

SUPREME COURT NO. 84296-5
COURT OF APPEALS NO. 62167-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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

Appellants,

v.

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

Respondents.

PHOENIX DEVELOPMENT'S OBJECTION TO MOTION OF
WSAMA AND AWC FOR LEAVE TO FILE AMICUS BRIEF

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I. IDENTITY OF PARTIES OBJECTING TO MOTION

This answer is filed by Appellants Phoenix Development, Inc. and G&S Sundquist Third Family Limited Partnership (collectively, “Phoenix”).

II. STATEMENT OF RELIEF SOUGHT

Phoenix respectfully asks the Supreme Court to deny the motion of the Washington State Association of Municipal Attorneys and the Association of Washington Cities (collectively, “Applicant”) for leave to file amicus curiae brief.

III. THE APPLICANT’S “STATEMENT OF FAMILIARITY WITH THE ISSUES INVOLVED IN THE REVIEW” FAILS TO MEET THE REQUIREMENT OF RAP 10.6(b)(2).

RAP 10.6(b)(2) requires that a motion to file an amicus curiae brief must include a statement of an applicant’s “familiarity with the issues involved in the review...”

The specific issue on which the Applicant in this case seeks to provide additional argument is City of Woodinville Issue 1 (see Applicant Motion at 4-5), which, as stated by the City, is as follows:

Where statutes charge local legislative bodies with exclusive authority to make a site-specific rezone decision, a discretionary legislative act, may courts usurp the decision-making authority of the local legislative body and compel the rezone of property based upon a court’s evaluation of the merits of the proposed rezone?

City of Woodinville Petition at 1. Phoenix restated Issue 1 in its Answer as follows:

Did the Court of Appeals correctly hold that a site-specific rezone request is a quasi-judicial decision that a city council must evaluate under legislatively established criteria, including the comprehensive plan policies and other development regulations, which constrain the council's discretion?

Phoenix Answer at 1.

In an effort to comply with the requirement of RAP 10.6(b)(2), the Applicant included in its motion a section entitled "Applicant's Familiarity with the Issues and the Scope of Argument to be Presented by the Parties." Applicant Motion at 4. That section in its entirety states:

The applicant has reviewed the pleadings filed by the parties in the Court of Appeals, as well as those filed in the lower court. The applicant has further reviewed and researched the issues raised by the parties. As noted above, the applicant has litigated issues relating to similar issues in various judicial forums, and the applicant submits that **he is aware of the concerns of other municipal attorneys and of other cities regarding the responsibilities and concerns flowing from forcing municipal employers both to fund industrial insurance for police and firefighters and the exposure to potentially unlimited liability in common law actions brought by the same police/fire employees.**

Applicant Motion at 4 (emphasis added).

Clearly, this statement fails to meet the requirement of RAP 10.6(b)(2). The issue on which the Applicant seeks to provide argument

relates to the appropriate remedy under the Land Use Petition Act (“LUPA”) in connection with review of a City Council decision on a site-specific rezone. Applicant’s Motion identifies no familiarity whatsoever with this issue. Indeed, the only issue identified in Applicant’s Motion with which Applicant has familiarity relates to “the responsibilities and concerns flowing from forcing municipal employers both to fund industrial insurance for police and firefighters and the exposure to potentially unlimited liability in common law actions brought by the same police/fire employees.” Applicant Motion at 4. This issue, of course, has nothing whatsoever to do with the issue in this case.

Because the Applicant has failed to meet the requirement of RAP 10.6(b)(2), Applicant’s motion should be denied.

IV. APPLICANT HAS PROVIDED NO PERSUASIVE STATEMENT WHY ADDITIONAL ARGUMENT IS NECESSARY ON CITY OF WOODINVILLE ISSUE 1.

RAP 10.6(b)(4) requires the Applicant to include in its motion a statement of “applicant’s reason for believing that additional argument is necessary on [the] specific [issue]” the Applicant seeks to address.

In this case, the issue at hand is City of Woodinville Issue 1, relating to the appropriate remedy a Court may impose when reviewing a City Council decision on a site-specific rezone under the Land Use Petition Act.

Applicant attempts to comply with the requirement of RAP

10.6(b)(4) by setting forth the following statement:

The decision of the Court of Appeals in this case could affect all cities and towns. The Petitioner and Respondent have concentrated on their particular facts and issues in the cases before the Court as they relate to their specific concerns. However, again, the issue involved could affect all cities and towns in the State. The full scope of the impacts of this decision warrants the perspective of more than just the two jurisdictions [sic] that are parties to this case. Allowing participation from Amici will provide the Court with a broader perspective regarding the related issues and ramifications faced by cities and towns across the state.

Applicant Motion at 5.

At best, this statement is boilerplate. The fact that it is boilerplate from another motion filed in another case is demonstrated by the mistake in the fourth sentence that there are “just the two jurisdictions that are parties to this case.” Apparently, this Applicant sought leave in the past to file an amicus curiae brief in a case that involved two jurisdictions.

In this case, of course, there are not two jurisdictions. There is only one jurisdiction and one applicant for a site-specific rezone.

There is absolutely no discussion in this statement as to why additional argument is necessary on the specific issue of the appropriate remedy for a court to impose when reviewing a site-specific rezone decision.

Because the Applicant has failed to provide a statement as to why additional argument is necessary to address the “specific issue” identified in this case, as required by RAP 10.6(b)(4), the Applicant’s motion should be denied.

V. CONCLUSION

The Applicant is not entitled as of right to file an amicus curiae brief. Leave of court is required. RAP 10.6(a).

RAP 10.6 sets forth the steps that an Applicant must follow before the Court will grant leave to file an amicus. The Rule requires that the Applicant demonstrate specific familiarity with the issues involved in the case, and that the applicant explain convincingly why additional argument is necessary as to those specific issues.

The Applicant has failed to meet its burden. Rather than meeting the requirement of this Rule by explaining its familiarity with and the need for additional argument on issues involving judicial review of site-specific rezone decisions under LUPA, the Applicant in this case has merely provided inaccurate boilerplate language from past motions, language that addresses cases involving multiple warring jurisdictions and involving “industrial insurance for police and firefighters.”

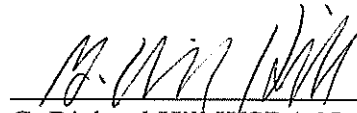
Because, rather than meeting in good faith its obligation to explain to the Court how it is familiar with the specific issues in this case and why

additional argument is necessary to address those specific issues, Applicant merely submitted to the Court inaccurate boilerplate language, Applicant's motion should be denied.

DATED this 28th day of May, 2010, at Seattle, Washington.

Respectfully submitted,

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