

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. ASSIGNMENTS OF ERROR.....	2
III. STATEMENT OF THE CASE	2
A. Hall’s Plans.....	2
B. April Comprehensive Plan Map Amendment	3
C. The September Rezone	3
D. Superior Court grants stay under RCW 36.70C.100	4
E. GMHB Invalidates the Map Amendment.....	5
F. Emergency Motion for Discretionary Review.....	5
G. Superior Court Grants Port’s Motion for Partial Summary Judgment	5
IV. STANDARD OF REVIEW.....	6
V. ARGUMENT.....	7
A. Issue 1: The City’s conclusion that the Rezone was a legislative decision is an erroneous interpretation of the law; the superior court correctly concluded that the Rezone is site-specific.	8
1. The statutory framework supports the characterization of the Rezone as site- specific.....	9
2. The City’s amendment of the Comprehensive Plan preceded the Rezone, making the City’s subsequent consideration of the Rezone a quasi-judicial proceeding in which site-specific land use decisions are made.....	11

3.	The superior court correctly concluded that the City’s action was quasi-judicial.....	14
B.	Issue 2: The City’s review of the Rezone for consistency only with the Comprehensive Plan Map Amendment—rather than for consistency with the overall Comprehensive Plan—was an erroneous interpretation of law.....	15
1.	Washington law requires that a site-specific rezone be consistent with the comprehensive plan.	16
2.	The City committed an error of law in failing to consider the Rezone’s consistency with the transportation and industrial policies and requirements of the Shelton Comprehensive Plan.	19
C.	Issue 3: Reversal is the appropriate relief.....	22
D.	Issue 4: The superior court did not abuse its discretion in staying the Rezone’s effective date.	22
1.	LUPA authorizes a stay.	23
2.	The inability to obtain relief if Hall vests is irreparable harm.....	23
3.	The superior court found that Hall would not be substantially harmed.	24
4.	The superior court entered the temporary stay in response to Hall’s assertion that Hall would be prejudiced.....	24
VI.	CONCLUSION	25

TABLE OF AUTHORITIES

Page

WASHINGTON STATE CASES

Abbey Rd. Grp., LLC v. City of Bonney Lake,
167 Wn.2d 242, 218 P.3d 180 (2009)..... 5, 23

Brown v. Voss,
105 Wn.2d 366, 715 P.2d 514 (1986)..... 25

Cingular Wireless, LLC v. Thurston Cnty.,
131 Wn. App. 756, 129 P.3d 300 (2006)..... 17, 18

Citizens for Mount Vernon v. City of Mt. Vernon,
133 Wn.2d 861, 947 P.2d 1208 (1997)..... 16

DeTray v. City of Olympia,
121 Wn. App. 777, 90 P.3d 1116 (2004)..... 7

Erickson & Assocs., Inc. v. McLerran,
123 Wn.2d 864, 872 P.2d 1090 (1994)..... 23

Harrington v. Spokane Cnty.,
128 Wn. App. 202, 114 P.3d 1233 (2005)..... 7

*HJS Dev., Inc. v. Pierce Cnty. ex rel. Dep't of Planning &
Land Servs.*,
148 Wn.2d 451, 61 P.3d 1141 (2003)..... 7

Isla Verde Int'l Holdings, Inc. v. City of Camas,
146 Wn.2d 740, 49 P.3d 867 (2002)..... 6

King v. Olympic Pipeline Co.,
104 Wn. App. 338, 16 P.3d 45 (2000)..... 22

Phoenix Dev. v. City of Woodinville,
154 Wn. App. 492, 229 P.3d 800 (2009)..... 14

Phoenix Dev., Inc. v. City of Woodinville,
--- Wn.2d ---, --- P.3d ---, 2011 WL 2409635
(June 16, 2011) passim

Wenatchee Sportsmen Ass'n v. Chelan Cnty.,
141 Wn.2d 169, 4 P.3d 123 (2000)..... 6, 10, 11

Woods v. Kittitas Cnty.,
162 Wn.2d 597, 174 P.3d 25 (2007)..... 6, 17, 18

WASHINGTON STATE STATUTES

RCW 36.70A 10

RCW 36.70A.010 10

RCW 36.70A.030(7)..... 10, 11

RCW 36.70A.200 21

RCW 36.70A.70 10

RCW 36.70B 10

RCW 36.70B.020 11

RCW 36.70B.020(4)..... 10, 11, 13

RCW 36.70C 10

RCW 36.70C.010 6

RCW 36.70C.020(2)(a) 10

RCW 36.70C.100 4, 23

RCW 36.70C.130(1)..... 7

RCW 36.70C.140 7, 22

OTHER AUTHORITIES

Hensley v. Snohomish County,
*CPSGMHB No. 01-3-0004c (Order on Remand and
Reconsideration, Dec. 19, 2002), at 6* 12

North Everett Neighbor Alliance (NENA) v. City of Everett,
CPSGMHB No. 08-3-0005 (Order on Motions, Jan. 26,
2009), at 8 12

SMC 2.36.010..... 14

SMC 20.52.010..... 16, 17

The McNaughton Grp. v. Snohomish Cnty.,
CPSGMHB No. 06-3-0027 (Order on Motions, October 30,
2006), at 7 12

I. INTRODUCTION

This Land Use Petition Act (“LUPA”) appeal challenges the City of Shelton’s (the “City’s”) approval of a rezone of 160 acres for residential use in the flight traffic pattern for Sanderson Field, Mason County’s only regional airport. The Port of Shelton (the “Port”) contends the City made two errors of law that will result in a residential development in direct conflict with the industrial and transportation requirements of the City’s Growth Management Act (“GMA”) Comprehensive Plan: (1) by erroneously categorizing Ordinance No. 1771-0910 (the “Rezone Ordinance”) as a legislative action, rather than a site-specific zoning decision, and (2) by limiting review of the Rezone to consistency with the recently adopted amendments to the Comprehensive Plan land use map (“Map Amendment”), rather than all relevant parts of the Comprehensive Plan, including the Plan’s industrial and transportation requirements.

The Mason County Superior Court agreed with the Port, granting the Port’s motion to stay the Rezone’s effective date and the Port’s Motion for Partial Summary Judgment, and reversing the City’s approval of the Rezone Ordinance. The City of Shelton and Hall Equities/Shelton Hill Investors (collectively “Hall”) have appealed the superior court’s decision. The Port, as the party that filed the LUPA petition in superior court, is

responsible for filing the opening brief pursuant to General Order 2010-1 of this Court.

II. ASSIGNMENTS OF ERROR

1. Was the City's conclusion that the Rezone is legislative an erroneous interpretation of law?

2. Was the City's conclusion that its review of the Rezone for consistency with the Comprehensive Plan should be limited to a review for consistency only with the Map Amendment—and not the industrial and transportation requirements of the Comprehensive Plan—erroneous as a matter of law?

3. Should the Rezone be reversed because the Rezone is based on erroneous interpretations of the law and because the Growth Management Hearings Board ("GMHB") has invalidated the Map Amendment on which the Rezone relied?

4. Did the superior court abuse its discretion in staying the effective date of the Rezone Ordinance pending its deliberations on the Port's land use petition?

III. STATEMENT OF THE CASE

A. Hall's Plans

Hall seeks residential zoning of 160 acres of property to allow homes directly in the flight traffic pattern of Sanderson Field, a regional

airport and Mason County's only airport. Clerk's Papers ("CP") 211, 549. The Port opposes the development as contrary to Washington state law and the City of Shelton's Comprehensive Plan. CP 937-42.

B. April Comprehensive Plan Map Amendment

In April 2010, the City Commission passed Ordinance 1764-0310 to amend the City's Comprehensive Plan land use map ("Map Amendment"). CP 216-19. The Map Amendment changes the uses allowed on Hall's property to include residential uses. *Id.* The Map Amendment makes no reference to the Rezone that is the subject of the Port's LUPA petition and this appeal. *Id.* The Port appealed the Map Amendment to the GMHB because it did not comply with the GMA. CP 1411-14.

C. The September Rezone

Three months after the City Commission's approval of the Map Amendment, Hall's rezone request was considered by the City's Hearing Examiner. The Hearing Examiner made findings of fact and conclusions of law. CP 91-103, 921-32. Conclusion 2 of the Hearing Examiner's Recommendation limited the consideration of the Rezone for consistency with the Comprehensive Plan to review of only the land use map designation of Neighborhood Residential. CP 99.

The City Commission approved Ordinance No. 1771-0910 (“Rezone Ordinance”) on September 7, 2010, based on the City Hearing Examiner Recommendation. *See* CP 87-88. The Rezone Ordinance provided that it would become effective five days after passage. *See* CP 88. The City’s approval of the Rezone came more than four months after the Map Amendment. CP 87-88, 216-19.

D. Superior Court grants stay under RCW 36.70C.100

On September 8, 2010,¹ the Port served its LUPA petition on Hall with its motion for a LUPA stay and a motion to shorten time for the stay motion to be heard on September 9 or September 10, the only two court days available before the Rezone became effective and Hall would seek to vest.² CP 1582-96. Hall objected to the Port’s motion to shorten time, complaining that the superior court would not have time to consider Hall’s arguments. CP 1278-82.

On September 10, the superior court granted a temporary stay to allow time to consider the parties’ briefs. CP 1032-39, 1267-68; Partial Report of Proceedings (“PRP”) 1-7. On September 13, Hall moved to

¹ CP 937-42. The Port’s LUPA petition was filed with the superior court on September 9, 2010. CP 1597-602.

² The Port filed an initial lawsuit and motion for injunction in August 2010 (Mason County Superior Court Cause No. 10-2-00772-9) to avoid the problem it faced on September 8: three court days within which to file a LUPA appeal and obtain a hearing on a stay motion. In August 2010, the superior court ruled that it could not issue an injunction in aid of its jurisdiction before the Port’s LUPA appeal was “ripe,” and denied the motion and dismissed the Port’s complaint. *See* CP 1473-77.

shorten time to hear a motion to reconsider the temporary stay and simultaneously submitted its application for a subdivision to the City. CP 1031, 1250-54, 1269-77. On September 16, the superior court heard and granted the Port's motion for a stay under RCW 36.70C.100. CP 1170-75, 1188-89; PRP 8-20.³

E. GMHB Invalidates the Map Amendment

While the Port's LUPA challenge of the Rezone Ordinance was pending in superior court, the GMHB invalidated the Map Amendment on October 27, 2010, finding that the Map Amendment failed to comply with the GMA and that it set back the GMA transportation goal. CP 967-1007. As a result, the Map Amendment has no legal effect.

F. Emergency Motion for Discretionary Review

Hall filed an emergency motion for discretionary review by this Court of the superior court's ruling granting a stay. The Court's Commissioner denied the motion. CP 1009-13.

G. Superior Court Grants Port's Motion for Partial Summary Judgment

On December 6, 2010, the Port filed its Motion for Partial Summary Judgment based on Issues 1-3 identified in Part II above. CP

³ Without the LUPA-authorized stay of the effective date of the Rezone Ordinance, Hall's subdivision application would have caused its rights in the Rezone to vest and would have prevented the courts from granting the Port meaningful relief. *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 251, 218 P.3d 180 (2009).

1014-27. On January 4, 2011, the superior court granted the Port's Motion for Partial Summary Judgment and reversed the City's Rezone Ordinance, declaring it to be invalid. CP 14-15, 6-10 (Amended Order Granting Summary Judgment (Apr. 7, 2011)); PRP 21-23.

IV. STANDARD OF REVIEW

A local government's approval of a site-specific rezone is a land use decision. *Woods v. Kittitas Cnty.*, 162 Wn.2d 597, 610, 174 P.3d 25 (2007). In reviewing a land use decision, the Court of Appeals stands in the same position as the superior court. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751, 49 P.3d 867 (2002) (citing *Wenatchee Sportsmen Ass'n v. Chelan Cnty.*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)).

The decision before the Court is the superior court's reversal of the City's approval of the Rezone on partial summary judgment. LUPA's purpose is to reform the process for judicial review of land use decisions by providing "expedited" review. RCW 36.70C.010. Summary judgment, where applicable, promotes LUPA's purpose by allowing expedited decisions on issues where facts are not in dispute, and courts regularly use summary judgment in LUPA cases to more promptly resolve the dispute. *See Harrington v. Spokane Cnty.*, 128 Wn. App. 202, 114 P.3d 1233

(2005); *DeTray v. City of Olympia*, 121 Wn. App. 777, 90 P.3d 1116 (2004).

The relevant standards for granting relief in this LUPA action are set forth in RCW 36.70C.130(1). The following standard applies to this case, which involves a question of law that may be determined on summary judgment:

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise; ...

RCW 36.70C.130(1). Under subsection (b) of RCW 36.70C.130(1), this Court reviews the question of law de novo. *HJS Dev., Inc. v. Pierce Cnty. ex rel. Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 468, 61 P.3d 1141 (2003).

In a LUPA proceeding, the Court may affirm or reverse the land use decision or remand for modification or further proceedings. RCW 36.70C.140; *Phoenix Dev., Inc. v. City of Woodinville*, --- Wn.2d ---, --- P.3d ---, 2011 WL 2409635, at *3 (June 16, 2011).

V. ARGUMENT

The superior court granted the Port's Motion for Partial Summary Judgment on Issues 1, 2, and 3 stated above. CP 6-10. As discussed below, the superior court properly ruled that the City's Rezone was based on erroneous interpretations of the law because (1) the Hearing Examiner

and City Commission improperly treated the Rezone as a legislative action rather than a quasi-judicial proceeding (PRP 21), and as a result, (2) the Hearing Examiner and City Commission failed to consider the Rezone's consistency with the overall Comprehensive Plan, and instead assessed only its consistency with the Map Amendment (PRP 21). The superior court also correctly concluded that the City's Rezone should be reversed because the GMHB had invalidated the Map Amendment on which the Rezone was based (PRP 21-22; CP 8).

The Port also anticipates, based on Hall's motion for discretionary review and notice of appeal (CP 11-12, 1009-13), that Hall will argue that the stay imposed by the superior court was an abuse of discretion. Issue 4 addresses this argument.

A. Issue 1: The City's conclusion that the Rezone was a legislative decision is an erroneous interpretation of the law; the superior court correctly concluded that the Rezone is site-specific.

Beginning with the City Hearing Examiner and ending with the City Commission, the City consistently concluded that the Rezone was a legislative act, rather than a site-specific project decision. Specifically, in adopting the Rezone Ordinance, the City concluded that it was acting legislatively: "This ordinance concerns powers vested solely in the Commission as a legislative entity" CP 88. Likewise, the City's

Hearing Examiner concluded that the Rezone was a “development regulation” and that the “request before the Hearing Examiner is not a project specific request.” CP 99. The City, therefore, failed to apply Washington law for site-specific rezones.

The Port’s LUPA claim asserted that the City’s conclusion that it was acting legislatively, rather than approving a site-specific rezone in a quasi-judicial proceeding, was an erroneous interpretation of law. CP 939, 1018-24. The superior court agreed and granted partial summary judgment to the Port on this ground. PRP 21. The Rezone is site-specific and the City’s conclusion to the contrary is an erroneous interpretation of the law subject to reversal under LUPA.⁴

1. The statutory framework supports the characterization of the Rezone as site-specific.

Three state statutes determine the question of whether a rezone is a “site-specific” rezone—as determined by the superior court—or a “development regulation”—under the City’s legal interpretation: (a) the

⁴ Throughout the superior court proceedings, Hall contended that the superior court lacked jurisdiction to consider the Port’s petition because the Rezone Ordinance was a legislative decision that should be considered through an appeal to the GMHB, not a LUPA petition filed in superior court. CP 1176-87. Hall’s jurisdictional argument is subsumed by the Port’s first assignment of error. CP 1100-02. If the Hearing Examiner’s and City Commission’s consideration of the Rezone was a legislative action, then the only way in which it can be challenged is through a GMHB appeal; however, if the Court agrees that the Rezone is properly categorized as a site-specific, quasi-judicial decision, then the Court has jurisdiction to consider the Rezone Ordinance through this LUPA appeal. See *Phoenix Dev.*, 2011 WL 2409635, at *6 (considering whether a rezone decision was a legislative or quasi-judicial action in the context of a LUPA appeal).

GMA, chapter 36.70A RCW; (b) the project permitting statute, chapter 36.70B RCW; and (c) LUPA, chapter 36.70C RCW. These statutes support the superior court's characterization of the Rezone as site-specific.

The state enacted the GMA in 1990 to require local governments to adopt comprehensive plans and development regulations to address the problem of unplanned growth. RCW 36.70A.010. The GMA requires the comprehensive plan to include a land use map that identifies the uses allowed in different areas of the jurisdiction. RCW 36.70A.70. The GMA defines "development regulations" to include "zoning ordinances," but explicitly excludes a "project permit application as defined in RCW 36.70B.020." RCW 36.70A.030(7). As discussed below, "project permits" include "site-specific" rezones.

The state enacted the project permitting statute (Section 70B) and LUPA (Section 70C) of title 36 RCW in 1995. The project permitting statute defines "site-specific rezones" as rezones "authorized by a comprehensive plan." RCW 36.70B.020(4). In turn, LUPA subjects "land use decisions" to appeal to superior court and defines "land use decisions" to include project permits such as site-specific rezones. RCW 36.70C.020(2)(a). In *Wenatchee Sportsmen*, the Washington Supreme Court reviewed the above statutory framework and distinguished "development regulations" from "site specific" rezones as follows:

A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020 . . . RCW 36.70A.030(7). The Local Project Review statute defines “project permit application” as including, among other things, “site-specific rezones authorized by a comprehensive plan or subarea plan.” RCW 36.70B.020(4) . . . [A] site-specific rezone is not a development regulation under the GMA, and . . . [the] GMHB does not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA.

141 Wn.2d at 178-79 (internal citations omitted). The Court in *Wenatchee Sportsmen* described what it means for a rezone to be “authorized by a comprehensive plan”:

The . . . Staff Report recommending that the rezone be approved concludes that approval would be consistent with that comprehensive plan . . . Thus, the rezone of Stemilt’s property is a site-specific rezone.

Id. at 179-80 (emphasis added). In other words, a rezone is “authorized by a comprehensive plan” under RCW 36.70B.020(4) when there are policies in the comprehensive plan against which the rezone can be reviewed and found to be consistent.

2. The City’s amendment of the Comprehensive Plan preceded the Rezone, making the City’s subsequent consideration of the Rezone a quasi-judicial proceeding in which site-specific land use decisions are made.

Decisions of the GMHB further bolster the conclusion that the Rezone is a site-specific decision. The GMHB has concluded that it only has jurisdiction over rezones where the comprehensive plan amendment

and the rezone were adopted concurrently and the comprehensive plan amendment did not precede the rezone.⁵ Here, the Map Amendment preceded the Rezone by four months. CP 87-88, 216-19. The superior court explicitly considered these GMHB decisions and found that the City’s adoption of the comprehensive plan amendment and the rezone in two different procedures at two different times put the Rezone Ordinance outside the GMHB’s jurisdiction as a site-specific decision because “[h]ere, clearly one decision preceded the other . . .” PRP 10 (emphasis added).

The highlighted language in the superior court’s ruling comes from the leading GMHB case *Hensley v. Snohomish County*: amendments to the comprehensive plan and a rezone are a package where “they became effective together and none preceded another . . .” CP 1209-12 (CPSGMHB No. 01-3-0004c (Order on Remand and Reconsideration, Dec. 19, 2002), at 6 (emphasis added)). The significance of the

⁵ CP 139-54 (*North Everett Neighbor Alliance (NENA) v. City of Everett*, CPSGMHB No. 08-3-0005 (Order on Motions, Jan. 26, 2009), at 8 (noting that development regulations and amendment to plans must be “enacted concurrently” under CTED guidelines (emphasis added))); CP 1199-202 (*The McNaughton Grp. v. Snohomish Cnty.*, CPSGMHB No. 06-3-0027 (Order on Motions, October 30, 2006), at 7 (“[W]here a site specific rezone implements a comprehensive plan amendment adopted simultaneously with the rezone, the rezone does not meet the definition of “project permit” under RCW 36.70B.020(4)...” (emphasis added))); CP 1204-07 (*Bridgeport Way Cmty. Ass’n v. Lakewood*, CPSGMHB No. 04-3-0003 (Final Decision and Order, July 14, 2004), at 8 (“By bundling the rezone components (maps and text) together with the comprehensive plan components , the City has made the entire package of amendments legislative rather than quasi-judicial.” (emphasis added))).

emphasized language is obvious. A “site-specific rezone” is a rezone “authorized by a comprehensive plan.” RCW 36.70B.020(4). If the rezone preceded the comprehensive plan amendment, it would be inconsistent with the comprehensive plan. If the comprehensive plan precedes the rezone, as here, then the comprehensive plan authorizes the subsequent rezone and the rezone is, by statutory definition, a site-specific rezone subject to LUPA. The superior court properly applied *Hensley* in finding that the Rezone was not part of a package. PRP 10-11.

The Map Amendment does not include or even reference the Rezone. CP 216-19. Contrary to Hall’s arguments in the superior court proceedings that the Rezone is bundled with the Map Amendment, the Rezone stands alone, having been approved more than four months after the City adopted the Map Amendment, which also is a stand-alone ordinance. CP 87-88, 216-19.

The Rezone followed the Map Amendment and substantively must comply with the Comprehensive Plan generally—a site-specific rezone that is quasi-judicial in nature and appropriately subject to this LUPA appeal.

3. The superior court correctly concluded that the City's action was quasi-judicial.

The Map Amendment was enacted through an entirely legislative process. In contrast, the Rezone was enacted through a quasi-judicial process before the City Hearing Examiner.⁶ The City Hearing Examiner's, and subsequently the City Commission's, application of law to fact is quasi-judicial and makes the rezone site-specific. *Phoenix Dev. v. City of Woodinville*, 154 Wn. App. 492, 503, 229 P.3d 800 (2009) (a site-specific rezone request is a quasi-judicial decision involving applying existing law to particular facts rather than the creation of new policy) (rev'd on other grounds by *Phoenix Dev.*, 2011 WL 2409635).

In recognizing the Rezone as quasi-judicial, the superior court considered the City's code provision establishing the Hearing Examiner:

[T]he enabling ordinance that the hearings examiner was acting under clearly showed that the function of the hearings examiner was regulatory rather than in a planning posture or use . . .

PRP 9-10. The referenced enabling ordinance states that the City Commission established the Hearing Examiner "to separate the city's land use regulatory function from its land use planning function." Shelton Municipal Code ("SMC") 2.36.010 (*see* Appendix 1). The Hearing

⁶ The Hearing Examiner held an open record hearing on July 29, 2010. CP 91-103. The Hearing Examiner took testimony, made evidentiary rulings regarding the scope of the hearing, left the record open, and made findings and conclusions. *Id.*

Examiner is charged with the regulatory function, which is quasi-judicial, not the policy-making or planning function, which is legislative. The Hearing Examiner cannot participate in the planning function of reviewing legislative GMA development regulations without exceeding its explicitly limited role.

The superior court further found that the Hearing Examiner's Decision made findings of facts and conclusions of law—a framework typical of a judicial or quasi-judicial decision, rather than that of a legislative action. PRP 10. The Hearing Examiner's Recommendation speaks for itself; it applies law to fact. CP 97-100.

This Court should conclude, like the superior court (CP 21), that the City made an error of law in categorizing the consideration of the Rezone as a legislative decision.

B. Issue 2: The City's review of the Rezone for consistency only with the Comprehensive Plan Map Amendment—rather than for consistency with the overall Comprehensive Plan—was an erroneous interpretation of law.

The Port's LUPA Petition alleged that the City's erroneous categorization of the Rezone as a legislative decision—rather than a site-specific, quasi-judicial decision—led the City to make another error of law. CP 939, 1024-25. The City improperly reviewed the Rezone for consistency only with the Comprehensive Plan Map Amendment rather

than for consistency with the Comprehensive Plan generally. CP 87-88, 99. The superior court agreed with the Port and granted partial summary judgment on this issue. CP 6-9; PRP 21 (“the City’s conclusion that it was only required to review the rezone for consistency with the comprehensive plan land use map was also a[n] error of law”).

1. Washington law requires that a site-specific rezone be consistent with the comprehensive plan.

Three basic rules apply to rezone applications: (1) they are not presumed valid; (2) the proponent of a rezone must demonstrate that there has been a change of circumstances since the original zoning; and (3) the rezone must have a substantial relationship to the public health, safety, morals, or general welfare. *Citizens for Mount Vernon v. City of Mt. Vernon*, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). In addition, the City imposes the following additional criterion for approval of a rezone:

The city commission may, after receiving a report and recommendation from the hearings examiner to approve a rezoning of any parcel(s), change by ordinance the zoning map of the city to reflect such report and recommendation; provided such change has been duly considered in relationship to a comprehensive plan as required by the laws of Washington.

SMC 20.52.010 (emphasis added) (*see* Appendix 2).

Conclusion 2 of the Hearing Examiner’s Recommendation implicitly limits the review of the Rezone for consistency with the

Comprehensive Plan to review only of the land use map designation of Neighborhood Residential. CP 99 (*see also* 87-88 (Rezone Ordinance adopting Hearing Examiner’s Recommendation)). This limitation is an erroneous reading of the City Code, SMC 20.52.010, which requires consideration of the comprehensive plan.

Under Washington law, the City must evaluate the Rezone against all relevant comprehensive plan policies—not just the land use map designation. *Cf. Cingular Wireless, LLC v. Thurston Cnty.*, 131 Wn. App. 756, 770, 129 P.3d 300 (2006) (“[W]here ... the zoning code itself expressly requires that a proposed use comply with a comprehensive plan, the proposed use must satisfy both the zoning code and the comprehensive plan.”); *Woods v. Kittitas Cnty.*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007) (“The [county code] explicitly requires that a site-specific rezone application be compatible with the comprehensive plan. If a zoning code explicitly requires that all proposed uses comply with a comprehensive plan, then the proposed use must comply with both the zoning code and the comprehensive plan.” (internal citation omitted)).

For example, in *Phoenix Development, Inc. v. City of Woodinville*, Woodinville denied a rezone that was consistent with the comprehensive plan map designation after finding that the rezone was not consistent with a number of the comprehensive plan’s general policies. The Supreme

Court upheld Woodinville's review of the rezone against the general policies of Woodinville's comprehensive plan:

Since its incorporation in 1993, it has been an express goal and vision of the City "to preserve our Northwest Woodland Character." Indeed, the first goal listed in the land use section of the City's comprehensive plan is "To guide the City's population growth in a manner that maintains or improves Woodinville's quality of life, environmental attributes, and *Northwest woodland character*." Therefore, to be consistent with the comprehensive plan, Phoenix must establish that its development would maintain or improve Woodinville's "Northwest woodland character."

...

[Woodinville] did not err when it concluded that the proposed rezones are inconsistent with its own comprehensive plan.

Phoenix Dev., 2011 WL 2409635, at *6-7 (internal citations omitted) (emphasis in original). As discussed below, the City engaged in a truncated review of the Rezone that focused solely on comparing the Rezone and Comprehensive Plan maps, rather than the consistency analysis required under Washington law as enunciated in *Phoenix Development, Cingular*, and *Woods*.

2. The City committed an error of law in failing to consider the Rezone’s consistency with the transportation and industrial policies and requirements of the Shelton Comprehensive Plan.

The Rezone Ordinance in this case was properly reversed by the superior court based on the City’s failure to consider its consistency with relevant provisions of the Shelton Comprehensive Plan—not just the Map Amendment.

The Port’s and the Washington State Department of Transportation (“WSDOT”) Aviation Division’s letters to the City, included in the Hearing Examiner record, explained that the City’s action is inconsistent with Shelton Comprehensive Plan Policies LU 15c, 18a, 19a, 19c, and 19d. *See* CP 1553-76. As these exhibits document, Comprehensive Plan Goal LU19 directs the City to “[s]upport the operation of and development of Sanderson Field in accordance with an approved master plan.” Specific policies under this goal include:

Policy LU19a. The City shall restrict uses in airport areas that would create hazards or conflict with safe and effective airport operations. Prohibit uses in airport areas which . . . obstruct or conflict with airport operations or aircraft traffic patterns, or result in potential hazard for off-airport land use.

Policy LU19b. Encourage those land uses in airport areas that would benefit from aircraft locations and are least affected by noise and other annoyances.

Policy LU19c. Discourage land uses in airport areas that are negatively impacted by airport operations. Decisions on zone reclassifications and land use development shall be partially based upon the noise hazards of aircraft operations and accident potentials.

LU19d. The City should encourage continuing airport planning that considers expansion of existing airport facilities to meet changing needs.

CP 1554 (emphasis in original). The Hearing Examiner Recommendation and City Ordinance do not review these policies. CP 87-88, 91-103. The failure to do so is an error of law.

If the Hearing Examiner had reviewed these policies, he would have concluded that the Rezone is inconsistent with Policy LU19a because it allows, rather than prohibits, uses in airport areas that obstruct or conflict with airport operations and air traffic patterns, and result in potential hazard for off-airport land use. The Rezone allows and encourages uses in airport areas that are most affected by noise and other annoyances, and, therefore, is inconsistent with Policy LU19b and c. The Rezone will lead to pressure to curtail airport operations and discourages current level uses and airport expansion and, therefore, is inconsistent with LU19d.

Comprehensive Plan Policy 18a affirms that the City will not preclude siting of essential public facilities. CP 1572. This policy implements state law which forbids local governments from precluding

essential public facilities. RCW 36.70A.200. Airports are, by definition, an essential public facility. The Ordinance fails to comply with RCW 36.70A.200 and, therefore, is inconsistent with Policy 18a.

Comprehensive Plan Policy LU15c specifies that “[t]he City shall work with the Port to ensure there is an adequate supply of industrial zoned land for sale and lease.” CP 1571 (emphasis added). The word “shall” is mandatory, not discretionary. The City’s own land use capacity analysis identified a shortfall of 804 acres of industrial lands. *See* CP 1556. The City’s Rezone of 160 acres of industrial land to residential increases this shortfall. CP 1556. Rather than work with the Port to ensure an adequate industrial land supply as required by Policy LU15c, the City reduced the industrial land supply by approving the Rezone over the Port’s objection.

The Port is not asking the Court to rule on the consistency of the Rezone with these policies but presents the above discussion to demonstrate why consideration of consistency matters. In sum, the Port asks the Court to find that the City’s conclusion that it only had to review the Rezone for consistency with the Map Amendment was an erroneous interpretation of the law subject to reversal under the APA.

C. Issue 3: Reversal is the appropriate relief.

Under LUPA, the court has the authority to reverse a land use decision or remand it for modification or further proceedings. RCW 36.70C.140. The superior court reversed the Rezone because the GMHB had invalidated the Comprehensive Plan Map Amendment, thereby removing any underlying foundation for the Rezone. CP 8, 1040-80; PRP 22. Under those circumstances no purpose would be served by remanding the matter to the City for further proceedings. The Port respectfully requests this Court uphold the relief provided by the superior court.

D. Issue 4: The superior court did not abuse its discretion in staying the Rezone's effective date.

Hall's Emergency Motion for Discretionary Review in this Court and its Notice of Appeal both foreshadow Hall's intention to challenge the superior court's decisions to grant the Port's motion for a temporary stay and LUPA stay of the effective date of the Rezone Ordinance.⁷ CP 11-12, 1009-13. A superior court's decision to issue a stay is discretionary and reviewed only for abuse of discretion. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 348, 16 P.3d 45 (2000). A trial court abuses its discretion only if its ruling is manifestly unreasonable or is based upon untenable

⁷ The Port must anticipate Hall's arguments on this point due to the requirement that the Port file the opening brief under General Order 2010-1.

grounds or reasons. *Id.* The superior court did not abuse its discretion in granting either the LUPA stay or temporary stay of the Rezone Ordinance.

1. LUPA authorizes a stay.

RCW 36.70C.100 expressly authorizes “[a] petitioner . . . [to] request the court to stay . . . an action by the local government or another party to implement the decision under review.” RCW 36.70C.100. The decision under review, the Rezone, is a land use decision as defined by LUPA and subject to LUPA’s stay provision. *See* Section V.A. above.

2. The inability to obtain relief if Hall vests is irreparable harm.

The superior court found that the Port would be irreparably harmed because it is “tremendously obvious” that Hall is going to move forward to vest as soon as possible.⁸ The superior court concluded, “if the Port were successful following a hearing . . . on the merits, the Court would be unable to grant the relief that’s being requested.” PRP 11.

Hall has admitted it submitted a subdivision application hoping to vest if the stay is lifted (CP 1031); however, Hall has not disputed that the

⁸ *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 251, 218 P.3d 180 (2009) (a party “vests” under the zoning or other land use control ordinances in effect on the date of filing when a fully completed application is submitted). The Washington Supreme Court has rejected Hall’s absolutist approach to the vesting doctrine observing that, “[i]f a vested right is too easily granted, the public interest is subverted.” *Erickson & Assocs., Inc. v. McLerran*, 123 Wn.2d 864, 873-74, 872 P.2d 1090 (1994).

Court would be unable to grant relief to the Port if it succeeded on the merits absent a stay.

3. The superior court found that Hall would not be substantially harmed.

The superior court correctly found that Hall would not be irreparably harmed because the Legislature clearly authorized the superior court to impose a stay and Hall did not challenge the constitutionality of the statute. PRP 12. The superior court also found unpersuasive Hall's "eleventh hour" declaration of specific harm, including possible loss of tenants.⁹ PRP 12.

4. The superior court entered the temporary stay in response to Hall's assertion that Hall would be prejudiced.

The superior court entered the temporary stay in large part because Hall argued that it would be prejudiced if the court considered the motion for stay on shortened time. PRP 14 ("This court . . . was mindful of the request by Hall that it would be prejudiced . . ."). The court has inherent power to manage its docket where the interest of justice so requires.

Hall's theory that the superior court should not hear the motion for stay on shortened time, but also should not be able to grant a temporary

⁹ "That is clearly a very different situation than what was portrayed by the party in a letter as late as July 29th, 2010 in which Hall indicates that 'no definite plans have been developed.' And so within the last fifty-eight, sixty days to have made that major a turnaround in filing that indication at the eleventh hour, the Court is not persuaded." PRP 13.

stay boils down to arguing that the superior court cannot grant relief in this case. The superior court has broad discretion to fashion relief that is appropriate to the facts and circumstances before it. *Brown v. Voss*, 105 Wn.2d 366, 372, 715 P.2d 514 (1986). Most importantly, Hall seeks to invalidate the temporary stay for the sole purpose of allowing its September 13 subdivision application—submitted during the temporary stay—to vest. The superior court’s ruling to maintain the status quo through the temporary stay also was not an abuse of discretion.

VI. CONCLUSION

The Port respectfully requests that the Court affirm the superior court’s decisions, reversing the Rezone Ordinance as an error of law. The Port also requests that the Court conclude that the superior court did not abuse its discretion in granting the temporary stay and LUPA-authorized stay of the Rezone Ordinance.

DATED this 15th day of August, 2011.

Respectfully submitted,

K&L GATES LLP



Eric S. Laschever, WSBA No. 19969

*Attorney for Respondent
Port of Shelton*

APPENDICES

Appendix 1 Shelton Municipal Code, Chapter 2.36.

Appendix 2 Shelton Municipal Code, Chapter 20.52.

COURT OF APPEALS
DIVISION II

CERTIFICATE OF SERVICE

11 AUG 15 PM 12:01

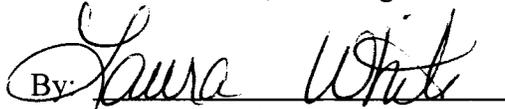
STATE OF WASHINGTON

I hereby certify that the foregoing **BRIEF OF PORT OF SHELTON, LUPA PETITIONER** is being served on the following named person(s), at the addresses indicated by pdf/email and via First Class U. S. Mail:

Courtney Anne Kaylor
McCullough Hill
701 Fifth Ave., Ste 7220
Seattle, WA 98104
Email: courtney@mhseattle.com

Kathleen J. Haggard
Dionne & Rorick
601 Union St., Ste 900
Seattle, WA 98101
Email: kathleen@dionne-rorick.com

DATED at Seattle, Washington this 15th day of August, 2011.

By: 
Laura White, Secretary
K&L Gates LLP

APPENDIX 1

Chapter 2.36 LAND USE HEARINGS EXAMINER

Sections:

I. Hearings Examiner

- 2.36.010 Purpose.
- 2.36.020 Office created.
- 2.36.030 Appointment—Term.
- 2.36.040 Qualifications.
- 2.36.050 Deputy examiner—Qualifications and duties.
- 2.36.060 Removal.
- 2.36.070 Freedom from improper influence.
- 2.36.080 Conflict of interest.
- 2.36.090 Organization of office.
- 2.36.100 Rules.
- 2.36.110 Powers.

II. Permit Application Procedures

- 2.36.130 Applications.
- 2.36.140 Report by department of community development.
- 2.36.150 Hearing—Notice.
- 2.36.160 Evidence.
- 2.36.170 Examiner's decision—Contents.
- 2.36.180 Examiner's decision—Notice.
- 2.36.190 Examiner's decision—Reconsideration.
- 2.36.200 Examiner's decision—Appeal to city commission.
- 2.36.210 Appeal—City commission consideration.
- 2.36.220 Appeal—City commission action.

I. Hearings Examiner

2.36.010 Purpose.

The purpose of this chapter is to provide the administrative land use regulatory system which will best satisfy the following basic needs:

- A. The need to separate the city's land use regulatory function from its land use planning function;
- B. The need to ensure and expand the principles of fairness and due process in public hearings; and
- C. The need to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making process for land use matters. (Ord. 1750-0709 § 1 (part), 2009; Ord. 1049 § 1, 1981)

2.36.020 Office created.

Pursuant to Chapter 213, Laws of 1977, First Extraordinary Session, the office of hearings examiner, hereinafter referred to as examiner, is created. The examiner shall interpret, review and implement land use regulations as provided by this chapter or any other ordinance. Unless the context provides otherwise, the term "examiner" as used in this chapter shall include deputy examiners and examiners pro tem. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 2, 1981)

2.36.030 Appointment—Term.

The examiner and his/her deputy shall be appointed by the city commissioners and for a term which shall initially expire one year following the date of original appointment and thereafter expire one year following the date of each reappointment. The city commissioners may also, by professional service contract, appoint for terms and functions deemed appropriate by the commission. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 3, 1981)

2.36.040 Qualifications.

The examiner shall be appointed solely with regard to qualifications for the duties of such office, shall have such training or experience as will qualify the examiner to conduct administrative or quasi-judicial hearings on land use regulatory codes and must have experience in city planning, and shall have knowledge or experience in one of the following areas: environmental science, law, architecture, public administration, administrative experience or economics. The examiner shall hold no other appointive or elective public office or position in city government. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 4, 1981)

2.36.050 Deputy examiner—Qualifications and duties.

The deputy shall, in the event of the absence or the inability of the examiner to act, have all the duties and powers of the examiner. The deputy may also serve in other capacities as an employee of the city; however, the deputy should have such training or experience as will qualify such person to conduct administrative or quasi-judicial hearings on land use. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 5, 1981)

2.36.060 Removal.

Any examiner or deputy examiner may be removed from office for cause by the affirmative vote of a majority of the city commissioners. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 6, 1981)

2.36.070 Freedom from improper influence.

No person shall attempt to influence an examiner in any matter pending before him/her, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his or her duties in any other way; provided, that this section shall not prohibit the city attorney or county prosecuting attorney from rendering legal services to the examiner upon request. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 7, 1981)

2.36.080 Conflict of interest.

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familiar interest, or

concerning which the examiner has had pre-hearing contacts with proponents or opponents; nor, on appeal from or review of an examiner decision, shall any member of the city commission who has such an interest or has had such contacts participate in the consideration thereof. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 8, 1981)

2.36.090 Organization of office.

The office of the examiner shall be under the administrative supervision of the examiner and shall be separate and not a part of the department of community development. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 9, 1981)

2.36.100 Rules.

The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matter related to the duties of his or her office. Such rules may provide for cross-examination of witnesses. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 10, 1981)

2.36.110 Powers.

The examiner shall receive and examine available information, including environmental impact statements, conduct public hearings and prepare a record thereof, and enter findings and conclusions as provided for herein.

A. The decision of the examiner on the following matters shall be final unless such decision is appealed to the city commission pursuant to Section 2.36.210:

1. Variance requests;
2. Conditional and special use permits;
3. Shoreline development permits and rescissions;
4. Administrative zoning appeals;
5. Appeals of administrative decisions made pursuant to Title 19 (Subdivisions) of the Shelton Municipal Code;
6. Preliminary plat approval extension requests;
7. Applications for any other land use regulatory permits which may be required by ordinance;
8. Binding site applications;
9. Preliminary plat applications;
10. Preliminary plat modification requests;
11. A requirement to connect to city water rather than drilling an exempt well pursuant to Section 15.08.060;
12. Impact fees levied pursuant to Title 17.

B. The decision of the examiner on the following matters shall constitute a recommendation to the city commissioners:

1. Planned unit development.
2. Rezone applications; provided, that the hearings examiner shall conduct a public hearing on rezone applications and make a recommendation to the city commission. The city commission shall conduct a closed record review of the recommendation. (Ord. 1750-0709 § 1 (part), 2009; Ord. 1733-1008 § 2, 2009; Ord. 1712-1207 § 2, 2008; Ord. 1702-0407 § 1, 2007; Ord. 1310-191 § 2 (part), 1991; Ord. 1049 § 11, 1981)

II. Permit Application Procedures

2.36.130 Applications.

Applications for permits or approvals within the jurisdiction of the examiner shall be presented to the department of community development. The department shall accept such applications only if applicable filing requirements are met. The department shall be responsible for assigning a date for and ensuring due notice of public hearing for each application, which date and notice shall be in accordance with the statute or ordinance governing the application. (Ord. 1750-0709 § 1 (part), 2009; Ord. 1049 § 12, 1981)

2.36.140 Report by department of community development.

When such application has been set for public hearing, the department of community development shall coordinate and assemble the comments and recommendations of other city departments and other governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the department's findings and recommendations. At least seven calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs. (Ord. 1750-0709 § 1 (part), 2009; Ord. 1049 § 13, 1981)

2.36.150 Hearing—Notice.

Prior to rendering a decision on any application, the examiner shall hold at least one public hearing thereon. Notice of the time and place of the public hearing shall be given as provided in Section 2.36.130. At the commencement of the hearing, the examiner shall give all notice regarding the register provided for in Section 2.36.180. (Ord. 1750-0709 § 1 (part), 2009; Ord. 1049 § 14, 1981)

2.36.160 Evidence.

A. **Burden of Proof.** In each particular proceeding, the petitioner, applicant or the proponent of an individual petition or application shall have the burden of proof.

B. **Admissibility.** The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law.

C. Copies. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. Official Notice. The examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. When any recommendation or decision of the examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such notice as fact shall be granted any affected person making timely motion therefor. The examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

E. Evidence Received Subsequent to the Hearing. If additional evidence is submitted after the public hearing, it will be considered only upon a showing of significant relevant and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 15, 1981)

2.36.170 Examiner's decision—Contents.

Within ten working days of the conclusion of a hearing, unless a longer period is agreed to in writing by the applicant, the examiner shall render a written decision which shall include at least the following:

A. Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would carry out and conform to the city's zoning ordinance, other official policies and objectives, and land use regulatory enactments;

B. A decision on the application which may be to grant, deny, or grant with such conditions, modifications and restrictions as the examiner finds necessary to make the application compatible with its environment, the zoning ordinance, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications and restrictions which may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, agreements concomitant to rezones, restrictive covenants, easements, dedications of additional rights-of-way, and performance bonds;

C. A statement that either:

1. The decision constitutes a recommendation to the city commission together with the date, time and place for city commission consideration thereof and the deadline for submitting written comments to the city commission thereon as provided in Section 2.36.210, or

2. The decision will become final in twenty calendar days unless appealed to the legislative body together with a description of the appeal procedure prescribed in Section 2.36.200. (Ord. 1754-1009 § 1, 2009: Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 16, 1981)

2.36.180 Examiner's decision—Notice.

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" includes the applicant and all other persons who specifically request notice of decision by signing a register provided for such purpose at the public hearing. If the effect of the decision is a recommendation to the city commission, the original thereof shall be transmitted to the city commission. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 17, 1981)

2.36.190 Examiner's decision—Reconsideration.

Any interested person may file a written request for reconsideration within ten days of the date of the examiner's decision or recommendation by filing a fee as adopted by resolution with the department of community development. The request shall explicitly set forth alleged errors of procedure or fact. The examiner shall act within ten days after the date of the filing of request for reconsideration by either denying the request, issuing a revised recommendation or decision or calling for an additional public hearing. If an additional hearing is called for, notice of said hearing shall be mailed to all parties of record not less than seven days prior to the hearing date, and any final decision shall be stayed. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 18, 1981)

2.36.200 Examiner's decision—Appeal to city commission.

A. The decision of the examiner as to those applications listed in Section 2.36.110 shall be final and conclusive unless no more than fifteen calendar days following rendering of such decision an appeal therefrom is filed with the department of community development by the applicant. Such appeal shall be in writing, shall contain a brief statement of the reason why error is assigned to the examiner's decision, and shall be accompanied by a fee as adopted by resolution; provided, that such appeal fee shall not be charged to the city commission or any other department or to other than the first appellant.

B. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city commission or is withdrawn.

C. Within fifteen working days following the timely filing of an appeal, notice thereof and of the date, time and place for city commission consideration shall be mailed to the applicant and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in Section 2.36.210. (Ord. 1750-0709 § 1 (part), 2009: Ord. 1049 § 19, 1981)

2.36.210 Appeal—City commission consideration.

An examiner's decision which constitutes a recommendation or final decision which has been timely appealed pursuant to Section 2.36.200 shall come on for city commission consideration in open public meeting no sooner than fourteen days from the date of the decision or recommendation. The city commission shall consider the matter based upon the written record before the examiner, the examiner's decision, the written appeal, if any, and any written comments received by the city commission before closure of the commission office on the next to last working day prior to the date set for the commission's consideration. (Ord. 1754-1009 § 2, 2009: Ord. 1750-0709 § 1 (part), 2009:

Ord. 1049 § 20, 1981)

2.36.220 Appeal—City commission action.

A. The city commission may accept, modify or reject the examiner's decision, or any findings or conclusions therein, or may remand the decision to the examiner for further hearing. A decision by the city commission to modify, reject or remand shall be supported by findings and conclusions.

B. The action of the city commission approving or rejecting a decision of the examiner shall be final and conclusive unless within twenty-one days from the date of such action an aggrieved party files a petition under the Land Use Petition Act (LUPA), Chapter 36.70C RCW; provided, that appeals from a decision to grant, deny or rescind a shoreline development permit shall be governed by the provisions of RCW 90.58.180. (Ord. 1750-0709 § 1 (part), 2009; Ord. 1365-293 § 1, 1993; Ord. 1049 § 21, 1981)

This page of the Shelton Municipal Code is current through Ordinance 1783-0311, passed April 11, 2011.

Disclaimer: The City Clerk's Office has the official version of the Shelton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.shelton.wa.us/>
City Telephone: (360) 432-5103
Code Publishing Company

APPENDIX 2

Chapter 20.52 AMENDMENTS

Sections:

- 20.52.010 Map changes.
- 20.52.020 Text changes.
- 20.52.030 Application procedure.
- 20.52.040 Annexed areas.
- 20.52.050 Recording.
- 20.52.060 Plans as basis for permit.

20.52.010 Map changes.

A. The city commission may, after receiving a report and recommendation from the hearings examiner to approve a rezoning of any parcel(s), change by ordinance the zoning map of the city to reflect such report and recommendation; provided such change has been duly considered in relationship to a comprehensive plan as required by the laws of Washington.

B. The city commission may, upon proper application, upon recommendation of the hearings examiner or upon its own motion, and after public hearing in any manner the city commission deems appropriate, amend, delete, supplement, or change by ordinance the district boundary lines of zone classifications as shown on the zoning map; provided such change is duly considered in relationship to a comprehensive plan as required by the laws of Washington. (Ord. 1450-796 § 1 (part), 1996: Ord. 1310-191 § 2 (part), 1991; Ord. 987 § 18.01, 1979)

20.52.020 Text changes.

The city commission may, upon recommendation of the hearings examiner or upon its own motion, and after public hearing in any manner the city commission deems appropriate, amend, delete, supplement, or change by ordinance the regulations herein established, provided such revision conforms to the state statute. (Ord. 1450-796 § 2, 1996; Ord. 1310-191 § 2 (part), 1991; Ord. 987 § 18.02, 1979)

20.52.030 Application procedure.

An application for a change of zone classification or district boundary lines submitted by the property owner, or his authorized representative, shall be entered on a form provided for this purpose and filed with the planning director. Said petition shall be accompanied by all required fees, made payable to the city, which shall be nonrefundable and used to cover costs incurred in connection with posting of the premises, mailing of notices and conducting the hearing as provided in this title. (Amended during 9/92 supplement; Ord. 1310-191 § 2 (part), 1991; Ord. 987 § 18.03, 1979)

20.52.040 Annexed areas.

Private land annexed to the city after the effective date of the ordinance codified in this title shall be classified as SR districts, unless otherwise provided in the ordinance of annexation. Subsequent changes shall be in accordance with procedure specified in this chapter. (Ord. 987 § 18.04, 1979)

20.52.050 Recording.

A copy of any ordinance granting change of zone classification or district boundary lines, or any part thereof, or any amendment thereto, or any ordinance vacating any street or alley, shall include a proper legal description (not tax lot), shall be duly certified as a true copy by the city clerk and shall be recorded with the county auditor as required by law. (Ord. 987 § 18.05, 1979)

20.52.060 Plans as basis for permit.

A plan, upon being acceptable as part of a petitioner's application for change of zone district or boundary, shall be considered as part of any special permit granted for the use represented, and building permits may only be issued in accordance therewith to the applicant or his successor; provided a covenant shall be prepared, accepted and recorded to govern conditions of the aforementioned permit. (Ord. 987 § 18.06, 1979)

This page of the Shelton Municipal Code is current through Ordinance 1783-0311, passed April 11, 2011.

Disclaimer: The City Clerk's Office has the official version of the Shelton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.shelton.wa.us/>
City Telephone: (360) 432-5103
Code Publishing Company