THE HONORABLE DEAN S. LUM
LUPA Trial Date: February 11, 2008

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' REPLY BRIEF

INTRODUCTION

"Developments with densities less than R-4 are allowed only if adequate services cannot be provided."
WMC 21.04.080(1)(a)

///

///

McCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

Winnow this case down to its essence, and what is found?

The Woodinville City Council, obligated to act quasi-judicially and not legislatively, at the behest of vocal community opponents made an unlawful decision. It refused to implement the legislative policy its predecessor Council had enshrined in its comprehensive plan and in its zoning code. That legislative policy provided that the City would end the perpetuation of suburban sprawl by providing that, if adequate services are available, minimum urban densities of four dwelling units to the acre would be required.

Instead, the Council sought to adopt a new policy, one guaranteed to perpetuate suburban sprawl. R-1, estate-sized large lot, suburban sprawl is now to become the rule in City neighborhoods comprising 30% of the land area of the City and 50% of the residentially zoned land in the City.

An agency such as the Council in this case which is acting quasi-judicially may not prescribe a new policy or plan. Instead, it must limit itself to the application of applying existing law to specific individuals in a specific factual setting. "The acts of administering a zoning ordinance do not go back to the questions of policy and discretion which were settled at the time of the adoption of the ordinance. Administrative authorities are properly concerned with questions of compliance with the ordinance, not with its wisdom. To subject individuals to questions of policy in administrative matters would be unconstitutional." *State ex rel. Ogden v. Bellevue,* 45 Wn.2d 492, 275 P.2d 899 (1954).

The City's Response Brief solves a mystery. With this administrative record, and these rezoning criteria, how could the Council possibly have thought it had a basis to deny this project application? The answer is now clear. As stated in the City's Response Brief at pp. 18-22, the

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

Council wholly misapprehended the nature of its decision-making authority. It conceived of itself as acting legislatively, and therefore free to disregard the record and to ignore its rezoning criteria. However, as the Court recently held in *Woods v. Kittitas County,* Cause No. 78331-4, (December 20, 2007), a Council's decision on a site-specific rezone is clearly quasi-judicial and not legislative. When it acts in such a capacity, the Council is bound by existing policy, and is precluded from making new legislative choices.

Other than the Council's admittedly legislative, and therefore unlawful, policy decision, all of the rest of its "findings and conclusions" are smokescreens.

Is there substantial evidence supporting the contentions that the proposal is inconsistent with the comprehensive plan, that infrastructure is inadequate, or that critical areas preclude development? Certainly, the projects' biased opponents so assert, based on evidence and arguments they themselves generated. See CNW Response Brief at pp. 11-34. The City's own professional staff and consultants, however, fully considered and evaluated all of these opponent claims and fully discredited them. See citations to record in Phoenix Opening Brief at pp. 14-18. The evidence proffered by the obviously biased project opponents, in other words, is not "substantial" – it is not "evidence which would convince an unprejudiced thinking mind of the truth of the declared premise." *Bjarnsen v. Kitsap County,* 78 Wn.App. 840, 845, 899 P.2d 1290 (1995). It certainly did not convince City staff, the City's professional consultants, or the Hearing Examiner. Even the City Council failed to cite to any of the opponents' biased assertions in its Findings or Conclusions.

RCW 36.70C.140 explicitly provides the Court with the authority to reverse a City Council's land use decision. In this case, the Council's land use decision is contrary to law,

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

clearly erroneous, and not supported by substantial evidence. It should accordingly be reversed. Phoenix's applications, including its applications for subdivision, should be approved.

ARGUMENT

In its Response Brief, the City makes eleven arguments in defense of the Council's land use decision. Phoenix will address each in turn. In its Response Brief, Respondent Concerned Neighbors of Wellington ("CNW") essentially rehashes the City's arguments, and repeats biased factual allegations that have already, as stated above, been fully reviewed and refuted by City staff and the City's professional consultants. Phoenix will address CNW's contentions as may be necessary in the course of Phoenix's reply to the City.

A. *Woods v. Kittitas County* sets forth the Standards Governing Review of this Site-Specific, Quasi-Judicial Rezone Decision.

Woods v. Kittitas County, Cause No. 78331-4 (December 20, 2007) (copy attached as Attachment B to CNW Response Brief) sets forth the standards governing review of a site-specific, quasi-judicial rezone decision.

In *Woods,* the Court examined the framework of the Growth Management Act ("GMA") and the Land Use Petition Act ("LUPA") in the context of site-specific rezones. The Court stated that the legislature enacted GMA to address concerns with "uncoordinated and unplanned growth." GMA requires counties to develop a comprehensive plan, which must designate an urban growth area "within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature." Along with a comprehensive plan, the GMA requires counties and cities to adopt development regulations that are consistent with and implement the comprehensive plan. The legislature created three hearings boards to hear petitions alleging violations of GMA. Such boards do not have jurisdiction, however, to decide challenges to site-

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

specific land use decisions. Such challenges must be brought in a LUPA petition at superior court. At pp. 8-9.

LUPA grants the superior court exclusive jurisdiction to review a local jurisdiction's land use decisions. The legislature's purpose in enacting LUPA was to "establish uniform, expedited appeal procedures and **uniform criteria for reviewing land use decisions by local jurisdictions"** (emphasis added). The Court specifically held that a site-specific rezone is a project permit, and thus a land use decision. At p. 9.

The GMA's planning goals, which include the reduction of sprawl, apply by their terms only to comprehensive plans and development regulations. The GMA does not directly regulate local land use decisions such as site-specific rezones, but does so indirectly through comprehensive plans and development regulations, both of which must comply with GMA. It is local development regulations that directly "constrain" individual land use decisions. In reviewing a site-specific rezone, a local government "must determine whether the proposed project is consistent 'with applicable development regulations, or in the absence of applicable regulations the adopted comprehensive plan'." At pp. 11-12.

An appellate court reviews an administrative decision such as a site-specific rezone under the substantial evidence standard and conclusions of law de novo. The party seeking relief has the burden of establishing that one of the six standards under LUPA has been met. At p. 12.

The ink on the *Woods* case, decided only last December, is barely dry. Yet, rather than acknowledging it as the authority setting forth the applicable standard of review for site-specific rezones, the City in its response brief seeks to turn back the clock, to cases dating from 1972, 1976, 1978, and 1984, for the proposition that the Council's site-specific rezone decision was "a wholly discretionary decision by a local legislative body." City Response Brief at pp. 18-22. In

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

other words, the City contends that the Council's land use decision in this case is essentially unreviewable.

Of course, all of the cases cited by the City pre-date the GMA and LUPA. LUPA makes it clear that its purpose was to establish uniform criteria for reviewing land use decisions. RCW 36.70C.010. LUPA does not except site-specific rezone decisions from these criteria. Nor does the Washington Supreme Court in *Woods.*

The issue then, is clear. Was the Council's land use decision contrary to law, clearly erroneous, or unsupported by substantial evidence? If so, then Phoenix is entitled to a reversal of the decision. RCW 36.70C.140.

B. The Spokane Hearing Examiner Was a Trained and Objective Land Use Attorney Who Was Able to Watch the Demeanor of the Witnesses and Weigh Their Credibility.

The City acknowledges that the EIS found that the proposals comply with the City's rezone criteria, that City staff and professional consultants agreed with the EIS findings (subject to the "demonstrated need" criterion being met), and that the Spokane Hearing Examiner, a trained and objective land use attorney specially retained by the City to hold a hearing in this matter, also found that the proposals comply with the City's rezone criteria.

The City argues that the Council is not bound by the Examiner's recommendation on the rezone. Phoenix agrees. However, in order validly to reject that recommendation, the Council must adopt a decision that is lawful, not clearly erroneous, and that is supported by substantial evidence. *Woods v. Kittitas County, supra.* This, as pointed out in Phoenix's Opening Brief, the Council utterly failed to do. Accordingly, the Council's decision must be reversed.

The City also contends that the Council was entitled to adopt its own findings of fact and to reject those made by the Examiner. Phoenix agrees that there is authority for the proposition

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

that a Council making a rezone decision must adopt findings as well as conclusions. However, in this case, since the Council did not by ordinance afford itself fact-finding authority, it should have adopted the Hearing Examiner's findings and then, if it wished, it could have reached different conclusions (assuming those conclusions were lawful and otherwise supported by substantial evidence).

The City argues that the case of *Citizens v. Mercer Island,* 106 Wn.App. 461, 24 P.3d 479 (2001), stands for the proposition that a City Council has "inherent" authority to make findings. However, in that case the Court of Appeals specifically found that the "findings" adopted by the Council revolved around the meaning and application of the variance criteria. "Such disputes, as contrasted to disagreement about 'raw facts,' present either questions of law, or mixed questions of fact and law." 106 Wn.App. at 473. Similarly here, in this case virtually all of the Council's "findings" deal not with "raw facts," but present either questions of law, or mixed questions of fact and law. The issue for the Court on review is whether those legal determinations are in error, and whether those mixed determinations of fact and law are clearly erroneous.

C. *Hensley v. Woodinville* Controls, Directly and Indirectly, the Outcome of this Appeal.

The City is understandably uncomfortable with the holding of the Growth Management Hearings Board in *Hensley v. Woodinville,* CPSGMHB Case No. 96-3-0031, Final Decision and Order (February 25, 1997). It seeks to discredit and to diminish the significance of the Board's decision, which held that the City may not "perpetuate an inefficient pattern of one-acre lots" and may not allow "the inappropriate conversion of undeveloped land into sprawling low-density development," because to do so "would effectively thwart long-term urban development within the City's boundaries."

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

The City seeks to minimize the significance of the language cited above by calling it "dictum." To the contrary, the cited language was the holding of the Board. This language from the decision specifically states that the City's Comprehensive Plan Goal LU-3 prohibits an inefficient pattern of one-acre lots, and accordingly Policy LU 3.6 was unlawful.

The City denies that it is collaterally estopped, because, the City contends, in this case there are different issues, and because in this case application of the doctrine would work an injustice. However, in point of fact the issues are exactly the same – whether the City may lawfully perpetuate a pattern of inefficient one-acre lots. The Board held that it may not. The City did not appeal. The City adopted a land use regulation prohibiting densities less than four units per acre where services are available. And yet in this case, the City has done exactly what the Board held it may not do – it has denied a rezone to allow urban density and stated that the subject properties must be developed in a pattern of inefficient one-acre lots. To argue, as the City does, that application of the doctrine would work an injustice on the City is a mighty stretch. All that Phoenix asks is that the City implement its own established legislative policy prohibiting densities less than four units per acre.

Thus, under the doctrine of collateral estoppel, *Hensley* directly determines the outcome of this case.

Hensley also indirectly determines the outcome of this case. It was because of the *Hensley* case, the GMA itself, and other decisions of the Growth Management Hearings Board, that the City adopted a comprehensive plan and development regulations that encourage development at "urban densities (minimum four units per acre and greater)." WMC 21.04.080(1)(a); M Ex. 40 (Comprehensive Plan) pp. 3.4-22 to 3.4-28; Chap. 2, p. 7; Chap. 2, p. 8; Policy LU 3.6; Policy H-1.4.

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

Woods v. Kittitas County established that a superior court does not have jurisdiction to rule that a site-specific rezone decision is inconsistent with the Growth Management Act. However, *Woods* acknowledged that GMA principles indirectly constrain site-specific land use decisions, because such decisions must meet the criteria of the comprehensive plan and development regulations, which themselves must be consistent with the GMA.

As Councilmember Brocha stated, the City's minimum R-4 density policy was specifically adopted to address the GMA urban density requirements. See Opening Brief at p. 27. By virtue of adopting a zoning code policy requiring developments at four units per acre or greater, the City was seen as meeting its GMA urban density mandate. The City does not deny that was its intention. For the City to seek to change that policy now, in the context of a site-specific, quasi-judicial rezone decision, is legally erroneous.

The City, finally, cites *Viking Properties v. Holm,* 155 Wn.2d 112, 118 P.3d 322 (2005), for the proposition that "the urban density standard espoused by *Hensley* has been overruled." The City's reading of *Viking* is too broad. *Viking* certainly held that Growth Boards may not enact "bright line" urban density standards under the GMA. This is not, however, what the Board in *Hensley* required of the City of Woodinville. What was required was that the City may not perpetuate an inefficient pattern of one-acre lots, and that the City must provide for urban densities and urban services to comply with the GMA. It was the Woodinville City Council, not the Board, that adopted a policy that development less than four units per acre was prohibited when services are available. See also Judge Agid's concurrence in *Gold Star Resorts v. Futurewise,* 140 Wn.App. 378, 401, 166 P.3d 178 (2007), in which she provided guidance on the applicability of *Viking Properties*:

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

> While the Supreme Court in *Viking Properties v. Holm* rejected the Boards' authority to adopt a "bright line minimum urban density of four dwelling units per acre," it did not reject the approach the Boards have actually taken in evaluating proposed urban and rural densities in GMA plans. Neither our decision today nor the *Viking* opinion is designed to undercut the Boards' authority to evaluate GMA plans under the guidelines established by the Act, judicial decisions interpreting the Act and the Boards' own decisions. Thus, characterizing four units to the acre as "clearly compact urban development that satisfies the low end of the range required by the Act" is not impermissible "public policy" making under the GMA and *Viking*. Similarly, the Boards may recognize that, in order to avoid sprawl as required by the Act, "as a general rule, new 1- and 2.5 acre lots are prohibited as a residential development pattern in rural areas. Neither is a bright line rule. Rather, they are rebuttable presumptions that serve as guidelines for local jurisdictions seeking to develop plans that comply with the urban and rural density requirements of the Act.

The City did not appeal the *Hensley* decision, but chose instead to comply with it. It is far too late now, ten years later, to argue that it should not be bound by it.

D. WMC 21.04.080(1)(a) Prohibits Development with Densities less than R-4 if Adequate Services Can Be Provided.

WMC 21.04.080(1)(a) could not be more clear. It states that "Developments with densities less than R-4 are allowed only if adequate services cannot be provided." It is undisputed that this provision was adopted to comply with the GMA and the *Hensley* decision to assure that urban densities are provided in the City.

Any property owner who reads this provision of the Code would certainly conclude that if he or she wished to develop property where adequate services could be provided, the City would require a minimum R-4 density.

The City suggests that this sentence is merely a collection of words with no significance.

However, this after-the-fact recantation is belied by the administrative record, which consistently found this provision to embody the City Council's express legislative policy. See, e.g., M Ex. 40 (EIS) at pp. 3.4-28 through 3.4-30; M Ex. 1 (Staff Report) p. 17; HE M Decision, p. 10.

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

A City Council, acting quasi-judicially, cannot ignore existing legislative policy and instead adopt and implement a new, conflicting policy. To do so would be unconstitutional. *State ex rel. Ogden v. Bellevue, supra.*

E. The R-1 Zone is Not Appropriate for Phoenix's Property.

The City contends that WMC 21.04.080(2)(a) and (2)(b) justifies its denial of Phoenix's site-specific rezone application. This provision provides guidelines for when it is appropriate to designate property for R-1 densities.

First, it must be emphasized that the City has cited the wrong standard. It cites the "rational basis" standard. This is a standard applicable to legislative decisions, not quasi-judicial land use decisions being evaluated under LUPA.

Second, this provision states that R-1 zoning is appropriate "in well-established subdivisions of the same density." However, the Phoenix properties have not been developed at R-1 densities. This criterion is accordingly inapplicable.

Third, this provision states that R-1 zoning is appropriate "on or adjacent to lands with area-wide environmental constraints," and that R-4 zoning is appropriate on urban lands that are predominately environmentally unconstrained. The City's Sustainable Development Study found that Phoenix's properties were not subject to environmental constraints that would preclude R-4 development. WT Ex. 83, pp. 9-12, 21-25.

Fourth, this provision states that R-4 zoning is appropriate on urban lands that are served by adequate public facilities and services. As demonstrated in the Phoenix Opening Brief at pp. 27-31, the Phoenix properties are well-served by adequate public facilities and services.

Accordingly, the Council was clearly erroneous in its conclusion that R-1 zoning was appropriate for Phoenix's properties.

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

F. Phoenix Has Satisfied the Changed Circumstances Criterion.

"We hold that where the proposed rezone... implements policies of the comprehensive plan, changed circumstances are not required." *Bjarnsen v. Kitsap County,* 78 Wn.App. 840, 846, 899 P.2d 1290 (1995).

Here, even the City Council agrees that the Phoenix rezones implement policies of the comprehensive plan. See, e.g., City Council M Decision, Finding 6(e). See also Phoenix Opening Brief at pp. 32-34. Accordingly, under the holding of *Bjarnsen,* demonstration of changed circumstances is not required.

Respondent CNW cites the alternative holding in *Bjarnsen,* holding that in applying the changed circumstances test courts have looked at a variety of factors. CNW Response Brief at pp. 6-8. In this case, the proposals will bring sewer to the properties. This was precisely the changed circumstance that the City anticipated would be the precondition to R-4 rezones. See Phoenix Opening Brief at pp. 27-29.

Changed circumstances, therefore, are not required. Even if required, the changed circumstances criterion has been satisfied.

G. The Council's Determination that there is no "Demonstrated Need" for the Rezone is a Clearly Erroneous Application of the Law to the Facts.

WMC 21.44.070(1) requires Phoenix to demonstrate "need" as a precondition to approval of a rezone. The Council applied that legal requirement to the facts of this case and determined that Phoenix had failed to meet its burden. Accordingly, the Council's determination will be reviewed under the clearly erroneous standard. RCW 36.70C.130(1)(d).

Phoenix fully met its burden. See Phoenix Opening Brief at pp. 34-41.

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

The City basically contends that its need determination is unreviewable. It is a police power determination, the City contends, that is wholly within the discretion of the City Council. However, as discussed above, the City Council is not in this case acting as a legislative body adopting new policy. To the contrary, it is acting quasi-judicially, implementing existing law. The question of the meaning of "demonstrated need" is accordingly a question of the application of facts to law, reviewed under the clearly erroneous standard.

The City Council's determination in this case is clearly erroneous. There is a need for R-4 zoning in the City, as the Hearing Examiner found. Only 2.7% of the property in the City is available at R-4 densities. Providing multi-family housing downtown does not satisfy the need for families to have single family detached homes at R-4 densities, much more affordable than estate-sized one-acre lots. As the City's Sustainable Development study found, there is adequate public infrastructure to accommodate R-4 densities in the Wellington-Leota neighborhood. WT Ex. 83, pp. 15-16. In addition, as Phoenix demonstrated in its Opening Brief at pp. 34-41, the need for R-4 zoning has been demonstrated due to market demand, the State's adopted public policy to end sprawl, sound planning principles, the legal requirements of the City's own comprehensive plan and development regulations, the doctrine of collateral estoppel, and the rules of statutory construction.

Phoenix met its burden. The City's determination must be reversed.

H. The Proposed Rezones are Consistent with the Public Health, Safety and Welfare.

The consistency of the proposed rezones with the public health, safety and welfare is enshrined in state law and the City's comprehensive plan and zoning code.

McCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

State law requires local jurisdictions to provide for urban densities to promote the efficient use of scarce land and to avert the manifest costs of suburban sprawl. See Opening Brief at pp. 7-11, 32-34.

These policies of state law are themselves enshrined in the City's comprehensive plan and zoning code. Id.

It would seem therefore that this consistency would be beyond debate. See *Henderson v. Kittitas County,* 124 Wn.App. 747, 756, 100 P.3d 842 (2004) (consistency with comprehensive plan is evidence that a rezone promotes the public health, safety and welfare). The City indeed expresses no enthusiasm to engage in such a debate. It devotes a mere paragraph of its Response Brief to a defense of this determination. In that paragraph, the City fails to identify any specific fact or finding that supports its determination. In the absence of any such identification, its determination must be seen to be clearly erroneous.

I. The Phoenix Proposals Are Compatible with Surrounding Development.

It is undisputed that the Phoenix proposals are low-density residential development under the City's comprehensive plan. The surrounding development is also low-residential development. It is truly difficult to understand the hullabaloo surrounding the issue of the compatibility of these proposals with the surrounding low-density development.

The City in its Response Brief once again contends that it has the discretion to determine the Phoenix development is inconsistent with surrounding development, but again utterly fails to explain any way in which that development is incompatible, and fails to cite to anything in the record supporting its application of the law to the facts. Accordingly, the Council's decision is clearly erroneous and should be reversed.

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

J. Finding #6 is indeed Anomalous and Inapt.

The City denies that Finding #6 is anomalous and inapt, because, the City contends, "the decision to rezone is a discretionary act of the City Council" that "is an exercise of legislative discretion." City Response Brief at p. 39.

As pointed out above at pp. 4-6, the City is just plain wrong in making these assertions. The City cites two cases in its support, one dated 1955, and one dated 1954, both pre-GMA and pre-LUPA.

The fact of the matter is, as the Court very recently held in *Woods v. Kittitas County,* the decision on a site-specific rezone is quasi-judicial, administrative, and is reviewed under the substantial evidence standard and conclusions of law are reviewed de novo. See supra at pp. 4-6.

For the Council to adopt **legislative** findings in this case merely underscores its misguided, erroneous, unlawful interpretation of its proper role.

K. The City's Zoning Code Prohibits Phoenix from Developing its Property at R-1 Densities.

The Hearing Examiner properly found that the City's zoning code precludes development of Phoenix's property at R-1 density. WMC 21.04.080(1)(a). See, e.g., HE M Decision at p. 10. When the zoning code states that developments at less than R-4 are allowed only when services are not available, any reasonable person would take that statement at face value.

The City does not. While acknowledging this provision is a part of its zoning code statement of legislative policy, it contends a reasonable person would have understood that subdivision development at R-1 densities would have been allowable on the Phoenix properties even if adequate services were available.

MCCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax

However, WMC 21.04.080(1)(a) explicitly forbids such development. For a subdivision to be approved in the City of Woodinville, it must comply with the development standards set forth in WMC Title 21, which includes, of course, WMC 21.04.080(1)(a). See WMC 20.06.020.B. A property owner applicant would be foolhardy, to say the least, to pursue a development at R-1 density in the light of the WMC 21.04.080(1)(a) prohibition.

CONCLUSION

Phoenix respectfully asks the Court to reverse the decisions of the Woodinville City Council to deny the rezone and subdivision applications for Wood Trails and Montevallo. The Council's decisions were clearly erroneous, contrary to law, and not supported by substantial evidence.

DATED this 9th day of January, 2008.

Respectfully submitted,

McCULLOUGH HILL, P.S.

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

McCULLOUGH HILL, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104-7042
206.812.3388
206.812.3389 fax