

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 94232-3

Court of Appeals No. 75204-9-I

THE UNIVERSITY OF WASHINGTON, a State Institution of Higher
Education,

Respondent,

v.

THE CITY OF SEATTLE, a municipal corporation; and
DOCOMOMO US – WEWA, a nonprofit corporation,
HISTORIC SEATTLE; and THE WASHINGTON TRUST
FOR HISTORIC PRESERVATION

Appellants.

SUPPLEMENTAL BRIEF OF DOCOMOMO US – WEWA,
HISTORIC SEATTLE, AND THE WASHINGTON TRUST
FOR HISTORIC PRESERVATION

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The Court has requested that the parties file supplemental briefs regarding the sufficiency of Ordinance 117221 and Ordinance 117430 as they relate to Issue IV.C.2.a in the Brief of Respondent.

Ordinance 117221 adopted the City's Comprehensive Plan. It is only incidentally relevant to the University of Washington claim that the Landmark Preservation Ordinance (LPO) is not a "development regulation" "adopted pursuant to" the Growth Management Act (GMA). The City has adequately addressed this ordinance in its supplemental brief. We incorporate the City's discussion of that ordinance by reference.

The real focus should be on Ordinance 117430 (which adopted the development regulations necessary to assure that the entire suite of the City's existing and new development regulations was consistent with and implemented the City's then-new comprehensive plan, as the GMA required). As detailed in the City's Supplemental Brief, the state agency overseeing GMA implementation at the time provided formal guidance that cities and counties did not have to re-adopt all of their existing development regulations, but could simply make such changes as were necessary to bring the existing regulations into compliance with the GMA. That is what the City did, as it explains in its brief.

The University of Washington is wrong in suggesting that the public (including the University of Washington) was not aware of the City's strategy for complying with the GMA. The City has documented (in its proposed additional evidence) that the public was provided notice in advance that the City planned to make only limited amendments to assure that the City's development regulations complied with the GMA. The City's action was in accord with the direction provided by the state agency that was overseeing compliance. The then-existing development regulations should be deemed "adopted pursuant to" the GMA.

The University of Washington's claim that the LPO is not a "development regulation" is not credible. A "development regulation" is defined as a regulation that "controls . . . development or land use activities." RCW 36.70A.030(7). The LPO "controls" development and land use activities. It meets the GMA definition of a "development regulation."

The University of Washington argues that "one would expect" to find development regulations in the City's land use code (codified at Title 23). Response Brief at 31. While one might "expect" to find many of the City's development regulations in that title, nothing in the City Code or state

law requires that. The GMA definition of “development regulation” does not turn on where the codifier of the City’s ordinances locates a specific ordinance.

Contrary to what UW may “expect,” the City Code includes controls on the use of land scattered throughout its various titles. For instance, a variety of development regulations in addition to the LPO are included in Title 25, including regulations on floodplain development (chapter 25.06 SMC) and regulations related to environmental critical areas (chapter 25.09 SMC).

The City’s Supplemental Brief addresses these and related issues in more detail. We adopt by this reference the City’s Supplemental Brief’s discussion of the sufficiency of Ordinance 117430.

Dated this 4th day of May, 2017.

Respectfully submitted,

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DECLARATION OF SERVICE

STATE OF WASHINGTON)

)

ss.

COUNTY OF KING)

I, PEGGY S. CAHILL, under penalty of perjury under the laws of

the State of Washington, declare as follows:

I am the legal assistant for Bricklin & Newman, LLP, attorneys for
DOCOMOMO US - WEWA herein. On the date and in the manner
indicated below, I caused the Supplemental Brief of DOCOMOMO US –
WEWA, Historic Seattle and The Washington Trust for Historic
Preservation to be served on:

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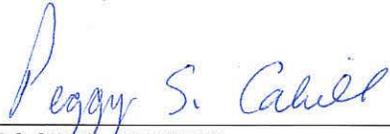
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DATED this 4th day of May, 2017, at Seattle,
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