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LAW OFFICES
J. RICHARD ARAMBURU

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

Phoenix Development, Inc., et. al.,
Petitioners/Plaintiffs,

Vs.

City of Woodinville, et. al.,
Respondents/Defendants.

NO. 07-2-29402-3SEA
NOTICE FOR HEARING
SEATTLE COURTHOUSE ONLY
(Clerk's Action Required) (NTHG)

TO: THE CLERK OF THE COURT and to all other parties listed on Page 2:
PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: February 11, 2008

Day of Week: Monday

Nature of Motion: Leave to File Amended Land Use Petition and Complaint

CASES ASSIGNED TO INDIVIDUAL JUDGES – Seattle

If oral argument on the motion is allowed (LR 7(b)(2)), contact staff of assigned judge to schedule date and time before filing this notice. **Working Papers:** The judge's name, date and time of hearing must be noted in the upper right corner of the Judge's copy. **Deliver Judge's copies to Judges' Mailroom at C203.**

☒ Without oral argument (Mon - Fri)

☐ With oral argument Hearing

Date/Time: February 11, 2008 at 9:00 a.m.

Judge's Name: Dean S. Lum

Trial Date: February 11, 2008

CHIEF CRIMINAL DEPARTMENT - Seattle in E1201

☐ Bond Forfeiture 3:15 pm, 2nd Thur of each month

☐ Certificates of Rehabilitation- Weapon Possession (Convictions from Limited Jurisdiction Courts)
3:30 First Tues of each month

CHIEF CIVIL DEPARTMENT – Seattle -- (Please report to E713 for assignment)

Deliver working copies to Judges' Mailroom, Room C203. In upper right corner of papers write "Chief Civil Department" or judge's name and date of hearing

☐ Extraordinary Writs (Show Cause Hearing) (LR 98.40) 1:30 p.m. Tues/Wed -report to Room E713

☐ Supplemental Proceedings
(1:30 pm Tues/Wed)(LR 69)

☐ DOL Stays 1:30 pm Tues/Wed

☐ Motions to Consolidate with multiple judges
assigned (without oral argument) (LR 40(a)(4))

Non-Assigned Cases:

☐ Non-Dispositive Motions M-F (without oral argument).
☐ Dispositive Motions and Revisions (1:30 pm
Tues/Wed)

☐ Certificates of Rehabilitation (Employment) 1:30 pm
Tues/Wed (LR 40(2)(B))

You may list an address that is not your residential address where you agree to accept legal documents.

Sign: G. Richard Hill Print/Type Name: G. Richard Hill

WSBA # 8806 (if attorney)

Attorney for: Petitioners/Plaintiffs

Address: 701 5th Avenue, Suite 7220

City, State, Zip Seattle, WA 98104

Telephone: 206-812-3388

Date: February 1, 2008

NOTICE FOR HEARING - Seattle Courthouse Only

ICSEA040502

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LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE
--

Name J. Richard Aramburu
Service Address: 505 Madison, Suite 209
City, State, Zip Seattle, WA 98104
WSBA# 466 Atty For: Respondents, Concerned
Neighbors of Wellington
Telephone #: 206-625-9515

Name Greg Rubstello
Service Address: 1601 5th Avenue, Suite 2100
City, State, Zip Seattle, WA 98101
WSBA# 6271 Atty For: Respondent, City of
Woodinville
Telephone #: 206-447-7000

Name _____
Service Address: _____
City, State, Zip _____
WSBA# _____ Atty For: _____
Telephone #: _____

Name _____
Service Address: _____
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Telephone #: _____

Name _____
Service Address: _____
City, State, Zip _____
WSBA# _____ Atty For: _____
Telephone #: _____

IMPORTANT NOTICE REGARDING CASES

Party requesting hearing must file motion & affidavits separately along with this notice. List names, addresses and telephone numbers of all parties requiring notice (including GAL) on this page. Serve a copy of this notice, with motion documents, on all parties.

The original must be filed at the Clerk's Office not less than **six** court days prior to requested hearing date, except for Summary Judgment Motions (to be filed with Clerk 28 days in advance).

THIS IS ONLY A PARTIAL SUMMARY OF THE LOCAL RULES AND ALL PARTIES ARE ADVISED TO CONSULT WITH AN ATTORNEY.

The SEATTLE COURTHOUSE is in Seattle, Washington at 516 Third Avenue. The Clerk's Office is on the sixth floor, room E609. The Judges' Mailroom is Room C203.

FEB 01 2008

LAW OFFICES
J. RICHARD ARAMBURUTHE HONORABLE DEAN S. LUM
LUPA Trial Date: February 11, 2008IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTYPHOENIX DEVELOPMENT, INC., a
Washington Corporation, and G&S SUNDQUIST
THIRD FAMILY LIMITED PARTNERSHIP, a
Washington limited partnership,

Petitioners/Plaintiffs,

vs.

CITY OF WOODINVILLE, a Washington
Municipal Corporation, and CONCERNED
NEIGHBORS OF WELLINGTON, a Washington
Nonprofit Corporation,

Respondents/Defendants.

No. 07-2-29402-3 SEA

MOTION FOR LEAVE TO FILE
AMENDED LAND USE PETITION
AND COMPLAINT FOR DAMAGES

RELIEF REQUESTED

Petitioners, Phoenix Development *et al.* (Phoenix), respectfully move the Court for an order granting leave to file an Amended Land Use Petition and Complaint for Damages. The amendment seeks only to clarify the allegations regarding the damages cause of action pursuant to RCW, Chapter 64.40. That clarification is made by adding a paragraph 4.5 to the Complaint

for Damages. No amendments are made to the petition filed under the Land Use Petition Act (LUPA).

A copy of the Amended Land Use Petition and Complaint for Damages is attached hereto as Exhibit A (without exhibits thereto). A proposed Order Granting Motion for Leave to File Amended Complaint is attached as Exhibit B.

STATEMENT OF FACTS

This action was originally filed on September 7, 2007. An Answer was filed on December 11, 2007.

This lawsuit includes a petition under the Land Use Petition Act (LUPA). Briefing is underway on the Petition and a hearing is set for February 11, 2008. No amendments are made to the Petition.

The action also includes a Complaint for Damages pursuant to RCW, Chapter 64.40. Other than the filing of an Answer, there has been no activity with respect to the RCW 64.40 damages claim by either party.

This matter arose from a conflict between the R-1 zoning applicable to the subject properties, and the operation of Woodinville Municipal Code section 21.04.080(1(a). The properties are zoned R-1 (one dwelling unit per acre). However, because urban services are available to the properties, they were not allowed to be developed at the low R-1 density. The code section stated:

Developments with densities less than R-4 are allowed **only** if adequate services cannot be provided.

1 WMC § 21.04.080(1)(a) (emphasis added). This code provision was enacted in 1997 in response
2 to a decision of the Growth Management Hearings Board. The Board had ruled that Woodinville
3 cannot perpetuate a pattern of inefficient, sprawling, one-acre lots when urban services are
4 available. In those areas of the City where services are available, development must be at urban
5 levels of at least R-4 density.
6

7 In an attempt to reconcile this conflict, Phoenix Development applied for a site-specific
8 rezone to R-4, the lowest density allowed under WMC § 21.04.080 (1)(a). Without approval of
9 that rezoning application, the properties could not be developed at all without being in conflict
10 with WMC § 21.04.080(1)(a).
11

12 On August 20, 2007, the City of Woodinville denied the rezone applications for the two
13 properties.

14 If the City's denial of the rezoning is upheld in the LUPA portion of this action, Phoenix
15 Development will have failed in its attempt to reconcile the conflict between the R-1 zoning and
16 WMC § 21.04.080(1)(a). The practical result will be that for the period of time between 1997
17 and the present date, the subject properties could not be lawfully developed at all under the
18 applicable zoning and code provisions. Phoenix Development contends that the City's decision
19 denying the rezone applications, even if a court should ultimately find that it is a "correct"
20 decision under the City's land use criteria, --a finding with which Phoenix would respectfully but
21 strongly disagree--nevertheless creates a situation where the interaction between the applicable
22 zoning and the code provision is unduly oppressive and is arbitrary, capricious, and unlawful and
23 that the City knew or reasonably should have known of the unlawfulness.
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STATEMENT OF ISSUES

Whether an order should be granted providing leave to Petitioners to file an Amended Land Use Petition and Complaint for Damages.

EVIDENCE RELIED UPON

This motion is based upon the administrative record and pleadings on file with the court.

AUTHORITY

Amendment of pleadings is governed by CR 15(a), which provides that “leave shall be *freely* given when justice so requires.” CR 15(a) (italics added). The granting or denial of a motion to amend a pleading is a decision within the trial court’s discretion and courts have consistently interpreted this requirement to mean that the rule must be *liberally applied*. See, e.g., *Sanwick v. Puget Sound Title Ins. Co.*, 70 Wn.2d 438, 445, 423 P.2d 624 (1967); *Culpepper v. Snohomish County Dep’t of Planning & Cmty. Dev.*, 59 Wn. App. 166, 169, 796 P.2d 1285 (1990). Amendment is *allowable at any stage* of proceedings, when necessary in furtherance of justice. See, e.g., *Hendricks v. Hendricks*, 35 Wn.2d 139, 148, 211 P.2d 715 (1949); *Jones v. Western Mgt. Co.*, 32 Wash. 375, 73 P. 359 (1903).

The language of CR 15 has been consistently considered to be a mandate to liberally grant leave to amend pleadings. The purpose of CR 15 is two-fold: to facilitate a decision on the merits, and to provide parties with adequate notice of the claims or defenses asserted against them. See *Herron v. Tribune Publ’g Co.*, 108 Wn.2d 162, 165, 736 P.2d 249 (1987).

In this case, the Amended Complaint will serve to better provide notice of the claims asserted against the City of Woodinville. The amendment simply adds language to clarify the RCW 64.40 claim. No new claims are added.

1 The principal factor in determining whether a motion to amend will be granted is the
2 presence or the absence of prejudice to the nonmoving party. *Id.* at 166. The parties have not
3 engaged in any discovery and there have been no motions or other filings regarding the RCW
4 64.40 claim. There is no prejudice to the nonmoving party.

5
6 **CONCLUSION**

7 For the foregoing reasons, Phoenix respectfully requests that the accompanying order be
8 granted allowing leave to file the Amended Land Use Petition and Complaint for Damages.

9 DATED the 1st day of February, 2008.

10
11 MCCULLOUGH HILL, P.S.

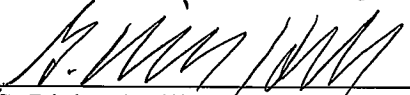
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15 G. Richard Hill, WSBA No. 8806
16 Attorneys for Petitioners/Plaintiffs

EXHIBIT A

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

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

Petitioners/Plaintiffs,

vs.

CITY OF WOODINVILLE, a Washington
Municipal Corporation, and CONCERNED
NEIGHBORS OF WELLINGTON, a Washington
Nonprofit Corporation,

Respondents/Defendants.

No. 07-2-29402-3 SEA

AMENDED LAND USE PETITION
AND COMPLAINT FOR DAMAGES

This is a tale of two subdivisions. Petitioner Phoenix Development, Inc. ("Phoenix") has applied for approval of two modestly sized subdivisions in the City of Woodinville ("City"). The first is the Montevallo proposal ("Montevallo"). The Montevallo property is 16.48 acres in size. 56 single-family detached homes are proposed. The second is the Wood Trails proposal ("Wood Trails"). The Wood Trails property is 38.7 acres in size. 66 single-family detached homes are proposed. In addition to subdivision approval, a zoning map amendment is required

1 that would re-designate the two properties from R-1 (one dwelling unit per acre) to R-4 (four
2 dwelling units per acre). Because public services are available, the zoning amendment is
3 mandated by the Woodinville Municipal Code ("WMC") Section 21.04.080(1)(a):
4 "Developments with densities less than R-4 are allowed only if adequate services cannot be
5 provided."
6

7 Both the Montevallo and Wood Trails proposals are considered "low density residential,"
8 as defined in the WMC and the Woodinville Comprehensive Plan ("Comprehensive Plan"). R-4
9 zoning is considered to be the minimum urban zoning that results in a land use pattern "that will
10 reduce consumption of land and concentrate development." King County Countywide Planning
11 Policy CA-7.
12

13 The Montevallo and Wood Trails proposals endured three years of public process, and
14 underwent three thorough levels of City review – the City's Draft and Final Environmental
15 Impact Statements, the City's Planning Department and Public Works Department reviews and
16 recommendations, and review and decision after a public hearing by the City's Hearing
17 Examiner. All three levels of City review reached the same conclusions: the two proposals
18 comply with all applicable City policies, and the zoning map amendment and the preliminary
19 plat should be approved.
20

21 Despite the unanimous recommendations of all of its professional planners and
22 consultants, and in the face of the facts and applicable law, the Woodinville City Council
23 ("Council"), in two decisions adopted August 20, 2007, denied the Montevallo and Wood Trails
24 proposals ("Decisions"). In doing so, the Council bowed to neighborhood opposition, acted
25 clearly erroneously, contrary to law, and without substantial evidence to support its decision. In
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1 so doing, and due to the inordinate delay in acting on the proposals, the City has also acted in
2 violation of RCW 64.40. Phoenix has been damaged in the amount of at least \$5,000,000.

3 Phoenix respectfully asks the Court to reverse the Decisions, to approve the Montevallo
4 and Wood Trails proposals, and to award due compensation to Phoenix for the damages that the
5 City has caused.

7 LAND USE PETITION

8 Phoenix Development, Inc. and G&S Sundquist Third Family Limited Partnership
9 (collectively, "Phoenix") petition the Court to review two land use decisions ("Decisions") of the
10 City of Woodinville ("City") denying the Montevallo and Wood Trails proposals.

11
12 1. Phoenix Development, Inc. is a Washington municipal corporation. Its address is
13 16108 Ash Way, Suite 201, Lynnwood, WA 98087. G&S Third Family Limited Partnership is a
14 Washington limited partnership. Its address is 3030 NE 181st Street, Seattle, WA 98155.

15
16 2. The attorneys for Phoenix are G. Richard Hill, McCullough Hill, PS, 701 Fifth
17 Avenue, Suite 7220, Seattle, Washington 98104.

18
19 3. Respondent City of Woodinville is a Washington municipal corporation. The
20 address of the City is 17301 133rd Avenue NE, Woodinville, WA 98072-8534.

21
22 4. Respondent Concerned Neighbors of Wellington is a Washington nonprofit
23 corporation. It is named pursuant to RCW 36.70C.040(2)(d). Its address is c/o J. Richard
24 Aramburu, Attorney at Law, 505 Madison Street, Suite 209, Seattle, WA 98104..

1 5. Phoenix appeals two land use decisions ("Decisions") adopted by the Woodinville
2 City Council on August 20, 2007. The first denies the Montevallo proposal, Appeal Application
3 No. APP2007-0001, and is attached as Exhibit A ("Montevallo Decision"). The second denies
4 the Wood Trails proposal, Appeal Application No. APP2007-0002, and is attached as Exhibit B
5 ("Wood Trails Decision").
6

7 6. Phoenix has standing pursuant to RCW 36.70C.060 because it is the applicant for
8 the Montevallo and Wood Trails proposals. It is also the owner of the property that is the subject
9 of the Decisions. Phoenix is aggrieved and adversely affected by the Decisions because they are
10 unlawful, erroneous, clearly erroneous, not supported by substantial evidence, and violate its
11 constitutional rights. In addition, Phoenix' interests are among those that the City was required
12 to consider when it made the Decisions, and a judgment in favor of Phoenix would address the
13 prejudice to Phoenix. Phoenix has exhausted all administrative remedies prior to initiating this
14 land use petition.
15
16

17 7. The facts upon which Phoenix relies to sustain its statement of error are set forth
18 in the administrative record, as it may be supplemented in this proceeding. A summary of the
19 key facts follows:
20

21 (a) The City adopted its initial Growth Management Act ("GMA")
22 Comprehensive Plan on June 24, 1996. On August 29, 1996, Corrine Hensley submitted a
23 petition for review to the Central Puget Sound Growth Management Hearings Board ("GMHB").
24 Among other things, Ms. Hensley challenged the Plan's policy LU-3.6 which provided: "Allow
25 densities higher than one dwelling unit per acre only when adequate services and facilities are
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1 available to serve the proposed development.” She focused the Board’s scrutiny on the Plan’s
2 use of one dwelling unit/acre densities in the Leota neighborhood, an area which comprises a
3 significant part of the City’s land mass (and which includes the Wood Trails and Montevallo
4 properties).

5
6 (b) The GMHB held that this policy was inconsistent with the GMA and
7 remanded to the City. In the course of doing so, the GMHB held: “Because the Act requires that
8 cities make available and provide urban services throughout their UGAs, the Board cannot
9 construe Goal U-3 to perpetuate an inefficient pattern of one-acre lots. For the Board to
10 conclude otherwise would sanction the inappropriate conversion of undeveloped land into
11 sprawling low-density development, which would effectively thwart long-term urban
12 development within the City’s boundaries...” *Hensley v. Woodinville*, 1997 GMHB LEXIS 354,
13 FDO at 9-10 (February 25, 1997).

14
15
16 (c) The City did not appeal this decision. Instead, the City amended its
17 comprehensive plan and its development regulations to comply with the Board’s directive.
18 WMC 21.04.080 directly responds to the Board’s order. To avoid “the inappropriate conversion
19 of undeveloped land into sprawling low-density development which would effectively thwart
20 long-term urban development within the City’s boundaries,” WMC 21.04.080(1)(a) states clearly
21 that “[d]evelopments with densities less than R-4 are allowed only if adequate services cannot be
22 provided.” In other words, if adequate services can be provided, developments must be at least
23 at R-4 densities. Developments less than R-4 would violate WMC 21.04.080(1)(a).
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1 (d) The Montevallo and Wood Trails properties are largely undeveloped
2 parcels in the Leota neighborhood. Sewer and other public services are available to the
3 properties. In order to be consistent with the requirements of WMC 21.04.080(1)(a) and of the
4 GMA, Phoenix submitted applications for development approval for both properties at R-4
5 densities. Phoenix submitted its application for Montevallo in November 2004. The City issued
6 its Montevallo Notice of Completeness and Vesting Determination on November 23, 2004.
7
8 Phoenix submitted its application for Wood Trails in June 2004. The City issued its Wood Trails
9 Notice of Completeness and Vesting Determination on July 8, 2004.
10

11 (e) The City engaged in two years of environmental review for the
12 Montevallo and Wood Trails proposals.
13

14 (f) In January 2006, the City published its Draft Environmental Impact
15 Statement. It was hundreds of pages in length, evaluated four land use alternatives, and reviewed
16 the affected environment, significant impacts, and mitigation with respect to the following
17 elements of the environment: earth, water, plants and animals, land use, transportation, and
18 public services. Its technical appendices included four geotechnical engineering studies, four
19 drainage reports, two wetland and stream reports, and an extensive transportation analysis.
20

21 (g) The Draft EIS received public comment. The Final EIS was published
22 eleven months later, in December 2006. It is also hundreds of pages in length, evaluates four
23 alternatives, and provides additional analysis on each of the elements of the environment
24 analyzed in the Draft EIS. It includes a lengthy response to comments raised by the public in the
25 Draft EIS. In addition, it includes a second volume of technical appendices, also hundreds of
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1 pages in length. The technical appendices include additional earth resources and groundwater
2 documentation, an updated wetland mitigation plan, and an updated transportation analysis.

3
4 (h) The EIS concludes that, as mitigated, the Montevallo and Wood Trails
5 proposals will result in no significant adverse environmental impacts as to any of the studied
6 elements of the environment: no significant adverse impacts relating to soil stability and erosion
7 issues, the hydro-geologic regime, water quantity or water quality, plants or animals, traffic or
8 parks. As to land use, the EIS concluded the proposals are compatible with adjacent land uses,
9 consistent with applicable comprehensive plan policies, and consistent with the zoning code
10 purpose statements.
11

12 (i) Following completion of the EIS, City planning and engineering staff
13 reviewed the proposals for compliance with applicable City policies and recommendations.
14 Their staff reports unequivocally recommended approval of both proposals, with conditions,
15 finding that the proposals comply with the City's Comprehensive Plan, land development and
16 subdivision regulations, storm drainage, water quality, buildings and construction regulations,
17 and the City's rezone criteria (subject to further demonstration by the applicant before the
18 Hearing Examiner on the "demonstrated need" criterion under the zoning code map amendment
19 provisions).
20
21

22 (j) The City's appointed hearing examiner, Greg Smith, a trained attorney and
23 former municipal land use attorney with many years experience as a hearing examiner in land
24 use matters, then held several evenings of public hearings on the proposals. He listened carefully
25 to all of the testimony from the City, Phoenix and its consultants, and the community, and
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1 reviewed carefully all of the exhibits submitted by the parties. He issued two decisions and
2 recommendations, one on Montevallo and one on Wood Trails. The two decisions
3 unequivocally approved the Montevallo and Wood Trails subdivisions and recommended
4 approval of the Montevallo and Wood Trails zoning map amendments.
5

6 (k) Concerned Neighbors of Wellington appealed the hearing examiner's
7 approval of the Montevallo and Wood Trails subdivisions to the City Council.
8

9 (l) After hearing argument from the parties as to the subdivisions and from
10 the applicant and the public as to the zoning map amendments, the City Council adopted the
11 Decisions reversing the hearing examiner's approval of the subdivisions and denying the zoning
12 map amendments. The Decisions are erroneous, clearly erroneous, contrary to law, and are not
13 supported by substantial evidence.
14

15 8. The Decisions commit the following errors:
16

17 (a) The following findings and conclusions of the Montevallo Decision are
18 challenged on this appeal: Findings 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 16, 21, 24, 25, 26, and
19 Conclusions 1, 2, 3, 4, 5, 6, 7, 8.
20

21 (b) The following findings and conclusions of the Wood Trails Decision are
22 challenged on this appeal: Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 22, 25, 26, 27,
23 and Conclusions 1, 2, 3, 4, 5, 6, 7, 8.
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1 (c) The Decisions incorrectly find and conclude that the Montevallo and
2 Wood Trails properties can be lawfully developed under the current R-1 zoning designation. To
3 the contrary, WMC 21.04.080 precludes R-1 development on these properties.
4

5 (d) The Decisions incorrectly find and conclude that R-1 zoning on the
6 Montevallo and Wood Trails properties is consistent with the City's Comprehensive Plan. To
7 the contrary, the City's Comprehensive Plan requires that the City provide urban densities
8 throughout the City where public services are available.
9

10 (e) The Decisions purport to make findings by the City Council "in its
11 legislative capacity." However, the City Council was acting in this case as a quasi-judicial
12 decision-maker. The City Council had no business acting as a legislative finder of fact. In doing
13 so, the City Council acted contrary to law and violated Phoenix's rights under City Code and
14 statutory and constitutional law.
15

16 (f) The Decisions purport to find and conclude that the R-1 designation is
17 appropriately placed on the Wood Trails and Montevallo properties because of "the development
18 history of the area in which the property is located." There is no basis in the City's land use code
19 or under state law to deny these zoning map amendments based on "the development history" of
20 this area.
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23 (g) The Decisions purport to find and conclude that the R-1 designation is
24 appropriately placed on the Wood Trails and Montevallo properties in consideration of "the
25 maintenance of the existing suburban neighborhood character." As a matter of law, the desire to
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1 preserve "neighborhood character" is not a sufficient basis for the perpetuation of low densities.
2 Under GMA, the City is in an "Urban Growth Area," not a "Suburban Growth Area." The City
3 has a legal obligation under GMA to provide for urban densities, not suburban densities. The
4 consideration of "neighborhood character" has no basis in the City's land use code or under state
5 law.
6

7 (h) The Decisions purport to find and conclude that there are inadequate
8 public facilities and services to support the Wood Trails and Montevallo proposals. There is no
9 substantial evidence to support this finding. To the contrary, the City's EIS, the City's staff
10 report, the City's hearing examiner, and the City's Sustainability Report all agree that there are
11 adequate public facilities and services to support these proposals.
12

13 (i) The Decisions purport to find and conclude that there are no "changed
14 circumstances" justifying the proposed zoning map amendment. To the contrary, the City's land
15 use code requires R-4 zoning where public services are available. No "changed circumstances"
16 are required to be shown. Moreover, the proposed zoning map amendment is consistent with the
17 City's comprehensive plan, which specifically designates these properties as "low density
18 residential." R-4 zoning is considered to be "low density residential" in both the City's
19 Comprehensive Plan and the City's land use code. Finally, the provision of sewer to these
20 properties in any event constitutes changed circumstances.
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22

23 (j) The Decisions purport to find and conclude that R-4 development on these
24 properties is not necessary for the City to meet its GMA-mandated growth targets. To the
25 contrary, the City has utterly failed to demonstrate that it has adequate capacity to meet its
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1 mandated growth targets. Moreover, the City has a duty, separate and independent from its
2 obligation to meet growth targets, under its own Comprehensive Plan and state law to provide for
3 urban density throughout the City in order to prevent the perpetuation of sprawl and inefficient
4 use of scarce land resources.

6 (k) The Decisions purport to find and conclude that the City has an
7 appropriate diversity of housing. To the contrary, the City's current land use planning priorities
8 are to create a two-tier system, with multi-family zoning in the downtown area which is in the
9 valley below, and suburban one-acre estate zoning in the residential neighborhood on the hill
10 above. The City's available R-4 buildable lands, on the other hand, are extremely limited. The
11 City maintains one of the lowest residential land use densities in the region, which results in its
12 housing stock being among the least affordable.

15 (l) The Decisions purport to find and conclude that the City's EIS identifies
16 unavoidable adverse impacts to the City's transportation systems. To the contrary, the EIS
17 identifies no such impacts.

19 (m) The Decisions purport to find and conclude that the Wood Trails and
20 Montevallo proposals are not in character with the surrounding R-1 neighborhoods and
21 properties. There is no substantial evidence in the record supporting this finding.

23 (n) The Decisions purport to find and conclude that the Wood Trails and
24 Montevallo proposals have not fulfilled the "need" criterion under WMC 21.04.070. To the
25 contrary, they have demonstrated that need. The City's own land use code, WMC 21.04.080,
26

1 requires the proposals to be developed under R-4 zoning. The City's Comprehensive Plan
2 demonstrates that need as well. Market demand and sound planning principles demonstrate that
3 need. The GMA requires urban densities throughout the City. And the City is required to
4 provide urban densities throughout the City pursuant to the doctrines of res judicata and
5 collateral estoppel, in light of the City's decision not to appeal *Hensley v. Woodinville*.
6

7 (o) The Decisions purport to find and conclude that there are policies in the
8 Comprehensive Plan that support further R-4 development, but that the Plan allows the City to
9 phase its approval of R-4 development. Neither the Plan nor the City's land use code, however,
10 authorizes the City Council to delay approval of R-4 development that meets the requirements of
11 the land use code and the policies of the Comprehensive Plan.
12

13 (p) The Decisions purport to defend their denial of the zoning map
14 amendments because the City has decided to focus growth downtown. However, the City's land
15 use code sets standards and imposes requirements for zoning map amendments to R-4 zoning.
16 The Montevallo and Wood Trails proposals comply with these standards and requirements.
17 While the City may wish to focus growth downtown, it may not preclude developments such as
18 Montevallo and Wood Trails that are authorized, indeed mandated, by its land use code and
19 applicable state law.
20

21 (q) The Decisions purport to defend their denial of the zoning map
22 amendments because the City has determined to commit its capital resources in the downtown
23 area. However, the Montevallo and Wood Trails proposals, as demonstrated in the City's EIS
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1 and the City's Sustainability Study, are adequately served by public services. Accordingly,
2 where the City commits its resources is irrelevant to this matter.

3
4 (r) The Decisions purport to defend their denial of the zoning map
5 amendments because of the City's conduct of a Sustainability Study. However, the
6 Sustainability Study is in the record of this proceeding. It supports the Montevallo and Wood
7 Trails proposals.

8
9 (s) The Decisions reverse the Hearing Examiner's approval of the proposed
10 subdivisions because they are based upon R-4 zoning. Since R-4 zoning should be approved,
11 and the Decisions do not otherwise object to the Hearing Examiner's approval of the proposed
12 subdivisions, they should accordingly be approved.

13
14 (t) The Decisions to deny the zoning map amendments should be reversed as
15 well based on the doctrines of collateral estoppel and res judicata.

16
17 (u) The Decisions violate Phoenix's state constitutional rights to equal
18 protection, procedural and substantive due process, and to be free of a regulatory taking.

19
20 (v) The City's processing of these proposals was done in a manner
21 inconsistent with lawful process and failed to follow the prescribed process.

22
23 (w) The Decisions constitute erroneous interpretations of law, are not
24 supported by substantial evidence, are a clearly erroneous application of the law to the facts, and
25 are ultra vires.

1 9. Phoenix asks for the following relief:

2 (a) For an order reversing the Decisions, granting the proposed zoning map
3 amendments, and approving the proposed subdivisions as conditioned by the hearing examiner;

4 (b) For award of Phoenix's attorney fees and costs against the City;

5 (c) For permission to amend this petition to conform to the proof; and

6 (d) For such other further relief as the Court deems just and equitable.

7
8 COMPLAINT FOR DAMAGES

9
10 Plaintiffs Phoenix Development and G&S Sundquist Third Family Limited Partnership, a
11 Washington limited partnership, (collectively, "Phoenix") allege as follows:

12 I. PARTIES

13
14 1.1 Plaintiffs. Phoenix Development, Inc. is a Washington Municipal Corporation.
15 G&S Sundquist Third Family Limited Partnership is a Washington limited partnership.

16 1.2 Defendants. Defendant City of Shoreline ("City") is a Washington municipal
17 corporation. Defendant Concerned Neighbors of Wellington is a Washington nonprofit
18 corporation.
19

20 II. VENUE

21
22 2.1 Venue. Venue in King County is proper pursuant to RCW 4.12.020 and RCW
23 4.12.025, since Phoenix conducts business and owns property in King County, and the City is
24 located in King County.
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III. FACTS

3.1 The relevant facts are set forth in the land use petition herein and incorporated herein by reference.

IV. CAUSE OF ACTION

RCW 64.40

4.1 RCW 64.40 creates a cause of action for damages for applicants for project approvals. Applicants are entitled to damages when local governments act in a manner that is arbitrary and capricious, unlawful, or in excess of their lawful authority, so long as that action was made in knowledge of its unlawfulness or that it was in excess of its lawful authority, or that it should have reasonably been known that it was unlawful or in excess of its lawful authority. In addition, applicants are entitled to damages when local governments fail to act within time limits established by law.

4.2 The Decisions are arbitrary and capricious. They are unlawful. They were made by the City in excess of its lawful authority. The City Council knew or should have known that the Decisions were unlawful and in excess of the City's lawful authority.

4.3 The City, in its processing of the Montevallo and Wood Trails proposal, failed to act within the time limits established by law under the State Environmental Policy Act, RCW 43.21C, and regulations promulgated thereunder.

1 4.4 The Decisions, and the City's unlawful delay, have damaged Phoenix in an
2 amount to be proved at trial. Phoenix believes at this time those damages will be demonstrated
3 to be in excess of \$5,000,000.
4

5 4.5 The City's denial of the rezone request creates circumstances where, as applied to
6 the subject properties, the interaction between the R-1 zoning and WMC 21.04.080(1)(a) is
7 unduly oppressive and is arbitrary, capricious and unlawful and the City knew or reasonably
8 should have known of its unlawfulness.
9

10 V. RELIEF REQUESTED

11 Phoenix prays for the following relief:
12

13 5.1 For an award of damages in an amount to be proved at trial;
14

15 5.2 For an award of Phoenix's attorney fees and costs;
16

17 5.3 For permission to amend its pleadings to conform to the proof; and
18

19 5.4 For such other further relief as is just and equitable.
20

21 DATED this 1st day of February, 2008.

22 MCCULLOUGH HILL, P.S.
23

24 _____
25 G. Richard Hill, WSBA No. 8806
26 Attorneys for Petitioners/Plaintiffs
27

EXHIBIT B

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

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

Petitioners/Plaintiffs,

vs.

CITY OF WOODINVILLE, a Washington
Municipal Corporation, and CONCERNED
NEIGHBORS OF WELLINGTON, a Washington
Nonprofit Corporation,

Respondents/Defendants.

No. 07-2-29402-3 SEA

[PROPOSED] ORDER GRANTING
LEAVE TO FILE AMENDED LAND
USE PETITION AND COMPLAINT
FOR DAMAGES

This matter came before the Court on Petitioner's Motion for Leave to File Amended
Land Use Petition and Complaint for Damages. The Court, having read and considered the
motion and papers filed in response and reply, hereby

ORDERS that Petitioner is granted leave to file its First Amended Land Use Petition and
Complaint for Damages.

[PROPOSED] ORDER GRANTING
LEAVE TO FILE AMENDED
LAND USE PETITION AND
COMPLAINT FOR DAMAGES - Page 1 of 2

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MCCULLOUGH HILL, P.S.

701 Fifth Avenue, Suite 7220

Seattle, WA 98104

206.812.3388

206 812 3388 F...

1 Dated this _____ day of February, 2008.

2
3 _____
4 THE HONORABLE DEAN S. LUM

5 Presented by:

6 MCCULLOUGH HILL, P.S.
7

8 By: _____

9 G. Richard Hill, WSBA #8806

10 Attorneys for Petitioners/Plaintiffs
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28 [PROPOSED] ORDER GRANTING
LEAVE TO FILE AMENDED

LAND USE PETITION AND

COMPLAINT FOR DAMAGES - Page 2 of 2

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