NO. 1043031

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FALL CITY SUSTAINABLE GROWTH,

Appellant,

vs.

KING COUNTY; MT. SI INVESTMENTS, LLC; CEDAR 17 INVESTMENTS, LLC; CHA CHA 15 INVESTMENTS, LLC; TAYLOR DEVELOPMENT, INC.,

Respondents.

TAYLOR DEVELOPMENT, INC.'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTY

Respondents Mt. Si Investments, LLC, Cedar 17 Investments, LLC, and Cha Cha 15 Investments LLC, (collectively "Taylor"), submit this Answer to Petitioner Fall City Sustainable Growth's ("FCSG's") Petition for Review.

FCSG seeks review of a published Court of Appeals decision, *Fall City Sustainable Growth v. King County*, __ Wn. App. __, 568 P.3d 1129 (2025) ("Decision"), issued on May 19, 2025.[1]

FCSG seeks to make remarkable new law out of what was an entirely *unremarkable* application of existing law. As found by the Hearing Examiner and King County Council, and as affirmed by the Court of Appeals, Taylor's preliminary plat applications for residential housing in Fall City were consistent with the County's Comprehensive Plan, the Fall City Subarea Plan, and the location-specific development regulations that

[1] The Decision is attached to FCSG's Petition, App'x A.

enacted those Plans' rural character planning policies.

Undeterred, FCSG seizes on dicta statements by the Hearing Examiner that she "could not say" that the proposed developments met with her own personal interpretation of "rural character,"[2] and argues that the plat approvals should be overturned and remanded to the Hearing Examiner to allow her the discretion to deny Taylor's approved preliminary plat applications based on her subjective interpretation of rural character, drawn from whatever comprehensive plan policies she

2 FCSG repeatedly asserts that the Hearing Examiner concluded "as a matter of law" that Taylor's plats did not conform with one (of many competing) goals of the Comprehensive Plan to protect rural character. That is not accurate and is alone grounds to deny the Petition. The Hearing Examiner simply declined to conclude as a matter of law that the plats were *consistent* with her idea of rural character, a finding she was not required to make in any event. *See* KC16234 (referencing a conclusion by the Examiner with respect to a different development that the R-4 zoning, as conditioned, was consistent with the Comprehensive Plan and Fall City Subarea Plan, but stating that "[t]he record developed in this matter does not allow the Examiner to reach the same conclusion as a matter of law.") That is very different than saying that the plats are *inconsistent* as a matter of law.

feels may be most appropriate.[3]

FCSG seeks this result despite the fact that the Examiner, in previously approving the plats, correctly identified and applied the County's development regulations that were adopted to implement the Subarea Plan and address rural character in Fall City.[4] She also found that the state's Growth Management Act (("GMA") RCW Ch. 36.70A) general rural policies did not directly apply in this project-specific review[5] and that the applications met all local and state subdivision requirements.[6]

Upholding the decisions of the Examiner and County Council, the Court of Appeals applied longstanding precedent holding that specific development regulations govern individual

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[3] Petition, p. 32 ("the matter should have been remanded to the examiner to exercise her discretion").

[4] KC07400 (Cedar HED, Cond. 9); KC13216 (Mt. Si HED, Conc. 13); KC03037 (Cha HED, Conc. 11).

[5] KC07400 (Cedar HED, Cond. 3); KC113215 (Mt. Si HED, Cond. 5); KC03036 (Cha HED, Cond. 5).

[6] KC07401 (Cedar HED, Conc. 10); KC13216 (Mt. Si HED, Conc. 11; KC03037 (Cha HED, Conc. 12); see also KC03036-37 (Cha HED, Conc. 7).

land use applications, and that general compliance with unspecified comprehensive plan policies is not a requirement for preliminary plat approval.

This case is not about a variance, or special or conditional use permit, as Petitioner's reliance on cases concerning cell phone towers or sanitary landfills would suggest. This case involves the routine approval of residential preliminary plats that are allowed as a matter of right and indisputably complied with the County's 2016 Comprehensive Plan, 1999 Fall City Subarea Plan, and all applicable land use regulations.

Notably, in December 2024, King County amended its Comprehensive Plan and adopted the Snoqualmie Valley/NE King County Subarea Plan, which repealed the 1999 Fall City Subarea Plan at issue in this litigation.[7] The County then adopted new development regulations related to "rural character" for Fall City.[8] Thus, with the exception of vested applications like

[7] KC Ord. 19881(Attachment J, p. 8).

[8] 2024 SV Subarea Plan, pp. 244-255; KCC Ch. 21A.09P.

Taylor's plats, there is no enduring public interest in reviewing King County's former comprehensive plan provisions or development regulations.

The Petition does not meet any of the requirements of RAP 13.4 and should be denied.

II. COUNTERSTATEMENT OF THE CASE

A. Taylor proposed three preliminary plats within the Rural Town of Fall City.

Taylor obtained preliminary plat approval for three modest residential plats within the boundaries of the Rural Town of Fall City. Mt. Si is a 16-lot plat on 4.03 acres; Cedar is a 23-lot plat on 5.74 acres; and Cha is a 15-lot plat on 3.63 acres.[9]

The plats are nothing like the Arrington Court development pictured on Petition, p.7, which was designed with

[9] KC07381-82 (Cedar Hearing Examiner Decision ("HED") Find. 4); KC13191 (Mt. Si. HED Find. 4); KC03015 (Cha Find. 4). The citing convention is Hearing Examiner Decision ("HED"); Hearing Examiner Finding ("Find."); and Hearing Examiner Conclusion ("Conc.").

the homes exiting directly onto the public street. Mt. Si, Cedar, and Cha are designed so that the homes exit onto interior private roads that accommodate parking on one side of the street.[10]

The plats provide parking in excess of County requirements.[11] The plats also provide recreation space, and, as a result of the use of onsite community drainfields, they provide significant open space, which accounts for approximately 19% of the project sites.[12]

B. King County adopted regulations to address "rural character" in Fall City.

Under the regulatory scheme in place at the time Taylor filed its complete applications, three documents were relevant: (i) King County's 2016 Comprehensive Plan ("Comprehensive

[10] KC05750-53 (Cedar plans); KC09825-28 (Mt. Si plans); KC00025-28(Cha plans).

[11] KC07388 (Cedar HED, Find. 42); KC13202 (Mt. Si HED, Find. 46); KC13228-29; (Mt. Si HED, Dec. on Recon); KC03024 (Cha HED, Finds. 43-44).

[12] KC06145 (Cedar); KC10082 (Mt. Si); and KC00031 (Cha).

Plan");[13] (ii) the 1999 Fall City Subarea Plan ("Subarea Plan"),[14] which was expressly adopted as part of the Comprehensive Plan; and (iii) King County Ordinance 13881,[15] which was enacted in 2000 to implement the Subarea Plan's rural character element through adjusting the Fall City zoning map and implementing lower-density modified R-4 zoning codified in KCC 21A.12.030.B.22.[16]

The Comprehensive Plan designates Fall City as a Rural Town.[17] Rural Towns are areas of higher density development, which help support surrounding lower density Rural Areas.[18] The Comprehensive Plan included more flexible development standards for Rural Towns to allow for higher densities and

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[13] KC00466-KC1579.

[14] KC18024-18093.

[15] KC18010-18022.

[16] The County has adopted new development regulations for rural character in Fall City to implement the 2024 comprehensive plan and new subarea plan. KCC Ch. 21A.09P.

[17] KC01085 (Comprehensive Plan ("CP"), R-504).

[18] KC01084 (CP, "Rural Towns").

different housing types than those permitted in adjoining rural and agricultural areas.[19] Permitted development in Rural Towns included ***"[r]esidential development, including single-family housing on small lots as well as multi-family housing and mixed-use developments***."[20]

In 1999, King County adopted the Fall City Subarea Plan to address rural character. While it was in effect, the Subarea Plan was the "official county policy for the geographic area of unincorporated King County defined in the plan."[21]

The Subarea Plan was specifically crafted to protect rural character in and around Fall City.[22] It eliminated a 407-acre Urban Reserve, significantly reduced the Rural Town boundaries, and concentrated modified R-4 density residential development within the new reduced town boundaries, while

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[19] KC01068 (CP R-302(a)); KC01084-85 (CP, R-506).

[20] KC01085 CP, R-507(b) (emphasis added).

[21] KC Ord. 13875 §1(N).

[22] KC18053 (SP, RT-1); KC18056, (SP, L-1); KC108056-57 (SP, L-2).

adopting low density rural and agricultural zoning for areas outside of the town, as illustrated on the zoning map below.[23]

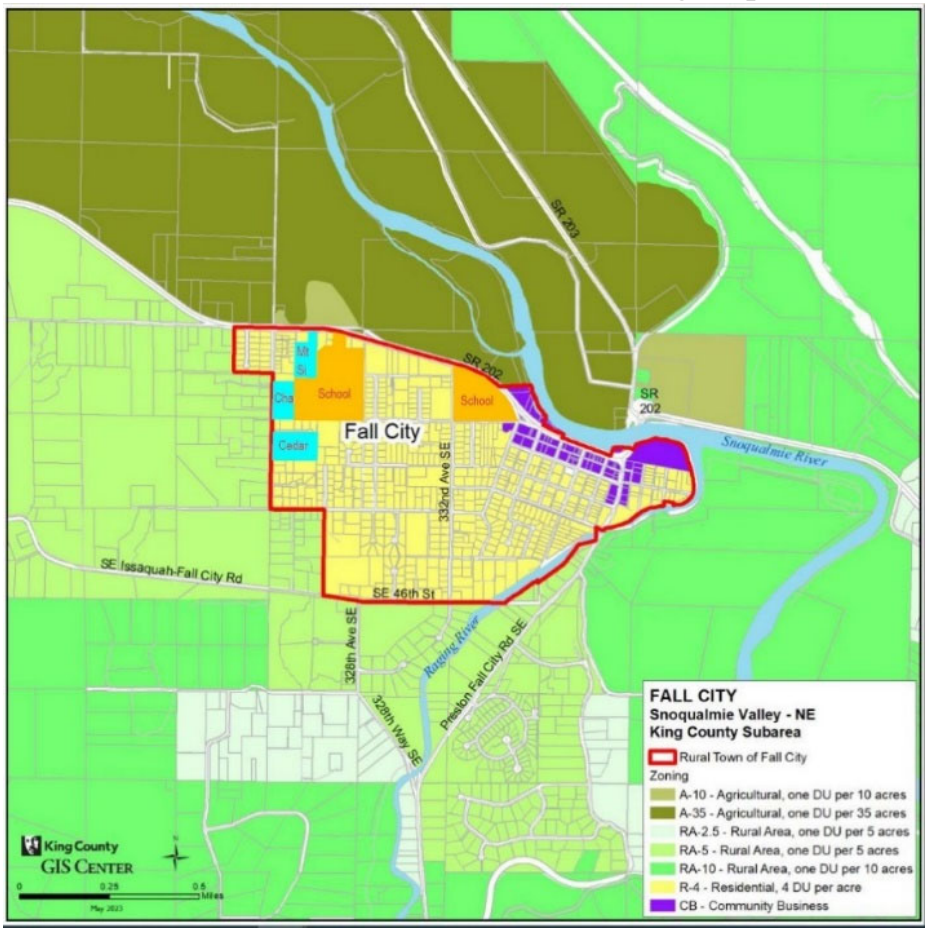

Fig. 1 Illustrative Exhibit of the Taylor Plats (blue), Boundary of Fall City (red), R-4 Zoning (yellow), and the Rural and Agricultural Zoning Outside of the Rural Town (green).[24]

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[23] KC18053 (SP, RT-1); KC18026-28 (SP, Guide to Readers); KC18053 (SP, RT-1); KC18054 (SP, former zoning map); KC18055 (SP, new town boundaries and new zoning); and KC18056-58 (SP, L-1 and L-2).

[24] This map is based on KC18055.

The modified R-4 zoning within the Rural Town boundaries reduced the maximum allowed units/acre from six to four. As a result of these changes, Subarea Plan policy RT-1 concluded:

> The Rural Town boundaries of Fall City are shown on the map on page 21, and ***reflect the community's strong commitment to its rural character***, recognize existing development patterns and respect natural features.[25]

The Comprehensive Plan made similar findings:

> ***The zoning for Fall City adopted in the 1999 Fall City Subarea Plan reflects the community's strong commitment to its rural character,*** recognizes existing uses, provides for limited future commercial development, and respects natural features.[26]

On June 27, 2000, the County adopted KC Ord. 13881 to implement the Subarea Plan by amending the residential density

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[25] KC18053 (emphasis added).

[26] KC01505 (CP, CP-535 (emphasis added)).

and dimension table for properties located in Fall City to the modified R-4 standard.[27] Thus, for nearly 25 years, modified R-4 zoning was "the" standard for complying with the Comprehensive Plan and Subarea Plan to meet rural character within the boundaries of Fall City, and it was the regulatory landscape applicable to the Taylor plats.[28]

C. The Hearing Examiner and King County Council determine the plats meet all development and zoning requirements and approve them.

The King County Hearing Examiner found that the Taylor plats conformed to the applicable land use controls, that the plats made appropriate provision for the items listed in RCW 58.17.110, and that the plats would serve the public health, safety, welfare, use, and interest.[29] Consistent with longstanding

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[27] KC18010-20 (Ord. 13881 §1(22)).

[28] ToP, pp. 295, ln. 5 - 300, ln. 26, HT, pp. 14-19. References to "ToP" are the "Transcript of Proceedings." "Ln." is the abbreviation for "Line" and "HT" stands for Hearing Transcript.

[29] KC07400-01 (Cedar HED, Concs. 9, 10, and 12); KC13216 (Mt. Si HED, Concs. 10 and 11); KC03037 (Cha HED, Concs. 11 and 12).

Washington law, the Examiner concluded that the Comprehensive Plan's policies were not directly applicable to the Taylor plats because of the existence of adopted development regulations.[30]

Although she apparently felt the County could have done more to address rural character, she acknowledged that the County's modified R-4 zoning was the sole controlling means to address rural character in Fall City and that the plats met that standard:

> ***"The King County Council has provided one regulatory tool to address Fall City rural character" and "the King County Council has not given Permitting or the Examiner tools other than maximum density to address compatibility with rural character.***"[31]

Citing to *Citizens for Mount Vernon v. City of Mount*

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[30] KC07400 (Cedar HED, conc. 4); KC13215-16 (Mt. Si HED, conc. 7); KC03036-37 (Cha HED, Conc. 7).

[31] KC07383 and 85 (Cedar HED, Finds. 12 & 15); KC13194 and 96 (Mt. Si HED, Finds. 11 & 14); KC03017 & 19 (Cha HED, Finds. 12 and 16). KC17301 (Cedar HED, Find. 12); KC13194 (Mt. Si HED, Find. 11); KC03017 (Cha HED, Find. 12) (plats met R-4 standard).

Vernon, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997), RCW 36.70B.030(1), and RCW 36.70B.040(1), the Examiner explained that the Comprehensive Plan is a policy guide for lawmakers that cannot be applied to land use project decisions that are addressed by adopted development regulations.[32] Thus, the Examiner concluded that she had "no authority to change the zoning designation or to "fill in" perceived or real gaps in applicable regulations."[33]

Discussing the GMA's standards for the rural element of a comprehensive plan, the Examiner stated, "WAC 365-196-425 in particular guides the development of the rural element of the comprehensive plan. Again, it does not apply directly to individual projects such as the subject preliminary plat."[34]

Finally, the Examiner concluded that the Taylor plats

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[32] KC03036-37 (Cha HED, Conc. 7).

[33] KC03036 (Cha HED, Conc. 7); *see also,* KC07400 (Cedar HED Conc. 4); KC13215 (Mt. Si HED, Conc. 7).

[34] KC07400 (Cedar HED, Conc. 3); KC13215 (Mt. Si HED, Conc. 5); KC03036 (Cha HED, Conc. 5).

complied with the state's subdivision statute, RCW Ch. 58.17, and made adequate provision for the list of enumerated items and the public health, safety, and general welfare, as required by RCW 58.17.110.[35] She approved the plats.[36]

FCSG appealed, and the King County Council conducted a *de novo* review.[37] At the hearing, Council pressed FCSG to articulate what aspects of the Comprehensive Plan had been violated and what the authority would be for the subjective "rural character" standards it sought to impose.

> **Councilmember Dembowski:**
> OK. And so, help me understand specifically what did she find violated, with respect to these plats, the Comp. Plan.
>
> **FCSG:**
> So specifically, she found that each one of these subdivisions . . . how do I want to phrase this . . . Fall City, the typical Fall City lot has characteristics civil (sic) a certain lot size, has minimal impervious

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[35] KC07401 (Cedar HED, Conc. 10); KC13216 (Mt. Si HED, Conc. 11; KC03037 (Cha HED, Conc. 12).

[36] KC07401 (Cedar HED, Dec. 1); KC13216 (Mt. Si HED, Dec. 1); KC03037 (Cha HED, Dec. 1).

[37] ToP, pp. 287, ln. 33-288,-ln. 2, HT, pp. 6-7.

> surface coverage, has . . . vegetation characteristics, leaves room for RV for recreational vehicles, boats, things of that nature. There's parking for multiple vehicles. You're not forced to park . . . on the driveway and then fill up the streets. These are some of the characteristics she found were not reflective of rural character. That was her factual determination.[38]
>
> **Councilmember Dembowski:**
> [B]ut then she goes on to say that the department hasn't been given specific tools to kind of address these general policies.
>
> **FCSG:**
> Yes, right.[39]

Councilmember Dembowski recognized the pitfalls of FCSG's position and the regulatory anarchy it would cause:

> **Councilmember Dembowski:**
> [I] hear what you're saying and I'm not sure that I agree with her on step one that these plats are inconsistent with the General Comp. Plan. But let's say she's right and we follow your path . . . Without specific development regulations like you know minimum lot size, side yard setbacks, must have RV's parking of so many square feet, impervious [surface] limits, or whatever, what would we have the examiner do with respect to these conditions on these plats for approval? And what would guide the

[38] ToP, p. 291, lns. 21-29, HT, p. 10.

[39] ToP, p. 291, lns. 37-40, HT, p. 10.

examiner or us?[40]

* * * *

> **Councilmember Dembowski:**
> ***[I]'m left with the impression that with general policies absent specific development regulations, if we were to remand this, I'm trying to figure out from what source would the conditions be to better achieve the rural character objectives that appellant wants to achieve. From what source would, where would we find those, where would the examiner find those to impose them as a condition of approval for the plats? We make them up?***[41]

In response to these concerns, FCSG confirmed it was seeking an uncodified, subjective remedy.[42] FCSG also acknowledged the Council's "nervousness about having the examiner be in the position where he or she has to make subjective judgments as to whether something meets a subjective standard . . . like the rural character language in the comp. plan, in the sub-area plan."[43]

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[40] ToP, pp. 287, ln. 33-288,-ln. 2, HT, pp. 6-7.

[41] ToP, p. 293, lns. 5-10, HT, p. 12 (emphasis added).

[42] ToP, p. 293, lns. 29-35, HT 13.

[43] ToP, p. 302, lns. 7-12, HT, p. 21.

Despite this, FCSG argued that the Council should remand the plat approvals and allow the Examiner to impose different, unknowable, and uncodified conditions on the Taylor plats, after an *ad hoc* subjective process. The Council was understandably concerned about such unfettered discretion:

> **Councilmember Dembowski:**
> [I] mean, I guess to just say it again, I've not heard from what source if those were the objectives that we wanted to achieve how that would be determined with specificity such that a project proponent could design a plat with their engineers and architects and designers to achieve them. We don't. That's what I'm troubled with here. If we were to remand, remand to what? To do what? It feels like you are boxing with the marshmallow man. . . .[44]

Councilmember Dembowski also discussed the Subarea Plan at length.[45] He recognized that the modified R-4 zoning in the Subarea Plan "was a compromise" that reduced the maximum density from 6 units/acre to 4 units/acre and that this zoning was the applicable regulation to address rural character in Fall City.[46]

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[44] ToP, p. 294, lns. 3-7, HT, p. 13.

[45] ToP, pp. 298, ln. 38-300, ln. 26, HT, pp. 17-19.

[46] ToP, p. 299, lns. 30-32, HT p. 18; ToP p. 300, lns 1-3; 10-17,

Following the hearing, the Council voted 7-0 to deny FCSG's appeals and adopted ordinances that approved the preliminary plats.[47]

D. <u>The Court of Appeals affirms.</u>

In a thorough and well-reasoned opinion, the Court of Appeals upheld the preliminary plat approvals granted by the Hearing Examiner and confirmed by County Council.[48]

The Decision explained that there was no statutory mandate requiring the Hearing Examiner to apply the general policies of the Comprehensive Plan to meet subdivision requirements where the County had complied with the GMA by adopting a Comprehensive Plan and Subarea Plan with specific development regulations to address rural character, and the Examiner had found that the plats complied with the list of

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HT, p. 19.

[47] Ord. 19673 (Mt. Si); Ord. 19674 (Cedar); and Ord. 19675 (Cha).

[48] Decision, Pet. App'x A, p. 25.

requirements for preliminary plat approval in RCW 58.17.110 and in the County's analogous regulation, KCC 20.22.180.[49]

III. ARGUMENT

RAP 13.4(b) provides that a Petition may *only* be accepted if (1) the Decision is in conflict with a decision of the Supreme Court; (2) the Decision is in conflict with a published decision of the Court of Appeals; (3) a significant question of constitutional law is involved; or (4) the petition involves an issue of substantial public interest. FCSG's Petition fails to meet any of these standards.

A. The GMA vests the County with broad regulatory discretion to balance priorities in its Comprehensive Plan.

The GMA vests local governments with a "broad range of discretion" because they are required to balance priorities and options in full consideration of local circumstances.[50] Thus, if a

[49] Decision, Pet. App'x A, pp. 10-11; 17-19, 21.

[50] RCW 36.70A.3201.

local development regulation meaningfully advances certain comprehensive plan goals and policies, a finding that the regulation fails to advance a different goal or policy cannot by itself be an invalidating inconsistency. *Homeward Bound in Puyallup v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 23 Wn. App. 2d 875, 894, 517 P.3d 1098 (2022).

1. The Comprehensive Plan and Subarea Plan meet the GMA's Rural Element requirement.

The GMA directs that local comprehensive plans include a rural element to address lands that are not designated for urban growth, agriculture, forest, or mineral resources.[51] The GMA recognizes that "[b]ecause circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances . . . ."[52]

The GMA does not dictate a specific manner for achieving a variety of rural densities. *Thurston Cnty. v. W. Washington*

[51] RCW 36.70A.070(5)(a).

[52] RCW 36.70A.070(5)(b).

Growth Mgmt. Hearings Bd., 164 Wn.2d 329, 360, 190 P.3d 38 (2008). Instead, the GMA provides general guidelines for local governments and gives counties "a great amount of discretion to employ various techniques to achieve a variety of rural densities." *Id.* at 355.

Thus, as the Court of Appeals found, the County followed the GMA by adopting a Comprehensive Plan, Subarea Plan and implementing development regulations (KCC 21A.12.030.B.22 and the amended zoning map) to address rural character in Fall City.[53]

The Court's Decision is entirely consistent with the GMA's regulatory scheme, the state's Local Project Review Act (RCW Ch. 36.70B), and precedent establishing the appropriate roles for comprehensive plans and development regulation during project permit review.[54]

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[53] Decision, Pet. App'x A, p. 25

[54] See e.g., RCW 36.70B.030(1); RCW 36.70B.030(2); and RWC 36.70B.040(1).

Key points in the Decision include:

- Under the GMA, comprehensive plans serve as "guides" or "blueprints" to be used in making land use decisions. Thus, a proposed land use decision must only generally conform, rather than strictly conform, to the comprehensive plan. A comprehensive plan does not directly regulate site-specific land use decisions. Instead, local development regulations, including zoning regulations, directly constrain individual land use decisions. *Woods v. Kittitas County,* 162 Wn.2d 597, 612-614 174 P.3d 25 (2007); *Citizens for Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 873, 947 P.2d 1208 (1997).[55]

- In adopting the Local Project Review Act (RCW Ch. 36.70B), the legislature explained that, where there are adopted development regulations, project consistency with the GMA is determined by those regulations, or in their absence, by reference to the comprehensive plan. RCW 36.70B.030(1) and RCW 36.70B.040(1).[56] Here, to further the policies in the 1999 Subarea Plan, the County adopted a specific development regulation, KCC 21A.12.030.B.22, to address rural character in Fall City by limiting allowed development density.[57]

- The Taylor plats were appropriately approved because the Hearing Examiner concluded that the

[55] Decision, Pet. App'x A, p. 10.

[56] Decision, Pet. App'x A, pp. 10-11; 17-18.

[57] Decision, Pet. App'x A, pp. 12-14.

plats met the applicable development regulations and made appropriate provision for the subjects enumerated in RCW 58.17.110: to serve the public health, safety, and welfare and to serve the public use and interest.[58]

- The Decision correctly noted that RCW 58.17.110 does not include a requirement to generally conform with the comprehensive plan and that nothing in RCW 58.17.100's direction for an examiner to make advisory reports and recommendations mandated denial of the plat applications.[59]

- The Decision correctly concludes that the 1995 post-GMA Project Review Act, was written to establish a mechanism for compliance, conformity, and consistency of proposed projects with GMA comprehensive plans and development regulations. The Court concluded that to the extent there is an inconsistency between the Project Review Act, and the state's 1977 pre-GMA Planning Enabling Act (RCW 36.70.970(3)), the Project Review Act, as the later, more specific regulation should control.[60] Moreover, when the two Acts are read together, to find conformity with a comprehensive plan means that the hearing examiner looks first to the adopted development regulations where they exist.[61] Here, this is what occurred, and FCSG's attempt to manufacture a conflict between the statutory

[58] Decision, Pet. App'x A, p. 17.

[59] Decision, Pet. App'x A, pp. 15-16.

[60] Decision, Pet. App'x A, pp. 18-20.

[61] Decision, Pet. App'x A, p. 19.

language was appropriately rejected.

- Nothing in King County's subdivision regulations required conformity with every element or policy of the Comprehensive Plan, but instead mirrored the list of topics that the Examiner was required to review under RCW 58.17.110.[62]

The Decision correctly applied long-standing precedent on the relationship between comprehensive plans and development regulations during project review:

> [T]hus, under RCW 36.70B.030(1), RCW 36.70B.040(1) and *Citizens for Mount Vernon,* the development regulations controlled. After a careful review, followed by detailed findings, the hearing examiner ultimately concluded that the proposed subdivisions "will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety, and welfare and public use and interest." Such findings and conclusions satisfy the requirements of the subdivision statute.[63]

To adopt FCSG's desired outcome and impose additional, unknowable, and subjective standards of "compliance" with the Comprehensive Plan's policies, as determined in the subjective

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[62] Decision, Pet. App'x A, pp. 20-21.

[63] Decision, Pet. App'x A, pp. 17-18.

opinion of the Hearing Examiner, would upset the GMA/Local Project Review Act hierarchy, and deprive Taylor and other landowners of due process notice and their vested rights to use their property consistent with established development regulations.

B. The Decision does not conflict with any precedent.

FCSG argues that various state and local statutes and regulations mandate compliance with both comprehensive plans and development regulations and that, as a result, the Decision conflicts with *Cingular Wireless, LLC v. Thurston Cnty.*, 131 Wn. App. 756, 129 P3d 300 (2006).

Cingular Wireless is entirely distinguishable. It involved a special use permit in Thurston County for a cell tower, not application of established King County zoning and preliminary plat regulations to a use allowed as a matter of right. Moreover, the Thurston County Code expressly mandated application of the County's Comprehensive Plan as part of the discretionary decisionmaking process inherent in special use permitting. *Id.* at

763 (citing TCC 20.54.040, which required that the proposed special use "shall comply with the Thurston County Comprehensive Plan . . .").

Here, as the Court noted in the Decision, the Thurston County Code allowed wireless communication facilities "as a special use, but subject to compliance with both "general" and "specific" standards."[64] Thus, *Cingular* is an expection to the general rule.

In the instant case, there is no such mandate expressly requiring compliance with general comprensive plan policies as conditions for approval of preliminary plats in King County. As the Court of Appeals put it: "[F]CSG's arugments fail; unlike the the Thurston County code, none of the provisions cited by FCSG "expressly require that a proposed use comply with a comprehensive plan."[65]

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[64] Decision, Pet. App'x A, p. 22.

[65] Decision, Pet. App'x A, p. 23 (citing *Cingular*, 131 Wn. App. at 770).

Tellingly, FCSG does not cite to a single case in which this Court or the Court of Appeals has held that the state statutes and local regulations that FCSG cites to "mandate" application of general comprehensive plan policies to override adopted development regulations, which would contravene RCW 36.70B.030(1), RCW 36.70B.030(2), and RCW 36.70B.040(1).

Here, the Court of Appeals reviewed the statutes and regulations cited by FCSG and reached the unremarkable conclusion that neither the state nor King County had statutorily mandated application of general comprehensive plan policies to Taylor's plats in light of the specific Comprehensive Plan policies, Subarea Plan policies, and enabling development regulations that had been adopted to address rural character in Fall City.[66] Thus, the Decision aligns with prior precedent, and there is no conflict.

[66] Decision, Pet. App'x A, pp. 23-25.

C. There is no substantial public interest at play.

There is no substantial public interest in the approval Taylor's preliminary plats, which were adopted under a regulatory scheme that, except for other vested applications, is no longer in effect. Nor has FCSG shown that there is any public interest in its novel attempts to create a field of discretion in which a hearing examiner decides plat applications based on his or her *ad hoc* beliefs about applicable comprehensive plan policies.[67] Additionally, contrary to FCSG's assertions, King

[67] FCSG requests a remand to the Hearing Examiner so that she can re-review the approved applications with her new-found discretion. FCSG cites two cases in support of this relief, but both are entirely distinguishable. In *Norco Construction Inc. v. King County,* 29 Wn. App. 179, 187 (1981), the court compelled the County to act on a preliminary plat application because it had failed to act for more than 90 days, contrary to state law. In *Weyerhauser v. Pierce County,* 124 Wn.2d 26 (1996), this Court remanded an approval of a permit for a sanitary landfill project in part because the Hearing Examiner improperly held that the Solid Waste Management Plan was only a "guideline," while compliance was in fact mandatory. FCSG seeks the opposite here: remand so that the Hearing Examiner can re-explore the issue with *more* discretion. As Councilmember Dembowski pointed out, it has never been clear what metrics FCSG would have the Hearing Examiner use on remand to further apply the Comprehensive Plan other than the enacted development

County's former local comprehensive plan policies and zoning regulations for addressing rural character in Fall City do not "implicate housing developments statewide."[68] This case involved a uniquely local issue, under a former regulatory regime, that has no impact on the larger public interest.

IV. CONCLUSION

For the foregoing reasons, the Court should deny FCSG's Petition for Review.

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regulations.

[68] Petition, p. 33.

I certify that this brief is in 14-point Times New Roman font and contains 4,667 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 23rd day of July, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 2025, I caused to be served the foregoing TAYLOR DEVELOPMENT, INC.'S RESPONSE TO PETITION FOR REVIEW on the following parties at via ECF and e-mail:

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July 23, 2025 - 2:20 PM

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