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Scott E. Stafne,

*Respondent,*

vs.

Snohomish County and Snohomish County Planning Department,

*Respondents.*

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**ORIGINAL**

BRIEF OF AMICUS CURIAE  
WASHINGTON STATE ASSOCIATION OF MUNICIPAL  
ATTORNEYS

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### **3. Identity and Interest of Amicus**

Washington State Association of Municipal Attorneys (WSAMA) is a nonprofit Washington corporation organized primarily for educational purposes and the advancement of knowledge in the area of municipal law. WSAMA has no direct interest in this matter. It has an interest in the impact that this case has upon administration of land use appeals in comprehensive planning matters.

Undersigned counsel for WSAMA were counsel for the City of Walla Walla in *Coffey v. City of Walla Walla*, 145 Wn.App. 435, 187 P.3d 272 (2008). The *Coffey* case has been concluded, and any decision in this case will have no bearing upon the outcome of that previously litigated matter.

### **4. Argument**

Amicus submits that the decision of the Court of Appeals for Division One in this case conflicts with the decision of the Court of Appeals for Division Three in *Coffey v. City of Walla Walla*, 145 Wn.App. 435, 187 P.3d 272 (2008) which held that the final determination made by a local jurisdiction on an application to amend a comprehensive plan does not constitute a "land use decision" as defined by Washington's land use petition act (LUPA) because "comprehensive plan amendments are legislative in nature." *Coffey*, 145 Wn.App. at 441.

RCW 36.70C.010 explains in pertinent part that the "purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions. . . ." A "land use decision" is specially defined by RCW 36.70C.020(2) (former RCW 36.70C.020(1)) as follows:

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

Laws of 2010, Ch. 59, § 1. "Application of statutory definitions to the terms of art is essential to determining the plain meaning of the statute." *Cobra*

*Roofing v. Labor & Indus.*, 157 Wn.2d 90, 99, 135 P.3d 913 (2006).

In this case, Mr. Stafne filed an application with Snohomish County dated October 29, 2007 to amend its comprehensive plan to de-designate certain resource lands by removing existing commercial forest land and forest transition area overlay designations from land which had been absorbed into rural residential parcels through boundary line adjustments. CP 149-197. The amendments proposed by Mr. Stafne were added to docket XIII and evaluated by Snohomish County planning staff for the Snohomish County Council. CP 199-211. The Stafne application and other proposals on docket XIII were considered by the Snohomish County Council which ultimately passed amended motion number 08-238 on June 16, 2008 deciding, in part, that it would not further process the Stafne proposal and thereby rejecting it. CP 230-232, 232 (re: Resource Lands).

Mr. Stafne filed a complaint and petition in Skagit County Superior Court on July 18, 2008. The amended complaint and petition (hereinafter referred to as the "petition") alleges that the commercial forest land designations must be removed because only full parcels of land of sufficient size can be designated as commercial forest land under Snohomish County criteria, and the combination of the forest land to rural residential lots through boundary line adjustments excluded the parcels from the statutory

definition of commercial forest land contained in the growth management act (GMA). CP 12-32, ¶¶29(H)-39(V). The petition incorporated those allegations into various causes of action which contested the County's decision to reject and not further process petitioner's proposed comprehensive plan amendments, including: (1) a request for a statutory writ of certiorari, CP 34-35, ¶¶ 44-49; (2) a request for a constitutional writ of certiorari, CP 35-36, ¶¶ 46-49; (3) a request for a writ of mandamus, CP 34-35, ¶¶ 50-54; (4) a request for a writ of prohibition, CP 36-37, ¶¶ 53-54; (5) a LUPA appeal, CP 37-38, ¶¶ 55-57; and (6) a request for declaratory judgment, CP 38-39, ¶¶ 59-60. The County filed a motion to dismiss, CP 60-111, and Mr. Stafne filed a counter-motion for summary judgment. CP 112-122. In his response to the County dismissal motion, Mr. Stafne withdrew his LUPA appeal and his request for a statutory writ of certiorari. CP 261; CP 270. The Superior Court granted the County's motion to dismiss and denied Mr. Stafne's summary judgment motion by order entered on December 10, 2008. CP 235-236.

The Court of Appeals affirmed the dismissal order in *Stafne v. Snohomish County*, 156 Wn.App. 667, 689, 234 P.3d 225 (2010). It held that the County's decision *not to adopt* Mr. Stafne's proposed docketing amendments fell outside growth management hearings board jurisdiction.

*Stafne*, 156 Wn.App. at 682-84. The Court of Appeals further reasoned that the decision was therefore subject to LUPA review, writing, "[w]here a land use decision is not subject to review by the growth management hearings board, a LUPA petition is the exclusive means to obtain judicial review of a local jurisdiction's final decision." *Stafne*, 156 Wn.App. at 684. The Court concluded that Mr. Stafne's petition was barred, because his petition was untimely filed. *Stafne*, 156 Wn.App. at 686-87.

LUPA does exclude decisions subject to review by a growth management hearings board from its purview. RCW 36.70C.030(1)(a)(ii). However, it also separately excludes determinations made on "applications for legislative approvals." RCW 36.70C.020(2)(a). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). The legislative approval exclusion in RCW 36.70C.020(2)(a) would be rendered meaningless and completely superfluous if it was construed to cover only the same ground as RCW 36.70C.030(1)(a)(ii).

*Coffey* decided in 2008 that the list of "legislative approvals" in former RCW 36.70C.020(1)(a) is illustrative rather than exclusive, and that an application for a comprehensive plan amendment is an application for a

"legislative approval" thereunder. *See Coffey*, 145 Wn.App. at 440-41. The Legislature thereafter amended the definition adopted by LUPA for the phrase: "land use decision" in 2010, but it left the legislative approval exception untouched. Laws of 2010, Ch. 59, § 1. It did however indicate in the final bill report for the 2010 legislation that the "growth board" exception is supplementary.

Land use decisions that do not fall under the LUPA are approvals to use, vacate, or transfer streets, parks and other similar types of public property, approvals for area-wide rezones and annexations, and applications for business licenses. *In addition*, the LUPA does not apply to land use decisions that are subject to review by legislatively created quasi-judicial bodies, such as the Shorelines Hearings Board, the Environmental and Land Use Hearings Board, and the Growth Management Hearings Board.

Final Bill Report on H.B. 2740, 61st Washington Legislature (2010) (emphasis added). The 2010 Legislature confirmed that the "growth board" exception exists in addition to the "legislative approval" exception, and no effort was made to overturn *Coffey* which classified comprehensive plan amendments in the same category as area-wide rezones. "The Legislature is presumed to be aware of judicial construction of prior statutes. . . . Absent an indication that the Legislature intended to overrule the common law, new legislation will be presumed to be consistent with prior judicial decisions." *Marriage of Williams*, 115 Wn.2d 202, 208, 796 P.2d 421 (1990).

It begs the question to call the County Council determination in this matter a mere docketing decision. If that was the case, the decision still would not be subject to LUPA. See *Pacific Rock Envtl. v. Clark County*, 92 Wn.App. 777, 781-82, 964 P.2d 1211 (1998). The staff recommendations to the County Council evidence that the Council's rejection of Mr. Stafne's application involved policy goal balancing. CP 199-204; CP 209-211; see also CP 230-232 (Commissioner Motion). The GMA lists thirteen planning goals which are sometimes competing. RCW 36.70A.020. "Balancing the GMA's goals in accordance with local circumstances is precisely the type of decision that the legislature has entrusted to the discretion of local decision-making bodies." *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 128, 118 P.3d 322 (2005). This balancing lies at the very heart of legislative policy making.

The GMA does not dictate any particular goal, such as the protection of property interests should dominate over other goals. Rather, there is an inherent tension in seeking to accommodate by comprehensive action all of these goals, some of which are in conflict. Government entities must weigh these goals and exercise discretion in determining how to address them in enacting their plans and regulations.

1992 Op. Att'y Gen. No. 23 (answer to question 1). LUPA excludes final determinations on "applications for legislative approvals." RCW 36.70C.020(2)(a). The Stafne comprehensive plan amendment proposal is

an application for legislative approval, and Snohomish County Council Amended Motion No. 08-238 is the Council's final determination and rejection of that application. CP 230-232. The form of final rejection did not change the type of application or the nature of the disapproval.

The GMA did not overturn the well understood role of comprehensive plans in Washington's land use law structure. This Court recognized pre-GMA, in *Barrie v. Kitsap County*, 93 Wn.2d 843, 851-52, 613 P.2d 1148 (1980), that “[g]enerally, when a municipality adopts a comprehensive plan and zoning code, it acts in a legislative, policy-making capacity.” See also *Westside Hilltop v. King County*, 96 Wn.2d 171, 175-179, 634 P.2d 862 (1981); *Bishop v. Town of Houghton*, 69 Wn.2d 786, 792, 420 P.2d 368 (1966). In *Citizens v. Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997), this Court rejected argument that the GMA converted comprehensive plans into regulatory devices, and the Court confirmed that *Barrie* remains the law.

This Court has adopted a 4-part test to determine when a given action is legislative or quasi-judicial.

(1) whether the court could have been charged with the duty at issue in the first instance; (2) whether the courts have historically performed such duties; (3) whether the action of the municipal corporation involves application of existing law to past or present facts for the purpose of declaring or enforcing liability rather than a

response to changing conditions through the enactment of a new general law of prospective application; and (4) whether the action more clearly resembles the ordinary business of courts, as opposed to those of legislators or administrators.

*Raynes v. Leavenworth*, 118 Wash.2d 237, 244-245, 821 P.2d 1204 (1992).

Looking at these factors: (1) Courts could not have enacted or amended a GMA comprehensive plan map to designate or de-designate resource lands in the first instance. Local legislative authorities have been directly charged with that duty by the Legislature. RCW 36.70A.040 (planning obligations), RCW 36.70A.170(1)(b) (obligation to designate forest lands), and RCW 36.70A.130(1)(a) (continuing review and amendment obligations). (2) Courts have not historically performed such duties. Comprehensive planning is a local legislative police power function. *Town of Houghton*, 69 Wn.2d at 792. (3) A local legislative authority does not declare or enforce liability when it decides whether or not to amend a GMA comprehensive plan map designation, because the plan is only a blueprint for prospective application. *Mount Vernon*, 133 Wn.2d at 873. Finally, (4) every known reported Washington authority on the subject confirms that comprehensive plan mapping is a policy making function involving the balancing of sometimes competing priorities which is regularly performed by legislators rather than a judicial or quasi-judicial type function resembling the ordinary business of

courts. *E.g.*, *Westside Hilltop*, 96 Wn.2d at 175-179; *Barrie*, 93 Wn.2d at 851-52. The *Stafne* proposal to remove the Snohomish County comprehensive plan's forest lands designation from various properties was an application for legislative action under the *Raynes* test.

**5. Conclusion**

Amicus curiae submits that the decision in *Stafne*, 156 Wn.App. 667 (2010) conflicts with the decision in *Coffey*, 145 Wn.App. 435 (2008), and this Court should take review pursuant to RAP 13.4(b)(2). Amicus requests that this Court accept discretionary review in this case and that the Court hold that an application for a comprehensive plan amendment is an application for a legislative approval excluded from LUPA by RCW 36.70C.020(2)(a).

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