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No. 94232-3

THE SUPREME COURT OF THE STATE OF WASHINGTON

University of Washington
v.

City of Seattle, DOCOMOMO US-WEWA, Historic Seattle, and the
Washington Trust for Historic Preservation

**BRIEF OF AMICUS
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS**

Attorney for Washington State Association of Municipal Attorneys

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I. INTRODUCTION

This case involves the application of a City of Seattle (“City”) land use development regulation, the Landmark Preservation Ordinance (“LPO”), to properties owned by the University of Washington (“UW”), a state agency. The central legal questions presented by the case are whether a key provision of the Growth Management Act, RCW 36.70.A.103, means what it says when it commands that “State agencies *shall comply* with the local. . . development regulations and amendments thereto adopted pursuant to this chapter,” and whether this GMA provision falls within RCW 28B.20.130(1)’s limitation on the UW’s ability to manage university property: “except as otherwise provided by law.” The trial court avoided these questions, and ruled that UW is not a “person” subject to the LPO.

This Court should reverse the trial court and rule that, under RCW 36.70A.103, local land use development regulations (including the LPO) apply to state agencies like the UW, because RCW 28B.20.130(1)’s grant of power to the UW is limited by the phrase “except as otherwise provided by law,” and RCW 36.70A.103 “otherwise provide[s] by law.”

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association of Municipal Attorneys (WSAMA) is a nonprofit Washington corporation that provides education

and training in the area of municipal law to attorneys who represent cities, towns and other local governments throughout the State of Washington. WSAMA also regularly participates as an *amicus curiae* in cases before this Court to advocate on behalf of municipal police powers, including the ability of cities' and towns' to apply their local land use and development regulations to all property within their respective jurisdictions, including property owned by state agencies. This brief supports these purposes.

WSAMA has an interest in preventing state institutions of higher education from evading local development regulations on the basis of meritless, implied preemption claims. Institutions of higher education are located throughout Washington, usually within the borders of incorporated cities and towns. They can (and do) purchase property outside of their designated campuses, and develop and operate facilities there. WSAMA has a vested interest in assisting the Court to clarify that local development regulations apply to properties owned by institutions of higher education in the same way they apply to other state agencies.

III. STATEMENT OF FACTS

WSAMA adopts Seattle's Statement of Facts Op. Brief at pp. 4-8.

IV. ARGUMENT

A. The Court Should Clarify the Meaning and Interaction of RCW 28B.20.130(1) and RCW 36.70A.103.

The Court should reverse the trial court, clarify the meaning and interaction of RCW 28B.20.130(1) and RCW 36.70A.103, and hold that the City's LPO applies to UW properties. The UW's Complaint alleged that the LPO conflicts with the authority RCW 28B.20.130(1) grants the UW, and requested a declaratory judgment to that effect. CP 13 at para. 4.3.1; CP 16 at para. 5.2.1. The UW moved for summary judgment, arguing that RCW 28B.20.130(1) vests it with plenary authority to control UW properties, and that nothing in the GMA or RCW 36.70A.103 altered this authority. CP 209-216. The City cross-moved for summary judgment, requesting entry of a declaratory judgment in its favor, to the effect that the LPO did *not* conflict with RCW 28B.20.130(1), because RCW 36.70A.103 made the LPO applicable to the UW in its capacity as a state agency. CP 41, 45, 55, esp. n. 68.

Notwithstanding the parties' joint request for declaratory judgment, the trial court declined to address this issue. It ruled instead that, "while making no ruling regarding the applicability of any other development regulation to the [UW], as to the LPO, it has no application because the University is not a "person" or "owner" as defined in the LPO." CP 609. In the process, the pointed to an *unpublished* New York case that the trial

court acknowledged “has no precedential value.”¹ CP 610.

The trial court’s conclusion and reasoning were incorrect, for the reasons outlined in the City’s Opening Brief (at pages 24-29) and Reply Brief (at pages 20-25). But before the trial court could reach the issue of application of the LPO to the UW, it first needed to consider and address the central legal issue in the case: whether the GMA’s requirement that locally-enacted development regulations apply to state agencies means they also apply to the UW, a state agency, and whether the “except as otherwise provided by state law” limitation on the UW’s authority include the GMA? Although WSAMA advocates that this Court rule in favor of the City on the issue of whether the UW is a “corporation” as that term is used in the LPO, this Court should ensure that it addresses the underlying statutory issues no matter how it ultimately resolves the issue of the UW’s corporate status.

For decades, the City and UW have litigated the issue of the applicability of City zoning requirements to UW property. *See, e.g., State v. Seattle*, 94 Wn.2d 162 (1980). The UW admits that there is a actual, present existing dispute between it and the City, and that issue is likely to recur regardless of which site the UW selects for future expansion. CP 13 at para. 4.2.1. And, cities clearly have standing to obtain a declaratory

¹ CP 609-10.

judgment on issues of substantial public importance. *City of Snoqualmie v. King County Executive*, 187 Wn.2d 289, 296-97, 286 P.3d 279 (2016).

Perhaps most important, the issue is likely to recur with other universities and other cities. This Court may judicially notice that the campuses of other colleges and universities are located within cities and towns: Washington State University is located in Pullman; Western Washington University in Bellingham; Central Washington University in Ellensburg; Eastern Washington University in Cheney. Each of those jurisdictions has adopted a GMA subarea plan and/or development regulations that expressly apply to their respective university or college and governing, at a minimum, allow college/university uses and, in many instances, applying additional campus master plan and/or zoning restrictions.² Where a higher educational institution is located outside of a city—The Evergreen State College is located in unincorporated Thurston

² See excerpts of city codes and ordinances adopting subarea plan set forth in Appendix A – 1 – A-7. City ordinances whether codified or otherwise, are allowed as appendices to an appellate brief pursuant to RAP 10.3(a)(8) and 10.4(c), which allow inclusion of “a statute, rule, regulation, . . . or the like. . . .” See also RCW 5.44.080 (“All ordinances passed by the legislative body of any city. . . shall be received in any court of the state. . . .”); RCW 35.21.5520 (municipal codes “shall be received without further proof as the ordinances of permanent and general effect of the city or town in all courts and administrative tribunals of this state.”); *Bank of New York Mellon v. Scotty’s Gen’l Constr. Inc.*, 175 Wn.App. 1007 (Div. I 2013)(unpubl.) at *7 (allowing appendices under RAP 10.4(c)’s “or the like” clause); *Moore v. Dresden Inv. Co.*, 162 Wash. 289, 307-08, 298 P. 465 (1931) (trial court and appellate court could take judicial notice of city building code ordinances); *State v. Larson*, 49 Wn.2d 239 (1956) (same).

County—it too is subject to the county’s local land use regulations.³ These city codes and ordinances adopting subarea plans are based on an explicit understanding that GMA plans and development regulations apply to colleges and universities.⁴ In addition, the Legislature has directed the UW, WSU, and CWU to operate branch campuses in other cities, including Bothell and Tacoma (UW), the Tri-Cities and Vancouver (WSU), and Yakima (CWU). *See* RCW 28B.45.020, .030, .040, and .060. Each of those institutions is likewise subject to locally-adopted GMA development regulations. In addition to their campuses, the UW and WSU both own substantial off-campus properties, as the City details.⁵ These properties, too, are subject to applicable county or code provisions.

Because the legislation authorizing those institutions’ regents to control that expansive property is identical to the UW’s authorizing legislation,⁶ if this Court declines to address the substantive statutory issue,

³ Appendix A - 6.

⁴ *See, e.g.*, App. A-1 BMC Sec. 20.40.020(A); .040(A); App. A-2 (Ord. 1998-09-077 adopting WWU neighborhood plan at 103, 107, esp. 110 (“In 1991, the Growth Management Act was amended to require that state agencies comply with local comprehensive plans and development regulations adopted pursuant to the Act.”); App. A-3 (Ord. 2004-012-087 adopting WWU neighborhood plan, at 1, 4, 19 (same); A-4 App. A-5 (CMC Sec. 21.37.020 (purpose of P zone is to designate areas of institutions of higher education and regulate their development in accordance with comprehensive plan) at Sec. 21.37.040(A) (purpose of development standards “is to regulate impact of university development. . .”).

⁵ City Opening Brief at 11; CP 475, 477-80.

⁶ *Compare* RCW 28B.20.130(1) (allowing UW Board of Regents “To have full control of the university and its property of various kinds, *except as otherwise provided by law*”) (emphasis added) *with* RCW 28B.30.150 (allowing WSU regents to “Have full control of the university and its property of various kinds, *except as otherwise provided by law*”).

there is a high likelihood that the careful balance established by other cities' codes will be upset, and that the legal dispute between the City and the UW could recur in another forum as a dispute between a different city and a different college or university. That dispute will involve the exact same legal issue: the interplay between land use development regulations adopted under RCW 36.70A.103, on the one hand, and Title 28B provisions limiting control over college/university properties "as otherwise provided by law," on the other. There is thus an urgent and substantial need for this Court to address the fundamental statutory legal issue, regardless of the Court's ultimate resolution of whether the UW is a "person" within the meaning of the LPO, or whether Seattle's LPO is a "GMA development regulation."

B. The Legislature Conclusively Limited the UW's Control Over University Property "As Otherwise Provided By Law."

In 1985, the Legislature acted to conclusively limit the UW Regents' control over UW property, by making the Regents' control expressly subject to "as otherwise provided by law." Laws 1985, ch. 370 §92. The UW runs from this plain language. It claims that this case is one requiring an ad-hoc determination of "legislative intent." Brief of Respondent ("UW Response") at 25. It argues that the Legislature has always "vested plenary

(emphasis added) and RCW 28B.35.120 (allowing regional universities' boards of trustees to "have full control of the regional university and its property of various kinds, *except as otherwise provided by law*") (emphasis added).

authority in the Board of Regents to manage University property,” that this Court confirmed the Regents’ plenary authority in *Seattle v. State*, and that nothing in the 1985 amendments detracted from or otherwise limited the Regents’ property control. *Id.* at 26-29. The UW’s approach to the legal issues in this case is meritless for several reasons.

First, this case is *not* about gleaning legislative intent from legislative history. It is a straightforward case of statutory interpretation as dictated by the plain language of two statutes, RCW 28B.20.130(1) and 36.70A.103. As this Court has reiterated, the statutory text controls:

The purpose of statutory interpretation is to determine and give effect to legislative intent. The legislative intent should be derived *primarily from the statutory language*. When the words in a statute are clear and unequivocal, *this court is required to assume the Legislature meant exactly what it said and apply the statute as written*.

Town of Woodway v. Snohomish County, 180 Wn.2d 165, 322 P.3d 121 (2014) (emphasis added). “When the language is clear, we look only to the wording of the statute.” *Whatcom County v. Hirst*, 186 Wn.2d 648, 673, 381 P.3d 1 (2016). In other words, “when a statute is not ambiguous, only a plain language analysis of a statute is appropriate.” *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). “A statute is ambiguous if it is “ ‘susceptible to two or more reasonable interpretations,’ but ‘a statute is not ambiguous merely because different interpretations are conceivable.’”

Id., quoting *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005).

To discern legislative intent from the Legislature's plain language, the Court considers the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole. *Hirst*, 186 Wn.2d at 667. If the plain meaning is unambiguous, the Court will apply that plain meaning as an expression of legislative intent without considering extrinsic sources. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014).

Rather than using these well-established rules for statutory interpretation, the UW begins its "legislative intent" analysis with a lengthy discourse on the history of statutory regulation of the UW, the UW's mission, and legislative appropriations. UW Response at 25-26. This is flatly wrong. The Court's analysis must begin with the plain text of RCW 28B.20.130(1) and RCW 36.70A.103 and, because they are unambiguous, must apply those statutes' plain meaning "as an expression of legislative intent without considering extrinsic sources." *Jametsky*, 179 Wn.2d at 762. The Court should disregard the UW's detour into its history, mission, or appropriations, and apply the statutes as written.

Second, contrary to the UW's arguments, this Court has actually rejected, rather than confirmed, the UW's claimed "plenipotentiary" status.

In *Seattle v. State*, 94 Wn.2d 162 (1980), for example, the Court's holding was limited to the application of two statutes (former RCW 28B.20.382 and .392(2)(b)), which provided the UW specific powers over specific property (the so-called "Metropolitan Tract") at issue in that case. Although the Court mentioned the UW's general property management authority, RCW 28B.20.130(1), the Court's took care to base its actual holding on a different statute, "The City's Landmarks Ordinance as applied cannot coexist *with RCW 28B.20.392(2)(b)(ii)*." 94 Wn.2d at 166 (emphasis added). The Court reasoned that "the classification of *Tract properties as distinct from other properties* is appropriate," and noted that the statute in question gave the UW specific powers vis-à-vis *the Tract property*: "RCW 28B.20.392(2)(b)(ii) expressly permits the Board of Regents to alter and even demolish *Tract buildings*." *Id.* at 166. Meanwhile, the Court *rejected* UW's claim that its general authority as a state agency immunized it from all municipal regulation unless the legislature specifically provided otherwise. *Id.* at 167 ("We decline to apply a rule of immunity. . .").

Third, and contrary to the UW's claim that 1985 legislative amendments "did not intend to limit the Board of Regents' authority in any way,"⁷ the Legislature's plain language demonstrates that it acted

⁷ UW Response at 29.

conclusively to *rein in* the UW and put to rest the UW’s blanket immunity claim in *Seattle v. State*.⁸ In 1985—just five years after *State*—the Legislature adopted ESSB 3776, which established the Higher Education Coordinating Board and comprehensively revamped the statutes relating to the powers of UW and other state colleges and universities. 1985 Laws Ch. 370, § 1. The Legislature endowed the HEC Board with broad planning, coordination, and monitoring powers, and specifically directed “that the Board represent *the broad public interest above the interests of public colleges and universities*.” *Id.* at § 3 (emphasis added).⁹ As part of this “claw-back” of power from the UW and other colleges and universities, the Legislature limited their power to acquire property by expressly requiring that “the purchase or lease of major off-campus facilities is subject to the higher education coordinating board pursuant to section 5 of this act.” *Id.* at § 50 (amending RCW 28B.10.020).

The Legislature did not stop there. For each of the State’s four-year institutions, the Legislature also amended their property management

⁸ The legislature is presumed to be familiar with past judicial interpretations of statutes, including appellate court decisions. *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *Friends of Snoqualmie Valley v. King County Boundary Review Bd.*, 118 Wn.2d 488, 496–97, 825 P.2d 300 (1992)).

⁹ See also §§ 4 – 6 (authorizing HEC Board to prepare comprehensive master plan, review, evaluate and make recommendations on colleges’/universities’ capital budget requests; make recommendations on merger / closing of 4-year institutions; approve purchase or lease of major off-campus facilities; and establish campus service areas and define on-campus and off-campus activities and major facilities).

authorization, limiting their control over their property “as otherwise provided by law.”¹⁰ These limitations did not merely subject the UW and other four-year institutions to HEC Board review, as the UW argues.¹¹ Instead, they were *in addition to* express requirements for HEC Board review and approval of property purchases and leases. *Compare* Laws 1985, Ch. 370, § 92 amendment of RCW 28B.20.130(1) (adding “except as otherwise provided by law”) with amendment of RCW 28B.20.130(10) (adding caveat that Board powers to purchase or lease major off-campus facilities are “subject to the approval of the higher education coordinating board pursuant to subsection 5 of this act. . .”). The Legislature’s addition of the restriction “except as otherwise provided by law” was not limited to HEC Board approval, but was broad and sweeping, encompassing any law that the Legislature might adopt. Instead of the UW’s preferred “blanket immunity” approach advocated in *State*, the Legislature not only subjected the UW and other colleges and universities to HEC Board oversight, but also limited their general property management authority “as otherwise provided by law.”¹² This limitation brought the Regents’ property

¹⁰ *Id.* at § 92 (amending RCW 28B.20.130(1) applicable to UW), § 93 (amending RCW 28B.30.150(1) applicable to WSU), § 94 (amending RCW 28B.35.120(1) applicable to regional universities (WWU, CWU and EWU)), and § 95 (amending RCW 28B.40.120(1) applicable to Evergreen State College).

¹¹ UW Response at 29-30.

¹² The Legislature’s use of specific terms in one instance, and different terms in another, within the same section of a bill, compels the Court to accord different meanings to the different terms. “Where a statute specifically designates the things or classes of things

management authority back into line with pre-existing limitations on the UW Regents' contracting authority and authority to employ a president, faculty and other employees. *See* RCW 28B.20.130(2) and (8).

Reading the plain language of RCW 28B.20.130(1) as amended by Laws 1985, Ch. 370 § 92, and taking into account related provisions and amendments,¹³ it is clear that the Legislature intended to subject the UW Regents' authority to control UW property to such additional requirements "as otherwise provided by law," as part of a broader, comprehensive scheme whose overarching legislative intent was to provide for representation of "the broad public interest *above the interests of public colleges and universities.*" Laws 1985, Ch. 370, § 3 (emphasis added). The meaning of § 92's limitation is plain, not ambiguous; it specifies that the Regents' property control is limited by such requirements as the Legislature otherwise provides by law. This is the *opposite* of the all-powerful status the UW claims here.

Also contrary to the UW's argument, the Legislature did not "walk back" or reduce the scope of the limitation in RCW 28B.20.130(1), when it

upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius* -- specific inclusions exclude implication." *Washington Natural Gas Co. v. PUD No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

¹³ *Hirst*, 186 Wn.2d at 667.

adopted Laws of 1999, ch. 346, § 1. As the 1999 enactment stated, it was merely a consolidation of the UW's pre-existing statutes *related to the Metropolitan Tract*, not the UW's general authority to control other property. Laws 1999, ch. 346, §2. As such, it amended the statutes pertaining to the Metropolitan Tract (RCW 28B.20.382 - .396), and *not* the UW Regents' general powers in RCW 28B.20.130(1) that had been previously limited in 1985. Laws 1999, ch. 346, §§ 3-8. That such a "consolidation" also stated that it was not intended to diminish the UW's powers over the Metropolitan Tract is of no moment, and did not affect the substantive limitations on the Regents' powers (and those of WSU and the regional universities) imposed in Laws 1985, ch. 370.

The UW's other argument, that "except as otherwise provided by law" means only those laws that expressly amend Ch. 28B.20 RCW related to the UW, is also meritless. *See* UW Response at 37-39, 43. The UW's argument requires the re-wording of the phrase "except as otherwise provided by law," so that it would read "except as otherwise provided *in this chapter [ch. 28B.20 RCW]*." But this court has "declined to add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it." *Kilian v. Atkinson*, 147 Wash.2d at 20, 50 P.3d 638 (2002). "Courts may not read into a statute matters that are not in it and may not create legislation under

the guise of interpreting a statute.” *Cerillo*, 158 Wn.2d at 201.

The UW’s argument here is just a rehash of the argument it made in *Seattle v. State*— that it should have blanket immunity unless *specifically provided otherwise* in an amendment to Ch. 28B.20. This Court rejected that argument, and so did the Legislature when it added the broader limitation “except as provided by law,” which means *any* law the Legislature may adopt that “otherwise provides.”

To be clear, WSAMA is not advocating for implied amendment. But where, as here, the Legislature has adopted an “other statute” that expressly applies—RCW 36.70A.103, which by its terms applies to all state agencies—that other statute falls within the “except as otherwise provided by law” limitation in RCW 28B.20.130(1).

C. RCW 36.70A.103 is a “Law” Within the Meaning of RCW 28B.20.130(1), and Applies to the UW, a State Agency.

A key provision of the Growth Management Act, RCW 36.70A.103, requires that “[s]tate agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter, except as otherwise provided in RCW 71.09.250 (1) through (3), 71.09.342, and 72.09.333. Although the Legislature included exemptions within Section 103, it has provided no such “free pass” for the UW or other universities and colleges. None is appropriate here.

RCW 36.70.103 is a law enacted by the Legislature, and clearly applies to the UW as a state agency. As such, it limits the use of UW property, and falls within the “except as otherwise provided by law” limitation on the UW Regents’ powers under RCW 28B.20.130(1).

The Legislature has sound policy reasons to apply GMA plans and development regulations to state agency colleges and universities. The GMA’s coordinated, iterative planning scheme -- (countywide planning policies inform a city’s comprehensive plan, which in turn governs locally-adopted development regulations that must be consistent with and implement the comprehensive plan) -- is unworkable if development regulations are not applied equally, to large institutional land owners like colleges and universities, and Boeing, Microsoft, Google, and even small businesses, alike. And, because the GMA’s scope reaches far more than historic preservation (*e.g.*, protection of the environment and critical areas, and providing for housing, transportation water, sewer and stormwater),¹⁴ allowing colleges and universities to escape GMA development regulations would have real-world consequences.

If the UW is correct in this case, the UW is also free to subdivide and develop its Pack Forest or Ellis Biological reserve properties relying on

¹⁴ RCW 36.70A.020.

exempt water wells, contrary to this Court's command in *Hirst* that county comprehensive plans and development regulations must require a demonstration of legal and factual availability of water at both subdivision and building permit approvals. *Hirst*, 186 Wn.2d at 672-84. The UW would be free to expand the size of its Friday Harbor Lab premises without a new shoreline permit, or develop multiple large, free-standing docks to serve its properties on San Juan Island, without first obtaining a new shoreline substantial development permit and without complying with San Juan County Shoreline Master Program regulations limiting the size, number and aesthetic impact of docks.¹⁵ The UW could log its Pack Forest properties, right up to the edge of slopes above the Nisqually River and State Route 7, for example, notwithstanding Pierce County geological hazard area regulations¹⁶ that prohibit vegetation removal within a landslide hazard area and its buffer, and that we now know are necessary to an Oso-like landslide.

¹⁵ See, e.g., *Bellevue Farms Homeowner Association v. Shorelines Hearings Board*, 100 Wn.App. 341, 997 P.3d 380 (2000), *rev. denied* 142 Wn.2d 1014 (2000); App. B (Agreed Order, *University of Washington Friday Harbor Laboratories v. Port of Friday Harbor*, SHB No. 85-24 (1986)); and App. C (SJCC Section 18.50.020(B) (San Juan County shoreline master program applies to "every person, individual, firm, partnership, association, organization, corporation, *local or state governmental agency, public or municipal corporation, or other nonfederal entity* which develops, owns, leases, or administers lands, wetlands, or waters which fall under the jurisdiction of the Shoreline Management Act"); Section 18.50.190(B)(5) ("In general, only one form of moorage or other structure for boat access to the water shall be allowed on a single parcel. . . .") App. B, an Agreed Order of the Shorelines Hearings Board, is properly included as an appendix pursuant to RAP 10.4(c)'s "and the like" clause, because the Agreed Order functions as a "rule" or "regulation" by requiring a substantial development permit.

¹⁶ App. D (Pierce County Code Section 18E.80.040(A) ("vegetation removal shall be prohibited within active landslide hazard areas and associated buffers. . . .").

UW could even plunk down a replica of its former Law School building, the 8-story poured-concrete Brutalist monolith, Condon Hall,¹⁷ in the center of the City of Leavenworth, contrary to Leavenworth regulations requiring a uniform, “Old World Bavarian architectural theme.”¹⁸

To avoid such piecemeal results, the Legislature mandated application of GMA plans and regulations to state agencies like the UW via RCW 28B.20.130(1) and RCW 36.70A.103. And while the UW protests (UW Response at 44) that it is “not a scofflaw” and complies with other state laws (of its choosing), achievement of the GMA’s coordinated planning goals depends on more than voluntary, institutional good will.

A second policy underlying application of the GMA to state agencies lies in the Legislature’s recognition that the GMA requires counties and cities to balance different GMA priorities, and that because such balancing requires “full consideration of local circumstances” it is best accomplished by deferring to elected county and city officials.¹⁹ While the

¹⁷ [https://en.wikipedia.org/wiki/Condon_Hall_\(University_of_Washington\)](https://en.wikipedia.org/wiki/Condon_Hall_(University_of_Washington))

¹⁸ See Appendix D (Leavenworth Municipal Code Section 14.08.020(A) (“Within all of the commercial zone districts of the city and the city’s urban growth area, all new buildings, substantial alterations and changes to individual buildings “shall conform in exterior design to the Old World Bavarian architectural theme. . . .”); 14.08.020(F) (“An existing structure which is not compliant with the Old World Bavarian Architectural Theme shall not be relocated to the commercial zone districts.”). See also Ch. 14.08 LMC generally. For authority for inclusion of Leavenworth’s code sections as an appendix, see *supra* n. 2.

¹⁹ RCW 36.70A.3201 (“*the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county’s or city’s future rests with that community.*” Emphasis added.

UW correctly observes that the Legislature gave control over *educational* mission to universities,²⁰ the Legislature gave the power to make the GMA's balancing choices involving growth, zoning, the environment and the like to city and county elected officials. The Legislature prescribed that GMA balancing choices be codified in development regulations adopted in open meetings by *county and city elected officials*, after a robust public participation process, not undercut by *ad hoc* decisions of unelected university officials meeting behind a President's mansion's closed doors.²¹

Per RCW 36.70A.103, GMA plans and development regulations apply to the UW because UW is a "state agency." As the City has detailed, this Court has considered the UW a "state agency" for decades, and the UW has labeled itself a "state agency" or "an agency of the state" in pleadings and underlying documents in this case. City Reply Brief at 4-6 and citations therein. Now, however, the UW claims it is *not* a "state agency," at least, not for GMA purposes, because (UW argues) the Legislature did not define "state agency" to include "institutions of higher education" within the GMA itself. UW Response at 40-43. The UW's own actions disprove its claim. The UW *does* act pursuant to other statutory commands applicable to "state

²⁰ UW Response at 26-27.

²¹ "UW broke state open-meetings law 24 times judge rules," Seattle Times April 24, 2015 <http://www.seattletimes.com/seattle-news/education/uw-broke-state-open-meetings-law-24-times-judge-rules/>.

agencies,” even where those statutes do not separately define “agency” to include “institutions of higher education.”²² The evidence is clear. UW is a “state agency,” and has always freely admitted it -- except now, when it perceives a legal disadvantage. Facts matter. The UW cannot “have it both ways.” Most important, this Court has always considered UW to be a “state agency.” The Court should do so again concerning RCW 36.70A.103.

V. CONCLUSION

For all the foregoing reasons, the Court should reverse the decision below, and rule that the LPO applies to the UW. RCW 28B.130(1) expressly limits the UW’s property management control “as otherwise provided by law,” and the GMA is a “law” that “otherwise provide[s]” because it requires state agencies to comply to locally-enacted GMA development regulations such as the LPO. The UW is clearly a “state agency,” by its own admissions and per extensive appellate precedent. The trial court should be reversed.

²² Compare RCW 43.21C.120(1) and (2) (“state agencies” (but not “institutions of higher education”) required to adopt environmental regulations) with WAC 478-324-010 (UW SEPA rules); compare RCW 39.04.155 (“state agencies” and “local governments” may adopt “small works roster” procedures for awarding small public works contracts) with WAC 478-155-010 (UW small works roster procedures); compare RCW 42.56.040 (“state agencies” defined as “every state office, department, division, bureau, board, commission, or other state agency” shall publish in the WAC “guidance” and “rules of procedures” regarding public records) with WAC Ch. 478-250 and 478-276 (UW public records guidance and procedures).

Signed this 9th day of May, 2017.

Attorney for Washington State Association of Municipal Attorneys

A handwritten signature in black ink, appearing to read "Bob C. Sterbank". The signature is written in a cursive style with a horizontal line underneath it.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this 9th day of May, 2017, I sent a copy of the Brief of the Washington State Association of Municipal Attorneys as amicus curiae, via electronic mail, transmitted to the following:

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Attached hereto please find an electronic copy of the brief of amicus curiae of the Washington State Association of Municipal Attorneys with attached certificate of service in the above referenced case for filing. The appendix and attachments are being mailed to the Court by U.S. mail due to size.

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