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**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

CLARK COUNTY WASHINGTON, THE CITY OF LA CENTER, GM
CAMAS LLC, MACDONALD LIVING TRUST, RENAISSANCE
HOMES, AND STERLING SAVINGS BANK,
Petitioners,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL
RESOURCES COUNCIL, & FUTUREWISE,
Respondents.

**KARPINSKI'S, CCNRC'S & FUTUREWISE'S ANSWER TO THE
AMICUS CURIAE BRIEF OF THE CITY OF CAMAS**

Robert A. Beattey, WSBA # 41104
Spencer Law Firm, LLC
1326 Tacoma Ave S, STE 200
Tacoma, Washington 98122
T: 253.383.2770
rbeattey@spencer-lawfirm.com

Tim Trohimovich, WSBA # 22367
Futurewise
816 Second Ave., STE 200
Seattle, Washington, 98104
T: 206.343.0681
tim@futurewise.org

*Counsel for John Karpinski, Clark
County Natural Resources Council,
& Futurewise*

ORIGINAL

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I. INTRODUCTION

John Karpinski, Clark County Natural Resources Council (CCNRC), and Futurewise (the “Karpinski Respondents”) respectfully submit this answer to the City of Camas’ *Amicus Curiae* Brief. The City of Camas makes three arguments:

- That the City of Camas was a necessary and indispensable party to any proceedings to invalidate its annexations.
- That the Western Washington Growth Management Hearings Board (Board), the Clark County Superior Court, Division II of the Washington State Court of Appeals, and the Supreme Court do not have subject matter jurisdiction over the City of Camas’ annexations in this case.
- The City of Camas’ annexations deprived Clark County of jurisdiction to plan for the annexed land and so the challenge to the designation of agricultural lands of long-term commercial significance is moot.

As this brief will show, the first two arguments fail because this is an appeal of Clark County’s decisions to de-designate agricultural lands of long-term commercial significance and include these lands within several

urban growth areas, not an appeal of the annexations.¹ The third argument fails because remedies that would protect agricultural lands of long-term commercial significance remain.

II. ARGUMENT

A. THE CITY OF CAMAS WAS NOT A NECESSARY AND INDISPENSABLE PARTY BECAUSE THE LAND WAS NOT IN THE CITY WHEN THIS APPEAL WAS FILED AND ARGUED AND THIS IS NOT AN APPEAL OF THE CITY'S ANNEXATIONS.

As it did before the court of appeals, the City of Camas argues that it is a necessary and indispensable party to this appeal.² On page 6 the City of Camas *amicus* brief argues that the city has a direct and fundamental interest in any proceeding that seeks to alter its urban growth area (UGA) or its corporate limits.

As to the UGA, UGAs are designated by counties, not cities.³ The county must follow the Growth Management Act's (GMA) requirements

¹ *Clark County Washington v. Western Washington Growth Management Hearings Review Bd.*, 161 Wn. App. 204, 214, 254 P.3d 862, 865 (2011).

² *Clark County*, 161 Wn. App. at 226, 254 P.3d at 871. We also apologize to the City of Camas for erroneously stating that it was a party before the Board. The City participated as an *amicus curie* before court of appeals. *Id.*

³ RCW 36.70A.030(20); RCW 36.70A.040(3)(c); RCW 36.70A.110(1); RCW 36.70A.110(6).

in designating urban growth areas.⁴ The county must review its designated UGAs every eight years and must revise them to accommodate its planned 20 year population growth.⁵ While cities should participate in the designation and review of urban growth areas and can request mediation of the initial designation of the UGA, a city cannot be said to have any fundamental interest in the alteration of the UGA given the county's role in designating the UGA and standards the UGA must meet.

Further, when this appeal was filed, November 16, 2007, the land the City of Camas subsequently annexed was in unincorporated Clark County.⁶ The land was not annexed until April 21, 2008, less than a month before the Board issued its final decision and order on May 14, 2008, and after all briefing and argument had been completed.⁷ How could the City of Camas have been named in the appeal before the Board?

⁴ RCW 36.70A.110; RCW 36.70A.115.

⁵ RCW 36.70A.110(3); *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 352, 190 P.3d 38, 49 (2008).

⁶ Supplemental Brief of *Amicus Curiae* City of Camas p. 4; Administrative Record (AR) 3215 (referencing the "Bates" page number), *Karpinski et al. v. Clark County*, WWGMHB Case No. 07-2-0027, Final Decision and Order Amended for Clerical and Grammatical Errors June 3, 2008 (amended June 3, 2008), at 81 of 86.

⁷ The original *Karpinski et al.* Final Decision and Order was issued on May 14, 2008. AR 3135, *Id.* at 1 of 86. The briefs were filed in February and March 2008, and the Hearing on the Merits was held on March 28, 2008. AR 3217 – 18, *Id.* at 83 – 84 of 86.

The City of Camas then goes on to write, on page 6 of its *amicus* brief, that the Karpinski Petitioners are “seeking affirmative relief against the City, i.e. nullification of its annexations, and the City would be clearly prejudiced by such a ruling.” However, this is not what this case requests. The Karpinski Petitioners challenged Clark County’s decisions to de-designate agricultural lands of long-term commercial significance and include those lands in UGAs.⁸ And the court of appeals only held that the annexations did not bar review of those decisions.

¶ 30 Accordingly, we hold that Camas’s and Ridgefield’s annexations did not deprive the Growth Board of jurisdiction to review the validity of the County’s actions dedesignating parcels CA–1, CB, and RB–2 and including them in the cities’ UGAs. We address this issue only in relation to the County’s challenge to the Growth Board’s jurisdiction, and ours, to review its dedesignation/UGA decisions. We hold only that the Camas and Ridgefield annexation ordinances did not deprive the Growth Board or this court of jurisdiction over the appeal of parcels CA–1, CB, and RB–2 in this case. We reject the County’s argument that the Growth Board lacked authority to enter noncompliance findings related to parcels CA–1, CB, and RB–2 and that it committed an error of law when entering its findings on these parcels. Accordingly, we hold that the Growth Board had authority to enter findings regarding these parcels.

¶ 31 Finally, in its *amicus curiae* brief, Camas argues that it is a necessary party to the consideration of

⁸ *Clark County*, 161 Wn. App. at 214, 254 P.3d at 865.

any questions involving the validity of the annexations and that it was never properly joined to these proceedings. CR 19. A necessary party is one that “claims an interest relating to the subject of the action” and whose absence from the case may “impair or impede his ability to protect that interest.” CR 19(a)(2). We are not insensitive to the cities’ concerns and limit our holding only to the Growth Board’s authority to enter findings regarding the validity of the County’s decisions relating to these parcels.⁹

Like the court of appeals, this court should hold that the City of Camas’ absence from this appeal does not impair its ability to address any challenge to its annexations should any such a challenge be filed.

B. THIS IS NOT AN APPEAL OF THE CITY OF CAMAS’ ANNEXATIONS, AND THE BOARD AND COURTS HAVE NOT ASSERTED ANY AUTHORITY OVER THE ANNEXATIONS.

Pages 7 through 9 of the City of Camas’ *amicus* brief argue that the board and courts do not have subject matter jurisdiction over the city’s annexations. As we have seen, neither the board nor the courts have claimed jurisdiction over the annexations.

⁹ *Clark County*, 161 Wn. App. at 226, 254 P.3d at 871 footnote omitted.

C. THIS APPEAL IS NOT MOOT BECAUSE REMEDIES ARE AVAILABLE.

1. The court of appeals rejected the argument that this appeal is moot and the Supreme Court should also reject this argument.

Pages 9 and 10 of the City of Camas' *amicus* brief argue that this case is moot. The court of appeals rejected this argument. As the court wrote, this

interpretation would allow a county to incorporate any land into a UGA regardless of whether it satisfies the GMA's requirements; draw out the appeal at the Growth Board level until a city could pass an ordinance annexing the property; and then moot out any challenges by citing the county's lack of authority over the lands or argue, as it did here, that the annexation deprived the Growth Board of jurisdiction to review its decision to include the property in the UGA. The legislature did not intend to permit counties to evade review of their GMA planning decisions in this manner, and the GMA's statutory scheme does not allow them to do so.¹⁰

On pages 5 through 15 of the Supplemental Brief of Respondents Karpinski, CCNRC & Futurewise, the Karpinski Petitioners argue that the GMA does not deprive the Board or courts of jurisdiction to review comprehensive plans, development regulations, and amendments. The Karpinski Petitioners' Supplemental Brief also demonstrates that the vested rights doctrine does not insulate the City of Camas from the Board

¹⁰ *Clark County*, 161 Wn. App. at 225, 254 P.3d at 871.

rulings and court review. The Karpinski Petitioners' Supplemental Brief also argues that the GMA does not preclude meaningful judicial review of comprehensive plans, development regulations, and amendments. These arguments support the court of appeal's conclusion on this question.

2. The Board's *Panesko* decision illustrates the problem the Court of Appeals' *Lewis County* decision solves.

On pages 9 and 10, Camas' *Amicus* Brief uses the Board's *Panesko* decision to argue that annexing land deprives the Board and courts of jurisdiction over appeals of county decisions on the designation of agricultural lands of long-term commercial significance and urban growth area expansions. As part of Lewis County's multi-year effort to initially designate agricultural lands under RCW 36.70A.170, the Board had concluded that omitting certain lands from the designation of agricultural lands of long-term commercial significance violated the GMA. The Board had earlier made a determination of invalidity for some of these undesignated lands.¹¹ Lewis County then expanded the Toledo UGA to include some of the land subject to the determination of invalidity.¹² The

¹¹ *Panesko et al. v. Lewis County*, WWGMHB Case No. 08-2-0007c, Final Decision and Order (Aug. 15, 2008), at 26 of 45, 2008 WL 4276934 pp. *15 – 16.

¹² *Id.* at 26 of 45, 2008 WL 4276934 p. *16.

Board concluded this violated the GMA because Lewis County had not shown that the land added to the UGA no longer substantially interfered with the goals of the GMA.¹³ While the Board was considering the *Panesko* appeal, the City of Toledo annexed the land.¹⁴ After the annexation, the Board concluded that because the City of Toledo had annexed the territory, Lewis County no longer had “jurisdiction.”¹⁵ The Board reasoned that because the county no longer had the ability to consider or alter the designation of the property the case was moot.¹⁶ So *Panesko et al. v. Lewis County* is another example of foiling review by the Board and the courts of land use planning decisions for compliance with the GMA through strategic annexation. This is exactly the problem the court of appeal’s *Clark County* decision solves.

The basis of the Board’s *Panesko et al. v. Lewis County* decision, that the county could no longer do any planning for the land, is wrong. RCW 36.70A.100 provides that “[t]he comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with,

¹³ *Id.*

¹⁴ *Panesko et al. v. Lewis County*, WWGMHB Case No. 08-2-0007c, Compliance Order (July 27, 2009), at 9 of 10, 2009 WL 2981888 p. *5.

¹⁵ *Id.* at 10 of 12, 2009 WL 2981888 p. *6.

¹⁶ *Id.* at 9 – 10 of 12, 2009 WL 2981888 pp. *5 – 6.

and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.” The loss of agricultural lands is a related regional issue. That is why the GMA adopted Goal 8 in RCW 36.70A.020(8), which calls upon the City of Camas and other cities to “[e]ncourage the conservation of productive ... agricultural lands, and discourage incompatible uses.” So the annexing cities would then make their comprehensive plans consistent with the county plan and protect the designated agricultural resource land.

Further, if a city innocently annexed the land believing it no longer qualified as agricultural land of long-term commercial significance based on the county’s de-designation, once the city learns that the land still qualifies as agricultural lands of long-term commercial significance the city may exercise its duty “to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.”¹⁷

¹⁷ RCW 36.70A.060(1)(a) ... “each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.” See also *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000) for an explanation of this duty.

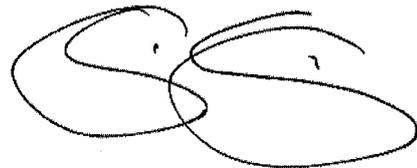
Of course since this is an appeal of the county's decision to de-designate the agricultural lands, a separate action would be needed to require a city to fulfill this duty. Further, if the court of appeals decision is upheld, additional remedies may be available in the proper forum and with the proper parties before the forum.

III. CONCLUSION

For the foregoing reasons, and each of them, the Karpinski Respondents respectfully request the Court affirm the decision of the Court of Appeals and the Growth Management Hearings Board on the issues for which it granted review.

DATED 16 April 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Tim Trohimovich', written in a cursive style.

Tim Trohimovich, WSBA No. 22367
Futurewise
816 Second Ave, STE 200
Seattle, WA 98104
tim@futurewise.org

Robert A. Beattey, WSBA No. 41104
Spencer Law Firm, LLC
1326 Tacoma Ave S, STE 200
Tacoma, Washington 98122
T: 253.383.2770
rbeattey@spencer-lawfirm.com

*Counsel for John Karpinski, Clark
County Natural Resources Council,
& Futurewise*

CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of April, 2012, I caused the following documents to be served on the following parties by regular U.S. Mail, postage prepaid, and email: Karpinski's, CCNRC's & Futurewise's Answer to the *Amicus Curiae* Brief of the City of Camas.

Christine M. Cook
Clark County Prosecuting Attorney's Office
Clark Co. Courthouse
PO Box 5000
Vancouver, WA 98666
Email: christine.cook@clark.wa.gov
Attorney for Clark County

Daniel H. Kearns
Reeve Kearns
910 Oregon National Building
610 SW Alder St.
Portland, OR 97205
Email: dan@reevekearns.com
Attorney for City of LaCenter

Randell B. Printz
Michael Simon
Brian K. Gerst
Landerholm, P.S.
915 Broadway
PO Box 1086
Vancouver, WA 98666-1086
Emails: randy.printz@landerholm.com; brian.gerst@landerholm.com;
michael.simon@landerholm.com
Attorneys for MacDonald Living Trust and GM Camas LLC

Rogelio Omar Riojas
DLA Piper LLP (US)
701 5th Ave Ste 7000
Seattle, WA 98104-7044
Email: omar.riojas@dlapiper.com
Attorneys for Sterling Savings Bank

John D. Spurling
Betty M. Shumener
Henry H. Oh
Shumener, Odson & Oh, LLP
550 South Hope Street, Suite 1050
Los Angeles, CA 90071-2678
Emails: JSpurling@soollp.com; HOh@soollp.com;
bshumener@soollp.com
Attorneys for Sterling Savings Bank

Le Anne Marie Bremer
Miller Nash LLP
500 E. Broadway, Suite 400
PO Box 694
Vancouver, WA 98666-0694
Email: leanne.bremer@millernash.com

Christopher R. Sundstrom
Spencer Soundstrom
1612 Columbia St
Vancouver, WA 98660
(mailed only)

Roger D. Knapp
Knapp, O'Dell & MacPherson
430 N.E. Everett Street
Camas, WA 98607
Email: knapplaw@comcast.net
Attorney for City of Camas

James Denver Howsley
Jordan Ramis, PC

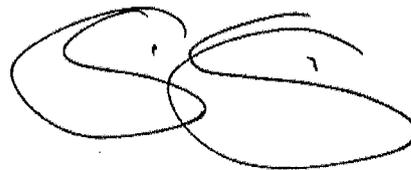
1498 SE Tech Center Place, Suite 380
Vancouver, WA 98683-5519
Email: jamie.howsley@jordanramis.com

Marc Worthy
Office of the Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
Email: marcw@atg.wa.gov
Attorney on Appeal for Growth Management Hearings Board

Julie Sund Nichols
Law Offices of Stephen Whitehouse
PO Box 1273
Shelton, WA 98584-0952
Email: juliesund@comcast.net

Kathleen J. Haggard
Dionne & Rorick LLP
601 Union Street, Suite 900
Seattle, WA 98101-2360
Email: kathleen@dionne-rorick.com

Dated: 16 April 2012.

A handwritten signature in black ink, appearing to be 'Tim Trohimovich', written in a cursive style with large loops.

Tim Trohimovich

OFFICE RECEPTIONIST, CLERK

To: Tim Trohimovich
Cc: RBeattey@spencer-lawfirm.com; christine.cook@clark.wa.gov; dan@reevekearns.com; randy.printz@landerholm.com; brian.gerst@landerholm.com; michael.simon@landerholm.com; omar.riojas@dlapiper.com; JSpurling@soollp.com; HOh@soollp.com; bshumener@soollp.com; leanne.bremer@millernash.com; knapplaw@comcast.net; jamie.howsley@jordanramis.com; marcw@atg.wa.gov; juliesund@comcast.net; kathleen@dionne-rorick.com
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From: Tim Trohimovich [<mailto:Tim@futurewise.org>]
Sent: Monday, April 16, 2012 2:32 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: RBeattey@spencer-lawfirm.com; christine.cook@clark.wa.gov; dan@reevekearns.com; randy.printz@landerholm.com; brian.gerst@landerholm.com; michael.simon@landerholm.com; omar.riojas@dlapiper.com; JSpurling@soollp.com; HOh@soollp.com; bshumener@soollp.com; leanne.bremer@millernash.com; knapplaw@comcast.net; jamie.howsley@jordanramis.com; marcw@atg.wa.gov; juliesund@comcast.net; kathleen@dionne-rorick.com
Subject: Karpinski's Answer to the Amicus Curiae Brief of the City of Camas Case No. 85989-2

Dear Sirs and Madams:

Enclosed please find Karpinski's, CCNRC's & Futurewise's Answer to the *Amicus Curiae* Brief of the City of Camas in Supreme Court Case No. 85989-2. Futurewise has also moved and enclosed also please find a notice of a change of address. We are sending them as PDFs, but if you prefer another format, please let me know. We are also mailing paper copies to the attorneys for the parties, but not the Court.

Thanks for accepting service by email.



Tim Trohimovich, AICP
Director of Planning & Law
WSBA No. 22367

email: tim@futurewise.org
web: www.futurewise.org

816 Second Avenue, Suite 200
Seattle, WA 98104-1530
p 206 343-0681 Ext. 118

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