97233-8

**SUPREME COURT OF THE
STATE OF WASHINGTON**

(Court of Appeals No. 50363-8-II)

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SUMMIT-WALLER COMMUNITY ASSOCIATION, Petitioner

v.

PIERCE COUNTY , APOGEE CAPITAL LLC AND HIGH VALLEY INVESTMENT, L.L.C., Respondents

RESPONDENT PIERCE COUNTY'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners Summit-Waller Communities (collectively, "Summit-Waller") challenge Area-Wide Map Amendment M-2, one of several Comprehensive Plan amendments Pierce County reviewed and adopted as part of its periodic update required under the Growth Management Act ("GMA"). RCW 36.70A.130(1)(a).[1] Respondents Apogee Capital LLC and High Valley Investment, L.L.C. (collectively, "Apogee") applied to the County for an Area-Wide Map amendment to reclassify eight parcels of land within the Midland Community Plan area.[2] The County Council initiated Amendment M-2 for review and recommendation by County Planning Staff, the Land Use Advisory Commissions and the Planning Commission.

When County planning staff reviewed Amendment M-2, they determined the subject properties ("Properties"), did not meet the County's locational criteria for either the current land use designation, Employment Community ("EC), or the proposed Community Center ("CC") designations. As part of the evaluation process, the County considered apartments, which were allowed uses in both CC and HRD, but not in EC

[1] On June 30, 2015, the County Council completed its GMA mandated comprehensive plan review by adopting Ordinance 2015-33s. After County Executive veto and Council override, the Council enacted Ordinance 205-40 on September 9, 2015.
[2] Apogee Capital LLC and High Valley Investment, L.L.C. were intervenors in the appeal before the Growth Management Hearings Board.

designated lands. Ultimately, the County redesignated the Properties as High Density Residential ("HRD"), which allows less intense development than CC or EC and provides a better transition to neighboring lands.

The Growth Management Hearings Board, Superior Court, and Court of Appeals upheld the County's adoption of Amendment M-2, finding the amendment GMA compliant. Summit-Waller seeks this Court's discretionary review of the Court of Appeals' unpublished opinion ("Opinion")[3] under RAP 13.4, claiming the Opinion conflicts with Washington caselaw and presents an issue of substantial public importance. Contrary to Summit-Waller's claims, the court of appeals Opinion is not in conflict with any published Washington State case, nor does the Petition involve an issue of substantial public importance. Their Petition provides no basis for reversing the well-reasoned decisions of the Court of Appeals, the Superior Court, or the Growth Board. The Petition should be dismissed.

II. FACTUAL BACKGROUND

A. Pierce County's Evaluation and Subsequent Adoption of Amendment M-2.

On July 30, 2014, Scott Edwards, managing member of Respondents Apogee, submitted an application with the County for an Area-Wide Comprehensive Plan Map Amendment, Amendment M-2.[4]

[3] *Summit-Waller Comm. Ass'n v. Pierce County*, No. 50363-8-II (February 6, 2019).
[4] There are five types of comprehensive plan amendments in Pierce County, Area-Wide

Administrative Record ("AR") 81. The County defines an "Area-Wide Map amendment as a proposed change or revision to the Comprehensive Plan Generalized Land Use Map" that "is of area-wide significance and includes many separate properties under various ownerships ..." PCC 19C.10.030(A)[5]. This differs from a parcel or site-specific land use reclassification proposal. PCC 19C.10.030.

The proposal sought the land use reclassification of eight parcels (34 acres) from Employment Center (EC) to CC. AR 81-82. The Properties lie within the County's Urban Growth Area (UGA), just north of the 121st Street East, which functions as the UGA boundary.[6] The Rural Separator buffer[7] lies directly south of 121st Street East. AR 1705-06.

The Properties are bordered on the East by railroad tracks, which offer no access to transport goods. Diagonally adjacent to the Properties, but separated by the railroad tracks is an area designated CC and another one designated EC. North of 121St Street East is light industrial complex.

Map amendments, Capital Facilities amendments, Emergency amendments, Text amendments, Community Plan amendments, and Urban Growth Area amendments. PCC 19C.10.030(D).

[5] In 2016, the County amended its Comprehensive Plan procedures under Title 19C of the Pierce County Code, but the text of PCC 19C.10.030(A) remains unchanged. Ordinance 2016-18 § 1 (part).

[6] The UGA is designed to graphically show the separation of land expected to be urban from those lands expected to be rural or devoted to mining, forestry, or agriculture.

[7] The Rural Separator land use designation and implementing RSep zoning classification includes rural lands intended to provide a buffer between urban zone classifications. AR 1892.

Clerks' Papers ("CP ") 14. The properties are bordered on the West by a large area of Moderate Density Single Family (MSF)/Residential Resource. The CC designation incorporates a significant traffic generator around which a concentration of other commercial office, services, and high-density residential development can occur. AR 1892.

On November 4, 2014, the Mid-County Land Use Advisory Commission ("MCAC")[8] considered Amendment M-2. AR 100. Pierce County Planning and Land Services ("PALS") staff suggested that the properties may not have been appropriately designated as EC, as they did not meet the criteria for either the proposed CC or the existing EC designation, but proposed an alternate designation allowing higher density residential development. AR 100. Brynn Brady, who spoke on behalf of applicant Scott Edwards, explained that the applicant's vested application had expired, and the applicant would be satisfied with some designation that accommodated the multifamily development that had been planned. Based on this testimony and that of PALS staff, MCAC voted to support PALS' recommendation and encouraged them to work toward a redesignation that

[8] The County Council created Land Use Advisory Commissions, "to serve in an advisory capacity on land use matters within defined geographical areas to the County Executive, County Council, the Hearing Examiner, the Planning Commission, and the Planning and Public Works Department. PCC 2.45.010. The LUAC's purpose is to facilitate communication between the County and the community regarding significant land use issue. *Id.*

would allow multifamily development. AR 100.

On December 4, 2014, PALS presented an analysis of Amendment M-2 to the Pierce County Planning Commission. In its Staff Report, PALS analyzed the proposal's impacts using the factors in PCC 19C.19.065(A)[9] and concluded that the proposal was not consistent with the Comprehensive Plan policies for expanding a CC designation; however, PALS suggested that "a higher density residential designation may be more appropriate as a transition into the surrounding neighborhood." AR 1701. PALS indicated staff would discuss an appropriate redesignation of this area with the MCAC as part of the County's full 2015 Comprehensive Plan update. *Id*. The Planning Commission moved that PALS should prepare an alternative recommendation to accommodate high density residential development on the M-2 site. CP 169.

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[9]PCC 19C.10.065(A) provides as follows:

A. During a required GMA periodic update, the Planning and Land Services Department shall evaluate Council-initiated amendments based upon the following:
   1. Is there a community or countywide need for the proposed amendment? If so, what is that need?
   2. Is the infrastructure available to support the requested amendment, such as sewer, water, roads, schools, fire support?
   3. Would the requested amendment provide public benefits? If so, what sorts of public benefits?
   4. Are there physical constraints on the property?
   5. Are there environmental constraints, such as noise, access, traffic, hazard areas on or adjacent to the proposed amendment?
   6. What types of land use or activities are located on the property?
   7. What types of land use or activities are located on neighboring properties?
   8. Is the proposed amendment consistent with all applicable state and local planning policies?

On December 9, 2014, PALS issued a modification of its recommendation for Amendment M-2. CP 172-174. As an alternative to the CC designation, PALS recommended that the Planning Commission add the High Density Residential District ("HRD") land use designation and Moderate High Density Residential ("MHR") zoning classification to the MCCP and apply this designation and zoning to the eight M-2 parcels. CP 172. The original EC land use allowed industrial and commercial uses. EC did not allow residential development, but the CC land use designation proposed by Apogee would have allowed a mix of commercial uses and multifamily housing, including apartments. HRD was more limiting than CC, allowing apartments without the additional commercial uses. CP 98-99, 178-180.[10] Amendment M-2 was subsequently adopted by the Pierce County Council as part of the County's 2015 Comprehensive Plan update cycle.[11] The Council included several findings of fact in support of adopting Amendment M-2. CP 200-201, AR 1898-99.

B. Growth Management Hearings Board and Thurston County Superior Court's Decisions.

Before the Board, Summit-Waller contended that the County's evaluation of Amendment M-2 was flawed because: 1) it began with a

[10] Respondents' Brf, Appendix I.
[11] AR 1898-99, PCC #216, Ex. I to Ordinance 2015-40, at Finding of Fact #165.

proposed redesignation from EC to CC but ended with an EC to HRD redesignation, 2) PALS staff answered "undetermined" related to evaluation criterion number one (whether a community or countywide need for the amendment existed), and 3) the amendment was untimely under the GMA.[12] CP 21. The Board noted Summit-Waller was under the mistaken impression the County's evaluation process required the proposal to be accepted or rejected with no room for modification. CP 23. The Board found that PCC 19C.10.065(A) did not require the review process to start anew (presumably in the next amendment cycle) if the original proposal was not accepted. CP 23.

The Board determined that for County Council initiated Comprehensive Plan Amendments, Summit-Waller did not show the County [code] requires more than a recommendation based on the review —" that a proposal must necessarily 'satisfy' each and every criterion." Accordingly, the Board concluded Summit-Waller failed to show the County did not evaluate the M-2 proposal as required under 19C.10.065(A) or that the County's adoption of Amendment M-2 was inconsistent with the Comprehensive Plan contrary to the GMA (RCW 36.70A.130(1)(d)). CP

[12] RCW 36.70A.130(5)(a) required the County to update its Comprehensive Plan by June 2015. The County adopted its update on August 11, 2015. Ordinance 2015-40. The Board rejected Summit-Waller's contention because it was moot and because they had abandoned this issue. CP 24.

24.

Summit-Waller further contended that the County was required "to show its work" and acted in an arbitrary and capricious manner. CP 26. The Board concluded Summit-Waller had not shown the redesignation violates the GMA or do anything more than imply the County redesignated the lands for reasons other than to remediate an inappropriate designation. *Id.*

The Superior Court upheld the Board's decision. CP 239. The court also addressed Summit-Waller's untimely notice argument, which the Court found lacked any merit. CP 238.

C. Court of Appeals Decision.

The Court of Appeals upheld the decisions of the Board and Superior Court, finding Summit-Waller had failed to show the County did not evaluate amendment M-2, as required by PCC 19C.10.065(A) and therefore, they failed to show Amendment M-2 violated the GMA. Opinion at 27. The court held that Summit-Waller failed to meet their burden to show substantial evidence did not support the Board's decision. Opinion at 25-26, 34. In reaching its decision, the court also found that Summit-Waller had abandoned or waived numerous issues, including "public notice," which Summit-Waller attempts to resurrect here. Opinion at 20, 25, 28, 31, 33.

D. Public Notice.

Tellingly, Summit-Waller did not raise the issue of public notice before the Board or during their participation before the Planning Commission, the Community Development Committee ("CDC") or the County Council. Before the Board Summit-Waller focused on alleged deficiencies with the County's review of Amendment M-2 under PCC 19C.10.065. Summit -Waller raised the notice issue for the first time in the APA[13] appeal before the Thurston County Superior Court. The crux of Summit-Waller's argument is that the County was required to provide additional notice that the County considered the Properties suitable for the HRD land use designation, not the proposed CC land use designation. The Superior Court found Summit-Waller's arguments were meritless. CP 238.

The County sent notice of Amendment M-2 to surrounding property owners in October 2014.[14] Opinion at 16. The County then published notice in local newspapers for the MCAC and Planning Commissions meetings where M-2 was discussed. Amendment M-2 was also published on the County's website before adoption. AR 471-474, 515-517.[15] Despite the

[13] Administrative Procedure Act, RCW 34.05.

[14] In their Brief, Respondents reference Ex. #PC 6-3 (Notice of Public Hearing dated October 24, 2014, which is in the underlying 2015-40 legislative record, but the notice is not part of the record below because Summit-Waller had not raised the issue before the Board. Respondents' Brf. at 30.

[15] PALS's Staff Report to the Planning Commission, April 2015.

thorough public notice, comment and review process, Summit-Waller inexplicably failed to participate in the process until after Amendment M-2 was approved by the Planning Commission. Summit-Waller did participate in meetings and voiced their concerns before the Planning Commission, the CDC and the County Council. Opinion at 8-9.

III. ARGUMENT

Summit-Waller seeks discretionary review under RAP 13.4(b)(1) and 13.4(b)(4). Review under these provisions is limited to cases where the Court of Appeals decision "is in conflict with a decision of the Supreme Court," (RAP 13.4(b)(1)) or if the "petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). In this case, Summit-Waller has failed to establish that the Opinion conflicts with Washington court precedent or presents an issue of substantial public interest.

A. Review Should Not Be Granted Under RAP 13.4(b)(1) because the Opinion Does Not Conflict with Any of decision of this Court or the Court of Appeals.

The Court of Appeals upheld the Board's conclusion that the GMA does not require an evaluation of the eight factors enumerated under former PCC 19C.10.065(A), the County's procedural requirements for Council initiated Comprehensive Plan amendments. Opinion at 22. The Court of Appeals also held that even if the County failed to evaluate Amendment M-

2 under PCC 19C.10.065(A), Summit-Waller has failed to show how this alleged failure means that Amendment M-2 does not conform with the GMA. Opinion at 22. The Court of Appeals Opinion is correct and is not in conflict with Washington caselaw.

Summit-Waller asserts four "erroneous reasons" the Court of Appeals' decision conflicts with the Court's decisions in *Thurston County*[16] and in *Kittitas County.*[17] Summit-Waller's four "reasons" collapse down to their argument that the County's review of Amendment M-2 under PCC 19C.10.065(A) was allegedly deficient and thus is contrary to these Supreme Court decisions. Summit-Waller relies upon *Thurston County*, for the proposition that Amendment M-2 must comply with the GMA under RCW 36.70A.130(1)(d). Petition at 9. In a similar vein, Summit-Waller relies upon *Kittitas County,* for the proposition that Amendment M-2 allegedly violates the "internal consistency" requirements of the GMA — County comprehensive plan amendments and development regulations must be consistent with the GMA and be consistent with the Comprehensive Plan under RCW 36.70A.130(1)(d). Petition at 9-10.

To establish a violation of RCW 36.70A.130(1)(d), Summit-Waller

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[16] *Thurston County v. W. Wash Growth Mgmt. Hr'gs Bd.,* 164 Wn.2d 329, 347, 190 P.3d 39 (2008).
[17] *Kittitas County v. E. Wash Growth Mgmt. Hr'gs Bd.,* 172 Wn.2d 144, 256 P.3d 1193 (2011).

must show that Amendment M-2 (1) does not conform to the GMA or (2) Amendment M-2 is an amendment or revision to a development regulation, which is inconsistent with or did not implement the Comprehensive Plan. RCW 36.70A.130(1)(d). Regarding GMA conformity, Summit-Waller's argument stems from its mistaken belief that the County is required under the GMA and PCC 19C.10.065(A) to provide a detailed analysis of each of the eight criteria or that any one criterion is determinative. Neither the GMA nor PCC 19C.10.065(A), require that level of analysis. Furthermore, the County has a broad range of discretion in adopting Amendment M-2 and the adopted amendment is entitled to great deference by the Board.[18] RCW 36.70A.3201. The Court of Appeals, like the Board, correctly held Summit-Waller has failed to show that the County improperly evaluated Amendment M-2 under PCC 19C.10.065(A) or that the County's alleged procedural failure somehow renders Amendment M-2 inconsistent with GMA. Opinion at 22, CP 27.

Regarding alleged inconsistency between Amendment M-2 and any development regulation, Summit-Waller mistakenly believes Amendment M-2 also revised the County's development regulations, which it did not. M-2 is a Map-Amendment to the Countywide Land Use Designation Map

[18] This deference supersedes the deference afforded the Board's interpretation of the GMA *Id*. at 154.

and associated Plan policies.[19] Amendment M-2 did not amend the County's development regulations.[20] Accordingly, the Court of Appeals correctly indicated, Amendment M-2 is an amendment to the Comprehensive Plan land use designation map, not an amendment to the County's development regulations hence the second part of RCW 36.70A.130(d) is not applicable to this case. Opinion at 21. Accordingly, Summit-Waller has not demonstrated that the Opinion conflicts with the *Thurston County* and *Kittitas County* decisions and thus has not satisfied RAP 13.4. The Petition should be dismissed.

B. Summit-Waller's Abandoned and Waived Arguments Do Not Warrant Discretionary Review.

For Summit-Waller's Fifth "erroneous reason" the Court of Appeals Opinion is contrary to the *Thurston County* and *Kittitas County* decisions, they claim the court erred when it concluded Summit-Waller had waived arguments they failed to raise in their original appeal under PCC 19C.10.065(A). Summit-Waller fails to provide any basis for why their failure to preserve other arguments challenging Amendment M-2 under PCC 19C.10.010 conflicts with these or any other Supreme Court decisions.

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[19] This included related changes to the Mid-County Plan Land Use Element (AR 1978) and Land Use Policies (AR 1985).

[20] The County later adopted the companion implementing HDR land use designation and implementing MHR zoning classifications when it amended its urban zone classifications under PCC 18A.10.080 in 2017. Ordinance 2017-89s, effective May 1, 2017.

Summit-Waller also contends the Court of Appeals erred when the court "declined to consider [their] argument regarding economic development under RCW 36.70A.020(5)." Petition at 13. Summit-Waller is mistaken. Responding to Summit-Waller's Motion for Reconsideration, the Court of Appeals addressed this claim when it held:

> Contrary to RAP 10.3(a)(6), [Summit-Waller] fail to cite facts or legal authority that show that the County failed to properly consider economic development or that the adoption of amendment M-2 violated RCW 36.70A.020(5).[21]

Accordingly, they have not shown why they are entitled to discretionary review.

C. Review Should Not Be Granted Under RAP 13.4(b)(4) Because Summit-Waller's Petition Does Not Involve an Issue of Substantial Public Interest.

1. The Opinion does not involve an issue of "substantial public interest." Amendment M-2 corrected an inappropriate land use designation of eight parcels within the County's UGA, which does not constitute "a matter of continuing and substantial public interest for this Court to determine".

As a preliminary matter, Summit-Waller has not demonstrated how a Comprehensive Plan map amendment constitutes a matter of continuing and substantial public interest. Notably, the property involves 35 acres of an approximate total of 14,652 acres in the Mid-County Community Plan area or less than 1 per cent of the total. AR 94. By contrast, the Rural

[21] April 23, 2019 Order Amending Unpublished Opinion, at 3.

Separator constitutes approximately 10,696 acres. *Id*. Pierce County's amendment review procedure functioned as intended. The review remediated the inappropriate EC area-wide designation, prevented the proposed CC designation, which would have allowed both high-density and commercial uses, and provided a reasonable alternative HRD designation that would be a better transition into the surrounding community. Accordingly, Summit-Waller has not demonstrated the County's adoption of Amendment M-2 raises an issue of "substantial public interest" The Court of Appeals properly decided the matter.

2. *The Opinion does not raise an issue of substantial public interest related to notice or "due process" because Summit-Waller failed to preserve the issue for appeal and their tardy claim lacks any merit.*

The Opinion does not raise an issue of substantial public interest related to notice or "due process." Summit-Waller's argument regarding public notice and participation under RCW 36.70A.020(11) and RCW 36.70A.140 is improper. Opinion at 33, 35. Neither of these provisions were the subject of the M-2 appeal before the Board, and thus the administrative record on this topic is incomplete. As the Court of Appeals explained, the Court reviews "the decision of the Board, not the decision of the superior court" and "the review is limited to "the record before the Board." Opinion at 33, *quoting*, *Feil v E. Wash. Growth Mgmt. Hr'gs Bd.,*

172 Wn.2d 367, 376, 259 P.3d 227 (internal quotations omitted).

The Court of Appeals examined whether an exemption to this general rule exists where, "the interests of justice would be served by resolution of an issue arising from ...[a]gency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency" *(quoting* RCW 34.05.554(1)(d)(ii). Opinion at 32. Summit-Waller participated in hearings before the Planning Commission, the CDC ("CDC") and full Council and inexplicably never complained of inadequate notice. Opinion at 8. The court declined to extend the exception to Summit-Waller because the issue had not been raised before Summit-Waller had "exhausted the last feasible opportunity for seeking relief" from the Board. Opinion at 31-32, *quoting* RCW 34.05.554(1)(d)(ii).

Additionally, the Summit-Waller relies upon *Maynard Inv. Co. v. McCann,* 77 Wn.2d 616 (1970), for the misguided notion that they may raise their otherwise untimely and unperfected notice argument where the issue "affects the public interests" (*quoting Maynard*, 77 Wn.2d at 622. Petition at 17. Summit-Waller conveniently ignores the court's qualification of the general rule precluding raising issues for the first time on appeal. The *Maynard* court limited the exception to where the question involves," the present welfare of the people at large or a substantial portion thereof." *Id*. at 622. The Court of Appeals rejected Summit-Waller's argument because

Summit-Waller never argued that the redesignation notice here involves the public interest and present welfare of the public at large. Opinion at 30-31.

Instead of properly raising the issue before the Board to allow Respondents to appropriately respond and to adequately develop the record, Summit-Waller advances an unrelated argument presented by James Halmo, a representative for another group of petitioners in the consolidated appeal before the Board. Petition at 17. There, Mr. Halmo challenged the County's reformatting and consolidation of the Comprehensive Plan and subarea community plans, which he claimed denied the public "meaningful public participation." Summit-Waller's Brf 39-40. The Board disagreed, "Petitioners have not satisfied their burden to adduce facts demonstrating that Pierce County's Comprehensive Plan Amendments were adopted without being guided by the planning goal to encourage the involvement of citizens. AR 2090.[22] Contrary to Summit-Waller's claim, Halmo never raised the issue of notice in the context of Amendment M-2.

Even if the issue is properly before the Court, and it is not, the record does not support Summit-Waller's contention. The Board found the County met its notice requirements under the GMA. The GMA requires the County to provide notice of actions under the GMA that is "reasonably calculated

[22] The County's extensive public outreach and participation is detailed in the PALS's April 2015 Staff Report to the Planning Commission (AR 0471, AR 0515) and the Illustrative Exhibit attached to the County's Prehearing Brief. AR 1652.

to provide notice to property owners and other affected and interested individuals…," and it lists publication of notice in a newspaper as an approved method.[23] The County sent notice of Amendment M-2 to surrounding property owners in October, 2014.[24] The County then published notice in local newspapers for both the November 4, 2014 MCAC meeting and December 4, 2014 Planning Commission meeting at which M-2 was discussed. Amendment M-2 was also published on the County's website before adoption.

Summit-Waller contends that the County's public notice was deficient because the notice described the proposed redesignation from EC to CC, not from EC to HRD. Pet. at 16. The distinction is without merit. Discussion of a redesignation to CC necessarily included the same analysis of moderate to high density residential development as a redesignation to HRD since both designations allow apartments. The County's published notification via newspapers and its website complied with GMA requirements and served its purpose of putting nearby property owners on notice of the proposed redesignation process.

[23] RCW 36.70A.035. To the extent Summit-Waller may be claiming lack of individual notice, such notice is not required under the GMA. *Chevron U.S.A. Inc. v. Central Puget Sound GMHB*, 123 Wash. App 161, 169-70, 93 P.3d 880 (2004).

[24] Ex. #PC 6-3 in underlying record. See also, Minutes from 11/04/15 MCAC meeting, at AR 1710 (County Planner Sean Gaffney advising the MCAC that neighboring property owners were notified of the proposal).

Moreover, potential modification of the initial proposal is part of the County review process under PCC 19C.10. As the Board noted, "nowhere is there a prohibition against modification of a proposal in light of the review and recommendation." CP 23. Change is a logical outcome given the County and public review. The County code does not require an applicant to start anew if the County does not support the original proposal during the map amendment review process. Likewise, the County does not require additional public notice of the HRD modification during that process. HRD is a subset of CC; there is no use allowed to HRD that is not already allowed in CC.

Summit-Waller further contends their "due process rights" have been denied the "citizen participation and coordination Goals of RCW 36.70A.020(11) have been denied.[25] Petition at 18. Though Summit-Waller asserts the "required process never occurred" (*Id.*), they fail to recognize PALS' review under PCC 19C.10.065(A) was just the start of the review process. After PALS recommended the M-2 proposal to the MCAC and to the Planning Commission, the Commission, in turn, upheld the recommendation and forwarded it to the CDC. Ultimately the full Council adopted Amendment M-2 under Ordinance 2015-40. Summit-Waller

[25] Summit-Waller laments "the loss of an important Employment Center," though they acknowledged their historical opposition to the EC designation in a June 2, 2015 letter to the Pierce County Council. AR 63.

participated at every level from the Planning Commission through the County's final adoption of Amendment M-2 via Ordinance 2015-40, and thus have not demonstrated they were denied participation or due process. As such, Summit-Waller has not established that the Opinion presents an issue of substantial public opinion or provided any basis for review under RAP 13.4.

IV. CONCLUSION

Summit-Waller fails to establish the Court of Appeals' decision conflicts with Washington court precedent and fails to present an issue of substantial public interest. Additionally, Summit-Waller improperly raises a notice issue that was not raised before the Growth Board and improperly argues other issues the Court of Appeals and Growth Board properly dismissed as abandoned. For the foregoing reasons, the Court should dismiss the Petition for Review.

RESPECTFULLY SUBMITTED this 14th day of June, 2019.

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DECLARATION OF SERVICE

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. On June 14, 2019, I caused a copy of the foregoing Respondent Pierce County's Answer to Petition of Review to be served on the following parties and in the manner indicated below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington, this 14th day of June, 2019.

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