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No. 73738-4-I

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

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**ROBIN JONES and ROSEMARY QUESENBERRY,**

**Petitioners**

**v.**

**THE RENTON SCHOOL DISTRICT #403,**

**Respondent.**

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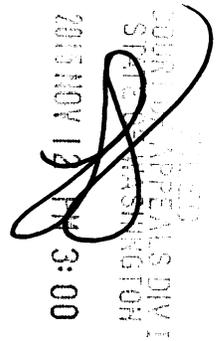
**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

This case arises from the filing of a declaratory judgment action by Petitioners Robin Jones (“Jones”) and Rosemary Quesenberry (“Quesenberry”). Jones and Quesenberry requested a declaration and a writ to prohibit Respondent Renton School District #403 (“School District”) from selling its surplus property to a private developer. The Superior Court denied Jones’s and Quesenberry’s request and granted the School District’s motion for summary judgment, dismissing Jones’s and Quesenberry’s action. Jones and Quesenberry now renew their request with this Court.

On appeal, Jones and Quesenberry assign no error, and instead raise issues that are irrelevant to their underlying claim. The decision of the Superior Court should be affirmed. No party disputes that the School District has the authority to sell its surplus property. Neither Jones nor Quesenberry has standing to challenge the School District’s proposed sale, and Jones’s and Quesenberry’s appeal is a transparent attempt to delay the School District’s sale.

## **II. COUNTERSTATEMENT OF THE CASE**

The School District owns approximately 21 acres of surplus land in Renton, Washington (“Property”). The Property was acquired by the School District in 1973 with the intent to build a middle school on the site.

*See* CP 30. However, no school was ever built on the Property, and the School District decided that the Property should be sold. *See* Board Resolution at CP 23. Pursuant to the public notice provision of Washington's school district real property statute, RCW 28A.335.120(2), the School District is required to provide notice of its plans to sell the Property:

When the board of directors of any school district proposes a sale of school district real property pursuant to this section and the value of the property exceeds seventy thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper with a general circulation in the area in which the school district is located.

The School District scheduled a public hearing regarding the sale, and that hearing was conducted on November 27, 2012. *See* public notices, news releases and Nov. 27, 2012 hearing transcript at CP 27-88. Jones appeared and gave testimony at that hearing, and Quesenberry notified the School District of her objections to the sale via letter. *See* Nov. 27, 2012 hearing transcript at CP 55-56; letter at CP 253-54.

The School District met and considered the public testimony, approved the decision to sell the Property, and subsequently entered into a purchase and sale agreement ("PSA") with a private entity that plans to build housing on the Property. *See* Board Resolution, public notices, meeting minutes, news releases and Nov. 27, 2012 hearing transcript at CP

23-89; PSA at CP 134-58. The School District later discovered an error in the notice for the November public hearing. The error was that the School District did not publish its notice for two consecutive weeks in the Renton newspaper. Instead, it published the notice for one week in a Snoqualmie newspaper and for one week in the Renton newspaper. *See* public notices at CP 27-28. The School District decided to issue a new notice, published for two consecutive weeks in the Renton newspaper, and to hold a second public hearing, and it delayed the sale of the Property and amended the PSA to do just that. *See* public notice and Oct. 29, 2014 hearing transcript at CP 89-133; extension notices and amendments at CP 159-63. Jones also appeared at that second hearing through his attorney, who testified. *See* CP 98-101. After the second public hearing, the School District Board of Directors met again, considered the evidence presented there, and confirmed the resolution approving the proposed sale. *See* CP 228-29. The School District is under contract to sell the Property, but the sale has not closed and is contingent upon resolution of litigation involving the Property. *See* Second Amendment to PSA at CP 272.

Jones then filed suit in Superior Court seeking a declaratory judgment and a writ of prohibition to prevent the School District from selling the Property to a private entity. The School District filed a motion to dismiss for failure to state a claim on which relief can be granted and

for lack of standing. The Superior Court, after hearing oral arguments, granted the School District's motion to dismiss for failure to state a claim and for standing. *See* CP 179-80. Jones requested reconsideration. After acknowledging that "A CR 12 motion should be granted sparingly so that a plaintiff is not improperly denied adjudication on the merits," the Superior Court granted reconsideration "so that the record can be more fully developed before the case is finally adjudicated." Order on Plaintiff's Motion for Reconsideration at CP 205, ll. 16-18, 20-23. The School District and Jones engaged in discovery and the School District moved for summary judgment. Jones moved to add Quesenberry as a plaintiff, and the School District did not object. The Superior Court then reviewed briefing, heard oral arguments, and granted the School District's motion on the merits. The Superior Court denied Jones's and Quesenberry's request for reconsideration, and this appeal followed. Jones and Quesenberry failed to timely file their initial brief and filed their brief only after this Court issued a motion for sanctions.

### **III. SUMMARY OF THE ARGUMENT**

The School District is hampered in its ability to respond to Jones's and Quesenberry's opening brief because it does not include any assignment of error or list of issues. Instead, the brief lists one long interrogatory raising various questions that are irrelevant to a resolution of

the issues in this case. Jones and Quesenberry have failed to assign any error to the Superior Court's interpretation of law, analysis of facts, or even the Superior Court's conclusion to grant summary judgment in favor of the School District.

The School District has broad statutory authority to sell its surplus property. Amendments to the real property statute over the years have made it easier for school districts to sell their surplus property. Jones and Quesenberry are passionately opposed to any sale of the Property to a private entity, and their appeal centers on the argument that they have been injured by the School District's decision to sell. They grasp onto a minor procedural error, one that the School District corrected, to claim that the School District's decision to sell the Property is illegal and should be prohibited. But their argument fails for several reasons. First, the School District corrected its error before it sold the Property, so no violation occurred and Jones and Quesenberry are not entitled to any relief. Second, even if the sale had occurred before the School District corrected the error, such a minor procedural error does not justify invalidating the School District's decision to sell. Third, Jones and Quesenberry have no standing to appeal because the School District has not injured any legally protected right.

#### IV. ARGUMENT

##### A. THE SUPERIOR COURT CORRECTLY DISMISSED JONES'S AND QUESENBERRY'S ACTION BECAUSE THERE HAS BEEN NO VIOLATION OF STATUTE.

###### 1. Legislative Intent Is Clear in the Unambiguous Statute.

The language of RCW 28A.335.120(2) unambiguously provides:

When the board of directors of any school district proposes a sale of school district real property pursuant to this section and the value of the property exceeds seventy thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper with a general circulation in the area in which the school district is located. . . . The board shall hold a public hearing upon the proposal to dispose of the school district property at the place and the day and hour fixed in the notice and admit evidence offered for and against the propriety and advisability of the proposed sale.

The School District initially made a minor error in the publication—it did not publish its notice for two consecutive weeks in the Renton newspaper. Instead, it published the notice for one week in a Snoqualmie newspaper and for one week in the Renton newspaper. The School District corrected its error and republished the notice. It then held a second hearing and voted to reaffirm its decision to sell the Property. Accordingly, the School District complied with the unambiguous notice requirements.

Jones and Quesenberry cannot point to any provision of any statute that has been violated. Instead, Jones and Quesenberry attempt to read

substantive rights into the notice provision above by extrapolating from its legislative history. Their argument should be rejected because (a) it is not appropriate to resort to legislative history to interpret an unambiguous statute, and (b) Jones's and Quesenberry's interpretation of legislative intent is flawed and without support.

It is not appropriate to use legislative history to interpret a statute that is unambiguous. The "first rule" of statutory interpretation requires "assum[ing] that the legislature means exactly what it says." *State ex rel. Davis v. Dep't of Licensing*, 137 Wn.2d 957, 964, 977 P.2d 554 (1999) (quoting *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)). Unless the plain language of a statute is subject to more than one reasonable interpretation, its plain meaning should be given effect without further investigation into legislative history. *State v. Amendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

This Court should reject Jones's and Quesenberry's legislative history arguments not only because they are inappropriate, but also because the conclusions they draw are without support and incorrect. The legislature amended Washington's real property statute in 1981 to remove the requirement that the public approve, through a vote, the purchase and sale of sufficiently valuable public property. The statute was also amended to provide for a public hearing. Jones and Quesenberry take this

amendment and infer several pages of legislative intent without one citation, stating that the legislature meant to require a public hearing before a school district decides to sell its property. *See* Petitioners' Opening Brief at 6-11.

There is absolutely no support for this inference; Jones and Quesenberry cite no legislative history, and the plain language contradicts that meaning. Apart from the minimum sales price provision (RCW 28A.335.120(5)), the statute imposes no limits on the School District's discretion to choose to sell the Property. The only public hearing requirements are to publish notice of one, hold it, admit evidence, and not sell the property for at least 45 days. RCW 28A.335.120(3).

Jones and Quesenberry evidently equate a purchase and sale agreement with an actual sale, but that is not correct. A purchase and sale agreement is a proposed sale; it is an agreement to sell, but it is not "the sale." No sale occurs until all conditions in a purchase and sale agreement have been met and the sale closes. What the statute clearly prohibits is the sale of real property before 45 days following the public notice. In no way did the School District sell the Property before 45 days following the public notice. In fact, the School District postponed the sale at least three times before this appeal. *See* CP 159-63. This Court should reject Jones's and Quesenberry's unsupported inferences. The only thing one can

reasonably infer from the legislature's 1981 amendment is that the legislature wanted to make it easier for a school district to dispose of its surplus property.

**2. The Undisputed Facts and Applicable Statute Show No Violation Owing Relief.**

The School District has authority to sell surplus real property under RCW 28A.335.120(1)(a), and it decided to do so. RCW 28A.335.120(1) states: "The board of directors of any school district of this state may: (a) Sell for cash, at public or private sale, and convey by deed all interest of the district in or to any of the real property of the district which is no longer required for school purposes . . . ."

Once a school district proposes a sale, it must then publish a notice of its intention to sell the property. RCW 28A.335.120(2). There is no requirement that the notice be published prior to deciding to sell the property or prior to entering into a contract to sell, only that it be published 45 days before the sale. RCW 28A.335.120(3). But Jones and Quesenberry claim otherwise: "The School District must hold the properly noticed hearing before deciding to sell the property." Petitioners' Opening Brief at 6. This is simply not true, and Jones and Quesenberry understandably state no authority for such a claim. In fact, the language the legislature used implies that a school district will have intent to sell

and a proposed sale in place *before* bringing it to the public. A school district must have made a general decision to sell in order to present a proposal to the public.<sup>1</sup> Without sufficient detail of the sale terms, a public hearing on the proposed sale would be pointless.

**3. The School District Fulfilled the Statute’s Purpose and Policy.**

Not only did the School District comply with the language of the notice requirement, it also complied with its purpose and policy. While RCW 28A.335.120 does not expressly identify the purpose of the notice and public hearing requirement, its purpose appears to be providing a school district with an opportunity to gather and consider evidence and weigh the propriety and advisability of a proposed sale. The School District published notices alerting the community that a hearing would be held, then held a hearing in which it admitted evidence offered for and against the propriety and advisability of the proposed sale. Jones and other community members attended the hearing. Quesenberry was aware of the proposed sale and informed the School District of her opposition to it before the public hearing. Jones and others also offered evidence at the

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<sup>1</sup> This is contrary to other statutes, such as RCW 36.70B.200, regarding development agreements, which states: “A county or city shall only approve a development agreement by ordinance or resolution after a public hearing.” The legislature could have required a public hearing before allowing a school district to enter into a real estate contract, but it did not.

second hearing, which the School District admitted and considered in approving the property sale. The School District's initial publication error, which was corrected, did not prevent evidence from being offered for and against the propriety and advisability of the proposed sale.

The impact of the School District's minor procedural error has been grossly overblown by Jones and Quesenberry. The School District gave Jones and Quesenberry an opportunity to be heard, and by doing so, satisfied its regulatory obligation. But the School District also did more; it considered both Jones's and Quesenberry's opinions before entering into the PSA. Jones and Quesenberry strongly oppose the sale and want nothing less than an order prohibiting the School District from selling its surplus property to a private entity. *See* Plaintiff's Response to Motion for Summary Judgment at CP 265-66 ("The remedy is to invalidate the decision to sell."). That is not something the statute demands nor that this Court can grant.

**B. THE SUPERIOR COURT CORRECTLY DETERMINED THAT THE SCHOOL DISTRICT'S INITIAL PROCEDURAL ERROR DID NOT INVALIDATE THE PSA.**

The School District's publication of the first public hearing notice in two different newspapers did not void or invalidate the PSA or render the PSA illegal. Washington courts have settled the issues that Jones and Quesenberry are attempting to raise.

Under Washington law, a governmental entity's failure to follow statutory procedural requirements does not render a contract *ultra vires*, illegal, or unenforceable unless the relevant statute expressly provides otherwise. *S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 233 P.3d 871 (2010); *see also Finch v. Matthews*, 74 Wn.2d 161, 172, 443 P.2d 833 (1968) (stating that an entity is bound by "acts which are within the scope of the broad governmental powers conferred, granted or delegated, but which powers have been exercised in an irregular manner or through unauthorized procedural means"). For example, the Intergovernmental Disposition of Property Act, Chapter 39.33 RCW, provides that "[i]f there is a failure to substantially comply with the procedures set forth in this section [e.g., its notice and hearing procedures], then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court." RCW 39.33.020. RCW 28A.335.120, on the other hand, does not contain any similar provisions providing for the invalidation of purchase and sale agreements in the event of procedural inconsistencies. The most similar provision is RCW 28A.335.120(5), which states a requirement that a school district's sale of real property must be preceded by a market value appraisal by a certified appraiser, and that "no sale shall take place if the sale price would be less than ninety percent of the appraisal made by the real estate appraiser."

**1. The School District's Notice Requirement Is a Procedural Rule, Not a Substantive Rule.**

The Washington Supreme Court upheld the Washington State Department of Transportation's ("WSDOT") sale of real property despite WSDOT's inadvertent failure to comply with statutory notice requirements in *S. Tacoma Way (supra)*. In that case, WSDOT sold a former railroad spur to the owner of abutting property after determining that the real property was surplus. The governing statute, RCW 47.12.063, required WSDOT to provide notice of the proposed sale to the owners of each property abutting the former spur and, if more than one abutting owner notified WSDOT of its interest in the property, to sell the property at public auction. WSDOT mistakenly believed that the proposed purchaser was the only abutting landowner, so WSDOT did not provide any notice and did not sell the property at public auction. One of the abutting landowners sued WSDOT, claiming that the transaction was invalid and illegal because WSDOT failed to comply with the notice requirements in the applicable statute.

The Washington Supreme Court held that "a contract formed between a government entity and a private entity will be void only where the government entity had no authority to enter the contract in the first place." *S. Tacoma Way*, 169 Wn.2d at 123. In doing so, the court

distinguished between contracts involving substantive statutory violations and those involving procedural statutory violations. A contract that violates substantive statutory requirements—that is, one that is contrary to the required terms and policy of a legislative enactment—is void and illegal because it exceeds the agency’s statutory authority. *Id.* Because WSDOT had statutory authority to sell surplus property, including the former railroad spur, and because WSDOT did not violate the purpose of the notice requirement (which the court found was to prevent fraud and collusion in state sales of real property), the court held that WSDOT’s failure to comply with statutory notice requirements did not invalidate the contract or impair its enforceability.

In another recent decision, the Washington Court of Appeals (Division I) similarly held that the Port of Seattle’s purchase of a rail line was valid and legal, even though it failed to comply with a statute requiring the adoption of a formal resolution regarding the purchase. *Lane v. Port of Seattle*, 178 Wn. App. 110, 316 P.3d 1070 (2013), *rev. denied*, 180 Wn.2d 1004 (2014) (holding that the port’s purchase of a rail line was valid and legal, notwithstanding the port’s failure to comply with statute requiring adoption of a formal resolution regarding the purchase). The court determined that the port had the authority to acquire the real property at issue. Additionally, the court determined that the port acted in

accordance with the purpose of the formal resolution requirement, which was intended to “ensure careful deliberation about whether a proposed acquisition of rail facilities outside the [port] district is genuinely necessary to link up to an interstate rail system,” by considering the purchase at numerous meetings held over a two-year period. 178 Wn. App. at 125. The purchase was therefore valid and legal even though the port had not adopted the statutorily required resolution.

Jones’s and Quesenberry’s claims fail for the same reasons that the court dismissed the plaintiffs’ claims in *S. Tacoma Way* and *Lane*. The notice requirement in RCW 28A.335.120(2) is a procedural requirement, not a substantive one. *See S. Tacoma Way*, 169 Wn.2d 118 (holding that notice requirement was procedural, not substantive).

**2. Jones and Quesenberry Rely on Bad Law for Their Policy Argument.**

Jones and Quesenberry ignore the holdings in *S. Tacoma Way* and *Lane* and instead claim that “When the underlying policy is not fulfilled, the sale must be rejected.” Petitioners’ Opening Brief at 14. Their authority for this position is *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982). *See* Petitioners’ Opening Brief at 14. It is interesting that Jones and Quesenberry rely on *Noel* because it was overturned specifically to prevent the arguments Jones and Quesenberry are now attempting. Much

like Jones and Quesenberry in this case, the citizens in *Noel* sued to enjoin a sale of timber held in trust for educational purposes. Even though timber sales were categorically exempted from having to prepare an Environmental Impact Statement (“EIS”) under the State Environmental Policy Act (“SEPA”), exemptions at that time were “guidelines,” not rules. The court in *Noel* held that a review of the particular timber sale showed that it was a “Major Action” that did require an EIS. So, the court invalidated the sale. But a statutory amendment and *Dioxin/Organochlorine Center v. Pollution Control Hearings Board*, 131 Wn.2d 345, 932 P.2d 158 (1997), subsequently superseded and overturned *Noel*.

In 1983, the legislature amended SEPA to codify the position that categorically exempt actions do not require an EIS, changing the guidelines to rules. *Dioxin*, 131 Wn.2d at 360. While *Noel* required a case-by-case review of legislative history and policy to determine if an EIS was required for a categorically exempt project, the SEPA amendment and subsequent cases rejected such case-by-case analyses. *Id.* Jones and Quesenberry rely only on *Noel* to argue that a case-by-case analysis of policy is appropriate, but that case was overturned to prevent exactly such an analysis. The Superior Court, on the other hand, relied on the recent

cases of *Lane* and *S. Tacoma Way*, finding the latter to be “very much on point.” CP 313.

**3. The School District’s Authority to Sell Its Surplus Property Is Separate and Distinct from the Requirement to Publish Notice of Its Intent to Sell.**

As in *S. Tacoma Way* and *Lane*, the School District has statutory authority to sell the surplus property at issue. RCW 28A.335.120(1) provides: “The board of directors of any school district of this state may: (a) Sell for cash, at public or private sale, and convey by deed all interest of the district in or to any of the real property of the district which is no longer required for school purposes . . . .” But that statute is not the only authority. RCW 28A.335.090(1) similarly provides:

The board of directors of each school district shall have exclusive control of all school property, real or personal, belonging to the district; said board shall have power, subject to RCW 28A.335.120, in the name of the district, to convey by deed all the interest of their district in or to any real property of the district which is no longer required for school purposes. Except as otherwise specially provided by law, and RCW 28A.335.120, the board of directors of each school district may purchase, lease, receive and hold real and personal property in the name of the district, and rent, lease or sell the same, and all conveyances of real estate made to the district shall vest title in the district.

*See also* RCW 28A.320.010 (“A school district shall constitute a body corporate and shall possess all the usual powers of a public corporation, and in that name and style may sue and be sued and transact all business necessary for maintaining school and protecting the rights of the district,

and enter into such obligations as are authorized therefor by law.”). These provisions unequivocally provide the School District with the authority to sell the Property at issue in this case.

Jones and Quesenberry erroneously claim that the School District was not authorized to sell the Property because “Such a sale is authorized only pursuant to RCW 28A.335.120(2), which contains the public notice and hearing requirement.” Petitioners’ Opening Brief at 22. First, they are wrong that the sale is authorized pursuant to RCW 28A.335.120(2). That is the notice requirement, which is separate from a school district’s authority to sell property. As stated above, the School District is authorized to sell property pursuant to RCW 28A.335.090, RCW 28A.320.010, and RCW 28A.335.120(1)(a). Second, Jones and Quesenberry are wrong that the School District’s authority to sell property is contingent on providing notice. The School District’s authority to sell property under RCW 28A.335.120(1)(a) is separate and distinct from its procedural notice obligations under RCW 28A.335.120(2).

Had the legislature intended to make a school district’s authority to sell its surplus property contingent on the notice requirement, the statute would have stated that, just as it did with regard to determining market value in RCW 28A.335.120(5). That provision states that a school district’s sale of real property must be preceded by a market value

appraisal by a certified appraiser, and that “no sale shall take place if the sale price would be less than ninety percent of the appraisal made by the real estate appraiser.” RCW 28A.335.120(5). The notice requirement has no such language because the notice requirement is clearly procedural, intended to provide notice to the public of an impending sale.

**4. A Procedural Error Requires a Procedural Remedy, if Any, and That Remedy Has Already Been Provided.**

For the reasons discussed above, the Superior Court was correct to dismiss Jones’s and Quesenberry’s claim. To the extent that Jones and Quesenberry are entitled to any remedy, however, a procedural remedy is appropriate—that is, providing a second notice and holding a hearing where the recipients of that notice have an opportunity to offer evidence regarding the propriety and advisability of the proposed sale. *See Boeing Co. v. Gelman*, 102 Wn. App. 862, 10 P.3d 475 (2000) (remanding decision of Board of Tax Appeals for further proceedings to correct a procedural defect). This remedy was provided by the School District and utilized by Jones when the School District issued a second local newspaper notice and held a second hearing. Accordingly, Jones and Quesenberry have not been damaged, and there is no remedy to order.

**5. The School District Board of Directors Reconsidered and Confirmed the PSA After the Second Hearing.**

The School District Board of Directors (the “Board”) met after the second public hearing, considered the evidence presented there, and took specific action to reconsider and reconfirm the PSA. In other words, when the School District realized its error, it started over. Jones and Quesenberry attempt to put more reliance on the PSA than is appropriate, arguing essentially that the agreement itself effects a sale and is “binding” and implying that the Board has no power to reject the PSA after it is signed. Specifically, Jones and Quesenberry argue that there was no fair opportunity to present evidence against the sale after the Board entered into the PSA. *See* Petitioners’ Opening Brief at 8-9. Jones and Quesenberry provide no authority for such a claim, and the Board’s action after the second hearing directly contradicts that claim. The Board amended the PSA to delay the sale, then it met again after the second hearing. *See* CP 161-62, 224-25. The minutes of that meeting reflect that “The board has considered the evidence presented by the public at each of these hearings.” CP 228. After such consideration, the Board confirmed the resolution authorizing the sale. CP 229. The second hearing, therefore, was procedurally and substantively correct. The public’s (and, more particularly, Jones’s and Quesenberry’s) evidence was expressly considered, not once, but twice.

**C. JONES AND QUESENBERRY HAVE NO STANDING BECAUSE THEY HAVE NOT BEEN DAMAGED.**

The Superior Court dismissed Jones's and Quesenberry's action on the merits and it did not reach the standing argument, but both Jones and Quesenberry lack standing. To prove standing, Jones and Quesenberry must satisfy Washington's two-pronged standing test. *Branson v. Port of Seattle*, 152 Wn.2d 862, 875-76, 101 P.3d 67 (2004). First, Jones and Quesenberry must show "a personal injury fairly traceable to the challenged conduct and likely to be redressed by the requested relief." *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986). Second, Jones and Quesenberry must show that the claim falls within the zone of interests protected by the statute or constitutional provision at issue. *Branson*, 152 Wn.2d at 875. Both prongs must be satisfied for a plaintiff to have standing for a claim, but Jones and Quesenberry fail both prongs. Stated another way, a claimant must establish that injury has occurred to a legally protected right. *Sprague v. Sysco Corp.*, 97 Wn. App. 169, 176 n.2, 982 P.2d 1202 (1999).<sup>2</sup> They fail this standard too because they cannot point to any legally protected right that has been injured.

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<sup>2</sup> This is the standard on which Jones and Quesenberry rely. See Plaintiff's Response to Motion for Summary Judgment at CP 265.

Here, Jones and Quesenberry do not state a personal injury resulting from the School District's initial procedural error. Neither Jones nor Quesenberry claims that any evidence offered was denied admission by the School District. Jones cannot make these claims because he attended or was represented at both hearings and his oral testimony was admitted into the School District's hearing records. Quesenberry cannot make these claims because her opposition was submitted to the School District before the first hearing was held. Jones and Quesenberry were provided notice and an opportunity to be heard by the School District in accordance with RCW 28A.335.120. Jones's and Quesenberry's testimony was actually heard and considered twice. Their disagreement with the School District's decision to sell the Property is not a cognizable injury.

Jones and Quesenberry clarify that their "harm" is the actual sale, not the inability to provide input.

The challenged act is the sale of the property, taking public property away from Robin Jones and his neighbors, and putting it in private ownership for others who have no reason to consider Robin Jones's interest or anyone else's. The removal of the site for a school for his children, and placement of one hundred homes next door, certainly will cause injury to Jones.

Plaintiff's Response to Motion for Summary Judgment at CP 265. Also,

The focus in all of these formulations is on the act of the Renton School District in selling the property. This is the act that will harm Robin Jones.

*Id.* at CP 266. But this Court cannot grant the relief Jones and Queensberry are demanding: it cannot prohibit the School District from selling the Property to a private entity. The School District has the express right to sell surplus property to a private entity, so Jones and Quesenberry have no legally protected right to prevent it. Their legally protected right is to have an opportunity to be heard, and the School District provided that. If, instead, their claim is that they did not receive notice of the proposed sale, then they still lack standing because (1) they have no legally protected right to receive notice, and (2) they actually did receive notice of the sale. Under every scenario, both Jones and Quesenberry lack standing.

**V. THE SCHOOL DISTRICT MOVES FOR DISMISSAL OF PETITIONERS' APPEAL, ATTORNEYS' FEES AS SANCTIONS FOR FILING A FRIVOLOUS APPEAL AND FOR USING APPELLATE RULES FOR DELAY.**

The School District moves this Court to dismiss review of this case because it is frivolous, is brought solely for the purpose of delay, and the failure of Jones and Quesenberry to timely file their opening brief was use of the appellate rules for further delay.

**A. SANCTIONS ARE APPROPRIATE BECAUSE APPEAL IS FRIVOLOUS.**

This case is frivolous and brought solely for the purpose of delay. RAP 18.9(a) authorizes dismissal of frivolous appeals. An appeal is frivolous “if it presents no debatable issue upon which reasonable minds might differ and is so devoid of merit that there is no reasonable possibility of reversal.” *State v. Costich*, 117 Wn. App. 491, 507, 72 P.3d 190, 198 (2003). In determining whether an appeal is frivolous, the court considers, in addition to the foregoing definition of ‘frivolous appeal,’ the following principles: RAP 2.2 gives a civil appellant the right to appeal, all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant, the record should be considered as a whole, and an appeal that is affirmed simply because the court rejects the arguments is not frivolous. *See Satterlee v. Snohomish County*, 115 Wn. App. 229, 237-38, 62 P.3d 896 (2002).

Jones and Quesenberry fail to present any error of fact or law that would support reversal of the Superior Court’s decision. Jones’s and Quesenberry’s filing is not well grounded in fact, nor is it warranted by existing law or a good faith argument to alter existing law. *Conom v. Snohomish Cty.*, 155 Wn.2d 154, 163-64, 118 P.3d 344 (2005). They point to no factual errors by the court below. On the law, they do not

challenge the legal holdings, but argue that the legal grounds are insufficient because the court did not address underlying policies as well as the letter of the law. Such a claim is irrelevant. They make attempts to distinguish cases regarding municipal contracts, but make no attempt to support their causes of action for declaratory judgment under the notice, hearing, and sale provisions of the applicable statute (RCW 28A.335.120), nor for a writ of prohibition preventing sale of the Property. Finally, the issue is not a novel one, and case law provides no support or authority for Jones's and Quesenberry's position.

**B. JONES AND QUESENBERRY SHOULD BE SANCTIONED FOR USING THE RULES TO DELAY THE SALE.**

RAP 18.9(a) also authorizes imposition of sanctions when a person (1) “uses the rules for the purpose of delay,” (2) “files a frivolous appeal,” or (3) “fails to comply with these rules to pay terms or compensatory damages.” On review of the record, it is clear that this appeal is taken only for delay—delay intended to indirectly provide Jones and Quesenberry with their desired relief of unwinding the School District's decision to sell the Property. This Court discourages the taking of appeals for delay only. *Harvey v. Unger*, 13 Wn. App. 44, 48, 533 P.2d 403 (1975).

Jones and Quesenberry disregarded RAP 10.2(a) and only filed their opening brief when this Court issued its own motion for sanctions. They are well aware that the sale of the Property is contingent on the resolution of this litigation, so they have an incentive to delay this appeal. Their failure to file their opening brief until this Court issued a motion for sanctions indicates that they are using the appellate rules as a means of delay.

This appeal has absorbed the efforts and time of the appellate court, the superior court, and the parties for indiscernible benefits to Jones or Quesenberry. *See In re Guardianship of Cobb*, 172 Wn. App. 393, 406-07, 292 P.3d 772 (2012). Jones and Quesenberry seek to quash the sale or delay the sale indefinitely, but if this Court were to void the School District's PSA, the School District would not abandon its plan. It would simply have the burden, cost, and delay of starting over. The School District would publish notice a third time, hold a third public hearing, and most likely enter into the same agreement to sell its surplus property to the same entity. *See CP 299*. This would cause substantial administrative waste and additional costs to the School District, the purchaser, and the public. Jones and Quesenberry would gain nothing but the School District and the public would be significantly harmed. For these reasons, the School District respectfully requests relief of dismissal of the case, an

award to the School District of attorneys' fees and costs as compensatory damages caused by this improper delay and the undue burden of responding to this appeal, and the imposition of any other sanctions deemed appropriate by this Court.

## VI. CONCLUSION

For the reasons set forth above, the School District respectfully requests that this Court affirm the Superior Court's Order Granting Summary Judgment in favor of the School District. Further, the School District requests that this Court order Petitioners to pay the School District's attorneys' fees and costs related to defending this appeal.

RESPECTFULLY SUBMITTED this 12th day of November,  
2015.

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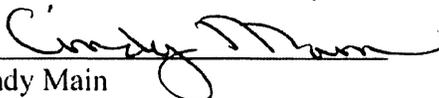
**CERTIFICATE OF SERVICE**

On November 12, 2015, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

Eric R. Stahlfeld	<input checked="" type="checkbox"/>	Via Hand Delivery
Law Offices of Eric R. Stahlfeld	<input type="checkbox"/>	Via U.S. Mail, 1st Class, Postage Prepaid
145 SW 155th Street	<input type="checkbox"/>	Via Overnight Delivery
Suite 101	<input type="checkbox"/>	Via Facsimile
Seattle, WA 98166	<input type="checkbox"/>	Via Email
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Attorney for Plaintiff		
Telephone #: 206-248-8016		

**I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.**

EXECUTED at Bellevue, Washington, on November 12, 2015.

  
Cindy Main  
Secretary to Donna Barnett