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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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SUPREME COURT NO. 90500-2

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CITIZENS ALLIANCE FOR PROPERTY RIGHTS LEGAL FUND, a  
Washington non-profit corporation,

Appellant,

v.

SAN JUAN COUNTY,

Respondent.

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SAN JUAN COUNTY'S ANSWER TO AMICUS CURIAE  
MEMORANDUM OF ALLIED DAILY NEWSPAPER AND  
WASHINGTON COALITION FOR OPEN GOVERNMENT

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 ORIGINAL

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## I. INTRODUCTION

This is a San Juan County case<sup>1</sup> concerning the Open Public Meetings Act (OPMA) and the specific issue of whether informal gatherings of three members of a six member county council violates the Act. The circumstances that existed in San Juan County have ended with the passage of amendments to its charter reducing the size of the County Council from six members to three members and adopting a charter provision that specifically requires all subcommittees of the County Council to abide by the OPMA. See, *Carlson v. San Juan County*, -- Wn. App. --, 333 P.3d 511 (2014). Amicus argues this Court should accept review not to address the facts of this San Juan County case, but rather to address policy level issues regarding the role of committees in government. The policy issues raised by Amicus were debated in the legislature, and the legislature's statements have played an important part of the Court of Appeals' decision. *Citizens Alliance for Property Rights Legal Fund v. San Juan County*, -- Wn. App. --, 326 P.3d 730, 736 (2014). An advisory opinion by this Court is not the way to address concerns about potential future cases; such concerns should be addressed by legislature.

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<sup>1</sup> Amicus attaches several printed pages from the City of Seattle, King County and City of Tacoma websites. The existence of these committees is in no way related to the facts in this case.

The facts of this case not only fail to establish any violation of the OPMA, but they likewise fail to present any novel issues of law or policy-level interpretations of the OPMA. As such, the Court of Appeals (which initially chose not to publish its decision) properly affirmed summary judgment in favor of San Juan County.

## **II. BACKGROUND**

A detailed statement of the facts of this case can be found in San Juan County's Answer to Petition for Review. In short, the San Juan County Critical Area Ordinance Team began gathering in 2010 to facilitate and coordinate the County's efforts to update its development regulations for critical areas under the Growth Management Act. CP 255, 290, 320, 381. The County Council conducted over 75 open public meetings to discuss these development regulations. CP 771-75. In mid-December 2012, the County Council adopted four critical area ordinances. CP 681-91.

CAPR filed this lawsuit in the fall of 2012. CP 1-43. On April 28, 2014, the Court of Appeals issued an unpublished decision affirming the superior court's rulings granting summary judgment in favor of San Juan County. The Court of Appeals decision was later published upon motion by the Washington State Association of Municipal Attorneys.

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### III. ARGUMENT

#### A. The Court of Appeals Decision is Clear and is Consistent with the Legislature's Intent.

Amicus contorts the language of the OPMA to support its theory that the Court of Appeals decision does not reflect the intent of the legislature. In fact, the Court of Appeals adopted the rationale of the 1986 Attorney General Opinion which evaluates and discusses in detail the intent of the legislature going so far as to quote verbatim from the floor debate between Representative Isaacson and Representative Hine. *Citizens Alliance for Property Rights Legal Fund v. San Juan County*, -- Wn. App. --, 326 P.3d 730, 736 (2014). This debate by the legislature highlights the legislature's intent that not every subcommittee is subject to the OPMA. The Opinion "acknowledges that the statutory mandate for liberal construction supports the broad definition, but nevertheless concluded that 'the narrower construction correctly reflects the intent of the legislature.'" *Id.* (quoting AGO 1986 No. 16). Now, thirty years later, Amicus is asking this Court to revisit that floor debate and overturn the legislature's intent.

The Court of Appeal's decision is clear and reflects both the laws in the State of Washington and the legislature's intent when enacting those laws. These principles do not require further review.

**B. The Hypothetical Issues Presented by Amicus are Not before the Court in this Case.**

Amicus states that, “[t]he proper inquiry is not whether a committee has independent power, but whether it discusses, reviews, considers or evaluates matters at the behest of and under the governing body’s control.” Amicus Brief, pg. 8. There is no evidence from participants in this case that the CAO team “discussed, reviewed, considered or evaluated” the critical area ordinances. There is no evidence they were charged with bringing recommendations to the full Council except as to scheduling. There is no evidence that the CAO Team exercised any type of “decision making authority.” In the absence of evidence, the inquiry proposed by Amicus is moot.

Amicus fails to present any facts that are present *in this case* which support its argument that clarification is needed. Rather Amicus asks the Court to assume facts that are not present in the record. See Amicus Brief, pg. 9 (requesting clarification on “do pass” recommendations<sup>2</sup>). Appellate courts may not speculate upon the existence of facts that do not appear in the record. *City of Enumclaw v. Hunt*, 35 Wn. App. 470, 472, 667 P.2d 145 (1983). Courts should decline to reach hypothetical issues not raised by the facts presented. *Ward v. Board of County Comm’s, Skagit County*,

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<sup>2</sup> It is worth noting that “do pass” recommendations are not something that is done, or has ever been done, in San Juan County.



86 Wn. App. 266, 275, 936 P.2d 42 (1997) (court rejected due process challenge based on hypothetical facts).

Washington Courts generally do not render advisory opinions. *Walker v. Munro*, 124 Wn.2d 402, 418, 879 P.2d 920 (1994). Yet Amicus asks this Court to do just that when it requests clarity based on a series of hypothetical questions that may be faced by “a newspaper reporter or other citizen.” Amicus Brief, pg. 9. Though these questions might be appropriately addressed by the Court in a different case, the facts present in this case do not raise such issues. In this case, no evidence exists to support the elements of CAPR’s claims and no evidence exists to support the hypothetical situations raised by Amicus. Summary judgment was properly granted based upon the facts of this case and does not warrant further review.

**C. There is No Issue of Substantial Public Interest Present in this Case.**

Amicus states, “[h]ere the petition involves the scope of the public’s right to observe government decision-making – a matter of interest to any citizen affected by government policies.” Amicus Brief, pg. 4. Amicus then cites to the OPMA’s declaration contained in RCW 42.30.010.

Following this logic would mean that every OPMA case involves a “substantial public interest” which must be reviewed by the Washington Supreme Court. Yet, that is not the practice of the Court. Though Amicus presents a few OPMA cases in which review has been accepted, review is denied much more often. See, *Zink v. City of Mesa*, 162 Wn. App. 688, 256 P.3d 384 (2011), rev. denied, 173 Wn.2d 1010 (2012); *Zink v. City of Mesa*, 137 Wn. App. 271, 152 P.3d 1044 (2007), rev. denied, 162 Wn.2d 1014 (2008); *Eugster v. City of Spokane*, 121 Wn. App. 799, 91 P.3d 117 (2004), rev. denied, 153 Wn.2d 1012 (2005); *Eugster v. City of Spokane*, 128 Wn. App. 1, 114 P.3d 1200 (2005), rev. denied, 156 Wn.2d 1014 (2006); *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.)* 119 Wn. App. 665, 82 P.3d 1199, rev. denied, 152 Wn.2d 1023 (2004); *Eugster v. City of Spokane*, 118 Wn. App. 383, 76 P.3d 741 (2003), rev. denied, 151 Wn.2d 1027 (2004); *Heesan Corp. v. City of Lakewood*, 118 Wn. App. 341, 75 P.3d 1003 (2003), rev. denied, 151 Wn.2d 1029 (2004); *Eugster v. City of Spokane*, 110 Wn. App. 212, 39 P.3d 380, rev. denied, 147 Wn.2d 1021 (2002).

Merely involving the OPMA is not enough to raise an issue of substantial public interest. Amicus has not provided the Court with any reason why the issues of *this case* raise any such interest. Absent a

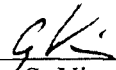
showing of substantial public interest, discretionary review is unwarranted and should be denied.

#### IV. CONCLUSION

For the reasons described above, San Juan County respectfully requests this Court deny discretionary review.

Respectfully submitted this 10<sup>th</sup> day of October 2014.

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PROSECUTING ATTORNEY

By:   
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Deputy Prosecuting Attorney  
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Appellant,

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SAN JUAN COUNTY, et al.

Respondents.

NO. 90500-2

CERTIFICATE OF  
SERVICE

Cathy S. Korth declares and states:

That I am now, and at all times hereinafter mentioned was, a citizen of the United States and a resident of San Juan County, state of Washington, over the age of 18 years, competent to be a witness in the above-entitled proceeding and not a party thereto; that on October 10, 2014, I caused to be delivered in the manner indicated below a true and correct copy of SAN JUAN COUNTY'S ANSWER TO AMICUS in the above-entitled cause to:

Mr. Dennis D. Reynolds  
200 Winslow Way West, Suite 380  
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Michelle Earl-Hubbard  
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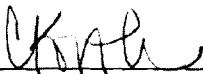
By First-Class Mail

Katherine George  
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2101 4<sup>th</sup> Ave. Ste. 1900  
Seattle, WA 98121-2315

By First-Class Mail

I make the foregoing statement under penalty of perjury of the laws of the state of Washington.

Dated this 10th day of October, 2014, at Friday Harbor, Washington.



---

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## OFFICE RECEPTIONIST, CLERK

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