

No. 42490-8-II

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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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NORTHSHORE INVESTORS, LLC, a Washington limited liability company; and NORTH SHORE GOLF ASSOCIATES, INC., a Washington corporation; and SAVE NE TACOMA, a Washington non-profit corporation, et al.

Appellants / Cross-Respondents,

v.

CITY OF TACOMA, a Washington municipal corporation,

Respondent / Cross-Appellant.

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**REPLY BRIEF OF  
CROSS-APPELLANT  
CITY OF TACOMA**

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## I. INTRODUCTION

The parties agree that the sole issue before the Court in this cross-appeal is whether the Tacoma City Council issued its land use decision orally or in writing. If the City Council issued its decision orally, the undisputed facts confirm that Petitioners<sup>1</sup> failed to timely serve their Amended LUPA Petition on the City and that the trial court should have dismissed both of their land use petitions. If, on the other hand, the Council issued its decision in writing, Petitioners timely served the City and the trial court correctly denied the City's motion to dismiss.

The law is clear: final land use decisions that are announced orally are "issued" when they are entered into the public record. The relevant facts are also clear. Petitioners do not dispute that the Tacoma City Council's orally-announced decision was final or that the decision was entered into the public record on April 13, 2010, and again on April 14, 2010. Nor do Petitioners dispute that they failed to serve the City within 21 days of those dates. Because the law and the facts confirm that the City Council issued its decision orally, the Court should reverse the trial court's decision denying the City's motion to dismiss.

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<sup>1</sup> Because this cross-appeal raises issues regarding the timeliness of land use petitions filed by the Appellants in proceedings below, for ease of reference, the City will continue to collectively refer to Appellants Northshore Investors, LLC (the "Developer") and North Shore Golf Associates, Inc. (the "Owners") as the "Petitioners."

## II. ARGUMENT

### A. Standard of Review

Petitioners admit that this Court owes no deference to the trial court's decision to deny Tacoma's motion to dismiss and reviews that decision *de novo*.<sup>2</sup> However, the Court does give substantial deference to the City's interpretation of its own ordinances. "It is a well established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement."<sup>3</sup> This common law rule of deference to local interpretations was strengthened by LUPA, which specifically provides for deference to local interpretations of land use ordinances.<sup>4</sup> Thus, the Court should defer to Tacoma's interpretation of its own municipal code in determining whether the City issued an oral or written land use decision.

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<sup>2</sup> Petitioners' Response Brief, p. 7.

<sup>3</sup> *Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 377-78, 739 P.2d 668 (1987) (citing *Keller v. Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979); *Morin v. Johnson*, 49 Wn.2d 275, 279, 300 P.2d 569 (1956)). See also *Citizens for a Safe Neighborhood v. City of Seattle*, 67 Wn. App. 436, 440, 836 P.2d 235 (1992) (finding that "the trial court improperly substituted its interpretation and judgment for that of the hearing examiner" where there were "two plausible constructions" of an ordinance). This rule of deference to local interpretations was applied by this Court in *Eastlake Community Council v. City of Seattle*, 64 Wn. App. 273, 282, 823 P.2d 1132 (1992).

<sup>4</sup> RCW 36.70C.130(1)(b) (providing for "such deference as is due the construction of a law by a local jurisdiction with expertise"). The courts have recognized that this statutory provision extends to legal interpretations of local land use ordinances. *City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn. App. 17, 38, 252 P.3d 382 (2011) (citing *Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 415, 225 P.3d 448, rev. denied, 169 Wn.2d 1014, 236 P.3d 895 (2010); *City of Medina v. T-Mobile USA, Inc.*, 123 Wn. App. 19, 24, 95 P.3d 377 (2004)).

**B. The City Council Issued an Oral Land Use Decision, Not a Written Decision.**

Petitioners' arguments asserting the City's issuance of a written decision are without merit. Their contentions regarding the Tacoma Municipal Code fail to harmonize all relevant provisions and fail to confront the City's interpretation of its own Code, and their arguments regarding case law and LUPA are based on nothing more than logical fallacies and mischaracterizations.

When the relevant legal authorities are read in context, it becomes clear that the law strongly supports Tacoma's position that the City Council issued an oral land use decision.

1. The Tacoma Municipal Code Confirms that the City Council Issued an Oral Land Use Decision.

The Tacoma Municipal Code (TMC) establishes the local framework for the Tacoma City Council's issuance of land use appeal decisions. Petitioners concede that an interpretation of the TMC is relevant to this Court's decision, but they ignore fundamental rules of statutory construction in arguing that the City Council issued a written decision in this case.<sup>5</sup> The centerpiece of Petitioners' argument is that the City Council was required to issue a written decision in this case, and indeed is required to do so in all cases. This argument finds no support in

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<sup>5</sup> See Petitioners' Response Brief, pp. 11-13.

the TMC. When the relevant provisions of the TMC are read in light of rules of statutory construction, it is apparent that the City Council may issue land use decisions orally, and the facts confirm that the Council issued an oral land use decision in this case.

In reviewing municipal ordinances, courts apply the same rules of construction applied to state statutes.<sup>6</sup> Several such rules of construction are relevant here. The goal of statutory construction is “to avoid interpreting statutes to create conflicts between different provisions so that [the court may] achieve a harmonious statutory scheme.”<sup>7</sup> Courts avoid interpretations that result in “unlikely, absurd, or strained consequences.”<sup>8</sup> Courts will also avoid an interpretation that “nullifies, voids, or renders meaningless or superfluous any section or words.”<sup>9</sup> Finally, as noted above, courts give deference to the construction of an ordinance by an official charged with its enforcement.<sup>10</sup>

When TMC 1.70.030, TMC 1.70.040 and TMC 1.70.050 are read together, it is clear that the City Council is not required to issue a written

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<sup>6</sup> *City of Gig Harbor v. North Pacific Design, Inc.*, 149 Wn. App. 159, 167, 201 P.3d 1096, rev. denied, 166 Wn.2d 1037, 217 P.3d 783 (2009).

<sup>7</sup> *American Legion Post #149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 587, 192 P.3d 306 (2008).

<sup>8</sup> *Clark County v. Western Washington Growth Management Hearings Board*, 161 Wn. App. 204, 234, 254 P.3d 862 (2011).

<sup>9</sup> *State ex rel. Gallwey v. Grimm*, 146 Wn.2d 445, 48 P.3d 274, 283 (2002) (citing *Nisqually Delta Ass'n v. City of DuPont*, 95 Wn.2d 563, 568, 627 P.2d 956 (1981)).

<sup>10</sup> *Mall, Inc.*, 108 Wn.2d at 377-78; *Citizens for a Safe Neighborhood*, 67 Wn. App. at 440; *Eastlake Community Council*, 64 Wn. App. at 282.

decision in all cases. Both TMC 1.70.030 and TMC 1.70.050 indicate that the City Council may “accept” and “adopt” the Hearing Examiner’s written findings and conclusions, rather than issuing a new written decision, in cases where the Council agrees with the Examiner’s findings and conclusions. *See* TMC 1.70.030 (“The City Council shall accept, modify, or reject any findings or conclusions . . .”); TMC 1.70.050 (“[T]he City Council may adopt all or portions of the Hearing Examiner’s findings and conclusions . . .”). Moreover, that the City Council may issue appeal decisions by oral motion is confirmed by TMC 1.70.050, which provides that “the final date of the decision of the City Council on the appeal shall be deemed to be the date the motion concerning the appeal is adopted by the City Council...”

The City’s reading of these TMC provisions appropriately harmonizes them. The City’s reading is also consistent with the longstanding interpretation of the City official charged with their enforcement – the City Clerk – who stated that “the ‘Notice of Appeal Results’ is not required by the Tacoma Municipal Code” and has been provided by the City “as a courtesy” to appeal parties for the past ten years.<sup>11</sup> This interpretation by the City Clerk directly contradicts

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<sup>11</sup> CP 633 (Declaration of Doris Sorum, ¶3). The City Clerk is charged with enforcing the notice provisions of Tacoma’s land use ordinances. CP 583 (TMC 1.06.100, attached as page 4 of Ex. H to the Declaration of Aaron Laing).

Petitioners' misreading of the TMC and should be given deference.

Rather than harmonizing all of the related provisions in TMC 1.70.030, .040 and .050, Petitioners wholly ignore TMC 1.70.040 and TMC 1.70.050<sup>12</sup> and ask the Court to make its decision by reading a single sentence from TMC 1.70.030 in isolation: "The Council's decision shall be in writing and shall specify findings and conclusions whenever such findings and conclusions are different from those of the appealed recommendation." The Court should reject this myopic approach. Petitioners' assertion that rules of grammar require the Court to interpret this sentence to mean that the City Council must issue a written decision in all cases – even when the Council agrees with all of the Hearing Examiner's findings and conclusions and no written decision is required as a practical matter – is unpersuasive in light of the larger context and intent of the TMC.

Petitioners cite no authority to support their grammatical interpretation, and this interpretation flies in the face of well-established rules of statutory construction requiring courts to harmonize related provisions and defer to local interpretations. Even if the Court were to accept Petitioners' grammatical interpretation, courts will not apply

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<sup>12</sup> Instead, Petitioners mock the rule of construction requiring courts to "harmonize" related provisions. *See* Petitioners' Response Brief, p. 12 ("Northshore respectfully suggests that it is the work of the City, not this court, to 'harmonize' various provisions of its code . . .").

technical rules of grammar “if other factors, such as context and language in related statutes, indicates contrary legislative intent,” or if a literal reading “will result in strained or absurd consequences.”<sup>13</sup> Here, the related language in TMC 1.70.040 and TMC 1.70.050 indicates contrary legislative intent, and Petitioners’ asserted literal reading would result in absurd consequences: the City Council would be required to issue a written decision even in cases when there is no need for a written decision.

The Court should defer to the City’s longstanding practice and interpretation of the TMC and hold that the City Council issued an oral land use decision, not a written decision.

2. Case Law Confirms that the City Council Issued an Oral Land Use Decision.

The case law cited by Petitioners does not support their position that the City issued a written land use decision in this case. In their Response Brief, Petitioners repeatedly engage in “begging the question,” the logical fallacy in which the proposition asserted is assumed in the premise: they assert that (1) the City issued a written decision, and (2) therefore, the City could not have issued an oral decision.<sup>14</sup> This assertion is not only illogical (because it presumes that the Notice of Appeal Results

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<sup>13</sup> *State v. Bunker*, 169 Wn.2d 571, 578, 238 P.3d 487 (2010); *State v. Neher*, 52 Wn. App. 298, 300, 759 P.2d 475 (1988).

<sup>14</sup> See Petitioners’ Response Brief, pp. 11, 13-18.

was a “written decision”), but as discussed below, it finds no support in the case law. Petitioners largely ignore the City’s arguments distinguishing the same cases cited in their Response Brief and instead rely on selective quotations taken out of context. Contrary to Petitioners’ assertions, the case law confirms the City’s position that the Council’s land use decision was issued orally.

As discussed in the City’s Opening Brief, the courts have consistently held that orally-announced land use decisions are “issued” when they are entered into the public record – except in particular circumstances indicating that the oral decision was not yet “final.”<sup>15</sup> Those circumstances include the following fact patterns, which are not present in this case:

- The materials entered into the public record were not sufficient to identify the scope and terms of the decision (as in *Vogel v. City of Richland*)<sup>16</sup>;
- Some further action was required to make the decision “final” (as in *King’s Way Foursquare Church v. Clallam County*)<sup>17</sup>; or
- The decision maker executed a formal decision document that was

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<sup>15</sup> See RCW 36.70C.020(2) (defining “land use decision” as “a final determination by a local jurisdiction’s body or officer . . .”). See also City’s Opening Brief, pp. 19-23 (discussing cases cited by Petitioners).

<sup>16</sup> *Vogel v. City of Richland*, 161 Wn. App. 770, 255 P.3d 805 (2011).

<sup>17</sup> *King’s Way Foursquare Church v. Clallam County*, 128 Wn. App. 687, 116 P.3d 1060 (2005).

prepared in advance and spoke in present-tense terms (as in *Hale v. Island County*).<sup>18</sup>

Petitioners gloss over these distinctions and suggest, contrary to LUPA and relevant case law, that local governments are required to issue written land use decisions in most or all cases.<sup>19</sup> This suggestion lacks merit. Petitioners also mischaracterize several cases that simply do not stand for the proposition asserted by Petitioners, and, in fact, support the City's position in this case.

In particular, *Hale v. Island County* strongly supports the City's position. As Petitioners recognize, the *Hale* court set forth "indicia" that a particular document, rather than an earlier-announced oral decision, constituted the County's final land use decision:

[H]ere a proposed written decision was prepared in advance and presented to the BICC for approval. When the BICC voted to approve, it signed the document and had it attested. It states in the present tense that the "use described in this permit shall be undertaken[.]" The document was not written after the decision had been made. When Island County mailed a copy, its cover letter referred to it as a "decision document" and we agree with that characterization.<sup>20</sup>

Contrary to Petitioners' argument, none of these "indicia" were present in

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<sup>18</sup> *Hale v. Island County*, 88 Wn. App. 764, 769, 946 P.2d (1997).

<sup>19</sup> See Petitioners' Response Brief, pp. 13-14.

<sup>20</sup> *Hale*, 88 Wn. App. at 769.

this case.<sup>21</sup> As noted in the City’s Opening Brief, the “Notice of Appeal Results” was not prepared in advance or presented to the City Council for approval; the City Council did not sign the “Notice of Appeal Results” or have that document attested; the “Notice of Appeal Results” used the past tense, not the present tense; and the City never described the “Notice of Appeal Results” as a “decision document.”<sup>22</sup>

Petitioners rely heavily on *Hale*, yet they invite this Court to ignore the *Hale* court’s analysis of key factors such as whether the document “uses the passive or present voice” or “was prepared in advance of the hearing.”<sup>23</sup> The Court should reject Petitioners’ invitation. Rather, the Court should begin its analysis using the framework in *Hale*, which provides clear support for the City’s position that the “Notice of Appeal Results” was simply a courtesy notice to the parties of a previously-issued oral decision.<sup>24</sup>

Petitioners also mischaracterize several other decisions addressing the issuance of oral and written land use decisions. When these cases are read in context, they do not support Petitioners’ position. For example,

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<sup>21</sup> See Petitioners’ Response Brief, p. 16.

<sup>22</sup> Petitioners’ argument that “[n]othing in the Notice of Appeal Results stated that it was not the decision document” attempts to turn the *Hale* analysis on its head. See Petitioners’ Response Brief, p. 16 (emphasis added). Under *Hale*, the salient fact is that nothing in the Notice of Appeal Results stated that it was the decision document. *Hale*, 88 Wn. App. at 769.

<sup>23</sup> See Petitioners’ Response Brief, p. 18.

<sup>24</sup> See *id.*, p. 16.

*King's Way Foursquare Church v. Clallam County*, which was selectively quoted in Petitioners' Response Brief, did not announce an inflexible rule requiring local governments to issue written decisions in all quasi-judicial proceedings, as asserted by Petitioners.<sup>25</sup> Moreover, the holding in *King's Way* was the result of the particular facts of that case, where "the Board's oral vote on November 18 remained subject to change, and thus did not become final, until December 2."<sup>26</sup> Here, by contrast, the City Council's decision was undeniably final on April 13, 2010, and did not remain "subject to change."

*Vogel v. City of Richland* is similarly distinguishable.<sup>27</sup> Petitioners quote extensively from *Vogel* but fail to even mention the facts of that case.<sup>28</sup> In *Vogel*, Richland's preliminary oral and written responses to an oral land use request were deemed insufficient to identify the scope and terms of a land use decision.<sup>29</sup> The *Vogel* court rejected arguments that these preliminary responses constituted Richland's final land use decision because "they [did] not purport to memorialize the terms of the decision,

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<sup>25</sup> See Petitioners' Response Brief, p. 13 (selectively quoting *King's Way*, 128 Wn. App. at 691-92 ("In judicial proceedings, the date of a decision is generally the date on which the decision is reduced to writing, as opposed to an earlier date on which it may be orally announced.") (omitted language emphasized)).

<sup>26</sup> *King's Way*, 128 Wn. App. 687 at 92, n. 6.

<sup>27</sup> *Vogel*, 161 Wn. App. 770.

<sup>28</sup> See Petitioners' Response Brief, p. 14 (quoting *Vogel* 161 Wn. App. at 780).

<sup>29</sup> *Vogel*, 161 Wn. App. at 774-76.

even summarily.”<sup>30</sup> Here, by contrast, the City’s decision was tangibly and accessibly memorialized in the Hearing Examiner’s 21-page written recommendation, which included detailed findings and conclusions that clearly identified the scope and terms of the City’s decision. This written decision was unmistakably adopted by the City Council when it voted to concur in the Hearing Examiner’s recommendation and to deny Petitioners’ appeal. Thus, unlike in *Vogel*, here there was no ambiguity regarding the scope and terms of the decision.

*Applewood Estates Homeowners Ass'n v. City of Richland*, cited by Petitioners, further supports the City’s position that the City Council’s orally-announced decision was “issued” when it was entered into the public record.<sup>31</sup> There, in determining when a land use decision was issued, the court focused its analysis on Richland’s entry of documents into the public record:

[ ] Mr. Simon provided a written decision, a public record, administratively approving the minor amendment requested by the Developer on June 16, 2010. *See* RCW 42.56.030(2) (“Public record” includes any writing containing information relating to the conduct of government). On August 4, the City confirmed the Developer’s application constituted a “minor amendment ... and is hereby approved as [ ] a revised final PUD plan as

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<sup>30</sup> *Id.* at 778-80.

<sup>31</sup> *See* Petitioners’ Response Brief, p. 14 (citing *Applewood Estates Homeowners Ass'n v. City of Richland*, --- P.3d ----, 2012 WL 246629 (Jan. 26, 2012, No. 29806-0-III)).

provided under RMC Sections 23.50.050 and 23.50.040(D).” . . . Taken together, these actions were a “memorialization sufficient to identify the scope and terms of the decision.”<sup>32</sup>

Here, as in *Applewood Estates*, Tacoma entered numerous documents into the public record that, taken together, were more than sufficient to identify the scope and terms of the City Council’s decision. These documents include the Hearing Examiner’s recommendation, a live webcast and a video recording of the City Council appeal hearing, a transcript of the closed-captioning provided for the live television broadcast, the Voting Record from the hearing, and a DVD video recording of the hearing.<sup>33</sup>

Petitioners’ reliance on *Overhulse Neighborhood Ass’n v. Thurston County* is likewise misplaced.<sup>34</sup> In *Overhulse*, the Thurston County Board of Commissioners affirmed a hearing examiner decision, but rather than merely voting to concur in the examiner’s decision, the Board prepared a written decision that was mailed to parties of record.<sup>35</sup> The court in *Overhulse* did not describe the nature of the Board’s written decision or analyze whether the Board’s decision may have been made orally and entered into the public record under RCW 36.70C.040(3)(c). Because it

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<sup>32</sup> *Applewood Estates*, slip op. at ¶ 17, 2012 WL 246629 at \* 4 (quoting *Vogel*, 161 Wn. App. at 774, 255 P.3d 805).

<sup>33</sup> See CP 300; CP 204.

<sup>34</sup> See Petitioners’ Response Brief, p. 15 (citing *Overhulse Neighborhood Ass’n v. Thurston County*, 94 Wn. App. 593, 972 P.2d 470 (1999)).

<sup>35</sup> *Overhulse*, 94 Wn. App. at 595.

was undisputed that the Board's decision was a written decision, the court concluded that RCW 36.70C.040(3)(a) applied.<sup>36</sup> Thus, unlike the cases discussed above, *Overhulse* did not address the circumstances under which a decision may be issued orally.

Finally, contrary to Petitioners' argument, *Habitat Watch v. Skagit County* does not "disfavor" the City's position in this case.<sup>37</sup> In fact, the Supreme Court's clear statement in *Habitat Watch* that the "catch-all" provision in RCW 36.70C.040(4)(c) would apply to "decisions made orally at a city council meeting" supports the City's position and directly contradicts Petitioners' suggestion that local governments are required to issue written land use decisions in all cases.<sup>38</sup>

Furthermore, Petitioners' reliance on the Supreme Court's decision in *Habitat Watch* not to apply the "catch-all" provision (based on the date the decision was "entered into the public record") is misplaced.<sup>39</sup> That decision is easily explained by the facts of *Habitat Watch*. As acknowledged by Petitioners, the record in *Habitat Watch* was unclear as to whether the decisions "were mailed to all parties of record, or otherwise made publicly known, or passed by ordinance or resolution," and it was

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<sup>36</sup> *Id.* at 595, n.1.

<sup>37</sup> See Petitioners' Response Brief, pp. 17-18 (citing *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 406, 120 P.3d 56 (2005)).

<sup>38</sup> *Habitat Watch*, 155 Wn.2d at 408 n. 5.

<sup>39</sup> See Petitioners' Response Brief, pp. 17-18.

also unclear “if and when the decisions were ‘entered’ into the public record.”<sup>40</sup> These are not the facts before this Court.

In short, none of the cases cited by Petitioners supports their position, and several of those cases confirm that the City issued an oral land use decision, not a written decision.

3. LUPA Confirms that the City Council Issued an Oral Land Use Decision

Petitioners’ assertions that the structure and policy of LUPA favor written land use decisions are meritless.<sup>41</sup> Nothing in the structure of LUPA implies a hierarchy in which written decisions are preferred over oral decisions. LUPA expressly recognizes that local governments may issue land use decisions orally.<sup>42</sup> Contrary to Petitioners’ argument, the fact that “written decisions” are addressed in subsection (a) of RCW 36.70C.040 and oral decisions are addressed in subsection (c) of RCW 36.70C.040 does not mean that the Legislature has made a policy decision favoring written decisions over oral decisions, and Petitioners cite no authority to support this argument.<sup>43</sup>

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<sup>40</sup> Petitioners’ Response Brief, p. 17 (citing *Habitat Watch*, 155 Wn.2d at 408).

<sup>41</sup> See Petitioners’ Response Brief, pp. 10, 16-19.

<sup>42</sup> See RCW 36.70C.070(4) (requiring that land use petitions set forth “[i]dentification of the decision-making body or officer, together with a duplicate copy of the decision, or, if not a written decision, a summary or brief description of it”) (emphasis added).

<sup>43</sup> Petitioners’ Response Brief, p. 17.

Moreover, the policy of LUPA favors the City's position in this appeal. As recognized by Petitioners, LUPA's express purpose is to "establish[] uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review."<sup>44</sup> The City's position provides for "expedited appeal procedures" by allowing the City Council to immediately issue oral land use decisions rather than waiting for the preparation and mailing of unnecessary written decisions.<sup>45</sup> Petitioners' position, by contrast, would impose a requirement that all (or nearly all) land use decisions be issued in writing, creating unnecessary paperwork and delay in local land use decision-making.

The Court should reject Petitioners' unsupported arguments and hold that the City Council orally issued its final land use decision on April 13, 2010.

**C. Because the City Council Issued an Oral Land Use Decision, the Trial Court Should Have Dismissed Petitioners' Land Use Petitions.**

Petitioners do not deny that, if the City issued an oral land use decision, their service on the City was untimely and their Amended Land Use Petition should have been dismissed. Nor do Petitioners deny that

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<sup>44</sup> See Petitioners' Response Brief, p. 10 (quoting RCW 36.70C.010 (emphasis added)).

<sup>45</sup> See RCW 36.70C.010.

dismissal of the Amended Land Use Petition also required dismissal of the Original Land Use Petition.

Because Petitioners failed to serve the City within 21 days of the City Council's orally-issued land use decision, the trial court should have granted the City's motion and dismissed both the Amended Land Use Petition and the Original Land Use Petition.

### III. CONCLUSION

For these reasons, Tacoma respectfully requests that this Court reverse the trial court's decision denying the City's motion to dismiss and remand with instructions to dismiss both the Amended LUPA Petition and the Original LUPA Petition.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of March, 2012.

VAN NESS FELDMAN GORDONDERR

By 

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CERTIFICATE OF SERVICE

I, Amanda Kleiss-Acres, under penalty of perjury under the laws of the State of Washington, declare as follows:

On the date and in the manner indicated below, I caused a true and correct copy of Reply Brief of Cross-Appellant City of Tacoma to be served on the following individuals:

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c/o Court of Appeals Division I  
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AMANDA KLEISS-ACRES, DECLARANT