Supreme Court No. 1037899

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SAMMAMISH
Petitioner

v.

WANTHIDA CHANDRRUANGPHEN
Respondent

and

DANIEL BLOOM
Intervenor/Respondent

AMICUS CURIAE BRIEF OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

State Statutes

Rules

Other Authorities

I. INTRODUCTION

By allowing secondhand service of a land-use petition on local governments and judicially imposing a new definition of "mail" that allows an extra three days for challenging land-use decisions issued by email, the Decision of the Court of Appeals, Division I (the Decision) upends longstanding precedent and creates confusion and inconsistency in an area of law where clarity is essential and previously prevailed.

Until the Decision, no state court had allowed secondhand service on local governments or held that the three-day tolling period that applies to service by "mail" under the Land Use Petition Act (LUPA), RCW 36.70C, applies to "email." Nor had any court extended the three-day tolling period to e-mail in any other legal context, including the Civil Rules. By fundamentally altering the rules and procedures controlling issuance of land-use decisions by, and service of process on, local governments, the Decision raises two issues of substantial public interest that should be decided by this Court.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

WSAMA is a non-profit corporation composed of attorneys who represent Washington's 281 cities and towns. WSAMA's members advise their clients on issues related to sufficiency and timeliness of service under LUPA and other laws. WSAMA also regularly advocates for the responsible development of municipal law through the filing of amicus briefs in state and federal courts.

III. ISSUES ADDRESSED BY AMICUS

1. Whether review is warranted because the Decision authorizes secondhand service of process on local governments despite contrary precedent. RAP 13.4(b)(1), (4).

2. Whether review is warranted because the Decision's definition of "mail" under RCW 36.70C.040(4)(a) improperly extends LUPA's strict 21-day limitations period and conflicts with this Court's precedent and the Civil Rules. RAP 13.4(b)(1), (4).

IV. STATEMENT OF THE CASE

WSAMA agrees with and adopts Petitioner's Statement of the Case.

V. ARGUMENT

A. Allowing secondhand service on governments conflicts with precedent and raises issues of significant public importance.

1. Secondhand service of process is not—and should not be—permitted on local governments, especially under LUPA.

Although this case involves service of a land-use petition under LUPA, LUPA incorporates—and the Decision interpreted—RCW 4.28.080, which controls personal service in the civil context generally. *See* RCW 36.70C.040(5). If left in place, the Decision will *de facto* amend LUPA and allow "secondhand service" on any local government entity subject to RCW 4.28.080, in any context.

Until now, no court in this state has allowed secondhand service on a local government. Instead, courts, including this one, have consistently recognized the "general rule" that "[w]hen a

statute designates a particular person or officer upon whom service of process is to be made in an action against a municipality, no other person or officer may be substituted." *Meadowdale Neighborhood Comm. v. City of Edmonds*, 27 Wn. App. 261, 264, 616 P.2d 1257 (1980); *see also Nitardy v. Snohomish Cnty.*, 105 Wn.2d 133, 134, 712 P.2d 296 (1986) (applying same principle to service on county); *Davidheiser v. Pierce Cnty.*, 92 Wn. App. 146, 960 P.2d 998 (1998); *Landreville v. Shoreline Cmty. College Dist. No. 7*, 53 Wn. App. 330, 332, 766 P.2d 1107 (1988) (applying same principle to service on state). Failure to serve the designated person or officer deprives the court of jurisdiction. *Meadowdale*, 27 Wn. App. at 267; *see also* RCW 36.70C.040(2).

This "general rule" plays an important role in protecting public interests. Persons expressly authorized to accept service for local jurisdictions are in positions of authority and are entrusted to act in the government's best interest as its agent. Timely responses in litigation are imperative, and missing

deadlines can result in significant consequences to governments and their taxpayers. This is especially true in LUPA, which imposes shortened timelines and "expedited" procedures to promote finality in land-use decisions. RCW 36.70C.010. *See Durland v. San Juan Cnty.*, 182 Wn.2d 55, 67, 340 P.3d 191 (2014); *RST P'ship v. Chelan Cnty.*, 9 Wn. App. 2d 169, 175, 442 P.3d 623 (2019).

Allowing secondhand service of a land-use petition to any government employee who happens to be in the vicinity conflicts with plain statutory language and would render RCW 36.70C.040(5) and the local-government-specific provisions of RCW 4.28.080(1)-(3) meaningless. It would also "open the door to a host of problems" when attempting to determine when and whether legally sufficient service occurred. *Meadowdale*, 27 Wn. App. at 267; *Nitardy v. Snohomish Cnty.*, 105 Wn.2d at 135 (legislature "acted reasonably" when naming individuals authorized to accept service).

In the context of LUPA specifically, this Court has recognized that requiring strict compliance with LUPA's procedural requirements furthers that statute's purpose, while applying "equitable exceptions" and "substantial compliance" does not. *Durland*, 182 Wn.2d at 68; *Habitat Watch v. Skagit Cnty.,* 155 Wn.2d 397, 406–10, 120 P.3d 56 (2005).

Here, LUPA and RCW 4.28.080(2) require personal service of a land-use petition on an incorporated city or town be by delivery "to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof." RCW 4.28.080(2). *See* former RCW 36.70C.040(5) ("Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process"). Because the land-use petition was delivered to "an office assistant at the front desk of the Sammamish City Hall building," Op. at 3, proper service did not occur, which should have resulted in prompt dismissal. RCW 36.70C.040(2). Any other result

conflicts with LUPA, well-established precedent, and significant public interests.

2. *Scanlan* is inapplicable and, even if it applied, the Decision conflicts with its holding.

Despite the rule that secondhand service is not allowed on local governments, the Court of Appeals, relying on this Court's decision in *Scanlan v. Townsend*, 181 Wn.2d 838, 336 P.3d 1155 (2014), concluded that because a city office assistant ultimately "caused the documents to be within the personal control of the city clerk at her official work station," service was completed properly. Op. at 14. But *Scanlan* did not involve service on a municipality or any other local government; it involved service on a private individual under a different provision of RCW 4.28.080.

Respondent suggests this distinction is irrelevant, but *Scanlan* rests "on the language" of former RCW 4.28.080(15),[1] which did not limit service to specific individuals and instead

[1] Now RCW 4.28.080(16). *See* Laws of 2015, ch. 51, § 2.

allowed for service by "leaving a copy of the summons at the house of [the defendant's] usual abode with some person of suitable age and discretion[.]" *Scanlan*, 181 Wn.2d at 840, 856. The specific statute at issue in *Scanlan* expressly *allowed* "secondhand" service by delivery. By contrast, the statutes at issue here, RCW 36.70C.040(5) and RCW 4.28.080(2), do not. Nor do other statutes specifying methods of service on local governments. *See* RCW 4.28.080(1), (3).

Respondent also cites the current version of RCW 36.70C.040(5), amended *after* attempted service of the land-use petition in this case to allow service by delivering a copy of the petition "to the office of a person identified by or pursuant to RCW 4.28.080," to suggest the Legislature intended to allow anyone working in "offices" of the named individuals to accept service. Resp. at 15. But Respondent has not argued the amendment applies retroactively, and the plain language of the prior version of the statute is clear, as is applicable appellate precedent. Besides, even assuming this case involved the current

version of the statute, Respondent served the City Hall's front desk, not the office of the mayor, city manager, or city clerk, as required.

Scanlan also specifies secondhand service must be accomplished by "hand-to-hand" delivery and there is no evidence that occurred here. *Scanlan*, 181 Wn.2d at 841 (person who received summons "later handed the summons and complaint directly to" the appropriate person); *Covington Land, LLC v. City of Covington*, 2021 WL 2809610, at *4 (Ct. App. July 6, 2021).

The Decision and Respondent also emphasize that the City Clerk was working remotely.[2] Aside from the fact that the statute's language and prior court decisions interpreting it control, this is a red herring. It is unrealistic to expect the employees listed in RCW 4.28.080(2) to stay in their offices

[2] The Decision states, without citation or evidence, that remote work is "at plain variance" with the Legislature's expectations when enacting RCW 4.28.080(2).

every minute of the working day just in case someone stops by to deliver service. Instead, municipalities, counties, and state agencies take appointments, making it *easier* to effect service.

B. Applying a three-day tolling period to emailed land-use decisions is contrary to precedent and confuses the standards that control timeliness of service.

1. The Decision creates legal inconsistencies.

LUPA explains that its strict 21-day appeal period starts to run "[t]hree days after a written decision is *mailed* by the local jurisdiction . . . ." RCW 36.70C.040(4)(a) (emphasis added). "Mail" means postal mail, not email—a simple concept the Decision muddles.

The Civil Rules govern LUPA to the extent they are consistent with it. RCW 36.70C.030(2). Like LUPA, CR 5 also provides three extra days for mailing and states the obvious: that "mailing" occurs through the Post Office. CR 5(b)(2)(A). Consistent with that plain language, this Court reads "mail" in CR 5 as "postal matter carried by the United States Postal Service." *Cont'l Sports Corp. v. Dep't of Labor and Indus.*, 128

Wn.2d 594, 602, 910 P.2d 1284 (1996).[3]

This Court has explained that the purpose of a three-day tolling period for service accomplished by "mail" is to "compensate for the transmission time when the notice is mailed." *In re Est. of Toth,* 138 Wn.2d 650, 655, 981 P.2d 439 (1999); *accord Dandindo, Inc. v. U.S. Dep't of Transp.*, 729 F.3d 917, 921 (9th Cir. 2013) (U.S. Postal Service regulations, federal court decisions, and federal rules all "assume that mail will take three days to arrive at its destination").

Given that clear language and purpose, it is not surprising that the Civil Rules do not allow an extra three days for service by email. Instead, service by "electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day."

[3] Respondent argues that *Continental Sports* is irrelevant because it was decided "long before email became the primary method of correspondence in commerce and government," Resp. at 22, but the ordinary definition used in that decision is consistent with the current definition in CR 5(b)(2), and the Rule's treatment of electronic service as "other means" of service, not "mail." CR 5(b)(7).

CR 5(b)(7). Other courts recognize that the same distinction controls the start of LUPA's strict limitations period. *See*, *e.g.*, *RST P'ship v. Chelan Cnty.*, 9 Wn. App. 2d 169, 177, 442 P.3d 623 (2019) (assuming 21-day timeline would apply to land-use decision issued by email). Even the parties here acknowledged in superior court that "email" does not qualify as "mail" under LUPA. CP 241 (order granting motion to dismiss) ("It is undisputed that the City did not mail the decision.").

Despite this clear distinction, the Decision reads "mailed" in LUPA to include email, thereby extending the limitations period by three days for land-use decisions issued via email. In addition to overstepping its authority–it is axiomatic that only the Legislature may amend a statute–the Decision conflicts with authority from this Court and the Court of Appeals. Resolving that conflict to eliminate disputes over the commencement and length of LUPA's limitations period are issues of substantial public interest warranting this Court's review.

2. The Decision misapplies *Confederated Tribes.*

The Decision rests on *Confederated Tribes and Bands of Yakama Nation v. Yakima Cnty.*, 195 Wn.2d 831, 837, 466 P.3d 762 (2020). As described in the City's Petition for Review, the question before this Court in *Confederated Tribes* was not whether email is "mail" for purposes of RCW 36.70C.040(4)(a)'s three-day tolling period. No one disputed in that case whether "mailing" had occurred. The "principal disagreement" was whether the land-use decision had been issued by adoption of a resolution for purposes of RCW 36.70C.040(4)(b). *Confederated Tribes*, 195 Wn.2d at 836. This Court held that RCW 36.70C.040(4)(a) applied because the decision had been reduced to writing and sent to the petitioner. *Id*. at 838–39. Whether it was sent by mail or email was immaterial and therefore *dictum*. *See Sw. Suburban Sewer Dist. v. Fish*, 17 Wn. App. 2d 833, 841 n.3, 488 P.3d 839 (2021) (defining dictum).

When interpreting a statute, this Court "will adopt the

interpretation which best advances the legislative purpose." *Bennett v. Hardy*, 113 Wn.2d 912, 928, 784 P.2d 1258 (1990); *Portugal v. Franklin Cnty.*, 1 Wn.3d 629, 651, 530 P.3d 994 (Wash. 2023). The Decision fails to do that. Instead, it undermines LUPA's purpose to establish "uniform, expedited appeal procedures" and provide "consistent, predictable, and timely judicial review." RCW 36.70C.010. It makes no sense that the Legislature would make it more time-consuming to issue land-use decisions than other types of written documents. Treating email differently under LUPA creates a confusing and conflicting standard in an area of law where predictability is paramount.

3. Respondent's contrary arguments fail.

Respondent claims if email is distinguishable from mail for purposes of LUPA's three-day tolling period, email can never be used as a "legitimate means of issuing a land use decision" because LUPA does not use the word "email." Resp. at 23–24. This narrow interpretation ignores statutory context and leads to

absurd results at odds with legislative intent and the public interest. *See Est. of Bunch v. McGraw Residential Center*, 174 Wn.2d 425, 433, 275 P.3d 1119 (2012) ("duty to avoid absurd results").

Respondent is wrong that the City's interpretation would prevent local jurisdictions from using email. If not mailed, a land-use decision issues on "the date on which the local jurisdiction provides notice that a written decision is publicly available." RCW 36.70C.040(4)(a). Email is one way of making a document publicly available, as occurred here. *See Habitat Watch v. Skagit Cnty.*, 155 Wn. 2d 397, 409–10, 120 P.3d 56 (2005) ("At the very latest, the written decisions were issued *when the county made them available* on June 24, 2002, in response to [petitioner's] public disclosure request.") (emphasis added); *see also* CP 242 (City provided noticed on May 8, 2023, that the written decision was publicly available).

Respondent contends that for something other than "mailing" to trigger the 21-day period, the City had to provide

public notice under SDC 21.09.010.L. Resp. at 24 n.47. But LUPA does not require any specific method for making a document publicly available and local jurisdictions have the right to select which issuance process they will use. *Confederated Tribes*, 195 Wn.2d at 837. Regardless, the provision Respondent cites applies to final permit decisions, not cancellation of an application to amend a short plat, as occurred here. *See* SDC 21.09.010.B.

Respondent further suggests a three-day tolling period for email service is warranted because emailed documents sometimes contain street addresses and a petitioner "would have no way of knowing whether the City" mailed the document. Resp. at 24–25. The application of three-day tolling does not turn on whether a document contains a street address. *See* CR 5(b)(2). Including a street address on an emailed letter is not a "bait and switch" tactic. It is simply standard practice. There is no rational or legal reason to allow three extra days to accomplish service when a land-use decision issues instantaneously via email.

VI. CONCLUSION

The Decision erroneously allows secondhand service on governments and a three-day tolling period for service of land-use decisions by email, thereby raising issues of substantial public interest warranting this Court's review.

Respectfully submitted this 14th day of March, 2025.

We certify that this Amicus Brief contains 2500 words in compliance with RAP 13.4(h) and RAP 18.17(c)(9).

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CERTIFICATE OF SERVICE

I certify that I e-filed the Amicus Curiae Brief of the Washington State Association of Municipal Attorneys through Washington State Court's Secure Access web portal to be served on all parties or their counsel of record on the date below as indicated.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 14th day of March, 2025.

s/ Amanda Kleiss
Amanda Kleiss, Paralegal

VAN NESS FELDMAN LLP

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