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

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IRENE WALL and ROBERT MORGAN, )  
Petitioners, )

v. ) NO. 18-2-21317-7 SEA

CITY OF SEATTLE, a Washington )  
Municipal Corporation, 70<sup>th</sup> & )  
GREENWOOD AVE., LLC and OJD, )  
LLC, Washington limited )  
liability companies, )  
Respondents. )

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EXCERPT OF VERBATIM REPORT OF PROCEEDINGS

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COURT'S RULING  
NOVEMBER 1, 2018

KING COUNTY SUPERIOR COURT  
JUDGE MAUREEN A. McKEE

Parties Present:

Jeffrey M. Eustis, Attorney at Law, for the Petitioners  
Patrick Downs, Attorney at Law, for Respondents, City of Seattle  
Katie Kendall and Jessica M. Clawson, Attorneys at Law, for  
Respondents, 70<sup>th</sup> & Greenwood Ave., LLC and OJD, LLC

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Court is convened on Thursday, November 1, 2018 in the matter of IRENE WALL and ROBERT MORGAN v. CITY OF SEATTLE, 70<sup>TH</sup> & GREENWOOD AVE., LLC and OJD, LLC, King County Cause No. 18-2-21317-7 SEA, before the HONORABLE MAUREEN A. McKEE, Judge; JEFFREY M. EUSTIS appearing on behalf of the Petitioners, IRENE WALL and ROBERT MORGAN; PATRICK DOWNS appearing on behalf of the Respondent, CITY OF SEATTLE; KATIE KENDALL and JESSICA M. CLAWSON appearing on behalf of the Respondents, 70<sup>TH</sup> and GREENWOOD AVE., LLC and OJD, LLC, Respondents.

The following is an excerpt containing the Court's Ruling beginning at 9:22:58:

THE COURT: So the issue is whether the SDCI decision on the MUP, Master Use Permit, on April 9, 2018 triggered the 21 day statute of limitations if the Petitioner decided to appeal in Superior Court was to be filed, so when that clock was triggered. Was it at the time SDCI provided its analysis decision and recommendation on April 9<sup>th</sup>, or is it at the time within 21 days of the City Council's final decision on the rezone issue.

And the Plaintiffs' filed a Land Use Petition which appealed both the zoning decision -- or the SDCI's decision published on April 9<sup>th</sup>, and the City Council's decision on August 6, 2018. There's no dispute that the Petitioner filed the LUPA within 21 days of August 6<sup>th</sup>. Certainly the issue is did the statute of limitations run if the 21 day clock started on April 9<sup>th</sup>. And the Respondent now specifically moves to dismiss Section 7.4 of the complaint which pertains to SDCI's determination that a proposal complies with the development standard.

1           The Respondents argue this portion of the complaint should be  
2 dismissed because the statute of limitations runs. And I just  
3 mentioned the gist of the argument is that the SDCI decision was a  
4 final one insofar as a Type I decision was concerned. And, of  
5 course, the Petitioners argument is that finalization didn't occur  
6 regarding the Type I decision until the City Council's decision was  
7 imposed on August 6<sup>th</sup>.

8           Initially the Petitioner argues in -- in its response to the  
9 partial motion of summary judgment that this is not a want of  
10 jurisdiction but rather an issue of merit, and therefore, it's not  
11 properly before the Court. The Court finds that that -- denies  
12 that motion not to rule on this issue. And the Court finds that it  
13 is a jurisdictional issue.

14           The Court, however, is denying the partial motion for summary  
15 judgment. And I think it is clear that deciding that an SDCI  
16 decision regarding a Type I determination -- it doesn't make sense  
17 to the Court that the Type I decision is final upon SDCI's  
18 provision of the analysis, recommendation and decision. And the  
19 reason is -- the reasons are what both the Petitioner and the  
20 Respondent actually mentioned, which is the -- the decision on the  
21 rezone -- the Council's decision on the rezone will inevitably  
22 inform the finalization of the Type I decision.

23           In this case it informed it by saying it did not affect it.  
24 That's my understanding, because the City Council approved the  
25 rezone application by the Respondents. But what I'm hearing is

1 that the City Council could have decided -- could have arrived at a  
2 very different decision which would inform the Type I decision.  
3 And I understand the Respondent -- the Respondents position is that  
4 the Petitioners should have filed the LUPA within 21 days of the  
5 SDCI decision, and the Superior Court simply would have stayed its  
6 proceedings until the City Council made that decision.

7 But, you know, again, and I'm referring to common sense as  
8 opposed to a code or statute, that doesn't make sense because that  
9 seems to undermine the need for efficiency. It's quite possible  
10 that City Council would have come to a decision informing the Type  
11 I decision, leaving the Petitioner to have no need or no desire to  
12 file a LUPA Petition, in which case that would have been extremely  
13 inefficient to require a Petitioner to file it within 21 days of  
14 the SDCI decision.

15 The Court agrees with the Petitioner that there's value in a  
16 process that is integrated, consolidated, and frankly, transparent.  
17 Under RCW 36.70B.060 there are procedures set forth for an  
18 integrated and consolidated land use permit process. It bears  
19 referring to RCW 36.70B.010 that states, the legislature finds and  
20 declares the following -- and you know, this pertains to SEPA, but  
21 I think it's analogous. That (1), as the number of environmental  
22 laws and development regulations has increased for land uses and  
23 development, so has the number of required local land use permits,  
24 each with its own separate approval process. Number (2), the  
25 increasing number of local and state land use permits and separate

1 environmental review processes required by agencies has generated  
2 continuing potential for conflict, overlap, and duplication between  
3 the various permit and review processes. And number (3), this  
4 regulatory burden has significantly added to the cost and time  
5 needed to obtain local and state land use permits and has made it  
6 difficult for the public to know how and when to provide timely  
7 comments on land use proposals that require multiple permits and  
8 have separate environmental review processes.

9 And again, the Court finds this statute while not directly  
10 pertinent, certainly analogous and helpful, because that's exactly  
11 why we're here today.

12 Second, the final decision of the City Council as a trigger to  
13 the 21 day statute of limitations makes sense, given the definition  
14 of land use decision. According to RCW 36.70C.040 which pertains  
15 to the commencement of review for land use petitions, the petition  
16 is timely if it is filed and served on all parties listed in  
17 subsection (2) of this section within 21 days of the issuance of  
18 the land use decision.

19 And under RCW 36.70C.020, a land use decision means a final  
20 determination by a local jurisdiction's body or officer with the  
21 highest level of authority to make the determination, including  
22 those with authority to hear appeals.

23 Also the Court put some weight upon the SDCI's decision itself,  
24 which in the very -- and on page 45, the last page of the analysis,  
25 decision and recommendation, it states projects requiring Council

1 land use action shall be considered approved for issuance following  
2 the Council's decision. And, of course, that statement makes sense  
3 to the Court, given that the decision by the City Council regarding  
4 the Type IV decision could -- not necessarily would, but could --  
5 inform the final Type I decision of a project.

6 Fourth, the Washington Supreme Court recognized the land use  
7 decision incorporates smaller decisions. And as the Petitioner  
8 pointed out under Community Treasures v. San Juan County, the  
9 Supreme Court stated, the County points out the land use decision  
10 on an application includes a constellation of smaller decisions  
11 that precedes approval or disapproval of the land use request. And  
12 that these decisions are part and parcel of the permit decision,  
13 and inextricably linked to the permit itself.

14 Fifth, and perhaps most importantly, SMC 23.76.028 makes it  
15 clear that the MUP is approved for issuance after the Council's  
16 decision is made. Type I Master Use Permit is approved for  
17 issuance at the time of the Director's decision that the  
18 application conforms to all applicable laws, except that for a  
19 project that requires both a Master Use Permit and a Council land  
20 use decision, the Master Use Permit is approved for issuance only  
21 after the Council use -- land use decision is made.

22 And then six, when reviewing the City Council's findings, it  
23 states that before SDCI issues the MUP, it must confirm a number of  
24 things. And this language suggests to the Court that the MUP has  
25 not been issued which -- the finalization of the MUP has not been

1 issued, which leads the Court to find that the Type I decision, at  
2 least the finalization of the Type I decision has not been issued.

3 And then lastly, as I mentioned in the beginning of my ruling,  
4 it simply just doesn't make sense that given the need for Court  
5 efficiency, and given the need for transparency to the public, that  
6 there would be potentially two parallel lines of appellate  
7 procedure; one for SDCI, and then one for the Type I, Type III, and  
8 Type IV decisions. What does make sense is for streamlined and  
9 transparent process, which is exactly what Mr. Eustis is arguing  
10 exists, and which is the grounds for why the Petitioner filed its  
11 LUPA Petition at the time that it did, when it appealed not only  
12 the Type IV, but also the Type I.

13 So that is the Court's ruling. Again, the Court is denying the  
14 partial motion for summary judgment.

15 MR. EUSTIS: Your Honor --

16 THE COURT: Do you have an Order?

17 MR. EUSTIS: -- certainly Petitioner very much appreciates  
18 the attention that you've given and the analysis that you provided.  
19 With regard to an Order, would you -- there's no need for the Order  
20 to set forth all the reasons.

21 THE COURT: No, exactly.

22 MR. EUSTIS: But would you like the parties then to draft  
23 up an Order for --

24 THE COURT: Well, I think --

25 MR. EUSTIS: -- your review or --

1 THE COURT: And did -- did the Respondents already draft  
2 an Order? I think you did.

3 MS. KENDALL: We did, Your Honor.

4 THE COURT: Do you have an extra?

5 MS. KENDALL: I have copies of that, yes.

6 THE COURT: Could you provide one to the Court, please?

7 MS. KENDALL: Yes.

8 THE COURT: I know -- I apologize.

9 MS. KENDALL: Yeah, I have a couple copies.

10 THE COURT: I probably have it right in front of me and  
11 I'm just now seeing it.

12 MS. KENDALL: Your Honor, as I'm looking for it, I will --  
13 if I could ask a clarification --

14 THE COURT: Sure.

15 MS. KENDALL: -- on the Order?

16 THE COURT: Absolutely.

17 MS. KENDALL: And one of the -- the points you mentioned  
18 on 23.76.028 in terms of approval for issuance, you said the  
19 finalization of the -- the Type I has not been issued, or  
20 something -- something to that effect. As we move forward to trial  
21 on this, is SDCI's decision on development site something that can  
22 be considered, or are we only looking at the Council's  
23 consideration, since you were ruling that it was not issued? I  
24 just want to understand that the limitations are not of the review  
25 as we move forward.



1 THE COURT: I don't know if I'm understanding your  
2 question. My thinking is that the Petitioner can litigate the  
3 application of the development site by SDCI, not just limited to  
4 whether or not the Council appropriately or inappropriately  
5 considered the development site. Is that your question? Am I  
6 answering --

7 MS. KENDALL: That is my question.

8 THE COURT: Okay.

9 MS. KENDALL: That clarifies it. And I do have a copy of  
10 this. Respondents would request that we --

11 MR. EUSTIS: Could you -- could you hand me a copy --

12 MS. KENDALL: Yes.

13 MR. EUSTIS: -- please?

14 THE COURT: And Mr. Eustis, I'll change the language and  
15 I'll provide it to the parties --

16 MS. KENDALL: Yeah.

17 THE COURT: -- before I sign off.

18 MS. KENDALL: Your know, the Respondents would -- would  
19 request that we do a quick findings, not something written, but  
20 just the -- the -- you had four points, I think, that were the  
21 important aspects that may be helpful for us to -- to have that in  
22 writing as you -- as you amend this. It's up to you, of course,  
23 but we would request that.

24 THE COURT: Okay. And I don't see the need for it.

25 MS. KENDALL: Okay.

1 THE COURT: And I'm not -- I'm not trying to say no --

2 MS. KENDALL: Certainly.

3 THE COURT: -- immediately. I'm just telling you my  
4 thoughts.

5 MS. KENDALL: Yes.

6 THE COURT: I don't see the need to it -- for it just  
7 simply because if it's reviewed, it's reviewed de novo.

8 MS. KENDALL: Yeah.

9 THE COURT: But what -- what is your thinking about why it  
10 would be necessary, or simply helpful?

11 MS. KENDALL: I think it's just helpful for us to  
12 understand the -- the decision, and just understand the points  
13 behind it. But we agree that, you know, we certainly don't need  
14 it. It was just -- that was kind of our -- my initial reaction to  
15 it.

16 THE COURT: Uh huh.

17 MS. KENDALL: But we're -- we're fine with this as is.

18 THE COURT: Well let me tell you this. Certainly you are  
19 welcome to obtain the recording. And if you wish to --

20 MS. KENDALL: Sure.

21 THE COURT: -- draft up, then I'll -- you know, I'll amend  
22 it, if needed, and then sign off.

23 MS. KENDALL: Okay.

24 THE COURT: I don't -- I mean I'm not adverse to that.

25 MS. KENDALL: Okay.

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THE COURT: I just --

MS. KENDALL: I don't think we need to go to that --

THE COURT: Okay.

MS. KENDALL: -- that level of --

THE COURT: Okay.

MS. KENDALL: Yeah, that's fine.

THE COURT: If the parties could approach and look at this Order before I sign it. And in case you can't read my writing, it says, the Court did not review the Petitioners further statement of additional authorities, or Respondents objection to Petitioners further statement of additional authorities. But I did review everything else that was provided.

MR. EUSTIS: Very well.

MR. DOWNS: Thank you, Your Honor.

MR. EUSTIS: Do you want us to sign or --

THE COURT: If you want.

MR. EUSTIS: Does the space provide it?

THE COURT: Do parties want copies?

MR. EUSTIS: Yes, please.

MS. KENDALL: Yes, please.

COURT CLERK: How many copies?

COURT CLERK: I'll make copies.

THE COURT: Let me -- I need to sign it. That's okay, that's fine. Again, thank you so much. I appreciate it.

MS. KENDALL: Okay, thank you.

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MR. EUSTIS: Thank you, Your Honor.

MS. CLAWSON: Thanks.

MR. DOWNS: Thank you, Your Honor.

THE COURT: Court is in recess.

Matter adjourned.

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