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No. 91978-0

SUPREME COURT
OF THE STATE OF WASHINGTON

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NEW CINGULAR WIRELESS PCS, LLC,

Respondent,

v.

CITY OF CLYDE HILL, WASHINGTON,

Petitioner.

CLYDE HILL'S SUPPLEMENTAL BRIEF

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 ORIGINAL

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A. INTRODUCTION

Municipalities across the state routinely impose monetary fines and penalties for civil violations of their municipal codes, and they provide administrative appeal hearings to review such decisions. After such review, any such quasi-judicial decision issued by the municipality is a final decision, unless appealed to the superior court for judicial review. The Court of Appeals decision allows an aggrieved party to circumvent the municipality's administrative process and the attendant judicial review of any quasi-judicial administrative decision by filing a complaint for declaratory relief. The Court of Appeals decision encourages such an aggrieved party to treat the municipal administrative process, including the development of the administrative record and final decision, as meaningless. The Court of Appeals decision will facilitate the needless prolongation of the municipal administrative process and significantly diminish the value and judicial economy inherent in that process.

This Court should hold that the statutory writ process of RCW 7.16.040 is the appropriate means of securing judicial review of a municipality's quasi-judicial administrative decision and a party may not evade the municipal administrative process by filing a declaratory judgment action in court.

B. ISSUES PRESENTED FOR REVIEW

(1) Where a municipal code requires exhaustion of administrative remedies prior to judicial review of the municipality's final quasi-judicial administrative decision, is a party wishing to appeal that decision required to seek judicial review under RCW 7.16.040, the writ of review statute, and is that party foreclosed from evading that municipal process by filing an action for declaratory relief?

(2) If a party is allowed to bring an action under the Uniform Declaratory Judgments Act ("UDJA"), Ch. 7.24 RCW, to challenge a City's quasi-judicial administrative decision, then is a 30-day time period a reasonable time by analogy to file such an action?

C. STATEMENT OF THE CASE

For a number of years the City of Clyde Hill ("City") has imposed a utility tax on telephone businesses such as New Cingular Wireless PCS, LLC ("New Cingular"). In November 2010, New Cingular made a written demand on the City for a refund of utility tax monies for sales of wireless internet services to City customers for the five-year period between November 2005 and September 2010. CP 560-79. In its refund demand, New Cingular admitted it had collected and paid monies for the City's utility tax in violation of the Internet Tax Freedom Act ("ITFA"), which prohibits the taxing of wireless internet services. *Id.*

During the time periods in question, New Cingular submitted its tax returns along with declarations verifying the truth and accuracy of the statements made in those returns. CP 383-515. As it had collected and paid taxes in violation of the ITFA, the City determined these declarations

contained false statements violating the City's tax code, CHMC 3.28.130B, and issued New Cingular a notice of violation ("NOV") for making false statements in connection with its utility tax returns and fining it under CHMC 3.28.140 and 1.08.010. CP 555-58. Under the CHMC, New Cingular had 15 days to file a written request for a hearing to challenge the NOV. Nothing in CHMC 1.08.030 prevented New Cingular from presenting witness testimony, for example. CHMC 1.08.030. *See* Appendix. Such an appeal is heard and decided by the City's Mayor. *Id.*¹

New Cingular protested the NOV and requested a hearing. CP 580-85. It requested permission to appear at the hearing via telephone. CP 550. Although New Cingular could have provided evidence at this hearing, including witness testimony, billing records, and any documentation it felt necessary to mount a defense, CP 230, it *chose* to appear by phone only through its attorney, who relied solely upon New Cingular's protest letter. CP 206, 230-33, 243, 55, 594. It *chose* not to submit any witnesses or documentary evidence at its hearing, resulting in a hearing of 5 minutes duration. *Op.* at 3. Similarly, New Cingular could

¹ The Court of Appeals states in its opinion at 3: "The city administrator offered New Cingular the choice of an 'informal hearing' or a decision based on its written protest alone. New Cingular requested an informal hearing." While that is true, as far as it goes, it misses what occurred below. New Cingular *chose* a telephonic hearing, which the City granted, rather than the more extensive hearing available to it; nothing prevented New Cingular from presenting live witnesses at that hearing.

have conducted discovery. It *chose* not to do so. It could have submitted meaningful pleadings. It *chose* not to do so.

The Mayor issued an administrative decision denying New Cingular's appeal and affirming the NOV. CP 234-37. Under CHMC, this decision is final and binding, subject only to an "appeal in superior court." CHMC 1.08.030.² Had New Cingular wanted to seek judicial review of the Mayor's quasi-judicial decision, it could have filed a timely statutory writ of review pursuant to RCW 7.16.040. It did not. Instead, four months later, it filed an action in the King County Superior Court against the City seeking declaratory relief under the Uniform Declaratory Judgment Act, RCW 7.24 ("UDJA"). CP 1-5.

The City filed a motion to dismiss New Cingular's declaratory judgment action on the grounds that it failed to timely seek judicial review of the NOV pursuant to RCW 7.16 within 30 days of the Mayor's decision. CP 238-39. The trial court granted the City's motion, CP 625, and awarded fees to the City. CP 692-96.

In its published decision, the Court of Appeals reversed the trial court, holding that so long as any administrative remedy is first exhausted, a party may "contest the legality of a municipal fine" *either* by seeking

² The CHMC does not say a party must file a notice of appeal, nor has the City ever made such argument. The Court of Appeals assertion that the City made such an argument, op. at 5, is mistaken. The City's legal counsel specifically advised the trial court that the City was *not* making this argument. RP 11-12.

declaratory relief or seeking judicial review under RCW 7.16. Op. at 1. The court declined to reach the applicable time limit for such declaratory relief, leaving that issue to the trial court on remand, but held that a 30-day time limit by analogy did not apply. Op. at 11.³

D. ARGUMENT

(1) The Court of Appeals Decision Misreads Article IV, § 6

The Court of Appeals misinterpreted article IV, § 6 of our State Constitution. *See* Appendix. That provision vests the superior courts with jurisdiction over a long list of cases, including those involving "the legality of any tax, impost, assessment, toll, or municipal fine." *See also*, RCW 2.08.010.

The Court of Appeals correctly noted that article IV, § 6 "pertains to both original trial jurisdiction and original appellate jurisdiction." Op. at 4. The court also observed that the Legislature has authority to set up procedural requirements for invoking the superior courts' jurisdiction. Op. at 4-6. Finally, the court correctly noted that the Legislature has set up particular statutes over the years to address the unique circumstances presented by certain administrative appeals, such as the Land Use Petition Act ("LUPA"), RCW 36.70C, for appeals of municipal land use decisions;

³ The court declined reconsideration to clarify its ruling regarding the time limit applicable to such a declaratory judgment action.

and the Administrative Procedures Act (“APA”), RCW 34.05, for appeals of state administrative agencies’ decisions. Op. at 6.

The Court of Appeals failed, however, to acknowledge that RCW 7.16.040 has long been the exclusive means for a party to obtain judicial review of a municipal administrative decision. RCW 7.16.040 provides for judicial review of various non-land use quasi-judicial administrative decisions. Both New Cingular and the Court of Appeals agree that the Mayor’s decision affirming the NOV is a quasi-judicial administrative decision subject to the writ statute.⁴ Op. at 7. The court concluded, without citation to relevant authority, that because “municipal fines” are mentioned in article IV, § 6,⁵ the court’s original jurisdiction compelled the conclusion that New Cingular had a choice to invoke that original jurisdiction in a UDJA action, notwithstanding its failure to timely seek review under RCW 7.16 of the Mayor’s decision. Op. at 7.⁶

⁴ New Cingular has never disputed that the City’s decision here meets the definition of a quasi-judicial administrative decision. CP 253-55. See, e.g., *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 244-45, 821 P.2d 1204 (1992).

⁵ The court justified its decision by stating that because New Cingular was challenging a “municipal fine,” and because the Legislature allegedly had not set up special procedures governing judicial review of “municipal fines” – as it had with land use decisions in LUPA and state administrative agencies’ decisions in the APA – then New Cingular “had a choice that is not available to a party who wishes to challenge a land use decision or an administrative agency decision and is subject to statutory procedural requirements in doing so.” Op. at 7.

⁶ In partial support of this novel theory, the Court of Appeals cited, without explanation, to its own decision in *City of Tacoma v. Mary Kay, Inc.*, 117 Wn. App. 111, 70 P.3d 144 (2003). But *Mary Kay* does not support the court’s decision. *Mary Kay* held

The Court of Appeals decision is unprecedented in misreading article IV, § 6. The Court of Appeals bogged down in concepts of original versus appellate jurisdiction for superior courts in reviewing municipal quasi-judicial administrative decisions. The Constitution directs that judicial review be available to litigants with regard to administrative decisions. Here, the Legislature has prescribed the process for securing judicial review of certain types of decisions, such as land use decisions (LUPA), state agency decisions (APA) and all other decisions (RCW 7.16).⁷ That is sufficient.

The Court of Appeals decision incorrectly assumes that if the Legislature has not enacted a prescribed process for seeking judicial review of a specifically identified type of administrative decision such as municipal fines, then article IV, § 6 of the Constitution provides a litigant

that the superior courts' jurisdiction cannot be compelled by a Tacoma city code provision that purportedly required the filing of a "Notice of Appeal" from the City's administrative decision. *Mary Kay* did not address the issue of whether a superior court has concurrent trial *and* appellate jurisdiction over review of non-land use administrative decisions, nor did *Mary Kay* address the issue of whether an appellant could chose which jurisdiction to invoke.

⁷ Even the courts by court rule have lawfully prescribed how appellate jurisdiction may be exercised. *See, e.g., State v. Rolax*, 104 Wn.2d 129, 702 P.2d 1185 (1985) (a motion on the merits per RAP 18.14 is a proper and constitutional means of obtaining judicial review in criminal cases); *In re Detention of Petersen*, 145 Wn.2d 789, 42 P.3d 952 (2002) (discretionary review procedures satisfy constitutional right of alleged sexually violent predator to judicial review).

with the right to circumvent the administrative process and go to court in a declaratory judgment action.⁸

The critical question is whether a party like New Cingular gets the opportunity for judicial review of the municipal administrative decision by invoking judicial review under RCW 7.16.060. It does. The fact that the Legislature has set up specific procedures for judicial review of certain types of decisions does not mean that RCW 7.16 has become obsolete with regard to securing judicial review of other types of quasi-judicial administrative decisions. On the contrary, RCW 7.16.040 clearly contains the Legislature's required procedures for securing judicial review of all types of quasi-judicial administrative decisions that have not otherwise been addressed by separate statutes. Those procedures have long been held by this Court to be the proper means of obtaining judicial review for administrative decisions.⁹

⁸ The Court of Appeals' assertion that the APA and LUPA are comprehensive schemes imposing procedural requisites to superior court jurisdiction, making appellate jurisdiction the exclusive means of review, op. at 6, 9-10, is no real distinction at all. This Court in *Cost Management Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 646-47, 310 P.3d 804 (2013) specifically rejected the proposition that if the courts have jurisdiction over a specific type of claim, administrative jurisdiction over such a claim is ousted and exhaustion of administrative remedies is not required. *See id.* at 648 n.4. The courts have jurisdiction over the type of claim at issue here, but the claim can nevertheless be addressed in the City's administrative process, where New Cingular must exhaust the available remedies provided, and the decision can then be reviewed in due course by the courts under RCW 7.16.

⁹ Prior to enactment of the LUPA and the APA, appeals of land use decisions and agencies' decisions were reviewed by the courts via the statutory writ of review,

The Court of Appeals does not offer a cogent analysis of why the Legislature's decision to confine superior court jurisdiction to appellate review only in some instances like worker compensation cases (IIA), land use matters (LUPA), or state administrative matters (APA) on the one hand is acceptable, but the legislative determination that judicial review of local governments' quasi-judicial administrative decisions under RCW 7.16 on the other hand is not.¹⁰

Ultimately, the Court of Appeals' analysis of article IV, § 6 is illogical. Under the Court of Appeals' constitutional distinction between trial and appellate jurisdiction, nothing prevents LUPA or APA litigants from circumventing those statutes by invoking constitutionally-based jurisdiction in the superior courts to obtain declaratory relief, but that approach was rejected by this Court in *James v. County of Kitsap*, 154 Wn.2d 574, 115 P.3d 286 (2013).¹¹ If the Legislature can "channel"

RCW Ch. 7.16, even though the writ statute does not specifically single out those categories of administrative decisions.

¹⁰ Cases like *City of Spokane v. J.R. Distributors, Inc.*, 90 Wn.2d 722, 585 P.2d 784 (1978) or *Mary Kay* do not help New Cingular. The City here did not prescribe the review mechanism as did Tacoma in the latter case. Here the Legislature determined how judicial review would occur — RCW 7.16 — just as *J.R. Distributors* mandates.

¹¹ There, this Court rejected developers' contention that they were not subject to LUPA and could invoke the courts' original jurisdiction under article IV, § 4 by filing a class action to challenge Growth Management Act impact fees. This Court stated that while LUPA could not oust the courts' original jurisdiction, nonetheless, "where statutes prescribe procedures for the resolution of a particular type of dispute, state courts have required substantial compliance or satisfaction of the spirit of the procedural requirements before they will exercise jurisdiction over the matter." *Id.* at 588. Here, the

certain decisions through an administrative process thereby limiting the constitutional original jurisdiction of the superior courts, as the Court of Appeals concedes, there simply is no basis for saying that the Legislature's decision to allow judicial review of local quasi-judicial administrative decisions pursuant to RCW 7.16 is any less constitutionally sustainable than judicial review under the IIA, LUPA, or the APA. If the supposed distinction is that the Legislature must prescribed a *particular* process for a particular type of administrative process that was not true of the APA where that statute governs judicial review of virtually every type of state quasi-judicial administrative decision. If, as New Cingular contended in its answer to the WSAMA memorandum on review at 1, 4, the Legislature can limit superior court original jurisdiction by statute, that would be unconstitutional. If *the Constitution* prescribed original jurisdiction in the superior courts, the Legislature lacks the authority to subtract from such

writ statute, RCW 7.16, prescribes the procedures for review of a quasi-judicial municipal decision. Substantial compliance means "actual compliance in respect to the substance essential to every real objective of the statute." *See also, Wells Fargo Bank, N.A. v. Dep't of Revenue*, 166 Wn. App. 342, 271 P.3d 268, *review denied*, 175 Wn.2d 1009 (2012). The bank attempted to seek review of a DOR decision on its entitlement to interest on certain B&O tax refunds by filing a separate action in court, rather than seeking judicial review under the APA. Division II found the DOR decision to be subject to the APA. It rejected the bank's contention that it could invoke the courts' original jurisdiction to avoid seeking judicial review under the APA, citing *James* and stating "before a challenge to agency action may invoke the superior court's original appellate jurisdiction, parties must substantially comply with the APA's procedural requirements. *Id.* at 360.

New Cingular's perfunctory involvement in the hearing before the City's Mayor and failure to seek review under RCW 7.16 hardly qualifies as "substantial compliance."

original, constitutionally-prescribed jurisdiction merely by enacting a statute to the contrary.¹²

The logical analysis is that RCW 7.16 satisfies article IV, § 6 by allowing judicial review of quasi-judicial administrative decisions of a municipality. This Court held that as a prudential matter it will respect such a legislative procedure. *See infra*. An aggrieved party must invoke it. Indeed, RCW 7.16 more than adequately assures litigants the right to obtain judicial review in accordance with article IV, § 6, while still preserving the administrative process.¹³ The procedures under RCW 7.16 gave New Cingular ample opportunity for judicial review and relief from any alleged improper City action.

This Court should reaffirm that article IV, § 6 does not require a decision-specific judicial review process and that RCW 7.16 is an

¹² The Legislature cannot limit the court's constitutional jurisdiction. *J.R. Distributors*, 90 Wn.2d at 727 ("That judicial power may not be abrogated or restricted by any legislative act."); *James*, 154 Wn.2d at 588 ("It is axiomatic that a judicial power vested in Courts by the Constitution may not be abrogated by statute.").

¹³ The Court of Appeals nowhere disputes that judicial review under RCW 7.16 affords a litigant the same extensive procedural protections afforded a litigant in APA or LUPA judicial review proceedings. Judicial review under RCW 7.16 is but one of three avenues recognized by Washington courts for review of administrative decisions — direct appeal authorized by statute, the statutory writ of RCW 7.16, and the constitutional or common law writ of article IV, § 6. *City of Des Moines v. Puget Sound Regional Council*, 97 Wn. App. 920, 925 n.6, 988 P.2d 993 (1999), *review denied*, 140 Wn.2d 1022 (2000). Review under the writ procedure is available if the lower tribunal acted illegally, beyond its jurisdiction, or erroneously, and there is no adequate remedy at law. RCW 7.16.040; *City of Seattle v. Holifield*, 170 Wn.2d 230, 240 P.3d 1162 (2010) (defining "acting illegally"). RCW 7.16.120 makes clear that the court can assess whether the administrative decision was factually supported. In sum, judicial review under RCW 7.16 is no less extensive than judicial review under the IIA, LUPA, or APA.

adequate means for invoking the courts' jurisdiction to review a municipal quasi-judicial administrative decision.

(2) New Cingular's Failure to Seek Judicial Review of the NOV by a Timely Petition under RCW 7.16.060 Bars Its Present Action

Because RCW 7.16 affords New Cingular an ample means of securing judicial review of the City's NOV, its failure to timely invoke its procedures barred its attempt to evade its obligation to seek judicial review of the NOV under RCW 7.16 by filing a UDJA action. In *Reeder v. King County*, 57 Wn.2d 563, 564, 358 P.2d 810 (1961), this Court held that the proper procedure for seeking review of a local jurisdiction's quasi-judicial administrative decision is not a declaratory judgment action, but a statutory writ proceeding under RCW 7.16.040. The *Reeder* court dismissed the plaintiff's declaratory judgment action after finding that a writ action was available and would have afforded the plaintiff with all the relief to which he was entitled. *Reeder* is still good law and makes good sense.¹⁴

¹⁴ New Cingular argued below that *Reeder*, which was decided in 1961, had already been rejected by the adoption of CR 57 in 1967 and this Court's decision in *Ronken v. Bd. of County Comm'rs*, 89 Wn.2d 304, 572 P.2d 1 (1977). The Court of Appeals did not address this argument. But the argument is baseless.

CR 57 states, in part: "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." See Appendix. It does not alter the result in *Reeder*. Writs of review were always necessary to seek judicial review of an administrative decision, thus, declaratory relief was never an "appropriate" remedy and was not made appropriate by this rule.

In the present case, a writ action was likewise available under RCW 7.16.040, and it too would have afforded New Cingular with the opportunity to obtain the judicial relief it later sought in a UDJA action. But instead of following *Reeder*, the Court of Appeals held, for the first time, that a municipal quasi-judicial administrative decision may be subject to judicial review only if the Legislature has first specifically enacted legislation setting forth a special procedure for seeking judicial review, and, if not, then a party can choose to invoke the courts' jurisdiction by filing a declaratory judgment action. Op. at 5.¹⁵

RCW 7.16, however, does not specifically state that it applies to *any* specific type of case at all. Under the Court of Appeals' analysis, parties are no longer required to file writ actions under RCW 7.16.040 for

New Cingular's argument that *Reeder* was "rejected" by *Ronken* is also incorrect. The two cases are not comparable because they do not address the same type of governmental decisions. In *Reeder*, as here, the County issued a quasi-judicial administrative decision, a land use decision which, at that time, was subject to review under RCW 7.16. This Court held that the plaintiff could not challenge the decision by a declaratory judgment action because a writ action was available and would have afforded him all the relief to which he was entitled. 57 Wn.2d at 564. By contrast, in *Ronken*, the County Board of Commissioners was sued by a local union and a local contractors' association regarding public works projects completed by county employees instead of letting the work out to the private sector through the competitive bidding process. The trial court held that the Board's actions violated the competitive bidding procedures set by RCW 36.32.240, .250, and 36.77.060. 89 Wn.2d at 306. The contested decisions in *Ronken*, unlike in *Reeder* and here, were *not* quasi-judicial administrative decisions. *Ronken* did not affect, much less overrule, this Court's decision in *Reeder*.

¹⁵ Because RCW 7.16.040 does not specifically state that it applies to municipal fines, the Court of Appeals reasoned that it does "not circumscribe New Cingular's ability to invoke the superior court's original *trial* jurisdiction" by a declaratory judgment action to challenge the City's final decision with regard to its municipal fine. Op. at 7 (emphasis in original).

judicial review of a municipality's final administrative decision in *any* type of case merely because RCW 7.16 does not address a particular type of case. The result is that parties can now simply choose to ignore a municipality's final administrative decision, even though *Reeder* directed that they seek judicial review of those decisions under the writ statute.

The critical import of this Court's decision in *Reeder* is that review under RCW 7.16 affords a litigant the appropriate relief from an adverse administrative decision, thereby obviating the need for a declaratory judgment action. RCW 7.16 "afforded the [litigants] all relief to which they may be entitled in this case." *Reeder*, 57 Wn.2d at 564.

Just like the statutorily-prescribed judicial review procedures of the APA,¹⁶ *Reeder* makes clear that RCW 7.16 qualifies as a legislatively-imposed means of securing judicial review of local quasi-judicial administrative decisions and constitutes an adequate remedy, obviating the need for declaratory relief.

The practical ramifications of the Court of Appeals analysis are disturbing. First, it is contrary to this Court's development of the doctrine of exhaustion of administrative remedies. *Cost Management*, 178 Wn.2d

¹⁶ *Evergreen Wash. Healthcare Frontier, LLC v. Dep't of Soc. & Health Servs.*, 171 Wn. App. 431, 287 P.2d 40 (2012), *review denied*, 178 Wn.2d 1028 (2013) (failure to exhaust the administrative remedies afforded by the APA bars a separate action), or LUPA, *James, supra*; *Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 38 P.3d 1040 (2002) (citing *Reeder*).

at 648 (holding that a taxpayer seeking a refund for alleged overpayment of taxes to a local jurisdiction is first required to exhaust the jurisdiction's available administrative remedies).¹⁷

Thus, the Court of Appeals encourages the deliberate flouting of the City's administrative processes, and allows New Cingular to avoid aiding judicial review by permitting it to avoid the development of facts *during that administrative proceeding*.¹⁸

The Court of Appeals' decision allows parties aggrieved by administrative decisions a ready basis by which they can avoid real participation in the municipal administrative process. Notwithstanding well-developed principles requiring serious participation in such

¹⁷ Division III in *IGI Resources, Inc. v. City of Pasco*, 180 Wn. App. 638, 642, 325 P.3d 275 (2014) articulated the main purposes supporting exhaustion:

(1) discouraging the frequent and deliberate flouting of administrative processes; (2) protecting agency autonomy by allowing an agency the first opportunity to apply its expertise, exercise its discretion, and correct its errors; (3) aiding judicial review by promoting the development of facts during the administrative proceeding; and (4) promoting judicial economy by reducing duplication, and perhaps even obviating judicial involvement.

¹⁸ The Court of Appeals claimed that allowing New Cingular to ignore the City's administrative decision and to seek declaratory relief in superior court did not render the City's administrative procedures meaningless because it gave the City "an opportunity to correct any errors Clyde Hill may have made in imposing the fine," and correcting errors is "one of the purposes served by the doctrine of exhaustion of remedies." *Op.* at 8. But this reasoning is flawed. A properly-operated administrative process will afford all parties that opportunity, subject to judicial review. But more critically, in allowing parties to use the UDJA, why would participants ever seriously participate in the administrative process? New Cingular did not do so here (i.e., where it chose not to submit any witnesses or documentary evidence; chose only to appear through one representative; and chose to have its representative appear via telephone).

processes, like exhaustion, a party can participate in the municipal administrative process in only the most rudimentary fashion and then, rather than going to the court on review of the administrative decision on the record created in that process, it can wait 3 years, and file an entirely new declaratory judgment action in a superior court with discovery leading to an entirely new record, just as New Cingular did here. Uncertainty about the finality of the municipal administrative decision and delay will be the obvious result. This does not comport with the theoretical foundation of the exhaustion doctrine.

The core principle overlooked by the Court of Appeals and ignored by New Cingular, is the integrity of the local government administrative process. The Court made this point explicitly in *Cost Management*. In that case, the primary issue was whether the relief a party seeks can be obtained through an available administrative remedy and, if so, whether the party must first seek that relief through the administrative process. 178 Wn.2d at 642. This Court rejected the proposition that the superior courts and the municipal agency have concurrent original jurisdiction, *id.* at 645-46, and emphasized that exhaustion was still required even where the courts had original jurisdiction over a controversy. *Id.* at 648 ("A superior court's original jurisdiction over a claim does not relieve it of its responsibility to consider whether exhaustion should apply to the

particular claim before the court."). In other words, as a prudential matter,¹⁹ the courts will not exercise their original jurisdiction under article IV, § 6 if the litigant has appropriate recourse for relief in the administrative process and subsequent opportunities for judicial review.

A second practical problem with the Court of Appeals' analysis, particularly if the limitation period for the declaratory judgment action it contemplates is not thirty days, but a much longer period, is that litigants aggrieved by the municipal decision can manipulate the process to defeat that decision. Litigants like New Cingular could wait 3 years²⁰ after the decision to attack in a UDJA action, making the municipal decision-making process unpredictable and chaotic by such an opportunity for delay; the municipality would believe the decision was final only to have a lawsuit on that decision spring up 3 years later. Moreover, rather than developing an administrative record, that litigant could add to municipal expense by conducting new, belated, discovery in the UDJA action.

This Court should reaffirm the viability of the principle expressed in *Reeder*: so long as a party aggrieved by a municipality's quasi-judicial

¹⁹ This Court stated exhaustion is a "doctrine of judicial administration" applicable even where the courts have original jurisdiction under article IV, § 6. 178 Wn.2d at 648.

²⁰ New Cingular argued that the 3-year limitation period of RCW 4.16.080(3) for its declaratory judgment action is in order. Answer to PFR at 10-15.

administrative action has recourse to judicial review under RCW 7.16, it may not evade such a process by filing a separate declaratory judgment action to obtain judicial review of the municipality's decision.

(3) The Limitation Period for Seeking Review of a Local Jurisdiction's Administrative Decision Should Be No More Than 30 Days²¹

New Cingular failed to timely seek judicial review of the NOV, which should have been filed within 30 days of the City's issuance of its decision.

Even if this Court ultimately determines that New Cingular could commence a declaratory judgment action to obtain judicial review of the NOV, it did not do so in a timely manner; the Court of Appeals statement that a 30-day time limit does not apply to the declaratory judgment action in this case "by analogy to an appellate proceeding" (Op. at 11) is wrong.

The general rule is that review under RCW 7.16 should be sought within the same period as that allowed for an analogous appeal.²² Here,

²¹ The Court need not reach this issue if it agrees with the City's analysis of article IV § 6 and RCW 7.16.

²² Washington courts have long held that where the Legislature did not specifically provide a limitation period in the UDJA or in RCW 7.16 itself, the courts will craft a limitation period by analogy, looking to other statutes, court rules, and the like. *E.g.*, *City of Federal Way v. King County*, 62 Wn. App. 530, 536, 815 P.2d 790 (1991); *Summit-Waller Citizens Ass'n v. Pierce County*, 77 Wn. App. 384, 392, 895 P.2d 405, review denied, 127 Wn.2d 1018 (1995); *Brutsche v. Kent*, 78 Wn. App. 370, 376-77, 898 P.2d 319, review denied, 128 Wn.2d 1003 (1995). In *Cost Management*, this Court noted that the limitation period for a writ of mandamus to compel an administrative decision generally is the same period of time as allowed for an appeal. 178 Wn.2d at 649-50.

the time limit to file for an administrative appeal of the City's NOV under the CHMC is 15 days, CHMC 1.08.030; the time limit to appeal a local jurisdiction's land use decision under the LUPA is 21 days, RCW 36.70C.040(3); the time limit to file a judicial appeal of a state agency's decision under the APA is 30 days, RCW 34.05.542(2); and the time limit to file an appeal of a superior court decision to the Court of Appeals is 30 days. RAP 5.2. Assuming the most "reasonable" time by analogy to these time limits is the longest time, 30 days, New Cingular should have filed its writ within 30 days of the date the City's NOV was issued.

Ultimately, New Cingular's UDJA action is, in effect, an effort to seek *judicial review*, akin to the similar limitations reference *supra*. To avoid the gamesmanship displayed by New Cingular in this case, and the prospect of gamesmanship in future cases, it is more appropriate to employ the shorter limitations period rather than a 3-year period for an action to "recover" taxes or fees. This is not an action to recover taxes; it is an appeal of an administrative decision, no matter how it is packaged, and the usual appeal period for judicial review should apply.

(4) The City Is Entitled to Its Fees at Trial and on Appeal

CMHC 1.08.010B provides for the payment of the City's reasonable attorney fees in enforcing a civil penalty, and the trial court

awarded the City its fees. CP 692-96. The City is entitled to an award of its fees at trial and on appeal. RAP 18.1(a).

E. CONCLUSION

The Court of Appeals decision has pernicious effects. The proper procedure for obtaining judicial review of a municipality's quasi-judicial administrative decision is RCW 7.16, even though the Legislature has enacted separate legislation on judicial review to address the unique circumstances of certain other types of administrative decisions. RCW 7.16.040 is the proper means to appeal the City's NOV decision on the municipal fine assessed against New Cingular in this case, not a separate UDJA proceeding.

This Court should reverse the Court of Appeals decision and uphold the trial court's dismissal of New Cingular's declaratory judgment action. Costs on appeal, including reasonable attorney fees, should be awarded to the City.

DATED this 4th day of January, 2016.

Respectfully submitted,



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APPENDIX

Wash. Const., art. IV, § 6:

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

RCW 7.16.040:

A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the

jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

CMHC 1.08.010B:

B. Civil Penalty. Any person, firm, or corporation violating any provisions or failing to comply with any of the mandatory requirements of any ordinance of the city may be subject, in addition to other penalties hereunder, to a civil penalty not more than \$250.00 per day or portion of a day for each violation, plus payment of the city's reasonable attorneys' fees, witness fees, staff time, and other costs incurred in enforcing said civil penalty.

CMHC 1.08.030:

Any person who receives a notice of violation shall respond within 15 days from the date the notice is served. The date of service is the date the notice of violation is either (A) served on the violator(s) personally, or by leaving a copy of the notice at the house of the violator's usual abode with some person of suitable age and discretion then resident therein, (B) deposited into the United States mail, postage prepaid, via first class and certified mail, return receipt requested, or (C) is otherwise received, whichever occurs first. When the last day of the period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. Persons wishing to contest the notice of violation and people who do not wish to contest the notice of violation but wish to explain mitigating circumstances shall file a written request for a hearing within 15 days of the date the notice of violation is served and, upon the city's receipt of a timely request, a hearing shall be scheduled before the mayor. Failure to timely contest the notice of violation within 15 days of service results in the notice becoming the final and

binding order of the city. At or after the appeal hearing, the mayor may (A) sustain the notice of violation; (B) withdraw the notice of violation; (C) continue the review to a date certain for receipt of additional information; or (D) modify the notice of violation, which may include an extension of the compliance date. The mayor shall issue a written decision within 10 days of the completion of the review and shall cause the same to be mailed by regular first class mail to the person(s) names on the notice of violation and, if possible, the complainant. The determination by the mayor shall be final, binding, and conclusive unless a judicial appeal is appropriately filed with the King County superior court.

CR 57:

The procedure for obtaining a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of Clyde Hill's Supplemental Brief in Supreme Court Cause No. 91978-0 to the following parties:

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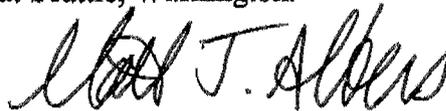
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Clerk's Office
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Olympia, WA 98504-0929

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.

Dated: January 4, 2016 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

OFFICE RECEPTIONIST, CLERK

To: Matt Albers
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Subject: RE: New Cingular Wireless PCS, LLC v. City of Clyde Hill - Supreme Ct Cause #91978-0

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Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Subject: New Cingular Wireless PCS, LLC v. City of Clyde Hill - Supreme Ct Cause #91978-0

Good afternoon:

Attached please find the following document for filing with the Supreme Court:

Document to be filed: Clyde Hill's Supplemental Brief
Case Name: New Cingular Wireless PCS, LLC v. City of Clyde Hill, Washington
Case Cause Number: 91978-0
Attorney Name and WSBA#: Philip A. Talmadge, WSBA #6973
Contact information: Matt J. Albers, (206) 574-6661, matt@tal-fitzlaw.com

Please let me know if you have any questions. Thank you.

Very truly yours,

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