

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SNOQUALMIE HISTORIC DISTRICT
APPELLATE GROUP and DANE STOKES,

Petitioners,

V.

CITY OF SNOQUALMIE; TRACY D.
HOVINGA,

Respondents.

GREG BALMER; CRISTIE COFFING;
FUZZY FLETCHER; REBECCA BASTIAN,
aka REBECCA BASTION; TINA HARTWIG,
aka LINDA HARTWIG; ELIZABETH
HEARING; TINA LAGUNA; JULIE H
LAKE; CAROL PETERSON; ALLISON
PRINGLE, aka ALLISON LINDELEF; and
GARTH LINDELEF.

Other Parties identified as required by law.

This matter came before the Court on the Respondents' Motion to Dismiss on Jurisdictional Grounds. The Court considered the following:

1. The Land Use Petition in this case;
2. Respondents' Motion to Dismiss on Jurisdictional Grounds;
3. The Declaration of Steven J. Gillespie in Support of Respondents' Motion to Dismiss on Jurisdictional Grounds;

**ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS ON JURISDICTIONAL GROUNDS - 1**

ERROR! UNKNOWN DOCUMENT PROPERTY NAME

FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

4. Petitioners' Response to Motion to Dismiss on Jurisdictional Grounds;
5. Declaration of Greg Balmer;
6. Declaration of Dane Stokes;
7. Declaration of Julie Lake;
8. Declaration of Christie Coffing with Exhibits;
9. Respondents' Reply In Support of Motion to Dismiss on Jurisdictional Grounds;
10. Declaration of Dylan Gamble with Exhibits;
11. Declaration of Greg Balmer (Corrected);
12. Declaration of Dane Stokes (Corrected);
13. Declaration of Julie Lake (Corrected); and
14. Declaration of Christie Coffing (Corrected).

12 On Friday, June 10, 2022, the Court heard oral argument of counsel for the parties. Being
13 fully advised in the premises, and based on the facts asserted in the documents listed above, the
14 Court hereby makes the following:

I. CONCLUSIONS OF LAW

- 1) The Declarations initially filed in opposition to the Motion to Dismiss, items 5-8 above, did not substantially comply with the mandatory standards for unsworn declarations under GR 13 or Chapter 5.50 RCW, in particular, the requirement that the declaration expressly state that it is signed under penalty of perjury.
- 2) The Corrected Declarations, items 11-14 above, cured the defect described in the previous conclusion, and although they were filed and served the afternoon on the day before the hearing in violation of Local Civil Rule 7(b)(4)(D), the timing created no prejudice to Respondents.
- 3) The proper remedy for a violation of LCR 7(b)(4)(D) is a continuance, but because Respondents did not request such relief, because the reply brief and supporting evidence filed by Respondents addressed the facts asserted in the Corrected Declarations, and

ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS ON JURISDICTIONAL GROUNDS - 2

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

1 because the purpose of the Land Use Petition Act (“LUPA”) to ensure timely judicial
2 appeals, RCW 36.70C.010, the Court concludes that no continuance is warranted here.

3 4) The Court exercised its discretion to admit the Corrected Declarations and considered their
4 content in ruling on the Motion to Dismiss.

5 5) LUPA, specifically RCW 36.70C.060(2), sets forth the specific requirements that persons
6 other than the applicant and landowner of the property to which the land use decision is
7 directed must meet to establish standing: they must demonstrate that the land use decision
8 has prejudiced or is likely to prejudice them, that their asserted interests are within the
9 “zone of interests” protected by the regulation at issue, .i.e., that they are among those the
10 local jurisdiction was required to consider, and that the petitioner has exhausted
11 administrative remedies to the extent required by law.

12 6) With respect to the requirement to demonstrate prejudice, *Chelan County v. Nykreim*, 164
13 Wn.2d 904, 52 P.3d 1 (2002) and related cases hold that a LUPA petitioner must
14 demonstrate more than a general interest in ensuring compliance with zoning laws, and
15 more than an interest in ensuring the integrity of a zoning district, in order to demonstrate
16 standing. Petitioners’ stated interests in maintaining the integrity of the Snoqualmie
17 historic district overlay, and in protecting historic downtown Snoqualmie from
18 development they allege will “mar the character of the historic district” (Land Use Petition
19 at 4-5, para. 7) are the same type of general interests in protecting the integrity of a zoning
20 district held to be insufficient to establish standing under *Nykreim*. For that reason,
21 Petitioners’ stated interest in protecting the integrity of the historic district in Snoqualmie
22 are insufficient to establish standing here.

23 7) The harms alleged in the Corrected Declarations, such as light and noise pollution;
24 spillover parking; view impacts; and the like are not within the “zone of interest” protected
25 by the City’s historic district regulations in Ch. 17.35 of the Snoqualmie Municipal Code
26 (“SMC”). The Land Use Petition at 5-7, paras. 8.1 – 8.6, identifies several sections of the

ORDER GRANTING RESPONDENTS’ MOTION TO
DISMISS ON JURISDICTIONAL GROUNDS - 3

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

1 SMC petitioners allege were violated, and nothing in those code sections required the City
2 Council to consider the interests of light and noise pollution, spillover parking, view
3 impacts or the other impacts alleged in the Corrected Declarations.

4 8) The Court concludes that no Petitioner established, either by setting forth facts in the
5 Petition as required by RCW 36.70C.070(6) or in the Corrected Declarations filed in
6 response to the Motion, that the challenged land use decision would specially and
7 specifically harm them or their properties. In that respect, Petitioners' allegations were
8 distinct from, and not equivalent to, the kinds of direct harm alleged by neighboring
9 property owners in the cases relied on by Petitioners, including *Lauer v. Pierce County*,
10 173 Wn.2d 242, 254, 267 P.3d 988 (2011), *Chelan Basin Conservancy v. GBI Holding Co.*,
11 190 Wn.2d 249, 272, 413 P.3d 549 (2018), and *Biermann v. City of Spokane*, 90 Wn. App.
12 816, 960 P.2d 434 (1998).

13 9) The Respondents requested in the alternative that the alleged association Petitioner
14 (SHDAG) be dismissed for failure to exhaust its administrative remedies. The Court notes
15 that SHDAG did not participate in its own name in the administrative appeal to the City
16 Council and does not appear to have existed in any meaningful way prior to filing the
17 Petition in this matter. However, in light of the Court's conclusion that no Petitioner has
18 alleged an injury-in-fact sufficient to support standing, the Court declines to rule on
19 whether SHDAG should be dismissed for the additional ground of failure to exhaust
20 administrative remedies.

21 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

22 //

23 //

24 //

25 //

26 //

ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS ON JURISDICTIONAL GROUNDS - 4

ERROR! UNKNOWN DOCUMENT PROPERTY NAME.

FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

II. ORDER

- 1) Respondents' Motion to Dismiss for Jurisdictional Grounds is Granted;
- 2) The Land Use Petition in this matter is dismissed for Petitioners' lack of standing; and
- 3) Respondents are entitled to an award of statutory attorneys' fees and costs, in an amount to be determined accordance with Ch. 4.84 RCW.

DATED this 28th day of June, 2022.

Electronic Signature Attached
The Honorable Tanya L. Thorp

Presented by:

s/Steven J. Gillespie

s/James Garlant

Steven J. Gillespie, WSBA # 39538

James Garlant WSBA # 58884

James Garant, WSBA # 58884
FOSTER GARVEY PC

FOSTER GARVEY
1111 Third Avenue

1111 Third Avenue, Suite 3
Seattle WA 98101

Seattle, WA 98101
Telephone: (206) 447-4400

Telephone: (206) 447-4400
Facsimile: 206 447 9700

Fax: 200-447-9700
Email: steve.gillespie@foster.com

Email: steve.gillespie@foster.com
james.garlett@foster.com

James.Gallant@foster.com
Attorneys for Respondent Tracy D. Hovinga

s/Bob Sterbank

s/Anna Astrakhan

Bob Sterbank, WSBA No. 19514

Anna Astrakhan, WSBA No. 49512

CITY OF SNOQUALMIE

38624 SE River Street
Snohomish, WA 98290

Snoqualmie, WA 98065
Telephone: (425) 831-18

Telephone: (425) 831-1888 (direct)
Email: bsterbank@snoqualmiewa.org

Email: bastrakhan@snoqualmiewa.gov

austriakhani@shoquaminewa.gov

**ORDER GRANTING RESPONDENTS' MOTION TO
DISMISS ON JURISDICTIONAL GROUNDS - 5**

FOSTER GARVEY PC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
ONE (206) 447-4400 FAX (206) 447-9

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-06255-0

Case Title: SNOQUALMIE HISTORIC DIST APPELLATE GROUP ET ANO
VS CITY OF SNOQUALMIE ET AL

Document Title: ORDER RE TO DISMISS

Signed By: Tanya Thorp

Date: June 28, 2022



Judge: Tanya Thorp

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 4D07BB86DC71A3443DCA4BFF33DECF70A434C3DD

Certificate effective date: 5/9/2019 9:31:50 AM

Certificate expiry date: 5/9/2024 9:31:50 AM

Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Tanya Thorp:
OHNcrwvS5hGeC2b3AFk6yQ=="