

74360-1

74360-1

No. 74360-I

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MICHELLE J. KINNUCAN,
Petitioner/Appellant,

vs.

CITY OF SEATTLE,
Respondent,

**RESPONDENT CITY OF SEATTLE'S ANSWER TO
NORTHWEST JUSTICE PROJECT'S AMICUS CURIAE BRIEF**

PETER S. HOLMES
Seattle City Attorney

Elizabeth E. Anderson, WSBA #34036
Assistant City Attorney
Attorneys for Respondent
City of Seattle

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, Washington 98104-7097
(206) 684-8200

FILED
JUL 17 11:35
CLERK OF COURT
SUPERIOR COURT
JUL 17 2017

TABLE OF CONTENTS

	<u>Page(s)</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE	2
III. AUTHORITY AND ARGUMENT.....	5
A. RCW 59.18.440 does not create a duty for the Examiner to resolve all tenant grievances during the “relocation period”	5
B. There is no duty for the Examiner to cancel Licenses or permits needed for redevelopment.	9
C. Authorizing the Examiner to revoke a License or “reset” TRAO’s 90-day notice is unnecessary and unenforceable.....	11
1. Where a redevelopment permit has been issued and the 21-day appeal period lapses, the permit cannot be revoked.	11
2. Authorizing the Examiner to revoke a License is unnecessary because the City’s Code Enforcement Process is Available throughout Relocation.	12
3. Authorizing the Examiner to reset the 90-day notice requirement conflicts with the RLTA.	13
4. Seattle’s TRAO Administrative Appeals Timeline is Consistent with RCW 59.18.440.	14
D. TRAO’s Administrative Appeal Time Limit Is Not Arbitrary and Capricious	15
V. CONCLUSION.....	17

TABLE OF AUTHORITIES

Page(s)

CASES

Abbenhaus v. City of Yakima,
89 Wn.2d 855, 576 P.2d 888 (1978)..... 15

Burley Lagoon Improvement Ass'n. v. Pierce
County, et. al., 38 Wn.App. 534, 686 P.2d 503 (1984) 14

Cannabis Action Coalition v. City of Kent,
183 Wn.2d 219, 351 P.3d 151 (2015)..... 14

City of Hoquiam v. Grays Harbor Cty.,
24 Wn.2d 533, 166 P.2d 461 (1949)..... 10

DeHeer v. Seattle Post-Intelligencer,
60 Wn.2d 122, 372 P.2d 193 (1962)..... 9

Eugster v. City of Spokane,
118 Wn.App. 383, 76 P.3d 741 (2003)..... 14

Fox v. Skagit Cty.,
193 Wn. App. 254, 372 P.3d 784 (2016)..... 9

Freeman v. Gregoire,
171 Wn.2d 316, 256 P.3d 264 (2011)..... 6

Habitat Watch v. Skagit Cty.,
155 Wn.2d 397, 120 P.3d 56 (2005)..... 11

Heinsma v. City of Vancouver,
144 Wn.2d 556, 29 P.3d 709 (2001)..... 14

HJS Development, Inc. v. Pierce County, 148 Wn.2d 451,
61 P.3d 1141 (2003)..... 13, 14

State ex rel. Spokane United Rys. v. Dep't of Pub. Serv.,
191 Wn. 595, 71 P.2d 661 (1937)..... 14

<u>Woodinville Water Dist. v. King County,</u> 105 Wn. App. 897, 21 P.3d 309 (2001).....	8
---	---

STATUTES

RCW 7.16.160	11
RCW 7.16.170	11
RCW 35.22.280(32).....	10
RCW 36.70A.040(1).....	2
RCW 36.70C.020(2)(a).....	11
RCW 59.12	7
RCW 59.12.050	8, 17
RCW 59.18	3, 7, 8, 10, 15
RCW 59.18.050	8, 17
RCW 59.18.130	13
RCW 59.18.180	13
RCW 59.18.380	13
RCW 59.18.440	passim
RCW 59.18.440(5).....	passim

ORDINANCES

SMC 3.02.110-130.....	8
SMC 22.204.050	5
SMC 22.206.160.C.1	3, 4

SMC 22.206.160.C.1.h	3, 4
SMC 22.206.160.C.5	4, 16
SMC 22.206.160.C.6	16
SMC 22.206.160.C.7	4, 16
SMC 22.206.220-250.....	3
SMC 22.206.270-280.....	16
SMC 22.206.280(f)	16
SMC 22.206.295	16
SMC 22.206.305	3
SMC 22.206.315	3
SMC 22.210	2, 3
SMC 22.210.040.....	3
SMC 22.210.050	5
SMC 22.210.060	3, 5, 12
SMC 22.210.110.....	3, 12
SMC 22.210.120	3
SMC 22.210.130	3, 12
SMC 22.210.150.....	4, 8
SMC 22.210.150.A.....	5
SMC 22.210.150.C	4
SMC 22.210.180.B	12
SMC 22.210.280.F.....	5

OTHER AUTHORITIES

17 Wash. Prac. Real Estate § 6.81 (2d ed.)..... 13

I. INTRODUCTION

This case involves interpreting the undefined statutory phrase “relocation period”,¹ and determining if it imposes a mandatory duty on the City to extend the administrative appeals timeline until well after a landlord has complied with the City of Seattle’s (“City’s”) Tenant Relocation Assistance Ordinance (“TRAO”) requirements and obtained a Tenant Relocation License (“License”) from the City.

While the City has the authority to extend the administrative appeal timelines, the City does not have a mandatory duty to do so. Similarly, while the City may have the authority to revoke a License as advocated for by Northwest Justice Project (“NWJP”), the City does not have a duty to revoke a License even if a violation of City code occurs.

NWJP mischaracterizes the issue by claiming “[t]his case concerns the interpretation of Seattle’s Tenant Relocation Assistance Ordinance...”² This mischaracterization and the unsupported claim that the City has a duty to hold an administrative hearing after a License has been issued should be rejected.

¹ RCW 59.18.440(5).

² Brief of Amicus Curiae Northwest Justice Project (“Amicus”) at 2.

II. STATEMENT OF THE CASE

RCW 59.18.440, the statute at issue, provides:

(1) Any city . . . that is required to develop a comprehensive plan under RCW 36.70A.040(1) is authorized to require... property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation ...or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development.

...

(5) Any city... requiring the provision of relocation assistance under this section *shall adopt... regulations to implement such requirement. Such ... regulations shall include provisions for administrative hearings* to resolve disputes between tenants and property owners relating to... unlawful detainer actions *during relocation.*
(emphasis added)

This statute sets no time period for administrative appeals nor does it define “relocation period.”

As authorized by this statute, the City adopted TRAO³ to provide funds for qualifying low-income tenants when a landlord seeks to terminate their tenancy under certain circumstances. One such circumstance is when a landlord terminates a tenancy under the City’s

³ Chapter 22.210 SMC.

Just-Cause Eviction Ordinance (“Just Cause”).⁴ In particular, where “the owner seeks to do substantial rehabilitation in the building”, the owner “must obtain a tenant relocation license if required by Chapter 22.210 and at least one permit necessary for the rehabilitation, other than a Master Use Permit, before terminating the tenancy.”⁵ Combined, these codes provide that a landlord may not terminate a tenancy until the landlord has complied with TRAO and Just Cause.

Under TRAO, the City will not issue a License until the landlord: provides all tenants with TRAO program information; provides a 90-day advance notice of planned development⁶ (this is in addition to the 20-day notice under the Washington Residential Landlord-Tenant Act (“RLTA”) Chapter 59.18 RCW); and pays the landlord’s share of the relocation assistance for eligible tenants.⁷

⁴SMC 22.206.160.C.1. If a landlord terminates a tenancy in violation of the Just Cause Eviction Ordinance (“Just Cause”), the City may bring an enforcement action for penalties (SMC 22.206.220-250, .270); or a tenant may bring private right of action (SMC 22.206.305), with a right of appeal to superior court (SMC 22.206.315).

⁵ SMC 22.206.160.C.1.h. *See also* SMC 22.210.040 which states “This chapter shall apply to displacement caused by demolition, change of use, substantial rehabilitation, or removal of use restrictions from any dwelling unit in The City of Seattle....” except for limited circumstances not present here.

⁶ SMC 22.210.060 and .120.

⁷ SMC 22.210.060, .110, and .130.

As part of TRAO,⁸ a tenant or landlord may file an administrative appeal with Seattle’s Hearing Examiner (“Examiner”) to resolve disputes between tenants and property owners associated with an unlawful detainer action before a License is issued.⁹

If, after a License is issued the landlord threatens eviction or improperly issues a notice to terminate tenancy without obtaining, for example, a permit for substantial rehabilitation, the landlord would be in violation of Just Cause.¹⁰

Remedies for violating Just Cause include bringing a private action against a landlord,¹¹ use of such Just Cause violation as a defense in an unlawful detainer action¹² or filing a code compliance complaint with the City — a remedy Ms. Kinnucan used.¹³ After receiving Ms. Kinnucan’s complaint, the City concluded the landlord’s June termination notice violated Just Cause.¹⁴ After being notified of the violation, the landlord rescinded the notice, obtained a building permit, and issued a corrected

⁸ SMC 22.210.150 (authorizes two types of administrative appeals).

⁹ SMC 22.210.150.C.

¹⁰ SMC 22.206.160.C.1.h.

¹¹ SMC 22.206.160.C.7.

¹² SMC 22.206.160.C.5 and .160.C.1.

¹³ Clerk’s Papers (“CP”) 42:4-21; CP 64-66.

¹⁴ *Id.*

termination notice requiring Ms. Kinnucan move by July 31, 2014.¹⁵

Ultimately, Ms. Kinnucan remained in her apartment until October 2014.¹⁶

Contrary to NWJP's claims,¹⁷ the Examiner does not have the authority to issue or affirm or reverse Notices of Violation for code violations under TRAO or Just Cause, nor does the Examiner have the jurisdiction to impose civil fines or to deny Licenses.¹⁸ TRAO licenses are only issued after the opportunity for an Examiner appeal under TRAO has passed.¹⁹

III. AUTHORITY AND ARGUMENT

A. **RCW 59.18.440 does not create a duty for the Examiner to resolve all tenant grievances during the "relocation period".**

¹⁵ *Id.*

¹⁶ CP 42:20-21.

¹⁷ Amicus at 14.

¹⁸ SMC 22.210.150.A. See also SMC 22.210.280.F (penalty action for code violations); SMC 22.210.050 (requiring landlords to obtain a License, stating "*The Director* shall not issue any permit for the demolition, change of use or substantial rehabilitation of any dwelling unit until the owner has obtained a tenant relocation license."); SMC 22.210.060 (which states "*The Director* shall issue a tenant relocation license when the owner has completed all of the following: [A-D]."); and SMC 22.204.050 (which defines "Director" as the Director of the Seattle Department of Construction and Inspections for the City of Seattle and/or the Director's designee.) (Emphasis added.)

¹⁹ SMC 22.210.150.A.

Three elements must be established before a writ of mandamus will issue.²⁰ Arguing the City is under a “statutory duty to hear and decide tenant grievances throughout the relocation period”,²¹ NWJP simply assumes that the first element has been met.

NWJP relies on RCW 59.18.440(5) as the source of the alleged duty.²² RCW 59.18.440 authorizes a municipality to require landlords to pay relocation assistance monies for low-income tenants being evicted due to the demolition, substantial rehabilitation, or change of use of residential property.

However, nothing in RCW 59.18.440(5) creates a mandatory duty that the City extend its administrative appeal deadline until a tenant removes its last item from the rental unit. As recognized by Washington courts, a mandatory duty to perform an act required by law, where the mandate specifies the precise thing to be done and leaves nothing to the exercise of discretion or judgment.²³ As noted in the City’s response

²⁰ As contained in the City’s Response Brief at 1, mandamus in an extraordinary writ appropriate only where a plaintiff proves three elements: (1) the government is under a clear duty to act; (2) the plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law; and (3) the plaintiff is “beneficially interested” in the duty.

²¹ Amicus at 15, last full paragraph.

²² Amicus at 3, 19 (“The Court should hold that RCW 59.18.440(5) requires Seattle, throughout the entire relocation period [pre-and post-issue issuance] to hear tenant grievances that present grounds for denial or cancellation of a tenant relocation license.”)

²³ *Freeman v. Gregoire*, 171 Wn.2d 316, 323, 256 P.3d 264, 267-68 (2011).

brief,²⁴ the Legislature did not dictate any administrative appeals timeline or define “relocation period” in RCW 59.18.440²⁵ or in Chapter 59.18 RCW. Nowhere in RCW 59.18 does it state that a municipality must provide administrative appeals, as NWJP claims, to “decide tenant grievances until a tenant has relocated.”²⁶ RCW 59.18.440 establishes a variety of detailed requirements for municipalities that want to charge landlords for low-income tenant relocation. Yet, the Legislature did not set a timeline for how long a municipality must allow administrative appeals under 59.18.440(5).

Likewise, when the Legislature adopted RCW 59.18.440, it did not amend the superior court’s jurisdiction over evictions (“unlawful detainer”) or the unlawful detainer procedures,²⁷ or the procedures in the RLTA.²⁸ The superior court has general jurisdiction to determine possession under unlawful detainer, including for residential tenancies

²⁴ City’s Response Brief at 7-9.

²⁵ RCW 59.18.440 – Relocation assistance for low-income tenants – Certain cities, towns, counties, municipal corporations authorized to require

(5) Any city... requiring *the provision of relocation assistance* under this section *shall adopt... regulations to implement such requirement. Such ... regulations shall include provisions for administrative hearings* to resolve disputes between tenants and property owners relating to... unlawful detainer actions *during relocation.*(emphasis added).

²⁶ *E.g.*, Amicus at 15 (“Though the city’s statutory duty to hear and decide tenant grievances extends throughout the relocation period....”)

²⁷ Chapter 59.12 RCW.

under the RLTA.²⁹ Such jurisdiction was never delegated to administrative tribunals.³⁰

The administrative appeal contemplated by RCW 59.18.440(5) is not concerned with Just Cause. NWJP's argument that administrative appeals of Just Cause should be allowed because the Legislature "was surely aware that local eviction protections would exist and strongly alluded to their significance by requiring cities to hear and decide alleged violations" of local eviction protections (referring to the City's Just Cause Ordinance) must fail.³¹ Because there is no state law equivalent to Just Cause, nor is there any mention of Just Cause in RCW 59.18.440, it cannot be assumed the Legislature intended that the administrative hearings referenced in RCW 59.18.440(5) require the City to provide an administrative appeal for violating a Seattle-specific code requirement.

Instead of resting on authority, NWJP's argument is based on speculation. If the Legislature intended the City to have administrative

²⁸ Chapter 59.18 RCW. In particular, RCW 59.12.050 and 59.18.050 (the superior court has jurisdiction over unlawful detainer and unlawful detainer under the RLTA).

²⁹ *Id.* Additionally, as officials of an administrative agency created by the Seattle City Council, see SMC 3.02.110 -.130, "hearing examiners have only the authority delegated to them by the Council." *Woodinville Water Dist. v. King County*, 105 Wn. App. 897, 906, 21 P.3d 309 (2001). Nowhere does the Seattle Municipal Code purport to vest the Hearing Examiner with authority to resolve tenant grievances. See SMC 3.02.110 -.130; SMC 22.210.150.

³⁰ *Supra*, footnote 28.

³¹ Amicus at 15.

appeals of Just Cause, it would have said so in RCW 59.18.440(5). But it did not.

NWJP has failed to establish the City has any duty to have an administrative hearing until a tenant moves the last item out of a rental unit.

B. There is no duty for the Examiner to cancel Licenses or permits needed for redevelopment.

NWJP recognizes that “RCW 59.18.440 does not state or suggest that municipal hearing officers adjudicate unlawful detainer claims directly” but rather that the “administrative tribunal could deny or revoke a [tenant relocation] license.”³² NWJP argues that the Examiner has a duty to revoke or deny Licenses. No legal authority supports this interpretation and therefore it must be rejected.³³

NWJP does not point to any language in RCW 59.18.440 that states the administrative tribunal should deny or revoke a License. And, contrary to NWJP’s argument, nowhere in RCW 59.18.440 did the Legislature contemplate the City withhold or cancel permits needed for redevelopment.

³² Amicus at 7, 12, and 14; NWJP Motion for Leave to File Amicus at 4-5.

³³ *Fox v. Skagit Cty.*, 193 Wn. App. 254, 277–78, 372 P.3d 784, 796 (2016) citing *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”)

While it is true that denying or cancelling a License may prevent or delay a tenant eviction, there is no evidence the Legislature intended such a result by RCW 59.18.440's plain language or in the statute's legislative history. If the Legislature intended the Examiner to have the authority to alter the timelines or extend the eviction process under the RLTA, it would have amended that chapter.

Rather, NWJP argues that as part of the administrative process, the City has the authority to revoke a License after Landlords have complied with TRAO.³⁴ In particular, NWJP points to TRAO and RCW 35.22.280(32) to support its argument that Seattle has the authority to revoke tenant relocation license for post-issuance TRAO violations.”³⁵

The City may have the authority to revoke Licenses after issuance; however, the authority to take some action is not the same thing as having the duty to do so.³⁶ Particularly with respect to a writ of mandamus, which requires a duty for the City to take some action.³⁷

³⁴ Amicus at 12-15, 17-19.

³⁵ Amicus at 18 provides “Fortunately, Seattle absolutely can revoke tenant relocation licenses. Not only is this authority implied [by TRAO]”, the “power to revoke licenses” is expressed at RCW 35.22.280(32).

³⁶ *City of Hoquiam v. Grays Harbor Cty.*, 24 Wn.2d 533, 541, 166 P.2d 461, 465 (1949)(finding that “Statutes granting authority to improve, and providing means for paying the cost of the improvement, are not considered as mandatory in such a sense, at least, as to deprive the highway officers of the discretionary power. Thus the grant of authority to construct and repair sidewalks and assess the expense against the abutters

C. Authorizing the Examiner to revoke a License or “reset” TRAO’s 90-day notice is unnecessary and unenforceable.

1. Where a redevelopment permit has been issued and the 21-day appeal period lapses, the permit cannot be revoked.

While the City as the authority, but not the duty, to revoke a License in certain circumstances, in cases where redevelopment permits were also issued, such Licenses may not be revoked by the Examiner. In cases where a landlord had not submitted a demolition or substantial rehabilitation (“redevelopment”) permit application to the City, the landlord will apply for and receive the needed permits after the City issues a License. The City’s issuance of a redevelopment permit is a land use decision subject to the Land Use Petition Act (“LUPA”).³⁸ Decisions subject to appeal under LUPA must be appealed within 21 days, even if that decision is later determined to be in error or illegal.³⁹ If a redevelopment permit is not timely challenged under LUPA, the redevelopment permit cannot be revoked.

does not create an imperative duty....[or]...impose upon them a duty that can be coerced by mandamus...).

³⁷ RCW 7.16.160, 7.16.170.

³⁸ RCW 36.70C.020(2)(a).

³⁹ *Habitat Watch v. Skagit Cty.*, 155 Wn.2d 397, 407, 120 P.3d 56 (2005) (“LUPA embodies the same idea expressed by this court in pre-LUPA decisions—that even illegal decisions must be challenged in a timely, appropriate manner.”).

2. Authorizing the Examiner to revoke a License is unnecessary because the City's Code Enforcement Process is Available throughout Relocation.

If an unlawful detainer action were to be filed after the City issued a License, a tenant would have already been deemed eligible (or not) for relocation assistance,⁴⁰ the landlord would have given out the tenant relocation packets to all tenants, and the 90-day advance notice of development activity would have been issued by the landlord.⁴¹ All of these steps must occur under TRAO before the City will issue the License to the landlord.

Any tenant grievance arising after the City issues a License may be alleged violations of Just Cause or the RLTA. Enforcement for Just Cause violations, like TRAO violations, are addressed through the City's code enforcement process. If voluntary compliance cannot be obtained,⁴² the City may file a lawsuit in municipal court.⁴³ Authorizing the Examiner to

⁴⁰ SMC 22.210.060, .110, .130.

⁴¹ *Id.*

⁴² These procedures include notifying Seattle DCI Code Compliance staff, who will investigate the complaint and, if a violation of the JCEO exists, DCI will attempt to obtain voluntary compliance. This occurred in this case. *See* CP 42, lines 4-21.

⁴³ SMC 22.210.180.B, authorizing SDCI to seek a monetary penalty against violator. The City cannot administratively seek to stop an unlawful detainer action which is dictated by RCW 59.18.

revoke a License is unnecessary since any “grievance” based on a code violation can be addressed through the code enforcement process.

3. Authorizing the Examiner to reset the 90-day notice requirement conflicts with the RLTA.

The RLTA provides that once a landlord has complied with the statutory procedures, and if a tenant continues to hold over (retain possession of the tenancy), the landlord may forcibly remove the tenant.⁴⁴ If, as argued by NWJP, the Examiner should have the authority to reset the 90-day notice requirement contained in TRAO,⁴⁵ such action may conflict with RLTA by allowing a tenant to hold over after the landlord has complied with the RLTA.

As the Court knows, a municipality cannot prohibit something allowed by state law.⁴⁶ The RLTA allows a landlord to evict a tenant once the landlord has followed the statutory procedures set forth in the RLTA. By allowing a jurisdiction the authority to, in essence, restart the process for TRAO, it would prevent the landlord from evicting a tenant until that TRAO process was redone and a new License was issued. NWJP acknowledges that such a “brief delay in a redevelopment project can

⁴⁴ RCW 59.18.130, .180 and .380. *See also* 17 Wash. Prac. Real Estate § 6.81 (2d ed.)

⁴⁵ Amicus at 14 and 18.

⁴⁶ *HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 476-477 and 481-482, 61 P.3d 1141 (2003).

equate to weeks or months of affordable housing for tenants....”⁴⁷ Yet, such an action would conflict with state law.

4. Seattle’s TRAO Administrative Appeals Timeline is Consistent with RCW 59.18.440.

NWJP argues that the TRAO administrative appeals timeline is inconsistent with RCW 59.18.440. This argument lacks merit. As noted in Seattle’s Response Brief, “[o]rdinances are to be interpreted consistent with state law.”⁴⁸ A county or city cannot override state law.⁴⁹ Here, the Legislature did not define “relocation period” or set a specific timeline for administrative appeals in RCW 59.18.440. In considering an undefined term, the court considers the statute as a whole to give meaning to the term in harmony with other statutory provisions.⁵⁰ Courts must reasonably construe ordinances with reference to their purpose.⁵¹ As argued in detail in the City’s Response brief, the City’s TRAO administrative appeals

⁴⁷ Amicus at 19.

⁴⁸ *Eugster v. City of Spokane*, 118 Wn.App. 383, 406, 76 P.3d 741 (2003).

⁴⁹ See *Cannabis Action Coalition v. City of Kent*, 183 Wn.2d 219, 227, 351 P.3d 151 (2015) (“state law preempts a local ordinance when [it] permits what state law forbids or forbids what state law permits.”).

⁵⁰ *HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 471-472, 61 P.3d 1141 (2003) citing *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 563, 29 P.3d 709 (2001).

⁵¹ *HJS Development, Inc. v. Pierce County ex rel. Dept. of Planning and Land Services*, 148 Wn.2d 451, 471-472, 61 P.3d 1141 (2003) citing *Burley Lagoon Improvement Ass’n, v. Pierce County et. al.*, 38 Wn.App. 534, 537, 686 P.2d 503 (1984) (citing *State ex rel. Spokane United Rys. v. Dep’t of Pub. Serv.*, 191 Wn. 595, 71 P.2d 661 (1937)).

timeline are consistent with RCW 59.18.440's requirement. The City refers the Court to its Response Brief on that point.

D. TRAO's Administrative Appeal Time Limit Is Not Arbitrary and Capricious

NWJP incorrectly asserts that *Abbenhaus* stands for the proposition that the TRAO's administrative appeal deadline should be reviewed under the "arbitrary and capricious" standard.⁵² A court applies this standard in "review of the action taken by the municipality."⁵³ There is no City "action" at issue in this appeal, which can be evaluated under this standard. Instead, the issue is whether the City has a duty under RCW 59.18.440(5) to provide administrative appeals beyond those provided by TRAO. The City finds no case law, and NWJP cites no authority, applying this standard to assess a municipal ordinance's consistency with a statute.

Even if the Court were to use the arbitrary and capricious standard, which it should not, their claim lacks merit. To support its arbitrary and capricious claim, NWJP argues "there is no logical reason" for treating

⁵² Amicus at 16.

⁵³ *Abbenhaus v. City of Yakama*, 89 Wn.2d 855, 859, 576 P.2d 888 (1978).

tenants with grievances after issuance of a License “less favorably” than tenants who submit grievances before a license is issued.⁵⁴

NWJP’s argument fails for several reasons. First, tenants alleging an improper unlawful detainer action have the same remedies under Just Cause either before or after a License is issued. If a landlord attempts to evict a tenant for substantial rehabilitation without carrying out the stated reasons for or condition justifying the termination, the landlord: (1) may be liable to a tenant in a private action for damages;⁵⁵ (2) may be subject to civil penalties accrued for a Just Cause violation;⁵⁶ and/or (3) may be subject to a violation of Just Cause as a defense in an action to terminate tenancy.⁵⁷

Second, while a tenant with a grievance that arises after a License is issued may not file an administrative appeal, the lack of an administrative appeal is tied to several important factors: The Examiner cannot provide the relief the tenant desires like an order allowing a tenant to remain in their rental unit. As noted above, this authority is exclusively

⁵⁴ Amicus at 16.

⁵⁵ SMC 22.206.160.C.7 and 22.206.295.

⁵⁶ SMC 22.206.160.C.6; SMC 22.206.270-280. If voluntary compliance is not achieved, code enforcement staff may refer the matter to the Seattle City Attorney’s Office for prosecution. SMC 22.206.280(f).

⁵⁷ SMC 22.206.160.C.5.

vested in the superior court.⁵⁸ Nor can the Examiner revoke the License in circumstances where the landlord has obtained a redevelopment permit and LUPA's 21-day appeal period has lapsed. Further, requiring an additional 90-day notice of development activity under City code may violate the RLTA by allowing a tenant to hold over after a landlord properly evicted a tenant. The City properly established a reasonable administrative appeal timeline under TRAO.

V. CONCLUSION

While NWJP and the City agree that the City has the authority to extend the TRAO administrative appeal timeline until long after a landlord has complied with the TRAO requirements, NWJP has failed to establish the City has a mandatory duty to do so. Likewise, while the City may have the authority to revoke a License under certain circumstances as advocated for by NWJP, the City does not have a duty to revoke a License even if a violation of City code occurs. The City appropriately set the TRAO administrative appeal timeline consistent with RCW 59.18.440.

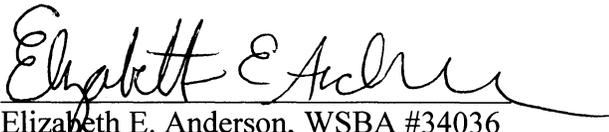
⁵⁸ RCW 59.12.050; 59.18.050.

NWJP speculation and unsupported claims to the contrary should be rejected.

DATED this 17th day of August, 2016.

PETER S. HOLMES
Seattle City Attorney

By:


Elizabeth E. Anderson, WSBA #34036
Assistant City Attorney
*Attorneys for Respondent
The City of Seattle*

CERTIFICATE OF SERVICE

I certify that on this date, I served a copy of the Respondent's Answer to NWJP's Amicus Curiae Brief to the following parties by the method stated below:

Clerk of the Court
Court of Appeals, Division I
600 University Street, Suite 2600
Seattle, WA 98101
VIA MESSENGER

Vanessa Soriano Power, Esq.
Karl Francis Oles
Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, WA 98101
E-mail: vanessa.power@stoel.com
E-mail: karl.oles@stoel.com
Attorneys for Appellant
VIA MESSENGER & E-MAIL

Eric Dunn
Northwest Justice Project
401 Second Avenue South, Suite 407
Seattle, WA 98104
Attorneys for Amicus Curiae NJP
VIA MESSENGER & E-MAIL

the foregoing being the last known address of the above-named parties.

Dated this 17th day of August, 2016, at Seattle, Washington.



ALICIA REISE

2016 AUG 17 PM 4:35
COURT OF APPEALS
STATE OF WASHINGTON