95864-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS NO. 761421

GREGORY AND JANETTE KOVSKY, husband and wife,

Petitioners,

v.

ROBERT FANFANT and MELANIE R. BISHOP, husband and wife, and KING COUNTY,

Respondents.

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Statutes and Regulations Page

King County Regulations Page

I. INTRODUCTION

The statute of limitations in the Land Use Petition Act ("LUPA"), Ch. 36.70C RCW, is strictly applied to the point that appeal rights can be lost before effective notice is given. The question of whether the absence of effective notice creates a constitutional problem has been avoided in prior cases because this Court has found no private property rights were at stake, so due process did not apply. *Durland v. San Juan County*, 182 Wn.2d 55, 75, 340 P.3d 191 (2014) (no private property right created by county code); *Samuel's Furniture, Inc. v. State, Dept. of Ecology*, 147 Wn.2d 440, 463, 54 P.3d 1194 (2002) (government agency has no due process rights). Given the Court of Appeals decision below, this issue can no longer be avoided.

In this case, King County adopted an ordinance to protect neighbors from the adverse effects of constructing large communication towers (*e.g.,* Ham radio towers) in neighboring yards. If the tower is more than 60 feet tall, the King County Code requires a conditional use permit to assure that the proposed tower is necessary and, if so, that it is designed to avoid unnecessary impacts on the neighborhood.

But here the permitting system did not work as designed. The proponents of an 89-foot tall tower (respondents Robert Fanfant and Melanie Bishop) did not apply for a conditional use permit nor did the County require one. The County did not provide notice to the neighbors,

including petitioners Gregory and Janette Kovsky, that a conditional use permit would not be required. The neighbors' first notice was seeing the tower constructed. But by then, according to the Court of Appeals, it was too late to challenge the project because LUPA's 21-day statute of limitations had expired.

The Court of Appeals referenced a building permit that had been issued for the tower in its decision. On an obscure page of the County's website, the County posts monthly a spreadsheet of all permits issued by the County. Within that list of hundreds of permits was a line referencing a building permit issued to Fanfant. There is no indication in the record that the public is aware that the County maintains a spreadsheet of recently issued permits on its website. Even if such knowledge existed, the spreadsheet would not satisfy due process standards of notice reasonably calculated to alert impacted individuals that they had 21 days to file a judicial challenge. If that notice were deemed sufficient, every property owner in King County would need to review the list of hundreds of permits every month to determine if any permit had recently been issued that might impact their property rights. Providing a spreadsheet buried on the County's website is not notice reasonably calculated to alert property owners that their property rights might be impacted.

The Court of Appeals held that this notice was sufficient to satisfy LUPA's requirements.[1] In doing so, it relied on this Court's ruling in *Samuel's Furniture,* but the Court of Appeals overlooked that in *Samuel's Furniture,* this Court did not address the due process issue (because the entity that complained about a lack of effective notice was a government agency that had no due process rights).

Justice Chambers warned over a decade ago that this Court has "painted [itself] into a corner" when it comes to LUPA's statute of limitations. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 418, 120 P.3d 56 (2005) (Chambers, concurring). Here, the Court of Appeals misconstrued the import of language from this Court's decision in *Samuel's Furniture* and, thereby, crossed the line into unconstitutional territory. This Court should accept review to address this constitutional issue. The issue also is of substantial public import given the wide use of LUPA in resolving land use permitting disputes.

The Court of Appeals also determined that the County had properly decided that a conditional use permit was not necessary for this project. The

[1] Similarly, the trial court's order notes that it was constrained by the strict application of LUPA's statute of limitations: "[g]iven controlling Supreme Court authority, Defendants' converted motions for summary judgment must be granted despite the County DPER's questionable decision to not require a conditional use permit (so as to allow for impacted neighbor input and consideration), and without providing actual notice to Plaintiffs." CP 357.

Fanfants have built an 89-foot tall, industrial style communication tower looming over the Kovskys' home and backyard. The Court of Appeals misconstrued the county code to eliminate the requirement that the project obtain a conditional use permit. According to the Court of Appeals, a private communication tower of any height could be built feet from a neighbor's property line with no review other than to assure it was structurally sound. Given that this code applies to all residential property throughout King County, the most populous county in the state, this code interpretation issue is of substantial public importance and provides independent cause for granting review.

II. IDENTITY OF PETITIONER

Gregory and Janette Kovsky, appellants, are the party filing this petition for review.

III. DECISION OF THE COURT OF APPEALS

The decision at issue is the unpublished decision on the merits in *Kovsky v. Fanfant, et. al*, Case No. 76142-1-I (April 16, 2018).

IV. ISSUES PRESENTED FOR REVIEW

1. Whether the decision of the Court of Appeals conflicts with the constitutions of the State of Washington and the United States by depriving the Kovskys of their due process rights by applying LUPA's 21-

day statute of limitations to the Kovskys when they received no effective notice of the land use decision.

2. Whether the Court of Appeals decision presents an issue of substantial public interest because adjacent property owners are being denied the ability to seek judicial review under LUPA.

3. Whether the Court of Appeals decision presents an issue of substantial public interest because the lower court's interpretation would allow for the development of private radio towers throughout all of King County's residential areas with no height restrictions.

V. STATEMENT OF THE CASE

Gregory and Janette Kovsky have lived in their family home in the Hunterswood neighborhood near Redmond, Washington for over a decade. CP 37. The Kovskys were drawn to the quiet streets, strong community, and park-like setting of the backyard when they purchased their home in 2004. CP 38. The backyard quickly became a focal point of their home. *Id*.

Robert Fanfant and Melanie Bishop own the home behind the Kovskys. The backyards are adjacent. *Id*. Both lots are zoned RA-5 (which is a rural residential zone). *See* KCC 21A.04.060(A).

In January 2016, upon returning home from a walk in their large, planned neighborhood of well-maintained homes, the Kovskys discovered

that Fanfant had erected an 89-foot tall, metal latticework, industrial-style, tower utilized for amateur, otherwise known as Ham, radio transmissions. CP 39. *See* Appendix A. The sight of the completed tower was the first indication they had that Fanfant was constructing a tower. CP 41. The Kovskys had not received any notice prior to the tower's construction. *Id*.

The fully constructed tower has a significant visual impact upon the Kovskys' home and backyard. CP 40. The tower is situated in such a way on Fanfant's property so that the tower is actually closer to and more visible from the Kovskys' home than it is to Fanfant's home. CP 39. The industrial appearance of the tower clashes with the professionally landscaped and well-maintained backyard. *Id*. The large metal latticework structure of the tower destroys the serene views that the Kovskys once enjoyed. *Id*.

The regulations applicable to minor communication facilities restrict towers in the residential RA-5 zone to a height of 60 feet with a setback of either 50 feet or the height of the tower, whichever is greater. KCC 21A.27.030. If the proposed structure exceeds the height limit, then the applicant must obtain a conditional use permit before construction can begin. KCC 21A.27.020. The Fanfant tower is 89-feet tall and less than 89 feet from the Kovsky property. Unless the project is exempt from the requirements in chapter 21A.27 KCC, a conditional use permit was required.

The regulations for minor communication facilities are designed to protect neighbors from the aesthetic and other impacts of industrial-styled communication towers of unlimited height sprouting up in residential neighborhoods. Pre-application, a community meeting must be held where the applicant must provide information evaluating whether existing structures or alternative sites are available that could be used in lieu of a new tower. KCC 21A.27.010(B). Further, a "listing of the sites, identified in writing and provided to the applicant at or before the community meetings, shall be submitted to the [county] department with the proposed application. Applicants shall also provide a list of meeting attendees and those receiving mailed notice and a record of the published meeting notice at the time of application submittal." *Id*. The applicant also must provide a map showing all existing transmission support structures or suitable nonresidential structures where the applicant could "colocate" antennas, rather than building a new structure to support the antennae. KCC 21A.27.080.

If co-location is not feasible, the applicant must take steps to minimize the visual intrusion of the new tower on the neighborhood. Minor communication facilities are subject to various visual compatibility standards, such as minimizing the appearance of antennae, designing the structure to blend with the existing surroundings to the maximum extent

feasible, and consideration of means of screening the communications facility. *See* KCC 21A.27.040; -.050. This entire process is designed to protect the interests of property owners in the immediate vicinity of the proposed tower.

Fanfant did not apply for a conditional use permit. CP 378. Fanfant did not conduct a community meeting to receive input on the tower's location from neighboring landowners. CP 379. Nor did Fanfant submit an alternatives analysis to King County. CP 380. King County did not require Fanfant to apply for a conditional use permit, either. The County did not assess whether the tower was located and designed to minimize impacts on surrounding properties or satisfied height and setback requirements relevant to its code. Because the County did not require a conditional use permit, no notice of the pending building permit application was provided to the neighbors and there was no "land use decision" on compatibility issues that Kovskys could appeal under LUPA.[2]

The only approval Fanfant obtained was a building permit. A building permit ensures that structures meet requirements for physical integrity, but does not address land use compatibility. RCW 19.27.020.

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[2] *See* RCW 36.70C.030 (LUPA provides process for judicial review only of "land use decisions" as defined in the act); RCW 36.70C.020 ("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 July 7, 2015, King County issued the building permit to Fanfant for the Ham radio tower. CP 109-110. King County and Fanfant did not provide notice to the Kovskys or other neighbors. CP 379. Instead, the only mention of the building permit was in a spreadsheet of issued permits, accessible only on a page of King County's website. CP 288-322. Fanfant's building permit is referenced on Row 423 (out of 435 rows). CP 321. The spreadsheet does not mention a minor communications facility, a conditional use permit, or give any indication whether a decision had been made on a conditional use permit. *Id*.

Fanfant did not construct his tower until January 2016, so the Kovskys did not have visual notice of any land use decision until months after the building permit had been issued. After extensive efforts to have the County correct its mistake in allowing the tower to be built without a conditional use permit, the Kovskys filed this lawsuit, alleging that the tower constituted a nuisance *per se*. CP 283–284; CP 1–9.

VI. ARGUMENT

A. The Court of Appeals Decision Creates a Conflict with the Due Process Guarantees of the Washington and United States Constitutions.[3]

The Court of Appeals decision deprives the Kovskys of their due process rights. Rather than construe LUPA to avoid a constitutional problem, the Court of Appeals decision manufactures one. Washington courts "are obliged to construe [every] statute in a way that is consistent with its underlying purpose and *avoids constitutional deficiencies*." *State v. Crediford*, 130 Wn.2d 747, 755, 927 P.2d 1129 (1996) (emphasis supplied). The decision below violates this basic rule.

No person may be deprived of a constitutional or state-created property right without due process of law. *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 962, 954 P.2d 250 (1998). The first step in the analysis is whether the Kovskys have a property right protected by the Due Process Clause. It is well-established that a "zoning ordinance can create a property right." *Asche v. Bloomquist*, 132 Wn. App. 784, 798, 133 P.3d 475 (2006). The issue is whether the zoning code "requires the permitting authority to consider the views of neighboring property owners." *Durland, supra,* 182 Wn. 2d at 72.

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[3] Because the due process clauses of the two constitutions provide similar protections in this context, we construe the federal constitution protections only. *See State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

The development standards for minor communications facilities within the King County Code were unquestionably intended to benefit neighboring property owners and created a recognizable property right for the Kovskys. The code requires any applicant for a minor communication facility to mail individual notice to all property owners within five hundred feet of the site and hold a community meeting on the proposal, where neighbors can identify alternatives sites. KCC 21A.27.010(A)(2); (B). The development standards also impose several "visual compatibility standards" that explicitly require the applicant to minimize the ability to view the structure from "existing residences." KCC 21A.27.040; -050.[4]

Because the Kovskys possess a cognizable property interest, the next question for the Court is whether the Court of Appeals decision denies the Kovskys the procedural protections guaranteed by the federal constitution. The most basic tenet of due process is that citizens must have notice and an opportunity to oppose government actions that harm them. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). As this Court has held, "[o]ne of the basic touchstones of due process in any proceeding is notice

[4] Thus, in *Asche*, the court found that a property right existed where the relevant zoning ordinance required consideration of the views of neighboring residences. 132 Wn. App. at 784. In contrast, the height restrictions in the county code in *Durland* made no reference to maintaining the neighbors' views and, therefore, did not create a private property right. 182 Wn.2d at 74 (height limits at issue "exist to protect public visual access, not private views").

reasonably calculated under all the circumstances to apprise affected parties of the pending action and afford them an opportunity to present their objections." *Barrie v. Kitsap County*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1974).

The United States Supreme Court has long recognized that "when notice is a person's due, process which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). In *Mullane*, the court found notice by publication in a newspaper was inadequate for known beneficiaries of a common trust fund and that "[c]hance alone brings to the attention of a local resident an advertisement in small type inserted in the back pages of a newspaper . . ." *Id*. The Supreme Court concluded that the statutorily-required notice published in a newspaper for "known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." *Id*. at 319. *See also Jones v. Flowers*, 547 U.S. 220 (2006) (merely publishing notice in newspaper without posting notice at address or taking other measures reasonably available to notify taxpayer of sale of property after mailed notice was returned violated due process); *Passalino v. City of Zion*, 237 Ill.2d118, 928 N.E.2d 814 (2010) (notice by publication

was not reasonably calculated to inform plaintiffs of a proposed zoning map amendment when trustee of land could have been easily ascertained).

Likewise, in *Responsible Urban Growth Group v. City of Kent*, 123 Wn.2d 376, 868 P.2d 861 (1994), a city gave notice of a rezone by providing a vague reference to the rezone in the agenda of a city council meeting. Notice was not mailed to property owners surrounding the subject property nor was notice published in the newspaper of record. The court upheld the trial court's finding that the notice violated due process requirements. *Id.* at 386–387.

Here, the Court of Appeals has construed LUPA to trigger the statute of limitations at a time in the process that was "wholly inadequate for one whose first notice of a land use action is actual notice of work on the property." *Habitat Watch*, 155 Wn.2d at 420 (Chambers, concurring). At that point, in 21 days or less, the person "must discover what government action has been taken, arrange for representation, and determine the appropriate course of action to follow." *Id.*

The Kovskys did not receive effective notice of the building permit issued for the Fanfant tower. The grossly inadequate notice consisted of a reference to a building permit for an unspecified project on a spreadsheet within an obscure page of the County's website — a list that included hundreds of recently issued permits throughout the county, including a

summer picnic for a pediatric group, the installation of fire alarms and French doors, and, most commonly, the installation of furnaces, air conditioners, and heat pumps. CP 288–322. There is no reason for members of the public to review the list monthly (which is what would be required to spot a permit that might impact property rights and have time to obtain the permit, review the file, obtain legal counsel, and file a lawsuit within 21 days of the permit's issuance).

To meet constitutional muster, notice that merely complies with statutory notice requirements may not be sufficient. *Mullane*, 339 U.S. at 319. Thus, the Court of Appeals' reference to the county code proclamation that electronic notification "shall be deemed satisfactory" (Opinion at 5) misses the point. The constitution demands more.

When private property rights are at stake, the notice must be "reasonably calculated" to reach the people who may be impacted and provide them with sufficient information to protect their rights. *Mullane,* 339 U.S. at 314. Here, there simply are no facts to support a claim that listing the permit among hundreds of other permits on an obscure spreadsheet makes a reasonable effort to display permits for public notice in a way reasonably calculated to give notice to nearby property owners. The King County Code itself demonstrates that there are readily available, reasonable steps to notify affected property owners, such as neighborhood

meetings and individualized notice within 500 feet. KCC 21A.27.010(A)(2); (B); *Jones*, 547 U.S. at 234. But that kind of notice, reasonably calculated to reach the intended audience, was not provided here.

Either LUPA should be construed to cut off the Kovskys' rights only after adequate notice is provided or, if LUPA is being correctly construed to cut off an individual's property right without adequate notice, then the statute itself is unconstitutional. This court should accept review and either clarify the case law to avoid this unconstitutional result or hold that LUPA itself is unconstitutional, to the extent that it would cut off property owners' rights to protect their property interests without due process of law.

B. The Ability of Neighboring Property Owners to Appeal Land Use Decisions is of Substantial Public Interest.

Not only does this case create conflict with the constitutions of the State of Washington and the United States, but it also creates an issue of substantial public interest by considerably restricting the ability of neighboring property owners to challenge development that impacts their property rights.

The lower court's decision undermines LUPA's purpose to "establish[] uniform, expedited appeal procedures and uniform criteria for reviewing such decision, in order to provide consistent, predictable, and

timely judicial review." RCW 36.70C.010. One of LUPA's purposes is to provide citizens with the opportunity to appeal land use decisions that are contrary to law and do harm to their community. "Timely" judicial review does not mean that there should be no judicial review at all.

The appeal procedures under LUPA have become anything but uniform — neighboring property owners are left guessing which permits are necessary to appeal and whether they will receive notice for some permits and not others. Similarly, judicial review is not consistent or predictable. Quite the opposite has occurred, where some permits can be reviewed if the applicant has received notice, where other permits that are issued without notice cannot be reviewed. The issue present in this case — requiring an aggrieved party to challenge a permit without any effective notice — further compounds the problems of this incoherent judicial review process. This Court should revisit the LUPA appeal process to fulfill one of the underlying purposes of LUPA — access to the courts.

C. The Court of Appeal's Decision Would Allow the Development of Towers with No Height Restrictions.

The Court of Appeals decision involves an issue of substantial public interest because it would create a loophole within the King County Code that would allow towers to be built with no height restrictions in all of King County's residential zones (and many other zones, too). The lower

court's decision is contrary to the plain language and intention of the King County Code and could lead to absurd results, such as a person building a "minor communications facility" that is 500 feet tall (or higher) in a residential zone with absolutely no compatibility review. This erroneous interpretation of the King County Code creates an issue of substantial public interest for everyone living in a residential zone in King County.

Two separate chapters of the King County Code deal with communications facilities: Chapter 21A.26 and Chapter 21A.27. There is no question that Ham radio stations are exempt from the requirements of Chapter 21A.26. KCC 21A.26.020(G) ("The following are exempt **from this chapter** [Ch. 21A.26 KCC] . . .) (emphasis supplied). But by the explicit terms of that section, those exemptions only shelter an exempt facility from the requirements of Chapter 21A.26. By its own terms, the facilities listed in 21A.26.020(G) are not exempt from the requirements in Chapter 21A.27.

Of course, this is a logical outcome — it is nonsensical for the King County Code to exempt an 89-foot tall tower like the Fanfant tower (or, for that matter, a 589-foot tower) from any and all land use regulations.

The Court of Appeals erred by holding that the exemption for Ham radio stations from the requirements in Chapter 21A.26 KCC also exempts Ham radio towers from Chapter 21A.27 KCC. To justify this extension of

the Ham radio exemption, the lower court pointed to a section of the code, KCC 21A.26.030, that dealt with conflicts between the requirements for minor communications facilities (KCC Ch. 21A.27) and communications facilities in general (KCC Ch. 21A.26):

> All communication facilities that are not exempt under K.C.C. 21A.26.020 shall comply with **this chapter** as follows:
>
> ***
>
> D. New, modified or consolidated minor communication facilities shall comply with the standards of this chapter and K.C.C. chapter 21A.27. In the case of conflict between this chapter and K.C.C. chapter 21A.27, [K.C.C.] chapter 21A.27 shall apply.

KCC 21A.26.030 (emphasis supplied). The Court of Appeals viewed subsection D as providing the only basis for subjecting minor communication facilities to the requirements of Chapter 21A.27 KCC. And because the preamble refers to non-exempt communication facilities, the court concluded that this provision requiring non-exempt facilities to comply with Chapter 21A.27 KCC did not apply to Ham radio facilities (because they are exempt). Opinion at 9 ("KCC 21A.26.030(D) never applies to exempt facilities").

The Court of Appeals' analysis ignores that KCC 21A.26.030 is specifying the applicability of Chapter 21A.26, not Chapter 21A.27: "All communication facilities that are not exempt under KCC 21A.26.020 shall

comply **with this chapter as follows**: . . ." Subparagraphs A, B and C then list particular sections of Chapter 21A.26 KCC applicable to various types of communication facilities. The section ends with subsection D that makes clear that minor communication facilities also must comply with chapter 21A.27 (and, if there is a conflict between the two chapters, Chapter 21A.27 KCC takes precedence).

The applicability of Chapter 21A.27 KCC to all minor communication facilities does not depend on KCC 21A.26.030. By its own terms, Chapter 21A.27 KCC applies to all minor communication facilities. There are no exemptions in that chapter for Ham radio stations utilizing separately built towers.

The Ham radio exemption in KCC 21A.26.020 is expressly limited to exempting Ham radio stations from Chapter 21A.26 KCC. When KCC 21A.26.030(D) states the rules for facilities that are not exempt from Chapter 21A.26 and explains the precedence of Chapter 21A.27, it is not suggesting that exemptions explicitly limited to chapter 21A.26 are now also applicable to Chapter 21A.27. The Court of Appeals' convoluted construction is at odds with the plain language of the exemptions which are limited to Chapter 21A.26 KCC. If the County Council intended to exempt facilities from the requirements of Chapter 21A.27 KCC, it certainly had more direct, unambiguous means of saying so.

The Court of Appeals construction also violates the rule that ordinances should be construed to avoid absurd results. *State v. Dennis,* 200 Wn. App. 654, 658, 402 P.3d 943 (2017). Under the Court of Appeals' ruling, the sky is literally the limit. Fanfant could have built the Ham radio tower to a height of 500 feet or more, and there would be nothing in the King County Code that would prevent Fanfant from doing so. Such an interpretation is contrary to the plain language and intent of the code. Because these rules apply throughout all residential zones in King County (KCC 21A.27.020), the ruling creates an issue of substantial public interest.

VII. CONCLUSION

For the foregoing reasons, the Kovskys respectfully request that this Court grant discretionary review of this matter. The lower court's decision conflicts with the constitutions of the State of Washington and the United States, and it has also created issues of substantial public interest that this Court should resolve.

Dated this 16th day of May, 2018.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

EXHIBIT B

EXHIBIT C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GREGORY and JANETTE KOVSKY, husband and wife, Appellants,	)	No. 76142-1-I
v.	)	DIVISION ONE
ROBERT FANFANT and MELANIE R. BISHOP, husband and wife, and KING COUNTY, Respondents.	)	UNPUBLISHED OPINION
	)	FILED: April 16, 2018

TRICKEY, J. — Robert Fanfant obtained a permit to construct an 89-foot tall amateur (Ham) radio tower on the residential property he shares with Melanie Bishop.[1] Gregory and Janette Kovsky, Fanfant's neighbors, brought a nuisance suit against Fanfant and King County. The trial court granted summary judgment in favor of Fanfant and King County because the suit was time barred by the Land Use Petition Act (LUPA), chapter 36.70C RCW. The Kovskys appeal the trial court's order of summary judgment for Fanfant and King County. Finding no error, we affirm.

FACTS

The Kovskys have lived in their home in Redmond, Washington for over twelve years. In 2015, Fanfant purchased a neighboring home. The two homes are adjacent, share a common boundary line, and are separated by a wooden

[1] This opinion refers to Robert Fanfant as Robert, and Robert Fanfant and Melanie Bishop collectively as Fanfant where applicable. No disrespect to the parties is intended.

fence. The properties are zoned RA-5.[2]

Robert is a licensed Ham radio operator. When Fanfant bought the home, Robert intended to install an 89-foot antenna and tower on the property. Prior to buying the home, Robert visited the King County Department of Permitting and Environmental Review (DPER) and inquired into the permitting process for a Ham radio tower.

In May 2015, Fanfant submitted a building permit application for the Ham radio tower. DPER approved the permit on July 7, 2015, and posted notice of the issuance of the building permit on its website on July 31, 2015. DPER staff inspected the completed Ham radio tower, and the permit received final approval on September 28, 2015.

The Kovskys were not notified of Robert's plans to build the Ham radio tower or the issuance of the building permit. They had observed construction activity on Fanfant's property, including tree removal and construction of a metal structure. On January 31, 2016, the Kovskys returned from a walk to discover that an 89-foot tall metal latticework structure with horizontally protruding antennae had been erected in Fanfant's yard. The tower is closer to the Kovskys' home than Fanfant's home and highly visible from both the Kovskys' backyard and inside their house.

The Kovskys contacted King County for more information about the Ham radio tower. On February 9, 2016, the Kovskys learned that Robert had obtained a building permit and that the Ham radio tower had passed the DPER final

[2] RA-5 is a rural area, with one dwelling per 5-acre lot.

inspection. King County informed them that no community notice was required or provided during the permitting process.

The Kovskys also learned that DPER had opened a code enforcement investigation into the Ham radio tower due to complaints from Fanfant's neighbors. The code enforcement officer found that licensed Ham radio stations are allowed in all classes of property zones and are considered an accessory residential use. The enforcement officer also found that Ham radio towers are exempt from the development standards for communication facilities, but require a building permit. The enforcement officer concluded that Fanfant's Ham radio tower was allowed and that all required permits and approvals had been obtained. The enforcement officer closed the code enforcement inquiry on January 27, 2016.

On February 22, 2016, the Kovskys filed suit against Fanfant and King County alleging that the Ham radio tower is a nuisance in fact and law. They alleged that Fanfant had failed to comply with zoning and permit requirements when constructing the Ham radio tower. The Kovskys sought review of the building permit, an injunction requiring removal of the tower and antenna, and a writ of mandamus directing King County to enforce its land use regulations.

The parties moved for summary judgment. The trial court concluded that it lacked the necessary jurisdiction under LUPA, RCW 36.70C.040. The trial court granted summary judgment in favor of Fanfant and King County and dismissed the case. The Kovskys appeal.

ANALYSIS

The parties filed cross motions for summary judgment, and the trial court granted summary judgment in favor of Fanfant and King County. Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); Macias v. Saberhagen Holdings, Inc., 175 Wn.2d 402, 408, 282 P.3d 1069 (2012). "By filing cross motions for summary judgment, the parties concede there were no material issues of fact." Pleasant v. Regence BlueShield, 181 Wn. App. 252, 261, 325 P.3d 237 (2014). The appellate court reviews an order of summary judgment de novo. Enterprise Leasing, Inc. v. City of Tacoma, 139 Wn.2d 546, 551, 988 P.2d 961 (1999).

Because the trial court granted summary judgment following cross motions by the parties, we need only examine the legal issues presented and review them de novo.

LUPA

The trial court granted summary judgment in favor of Fanfant and King County because the case was time barred by LUPA. The Kovskys argue that summary judgment was improperly granted because LUPA does not apply to their nuisance claim.

LUPA is the exclusive means of judicial review of land use decisions. RCW 36.70C.030(1); see Habitat Watch v. Skagit County, 155 Wn.2d 397, 407, 120 P.3d 56 (2005). LUPA was established to create "uniform, expedited appeal procedures and uniform criteria" for reviewing land use decisions "in order to provide

consistent, predictable, and timely judicial review." RCW 36.70C.010. To this end, LUPA requires that a party appeal a land use decision within 21 days of issuance. RCW 36.70C.040(3).

Under LUPA, a land use decision is issued (1) three days after a written decision is mailed or notice is provided that the decision is publically available, (2) the date a legislative body sitting in a quasi-judicial capacity passes the ordinance or resolution, or (3) the date the decision is entered into the public record if the decision is not written or an ordinance or resolution. RCW 36.70C.040(4)(a)-(c). If a claim is not filed within 21 days, the claim is time barred and the trial court may not grant review. RCW 36.70C.040(2). The procedural requirements, including this time limitation, must be strictly met before a trial court's appellate jurisdiction under LUPA is properly invoked. Citizens to Preserve Pioneer Park, LLC v. City of Mercer Island, 106 Wn. App. 461, 467, 24 P.3d 1079 (2001). This deadline is stringently enforced and applies even to erroneous or illegal land use decisions. Chumbley v. Snohomish County, 197 Wn App. 346, 359, 386 P.3d 306 (2016).

The issuance of a building permit constitutes a land use decision under LUPA. Asche v. Bloomquist, 132 Wn. App. 784, 790, 133 P.3d 475 (2006). A building permit is best classified as a written decision, which is considered issued three days after the decision is mailed or the date on which the local jurisdiction provides notice that a written decision is publically available. Habitat Watch, 155 Wn.2d at 408.

The King County Code (KCC) establishes the notice requirements for issuing building permits. A building permit is a Type 1 decision made by the

director or designee of DPER. KCC 20.20.020(A)(1). Type 1 decisions require public notice, which may be provided electronically. KCC 20.20.062. This notice "shall be deemed satisfactory despite the failure of one or more individuals to receive notice." KCC 20.20.062.[3]

Here, the July 7, 2015 building permit was the land use decision. DPER posted notice of Fanfant's approved building permit on its website on July 31, 2015. Therefore, the 21-day time period to appeal the issuance of Fanfant's building permit began on July 31, 2015. The Kovskys filed their complaint on February 22, 2016, which is substantially more than 21 days after issuance of the building permit. Therefore, the trial court correctly determined that the Kovskys' complaint was time barred under LUPA and granted summary judgment in favor of Fanfant and King County.

Minor Communication Facility

The Kovskys argue that their claim is not subject to the strict deadline in LUPA because they are not challenging the issuance of the building permit. Instead, the Kovskys argue that Fanfant's Ham radio tower is a nuisance per se because Fanfant failed to obtain a conditional use permit (CUP) in compliance with the development standards applicable to minor communication facilities. Because the Ham radio tower[4] is exempt from the development standards governing minor communication facilities, the Kovskys' distinction fails.

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[3] DPER posts notice of approved building permits online on its website.

[4] At oral argument the Kovskys made a brief reference to the possibility that Fanfant's Ham radio tower is not a "station" exempted under KCC 21A.26.020(G). Wash. Court of Appeals oral argument, Kovsky v. Fanfant, No. 76142-1-I (Nov. 3, 2017), at 18 min., 57 sec. to 19 min., 17 sec. We do not consider arguments made outside the briefing. RAP 10.3.

The KCC's zoning regulations govern the siting for towers and antennas for communication facilities. Ch. 21A.26 KCC. The goal of these zoning requirements is to minimize the number and visual impact of communication facilities' towers and antennas. KCC 21A.26.010. Minor communication facilities have their own, separate development standards. Ch. 21A.27 KCC.

The category of minor communication facilities includes facilities for the transmission and reception of two-way radio signals. KCC 21A.06.215. New transmission support structures for minor communication facilities must comply with extensive preapplication procedures and review. KCC 21A.26.030(D); ch. 21A.27 KCC. These requirements include obtaining a CUP for transmission support structures that will be over 60-feet tall when completed. KCC 21A.27.020, .030.

Determining whether the Ham radio tower is subject to the regulations of a minor communication facility, and therefore subject to the regulations governing such facilities, requires examination of KCC ordinances. In construing ordinances and statutes, the goal "is to effectuate legislative intent, giving effect to the plain meaning of ordinary statutory language and the technical meaning of technical terms and terms of art." Foster v. Wash. State Dep't of Ecology, 184 Wn.2d 465, 471, 362 P.3d 959 (2015). The same rules of construction apply to interpretation of municipal ordinances as to statutes. Faciszewski v. Brown, 187 Wn.2d 308, 320, 386 P.3d 711 (2017). Interpretation of the law is de novo. Foster, 184 Wn.2d at 471. But appellate courts "give considerable deference to the agency charged

with enforcing an ordinance where the ordinance is ambiguous." Asche, 132 Wn. App. at 797.

Ham radio is a two-way signal. As such, Ham radio towers meet the definition of a minor communication facility. KCC 21A.06.215(A)(1). Therefore, Ham radio towers would ordinarily be required to adhere to the development standards of a minor communication facility under chapter 21A.27 KCC.

But, Ham radio stations are not subject to the provisions of chapter 21A.27 KCC. The KCC exempts licensed Ham radio stations from the provisions of chapter 21A.26 KCC and permits them in all zones. KCC 21A.26.020(G). Ham radio stations are also exempt from the standards and process requirements for minor communication facilities.

> All communication facilities that are not exempt under K.C.C. 21A.26.020 shall comply with this chapter as follows:
>
> . . . .
>
> D. New, modified or consolidated minor communication facilities shall comply with the standards of this chapter and K.C.C. chapter 21A.27. In the case of a conflict between this chapter and K.C.C. chapter 21A.27, [K.C.C.] chapter 21[A].27 shall apply.

KCC 21A.26.030. Because Ham radio towers are exempt under KCC 21A.26.020(G), they are not required to comply with the standards of chapters 21A.26 and 21A.27 KCC, as described in KCC 21A.26.030(D). Only those facilities that are not exempt are subject to the stipulated regulations. KCC 21A.26.030.

Thus, while Ham radio towers are two-way radio facilities, they are specifically excluded from the regulations for minor communication facilities. Due

to this blanket exemption, Fanfant's 89-foot Ham radio tower was exempt from the more stringent application process for minor communication facilities in chapter 21A.27 KCC.

The Kovskys contend that the Ham radio exemption in KCC 21A.26.020(G) only applies to provisions of chapter 21A.26 KCC, and Fanfant was, therefore, required to comply with the development standards for minor communication facilities in chapter 21A.27 KCC. The Kovskys support this argument with reference to the specification in KCC 21A.26.030(D), that chapter 21A.27 KCC governs if the two chapters conflict.

This argument ignores the language of KCC 21A.26.030. Compliance with the standards of chapters 21A.26 and 21A.27 KCC applies only to communication facilities that are *not* exempt under KCC 21A.26.020. KCC 21A.26.030(D) never applies to exempt facilities. As an exempt facility, Ham radio stations are not required to comply with the standards for minor communication facilities as outlined in KCC 21A.26.030(D).

Because of the exemption, the 89-foot tall Ham radio tower was not subject to the extensive preapplication processes and CUP requirement of chapter 21A.27 KCC. Fanfant was only required to obtain a building permit for his Ham radio tower.

The building permit issued for Fanfant's Ham radio tower was a land use decision under LUPA. Any challenge to the building permit was subject to LUPA's procedural requirements. Because the Kovskys did not file their challenge within the strict 21-day appeal period, the Kovskys' LUPA claim is time barred and the

trial court lacked jurisdiction to hear the challenge. We conclude that the trial court properly granted summary judgment in favor of Fanfant and King County.

Notice Requirement

The Kovskys contend that their claim is not time barred because they filed suit within 21 days of receiving actual notice of the building permit. We disagree, because LUPA only requires general notice to begin the appeal period.

"LUPA does not require that a party receive individualized notice of a land use decision in order to be subject to the time limits for filing a LUPA petition." Samuel's Furniture, Inc. v. State, Dep't of Ecology, 147 Wn.2d 440, 462, 54 P.3d 1194 (2002), 63 P.3d 764 (2003). Instead, "LUPA seems to require merely that a local jurisdiction provide general public notice by virtue of publication of the land use decision." Samuel's Furniture, 147 Wn.2d at 462.

Here, the record clearly shows that the permit was granted on July 7, 2015, and DPER published notice of the building permit on its website by July 31, 2015. The DPER's online posting constituted general notice and began the appeal period. Individualized, actual notice was not required to start LUPA's time limit to file an appeal, which then expired well before the Kovskys filed their suit. Therefore, the Kovskys' suit was time barred.

Attorney Fees on Appeal

Fanfant requests reasonable attorney fees on appeal as the prevailing party in an appeal of a land use decision.

The prevailing party on appeal of a decision by a county to issue, condition, or deny a development permit involving a building permit is entitled to reasonable

attorney fees and costs. RCW 4.84.370(1). The prevailing party on appeal must have been the prevailing party or substantially prevailing party before the county and in all prior judicial proceedings. RCW 4.84.370(1)(a), (b). To be entitled to fees on appeal, a party must prevail in at least two courts. Habitat Watch, 155 Wn.2d at 413. "Prevailing" includes jurisdictional wins. Durland v. San Juan County, 182 Wn.2d 55, 78-79, 340 P.3d 191 (2014).

Here, Fanfant successfully obtained a building permit from King County and prevailed in both the trial court and this court. As the prevailing party at all levels of this case, Fanfant is entitled to fees incurred on appeal to this court.

Affirmed.

Trickey, J

WE CONCUR:

Cox, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

GREGORY and JANETTE KOVSKY, husband and wife, Appellants, v. ROBERT FANFANT and MELANIE R. BISHOP, husband and wife, and KING COUNTY, Respondents.	)	No. 76142-1-I ORDER GRANTING MOTION FOR RECONSIDERATION IN PART AND DENYING IN PART, AND WITHDRAWING OPINION AND SUBSTITUTING OPINION

The appellants, Gregory and Janette Kovsky, have filed a motion for reconsideration. The respondents, Robert Fanfant and Melanie Bishop, and King County, have filed answers. The court has taken the matter under consideration and has determined that the motion for reconsideration should be granted in part and denied in part.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is granted in part as to the scrivener's errors in the opinion and denied in part as to the remaining issues; and, it is further

ORDERED that the opinion in the above-referenced case filed on February 12, 2018, is withdrawn and a substitute opinion be filed in its place.

FOR THE COURT:

Trickey, J.

Dwyer, J.

Cox, J.

21A.26 DEVELOPMENT STANDARDS - COMMUNICATION FACILITIES

Sections:

21A.26.010 Purpose. The purpose of this chapter is to establish guidelines for the siting of towers and antennas. The goals of this chapter are to:

A. Encourage the location of towers in nonresidential areas and minimize the total number of towers throughout the community;

B. Strongly encourage the joint use of new and existing tower sites;

C. Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;

D. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;

E. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently; and

F. Limiting exposures to NIER consistent with Federal Communication Commission statutes. (Ord. 13129 § 12, 1998: Ord. 10870 § 490, 1993).

21A.26.020 Exemptions. The following are exempt from the provisions of this chapter and shall be permitted in all zones:

A. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the Federal Communications Commission (FCC);

B. Machines and equipment that are designed and marketed as consumer products, such as microwave ovens and remote control toys;

C. The storage, shipment or display for sale of transmission equipment;

D. Radar systems for military and civilian communication and navigation;

E. Hand-held, mobile, marine and portable radio transmitters and/or receivers;

F. Two-way radio utilized for temporary or emergency services communications;

G. Licensed amateur (Ham) radio stations and citizen band stations;

H. Earth station downlink using satellite dish antennas with a diameter of less than 12 feet provided that stations in excess of one dish antennas are subject to conditional use permits;

I. Receive-only satellite dish antennas as an accessory use; and

J. Two-way radio antennas, point-to-point microwave dishes, and personal wireless service antennas that are not located on a transmission structure (lattice towers and monopoles); and

K. Any maintenance, reconstruction, repair or replacement of a conforming or nonconforming communication facility, transmission equipment, transmission structure or transmitter building; provided, that the transmission equipment does not result in noncompliance with K.C.C. 21A.26.100 and 21A.26.130.

L. In the event a building permit is required for any emergency maintenance, reconstruction, repair or replacement, filing of the building permit application shall not be required until 30 days after the completion of such emergency activities. In the event a building permit is required for nonemergency maintenance, reconstruction, repair or replacement, filing of the building permit application shall be required prior to the commencement of such nonemergency activities. (Ord. 17191 § 42, 2011: Ord. 10870 § 491, 1993).

21A.26.030 Applicability. The standards and process requirements of this chapter supersede all other review process, setback or landscaping requirements of this title. All communication facilities that are not exempt under K.C.C. 21A.26.020 shall comply with this chapter as follows:

A. New communications facilities, with the exception of consolidations, shall comply with K.C.C 21A.26.020 through 21A.26.130 and K.C.C. 21A.26.160 through 21A.26.190;

B. Modified communications facilities, with the exception of consolidations, shall comply with standards as provided in K.C.C. 21A.26.020, K.C.C. 21A.26.060 through 21A.26.140, and 21A.26.160 through 21A.26.190;

C. Consolidations shall comply with standards as provided in K.C.C. 21A.26.020, K.C.C. 21A.26.060 through 21A.26.130, and K.C.C. 21A.26.150 through 21A.26.190; and

D. New, modified or consolidated minor communication facilities shall comply with the standards of this chapter and K.C.C. chapter 21A.27. In the case of a conflict between this chapter and K.C.C. chapter 21A.27, the provisions of this chapter shall apply. (Ord. 17191 § 43, 2011: Ord. 17029 § 3, 2011 (Expired 12/31/2012): Ord. 13129 § 23, 1998: Ord. 10870 § 492, 1993).

21A.26.050 Setback requirements. Except as outlined for modifications and consolidations pursuant to K.C.C. 21A.26.140 and 21A.26.150 or when setbacks are increased to ensure compliance with NIER exposure limits, communication facilities shall comply with the following setbacks:

A. Transmission structures, other than those for minor communication facilities, that do not exceed the height limit of the zone in which they are located shall be set back from the property line as required for other structures by the zone in which such transmission structure is located;

B. Transmission structures, other than those for minor communication facilities, that exceed the height limit of the zone in which they are located shall be set back from property lines either a minimum of fifty feet or one foot for every foot in height, whichever results in the greater setback, except:

1. Transmission structures, other than those for minor communication facilities located in the A, F, NB, CB, RB, O or I zones shall be set back from the property line as required by the zone in which they are located; and

2. Transmission structures for minor communication facilities shall be set back from the property line as provided in K.C.C. 21A.27.030;

C. When two or more communication facilities share a common boundary, the setback from such boundary shall comply with the requirements of the zone in which the facilities are located, unless easements are provided:

1. On the adjoining sites that limit development to communication facilities;

2. Of sufficient depth to provide the setbacks required in subsections A and B; and

3. That provide for King County as a third party signatory to the agreement; and

D. Transmitter buildings shall be subject to the setback requirements of the zone in which they are located. (Ord. 17191 § 44, 2011: Ord. 13129 § 24, 1998: Ord. 11621 § 82, 1994: Ord. 10870 § 494, 1993).

21A.26.060 Landscaping requirements. A communication facility site shall provide landscaping as follows:

A. When the facility is located in:

1. The NB, CB, RB, O or I zone, the base of any transmission structure or transmitter building shall be landscaped with eight feet of Type II landscaping as defined by K.C.C. 21A.16.040B, if there is no existing landscaping consistent with K.C.C. chapter 21A.16 along the lot line abutting R, UR, or RA zoned properties.

2. The A, F or M zone, the base of the transmission structure or transmitter building shall be landscaped with ten feet of Type III landscaping (groundcover may be excluded) as defined by K.C.C. 21A.16.040C, if the base of such transmission structure or transmitter building is within three hundred feet of any lot line abutting R, UR, or RA zoned properties.

3. The R, UR or RA zone, the base of any transmission structure or transmitter building shall be landscaped with ten feet of Type I landscaping as defined by K.C.C. 21A.16.040A.

B. When a security fence is used to prevent access onto a transmission structure or transmitter building, any landscaping required pursuant to K.C.C. 21A.26.060A shall be placed outward of such security fence.

C. When a security fence is used:

1. In the NB, CB, RB, O or I zone, wood slats shall be woven into the security fence if made of chain-link material.

2. In the R, UR or RA zone, climbing evergreen shrubs or vines capable of growing on the fence shall supplement any landscaping required pursuant to K.C.C. 21A.26.060A.

D. Landscaping shall be planted according to accepted practice in good soil and maintained in good condition at all times. Landscaping shall be planted as a yard improvement at or before the time of completion of the first structure or within a reasonable time thereafter, considering weather and planting conditions.

E. Existing vegetation may be used and/or supplemented with additional vegetation to comply with the requirements of K.C.C. 21A.26.060A.

F. The director may waive or modify the provisions for landscaping at the base of the transmission support structure and equipment buildings when:

1. Existing structures on the site or the screening effects of existing vegetation on the site or along the site perimeter would preclude the ability to view the base of the tower or equipment building, or

2. The required landscaping is accessible to grazing animals and the animals would be better protected by placement of landscape materials within any proposed fencing or by the use of alternative landscaping vegetation that would not be toxic to the animals. (Ord. 13129 § 15, 1998: Ord. 10870 § 495, 1993).

21A.26.070 Color and lighting standards. Except as specifically required by the Federal Aviation Administration ("FAA") or the FCC, transmission structures shall:

A. Use colors such as grey, blue or green which reduce their visual impacts; provided, wooden poles do not have to be painted; and

B. Not be illuminated, except transmitter buildings may use lighting for security reasons which is compatible with the surrounding neighborhood. (Ord. 10870 § 496, 1993).

21A.26.080 Fencing and NIER warning signs. Communication facility sites shall be:

A. Fenced in a manner which prevents access by the public to transmission structures and/or areas of the site where NIER or shock/burn levels are exceeded. This may be modified if natural features, such as an adjoining waterway, or a topographic feature preclude access;

B. Signed to warn the public of areas of the site where:

1. NIER standards are exceeded; and

2. Potential risks for shocks or burns are present. (Ord. 10870 § 497, 1993).

21A.26.090 Interference. Permit applications for communication facilities shall include:

A. A statement describing the nature and extent of interference which may be caused by the proposed communication facility and the applicant's responsibilities under FCC rules and regulations;

B. Unless the department determines that there will be no noticeable interference from the proposed communication facility, notification of expected interference shall be provided as specified in K.C.C. 21A.26.170; and

C. General information concerning the causes of interference and steps which can be taken to reduce or eliminate it. (Ord. 10870 § 498, 1993).

21A.26.100 NIER exposure standards. To prevent whole-body energy absorption of .08 W/Kg or more, a communication facility, by itself or in combination with others, shall not expose the public to NIER that exceeds the electric or magnetic field strength, or the power density, for the frequency ranges and durations described as follows:

NIER Exposure Standards (1) (6)

Frequency (2)	Mean squared electric field strength (3)	Mean squared magnetic field strength (4)	Equivalent plane-wave power density (5)
0.1 to 3	80,000	0.5	20,000
3 to 30	$4{,}000 \times (180/f^2)$	$0.025 \times (180/f^2)$	$180{,}000/f^2$
30 to 300	800	0.005	200
300 to 1500	$4{,}000 \times (f/1500)$	$0.025 \times (f/1500)$	$f/1.5$
1500 to 300,000	4,000	0.025	1000

(1) All standards refer to root mean squared measurements averaged over a six minute period;

(2) Frequency or f is measured in megahertz (MHz);

(3) Electric field strength is expressed in volts squared per meter squared (V^2/m^2);

(4) Magnetic field strength is expressed in amperes squared per meter squared (A^2/m^2); and

(5) Power density is expressed in microwatts per centimeter squared (uW/cm^2).

(6) Peak NIER levels shall not exceed the following equivalent plane-wave power densities:

a. Twenty times the average values in the frequencies below 300 MHz;

b. 4,000 uW/cm^2 in the frequencies between 300 Mhz to 6,000 MHz;

c. $(f/1.5)uW/cm^2$ in the frequencies 6,000 MHz to 30,000 MHz; and

d. 20,000 uW/cm^2 in the frequencies above 30 GHz.

(Ord. 10870 § 499, 1993).

21A.26.110 NIER measurements and calculations. NIER levels shall be measured and calculated as follows:

A. When measuring NIER for compliance with K.C.C. 21A.26.100:

1. Measuring equipment used shall be generally recognized by the Environmental Protection Agency (EPA), National Council on Radiation Protection and Measurement (NCRPM), American National Standards Institute (ANSI), or National Bureau of Standards (NBS) as suitable for measuring NIER at frequencies and power levels of the proposed and existing sources of NIER;

2. Measurement equipment shall be calibrated as recommended by the manufacturer in accordance with methods used by the NBS and ANSI, whichever has the most current standard;

3. The effect of contributing individual sources of NIER within the frequency range of a broadband measuring instrument may be specified by separate measurement of these sources using a narrowband measuring instrument;

4. NIER measurements shall be taken when and where NIER levels are expected to be highest due to operating or environmental conditions;

5. NIER measurements shall be taken along the perimeter of the communication facility site and other areas on-site or off-site where the health department deems necessary to take measurements; and

6. NIER measurements shall be taken following spatial averaging procedures generally recognized and used by experts in the field of RF measurement or other procedures recognized by the FCC, EPA, NCRPM, ANSI, NBS;

B. NIER calculations shall be consistent with the FCC, Office of Science and Technology (OST) bulletin 65 or other engineering practices recognized by the EPA, NCRPM, ANSI, NBS or similarly qualified organization; and

C. Measurements and calculations shall be certified by a licensed professional engineer and shall be accompanied by an explanation of the protocol, methods, equipment, and assumptions used. (Ord. 10870 § 500, 1993).

21A.26.120 Measurements and monitoring.

A. The department of public health shall measure or contract for measurement of NIER levels as necessary to insure that the NIER standard is not being exceeded.

B. If the NIER level of an existing major communication facility has not been measured within 3 years of June 28, 1993, such facility shall be measured within 120 days from June 28, 1993. All major communication facilities shall be measured every third year thereafter. The measurements shall be submitted to the department of public health for review within 60 days of measurement. The department shall be reimbursed for its review of the measurements pursuant to this section.

C. New major communication facilities shall be measured within 120 days from the commencement of the operation and every third year thereafter. The department shall be reimbursed for its review of the measurements pursuant to this section.

D. The department of public health shall have the authority to assess fees for the cost of plan review. The fee shall be based upon the time required by staff, including overhead cost, for plan review. (Ord. 10870 § 501, 1993).

21A.26.130 Shock and burn standard. The communication facility shall not emit radiation such that the public will be exposed to shock and burn in excess of the standards contained in ANSI C-95.1 or subsequent amendments thereto recognized by ANSI. (Ord. 10870 § 502, 1993).

21A.26.140 Modifications.

A. Cumulative modifications of conforming or nonconforming communication facilities, transmission structures or transmission equipment that do not increase the overall height of the transmission structure or transmission equipment by more than thirty percent shall be allowed subject to the following:

1. A nonconformance with respect to the transmission structure shall not be created or increased, except as otherwise provided above as to height;

2. Existing perimeter vegetation or landscaping shall not be reduced;

3. The modification brings the facility, structure or equipment into compliance with K.C.C. 21A.26.100 and 21A.26.130. The applicant shall provide King County a detailed certification of compliance with these provisions that has been prepared by a licensed professional engineer; and

4. For minor communication facilities, the allowances for increased height established by K.C.C. chapter 21A.27 shall be complied with.

B. Except for consolidations allowed by K.C.C. 21A.26.150, modifications which increase the overall height of the transmission structure or transmission equipment by more than thirty percent shall be subject to the following:

1. Applications for such transmission structures shall be reviewed in accordance with the applicable process specified in this chapter; and

2. Such transmission structures shall comply with K.C.C. 21A.26.020, K.C.C. 21A.26.060 through 21A.26.140, K.C.C. 21A.26.160 through 21A.26.190 and, for minor communication facilities, with K.C.C. chapter 21A.27. (Ord. 17841 § 45, 2014: Ord. 17191 § 45, 2011: Ord. 13129 § 25, 1998: Ord. 10870 § 503, 1993).

21A.26.150 Consolidation. Consolidation of two or more existing transmission structures may be permitted subject to the following:

A. If the consolidated transmission structure cannot meet the requirements of K.C.C. 21A.26.050, it shall be located on the portion of the parcel on which it is situated which, giving consideration to the following, provide the optimum practical setback from adjacent properties:

1. Topography and dimensions of the site,

2. (in the case of a consolidation) to any existing structures to be retained, and

3. (in the case of a guyed transmission tower) to guy anchor placement necessary to assure structural integrity of the consolidated transmission tower.

Consolidated transmission structures shall be set back from abutting residential property a minimum of ten percent of the height of the consolidated transmission structure, but in all cases no less than 100 feet;

B. If a consolidation involves the removal of transmission structures from two or more different sites and if a consolidated transmission structure is to be erected on one of those sites, it shall be erected on the site which provides for the greatest compliance with the standards of this chapter;

C. All existing transmission equipment on the site of a communication facility which does not comply with the provisions of this chapter shall be relocated to the consolidated transmission structure before the relocation of transmission equipment from a non-exempt off-site, conforming communication facility is permitted;

D. The consolidation shall eliminate NIER and electrical current levels attributable to the consolidating transmission equipment which exceed the limits of K.C.C. 21A.26.100 and 21A.26.130;

E. Any transmission structure to be removed as part of a consolidation shall be removed within 12 months of relocation of the transmitting equipment;

F. Consolidation shall result in a net reduction in the number of transmission structures; and

G. Consolidated facilities shall require a conditional use permit. (Ord. 10870 § 504, 1993).

21A.26.160 Supplemental application requirements.

A. In addition to any required site plan, a permit application for a communication facility shall also include:

1. A site plan that shows existing and proposed transmission structures; guy wire anchors; warning signs; fencing and access restrictions;

2. A report by a licensed professional engineer demonstrating compliance with applicable structural standards of K.C.C. Title 16, and describing the general structural capacity of any proposed transmission structure(s), including:

a. The number and type of antennas that can be accommodated; and

b. The basis for the calculation of capacity;

3. A report by a state licensed professional engineer that includes the following:

a. A description of any proposed transmission tower(s) or structure(s), including height above grade, materials, color and lighting; and

b. Information related to interference required by K.C.C. 21A.26.090.

B. Where a permit for a non-exempt communication facility is required, the application shall also include the following information:

1. The name and address of the operator(s) of proposed and existing antennas on the site;

2. The height of any proposed antennas;

3. Manufacture, type, and model of such antennas;

4. Frequency, modulation and class or service;

5. Transmission and maximum effective radiated power;

6. Direction of maximum lobes and associated radiation;

7. The calculated NIER levels attributable to the proposed antennas at points along the property line and other areas off-site which are higher than the property line points, as well as calculated power density (NIER levels) in areas that are expected to be unfenced on-site;

8. For a major communication facility, if there is another major communication facility within one mile of the site of the proposed facility, the level of NIER at the points identified in subsection B.7. as measured within thirty days prior to application; and

9. For a minor communication facility, if there is an existing major communication facility within one-half mile of the site of the proposed facility, the level of NIER at the points identified in subsection B.7. as measured within thirty days prior to the application. (Ord. 17191 § 46, 2011: Ord. 10870 § 505, 1993).

21A.26.170 Notification requirements. Notification of a permit application shall be given to adjacent property owners within a 500 foot radius and the local community council. The area within which mailed notice is required shall be expanded to include at least 20 different owners in rural or lightly inhabited areas or in other appropriate cases to the extent the department determines is necessary. The standards of published notice and posting of property required by K.C.C. 21A.42 shall be pursuant to K.C.C. 21A.40. (Ord. 10870 § 506, 1993).

21A.26.180 NIER compliance criteria. The department of public health shall consider the following criteria in determining compliance with K.C.C. 21A.26.100:

A. The number and location of points at which levels have been determined to exceed NIER standards;

B. The duration of exposure to NIER levels above the standard;

C. The extent by which the levels measured at such points exceed the standards established by this chapter; and

D. The relative contribution of individual sources in a multiple source environment. (Ord. 10870 § 507, 1993).

21A.26.190 NIER enforcement.

A. The department of public health shall be responsible for the enforcement of the provisions of K.C.C. 21A.26.100 in accordance with K.C.C. 23. The department director shall allow no more than 10 days to elapse from the date of a violation before corrective action is commenced. If this deadline cannot be met, the director shall issue a stop work order.

B. If the approved NIER standard is exceeded in an area where there are multiple users and transmission equipment, all users shall share in the NIER the reduction will adequately protect the proposed development and the sensitive area; reductions, scaled proportionally to their current discharges. (Ord. 10870 § 508, 1993).

21A.26.210 State regulation.

A. If state regulations establish a NIER exposure standard which is more restrictive than the county standard, the state standard shall automatically become effective.

B. If such state standards are intended to preempt local enforcement with respect to specific sections of this chapter, said sections shall automatically be deemed ineffective.

C. Application of the provisions of this chapter shall be subject to any rule, regulation, order or decision of any state or federal court or government agency with which such communication facility is obligated to comply. (Ord. 10870 § 510, 1993).

21A.27 DEVELOPMENT STANDARDS - MINOR COMMUNICATION FACILITIES

21A.27.010 Preapplication community meetings. When a new transmission support structure is proposed, a community meeting shall be convened by the applicant prior to submittal of an application.

A. At least two weeks in advance, notice of the meeting shall be provided as follows:

1. Published in the local paper and mailed to the department, and

2. Mailed notice shall be provided to all property owners within five hundred feet or at least twenty of the nearest property owners, whichever is greater, as required by K.C.C. 21A.26.170 of any potential sites, identified by the applicant for possible development, to be discussed at the community meeting. When the proposed transmission support structure exceeds a height of one hundred twenty feet, the mailed notice shall be provided to all property owners within one thousand feet. The mailed notice shall at a minimum contain a brief description and purpose of the project, the estimated height, approximate location noted on an assessor map with address and parcel number, photo or sketch of proposed facility, a statement that alternative sites proposed by citizens can be presented at the meeting that will be considered by the applicant, a contact name and telephone number to obtain additional information and other information deemed necessary by King County. Because the purpose of the community meeting is to promote early discussion, applicants are encouraged to note any changes to the conceptual information presented in the mailed notice when they submit an application.

B. At the community meeting at which at least one employee of the department of permitting and environmental review, assigned by the director of the department, shall be in attendance, the applicant shall provide information relative to existing transmission support structures and other nonresidential structures, such as water towers and electrical transmission lines, within one-quarter mile of potential sites, and shall discuss reasons why those existing structures are unfeasible. Furthermore, any alternative sites within one-quarter mile, identified by community members and provided to the applicant in writing at least five days in advance of the meeting, shall be evaluated by the applicant to the extent possible given the timeframe, and discussed at the meeting. A listing of the sites, identified in writing and provided to the applicant at or before the community meetings, shall be submitted to the department with the proposed application. Applicants shall also provide a list of meeting attendees and those receiving mailed notice and a record of the published meeting notice at the

time of application submittal. (Ord. 17420 § 107, 2012: 17416 § 17, 2012: Ord. 13129 § 2, 1998. Formerly K.C.C. 21A.26.300).

21A.27.020 Review process. Minor communication facilities shall be reviewed as follows:

MINOR COMMUNICATION FACILITIES - REVIEW PROCESS

Zone District(s)	Antenna	Transmission Support Structure
I, RB, CB NB, O	P	P C[1]
F, M	P	P C[1]
UR, RA, A	P	P[2] C[1 and 2]
R1 - R48	P	P C[1]

P - Permitted Use

C - Conditional Use

[1] If the proposal exceeds the development standards of this chapter contained in K.C.C. 21A.27.030 for transmission support structures, the proposal shall be reviewed through this process.

[2] The proposed transmission support structure shall not be located on any RA or A zoned site for which the development rights have been encumbered by the farmlands preservation program.

(Ord. 13129 § 3, 1998. Formerly K.C.C. 21A.26.310).

21A.27.030 Development standards for transmission support structures. A new transmission support structure exceeding the standards of this section are subject to the conditional use permit process as outlined in K.C.C. 21A.27.020. These provisions do not apply to transmission support structures that are being modified or replaced pursuant to the provisions of K.C.C. 21A.27.090 or replace an existing transmission support structure.

MINOR COMMUNICATION FACILITIES - DEVELOPMENT STANDARDS

Zone District(s)	Height and Location Of Tower	Setbacks 1

I	140 feet high	50 feet (or one foot setback for every one foot in height) from any UR, RA, A, or R1 - R48 zone property, whichever provides the greatest setback
RB, CB	120 feet high	SAME AS ABOVE
NB, O, UR, RA, A, R1 - R48	60 feet high	SAME AS ABOVE
F, M	140 feet high	SAME AS ABOVE

[1]Setbacks may be modified to achieve additional screening, see K.C.C. 21A.27.040 or as provided in K.C.C. 21A.26.050.

(Ord. 17841 § 46, 2014: Ord. 13129 § 4, 1998. Formerly K.C.C. 21A.26.320).

21A.27.040 Visual compatibility standards. With consideration to engineering and structural requirements, and the coverage patterns the provider is seeking to achieve, minor communication facilities shall be subject to the following visual compatibility standards in addition to K.C.C. 21A.44.040.

A. Antenna should, to the extent practicable, reflect the visual characteristics of the structure to which it is attached. This should be achieved through the use of colors and materials, as appropriate. When located on structures such as buildings or water towers, the placement of the antenna on the structure should reflect the following order of priority in order to minimize visual impact:

1. A location as close as possible to the center of the structure, and

2. long the outer edges or side-mounted, provided that in this instance, additional means such as screens should be considered and may be required by the department on a case-by-case basis, and

3. When located on the outer edge or side-mounted, be placed on the portion of the structure less likely to be seen from adjacent lands containing, in descending order of priority: existing residences, public parks and open spaces, and public roadways.

B. To the extent that there is no conflict with the color and lighting requirements of the Federal Communication Commission and the Federal Aviation Administration for aircraft safety purposes, transmission support structures shall be designed to blend with existing surroundings to the extent feasible. This should be achieved through the use of compatible colors and materials, and alternative site placement to allow the use of topography, existing vegetation or other structures to screen the proposed transmission support structure from adjacent lands containing, in descending order of priority: existing residences, public parks and open spaces, and public roadways.

C. The setback provisions of K.C.C. 21A.27.030 may be waived by the department or the examiner, in order to achieve greater levels of screening than that which would be available by using the stated setback, during the course of the review process described in K.C.C. 21A.27.020. In waiving the requirement, the

department or examiner shall consider the protection of adjacent lands on the basis of the priorities stated in subsections A. and B. of this section. (Ord. 13129 § 5, 1998. Formerly K.C.C. 21A.26.330).

21A.27.050 Visual impact - additional standards to reduce degree. The department shall also consider the following criteria and give substantial consideration to on-site location and setback flexibility authorized in K.C.C. 21A.27.040.C. when reviewing applications for new free-standing towers and determining appropriate levels of mitigation:

A. Whether existing trees and vegetation can be preserved in such a manner that would most effectively screen the proposed tower from residences on adjacent properties;

B Whether there are any natural land-forms, such as hills or other topographic breaks, that can be utilized to screen the tower from adjacent residences;

C. Whether the applicant has utilized a tower design that reduces the silhouette of the portion of the tower extending above the height of surrounding trees; and

D. Whether the factors of subsections B. and C. can be addressed and the height of the proposed tower be reduced and still provide the level of coverage proposed by the applicant. (Ord. 13129 § 17, 1998. Formerly K.C.C. 21A.26.340).

21A.27.060 Time limits and establishment period. The building permit shall become null and void if construction of the transmission support structure has not begun within one year after the effective date of permit approval or if antennas are not installed within one hundred eighty days after construction of the transmission support structure. Extensions shall be allowed only in accordance with the criteria specified for building permit extensions in K.C.C. 16.04.05013. (Ord. 13129 § 6, 1998. Formerly K.C.C. 21A.26.350).

21A.27.070 Minor communication facilities - cessation of use. Antenna shall be removed from transmission support structures within one hundred eighty days after the antenna is no longer operational. Transmission support structures for wireless communication facilities shall be removed within one year of the date the last antenna is removed. (Ord. 13129 § 7, 1998. Formerly K.C.C. 21A.26.360).

21A.27.080 Colocation.

A. Upon application for a conditional use permit or a building permit for a new free-standing tower, whichever is required first, the applicant shall provide a map showing all existing transmission support structures or other suitable nonresidential structures located within one-quarter mile of the proposed structure with consideration given to engineering and structural requirements. No new transmission support structure shall be permitted if an existing structure suitable for attachment of an antenna or collocation [colocation] is located within one-quarter mile, unless the applicant demonstrates that the existing structure or a new structure complying with K.C.C. 21A.27.090:

1. would be physically or technologically unfeasible pursuant to K.C.C. 21A.27.130, or

2. is not made available for sale or lease by the owner, or

3. is not made available at a market rate cost, or

4. would result in conflicts with Federal Aviation Administration height limitations.

B. The burden of proof shall be on the applicant to show that a suitable existing, modified or replacement structure for mounting of antenna or collocation [colocation] cannot be reasonably or economically used in accordance with these criteria.

C. Prior to the receipt of a building permit to construct a new tower, the applicant shall file a letter agreeing to allow collocation [colocation] on the tower with the department. The agreement shall commit the applicant to provide, either at a market rate cost or at another cost basis agreeable to the affected parties, the opportunity to collocate [colocation] the antenna of other service providers on the applicant's proposed tower to the extent that such collocation [colocation] is technically feasible for the affected parties.

D. All new or modified transmission support structures shall be constructed in a manner that would provide sufficient structural strength to allow the collocation [colocation] of additional antenna from other service providers. (Ord. 14045 § 50, 2001: Ord. 13129 § 8, 1998. Formerly K.C.C. 21A.26.370).

21A.27.090 Modifications.

A. Antenna modifications consistent with K.C.C. 21A.27.100 are permitted outright. Antenna modifications consistent with K.C.C. 21A.27.100 that are proposed for a transmission support structure that was approved by a conditional use permit are permitted outright, notwithstanding conditions in the conditional use permit that limit the number of antennae allowed on the transmission support structure.

B.1. Except as otherwise provided in subsection B.2. of this section, modifications to transmission support structures are permitted outright, if there is no increase in the height of the transmission support structure.

2. A modification to increase the height of a transmission support structure is permitted outright if the increase in height is:

a. necessary to accommodate the actual collocation of the antenna of other service providers, or to accommodate the current providers antenna required to use new technology, such as digital transmissions;

b. limited to no more than forty feet above the height of the existing transmission support structure; or

c. the transmission support structure is located in the rural area zone or a residential zone, the proposed height exceeds sixty feet and the applicant demonstrates the proposed height is required to meet the proposed area of coverage.

3. If modification to increase the height of a transmission support structure is proposed in the rural area zone or a residential zone:

a. notice and a comment period shall be provided consistent with K.C.C. 20.20.060;

b. If the need for additional height is challenged within the comment period specified, a technical evaluation under K.C.C. 21A.27.160 shall be conducted; and

c. The department may approve, require additional mitigation, or deny the proposed height increase on the basis of this technical evaluation. (Ord. 17841 § 47, 2014: Ord. 17539 § 58, 2013: Ord. 14045 § 51, 2001: Ord. 13129 § 9, 1998. Formerly K.C.C.21A.26.380).

21A.27.100 Antennas. Antennas meeting the standards of this section are permitted outright. An antenna shall not extend more than six feet horizontally from any structure to which it is attached. Furthermore, an antenna shall not extend vertically above the uppermost portion of the structure to which it is mounted or attached, as follows:

A. Not more than twenty feet on a nonresidential structure, and

B. Not more than fifteen feet on a residential structure. (Ord. 13129 § 10, 1998. Formerly K.C.C. 21A.26.390).

21A.27.110 Location within street, utility and railroad rights-of-way.

A. The mounting of antenna upon existing structures, such as light and power poles, located within publicly or privately maintained street, utility and railroad right-of-ways is permitted outright. If an existing structure within a street, utility, or railroad rights-of-ways cannot accommodate an antenna due to structural deficiency or does not have the height required to provide adequate signal coverage, the structure may be replaced with a new structure that will serve the original purpose and will not exceed the original height by forty feet. However, minor communication facilities within street, utility and railroad right-of-way that propose the construction of a separate structure used solely for antenna shall be subject to the zoning provisions applicable to the property abutting the portion of right-of-way where the structure is proposed except that the setbacks specified in the zoning code shall not apply. Setbacks shall be those specified in the road design standards. In cases where the abutting property on either side of the right-of-way has different zoning, the more restrictive zoning provisions shall apply.

B. The placement of antenna on existing or replacement structures within street, utility or railroad rights-of-way is the preferred alternative in residential neighborhoods and the Rural Areas and the feasibility of such placement shall be considered by the county whenever evaluating a proposal for a new transmission support structure, except for a new structure that is proposed to collocate antenna for two or more separate service providers. (Ord. 14045 § 52, 2001: Ord. 13129 § 11, 1998. Formerly K.C.C. 21A.26.400).

21A.27.120 Public parks and open spaces owned by King County. Within public parks and open spaces owned by King County, the placement of antennas on existing structures, such as power poles, light poles for streets and parking lots, light standards for recreational fields and communication towers, is the preferred option. If an existing structure within a county-owned park or open space cannot accommodate an antenna due to structural deficiency, or does not have the height required to provide adequate signal coverage, the structure may be replaced with a new structure provided that the new structure will serve the original purpose and not exceed the original height by forty feet. Any height increase in excess of forty feet will require a conditional use permit.

The construction of a new free-standing tower within public parks and open spaces owned by King County shall be subject to a conditional use permit when the height of the proposed tower exceeds sixty feet. (Ord. 14045 § 53, 2001: Ord. 13129 § 14, 1998. Formerly K.C.C. 21A.26.410).

21A.27.130 Criteria for determining technical feasibility. When an applicant is required to demonstrate that an existing, modified or replacement structure is not technically feasible for collocation, the evidence submitted to corroborate that finding may consist of any of the following:

A. No existing structures are located within the geographic area required to meet the applicant's proposed area of coverage.

B. Existing structures are not of sufficient structural strength to support the applicant's proposed antenna and related equipment and the cost of modification or replacement of an existing structure to allow collocation would equal or exceed that of the construction of the new structure.

C. Existing structures or structures modified consistent with K.C.C. 21A.27.090 would not be of sufficient height required to meet the applicant's proposed area of coverage or allow microwave connection to other sites operated by the applicant.

D. The applicant's proposed antenna would cause interference between the proposed and existing antenna, and that even the additional height permitted for collocations pursuant to K.C.C. 21A.27.090 would not ensure enough separation to avoid such interference. (Ord. 14045 § 54, 2001: Ord. 13129 § 16, 1998. Formerly K.C.C. 21A.26.420).

21A.27.140 Applicability to vested applications. The standards of Ordinance 13129 shall not apply to vested applications for conditional use permits and building permits for transmission support structures. Furthermore, the standards, except for the antenna mounting provisions of K.C.C. 21A.27.100, shall not apply to new building permits required to construct a transmission support structure that been authorized through a prior-vested or prior-approved conditional use or special use permit. (Ord. 13129 § 18, 1998. Formerly K.C.C. 21A.26.430).

21A.27.150 Standards within city potential annexation areas. Within the approved potential annexation areas of a city, the agreed upon permitting jurisdiction shall apply the provisions of the applicable city as provided for by an interlocal agreement that has been entered into between the city and the county. The city standards would be applied when adopted in an ordinance by King County. (Ord. 13129 § 21, 1998. Formerly K.C.C. 21A.26.440).

21A.27.160 Technical evaluation. The department of permitting and environmental review shall retain the services of a registered professional electrical engineer accredited by the state of Washington who holds a Federal Communications General Radio telephone Operator License. The engineer will provide technical evaluation of permit applications for minor communications facilities. The department is authorized to charge the applicant for these services. The specifications for an RFP to retain a consulting engineer shall specify at least the qualifications noted above, the capacity to provide a three week turnaround on data review, a request for a proposed fixed fee for services and shall state a preference for a qualified professional with a balance of experience in both the private and public sectors. Such a review shall be performed in a timely manner, be limited to the data necessary to establish findings pursuant to K.C.C. 21A.27.130.C. and 21A.27.130.D, and avoid any conflicts with the department's duty to review permit applications within one hundred twenty days of acceptance pursuant to RCW 36.70B.090. This review shall be performed when requested by affected residents pursuant to K.C.C. 21A.27.090. (Ord. 17420 § 108, 2012: Ord. 13129 § 22, 1998. Formerly K.C.C. 21A.26.450).

RCW 19.27.020

Purposes—Objectives—Standards.

The purpose of this chapter is to promote the health, safety and welfare of the occupants or users of buildings and structures and the general public by the provision of building codes throughout the state. Accordingly, this chapter is designed to effectuate the following purposes, objectives, and standards:

(1) To require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire and life safety.

(2) To require standards and requirements in terms of performance and nationally accepted standards.

(3) To permit the use of modern technical methods, devices and improvements.

(4) To eliminate restrictive, obsolete, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

(5) To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons.

(6) To consolidate within each authorized enforcement jurisdiction, the administration and enforcement of building codes.

[**1985 c 360 § 6; 1974 ex.s. c 96 § 2.**]

RCW 36.70C.010

Purpose.

The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.

RCW 36.70C.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "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, including those with authority to hear appeals, 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, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW **19.280.020**.

RCW 36.70C.030

Chapter exclusive means of judicial review of land use decisions—Exceptions.

(1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter.

United States Code Annotated
Constitution of the United States
Annotated
Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V full text

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V full text, USCA CONST Amend. V full text
Current through P.L. 115-140. Also includes P.L. 115-158 to 115-170. Title 26 includes updates from P.L. 115-141, Divisions M, T, and U.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 115-140. Also includes P.L. 115-158 to 115-170. Title 26 includes updates from P.L. 115-141, Divisions M, T, and U.

End of Document

BRICKLIN & NEWMAN, LLP

May 16, 2018 - 3:27 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Gregory and Janette Kovsky, Appellants v. Robert Fanfant and Melanie Bishop, Respondents (761421)

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