Supreme Court No. 1037899

Court of Appeals No. 85756-8-I
(King County Superior Court No. 23-2-09498-1 SEA)

CITY OF SAMMAMISH,

Appellant,

vs.

WANTHIDA CHANDRRUANGPHEN,

Respondent,

and

DANIEL BLOOM,

Intervenor/Respondent.

RESPONDENT'S RESPONSE TO AMICUS CURIAE BRIEF OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS

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I. INTRODUCTION

In its Amicus Brief, the Washington State Association of Municipal Attorneys ("WSAMA") claims the Court of Appeals Division One upended precedent. Contrary to this assertion, the Court of Appeals decision correctly applied the secondhand service precedent set by this Court in *Scanlan v. Townsend.*[1] The Court of Appeals also correctly applied this Court's *Confederated Tribes & Bands of Yakama Nation v. Yakima County*[2] precedent that email is a form of mail for purposes of the Land Use Petition Act ("LUPA"). The Court of Appeals logically applied existing case law in a manner consistent with the specific facts at hand. Its decision is not in conflict with a decision of this Court or any Court of Appeals, raises no significant questions of constitutional law, and did not involve an issue of substantial public interest that would warrant further review by this Court.

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[1] 181 Wn.2d 838, 856, 336 P.3d 1155 (2014).
[2] 195 Wn.2d 831, 466 P.3d 762 (2020).

II. ARGUMENT

A. Secondhand Service on Governments is Appropriate and Consistent with the *Scanlan* Precedent.

WSAMA claims the Court of Appeals' application of the service of process rules and applicable caselaw amounts to a *de facto* amendment of LUPA. The Court of Appeals decision does not amend or even conflict with LUPA. The decision properly applies precedent set by the Supreme Court in *Scanlan,* which interprets the service of process rules under RCW 4.28.080. Ironically, WSAMA asks the Court to add limits to who can effect service under RCW 4.28.080 and CR 4(c), something the *Scanlan* Court deemed improper.[3]

Scanlan approves secondhand service, ruling that the personal service statute does not require every person who assisted in the personal delivery of documents be an "agent" of the serving party.[4] So long as each person in the chain of service

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[3] *Scanlan,* 181 Wn.2d at 849.
[4] *Id.,* 181 Wn.2d at 848.

is over 18 years old and legally competent, personal service has been achieved.[5] *Scanlan* clarified that secondhand service is personal service for purposes of RCW 4.28.080.[6] *Scanlan* reiterated the Court's disapproval of further limiting who can effect service within the limits of CR 4(c).[7]

The Court of Appeals correctly determined that service was properly accomplished by way of "secondhand" personal service.[8]

1. *Secondhand Service is Consistent with LUPA and the Service Statute*.

WSAMA claims that allowing secondhand service somehow conflicts with LUPA. Nothing in LUPA changes the service standards under RCW 4.28.080, which authorize secondary service. WSAMA conflates LUPA's procedural requirements and the requirements of the statute governing

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[5] *Id.* 181 Wn.2d at 850.
[6] *Id.* 181 Wn.2d at 848.
[7] *Id.* 181 Wn.2d at 849.
[8] *Chandrruangphen v. City of Sammamish*, 32 Wn.App.2d 527, 539, 556 P.3d 1137 (2024).

service of process, RCW 4.28.080. Under LUPA, service must be made in accordance with RCW 4.28.080.[9] RCW 4.28.080 designates the officials to be served to effectuate service of process on a municipality. The requirements of RCW 4.28.080 may be met in the manner set forth in the statute and case law interpreting the statute. *Scanlan* approved the use of secondhand service under RCW 4.28.080.[10]

WSAMA's approach would require a higher service of process standard under LUPA than RCW 4.28.080 and CR 4(c), creating a separate, overly strict compliance rule only for land use petitions. No other type of judicial appeal would have the same restrictions on personal service under RCW 4.28.080 and CR 4(c). The *Scanlan* Court specifically disapproves of "add[ing] additional limits on who can effect service onto the limits contained in CR 4(c)."[11]

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[9] RCW 36.70C.040(5).
[10] *Scanlan,* 181 Wn.2d 838.
[11] *Scanlan,* 181 Wn.2d at 849.

Neither LUPA nor RCW 4.28.080 prohibit non-agent individuals from passing service documents to the ultimate recipient in the course of personally serving documents, as happened in this case. As the Court of Appeals noted, "Hachey, the city clerk, was working from home and, therefore, was not present in the city clerk's office during the City's official normal office hours. She was thus not available to receive service as provided for in RCW 4.28.080(2)."[12] The process server served Bravo "thereby satisfying the requirements to serve process pursuant to CR 4(c). Although Bravo was not authorized to receive service on behalf of the City, he met the qualifications to serve process."[13] Hachey was called into work to process the documents. "It is clear that Bravo's role was to receive documents, he did so, and he caused the documents to be within the personal control of the city clerk at her official work

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[12] *Chandrruangphen*, 32 Wn.App. at 540–41 (internal footnote omitted).
[13] *Id.*

station."[14] As stated by the City Clerk herself, "process service was sufficient."[15]

2. *Public Policy Supports Secondary Service.*

WSAMA cites the LUPA deadlines as playing an important role in "protecting public interest."[16] WSAMA claims applying secondhand service would somehow be against the government's "best interests", implying that the government's best interest is to avoid being served by individuals with valid legal claims. It is abhorrent that our government would seek to avoid service rather than allow their residents the opportunity to be heard. Given LUPA's short statute of limitations, it is imperative a petitioner have a fair opportunity to serve a municipality and have its case heard on the merits. The Supreme Court instructs that LUPA "should not be so woodenly

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[14] *Id.*

[15] CP 170.

[16] Amicus Brief, p. 4.

interpreted as to prevent judicial review on the merits."[17] In this vein, it is essential that municipalities ensure petitioners have a reasonable opportunity to effectuate service without hindrance from the municipality.

This is especially true in the current "work from home" environment. As illustrated by this case, the statutorily designated officials frequently work remotely. This makes service within the short LUPA deadlines increasingly difficult. The legislature itself recognized this problem, recently amending LUPA to broaden who may be served: the "office of a person" rather than the "person" identified in RCW 4.28.080.[18] While the Court of Appeals did not rely on this amendment which was not yet in effect when it ruled, the amendment demonstrates a recognition of the difficulty in serving municipalities and a legislative policy to more readily allow such service.

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[17] *Confederated Tribes*, 195 Wn.2d at 838.
[18] Laws of 2024, Chapter 347.

WSAMA hyperbolically fears "secondhand service of a land-use petition to any government employee who happens to be in the vicinity…"[19] Mr. Bravo was not merely "in the vicinity"; he was at the front desk of the City Clerk's Office.[20] Moreover, the City Clerk was not, as WSAMA implies, away from her desk for a minute. She was working from home, as is common in today's remote work environment.

WSAMA has neither law nor good policy arguments to ignore the *Scanlan* precedent allowing secondhand service and the legislature's desire to more readily allow service. As a matter of common sense and policy, there is no reason why secondary service should not be "personal service."

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[19] Amicus Brief, p. 5.
[20] CP 91.

B. The Court of Appeals Properly Applied the *Confederated Tribes* Precedent to Allow Three Additional Days Under the LUPA Deadline.

1. *WSAMA'S CR 5 Argument is Improper.*

WSAMA cites CR 5 in support of its argument that email should not be treated as mail. WSAMA improperly introduces a new argument not previously raised by either party. "The Supreme Court does not consider arguments raised solely by an amicus."[21] Moreover, CR 5 deals with service of "every pleading *subsequent* to the original complaint."[22] This case deals with initial service of process under CR 4 and RCW 4.28.080. CR 5 is inapplicable.

2. *Supreme Court Ruling that Email is Equivalent to Mail Under LUPA is Not Dicta.*

WSAMA argues that the Court of Appeals' reliance on *Confederated Tribes* precedent conflicts with Supreme Court and Court of Appeals authority. However, *Confederated Tribes* is the

[21] *State v. Kelly*, 4 Wn.3d 170, 561 P.3d 246, n. 19 (2024).
[22] Emphasis added.

primary precedent in this case. In *Confederated Tribes*, this Court ruled that the County's "e-mail correspondence satisfies the 'mailing' requirement of RCW 36.70C.040 (4)(a)."[23] The Court of Appeals properly applied this Court's holding in *Confederated Tribes* to rule that a land use decision is issued three days after a written decision is emailed for the purpose of obtaining LUPA review.[24]

As briefed in prior pleadings, this Court's *Confederated Tribes* ruling was not dicta. The ruling would collapse without a finding that email is the equivalent of mail for under LUPA's issuance rules. Without the Court's determination that email constitutes mail for purposes of RCW 36.70C.040, the LUPA 21-day period would begin with the Board's resolution rather than the transmittal of the resolution, thereby exceeding the LUPA deadline. The Court's ruling that email satisfies LUPA's mailing

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[23] 195 Wn.2d at 836.
[24] *Chandrruangphen*, 32 Wn.App.2d at 538.

requirement meant service was made within the LUPA deadlines.[25]

The Court of Appeals decision is consistent with this Court's analysis in *Confederated Tribes* and extends that prior analysis consistently to the facts of this case:

> Our Supreme Court unanimously held that the Yakama petition was timely pursuant to RCW 36.70C.040(4)(a), concluding that "Yakama filed its petition in superior court within 19 days of the county's mailing and within the 21-day filing period." Confederated Tribes. . . . The court employed the term "mailing" throughout the opinion, making no distinction between mail and e-mail. As noted by the court, "[t]here is no dispute that this e-mail correspondence satisfies the 'mailing' requirement of RCW 36.70C.040(4)(a)." Confederated Tribes. . . . The message is clear: e-mail transmittal of a land use decision constitutes a mailing and, therefore, is governed by RCW 36.70C.040(4)(a). Thus, we hold that, for the purpose of obtaining LUPA review, a land use decision is "issued" three days after a written decision is e-mailed by the local jurisdiction.[26]

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[25] *Confederated Tribes*, 195 Wn.2d at 838.
[26] *Chandrruangphen*, 32 Wn.App.2d at 538.

3. *City's Decision Was Issued Via Email Rather Than Being Made Publicly Available.*

LUPA defines "issuance" as a mailed written decision, a written decision made publicly available, a decision made by ordinance or resolution, or an unwritten decision.[27] Rather than acknowledge that email is the equivalent of mail under LUPA, WSAMA incongruously asserts that the City's Decision was actually "issued" by being made "publicly available." "Email is one way of making a document publicly available, as occurred here."[28] WSAMA relies on *Habitat Watch v. Skagit Cnty.*,[29] in which a decision was made publicly available through a response to a public disclosure request. *Habitat Watch* is inapposite.

WSAMA argues that LUPA does not define "publicly available" and "local jurisdictions have the right to select which issuance process they will use."[30] The City, in fact, selected

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[27] RCW 36.70C.040(4).
[28] Amicus Brief, p. 15.
[29] 155 Wn.2d 397, 120 P.3d 56 (2005).
[30] Amicus Brief, p. 16.

which issuance processes it will use by adopting City Code requirements defining public notification, none of which the City complied with. The City's public notice provisions include posting at the project site; mailing by first class mail; and publishing on the City's official website.[31] The City did not follow any of its required notification methods, merely emailing its Decision to Ms. Chandrruangphen's attorney unaccompanied by a first class mailing. While LUPA may not mandate any specific method, City Code does, and City Code does *not* allow public notice via a private email to an applicant's attorney.

LUPA's companion statute, RCW 36.70B, governs local project review by municipalities. The City's public notice requirements follow this statute, which designates as "reasonable methods to inform the public" posting the property; publishing notice in newspapers; notifying public or private groups with known interest; notifying the news media; placing notices in

[31] SDC 21.09.010.H.

newspapers or trade journals; publishing notice in agency newsletters or sending notice to agency mailing lists; and mailing to neighboring property owners.[32]

LUPA, RCW 36.70C.040, in turn, governs appeals from local project review to which the foregoing notices apply. Under the rules of statutory construction, the Court will read "provisions in *pari materia* with related provisions" to determine legislative intent underlying the entire statutory scheme to achieve harmony and integrity of the respective statutes.[33] LUPA's references "publicly available" without definition. This should be read in *pari materia* with RCW 36.70B.110(4) defining the "methods to inform the public" of the applications underlying the local jurisdiction's decision. In any case, an email

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[32] RCW 36.70B.110(4).

[33] *In re Estate of Kerr*, 134 Wn.2d 328, 336, 949 P.2d 810 (1998).

to an applicant's attorney is not publicly available. Rather, it is the equivalent of mailing the decision to the applicant.

WSAMA's argument that an email from City staff to an applicant is not "mailing" but is "publicly available" is absurd. There is no precedent or reasonable basis to conclude an emailed decision cancelling an application emailed only to an applicant's attorney should qualify as a "publicly available" decision. The City's Decision was not even made publicly available to Mr. Bloom, the Intervenor, let alone the general public.

WSAMA wrongly asserts that Ms. Chandrruangphen "acknowledged in superior court that 'email' does not qualify as 'mail' under LUPA, citing the Superior Court Order."[34] The Superior Court references Ms. Chandrruangphen's position equating "mailing" with "emailing."[35] The Superior Court then rejected the "argument that the LUPA permits the 'mailing' of a decision by a means other than conventional mail, such as by

[34] Amicus Brief, p. 12.
[35] CP 241.

email."[36] This ruling was overturned by the Court of Appeals decision.

WSAMA also misconstrues Ms. Chandrruangphen's point that the City's Decision was addressed to Ms. Chandrruangphen's attorney's street address, but only sent via email. Ms. Chandrruangphen could not know whether the City was sending its Decision through the post office, as implied by the letter's address, or if the email to her attorney would be the only notification from the City. If email is not the equivalent of mail under LUPA, an applicant cannot know when the LUPA time period will begin because the applicant does not know if the decision will be subsequently delivered via the postal service. Municipalities may use this imbalance in power to deter an applicant's ability to appeal under LUPA, as was the case here.

[36] *Id*.

III. CONCLUSION

The Court of Appeals properly applied the secondhand service precedent set by this Court in *Scanlan.*[37] It also properly applied the ruling in *Confederated Tribes* that email is a form of mail for purposes of LUPA.[38] The Court of Appeals decision is not in conflict with a decision of this Court or any Court of Appeals; to the contrary, the decision is wholly consistent with precedent. There are no significant questions of constitutional law. The decision does not involve an issue of substantial public interest that would warrant further review by this Court. The Petition should be denied and the Court of Appeals decision should be upheld.

I certify that the foregoing Response to Amicus Brief contains 2,442 words, excluding the parts of the document

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[37] 181 Wn.2d at 856.
[38] 195 Wn.2d at 836.

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DATED this 10th day of April, 2025.

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2025-04-10 Response to Amicus Brief w-TOC, TOA 01-318-1

DECLARATION OF SERVICE

I, Benita K. Lamp, am a citizen of the United States, resident of the State of Tennessee, that on this date, I caused to be served a true and correct copy of the foregoing RESPONDENT'S RESPONSE TO AMICUS CURIAE BRIEF OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS, with the Clerk of the Court using the CM/ECF system, which will electronically serve all counsel of record.

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I declare under the penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

DATED this 10th day of April, 2025, in Nolensville, Tennessee.

BENITA K. LAMP

JOHNS MONROE MITSUNAGA KOLOUSKOVA, PLLC

April 10, 2025 - 3:05 PM

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