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70321-8

No. 87861-7

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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ANNE K. BLOCK and NOEL FREDERICK,

Appellants,

v.

CITY OF GOLD BAR and CITY OF GOLD BAR CITY COUNCIL,

Respondents.

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**AMENDED REPLY BRIEF OF APPELLANT**

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ORIGINAL

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## **I. LEGAL AUTHORITY AND ARGUMENT**

### **A. Introduction**

Respondents City of Gold Bar and Gold Bar City Council (collectively “Gold Bar”) seek to avoid liability for an Open Public Meeting Act (“OPMA”) violation arguing first, that its action at an October 26, 2010, executive session was covered by RCW 42.30.110(1)(i), and second, if it wasn’t, that the action it took at the October meeting was beyond its authority and therefore it should not be found to have committed an OPMA violation. Gold Bar further tries to avoid any discussion of the OPMA claims alleging a recall petition decision, in a suit filed after the OPMA case which by its clear terms dealt with issues not present in the OPMA case, bars the OPMA suit. None of Gold Bar’s arguments have merit as will be discussed below.

### **B. Block Need Not Prove Knowledge by Members that Action is an OPMA Violation to Establish an OPMA Violation.**

Gold Bar persists in misstating the elements Block must show to prove an OPMA violation. See Resp. Br. at 13. If Block was seeking to hold individual council members liable for the \$100 fine, Block would need to show they knowingly violated the Act. As Block is not seeking these individual fines, she need only show the entity held a meeting which violated the Act. She has done so. Gold Bar admits the governing body

of the Gold Bar City Council attended a meeting. Resp. Br. at 13. A “meeting” is any occasion at which “action” is taken. RCW 42.30.020(4). “Action” is defined as the “transaction of official business” and includes discussion, consideration, public testimony, review, evaluation and other deliberation, as well as “final action.” RCW 42.30.020(3) Gold Bar alleges action was not taken in violation of the OPMA (because the action taken either was beyond the Council’s authority or because the action allegedly fell within an executive session exemption – arguments that will be addressed below.) Block need not also prove the individual council members **knew** they were breaking the law when action was taken in violation of the Act (although such a finding **is** an essential part of a recall petition). As explained below, the record shows a meeting occurred that violated the OPMA.

**C. The October 26, 2010, Executive Session Did Not Fall Within RCW 42.30.110(1)(i).**

Gold Bar first argues that the action it took at the October 26, 2010, executive session was authorized by RCW 42.30.110(1)(i). The clear language of RCW 42.30.110(1)(i) states that it only applies to executive sessions to “discuss with legal counsel representing the agency litigation ...”, and “it does not permit a governing body to hold an

executive session solely because an attorney representing the agency is present...” RCW 42.30.110(1)(i):

(i) To discuss **with legal counsel** representing the agency matters relating to agency enforcement actions, or to discuss **with legal counsel** representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, **when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.**

**This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present....**

RCW 42.30.110(1)(i) (emphasis added).

The other executive session provisions are not so limited. This is the only one which limits the provision to discussion “with legal counsel” and specifically states it does not apply merely because the lawyer is present. This is because Section 110(1)(i) is intended to cover attorney client privileged discussions not all discussions about litigation. Just as a written communication between councilmembers or between the mayor and councilmembers would not be deemed attorney client privileged solely because a lawyer was cc’d on the communication, a meeting where the clients lobby one another about a subject is not privileged simply because a lawyer sits passively by to listen in by phone. Gold Bar now concedes the Executive Session was for the Mayor, not the attorney, to

update the Councilmembers about the litigation, alleging now that the Council had no authority to act and thus the meeting was just to update Councilmembers on developments. Councilmembers all testify to extensive discussions with one another, not with the attorney. The meeting minutes reveal that Attorney Margaret King was not physically present at the Executive Session but merely connected via telephone. CP 149. No evidence has been offered regarding any discussions with the attorney, or that any discussions with the attorney in fact occurred. While the councilmembers' discussions with Ms. King, if any, might conceivably have been covered by Section 110(1)(i) (subject to the additional requirement discussed below), the discussions, which Gold Bar admits occurred, between the Mayor and Councilmembers, fell outside of Section 110(1)(i). Section 110(1)(i) "**does not permit a governing body to hold an executive session solely because an attorney representing the agency is present.**" RCW 42.30.110(1)(i). The fact that Ms. King was present, here by phone, during the Councilmembers' and Mayor's discussions with each other is no basis for the closed meeting under the clear language of the Section 110(1)(i). It is clear the Councilmembers went beyond the scope of Section 110(1)(i) based on their own admissions. This means their discussions and actions in that meeting violated the OPMA.

Further, for the Section to apply, Gold Bar was required to show that “public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.” RCW 42.30.110(1)(i). Gold Bar has made no showing that public knowledge regarding the discussion of whether or not to mediate the Forbes’ Public Record Act litigation was likely to result in an adverse legal or financial consequence to the agency. Gold Bar kept from its citizens the fact that Ms. Forbes requested mediation and that it had refused choosing instead to pay its attorneys considerable legal fees and costs to litigate the matter adding to the City’s fears of bankruptcy and insolvency. No adverse financial consequence was likely from public knowledge of the discussion whether or not to mediate. If anything, the agency may have saved money had its citizens known of the discussion so leaders may have felt compelled to behave more fiscally responsible with tax payer resources. No adverse legal consequence was likely from public knowledge of the discussion (had it occurred in a manner that did not violate the OPMA, of course). Public knowledge of a request for mediation, and Gold Bar’s refusal, could not have impacted the legal proceeding, and the request to mediate would not have been admissible in the proceeding. Because Gold Bar has failed to make this additional mandatory showing, Section

110(1)(i) cannot be found to apply, even as to the discussions with counsel, if any, that occurred during the Executive Session.

Finally, it is also a violation of the OPMA for participants to make a decision in the executive session or attempt to reach a collective decision. **Feature Realty v. City of Spokane**, 331 F.3d 1082, 1089, 1090-91 (9th Cir. 2003) (“Unless the action is “explicitly specified,” it is “beyond the scope of the exception” and violates the Act.”; reaching a “collective positive decision” done by informal consensus during the closed session violated the OPMA because that action was beyond the scope of the exception); **see also Miller v. Tacoma**, 138 Wn.2d 318, 331, 979 P.2d 429 (1999) (finding OPMA violation in informal balloting during executive session regarding councilmembers’ preferences among candidates). “Reaching a consensus on a position to be voted on at a **later** meeting qualifies as a collective decision and, consequently, as ‘final action.’” WSBA PUBLIC RECORDS ACT DESKBOOK, § 21.3(1), at 21-5-21-6 (citing **Miller**, 138 Wn.2d at 327).

Councilmember Lie testified to actual voting at the meeting by himself and another Councilmember, and to the reaching of a consensus during the meeting. CP 386-87. A decision in fact was reached and communicated to Ms. Forbes the following day. CP 151. Because the participants sought to reach a collective decision

during the meeting, the meeting additionally fell outside the scope of Section 110(1)(i).

**D. The Mayor Did Not Have the Sole Power to Decide Litigation Matters.**

Gold Bar next argues that even if it took action during the October 26, 2010, executive session that either fell outside of narrow scope of Section 110(1)(i) or would otherwise constitute an OPMA violation, that it cannot be an OPMA violation because allegedly only the Mayor, and not the Council, had the power to decide whether or not to mediate. RCW 35A.12.100 shows the limited power given to a Mayor in a Mayor-City Council form of government in place in Gold Bar:

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the

payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.

RCW 35A.12.100. Thus, the Mayor may institute litigation solely to see that all contracts and agreements made with the city or for its use and benefit are faithfully performed – and only after approval by a majority vote of all members of the council. **Id.** While the Mayor is given “general supervision of the administration of city government and all city interests” he shall report to the council concerning the affairs of the city and its financial and other needs “and shall make recommendations for council consideration and action...” **Id.** Nowhere is RCW 35A.12.100 or elsewhere is the Mayor given sole decisionmaking authority over the course of litigation once commenced. Rather, he is only to make “recommendations” to the Council concerning the affairs of the City “for council consideration and action...” **Id.** Gold Bar offers no evidence of this alleged tremendous power grant to its Mayor and power denial to its

Council other than its claim it has opted for a Mayor-City Council form of government.

RCW 35A.12.190 states:

The council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW.

Chapter 35A.11 RCW makes clear the extremely broad powers left to the Council whether in a RCW 35A.12 type government or one under RCW 35A.11.

The general grant of municipal power conferred by this chapter and this title on legislative bodies of noncharter code cities and charter code cities is intended to confer the greatest power of local self-government consistent with the Constitution of this state and shall be construed liberally in favor of such cities....

RCW 35A.11.050.

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. ...

In addition and not in limitation, the legislative body of each code city shall have any authority ever given to any class of municipality or to all municipalities of this state before or after the enactment of this title, such authority to be exercised in the manner provided, if any, by the granting statute, when not in conflict with this title. ...

RCW 35A.11.020.

Gold Bar argues the Council lost its rights to make decisions related to litigation, once instituted, solely on the basis that the City

became a Mayor-Council form of government under Chapter 35A.12 RCW. RCW 35A.11.020 and 35A.11.050 show the legislative bodies in both Chapter 35A.11 and 35A.12 type governments are intended to have the greatest powers possible, not a limitation of such powers. There is no basis for Gold Bar's claim that the Council lost its power to act, and Gold Bar has provided no evidence it affirmatively choose to relinquish that power to its Mayor, even if such relinquishment would have been effective.

Further, the OPMA provides that "If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control. RCW 42.30.140. Thus, if anything in Chapters 35A.11 or 35.12 RCW conflicts with the provisions of the OPMA as Gold Bar's delegated authority argument surely would, then the OPMA governs. Chapter 35A.11 RCW shows that the powers reserved for councils are broad and unlimited. RCW 35A.12.100 shows the limited power the Mayor actually holds, and that Gold Bar's argument that he could make all litigation decisions cannot prevail. Even if he had such powers, it does not change the fact that "action" occurred in an Executive Session that cannot fit within the limited exception of RCW 42.30.110(1)(i). Committing an impermissible act in an illegal meeting does not preclude the finding of an OPMA violation and no authority has

been cited for such a premise.

**Second, there should be no doubt: the Respondents did not believe on October 26, 2010, that the Mayor had the sole power to decide litigation matters including whether or not to mediate.** The City Attorney's communications to Susan Forbes indicate that the **City Council** would be reviewing and deciding on her request for mediation. See CP 218-219 (King emails to Forbes indicating the City Council would be meeting to discuss the offer in executive session). The agenda shows the **City Council** would be the one to review and decide on the request. CP 220 (City Council agenda with executive session announced purpose of "executive session regarding current litigation with possible action to follow.") The Councilmembers' declarations all show they understood they were to decide, and in some cases admit they did decide, on the issue, with Mayor Beavers being the sole voice, belatedly in litigation, claiming he had the sole power. **See** CP 56, 58, 60, 62, and 140, 148 (Councilmember and Mayor Beavers' declarations admitting to discussion of issue in executive session), CP 386-87 (Councilmember Lie declaration admitting to voting in executive session and understanding that Council needed to make a decision). Ms. King had said in an email to Forbes that "The City is attempting to schedule an executive session ..." (CP 219), that "The Council will be discussing your offer in an executive session..."

(CP 218), and then the day after the executive session that “the City” was declining her offer as “it” does not believe it would be constructive. CP 151. Gold Bar belatedly tries to argue that “the City” means solely the Mayor, and that everyone knew, despite all their sworn statements and other evidence to the contrary, that the elected Councilmembers had no right to consider or decide the issue and that they had secretly, and without notice, given all power over litigation decisions to the Mayor.

The abdicated authority argument is something Gold Bar has latched on to, after the fact, as a basis for excusing its illegal behavior, and not something it or its agents believed to be true at the time. The Citizens of Gold Bar were never notified of this position prior to the litigation arguments, and the City Council at no time showed a belief in this position prior to the argument being raised in litigation. The City of Gold Bar alleges it is being bankrupted by its legal fees to its own attorneys and that it may face dissolution as a result. This Court must, in light of the record here, seriously doubt the claims by the City and Council that it believed on October 26, 2010, the City Council did not have the authority to decide whether or not to mediate. Regardless of the City’s belief, the Mayor did not actually possess the sole power to decide the issue pursuant to RCW 35A.12.100 as explained above. Even if he had, this would not preclude an OPMA violation for the events that occurred here.

Gold Bar's reliance on Washington Public Trust Advocates v. City of Spokane, 120 Wn. App. 892, 902, 86 P.3d 835 (2004)(“WPTA”), on this issue is misplaced. WPTA dealt with claims by a councilmember that all decisions related to a litigation required council approval and that the failure to hold a meeting with the full council to approve each such action constituted a violation of the OPMA. Meetings had been held between the Mayor and attorney. The narrow holding of this case is that a meeting between the Mayor and the attorney were not meetings of a governing body and thus not meetings subject to the OPMA.

**E. Respondents' Ultra Vires Argument Does Not Prevent an OPMA Violation.**

Respondents argue that because the Council allegedly did not have the power to make the decision it made in executive session because the Council allegedly had secretly abdicated all authority for such decisions to its Mayor, that there can be no OPMA violation for the action taken in executive session.

Respondents ignore that any “action,” not just final action, that occurs outside of an open meeting is an OPMA violation if the action is not explicitly covered with a narrowly construed executive session exception. Here, Respondents admit to “action” in a closed meeting. Action includes “deliberations, discussions, considerations, reviews...”

RCW 42.30.020(3). The Councilmembers admit to spirited discussion with one another and it is clear from their declarations that they considered, deliberated and reviewed the issue of whether or not to agree to mediation. As explained above, the events at the October 26, 2010, executive session went beyond the narrow scope of Section 110(1)(i) because it involved discussions and lobbying of one another, and briefing by the Mayor, not solely discussions “with legal counsel” as the Section is meant to be limited.

It is also clear they took “final action” at the meeting based on the record – something that is not allowed even if the remainder of the action fell within the Scope of Section 110(1)(i).

Gold Bar argues that even if it took action or final action that this action was beyond the Council’s authority and so there should be no OPMA violation. No OPMA case on this issue has been cited, nor does any exist to counsel’s knowledge. The mischief of such a proposal should be obvious. Gold Bar argues that a City could act in secret and take actions clearly beyond the scope of its powers, and then argue if it were ever caught that it lacked the power for such actions and thus escape OPMA liability for its illegal secret activities. The Gold Bar City Council could, for example, meet illegally and secretly and pass a resolution exempting the City from the reach of the OPMA or the Public Records

Act, or stating that the free speech rights of Article I, Section 5 of the Washington Constitution or the First Amendment to the United States do not apply within the City limits, or it could decide the federal and state civil rights laws precluding it from discriminating against certain individuals do not apply within the City of Gold Bar, or it could decide to exempt City Councilmembers and its Mayor from the obligation to pay federal income taxes – all events beyond the power of a City. If these illegal actions were ever discovered, and someone brought an OPMA claim, the City, under Gold Bar's theory, would be immune from OPMA liability because the actions it took were beyond the scope of its powers. There is no support for such a conclusion. This Court must reject that argument. The harm such a holding would make to open and accountable government is great.

The City's argument that the Council did not have the power to decide whether or not to mediate should be rejected, as (a) it is not correct based on RCW 35A.12.100, (b) has not been proven correct here, and (c) it was not actually believed by the City Council or the Mayor at the time of the event and is a belated-theory to try and escape liability. But even if the Gold Bar's argument was correct and the Council lacked the power to decide whether or not to mediate, this does not, and cannot preclude an OPMA violation for taking action in a meeting that violates the OPMA.

**F. The Recall Petition Decisions Do Not and Cannot Bar the OPMA Case.**

Block filed this OPMA lawsuit against the City and City Council as entities on January 17, 2012. CP 393-399. Councilmember Lie filed his declaration on March 9, 2012. CP 386-387. In March 2012, while this OPMA suit was underway, Block and others filed recall petitions against Councilmembers Martin and Wright individually alleging in part they “voted in executive session” on October 26, 2010. CP 300-301, 304-305. They did not allege the councilmembers knowingly violated the OPMA, a requirement for a recall petition. They also filed a recall petition against the Mayor, who is not a member of the City Council and thus not a member of the governing body of the City, in part for “failing to reconvene an executive session” on October 26, 2010. CP 296-297. At a recall sufficiency hearing in April 2012, the trial court indicated in short written orders only that the recall charges were “insufficient” to allow the recall petition to go forward. CP 298-299, 302-303, 306-307.

On April 25, 2012, Gold Bar resident Susan Forbes and former councilman Lie filed a second recall petition against just the Mayor alleging the Mayor “violated the OPMA “by failing to reconvene to an open public meeting from an executive session to vote/take action on the record in an open public meeting” and that the vote/take action was taken

in executive session in violation of the OPMA. CP 308-309. On May 25, 2012, following a sufficiency hearing the trial court held that the recall petition allegations were insufficient because the OPMA does not apply to the Mayor who is not a member of the governing body of the City Council, that there was no showing the Mayor **intended** to violate the OPMA, that an agency does not need to reconvene to an open session after an executive session (an incorrect statement of the law), and that the petition was barred by res judicata as a similar allegation was asserted in the first recall petition against the Mayor. CP 254-256.

In June 2012, Gold Bar sought summary judgment in this OPMA case alleging the recall petitions above were a res judicata and collateral estoppel bar to the OPMA claims. As the recall petition actions make clear, the allegations in those cases are **not** identical to the issues in this OPMA case. Two of the actions were against the Mayor, who is not a member of the governing body and thus not subject to the OPMA. All three actions were against individuals and thus required a showing of a knowing and intentional violation, something not at issue here in this OPMA case where individual liability is not being sought.

A decision in a recall petition that allegations are not sufficient for a recall from office does not automatically determine whether or not an OPMA violation has occurred by the entities of which the official was a

member. A recall petition is not an adjudication on the merits. All a court does in a recall petition is determine “(1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis.” RCW 29A.56.140. “Courts play a highly limited role in the recall process. We are merely gatekeepers, limited to protecting the process of ensuring that only legally and factually sufficient charges are referred to the voters.” **In re: Carkeek**, 156 Wn.2d 469, 473, 128 P.3d 1231 (2006). A court does not determine whether the charges in a recall petition are true. **See** RCW 29A.56.140 (“The court shall not consider the truth of the charges, but only their sufficiency.”); **see also In re: Davis**, 164 Wn.2d 361, 367, 193 P.3d 98 (2008) (“A reviewing court does not look to the truthfulness of the charges but instead considers whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position.”).

When a recall petition charges an official with violating the OPMA, the petition must state facts indicating an intent by the official to violate the Act. **In re Petition for Recall of Anderson**, 131 Wn.2d 92, 95, 929 P.2d 410 (1997). If the petitioner fails to allege the official intended to violate the OPMA, that alone is grounds for finding the recall petition insufficient. **Anderson**, 131 Wn.2d at 95. Therefore, a court ruling not to allow a recall petition on an OPMA-related charge to go

forward to the signature-gathering phase and then the ballot is **not** a ruling that the OPMA was not violated, only that the citizen has not sufficiently alleged an intention to violate the Act—something not at issue here in this OPMA suit as Block is not alleging intentional violations on the part of individual council members or seeking to have them individually fined.

A recall petition does not determine the truthfulness of the underlying allegations, such as whether an OPMA violation occurred. The only issue in a recall petition is whether the petitioner has shown “malfeasance, misfeasance, or violation of oath of office” and therefore should go onto the ballot. RCW 29A.56.110. An OPMA violation occurs whether or not any individual is shown to have intentionally and knowingly violated the Act. Entities can unintentionally and unknowingly break the law, precluding individual fines against them, but not precluding a finding the OPMA was violated and the voiding of the act taken in the illegal meeting.

The Orders on the first three recall petitions do not provide any findings or explanation of the basis for the holding, except that the allegation was “insufficient” to go forward. The Order on the second recall petition of the Mayor held that the Mayor was not subject to the OPMA as he was not a member of the governing body and thus allegations of technical OPMA violations wrongdoing could not form a

basis for recall and further held that the agency did not need to reconvene from an executive session into a public open meeting, which is an erroneous statement of the law. See RCW 42.30.110. Here, the issue is whether the City Council, which is subject to the OPMA, committed an OPMA violation regardless of the intent of individual council members or agents. The claims and legal tests in the recall and OPMA actions are not identical and what can constitute an OPMA violation will not succeed as a recall action.

Further, despite the attempting bashing of Block by Gold Bar over her persistence is seeking to hold her accountable, Block has shown an injustice would occur if the recall decisions were allowed to act as a collateral estoppel or res judicata bar to this OPMA case. No court has decided the truth of the allegations in this case, and certainly not based on a developed record; the truth of the facts of the OPMA violation has not been decided in the recall petitions. See RCW 29A.56.140 (“The court **shall not** consider the truth of the charges, but only their sufficiency.”(emphasis added)); see also Davis, 164 Wn.2d at 367 (“A reviewing court does not look to the truthfulness of the charges but instead considers whether, accepting the allegations as true, the charges on their face support the conclusion that the officer abused his or her position.”). The record that has been compiled, as discussed herein, show a violation

of the Act. Collateral estoppel and res judicata could not have applied and the trial court should not have granted the City's motion for summary judgment on that basis.

**G. The CR 56(f) Motion Should Have Been Granted.**

The order granting protective order in this case quashed solely the deposition of the City's Attorney. CP 291-93. It delayed for a period of 45 days the other depositions for consideration of an as-then-unfiled summary judgment motion. **Id.** There was no delay in discovery as Gold Bar alleges. The lawsuit was filed on January 17, 2012. CP 393. Deposition notices were issued on May 11, 2012. CP 90-91. On May 18, 2012, the City moved for a protective order staying the depositions for 45 days, which was granted. CP 291-293. On June 15, 2012, the City filed a motion for summary judgment and Block timely filed a CR 56(f) Motion for a continuance asking to take the depositions of the other participants before consideration of a summary judgment motion in order to respond to that motion. The CR 56(f) Motion addressed the contradictions in the declarations filed by the various Gold Bar Councilmembers and Mayor regarding the October 26, 2010, meeting and their understanding of their role at that meeting. The Motion addressed the evidence it expected to result from such discovery and the relevance to the issue of such evidence. On August 10, 2012, the trial court denied the CR 56(f) Motion (CP 41-

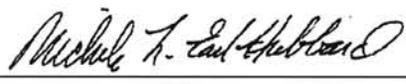
42) and granted the summary judgment motion. The CR 56(f) Motion denial contains no findings or explanations. CP 41-42.

Gold Bar is wrong to allege Block has not challenged the denial of her right to take depositions in this case. She specifically requested a CR 56(f) Motion which was denied, and she has assigned error to this order and addressed the issue in her brief. The trial court erred in not granting the CR 56(f) Motion allowing discovery including depositions of the Councilmembers prior to ruling on the summary judgment motion. Block was entitled to question the witnesses about the statements made in their declarations and the allegations made by Gold Bar about its abdication of authority to its Mayor. Litigation is not to occur by ambush, and courts are better served by argument from two fully informed parties, rather than one-sided “proof” by one party that was not allowed to be investigated by the other.

## II. CONCLUSION

The Court should reverse the trial court and find a violation of the OPMA, or, at a minimum, grant the Rule 56(f) Motion and allow discovery and overturn the grant of summary judgment to the Defendants.

Respectfully submitted this 20th day of March, 2013.

By:   
Michele Earl-Hubbard, WSBA No. 26454

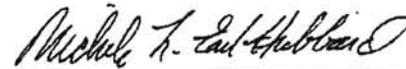
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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on March 20, 2013, I delivered a copy of the foregoing Amended Reply Brief of Appellant by email pursuant to an electronic service agreement among the parties with back up by U.S. Mail to the following:

Attorneys for City of Gold Bar and Gold Bar City Council  
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Dated this 20th day of March, 2013.



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Michele Earl-Hubbard

## OFFICE RECEPTIONIST, CLERK

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**To:** Michele Earl-Hubbard; 'KATHY SWOYER'  
**Cc:** 'ANN MARIE SOTO'; 'MIKE KENYON'  
**Subject:** RE: Filing in Case No. 87861-7

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Subject: RE: Filing in Case No. 87861-7

Attached is an Amended Reply Brief of Appellant. (One typographical error was discovered on the final page of the brief. The inadvertent referral to "depositions" instead of "declarations").

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Michele Earl-Hubbard

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Please accept for filing the attached Reply Brief of Appellant, in Supreme Court Case No. 87861-7, Anne Block et al. v. City of Gold Bar. It includes the Declaration of Service.

This is being filed by Michele Earl-Hubbard, WSBA No. 26454, Attorney for Appellants.

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