

No. 62167-0

IN THE COURT OF APPEALS, DIVISION ONE
FOR THE STATE OF WASHINGTON

PHOENIX DEVELOPMENT, INC., a Washington
Corporation, and G & S SUNDQUIST THIRD FAMILY
LIMITED PARTNERSHIP, a Washington
limited partnership,

Appellants,

v.

CITY OF WOODINVILLE, A Washington Municipal
Corporation, and CONCERNED NEIGHBORS OF WELLINGTON, a
Washington non-profit corporation,

Respondent.

**MOTION TO FILE BRIEF OF AMICUS CURIAE
BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON**

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Building Industry Association of Washington (BIAW) has over 12,500 members who are involved in construction and homebuilding projects statewide. Construction is a highly regulated industry and regulatory changes frequently impact affordable housing. BIAW's interest is to ensure individuals working in the building industry have predictability in the land development process. When local jurisdictions fail to follow the letter of the law in making quasi-judicial land use determinations, housing affordability suffers.

II. FAMILIARITY WITH THE ISSUES

Amicus curiae BIAW has reviewed the briefs filed by the parties. Amicus curiae BIAW is familiar with the issues involved and the scope of the argument presented by the parties on appeal. BIAW has filed numerous amicus memorandum in matters related to predictability in the development process. See, e.g., *City of Arlington v. Central Puget Sound Growth management Hearings Board*, 164 Wn.2d 768 (2008) (concerning a re-designation of agricultural land); *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683 (2007); (concerning a moratorium on shoreline development); *Habitat Watch v. Skagit County*, 155 Wn.2d 357 (2005) (concerning the applicability of appeal time limits under the Land Use Petition Act).

III. ISSUE(S) TO BE ADDRESSED BY AMICUS CURIAE

Amicus curiae requests leave to file a brief in *Phoenix Development v. City of Woodinville*. Amicus curiae will discuss how a decision by this court will impact the home building industry across the state. Amicus curiae will specifically address the City's role in quasi-judicial decision-making, and how the City's decision thwarts the goals and mandates of the Growth Management Act, RCW ch. 36.70A.

Amicus Curiae supports the Hearing Examiner's decision which was reversed by the City of Woodinville, and submits this motion and memorandum for the purpose of addressing this Court regarding the soundness of legal principles announced in the course of the City's decision.

IV. NEED FOR AMICUS CURIAE MEMORANDUM

An amicus curiae memorandum from BIAW will assist the Court with an industry perspective, by the home building industry, which is most affected by the decision in this case. The predictability of decision-making in land use decision making like rezones are of interest to both home builders and home owners to whom additional costs are passed in the course of the sale of property. Amicus curiae desire to help this Court understand the perspective of homebuilders who rely on clarity and predicatability of the decisions of local jurisdictions.

WHEREFORE, Movant/Amicus Curiae respectfully requests leave to file an amicus curiae brief in support of appellants PHOENIX DEVELOPMENT, INC. and G & S SUNDQUIST THIRD FAMILY LIMITED PARTNERSHIP.

Respectfully submitted this 17TH day of March, 2009.

By

A handwritten signature in black ink, appearing to read 'Timothy Harris', is written over a horizontal line.

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