

# **Bond Case Briefs**

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## **MUNICIPAL ORDINANCE - WASHINGTON**

### **Johnson v. City of Seattle**

**Court of Appeals of Washington, Division 1 - October 13, 2014 - P.3d - 2014 WL 5144611**

After resident's citations issued by city for parking more than three vehicles on his single-family lot were affirmed by hearing examiner, resident filed petition against city under Land Use Petition Act (LUPA), contesting each of his citations, and filed claims for damages under § 1983, alleging violations of procedural due process. The Superior Court affirmed two of resident's citations, remanded one citation for mitigation hearing, and granted city summary judgment on § 1983 claims. Resident appealed.

The Court of Appeals held that:

- Resident was not in violation of municipal ordinance, and thus was not subject to citation, and
- City violated resident's right to procedural due process by preventing him from asserting nonconforming use as defense.

Resident, who had vested right to legal nonconforming use to park five additional cars on his single-family lot, was not in violation of municipal code for failing to limit number of vehicles parked on his lot to three, and thus was not subject to citation by city for such violation, even though resident had not established nonconforming use with Department of Planning and Development and did not have permit for nonconforming use. Establishment procedure did not create legal use, but rather procedure merely verified that legal use existed and had not been abandoned or discontinued at any intervening time.

City violated resident's right to procedural due process by preventing him from asserting his legal nonconforming use to park five additional cars on his single family lot as defense to city's citations for violating municipal code by having more than three cars on his lot, such that resident had valid claim for damages under § 1983, since resident was denied meaningful opportunity to be heard. Resident had right to avoid erroneous monetary penalties and vested right to nonconforming use, which was property interest, risk of deprivation of resident's interest was apparent, and no administrative burden would result from providing additional safeguards to ensure that resident would avoid penalties for legal use of his property.