings to make them more watertight and removal of junk during cleanup. He testified that the removal of scrap metal is one part of auto wrecking. *Testimony of Sergey Kasko.*

Closing Arguments

18. Attorney David Cottingham gave the landowners' closing argument. He argued that SCC 14.16.880 requires an intent to abandon the use, and that no such intent was present here. He acknowledged that Ms. McAdow had allowed her licenses to lapse, but he argued that the County had never told her this would be construed as an act of abandonment of the land use itself. He argued that she had merely intended to cut back on the intensity of the use until a buyer could be found. The use had never been abandoned, because the storage of auto parts and the selling of scrap metal were both integral parts of auto wrecking, and both had continued after 2017.

Mr. Cottingham raised what he called the temporal argument, namely, that under a strict reading of SCC 14.16.880(6), abandonment could only be determined from the date of the County's notice of determination of abandonment. The initial burden was on the County to send the notice. After the notice, the burden shifted to the landowner, who had 60 days to respond with evidence that the allegedly abandoned use had occurred *within the last year*. Mr. Cottingham argued that the landowners in this case had met that test: they had received the June 15, 2023 notice, Exhibit 5, and had responded in less than 60 days with a narrative and photographs showing that auto wrecking had occurred within the last year, that is, since June 2022. The specific auto wrecking-related activities were the storage of junked vehicles and auto parts, the maintenance of an office on the property, and the sale of scrap metal, all of which were integral parts of auto wrecking, and all of which had occurred since 2022. *Closing Arguments of Landowners.*

19. Jason D'Avignon, Skagit County Civil Deputy Prosecuting Attorney, gave the County's closing argument. He argued that, if a use ceases for more than a year for any reason whatsoever, then that use is abandoned. It cannot be resumed unless required permits and licenses are issued. Here, Art's Auto Wrecking closed in 2016, and by July 30, 2017, it had ceased all operations, including clean-up. All licenses had also lapsed by the end of

2017. Therefore, the auto wrecking yard use had ceased no later than the end of 2017. The specific date that abandonment had occurred, according to Mr. D’Avignon, was July 30, 2018, exactly one year after July 30, 2017, which Ms. McAdow identified in her Exhibit 24 filing as the date she had ceased “all operations,” and “all licenses are expired,” and “no vehicles on this property, no tires, no parts or tools, fluids have all been removed.”

Mr. D’Avignon denied that continued clean-up of the property after 2017 would constitute continued use of an auto wrecking yard. Because auto wrecking requires a state license, it would have been a crime for auto wrecking to continue after 2017. Whatever clean-up activities may have continued beyond 2017 were not a continuation of the earlier, auto-wrecking use. In particular, the cleanup activities lacked a commercial element, whereas an auto wrecking yard was a commercial use.

Mr. D’Avignon argued that SCC 14.16.800(6) is not the only means for a finding of abandonment. Other means could have included a code enforcement action against the landowners for running an unpermitted auto wrecking yard; a denial of the landowners’ permit application on the grounds that the use they sought approval for was not allowed in the RB or Ag-NRL zone; or a nuisance action against the landowners for violation of the code. The “procedure for verifying abandonment” in SCC 14.16.800(6) was simply the process the County had selected in this instance, not the only possible process the County could have used to prohibit the landowners from resuming a previously abandoned auto wrecking yard.

Mr. D’Avignon called the Hearing Examiner’s attention to the cases of *Brown v. Mason Cty.*, No. C20-5628 TSZ, 2021 WL 2312859 (W.D. Wash. June 7, 2021) and *Van Sant v. City of Everett*, 69 Wn. App. 641, 849 P.2d 1276 (1993). *Closing Arguments of County.*

CONCLUSIONS

Jurisdiction

Under Skagit County’s “procedure for verifying abandonment,” a Level II permit application to the Hearing Examiner is triggered when an owner timely disputes a notice letter in which the County informs the owner that a previously existing nonconforming use has been abandoned. *SCC 14.16.880(6)*. In a Level II process, the Hearing Examiner conducts review of the application in an open record pre-decision hearing. *SCC 14.06.120(7)*.

Standard of Review

In a Level II process, the proponent of the application bears the burden to prove that the proposal complies with the Skagit County code and other applicable law. *SCC 14.06.160(3)(b)*. Here, although the landowners dispute the County’s determination of abandonment, it is the County that is the proponent of the Level II application to the Hearing Examiner, so it is the County that bears the burden to prove that the land use was abandoned.

Elements of Abandonment of a Non-Conforming Use

Under Washington State law:

to prove a land occupier has discontinued using a nonconforming use, a person seeking to prove discontinuance has the burden of proving:

(a) An intention to abandon; and (b) an overt act, or failure to act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use.

Skamania Cty. v. Woodall, 104 Wn. App. 525, 16 P.3d 701 (2001) (citing *Van Sant*, 69 Wn. App. at 648).

If the ordinance references a time frame such as discontinued for one year then once the person seeking to prove discontinuance proves the land occupier has not used the property for that time period, a rebuttable presumption arises that the land occupier has intended to abandon the nonconforming use.

Id. (citing *City of Univ. Place v. McGuire*, 102 Wn. App. 658, 671, 9 P.3d 918 (2000)).

The Skagit County code nearly mirrors the state-law elements of abandonment of a non-conforming use, except that the County code does not include failure-to-act:

For the purposes of this Subsection, abandonment shall mean:

- (a) An intention to abandon; and
- (b) An overt act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use.

SCC 14.16.880(4).

A non-conforming use must have been established prior to the adoption of a County ordinance that would have prohibited the non-conforming use. *SCC 14.16.880(1)*. A non-conforming use that is abandoned for a period of one year or more cannot be resumed unless the use can be brought into compliance with the County code. *SCC 14.16.800(5)*.

Thus, the Hearing Examiner concludes that the County has the burden to prove that the wrecking yard use was abandoned for a period of at least one year, regardless of whether a wrecking yard was resumed at some point after one year of abandonment. To prove abandonment, the County must first prove an intent to abandon. The County can prove intent either through direct evidence of intent to abandon or else the County can create a rebuttable presumption of intent by demonstrating that the use was abandoned for one year. The County must then prove an overt act occurred that would imply the owner (or former owner) does not claim or retain any interest in the right to the nonconforming use.

Conclusions Based on Findings

- 1. The County has met its burden to show intent to abandon the wrecking yard use.**

The Hearing Examiner is persuaded both by direct evidence and by rebuttable presumption that the former owner of the property, Angela McAdow, intended to abandon the wrecking yard use. The strongest direct evidence of Ms. McAdow's intent to abandon the use is her Exhibit 23 email to Washington State Patrol Trooper Tory Giddings, described above in Findings 9 and 13. In the Exhibit 23 email, Ms. McAdow wrote explicitly that she had "closed Art's Auto Wrecking." She wrote she had "crushed everything and shipped [everything] out to Richmond Steel." She wrote that she was not buying any more vehicles and that she would not be sending in any more required reports to the Washington State Patrol. Most revealingly, she claimed she wanted to "try to sell the property for *commercial use that it is zoned for* after we are done cleaning" (emphasis added). The first sentences quoted above show that Ms. McAdow intended to end her own use of auto wrecking. The final sentence quoted above shows that Ms. McAdow intended future users of the property to make some use of it other than auto wrecking, because auto wrecking is not an allowed use in the RB or Ag-NRL zones. *See SCC 14.16.150* (RB uses); *SCC 14.16.400* (Ag-NRL uses). The Exhibit 23 email is sufficient evidence to conclude that, as of December 31, 2016, Ms. McAdow affirmatively intended to abandon auto wrecking as a land use on the subject property.

Further direct evidence of her intent to abandon the use appears in her Exhibit 24 notice of termination of her Department of Ecology stormwater permit, dated November 17, 2017. In the Exhibit 24 notice, as described in Findings 9, 15, and 19, Ms. McAdow wrote that the activities allowed by her permit, namely, auto wrecking, had ceased. She had ceased taking customers as of October 23, 2016, and had ceased operations altogether as of July 30, 2017. She acknowledges that all licenses had expired and claimed there were no vehicles on the property, no tires, no parts, and all fluids had been removed. All of this is evidence, in the Hearing Examiner's mind, that she did intend to terminate the wrecking yard use. Nowhere in the Exhibit 24 notice (or in any other filing or communication from the 2016–2017 timeframe) did Ms. McAdow indicate a desire to someday resume the wrecking yard use or allow others to do so. Like the Exhibit 23 email, the Exhibit 24 notice would be sufficient direct evidence, on its own, to conclude that Ms. McAdow intended to abandon the use.

Besides the direct evidence of Ms. McAdow's intent to abandon the use, there is also the rebuttable presumption created by her actual abandonment of the wrecking yard for a period of over one year. *See Woodall*, 104 Wn. App. at 540 (citing *Van Sant*, 69 Wn. App. at 648). The Hearing Examiner takes Ms. McAdow at her word, expressed in her Exhibit 24 filing, that she had ceased all auto wrecking operations by July 30, 2017. She also testified, as described in Finding 15, that neither she nor anyone else on the property engaged in any auto wrecking after 2017. Thus, even assuming that the new landowners have begun to engage in auto wrecking (an activity for which they do not have a license

from the Washington State Patrol), the earliest either of the new landowners entered the property was in late 2021 or early 2022, by their own testimonies in Findings 16 and 17. Thus, there is a gap of greater than one year between the cessation of auto wrecking in 2017 and its possible resumption in 2021 or 2022. Under *Woodall* and *Van Sant*, this creates a “rebuttable presumption” of intent to abandon the use.

The landowners have failed to rebut the presumption of intent to abandon the use. The Hearing Examiner is not persuaded by Ms. McAdow’s April 3, 2023, declaration, Exhibit 39, described in Findings 10 and 14, in which she claimed she never intended to abandon auto wrecking as a land use, nor is the Hearing Examiner persuaded by her testimony at the hearing, described in Finding 15, that she never intended to abandon the use. The 2023 declaration and testimony convince the Hearing Examiner that Ms. McAdow *today* wants the current landowners to be able to resume the wrecking yard bearing her late father-in-law’s name, but they do not convince the Hearing Examiner that she felt the same way back in 2016 and 2017. In those years, she inserted no caveats in her communications to the Washington State Patrol or Department of Ecology indicating that she held out hope of someday getting back into the wrecking business. On the contrary, as described above, she explicitly stated she intended to sell the property for a use allowable under the code, which would preclude auto wrecking altogether. In addition, there elapsed not just one year but more than three years during which time, by her own testimony, no one at the property engaged in auto wrecking—and in fact, she herself never got back into auto wrecking again. Ms. McAdow’s change of heart in 2023 is not sufficient evidence to rebut the presumption that her years-long failure to engage in auto wrecking is evidence that she intended to abandon auto wrecking. *Findings 1–19*.

2. **The County has met its burden to show an overt act that carries the implication that the owner does not claim or retain any interest in the nonconforming use.** Ms. McAdow’s conduct in sending termination notices to the Washington State Patrol in 2016 and the Department of Ecology in 2017 constitute overt acts that more than merely imply she did not retain any interest in a wrecking yard—they affirmatively state that she has no further interest in a wrecking yard. She cites low prices and high costs as not just reasons to close her business but as reasons to liquidate her inventory, clean-up the entire property (which would not be necessarily if she intended to resume wrecking), and sell it off for some non-wrecking use.

These communications were not mere idle talk. Ms. McAdow followed through. By her testimony, described in Finding 15, and as confirmed by the aerial photographs, described in Finding 14, Ms. McAdow rapidly liquidated her inventory of junked vehicles during 2017. The Hearing Examiner agrees with the comment of Nora Kammer, described in Finding 7, that the Exhibit 12 aerial photos show not just the removal of existing vehicles sometime in 2017 but also the regrowth of vegetation by 2021. It is true that some vehicles remain visible in the aerial photography, but Ms. McAdow’s

testimony supplies the likely explanation: employees or caretakers, such as the “Spanish couple,” occasionally brought their own vehicles onto the property, but those vehicles were never part of the auto wrecking business’s inventory and so cannot be construed as a continuation of the auto wrecking use. Both the promise and the subsequent actual removal of Ms. McAdow’s inventory during 2017 constitute overt acts that persuade the Hearing Examiner that Ms. McAdow did not intend to continue wrecking vehicles on the property.

The testimony of the Appellant landowners, described in Findings 16 and 17, as well as the photographs they submitted to the County in Exhibit 2, described in Finding 2, are evidence that not every vehicle and not every auto part was removed from the subject property. In addition, as the landowners testified, usable structures remain on the property, including those suitable for use as an office (which, as Trooper Giddings testified, is a necessary component of an auto wrecking yard) as well as for storage and dismantling of vehicles. However, the County code is clear that:

The mere presence of a structure, equipment or material shall not be deemed to constitute a continuance of a nonconforming use unless the structure, equipment, or material are actually being occupied or employed in maintaining such use.

SCC 14.16.880(5).

The fact that Ms. McAdow’s years-long cleanup overlooked a couple of vehicles, some engine parts and axles, and an office full of office supplies does not mean that she was, unbeknownst even to herself, operating an auto wrecking yard the entire time. After July 30, 2017, she had no customers, was not accepting inventory, had affirmatively sought the termination of her license and stormwater permit, and was primarily engaged in removing junk she had been unable to sell. The landowners proffered no evidence that the specific vehicles, parts, and office supplies they subsequently discovered had formed any part of Ms. McAdow’s wrecking yard business, much less a years-long continuation of the business that had somehow survived her affirmative attempts to terminate the business in 2016 and 2017. The promise to liquidate, followed by the actual liquidation, are overt acts sufficient to constitute abandonment of the wrecking yard, even if the liquidation did not involve the removal of every single useable piece of equipment, scrap, or structure.

The Hearing Examiner rejects the argument, advanced during the landowners’ testimony, as well as in their closing argument, that Ms. McAdow’s ongoing clean-up efforts constituted a continuation of her auto wrecking yard land use. The Hearing Examiner does not dispute that clean-up may, in fact, be an integral part of running an auto wrecking yard, but the definition of *automobile wrecking* is “premises used for the storage and/or sale of used automobile parts, or for the storage, dismantling, or abandonment of junk, automobiles, trailers, machinery or parts thereof.” *SCC 14.04.020.*

Mere clean-up is not part of the definition of an auto wrecking yard. According to Ms. McAdow's testimony and her 2016 and 2017 written submissions to the Washington State Patrol and Department of Ecology, she no longer used her premises for the storage or sale of used auto parts, nor for the storage, dismantling, or abandonment of junk, automobiles, trailer, machinery, or parts thereof. She was not storing or selling used auto parts after 2017. She was, as she testified, actively trying to remove them because she believed they had no value. *Findings 1–19.*

- 3. The Hearing Examiner rejects the landowners' temporal argument.** The landowners argued, in both their prehearing brief and closing, Findings 10 and 18, that the Hearing Examiner cannot determine that a use was abandoned years ago. Instead, under the landowners' reading of SCC 14.16.880(6), the Hearing Examiner can only determine a use was abandoned if the landowners fail to demonstrate that the use continued at any point during the one year preceding the County's issuance of a notice of determination of abandonment. The Hearing Examiner rejects this argument.

The landowner's argument elevates the County's "procedure for verifying abandonment," SCC 14.16.880(6), over the County's definition of abandonment, SCC 14.16.880(4), and the County's regulation prohibiting the resumption of abandoned uses after one year of abandonment, SCC 14.16.880(5). The fact of abandonment does not depend on the County's issuance of a notice. The fact of abandonment depends on an owner's intent to abandon a non-conforming use coupled with an overt act in that direction. *SCC 14.16.880(4)*. Under the code's definition of abandonment, Ms. McAdow abandoned the use no later than July 30, 2017, by which time she had explicitly informed the government of her intent to abandon her wrecking yard and had, in fact, ceased operation of her wrecking yard. From that moment, she had one year to resume the wrecking yard use. *SCC 14.16.880(5)*. She did not do so, as her own testimony acknowledges, and as the aerial photographs confirm. Thus, as of July 30, 2018, no one could have resumed a wrecking yard use on the subject property—neither Ms. McAdow, nor any subsequent landowners, including the Appellants. The County was under no obligation to inform Ms. McAdow or any subsequent landowners of this reality. As Mr. D'Avignon correctly argued in his closing, the County was not required at any point to trigger the verification of abandonment process in SCC 14.16.880(6) at all. Instead, the County could simply have declined to issue zoning approval for the landowners' Washington State Patrol license; or, more viciously, the County could have waited until the landowners resumed operating an unpermitted wrecking yard and then commenced a code enforcement action or nuisance lawsuit against them. The County's decision to trigger the verification process in SCC 14.16.880(6) was, if anything, a courtesy to the landowners, in that it afforded a process for the landowners to learn, definitively, where their property stood in the County's eyes and gave them a chance to argue their case in front of a hearing examiner, a forum in which the County bears the burden of proof and in which the landowners face no liability for fines or damages.

It is not the case that every abandoned, non-conforming use in Skagit County, whether the use is abandoned years, decades, or even centuries ago, may be resumed at the whim of some subsequent landowner so long as he or she never received a notice letter from the County. Rather, it is the case that no abandoned, non-conforming use may be resumed, unless the abandonment is less than one year old, regardless of whether the County has sent a notice letter. *SCC 14.16.880(5)*. The notice letter and subsequent hearing is an optional process. It should not be mistaken for a requirement. *Findings 9–11, 18, and 19.*

4. **Constitutional torts and other constitutional claims are outside the jurisdiction of the Hearing Examiner.** The Hearing Examiner notes that the landowners have called the County’s notice of determination of abandonment a constitutional tort and have raised other constitutional claims. The Hearing Examiner agrees with the County’s argument in its response brief that constitutional claims lie outside the Hearing Examiner’s jurisdiction. The Hearing Examiner will presume that the County code, and the Washington State law regulating the abandonment of non-conforming uses, which the County code reflects, are consistent with the Constitution of the State of Washington and the Constitution of the United States. The Hearing Examiner believes he has afforded the parties an opportunity to be heard that is consistent with the County code and with principles of procedural due process. Any further constitutional issues lie outside the Hearing Examiner’s jurisdiction. *Findings 9–11, 18, and 19.*

DECISION

Based on the preceding findings and conclusions, the application by Skagit County Planning and Development for a determination by the Hearing Examiner that the auto wrecking yard land use formerly established on parcels P37600, P37610, P37619, P37620, P37621, and P37628 is abandoned is hereby **GRANTED**. The auto wrecking yard land use on the aforementioned parcels is hereby deemed an abandoned, non-conforming use.

DECIDED this 7th day of December 2023.



ALEX SIDLES
Hearing Examiner