No. 85756-8-I

(King County Superior Court No. 23-2-09498-1 SEA)

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

WANTHIDA CHANDRRUANGPHEN, individually,

Appellant,

v.

CITY OF SAMMAMISH, a municipal corporation,

Respondent,

and

DANIEL BLOOM,

Intervenor/Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

This case asks the Court to determine whether Appellant Wanthida Chandrruangphen (Ms. Chandrruangphen) adequately served her petition under the Land Use Petition Act ("LUPA"), chapter 36.70C RCW, on the City of Sammamish (the "City"). The facts of the case show Ms. Chandrruangphen delivered copies of the petition and other service documents to the City Clerk's Office well within LUPA deadlines. Although Ms. Chandrruangphen's process server delivered the documents to an employee in the Clerk's Office, the City Clerk personally received and initialed the documents, and then advised a paralegal at Ms. Chandrruangphen's law firm, Benita Lamp, that she had received and "signed off on" the documents and that "process service was sufficient," all still within LUPA's deadlines. By separate messenger, Ms. Chandrruangphen also personally served the petition on the City Manager 21 days after the decision's technical "issuance" under LUPA.

The questions in this case revolve around the City Clerk's duties, whether service is accomplished under these circumstances, and what deadline applies to the particular land use decision under LUPA.

Ms. Chandrruangphen's first service—which the City concedes was timely—was proper because the personal service standards for municipal service clearly recognize the validity of personal but "secondhand service." Here, the City Clerk was personally served because she physically received the service documents within the LUPA deadline. The fact that someone other than Ms. Chandrruangphen's process server ultimately handed the documents to the Clerk is immaterial. Further, the City Clerk accepted or acquiesced to service based on her admission that she physically received the documents, initialed them, and processed them, and because she told Ms. Lamp that she had received and accepted them and that service was sufficient, all of which constitute a recognized means of

achieving service under both LUPA and the statute governing municipal service, RCW 4.28.080(2).

Further, Ms. Chandrruangphen's second service—which everyone agrees complied with the personal service requirements for municipal service in LUPA cases—was timely. LUPA's 21-day appeal period begins to run three days after a written decision is mailed. The Washington Supreme Court has equated email with mail for purposes of issuing a land use decision. *Confederated Tribes and Bands of Yakama Nation v. Yakima County*, 195 Wn.2d 831, 836 n.2, 838, 466 P.3d 762 (2020). Therein, the Supreme Court explained that LUPA's 21-day appeal period begins to run three days after a local jurisdiction delivers a written decision via email. *Id.* That is the exact fact pattern in this case, and the result should be the same: the LUPA appeal period began to run three days after the City emailed its land use decision to Ms. Chandrruangphen. Her service on the City Manager 24 days after the email date was timely.

Finally, Ms. Chandrruangphen also challenges the Superior Court's granting of intervention to Mr. Bloom, an adjacent property owner. The issues in the instant case deal with whether the City has the legal authority to simply cancel an application of its own accord without any process or apparent authority under City Code. If Ms. Chandrruangphen is correct, the relief is a remand to the City for a substantive decision on the land use application. But until then, Mr. Bloom has no particularized interest different from any member of the public in whether the City has the legal ability to simply cancel an application of its own accord and with no associated authority or process. Therefore, intervention was improperly granted.

For all the reasons detailed herein, Ms. Chandrruangphen respectfully requests this Court to grant her appeal, reverse the Superior Court's grant of the City's motion to dismiss and Mr. Bloom's motion to intervene, and remand to the Superior Court for review on the merits.

II. ASSIGNMENTS OF ERROR

Ordinarily, in reviewing a LUPA case, this Court stands in the shoes of the Superior Court and directly reviews the administrative decision below. *Wellington River Hollow, LLC v. King County*, 121 Wn. App. 224, 230, 54 P.3d 213 (2002). As such, the exact findings of a Superior Court are ordinarily mere surplusage. *Id.* at 230 n. 3. Assignments of error have therefore not generally been required in briefing under LUPA. However, because this is an appeal of a procedural motion rather than a merits decision, Ms. Chandrruangphen submits the following assignments of error:

A. Errors in Order Granting Motion to Dismiss

1. The Superior Court erred in dismissing the Land Use Petition on the basis that the land use petition had to be served by May 29, 2023. CP 242.

2. The Superior Court erred in dismissing the Land Use Petition on the basis that the "only valid service" was on the City Manager on June 1, 2023. CP 242.

3. The Superior Court erred in dismissing the Land Use Petition on the basis that the evidence "does not meet Petitioner's burden to establish that the City Clerk agreed to accept service through Julian Bravo," and that service was not effective on the City. CP 243.

4. To wit, the Court erred in finding that "Mr. Bravo, an office assistant, is not an enumerated person authorized to receive service of a LUPA petition pursuant to RCW 4.28.080(2)" and that "Petitioner failed to establish by a preponderance that Mr. Bravo was a person designated to receive service." CP 238. The Superior Court erred in dismissing the Land Use Petition on the basis that there was "insufficient evidence to overcome Ms. Hachey's testimony that she did not designate another individual to receive service of the LUPA Petition or represent that service was properly performed." CP 238.

5. The Superior Court erred in dismissing the Land Use Petition on the basis that "the Court does not credit Ms.

Lamp's testimony nor find it sufficient to establish that Mr. Bravo was a person designated to receive the materials." CP 238.

6. The Superior Court erred in concluding that "emailing is not mailing" under RCW 36.70C.040(4)(a). CP 242.

7. The Superior Court erred in concluding that the Decision was made publicly available on "May 8, 2023, when the City made Petitioner aware that it cancelled her application by letter." CP 242.

8. The Superior Court erred in dismissing the Land Use Petition on the basis that Petitioner failed to "timely perfect" the Superior Court's jurisdiction, and that the Superior Court lacked jurisdiction to hear the land use petition. CP 243.

B. Errors in Order Granting Motion to Intervene

1. The Superior Court erred in granting intervention to Mr. Bloom. CP 233–34

2. The Superior Court erred in concluding that Mr. Bloom claims a cognizable interest in this appeal. CP 234.

3. The Superior Court erred in concluding that Mr. Bloom's interests are divergent from the City's or the general public's and that they are not adequately represented by the City. CP 234.

4. The Superior Court erred in concluding that Mr. Bloom's participation in the proceedings would not unduly delay or prejudice Ms. Chandrruangphen's appeal. CP. 234.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did Superior Court err by granting the City's motion to dismiss Ms. Chandrruangphen's land use petition on grounds of improper and or untimely service? [Yes].

2. Was Ms. Chandrruangphen's first service on the Sammamish City Clerk valid and effective when all parties agree the City Clerk personally received physical copies of the documents within LUPA's appeal window, even though she did not receive them directly from Ms. Chandrruangphen's process server, under a theory of personal, secondhand service? [Yes].

3. Was Ms. Chandrruangphen's first service on the Sammamish City Clerk valid and effective when the City Clerk assured Ms. Chandrruangphen's law firm, within LUPA's appeal window, that she had received the service and that "process service was sufficient"? [Yes].

4. Was Ms. Chandrruangphen's second service on the City valid and effective when all parties agree it complied with LUPA's personal service requirements, and it took place 24 days after the City emailed (and 21 days after the City "issued") the challenged land use decision? [Yes].

5. Did the Superior Court err in granting Mr. Bloom's motion to intervene when he failed to demonstrate an interest in the purely procedural questions presented in this appeal (beyond the interest that every citizen has in a transparent and accountable government)? [Yes].

6. Did the Superior Court err in concluding that Mr. Bloom's interest was not adequately protected by the City's participation in this case, when Mr. Bloom has had no

involvement with the procedural aspects of this case that are the subject of this appeal? [Yes].

IV. STATEMENT OF THE CASE

The case before the Court is a LUPA appeal of the City of Sammamish's land use decision purporting to cancel Appellant Wanthida Chandrruangphen's short plat alteration application for alleged inactivity on the application (the "Decision"). If Ms. Chandrruangphen has the opportunity to make her case, she will show that the City does not have the ability to cancel an application in the manner it did and that, contrary to the assertions in the Decision, Ms. Chandrruangphen has satisfied all of the City's demands for information and is entitled to the short plat alteration.

Because this case involves an appeal of the Superior Court's grant of the City's motion to dismiss, there is no administrative record. The following facts are therefore taken from the parties' pleadings and from declarations submitted in support of the parties' briefing on the City's Motion to Dismiss.

A. Ms. Chandrruangphen Applied for a Short Plat Alteration to Declare Her Lot Buildable.

Ms. Chandrruangphen owns a parcel of property in the City of Sammamish. CP 3. Ms. Chandrruangphen's parcel is "Lot 2" in an existing short plat. *Id.*

The short plat contains a note reading:

> THERE IS NO ASSURANCE THAT LOT#2 MAY BECOME BUILDING LOTS IN THE FUTURE. IN ORDER FOR LOT#2 & LOT 3 TO BE CONSIDERED AS A BUILDING LOT, A REVISED SHORT PLAT MUST BE APPROVED AND RECORDED WHICH PROVIDES SUFFICIENT EVIDENCE TO DEMONSTRATE A REASONABLE BUILDING SITE.

Id.

In 2019, the prior owner of Ms. Chandrruangphen's property, Ms. Elizabeth Evans, filed a short plat alteration application (as provided for in the short plat notation) in order to have Lot 2 declared buildable. *Id.*

Ms. Chandrruangphen bought Lot 2 in February of 2021, legally assuming Ms. Evans' short plat alteration application. Ms. Chandrruangphen continued to carry the application forward. *Id.* The short plat alteration application is vested to the

regulations in place when she filed it—a matter of great import to the overall success of Ms. Chandrruangphen's development project.

As is common in a short plat process, City reviewers sent comment letters to Ms. Chandrruangphen asking for further expert analysis or clarification on various aspects of the application throughout the application process. CP 4. Ms. Chandrruangphen replied to each comment letter, engaging experts in each relevant field of inquiry and supplying the requested facts and analysis in the form of hundreds of pages of documentation and factual support for her application. CP 4.

Despite Ms. Chandrruangphen's thorough responses to each comment letter, in May of 2023, the City purported to cancel the application, claiming that Ms. Chandrruangphen had failed to supply requested information which she had in fact supplied, and that she failed to apply for various code amendments and code interpretations. CP 11–13. In fact, it is an applicant's prerogative to avail herself of the code amendments

and interpretations; the City cannot mandate any such applications. If the City felt the application did not comply with the Code as proposed, the correct procedure was denial.[1] The record, complete evidence, and substantive argument regarding the foregoing would proceed if this Court grants this appeal and remands.

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[1] The City's practice of "cancelling" applications for alleged failure to submit requested information is part of a larger and troubling trend in which cities risk abusing the "additional information" process in an attempt to gain concessions from an applicant and forestall administrative appeals. The additional-information process was designed to allow cities to pause the "shot clocks" that run on certain applications while the City gathered genuinely necessary (and genuinely absent) information. However, the "additional information" cities often seek in this process is not really *additional* information, but *concessions* about the application. In other words, cities request substantive changes to the application couched as "additional information." If a city believes an application as proposed does not comply with the Code, it should deny the application and allow the Hearing Examiner to review. But the practice of "cancelling" applications and using the additional application process as a substitute for formal denial delays the permitting process and strips applicants of their vested rights in an arbitrary and unconstitutional manner.

B. The City Emailed the Cancellation Letter to Ms. Chandrruangphen's Attorney on May 8, 2023.

Rather than following any adopted procedure under City Code, the City chose to simply email a letter attachment purporting to cancel the application. The City did not address the letter to Ms. Chandrruangphen, but only to her attorney, Vicki Orrico, addressed to the physical mailing address of Ms. Orrico's law firm, Johns Monroe, Mitsunaga, Kolouskova, PLLC ("JMMK"). The letter was not addressed to any other recipient and did not "cc" Ms. Chandrruangphen or anyone else. Nothing about the letter or email suggested the City would never mail the letter to the physical address listed. Nor did the letter state it would be emailed, let alone only emailed with no other notice. Finally, the City did not identify any authority in code for its purported cancellation of the application or process used to issue the cancellation, nor did the City provide any appeal procedures.

The letter was dated May 3, 2023, but the City did not transmit the letter on that date. Again, the City never mailed the letter at all. Instead, the City planner, Mr. Jasvir Singh, emailed

a PDF of the letter to Ms. Orrico, Ms. Chandrruangphen's attorney, on May 8, 2023. CP 112. The body of the email read, "Please see the attached letter of cancellation for PLA2019-00394." CP 112. It then attached a PDF copy of the cancellation letter. Mr. Singh cc'ed Ms. Chandrruangphen as well as the City's attorney and another City staff member in his transmission email.

C. Ms. Chandrruangphen Served Her LUPA Petition on the City Clerk's Office Sixteen Days After Receiving the Cancellation Letter, and the City Clerk Told Ms. Chandrruangphen's Law Firm That Service Was Sufficient.

Sammamish Development Code ("SDC")[2] does not contain any procedures for cancellation of an application in the manner taken by the City. Nor does City Code provide any

[2] The Sammamish Development Code is a title of the Sammamish Municipal Code, which is also cited in this briefing. The Sammamish Development Code is hosted on a different website from the SMC, and is available at https://www.sammamish.us/i-want-to/regulations/about-the-sammamish-development-code/. The Sammamish Code is available at https://www.codepublishing.com/WA/Sammamish.

administrative appeal of any such purported cancellation. Therefore, on May 24, 2023, sixteen days[3] after the City sent the cancellation letter via email, Ms. Chandrruangphen filed a LUPA appeal challenging the cancellation letter in the King County Superior Court. CP 1.

On that same day, Ms. Benita Lamp, a paralegal at JMMK, arranged for a registered process server at Seattle Legal to serve the LUPA petition and associated paperwork on the "City of Sammamish City Clerk." CP 172. On May 24, 2023, the process server delivered copies of the LUPA petition and other documents "into the hands and leaving same with Julian Brave [sic], Office Assistant II, who is authorized to accept service on

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[3] LUPA requires petitioners to personally serve their petitions on municipalities within 21 days of the challenged decision's issuance. RCW 36.70C.040(3), (4). LUPA further provides that written decisions are considered issued "[t]hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available." RCW 36.70C.040(4)(a).

behalf of the above." CP 168 (declaration from process server); *see also* CP 91 (declaration of Julian Bravo).

Upon receiving the declaration of service from Seattle Legal on May 26, 2023, Ms. Lamp noticed that Seattle Legal had not served the City Clerk, as she had directed, but rather an office assistant who was sitting at the front desk of the City Clerk's Office. Ms. Lamp therefore called the Sammamish City Clerk, Lita Hachey, at 10:19 a.m.[4] on May 26, 2023, and left a voicemail. CP 163. Ms. Hachey returned Ms. Lamp's call several minutes later (at 10:24 a.m.). *Id.* As Ms. Lamp attested in her declaration, in that return call Ms. Hachey explicitly told Ms. Lamp that the service by Seattle Legal was sufficient, and "explained that she had received the pleadings, signed off on

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[4] Ms. Lamp's declaration states that she called Ms. Hachey at 12:19 pm. CP 163. This is because Ms. Lamp referred to her cell phone log in stating the call times. *Id.* Ms. Lamp lives in Nolensville, Tennessee, and she works from home. *Id.* She is therefore on Central time, and her call log reflects that. The calls took place at 12:19 p.m. Central, 10:19 a.m. Pacific and 12:24 pm Central, 10:24 a.m. Pacific, respectively.

them and given them to Cynthia Schaff who is the City of Sammamish's Hearing Examiner's Clerk." CP 162. After getting off the call, Ms. Lamp immediately (at 10:28 a.m.) emailed Duana Kolouskova, undersigned attorney at JMMK, explaining:

> Lita called back and she said she received the pleadings, signed off on them and gave them to Cynthia Schaff who is the HE clerk now. She said process service was sufficient.

CP 170.

D. Because Sufficient Time Remained, Ms. Chandrruangphen Served the City with the Land Use Petition a Second Time.

The following week, the City Attorney alerted undersigned counsel that she believed the petition had been improperly served. Because LUPA provides that mailed decisions are not "issued" until three days after they are mailed, giving 24 days total for service,[5] there was time to execute a second service of process. Undersigned counsel for Ms. Chandrruangphen engaged another process server, who

[5] RCW 36.70C.040(4)(a).

personally delivered Ms. Chandrruangphen's land use petition and other service documents to Scott MacColl, the City Manager, on June 1, 2023. CP 162, 174. June 1, 2023, was 24 days after the Decision's transmittal date of May 8, 2023.

E. The City Moved to Dismiss the LUPA Appeal for Untimely Service.

Under LUPA, the first step in an appeal is for the Superior Court to hold an initial hearing to review any jurisdictional matters and preliminary matters such as establishing the scope of the administrative record and setting a case schedule. *See* RCW 36.70C.080. In the instant case, Ms. Chandrruangphen noted the matter for an initial hearing on August 11, 2023.[6] Shortly thereafter, Daniel Bloom, the owner of property adjacent to Ms. Chandrruangphen's Lot 2, moved to intervene in the appeal, which Ms. Chandrruangphen opposed.

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[6] Under LUPA, the petitioner must note an "initial hearing" between 35 and 55 days of filing the petition. RCW 36.70C.080(1).

During this short timeline, the City brought a Rule 12(b) motion to dismiss the case, arguing that the challenged cancellation letter was not a final, appealable "land use decision" under LUPA and that service of the LUPA petition was untimely. CP 68–78. In its motion, the City argued that the appeal period began to run on May 3, even though the City did not even email the letter until May 8, 2023, fully five days later. *See* CP 73–77.[7] The City then argued that, even going off of May 8 as the starting date of the appeal period and excluding the three-day rule, the last day of service was May 24, 2023. CP 75.

The City attached several declarations to its pleadings before the Superior Court. City Clerk Hachey provided a declaration that she had not been personally served, but she never denied that she received the Land Use Petition and attendant paperwork. CP 89. Julian Bravo provided a declaration

[7] The City later abandoned this position in oral argument. ROP 25:25–26:2 (City's counsel stating that "day one was May 8th").

acknowledging that Ms. Chandrruangphen's agent served him with the Petition while he was at the front desk of the Clerk's Office, and stating that neither the Mayor nor the City Manager had designated him to receive service under RCW 4.28.080(2). CP 92–92.

In opposition to the City's Motion to Dismiss, Ms. Chandrruangphen filed a declaration by Ms. Lamp in which Ms. Lamp explained that she had spoken with Ms. Hachey on the phone on May 26, 2023, and Ms. Hachey stated that process service was sufficient and that she had received and "signed off on" the service documents. CP 163.

In reply, the City submitted a second declaration from Ms. Hachey, wherein she stated only that she "d[id] not recall telling Ms. Lamp that the 'process was sufficient.'" CP 227. She simply "did not recall" and, unlike Ms. Lamp, apparently did not have contemporaneous notes. CP 227–28. Ms. Hachey did include the following statement in her declaration: "I have never stated, nor have I ever considered, that the May 24, 2023, service attempt

was valid and consistent with personal service as required by RCW 4.28.080(2) . . . ." CP 228. No one would expect Ms. Hachey to offer legal analysis of this kind, and her denial is not the same thing as denying her statement to Ms. Lamp that process was "sufficient."

Ms. Hachey did not deny that she received the Land Use Petition or delivered it to the Hearing Examiner. More specifically, she stated:

> I was working from home and not at Sammamish City Hall on May 24, 2023, the date that the LUPA Petition and Summons were left at the front desk with Office Assistant II Julian Bravo. I was informed that unspecified documents were left at the City and that I needed to come in to initial the documents. Only after I had initialed the document did I realize that the documents were the LUPA Petition and Summons for the above-captioned matter.

Id.

There was no public indication when the process server arrived at the Clerk's Office that Ms. Hachey was working from home. While Ms. Hachey does not specify when she next went into the office after the May 24, 2023, service on Mr. Bravo, she

clearly had the documents when she spoke with Ms. Lamp on May 26, 2023.

On August 11, 2023, the Court heard arguments from all parties (including the potential intervenor) on both issues raised in the City's motion to dismiss. On August 15, 2023, the Court granted intervention to Mr. Bloom. CP 233. On August 28, 2023, the Superior Court issued an order granting the City's motion to dismiss and finding that Ms. Chandrruangphen "failed to establish by a preponderance that Mr. Bravo was a person designated to receive service . . . ." CP 238. The Court also found that LUPA's 21-day appeal period began to run on May 8, 2023, and closed on May 29, 2023, and that the only procedurally valid service occurred on June 1, 2023. Finally, the Superior Court rejected the City's argument that the cancellation letter was not a valid "land use decision." Ms. Chandrruangphen timely appealed the Superior Court's rulings.

V. ARGUMENT

A. Standards of Review.

1. The Court of Appeals reviews dismissals for insufficient service *de novo.*

Washington appellate courts review dismissals for insufficient service under a *de novo* standard. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). In that review,

> [t]he plaintiff bears the initial burden to prove a prima facie case of sufficient service. The party challenging the service of process must demonstrate by clear and convincing evidence that the service was improper.

Id. (citations omitted).

A plaintiff can meet its prima facie burden of showing valid service by introducing a declaration that shows valid service on its face. *Woodruff v. Spence*, 88 Wn. App. 565, 571, 945 P.2d 745 (1997). Once the burden shifts, merely rebutting plaintiff's evidence will not suffice; a defendant must introduce clear and convincing evidence that plaintiff's prima facie evidence is incorrect. *See, e.g.*, *id*.; *Northwick v. Long*, 192 Wn.

App. 256, 261, 364 P.3d 1067 (2015). *See also* 14 Douglas J. Ende, Washington Practice, Civil Procedure § 4:40 (3d ed. 2023).

For instance, in *Woodruff*, a process server filed a declaration stating that he served a defendant in accordance with RCW 4.28.080[8] by leaving the service documents with a man who claimed to live at defendant's house. 88 Wn. App. at 569. The defendant testified that he did not know who the server spoke with, but the only people living in defendant's home at time of service were himself, his girlfriend, and his girlfriend's 12-year-old son. *Id*. at 568. The Court held that the defendant failed to meet his burden of rebutting plaintiff's prima facie evidence because he had failed to introduce any other supporting evidence beyond merely denying the server's affidavit. *Id*. at 571.

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[8] RCW 4.28.080(16) allows a party to serve a defendant by leaving a copy of the summons and complaint at the defendant's usual above with a person who resides there.

Clearly, therefore, a party claiming improper service must do more than simply rebut or contradict a serving party's statements of facts. The served party must submit additional evidence sufficient to overwhelm the serving party's evidence. Anything less may be sufficient to trigger an evidentiary hearing, but it is not sufficient to warrant dismissal.

2. The Court of Appeals reviews orders granting intervention for abuse of discretion.

Courts of appeal generally review orders granting a motion to intervene for abuse of discretion. *Columbia Gorge Audubon Soc. v. Klickitat County*, 98 Wn. App. 618, 622, 989 P.2d 1260 (1999). Permissive intervention is likewise reviewed under the abuse-of-discretion standard. *Ford v. Logan*, 79 Wn.2d 147, 150, 483 P.2d 1247 (1971).

B. Ms. Chandrruangphen's First Service on the City Was Valid.

Under LUPA, "[a] land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on . . . the local jurisdiction . . . ."

RCW 36.70C.040(2). For any statute of limitations, the Supreme Court has explained that it is accepted that "[l]itigants and potential litigants are entitled to know that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights." *Stikes Woods Neighborhood Ass'n v. City of Lacey*, 124 Wn.2d 459, 463, 880 P.2d 25 (1994) (quoting *McMillon v. Budget Plan of Va.*, 510 F. Supp. 17, 19 (E.D. Va. 1980)).

A petition is timely if it is filed and served within 21 days of a decision's "issuance." RCW 36.70C.040(3). LUPA further provides:

> For purposes of this section, the date on which a land use decision is issued is:
>
> (a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which a local jurisdiction provides notice that a written decision is publicly available . . . .

RCW 36.70C.040(4) (emphasis added). In terms of service, LUPA provides:

> Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first class mail . . . .

RCW 36.70C.040(5).

As briefed below, Ms. Chandrruangphen had until June 1, 2023, to serve her LUPA petition on the City. However, the Court need not get to that argument, as service in this case was timely and proper based on the original service to the Sammamish City Clerk.

1. Ms. Chandrruangphen served the City Clerk by May 26, 2023 via personal, secondhand service.

Ms. Chandrruangphen's evidence demonstrates that she personally served City Clerk Hachey by the morning of May 26, 2023.[9] The specific manner of service was "secondhand" personal service—*i.e.*, hand-to-hand service in which Ms. Chandrruangphen's agent (the process server), handed the

[9] The process server served Mr. Bravo on May 24, 2023, and Ms. Hatchey acknowledged receipt in her May 26. 2023, phone call with Ms. Lamp.

service documents to Mr. Bravo, and Mr. Bravo delivered the documents to Ms. Hachey. The Washington Supreme Court has clarified that this kind of "secondhand" service is personal service for purposes of RCW 4.28.080. *Scanlan*, 181 Wn.2d at 848–50. As such, Ms. Chandrruangphen achieved personal service of Ms. Hachey by May 26, 2023.

Under LUPA, service of a land use petition on a local jurisdiction "must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process." RCW 36.70C.040(5). RCW 4.28.080, in turn, calls for personally serving a copy of the summons to certain people designated to receive it. Thus, both LUPA and RCW 4.28.080 require "personal service." *Overhulse Neighborhood Ass'n v. Thurston County*, 94 Wn. App. 593, 597, 972 P.2d 470 (1999).

However, while both LUPA and RCW 4.28.080 require personal service on only the individuals named in the statute, neither the statute nor the Washington Civil Rules limit the

number of people who may be involved in the "chain" of personal service, nor do they require the people in that chain to have any special status or agency relationship to the plaintiff. As such, case law under RCW 4.28.080 has approved of "secondhand" service—meaning the hand-to-hand passing of documents from the process server to the defendant through some intermediary individual or individuals. *See Scanlan*, 181 Wn.2d at 848–50. As explained in *Scanlan*:

> This court has not yet addressed whether such direct, hand-to-hand—but "secondhand"—service satisfies our state's service of process requirements. RCW 4.28.080(15) lists specific prerequisites to personal service, but it does not say *who* has to do the service. CR 4(c) specifies who can accomplish service, which is anyone who is competent, over 18 years of age, and not a party. CR 4(c).
>
> This court has previously held that we will not add additional limits on who can effect service onto the limits contained in CR 4(c).
>
> [. . .]
>
> No reason exists to depart from this interpretation. It comports with our rules of statutory and court rule interpretation. Nothing in the plain language of CR 4(c) precludes Townsend's father, who is over 18 years old, is

> competent to be a witness, and is not a party, from having authority to serve Townsend.

Id. (internal citations omitted).

Moreover, *Scanlan* did not analyze the adequacy of secondhand service under a substantial compliance theory—instead, it held that the text of the personal service statutes does not require that every person who assisted in the personal delivery of documents be an "agent" of the serving party, and that, as long as each person in the "chain" of service is over 18 and legally competent, personal service has been achieved. *Id.* Therefore, *Scanlan* clarifies that secondhand service is personal service for purposes of RCW 4.28.080. *Id.* at 848. *Accord Brown-Edwards v. Powell*, 144 Wn. App. 109, 113, 182 P.3d 441 (2008) (holding that plaintiff achieved personal service on defendant by serving documents on a neighbor, who later delivered them to the defendant). The *Scanlan* Court upheld the validity of service where a process server, attempting to achieve substitute service, left service documents at a defendant's

father's house, where the process server believed the defendant resided. *Scanlan*, 181 Wn.2d at 842. The defendant did not in fact live there, but later testified that her father "gave" her the documents in some unspecified manner, at some unspecified time, and in some unspecified place. *Id.* at 844. The defendant's attorney also stipulated that the defendant's father "delivered the summons and complaint to Townsend personally . . . ." *Id.* at 846. The Court held that this testimony was sufficient to establish personal, "secondhand" service.

Here, Ms. Chandrruangphen's attorneys hired a process server—Seattle Legal—to serve the petition on the City of Sammamish on May 24, 2023. CP 116. The process server delivered the service documents to Julian Bravo, an office assistant sitting at the front desk of the Clerk's Office, on May 24, 2023. CP 122. City Clerk Hachey took possession of those documents by 10:24 a.m. on May 26, 2023. CP 117.

Ms. Chandrruangphen has evidence of such in the form of a declaration from Benita Lamp, paralegal at Ms.

Chandrruangphen's law firm. Ms. Lamp called Ms. Hachey on May 26, 2023, to confirm that service had been achieved; Ms. Hachey told Ms. Lamp that she had received the pleadings and passed them to the Clerk for the City of Sammamish Hearing Examiner. CP 117. Ms. Hachey also submitted a declaration below acknowledging that she initialed the hard copies of the service documents—and therefore had them in her physical possession—before her call with Ms. Lamp on May 26, 2023. CP 227. The City Clerk was therefore personally served with the documents on or before May 26, 2023.

The City may argue that secondhand service is not a valid form of service under LUPA because LUPA requires "strict compliance," not "substantial compliance," with its procedural rules. But secondhand service is not merely "substantial compliance" with personal service rules—it is personal service under RCW 4.28.080. *Scanlan*, 181 Wn.2d at 848–50. Neither LUPA nor RCW 4.28.080 prohibit non-agent individuals from passing service documents to the ultimate recipient in the course

of personally serving documents. That is what happened here, and Ms. Chandrruangphen therefore achieved personal service of the City Clerk by May 26, 2023, in strict compliance with LUPA and RCW 4.28.080(2).

Here, the uncontested evidence shows that the process server served the documents on the individual available at the Clerk's Office, Julian Bravo, because the Clerk was not in the office during regular business hours. CP 168; CP 91. The evidence further shows the City Clerk personally received physical copies of the documents directly from Mr. Bravo. CP 227–28. There is no evidence of or even a suggestion that the person who gave them to her would have been unsuited to do so (for instance by being a minor or legally incompetent). *Scanlan*, 181 Wn.2d at 847 (citing CR 4(c) ("'[A]ny person over 18 years of age who is competent to be a witness in the action, other than a party,' may serve process.")). Further, the City does not appear to dispute that the Clerk personally received the documents by hand-to-hand delivery; Ms. Hachey readily admits she received

the documents and physically initialed them. CP 227. This evidence is sufficient to demonstrate secondhand personal service, or at the very least, to make a prima facie case that service has been achieved. It is therefore City's burden to show that personal, secondhand service of the kind approved in *Scanlan* did not occur by clear and convincing evidence. The City has not done so, nor does it even contest that Ms. Hachey received the relevant documents by May 26, 2023.

Because Ms. Chandrruangphen has demonstrated secondhand, personal service (or at the very least made out a prima facie case that it occurred), and the City has never disputed that the City Clerk received and "signed off" on the served documents within the LUPA appeal window, Ms. Chandrruangphen achieved valid service on the City. This Court should reverse the trial court's dismissal of the case and affirm Ms. Chandrruangphen's service of the City.

2. The first service was valid because the City Clerk acquiesced to the means of service.

Moreover, service was valid in this case because the City Clerk waived any objections to service and consented to the means the process server used to deliver the documents.

Though both RCW 4.28.080 and LUPA limit who may be served, both statutes recognize that parties to a LUPA case can waive objections to service or accept service through consent or agreement. *See, e.g.*, RCW 36.70C.080(3) (providing that the defense of improper service is waived in a LUPA case if not raised at the initial hearing); *RST P'ship v. Chelan County*, 9 Wn. App. 2d 169, 177, 442 P.3d 623 (2019), (holding that LUPA allows parties to serve each by agreement or acceptance of service); *Thayer v. Edmonds*, 8 Wn. App. 36, 41, 503 P.2d 1110 (1972) (holding that served party may agree or consent to alternate means of service).

For instance, in *Thayer*, a process server called a defendant at 11:30 p.m. to let her know he needed to serve papers on her by midnight to meet a service deadline. *Thayer*, 8 Wn. App. at 41.

The defendant responded that it could wait until the following day. *Id.* The server insisted on serving the papers by midnight and said he would leave papers in her door if she didn't answer. *Id.* The defendant said, "That's fine, we are not going to wait up." *Id.* The Court held that the defendant had agreed to accept alternative means of service, and that service was valid, despite the fact that RCW 4.28.080 required personal service:

> [W]e can discern no reason of public policy why a defendant should not be able to authorize delivery in a manner not enumerated in the statute, and under the circumstances of this case we hold that such delivery constituted a substantial compliance with the statute. We wish to emphasize that those who are to be served with process are under no obligation to arrange a time and place for service or to otherwise accommodate the process server. On the other hand, we see no reason why they should not be able to do so if it suits their convenience, where the requirements of constitutional due process in all other respects are fully met.

Id. at 41–42.

Here, the City Clerk—a person authorized to accept service under RCW 4.28.080(2)—gave a much more "heavy duty" acceptance of Ms. Chandrruangphen's service than the

defendant in *Thayer*. By acknowledging, in her phone call with Ms. Lamp on May 26, 2023, that "the process service was sufficient," she acquiesced to the means of service employed by the process server on May 24, 2023. CP 163. City Clerk Hachey recognized the validity of service to the extent that she then forwarded the appeal to the City Hearing Examiner.

The City may argue that the City Clerk's statements consenting to service are contested in this case, and that the Court should therefore not approve service by consent. However, Ms. Chandrruangphen has put forward clear, prima facie evidence that the City Clerk acquiesced to the means of service, in the form of a declaration from a JMMK paralegal stating that the City Clerk told her "process service was sufficient" and that she had "signed off on" the service documents.[10] While the City Clerk

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[10] Ms. Lamp's declaration on this point is not hearsay because Ms. Hachey's statements were "verbal acts"—what matters to this case is the fact that she said them, not whether they are, in themselves, true. *See State v. Rangel-Reyes*, 119 Wn. App. 494, 498, 81 P.3d 157 (2003).

later could not recall telling the JMMK paralegal that service was sufficient, CP 227, she also never explicitly denied saying as much.[11] CP 228. And, of course, we know she did receive the documents by May 26, 2023, as both Mr. Bravo attested he received them on May 24, 2023, and Ms. Hachey attested she then physically initialed them. CP 91, 227. And, finally, Ms. Hachey deemed them proper such that she then sent them to the Hearing Examiner as part of the appeal process.

Ms. Lamp's declaration clearly sets out a prima facie case of service by consent, and Ms. Hachey's competing declaration is not clear and convincing evidence rebutting Ms.

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[11] Instead, the City Clerk declared, "I have never stated, nor have I ever considered, that the May 24, 2023, service attempt was valid and consistent with personal service as required by RCW 4.28.080(2) . . . ." No one would expect Ms. Hachey—a non-lawyer—to issue a legal analysis on whether the service she had acquiesced to was "valid and consistent with personal service under RCW 4.28.080(2)."[here or later] But it would be entirely within the realm of usual practice for Ms. Hachey to say that "process service was sufficient" from her perspective, and Ms. Hachey has not explicitly disclaimed making a non-technical statement of this kind.

Chandrruangphen's prima facie case. At the very least, the two declarations present a clear credibility issue for which remand and an evidentiary hearing on service is required.

3. The City Clerk is legally obligated to be available to accept service during the City's regular business hours.

Finally, strong policy factors and the law regarding *ultra vires* action support recognizing service by consent in the circumstances presented here. One of the core functions of city clerks in this state is to be present in their office during normal business hours for the purpose of accepting service. For instance, the state tort claims act requires local governments to appoint an agent for receiving tort claims, RCW 4.96.020(2), and Sammamish has appointed the City Clerk to this role. *See* Sammamish Municipal Code ("SMC")[12] 2.35.010 ("The City Clerk is hereby appointed to be the City agent responsible to receive claims for damages made under Chapter 4.96 RCW.").

[12] The Sammamish Municipal Code is available at https://www.codepublishing.com/WA/Sammamish/.

The statute governing municipal service likewise makes the City Clerk, along with the Mayor and Manager, a designated recipient of service. RCW 4.28.080(2).

The statute governing municipal service is premised on the old-fashioned notion that the city clerk is behind her desk and at her post "during normal office hours," and that it is therefore easy for LUPA petitioners to personally hand service documents to her within the extremely tight 21-day service window. *See* RCW 4.28.080(2) (providing that the clerk—one of the three municipal offices named—be served "during normal office hours"). That notion seems almost quaint in the current "work-from-home" era. As this case demonstrates, city clerks—just like other city employees—frequently work from home because their jobs now exist primarily in the digital domain. It is no longer a straightforward matter for a city clerk to be personally available during regular business hours.

The reason the city clerk is a designated service recipient is that these statutes presume the city clerk will be available in

person during regular business hours. The City's own ordinances justify this expectation—or would, if they had been followed—because they provide:

> Other than vacation, sick leave, and other temporary absences, the City clerk shall be available to receive claims for damages during normal City Hall business hours at Sammamish City Hall, 486 228th Avenue NE, Sammamish, Washington 98074-7209.

SMC 2.35.010.

Because the City Clerk is legally obligated to accept claims and service of process during regular business hours, either the City Clerk must be available or else must be sure a designee or deputy is available. The City Clerk surely has the power to appoint such a deputy. *See, e.g.*, RCW 35.23.121 (authorizing the City Clerk to appoint a deputy "for whose acts he or she . . . shall be responsible"); *State ex rel. O'Connell v. Engen*, 60 Wn.2d 52, 57, 371 P.2d 638 (1962); *Hikel v. City of Lynnwood*, 197 Wn. App. 366, 370, 389 P.3d 677 (2016).

Thus, if the Clerk is sick or on vacation, there must be another individual available to accept claims and service in her

place—a deputy or designee. Any other scenario would be *ultra vires* action on the part of the Clerk. As this Court has explained in other circumstances, "An act may be procedurally *ultra vires* when an agency has the authority to commit the act but ignores a required procedure." *Adamson v. Port of Bellingham*, 192 Wn. App. 921, 929, 374 P.3d 170 (2016). Acts are procedurally *ultra vires* when a public agent, here a City Clerk, exercises his or her powers "in an irregular manner or through unauthorized procedural means." *Id.* (citing *Finch v. Matthews*, 74 Wn.2d 161, 172, 443 P.2d 833 (1968)). If the City Clerk has the authority to act, for example to designate another employee to conduct some of her duties while she is on vacation or sick, and fails to do so, her failure would be procedurally *ultra vires*.

This is particularly significant given the extremely short window under LUPA which is further exacerbated in the Covid and post-Covid environment. Here, the City Clerk candidly declared she was not available during regular business hours. Instead, she was "working from home and not at Sammamish

City Hall on May 24, 2023." CP 227. Ms. Hachey did not excuse her absence as being "vacation, sick leave, and other temporary absence." Nor was there any posting or other means for the public to know the City Clerk was not available during business hours, apparently at any point during the day, and no information as to when or whether she would be available or not during business hours. This alone is a violation of City Code and state law.

If Ms. Hachey's declaration is credible, then she was not available at all during the City's business hours of May 24, 2023, in violation of Sammamish Code and RCW 4.28.080. This evidence is also critical in light of Mr. Bravo's declaration, wherein he admitted that he did receive service of the Land Use Petition on May 24, 2024. CP 91. If he was not authorized to accept service, and the City Clerk was working remotely, then the City Clerk was simply not available during regular business hours, a scenario not permitted under statutory service of process and *ultra vires*.

Notably, neither Ms. Hachey nor Mr. Bravo deny that Mr. Bravo was working in the Clerk's office and accepted the Land Use Petition and attendant paperwork. CP 91. While the City and Superior Court jump to the conclusion that Mr. Bravo had no authority to accept service on this statement, the gap in evidence is striking. If Mr. Bravo had no authority, the City Clerk has acted *ultra vires*. *Adamson*, 192 Wn. App. at 929. The remedy here, as discussed below, is that either Mr. Bravo had authority to accept service as the acting City Clerk and secondary service was appropriate, or City is estopped under *Adamson* and other precedent as discussed later in this brief.

In light of the interest in favoring adjudication on the merits, Washington's expressed preference for service by acceptance under *RST Partnership*, and the increasing practical difficulties of serving municipal officials in the work-from-home era, this Court should rule that Ms. Hachey was personally served by consent in this case, and that it is valid under both LUPA and RCW 4.28.080.

4. If the Court fails to find service by consent under *Thayer*, the City is estopped from denying service.

Finally, the City is estopped from denying sufficient service. Courts have long recognized that the principle of estoppel applies in the service context, even against a municipal defendant. *See, e.g.*, *Lybbert v. Grant County*, 93 Wn. App. 627, 633, 969 P.2d 1112 (1999). If there is any procedural violation of the law, *i.e.*, *ultra vires* action, this Court may apply the doctrine of equitable estoppel. *Adamson*, 192 Wn. App. at 929 (citing *Finch* v. Matthews, 74 Wn.2d at 171).

In order to prove estoppel, a party must demonstrate the following elements by clear and convincing evidence:

> (1) an admission, statement or act inconsistent with a claim afterward asserted, (2) action by another in reasonable reliance on that act, statement, or admission, and (3) injury to the party who relied on the admission, statement or act if the court allows the first party to contradict or repudiate the prior act, statement, or admission.

Finch, 74 Wn.2d at 171 n. 3. Estoppel against the government requires two additional elements: "equitable estoppel must be

necessary to prevent a manifest injustice, and the exercise of governmental functions must not be impaired as a result of the estoppel." *Kramarevcky v. Dept. of Soc. and Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993).[13]

In the instant case, all five elements are proved and readily evident. First, Ms. Hachey told Ms. Lamp that service was sufficient and that she had "signed off" on the documents. CP 162–63. That statement far exceeds the more implicit behavior usually found in service by estoppel cases. *See, e.g.*, *Overhulse Neighborhood Ass'n v. Thurston County*, 94 Wn. App. 593, 600, 972 P.2d 470 (1999) (rejecting estoppel based on employee saying "thank you" and stamping document that was handed to them). And while the City Clerk later could not remember

[13] These additional elements are often excluded in service-by-estoppel analyses, even against government defendants. *See, e.g.*, *Overhulse Neighborhood Ass'n v. Thurston County*, 94 Wn. App. 593, 600, 972 P.2d 470 (1999). However, Ms. Chandrruangphan has no objection to applying them here, and she easily meets these additional elements.

making this statement, and disclaimed ever having stated that service was "valid and consistent with RCW 4.28.080," Ms. Lamp's declaration is the more credible because, unlike Ms. Hachey's, hers is supported by a contemporaneous email.[14] *See* CP 170.

Second, Ms. Chandrruangphen certainly relied on the effectiveness of service and on Ms. Hachey's assurances and physical actions of accepting the documents, initialing them to show her receipt and further processing the documents according to the City's regular practices for land use petitions. It was because of that reliance that Ms. Chandrruangphen did not engage a server to serve the documents again on Friday, May 26, 2023, instead hiring a server again on June 1, 2023, after discussions with opposing counsel regarding the service issue.

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[14] Moreover, as noted above, it is unclear whether Ms. Hachey's second declaration is even disputing that she said service was "sufficient"—she may merely be disputing that she ever rendered a full legal analysis of the validity of the service under RCW 4.28.080.

And, unlike other service-by-estoppel cases such as *Overhulse*, where the Court found no estoppel, here the government employee making the statements and taking the actions that form the basis of the estoppel claim was the City Clerk, a statutorily designated agent for receiving service. *See Overhulse*, 94 Wn. App. at 601. Ms. Chandrruangphen's reliance on those statements was therefore utterly reasonable.

Third, should the Court rule in the City's favor, such ruling will clearly be to Ms. Chandrruangphen's injury. The success of her development hinges on voiding the cancellation letter in this appeal and maintaining her vested application rights, and she cannot do either of these things if this case is dismissed on service grounds.

Fourth, manifest injustice will result if the City is not estopped from denying service. Ms. Chandrruangphan made a diligent and utterly reasonable attempt to serve the City. Her law firm specifically asked the process server to serve her petition on the City Clerk herself. CP 120, 126. On noticing that the process

server had instead served an office assistant, JMMK immediately called the Clerk to inquire about service, and the City Clerk assured JMMK that service was sufficient and indicated that she had personally received and initialed the service documents. CP 117, 124. The City Clerk is a statutorily designated service agent who has the power to deputize another and be bound by the deputy's actions. *State ex rel. O'Connell v. Engen*, 60 Wn.2d 52, 57, 371 P.2d 638 (1962). Moreover, under the City's own Code, the Clerk should not have been absent from her post when the process server arrived, because one of the core functions of the City Clerk is to be present and able to receive service. Holding that the City is not bound by the Clerk's statements here would be manifestly unjust in light of the Petitioner's diligence and the City's lack of it in this case.

Fifth and finally, government functions would not be impaired by finding estoppel here. Critically, Ms. Chandrruangphan is not asking that the City be bound by every statement or action of every employee. Ms. Chandrruangphan is

specifically asking that the City be bound by the statements and actions of the City Clerk, a municipal officer who is statutorily designated to receive service, and who stated that service was proper and that she had received the documents within the appeal period. Estoppel here does not hinder government functions, it enhances them, because it allows for the work-from-home flexibility and agility that today's workforce demands. There is simply no reason, in the modern era, that a municipal officer whose job is acceptance of service cannot alter the mode of service by agreement without inadvertently punishing citizens who are merely attempting to exercise their rights to judicial process.

This is the rare case where a plaintiff has clear evidence of all five elements of service by estoppel. The Court should hold that the City is estopped from denying proper service on these facts. To hold otherwise would encourage jurisdictions in future to make service of process difficult and complex under one of the shortest statutes of limitations in Washington State. Such

result would fly in the face of many jurisdictions that, since Covid, have recognized the pressures on both the public and public agents in addressing these extremely short statutes of limitations.[15] Rather than encourage evasive action, this Court should rule in favor of encouraging the City to maintain practices that are straightforward and readily understandable to the public and that promote the interests of reaching decisions on the merits.

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[15] For example, King County now accepts summons by email:

> A. For the purpose of service of summons on King County under provisions of RCW 4.28.080, the person to be served is the manager of the records and licensing services division.
>
> B. The manager of the records and licensing division shall accept service by:
>
> > 1. Email to kcserviceofsummons@kingcounty.gov; or
> >
> > 2. In person Monday through Friday from 8:30 a.m. to 4:30 p.m. at the King County Customer Service Center, 201 South Jackson Street, Room 202, Seattle, Washington, 98104. (Ord. 19612 § 1, 2023: Ord. 19073 § 2, 2020: Ord. 13, 1969).

King County Code § 2.04.010.

C. Ms. Chandrruangphen's Second Service on the City on June 1, 2023, Was Timely and Effective.

The preceding section shows that service was timely and effective in this case *even assuming* that Ms. Chandrruangphen's appeal window began to run on May 8, 2023 (the day the City emailed her the cancellation letter) and closed on May 30, 2023.[16]

However, Ms. Chandrruangphen's LUPA appeal window did not close until June 1, 2023. LUPA provides that mailed decisions are "issued" three days after mailing. RCW 36.70C.040(4)(a). Washington case law treats "mail" and "email" as equivalents for purposes of LUPA's issuance provisions. *Confederated Tribes*, 195 Wn.2d at 836 n.2, 838. Therefore, the appeal period in this case in fact began to run on May 11, 2023, and closed on June 1, 2023 (21 days after May

[16] The preceding section shows that service was timely and proper even if the appeal window closed on May 26, 2023, the day before the holiday weekend that contained the actual 21st day after May 8, 2023.

11, 2023). Because the City acknowledges that Ms. Chandrruangphen's second service on the City Manager Scott MacColl on June 1 was procedurally correct, this second, timely service conclusively cured any alleged defects in the earlier service.

1. "Email" is the equivalent of "mail" under LUPA, and the emailed Decision was not "issued" until May 11, 2023.

Under LUPA, the 21-day appeal period runs from "issuance" of the challenged land use decision. RCW 36.70C.040(3). LUPA then provides:

> (4) For the purposes of this section, the date on which a land use decision is issued is:
>
> (a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;
>
> (b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or
>
> (c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

RCW 36.70C.040(4).

Only subsection (a) applies in the instant case. The cancellation Decision was not made by ordinance or resolution, and subsection (c) only applies to unwritten decisions. *See Habitat Watch v. Skagit County*, 155 Wn.2d 397, 408 n.5, 120 P.3d 56 (2005).

LUPA was adopted in 1995, before widespread use of email. The drafters of LUPA did not contemplate a time when local jurisdictions would email decisions on binding land use entitlements to applicants. Nevertheless, email has essentially supplanted mail in modern legal and business practice. *See RST P'ship*, 9 Wn. App. 2d at 176–77 (describing the "universal usage of electronic mail"). The Washington Supreme Court, sitting *en banc*, has recognized the validity of email as a means of transmitting land use decisions. *Confederated Tribes*, 195 Wn.2d at 836 n.2, 838.

Most importantly, the Washington Supreme Court has also treated email as "mail" for purposes of determining when a land

use decision is "issued" under RCW 36.70C.040(4)(a). In *Confederated Tribes*, the Yakama County Board of Commissioners passed a resolution on April 10, 2018, denying the Yakama Nation's ("Yakama's") appeal from a Hearing Examiner proceeding. *Confederated Tribes*, 195 Wn.2d at 834. A County planner emailed a copy of the resolution, along with an explanatory letter, to Yakama on April 13. *Id.* This email was the only means the County used to transmit the letter and resolution to Yakama—it did not separately mail the decision using "snail mail." *Id.* Yakama filed and served its appeal on May 2nd—22 days after the resolution was adopted but 19 days after the planner's email of April 13th.

The Supreme Court held that the April 13th emailed letter was the operative "written decision" in the case. *Id.* at 836. It then noted that the planner's email transmitting the letter to the appellant "satisfies the 'mailing' requirement of RCW 36.70C.040(4)(a)," *id.* at 836 n.2, and that "LUPA's 21-day filing period began 3 days after this mailing." *Id.* at 838. The

Supreme Court has therefore treated email as "mail" for purposes of RCW 36.70C.040(4)(a), and opined that an emailed decision is "issued" three days after it is emailed. *Id*. at 838. *Confederated Tribes* is decisive in this case, because if LUPA's appeal period began to run three days after the May 8, 2023, email, Ms. Chandrruangphen's service of the City Manager was timely and valid.

2. If the emailed Decision has not been "mailed" under RCW 36.70C.040(4)(a), then it has never been issued at all.

Furthermore, if the emailed Decision was not "mailed" for purposes of LUPA's issuance provisions, it has not been "issued" at all. As noted above, "issuance" under LUPA means a mailed written decision, a written decision that is made "publicly available," a decision made by ordinance or resolution, or an unwritten decision. RCW 36.70C.040(3); *Habitat Watch*, 155 Wn.2d at 408 n.5. Here, the Decision was not made "publicly available," by ordinance or resolution, or unwritten. It was

emailed. If email does not equate to "mail," then the Decision has never been issued.

In the proceedings below, the City argued that its Decision was not in fact "mailed," but merely made "publicly available" under RCW 36.70C.040(4)(a). CP 220. But that is simply not the case. The City sent Ms. Chandrruangphen's attorney a copy of the letter via electronic mail. The City's email did not "provide notice" that the Decision was somehow "publicly available" through other channels—the clear import of the May 8 email was to send (*i.e.*, mail) the letter.

Nor was the cancellation letter "publicly available" by some other means. The City's Code outlines detailed procedures for how land use procedures are to be publicly noticed. *See* SDC 21.09.010.L (code provisions regarding notice of decision, which reference rules for notices of application); SDC 21.09.010.H(6), H(7), and H(8) (code provisions regarding notice procedures for land use decisions). For instance, Code requires posted notice boards on the site and publication of the decision on the City's

website. *See* SDC 21.09.010H(6), .H(8), and .L. These notice procedures are common across Washington because they stem from the procedural requirements for notices of decision and application in RCW 36.70B.130 and .110(4).

While it has not been adjudicated whether these notice rules would have dictated particular notice procedures in this case,[17] the fact remains that the LUPA drafters clearly had these kinds of mandated "notice of decision" procedures in mind when drafting RCW 36.70C.040(4)(a). Decisions that do not receive this kind of formal notice are not "publicly available" under RCW 36.70C.040(4)(a).

The facts of the case at hand demonstrate the danger of the City's argument. The City addressed the Decision letter as

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[17] The City's Code dictates different notice procedures depending on the application "type" for a given decision. *See* SDC 21.09.010.L. However, it defines these application types in a circular fashion—by referring to the notice and other procedures required for that Type. *See, e.g.*, *id*. 21.09.010.B.1.a. As such, the type of application and attendant notice requirements in the case at hand are unclear.

though it would be mailed, with no reference to any email addresses. The City dated the Decision letter May 3, 2023, but then did not email the Decision letter until the following week on May 8, 2023.[18] Ms. Chandrruangphen would have no way of knowing whether the City was sending the Decision through the post office, as was implied by the address on the letter, or if the email to her attorney was the only method the City would use to notify her of the Decision. The City holds all of the cards, and it can use this bait-and-switch tactic to muddle an applicant's appeal rights. The City unilaterally chose to email the letter, and not send it through the post office, make it publicly available or provide any other notification, public or otherwise. This is precisely the sort of "traps for the unwary who seek to assert or defend their rights" the Supreme Court alluded to in the *Stikes*

[18] Even the City was confused as to what its process was: the City attorney argued as part of its motion that it issued the letter on May 3, 2023, when the City emailed it on May 8, 2023. CP 68-78. Five days within such a short statute of limitations is a critical amount of time to misunderstand.

Woods case. 124 Wn.2d at 463. The City should not be permitted to use its own lack of clarity to forestall applicants from their LUPA appeals.

Therefore, even if this Court concludes that an emailed decision is not "mailed" for purposes of RCW 36.70C.040(9), the Court must conclude that the Decision has never been issued. Of course, the practical effect of such a holding would be that emailing a land use decision of this type (*i.e.*, a land use decision that does not require formal notice procedures of the kind envisioned in the "publicly available" provisions of RCW 36.70C.040(4)(a)) is ineffective to "issue" a decision. And the practical implication of that holding would be that cities can no longer email land use decisions. This runs directly against public policy and the Court's modern trend of approving the ease, convenience, and efficiency of email. *RST P'ship*, 9 Wn. App. 2d at 176–77; *Confederated Tribes*, 195 Wn.2d at 836 n.2, 838.

The City emailed Ms. Chandrruangphen the land use decision on May 8, 2023. Under RCW 36.70C.040(4)(a), that decision was "mailed," and therefore was not "issued" until May 11, 2023. The appeal window closed on June 1, 2023, and service on the City Manager was timely. This Court should validate service in this case, reverse the Superior Court, and remand so that Ms. Chandrruangphen's appeal may proceed.

D. The Superior Court Improperly Granted Intervention In Light of the Procedural Nature of the Land Use Petition.

Mr. Bloom, Ms. Chandrruangphen's neighbor, moved to intervene as of right and permissively, and the Superior Court granted his motion. The Court should reverse the Superior Court's order granting Mr. Bloom's motion to intervene because he failed to demonstrate an adequate interest in the procedural subject matter of this appeal.

Intervention is allowed as a right only if the applicant satisfies the following standards:

> [W]hen the applicant claims an interest relating to the property or transaction which is the subject of the action

> and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

CR 24(a)(2).[19] At the Superior Court, Bloom claimed intervention as a matter of right, and, alternatively, as a matter of permission.[20] Cases have synthesized this rule into four distinct criteria for intervention as of right:

> (1) timely application for intervention; (2) an applicant claims an interest which is the subject of the action; (3) the applicant is so situated that the disposition will impair or impede the applicant's ability to protect the interest; and (4) the applicant's interest is not adequately represented by the existing parties.

Westerman v. Cary, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994). Intervention is granted only when the applicant has made an

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[19] CR 24(a)(1) is not relevant as there is no statute conferring an unconditional right to intervene.

[20] Bloom's arguments regarding intervention as a matter of right are largely indistinguishable arguments from his permissive intervention arguments. Accordingly, Ms. Chandrruangphen addresses them as follows.

affirmative showing satisfying the criteria under CR 24(a)(2). *See, e.g.*, *Loveless v. Yantis*, 82 Wn.2d 754, 757–60, 513 P.2d 1023 (1973) (reviewing evidence). The Court should balance liberal intervention with the ability of the parties to control their own lawsuit and of the public in the efficient resolution of controversies. *Am. Discount Corp. v. Saratoga W., Inc.*, 81 Wn.2d 34, 42, 499 P.2d 869 (1972). In determining whether an applicant for intervention has shown sufficient interest, a court should not "'water down' that requirement to the point of eliminating it in the practical sense." *Fritz v. Gordon*, 8 Wn. App. 658, 660, 509 P.2d 83 (1973).

1. Bloom has failed to show an interest sufficient to support intervention.

The party applying for intervention must show that the action would somehow impair a cognizable interest. *Loveless*, 82 Wn.2d at 758–59. For example, in *Loveless*, the party applying for intervention could show specific damages resulting from the land use decision subject to that litigation—namely, special damages by way of diminution in value of their property as a

result of the defendant's actions and the final land use decision issued by Thurston County. *Id.* at 758. On the other end of the spectrum, the intervenors in *Nykreim v. Chelan County* failed to show an adequate interest. 146 Wn.2d 904, 933–38, 52 P.3d 1 (2002). Though they owned property immediately adjacent to the property subject to the litigation, the *Nykreim* Court held that the intervenors' tangential interest in preserving the protections of the zoning district in which they lived was not sufficient to show they had standing to participate in the case: "an interest must be more than simply the abstract interest of the general public in having others comply with the law." *Id.* at 935.

Bloom has not shown sufficient interest warranting intervention. His entire argument for intervention relates to the substance of Ms. Chandrruangphen's application and its effect on his property. However, the instant case is about the procedural propriety of the City's decision to "cancel" the application for allegedly inadequate information despite the fact that Ms. Chandrruangphen submitted all requested materials. This is

specifically a question of process of Ms. Chandrruangphen's individual application not a question of land use policy on a particular property. Just as Mr. Bloom would have no right to interfere during the processing of Ms. Chandrruangphen's application, Mr. Bloom has no interest in the procedural issue posed in this case, any more than any other citizen would have.

If Ms. Chandrruangphen succeeds in her appeal, the City will be legally required to issue a substantive decision on the application. At that point, Bloom, along with any other legally interested parties in Sammamish, will have ample opportunity to provide comments and evidence during the City's substantive review. If Mr. Bloom has standing, he can appeal the substantive decision then. As it stands, his interests in the purely procedural issues presented in this appeal are indistinguishable from those of any other Sammamish resident, and he fails the test for intervention.

2. Bloom has not shown how the existing parties fail to adequately protect Bloom's interests.

In order for an intervenor to show a sufficient interest in the litigation, they must demonstrate an interest that is different, or divergent, from the interests of the current parties to the litigation, and that cannot be adequately represented by any of those parties. *Fritz*, 8 Wn. App. at 660.

At Superior Court, Mr. Bloom merely suggested his interest is different from or not aligned with the City's interests. Mr. Bloom did not describe what this different interest might be or how the City could not protect the interests of all its citizens in its land use Decision cancelling the plat alteration application.

In the future, Mr. Bloom likely will have a different interest regarding the substantive decision. But that is for the future. Mr. Bloom has not shown any interest now which Sammamish cannot adequately protect in defending its decision. Simply, Mr. Bloom has not demonstrated any particular interest that the City cannot and does not adequately protect in this litigation.

VI. CONCLUSION

Ms. Chandrruangphen timely and properly served the City Clerk with her LUPA petition by May 26, 2023—well within the 21-day appeal window for her LUPA petition. Ms. Chandrruangphen has made a *prima facie* case of secondhand personal service, showing that the City Clerk received the documents in hand by May 26, 2023. Secondhand service is a valid form of personal service under RCW 4.28.080, and therefore is valid under LUPA. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Alternatively, Ms. Chandrruangphen's service on the City Clerk was valid because, although the process server personally delivered the service documents to the individual running the City Clerk's Office in the Clerk's absence, the City Clerk later told a paralegal at Ms. Chandrruangphen's law firm that service was sufficient, and that she had "signed off on" the documents. This evidence establishes that the City Clerk—a person statutorily authorized to receive service—consented to an alternate means of service, which is

permitted under RCW 4.28.080. *Thayer v. Edmonds*, 8 Wn. App. 36, 41, 503 P.2d 1110 (1972). Finally, even if Ms. Chandrruangphen's service on the City Clerk was not valid, it is undisputed that Ms. Chandrruangphen personally served the City Manager on June 1, 2023, which was within the appeal window because the land use Decision, which the City emailed 24 days before June 1, was not "issued" until three days after it had been emailed. *Confederated Tribes and Bands of Yakama Nation v. Yakima County*, 195 Wn.2d 831, 836 n.2, 838, 466 P.3d 762 (2020).

Both of Ms. Chandrruangphen's service attempts were valid, and this Court should reverse the Superior Court's grant of the City's motion to dismiss and remand this case to Superior Court so that Ms. Chandrruangphen and the City may proceed with the substance of her LUPA appeal.

Mr. Bloom has failed to show a sufficient interest to support intervention in Ms. Chandrruangphen's appeal of the cancellation of her application. He has shown neither an adequate

interest in the procedural subject matter nor any interest which the City cannot adequately protect in defending its Decision. This Court should reverse the Superior Court's grant of intervention to Mr. Bloom.

I certify that this brief contains 11,965 words based on word processing software, in compliance with RAP 18.17.

DATED this 26th day of January, 2024.

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DECLARATION OF SERVICE

I, Benita K. Lamp, am a citizen of the United States, resident of the State of Tennessee, that on this date, I caused to be served a true and correct copy of the foregoing BRIEF OF APPELLANT, with the Clerk of the Court using the CM/ECF system, which will electronically serve all counsel of record.

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I declare under the penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

DATED this 26th day of January, 2024, in Nolensville, Tennessee.

BENITA K. LAMP

JOHNS MONROE MITSUNAGA KOLOUSKOVA, PLLC

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