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SUPREME COURT
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(Court of Appeals No. 47900-1-II)

SCHNITZER WEST, LLC, a Washington limited liability company,

Respondent,

v.

CITY OF PUYALLUP, a Washington municipal corporation,

Appellant,

and

NEIL ARTHUR VAN LIEROP, an individual, and VAN LIEROP INVESTMENT COMPANY, INC., a Washington company, and VAN LIEROP BULB FARMS, INC., a Washington Company,

Additional Parties.

ANSWER TO PETITION FOR REVIEW TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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TABLE OF CONTENTS

Page

I. IDENTITY OF APPELLANT AND INTRODUCTION 1
II. COURT OF APPEALS DECISION 3
III. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW 3
IV. RESTATEMENT OF THE CASE 4
 4.1 Legislative History of Ordinance No. 3067. 4
 4.2 Schnitzer's LUPA Appeal and Growth Management Hearings Board Petition. 7
 4.3 The Court of Appeals' Decision. 8
V. ARGUMENT WHY REVIEW SHOULD BE DENIED 9
 5.1 Ordinance No. 3067 Is Not a Land Use Decision Under LUPA. 10
 5.2 Ordinance No. 3067 Is Not a Site-Specific Rezone 12
  5.2.1 Enactment of Ordinance No. 3067 did not result from the request of any specific party 13
  5.2.2 The reach of Ordinance No. 3067 is not confined to a specific tract. 15
 5.3 Ordinance No. 3067 Is Not Subject to Review Under LUPA Because It Is a Legislative Enactment 16
 5.4 Ordinance No. 3067 Is Appealable Exclusively To the Growth Management Hearings Board. 17
VI. CONCLUSION 19

TABLE OF AUTHORITIES

Page

Cases

Adult Entertainment Center, Inc. v. Pierce County, 57 Wn. App. 435, 788 P.2d 1102 (1990) 17
Berst v. Snohomish County, 114 Wn. App. 245, 57 P.3d 273 (2002) 16
Bridgeport Way Community Ass'n v. City of Lakewood, CPSGMHB Case No. 04-3-0003 19
Citizens Alliance to Protect Our Wetlands v. City of Auburn, 126 Wn.2d 356, 894 P.2d 1300 (1995) 16
Durland v. San Juan County, 175 Wn. App. 316, 305 P.3d 246 (2013) .. 12
Harrington v. Spokane County, 128 Wn. App. 202, 114 P.3d 1233 (2005) 17
Horan v. City of Federal Way, 110 Wn. App. 204, 39 P.3d 366 (2002) .. 16
King County v. Central Puget Sound Growth Management Hearings Board, 91 Wn. App. 1, 951 P.2d 1151 (1998) 18
Kittitas County v. E. Wash. Growth Mgmt. Hr'gs Bd., 172 Wn.2d 144, 256 P.3d 1193 (2011) 19
Kittitas County v. Kittitas County Conservation Coalition, 176 Wn. App. 38, 308 P.3d 745 (2013) 12, 16, 19
Ralph v. Dept. of Natural Resources, 182 Wn.2d 242, 343 P.3d 342 (2014) 12
Raynes v. City of Leavenworth, 118 Wn.2d 237, 821 P.2d 1204 (1992) 16, 17
Samuel's Furniture, Inc. v. State Dept. of Ecology, 147 Wn.2d 440, 54 P.3d 1194 (2002) 11
Schnitzer West v. City of Puyallup, CPSGMHB Case No. 14-3-008 7
Schnitzer West, LLC v. City of Puyallup et al., No. 47900-1-II .... passim
Spokane County v. Eastern Washington Growth Management Hearings Board, 176 Wn. App. 555, 309 P.3d 673 (2013) 13
Woods v. Kittitas County, 162 Wn.2d 597, 174 P.3d 25 (2007) 13

Other Authorities

PMC 20.10.020 7
PMC 20.46 .... 4, 5, 6, 7
PMC 20.46.005-.015 5
WASHINGTON REAL PROPERTY DESKBOOK SERIES: Vol. 5 Land Use Planning (Wash. St. Bar Assoc. 4th ed. 2012) 5

Rules

RAP 13.4(b) 4, 9, 20
RAP 13.4(d) 3

Statutes

RCW 36.70A........ 18
RCW 36.70A.030(7) 18
RCW 36.70A.280........ 19
RCW 36.70A.280(1)(a) 18
RCW 36.70B.020(4) 11, 13, 14
RCW 36.70C........ 1, 3, 4, 9
RCW 36.70C.020........ 12
RCW 36.70C.020(2) 10, 14
RCW 36.70C.020(2)(a)........ 11, 14, 16
RCW 36.70C.030........ 10
RCW 36.70C.030(1)(a)(ii)........ 17
RCW 42.36.030 17
RCW 58.17.020(9)........ 15

I. IDENTITY OF APPELLANT AND INTRODUCTION

Appellant City of Puyallup hereby answers and opposes the November 17, 2016, Petition for Review filed by Respondent Schnitzer West, LLC in the above-captioned appeal. The underlying decision of the Court of Appeals is not merely consistent with all relevant judicial precedent, it is compelled by the plain, unequivocal language of Chapter 36.70C RCW, the Land Use Petition Act (LUPA).

The dispositive jurisdictional issue in this case is whether the local enactment challenged by Schnitzer, City of Puyallup Ordinance No. 3067, constitutes a "land use decision" under LUPA. Chapter 36.70C RCW unambiguously defines this term as a municipality's "final determination" on a party's "application" for a specific project permit or other governmental approval needed in order to develop property. LUPA jurisdiction does not exist without a project application.

As the Court of Appeals concluded below, Ordinance No. 3067 is not a land use decision under this standard. The local zoning code amendments contained in the ordinance were initiated by the Puyallup City Council itself; the measure is not, and does not purport to be, the City's "final determination" on any project-specific "application" submitted by Schnitzer or any other

party. Indeed, Ordinance No. 3067 does not evaluate or otherwise reference any particular development proposal whatsoever. The ordinance is instead comprised entirely of two components: Text amendments to the City's codified development regulations, and a previously-scheduled expansion of a local zoning map overlay to a large, multi-parcel area.

LUPA jurisdiction does not lie under these circumstances, and the Court of Appeals correctly dismissed Schnitzer's land use petition on this basis. The legislatively-processed code amendments enacted under Ordinance No. 3067 instead fall within the exclusive review authority of the Growth Management Hearings Board (GMHB) — where Schnitzer's separately-filed appeal is currently pending.

Contrary to Schnitzer's assertions, this case does not implicate a jurisdictional crisis in Washington land use law; subject matter jurisdiction under LUPA has always been expressly predicated upon a party's project-specific development proposal. As the Court of Appeals correctly concluded, no reported Washington case has ever recognized LUPA jurisdiction where the challenged local action did not result from a project proponent's formal permit application. Schnitzer's attempt to manufacture a conflict with existing precedent under these circumstances rings hollow. The instant case does not satisfy the standards governing the Supreme Court's acceptance of

review under RAP 13.4(b), and Schnitzer's Petition should be denied accordingly.

II. COURT OF APPEALS DECISION

Schnitzer's' Petition for Review seeks review of *Schnitzer West, LLC v. City of Puyallup et al.*, No. 47900-1-II, filed by Division Two of the Court of Appeals on October 18, 2016. *See* Petition for Review at 4.[1]

III. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Restating and supplementing[2] the issues identified in Schnitzer's Petition, the questions presented for this Court's review are properly framed as follows:

Issue No. 1: Is a local zoning ordinance a "land use decision" under RCW 36.70C where enactment of the ordinance was self-initiated by the municipality's legislative body and did not result from a separate party's application for a specific project permit or approval? NO.

Issue No. 2: Is a local zoning ordinance subject to superior court

[1] A copy of the Court of Appeals' October 18, 2016 decision is attached to Schnitzer's Petition for Review as Appendix A.

[2] Pursuant to RAP 13.4(d), an Answer to a Petition for Review may include issues that were raised but not decided in the Court of Appeals. Because the Court of Appeals dismissed Schnitzer's appeal solely based upon its conclusion that Ordinance No. 3067 was not a "land use decision" under LUPA, it did not reach the City's additional arguments concerning the size of the area currently affected by Ordinance No. 3067, the legislative character of the ordinance, and the GMHB's exclusive jurisdiction. *Schnitzer*, at 8, n.5; Appellant's Opening Brief at 20-21, 22-27. The City reasserts these issues, *infra* at Sections 5.2.2, 5.3 and 5.4, for purposes of answering Schnitzer's Petition.

jurisdiction under Chapter 36.70C RCW where the ordinance is purely legislative in character? NO.

Issue No. 3: Is a local zoning ordinance subject to superior court jurisdiction under Chapter 36.70C RCW where the ordinance is comprised entirely of development regulations that fall within the exclusive review authority of the Growth Management Hearings Board? NO.

Issue No. 4: Is a local zoning ordinance a site-specific rezone where the ordinance affects multiple parcels and was not enacted at the request of specific parties? NO.

Issue No. 5: Should this Court deny review pursuant to RAP 13.4(b) where the challenged Court of Appeals decision is consistent with all applicable precedent and where the case involves no issues of substantial public interest? YES.

IV. RESTATEMENT OF THE CASE

4.1 Legislative History of Ordinance No. 3067.

In 2009, the City of Puyallup adopted Puyallup Municipal Code (PMC) Chapter 20.46, which created a framework of alternate, use-specific "overlay" zones for the Shaw Road/East Pioneer area, a symbolic "gateway" to the City located near Puyallup's eastern boundary. *CP 205, 211. See*

Chapter 20.46 PMC *(CP 268-71).*[3] The Shaw/East Pioneer (SPO) overlay supplements base zoning standards in this area by establishing various use-specific regulations intended to promote creative, safe, attractive and environmentally sensitive development. *See* PMC 20.46.005-.015 *(CP 268-69).*

At the time the above-captioned appeal was initiated, Schnitzer was the contract purchaser of land commonly known as the Van Lierop property.[4] *CP 3.* Although the Van Lierop property was situated outside the Puyallup City limits when the City's SPO overlay zones were first adopted in 2009, Chapter 20.46 PMC included an express statement of the City's intent to extend the SPO overlay zone to that area when it was ultimately annexed. *CP 207.* Annexation of the Van Lierop property occurred in 2012, and the area was subsequently reclassified as "Limited Manufacturing" (ML) on the City's official zoning map. *CP 117, 317-21.*

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[3] Overlay zoning designations are a common means by which local jurisdictions may "augment their general zoning classifications with more detailed, property-specific" regulations. WASHINGTON REAL PROPERTY DESKBOOK SERIES: Vol. 5 Land Use Planning (Wash. St. Bar Assoc. 4th ed. 2012), §8.4(2).

[4] On November 15, 2016, two days before Schnitzer filed its Petition for Review to this Court, the company filed a Motion for Substitution of Parties in the Court of Appeals stating that the subject property had been transferred to an entity identified as Viking JV, LLC in July 2016. The City subsequently opposed the motion for substitution and filed a separate motion seeking Schnitzer's dismissal for lack of standing on December 2, 2016 and December 6, 2016, respectively. As of the date of this Answer, the Court of Appeals has not yet ruled on either motion.

In January 2014, the Puyallup City Council—*on its own initiative*—directed the City's Planning Commission and staff to analyze the potential expansion of the SPO overlay to the area north of East Pioneer Avenue. *CP 112-13, CP 205.* Following this legislative review process, the City Council ultimately proceeded with the expansion by adopting Ordinance No. 3067 on May 28, 2014. *CP 205-11.*

Ordinance No. 3067 added a new overlay zone for "limited manufacturing" (ML-SPO) uses to the SPO framework under Chapter 20.46 PMC. The scope of the SPO overlay under Puyallup's official zoning map was also extended to encompass the portion of the recently annexed area located north of East Pioneer Avenue that was already zoned Limited Manufacturing, including the Van Lierop property. *CP 205-11.* The remainder, and majority, of Ordinance No. 3067 contained amendments to the text of Chapter 20.46 PMC establishing development regulations for the new ML-SPO overlay zone. *Id.* These included regulations for outdoor storage uses; standards governing the design, size, setback and orientation of buildings; landscaping, open space and pedestrian infrastructure requirements; signage provisions; and stormwater management regulations. *CP 207-09.* These regulatory standards apply generally, and prospectively, to <u>all</u> current and future property covered by the ML-SPO overlay zone. *Id.*

Because the ordinance was initiated at the direction of the Puyallup City Council acting in its legislative capacity, the City followed its standard legislative procedures for amending the City's development regulations: the proposed amendments were vetted by the City's Planning Commission, subjected to a legislative public hearing, and ultimately codified as part of the land use regulatory framework set forth in the Puyallup Municipal Code. *CP 115-211. See* PMC 20.10.020.

At no time did Schnitzer or any other party apply for or otherwise request the code amendments contained in Ordinance No. 3067. Nothing in the ordinance identifies, or purports to render a determination on, any particular land use development application. *CP 205-11.*

4.2 Schnitzer's LUPA Appeal and Growth Management Hearings Board Petition.

Schnitzer filed a Petition for Review with the Central Puget Sound Growth Management Hearings Board challenging Ordinance No. 3067. *See Schnitzer West v. City of Puyallup*, CPGMHB Case No. 14-3-0008, Petition for Review.[5] The company also initiated the above-captioned action on June 17, 2014 by filing a Land Use Petition and Complaint in the Pierce County

[5] The GMHB appeal has been stayed by stipulation of the parties during the pendency of the above-captioned matter. *See Schnitzer West v. City of Puyallup*, CPSGMHB Case No. 14-3-008, Notice of Change of Presiding Officer and Order Granting Ninth Settlement Extension and Amending Schedule (October 11, 2016).

Superior Court. 3067. *CP 1-23.* After denying the City's motion to dismiss the appeal for lack of subject matter jurisdiction, *CP 422-25,* the Superior Court issued a final order on August 7, 2015, invalidating Ordinance No. 3067 on substantive, procedural and Appearance of Fairness grounds. *CP 676-80, 699-04.*

4.3 The Court of Appeals' Decision.

The City timely appealed the Superior Court's decision to Division Two of the Washington Court of Appeals. On October 18, 2016, the Court of Appeals issued a published opinion reversing the Superior Court and remanding the case for dismissal of Schnitzer's land use petition. *Schnitzer West, LLC v. City of Puyallup et al.*, No. 47900-1-II (October 18, 2016). The Court of Appeals rejected the Superior Court's characterization of Ordinance No. 3067 as a site-specific rezone and/or a land use decision under LUPA, noting that the well-established state law definitions of those terms include only local government zoning actions which result from the formal request or application of a specific party. *Id.* at 8-11 (citation omitted). As the Court of Appeals determined, LUPA jurisdiction does not apply where—as here—a local legislative body self-initiates zoning code amendments rather than acting upon an outside party's request for a project-specific permit or approval. *Id.*

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

The standards governing the Supreme Court's acceptance of discretionary review of a Court of Appeals decision are enumerated at RAP 13.4(b). In relevant part, review is granted only if the challenged appellate decision conflicts with existing precedent or involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

The instant case does not satisfy these criteria. The Court of Appeals' decision reflects the plain mandate of RCW 36.70C and is consistent with all relevant case law. No reported Washington case (and certainly none cited by Schnitzer) recognizes LUPA jurisdiction for local zoning enactments that are legislatively initiated by a city council rather than requested by a specific project permit applicant. All relevant authority instead supports the Court of Appeals' conclusion that local code amendments of this type are not "land use decisions" under LUPA. Supreme Court review of this case is unwarranted under RAP 13.4(b).

5.1 Ordinance No. 3067 Is Not a Land Use Decision Under LUPA.

A superior court's subject matter jurisdiction under LUPA is expressly limited to reviewing a local government's "land use decision". RCW 36.70C.030. A land use decision is defined as a municipality's binding administrative disposition on a project applicant's site-specific development proposal:

> "Land use decision" means a *final determination* by a local jurisdiction's body or officer with the highest level of authority to make the determination. . . *on*:
>
> (a) An *application* for a *project permit* or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used[.]
>
> . . . .

RCW 36.70C.020(2) (emphasis added).

The term "project permit" as used in RCW 36.70C.020(2) likewise refers exclusively to *project-specific* land use approvals, as distinct from legislative enactments that establish generally applicable regulations:

> "Project permit". . . means any land use or environmental *permit or license* required from a local government for a *project action*, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, *site-specific rezones* authorized by a comprehensive plan or subarea plan, *but excluding the*

> *adoption or amendment of* a comprehensive plan, subarea plan, or *development regulations* except as otherwise specifically included in this subsection.

RCW 36.70B.020(4) (emphasis added).

As the Court of Appeals concluded, Ordinance No. 3067 is not a land use decision under this definition for a basic, singular reason: The ordinance is not, and does not purport to be, the City of Puyallup's "final determination" on "an application for a project permit or other governmental approval". RCW 36.70C.020(2)(a). Enactment of Ordinance No. 3067 was self-initiated by the Puyallup City Council and did not result from a project permit application or any other site-specific approval request. *CP 205.* There is no reference whatsoever to any such "application" for a "project action" in the ordinance, much less any suggestion that the enactment was intended to serve as the City's "final determination" in this regard. *CP 205-11. See, e.g., Samuel's Furniture, Inc. v. State Dept. of Ecology*, 147 Wn.2d 440, 452, 54 P.3d 1194 (2002) (a "final determination" under LUPA is one that "reaches the merits and terminates the *permit process*") (emphasis added). Without a specific project permit application, there can be no final determination—and thus, no reviewable "land use decision" under LUPA.

No reported Washington authority has ever recognized LUPA jurisdiction in this context without the requisite development application by a

site-specific project permit applicant. The Court of Appeals' decision reflects this judicial consensus. Schnitzer's contrary argument disregards the "application" requirement of RCW 36.70C.020 in violation of the most basic principles of statutory construction, *see, e.g., Ralph v. Dept. of Natural Resources*, 182 Wn.2d 242, 248, 343 P.3d 342 (2014) (courts must interpret statutes to give effect to all words), and invites the type of jurisdictional encroachment under LUPA that Washington Courts have expressly forbidden:

> A superior court may not expand its statutory authority by varying LUPA's definition of a land use decision. Nor may the superior court expand its authority in a LUPA action by reviewing that which the legislature, in enacting LUPA, did not allocate to the court the authority to review.

Durland v. San Juan County, 175 Wn. App. 316, 324, 305 P.3d 246 (2013) (citation and internal punctuation omitted) (emphasis added), *aff'd*, 182 Wn.2d 55, 340 P.3d 191 (2014). This invitation was properly declined by the Court of Appeals.

5.2 Ordinance No. 3067 Is Not a Site-Specific Rezone.

The Court of Appeals' determination that Ordinance No. 3067 is not a site-specific rezone, *Schnitzer,* at 11, is also accordant with all relevant Washington authority. "A site-specific rezone is a change in the zone designation of a specific tract at the request of specific parties." *Kittitas County v. Kittitas County Conservation Coalition*, 176 Wn. App. 38, 50, 308

P.3d 745 (2013) (emphasis added) (citation and internal punctuation omitted); *see also Woods*, 162 Wn.2d at 611 n.7. Ordinance No. 3067 does not meet this definition.

5.2.1 Enactment of Ordinance No. 3067 did not result from the request of any specific party.

Certain types of site-specific rezones are indeed included by implication within the statutory definition of a "land use decision" under LUPA. *See* RCW 36.70C.020(2); RCW 36.70B.020(4). However, reclassifications of this type—like all other categories of local land use approvals governed by LUPA—constitute "land use decisions" under the statute only if they represent the municipality's "final determination" on a project-specific "application". *Id.* The code amendments contained in Ordinance No. 3067 were proposed by the City itself and thus did not originate from the "request" of Schnitzer or any other "specific parties." *CP 205.*

Schnitzer's mischaracterization of Ordinance No. 3067 as a site-specific rezone relies upon *Woods v. Kittitas County,* 162 Wn.2d 597, 174 P.3d 25 (2007), *Kittitas County v. Kittitas County Conservation Coalition,* 176 Wn. App. 38, 308 P.3d 745 (2013), and *Spokane County v. Eastern Washington Growth Management Hearings Board*, 176 Wn. App. 555, 309

P.3d 673 (2013). Petition for Review at 13-17. The Court of Appeals, however, accurately recognized that these cases are inapposite:

> Schnitzer fails to reconcile one aspect that is universally true in each case it cites, but is not true here. In each case on which Schnitzer relies, the site-specific rezone. . . was requested by a specific party and either approved or denied by the local government entity involved.

Schnitzer, at 10. As the *Schnitzer* Court correctly determined, the absence of a "request" from a "specific party" categorically removes any suggestion that Ordinance No. 3067 is a site-specific rezone.[6]

Schnitzer does not, and cannot, cite any Washington authority that conflicts with this holding. The company instead contends—absurdly—that the Puyallup City Council itself "requested" Ordinance No. 3067 and was thus a permit "applicant" for purposes of RCW 36.70C.020(2)(a). Petition for Review at 13. The Court of Appeals gave this argument appropriately short thrift, responding that "[a] public agency does not apply for a permit to itself nor does it apply for approval of its own action". *Schnitzer*, at 8. As the Court further noted, "Schnitzer does not point to any document in the record purporting to be the 'application' by the City to initiate consideration of

6 Schnitzer correctly notes that site-specific rezones authorized by a local comprehensive plan are subject to LUPA jurisdiction, while site-specific rezones requiring a comprehensive plan amendment are not. Petition for Review at 14-17. *See* RCW 36.70B.020(4); RCW 36.70C.020(2)(a). But this point is ultimately a red herring for purposes of the instant case, where the challenged ordinance is not a site-specific rezone in the first instance.

matters under its own zoning code", and the company's attempt to characterize Ordinance No. 3067 as resulting from the "specific request or application by a specific party" necessarily fails as a result. *Id.*, at 10-11. No Washington precedent contradicts this commonsensical holding.

5.2.2 The reach of Ordinance No. 3067 is not confined to a specific tract.

Schnitzer's characterization of Ordinance No. 3067 as a site-specific rezone is further undermined by the geographic scope of the enactment. A site-specific rezone is by definition a zoning reclassification of "a specific tract". *Kittitas County*, 176 Wn. App. at 50 (emphasis added). A "tract" is defined under Washington land use law as synonymous with "lot" or "parcel". *See, e.g.,* RCW 58.17.020(9). By their terms, the text amendments adopted under Ordinance No. 3067 apply uniformly to the City's entire new ML-SPO overlay district. The reach of these amendments currently affects a large (20+ acre) area containing multiple parcels[7], and the regulations adopted under the ordinance will apply to any other properties that may ultimately be added to the overlay area in the future. *CP 205-11.* The scope of Ordinance No. 3067 is not site-specific under this standard.

[7] Schnitzer's assertion that Ordinance No. 3067 affected only "a single tract of property", Petition for Review at 1, 13, is simply false under this well-established standard.

5.3 Ordinance No. 3067 Is Not Subject to Review Under LUPA Because It Is a Legislative Enactment.

LUPA jurisdiction also does not extend to Ordinance No. 3067 because of its wholly legislative character. Even if the ordinance had been enacted in response to the requisite "application" (it was not), RCW 36.70C.020(2)(a) categorically excludes from LUPA jurisdiction all "applications for legislative approvals". *See, e.g., Horan v. City of Federal Way*, 110 Wn. App. 204, 39 P.3d 366 (2002); *Berst v. Snohomish County*, 114 Wn. App. 245, 253-54, 57 P.3d 273 (2002). A hallmark of legislative action is that it involves "the enactment of a new general law of prospective application." *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 244-45, 821 P.2d 1204 (1992) (citation omitted).

Ordinance No. 3067 is unquestionably legislative under this standard, as it establishes a body of prospective, generally applicable land use regulations intended to govern all non-vested, unspecified future development within a designated zone. *CP 205-11.* The text amendments contained in the ordinance, *see CP 207-09,* are *per se* legislative in character. *See Raynes*, 118 Wn.2d at 248; *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 365-66, 894 P.2d 1300 (1995). Expansion of the City's SPO overlay to include additional areas, including the former Van Lierop property, is likewise area-wide—and thus legislative—as a matter of law because the

amendment affects more than one tract and did not result from the request of a specific party. *See Kittitas County*, 176 Wn. App. at 50. As Washington courts have long held, the legislative character of an ordinance is not changed merely because the enactment presently "affects. . . a limited area and involves readily identifiable individuals." *Raynes*, 118 Wn.2d at 241, 247-49 (zoning amendment was legislative even where only two parcels were potentially affected). The fact that a particular code amendment "has a high impact on a few people does not alter the fundamental nature of the decision" as legislative. *Id.* at 249. LUPA jurisdiction does not extend to local policy measures of this type.[8]

5.4 Ordinance No. 3067 Is Appealable Exclusively To the Growth Management Hearings Board.

Finally, LUPA does not apply to "[l]and use decisions of a local jurisdiction that are subject to review by. . . the growth management hearings board." RCW 36.70C.030(1)(a)(ii); *Harrington v. Spokane County,* 128 Wn. App. 202, 213, 114 P.3d 1233 (2005). Where a challenged action is subject to review by the GMHB, that measure is "outside the scope of a LUPA petition."

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[8] Neither the Appearance of Fairness doctrine nor the motives of individual council members are relevant where a municipality acts in a legislative capacity. RCW 42.36.030; *Adult Entertainment Center, Inc. v. Pierce County*, 57 Wn. App. 435, 441, 788 P.2d 1102 (1990).

King County v. Central Puget Sound Growth Management Hearings Board, 91 Wn. App. 1, 26-28, 951 P.2d 1151 (1998).

Under the Growth Management Act (GMA), the GMHB has exclusive jurisdiction over challenges to local "development regulations". *See* RCW 36.70A.280(1)(a). "Development regulations" are defined in relevant part by the GMA as "the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances[.]" RCW 36.70A.030(7). The Puyallup Municipal Code amendments (e.g., architectural design standards, setback requirements, signage provisions stormwater requirements, etc.) contained in Ordinance No. 3067 are precisely the type of local "controls placed on development or land use activities" over which the GMHB has exclusive jurisdiction. *CP 205-11. See* RCW 36.70A.030(7); RCW 36.70A.280(1)(a).

The zoning map amendment expanding the City's SPO overlay district under Ordinance No. 3067 is also subject to the GMHB's exclusive purview. Where—as here—an amendment to a local zoning map is adopted concurrently with text amendments to the city's code, the <u>entire</u> enactment falls within the Growth Board's subject matter jurisdiction:

> The Board holds that any action to amend... the text of a development regulation is a legislative action subject to the goals and requirements of RCW 36.70A, including the subject matter jurisdiction provisions of RCW

> 36.70A.280. Any amendment to the official zoning map that is proposed and processed concurrently with. . . development regulation text amendments is necessarily a legislative action subject to the goals and requirements of the GMA.

Bridgeport Way Community Ass'n v. City of Lakewood, CPSGMHB Case No. 04-3-0003, Final Decision & Order (July 14, 2004), at 8.[9]

The clarity of Washington law on this point belies Schnitzer's apocalyptic warning that challenges to enactments like Ordinance No. 3067 will somehow be orphaned and deprived of an appellate venue. Petition for Review at 17-19. Schnitzer's argument is also undermined by the company's own pending challenge of the ordinance before the GMHB—the correct forum for such appeals. Contrary to Schnitzer's assertion, there is no jurisprudential conflict, uncertainty or issue of substantial public importance implicated by this case.

VI. CONCLUSION

The Puyallup Municipal Code amendments enacted under Ordinance No. 3067 are the product of the City Council's self-initiated local legislative process and are subject to the exclusive review authority of the Growth Management Hearings Board. The ordinance does not purport to be a final

[9] As the administrative tribunal charged with construing and implementing the Growth Management Act, the GMHB's interpretations of the GMA planning framework are afforded "substantial weight" by Washington courts. *See, e.g., Kittitas County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 172 Wn.2d 144, 154, 256 P.3d 1193 (2011).

determination on any particular development application, and thus is not a site-specific rezone or any other type of land use decision under LUPA. The Court of Appeals' decision to this effect was well-reasoned and consistent with applicable precedent. Schnitzer does not, and cannot, demonstrate that the instant case satisfies any of the criteria enumerated at RAP 13.4(b), and its Petition should be denied.

RESPECTFULLY SUBMITTED this 19th day of December, 2016.

Respectfully submitted,

OGDEN MURPHY WALLACE, PLLC

By /s/ J. Zachary Lell
J. Zachary Lell, WSBA #28744
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CERTIFICATE OF SERVICE

I certify that on the date below, I e-filed this document with the Supreme Court at Supreme@courts.wa.gov, and provided copies of the foregoing upon the following counsel:

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DATED this 19th day of December, 2016

/s/ Charolette Mace
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