No. 89997-5

Court of Appeals No. 69418-9-I

SUPREME COURT OF
THE STATE OF WASHINGTON

TOWARD RESPONSIBLE DEVELOPMENT, Appellant,

v.

CITY OF BLACK DIAMOND, et al., Respondents

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Cases

Statutes

Rules

Regulations

I. INTRODUCTION

Respondents BD Lawson Partners, LP and BD Village Partners, LP (collectively, "Yarrow Bay") oppose the Petition for Review filed by Appellant Toward Responsible Development ("TRD"). TRD seeks further review of the unpublished decision, *Toward Responsible Development v. City of Black Diamond*, No. 69418-9-I (Div. I, Jan. 27, 2014). Yarrow Bay does not seek review of any issues not raised in the TRD Petition for Review. TRD's Petition should be denied.

II. COUNTER-STATEMENT OF THE CASE

A. The MPD Permits approve large projects that are in Compliance with the City's Comprehensive Plan.

Yarrow Bay proposed, and Respondent the City of Black Diamond approved, permits for two Master Planned Developments (the "MPD Permits"). When fully built out, decades from now, the MPD Permits authorize a large development that will quadruple the City's current population plus add a commercial tax base to the community with over 1 million square feet of new office, light industrial and/or retail development. A group of individuals, including residents of the City as well as neighbors who live outside the City boundaries, oppose the MPD Permits. The opponents have lost their arguments in front of the City Hearing Examiner, the City Council, the King County Superior Court, and the Court of Appeals, Division I.

TRD persists in wrongly asserting the City's Comprehensive Plan was adopted in 2007, "only two years before" Yarrow Bay filed its 2009

applications for the MPD Permits.[1] In fact, and as properly described by the Court of Appeals, the City Council adopted its updated Comprehensive Plan in 2009,[2] the same year that Yarrow Bay filed its applications for the MPD Permits.[3] Similarly, TRD's citation to AR 0014081 as evidence that the Comprehensive Plan included a compromise that authorized urban development but only in a manner that protects "small town atmosphere"[4] also is wrong. AR 0014081 is not part of the City's Comprehensive Plan, but rather is a page from a letter written by TRD's lawyer to the Hearing Examiner.

As correctly described by the Court of Appeals, Black Diamond Municipal Code ("BDMC") sections 18.98.080.A.1 and .010.L required that the MPD Permits comply with the City's Comprehensive Plan policies, including by ensuring that a purpose of the MPD permit process is to: "[p]romote and achieve the city's vision of incorporating and/or adapting the planning and design principles regarding mix of uses, compact form, coordinated open space, opportunities for casual socializing, accessible civic spaces, and sense of community; as well as additional design principles as may be appropriate for a particular MPD, all as identified in the book Rural By Design by Randall Arendt and in the

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[1] TRD Petition for Review, p. 3.

[2] The full text of the 2009 Comprehensive Plan is Appendix C to the Brief of Respondent, Yarrow Bay.

[3] *Toward Responsible Dev. v. City of Black Diamond*, No. 69418-9-I, Slip Op., at pp. 2 – 3 (Div. I, Jan. 27, 2014) (hereinafter "Slip Op."); AR 0027160-61, 0027332-22. Citations to the Administrative Record are abbreviated "AR."

[4] TRD Petition for Review, p. 3.

city's design standards."[5] And as further correctly described by the Court of Appeals, the City Council concluded these purposes were met, including that the protection of small town character is accomplished by meeting principles that include compact development.[6] As noted in the Court of Appeals citations to the administrative record, and contrary to TRD's assertions, the City Council did far more than assess only whether Yarrow Bay's projects were urban in density.[7]

Further, the Comprehensive Plan was the ultimate result of almost 20 years of legislative decisions. In 1996, the City, King County, and prior property owners Plum Creek Timber and Palmer Coking Coal, entered into the Black Diamond Urban Growth Area Agreement ("BDUGAA"), authorizing annexation of additional lands now included within each MPD site for purposes of future urban development, in exchange for the protection of other vast tracts of land as open space, both inside and outside the City.[8]

TRD's repeated exaggeration that site development will level the land into a pancake-flat development site[9] utterly ignores that development does require clearing and grading, and that the MPDs are required to comply with many protective codes, including the City's Tree

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[5] Slip Op., pp. 29 – 30.

[6] Slip Op., pp. 29 – 34.

[7] *Ibid.*

[8] *See* AR 0027184-85 (Ordinance 10-946, Exhibit A, pp. 25-26, Finding 18.B), AR 0027424 (Lawson Hills, Conclusion No. 20), AR 0024136 (describing the 2005 West Annexation, and the 2009 South Annexation), AR 0023757-58 (describing the 2005 West Annexation, and the later 2009 East Annexation).

[9] TRD Petition for Review, p. 5.

Preservation Ordinance and grading standards.[10] TRD's hyperbole also ignores the reality that pursuant to the BDUGAA and other agreements, more than 1,000 acres of other lands are already permanently protected open space.[11]

B. The MPD Permits are in Compliance with the State Environmental Policy Act.

TRD admits that under the State Environmental Policy Act, ch. 43.21C RCW ("SEPA"), full Environmental Impact Statements ("EISs") were prepared for the MPD Permits and that extensive hearings were held on appeals of these EISs.[12] TRD then argues that the City's Hearing Examiner (followed by the Superior Court and then, the Court of Appeals) wrongly upheld the EISs because in TRD's view the Examiner "held that the EIS was fatally flawed in relation to several significant impacts, but nevertheless used a vague and unfettered 'averaging' approach to conclude that, 'overall' the EIS was sufficient."[13] This is simply not true.

The Examiner stated that vital information was missing, but explained that under the rule of reason, by which EIS adequacy is measured, "all of the issues raised by the SEPA Appellants were relatively minor ('unfortunate but not fatal' under the case law) or there was little benefit found in additional TV FEIS review."[14]

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[10] *See* AR 0027186; AR 0027357, AR 0027486-87.
[11] AR 0027184-85.
[12] TRD Petition for Review, p. 5.
[13] TRD Petition for Review, p. 6.
[14] AR 0024581.

TRD's unsupported assertion that the Examiner used a "vague averaging approach" that was "completely foreign to the case law of this state" is wrong.[15] Both the City's Hearing Examiner and the Court of Appeals recited and applied Washington's long-standing "rule of reason" to test the adequacy of the EISs.[16]

C. Attorneys' Fees were awarded by the Court of Appeals and the parties now agree on potential collection mechanisms.

Yarrow Bay sought and the Court of Appeals awarded attorneys' fees pursuant to the Land Use Petition Act's attorney fee recovery statute, RCW 4.84.370.[17] In a case like this one, where fees are awarded to the developer and landowner who has prevailed three times in a row, the fee shifting statute is supposed to ensure that project opponents, like TRD, have some "skin in the game." That is, the statute is supposed to mitigate a part of the inequity between landowners – whose projects are delayed while they continue to pay substantial costs to hold the property – and project opponents – who can interpose that delay by filing appeals without the same degree of expense.

Yarrow Bay argued to the Court of Appeals that, by utilizing a corporation with no known assets to prosecute their appeal, the members of TRD are using the corporate form to perpetuate a fraud, causing injury to Yarrow Bay while avoiding their statutory duty to pay the award of fees and costs required by RCW 4.84.370. Yarrow Bay asked the Court of

[15] TRD Petition for Review, p. 6.
[16] AR 0024593-94; Slip Op., p. 1, pp. 5 – 6.
[17] Slip Op., p. 39, n. 119.

Appeals to pierce the corporate veil of TRD. The Court of Appeals did not reach that issue. Yarrow Bay seeks no review of that issue here. TRD's counsel has now admitted that the issue of piercing the corporate veil of TRD so as to seek an award of fees against the individuals or others associated with TRD is an issue that may arise "after a judgment is entered by the superior court and enforcement efforts against Toward Responsible Development are unsuccessful."[18] Prior to making that concession, TRD filed a motion under the anti-SLAPP suit statute, RCW 4.24.525, alleging that Yarrow Bay's efforts to pursue individuals were wrongly interposed as an intimidation method. In light of TRD's concession that piercing the corporate veil might be possible, TRD's anti-SLAPP motion is now moot.[19]

III. ARGUMENT

A. Applying the long-standing "Rule of Reason" Standard, the Court of Appeals affirmed the Hearing Examiner's EIS Adequacy Determinations and no reviewable issues under RAP 13.4 arise.

TRD alleges that the Court of Appeals decision conflicts with prior case law under RAP 13.4(b)(1) – (2), asserting a conflict with the three appellate cases in Washington state in which an EIS was overturned as inadequate.[20] That the Court of Appeals in this case affirmed the EISs, rather than found them inadequate as TRD requested, does not create a

[18] TRD Response to Costs Bills (February 18, 2014), p. 12.

[19] TRD's anti-SLAPP suit motion to strike was summarily denied. Slip Op., p. 39, n. 119.

[20] TRD Petition for Review, p. 10.

conflict of law. TRD also argues that those cases stand for the proposition that any error in an EIS mandates a determination of inadequacy. TRD is wrong.

Two of the cases relied upon by TRD involved EISs which failed to provide a mandatory alternative site analysis required for a public project, and the third involved an appeal by a developer who was seeking to avoid additional EIS review or the construction of expensive road improvements.[21] Those are not the facts presented by this case. Moreover, when applying the rule of reason to test the adequacy of an EIS, the vast majority of reported decisions hold that the challenged EIS is adequate under SEPA despite various imperfections.[22] Therefore, the

[21] Since SEPA's adoption in 1971, there have been only three reported decisions where appellate courts have held that an EIS was inadequate. *Kiewit Construction Group v. Clark County*, 83 Wn. App. 133, 920 P.2d 1207 (1996) (applying substantial weight to, and upholding, the county's determination that the EIS was inadequate after the permit applicant appealed the county's decision to require either a Supplemental EIS or that the applicant construct expensive road improvements). *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994) (holding the EIS inadequate because county failed to discuss any offsite alternatives, which is required by SEPA for public projects); *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980) (also holding that the County's EIS was inadequate because it did not discuss alternative sites).

[22] *E.g., Mentor v. Kitsap County*, 22 Wn. App. 285, 588 P.2d 1226 (1978) (holding EIS adequate even though EIS did not discuss the fact that part of the planned facility was in an area designated as "open space," concluding that the failure of the EIS to discuss the ramifications of the open-space designation was "unfortunate but not fatal," and did not "by itself, require[] us to hold the statement inadequate."); *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 197 P.3d 1153 (2008) (holding EIS was adequate even though not all potential mitigation measures were identified and even though the setback recommended in the siting decision was not specifically discussed in the EIS); *Org. to Pres. Agric. Lands v. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1996) (holding EIS was adequate for a regional solid waste landfill unclassified use permit even though the EIS did not analyze alternative sites and did not provide detailed analysis of groundwater impacts where they could be studied in more depth at the time of subsequent required regulatory approvals); *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 860 P.2d 390 (1993) (holding EIS was adequate in face of a flurry of technical arguments regarding the EIS preparation process and the analysis of historical and cultural impacts).

Court of Appeals decision is not in conflict with *Kiewit*, *Weyerhaeuser*, or *Barrie*.

Although not linked to any of its allegations of error under RAP 13.4(b), TRD might also be arguing a conflict of law with the way in which the Court of Appeals applied the case of *Save Lake Washington v. Frank*, 641 F.2d 1330, 1336 (9th Cir. 1981).[23] However, that case is not a decision of either the State Supreme Court or the Court of Appeals. In addition, TRD is wrong in asserting that the Examiner or the Court of Appeals created some sort of new averaging rule to test the adequacy of an EIS.[24]

EISs are tested under the rule of reason, not a rule of perfection. As the Court of Appeals properly summarized, the rule of reason requires only a "reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision."[25] The rule of reason is in large part a broad, flexible cost-effectiveness standard, in which the adequacy of an EIS is best determined on a case-by-case basis guided by all of the policy and factual considerations reasonably related to SEPA's terse directives.[26] As noted by the Court of Appeals, deference is granted to the Hearing Examiner's determination of EIS adequacy.[27]

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[23] *See* TRD Petition for Review, pp. 9 – 10.

[24] TRD Petition for Review, pp. 7 – 10.

[25] *See* Slip Op., p. 5; *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390 (1993).

[26] *Klickitat*, at 633.

[27] Slip Op., p. 5, text and n. 15, citing RCW 43.21C.090.

As to the phosphorus issues raised by TRD in its Petition, the Court of Appeals did far more than "casual[ly] rel[y]" on *Save Lake Washington.*[28] The Court carefully reviewed the Hearing Examiner's decision at Slip Op., pp. 13 – 20. Earlier in its opinion, the Court also had summarized the case law that defines the "rule of reason," citing some of the relevant cases, at Slip Op. pp. 5 – 6, and including a cite to *Save Lake Washington.* As part of its analysis of the alleged failure to adequately disclose potential phosphorus impacts to Lake Sawyer, the Court of Appeals stated: "[a]pplying the rule of reason, it was not error to conclude that omission of the full extent of these impacts cannot alone justify invalidating the entire EIS. At the very least, it did identify Lake Sawyer as a 'potential candidate[] for eutrophication[29] based on increased nutrients resulting from development.'"[30] Neither the Hearing Examiner, nor the Court of Appeals created any sort of new legal rule. Both applied the rule of reason recognizing that an EIS need not include every last possible detail, but is required only to provide a reasonably thorough discussion of the significant aspects of the probable environmental consequences of a permit decision. This case presents no conflict with prior case law.

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[28] *See* TRD Petition for Review, p. 10.

[29] As described in the EIS: "Eutrophication is a term that refers to the addition of nutrients to a water body. Although eutrophication can be a natural process, water pollution can greatly exacerbate and speed up this process. Eutrophication can lead to massive algae blooms in lakes and fish kills." AR 0020763.

[30] Slip Op., pp. 16 – 17, and citing AR 0020768.

TRD then re-hashes its argument, asserting that the Court of Appeals decision should be reviewed because it involves a "significant issue under the statute" reviewable under RAP 13.4(b)(3).[31] But RAP 13.4(b)(3) requires a finding that the petition involves "a significant question of law under the Constitution of the State of Washington or of the United States." Here, TRD's claim that the Decision involves a significant issue under the SEPA statute, even if it were true (which it is not), is not a basis for accepting review. Moreover, as described by the Court of Appeals, there are circumstances in which SEPA allows vital information to be omitted,[32] and many EISs have been upheld as adequate despite imperfections.[33]

Finally, TRD argues this issue should be reviewed as a matter of significant public import, under RAP 13.4(b)(4), asserting that the Court of Appeals decision will somehow diminish the quality of public decision making in the State of Washington for years to come. However, the Court of Appeals decision is unpublished and, as such, may not be cited as legal authority. Indeed, the Court's criteria for determining whether to accept review are similar to the criteria used by the Court of Appeals for determining whether to publish its opinion on a given matter.[34] Here, the Court of Appeals decided that this matter did not meet the criteria for

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[31] TRD Petition for Review, pp. 10 – 11.

[32] Slip Op., p. 18, citing WAC 197-11-080(3)(a) and (b).

[33] *Supra*, p. 7, text and n. 22.

[34] *See* RAP 13.4(b) and RAP 12.3(d) (listing likelihood of clarifying the state of the law, significance of the legal question in issue, and the overall public interest in the matter as criteria for both acceptance of review and publication).

publication, and for the same reasons the Court should deny TRD's Petition for Review: the Petition does not raise any unsettled questions of law or involve significant constitutional issues, and the public at large has little interest in this local issue.

The Court of Appeals applied the rule of reason and TRD has failed to establish grounds for this Court to accept review.

B. Failure to Tie issues to Applicable Standards of RAP 13.4 renders them unreviewable.

TRD presents a confusing three-and-one-half page argument alleging the Court of Appeals acted arbitrarily and capriciously[35] by "indulg[ing]" the Hearing Examiner's decision, which itself was supposedly based on inconsistent findings regarding phosphorus.[36] But TRD fails to cite any of the limited standards for acceptance of review set by RAP 13.4. And, TRD makes no argument alleging any conflict with case law, any significant Constitutional question, or any issue of substantial public interest. There is no issue raised in this section of TRD's Petition which could possibly justify the Court's acceptance of review.

C. The Court of Appeals decision raises no conflict of law regarding adequacy of City Council findings, nor is any issue of substantial public interest raised.

Washington case law provides that a permit decision must be accompanied by findings of fact and conclusions of law or reasons for the

[35] The arbitrary and capricious standard that TRD argues for is not even an applicable standard of review under the Land Use Petition Act. *See* RCW 36.70C.130.

[36] TRD Petition for Review, pp. 12 – 15.

action.[37] In reviewing local decisions, the Court of Appeals gives deference to the legal and factual determinations of the City with expertise in land use regulation.[38] TRD argues the Court of Appeals upheld the City Council's approval of the MPD Permits despite a lack of findings regarding protection of small town character, and, therefore, that the decision conflicts with cases such as *Weyerhaeuser v. Pierce County*.[39] Again, TRD is wrong.

TRD's argument centers on the manner in which the City reviewed compliance of the MPD Permits with requirements to protect small town character. The Comprehensive Plan describes how, in planning for and managing the growth coming from MPD development, the City will apply several fundamental principles to retain its small town character, including to retain the natural setting, define features and landmarks, provide mixture of uses and continuity of form, continue compact form and

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[37] *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35-36, 873 P.2d 498 (1994). TRD also cites (at p. 19, n. 16) to *Blair v. TA-Seattle E. No. 176*, 171 Wn.2d 342, 351, 254 P.3d 797 (2011) for the proposition that appellate courts should not consider the facts in the first instance as a substitute for [required] trial court findings." Similarly, TRD cites to *Low Income Hous. Inst. [LIHI] v. City of Lakewood*, 119 Wn. App. 110, 118-19, 77 P.3d 653 (2003) for the proposition that when an agency presents no basis for its decision, a court cannot review, and must remand for more thorough findings and articulation of the basis for the ruling. Contrary to this case, in both *Blair* and *LIHI*, the fact-finding tribunals failed to make any findings of facts in support of their decisions. In *Blair*, the trial court failed to make any of the findings of fact necessary to support its "severe sanction" of witness exclusion, which ultimately resulted in dismissal of the plaintiff's case. In *LIHI*, the Growth Management Hearings Board failed to make any findings of fact as to whether the Comprehensive Plans for the City of Lakewood and Pierce County were consistent. Here, the Court of Appeals rejected this same argument from TRD after carefully detailing the City Council's findings and conclusions on this issue.

[38] Slip Op., p. 5, text and n. 14.

[39] TRD fails to cite RAP 13.4(b)(1) and (2), but apparently raises an issue of conflict of law. TRD Petition for Review, pp. 16 – 19.

incremental development, maintain pedestrian scale and orientation, and provide opportunities for casual meeting and socializing.[40] To implement these six fundamental principles to retain small town character, the Comprehensive Plan directed the City to "[d]evelop and enforce regulations consistent with the character and scale of the community and [to] use design guidelines to help shape development."[41] Among those implementing regulations and guidelines, BDMC 18.98.010.L provides that the MPDs should incorporate all of those same design principles, thereby protecting small town character.

The Court of Appeals painstakingly reviewed and rejected TRD's argument.[42] The Court described how the City Council found that the purpose of BDMC 18.98.010.L was met, including how the MPD project included a mix of uses, with development located in compact clusters, separated by sensitive areas and open space.[43] The Court then continued a discussion and detailed quotes from the City Council's extensive findings and conclusions, including the critical point that "the Council pointed out that the [Comprehensive] Plan refers to protection of 'small town character,' which is accomplished by principles that include compact

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[40] Comprehensive Plan (Comp. Plan), pp. 5-7 to 5-8. The Comp. Plan is found at Appendix C to the Response Brief of Yarrow Bay.

[41] Comp. Plan, p. 5-33.

[42] Slip Op., pp. 29 – 34.

[43] Slip Op., pp. 30 – 31, citing AR 0027249 (Villages Conclusion of Law 15). Note also that City Council Finding of Fact 23 provided that any Conclusion of Law deemed to be a finding of fact was automatically adopted by reference as a finding of fact, and vice versa. AR 0027188.

development."[44] In addition, the Court affirmed the remainder of the Council's findings and conclusions describing how the City Council recognized that the City's MPD regulations were to be applied to harmonize the urban density requirements with maintaining small town character, and that the Council's findings and conclusions demonstrate that the MPD Permit approvals were consistent with the Comprehensive Plan policies, including the call for protection of small town character.[45]

The City Council did adopt findings and conclusions related to small town character consistent with *Weyerhaeuser v. Pierce County*, and the Court of Appeals properly affirmed the Council's decision. There is no conflict of law raised here and review should be denied.

TRD also argues that because hundreds of citizens in Black Diamond are upset, review is somehow justified under RAP 13.4(b)(4), as an issue of substantial public interest. But while Yarrow Bay's projects are large, the legal issue presented by TRD is routine. The City Council of Black Diamond adopted findings, and those findings were upheld on appeal – by both the Superior Court and the Court of Appeals. There is no issue here that transcends the specific application of municipal land use law in the City of Black Diamond to Yarrow Bay's projects. Moreover, the law is clear that community displeasure can never be the basis of a

[44] Slip Op., p. 32, text and n. 97, citing a portion of the lengthy Conclusion of Law 27, on AR 0027258.

[45] Slip Op., pp. 29 – 34.

permit decision. *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).[46]

D. TRD has conceded the issue that originally led to its Anti-SLAPP Suit Sanction request and, therefore, all issues related to the Anti-SLAPP suit motion are moot.

The Court should decline TRD's invitation to accept review and reverse the Court of Appeals' decision not to apply Washington's anti-SLAPP[47] statute (RCW 4.24.525). It appears that TRD's request is limited to the assertion that the issue of whether or not an anti-SLAPP motion can be brought at the appellate level is a matter of substantial public importance.[48]

But, TRD's argument under the anti-SLAPP statute was that Yarrow Bay's request to recover attorney's fees from the individuals behind TRD was somehow intended to intimidate them.[49] Now, TRD has conceded that Yarrow Bay may have an opportunity to pursue those individuals during Superior Court collection proceedings.[50] Accordingly, there is no longer any dispute regarding this issue. The issue is moot.

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[46] Yarrow Bay asks the Court to strike footnote 17 of TRD's Petition, which asserts facts outside the record. Facts unsupported by the record are not considered by the Court. *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 615 n.1, 160 P.3d 31 (2007). Additionally, under RAP 13.4(c)(6), TRD's factual statements should be "relevant to the issues presented for review." As the record shows, the City of Black Diamond approved Yarrow Bay's MPD Permits after decades of planning. The fact stated in footnote 17 that new city council members recently were elected who oppose Yarrow Bay's development is not relevant to this case, nor a valid basis for overturning a permit decision.

[47] SLAPP is an acronym for Strategic Lawsuits Against Public Participation.

[48] TRD Petition for Review, p. 20.

[49] TRD Petition for Review, p. 20.

[50] *See supra* footnote 18 herein and accompanying text.

Any decision by the Supreme Court on even the procedural issue of whether or not TRD's motion was allowed to be filed in the Court of Appeals would be purely advisory.

Moreover, TRD's only basis for seeking review is the assertion that because the purpose of the statute is of public interest, the Court should accept review under RAP 13.4(b)(4).[51] The Court should decline to accept review of TRD's anti-SLAPP suit issue because while many statutes are adopted with a purpose statement explaining a significant interest to the public, it does not follow that, as a consequence, all petitions for review involving such statutes should be granted.

E. Yarrow Bay is entitled to an award of its attorneys' fees.

The Court should decline TRD's invitation to accept review. In addition, Yarrow Bay requests that the Court issue an award of attorneys' fees to Yarrow Bay for its preparation and filing of a timely answer pursuant to RAP 18.1(j). Yarrow Bay was awarded its fees by the Court of Appeals, pursuant to RCW 4.84.370.[52]

[51] TRD Petition for Review, p. 20.

[52] Slip Op., p. 39, n. 119.

IV. CONCLUSION

TRD's Petition for Review fails to establish any of the grounds for review set by RAP 13.4(b). TRD's Petition should be denied. Yarrow Bay should be awarded its attorneys' fees pursuant to RCW 4.84.370 and RAP 18.1.

DATED this 27th day of March, 2014.

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Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on March 27, 2014, I caused a copy of the document to which this is attached to be served on the following individual(s) via legal messenger, First Class U.S. Mail, and email:

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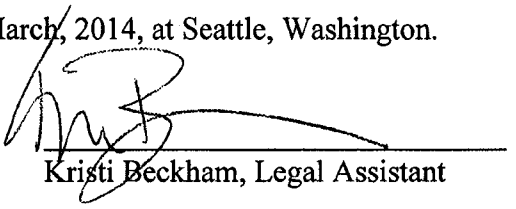
DATED this 27th day of March, 2014, at Seattle, Washington.



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For filing in the above-referenced case, attached please find the following document:

1. Answer to Petition for Review.

Case Name: Toward Responsible Development v. City of Black Diamond, et al.
Case No.: 89997-5
Person Filing: Nancy Bainbridge Rogers (Attorney for Respondents, BD Lawson Partners, LP and BD Village Partners, LP)
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Thank you.

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