

COUNTY CLERK OFFICE
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MAY 21 2024

LISA A. HENDERSON
SAN JUAN COUNTY WASHINGTON

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SAN JUAN COUNTY

SAN JUAN COUNTY, a political subdivision
of the State of Washington,

Plaintiff,

v.

TOWN OF FRIDAY HARBOR, a municipal
corporation; and the TOWN COUNCIL OF
THE TOWN OF FRIDAY HARBOR,

Defendants.

No. **24 2 0508228**

LAND USE PETITION AND
VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff San Juan County is a political subdivision of the State of Washington.

2. San Juan County is the owner of real property designated as San Juan County Tax Parcel Number 351332001000, commonly known as the San Juan County Fairgrounds ("Fairgrounds"), located at 849 Argyle Ave., Friday Harbor, situated in the county of San Juan, state of Washington and more particularly described in the full legal description attached as Exhibit A, and incorporated herein.

3. Defendant Town of Friday Harbor ("Town") is a municipal corporation, incorporated or organized under the laws of Washington.

4. The Town Council of the Town of Friday Harbor is the tribunal having custody of the record or proceeding relevant to this action.

5. The Court has jurisdiction over this action based on RCW 2.08.010 and RCW

1 7.24.010 and RCW 7.40 et. seq. because Defendants have questioned the rights and legal relations
2 of Plaintiff and Plaintiff is entitled to a declaration of such rights and injunctive relief.

3 6. Venue is proper in this Court based on RCW 4.12.020 because the real property that
4 is the subject of this action is located in San Juan County, Washington and each of the Defendants
5 resides in San Juan County, Washington.

6 II. FACTS

7 HISTORY OF WATER USE AT FAIRGROUNDS

8 7. The Fairgrounds property is located in an unincorporated area of San Juan County,
9 Washington.

10 8. The Town supplies water to the Fairgrounds property through a 2-inch water meter
11 and service line and a 6-inch water service line. The 2-inch water meter and service line has been
12 connected to and served by Town water since before 1979. The 6-inch water service line has
13 been connected to and served by Town water since 1993 for the sole purpose of fire suppression
14 in the Fair Exposition Building.

15 9. Use of the 6-inch water service line for fire suppression is not in dispute.

16 10. The Fairgrounds has served as a location for numerous diverse community activities
17 and events over the last century. The Fairgrounds property was owned and operated by private
18 entities or persons before the property came to be owned by San Juan County in the 1970s.

19 11. Many of the now-existing buildings at the Fairgrounds property were constructed
20 before May 1998.

21 12. Many of the now-existing buildings at the Fairgrounds property were served by
22 water from the Town water system before May 1998.

23 13. An "As Built" schematic from 1992 shows a then-existing connection to the Town's
24 water system to numerous structures on the Fairgrounds property, including the main exhibit hall,

1 picnic shed, Boy Scout building, senior services office, the “grey top inn” (used at that time to
2 provide senior services), log cabin, legion building, activity building, lavatory, and 4-H building.
3 Fairgrounds Existing “As Built” Plan, attached as Exhibit B and incorporated herein.

4 14. Established, ongoing uses of the Fairgrounds that were present in 1992 include:
5 recreational activities such as field sports and horse shows; community workshops, meetings, and
6 classes; dances; senior citizen activities; toddler programs; rummage sales and garden sales;
7 intermittent tent and RV camping; and major annual events generating attendance of thousands
8 of people per day – including the County Fair, the Pig War Picnic, and Jazz Festival.

9 15. Town Staff’s analysis of the existing and proposed buildings, facilities, and activities
10 on the Fairgrounds property dated November 1992 acknowledged numerous existing and
11 proposed uses at the property, acknowledged that the property was served by water from the Town
12 water system with average monthly water usage over the previous three years of 72,590 gallons,
13 and identified no concerns that use of water at the property violated Town ordinances.

14 16. Uses at the Fairgrounds property rely on and have relied on water provided by the
15 Town system for operation year-round.

16 17. Town records show use of the Town water system for the Fairgrounds property every
17 month in those months for which data is available, including January 1990 through September
18 1992 and June 2010 through present.

19 18. On information and belief, the Town has no records showing water usage for fewer
20 than 12 months a year at the Fairgrounds property during the time it has been connected to the
21 Town water system.

22 19. In 1998, the Town adopted Ordinance No. 1082. Ordinance No. 1082 states, in relevant
23 part, “Existing uses outside of the Town shall not be allowed to change to a different use or
24 customer class, as defined in Section 1 of Ordinance No. 1084 of the Town. In the event any such

1 change occurs, the Town shall provide the property owner with thirty (30) days written notice of
2 the violation. If the proper use is not restored within thirty (30) days, the Town shall disconnect
3 water service to that property.”

4 20. Ordinance No. 1082 repeals Ordinance Nos. 548, 638, 869, 903, and 940 in their
5 entirety together with “those other ordinances or portions thereof that are in conflict herewith”.

6 21. Ordinance No. 1082 is codified as Friday Harbor Municipal Code (FHMC)
7 13.12.010.

8 NOTICE OF VIOLATION

9 22. On January 9, 2024, the Town issued the County a Notice of Violation for violation
10 of FHMC 13.12.010(B) (the NOV). Notice of Violation, attached as Exhibit C and incorporated
11 herein.

12 23. The NOV states in part that, “The Town has reviewed evidence that supports usage
13 of Town water at the fairgrounds only during the annual County Fair.”

14 24. No evidence is contained in or attached to the NOV.

15 25. The NOV further states “Corrective Action: Within 30 days from the date of this
16 letter, provide Town Administrator Denice Kulseth with evidence of authorized water usage at
17 the fairgrounds during times other than the annual County Fair.”

18 26. The County responded to the NOV with a letter dated January 19, 2024 stating that
19 “[t]he County intends to provide evidence of authorized water usage as requested in the Notice.
20 In addition, San Juan County wishes to dispute the notice of termination per FHMC
21 13.05.045(E)(1) and requests a meeting with the town administrator or their designee.”

22 27. In response to the NOV request for “evidence of authorized water usage,” the
23 County submitted a letter dated January 31, 2024 to Town Administrator Kulseth providing links
24 to various documents in support of the County’s position that it had a long history of authorized

1 water use at the Fairgrounds prior to May 1998.

2 28. Town of Friday Harbor officials have repeatedly communicated their position that
3 the NOV is not an appealable decision.

4 29. On February 2, 2024, the Town Administrator held an informal meeting with
5 representatives from San Juan County regarding the NOV.

6 30. On February 9, 2024, Town Administrator Kulseth emailed the County a letter
7 upholding the NOV. Kulseth February 9, 2024 denial letter, attached as Exhibit D and
8 incorporated herein.

9 31. By letter dated February 15, 2024, the County appealed Administrator Kulseth's
10 February 9, 2024 decision to the Town Council.

11 32. The County appeared before the Town Council on April 4, 2024 and presented
12 evidence of existing water use at the Fairgrounds property prior to the enactment of Town
13 Ordinance No. 1082.

14 33. On April 18, 2024, the Town Council voted unanimously to uphold the NOV for the
15 reasons provided in Administrator Kulseth's February 9, 2024 denial letter.

16 34. On April 18, 2024, the Town Council unanimously passed a second motion directing
17 Town staff to prepare findings of fact and conclusions of law.

18 35. On May 2, 2024, the Town Council unanimously adopted Town of Friday Harbor
19 Resolution No. 2850, "A resolution by the Council of the Town of Friday Harbor Adopting
20 Findings, Conclusions and Decision Regarding San Juan County's Appeal of Town
21 Administrator's Denial of San Juan County's Appeal of Town's Notice of Violation Relating to
22 Water Usage".

23 //

24 //

1 **III. FIRST CAUSE OF ACTION – LAND USE PETITION (36.70C RCW)**

2 36. *Names and Mailing Address of Petitioner:* San Juan County, 350 Court Street,
3 No. 1, Friday Harbor, WA 98250.

4 37. *Name and Mailing Address of Petitioner's Attorney:* San Juan County Prosecuting
5 Attorney, P.O. Box 760, Friday Harbor, WA 98250.

6 38. *Name and Mailing Address of Local jurisdiction Whose Land Use Decision is at*
7 *Issue:* Town of Friday Harbor, P.O. Box 219, Friday Harbor, WA 98250.

8 39. *Identification of Decision-Making Body or Officer:* Petitioner is challenging the
9 Findings, Conclusions and Decision adopted by the Town of Friday Harbor via Resolution No.
10 2850 on May 2, 2024, attached as Exhibit E and incorporated by reference herein.

11 40. *Identification of Each Person to Be Made a Party under RCW 36.70C.040(2)(b)*
12 *through (d):* None.

13 41. *Facts Demonstrating that the Petitioner has Standing to Seek Judicial Review under*
14 *RCW 36.70C.060:* San Juan County is the owner of the property to which the land use decision
15 in Town of Friday Harbor Resolution No. 2850 is directed.

16 42. *Concise Statement of Each Alleged Error:*

17 The Friday Harbor Town Council engaged in unlawful procedure or failed to follow
18 a prescribed process by failing to provide a clear process for appeal of Notices of Violation issued
19 pursuant to FHMC 13.12.010; by failing to provide the evidence it reviewed in issuing the Notice
20 of Violation; and by failing to provide any legal authority for the Notice of Violation. Town of
21 Friday Harbor Resolution No. 2850 is an erroneous interpretation of the law, not supported by
22 substantial evidence, a clearly erroneous application of the law to the facts, and a violation of the
23 constitutional right to due process.

1 43. *Concise Statement of Facts Relied Upon:*

2 44. Petitioner realleges and incorporates paragraphs 7 to 35.

3 45. *Request for Relief:*

4 a. A determination that Petitioner has met its burden of proof under one or more
5 of the standards listed in RCW 36.70C.130.

6 b. Reversal of the Land Use Decision in Town of Friday Harbor Resolution No.
7 2850.

8 c. An Order awarding Petitioner its attorneys fees and costs.

9 d. Such other relief as the Court deems just and necessary.

10 **IV. SECOND CAUSE OF ACTION – PETITION FOR WRIT OF CERTIORARI**

11 46. In the alternative, Plaintiff petitions the Court for a constitutional or statutory Writ
12 of Certiorari.

13 47. Plaintiff incorporates all prior paragraphs as though restated in full herein.

14 48. Plaintiff is entitled to relief pursuant to RCW 7.16.040 as well as the Court's inherent
15 power to review administrative decisions for illegal or manifestly arbitrary and capricious acts.

16 49. Town Resolution No. 2850 is not supported by facts or governing law and thus is
17 erroneous and illegal.

18 50. Defendants have not shown Plaintiff violated FHMC 13.12.010(B).

19 51. Plaintiff will be harmed by the erroneous termination of water service to the
20 Fairgrounds property.

21 52. If Town Resolution No. 2850 is not a land use decision appealable under the Land
22 Use Petition Act, there is no appeal or plain, speedy, and adequate remedy at law.

23 **V. THIRD CAUSE OF ACTION – DECLARATORY JUDGMENT**

24 53. Plaintiff incorporates all prior paragraphs as though restated in full herein.

1 54. A controversy exists as to whether the County is in violation of FHMC 13.12.010(B)
2 as to the Fairgrounds Property.

3 55. Plaintiff is entitled to judgment declaring that it is not in violation of FHMC
4 13.12.010(B) as to the Fairgrounds Property.

5 **VI. FOURTH CAUSE OF ACTION – TOWN OF FRIDAY HARBOR**
6 **ORDINANCE NO. 1082 IS INVALID BOTH FACIALLY AND AS APPLIED.**

7 56. Plaintiff incorporates all prior paragraphs as though restated in full herein.

8 57. Due process demands the opportunity to be heard in a meaningful manner at a
9 meaningful time.

10 58. By failing to provide a landowner an appeal process, the Town's process for issuing
11 Notices of Violation under Ordinance No. 1082 violates the fundamental principles of due process
12 and is facially invalid.

13 59. Throughout the County's interactions with the Town, the Town Administrator, the
14 Mayor, and Council members repeatedly informed the County that it had no right to appeal. The
15 Town offered to allow the County to utilize the appeal process provided in FHMC 13.05.045.
16 The Town then changed the rules of the appeals process multiple times throughout the
17 proceedings. These actions violated due process as applied to the County's appeal of the Notice
18 of Violation.

19 **VII. FIFTH CAUSE OF ACTION – INJUNCTIVE RELIEF**

20 60. Plaintiff incorporates all prior paragraphs as though restated in full herein.

21 61. The County has relied on the Town's continuous supply of water at the Fairgrounds
22 since the County acquired the property in the 1970s. The discontinuation of water service to the
23 Fairgrounds by Defendants will damage the County.

24 62. The County has no plain, adequate, or speedy remedy at law and will suffer

1 irreparable harm and damage unless Defendants are, by mandatory injunction, enjoined from
2 discontinuing water service to the Fairgrounds Property.

3 **VIII. PRAYER FOR RELIEF**

4 Plaintiff San Juan County requests the following relief:

5 1. For an order by the Court entering judgment in favor of San Juan County declaring
6 that the County is not in violation of FHMC 13.12.010(B) as to the Fairgrounds Property.


7 2. For an order permanently enjoining the Town of Friday Harbor from taking any
8 enforcement actions, including turning off the water supply to the Fairgrounds property, based on
9 the Notice of Violation dated January 9, 2024, or the assertions therein.


10 3. For an award of the County's attorneys' fees and costs as provided under the law;
11 and

12 4. For such other relief as the Court deems just and equitable.

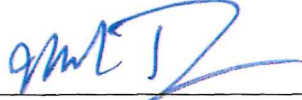
13
14 AMY S. VIRA
PROSECUTING ATTORNEY

15
16 Date: May 21, 2024
Friday Harbor, Washington

17 By: 
Amy S. Vira, WSBA #34197
Prosecuting Attorney

18
19 By: 
Jonathan W. Cain, WSBA #37979
Deputy Prosecuting Attorney

1 I have read the foregoing Verified Complaint for Declaratory Relief and Injunction, know the
2 contents, and believe the contents to be true.

3 

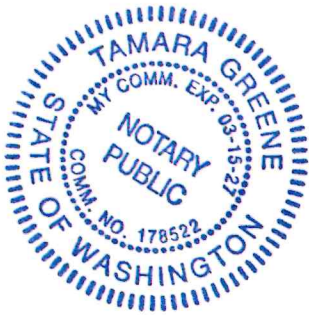
4 _____
5 Mark Tompkins
6 Interim San Juan County Manager


7 STATE OF WASHINGTON

8 ss.

9
10 On this 21 day of May 2024, before me personally appeared Mark Tompkins
11 to me known to be the Interim San Juan County Manager that executed the within and
12 foregoing instrument, and acknowledged said instrument to be the free and voluntary act and
13 deed of said County, for the uses and purposes therein mentioned, and on oath stated that he
14 was authorized to execute said instrument.

15 In Witness Whereof I have hereunto set my hand and affixed my official seal the day and
16 year first above written.





Notary Public for the state of Washington
Residing at San Juan County
My Appointment Expires: 3-15-27

EXHIBIT A

Legal Description

The Southwest quarter of the Northwest quarter of the Southwest quarter in Section 13, Township 35 North, Range 3 West, W.M., in San Juan County, Washington;

ALSO EXCEPT County Road known as Argyle Avenue;

AND ALSO the West 15.00 feet of the Southeast quarter of said Northwest quarter of the Southwest quarter in said Section 13;

AND ALSO those certain parcels of land described in Auditor's File Nos. 85135064, 102078;

AND ALSO the Southeast quarter of the Northwest quarter of the Southwest quarter in said Section;

EXCEPT the East 4 rods thereof;

ALSO EXCEPT the West 198 feet of said Southeast quarter of the Northwest quarter of the Southwest quarter;

ALSO EXCEPT the South 236.00 feet of said Southeast quarter of the Northwest quarter of the Southwest quarter;

ALSO EXCEPT County Road known as Dougherty Lane;

TOGETHER WITH and SUBJECT TO easements of record.



TOWN OF FRIDAY HARBOR
Post Office Box 219 • Friday Harbor, Washington 98250
(360) 378 – 2810 • FAX: (360) 378 – 5339
www.fridayharbor.org

January 9, 2024

San Juan County Fairgrounds
PO Box 1094
Friday Harbor, WA 98250

RE: Notice of Violation - 829 Argyle Ave., TPN 351332001000; Meter 30643714

To San Juan County Fairgrounds,

I am writing to inform you of the determination that your water usage at 849 Argyle Ave., Friday Harbor, WA, TPN 351332001000 (the "Property"), associated with Meter 30643714, is unauthorized per Friday Harbor Municipal Code (FHMC) Section 13.12.010 - Limitation on out-of-town services. In accordance with 13.12.010 (B), you have 30 days to provide evidence of your authorized use.

Determination

The Town has reviewed evidence that supports usage of Town water at the fairgrounds only during the annual County Fair. (Water for fire suppression to the Main Building is authorized and unmetered.)

Violation

FHMC 13.12.010(B).

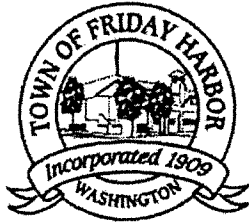
Corrective Action

1. Within 30 days from the date of this letter, provide Town Administrator Denice Kulseth with evidence of authorized water usage at the fairgrounds during times other than the annual County Fair. Failure to produce such evidence will result in the Town turning off water to the fairgrounds. The Town will turn water on again each year on or about August 1, and then off again each year on or about August 31.

Sincerely,

Ryan Ericson
Community Development Director
Community Development & Planning
Town of Friday Harbor
360-378-2810 ext. 227

EXHIBIT C



98250

Town of Friday Harbor

60 Second Street S • Post Office Box 219 • Friday Harbor, WA

(360) 378-2810 office • (360) 378-2380 fax •

www.fridayharbor.org

February 9, 2023

Jon Cain
Deputy Prosecuting Attorney
350 Court St.
Friday Harbor, WA 98250

VIA EMAIL ONLY to jonc@sanjuancountywa.gov

Re: Appeal of Notice of Violation – 829 Argyle Ave. TPN 3513320010000; Meter
30643714

Dear Jon:

As you know, the Notice of Violation issued to the County under FHMC Chapter 13.12 for unauthorized uses of Town water at the County Fairgrounds is not an appealable decision, but the Town agreed to allow the County to follow the appeal process set forth in FHMC Chapter 13.05 in order to give the County every opportunity to present its position. That process directs the Town Administrator to meet informally with the County within 10 business days of the County filing an appeal. You filed an appeal on January 19. You and I met along with the Mayor and Mark Tompkins on Friday, February 2, at 2:00 pm. Julie Greene attended to take notes.

At that meeting you provided me with 156 pages of documentation in support of the County's position that all current uses of water at the fairgrounds, and indeed all future uses of water at the fairgrounds for any purpose whatsoever, either have been tacitly authorized by the Friday Harbor Town Council, or, in the alternative, do not require authorization by the Friday Harbor Town Council, and your water use is limited only by the capacity of the 2" water meter to the property. You argue that by agreeing to install a water connection to the fairgrounds, the Town Council relinquished all authority over water service to that location, so long as the County pays for the water it uses.

I have carefully pored over all the documents you provided me last Friday afternoon, with an eye to viewing them in the light most favorable to the County. I was unable to find anything in those documents to support your position. In fact, the "San Juan County Fair History 1921-1975" you provided (hereafter "Fair History") bolsters the Town's understanding that the only authorized use of water at the fairgrounds is to support the County Fair.

EXHIBIT D

Letter to Jon Cain, February 9, 2024

The Town owns and operates a municipal water system for the benefit of the residents and businesses of Friday Harbor. The Town cannot be compelled to serve properties outside the town limits any more than the Town can compel property owners outside the town to connect to our system. However, the Town may voluntarily agree to provide water to customers outside the town limits, which is presumably how water service to the fairgrounds came to be.

The Fair History document you provided indicates that possibly as early as 1948, the Town agreed to extend its municipal water system to the fairgrounds' current location. The Fair had been held at that location for the previous 24 years without town water. Further, this document indicates that from 1924-1975 the need for water at the fairgrounds was exclusively to support the annual County Fair: a flush toilet was installed for the 1948 fair; in 1956 it was noted that water was needed in the sheep barn. Virtually all buildings constructed during this period were to support the annual Fair event: stock buildings, an exhibition hall, the Pioneer log cabin, a livestock building, a new barn, a 4-H building, another new barn, another stock barn, a grandstand, a caretaker's trailer, restrooms near the grandstand, a BBQ pit, a new horse barn, a Home Ec. Building, and an Arts and Crafts building are all mentioned. While there may have been incidental use of the fairgrounds during these years, likely none of these uses required water, and the essential purpose of the fairgrounds was to hold the annual County Fair.

The Fair History document covers the period from the Fair's beginnings through 1975, the year before the drought that resulted in the Town, in 1979, prohibiting any new water connections outside the town, and restricting existing customers located outside the Town to the uses approved at that time. The Fair History document supports the Town's contention that as of 1979, water use at the fairgrounds was in connection with the annual County Fair, and the Town's willingness to continue providing water to the fairgrounds was to support that important community event.

Over the years, various persons acting on behalf of the County seemingly have not understood that Town water and sewer utilities are not available "on demand" to properties outside the town limits, even properties owned by the County. Note the September 1992 CUP Fair Board application that states, "The [new Main Exhibition Hall] *will be served by sewer service.*" It wasn't until several weeks later that the Fair Board asked the Town Council if they would consider providing sewer service to the fairgrounds, and for many reasons the Town Council voted no. Likewise, according to County Building Official Dennis Neal in his November 12, 1992, review of the Fair Board's CUP application, the Fair Board indicated on its site plan that "*a new 3" water line will be laid* in along the north end of the multi-purpose building," but again the Fair Board had not asked the Town Council if they were willing to provide this additional water service, and ultimately the Town again said no. This confusion continues to this day, with two current Fair Board members contacting me to discuss what they were hearing for the first time: that water use at the fairgrounds is restricted. Neither of them understood the implications of the fairgrounds being outside the town limits. Compare the letter you provided from Jeff Otis, Senior County Planner, to Lloyd Miller dated June 10, 1993, stating that the proposed construction of a Senior Services Building at the fairgrounds would require demonstrating they could provide adequate water service. Jeff Otis understood that the fairgrounds, although served by Town water, did not have unbridled use of its water.

The Town has consistently held that water use at the fairgrounds is restricted, and there are emails and news articles I have already provided you that demonstrate the Town's frustration over the past 30 years with the County's continued lack of acknowledgment of these limitations:

"At the end of the day I had a meeting with Mike Thomas about the water issue at the fairgrounds. He was not aware of the restrictions and I am glad I caught him now because I think the county has a plan for building a park building on the site and I told him that wouldn't be happening without authorization from the town. I had made several inquiries about their records on how they can use water and they're [sic] slow use expansion over the years and that we needed to make a plan for how to control this in the future." Email from Duncan Wilson to Mayor Lacher, July 30, 2013

The rationale behind the Town restricting water uses by nonresidents is two-fold: to be able to plan for needed capacity for our water system, which we cannot do if we are compelled to provide water to properties where we have no authority over the kind of development that occurs there, and to protect our tax base. The Town of Friday Harbor does not want our water system to be used to support commercial development outside the Town that competes with Town businesses while providing no tax revenue to the Town. This is why, for example, although a vacation rental might use less water than a residence, the Town does not allow customers outside the Town to hold a vacation rental permit; vacation rentals in the County compete with Town overnight accommodations, and generate no sales tax or lodging tax for the Town; all those taxes go to the County.

Finally, I will address briefly two arguments made toward the end of the February 2 meeting:

- Mark Tompkins argued that because the Town provided the fairgrounds with a 2" water meter and service line, the Town must have anticipated the County would engage in significant development of the property, since a 2" line can serve a large number of fixtures. He argued the installation of a 2" meter and service line was tacit approval of any and all development at the fairgrounds that can be served by a 2" line. This is simply wrong. The 2" water meter and service line were installed in order to provide sufficient flow from Argyle Avenue to the back of the fairgrounds where the livestock barns are located, a distance of nearly 700'.
- Either you or Mark Tompkins argued Mike Betrand's lack of a response to Annie Matsumoto-Grah's email dated November 14, 2014, must have meant the Town Council approved providing water for government offices at the fairgrounds. Adding government offices to the fairgrounds violates the GMA and our Joint Planning Policies. As a matter of public policy, staff cannot agree to violate the GMA or our joint policies. Moreover, the water restrictions at the fairgrounds are in place by ordinance, and staff do not have the authority to amend Town ordinances. A non-response by the Town on any matter should not be considered approval of your intended actions. Further, while town staff has the right to review development at the fairgrounds per our Joint Planning Policies, the County is free to ignore our concerns, as it did in approving the 1992 CUP for the fairgrounds notwithstanding our concerns regarding stormwater, parking, water, sewer, fire flow, impacts to the surrounding neighborhood, and requesting a SEPA Determination of Mitigated Nonsignificance rather than the County's SEPA Determination of Nonsignificance. Your own Building Official shared similar concerns regarding compliance of structures with building codes, emergency access, fire suppression, barrier-free access, water availability, sewage disposal, parking needs, RV camping, grading, noise, and handling of combustible and flammable materials. This can all be found in the documents you provided me.

The Town has always supported the County Fair and wants to see it continue and thrive. (In fact, most of our Water Department staff believe the Town donated the water connection to the fairgrounds. That 2" water connection today would cost more than \$115,000.) Likewise, the Town wants to be a helpful partner to the County in its efforts to keep the fairgrounds operating. We understand it is an important community amenity that benefits Town residents as well as the residents of greater San Juan Island. In that regard, we see several options that are a win-win for both the Town and the County, allowing the County to continue using the fairgrounds for community events while allowing the Town to protect our water capacity and keep our businesses competing on a level playing field. The County could:

1. Request that the fairgrounds be annexed into the Town. This would allow the Town to plan for water needs at this location, alleviate any concerns that commercial activity there unfairly competes with other businesses operating inside the Town, and resolve any issues regarding lost revenue for the Town. It is not uncommon for fairgrounds to be located inside municipal limits. The Northwest Washington Fair and Event Center is located in the city of Lynden. Annexation has been discussed at various times over the years. The most recent discussion I can find was during the joint meeting on September 12, 2001, where the Town Council and the County Commission discussed annexing the fairgrounds: "Both [County] Commissioner Evans and Miller indicated that *year round use of the Fairgrounds is an idea being considered*. [Town] Councilmember Brooks inquired if the County was willing to pay infrastructure improvement costs to upgrade the wastewater main line to accommodate the Fairgrounds. [County] Commissioner Evans expressed that the County would be responsible for any infrastructure improvements involved with the Town's accepting the Fairgrounds septage. Mayor Boothman clarified not only the wastewater main line would need an upgrade, but the septage generated by the Fairgrounds would impact the flows at the Wastewater Treatment Plan and may cause a shortened life span for the new Wastewater Treatment Plant. ... [Town] Councilmember Sheiman advocated *putting the Fairgrounds in the urban growth area for future Town annexation*. [County] Commissioner Miller expressed concern regarding public health issues. ... Following discussion it was decided that the Town would create a cost analysis for infrastructure, etc., to hook up the County to the Town's wastewater system and that the County would attain [sic] figures in relation to the amount of septage generated by the Fairgrounds." Annexation and connection to town sewer would also alleviate any concerns about the capacity to safely treat septage at the fairgrounds as that property sees more year round use.
2. Remain outside the Town, but continue to use town water during the County Fair. The fairgrounds could be served by portables for events during other times of the year. The Pig War Picnic, which draws hundreds, perhaps thousands of visitors each year during the busy 4th of July holiday, has for years been held at the Historical Museum using portable toilets and handwashing stations. And the Childrens Playground and Skate Park located at the fairgrounds relies on a portable year round. Some of your facilities provide no restroom facilities at all, like Zylstra Lake. Yet all these facilities are widely used and loved by our residents.
3. Drill a well and disconnect from Town water. The exempt well provisions in Washington allow you to draw up to 5,000 gallons per day, which would provide more than sufficient water for the fairgrounds to operate year round.

Letter to Jon Cain, February 9, 2024

Accordingly, I am upholding Ryan Ericson's Notice of Violation issued January 9, 2024. Should you choose to appeal this decision to the Town Council, you have ten calendar days to file with the Town Clerk a request for the Mayor to place your appeal on the Council's next regularly scheduled meeting agenda, or on a meeting agenda as soon thereafter as practicable. The deadline for requesting an appeal is February 19. As I offered previously, we will not take action to turn off water to the fairgrounds until you have exhausted the appeal process.

Whether you appeal this decision or not, the Town remains willing to work with the County on any of the three options mentioned above, or on any option you might be considering where the Town could be a partner. Further, the County always has the option to come to the Town Council to request additional use of water at the fairgrounds, as you last did in 1993 when requesting water for fire suppression, which request was granted.

Regards,



Denice Kulseth
Town Administrator

cc: Raymont Jackson, Mayor
Town Council
Amy Taylor, Town Clerk
Ryan Ericson, Community Development Director
Jesse Douglas-Seitz, Public Works Director
Kasey Anderson, Water Distribution Supervisor
County Council
Mark Tompkins, Interim County Manager
Brandon Andrews, Parks and Fair Director and Asst. Interim County Manager

RESOLUTION NO. 2850

A RESOLUTION BY THE COUNCIL OF THE TOWN OF FRIDAY HARBOR ADOPTING FINDINGS, CONCLUSIONS AND DECISION REGARDING SAN JUAN COUNTY'S APPEAL OF TOWN ADMINISTRATOR'S DENIAL OF SAN JUAN COUNTY'S APPEAL OF TOWN'S NOTICE OF VIOLATION RELATING TO WATER USAGE

WHEREAS, the Town of Friday Harbor ("Town") served San Juan County ("County") with a Notice of Violation ("NOV") dated January 9, 2024 (ENF2024-01), related to unpermitted water usage by County at the County Fairgrounds; and

WHEREAS, under Friday Harbor Municipal Code 13.05.045, the County appealed the NOV to the Town Administrator; following an open record appeal hearing, the Town Administrator denied the appeal by letter dated February 9, 2024; and

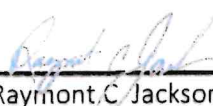
WHEREAS, the County appealed the Town Administrator's denial to the Town Council, and on April 4, 2024, the Town Council heard argument on the appeal; and

WHEREAS, on April 18, 2024, the Town Council deliberated and by unanimous vote denied the appeal;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Friday Harbor that the Findings, Conclusions and Decision attached hereto as Exhibit A is hereby adopted as if fully set forth herein.

ADOPTED this 2nd day of May 2024.

TOWN OF FRIDAY HARBOR


Raymont C Jackson, Mayor

SEAL of the
Town of Friday Harbor

ATTEST:

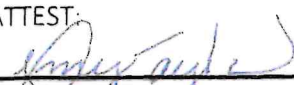

Amy Taylor, Town Clerk

EXHIBIT E

BEFORE THE TOWN COUNCIL OF THE TOWN OF FRIDAY HARBOR

In Re: San Juan County's Appeal of Town Administrator's Denial of San Juan County's Appeal of Town's Notice of Violation Relating to Water Usage.	FINDINGS, CONCLUSIONS AND DECISION
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I. INTRODUCTION

The following Findings of Fact and Conclusions of Law are based on consideration of the exhibits and evidence presented to the Town Administrator during the open record appeal on February 2, 2024, and to the Town Council during the closed record appeal on April 4, 2024. The subject of both appeal hearings is a Notice of Violation dated January 9, 2024, and an administrative determination dated February 9, 2024, issued by the Town Administrator upholding Code Enforcement Officer action ENF2024-01 issuing a Notice of Violation to San Juan County for using town water at the San Juan County Fairgrounds for unauthorized uses.

II. FINDINGS

1. The Town of Friday Harbor ("Town") operates a municipal water system; San Juan County ("County") does not.

2. The County owns property known as the Fairgrounds, located outside of but adjacent to the Town. By implied agreement, the Town extended a water connection to the Fairgrounds decades ago, most likely in the 1940s, for the limited purpose of providing water for the County Fair. By adoption of Ordinance 903 in 1993, the Town expressly authorized the County to connect the Fairgrounds to town water for the "sole and exclusive purpose" of providing fire suppression to the "Fair Exposition Building," now commonly known as the Main Exhibition Hall. Ordinance 903 does not authorize the extension of Town water to any other structures or for any other uses at the Fairgrounds. The Town has not expressly or impliedly authorized any other water uses at the Fairgrounds.

3. There is a long history of written correspondence and meetings between the parties beginning at least in 1989 discussing water restrictions at the Fairgrounds. Over the years the Town consistently objected to the County impermissibly expanding its water use beyond the two permitted uses identified in Section II.2, above.

4. The Town's written and verbal communications to the County over the years consistently advised of the County's continuing unpermitted uses, and also the need for the Town to conserve water due to limited treatment plant capacity and growing demand, and to otherwise protect a limited natural resource. Consistent with the Town's long-standing admonitions to the

County, the Department of Ecology on April 16, 2024, declared a state-wide drought emergency with limited exceptions not applicable to San Juan County.

5. Over the years, the County failed to substantively respond to any communications from the Town regarding the County’s unpermitted uses of Town water.

6. The Town served the County with a Notice of Violation (“NOV”) dated January 9, 2024 (ENF2024-01), and afforded the County an opportunity to appeal under FHMC 13.05.045. The County took full advantage of its right to an open record appeal, providing over 1,000 pages of records to the Town Administrator and arguing its case to the Town Administrator. The County’s appeal was denied by the Town Administrator’s letter dated February 9, 2024. After denial of the open record appeal, the County was afforded further opportunity to appeal to the Town Council. The County took full advantage of that opportunity on April 4, 2024, arguing its case to the Town Council for approximately 90 minutes.

7. On April 18, 2024, the Town Council deliberated and by unanimous vote denied the appeal and directed Staff to prepare Findings, Conclusions and Decision.

III. CONCLUSIONS

1. As a municipal water system operator, the Town has a statutory duty to serve all Town properties. The Town has no duty to serve the Fairgrounds or other properties outside of the Town limits but may do so by agreement.

2. The Town by agreement has served and continues to serve the Fairgrounds for two limited purposes. The Town Council also adopted ordinances expressly limiting all other out-of-town connections or expansions of then-permitted out-of-town uses.

3. The County failed to demonstrate that the Town had authorized any water uses at the Fairgrounds other than for the County Fair and for fire suppression at the Main Exhibition Hall as described in Section II.2, above.

IV. DECISION

The Town Administrator’s decision dated February 9, 2024, is affirmed in its entirety. The Town Council’s decision is not appealable per FHMC 13.05.045(E).

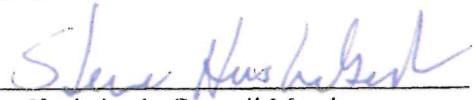
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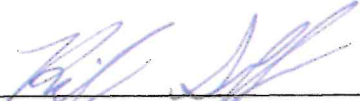
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DATED this 2nd day of May, 2024.



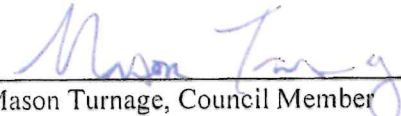
Steve Hushebeck, Council Member



Richard Geffen, Council Member



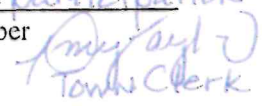
Anna Maria de Freitas, Council Member



Mason Turnage, Council Member

Voted Aye - Remote participation - Attest:

Barbara Starr, Council Member



Towns Clerk