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LUPA Trial Date: February 11, 2008

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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

PETITIONERS' OPENING BRIEF

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INTRODUCTION

In this case, the Woodinville City Council was faced with a clear choice between smart growth and compact urban development on the one hand, and sprawling, inefficient, suburban one-acre development on the other. The first choice was mandated by the City's zoning code, Comprehensive Plan, sound planning principles, and a prior Growth Management Hearings Board order to which it was subject. All of the City's professional consultants, professional staff, and the City's Hearing Examiner also recommended the first choice. However, the City Council chose to reject its obligations under the law and the sound recommendations of its consultants, staff and its Hearing Examiner. The City Council, bowing to intense neighborhood pressure, rejected smart growth and embraced sprawl. The City Council's unlawful and erroneous action must be reversed.

The City Council's action was in response to the proposal of Phoenix Development ("Phoenix") to develop two low density residential subdivisions in Woodinville, Washington ("City"). The name of the first subdivision is Wood Trails. The name of the second is Montevallo. Each will result in 66 new single family homes, at a density of R-4 (four dwelling units per acre). R-4 is considered "low density residential" in the City's Comprehensive Plan

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1 and Land Use Code, and is the minimum allowed density under the City's land use code when
2 public services are available. It is also considered the minimum "urban density" by the Growth
3 Management Hearings Board and by the vast majority of professional planners.

4
5 When Woodinville was initially incorporated in 1995, it adopted a Comprehensive Plan
6 under the Growth Management Act. Its Plan designated approximately 60% of its residentially
7 zoned land at a density of one unit per acre. That designation was appealed to the Growth
8 Management Hearings Board, which ultimately held, in *Hensley v. Woodinville*, CPSGMHB
9 Case No. 01-3-0004c, FDO at 9-10 (February 24, 1997), that the City's Plan was unlawful. The
10 Board stated that the City may not "perpetuate an inefficient pattern of one-acre lots," and added
11 that "[f]or the Board to conclude otherwise would sanction the inappropriate conversion of
12 undeveloped land into sprawling low-density development, which would effectively thwart long-
13 term urban development within the City's boundaries..."

14
15 The City responded by amending its Comprehensive Plan and adopting WMC
16 21.04.080(1)(a), which reads in pertinent part: "Developments with densities less than R-4 are
17 allowed only if adequate services cannot be provided."

18
19 In reliance on the holding in *Hensley*, the City's Comprehensive Plan, and this code
20 provision, Phoenix applied, along with its subdivision applications, for a zoning map amendment
21 to re-designate the Wood Trails and the Montevallo sites from R-1 to R-4 (the Comprehensive
22 Plan already authorizes R-4 density on these sites).

23
24 Over a period of three years, the two proposals went through three very thorough levels
25 of professional review. First, the City prepared a draft and final environmental impact statement
26 ("EIS") under the State Environmental Policy Act. Second, the City's Planning Department and
27

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1 Public Works Department reviewed the proposals, conducted additional analyses, and made their
2 recommendations. And third, the City's Hearing Examiner held three evenings of public
3 hearings, and issued his Decisions and Recommendations. All three levels of City review
4 reached the same conclusion: The two proposals comply with all applicable City policies, and
5 the zoning map amendment and subdivisions should be approved.
6

7 However, the elected Woodinville City Council, under intense neighborhood pressure
8 and shortly before the November City Council elections, denied the zoning map amendment
9 applications and reversed the Hearing Examiner's approval of the subdivisions. The City
10 Council's decisions were without basis in law, fact or equity. Phoenix respectfully asks the
11 Court to reverse the City Council, and to approve the Wood Trails and Montevallo proposals.
12

13 **ASSIGNMENTS OF ERROR**

14 Phoenix assigns error to Findings 3-10, 13-14, 16, 21, and 24-26, and Conclusions 1-8 of
15 the City Council's Montevallo Decision.
16

17 Phoenix assigns error to Findings 3-12, 14-17, 22, 25-27, and Conclusions 1-8 of the City
18 Council's Wood Trails Decision.

19 **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

20 1. Should the City Council Decisions to deny the Wood Trails and Montevallo
21 Zoning Map Amendments be reversed?
22

23 (a) Can adequate services be provided to the Wood Trails and Montevallo
24 sites? (WT Findings of Fact 6, 11, 16-22, 25; WT Conclusions 2-8; M Findings of Fact 6, 9, 16,
25 21, 24, 26; M Conclusions 2-8)
26
27
28

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1 (b) Are the Wood Trails and Montevallo sites predominantly environmentally
2 unconstrained? (WT Findings of Fact 6, 9, 10)

3 (c) Are the rezone proposals consistent with the Comprehensive Plan? (WT
4 Conclusion 1; M Conclusion 1)

5 (d) Has Phoenix shown a demonstrated need for additional R-4 zoning? (WT
6 Findings 5, 6, 7, 8, 14, 15; M Findings 5, 6, 7, 8, 13, 14)

7 (e) Are the proposed rezones compatible with the uses and zoning of
8 surrounding properties? (WT Finding 12; M Finding 10)

9 (f) Are the Wood Trails and Montevallo Properties practically and physically
10 suited for the uses allowed in the R-4 zone? (WT Findings 6, 9-10)

11 2. Should the Court reverse the City Council's decisions to deny the Wood Trails
12 and Montevallo subdivisions? (WT Finding 27)

13 STATEMENT OF FACTS

14 The administrative record compiled by the City Clerk in this case is voluminous. It fills
15 16 large notebook binders. In addition, transcripts have been prepared of the Hearing Examiner
16 hearings and the proceedings before the City Council, which have been submitted to the Court.
17 The parties agreed that rather than delivering the entire administrative record to the Court, they
18 would submit copies of those portions of the record referred to and that support arguments set
19 forth in their briefs. Accordingly, with this brief Phoenix has delivered six notebook binders
20 containing (1) Selected Wood Trails Exhibits, which will be cited as WT Ex. __; (2) Selected
21 Montevallo Exhibits, which will be cited as M Ex. __; (3) Draft Environmental Impact
22 Statement, which will be cited as M Ex. 35; (4) Draft Environmental Impact Statement Volume
23

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1 II Technical Appendices, which will also be cited as M Ex. 35; (5) Final Environmental Impact
2 Statement, which will be cited as M Ex. 40; and (6) Sustainable Development Study, which will
3 be cited as WT Ex. 83. Citations to the Transcripts will include the reference "TR," date and
4 page number. Citations to the Hearing Examiner Wood Trails and Montevallo Decisions (which
5 are included as the first document in the Wood Trails and Montevallo Exhibits binders,
6 respectively) will be to HE WT Decision and HE M Decision, respectively. Citations to the City
7 Council Decisions will be to CC WT Decision and CC M Decision, respectively.
8

9
10 With respect to the Wood Trails and Montevallo Exhibits, it should be noted that,
11 pursuant to the Hearing Examiner's direction, all exhibits admitted in each proceeding were
12 deemed "admitted" to both. Finally, attached to this brief as addenda are the City Council
13 Decisions, certain code provisions, comprehensive plan provisions, out-of-state and GMHB
14 cases, a Puget Sound Research Council study, and certain City legislative background, all of
15 which are referred to in this brief.
16

17 **A. The Growth Management Act Urban Density Requirement, *Hensley v.***
18 ***Woodinville* and WMC 21.04.080.**

19 Since the adoption of the Growth Management Act, RCW 36.70A, in 1990, one of its
20 "bedrock principles has been to direct urban development into urban growth areas" to protect
21 from low-density sprawl. *Burrow v. Kitsap County*, CPSGMHB Case No. 99-3-0018, FDO
22 (Mar. 29, 2000) at 18. RCW 36.70A.020(1) states that jurisdictions should "encourage
23 development in urban areas where adequate public facilities and services exist or can be provided
24 in an efficient manner." RCW 36.70A.020(2) states that jurisdictions should also "reduce the
25 inappropriate conversion of undeveloped land into sprawling, low-density development." In
26 considering Goals 1 and 2 of the GMA, the Growth Management Hearings Board looks to the
27
28

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1 ruling in *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154
2 Wn.2d 224, 110 P.3d 1132 (2005), where the Court indicated that the “primary method required
3 for meeting the goals of subsections .020(1) (urban growth) and .020(2) (reduce sprawl) is set
4 forth in RCW 36.70A.110.” 154 Wn.2d at 246. *See Camwest v. City of Sammamish*, (*Camwest*
5 *II*) CPSGMHB Case No. 05-3-0041, FDO (Feb. 21, 2006) at 23. RCW 36.70A.110 states that
6 “each urban growth area shall permit urban densities...” (emphasis added).
7

8 Joseph Tovar studied the issue of appropriate urban densities in his recent analysis
9 performed for the regional government planning agency known as the Puget Sound Regional
10 Council. *Appropriate Urban Densities in the Central Puget Sound Region: Local Plans,*
11 *Regional Visions, and the Growth Management Act*, (Puget Sound Regional Council: 2005)
12 (attached to this brief as Addendum A – the Court is requested take judicial notice of it as a
13 legislative fact. *See, e.g., Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 452 (1980); *In re*
14 *Marriage of Campbell*, 37 Wn. App. 840, 845, 683 P.2d 604 (1984) (stating a court may take
15 judicial notice of legislative facts that enable it to interpret the law). Mr. Tovar, a former
16 member of the Central Puget Sound Growth Management Hearings Board, provides information
17 and perspective on the topic of appropriate urban densities, reviews statutory provisions and
18 relevant GMHB and appellate case law and discusses actions the PSRC could take to clarify the
19 issue. He points out that “although multi-family housing at various densities will be a major
20 component of future growth accommodation, it will be important to provide a broad range of
21 single family lot sizes and forms as part of the housing choices within the [Urban Growth
22 Area].” Addendum A, p.1. He confirms that “one of the key organizing principles in the GMA
23 is to concentrate urban development within urban growth areas and to prohibit it in rural areas
24 and resource lands... The long term viability of the [Urban Growth Area]... depends upon the
25
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ability to utilize serviceable and environmentally unconstrained land in an efficient manner.”

Addendum A, p. 8.

Mr. Tovar cites the Growth Management Hearings Board’s decision in *Bremerton I*, CPSGMHG Case No. 95-3-0039, FDO, for the proposition that “the regional physical form required by [GMA] is a compact urban landscape, well designed and well furnished with amenities, encompassed by natural resource lands and a rural landscape...” Now, ten years later, Mr. Tovar observes that the public policy rationales for a compact urban landscape have been augmented by two worsening national trends: one in public health and one in energy. The evidence is increasingly clear that sprawl leads to health problems and energy wastage.

Addendum A, p. 11.

Mr. Tovar cites existing land use designations in Central Puget Sound. King, Pierce and Snohomish Counties have all adopted the four units per net acre minimum urban density threshold, as have many cities. 16 cities have designated 100% of their single family residential land at 4 dwelling units per acre or higher. 10 cities have designated over 90% at that density. 8 cities have designated over 70% at that density. By contrast, Woodinville has designated only 49% of its residential zoned land above 4 dwelling units per acre. In all of Snohomish, Pierce and King Counties, there are only seven cities with lower percentages: Medina, Hunts Point, Clyde Hill, Bainbridge Island, Brier, Woodway, and Normandy Park – the seven least affordable cities in the region. Addendum A, pp. 18-21.

At the conclusion of his study, Mr. Tovar emphasizes that “[i]t is neither practical nor equitable for those cities that are stepping up to meet new growth demands, that outlying jurisdictions consider a pattern of large lots to be frozen in perpetuity.” Addendum A, pp. 25-26.

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1 In this context, the City of Woodinville, which was incorporated in 1995, adopted its
2 initial Growth Management Act Comprehensive Plan on June 24, 1996. That comprehensive
3 plan designated much of the City for one-acre residential development. On August 29, 1996,
4 Corrine R. Hensley submitted a petition for review to the Central Puget Sound Growth
5 Management Hearings Board, claiming that the City had failed to permit urban densities. WT
6 Ex.140.
7

8 Ms. Hensley challenged the City's Comprehensive Plan Policy LU-3.6, which provided:
9 "Allow densities higher than one dwelling unit per acre only when adequate services and
10 facilities are available to serve the proposed development." She focused the Board's scrutiny on
11 the Plan's use of 1 du/acre densities in the Leota neighborhood, an area which comprises a
12 significant part of the City's land mass (and includes the Wood Trails and Montevallo sites). In
13 response to her appeal, the Board held:
14

15 No evidence or argument was presented by Woodinville that there was an environmental
16 justification for such a widespread pattern of one-acre lots. Instead, the City points to
17 Policy LU-3.6 to argue that, in effect, lack of service capacity serves as justification for a
18 FLUM with densities significantly below 4 du/acre. The Board disagrees with the City...

19 Because the Act requires that cities make available and provide urban services throughout
20 their UGAs, the Board cannot construe Goal U-3 to perpetuate an inefficient pattern of
21 one-acre lots. For the Board to conclude otherwise would sanction the inappropriate
22 conversion of undeveloped land into sprawling low-density development, which would
23 effectively thwart long-term urban development within the City's boundaries...

24 Policy LU-3.6 allows densities greater than 1 du/acre only where adequate services and
25 facilities are available. This policy reads as though new development cannot exceed 1
26 du/acre unless sewer service is available – this is inconsistent with Goal U-3 and the
27 intent of the Act...

28 Policy LU-3.6 is inconsistent with Goal U-3, therefore, the Plan is internally inconsistent
in violation of RCW 36.70A.070(1). Policy LU-3.6 will be remanded with instructions
for the City to bring the Plan into compliance.

WT Ex. 140, at 9-10.

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1 The City did not appeal this Decision. Rather, in 1997, the City amended its
2 Comprehensive Plan and its development regulations to comply with the Board's directive.
3 WMC 21.04.080 directly responds to the Board's order. In order to avoid "the inappropriate
4 conversion of undeveloped land into sprawling low-density development, which would
5 effectively thwart long-term urban development within the City's boundaries," WMC
6 21.04.080(1)(a) states clearly that "[d]evelopments with densities less than R-4 are allowed only
7 if adequate services cannot be provided."

9 In the years following 1997, according to City staff, WMC 21.04.080(1)(a) was
10 implemented in accordance with its intent:

12 Since incorporation, the City's Comprehensive Plan and zoning have allowed areas zoned
13 for one dwelling unit per acre (R-1) to be converted through a public hearing process to
14 up to four dwelling units per acre (R-4), contingent upon the provision of sanitary sewer
15 service through a developer provided extension of sewer lines.

16 (attached to this Brief as Addendum C --the Court is requested to take judicial notice of this City
17 Staff Report to the City Council as a legislative fact *Wyman*, 94 Wn.2d at 102; *In re Marriage of*
18 *Campbell*, 37 Wn. App. at 845).

18 **B. Phoenix Meets with City Staff and Reviews City Regulations.**

19 In 2004, Phoenix General Manager Bob Vick met with City planning staff to determine
20 the rules applicable to development in Woodinville, and in particular, the Wood Trails and
21 Montevallo sites. TR 66-70 (3/14/07). He learned that these two sites were zoned R-1, but that
22 the applicable City ordinance required development to occur at R-4 densities if adequate services
23 were available to the sites. WMC 21.04.080(1)(a). He advised the City that Phoenix was
24 prepared to extend sewer lines to the sites.
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1 He also reviewed the City's Comprehensive Plan provisions. The City's Comprehensive
2 Plan designates the Wood Trails and Montevallo properties as low density residential, 1-4 dwelling
3 units per acre. M Ex. 40, pp. 3.4-22 to 3.4-28.

4 The Comprehensive Plan also makes it clear that the City has determined that it has an
5 obligation to provide urban densities of four dwelling units per acre or greater:
6

7 The purpose of the [Buildable Lands] Program is for these local governments [including
8 Woodinville] to compare anticipated growth against actual development over time to answer
9 two basic questions: (1) Do local governments have suitable land to accommodate expected
10 growth for the 20 year planning period? And (2) **Are urban densities (four units to the
11 acre and greater)** being achieved in the Urban Growth Area?

12 Chap. 2, p. 7 (emphasis added) (see Addendum D for copies of cited Comprehensive Plan
13 provisions).

14 The City's Comprehensive Plan also cites the King County Countywide Planning Policies
15 (with which the City's Plan must be consistent). These policies mandate at FW-11 (cited in the
16 City's Comprehensive Plan at Chap. 2, p. 8): "Require land use patterns that will reduce
17 consumption of land and concentrate development." The City's Comprehensive Plan Policy LU
18 3.6 is clearly designed to address the mandate of King County Countywide Planning Policy FW-11,
19 when it states:

20 **Encourage moderate (5-8 d.u.) and medium (9-18 d.u.) density housing throughout the**
21 **community** where sufficient public facilities and services are available, where the land is
22 capable of supporting such uses, and where compatible with adjacent land uses.

23 (emphasis added).

24 The City's Comprehensive Plan makes it clear that the Land Use Map is the City's explicit
25 direction for future zoning, and is intended to allow the public to know in advance what land uses
26 are encouraged and allowed:

27 Under the Growth Management Act, all zoning actions and development regulations must

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1 be consistent with the community's adopted comprehensive plan. Since the Growth
2 Management Act requires that a city's development regulations be consistent with its
3 comprehensive plan, it is imperative that the Future Land Use Map be sufficiently detailed
4 to enable the public to understand what the designations on the Future Land Use Map imply
5 for future zoning and what land uses will be allowed in various locations.

6 Chap. 3, p. 7. The Low Density Residential designation is applied to the Wood Trails and
7 Montevallo properties on the Future Land Use Map, which means that "the permitted density for
8 this designation will not exceed 4 dwelling units per acre." Id.

9 The Comprehensive Plan also encourages greater affordability and a diversity of housing
10 types. It requires the City to: "Define land use regulations to allow for development that will
11 accommodate a range of incomes by providing for a variety of housing types and cost. Regulations
12 shall include provisions such as: 1. Requiring minimum densities for subdivisions to ensure full
13 land use where urban services are provided." Policy H-1.4. This policy is of course exactly what
14 led to WMC 21.04.080(1)(a): "Developments with densities less than R-4 are allowed only if
15 adequate services can not be provided."

16 **C. Wood Trails and Montevallo Applications Submitted.**

17 In reliance on these conversations with City staff, the *Hensley* case, and the City's
18 Comprehensive Plan and land use regulations, Phoenix then submitted applications for subdivision
19 approval and zoning map amendments for the Wood Trails and Montevallo sites. Wood Trails was
20 submitted in June 2004. WT Exs. 2-27. The City issued its notice of completeness and vesting
21 determination on July 8, 2004. WT Ex. 13, 20. Montevallo was submitted in November 2004. M
22 Exs. 2-28. The City issued its notice of completeness and vesting determination on November 23,
23 2004. M Ex. 13, 20.

24 According to City staff, the proposals to develop Wood Trails and Montevallo at R-4
25 densities led to community opposition:

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Historically, very few of these sewer extensions [leading to R-4 density] have occurred in the Leota Neighborhood, east of Downtown. However, this situation has changed, as illustrated by the recent applications for residential density increases in areas zoned R-1. In addition to the current applications already submitted, the City has received preliminary information indicating interest in conversion of other areas from R-1 to R-4 zoning.

Those existing and potential future applications for upzones have led to opposition by some in the community due to concerns regarding potential development impacts. As mentioned, this puts the City in the position of needing to reconcile the competing forces of community resistance to upzones, with the GMA's requirement to protect critical areas while also accommodating growth at "urban" densities.

Addendum C.

D. EIS Finds Projects Comply with Applicable City Requirements.

After receiving the two applications from Phoenix, the City then engaged in two years of environmental review for the two proposals. In January 2006, the City published its Draft EIS. It was hundreds of pages in length. It evaluated four land use alternatives, and reviewed the affected environment, significant impacts, and mitigation with respect to the following elements of the environment: earth, water, plants and animals, land use, transportation, and public services. Its technical appendices included four geotechnical engineering studies, four drainage reports, two wetland and stream reports, and an extensive transportation analysis. M Ex. 35.

The Draft EIS received public comment. 94 written comments were received, and 22 persons spoke at the Draft EIS public hearing. M Ex. 40, pp. 4-3 – 4-5. City staff took that public comment to heart and conducted significant additional environmental analysis to respond to it. The Final EIS was published eleven months later, in December 2006. It is also hundreds of pages in length, evaluates four alternatives, and provides additional analysis on each of the elements of the environment analyzed in the Draft EIS. It includes a lengthy response to comments raised by the public on the Draft EIS. In addition, it includes a second volume of technical appendices, also

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1 hundreds of pages in length. The technical appendices include additional earth resources and
2 groundwater documentation, an updated wetland mitigation plan, and an updated transportation
3 analysis. M Ex. 40.

4 The Draft and Final EIS are the City's documents, not the proponent's. Every word in each
5 document was reviewed and approved by the City's own professional consultants and the City's
6 professional staff.

7 The EIS concludes that, as mitigated, the Wood Trails and Montevallo proposals will result
8 in no significant adverse environmental impacts and are consistent with all applicable City policies
9 and regulations.

10 As for earth (soil stability and erosion issues), the Final EIS concludes that Montevallo will
11 have no significant adverse impacts. M Ex. 40, p. 3.1-22. Wood Trails also will have no significant
12 impacts, the Final EIS concludes, so long as its detention pond is replaced by a vault, no dispersion
13 trenches are placed within 50 feet of the top of the slope, and no utility trenches are dug in steep
14 slopes. M Ex. 40, p. 3.1-22. Phoenix has agreed to abide by these conditions.

15 As for water, the Final EIS concludes that the changes to the hydro-geologic regime for both
16 Wood Trails and Montevallo will be "minor," and that impacts to water quantity and water quality
17 issues will be "minimal." M Ex. 40, p. 3.2-37.

18 As to plants and animals, the Final EIS concludes that impacts would "not be significant."
19 M Ex. 40, pp. 3.3-20 - 3.3-21.

20 As to land use, the Final EIS concludes that the Wood Trails and Montevallo proposals are
21 compatible with existing adjacent residential land uses. M Ex. 40, pp. 3.4-17 -- 3.4-18. The Final
22 EIS finds the proposals to be consistent with applicable comprehensive plan land use policies. M
23 Ex. 40, pp. 3.4-22 -- 3.4-28. The Final EIS also finds the proposals to be consistent with the zoning

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1 code purpose statements for R-4 zones. M Ex. 40, 3.4-30.

2 As to traffic and parks, the Final EIS finds no significant adverse impacts from the Wood
3 Trails and Montevallo proposals. M Ex. 40, pp. 3.5-94 and 3.6-8.

4 **E. Staff Recommends Approval of the Proposals.**

5 After completion of the EIS, the City's professional planning and engineering staff then
6 completed its review of the two proposals. After completing that review, the City's Planning
7 Director and Public Works Director unequivocally recommended approval of the Wood Trails and
8 Montevallo zoning map amendment applications and preliminary plat applications, with conditions.
9 M Ex. 1, p. 27 and WT Ex. 1, p. 32. The City's Planning Director and Public Works Director
10 concluded that the projects comply with the City's comprehensive plan; the Woodinville municipal
11 code ("WMC") provisions on land development, subdivision, zoning, density transfer, health and
12 safety, storm drainage, water quality, buildings and construction and rezone criteria (subject to
13 further demonstration by the applicant before the Hearing Examiner on the "demonstrated need"
14 criterion, see Argument Section B.4 *infra*); and the Woodinville subdivision code. See M Ex. 1, pp.
15 10-27 and WT Ex. 1, pp. 13-32.

16 **F. Hearing Examiner Holds Open Record Public Hearings on Proposals.**

17 The Hearing Examiner held open record public hearings on the proposals on March 15,
18 March 16, and April 5, 2007. The City and Phoenix presented evidence ultimately found to be
19 credible by the Hearing Examiner that supported the conclusions in the City's EIS and City Staff
20 Reports, namely that the two proposals meet all applicable criteria and should be approved.

21 The testimony offered by and the evidence submitted by Joel Birchman, P.E., of Perteet
22 Engineering and Mike Swenson, P.E., of The Transpo Group, added to that already in the Final EIS,
23 demonstrate that there is adequate capacity for the additional traffic the proposals will generate, and
24

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1 that traffic can be handled safely. The City will require appropriate mitigation to address any
2 increased risk on the streets that access the project to ensure no decrease in level of safety occurs.
3 See WT Exs. 86, 129; letter report from Mike Swenson, P.E., submitted on April 26, 2007, WT Ex.
4 165; testimony of Joel Birtschman, P.E. (TR 136-149 (4/5/07)).

5
6 The evidence testified to and submitted by Ray Coglas, P.E., of Earth Solutions NW, in
7 addition to the thorough analyses contained in the Final EIS, show that development of both
8 proposals can proceed without incurring risk due to geologic hazards, so long as appropriate best
9 management practices are followed. See WT Ex. 131; letter report from Ray Coglas, P.E.,
10 submitted on April 26, 2007, WT Ex. 165.

11
12 Mark Keller, P.E., of Triad Associates submitted evidence that confirmed the conclusions in
13 the Final EIS that stormwater drainage will be safely retained and released in accordance with
14 applicable drainage codes. Triad's preliminary analysis has identified that there may be some
15 sections of the system downstream that may need to be upgraded (increased pipe size or increased
16 pipe slope) and that there is adequate space to make these changes. Yosh Monzaki, the City Public
17 Works staff person responsible for this issue, confirmed Mr. Keller's analysis. See WT Exs. 66,
18 134; Memorandum from Mark Keller, P.E., submitted on April 26, 2007, WT Ex. 165; testimony of
19 Yosh Monzaki (TR 34-35 (3/14/07)).

20
21 Ed Sewall of Sewall Wetland Consulting testified and submitted evidence confirming that
22 the project impacts on plants and animals will be nonsignificant, that impacts on wetlands will be
23 mitigated, and that the current hydrogeology of the Montevallo wetland will be protected. See WT
24 Ex. 133; letter report from Ed Sewall, Senior Biologist, submitted on April 26, 2007, WT Ex. 165;
25 testimony of Ed Sewall (TR 167-174 (4/5/07)).

26
27 With respect to land use planning and zoning need issues, Matthew Gardner, Bob Vick, and

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1 Mike McCormack testified and submitted evidence. There is a clear land use need for more dense
2 zoning than R-1 can provide. R-1 zoning is a grossly inefficient use of land in an age of land
3 scarcity. All sound planning principles require a minimum urban density within urban growth
4 areas. R-4 is considered by most to be the minimum urban density. See WT Ex. 88 (Matthew
5 Gardner memorandum attached as Exhibit A; Mike McCormack, AICP, memorandum attached as
6 Exhibit B), WT Exs. 128, 136, 138; letter report from Bob Vick submitted on April 26, 2007, WT
7 Ex. 165; TR 66-70 (3/14/07); TR 30-40 (3/15/07).

9 **G. Hearing Examiner Approves Subdivisions and Recommends Rezone**
10 **Approval.**

11 Following the open record public hearing, Greg Smith, the City of Spokane Hearing
12 Examiner specially retained by the City for his objectivity and experience in land use matters, issued
13 two decisions ("Decisions"), which unequivocally recommended approval of the Wood Trails and
14 Montevallo Zoning Map Amendments. HE M Decision, pp. 5-11; HE WT Decision, pp. 11-15.

15 The Hearing Examiner concluded that the Montevallo and Wood Trails proposals comply
16 with each of the four WMC general rezone criteria. WMC 21.44.070.

17 With respect to the first criterion, the Hearing Examiner found there was a "demonstrated
18 need" for R-4 zoning in the City of Woodinville. Existing R-4 zoning, even according to the City,
19 is less than 2.7% of the City's land area. The Hearing Examiner concluded from the evidence that it
20 was likely significantly less. The R-1 zone, by contrast, makes up nearly 30% of the land area of
21 the City. Clearly, the Hearing Examiner concluded, more R-4 zoning is needed to create a diversity
22 of building types in the City. Moreover, the Hearing Examiner concluded that the GMHB ruling in
23 *Hensley v. Woodinville, supra*, specifically held that the City may not perpetuate one-acre lots that
24 will effectively thwart urban development. WT Ex. 140. Since the City has only 2.7% of its land in
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1 R-4 and 30% in R-1, the Hearing Examiner concluded, there is definitely a “demonstrated need” for
2 additional R-4 zoned land. HE WT Decision, pp. 9-10, HE M Decision, pp. 9-10.

3 As to the second criterion, the Hearing Examiner concluded that the zone reclassification is
4 consistent and compatible with uses and zoning of the surrounding properties. Both R-1 and R-4
5 zoning are designated in the low-density residential category. Both are thus considered low density
6 residential uses. See WMC 21.04.080(1)(a). This site, like an R-1 zoned site, will be developed
7 with single family homes. Moreover, the Hearing Examiner concluded that the Woodinville Code
8 clearly states that the Wood Trails property can not be developed as R-1 because utilities are
9 available. Concluding that the applicant could not develop at R-4 would put the applicant in a
10 Catch 22, since R-1 zoning is also not available. See HE WT Decision, p. 10; HE M Decision, p.
11 10.
12
13

14 The Hearing Examiner also concluded that the zone reclassification is consistent with the
15 third criterion: the property is practically and physically suited for the uses allowed in the proposed
16 zone reclassification. The Hearing Examiner reviewed the extensive analyses contained in the Draft
17 EIS and the Final EIS, in which both the applicant’s experts and the City’s experts agreed that the
18 site was suitable based on the characteristics of the property. Stormwater drainage, landslide
19 hazards, and erosion hazards were all extensively studied, and those studies convinced the Hearing
20 Examiner to conclude the site is suitable. HE WT Decision at pp. 10-11; HE M Decision at pp. 10-
21 11.
22
23

24 In his Decisions, the Hearing Examiner also reviewed the criteria set forth in WMC
25 20.06.020 for preliminary plat approval: goals and policies, development standards, subdivision
26 standards, proposed street system, utilities, layout of lots, geologically stable soil, safe walking to
27 school procedures, and tree preservation.
28

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1 He concluded that the Wood Trails and Montevallo proposals meet each of the criteria. As
2 conditioned, they meet the goals and policies of the City. They will be low-density developments in
3 an area designated in the Comprehensive Plan for low-density development. Significant trees will
4 be preserved, erosion and sedimentation will be controlled, and stormwater will be managed. The
5 lots in the plats will comply with minimum lot and width standards in the R-4 zone. The proposal
6 meets all the subdivision standards as well, including provision of water and sewer and payment of
7 park mitigation fees. The streets in the plats comply with City criteria, with the deviations granted
8 by the City engineer. The proposed developments take into account topography and vegetation.
9 Development will occur on the flattest portions of the Wood Trails site and the steep slopes will be
10 left as open space. A landscape plan and tree retention plan have been submitted. A geotechnical
11 study has concluded that site soils are suitable. And safe walk to school procedures have been
12 complied with. HE WT Decision at pp. 11-16; HE M Decision at pp. 11-15.

15 **H. City Council Rejects Recommendations of its Professional Consultants, Staff**
16 **and Hearing Examiner.**

17 Following the Hearing Examiner's Decisions, a neighborhood opposition group known as
18 CNW appealed the Hearing Examiner's subdivision approvals to the City Council.

19 On August 6 and 13, 2007, the City Council conducted a closed record review of the
20 Hearing Examiner Decisions. On August 20, 2007, the City Council adopted Findings, Conclusions
21 and Decision, one for Wood Trails and one for Montevallo ("City Council Decisions" – attached as
22 Addenda E and F). The City Council denied the zoning map amendments for the two sites, and
23 reversed the Hearing Examiner's approval of the subdivisions.

25 The "Conclusions" sections of both City Council Decisions are identical. They identify two
26 reasons for denying the zoning map amendments and one reason for denying the subdivisions.

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1 First, the Council states that "a site specific rezone of the property to R-4 density would be
2 inconsistent with significant Comprehensive Plan policies and does not bear a substantial
3 relationship to the public health, safety, morals or welfare." Conclusion 1.

4 Second, the Council asserts that "approval of the proposed rezone is inappropriate at this
5 time due to the deficient public facilities and services (other than sewer) in the area where the
6 property is located..." Conclusion 2. The Council states that it has chosen to focus growth in its
7 downtown area, and does not currently have resources to construct new facilities and services
8 elsewhere. Conclusions 3-8.

9 With respect to the subdivisions, the Council's Conclusion 9 states that the sites are
10 currently zoned R-1. In the Decisions, the Council denies the two subdivisions on the ground that
11 the Council has denied the rezone to R-4.

12 It is these two City Council Decisions that Phoenix respectfully asks the Court to reverse.

13
14
15 **I. Moratoria, Interim Zoning and Sustainability Study**

16 While the Wood Trails and Montevallo proposals were undergoing environmental and City
17 staff review, the City Council adopted two successive moratoria followed by two successive interim
18 zoning ordinances. While the City staff and City Attorney had determined that the Phoenix projects
19 were vested to the land use regulations in effect as of 2004, these additional City actions were
20 designed to prevent further applications for R-4 zoning map amendments in the Leota and
21 Wellington neighborhoods. These additional City actions also indicate the City Council's aversion,
22 abetted by neighborhood pressure, to R-4 development in the Leota and Wellington neighborhoods.

23 On March 20, 2006 (two months after issuance of the Draft EIS for Wood Trails and
24 Montevallo), the City Council adopted Moratorium Ordinance 419. WT Ex. 48. The Ordinance
25 imposed a six-month moratorium upon the receipt and processing of building permit

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1 applications, land use applications, and any other permit application within the R-1 zoning
2 district, which, the Ordinance acknowledges, is the largest residential zone in the City,
3 comprising 1291 acres, approximately 30% of the entire municipality. Id.

4 On July 10, 2006, after having held a public hearing on Ordinance 419, the City Council
5 adopted Ordinance 424. This Ordinance incorporated supplemental findings of fact in support of
6 the moratorium, and revised and clarified certain exemptions. WT Ex. 48.

7 The original moratorium ordinance was set to expire on September 17, 2006.
8 Accordingly, on September 11, 2006, the City adopted Ordinance No. 427, renewing the
9 moratorium for a period of six additional months. The Council determined that the renewal was
10 necessary "in order to prevent land use permit applicants from obtaining vested development
11 rights inconsistent with the anticipated code amendments that will likely result from the
12 Sustainable Development study." WT Ex. 48.

13 The Sustainable Development Study referred to by Ordinance 427 was published on
14 February 20, 2007. WT Ex. 83. Its stated purpose was to determine the proper land use densities
15 in the Leota and Wellington neighborhoods. Id, p. 1.

16 The Study acknowledges that the residential zones in the City make up approximately
17 60% of the City's 3500 acres, with the R-1 zone encompassing approximately 30% or 1100
18 acres. The R-1 zone is located on the northeastern uplands of the City, and is referred to
19 generally as the Leota and Wellington Neighborhoods. Id, p. 1.

20 The environmental portion of the Study analyzes the six drainage basins located in this
21 area: Hillside Drainages, School Basin, Daniels Creek Basin, Woodin Creek Basin, Lake Leota
22 Basin, and Golf Course Basin. Id, Figure ES-2. The Wood Trails site is in the Hillside
23

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1 Drainages. The Montevallo site is located in the Golf Course Basin. Compare Figure ES-2 with
2 WT Ex. 68.

3 With respect to environmental considerations, the Study concludes that only one of the
4 drainage basins meets the applicable environmental criteria justifying a potential R-1
5 designation: the Lake Leota Basin. Accordingly, neither the Wood Trails site nor the
6 Montevallo site would qualify for an R-1 designation on environmental grounds. WT Ex. 83, pp.
7 21-25.
8

9 As for transportation and capital facilities, the Study makes it clear that the R-1 areas of
10 the City, including the Wood Trails and Montevallo sites, are fully suited to accommodate R-4
11 zoning. WT Ex. 83, pp. 21-25.
12

13 With the second six-month moratorium set to expire, the City Council then chose to
14 adopt Ordinance 431, which deleted on an interim basis the provision of WMC 21.04.080(1)(a)
15 providing that development with densities less than R-4 are allowed only if adequate services
16 cannot be provided. The interim ordinance was in full force and effect for six months. WT Ex.
17 84. Again, because the Wood Trails and Montevallo proposals were vested, the interim
18 ordinance was not applicable to them.
19

20 Phoenix and one other party appealed the validity of Ordinance 431 to the Growth
21 Management Hearings Board for noncompliance with the urban density requirements of the
22 Growth Management Act. Ordinance 431 expired by its terms prior to the Board Final Decision
23 and Order. In the meantime, the City attempted to renew Ordinance 431 by adopting Ordinance
24 447. However, the Board concluded Ordinance 447 was ineffective in accomplishing its
25 purpose, and therefore the R-4 mandate of WMC 21.04.080(1)(a) was once again in effect. The
26 appeal was accordingly dismissed as moot. Board Member Margaret Pageler dissented. She
27
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would have addressed the merits of the appeal in spite of its mootness, and would have instructed the City as follows:

1. The conclusion of the *Hensley III* case that a *low density* of one dwelling unit per acre is an inappropriate urban density for Woodinville still stands...

2. The Sustainable Development Study, particularly the environmental analysis (Litowitz test) did not support the need for low density plan designations and zoning because of environmental factors...

8. RCW 36.70A.110(2) mandates: Each urban growth area shall permit urban densities.

For all of the above reasons, I would have found the City of Woodinville noncompliant with the challenged provisions of the GMA and would have invalidated the amendment...

Phoenix Development LLC and Peter Rothschild v. City of Woodinville, CPSGMHB Case No. 07-3-0029c, FDO (October 12, 2007) (Attached as Addendum G).

Since the date that Ordinance 447 was found to be ineffective, the City Council has not adopted any new amendments to its zoning code in response to the Sustainable Development Study. The City is expected to consider such amendments in the first quarter of 2008. In the meantime, the R-4 mandate of WMC 21.04.080(1)(a) remains in full effect.

ARGUMENT

A. The Land Use Petition Act Sets Forth the Applicable Standard of Review.

The Land Use Petition Act, RCW 36.70C, ("LUPA") provides that the Court may grant relief when the petitioner has carried the burden of establishing that: (1) "the body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless"; (2) "the land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise"; (3) "the land use decision is not supported by evidence that is

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substantial when viewed in light of the whole record before the court”; (4) “the land use decision is a clearly erroneous application of the law to the facts”; or (5) “the land use decision violates the constitutional rights of the party seeking relief.” RCW 36.70C.130(1)(a), (b), (c), (d) and (f).

The Court views “the evidence and any reasonable inferences in the light most favorable to the party that prevailed in the highest forum exercising fact-finding authority.” *Schofield v. Spokane County*, 96 Wn. App. 581, 586, 980 P.2d 277 (1999). Fact-finding bodies are those that assess the credibility of witnesses and weigh reasonable but competing inferences. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652-53, 30 P.2d 453 (2001); *State v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992). “A tribunal with only appellate jurisdiction is not permitted or required to make its own findings,” and any such findings are treated as mere surplusage. *State v. County of Pierce*, 65 Wn. App. at 618; *Grader v. Lynnwood*, 45 Wn. App. 876, 879, 728 P.2d 1057 (2986)..

In this case, the zoning map amendment decision of the Council was in its quasi-judicial capacity, and the Council did not by ordinance afford itself independent fact-finding authority. Deference must therefore be given to the Hearing Examiner’s factual findings, and the evidence and all reasonable inferences must be viewed in the light most favorable to Phoenix, the party that prevailed before the Hearing Examiner. RCW 36.70C.020(1)(a); *City of Univ. Place*, 144 Wn.2d at 652-53; *State v. County of Pierce*, 65 Wn. App. at 618; *Griffin v. Bd. of Health*, 137 Wn. App. 609, 154 P.3d 296 (2007). Indeed, the Woodinville Municipal Code’s procedure for closed record hearings and appeals does not grant the Council authority to enter factual findings and specifically provides the hearing “shall be on the record before the hearing body, and no new evidence may be presented.” WMC 17.17.050(2). The Council thus acted solely in a capacity reviewing the administrative record developed by the Hearing Examiner. Its additional factual

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findings must be treated as mere surplusage. *State v. County of Pierce*, 65 Wn. App. 614;;
Grader, 45 Wn. App. 876.

Finally, a decision is clearly erroneous when a reviewing court is “left with the definite
and firm conviction that a mistake has been committed.” *Schofield, supra*, 96 Wn. App. 581,
980 P.2d at 280.

**B. The Wood Trails and Montevallo Proposals Comply with the City’s Rezone
Criteria – The City Council’s Denial Must Be Reversed.**

Two provisions of the WMC set forth the City’s rezone criteria. The first is WMC
20.04.080:

(1) The purpose of the Urban Residential zones (R) is to implement Comprehensive Plan
goals and policies for housing quality, diversity and affordability, and to efficiently use
residential land, public services and energy. These purposes are accomplished by:

(a) Providing, in low-density zones (R-1 through R-4), for predominantly single-
family detached dwelling units... Developments with densities less than R-4 are allowed
only if adequate services cannot be provided...

(2) Use of this zone is appropriate in residential areas designated by the Comprehensive Plan
as follows:

...(b) the R-4 through R-8 zones on urban lands that are predominantly
environmentally unconstrained and are served at the time of development by adequate
public sewers, water supply, roads and other needed facilities and services...

The second is WMC 21.44.070:

A zone reclassification shall be granted only if the applicant demonstrates that the proposal
is consistent with the Comprehensive Plan and applicable functional plans at the time the
application for such zone classification is submitted, and complies with the following
criteria:

(1) There is a demonstrated need for additional zoning as the type proposed.

(2) The zone reclassification is consistent and compatible with uses and zoning of the
surrounding properties.

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1 (3) The property is practically and physically suited for the uses allowed in the proposed
2 zone reclassification.

3 As the record demonstrates and the Hearing Examiner concluded, the Wood Trails and
4 Montevallo proposals meet all of these criteria. The City Council's conclusions to the contrary are
5 clearly erroneous and not supported by substantial evidence. They must therefore be reversed.

6 **1. Adequate Services.**

7 WMC 20.40.080(1)(a) and (2)(b) states that densities less than R-4 will be allowed only if
8 "adequate services" cannot be provided. Up until the date of these City Council decisions, the City
9 has always taken the position that this provision means that minimum R-4 densities are required if
10 sewer is available to a property. See Addendum C. As Councilmember Brocha stated at a May 10,
11 2006 Council meeting discussing GMA urban density requirements:

13 I'm going to ask the short-term question, because after all, that's why these people are
14 here tonight. And that short-term question has to do with, I'll call the battle line, the R-
15 1/R-4 battle line that Growth Management Hearings Board sort of drew however many
16 years ago, when it said R-4 is the density you have to have, if you're within a city. And,
17 you know, that's all relative – they said R-4 is the density you have to have; we've had
18 R-1 zoning all along. **And our, our Comp Plan in 1996 was challenged, and that**
19 **forced us to come to some way of dealing with the possibility of R-4, and that**
20 **directly leads to where we are tonight. You know, convert R-1 to R-4 with the**
21 **availability of sewage.** And that was something that came out of the challenge and the,
22 the Growth Management Hearings Board heard and said, Woodinville you need to do
23 something; **this is what we did to handle that.**

24 (Transcript was prepared by the City and is attached as Addendum H -- the Court is requested to
25 take judicial notice of this statement as a legislative fact) (emphasis added).

26 All parties concede that there is a changed circumstance in this case – as a result of these
27 proposals, sewer lines will be extended to serve the sites, and these sites will no longer be
28 dependent on environmentally questionable septic systems. Accordingly, as the term "services"

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1 had been applied by the City up until the date of these City Council decisions, this criterion is
2 met.

3 To the extent that other services are relevant to this criterion, they are those set forth in
4 the Growth Management Act pursuant to which this code section was adopted. RCW
5 36.70A.030(20) defines "urban services" as "those public services and public facilities at an
6 intensity historically and typically provided in cities, specifically including storm and sanitary
7 sewer systems, domestic water systems, street cleaning services, fire and police protection
8 services, public transit services, and other public utilities associated with urban areas and
9 normally not associated with rural areas."

10
11 All of these services are available to the Wood Trails and Montevallo properties. There
12 are adequate fire and police services. WT Ex. 83, p. 18. The sites will also be served by adequate
13 water, sewer and other utilities. HE WT Decision, p. 15. There is adequate school capacity. The
14 City's Sustainable Development Study confirms that all capital facilities are adequate for R-4
15 development. WT Ex. 83, p. 16.

16
17 With respect to public transit, the City Council contends that there is inadequate transit
18 serving this neighborhood. However, King County Metro does operate two transit routes in the
19 vicinity of the project site, and a park and ride lot is located downtown, so that residents can
20 commute via transit to jobs in Bellevue and Redmond. HE WT Decision, p. 13. If the City Council
21 truly wants better transit service to this neighborhood, the most effective action it could take is to
22 change the existing sprawling one-acre land use pattern to a higher density of six dwelling units per
23 acre or more. It is commonly understood that in order for transit to be successful, cities must
24 authorize densities at least six units per acre. Build to that density, and King County Metro transit
25 will come. However, by limiting density to one unit per acre, the City Council is guaranteeing that

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transit will never be fully available to the community, and the community will forever remain dependent on the automobile.

Despite all of this evidence that there are adequate services to the Wood Trails and Montevallo properties, the City Council in Conclusions 2-8 suggested that the proposals should be denied because of “deficient public facilities and services.” The City Council cites nothing in the record supporting this conclusion. Indeed, the record, as pointed out above, proves the contrary.

The City Council concedes that the Wood Trails and Montevallo sites are adequately served by fire, police, sewer, water, and electricity. Moreover, there is transit available in the vicinity of the site, and a park and ride lot in the downtown area.

The sole contention the City Council appears to make with respect to this issue is set forth in its CC WT Decision Findings 6(c) and 11, and CC M Decision Findings 6(c) and 9. The City Council identifies three alleged “inadequacies” of public facilities and services. One is “public transit,” which has been addressed above.

The second is “the substandard roads and pedestrian walkways providing access to and from the subject property,” referring, it is understood, solely to Wood Trails (no such allegation was made at the hearings with respect to Montevallo). However, the test is not whether these roads and walkways are “substandard” by current City guidelines. The test is whether they are “adequate” to serve traffic and provide pedestrian safety. The Sustainable Development Study confirms that most of the roads in this area were constructed by King County prior to incorporation, and do not meet the City’s current road cross-section standards. WT Ex. 83, p. 15. However, the City’s transportation experts, including the Public Works Director and the City’s transportation engineering consultant, explained why these roads are adequate and safe at R-4 densities, subject to certain defined improvements for traffic calming and related matters. See Testimony of Joel

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1 Birtschman, TR 45-49 (3/14/07); 139-149 (4/5/07). All traffic intersections operate at acceptable
2 levels of service. M Ex. 40, p. 3.5-56. Traffic safety is adequate. M Ex. 40, pp. 3.5-59 – 3.5-60.;
3 WT Exhibits 129, 165. As the City's own Sustainable Development Study concluded,
4 "transportation conditions can be mitigated under different densities, and transportation is not a
5 distinguishing factor in the R-1 study." WT Ex. 83, pp. 15-16. CC WT Decision Finding 11
6 misstates the findings of the EIS on transportation. The EIS specifically found that the Wood Trails
7 development caused no different impacts on traffic sight distance as R-1, and that there is mitigation
8 available to address that issue. M Ex. 40, pp. 3.5-93 – 3.5-94.

10 Second, the City Council contends that there are no neighborhood parks in the immediate
11 vicinity of the proposals. However, under the City Code, Phoenix will pay park impact mitigation
12 fees to contribute its fair share to park improvements. It is the City's decision whether to focus park
13 improvements city-wide in the downtown area or to accommodate additional neighborhood parks.
14 HE WT Decision, p. 13. Moreover, parks are not defined as "urban services" under the GMA.
15 Even if there were deemed to be inadequate parks, this would not be a valid basis to deny the
16 proposed rezone. Finally, the EIS found no significant adverse impacts caused by the proposals on
17 parks. M Ex. 40, p. 3.6-8.

20 Accordingly, the Wood Trails and Montevallo sites clearly have adequate services available
21 to them. The City Council's denial of the rezone on this basis must be rejected.

22 Conclusions 2-8 identify a number of ancillary concerns related to this issue. They all boil
23 down to the argument that the City has made a planning decision to invest infrastructure dollars in
24 the downtown rather than in the Leota and Wellington neighborhoods, and that therefore the City
25 does not have the resources to invest infrastructure dollars in Leota and Wellington. This is all well
26 and good, but is totally irrelevant. It is not necessary, as demonstrated above, for the City to invest
27

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infrastructure dollars in these neighborhoods. The record proves that there is adequate existing infrastructure to accommodate R-4 development. Suffering from the same logical inconsistency and irrelevance are CC WT Decision Findings 16.22 and 25-26, and CC M Decision Findings 16, 21, 24, and 26.

2. Predominantly Environmentally Unconstrained.

WMC 20.40.080(2)(b) states that R-4 designations are appropriate on lands “that are predominantly environmentally unconstrained...”

The EIS thoroughly evaluated the issues of soil stability, wetlands, and streams. The technical appendices to the Draft EIS include two geotechnical engineering studies, a drainage report, and a wetland and stream report. After all this analysis, the EIS found no environmental constraints precluding development of the properties at R-4 densities. Soil stability and erosion issues were fully addressed and mitigated. M Ex. 40, p. 3.1-22. Impacts to water quality and water quantity will be minimal. M Ex. 40, p. 3.2-37. In addition, the Sustainable Development Study found no basis on environmental grounds to preclude R-4 zoning (outside of the Lake Leota Basin) on the basis of environmental constraints. WT Ex. 83, pp. 21-25. Additional evidence was presented to the Hearing Examiner on these issues. See, e.g., WT Ex. 165. The Hearing Examiner found the evidence submitted by Phoenix to be credible. He concluded that “the stability of the site for development has been established by the applicant.” HE WT Decision, p. 8.

The City Council does not refer in its conclusions to the presence of environmental constraints as a basis to deny the proposals. See Conclusions 1-8. Accordingly, it should be precluded at this appellate stage from so arguing. However, to the extent it seeks to do so and the Court allows it to do so, the record is clear. The applicant clearly demonstrated that the portions of

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1 the Wood Trails site being developed are free of environmental constraints and suitable for
2 development.

3 The City Council did purport to make a number of Findings in the Wood Trails decision
4 relating to this issue. As indicated above, all such findings should be deemed mere surplusage. For
5 the sake of completeness, however, Phoenix will address them.
6

7 In WT Finding 6(d), the Council asserts that R-1, rather than R-4, zoning is appropriate
8 because of “area-wide environmental constraints imposed by steep slopes and erosion hazard areas”
9 “by minimizing the significant unavoidable adverse impacts of residential development of the
10 property.” However, this Finding ignores all of the evidence in the record, including the opinions of
11 its own professional consultants and the findings of its Hearing Examiner. Development of the
12 Wood Trails site will not adversely impact the steep slopes. And all erosion concerns can be
13 addressed through best management practices. See, e.g., WT Ex. 83, pp. 21-25, WT Ex. 165.
14 Findings 9 and 10 state that the EIS and City mapping “show evidence of area-wide environmental
15 constraints.” However, the EIS and City mapping identify no such “area-wide environmental
16 constraints.” What they do show is that there are steep slopes, which will be avoided in the Wood
17 Trails development, and erosion hazard areas, which will be dealt with through best management
18 practices.
19
20

21 As the City’s Sustainable Development Study concluded, there are no “area-wide
22 environmental constraints” on the Wood Trails and Montevallo properties that would preclude
23 development at R-4 densities. WT Ex. 83, pp. 21-25.
24

25 3. Consistent with the Comprehensive Plan.

26 WMC 21.44.070 states that a zone reclassification may be granted when the applicant
27 demonstrates that the proposal is consistent with the Comprehensive Plan. Here, the EIS
28

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1 demonstrates the proposals' consistency with the Plan. M Ex. 40, pp. 3.4-22 – 3.4-28. The Staff
2 Report includes a lengthy analysis of the proposals' consistency with the Plan. WT Ex. 1, pp. 13-
3 19. It analyzes eight land use policies, two housing policies, three community design policies, one
4 capital facilities element policy, and four environmental policies. It concludes that "[t]he proposed
5 rezone to R4, Low Density Residential, complies with the policies of the Comprehensive Plan..."
6

7 WT Ex. 1, p. 13.

8 The Hearing Examiner agreed, and found:

9 The proposal is reasonably compliant with the Comprehensive Plan. The Hearing Examiner
10 hereby adopts and incorporates the discussion of Comprehensive Plan Policies set forth in
11 Exhibit #1, pages 13 through 19; Exhibit #39, pages 3.4.22 through 3.4.28 and Exhibit #19,
12 pages 6 through 11. Specifically the Hearing Examiner finds that the zone change will
13 allow the development of low density detached single family homes in an area designated in
14 the comprehensive plan as low density residential. While arguments have been made that
15 the adjacent neighborhood is much less dense, R-4 is still classified as low density... The
16 site will be served with City water and sewer and the street network will be improved.
17 Much of the site will be left in a Native Growth Protection Area (NGPA) which will provide
18 habitat and open space. It presents a range of densities, which encourages a variety of
19 housing types to serve a variety of income levels. It preserves much of the natural features
20 of the site, such as the steep slopes and will preserve trees in accordance with the City's
21 Tree Retention regulations. Exhibit #1, pages 13 through 19.

22 HE WT Decision at p. 9; HE M Decision at p. 8.

23 Despite these thorough analyses in the EIS, in the Staff Report, and by the Hearing
24 Examiner, the City Council cites inconsistency with the Comprehensive Plan as one of its two
25 grounds to deny the proposed rezones. "[T]he City Council finds that, a site specific rezone of the
26 property to R-4 density would be inconsistent with significant Comprehensive Plan Policies..." CC
27 WT and M Decisions, Conclusion 1.

28 However, surprisingly, the Council cites no "significant Comprehensive Plan Policy" with
which the proposed rezones are inconsistent. Moreover, a review of the Council's Findings shows
that the Council in its Findings also identifies no Comprehensive Plan Policy with which the

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1 proposed rezones are allegedly inconsistent. To the contrary, the Council admits that “the proposed
2 rezone is arguably consistent with several policies of the City’s Comprehensive Plan...” CC WT
3 and M Decisions, Finding 6.

4 Due to the fact that the Council failed to cite any support for this Conclusion, it must be
5 rejected as the basis for denial of the rezones. Substantial evidence is “a sufficient quantity of
6 evidence to persuade a fair-minded person of the truth or correctness” of the decision. *Schofield*,
7 *supra*, 96 Wn. App. 581, 980 P.2d at 280. In this case, the substantial evidence supports the
8 conclusions of the EIS, of the Staff Reports, and of the Hearing Examiner that the rezones are
9 consistent with the Comprehensive Plan. And, as the Hearing Examiner properly concluded, “[a]
10 proposed rezone that furthers the goals of the local Comprehensive Land Use Plan, bears a
11 substantial relationship to the public health, safety, morals or general welfare. *Henderson v.*
12 *Kittitas Co.*, 124 Wn.App. 747, 756, 100 P.3d 842 (2004).” Moreover, by virtue of
13 implementing the policies of the Comprehensive Plan, the proposed rezones meet any applicable
14 “changed circumstances” requirement.” *SORE v. Snohomish County*, 99 Wn.2d 363, 662 P.2d
15 816 (1983). See CC WT and M Decisions Finding 6.

16 4. Demonstrated Need.

17 WMC 21.44.070 requires the applicant to show that there is a “demonstrated need” for
18 additional zoning of the type proposed.

19 The Hearing Examiner concluded:

20 This criterion is a many faceted criterion. The City [Staff Report] has analyzed it according
21 to its GMA growth allocation from King County and found that Woodinville could meet its
22 housing allocation without this rezone. The applicant’s expert criticized the City’s study as
23 not fully analyzing the amount of actual R-4 zoning there was in the City for development.
24 Most of the housing development that has occurred since 2002 has been in apartments and
25 condominiums rather than single-family residential uses. As the applicant’s expert
26 demonstrated, if the amount of R-4 developed between 2002 and 2007 were removed from
27

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1 the available R-4 totals, the amount of R-4 available for new development or redevelopment
2 would be much less than the existing amount cited by the City which still was only 2.7% of
3 the land area of the City. The R-1 zone, by contrast, makes up nearly 30% of the City's
4 zoning. Clearly more R-4 zoning is needed to create a diversity of building sites availability
5 by establishing more areas where detached single-family can be constructed at [higher]
6 densities than R-1 densities. In addition, the Growth Management Hearings Board has held
7 that Woodinville is not to perpetuate one-acre lots that will effectively thwart urban
8 development. See *Hensley v. Woodinville* CPSGMHB Case number 96-3-0031 (February
9 25, 1997)...

10 One of the goals of GMA is to encourage urban development within urban areas and reduce
11 sprawl. RCW 36.70A.020. The Hearings Board in the Hensley case, cited above, have
12 determined that one acre zoning will effectively thwart urban development. Therefore, the
13 fact that the City has 30% of its zoning in R-1 and only 2.7% in R-4 clearly demonstrates
14 the need for more R-4 zoning. Therefore, the Hearing Examiner finds that this criterion has
15 been met.

16 HE WT Decision, pp. 10-11; HE M Decision, pp. 9-10.

17 At hearing before the Hearing Examiner, Phoenix submitted the following additional factual
18 and legal arguments in support of the demonstration of need for the proposed rezone.

19 The term "demonstrated need" is a term of art in the area of zoning. While no published
20 Washington cases address this term, cases from other jurisdictions uniformly equate
21 "demonstrated need" with market or business demand. *Trisko v. City of Waite Park*, 566 N.W.2d
22 349 (Minn. Ct App. 1997) (business judgment that rock quarry was needed satisfied the
23 "demonstrated need criterion) *Accord, 1000 Friends of Oregon v. Marion County*, 116 Ore.
24 App. 584, 842 P.2d 441 (Ore. Ct. App. 1992), (RV park rezone demonstrated "need" by proving
25 market demand); *Blaker v. Planning and Zoning Commission*, 212 Conn. 471, 484, 562 A.2d
26 1093 (Conn. 1989) (testimony that area had a limited market of relatively affordable housing for
27 young married couples and "empty nesters," and that proposed condominium development
28 would provide more affordable means of housing than single family development, "supports a
finding by the commission of a 'fully demonstrated need for such type of land use.'"); *Eveline*

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1 *Township v. H & D Trucking Company*, 181 Mich. App. 25, 32-33, 448 N.W.2d 727 (Mich. Ct.
2 App. 1989) (demonstrated need for port facility to provide construction materials based in part
3 on "continuing and substantial need for these materials for road building and other construction")
4 (copies of these cases are attached as Addendum I).

5
6 In this case, the evidence submitted by Phoenix at the hearing in this matter demonstrated
7 that there is a market demand for the housing type and density proposed. Were this not the case,
8 of course, Phoenix would not have devoted the resources necessary to run the three-year
9 regulatory gauntlet the City has placed before it. See TR 66-70 (3/14/07); TR 30-40 (3/15/07);
10 WT Ex. 88, Att. A; WT Exs. 128, 136, 138, 165.

11
12 Moreover, sound planning principles indicate the demonstrated need for R-4 housing.
13 Michael McCormick, FAICP, a planner with over thirty-five years of experience in community
14 development and growth management, and former Assistant Director for Growth Management for
15 the Washington State Department of Community Development, submitted a report to the Hearing
16 Examiner. WT Ex. 88, Att. B. Mr. McCormick made the following observations: (1) The Puget
17 Sound Regional Council's current updating of its VISION 2020 plan, extending it to the year 2040,
18 envisions a significant increase in population allocation to Woodinville, underscoring the
19 importance of increasing density from one to four dwelling units per acre, as proposed by Phoenix;
20 (2) Increasing density from one to four dwelling units per acre is consistent with Growth
21 Management Hearings Board decisions, accommodates urban density, supports transit and schools,
22 and allows for more efficient use of existing capital facilities; (3) Increasing density from one to
23 four dwelling units per acre is necessary to assure sustainable development, which requires the
24 efficient use of land, and is consistent with the Smart Growth project of the United States
25 Environmental Protection Agency. Mr. McCormick concluded that approving the proposed rezone

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1 will be consistent with sound urban planning principles, and denying it will be inconsistent with
2 those principles. Sound planning principles, then, also demonstrate the need for R-4 zoning in
3 Woodinville.

4 In addition to market demand and sound planning principles, the need for approval of this
5 rezoning is demonstrated because the rezoning is legally mandated. First, the rezoning is legally
6 mandated because the City's zoning code requires that developments be approved at densities of
7 no less than 4 dwelling units per acre when urban services are provided. This matter involves
8 two applicable WMC sections. One requires a showing of "demonstrated need" for a rezoning
9 (WMC 21.44.070); the other provides that "developments with densities less than R-4 are
10 allowed only if adequate services cannot be provided" (WMC 21.04.080(1)(a)). In interpreting
11 these sections, the City must ensure that no provision is rendered superfluous, void or
12 insignificant. *Snow's Mobile Homes v. Morgan*, 80 Wn.2d 283, 288, 494 P.2d 216 (1972)
13 ("Courts are obliged to interpret a statute, if possible, so that no portion of it is superfluous, void,
14 or insignificant.") Thus, the City may not interpret the "demonstrated need" requirement to
15 eliminate the requirement for R-4 densities. If the Council interprets the term "demonstrated
16 need" to mean market or business demand, as Courts around the country have done, then there is
17 no conflict between these WMC sections and the City may easily give effect to both by granting
18 the requested rezoning. This interpretation is the only one that meets the statutory construction
19 requirement that no provision be rendered void or superfluous.

20 In addition, the City must follow the rule of statutory construction that "a specific
21 provision controls over one that is general in nature." *Miller v. Sybouts*, 97 Wn.2d 445, 448, 645
22 P.2d 1082 (1982). Here, WMC 21.04.080(1)(a) addresses the specific issue before the City:
23 whether R-4 zoning must be permitted on this site. WMC 21.44.070, on the other hand, provides

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1 only general standards applicable to any rezone. To the extent the City finds a conflict between
2 the provisions, WMC 21.04.080(1)(a), requiring R-4 densities, controls. Accordingly, the rezone
3 in this case is “needed” because it is legally required under established principles of statutory
4 interpretation.

5
6 Second, the City is collaterally estopped from denying the proposed rezones. As stated
7 above, the Growth Management Hearings Board has directly addressed the densities required in
8 the area in which the Montevallo property is located. In *Hensley v. Woodinville, supra*, the
9 Board held unequivocally that the City could not perpetuate low-density one-acre zoning.
10 Instead, GMA requires urban densities in this area. See Ex. 40.

11
12 The City did not appeal this decision, but instead adopted WMC 21.04.080, which is
13 directly responsive to the Board’s order. In order to avoid “the inappropriate conversion of
14 undeveloped land into sprawling low-density development, which would effectively thwart long-
15 term urban development within the City’s boundaries,” WMC 21.04.080(1)(a) states clearly that
16 “[d]evelopments with densities less than R-4 are allowed only if adequate services cannot be
17 provided” (emphasis added). In other words, throughout the City, R-1 development is prohibited
18 unless adequate services cannot be provided. An application for R-1 development in an area
19 where adequate services can be provided – such as the project site – would not comply with the
20 City’s zoning regulations.

21
22 The City is bound by the Board’s decision that densities of at least four units per acre are
23 required within the City under the doctrine of collateral estoppel. *Christensen v. Grant County*
24 *Hosp.*, 152 Wn.2d 299, 307, 96 P.3d 957 (2004). Collateral estoppel applies “where an issue
25 was adjudicated by an administrative agency in the earlier proceeding.” *Id.*

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1 In this case, the issue decided by the Board is identical to the issue presented in this
2 proceeding. The Board examined whether the City could maintain the existing pattern of one-
3 acre lots within the neighborhood in which the project site is located. The Board determined that
4 the City's land use regulations could not legally perpetuate these historic low densities. The City
5 Council's contention that it is no longer bound by *Hensley*, then, is precluded by collateral
6 estoppel.
7

8 Even if the City were not collaterally estopped under *Hensley, supra*, the Growth
9 Management Act clearly mandates urban densities for the Montevallo property. There is little
10 question that four dwelling units per acre is, absent environmental constraints, a minimum urban
11 density. And in this case, as the EIS affirms, there are no pertinent environmental constraints.
12

13 The State Constitution "Article XI, section 11 requires a local law to yield to a state
14 statute on the same subject matter . . . 'if a conflict exists such that the two cannot be
15 harmonized.'" *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998), citing
16 *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 561, 807 P.2d 353 (1991). "Two statutes must be
17 read together "to give each effect and to harmonize each with the other." *Bour v. Johnson*, 122
18 Wn.2d 829, 835, 864 P.2d 380 (1993). "Inconsistency between statutes upon a given subject is
19 never presumed, but such interpretation or construction should be adopted as will harmonize all
20 acts upon the subject, if reasonably possible." *Ropo, Inc. v. Seattle*, 67 Wn.2d 574, 578, 409
21 P.2d 148 (1965). In addition, "we presume the Legislature is familiar with past judicial
22 interpretations of its enactments." *State v. Brown*, 140 Wn.2d 456, 474, 998 P.2d 321 (2000).
23
24

25 Here, the Court must interpret the zoning code provisions at issue to be consistent with
26 the Growth Management Act ("GMA"), as interpreted by the Growth Management Hearings
27 Board ("Board"). The Board has directly addressed the densities required in the area in which
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1 the Wood Trails and Montevallo properties are located. In *Hensley v. Woodinville*, *supra*, as
2 stated above, the Board held unequivocally that the City could not perpetuate low-density one-
3 acre zoning. Instead, GMA requires urban densities in this area.

4 In sum, the Court is bound to interpret the City's zoning code in a manner consistent with
5 GMA. GMA prohibits the perpetuation of low-density, sprawling, one-acre, estate zoning in the
6 area in which the Wood Trails and Montevallo properties is located. Instead, GMA requires
7 sustainable, smart growth, efficient, urban densities on the property, regardless of whether these
8 densities are required to meet the City's population allocation. In addition, GMA does not
9 permit zoning decisions to be made based on the desire to preserve neighborhood character or
10 due to community opposition. Consistent with the mandate of the City's own zoning code as
11 expressed in WMC 21.04.080(1)(a), there is thus a "demonstrated need" to provide R-4 zoning
12 on the Montevallo property also in order for the City to meet its legal obligations under the
13 Growth Management Act.

14 In its Conclusions, the City Council does not identify as one of the grounds for its denial
15 of the rezones, the "demonstrated need" criterion. See Conclusions 1-8. Accordingly, it may not
16 seek to do so now before this tribunal.

17 The Council does, however, assert certain "Findings" relating to the issue of "need."
18 Although these "Findings" should be deemed "mere surplusage," as demonstrated above, for the
19 sake of completeness Phoenix will address them.

20 CC WT and M Findings 5 and 6 assert that "[i]t is not necessary to rezone the property in
21 order to provide consistency with the City's Comprehensive Plan." However, the Council cites
22 no evidence in the record to support this statement. To the contrary, the City's Comprehensive
23 Plan includes numerous policies with which R-1 zoning is inconsistent. See, e.g., Policy LU 3.6:

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1 “Encourage moderate (5-8 d.u.) and medium (9-18 d.u.) density housing throughout the
2 community...”; Policy H-1.4: Require “minimum densities for subdivisions to ensure full land
3 use where urban services are provided”; Chap., 2, p. 7: “Are urban densities (four units to the
4 acre and greater) being achieved in the Urban Growth Area?”

5
6 CC WT and M Findings 7 and 8 assert that it is not necessary for the City to approve the
7 proposed rezones in order to meet its GMA mandated growth targets or to provide housing
8 diversity. As Phoenix demonstrated and the Hearing Examiner concluded, however, the City’s
9 study did not fully analyze the amount of actual R-4 zoning that is available in the City for
10 development. Even if the City provides zoning for apartments downtown, it fails in its
11 obligation to provide more affordable and land-efficient single family housing if it retains its
12 current 30% of R-1 zoned land, and does not increase its current 2.7% of R-4 zoned land. HE
13 WT Decision at pp. 10-11; HE M Decision at pp. 9-10; WT Ex. 88, Att. A; WT Exs. 136, 165.

14
15 CC WT Decision Finding 14 and M Decision Finding 13 state merely that “The Council
16 finds that the proposed rezone is not ‘needed’ at this time.” However, it again cites to no
17 evidence in the record and provides no explanation as to how or why the Council chooses to
18 make this finding. It must accordingly be disregarded. CC WT Decision Finding 15 and M
19 Decision Finding 14 suggest that although the Comprehensive Plan supports these rezones, it
20 does not mandate them. Again, the Council cites to no evidence in the record for this statement
21 and provides no rationale to support it. These findings also must be disregarded.
22
23

24 **5. The Proposed Rezones are Compatible with the Uses and Zoning of
Surrounding Properties.**

25 WMC 21.44.070 requires that the new zone be compatible with the uses and zoning of
26 surrounding properties. In this case, the proposed rezones are to R-4, a low-density residential
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1 zoning designation in the City. Surrounding properties are zoned R-1. The uses of the two zones
2 are the same: Low-density residential. As the EIS, the Staff Reports, and the Hearing Examiner
3 found, this criterion is met. M Ex. 40, pp. 3.4-30 – 3.4-32; WT Ex. 1, p. 24; M Ex. 1, p. 20; HE WT
4 Decision, p. 11; HE M Decision, p. 10.

5
6 The City Council's Conclusions do not suggest this criterion as a basis for denial of the
7 rezone. It would therefore be inappropriate for the City to raise it here for the first time in this
8 forum.

9 Moreover, the City Council makes no Findings that assert that the proposed rezones are
10 incompatible with the uses and zoning of surrounding properties. The Council does state, in WT
11 Finding 12 and M Finding 10, that the proposed developments "as proposed are not in character
12 with the surrounding R-1 neighborhoods and properties." However, the Council does not identify in
13 what way these developments are not in character. A reviewing entity must simply guess. These
14 findings must accordingly be disregarded.
15

16
17 **6. The Properties are Practically and Physically Suited for the Uses
Allowed in the Proposed Zone Reclassification.**

18 Finally WMC 21.44.070 requires that the Wood Trails and Montevallo sites be "practically
19 and physically suited" for R-4 low-density residential use. There is no argument about the
20 Montevallo site. All parties concede that it is practically and physically suited for R-4 zoning.
21

22 The Wood Trails property, due to the fact that a portion of it includes steep slopes, was
23 extensively studied and analyzed to ensure that it complied with this criterion. After all that study
24 and analysis, there is unanimity among the EIS, the Staff Reports, and the City's experts that the
25 Wood Trails property is physically and practically suited for low density residential uses. As the
26 Hearing Examiner stated:
27
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[T]he property was studied extensively in the DEIS and FEIS. Both the applicant's experts and the City's reviewing experts concluded that the site was suitable based on the characteristics of the site. The extensive study of geotechnical aspects, stormwater drainage, landslide hazards and erosion hazards convinces the Hearing Examiner to conclude that the site is suitable. The soils in the upper portion of the site have the strength to be developed with single-family dwelling units at the proposed density and the steeper portions of the site will be retained in their natural state as open space. Stormwater can be accommodated and with the conditions of approval as set forth in this decision, the site is suitable for development.

HE WT Decision p. 11.

Again, the City Council did not cite this criterion in its Conclusions as the basis to deny the rezone. It may not do so in this forum.

In its Findings on Wood Trails, the Council stated that "[a]rea-wide environmental constraints imposed by steep slopes and erosion hazard areas make R-1 zoning particularly appropriate for this site by minimizing unavoidable adverse impacts of residential development of the property." As usual, the Council cites nothing in the record to support this Finding. All of the City's experts, in fact, as demonstrated above have found that the Wood Trails site does not contain area-wide environmental constraints. In fact, the City's own Sustainable Development Study finds that the Wood Trails site is, on environmental grounds, appropriate for R-4 development. WT Ex. 83, pp. 19-25. CC WT Decision Finding 6 must accordingly be disregarded.

7. The City Council's Anomalous Finding 6.

Before leaving the issue of the rezone, Phoenix is compelled to address the City Council's anomalous Finding 6 (in both the Wood Trails and Montevallo decisions). In that finding, the City Council purports to be acting "in its legislative capacity," and makes the finding that "the current zoning designation of R-1 is appropriate." As stated above, all of the City Council's findings should be disregarded as mere surplusage. This finding, however, above all the others, stands out as being especially inapt.

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1 This finding is anomalous, first, because it is undisputed in this case that the Council is
2 required to be acting quasi-judicially, applying existing land use regulations, not adopting new
3 legislative policy. The fact that the Council felt compelled to make a finding in its "legislative
4 capacity" merely underscores its confusion, the impropriety of its decision-making process, and the
5 fact that the City Council had no legal or factual foundation to deny the Phoenix rezone proposals
6 on a quasi-judicial basis. Since it is clear that the Council has no basis to act legislatively when it is
7 obligated to act quasi-judicially, Finding 6 must be totally disregarded.

9 This finding is anomalous, second, because the issue whether to zone the property R-1 was
10 not the issue this quasi-judicial body was asked to resolve. Rather, the issue the body was asked to
11 resolve is whether Phoenix had met its burden to demonstrate that it was entitled to R-4 zoning. To
12 the extent that this Finding addresses an issue that was not before the Council, it should be totally
13 disregarded.

15 WT Finding 6 contains seven sub-paragraphs. M Finding 6 contains six sub-paragraphs.
16 They are identical, with the exception that the WT Finding addresses the issues of steep slopes and
17 erosion hazard areas. None of the sub-paragraphs cite to the record.

19 First, the Council states the properties should remain R-1 because of "the development
20 history of the area in which the property is located." The Council makes no explanation of how that
21 consideration is relevant to whether sprawling, low density development patterns should be
22 perpetuated. In any event, that is not a relevant legal consideration under the City's rezone
23 ordinance criteria. The comment is inapt.

25 Second, the Council states the R-1 designation is appropriate for "maintenance of the
26 existing suburban neighborhood character." This merely underscores the obstinate recalcitrance of
27 this Council. This City is no longer a "suburb." It is in an urban growth area and under an

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obligation to plan for urban densities – an obligation confirmed in its own Comprehensive Plan and zoning regulations. It has been ordered in no uncertain terms by the Growth Management Hearings Board that it may not perpetuate existing, sprawling, low density suburban development patterns. With the adoption of the Growth Management Act in 1990, the days of sprawling suburbs were effectively ended. The City Council continues to refuse to wake up to this simple reality.

The third, fourth, sixth and seventh subparagraphs refer to alleged lack of adequate public facilities and alleged area-wide environmental constraints. Those meritless claims have been addressed above.

The fifth subparagraph asserts that R-1 should remain because of the absence of changed circumstances. First, as stated above, there are changed circumstances. Sewer will be brought to the properties which will enable urban R-4 density and will provide protection from the adverse environmental consequences of failing septic systems. Second, as the Washington Supreme Court held in *SORE v. Snohomish County, supra*, the implementation of a comprehensive plan, such as is proposed in this case, in and of itself satisfies any applicable changed circumstances requirement. Otherwise, land use patterns would remain frozen, sprawl would be perpetuated, planning would be for naught, and growth management's mandate to encourage urban density would be a dead letter.

8. Conclusion on Rezone Criteria.

Accordingly, applicable facts and law clearly demonstrate the Wood Trails and Montevallo proposals clearly meet all of the City's rezone criteria. The City Council's conclusions to the contrary are clearly erroneous and not supported by substantial evidence. The Decisions of the City Council to deny the rezones should be reversed.

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1 **C. The Hearing Examiner Decisions to Approve the Subdivisions Should Be**
2 **Affirmed.**

3 The Hearing Examiner approved both subdivisions. In the Wood Trails and Montevallo
4 Decisions, he adopted Findings, identified his jurisdiction, reviewed the criteria for preliminary plat
5 approval, entered conclusions based on those findings, and rendered his decisions approving the
6 subdivisions with conditions. HE WT Decision, pp. 11-22; HE M Decision, pp. 11-20.

7 CNW appealed both approvals to the City Council. The parties fully briefed the issues to
8 the Council, and presented oral argument.

9 The Council, in its Decisions, reversed the Hearing Examiner's Decisions to approve the
10 subdivisions on one ground – Since the Council denied the rezone to R-4, the subdivision proposals,
11 which were dependent on R-4 zoning, were also denied. CC WT Decision; CC M Decision.

12 Since, as demonstrated above, the City Council Decisions to deny the rezones should be
13 reversed, by the same token, the City Council Decisions to reverse the Hearing Examiner approvals
14 of the subdivisions should be reversed, and the subdivision approvals should be affirmed.

15 It is expected that the City will argue that this matter should be remanded to the City for
16 consideration of the merits of the other claims of error raised by CNW in its appeal. However, to do
17 so would only cause additional delay and frustrate the principles of judicial economy. The City
18 Council's review of CNW's subdivision appeal was a closed record review. That record is fully
19 available to the trial court. The trial court sits in the same appellate shoes as does the City Council.
20 The trial court can review the record and consider the merits of CNW's appeal without the need for
21 a remand to the Council. Much the same situation existed in the recent case of *Woods v. Kittitas*
22 *County*, Washington Supreme Court, Cause No. 78331-4 (December 20, 2007). In that case, the
23 superior court reached one issue in a LUPA appeal, and on that basis declined to reach the
24 25 26 27 28

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1 appellants' remaining LUPA issues. Once the Supreme Court reversed the decision of the superior
2 court on that one issue, the Supreme Court then found that the remaining LUPA issues were
3 properly before it, since it stood in the superior court's position on review of an administrative
4 decision. Similarly here, the trial court stands in the City Council's position on review of the
5 Hearing Examiner's quasi-judicial decision approving the subdivisions.
6

7 In his Decisions, the Hearing Examiner reviewed the criteria set forth in WMC 20.06.020
8 for preliminary plat approval: goals and policies, development standards, subdivision standards,
9 proposed street system, utilities, layout of lots, geologically stable soil, safe walking to school
10 procedures, and tree preservation.
11

12 He concluded that the Wood Trails and Montevallo proposals meet each of the criteria. As
13 conditioned, they meet the goals and policies of the City. They will be low-density developments in
14 an area designated in the comprehensive plan for low-density development. Significant trees will be
15 preserved, erosion and sedimentation will be controlled, and stormwater will be managed. The lots
16 in the plats will comply with minimum lot and width standards in the R-4 zone. The proposals meet
17 all the subdivision standards as well, including provision of water and sewer and payment of park
18 mitigation fees. The streets in the plats comply with City criteria, with the deviations granted by the
19 City engineer. The proposed developments take into account topography and vegetation.
20 Development will occur on the flattest portions of the site and the steep slopes (on the Wood Trails
21 site – there are no steep slopes on the Montevallo site) will be left as open space. A landscape plan
22 and tree retention plan have been submitted. A geotechnical study has concluded that site soils are
23 suitable. And safe walk to school procedures have been complied with. HE WT Decision at pp. 14-
24 16; HE M Decision at pp. 11-15.
25
26

27 CNW filed an appeal to the City Council of the Hearing Examiner Decisions approving the

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1 preliminary plat. Copies of CNW's will be furnished to the court prior to trial. As the appellant,
2 CNW bore the burden of proof. CNW did not meet its burden. None of CNW's appeal arguments
3 have merit.

4
5 **1. The Plat Drawings Are Accurate.**

6 CNW contends that at the last minute, the applicant proposed changes to plat drawings. See
7 WT Ex. 90. This is not the case. As was clearly stated at the hearing by Triad Associates
8 Landscape Architect Jeff Cox and Planning Director Cindy Baker, the proposal before the Hearing
9 Examiner is the surveyed proposal submitted by Phoenix in its initial application. Exhibit 90, they
10 both testified, was a response to the recommended conditions set forth in the Staff Reports relating
11 to perimeter buffering, the Wood Trails drainage pond, and dispersion trenches. To provide the
12 public and the Examiner with a conceptual design that showed one way of responding to those
13 conditions, the applicant prepared a sketch, which was presented at the hearing solely for that
14 purpose. As Ms. Baker made clear in her testimony, in the event the Examiner were to approve the
15 subdivisions, the applicant will be required to submit revised drawings that incorporate the
16 Examiner's recommended conditions. The Planning Director will review those drawings to be
17 certain the conditions are complied with.
18
19

20 **2. Stormwater Drainage Analysis is Adequate.**

21 CNW inaccurately stated that there has been no stormwater drainage analysis. To the
22 contrary, the Final EIS summarizes the thorough analysis of drainage issues that was completed by
23 the applicant. See M Ex. 40, pp. 3.2-1 – 3.2-37, and M Ex. 35, Appendices E, F, G, H and M. That
24 analysis includes a modeled downstream analysis. The questions raised by CNW appear to focus
25 on the conditions recommended by City staff to revise the detention facilities at Wood Trails. As
26 approved by the Examiner, the applicant will be required to provide final design of facilities to
27
28

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1 comply with those conditions. City staff will assure those facilities comply with the storm drainage
2 code and with the conditions of approval.

3. Road Improvement Mitigation Is Adequate.

4 City staff has imposed, as a condition of approval, that certain improvements, such as traffic
5 calming, of the streets that access the Wood Trails proposal will be required by the City Engineer.
6 The purpose of this requirement is to ensure that any increased risk due to increased traffic will be
7 mitigated. As Mike Swenson's memorandum of April 5, 2007 states (WT Ex. 129), several
8 measures can be implemented that will focus on controlling and reducing speeds which would
9 reduce the sight distance needed, along with measures that provide advance notification associated
10 with the deficient zone. Mr. Swenson's letter report submitted April 26, 2007 confirms that these
11 proposed mitigation measures are common and implemented in other areas where sight distance
12 issues exist and reprofiling of roads is not an option. WT Ex. 165. CNW cited to no authority
13 requiring public review and approval of improvements to be made to City streets, nor is there any.

4. The Site's Critical Areas Have Been Exhaustively Surveyed and Studied.

18 These two properties have been analyzed more thoroughly than virtually any residential
19 subdivision property in history. The properties have been poked, prodded, measured, surveyed,
20 walked, viewed and re-viewed. See M Ex. 40, Sections 3.1 through 3.5 and related technical
21 appendices. Nonetheless, CNW rather incredulously asserted that there have been no sensitive area
22 studies. As Mr. Sewall and Mr. Coglas stated in their testimony to the Examiner, the studies they
23 completed for the proposals, which are contained in the EIS appendices, comply with all of the
24 substantive requirements for a critical area study. TR 151-166, 167-174 (4/5/07); see also WT Exs.
25 131, 133.

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1 **5. The Wood Trails Dispersion Trenches Proposal Will Be Revised As**
2 **Directed by the Final Decision in this Matter.**

3 City Staff proposed, as a condition of approval, that the proposed Wood Trails dispersion
4 trenches be eliminated, or placed at least fifty feet from top of slope. The applicant believes that
5 condition can be complied with. As stated in Mark Keller's memorandum submitted on April 26,
6 2007 (WT Ex. 165), three alternatives have been through a preliminary analysis and each of the
7 three (staying fifty feet away from top of slope, tightline to the detention pond, or tightline to below
8 the 40% slope) are viable options. Once a final decision is issued on the subdivision, a final design
9 will be submitted to City staff for its review in light of applicable codes and the Hearing Examiner's
10 conditions of approval.
11

12 **6. The Montevallo Site Plan Will Be Revised As Directed by the Hearing**
13 **Examiner.**

14 As stated above, once a final decision is issued which determines the conditions of approval
15 of the subdivision, the preliminary plat will be revised to comply with those conditions. City staff
16 will review those plans to ensure that City codes and the conditions of approval are met. That will
17 include, of course, the Montevallo storm drainage facilities.
18

19 **7. No Montevallo Wetland Impacts are Anticipated.**

20 The City has required that the sewer line be bored beneath the Montevallo wetland.
21 Accordingly, the proposal will not be affecting the Montevallo wetland, and no mitigation plan will
22 be required. See TR 78-82 (3/14/07); TR 167-174 (4/5/07).
23

24 **8. Tree Retention and NGPA Areas Are Disclosed.**

25 Tree retention plans were submitted as part of the preliminary plat application. The City has
26 approved this plan. See WT Ex. 163. In addition, the preliminary plat discloses the proposed
27 NGPA tracts. See WT and M Exs. 11. No landscape plans are required at the time of preliminary
28

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1 plat application.

2 **9. Sewer and Water Availability Letters Have Been Submitted.**

3 Contrary to the contentions of CNW, current sewer and water availability letters have been
4 submitted. See WT and M Exs. 7 and 8.

5 **10. The Applicant Will Pay Park Impact Mitigation Fees.**

6 The Final EIS discusses parks at M Ex. 40, pp. 3.6-1 – 3.6-8. It concludes that after
7 payment of the parks mitigation fees, “no impacts [on parks] would remain” and “there would be no
8 significant impacts to public services.” The Final EIS makes clear that under City code, a developer
9 has the option of either paying the City’s fees or including within their proposed projects recreation
10 facilities to offset all or a portion of the park impact fees assessed. In this case, the applicant will
11 pay the sum of \$403,225 in parks impact fees, according to the current fee schedule.
12

13 **11. Wood Trails Qualifies as a Sending Site.**

14 CNW also asserted that the Wood Trails site does not contain open spaces, wildlife habitat,
15 or woodlands, as defined in the Comprehensive Plan, and therefore that it does not qualify as a
16 sending site. WMC 21.36.030. CNW appears to read this provision to require that there be a
17 *designation* of the property in the Comprehensive Plan before it can qualify. However, the code
18 provision does not require that the property be designated, only that it contain one of the features
19 enumerated. In this case, the EIS clearly shows that the Wood Trails site includes open spaces,
20 wildlife habitat and woodland. And the City’s Comprehensive Plan specifically endorses
21 preservation of these areas. See, e.g., Comprehensive Plan Policies PRO-3.1, ENV 3.1 through
22 3.11, and ENV 6.1. Accordingly, Wood Trails clearly qualifies as a sending site.
23

24 In conclusion, then, because the rezones should be approved, the subdivisions should also be
25 approved. CNW can not meet its burden of proof to demonstrate that the subdivisions do not meet
26

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applicable City criteria.

CONCLUSION

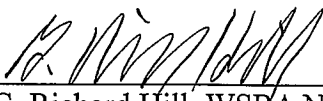
The Woodinville City Council denied the Wood Trails and Montevallo rezones for two stated reasons. First, the Council stated the rezones were inconsistent with the Comprehensive Plan. To the contrary, as the record discloses and as all of the Council's professional consultants and staff concluded, the rezones are consistent with the Plan. Second, the Council asserted there was inadequate public infrastructure to support development at R-4 density. To the contrary, as the record discloses and as all of the Council's professional consultants and staff concluded, the Wood Trails and Montevallo site have adequate public infrastructure to support development at R-4 density.

Moreover, the City's zoning code, Comprehensive Plan, and its obligations under the *Hensley decision* preclude the Council from perpetuating existing, sprawling one-acre development patterns. Smart growth principles, engrafted into the warp and woof of the City's land use regulations require efficient, not sprawling, use of land.

The City's denial, then, of the proposed rezones must be reversed. And, once the rezones are approved, the Hearing Examiner's approval of the subdivisions should be reinstated.

DATED this 7th day of January, 2008.

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