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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

Case No. 358381

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RST PARTNERSHIP, a general partnership Appellant, v. CHELAN COUNTY, a municipal corporation, Respondent, v. NSJB ENTERPRISE, INC., a Washington corporation, Additional Parties.	NSJB ENTERPRISE, INC., a Washington corporation Appellant, v. CHELAN COUNTY, a municipal corporation, Respondent, v. RST PARTNERSHIP, a general partnership, Additional Parties.
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BRIEF OF RESPONDENT

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## **I. INTRODUCTION**

Appellant RST Partnership (“RST”) and Appellant NSJB Enterprise Inc. (“NSJB”) (collectively, “Appellants”) seek review of the Chelan County Superior Court’s order granting dismissal of their respective land use petitions after Appellants failed to properly serve their petitions in accordance with the procedural requirements of Chapter 36.70C RCW, the Washington State Land Use Petition Act.

## **II. STATEMENT OF THE ISSUES**

1. Whether the Superior Court correctly concluded that the twenty-one (21) day limitations period provided in RCW 36.70C.040 began to run when RST and NSJB received actual notice of the land use decision?
2. Whether the Superior Court correctly concluded that RST and NSJB’s land use petitions were time barred when they failed to serve their respective petitions in accordance with RCW 36.70C.040 and Superior Court Civil Rule 4?

## **III. STATEMENT OF THE CASE**

On February 10, 2017, the Chelan County Department of Community Development Code Enforcement Division issued to RST, owner of the property located at 3110 Main Street, Monitor, WA 98836 APN 231914488018, a Notice and Order to Abate Zoning and Building

Code Violations Pursuant to Chapter 16.06 Chelan County Code (the “notice and order”). CP 052-061. The notice and order set forth violations of various local regulations surrounding the production and/or processing of cannabis on the subject property by tenants, Poorman Enterprises and NSJB<sup>1</sup>. *Id.* RST and NSJB jointly filed a notice of appeal of the notice and order to the Chelan County Hearing Examiner (the “Hearing Examiner”), and the appeal was assigned as Administrative Appeal 2017-060 (“AA 2017-060”). CP 063-074. NSJB and RST appeared with counsel before the Hearing Examiner and presented argument and evidence during the administrative proceedings. CP 082, 103, 124. The Hearing Examiner entered findings of fact, conclusions of law, and a decision affirming the notice and order on June 5, 2017. CP 031-040, 107, 128. The decision identified RST as the property owner, RST’s address, and RST and NSJB as appellants. CP 011 ¶¶ 4, 7; CP 014 ¶ 17.20. The decision also contained the following language pertaining to appellate rights:

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040(4)(a) as “(t)here days after a written decision is mailed by the local jurisdiction or, if not mailed, the**

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<sup>1</sup> At the time the notice and order was issued, NSJB Enterprise, Inc. was doing business, and was referred to, as Evergreen Production.

**date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3)(c) “. . . the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.**

CR 040 (bolding in original). A copy of the decision was delivered via e-mail to Robert McVay, then-attorney for NSJB, and Charles Steinberg, attorney for RST, on June 6, 2017. CP 236 ¶ 5; CP 087-099. Mr. Steinberg acknowledged receipt of the decision. CP 236 ¶ 6.

On June 26, 2017, NSJB filed a land use petition seeking review of the Hearing Examiner’s decision in Chelan County Superior Court Cause No. 17-2-00548-1. CP 101-120. NSJB’s petition did not identify RST as a party in the caption, nor did it reference RST in the body of the petition. CP 236 ¶ 9. On the same day, RST filed a separate land use petition in Chelan County Superior Court Cause No. 17-2-00549-0 also seeking review of the Hearing Examiner’s decision. CP 122-141. RST’s petition also failed to identify NJSB as a party in the caption. CP 236 ¶ 10. Neither NSJB nor RST served their petitions personally or by first-class mail on each other. CP 236 ¶ 8. On June 30, 2017 (more twenty-one (21) days since receiving the Hearing Examiner’s decision), RST and NSJB filed amended land use petitions identifying each other as additional parties in their respective amended petitions. CP 144-175.

While a certificate of service accompanied NSJB's amended petition, no proof of service on NSJB was filed with respect to RST's amended petition.

#### IV. ARGUMENT

##### A. Standard of Review

This matter is a review of the superior court's dismissal for lack of appellate jurisdiction of two land use petitions that sought review pursuant to the Washington State Land Use Petition Act ("LUPA"), Chapter 36.70C RCW. In reviewing an administrative decision, an appellate court stands in the position of the superior court. *Habitat Watch v. Skagit Cnty.*, 15 Wn.2d 397, 406, 120 P.3d 56 (2005). LUPA governs judicial review of local government land use decisions. RCW 36.70C.010. The purpose of the act 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." *Id.* Pursuant to LUPA, a

land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

...

(b) Each of the following persons if the person is not the

petitioner:

...

(ii) Each person identified by name and address in the local jurisdictions written decision as an owner of the property at issue.

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue . . .

RCW 36.70C.040(2) (emphasis added). A petition must be both filed and served within twenty-one (21) days of issuance of the land use decision.

RCW 36.70C.040(3).

The procedural requirements under LUPA must be strictly met before the superior court's appellate jurisdiction is properly invoked. *Citizens to Preserve Pioneer Park L.L.C. v. City of Mercer Island* (“*Citizens*”), 106 Wn. App. 461, 467, 24 P.3d 1079 (2001); *see also*, *Durland v. San Juan Cnty*, 182 Wn.2d 55, 67, 340 P.3d 191 (2014); *San Juan Fidalgo v. Skagit Cnty*, 87 Wn. App. 703, 711-713, 943 P.2d 341 (1997); *Overhulse Neighborhood Assoc. v. Thurston Cnty* (“*Overhulse*”), 94 Wn. App. 593, 597-598, 972 P.2d 470 (1999), *overruled in part on other grounds*, *Durland, supra* at 79. The superior court may not hear a land use petition if the petitioner fails to timely serve

a petition on persons designated in RCW 36.70C.040(2) as necessary parties to the review. *Citizens, supra*.

“A court lacking jurisdiction must enter an order of dismissal.” *Conom v. Snohomish Cnt’y*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005). Determination of whether a court has jurisdiction is a question of law that is subject to de novo review. *Id.*; *Bour v. Johnson*, 80 Wn. App. 643, 647, 910 P.2d 548 (1996).

**B. The Superior Court Correctly Concluded That LUPA’s Twenty-One (21) Day Limitation Period Began To Run on June 6, 2017 When NSJB and RST Received Notice of the Hearing Examiner’s Decision.**

1. The Hearing Examiner’s Decision Was a Final Land Use Decision Pursuant to RCW 36.70C.020(2).

RST and NSJB ask this Court to find that the decision by the Hearing Examiner was not a “land use decision” for LUPA purposes because the decision was not sent to the parties via certified mail as provided for in Chelan County Code. Appellants argue this error renders the decision not “final” for LUPA purposes, and therefore the twenty-one (21) day statute of limitations has yet to run. Appellants’ argument, however, is contrary to statute, Chelan County Code and case law.

Pursuant to LUPA, a “land use decision” is defined as “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.” RCW 36.70C.020. A decision is final when “‘it leaves nothing open to further dispute’ and ‘sets at rest [the] cause of action between the parties.’” *Durland*, 174 Wn. App. at 13 (quoting *Samuel’s Furniture, Inc. v. Dep’t of Ecology*, 147 Wn.2d 440, 452, 54 P.3d 1194 (2002)). “A final decision ‘concludes the action by resolving the plaintiff’s entitlement to the requested relief.’” *Id.* Appeals of notices and orders are set forth in Title 16 of the Chelan County Code.

The code states the following with regard to final orders:

(a) Following review of the evidence submitted, the hearing examiner shall make written findings and conclusions and shall affirm or modify the citation, notice and order or stop work order previously issued; provided, that the hearing examiner finds that a violation has occurred. The hearing examiner shall uphold the appeal and reverse the citation, notice and order or stop work order if the hearing examiner finds that no violation has occurred.

(b) The hearing examiner’s final order shall be conclusive unless proceedings for review of the decision are properly commenced in superior court within twenty-one days of the date of issuance of the order.

Chelan County Code (“CCC”) § 16.12.030.<sup>2</sup> The Hearing Examiner entered findings of fact, conclusions of law and a decision, thus comporting with the code’s provisions pertaining to final orders. CP

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<sup>2</sup> The Chelan County Code is available online at [www.codepublishing.com/WA/ChelanCounty/](http://www.codepublishing.com/WA/ChelanCounty/).

031-040. Nowhere in CCC § 16.12.030, or any other code provision, does it state that finality of a decision is based on compliance with service procedures. As the appellate body, the Hearing Examiner was the highest level of authority to make the decision. *See* CCC § 16.12.030. The decision settled the matter between the parties – whether the notice and order had been correctly issued – and left nothing open to further dispute.

Regardless, Appellants argue that the decision is not final because the Department failed to send the Hearing Examiner’s decision according to the service provisions found in Chapter 1.61 of the Chelan County Code:

Unless different procedures are prescribed by the resolution or statute governing the application, the department shall mail copies of the examiner’s decision by certified mail to the applicant and by regular first-class mail to other parties of record not later than three working days following the filing of a written decision by the examiner.

CCC § 1.61.140.

RST and NSJB cite to *WCHS, Inc. v. City of Lynnwood* (“*WCHS*”), 120 Wn. App. 668, 86 P.3d 1169 (2004), *Heller Bldg., LLC v. City of Bellevue* (“*Heller*”), 147 Wn. App. 46, 194 P.3d 264 (2008), and *Durland, supra*, to support their argument. These cases, however, are distinguishable from the present matter.

In *WCHS*, an applicant filed a complaint for declaratory judgment, writ of mandamus, and award for damages following issuance of letters from the City of Lynnwood denying applications for a building permit and a business license. 120 Wn. App. at 674. On appeal the city argued, among other defenses, that the applicant failed to exhaust administrative remedies as the letters were final orders that should have been administratively appealed or subject to LUPA. *Id.* at 678. Citing case law regarding the exhaustion of administrative remedies requirement, Division I of the Washington State Court of Appeals (“Division I”) stated that a letter will constitute a final order if it “clearly fixes a legal relationship as a consummation of the administrative process.” *Id.* at 679. Such was not the case in that matter, however. *Id.* While Division I noted that the letter at issue in *WCHS* was not sent pursuant to code, it also underscored that the letter did not use the words “decision”, “final” or “appealable”, and did not generally comport with the code requirements pertaining to decisions. *Id.* at 679-680. Division I reasoned that “[b]ecause of the unclear, inconsistent, and noncomplying nature of these letters, they were insufficient to constitute final orders” and no exhaustion of administrative remedies arose. *Id.* at 680.

Unlike the letters in *WCHS*, the Hearing Examiner’s decision

was a final order. First, the decision comported with CCC § 16.12.030's provisions pertaining to final orders – it set forth findings of fact, conclusions of law and a decision affirming the notice and order. CP 031-040. Second, the decision included the term “DECISION” in both the caption and body of the document clearly identifying itself as such. *Id.* Third, the decision was sent to the RST and NSJB's attorneys through whom RST and NSJB appeared and were represented in the administrative proceedings. CP 049 ¶ 5; CP 087-099. Fourth, the decision clearly set forth RST and NSJB's appellate rights, explaining that decision was appealable pursuant to LUPA, thereby signaling that the decision was the consummation of the administrative process. CP 0040. Finally, the decision specifically contained language setting forth when it was “issued” for purposes of LUPA. *Id.*

*Heller* is also distinguishable. In *Heller*, the City of Bellevue issued a stop work order contrary to city code provisions which required certain information be included in the order. 147 Wn. App. at 269-270. Examining the *sufficiency of content* of the stop work order, Division I found that a subsequent letter sent by the city was in fact the final land use decision since the letter contained the information necessary to constitute a stop work order and stated that it was a “supplement” to the stop work order. *See id.* In this matter, there is no question as to the

content of the Hearing Examiner's decision. Pursuant to county code, it contained findings of fact, conclusions of law and a decision affirming the notice and order. CP 031-040. This comports with the final order provisions set forth in CCC § 16.12.030.

Like *WCHS* and *Heller*, *Durland* is also distinguishable. In that case, Division I determined a compliance plan did not constitute a final land use decision because it left a choice of options available such that the cause of action was not set to rest. 174 Wn. App. at 16-17, 19. Furthermore, the court noted the plan was supplemented a year later, thereby negating a finding that it was a final determination. *Id.* at 17. This is contrary to the Hearing Examiner's decision which provided findings of fact, conclusions of law and a decision settling the dispute as to whether the notice and order was properly issued. Any service failures do not change the fact that the Hearing Examiner's decision resolved the matter in its entirety. Unlike *Durland*, there was simply nothing left to be decided. Rather, the Hearing Examiner's decision was the consummation of the administrative process and resolved issues as to RST and NSJB's entitlement to relief. *Id.* at 13-14; *WCHS, supra* at 679.

RST and NSJB also argue that the code's service provision is the only way in which a party contesting a land use decision would know

when to file a land use petition. This argument, however, ignores the clear language of the Hearing Examiner's decision which informed RST and NSJB of their appellate rights, specifically the timeframe by which to file an appeal with the Superior Court:

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040(4)(a) as “(t)here days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3)(c) “. . . the date the decision is entered into the public record.”**

CP 040 (bolding in original). Furthermore, Appellants need look no further than LUPA itself to determine when a petition is required to be filed and served. *See* RCW 36.70C.040(4) (setting forth when a land use decision is issued).

The Hearing Examiner's decision was a “land use decision” as defined in LUPA. The decision was the final determination by the hearing body with the highest level of authority to make the determination. The decision left nothing open to further dispute, settling the matter between the parties.

2. Being a Land Use Decision, the Superior Court Correctly Concluded that the Hearing Examiner's Decision Was Issued For Purposes of LUPA on June 6, 2017.

Being a final land use decision as defined in RCW 36.70C.020, the Superior Court correctly concluded that the Hearing Examiner's decision was "issued" for purposes of LUPA when counsel for RST and NSJB received actual notice of the decision on June 6, 2017.

Case law provides that defective notice is inconsequential when a party learns of a land use decision but still fails to challenge the decision within twenty-one (21) days after discovery of the decision. *See Habitat Watch*, 155 Wn.2d at 407-409. In *Habitat Watch*, Skagit County, contrary to county code, failed to provide any notice of either public hearings or a hearing examiner's decisions to grant second and third extensions of a special use permit. *Id.* at 402-403. After observing development activities occurring on the subject property several years later, a citizens group that had previously appeared before the hearing examiner to dispute initial issuance of the special use permit and its first extension, submitted a public disclosure request with the county. *Id.* at 403. The records produced in response to the request showed the hearing examiner granted two additional extensions of the permit. *Id.* at 404. After twenty-one (21) days had lapsed since being provided the records, the citizens group filed a land use petition challenging, in part,

the additional extension decisions. *Id.* The trial court dismissed the group's challenge. *Id.* Upon review, the Washington State Supreme Court affirmed the dismissal stating:

At the very latest, the written decisions were issued when the county made them available on June 24, 2002, in response to Habitat Watch's public disclosure request. By the date of the county's response to Habitat Watch's public disclosure request, the county had provided 'notice that a written decision is publicly available' pursuant to RCW 36.70C.040(4)(a) . . . Habitat Watch did not file a LUPA petition directly challenging the permit extensions until August 1, 2002 – well over 21 days after the permit extensions were made available to Habitat Watch on June 24, 2002. As such, the petition was time barred under RCW 36.70C.040(2) and the superior court was correct to dismiss Habitat Watch's challenges to the permit extensions.

*Id.* at 409.

In this case, counsel representing RST and NSJB received actual notice from the County of the Hearing Examiner's decision on June 6, 2017. CP 049 ¶ 5; CP 087-099. Consistent with the holding in *Habitat Watch*, the Superior Court concluded that the Hearing Examiner's decision was "issued" at the latest on June 6, 2017. CP 0238. LUPA petitions challenging the decision, therefore, had to be both filed and served on all necessary parties within twenty-one (21) days of that date, i.e. by no later than June 27, 2017. However, as shown below, RST and NSJB failed to identify and serve necessary parties their petitions in accordance with RCW 36.70C.040.

**C. The Superior Court Correctly Concluded RST and NSJB's Petitions Were Time Barred as They Failed to Comply with LUPA's Procedural Requirements Thereby Invoking the Appellate Jurisdiction of the Superior Court.**

A superior court may not hear a land use petition if a petitioner fails to timely serve a petition on persons designated in RCW 36.70C.040(2) as necessary parties to the review. *Citizens*, 106 Wn. App. at 467. LUPA mandates that service on parties other than the local jurisdiction comply with the superior court civil rules or by first class mail. RCW 36.70C.040(5). With regard to commencing an action in the superior courts, service is set forth in Superior Court Civil Rule ("Civ. Rule") 4. While Civ. Rule 4(d) addresses how process is served,<sup>3</sup> Civ. Rule 4(g) addresses how service is proved. Service must be by personal service, or, as authorized by the court, by publication or mailing. Civ. Rule 4(d). Personal service on a company must be made "to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent." RCW 4.28.080(9).

There is no dispute in this matter that Appellants failed to serve

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<sup>3</sup> Civ. Rule 4(e), (i) provide for methods of service not applicable in this matter.

their original land use petitions on the respective parties by either personal service or by mailing. CP 236 ¶ 8. Appellants argue, however, that alleged electronic service pursuant to an agreement among Appellants' attorneys in this matter comported to LUPA's requirements. Appellants' argument is essentially one of substantial compliance. LUPA, however, provides unequivocal directives regarding filing and service requirements and its "explicit statutory language forecloses the possibility that the doctrine of substantial compliance applies." *Overhulse*, 94 Wn. App. at 597-598. Therefore, the act's procedural requirements must be strictly met before the superior court's appellate jurisdiction is properly invoked. *Id.* at 598; *Citizens, supra*; *San Juan Fidalgo*, 87 Wn. App. at 711-713 (affirming trial court's dismissal as untimely a LUPA petition where petition was served on the last day of the appeal period, but 20 minutes after normal office hours).

Also, the record does not contain admissible evidence that the original land use petitions were actually e-mailed within the statutory deadlines. The record contains the declarations of Taud Hume, counsel for NSJB, and Charles Steinberg, counsel for RST. CP 198-207. Both Mr. Hume and Mr. Steinberg's declarations state that their clients' respective petitions were e-mailed. CP 199 ¶ 5; CP 204 ¶ 5. However, neither declaration identifies the actual individuals that sent and received

the alleged e-mails containing the petitions. If made by someone other than the declarant, statements pertaining to whether the original petitions were sent or received via e-mail are hearsay. *See* Wash. R. Evidence 801-802. It is the person that effectuates service that submits the declaration or affidavit of service. Civ. Rule 4(g)(2). If service was accepted, written acceptance or admission by the party or its attorney accepting service must be filed which specifies the time, place and manner of service. Civ. Rule 4(g)(5), (7). Mr. Hume and Mr. Steinberg's declarations do not comport, however, with these provisions. Mr. Hume's declaration, for example, does not state when RST's petition was received, who sent it, who received it, etc. Rather, Mr. Steinberg's declaration states that a copy of RST's land use petition was e-mailed to Mr. Hume on June 28, 2017. This was *after* the LUPA limitations period had already expired. Mr. Steinberg's e-mail also does not comport. While Mr. Steinberg indicates NSJB's petition was sent to his office, he does not indicate how it was received or who in his office received the petition.

Furthermore, as the Superior Court correctly noted, the methods of service set forth in Civ. Rule 4 do not include service via e-mail. Appellants argue that the alleged e-mail service is authorized pursuant to Civ. Rule 4(j). This provision states that "these [civil] rules do not

exclude the use of other forms of process authorized by law.” Civ. Rule 4(j). Appellants confuse the terms “process” with “service.” Process is defined as “[a] summons or writ, esp. to appear or respond in court,” whereas service is the “formal delivery of the writ, summons, or other legal process.” *Black’s Law Dictionary* 569, 648 (3<sup>rd</sup> pocket ed. 1996). Therefore, Appellants’ interpretation that Civ. Rule 4(j) authorizes other methods of service is incorrect.

The cases cited by Appellants regarding alternative service are also distinguishable. The alternative service in those cases occurred either by direction of the party sought to be served or pursuant to written agreement with the party sought to be served. *Thayer v. Edmonds*, 8 Wn. App. 36, 38, 503 P.2d 1110 (1972) (named defendant told process server to leave summons and complaint house door); *Prof'l Marien v. Certain Underwriters*, 118 Wn. App. 694, 706, 77 P.3d 658 (2003) (service made on company comported to terms agreed upon in insurance policy).

In the present matter, however, there is no evidence that the parties themselves - NSJB or RST - agreed to alternative service or agreed to waive service. The record only evidences that their attorneys may have. CP 198-207. When it comes to consenting to service of original process (i.e. waiving personal jurisdiction), however, an attorney’s actions will not be binding unless given special authority by

the client to accept service. *See Ashcraft v. Powers*, 22 Wn. 440, 443, 61 P. 161 (1900). As Division I has stated:

An attorney may not, however, surrender a substantial right of a client without special authority granted by the client. Therefore, ‘an attorney needs the client’s express authority to accept service of process.’ Requiring express authority is necessary to protect clients from possibly serious consequences arising from a misunderstanding between the client and the attorney. It also ensures that clients will be consulted on all important decisions if they so choose.

*Ha v. Signal Elec., Inc.*, 182 Wn. App. 436, 447-448, 332 P.3d 991 (2014) (internal citations omitted).

In *Ha*, express authority was evidenced in the retainer agreement. *Id.* at 448. Unlike *Ha*, there is nothing in the record before this Court showing that RST or NSJB gave express authority to their legal counsel to accept service of process. Rather Mr. Hume and Mr. Steinberg’s declarations merely indicate they spoke to one another and agreed amongst themselves to accept service via e-mail. *See* CP 198-207. There is no evidence that Mr. Hume or Mr. Steinberg spoke to their clients about service, or that their clients gave express authority to accept service of the land use petitions.

Even taking Appellants’ position as true, service would not comport with LUPA. As previously stated, LUPA mandates that service be accomplished pursuant to Civ. Rule 4(d), *i.e.* personal service on

NSJB and RST's president or other head of the company, the registered agent, secretary, cashier or managing agent or to such individuals' secretary, stenographer or office assistant. RCW 36.70C.040(5).

Allowing service that arguably substantially complies would be contrary to LUPA's intent to provide constituent and timely judicial review as well as its explicit directives governing filing and service of petitions. *See* RCW 36.70C.010 and 36.70C.040.

While the original land use petitions were filed on June 26, 2017 (a day before the 21-day deadline), service of the petitions did not comport with either Civ. Rule 4 or RCW 4.28.080(9). *See* CP 236 ¶ 8. As such, the Superior Court correctly found that service did not comport with LUPA's procedural requirements. RCW 36.70C.040(5) (service on parties other than local jurisdiction must be in accordance with superior court civil rules). Thus, the land use petitions were barred. *See* RCW 36.70C.040(2) ("a land use petition is ***barred***, and the ***court may not grant review***, unless the petition is . . . timely served on" the persons set forth in the statute as parties). The Superior Court's dismissal for lack of service, therefore, was proper even though Appellants' interests may be aligned. *See e.g. Suquamish Tribe v. Kitsap Cnty*, 92 Wn. App. 816, 641, 965 P.2d 636 (1998) (affirming dismissal of land use petition filed by tribe for failure to properly identify and serve citizens group which,

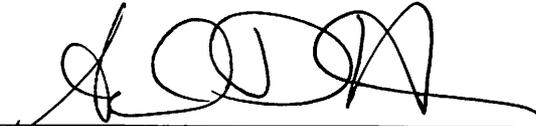
like tribe, objected to the same land use decision and had filed its own a land use petition).

**V. CONCLUSION**

For the forgoing reasons, the Superior Court's decision should be affirmed.

RESPECTFULLY SUBMITTED this 5th day of October, 2018.

DOUGLAS J. SHAE  
Chelan County Prosecuting Attorney

By:   
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Deputy Prosecuting Attorney  
*Attorney for Respondent, Chelan County*

## DECLARATION OF SERVICE

I certify that on October 5, 2018, I mailed, postage prepaid, a true and correct copy of the foregoing document, BRIEF OF RESPONDENT, to the following persons:

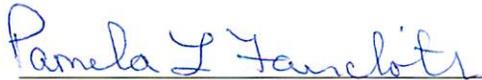
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

SIGNED THIS 5th day of October, 2018 in Wenatchee,  
Washington.

  
PAM FAIRCLOTH

# CHELAN COUNTY PROSECUTING ATTORNEY

October 05, 2018 - 1:28 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35838-1  
**Appellate Court Case Title:** RST Partnership v. Chelan County and NSJB Enterprise, Inc., et al  
**Superior Court Case Number:** 17-2-00549-0

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