NO. 102177-1

SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY,

Respondent,

v.

FRIENDS OF SAMMAMISH VALLEY, et al., and FUTUREWISE,

Petitioners.

KING COUNTY'S CONSOLIDATED ANSWER TO AMICI MEMORANDI OF WESTERN WASHINGTON AGRICULTURAL ASSOCATION AND COLLECTIVE FARM ORGANIZATIONS

LEESA MANION (she/her)
King County Prosecuting Attorney

CRISTY CRAIG, WSBA #27451
LENA MADDEN, WSBA #41246
Senior Deputy Prosecuting Attorneys
Attorneys for Appellant King County
701 Fifth Avenue, Ste 600
Seattle, Washington 98104
(206) 477-1120

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Court Rules

Other Authorities

I. ISSUES

A. DO *AMICI* RAISE NEW ARGUMENTS THAT SHOULD BE STRICKEN?

B. DO *AMICI* FAIL TO SHOW THAT THE OPINION IS INCONSISTENT WITH APPELLATE PRECEDENT UNDER 13.4(B)(1) and (2)?

1. **IS THE OPINION CONSISTENT WITH SWINOMISH INDIAN TRIBAL CMTY v. WWGMHB AND THURSTON COUNTY V. WWGMHB?**

2. **IS THE OPINION CONSISTENT WITH PRECEDENT REGARDING GMA MANDATE TO PROTECT AGRICULTURAL LAND?**

C. DO *AMICI* FAIL TO SHOW THAT THE OPINION IS OF SUBSTANTIAL PUBLIC INTEREST UNDER RAP 13.4(B)(4)?

II. INTRODUCTION

Amici, while well-intentioned, have not demonstrated that the Court of Appeals Opinion ("Opinion") is either inconsistent with prior court precedent or is of substantial public interest to merit further review. *Amici* do not cite or refer to Ordinance 19030's plain language and instead reassert erroneous theories

which King County ("County") already briefed in its Consolidated Answer to Futurewise and Friends of Sammamish Valley Petitions for Review ("Answer"). This brief incorporates and supplements the arguments in the County's Answer and its Consolidated Answer to *Amici Memorandi* of Sierra Club & Waters and Boundy-Sanders ("Consolidated Answer"). This Court should also decline to address new issues raised by *Amici*, consistent with this Court's precedent. Regardless, the new issues do not provide a basis to merit further review.

III. RESPONSE TO STATEMENTS OF THE CASE

The County incorporates the fact statement set forth in its Answer and its Consolidated Answer. While *Amici* express general concern that the Opinion will result in loss of farmland by increasing urban retail activity in the agricultural ("A") and rural ("RA") zones, *Amici* do not discuss the content of Ordinance 19030 or the Opinion itself. Even so, when correctly interpreted, Ordinance 19030 advances the policy goals of

Amici, including the conservation of farmlands within King County.

The King County Council's ("Council") Findings for Ordinance 19030 provide that the "ordinance adds additional protection for the Agricultural zone and provides guidance on enhancing economic activity in the Rural Area zones while also honoring and protecting rural character."[1] The Council Findings further provide that "the adult beverage industry uses allowed by the ordinance support development of new markets for local agricultural products and help ensure that agricultural production districts continue to be economically viable and farmed into the future. By promoting complimentary relationships with the adult beverage industry, these regulations will help to improve access to locally grown agricultural products throughout King County."[2]

[1] CP-AR 000081:62-64.
[2] CP-AR 000082:77-82.

IV. ANALYSIS

A. NEW ARGUMENTS SHOULD BE STRICKEN

The County renews its objection to Western Washington Agricultural Association ("WWAA") and collective farm organizations ("CFO") (collectively "*Amici*") new arguments which were not raised by Petitioners. Specifically, WWAA asserts that the Opinion failed to give the Board deference in conflict with this Court's prior decisions in Swinomish Indian Tribal Cmty. v. WWGMHB,[3] ("Swinomish") and Thurston County v. WWGMHB,[4] ("Thurston County").[5] CFO argue that the Opinion conflicts with City of Redmond v. CPSGMHB,[6] ("Redmond"), City of Arlington v. CPSGMHB,[7] ("Arlington"),

[3] 161 Wn.2d 415, 424, 166 P.3d 1198 (2007).
[4] 164 Wn.2d 329, 341, 190 P.3d 38 (2008).
[5] WWAA Memorandum at pp. 5-7.
[6] 136 Wn.2d 38, 959 P.2d 1091 (1998).
[7] 164 Wn.2d 768, 193 P.3d 1077 (2008).

and Concerned Fr. of Ferry County v. Ferry County,[8] ("Ferry County").

Because this Court has held repeatedly that arguments raised first and only by amicus will not be addressed,[9] the Court should do so here and strike these arguments. Even so, the Opinion does not conflict with the cited cases, discussed further below in Section B.

B. THE OPINION IS CONSISTENT WITH APPELLATE PRECEDENT UNDER 13.4(B)(1) and (2).

1. The Opinion is consistent with Swinomish Indian Trial Cmty v. WWGMHB and Thurston County v. WWGMHB.

WWAA asserts that Division One failed to give deference to the Growth Management Hearings Board's ("Board") conclusion that Ordinance 19030 violated the

[8] 191 Wn. App. 803, 365 P.3d 207 (2015), review denied, 185 Wn.2d 1030 (2016).

[9] Fite v. Mudd, 19 Wn.App.2d 917, 926, 498 P.3d 538, 544 (2021), City of Seattle v. Evans, 184 Wn.2d 856, 861, 366 P.3d 906, 909 (2015), Citizens for Responsible Wildlife Mgmt. v. State, 149 Wn.2d 622, 631, 71 P.3d 644, 649 (2003), Sunquist Homes, Inc. v. Snohomish County Pub. Util. Dist. No. 1, 140 Wn.2d 403, 413, 997 P.2d 915 (2000).

Growth Management Act ("GMA") under RCW 36.70A.177 by repurposing agricultural ("Ag") lands into nonagricultural uses. However, Division One correctly explained that such deference is not absolute.

In its analysis, Division One stated that while "substantial weight" is given to the Board's interpretation, "the court is not bound by that interpretation,"[10] and "may substitute its own view of the law for the Board's."[11] The Opinion also correctly recognized that "deference to county planning actions, that are consistent with goals and requirements of the GMA, supersedes deference granted by the [Administrative Procedure Act]."[12] Applying these principles, Division One correctly determined that "[t]he Board's finding that Ordinance 19030 authorizes uses in violation of section [RCW 36.70A].177 is based on an

---

[10] King County v. FOSV, et al, No. 83905-5-I, Slip Op. ("Opinion"), at 22. (citing Thurston County v. WWGMHB, 164 Wn.2d 329, 341, 190 P.3d 38 (2008)).
[11] Id. at 23 (citing Marcum v. Dep't of Soc. & Health Servs., 172 Wn. App. 546, 559, 290 P.3d 1045 (2012)).
[12] Id. at 22 (citing Quadrant Corp. v. State Growth Management Hearings Bd., 154 Wn.2d 224, 238, 110 P.3d 1132 (2005)).

erroneous reading of the Ordinance as allowing the repurposing of agricultural lands."[13]

Specifically, Division One found that the Board's interpretation overlooked 19030's specific limitation that facilities must be located on land "unsuitable for agricultural purposes"[14] and ignored that 19030 retained the "same limitation as the prior code permitting WBDs in agricultural lands only when the primary use on the site is growing crops or raising livestock."[15] Division One also found that the Board clearly erred when it rejected Ordinance 19030's clearly added Ag protections, and requirement that "sixty percent or more of the products processed must be grown *on-site*" as simply "meant to create the *appearance* of promoting agriculture."[16]

Division One further concluded that the Board's finding of GMA violation under RCW 36.70A.177 erronesouly relied

---

[13] Id. at 26.
[14] Id. at 27.
[15] Id. at 26.
[16] Id. at 28 (italics added).

on "decisions finding GMA violations where there were no restrictions on accessory uses in agricultural areas."[17] When "properly interpreted" Division One concluded Ordinance 19030 "does not repurpose agricultural lands into nonagricultural uses."[18]

Because the Board's analysis conflicts with Ordinance 19030's plain language and, as a result the Board erred in assessing Ordinance 19030's compliance with the GMA,[19] Division One correctly declined to defer to the Board's analysis, consistent with Swinomish and Thurston County,

2. The Opinion is consistent with court precedent regarding GMA's mandate to protect agricultural land.

Like Petitioners, *Amici* argue that the Opinion is inconsistent with both King County v. CPSGMHB[20] ("Soccer

[17] Id. at 26. (internal quotations omitted).
[18] Id. at 29-30.
[19] Id. at 24.
[20] 142 Wn.2d 543, 14 P.3d 133 (2000).

Fields") and Lewis County v. WWGMHB.[21] However, as stated in King County's Answer, the Opinion does not conflict with those cases because they involved regulations that allowed new primary uses not related to agriculture, without protective conditions.[22] Division One correctly distinguished them from Ordinance 19030, which "does not allow a previously unallowed use, but redefines a previously allowed use with new, more extensive requirements."[23]

The plain language of Ordinance 19030 also belies WWAA's assertion that the Opinion conflicts with this Court's interpretation of section .177 under Soccer Fields on the basis that 19030 does not require WBD as accessory uses to be located in already developed portions of Ag lands. As recognized by Division One, Ordinance 19030 provides that structures for nonagricultural facility uses "shall be located on

[21] 157 Wn.2d 488, 139 P.3d 1096 (2006).
[22] Soccer Fields, 142 Wn.2d at 562; Lewis County, 157 Wn.2d at 507.
[23] Opinion at 26-27.

portions of agricultural lands that are unsuitable for agricultural purposes," which Ordinance 19030 describes as "areas within the already developed portion of such agricultural lands that are not available for direct agricultural production, or areas without prime agricultural soils."[24] The Opinion is consistent with Soccer Fields and Lewis County.

CFO assert that the Opinion is inconsistent with Redmond, Arlington, and Ferry County. However, like Lewis County and Soccer Fields, the Opinion does not conflict with those cases because they involved different regulatory and SEPA processes not presented here.

Redmond and Ferry County both involved challenges to local jurisdictions' designation of land as agricultural under the GMA. Arlington involved a site-specific rezone as part of a comprehensive plan, which rezoned 110 acres of agriculture land to urban and general commercial within Arlington's Urban Growth Area (UGA).

---

[24] Id. at 27.

Whereas here, Ordinance 19030 does not designate or rezone any agricultural land for a new use. As Division One found, it simply amends existing code for previously allowed uses with new, more extensive Ag zone requirements.

WWAA asserts that the Opinion's SEPA analysis is inconsistent with King County v. Wash. State Boundary Review Bd. ("King County")[25] and Spokane County v. EWGMHB[26] ("Spokane County"). However, as stated in King County's Answer, the plain language of the GMA does not require an ordinance be invalidated based on SEPA errors alone.[27] Here, Division One correctly reviewed the County's 2020 checklist[28] and found Ordinance 19030 complied with the GMA.[29] Because the court is not required to invalidate a

[25] 122 Wn.2d 648, 860 P.2d 1024 (1993).
[26] 176 Wn. App. 555, 309 P.3d 673 (2013).
[27] Davidson Serles & Associates v. CPSGMHB, 159 Wn. App. 148, 244 P.3d 1003 (2010).
[28] King County's Answer, p. 32, Section IV.B.4.
[29] Opinion at 50.

GMA-compliant ordinance, the Opinion does not conflict with King County or Spokane County.

Finally, the Opinion does not conflict with Stevens County v. EWGMHB ("Stevens").[30] In Stevens, the court found that the county's subdivision ordinance did not protect critical areas because the amendments did not apply countywide and did not mention methods of addressing stormwater or impervious surface coverage.[31] Unlike Stevens, Ordinance 19030 applies countywide, and the King County Code ("KCC" or "Code") addresses both stormwater and impervious surface coverage.[32]

Because this Opinion is not in conflict with any of the cases cited by both Petitioners and *Amici,* this case does not merit further review under RAP 13.4(B)(1) and (2).

---

[30] 163 Wn. App. 680, 262 P.3d 507 (2011).
[31] Id. at 694.
[32] KCC Title 9, the KCC is available online at https://www.kingcounty.gov/council/legislation/kc_code.aspx.

C. *AMICI* FAIL TO SHOW THAT THE OPINION IS OF SUBSTANTIAL PUBLIC INTEREST UNDER RAP 13.4(B)(4).

Amici's contention that this case is one of substantial public interest is entirely based on a misinterpretation of what Ordinance 19030 does, similar to that of the Board. As Division One found, when "correctly interpreted, Ordinance 19030 is more restrictive than the Board interpreted to it be"[33] and, therefore, does not "exploit" or "gut" rural or agricultural lands as *Amici* assert.

Amici neglect Ordinance 19030's new requirement in the rural area that the "primary" use at a Winery Brewery Distillery ("WBD") be winery, brewery, or distillery "production use." As Division One found:

> By requiring a primary production use in the rural area, Ordinance 19030 does not authorize a WBD lacking realistic production capabilities and attempting to justify a primary retail use through two stages of production of a negligible or sample production quantity. When properly interpreted,

[33] Opinion at 49.

> Ordinance 19030 does not authorize uses inconsistent with traditional rural land uses…[34]

Retail uses, such as nightclubs, bars, and restaurants are specifically excluded from Ordinance 19030 WBD definitions.[35]

Ordinance 19030 also established new provisions governing temporary use permits ("TUP") for events. As Division One found, "the County must consider building occupancy and parking limitations and condition the number of guests allowed based on those limitations."[36] These new requirements are in addition to the Code's general, robust regulatory system that governs temporary uses,[37] parking,[38] setbacks,[39] water connections and septic system.[40] Division One

---

[34] Id. at 34-35 (italics omitted).
[35] KCC Chapter 21A.06.1427A, B, C.
[36] Opinion at 12.
[37] CP-AR 000097:419-000098:436, CP-AR 000170-175.
[38] CP-AR 000097:419-000098:436, CP-AR 000170-175, CP-AR 0159.
[39] KCC 21A.12.040.

correctly determined that "Ordinance 19030 cannot be viewed as an expansion of the permissions allowed for events held in agricultural areas, and the Board erred in construing it to do so."[41]

Because Ordinance 19030 adds protections to rural and agricultural zones, and because it is applicable only to King County, this case does not present issues of substantial public interest to merit further review.

V. CONCLUSION

WWAA and CFO raise new arguments that the Court should reject. Even so, *amici* do not show that the Opinion is inconsistent with any prior court precedent or that this case presents a substantial public interest meriting further review.

---

[40] Board of Health, Titles 12, R12 and 13, available on-line at https://www.kingcounty.gov/depts/health/board-of-health/code.aspx.

[41] Opinion at 31.

Certificate of Compliance

This document contains 2,108 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 4th day of October, 2023.

Respectfully submitted,

LEESA MANION (she/her)
King County Prosecuting Attorney

s/*Lena Madden*

CRISTY CRAIG, WSBA #27451
LENA MADDEN, WSBA #41246
WSBA Membership ID #91002
Senior Deputy Prosecuting Attorneys
King County Prosecuting Attorney Office
701 Fifth Avenue, Ste 500
Seattle, Washington 98104
(206) 477-1120

CERTIFICATE OF SERVICE

I, Monica Erickson, declare that I am over the age of 18 years, not a party to this action, and competent to be a witness herein.

On October 4, 2023, I caused the foregoing document to be e-filed and served to the parties below through Washington State Supreme Court's web portal:

Peter J. Eglick
Joshua A. Whited
Eglick & Whited, PLLC
Eglick@ewlaw.net
Whited@ewlaw.net

Tim Trohimovich
Futurewise
Tim@futurewise.org

Meredith Crafton
meredith@smithandlowney.com

Jeffrey Eustis
eustislaw@comcast.net

Joseph Rehberger
Louis Anders Russel
jrehberger@cascadialaw.com
lrussell@cascadialaw.com

Philip Talmadge
phil@tal-fitzlaw.com

Monica Erickson
Monica Erickson, Legal Assistant

10/4/2023
Date

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

October 04, 2023 - 3:34 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,177-1
Appellate Court Case Title:	King County v. Friends of Sammamish Valley, et al.

The following documents have been uploaded:

- 1021771_Briefs_20231004152427SC153872_0765.pdf
  This File Contains:
  Briefs - Answer to Amicus Curiae
  The Original File Name was KC Amici Answer to CFO.pdf

A copy of the uploaded files will be sent to:

- cristy.craig@kingcounty.gov
- eglick@ewlaw.net
- enickelson@cascadialaw.com
- eustislaw@comcast.net
- jrehberger@cascadialaw.com
- lrussell@cascadialaw.com
- matt@tal-fitzlaw.com
- meredith.a.crafton@gmail.com
- meredith@smithandlowney.com
- phelan@ewlaw.net
- phil@tal-fitzlaw.com
- tim@futurewise.org
- whited@ewlaw.net

Comments:

Sender Name: Monica Erickson - Email: monica.erickson@kingcounty.gov
Filing on Behalf of: Lena Madden - Email: lena.madden@kingcounty.gov (Alternate Email: monica.erickson@kingcounty.gov)

Address:
516 3rd avenue Room W-400
Seattle, WA, 98104
Phone: (206) 477-1120

Note: The Filing Id is 20231004152427SC153872