Supreme Court No.
Court of Appeals, Division I No. 85756-8
King Co. Superior Court Cause No. 23-2-09498-1

CITY OF SAMMAMISH,

Petitioner,

v.

WANTHIDA CHANDRRUANGPHEN,

Respondent.

PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

The purpose of Washington's Land Use Petition Act (LUPA) is to establish "uniform expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review." RCW 36.70C.010. Accordingly, Washington courts have consistently required strict compliance with LUPA's procedural provisions, including its service of process requirements on government entities and its 21-day appeal period.

This case involves two attempts by Respondent Wanthida Chandrruangphen (Chandrruangphen) to serve a Land Use Petition (Petition) on the City of Sammamish (City), neither of which met LUPA's requirements. The first attempted service was on the wrong person. RCW 36.70C.040(5) provides that service on the local jurisdiction must be pursuant to RCW 4.28.080(2), which for cities requires service on the mayor, city

manager, or their designated agent, or to the city clerk.[1] Instead, Chandrruangphen's process server left the Petition at the front desk of Sammamish City Hall with an office assistant who was not authorized or designated to accept service on the City's behalf.

Nevertheless, the Court of Appeals ruled that service was proper because the Petition eventually reached the City Clerk. The Court of Appeals based its ruling on the doctrine of "secondhand service," under which the office assistant purportedly became an "unwitting process server."[2] While this Court has upheld secondhand service with respect to personal service on *individuals*,[3] no other reported Washington decision has applied secondhand service to government entities. Since strict compliance is required when serving process on

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[1] RCW 4.28.080(2).
[2] Slip. Op. at 14.
[3] *Scanlan v. Townsend*, 181 Wn.2d 838, 856, 336 P.3d 1155, 1164 (2014).

municipalities, the Court of Appeals' decision conflicts with decisions of this Court, as well as published decisions of the Court of Appeals.

In addition, the Court of Appeals' decision impacts all forms of state and local government entities, and not just in the context of LUPA. Under the reasoning of the decision, secondhand service is an option in all cases where personal service is required on a state or local officer or employee. Therefore, clarifying the applicability and defining the appropriate scope of secondhand service with respect to government entities is an issue of substantial public interest under RAP 13.4(b)(4).

The second attempted service was untimely. The City emailed notice of its land use decision to Chandrruangphen on May 8, 2023, which means the 21-day deadline for serving the LUPA Petition on the City was May 30, 2023, taking into

account that May 29, 2023 was Memorial Day. The City Manager was served on June 1, 2023, which was day 24.

RCW 36.70C.040(4), which addresses the date on which a land use decision is issued, has been described in one Court of Appeals decision as a "quagmire."[4] The trial court in this case ruled that since the decision was emailed, the 21-day appeal period ran from the date the email was sent. The Court of Appeals reversed, holding that the decision was issued three days after the email was sent, relying on language in RCW 36.70.040(4)(a) that applies to regular postal delivery, also known as "snail mail."

The Court of Appeals' interpretation conflicts with decisions of this Court and the Court of Appeals distinguishing

[4] *RST P'ship v. Chelan Cnty.*, 9 Wn. App. 2d 169, 178, 442 P.3d 623, 628 (2019).

between regular mail and other forms of delivery and warrants review under RAP 13.4(b)(1).[5]

The Court of Appeals' interpretation also raises issues of substantial public interest because it ignores the real-world difference between email, which is delivered almost instantaneously, compared to postal mail, which can take several days to arrive. Given the purposes of LUPA and the need for clarity with respect to the strict timelines for filing and serving a petition, local jurisdictions, applicants, property owners, and other parties need to know how the 21-day period is measured. Accepting review of this case will allow the Court to provide helpful guidance on these two significant LUPA procedural issues.

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[5] *See*, *e.g.*, *Habitat Watch v. Skagit Cnty.*, 155 Wn.2d 397, 408-09, 120 P.3d 56 (2005) (holding that when it is unclear whether a decision was mailed, it was issued at the very latest when it is made available to the petitioner); *Cont'l Sports Corp. v. Dep't of Lab. & Indus.*, 128 Wn.2d 594, 601, 910 P.2d 1284 (1996) (holding that "mail" means only "postal matter carried by the United States Postal Service").

II. IDENTITY OF RESPONDENT AND COURT OF APPEALS' DECISION

The petitioner, the City of Sammamish, was the respondent in the Court of Appeals and the trial court. The City petitions for review of the published decision terminating review entered on October 7, 2024, by Division I of the Court of Appeals (the "Decision"). The City's Motion for Reconsideration of the Decision was denied by the Court of Appeals on December 12, 2024. A copy of the Decision is attached hereto, as well as a copy of the appellate court's Order Denying the City's Motion for Reconsideration.

III. ISSUES PRESENTED FOR REVIEW

1. In a LUPA case, do the service of process requirements of RCW 36.70C.040(2) and (5) and RCW 4.24.080(2) allow for "secondhand" service on local jurisdictions?

2. Under RCW 36.70C.040(4)(a), when a local jurisdiction emails notice of a land use decision to an applicant, is the 21-day appeal period tolled for three days as if it had been sent by postal or "snail" mail?

IV. STATEMENT OF THE CASE

RAP 13.4(b) sets forth the standards for discretionary review of Court of Appeals decisions by this Court. Review of the Decision is appropriate under RAP 13.4(b)(1) because the Decision conflicts with decisions of this Court, and under RAP 13.4(b)(4) because it involves an issue of substantial public interest that this Court should determine.

A. Cancellation of Chandrruangphen's Short Plat Alteration Application Due to Inactivity

In 2019, Elizabeth Evans, then the owner of property identified as King County Tax Parcel Number 2025069110 ("Property"), applied to the City for a Short Plat Alteration ("Application"), requesting removal of the Property's non-build

status, which had been imposed through the short plat process. Clerk's Papers ("CP") at 3, 109, 189. On February 22, 2021, Chandrruangphen purchased the Property from Evans and assumed the Application. CP at 3, 69.

On July 6, 2021, the City informed Chandrruangphen that the Application was cancelled due to inactivity, but it was reinstated on August 10, 2021. CP at 3, 69, 104. During the remainder of 2021, 2022, and the first part of 2023, the City corresponded with Chandrruangphen about necessary corrections and other actions needed to complete the processing of the application. CP at 11-13. Although the City issued multiple extensions, Chandrruangphen did not complete the necessary corrections. Accordingly, the City emailed a letter to Chandrruangphen notifying her that the Application was cancelled due to inactivity on May 8, 2023 (Cancellation Letter). CP at 2. The Cancellation Letter constitutes the final "Land Use Decision" in this case for the purpose of LUPA.

B. Two Attempts to Serve the LUPA Petition

Chandrruangphen filed her Petition in King County Superior Court on May 24, 2023, 16 days after she received the Cancellation Letter. CP at 1-10. On that same day, a process server left the Petition with Julian Bravo, an Office Assistant II, who was staffing the front desk of Sammamish City Hall. CP at 25, 91. The process server made no attempt to ascertain whether Mr. Bravo was an individual authorized to accept service of process on the City. CP at 91-92. Moreover, it is undisputed that Mr. Bravo was not authorized to accept service of process on the City. CP at 92.

Mr. Bravo then contacted the City Clerk, Lita Hachey, who was working from home that day. CP at 227-28. The City Clerk came to City Hall later that day and received the Petition. CP at 228. Although the record indicates the City Clerk took possession of the Petition on the afternoon of May 24, 2023, there is no indication in the record that there was a "secondhand

service" in which Mr. Bravo personally handed the Petition to Ms. Hachey. CP at 228.

Subsequently, Chandrruangphen attempted to serve the Petition again. On June 1, 2023, City Manager Scott MacColl was served with the Petition—24 days after the Land Use Decision was emailed to Chandrruangphen. CP at 225.

C. Procedural History

The City moved to dismiss the Petition based on, among other things, defective service of process. The trial court found that the first service attempt was on the wrong individual and the second service attempt was untimely. It therefore granted the City's motion to dismiss. CP 237-44.

Division I of the Washington Court of Appeals reversed, ruling that the City Clerk was ultimately served through "secondhand service" and that service on the City Manager was timely based on language in RCW 36.70C.040(4) that applies to decisions sent by postal mail. The Decision, published on

October 7, 2024, is attached to this Petition for Review. The City timely filed a Motion for Reconsideration with Division I, which was denied after review of an Answer from Chandrruangphen. The appellate court's Order Denying the City's Motion for Reconsideration, dated December 12, 2024, is also attached. The City now seeks this Court's review.

V. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A. The Court of Appeals' Decision applying "secondhand service" to local jurisdictions in LUPA cases conflicts with precedent and raises issues of substantial public interest.

1. Washington precedent is clear that strict compliance is required for service of process on government entities.

Well-established precedent in Washington case law makes clear that strict compliance with the statutory requirements of service of process is required for a trial court to

acquire jurisdiction over a local government.[6] This is true for all types of actions against state and local governments, not just LUPA.[7] "When 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."[8]

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[6] *See*, *e.g.*, *Davidheiser v. Pierce Cnty.*, 92 Wn. App. 146, 960 P.2d 998 (1998) (in action against County, service of process on County Risk Management Department is not sufficient when statute requires service on the County Auditor); *Meadowdale Neighborhood Comm. v. City of Edmonds*, 27 Wn. App. 261, 267, 616 P.2d 1257 (1980) (in action against City, service of process against the Mayor's secretary is not sufficient when statute requires personal service on the Mayor).

[7] *See*, *e.g.*, *Nitardy v. Snohomish Cnty.,* 105 Wn.2d 133, 135, 712 P.2d 296 (1986) (in wrongful termination claim against County, "Service on anyone other than the [County] Auditor is insufficient"); *Landreville v. Shoreline Cmty. Coll. Dist. No. 7*, 53 Wn. App. 330, 332, 766 P.2d 1107 (1988) (leaving summons and complaint with administrative assistant is not sufficient to acquire jurisdiction over the State when RCW 4.96.020 specifies service on the Attorney General or an Assistant Attorney General).

[8] *Meadowdale*, 27 Wn. App. at 264.

Further, LUPA itself contains a "clear legislative directive" with respect to service of process.[9] At the time service was attempted on the City, former RCW 36.70C.040(5) provided in relevant part:

> 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.

The Legislature recently amended RCW 36.70C.040(5), and the Decision cites the incorrect version of RCW 36.70C.040(5), which took effect on June 6, 2024, over one year after the service attempts in this case.[10] Prior to that date, there was not an option to deliver a copy of the petition "to the office of the person" identified by or pursuant to RCW 4.28.080.

For cities, RCW 4.28.080(2) specifies that service of process shall be:

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[9] *Witt v. Port of Olympia*, 126 Wn. App. 752, 756, 109 P.3d 489, 491 (2005), *disapproved of on other grounds by Durland v. San Juan Cnty.*, 182 Wn.2d 55, 340 P.3d 191 (2014).
[10] ESHB 2039 (2024).

> 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.

When a LUPA petitioner serves the wrong official, the court does not acquire jurisdiction over the case, even when the petition is subsequently transmitted to the correct official within the 21-day appeal period.[11] In *Overhulse*, the petitioner served an employee of the Board of County Commissioners, who then forwarded the petition to the County Prosecutor's Office within the 21-day period. Although the County Prosecutor was the correct entity and had actual notice of the petition during the 21-day appeal period, the court summarily rejected petitioner's argument that this type of secondhand service met "the spirit of LUPA's service requirements" and substantially complied with RCW 36.70C.040(2):

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[11] *Overhulse Neighborhood Ass'n v. Thurston Cnty.*, 94 Wn. App. 593, 597, 972 P.2d 470 (1999), *disapproved of on other grounds by Durland v. San Juan Cnty.*, 182 Wn.2d 55, 340 P.3d 191 (2014).

> A land use petition is barred, and the court may not grant review, if timely service is not completed in accordance with LUPA's procedures. RCW 36.70C.040(2). This explicit statutory language forecloses the possibility that the doctrine of substantial compliance applies.[12]

2. "Secondhand service" has no application to actions against municipal entities.

The Decision is an erroneous departure from the well-established strict compliance requirement regarding service of process on government entities. As such, it conflicts with Washington precedent and raises issues of substantial public interest.

The Decision relies heavily on *Scanlan v. Townsend*,[13] which upheld the use of secondhand service on an individual defendant in a personal injury case. The statute at issue in *Scanlan*, RCW 4.24.080(16), allows service of process to be made "to the defendant personally, or by leaving a copy of the

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[12] *Overhulse*, 94 Wn. App. at 598.
[13] 181 Wn.2d 838, 336 P.3d 1155 (2014).

summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein."

In *Scanlan,* the plaintiff attempted to serve an individual defendant at the residence of the defendant's father. The defendant did not reside at her father's residence, but there was evidence that the father subsequently personally delivered the summons and complaint to the defendant within the limitations period.[14] The Court held that "direct, hand-to-hand—but 'secondhand'—service" satisfies the requirements of RCW 4.24.080(16).[15]

The *Scanlan* holding does not apply to this case because RCW 4.24.080(16)[16] applies to service of process on individuals, not cities. Other than the Decision, there are no reported Washington cases in which secondhand service has

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[14] *Scanlan*, 181 Wn.2d at 846.
[15] *Id*. at 848.
[16] This subsection was renumbered from (15) to (16) in 2015, so pre-2015 cases refer to it as (15).

been upheld against corporate or government entities—it has been applied only to individuals.[17] This distinction is important because Washington courts allow for substantial compliance for service under RCW 4.24.080(16) (personal service on individuals)[18] but require strict compliance for service of process under RCW 4.24.080(2) (service on cities).[19]

The Decision upends this long-standing distinction and would authorize secondhand service for the many other service of process options under RCW 4.24.080 and other statutes. In addition to cities, the Decision impacts counties,[20] special

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[17] *See, e.g., Brown-Edwards v. Powell*, 144 Wn. App. 109, 182 P.3d 441 (2008) (secondhand service on an individual defendant in a personal injury action pursuant to RCW 4.24.080(16)).

[18] *Chai v. Kong*, 122 Wn. App. 247, 253, 93 P.3d 936 (2004), *as amended on reconsideration in part* (Aug. 30, 2004) ("The substantial compliance doctrine, however, applies only to **personal** service") (emphasis in original).

[19] *Thayer v. Edmonds*, 8 Wn. App. 36, 39, 503 P.2d 1110 (1972).

[20] RCW 4.24.080(1).

purpose districts,[21] and the State of Washington,[22] and conflicts with the many cases that have required strict compliance with the service requirements for governmental entities.

Secondhand service may apply when a statute authorizes substituted service of process on someone other than an individual defendant. An example of substituted service is RCW 4.24.080(16), which authorizes service of process on a "person of suitable age and discretion" at an individual defendant's "usual abode." In contrast, Washington courts have not applied substituted service when a statute, such as RCW 4.24.080(2), specifically enumerates who must be served and provides no alternate methods of effectuating service.[23] The

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[21] RCW 4.24.080(3).
[22] RCW 4.92.020.
[23] *Meadowdale Neighborhood Comm. v. City of Edmonds*, 27 Wn. App. 261, 264, 616 P.2d 1257, 1260 (1980) (holding that when "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").

Decision is therefore inconsistent with Washington case law regarding service of process on governmental entities.

The Decision also raises an issue of substantial public interest because allowing secondhand service on government entities undermines the consistency and predictability that LUPA is intended to provide.[24] Washington courts have consistently held that when the Legislature has named a specific person to receive process for a government entity, service on any other individual is insufficient.[25] The Court of Appeals made this point in a recent unpublished decision[26] involving similar facts—service of a LUPA petition on a city's permit

[24] RCW 36.70C.010.

[25] *See, e.g., Overhulse*, 94 Wn.2d at 598-99; *Nitardy v. Snohomish Cnty.*, 105 Wn.2d 133, 134-35, 712 P.2d 296 (1986).

[26] Since the case is unpublished, the City offers it as nonbinding, persuasive authority consistent with General Rule (GR) 14.1.

center manager instead of the city clerk.[27] Division I rejected the application of secondhand service in that scenario:

> The City also points out that "[t]o allow parties to serve random city employees with litigation and then wait to see if it serendipitously makes its way to one of the individuals named in RCW 4.28.080 eventually would render meaningless the protections and [certainty] afforded by RCW 36.70C.040(5) and RCW 4.28.080." As noted above, the stated purpose of LUPA is to create "uniform, expedited appeal procedures" to facilitate "consistent, predictable, and timely judicial review." RCW 36.70C.010. This purpose is not advanced by allowing secondary service rather than strict compliance with the requirements laid out in the relevant statutes. The indirect delivery here was insufficient under LUPA.[28]

Finally, the Decision relied on an incorrect version of RCW 36.70C.040. The recent revisions to subsection (5) are shown below, with strikethrough text representing deleted language and underlined text representing added language:

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[27] *Covington Land, LLC v. City of Covington*, 2021 WL 2809610 (Wash. July 6, 2021).
[28] *Id*. at 6.

> Service on the local jurisdiction must be by delivery of a copy of the petition to the ((~~persons~~)) office of a person identified by or pursuant to RCW 4.28.080 to receive service of process, or as otherwise designated by the local jurisdiction. Service on the local jurisdiction is effective upon delivery. Service on other parties must be in accordance with the superior court civil rules or by first-class mail…

Engrossed Substitute House Bill 2039, Ch. 347, Laws of 2024, at 18.[29]

Notably, the current version allows service "by delivery of a copy of the petition to the *office of a person* identified by or pursuant to RCW 4.28.080." RCW 36.70C.040(5) (emphasis added). The version in effect in May 2023, however, required service to occur by delivery "to the *persons* identified…." Former RCW 36.70C.040(5) (emphasis added). Thus, while the new version appears to allow service on the City by delivery

[29] Available at 2039-S.SL.pdf (https://lawfilesext.leg.wa.gov).

of the documents to the City Clerk's office, the version applicable here required the documents to be delivered to the City Clerk personally.

Although this change occurred in June 2024, more than a year after the service attempts at issue here, the Decision never mentions the applicable language and instead writes that service "on the local jurisdiction must be by delivery of a copy of the petition to the *office of a person* identified by or pursuant to RCW 4.28.080 to receive service of process…."[30]

This error is significant because there is no evidence of hand-to-hand service between the Office Assistant and the City Clerk.[31] *Scanlan* makes clear that for secondhand service to be

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[30] Decision at 8 (emphasis added) (quoting current RCW 36.70C.040(5)).

[31] The Decision also erroneously states that the Petition was served on Mr. Bravo "due to the city clerk's unavailability during normal business hours." Slip. Op. at 14. In fact, it is undisputed that the process server simply left the Petition documents with Mr. Bravo without asking for the City Clerk, the Mayor, the City Manager, or anyone else who may have

effective, it must be "hand-to-hand."[32] The prior, applicable version of RCW 36.70C.040(5) required delivery of a copy of the petition "to the person" identified by RCW 4.28.080 to receive service of process. The Decision appears to have relied on the inapplicable, new version of the statute in finding it sufficient that the Petition eventually made it to the office of the City Clerk without any evidence of hand-to-hand delivery:

> Hachey was then alerted of the need to report to her office in city hall to receive and initial the documents at issue. She then travelled to city hall and took possession and control of the documents. She handled them, initialed them, and reviewed them. Bravo's service of the documents on Hachey was complete. 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 station.[33]

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been authorized to accept service of process on the City. Nor is there any evidence that any attempt was made to make an appointment with any authorized persons for purposes of service of process. The fact that the City Clerk was working from home that day is a red herring.

[32] *Scanlan*, 181 Wn.2d at 838.

[33] Decision, pp. 14-15.

The Decision's reliance on an incorrect version of the statute, while undermining the Legislature's strict requirements for service of process on municipalities, further emphasizes the need for this Court to clarify the applicable standards.

B. The Decision Erroneously Allows 24 Days to Appeal a Land Use Decision Made Available by Email Rather than Postal Mail.

LUPA provides that a petition is timely if it is filed and served on all parties within 21 days of issuance.[34] RCW 36.70C.040(4)(a) provides that the date of issuance is:

> Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available….

Chandrruangphen made her second attempt to serve the Petition on the City Manager on June 1, 2023, which was 24 days after the Land Use Decision was emailed to her on May 8, 2023. In finding this service timely, the Court of Appeals relied

[34] RCW 36.70C.040(3).

heavily on this Court's decision in *Confederated Tribes & Bands of Yakama Nation v. Yakima Cnty*.[35] However, the Decision relied on *dicta* in *Confederated Tribes* and interpreted it in a way that conflicts with this Court's precedent.

Confederated Tribes involved a land use decision that was adopted by resolution on April 10, 2018, and emailed to the Yakama Tribe on April 13, 2021. The issue was whether the limitations period began running on April 10 (date of resolution adoption pursuant to RCW 36.70C.040(4)(b)) or April 13 (date the email was sent under RCW 36.70C.040(4)(a)). This Court held that it began running on April 13.

The Decision here relies on two statements from *Confederated Tribes* for its conclusion that emailing triggers three extra days for service. First, this Court stated in a footnote that the "county planner corresponded with Yakama through an e-mail containing a letter and the board's resolution"

[35] 195 Wn.2d 831, 466 P.3d 762 (2020).

and that there "is no dispute that this e-mail correspondence satisfies the 'mailing' requirement of RCW 36.70C.040(4)(a)."[36] Second, the Court stated later in the opinion that under "the plain language of RCW 36.70C.040(4)(a), LUPA's 21-day filing period began 3 days after this mailing."[37]

The Court of Appeals' reliance on these statements here was misplaced. The brief mentions of "mailing" and "3 days after" were *dicta*. The issue before this Court in *Confederated Tribes* was whether the limitations period was triggered by the county's passage of the resolution or by the sending of the email and letter.[38] This Court held that it was triggered by the email and letter.[39] Because the LUPA petition was filed nineteen days after the email and letter were sent, it was timely

[36] *Id*. at 836 n.2.
[37] *Id.* at 838.
[38] *Id*. at 834.
[39] *Id*. at 840.

whether the three additional days for mailing were applied or not. As such, there was no need for this Court to analyze whether a notice transmitted instantaneously by email should be considered to have been issued three days later because it was "mailed."

Treating an email transmission as "mail" conflicts with this Court's precedent of interpreting the term "mail" narrowly.[40] In *Cont'l Sports*, for example, this Court construed a statute requiring appeals to the Board of Industrial Insurance Appeals to be "sent to the director of labor and industries by mail or delivered in person."[41] This Court held that it was "not willing to hold that mail is anything other than postal matter carried by the United States Postal Service."[42] More recently, in the LUPA context, the Court of Appeals differentiated

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[40] See *Cont'l Sports Corp. v. Dep't of Lab. & Indus.*, 128 Wn.2d 594, 910 P.2d 1284 (1996).
[41] *Cont'l Sports*, 128 Wn.2d at 597 (quoting RCW 51.48.131).
[42] *Id*. at 601 (emphasis added).

between email and postal mail, recognizing that email "constitutes a trustier method of service than first-class mail."[43]

The Decision's interpretation of RCW 36.70C.040(4)(a) also conflicts with this Court's decision in *Habitat Watch v. Skagit Cnty.*[44] In *Habitat Watch*, a county hearing examiner granted an applicant's requests for permit extensions without providing notice to the other interested parties. The petitioners later submitted a public records request, and the decisions in question were reflected in records the county made available to the petitioners on June 24, 2002. This Court observed that it was "not clear from the record or the briefing when the final two permit extensions were issued within the meaning of RCW 36.70C.040(4)," noting that there was "nothing in the record that shows the extension decisions were mailed to all parties of

[43] *RST P'ship v. Chelan Cnty.*, 9 Wn. App. 2d 169, 177, 442 P.3d 623 (2019).
[44] 155 Wn.2d 397, 120 P.3d 56 (2005).

record…."[45] This Court concluded, however, that "[a]t the very latest, the written decisions were issued when the county made them available on June 24, 2002…."[46] The Court then applied a 21-day (not a 24-day) period and determined that under RCW 36.70C.040(4)(a) the petitioner's LUPA petition was untimely because it was filed "well over 21 days after the permit extensions were made available to [petitioners] on June 24, 2002."[47]

As such, *Habitat Watch* stands for the proposition that, when it is unclear whether a land use decision has been mailed within the meaning of RCW 36.70C.040(4)(a), it is issued, "at the very latest," when it is made available to a petitioner.[48] Here, it is beyond dispute both: (1) that the City did not "mail" the land use decision as this Court interpreted the term in *Cont'l*

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[45] *Id*. at 408.
[46] *Id*. at 409.
[47] *Id.*
[48] *Id*. at 408-09.

Sports; and (2) that the City made the land use decision available to Chandrruangphen via email on May 8, 2023. The Court of Appeals' Decision conflicts with this Court's precedent in both *Cont'l Sports* and *Habitat Watch* by holding that the land use decision was not issued until May 11, 2023.

The Court of Appeals' holding also conflicts with the legislative policy underlying the special provision for mailing in RCW 36.70C.040(4)(a). The purpose of a three-day mailing period is "to compensate for the transmission time when the notice is mailed."[49] Applying a three-day waiting period to decisions that are emailed or otherwise made immediately publicly available does not serve that purpose.

Finally, measurement of the 21-day period under RCW 36.70C.040(4) raises issues of substantial public interest. LUPA is the exclusive means of obtaining judicial review of

[49] *In re Est. of Toth*, 138 Wn.2d 650, 655, 981 P.2d 439 (1999).

land use decisions in Washington.[50] Local jurisdictions, applicants, property owners, and individuals impacted by land use decisions need to know how to measure LUPA appeal deadlines. As the Court of Appeals' Decision in this case illustrates, however, *dicta* in *Confederated Tribes* has created confusion about how such deadlines should be calculated in the context of notices transmitted via email. This case provides an excellent opportunity for this Court to resolve this confusion and clarify the applicability and scope of the three-day mailing period of RCW 36.70C.040(4)(a).

VI. CONCLUSION

The Decision misconstrues the law in two significant ways. First, secondhand service is a concept rooted in substantial compliance that applies to service of process on individuals. It does not apply to service of process on government entities, which requires strict compliance. Review

[50] RCW 36.70C.030(1).

of this issue is warranted under RAP 13.4(b)(4) because it involves an issue of substantial public interest. Second, the Decision erroneously calculates the 21-day LUPA appeal period in a way that conflicts with this Court's precedent in *Habitat Watch* and *Cont'l Sports*, thereby warranting review under RAP 13.4(b)(1). Because LUPA is the exclusive means by which a trial court reviews land use decisions, there is substantial public interest in consensus and clarity on how the 21-day appeal period is measured, meriting review under RAP 13.4(b)(4) as well. Accordingly, the City respectfully requests that this Court grant review.

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RESPECTFULLY SUBMITTED this 13th day of January, 2025.

I certify that the foregoing Answer to Petition for Review contains 4,906 words, excluding words contained in the title sheet, tables of contents and authorities, certificate of service, signature blocks, any pictorial images or appendices, and this certificate.

OGDEN MURPHY WALLACE

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CERTIFICATE OF SERVICE

On said day below I electronically served a true and accurate copy of the Petition for Review in Supreme Court of Washington, to the following parties:

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

Dated this 13th day of January, 2025 at Seattle, Washington.

/s/ Linda Vandiver
Linda Vandiver, Legal Assistant

PUBLISHED OPINION DATED: 10/7/24

FILED
10/7/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WANTHIDA CHANDRRUANGPHEN,

Appellant,

v.

CITY OF SAMMAMISH, a municipal corporation,

Respondent,

and

DANIEL BLOOM,

Intervenor Respondent.

DIVISION ONE

No. 85756-8-I

PUBLISHED OPINION

DWYER, J. — Wanthida Chandrruangphen appeals from an order of the King County Superior Court dismissing her Land Use Petition Act[1] (LUPA) petition for failing to timely and properly accomplish service of process on the City of Sammamish (the City). Chandrruangphen contends that she effectuated personal service of process twice within the stringent LUPA deadline, once by causing process to be personally served upon the city clerk by "secondhand service," and once by serving the city manager within the allowable number of days of the date on which the City sent an e-mail notifying her of the final land use decision at issue. Because both instances constitute timely and proper

[1] Ch. 36.70C RCW.

service on the City, we agree. Accordingly, we reverse and remand this matter for further proceedings.[2]

I

The real property at issue in this dispute is "Lot 2" of a King County short plat located in Sammamish, Washington. The short plat contained a notation stating: "[t]here is no assurance that Lot#2 & Lot#3 may become building lots in the future. In order for Lot#2 & Lot 3 to be considered as a building lot, a revised short plat must be approved and recorded which provides sufficient evidence to demonstrate a reasonable building site." (Capitalization omitted.)

In August 2019, property owner Elizabeth Evans filed a short plat alteration application with the City seeking to remove the nonbuild status of the property.

In February 2021, Chandrruangphen acquired the property from Evans and succeeded her as the applicant under the application.

On July 6, 2021, the City notified Chandrruangphen by e-mail that, due to inactivity, the application would be cancelled. Chandrruangphen appealed the City's decision to cancel the application to the city hearing examiner. In August 2021, the city attorney informed Chandrruangphen that the application had been "revived" and was "under review."

In November 2022, the City issued its fifth review letter seeking expert reports and analysis and granted Chandrruangphen a courtesy extension of six

[2] In addition, because we affirm the trial court's decision to allow Daniel Bloom to intervene such that he can seek to protect his property interest in the adjacent property, Bloom must be included in the resulting trial court proceedings on remand.

months to allow her adequate time to address all corrections and pursue all administrative remedies prior to resubmission of the application materials.

On May 8, 2023, the senior land use planner for the City issued, by way of e-mail, a letter of cancellation of the application. The document attached to the e-mail was dated May 3, 2023 and stated that the application was "cancelled for inactivity and failure to resubmit all the requested information." (Emphasis omitted.)

On May 24, 2023, Chandrruangphen filed a "Land Use Petition and Complaint for Damages" against the City in King County Superior Court. The same day, a process server delivered the summons and LUPA petition to Julian Bravo, an office assistant at the front desk of the Sammamish City Hall building. City clerk Lita Hachey, who was absent from the city clerk's office notwithstanding that the time of day was during normal business hours, was working from home that day, but learned that her presence at city hall was required to initial receipt of unspecified documents that had been left with Bravo. The city clerk then went to her office, initialed the documents, and noted that they included a LUPA petition and summons.

Two days later, May 26, 2023, Benita Lamp, paralegal for counsel representing Chandrruangphen, confirmed with Hachey that the City had received the LUPA petition and summons. Hachey informed Lamp that she had received the pleadings, signed off on them, and gave the documents to the City's hearing examiner's clerk. Lamp then notified counsel that Hachey had both confirmed receipt of the pleadings and "said process service was sufficient."

Hachey disputes that she informed Lamp that "process was sufficient," and avers that she neither stated nor considered "that the May 24, 2023, service attempt was valid and consistent with personal service as required by RCW 4.28.080(2)."

On June 1, 2023, a process server served the summons and LUPA petition on city manager Scott MacColl. MacColl confirmed receipt of the documents.

In July 2023, Daniel Bloom moved to intervene in the matter. He stated that he owns real property immediately adjacent to the property at issue and argued that a decision on the matter could significantly impact his interests and his property. Also in July, the City moved to dismiss Chandrruangphen's petition on two grounds. First, the City argued that cancellation of Chandrruangphen's short plat alteration application was an interlocutory decision and was not ripe for review pursuant to LUPA. Second, the City argued that Chandrruangphen had not properly and timely effectuated service of process. Soon after, Chandrruangphen filed a motion for an initial LUPA hearing and requested both that the court enter an order in her favor as to any jurisdictional and procedural objections and that the court set a schedule for the litigation.

On August 11, 2023, the trial court heard arguments on the motions from Bloom, the City, and Chandrruangphen. The trial court subsequently issued final orders granting both Bloom's motion to intervene and the City's motion to dismiss Chandrruangphen's petition.

As to the issue of Bloom's intervention, the trial court found that his request to intervene was timely and that "[t]he potential impact of proceedings

concerning the application is specific to his property," "[h]is interests are different and divergent [from] those of the City of Sammamish," "are also more particularized than that of the general public," and "are not adequately represented." Further, the court ruled, "insertion of [Bloom's] interests into the proceedings should not detract from Petitioner and the City of Sammamish's ability to control the lawsuit." Accordingly, the court granted Bloom's intervention as of right.[3]

As to the City's motion to dismiss, the trial court determined that the decision to cancel Chandrruangphen's application was a final land use decision subject to review pursuant to LUPA. However, the court further determined that it lacked authority to hear the case because Chandrruangphen did not comply with the strict service requirements of LUPA.

Chandrruangphen appeals.

II

As an initial matter, the City asserts that the trial court erred by concluding that the City's decision cancelling Chandrruangphen's application was not an interlocutory decision but was, instead, a final land use decision eligible for LUPA review. However, because the City's decision concerning the application effectively amounted to a rejection of the application, such that the only remedy is to submit a new application, the trial court did not err by concluding that the City's decision was a final land use decision and was, therefore, ripe for review.

[3] The trial court ruled, in the alternative, that permissive intervention was also an appropriate basis on which to grant Bloom's motion because his "intervention will not unduly delay or prejudice the adjudication of the rights of the original parties."

With certain exceptions not at issue here, LUPA provides the "exclusive means of judicial review of land use decisions." RCW 36.70C.030(1). LUPA defines a "land use decision," in pertinent part, as:

> a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:
> (a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used.

RCW 36.70C.020(2).

Our Supreme Court has explained that, "[a] 'final decision' is '[o]ne which leaves nothing open to further dispute and which sets at rest cause of action between parties.'" Samuel's Furniture, Inc. v. Dep't of Ecology, 147 Wn.2d 440, 452, 54 P.3d 1194 (2002) (second alteration in original) (quoting BLACK'S LAW DICTIONARY 567 (5th ed.1979)). Accordingly, for the purpose of LUPA review, "[a] land use decision is final when it leaves nothing open to further dispute and sets to rest the cause of action between the parties." Stientjes Fam. Tr. v. Thurston County, 152 Wn. App. 616, 618, 217 P.3d 379 (2009). In contrast, "an 'interlocutory' decision is one that is 'not final,' but is instead 'intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy.'" Samuel's Furniture, 147 Wn.2d at 452 (quoting BLACK'S, supra, at 731).

According to the City, a local jurisdiction must reach the merits of the proposed land use in order for a decision to qualify as a final land use decision. The City relies on Stientjes, in which we stated that, "[w]hether a land use

decision is final turns on whether the governmental action at issue 'reaches the merits,' not on whether the wisdom of such action is 'potentially debatable.'" 152 Wn. App. at 624 (quoting Samuel's Furniture, 147 Wn.2d at 452). There, however, the land use decision at issue "did not settle the controversy between the parties," and "was akin to a court order denying a dispositive pretrial motion from which an appeal may not be taken." Stientjes, 152 Wn. App. at 623-24. Here, in contrast, the City's cancellation of Chandrruangphen's application ended its consideration of the matter such that any dispute was concluded and no issues remain outstanding. In fact, the City essentially acknowledges that its cancellation of the application terminated the existing controversy between the parties by asserting that Chandrruangphen's remedy is to submit a *new* application for the proposed short plat alteration. The City's decision set the application to rest. Accordingly, the cancellation was a final land use decision and LUPA review is appropriate.

III

Chandrruangphen asserts that the trial court erred by dismissing her LUPA petition on the basis that she had failed to properly accomplish service of process upon the City. In support of this contention, she avers that service upon the City was timely and proper on both May 24 and June 1. To address her twofold argument, we must first set out the legal requirements for proper and timely service in the context of LUPA.

A

To ensure timely review of land use decisions, "LUPA requires that a party file a petition for review with the superior court within 21 days of the date [that] a land use decision is issued." Vogel v. City of Richland, 161 Wn. App. 770, 776-77, 255 P.3d 805 (2011) (citing RCW 36.70C.040(3)). "The petition is timely if it is filed and served on all parties . . . within twenty-one days of the issuance of the land use decision." RCW 36.70C.040(3). As pertinent here, the date on which a land use decision is issued, for the purpose of LUPA, is "[t]hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available." RCW 36.70C.040(4)(a). Thus, when a final land use decision is issued by mail, a LUPA petition must be filed with the superior court and served on all parties within 24 days of the date of mailing. RCW 36.70C.040(3), (4)(a).

During the period for service established by LUPA, the petitioner must serve all parties. RCW 36.70C.040(2). Where, as here, the petition is brought against a local jurisdiction, "[s]ervice on the local jurisdiction must be by delivery of a copy of the petition to the office of a person identified by or pursuant to RCW 4.28.080 to receive service of process, or as otherwise designated by the local jurisdiction." RCW 36.70C.040(5). In an action against a town or incorporated city, process must be served on "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).

LUPA requires strict compliance with its procedural requirements, including the bar against untimely or improperly served petitions. Durland v. San Juan County, 182 Wn.2d 55, 67, 340 P.3d 191 (2014). "A trial court may not hear a land use petition if it was not timely served upon certain persons designated by statute as necessary parties to the judicial review." Citizens to Preserve Pioneer Park LLC v. City of Mercer Island, 106 Wn. App. 461, 467, 24 P.3d 1079 (2001).

We review de novo whether service of process was properly accomplished. Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). The plaintiff bears the initial burden to prove a prima facie case of sufficient service after which the party challenging service of process must demonstrate by clear, cogent, and convincing evidence that service was improper. Scanlan, 181 Wn.2d at 847.

B

We first consider whether Chandrruangphen timely effectuated service of the summons and petition on the city manager on June 1. Chandrruangphen asserts that for the purpose of calculating the period for service, the date of issuance of the land use decision at issue was three days after the City sent the May 8 e-mail with the attached cancellation letter. In response, the City avers that "[t]his argument is premised on the faulty assumption that e-mail and mail are indistinguishable, such that the three-day tolling period for postal mailings also applies to land use decisions sent via e-mail." Br. of Resp't at 43-44. We disagree that this premise is faulty.

In Confederated Tribes and Bands of Yakama Nation v. Yakima County, 195 Wn.2d 831, 466 P.3d 762 (2020), our Supreme Court held that the three-day tolling period is equally applicable to postal mailings and e-mail. There, the court addressed the timeliness of a petition challenging a written final decision in the form of a resolution sent by e-mail. Confederated Tribes, 195 Wn.2d at 834-35. The Confederated Tribes and Bands of Yakama Nation (Yakama) challenged a conditional use permit that allowed expansion of mining operations. Confederated Tribes, 195 Wn.2d at 834. Yakama pursued administrative remedies, appealing to the hearing officer, whose decision Yakama then appealed to the county board of commissioners. Confederated Tribes, 195 Wn.2d at 834. The county board of commissioners passed a resolution affirming the hearing officer's decision and denying Yakama's appeal. Confederated Tribes, 195 Wn.2d at 834. Notably, "[t]hree days later, a county planner *sent an e-mail and letter* to Yakama with the resolution attached." Confederated Tribes, 195 Wn.2d at 834 (emphasis added). According to the court, "[t]he county planner corresponded with Yakama through an e-mail containing a letter and the board's resolution. *There is no dispute that this e-mail correspondence satisfies the 'mailing' requirement of RCW 36.70C.040(4)(a)*." Confederated Tribes, 195 Wn.2d at 836 n.2 (emphasis added).

It was undisputed that Yakama filed a LUPA petition 22 days after the county board adopted the resolution and 19 days after the county planner's e-mail and letter. Confederated Tribes, 195 Wn.2d at 835. When asked to assess the timeliness of the petition, the Supreme Court stated as follows:

> Here, the Board of Yakima County Commissioners met, voted, and reduced to writing its final land use decision at a public meeting on April 10, 2018. On April 13, 2018, a county project planner sent a letter to Yakama, as per its county code, transmitting the board's written decision—the resolution. YCC 16B.09.050(5) requires a final written decision, requiring transmission of that decision to Yakama, thereby triggering RCW 36.70C.040(4)(a). Under the plain language of RCW 36.70C.040(4)(a), LUPA's 21-day filing period began 3 days after this mailing. Therefore, we conclude that Yakama timely filed its LUPA petition in superior court 19 days after the written resolution was transmitted.

Confederated Tribes, 195 Wn.2d at 837-38. In reaching this conclusion, the Supreme Court applied RCW 36.70C.040(4)(a), which establishes the issuance date of a written decision *mailed* by the local jurisdiction, to determine the issuance date, and resulting timeliness, of a written decision *e-mailed* by the local jurisdiction. That was the same task as faced the superior court herein.

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, 195 Wn.2d at 840. 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, 195 Wn.2d at 836 n.2. 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.

Here, the City sent an e-mail with the cancellation decision on May 8, 2023.[4] Accordingly, the City's decision is deemed to have issued on May 11, 2023. For her petition to be timely, Chandrruangphen was required to accomplish service on the proper party by June 1, 2023. The City does not dispute that the city manager, who is an official designated to receive personal service by RCW 4.28.080(2), accepted service of the summons and petition on June 1, 2023, which is within 21 days of the May 11 issuance of the City's decision and, hence, within the time allowed to accomplish service of process. We conclude that service of process upon the city manager was timely and the trial court's dismissal of the petition was done in error.

C

Chandrruangphen also contends that the May 23 service was properly accomplished by way of "secondhand" personal service because the process server handed the documents to Bravo who then provided the same documents to the city clerk at her office during normal business hours. We agree that the process server set into motion the events which caused the documents to be served upon Hachey on May 23, 2023, thus satisfying personal service requirements within the LUPA time limits.[5]

[4] While the letter was dated May 3, 2023, the parties do not dispute that it was e-mailed to Chandrruangphen's attorney on May 8, 2023.

[5] We note that Chandrruangphen's argument as to "secondhand" service is far more robust in the appellate briefing than was the briefing before the superior court. However, given our resolution of the issue addressed in Section III.B. supra, we choose to reach this issue given that our consideration of it will be of benefit to both the bench and the bar. There would be little utility in exploring the question of issue preservation in this circumstance.

Our Supreme Court approved of the validity of what has come to be referenced as "secondhand" service of process in Scanlan, 181 Wn.2d 838. In Scanlan, a process server delivered a copy of a summons and complaint to defendant Townsend's father at his home, although the defendant, his daughter, had not lived there for several years. 181 Wn.2d at 842. The father later personally delivered the summons and complaint to Townsend. Scanlan, 181 Wn.2d at 844. The court determined that Townsend's father properly served her with the summons and complaint: "Townsend's father was competent to serve Townsend. He delivered a copy of the summons and complaint personally to Townsend within the statute of limitations. Townsend's deposition testimony and her attorney's stipulation demonstrated proof of service in compliance with CR 4(g)(5) and (7)." Scanlan, 181 Wn.2d at 856.

Our courts have acknowledged that CR 4(c)[6] does not require "that a process server have a contractual obligation to serve process. Nor is there any requirement of proof of intent to serve process." Brown-Edwards v. Powell, 144 Wn. App. 109, 111, 182 P.3d 441 (2008) (citation omitted). Accordingly, "nothing . . . would prohibit a person who comes into possession of a summons and complaint by defective service from being a competent process server." Brown-Edwards, 144 Wn. App. at 111. Thus, someone may, "even unwittingly," accomplish service of process through secondhand delivery if that person meets the minimum requirements to serve process established by CR 4(c). In re

[6] "Service of summons and process . . . shall be by the sheriff of the county wherein the service is made, or by the sheriffs deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party." CR 4(c).

Dependency of G.M.W., 24 Wn. App. 2d 96, 120, 519 P.3d 272 (2022), review denied, 1 Wn.3d 1005 (2023).

Here, Bravo was the unwitting process server. To commence LUPA review, Chandrruangphen was required to serve "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). However, 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).[7] Due to the city clerk's unavailability during normal business hours, the process server gave the documents to Bravo whose declaration confirms that he is over the age of 18, not a party to the action, and competent to be a witness, 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.

Hachey was then alerted of the need to report to her office in city hall to receive and initial the documents at issue. She then travelled to city hall and took possession and control of the documents. She handled them, initialed them, and reviewed them. Bravo's service of the documents on Hachey was complete. 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 station. Hachey confirmed that these steps had been completed

[7]That the city clerk effectively "set up shop" at home was at plain variance with the expectation of the legislature in enacting RCW 4.28.080(2).

well within the strict service period ending on June 1, 2023. Thus, Chandrruangphen caused the summons and petition to be timely served upon the city clerk to properly secure review pursuant to LUPA.

Accordingly, for both of the foregoing reasons, by dismissing Chandrruangphen's petition on the basis that she had failed to timely accomplish service of process upon the City, the trial court erred.

IV

Finally, Chandrruangphen asserts that the trial court erred by granting Bloom's motion for intervention of right because Bloom failed to demonstrate that he has an adequate interest in the subject matter at issue and that any interest is not adequately represented as required to intervene. We disagree, as Chandrruangphen has asked the court to resolve substantive issues that would impact Bloom's property such that he has individual concerns beyond those of the City or general public.

A trial court's decision to allow intervention is discretionary, therefore we review that decision for abuse of discretion. In re Recall Charges Against Seattle Sch. Dist. No. 1 Dirs., 162 Wn.2d 501, 507, 173 P.3d 265 (2007).

As pertinent here, intervention in an action is allowed as of right when, upon timely application,

> the applicant claims an interest relating to the property or transaction which is the subject of the action and the person is so situated that the disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

CR 24(a)(2). Accordingly, the rule imposes four requirements for intervention of right: (1) timely application, (2) an interest which is the subject of the action, (3) the disposition will impair or impede the applicant's ability to protect the interest, and (4) the applicant's interest is not adequately represented by the existing parties. Westerman v. Cary, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994). Once a divergent interest is shown, the burden of making a showing that the interest may be inadequately represented by the existing parties "should be treated as minimal." Fritz v. Gorton, 8 Wn. App. 658, 661-62, 509 P.2d 83 (1973).

The trial court determined that Bloom met the requirements to intervene. With respect to Bloom's interest, the trial court found that "[t]he application at issue concerns development immediately adjacent to Mr. Bloom's property and protections afforded specifically to the wetland on Mr. Bloom's property. The potential impact of proceedings concerning the application is specific to his property."

Chandrruangphen, for her part, disagrees with the court's characterization of her application, asserting that her case concerns only the procedural propriety of the City's decision to cancel her application, and, as such, is a question of process rather than land use policy applicable to her property.

However, Chandrruangphen's LUPA petition filed with the trial court belies her assertion. Rather than merely request that the trial court consider the procedure that led to cancellation of the application, Chandrruangphen's superior court petition alleged erroneous interpretations of law as to several of the City's decisions regarding Bloom's wetland property. For example, the allegation that

the City's decision "is an erroneous interpretation of the law because it does not abide by the definition of 'wetlands' set forth in SMC 25.09.012(C) and/or Washington Administrative Code ("WAC") 197-11-756(2)," requires the court to consider the statutory definition and assess the City's application of the law to the facts of this case. This is a substantive consideration. Bloom, as the owner of the wetland property, has an interest in substantive considerations that impact his property.

Moreover, Bloom's interests may not be adequately represented by the City. Our courts have recognized that, while the goals of land owners and local government may be aligned, "their interests were not the same: 'the county must consider the interests of all the residents of the county,' whereas 'the affected property owners represent a more sharply focused and sometimes antagonistic viewpoint.'" Pub. Util. Dist. No. 1 of Okanogan County v. State, 182 Wn.2d 519, 533, 342 P.3d 308 (2015). Bloom has identified concerns related to the protection of his property interests beyond those of the City or general public and, therefore, satisfies the minimal burden required to intervene. As such, the trial court did not abuse its discretion by granting Bloom's motion to intervene.

Reversed in part and remanded for further proceedings consistent with this opinion.[8]

WE CONCUR:

[8] Because we have decided this matter in Chandrruangphen's favor on the grounds discussed above, we need not address her additional arguments.

ORDER DENYING MOTION FOR RECONSIDERATION DATED: 12/12/24

FILED
12/12/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WANTHIDA CHANDRRUANGPHEN,

Appellant,

v.

CITY OF SAMMAMISH, a municipal corporation,

Respondent,

and

DANIEL BLOOM,

Intervenor Respondent.

DIVISION ONE

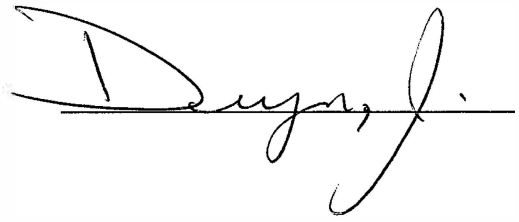
No. 85756-8-I

ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, City of Sammamish, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration is hereby denied.

FOR THE COURT:



OGDEN MURPHY WALLACE, PLLC

January 13, 2025 - 4:04 PM

Filing Petition for Review

Transmittal Information

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