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

NO. 86032-1

FALL CITY SUSTAINABLE GROWTH,

Appellant,

v.

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

Respondents.

OPENING BRIEF OF FALL CITY SUSTAINABLE GROWTH

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I. INTRODUCTION

This is an appeal under the Land Use Petition Act ("LUPA"), Ch. 36.70C RCW. A King County hearing examiner approved three preliminary plat (aka "subdivision") applications despite concluding that the plats were not in conformance with the King County Comprehensive Plan. Appellants, Fall City Sustainable Growth, appealed to the King County Council. The Council denied the appeal. Pursuant to KCC 20.22.250.A,[1] the

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[1]

> The council shall take final action on an examiner recommendation by ordinance and, when so doing, shall make findings and conclusions from the record of the public hearing conducted by the examiner to set forth and demonstrate the manner in which the action is consistent with applicable laws, regulations, and adopted policies. **The council's findings and conclusions may adopt as its own all or portions of the examiner's findings and conclusions**.

KCC 20.22.250.A (emphasis supplied).

Council opted not to make its own findings and conclusions and instead implicitly adopted the findings and conclusions of the hearing examiner as its own. AR[2] KC15962;[3] CP219-244.[4] Thus, this Court's review is of the examiner's legal determination that she lacked authority to ensure that the plats were in conformance with the Comprehensive Plan.

That is the crux issue in this case: Whether state law, the King County Code, or both require a plat to conform with the County's Comprehensive Plan?

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[2] King County has filed the administrative record and Bates-stamped the record with consecutive numbers in the format "KC#####." For the sake of conciseness, the identifier AR ("Administrative Record") will not be used in this brief. For example, for the remainder of the brief, "KC15962" will be used, as opposed to "AR KC15962."

[3] Video of King County Council hearing approving the plats (Oct. 3, 2023).

[4] Transcript of King County Council hearing (Oc. 3, 2023).

Taylor Development[5] is the applicant for all three plat applications at issue. All three of Taylor's proposed plats are located within Fall City, Washington.

King County's Comprehensive Plan, other county planning policies and the Washington Growth Management Act are replete with provisions describing the elements of rural character and the State's and County's interest in protecting rural areas. King County specifically designated Fall City as a "Rural Town" to protect its rural character.

The County's hearing examiner reached the same conclusion for each of the three plats: As a matter of law, none of the plats would conform with the County's Comprehensive Plan, particularly its goal to protect rural character.

Despite this conclusion, the examiner decided that she was obligated to approve the plats anyway. Her rationale was that the

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[5] Taylor Development's subsidiaries for each preliminary plat are named in the caption of this pleading.

County and State had only provided one tool to address the Comprehensive Plan's goal to protect rural character: compliance with the County Code's density standards. The examiner determined that because the plats were compliant with those density standards, she was obligated to approve them despite her conclusion that they did not conform with the Plan. The examiner cited no legal authority for her conclusion that compliance with density requirements negated various State and County codes mandate that plats must conform with the Comprehensive Plan.

The examiner's legal conclusion was wrong. State law and the King County Code prohibit approving plats that do not conform with a county's comprehensive plan while also requiring compliance with density regulations. The two requirements do not conflict. Developers can comply with both a comprehensive plan's rural protection policies and density limits. Compliance with density limits does not make the comprehensive plan conformity requirement superfluous.

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED FOR REVIEW

Appellant assigns error to the King County Council's approval of the following preliminary plat applications:

1. Council Ordinance No.19673 (approving Mt. Si plat) (CP10).

2. Council Ordinance No. 19674 (approving Cedar 23 plat) (CP19).

3. Council Ordinance No. 19675 (approving Cha Cha plat) (CP28).

A single legal issue is presented for review:

> Is King County required to deny a subdivision application that the county determines does not conform to the rural character policies of the King County Comprehensive Plan, even if the subdivision complies with the county zoning code's density standards?

III. STATEMENT OF THE CASE

A. Taylor Development Proposes Subdividing Three Properties in the Rural Town of Fall City.

Taylor Development submitted three preliminary plat applications to the Department of Local Services of King County.

A preliminary plat provides the basis of approval or disapproval for the subdivision of land. RCW 58.17.030(4).[6] The "Mt. Si" and "Cedar 23" plat applications were submitted on February 23, 2021. KC09824 (Mt. Si); KC05754 (Cedar 23). The "Cha Cha" plat application was submitted on June 10, 2021. KC00005. All three of the plats are located in the unincorporated town of Fall City. KC16237. The plats are identified in the image below as follows: Mt. Si (2), Cha Cha (3), and Cedar 23 (4). At one point, Taylor Development had planned to develop up to seven subdivisions in the town of Fall City:

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[6] RCW 58.17.020(4) defines a "preliminary plat" as:

> A neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

Id.[7]

B. Protecting Rural Areas, like Fall City, is a Priority of the State and King County.

The Growth Management Act (GMA) requires that counties designate "rural areas" in their Comprehensive Plan. RCW 36.70.070(5) ("Counties shall include a rural element [in their Comprehensive Plan] including lands that are not designated for

[7] The bottom half of the image has been cropped to fit the image on a single page.

urban growth, agriculture, forest, or mineral resources"). The GMA mandates that counties protect rural areas by requiring that development within these areas be "consistent with rural character." RCW 36.70A.070(5)(a).

The GMA requires King County and three surrounding counties to adopt a multi-county plan to address inter-jurisdictional issues in the central Puget Sound region. RCW 36.70A.210(7). "Vision 2050" is the regional multicounty planning policy document that includes King County. Implementation of the GMA's mandate to protect rural areas in the central Puget Sound region starts there.[8] Vision 2050 requires that "proposed levels of

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[8] The statutory framework has been described as a "cascading hierarchy" that starts with the GMA's goals and flows from there through multi-jurisdictional planning documents, to the comprehensive plans of individual cities and counties, then to development regulations and, ultimately, individual project decisions: "[T]the decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the [Act's] planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs

development [in the rural area] are consistent with the character of rural and resource areas." Multicounty Planning Policies at 37.[9] The multicounty planning policies echo the Growth Management Act's requirement that "[r]ural development … consist of … residential patterns that preserve rural character." *Id.* at 24.

The King County Countywide Planning Policies address growth issues among King County and the incorporated cities within King County. They are adopted by the county and the cities within the county and apply to both unincorporated and incorporated portions of the county. RCW 36.70A.210.[10]

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to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties. *See* RCW 36.70A.120." *Aagaard v. City of Bothell*, 1995 WL 1684088, at *4, (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Final Dec. and Order, Feb. 21, 1995).

[9] *VISION 2050: A Plan for the Central Puget Sound Region* (Oct 2020, links updated Nov 2022) (psrc.org) (accessed February 13, 2024). The GMA requires adoption of multicounty planning policies by the four central Puget Sound counties. RCW 36.70A.210(7).

[10] The county's comprehensive plan applies only to the

Like the four-county multi-county planning policies (*Vision 2050*), the Countywide Planning Policies prioritize protection of the rural area. The Countywide Planning Policies support patterns of growth in rural areas, including Rural Towns, that "maintain low density communities, and supports rural economic activities based on sustainable stewardship of land." 2021 King County Countywide Planning Policies at 33.[11] The Countywide Planning Policies echo the goal of the multicounty planning policies, stating that by 2050, "[t]he Rural Area is viable and permanently protected with a clear boundary between urban and rural areas." *Id.* at 9. Countywide policy DP-47 states that growth in the rural area should "maintain rural character." *Id.* at 33. Countywide policy

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unincorporated portions of the county. In contrast, the countywide planning policies are adopted by the county and the cities within the county and apply to both unincorporated and incorporated portions of the county. RCW 36.70A.210.

[11] 2021 Adopted CPPs (kingcounty.gov) (accessed January 13, 2024).

DP-48 states that residential development in the rural area should be limited to that which is "compatible with rural character." *Id.*

Next in the GMA hierarchy, the King County Comprehensive Plan fulfills the mandate of the Growth Management Act, the Multicounty Planning Policies, and the Countywide Planning Policies to designate and protect rural areas. An entire chapter of the Comprehensive Plan is dedicated to identifying and protecting rural areas. KC01052. The purpose of the first five sections of the Plan's "Rural Area" chapter is to satisfy the Growth Management Act's "mandatory rural element by designating Rural Area lands in order to limit development and prevent sprawl, by permitting **land uses that are supportive of and compatible with the rural character** established in the King County Countywide Planning Policies, and by providing for a variety of rural densities." KC01053 (emphasis supplied).

The Plan explicitly states the County's intent to protect rural character:

> Rural King County is an essential part of the county's rich diversity of communities and lifestyle choices, encompassing landscapes of scenic and great natural beauty. This chapter sets forth the **county's intent and policies to ensur**e the **conservation** and **enhancement** of **rural communities** and natural resource lands.

KC01052 (emphasis supplied).

The Plan includes several types of Rural Area designations, including the Rural Town designation. Fall City is designated as a "Rural Town," KC01084, one of only three remaining Rural Towns in King County. *Id*. Rural Towns, just like other parts of the Rural Area, are defined by their rural character. *Id*.

The GMA's cascading hierarchy continues with the statute's mandate that counties and cities adopt "development regulations that are consistent with and implement the comprehensive plan." RCW 36.70A.040(3)(d). King County has done so. Among other things, King County's development code mandates that proposed subdivisions in unincorporated King

County are to be "approved, approved with conditions or denied in accordance with" the King County Comprehensive Plan, KCC 19A.08.060.N, and "in accordance with" the Countywide Planning Policies. KCC 19A.08.060.O.

C. State and County Law Specify the Attributes of Rural Character.

The attributes associated with rural character are defined in several sources of authority. The Growth Management Act defines "Rural Character" as patterns of land use in which "open space, the natural landscape, and vegetation predominate over the environment;" which are "compatible with the use of the land by wildlife and for fish and wildlife habitat;" "that do not require the extension of urban … services;" and are "consistent with the protection of natural surface water flows and … water recharge and discharge areas." RCW 36.70A.030(35). While counties are afforded some flexibility in how they define rural character, RCW 36.70A.011, the regulations for the Growth Management Act set

forth foundational characteristics that must be included. Specifically, WAC 365-196-425(2) states:

> (a) The rural element shall include measures that apply to rural development and protect rural character. Counties must define rural character to guide the development of the rural element and the implementing development regulations.
> (b) The act identifies rural character as patterns of land use and development that:
> (i) Allow open space, the natural landscape, and vegetation to predominate over the built environment;
> (ii) Foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
> (iii) Provide visual landscapes that are traditionally found in rural areas and communities;
> (iv) Are compatible with the use of land by wildlife and for fish and wildlife habitat;
> (v) Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

> (vi) Generally do not require the extension of urban governmental services; and
> (vii) Are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

As directed by the Growth Management Act, King County's Countywide Planning Policies and Comprehensive Plan provide more specificity. The Countywide Planning Policies provide:

> The Rural Area is characterized by low density development with a focus on activities that are dependent on the land such as small-scale farming and forestry. The Rural Area also provides important environmental and habitat functions and is critical for salmon recovery. The location of the Rural Area, between the Urban Growth Area and designated Natural Resource Lands, helps to protect commercial agriculture and timber from incompatible uses. The Rural Area, outside of the Cities in the Rural Area, is to remain in unincorporated King County and is to be provided with a rural level of service.

King County Countywide Planning Policies at 33.

The Comprehensive Plan includes a list of attributes that are associated with rural character, including, among others, "traditional land uses of a size and scale that blend with historic rural development;" "community small-town atmosphere;" and "[t]he natural environment … as evidenced by the health of wildlife and fisheries." KC01058.

All these sources, State law and King County's policies, provide a structure for defining the attributes of rural character.

D. The Examiner Concluded as a Matter of Law that Taylor's Proposed Plats Are Not in Conformance with the Rural Protection Element of the Comprehensive Plan.

In all three review hearings (Cedar 23, Mt. Si, and Cha Cha), the examiner considered the evidence and concluded as a "matter of law" that the plats at issue did not conform with the Comprehensive Plan's keystone goal of protecting rural character. KC16231; KC17505; KC18119-20. Her legal conclusion in each was based on evidence she cited in her opinion. KC03017 (Cha

Cha); KC07384 (Cedar 23); KC13195 (Mt. Si). The proposed lots are so small and the homes so large, that the homes would fill most of the lot. Unlike typical rural areas, there would be tiny amounts of land remaining for front yards, side yards and rear yards.[12] The lack of front yards is evident in this image of Taylor's recently developed Arrington Court project (which has a similar design to the plats at issue in this appeal):

[12] For example, the proposed lot in the Cha Cha plat would average 5,839 square feet, KC16043, approximately 1/4th the size of a typical Fall City lot. KC00737. The reduced lot size results in "significantly higher impervious surface percentages on each individual lot." KC03018 (Cha Cha Report and Decision, FF 15.B).

KC18104.

The small lots in the three projects under review would leave little room for more than the minimum required parking, forcing much of the parking into the streets—typical in urban areas, but not rural. *See* KC16232 (Cha Cha Report and Decision, FF 15.F).

The small lots also would force "guests, service providers, delivery vehicles, or boats, trailers, RVs and other recreational vehicles typical in rural areas" to park in the street. *Id*.

Urban parking problems would result from fire code requirements: "The Fire Department requires that a paved roadway with a width less than 28 feet of curb-to-curb pavement be signed "No Parking" on both sides of the road. Providing no parking in front of all fifteen lots will only exacerbate the parking problems observed at Arrington Court [another similarly designed Taylor project recently developed in Fall City[13]]." KC03022 (Cha Cha Report and Decision, FF 36). The examiner found that it was unlikely the county sheriff would routinely enforce the no parking restrictions, resulting in much parking on the streets, uncharacteristic in a rural area. KC03018 (Cha Cha Report and Decision, FF 15.H).

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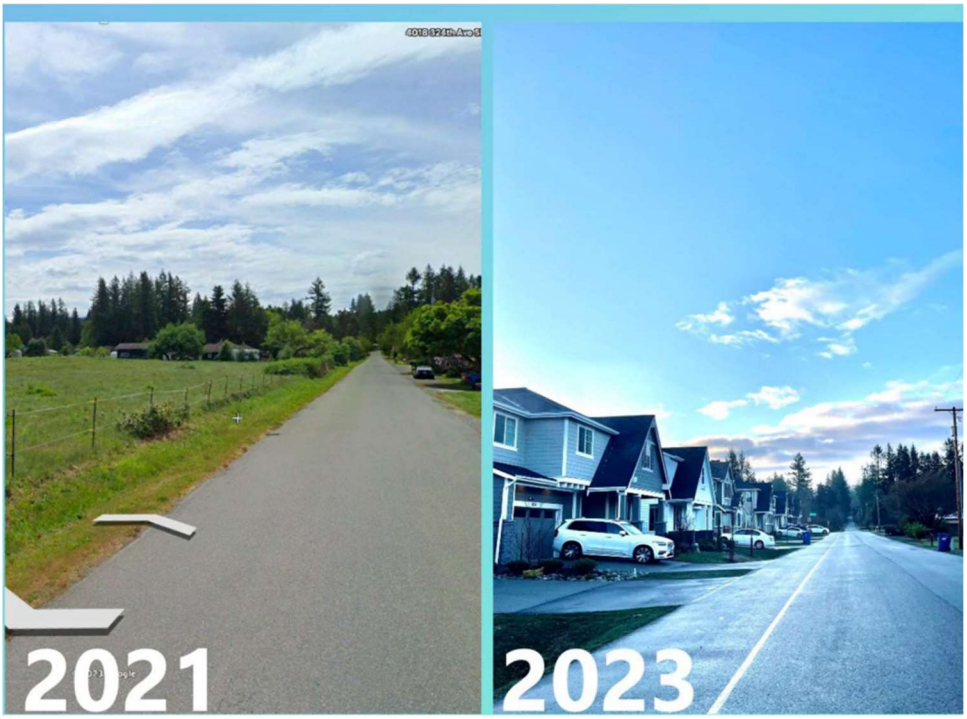
13 *See* KC03017.

Below are two more images from Taylor's Arrington Court project showing the transformation in character from a rural to urban setting wrought by developments of this type:



KC16207

The examiner supported her conclusion that the plats would not conform with the Comprehensive Plan with specific findings.[14] For example, in her Cha Cha decision, the examiner found:

> A. There is no minimum lot size in the R-4 zone…
> B. The use of residential LOSS[15] systems … allows an applicant to increase significantly the number of lots that can be created and to reduce significantly the lot sizes…
> C. The reduced lots sizes … result in significantly higher impervious surface percentages on each individual lot…
>
> * * *
>
> E. Arrington Court, Fall City II, Cedar 23, Mt. Si (as revised by the Applicant's Motion for Clarification) and Cha [sic], all proposed by Taylor Development entities … provide … little to no room [for parking] for guests, service providers, delivery vehicles, or boats, trailers, RVs and other recreational vehicles typical in rural areas.

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[14] Taylor did not challenge any of these findings in the appeal to the County Council. They are verities on appeal. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 238, 23 P.3d 520 (2001) (unchallenged findings are verities on appeal).

[15] "Large On-Site Septic System." *See* Ch. 246-272B WAC.

F. Due to their width, no parking is permitted on the Arrington Court internal roads in order to provide for passage of emergency vehicles.

G. Following the development of Arrington Court, the County signed 324th Ave. SE [Arrington Court internal road] "No Parking;" however, cars and service vehicles continue to park along the road on a weekly or even daily basis, frequently over the "fog line." When contacted, the Sheriff's office has responded that it does not have the resources to enforce no parking signs. It is not realistic to expect the King County Sheriff routinely to enforce the parking restriction.

* * *

K. …[A]s a result of the smaller lots … the County has permitted hybrid, more urban road standards within plats employing a LOSS system rather than rural road standards it had formerly applied…

* * *

For these reasons, the Examiner is not persuaded that Cha [sic] is consistent with rural character…

KC16222–23 (Cha Cha Report and Decision, FF 15).[16]

E. The Examiner Concluded that She Had Only One Tool to Address Conformance with the Comprehensive Plan's Rural Element: Density.

Despite her legal conclusions that the plats would not conform to the rural character policies of the Comprehensive Plan, the examiner concluded she was obligated to approve the plats anyway. Her reasoning was that State law and the King County code had only provided one tool to address conformance with the Comprehensive Plan: the County's density standards. KC17928 (Mt. SI); KC17301 (Cedar 17); KC16321 (Cha Cha). In support of her reasoning, the examiner cited no legal authority. *Id*. The Argument section of this brief will demonstrate the error in the examiner's legal conclusions.

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[16] The examiner's decision in the Cedar 23 and Mt. Si hearings includes the same findings as to the small lot sizes, the increased number of lots, the degree of impervious surface coverage, the lack of any additional parking, but does not include the expanded discussion of parking issues that occur at Arrington Court and are likely for Taylor's other plats. KC17915; KC17302.

IV. STANDARD OF REVIEW

LUPA sets forth the standards of review this Court must apply when reviewing a local land use decision. RCW 36.70C.130. Review is appellate review on the record created before the examiner. RCW 36.70C.120.

Questions of law are reviewed de novo. RCW 36.70C.130(1)(b). Deference may be given to a local hearing examiner when interpreting local ordinances. But no deference is given to a local government's construction of state statutes and regulations. *City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn. App. 17, 38, 252 P.3d 382 (2011). Even as to local ordinances, deference is not always due and never is absolute. Deference is not triggered unless the local ordinance is ambiguous. *Waste Mgmt. of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wn.2d 621, 628, 869 P.2d 1034 (1994). If the local code is ambiguous, the municipality's construction of its code is entitled to some deference only if the municipality can demonstrate a

history of construing the ambiguous term in a certain way. "One off" constructions receive no deference. *Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 815, 828 P.2d 549 (1992). If the municipality can meet that standard, its construction receives some deference, but even that does not mean blind acceptance by the reviewing court. *Franklin Cy. Sheriff's Office v. Sellers*, 97 Wn.2d 317, 325–26, 646 P.2d 113 (1982), *cert. denied*, 459 U.S. 1106 (1983) (courts retain the ultimate authority to interpret the law).

The application of the applicable law to the facts is reviewed under the "clearly erroneous" standard. RCW 36.70C.130(1)(c). A decision is clearly erroneous when the court is left with a definite and firm conviction that a mistake was committed even if some evidence supports the decision. *Norway Hill Preservation and Protection Ass'n v. King Cty Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). "[T]he court is expected to do more than merely determine whether there is substantial evidence to support an

administrative or governmental decision. The entire record is opened to judicial scrutiny and the court is required to consider the public policy and environmental values of SEPA as well." *Sisley v. San Juan Cty*, 89 Wn.2d 78, 84, 569 P.2d 712 (1977).

Findings of fact are reviewed for "substantial evidence," requiring a sufficient quantum to persuade a fair-minded person of the truth or correctness of the finding. RCW 36.70C.130(1)(c); *Thornton Creek Legal Def. Fund v. City of Seattle*, 113 Wn. App. 34, 61, 52 P.3d 522 (2002). However, the sole issue presented in this appeal is a legal issue.

V. ARGUMENT

A. A Preliminary Plat Application is Required to Satisfy the County and State Plat Requirements, Including Conformance with the Comprehensive Plan.

Both State law and County code mandate denying a plat application that is not in conformance with the Comprehensive Plan. State law requires that a preliminary plat application be

reviewed to assure conformance with two things: (1) the Comprehensive Plan and (2) regulatory standards and specifications (*e.g.,* density standards):

> [The hearing examiner][17] shall review all preliminary plats and make recommendations thereon to the city, town, or county legislative body **to assure conformance of the proposed subdivisions [1] to the general purposes of the Comprehensive Plan and [2] to planning standards and specifications as adopted by the city, town, or county.**

RCW 58.17.100 (emphasis supplied and [numbers] added).

The State's enabling statute for the hearing examiner system echoes RCW 58.17.100's dual requirement. A hearing examiner must find a plat conforms to both the Comprehensive Plan and the applicable planning codes and standards:

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[17] The statute refers to the duties of the planning commission or planning agency, but another statute provides counties with the option to substitute a hearing examiner for the planning commission. RCW 36.70.970. King County has opted to do so.

> Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. **Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to [1] the county's comprehensive plan and [2] the county's development regulations.**

RCW 36.70.970(3) (emphasis supplied and [numbers] added).[18]

The conformance mandate also is embodied in RCW 58.17.110(1). That section of the subdivision statute precludes approval of a plat unless it makes "appropriate provisions for . . . the general welfare" and only if "the public interest will be served." KCC 20.08.070 defines the Comprehensive Plan as a "means of promoting the general welfare."[19]

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[18] This provision states an examiner "shall … set forth the manner in which the decision would carry out and conform to the … plan." In this case, the examiner did the opposite, instead setting forth the manner in which the proposed plats did not conform to the Plan. *See* Section III.D., *supra*.

[19] This same section defines the Comprehensive Plan as a

The County platting ordinance mirrors the State's requirement:

> [A]pplications for subdivisions, short subdivisions and binding site plans may be approved, approved with conditions or denied in accordance with the following adopted county and state rules, regulations, plans and policies including, but not limited to:
> ***
> N. King County Comprehensive Plan

KCC 19A.08.060.

The examiner's express authority also includes the ability to "grant or deny an application … as the examiner finds necessary to carry out the applicable laws, regulations and **adopted policies**." KCC 22.22.030.B (emphasis supplied). The Comprehensive Plan and the Countywide Planning Policies are adopted policies. KCC 20.12.010; KCC 19A.08.060.N. & O.

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means for "establishing the urban/rural boundary." KCC 20.08.070.D.

Echoing RCW 58.17.110(1), KCC 20.22.180 and KCC 19A.08.060 require that plats protect the general welfare and be in the public interest.

In sum, a half dozen State and local code provisions prohibit the county from approving a plat which does not conform to the Comprehensive Plan.

B. The Absence of an Explicit Reference to Comprehensive Plan Conformity in RCW 58.17.110 Does Not Negate the Implicit Conformity Mandate in that Section nor the Express Conformity Mandate in Other Sections.

Taylor argued below that conformance with the Comprehensive Plan is not explicitly listed in the approval criteria in RCW 58.17.110 and, therefore, conformity is not required. *See* KC03214. That argument should be rejected for two reasons.

First, as already mentioned, RCW 58.17.110 prohibits approval of a plat if it does not promote the general welfare—and King County equates its Comprehensive Plan with

promoting the general welfare. KCC 20.08.070. Therefore, a plat that does not conform with the Plan does not promote the general welfare. Approving such a plat is expressly precluded by RCW 58.17.110(1).

Second, conformity is explicitly required in the preceding section, RCW 58.17.100, as well as in RCW 36.70.970(3) (hearing examiner decisions "shall . . . set forth the manner in which the decision would carry and conform to the comprehensive plan"). Taylor cannot succeed with an argument that these code sections (and the parallel county code sections) can be ignored.

The rules of statutory construction require reading codes in such a way that no provision is rendered meaningless. *Taylor v. Redmond*, 89 Wn.2d 315, 319, 571 P.2d 1388 (1977). If RCW 58.17.110 were read to preclude consideration of conformance with the Comprehensive Plan, the requirement in RCW 58.17.100 and RCW 36.70.970(3) that a county "assure

conformance" would be rendered superfluous. That reading should be avoided.

Here, the Court can harmonize these code sections and avoid rendering portions of RCW 57.17.100 or RCW 36.70.970(3) superfluous. When two codes address the same issue, both should be applied unless an irreconcilable conflict exists wherein compliance with one precludes compliance with the other. *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 708, 985 P.2d 262 (1999), *as amended* (Sept. 8, 1999). For instance, if one code requires streets to be wider than 15 feet and another requires streets to be only 12 feet wide, an irreconcilable conflict would preclude applying both provisions. But if one code provides that streets must be wider than 15 feet and another requires streets to be exactly 20 feet wide, both codes can be satisfied (by constructing a road exactly 20 feet wide).

Washington courts are familiar with this harmonization process. For example, in *Matter of Rodriguez,* 21 Wn. App. 2d

585, 506 P.3d 1256 (2022), the court was confronted with a criminal sentencing issue. The defendant was sentenced to 12 months of community service without accompanying treatment (*e.g.,* mental health treatment). The department of corrections filed a post-sentence petition asserting that the sentencing order violated the first-time offender waiver statute which prohibits community custody longer than six months without treatment. The State disagreed, arguing that another community custody statute should control. To resolve the issue, the court was required to determine whether the two rules were in conflict or if they could be harmonized. The first rule at issue was the first-time offender waiver statute, which requires that "an individual sentenced as a first-time offender cannot receive more than six months of community custody unless the trial court also orders treatment." RCW 9.94A.650. The second rule at issue was the combined effect of RCW 9.94A.702(1)(c) and RCW 9.94A.411, which the State argued allows for the imposition of up to 12-months of

community custody *without* accompanying treatment. The *Rodriguez* court concluded that there was no conflict:

> The two statutes here work in harmony. RCW 9.94A.702(1) generally allows, but does not require, trial courts to impose up to one year of community custody if the defendant's sentence is less than one year. The statute specifically refers trial courts to RCW 9.94A.650 if the defendant is sentenced as a first-time offender. RCW 9.94A.650 also allows, but does not require, a court to impose up to one year of community custody. However, this statute adds a requirement that if a court chooses to impose community custody beyond six months and up to one year, it must also impose a condition of treatment. RCW 9.94A.650(3).
>
> RCW 9.94A.702 and RCW 9.94A.650 work together to specify that when a defendant is sentenced as a first-time offender, a community custody term is governed by RCW 9.94A.650. This reading follows the general-specific rule of statutory construction, which favors a more specific statute over a more general one if two are in conflict.

> *See In re Est. of Kerr*, 134 Wn.2d 328, 949 P.2d 810 (1998).

21 Wn. App. at 588.

This harmonization analysis extends to all areas of law, including land use and subdivisions. For example, in *HJS Dev., Inc. v. Pierce Cty. ex rel. Dep't of Planning & Land Servs*., a hearing examiner revoked approval of a developer's preliminary plat pursuant to a local ordinance and the developer appealed. 148 Wn.2d 451, 61 P.3d 1141 (2003). The developer asserted that the local ordinance which allowed revocation of a preliminary plat conflicted with state law, RCW 58.17.140. The state law provided that a final plat meeting all requirements of the chapter must be submitted for approval within five years of the preliminary plat approval. The developer asserted that "RCW 58.17.140 … unconditionally allow[s] it five years following preliminary plat approval to comply with conditions and requirements. It [the developer] asserts the Legislature chose this policy to bring

preliminary plats within the arena of vested rights to instill certainty of the rules governing land development." 148 Wn.2d at 482. Thus, the developer argued that revocation pursuant to the local ordinance violates the state law and the developer's vested rights.

The court disagreed with the developer, concluding that the local ordinance and state law could be harmonized and therefore no conflict exists. Specifically, the court concluded that the state law does "nothing more than set a time limit," requiring that preliminary plats meeting all requirements be submitted for approval within five years. *Id.* at 486. This time limit, the court found, did not restrict the local government's right to adopt regulations allowing for the revocation of plat approval upon finding that the plat conditions or requirements had been violated or were impossible to meet. *Id.* at 482-483. The court went further, explaining the interplay between state platting requirements and a local government's authority to augment those requirements:

> Subdivision of land is both a local and statewide concern. State platting laws expressly charge local governments with the duty to ensure that the public interest is best served by approval of preliminary plats and final plats. The Legislature has provided that local governments may adopt regulations for the public health, safety, and general welfare in considering plat approval. When conditions of approval of a preliminary plat cannot be satisfied or are deliberately violated, remedial action, such as revocation, may be the only remedy. A revocation ordinance may be reconciled with state platting laws in circumstances under which revocation is necessary to protect the public health, safety and welfare.

Id. at 483 (footnotes omitted).

As shown above, the court concluded that both rules could be harmonized because neither precluded enforcement of the other. This is the essence of the conflict-harmonization analysis. *Inlandboatmen's Union of the Pac. v. Dep't of Transp.,* 119 Wn.2d 697, 701-2, 836 P.2d 823 (1992).

In yet another example of harmonization, in *Brown v. City of Tacoma,* the court confronted a potential conflict between a local ordinance and state law, both of which regulate the sale and discharge of fireworks. 116 Wn.2d 556, 807 P.2d 353 (1991). The appellant asserted that the local ordinance was unconstitutional because it conflicted with the state law. Specifically, the appellant argued that the local ordinance is unconstitutionally more restrictive than the state's law as to the dates and times that fireworks may be sold or discharged. *Id.* at 559. The state law reads as follows:

> "[N]o common fireworks shall be sold or discharged within this state except from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year. No common fireworks may be sold or discharged between the hours of eleven o'clock p.m. and nine o'clock a.m.

Id. at 558.

The local ordinance reads as follows:

> No common fireworks shall be sold or offered for sale at retail within the City of Yakima except from twelve noon on the twenty-eighth day of June to eleven o'clock p.m. on the fourth day of July of each year . . . No common fireworks may be sold or discharged between the hours of eleven o'clock p.m. and nine o'clock a.m.
>
> B. It is unlawful for a person to ignite, discharge, use or explode any common fireworks except between the hours of 9:00 a.m. and 11:00 p.m. on July 4th.

Id.

The local ordinance reduced the time available to purchase fireworks by two days. The local ordinance also reduced the time available to discharge fireworks to solely one day – July 4th.

The court concluded that the local ordinance and state law were not in conflict because neither precluded enforcement of the other. *Id.* at 562-3. Both laws could be adhered to simultaneously. Specifically, an individual who purchased fireworks between the 28th of June and the 4th of July and launched those fireworks

between 9am and 11pm on the 4th of July would be compliant with both. In reaching its conclusion, the court stated:

> …this court has repeatedly stated that a local ordinance does not conflict with a state statute in the constitutional sense merely because the ordinance prohibits a wider scope of activity. *Seattle v. Eze*, 111 Wn.2d 22, 33, 759 P.2d 366, 78 A.L.R.4th 1115 (1988); *Republic v. Brown*, 97 Wn.2d 915, 919, 652 P.2d 955 (1982); *Schillberg v. Everett Dist. Justice Court*, 92 Wn.2d 106, 108, 594 P.2d 448 (1979); *Bellingham v. Schampera*, 57 Wn.2d 106, 111, 356 P.2d 292 (1960). Where both the ordinance and the statute are prohibitory, and the difference between them is that the ordinance goes further in its prohibition, they are not deemed inconsistent because of mere lack of uniformity in detail. *Eze*, 111 Wn.2d at 33, 759 P.2d 366. Washington's fireworks law is a prohibitory, rather than a regulatory, law. *Red Devil Fireworks Co. v. Siddle*, 32 Wn. App. 521, 525-26, 648 P.2d 468 (1982). Because the statute and the ordinance are both prohibitory, they are not "'contradictory in the sense that they cannot coexist'" and should not be "'deemed inconsistent because of mere

> lack of uniformity'" as to the dates and times fireworks may be sold or used. *Eze*, 111 Wn.2d at 33, 759 P.2d 366 (quoting *Schampera*, 57 Wn.2d at 111, 356 P.2d 292).

Id.

Applying the harmonization analysis exemplified in the cases above to the case at hand demonstrates the fallacy of Taylor's argument. None of the criteria listed in RCW 36.70A.110(1) irreconcilably conflicts with the comprehensive plan conformity requirement in RCW 58.17.100 and RCW 36.70.970(3). Neither statute precludes enforcement of the other and, thus, no conflict exists.

In particular, the code's density requirements only set a maximum density, not a minimum. To comply with the density cap, Taylor's plat may not have more than 4 lots per acre. KCC 21A.12.030.B.22–B.23. But nothing in the density regulation precludes a plat with less than four units per acre. The regulation is a maximum, not a minimum. *Id.* Taylor can simultaneously stay

within the density cap *and* meet the rural character policies of the Comprehensive Plan by developing a project with fewer lots than the maximum allowed. Because compliance with both the density cap and the rural character polices is possible, there is no irreconcilable conflict; both code sections should apply. This type of compliance was exemplified in both *Rodriguez* and *Brown, supra,* where the court harmonized two rules by identifying conduct that would bring an individual into compliance with both rules.

Taylor's irreconcilable conflict argument fails for a second reason. As discussed above, while comprehensive plan conformity is not expressly stated as a requirement in RCW 58.17.110(1), it is implicitly required. RCW 58.17.110(1) expressly allows a county to deny a plat that does not serve the public interest and general welfare. KCC 20.08.070 defines the Comprehensive Plan as a

"means of promoting the general welfare."[20] Thus, there is no conflict with RCW 58.17.110(1) when King County denies a plat on grounds that it does not promote the general welfare because it does not conform with the county's Comprehensive Plan. Rather, in that situation, denial is implicitly authorized by RCW 58.17.110(1), too.

C. The Discretion Inherent in Determining Conformity with Comprehensive Plan Policies Does Not Render the Conformity Requirement Invalid.

Some County Council members alluded to a concern that requiring conformity with the Comprehensive Plan would inject impermissible discretion into the plat review process. CP226. But that argument ignores that discretion of this type pervades the land use permitting process. Provisions of this sort satisfy constitutional requirements that preclude excessively vague regulations.

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[20] This same section defines the Comprehensive Plan as a means for "establishing the urban/rural boundary." KCC 20.08.070.D.

1. Discretion is pervasive in land use permitting.

While certainty in the permitting process is served when regulations apply mathematical certitude, legislative bodies have long recognized that some subjectivity is necessary. This type of subjectivity is commonplace in King County's land use code and other land use codes around the state.

For example, many types of uses in various zoning districts are not allowed outright, but only if a "conditional use" permit can be obtained. As but two of many examples, in King County's residential zones, Mobile Home Parks and Dormitories are allowed as conditional uses. KCC 21A.08.030.A (Residential Land Use Table). The code provides that the King County examiner reviewing an application for a conditional use permit must determine whether "[t]he conditional use is designed in a manner that is **compatible with the character and appearance** of an existing, or proposed development in the vicinity of the

subject property." KCC 21A.44.040.A (emphasis added). Also, the examiner must assure that the "conditional use is not in conflict with the health and safety of the community." KCC 21A.44.040.E.

The County's zoning code does not define "compatibility." Miriam-Webster defines "compatible" as "capable of existing together in harmony."[21] Whether two things are harmonious is entirely subjective, thus, requiring the discretion of the decision maker.

Other jurisdictions use similar and identical terms. As but two of many examples, Thurston County allows a use defined as a "special use," only if it is compatible "with rural character," TCC 20.54.010, and compliant "with the Thurston County Comprehensive Plan." TCC 20.54.040.1. Kitsap County's conditional use criteria specifically requires that the "proposal is consistent with the comprehensive plan," and that "the proposal is

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[21] *Compatible Definition & Meaning - Merriam-Webster* (accessed January 10, 2024).

compatible with and . . . responds appropriately to the existing character . . . of the subject property and the immediate vicinity." Kitsap County Code 17.540.040.A.

King County's variance permit criteria similarly require the decision-maker to exercise subjective judgment. Criterion (D) requires that a variance not be "materially detrimental to the public welfare or . . . unduly injurious to property or improvements in the vicinity." KCC 21A.44.030. Many jurisdictions use the same or virtually the same standard for variances.[22]

Likewise, the County's temporary use permit requires the decision-maker to exercise subjective judgment:

> Temporary use permit**.** A temporary use permit shall be granted by the county, only if the applicant demonstrates that:

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[22] *See, e.g.,* PCC 18A.75.040.C.3 (Pierce County); KCC 17.560.010.A (Kitsap County); TCC 20.52.020.5-7 (Thurston County); ICC 17.03.210.D.1 (Island County).

> A. The proposed temporary use will not be materially detrimental to the public welfare;
> B. The proposed temporary use is compatible with existing land uses in the immediate vicinity in terms of noise and hours of operation;
> C. The proposed temporary use, if located in a resource zone, will not be materially detrimental to the use of the land for resource purposes and will provide adequate off-site parking if necessary to protect against soil compaction;
> D. Adequate public off-street parking and traffic control for the exclusive use of the proposed temporary use can be provided in a safe manner; and
> E. The proposed temporary use is not otherwise permitted in the zone in which it is proposed.

KCC 21A.44.020.[23]

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[23] Island County code similarly requires that a temporary use permit only be granted if it can be conditioned to "ensure that the activity or use does not disrupt the character of any of the surrounding permitted uses." ICC 17.03.200.D. *See also* SJCC 18.80.060.E.1-2 (San Juan County Code).

2. The County Codes and State Laws requiring conformance with the Comprehensive Plan are not unconstitutionally vague.

Taylor may argue that the regulatory requirement that plats conform to the Comprehensive Plan is too vague to satisfy the Constitution. *See* KC16281. But this would be an "as applied" challenge to the standards. The examiner had no trouble determining that *this proposal* clearly fell short of the standards. That some other design more in keeping with the standards might be more difficult to assess for conformance is not the issue here.

Three rules guide the court's evaluation of a "void for vagueness" challenge. First, mindful of separation of power issues, courts presume that the challenged rule or statute is constitutional:

> We do not apply this [vagueness] doctrine casually, however. In recognition of the Legislature's constitutional lawmaking role, *see* Const. art. 2, § 1, we approach a vagueness challenge with a strong presumption in favor of the statute's validity. *State v. Maciolek*, 101 Wn.2d

> 259, 263, 676 P.2d 996 (1984). Thus, "the party challenging the constitutionality of a legislative enactment has the burden of proving it is unconstitutionally vague ... beyond a reasonable doubt." (Citations omitted.) *Maciolek,* at 263, 676 P.2d 996.

State v. Smith, 111 Wn.2d 1, 5, 759 P.2d 372, 374 (1988).

Second, the void for vagueness test is stated in practical terms of the ability of a common person to understand the rule, without imposing undue requirements of specificity on the legislative body:

> Significantly, the vagueness doctrine "does not demand impossible standards of specificity or absolute agreement." *Id*. at 179, 795 P.2d 693. "If persons of ordinary intelligence can understand what [a statute] proscribes, notwithstanding some possible areas of disagreement, [the statute] is sufficiently definite." *Id*. (emphasis added). To determine whether a statute is sufficiently definite, the statute must be considered within the context of the entire enactment and the statute's language must be "afforded a sensible, meaningful, and practical

> interpretation." *Id*. at 180, 795 P.2d 693. A statute should not be found invalid merely because the reviewing court concludes that it could have been drafted more precisely. *Id*. at 179, 795 P.2d 693.

A.W.R. Const., Inc. v. Washington State Dep't of Labor & Indus.152 Wn. App. 479, 489–90, 217 P.3d 349, 353–54 (2009) (citing *City of Spokane v. Douglass*, 115 Wn.2d 171, 795 P.2d 693 (1990)).

Third, vagueness challenges "to enactments which do not involve First Amendment rights are to be evaluated in light of the particular facts of each case." *City of Spokane v. Douglass,* 115 Wn.2d 171, 182, 795 P.2d 693, 698 (1990). Therefore, unless the First Amendment is at issue, the court employs an "as-applied" analysis as opposed to a "facial" analysis. *See Maynard v. Cartwright*, 486 U.S. 356, 361, 108 S. Ct. 1853, 1858, 100 L. Ed. 2d 372 (1988). There is no First Amendment claim here, so an "as applied" framework is applied.

In cases where courts have applied the above three rules, policies more general than those at issue in this case have been upheld in a regulatory setting. In *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Associates,* 151 Wn.2d 279, 292-3, 87 P.3d 1176 (2004), the court rejected an argument that the city's design criteria were too vague to pass constitutional muster. The *Pinecrest* court found that the city's zoning requirements "in concert with a considerable number of design review concepts" created design standards that were sufficiently clear and, thus, not void for vagueness. *Id.*

In *Pinecrest,* for sites contiguous to single family development, the standards called for "increased building and parking setbacks," without specifying the amount of the increase setbacks and stated that "landscaping should be provided," without specifying the type or amount. *Id* at 282. The criteria also required compliance with several policies that lacked mathematical certitude or anything close to it: "enable a land use pattern that will

reduce dependence on automobile use, especially drive-alone vehicle use during morning and evening commute hours;" and "enable to design of new development in a manner that will ensure the safe and efficient movement of goods and people;" and "allow innovative site and building designs while providing for design harmony and continuity (*e.g.,* coordinated architectural styles, street trees, lighting, signage and benches." *Id.* at 283-4. Despite this level of generality, the Supreme Court upheld a rezone based on compliance with these vague policies. *Id.* at 293. The Court reasoned that the policies were consistent with the existing zoning code, unlike in other cases where the policies and code were in irreconcilable conflict. *Id.* at 291-2 (distinguishing *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997)). Further, the circumstances were distinguishable from cases where a city council had employed an "extremely vague" design review process. *Id.* at 293 (distinguishing *Anderson v. City of Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993)). In

contrast, the *Pinecrest* court concluded that the design review criteria in tandem with the detailed zoning code requirements were sufficiently clear to refute any vagueness argument. *Id.*

In *Cingular Wireless, LLC v. Thurston County,* 131 Wn. App. 756, 129 P.3d 300 (2006), the Court of Appeals upheld a county's denial of a cell tower permit based on noncompliance with general standards in the county's comprehensive plan and code. The court relied heavily on *Pinecrest* in rejecting vagueness arguments. The permit at issue required compliance with both general and specific standards. *Id.* at 763. The specific standards addressed design issues such as "height, setbacks, co-location with other providers," among others. *Id.* at 763–764. The hearing examiner determined that the cell tower would comply with these specific standards.

But the code also required conformity with more general standards. The first general standard was that the use "comply with the Thurston County Comprehensive Plan…" *Id.* This, in turn,

incorporated a plan policy that required "locat[ing] private utilities facilities **near compatible land uses** as defined in the county's Special Use standards." *Id.* at 773 (quoting Thurston County Comprehensive Plan, Utilities, at 7–13) (emphasis supplied). The code imposed additional general requirements. One required consideration of whether the use is "appropriate in the location for which it is proposed," as determined by whether the special use will have a "substantial or undue adverse impact on the neighborhood character or impose an undue burden on preexisting services." *Id.* at 763 (quoting TCC 20.54.040 & -.040(3)(a)).

The hearing examiner determined that although the cell tower would comply with the specific standards, it conflicted with the comprehensive plan's policy to "'locate private utility facilities near compatible land uses as defined in the County's Special Use standards.'" *Id.* at 766. The examiner also concluded that the project "would not comply with the purpose and intent of the zoning district, which is to '**enhance and preserve the rural**

agricultural character in areas where there is currently little development'" and that the project would violate the code's prohibition on facilities that "would have an undue adverse effect on neighborhood character." *Id.* (emphasis supplied). The board of commissioners affirmed. *Id.*

On appeal, the court denied Cingular's vagueness challenge. The court explained that "[z]oning ordinances must be specific enough to limit arbitrary and discretionary enforcement of the law." *Id.* at 777. The standards requiring preservation of "rural agricultural character" and avoiding "undue adverse effect on neighborhood character," though subjective, met constitutional requirements: "[O]ur state law does not require specific standards, but only general standards such as those contained in a comprehensive plan." *Id.* at 779.

In *State ex rel. Standard Mining & Dev. Corp. v. City of Auburn*, 82 Wn.2d 321, 510 P.2d 647 (1973), the city imposed conditions on a gravel pit operation based on "guidelines set forth

in the comprehensive plan [that] reveal a purpose, in harmony with the general purpose of the plan and of zoning laws, to provide for the protection of neighboring property . . .” *Id.* at 331. The court held that the city was entitled to consider general policies in its comprehensive plan in conjunction with more specific zoning code standards to determine whether permitting conditions were appropriate:

> The respondent argues that the city is not required to follow its comprehensive plan and consequently it cannot be read in *pari materia* with the zoning ordinance to find standards. If we were convinced that specific standards spelled out in the zoning law were necessary, this argument might well have substantial merit. But we have not been shown that courts have imposed such a stringent rule, nor have we been shown that it would serve any substantial purpose. If the purpose of the requirement of the special permit is known, the court can examine the conditions imposed and after having heard the evidence, can determine whether it is reasonably calculated to effect that purpose and whether it is

> unnecessarily onerous. **We know of no rule which would forbid the court to examine the comprehensive plan, as well as the applicable statutes, to ascertain the purpose of the legislative body in providing that certain land may not be used in certain ways** unless a special permit is secured.

Id. at 329-30 (emphasis supplied).

The court explained that mathematical certitude in permitting is not always appropriate because "[o]nly rarely will the environmental factors affecting different special use applications be the same." *Id.* at 330. This lack of certitude "does not mean that the applicant is denied due process of law or the equal protection of the laws—so long as he is granted a hearing, a right of appeal, and a chance to show that the conditions are unreasonable." *Id.* at 331.

These cases demonstrate that a constitutional attack on King County's use of the comprehensive plan policies should fail. The policies at issue are no more subjective than those upheld in the

foregoing cases. The applicant had a full and fair quasi-judicial hearing. The examiner considered the applicant's evidence and arguments, but then found that the projects would not meet the comprehensive plan's policies seeking to protect Fall City's "rural character." The meaning of that term is clarified by the Growth Management Act's definition of rural character, the policies and language of the multicounty and countywide planning policies, and the rural area chapter in the Plan itself. *See* Section III.C., *supra*.

The policies to protect Fall City's rural character certainly are no more vague than the policies upheld in *Pinecrest* ("enable a land use pattern that will reduce dependence on automobile use," "design . . . new development in a manner that will ensure the safe and efficient movement of goods and people," and "providing for design harmony and continuity," among others); in *Cingular* ("locat[ing] private utilities facilities near compatible land uses," whether the use is "appropriate in the location for which it is

proposed," and whether the use will have a "substantial or undue adverse impact on the neighborhood character," and a policy to "enhance and preserve the rural agricultural character" among others); and *Standard Mining* (provide for the protection of neighboring property).

As in *Cingular,* the examiner here concluded that none of the three plats at issue were in conformance with the Plan's keystone goal to protect rural character. She was emphatic that the line was crossed. But unlike the examiner in *Cingular* who then denied the application based on that nonconformance*, id.* at 764, the examiner in this case erred as a matter of law in believing that she was required to approve the applications despite her finding of nonconformance. Though she cited no basis for that legal conclusion, if Taylor seeks to defend it by referencing due process (void for vagueness) principles, the effort should fail. King County's policies to protect rural character should be enforced.

D. There Is No Conflict Between the King County Code and the Comprehensive Plan.

Taylor may also argue that this case amounts to a conflict between development regulations and the Comprehensive Plan, in which case the development regulations typically control. *See Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). But the rule is well established that while comprehensive plans are in many settings non-regulatory, if a code expressly requires conformance with a plan, conformance is required. *Lakeside Indus. v. Thurston Cty*., 119 Wn. App. 886, 895, 83 P.3d 433 (2004) (citing *Weyerhaeuser v. Pierce Cty*, 124 Wn.2d 26, 43, 873 P.2d 498 (1994)); *West Main Assocs. v. Bellevue*, 49 Wn. App. 513, 524–25, 742 P.2d 1266 (1987) (comprehensive plans can be given regulatory effect through enactment, in whole or part, as a regulation or ordinance), *rev. den.*, 112 Wn.2d 1009 (1989); *Woods v. Kittitas Cty*., 162 Wn.2d 597, 614, 174 P.3d 25 (2007) ("[i]f a zoning code explicitly

requires that all proposed uses comply with a comprehensive plan, then the proposed use must comply with both the zoning code and the comprehensive plan").

That is the case here where multiple state and county codes require a plat to conform with King County's Comprehensive Plan. *See* Section V.B., *supra*. Taylor's possible reference to cases like *Citizens for Mt. Vernon* should be to no avail.

VI. CONCLUSION

The examiner concluded as a matter of law that the plats were not in conformance with the Comprehensive Plan. The examiner's unchallenged findings of fact are verities on appeal. Because the application of law to fact has been decided (the proposed plats do not conform to the Comprehensive Plan), this Court should address the single legal issue presented and rule that the examiner erred when she approved the preliminary plat applications despite concluding they were not in conformance with the Comprehensive Plan. Upon so ruling, the Court should remand

the application to the county with instructions to deny the preliminary plat applications. Taylor Development would still be free to submit new applications that conform with the King County Comprehensive Plan.

Pursuant to RAP 18.17, I certify that this brief contains 9,245 words.

Dated this 5th day of March, 2024.

Respectfully submitted,

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