

No. 74528-0-1

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

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JAMES CHUMBLEY, et al,

Appellants,

v.

SNOHOMISH COUNTY, et al,

Respondents.

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**APPELLANTS' REPLY TO JAKE BEGIS AND BEGIS BUILDING,  
INC.'S OPPOSITION**

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## INTRODUCTION

As set forth in the Appellants' Opening Brief, this appeal challenges the trial court's erroneous dismissal of Appellants' Petition under the Land Use Petition Act, RCW 36.70C.005 *et seq.* ("LUPA") on the grounds that an unwritten, "inferential decision" by the Snohomish County Department of Planning and Development Services (the "County") triggered LUPA's 21-day deadline to file a Petition.

In response to Appellants' opening brief, respondents Jake Begis and Begis Building, Inc. ("Begis), the developer on the project at issue, merely incorporate by reference the arguments of the County and the Snohomish County Health District (the "District"). Accordingly, pursuant to RAP 10.1(g)(2), Appellants incorporate their replies to both the County and District's response briefs herein

In his response brief, however, Begis also raises a separate procedural issue that, although easily resolved, requires brief consideration. Specifically, Begis asserts that he should be dismissed from this LUPA action because he is no longer an owner of the property at issue, nor performing any further work on it. This misses the point.

Under the explicit terms of LUPA, Begis, as the applicant for the permits at issue in the Petition, is a necessary party to the Petition. RCW

36.70C.040(2)(b)(i). Accordingly, while Begis is not required to actively participate, under the express terms of the statute, Begis must remain a party until final resolution of the Petition. Begis cannot pass the buck and evade liability to the owners by asserting, in essence, that the permits for the residence are the owners' problem now.

### **ARGUMENT**

#### **I. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTIONS TO DISMISS APPELLANTS' LUPA PETITION**

In his respondent's brief, Begis merely incorporates the facts and arguments raised in the County and Districts' respective briefs, pursuant to RAP 10.1(g)(2). Accordingly, pursuant to RAP 10.1(g)(2), Appellants respectfully refer to their replies to the County and Districts' briefs, each of which are incorporated herein by reference.

For all the reasons set forth in the Appellants' opening brief and each of their respective reply briefs, Appellants respectfully request that the Court reverse the trial court's order dismissing Appellants' LUPA Petition and rule that Appellants' Petition is timely, as a matter of law.

#### **II. BEGIS REMAINS A NECESSARY PARTY, AND MAY NOT BE DISMISSED**

Separate and apart from his incorporation of the County and District's arguments, Begis also argues that, regardless of the merits of the

County and District's arguments, Begis should be dismissed because he is no longer an owner of the property at issue, and is no longer performing any work on the property, rendering the case against him "moot." Begis' Respondent's Brief ("BRB") 7-8. As explained below, Begis' argument relies on a mischaracterization of the relevant facts, a complete disregard of the purpose behind the statutory requirement that applicants be made parties to LUPA proceedings, and a misstatement of the law regarding mootness.

**A. Begis' Argument Mischaracterizes the Facts**

In the facts section of his brief, Begis acknowledges that the Appellants sought relief from Begis under LUPA; that counsel for Begis recognized that relief was sought from Begis due to "the fact that it is out permit that is being challenged in this case"; and that the trial court also recognized that relief was being sought from Begis under LUPA. BRB 4-5. In the argument section, however, Begis spins a different tale, asserting that "Plaintiffs' counsel conceded that they sought [no relief]" from Begis. *Id.* at 7. This assertion is contradicted by the facts recited in Begis' facts section.

**B. Begis' Argument Ignores the Statutory Requirement that Applicants Be Made Parties to LUPA Proceedings**

Begis' argument completely ignores the statutory requirement that applicants be made parties to LUPA proceedings. LUPA's strict

procedural requirements require the inclusion of certain enumerated necessary parties. *See* RCW 36.70C.040(2) (“A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons ***who shall be parties to the review of the land use petition***”) (emphasis added). These include not only the owner, but also “[e]ach person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue.” RCW 36.70C.040(2)(b)(i). It is undisputed that Begis is the “applicant for the permit or approval at issue.” *See* CP 785 at ¶ 10.6. While “necessary parties” do not need to participate in the proceedings (*see, e.g.,* RCW 36.70C.080(6)), they do need to remain parties to the action, and they remain entitled to notice. *See, e.g., Quality Rock Products, Inc. v. Thurston Cty.*, 126 Wn. App. 250, 267, 108 P.3d 805, 813 (2005) (service on all necessary parties is jurisdictional prerequisite).

Begis’ arguments to the contrary ignore the obvious reason why the legislature made applicants as well as owners necessary parties to LUPA proceedings: because, if their permits are reversed, the applicants and the owners may have competing interests. This is particularly true if the applicant sells the property before the permit is reversed. LUPA does not state that, if the applicant sells the property, they are no longer a necessary party. Begis will certainly be an interested party if the permits are reversed

and the new owners sue Begis for selling them an improperly-permitted home. Thus, dismissal of Begis as a party is not warranted merely because Begis sold the property immediately after the County issued its Certificate of Occupancy.

**C. Begis' Argument Misstates the Law Regarding Mootness**

Moreover, Begis' reliance on mootness cases to support his argument is misplaced, for several reasons. First, as Begis admits, a case is not moot unless "the court cannot provide the basic relief originally sought, or can no longer provide effective relief," and as Begis implicitly concedes, the trial court could still grant the relief originally sought (a reversal of the permits at issue, and/or a requirement that the County conduct LDA and critical areas review of the OSS Grading Activities) if this court determines that "the trial court erroneously concluded that the plaintiffs' claims were time-barred. *See* BRB 7-8. The trial court's ability to grant relief from the County's flawed land use process is not undermined by the predictable fact that Begis might try to evade liability and shift responsibility for such relief to the new owners.

Second, in all of the cases cited by Begis, the case had become moot as to *all* of the parties, not just some of them. *Orwick v. City of Seattle*, 103 Wn. 2d 249, 253-54, 692 P.2d 793, 797 (1984) (petitioners' claim for declaratory and injunctive relief became moot before trial because "the

traffic citations issued to the petitioners have been dismissed”); *Josephinium Associates v. Kahli*, 111 Wn. App. 617, 622, 45 P.3d 627, 630 (2002) (landlord’s unlawful detainer action was moot because the tenant vacated her apartment); *Snohomish Cty. v. State*, 69 Wn. App. 655, 660, 850 P.2d 546, 549-50 (1993) (challenge to permits for timber harvest was moot because the permits had expired, the timber had been harvested, and “it was no longer possible for the court to provide the relief sought, which was the invalidation of the permits”); *Brown v. Vail*, 169 Wn. 2d 318, 324, 237 P.3d 263, 266 (2010) (constitutional challenge to Department of Correction’s three-drug protocol for execution was moot where “[t]he Department represented that it was poised to adopt a new protocol allowing for execution by a single dose of sodium thiopental, rather than the three-drug combination”). The mootness rationale cited by Begis – to “avoid the danger of an erroneous decision caused by the failure of the parties, who no longer have an interest in the outcome of a case, to zealously advocate their position” – simply does not apply when the case has not become moot *as to all parties*. See BRB 8 (citing *Orwick*, 103 Wn. 2d at 253).

Finally, the mootness cases cited by Begis were not LUPA cases and simply have no bearing in this LUPA proceeding. Instead, RCW 36.70C.040(2)(b)(i) dictates this Court’s response to Begis’ request for dismissal based on mootness, which must be denied.

**CONCLUSION**

For all the reasons set forth herein, Appellants respectfully request that the Court reject Begis' request for dismissal under the mootness doctrine, reverse the trial court's order dismissing Appellants' LUPA Petition, and rule that Appellants' LUPA Petition is timely, as a matter of law.

Dated May 31, 2016

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

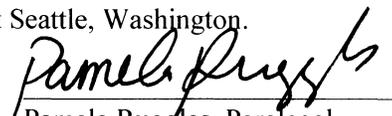
I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp , PLLC, whose address is 1218 Third Avenue, Suite 2500, Seattle, Washington, 98101.

I hereby certify that the original and one true and correct copy of the *APPELLANTS' REPLY TO JAKE BEGIS AND BEGIS BUILDING, INC.'S OPPOSITION* have been filed with the Court of Appeals of the State of Washington Division One and copies have been served electronically upon the following:

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I declare under penalty under the laws of the State of Washington that the foregoing information is true and correct.

DATED this 31st day of May, 2016, at Seattle, Washington.

  
Pamela Ruggles, Paralegal