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STATE OF WASHINGTON

SUPREME COURT NO. 80588-1
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SEATTLE HOUSING AND RESOURCE
EFFORT/WOMEN'S HOUSING EQUALITY AND
ENHANCEMENT PROJECT, a Washington Non-Profit
Corporation; and NORTSHORE UNITED CHURCH OF
CHRIST, a Public Benefit Corporation

Petitioners,

v.

CITY OF WOODINVILLE, a Municipal Corporation,

Respondent.

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RESPONDENT CITY OF WOODINVILLE'S ANSWER TO
PETITIONS FOR REVIEW

Greg A. Rubstello, WSBA #6271
J. Zachary Lell, WSBA #28744
Attorneys for Respondent
OGDEN MURPHY WALLACE, PLLC
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

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TABLE OF CONTENTS

	<i>Page</i>
A. ASSIGNMENTS OF ERROR	1
Issues Pertaining to Assignments of Error.....	1
B. STATEMENT OF THE CASE.....	1
C. SUMMARY OF ARGUMENT	1
D. ARGUMENT	4
1. The over length NUCC Petition for Review should not be accepted for violation of RAP 13.4(b) and 13.4(f).	4
2. The disposition by the Court of Appeals of NUCC’s claims under the Washington Constitution are consistent with the prior decisions of the Supreme Court.	5
a. The case law cited by the NUCC does not demonstrate a conflict with any particular decision of the Supreme Court concerning the need for a “Gunwall” analysis.	5
b. The <i>Gunwall</i> briefing requirement is inherently context-specific	7
c. Whether or not a Gunwall analysis was required is not an issue of substantial public interest that should be determined by the Supreme Court.....	9
3. The Court of Appeals’ applied RLUIPA consistent with prior decisions of the Supreme Court.	10
a. Strict scrutiny under RLUIPA is inapplicable unless the challenged regulation substantially burdens religious exercise.	10
b. The Court of Appeals correctly concluded that the City’s land use regulations did not substantially burden NUCC’s religious exercise.	12
E. NEW ISSUES	14
1. Attorney Fees - Conditional Issue.....	14
2. Decision and Reasoning of Court of Appeals.....	14
3. Appeals court misconstrued the purpose of the rule.....	15
F. CONCLUSION.....	16
APPENDIX A	A-1
APPENDIX B	B-1

TABLE OF AUTHORITIES

Page

CASES

City of Woodinville v. Northshore United Church of Christ (NUCC) et al,
 — Wn. App. —, 162 P.3d 427, slip op. 58296-8-1 (Wash. Ct. App. July
 16, 2007)----- 1, 5, 11, 12, 13, 14, 15
Confederated Tribes of Chehalis Reservation v. Johnson, 135 Wn.2d 734,
 758, 958 P.2d 260 (1998) -----15
First Covenant Church of Seattle v. City of Seattle, 120 Wn.2d 203, 224,
 840 P.2d 174 (1992) ----- 6, 8
First United Methodist Church of Seattle v. Hearing Examiner, 129
 Wn.2d 238, 916 P.2d 374 (1996) ----- 8
In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004) ----- 1
In re Marriage of Suggs, 152 Wn.2d 74, 80, 93 P.3d 161 (2004)----- 9
Ino Ino, Inc. v. City of Bellevue, 1332 Wn.2d 103, 937 P.2d 154 (1997),
 amended by 943 P.2d 1358 (1997) ----- 14, 15
Messiah Baptist Church v. County of Jefferson, Colo., 859 F.2d 820, 826
 (10th Cir. 1988)-----10
Munns v. Martin, 131 Wn.2d 192, 930 P.2d 318 (1997) -----8, 11
Open Door Baptist Church v. Clark County, 140 Wn.2d 143, 156-70, 995
 P.2d 33 (2000) ----- 8, 10, 13
Quinn Construction Co. v. King County Fire Protection District No. 26,
 111 Wn. App. 19, 44 P.3d 865 (2002) -----15
San Jose Christian College v. City of Morgan Hill, 360 F.3d 1024, 1033-
 35 (9th Cir. 2004) ----- 11, 12
Shumway v. Payne, 136 Wn.2d 383, 392, 964 P.2d 349 (1998)-----16
State v. Gregory, 158 Wn.2d 759, 820, 147 P.3d 1201 (2006)-----10
State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)----- 5, 6, 7, 8, 9
State v. Johnson, 128 Wn.2d 431, 446, 909 P.2d 293 (1996)----- 8
State v. Mierz, 127 Wn.2d 460, 473 n.10, 901 P.2d 286 (1995)----- 9
State v. Reichenbach, 153 Wn.2d 126, 131-32 n.1, 101 P.3d 80 (2004) --- 8
State v. Russell, 125 Wn.2d 24, 58, 882 P.2d 747 (1994) ----- 7
State v. Wethered, 110 Wn.2d 466, 472, 755 P.2d 797 (1988) ----- 6
State v. White, 135 Wn.2d 761, 769, 958 P.2d 982 (1998)----- 7
White v. Wilhelm, 34 Wn. App. 763, 773-74, 665 P.2d 407, review denied,
 100 Wn.2d 1025 (1983)-----15

{JZL671555.DOC;3/00046.050028/}

STATUTES

42 U.S.C. § 2000cc(a)(1)(A)-(B) -----	11
RAP 13.4 -----	3, 4, 9, 13, 16
RAP 13.4(b) -----	1, 4, 5, 10, 16
RAP 13.4(c) -----	2
RAP 13.4(c)(9) -----	4
RAP 13.4(f) -----	2, 4
Religious Land Use and Institutionalized Persons Act of 2000 -----	3, 5, 10, 11, 12, 13

OTHER AUTHORITIES

Hugh D. Spitzer, <i>Which Constitution? Eleven Years of Gunwall In Washington State</i> , 21 Seattle U. L.Rev. 1187, 1196-1202 (1998) -----	9
---	---

CONSTITUTIONAL PROVISIONS

Article I, Section 11 of the Washington Constitution -----	6, 7, 8, 9
Washington Constitution -----	3, 6, 9

A. ASSIGNMENTS OF ERROR

Issues Pertaining to Assignments of Error

Whether or not the Petitioner, in consideration of RAP 13.4(b), has identified a point of law that must be decided or clarified by the Supreme Court.

B. STATEMENT OF THE CASE

The argumentative factual statement of the case made by the NUCC¹ in its Petition for Review should be ignored. An objective summary statement of the instant case is contained in the Court of Appeals' decision. *See, City of Woodinville v. Northshore United Church of Christ (NUCC) et al.*, — Wn. App. —, 162 P.3d 427, slip op. 58296-8-1 (Wash. Ct. App. July 16, 2007) at 2-4. Moreover, as determined by the Court of Appeals, *NUCC*, slip op. 58296-8-1, at 10 (citing *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004)) all true findings of fact² made by the trial court are verities on appeal because neither the Church nor SHARE/WHEEL challenged any of the trial courts factual findings. The Findings of Fact are included in Appendix A hereto.

C. SUMMARY OF ARGUMENT

The Petition for Review filed by the NUCC should be denied out of hand because it ignores RAP 13.4(b) criteria for acceptance of review. RAP 13.4(b) specifically provides that a petition for review will be

¹ The Petitioner NORTSHORE UNITED CHURCH OF CHRIST is referenced herein as NUCC or as the Church.

² The Court of Appeals determined that findings 2.12 and 2.13 were really conclusions and were reviewed de novo.

accepted by the Supreme Court only if one or more of the four listed criteria are demonstrated. A copy of RAP 13.4(b) is included in Appendix B.

Instead of addressing RAP 13.4(b) in its argument, the NUCC incorporates by reference 48 pages of briefing made to the Court of Appeals in addition to the 20 pages of its Petition. RAP 13.4(f) limits the petition for review to 20 pages. The appellate brief is not a proper document for inclusion in the Appendix. *See* RAP 13.4(c). NUCC failed to move for the Court to accept an over-length Petition. The over-length Petition should not be accepted. At minimum the Appendix containing the Court of Appeals briefing should be stricken from the Petition and not considered by the Court.

The NUCC petition fails to identify a single significant point of law that must be decided or clarified by the Supreme Court. The NUCC Petition complains only about how the court of appeals applied the law to the record before the court. NUCC argument essentially distills to two largely unremarkable issues: (1) whether NUCC's status as a church should exempt it from compliance with local land use permitting regulations, and (2) whether NUCC may, with impunity, breach the unambiguous terms of its written contract with the City. By ruling in the City's favor, both the trial court and the Court of Appeals correctly answered these questions in the negative.

None of the arguments made by the NUCC implicates a precedential conflict with a prior opinion of this court or between Washington appellate courts. Nor do the arguments of the NUCC otherwise implicate the type of substantial public concern contemplated by RAP 13.4. NUCC's arguments concerning the allegedly erroneous consolidation of the preliminary injunction hearing with the trial on the merits implicate, at best, a well-settled principle of civil procedure under which the trial court enjoys broad discretion. [NUCC Petition at 2.] Likewise, the Church's allegations regarding the application and construction of the parties' 2004 Temporary Property Use Agreement involve only basic issues of contract interpretation. [NUCC Petition at 3.] And NUCC's arguments concerning the City's interpretation and enforcement of its zoning code, land use permitting moratorium and public nuisance abatement procedures are ultimately questions of *local* — as opposed to statewide — interest. [NUCC Petition at 2-3.]

The Church's Petition wholly disregards that the core issue underlying its Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and Washington Constitution arguments has already been resolved by recent controlling precedent. Both this Court and the Ninth Circuit Court of Appeals have flatly rejected the contention that mandatory compliance with local land use regulations and permitting requirements constitutes a "substantial burden" upon religious exercise.

Because this issue has already been definitely decided, it does not warrant discretionary review by this Court.

D. ARGUMENT

1. The over length NUCC Petition for Review should not be accepted for violation of RAP 13.4(b) and RAP 13.4(f).

The considerations governing this Court's discretionary acceptance of review are enumerated in RAP 13.4(b). Summarized, these criteria provide that review should be granted only where the challenged decision conflicts with existing precedent, implicates a significant question of constitutional law, or involves an issue of substantial public interest that should be determined by the Supreme Court. *See* RAP 13.4(b). Significantly, NUCC does not cite — much less apply — these factors in its Petition for Review, and the “Issues Presented for Review” by the Church fail to demonstrate that Supreme Court oversight is warranted under these circumstances.

Rather than addressing the criteria for discretionary review set forth in RAP 13.4, NUCC essentially attempts to reargue the merits of its appeal by appending and incorporating its entire appellate brief by reference. [NUCC Petition at 14.] The addition of 48 pages of briefing by reference into the 20-page petition totals 68 page of argument the NUCC expects the court to consider. RAP 13.4(f) limits the petition to 20 pages. *See* Appendix B. The briefing is not an appropriate use of the allowed appendix. *See* RAP 13.4(c)(9) (providing that an appendix to a Petition

for Review should contain only the Court of Appeals' decision and copies of relevant statutes or constitutional provisions).

In accordance with the clear intent of RAP 13.4(b), the City will refrain from rebutting the substance of the arguments on the merits and will instead address only why the criteria enumerated at RAP 13.4(b) are not satisfied in the petition.

NUCC submits two primary arguments within the 20 pages of its Petition as to why this Court should grant review of the Court of Appeals' July 16, 2007 decision. First, the Church contends that the appellate court improperly disregarded NUCC's state constitutional claims by requiring a *Gunwall* analysis. [NUCC Petition at 15-16.] Second, NUCC argues that the Court of Appeals erred by concluding that the City's land use regulations did not "substantially burden" the Church's religious exercise such as to require strict judicial scrutiny under RLUIPA. [NUCC Petition at 16-20.] Both of these arguments are without merit.

2. The disposition by the Court of Appeals of NUCC's claims under the Washington Constitution is consistent with the prior decisions of the Supreme Court.
 - a. The case law cited by the NUCC does not demonstrate a conflict with any particular decision of the Supreme Court concerning the need for a *Gunwall* analysis.

In rejecting NUCC's religious exercise claims, the Court of Appeals employed the federal analysis under the First Amendment. *NUCC*, 58296-8-1, slip op., at 11-13. The court refused to review

NUCC's claims under Article I, Section 11 of the Washington Constitution because NUCC failed to provide the analysis required by *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), demonstrating why the state Constitution should be interpreted more expansively than its federal counterpart under the specific circumstances at issue.³ *Id.* NUCC contends that no *Gunwall* analysis was required because, in the Church's view, this Court has already analyzed local land use regulations under the Washington Constitution. [NUCC Petition at 15-16.]

The Church's argument misconstrues this Court's constitutional jurisprudence and disregards both the nature and purpose of the *Gunwall* analysis. The reason for requiring a claimant to thoroughly address the six *Gunwall* factors is to supply the reviewing court with sufficient argument and legal citation to enable the development of State constitutional precedent. *State v. Wethered*, 110 Wn.2d 466, 472, 755 P.2d 797 (1988). The consequence of failing to adequately brief the *Gunwall* criteria is clear: "if a party does not provide constitutional analysis based upon the factors set out in *Gunwall*, the court will not analyze the state constitutional grounds in a case." *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 224, 840 P.2d 174 (1992).

³ The six *Gunwall* factors include: (1) the textual language of the Washington Constitution; (2) significant textual differences between parallel provisions of the federal and state constitutions; (3) State constitutional and common law history; (4) preexisting state law; (5) structural differences between the state and federal constitutions; and matters of particular state interest or local concern. *Gunwall*, 106 Wn.2d at 61-62.

NUCC correctly notes that *Gunwall* briefing is unnecessary where the Supreme Court has already construed the relevant state constitutional provision as offering greater provision than the federal Constitution in a particular setting. [NUCC Petition at 15-16] *See, e.g., State v. White*, 135 Wn.2d 761, 769, 958 P.2d 982 (1998). But NUCC disregards that this principle applies only where the *Gunwall* analysis has already been performed against the backdrop of the *specific* situation at issue. Contrary to NUCC's argument, the fact that the Supreme Court has previously applied Article I, Section 11 of the Washington Constitution to a particular type of land use ordinance does not does obviate the requisite *Gunwall* analysis with respect to Washington constitutional claims arising under a wholly different regulatory framework.

b. The *Gunwall* briefing requirement is inherently context-specific

“A determination that a given state constitutional provision affords enhanced protection in a particular context does not necessarily mandate such a result in a different context.” *State v. Russell*, 125 Wn.2d 24, 58, 882 P.2d 747 (1994). Litigants seeking to invoke the protection of the Washington Constitution accordingly must support their arguments with a *Gunwall* analysis unless this Court has already applied state law under highly similar factual circumstances:

Where this court has already determined *in a particular context* the appropriate state constitutional analysis under a provision of the Washington State

Constitution, no *Gunwall* analysis is necessary. . . .
*However, if there has been no prior determination of
an appropriate independent state constitutional in a
particular context, and no argument is made that a
different analysis applies under the state constitution
than applies under the federal constitution, then we
will apply the federal analysis.*

State v. Reichenbach, 153 Wn.2d 126, 131-32 n.1, 101 P.3d 80 (2004)
(emphasis added) (internal citations deleted). *See also State v. Johnson*,
128 Wn.2d 431, 446, 909 P.2d 293 (1996).

This principle is fatal to NUCC's argument that the Court of Appeals erred by requiring a *Gunwall* analysis in the instant case. For purposes of *this* appeal, it is largely irrelevant that the Supreme Court may have previously applied Article I, Section 11 of the Washington Constitution in the local historic preservation cases cited by NUCC. [NUCC Petition at 16 (citing *Munns v. Martin*, 131 Wn.2d 192, 930 P.2d 318 (1997); *First United Methodist Church of Seattle v. Hearing Examiner*, 129 Wn.2d 238, 916 P.2d 374 (1996); *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 840 P.2d 174 (1992)).] The present litigation involves *zoning regulations* — i.e., the City of Woodinville's land use moratorium, temporary use permit provisions, and zoning code designations — that are entirely distinct from historic preservation requirements in both purpose and effect *See, e.g., Open Door Baptist Church v. Clark County*, 140 Wn.2d 143, 156-70, 995 P.2d 33 (2000) (distinguishing strong public interest in zoning code enforcement from comparatively minor aesthetic and architectural interest underlying

historical preservation ordinances). The Court Appeals correctly determined that a *Gunwall* analysis was necessary under these circumstances.

- c. Whether or not a *Gunwall* analysis was required is not an issue of substantial public interest that should be determined by the Supreme Court.

“The failure to engage in a *Gunwall* analysis in timely fashion prevents [the court] from entertaining a state constitutional claim.” *State v. Mierz*, 127 Wn.2d 460, 473 n.10, 901 P.2d 286 (1995); *In re Marriage of Suggs*, 152 Wn.2d 74, 80, 93 P.3d 161 (2004). Washington courts have consistently refused to consider state constitutional arguments that are unsupported by adequate *Gunwall* briefing.⁴ NUCC’s failure to support its Article I, Section 11 claims with a detailed *Gunwall* evaluation effectively precluded the Court of Appeals from addressing the merits of these arguments. The court’s decision in this regard simply followed well-established principles of jurisprudence and does not form an adequate basis for discretionary review under RAP 13.4.⁵

⁴ See, e.g., Hugh D. Spitzer, *Which Constitution? Eleven Years of Gunwall In Washington State*, 21 Seattle U. L. Rev. 1187, 1196-1202 (1998) (surveying 204 Washington Supreme Court and Court of Appeals cases between 1986-97 in which state constitutional arguments were asserted; noting that courts refused to analyze Washington constitutional theories due to lack of *Gunwall* briefing in 57 percent of Supreme Court cases and approximately one-third of Court of Appeals cases surveyed).

⁵ Significantly, the substantive holding reached by the Court of Appeals would likely have remained the same even if a *Gunwall* analysis had been performed. NUCC’s chief contention in this litigation is that its status as a church should effectively exempt it from the City’s validly-enacted zoning and permitting requirements. This court has flatly rejected this position in previous cases, holding that — even under the Washington Constitution — “a church has no constitutional right to be free from reasonable zoning {JZL671555.DOC;3/00046.050028/}

3. The Court of Appeals applied RLUIPA consistent with prior decisions of the Supreme Court.

The second argument contained in NUCC's Petition for Review alleges that the Court of Appeals erroneously applied RLUIPA. [NUCC Petition at 16-20.] Under NUCC's theory, the Court of Appeals erred (1) by failing to apply strict scrutiny to the Church's RLUIPA claims, and (2) by concluding that the City's land use moratorium and zoning regulations did not "substantially burden" NUCC's religious exercise. [*Id.*] NUCC's assertions are incorrect. Because the appellate court's RLUIPA analysis was clearly supported by the plain text of that statute and consistent with controlling precedent, neither of NUCC's alleged errors satisfies the criteria for discretionary review under RAP 13.4(b).

a. Strict scrutiny under RLUIPA is inapplicable unless the challenged regulation substantially burdens religious exercise.

NUCC's argument that the Court of Appeals erred by not applying strict scrutiny to the Church's RLUIPA claims fails under even a cursory review of that statute. RLUIPA prohibits local governments from unduly restricting religious exercise through the imposition of land use regulations:

regulations." *Open Door Baptist Church*, 140 Wn.2d at 168) (quoting *Messiah Baptist Church v. County of Jefferson, Colo.*, 859 F.2d 820, 826 (10th Cir. 1988)). Thus, even assuming *arguendo* that the Court of Appeals erred by requiring NUCC to provide a *Gunwall* analysis, this error was clearly harmless. *See, e.g., State v. Gregory*, 158 Wn.2d 759, 820, 147 P.3d 1201 (2006) (declining to apply Washington Constitution where no constitutional violation would exist even if *Gunwall* analysis had been performed).

No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on. . . religious exercise. . . unless the government demonstrates that imposition of the burden. . . (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1)(A)-(B) (emphasis added).

By its plain terms, however, the “compelling interest” (i.e., strict scrutiny) standard codified at subsections (A) and (B) above applies *only* where a reviewing court has already determined that the challenged regulation imposes a “substantial burden” upon the claimant’s religious exercise. *Id. See San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1033-35 (9th Cir. 2004). Given the Court of Appeals’ express finding that the City’s land use regulations did *not* substantially burden NUCC’s, the court correctly refused to apply strict scrutiny. *See NUCC*, 58296-8-1, slip op., at 16-18.

NUCC’s reliance upon *Munns v. Martin*, 131 Wn.2d 192, 930 P.2d 318 (1997), the lone case offered in support of its RLUIPA argument, is severely misplaced. [NUCC Petition at 17-18.] The *Munns* court nowhere cites — much less applies — RLUIPA, a statute which was enacted three years after issuance of the *Munns* decision itself. As such, the decision obviously has no bearing on the correct interpretation and application of RLUIPA. NUCC does not — and cannot — cite any precedent in which RLUIPA’s strict scrutiny standard has been applied

under factually analogous circumstances. Absent any such authority, the Church's attempt to characterize the Court of Appeals' RLUIPA analysis as erroneous fails as a matter of law and does not warrant discretionary review by this Court.

- b. The Court of Appeals correctly concluded that the City's land use regulations did not substantially burden NUCC's religious exercise.

NUCC also characterizes as reversible error the Court of Appeals' determination that the City's zoning and land use permitting requirements did not "substantially burden" the Church's religious exercise within the meaning of RLUIPA. [NUCC Petition at 18-20.] Under NUCC's theory, the City's zoning regulations "preclude[d] the Church from inviting homeless guests onto its property as mandated by the scripture and its religious beliefs." [*Id.* at 20]

The Church's contention in this regard was correctly rejected by both the superior court and the Court of Appeals. The term "substantial burden" is undefined by RLUIPA itself. *See, San Jose Christian College*, 360 F.3d at 1034. But, as the Court of Appeals noted, the Ninth Circuit has consistently construed a "substantial burden" in this context as one "that is oppressive to a significantly great extent" and which imposes "a significantly great restriction or onus" upon religious exercise. *NUCC*, 58296-8-1, slip op. at 14 (quoting *San Jose Christian College*, 36 F.3d at 1034) (internal punctuation omitted).

In concluding that the City's zoning regulations did not impose a substantial burden upon the Church's religious exercise, the Court of Appeals focused upon several critical factors. These included, *inter alia*, (1) the fact that NUCC could potentially have housed Tent City 4 residents within its church buildings rather than outdoors; (2) that NUCC could potentially have sited the Tent City 4 encampment at an alternative location not constrained by the City's R-1 zoning district permitting moratorium; and (3) that the Church could utilize alternative methods of ministering to the homeless. *NUCC*, 58296-8-1, slip op. at 17-18.

While the legitimacy of NUCC's desire to assist the homeless is undisputed, *see NUCC*, 58296-8-1, slip op. at 13, the Church incorrectly equates this belief with *carte blanche* to circumvent local land use restrictions. The Court of Appeals' rejection of this argument is consistent both with federal RLUIPA caselaw and with this Court's opinions construing article I, section 11 in the context of zoning restrictions. *See, e.g., Open Door Baptist Church*, 140 Wn.2d at 169 (acknowledging that a "very specific showing of hardship" is necessary to exempt a religious organization from zoning regulations). NUCC is unable demonstrate that the Court of Appeals erred in this regard, or that the challenged decision satisfies the criteria set forth in RAP 13.4.

E. NEW ISSUES.

1. Attorney Fees - Conditional Issue.

In the event the court grants review, the City requests the Court include within the scope of review the issue of the denial by the court of appeals of the City's cross-appeal assigning error to the trial court's denial of its request for attorney fees based on Civil Rule 65 and the decision of this court in *Ino Ino, Inc. v. City of Bellevue*, 1332 Wn.2d 103, 937 P.2d 154 (1997), amended by 943 P.2d 1358 (1997). There, as noted by the Court of Appeals *NUCC*, 58296-8-1, slip op., at 22, this court explained that a party may recover attorney fees necessary to dissolve a wrongfully issued TRO, which is a TRO that is dissolved after a full hearing.

2. Decision and Reasoning of Court of Appeals.

Even though the TRO imposed by the trial court on the first day of trial did not dissolve until after a full hearing and judgment was rendered by the trial court, the City was denied attorney fees for dissolving the TRO. This decision is not consistent with *Ino Ino, Inc. v. City of Bellevue*.

An *expired* TRO, which the City did not have to extend attorney fees to dissolve, was *extended* on motion of the *NUCC*, joined by *SHARE/WHEEL* the first day of the multi-day trial. The TRO was extended on multiple occasions during the trial on motion of the Church. The TRO was not dissolved until the trial court issued its judgment at the end of the trial. *Ino Ino, Inc. v. City of Bellevue* clearly applies under

these circumstances. The distinction made by the court of appeals (*NUCC*, 58296-8-1, slip op., at 22) to support its denial of attorney fees is not consistent with the holding of *Ino Ino* nor with *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 758, 958 P.2d 260 (1998) and *Quinn Construction Co. v. King County Fire Protection District No. 26*, 111 Wn. App. 19, 44 P.3d 865 (2002). The court of appeals determined that since the purpose of the equitable rule is to deter a party from seeking unnecessary injunctive relief, the purpose of the rule would not be furthered by granting attorney fees, since the extension of the TRO was necessary for the moving parties to preserve the *status quo* created by the expired TRO.

3. Appeals court misconstrued the purpose of the rule.

The court of appeals misconstrued both the prior decisions of this court and the purpose of the rule. The purpose of the equitable rule is to deter a party from seeking relief prior to a trial on the merits. *See Ino Ino, Inc. v. Bellevue* at 143, citing *White v. Wilhelm*, 34 Wn. App. 763, 773-74, 665 P.2d 407, review denied, 100 Wash.2d 1025 (1983). Stated differently, the purpose of the rule is to encourage a party to prove the merits of their cases before seeking equitable relief. *Quinn*, 111 Wn. App. at 35-36. In *Johnson* at 135 this Court determined that the purpose of the rule would not be served where injunctive relief prior to trial is necessary to preserve a party's rights pending resolution of the action. That may have been the case in *Johnson* where a TRO was obtained to prevent the

disclosure of documents before a trial on the merits was held to determine if the documents were required to be disclosed. In the instant case, however, had the City been denied the permanent injunctive relief it requested, the Tent City 4 encampment could still have remained on the Church property or moved on to the Church property after the trial on the merits. It was the City's right to enforce its land use regulations and its contract with the NUCC that were at issue at the trial. NUCC and SHARE/WHEEL wanted and needed the TRO extended only for their convenience and to secure the benefit they hoped to obtain before proving the merits of their case.

If NUCC's Petition for Review is granted, the attorney fees issue should be included within the scope of this Court's review.

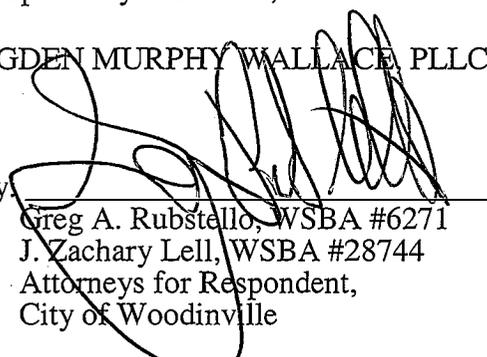
F. CONCLUSION

"A petition for review will be granted only in certain circumscribed cases[.]" *Shumway v. Payne*, 136 Wn.2d 383, 392, 964 P.2d 349 (1998) (citing RAP 13.4(b)). Because the Court of Appeals' opinion is so strongly supported by existing precedent, the instant matter clearly is *not* such a case. By omitting any citation and/or application of the factors enumerated at RAP 13.4, NUCC has failed to demonstrate that the underlying litigation satisfies the standard for acceptance of discretionary review by the Supreme Court. This court should accordingly reject NUCC's petition and decline review.

RESPECTFULLY SUBMITTED this 12th day of September,
2007.

Respectfully submitted,

OGDEN MURPHY WALLACE, PLLC

By: 

Greg A. Rubstello, WSBA #6271
J. Zachary Lell, WSBA #28744
Attorneys for Respondent,
City of Woodinville

APPENDIX A

FINDINGS OF FACT (VERITIES ON APPEAL)

2.1 *On August 25, 2004, the parties to this lawsuit entered into a Temporary Property Use Agreement which in pertinent part provided in subsection 2. B. that:*

SHARE/WHEEL and one or more Woodinville-based church sponsor(s) may jointly submit an application to locate a future Tent City at some other church-owned location, but

(1) must allow sufficient time in the application process for public notice, public comment and due process of the permit application; and

(2) must agree not to establish, sponsor or support any homeless encampment within the City of Woodinville without a valid temporary use permit issued by the city.

2.2 *On or about April 25, 2006, the Defendants submitted an application to the City to allow Tent City 4 on City park property. Use of City park property required approval of the Woodinville City Council; and*

2.3 *The Defendants completed a temporary use permit application to allow Tent City 4 on NUCC property in the City of Woodinville. The Rev. Forman brought it with him to City Hall, but did not submit it to the City because he was told by City staff⁶ that the Land*

⁶ Rev. Forman was told the day before by City Planning Director Ray Sturtz that the Moratorium Ordinance prohibited him from accepting a TUP application allowing the Tent City encampment on NUCC property in the R-1 zone. VRPT for June 1, 2006 at 10 - 11.

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Use Moratorium, established by City Ordinance 419, did not permit the City staff to accept the application; and

2.4 *On April 25, 2006 there was not sufficient time for the City to process an application for a temporary use permit that would allow Tent City 4 to locate on NUCC property by May 13, 2006. Temporary Use Permit processing requires a minimum of 30 to 40 days; and*

2.5 *On May 8, 2006 the Woodinville City Council by majority vote refused to authorize the use of City park property for Tent City 4 beginning May 13, 2006 as requested by the Defendants; and*

2.6 *On May 12, 2006 the King County Superior Court issued a Temporary Restraining Order allowing Tent City 4 on NUCC property pending the hearing on the Plaintiff's request for a preliminary injunction;⁷ and*

2.7 *On May 13, 2006, without a temporary use permit from the City of Woodinville, Defendant SHARE/WHEEL, with the assistance of the NUCC, located and began operating the homeless encampment Tent City 4, on the real property of the NUCC in the City of Woodinville; and*

2.8 *The NUCC property at issue is located in a neighborhood situated within the City of Woodinville's R-1 zoning district; and within*

⁷ The TRO allowing Tent City 4 on NUCC property pending the hearing on preliminary injunction was issue *sua sponte* by the Superior Court. See Opening Brief of NUCC at 10-11 and Opening Brief of SHARE/WHEEL at page 8. Judge Robinson was quoted in the Seattle Times as stating that there was no time to fully judge the arguments before the camp had to move the day of the TRO hearing. "These are important issues and really deserve more attention than any of us have been able to give," she said. See Exhibit J to City's Motion to Quash and for Preliminary Injunctive Relief at CP 77-148. (JZL671555.DOC;3/00046.050028/)

the scope of the moratorium validly established by City Ordinance No. 419 on March 20, 2006; and

2.9 The moratorium prohibits the City from accepting or processing new land use applications for permanent or temporary uses in the R-1 zoning district; and

2.10 The locating or establishment of the homeless encampment on the NUCC property without a temporary use permit from the City, violates the laws of the City of Woodinville and the laws of the state requiring compliance with local zoning regulations and prohibiting public nuisance; and

2.11 The issue as to the extent to which the Defendants can use the buildings on church property to physically shelter or house homeless persons within those buildings as a lawful accessory use under the City's zoning regulations was not before this Court.

APPENDIX B

RAP RULE 13.4 DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) **How to Seek Review.** A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must file a petition for review or an answer to the petition that raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed.

(b) **Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(c) **Content and Style of Petition.** The petition for review should contain under appropriate headings and in the order here indicated: (1) Cover. A title page, which is the cover. (2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where cited. (3) Identity of Petitioner. A statement of the name and designation of the person filing the petition. (4) Citation to Court of Appeals Decision. A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration. (5) Issues Presented for Review. A concise statement of the issues presented for review. (6) Statement of

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the Case. A statement of the facts and procedures relevant to the issues presented for review, with appropriate references to the record. (7) Argument. A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument. (8) Conclusion. A short conclusion stating the precise relief sought. (9) Appendix. An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

(d) Answer and Reply. A party may file an answer to a petition for review. If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with the requirements as to form for a brief as provided in rules 10.3 and 10.4, except as otherwise provided in this rule.

(f) Length. The petition for review, answer, or reply should not exceed 20 pages double spaced, excluding appendices.

(g) Service and Reproduction of Petition, Answer, and Reply. The clerk will arrange for the reproduction of copies of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as provided in rule 10.5. The clerk will serve the petition, answer, or reply if the party has not done so.

(h) Amicus Curiae Memoranda. The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae

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not later than 60 days from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should not exceed 10 pages.

(i) No Oral Argument. The Supreme Court will decide the petition without oral argument.