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CASE REPORT

MUNICIPAL REGULATIONS — LAND USE PETITION ACT — NEED FOR FINAL DECISION. RCW 36.70C, the Land Use Petition Act, is not applicable unless the challenged decision is final, and provides the exclusive means of judicial review for local land use decisions even if the decision is ministerial. Grandmaster Sheng-Yen Lu v. King County, No. 47647-5-I, (Slip Op., January 28, (2002)).

I. Facts. King County and a private developer tentatively agreed to the development of a gravel mine under specific development standards. The applicable county regulations allowed mining operations only after issuance of a conditional use permit (CUP) unless the mining would occur more than a quarter mile from an established residence and would not use local access streets abutting residential lots. The developer submitted a proposed development plan to King County containing two alternative proposals, one of which would have required a CUP under the county code. King County indicated that it would not determine whether a CUP was necessary until after selection of the final mining configuration.

Owners of neighboring parcels opposing the development sued King County, challenging the county's procedure in processing the mining application. The neighbors requested a declaratory judgment that the county was required to determine whether or not a CUP was necessary. The superior court granted summary judgment to the county, and the neighbors appealed.

II. Applicable Law and Analysis. On appeal, Division One of the Washington Court of Appeals affirmed the superior court's ruling. The Court of Appeals rejected the neighbors' request for a declaratory judgment, concluding that the LUPA process provided an adequate alternative remedy to declaratory relief. The neighbors' inability to obtain judicial review of King County's preliminary CUP determination was deemed irrelevant, as the Court noted that a final land use decision by a local government is a statutory prerequisite to LUPA jurisdiction. The Court similarly held that the neighbors' challenge was not ripe for judicial resolution, as the county had not yet issued a final land use decision.

The *Grandmaster* Court also rejected the neighbors' argument that LUPA applied only to quasi-judicial — rather than ministerial — actions, reasoning that the plain language of RCW 36.70C makes no such distinction. Significantly, Division One's holding in this regard contradicts Division Three's previous conclusion in *Chelan County v. Nykreim*, which had held that LUPA was not the exclusive means of obtaining judicial review of ministerial land use decisions.

III. <u>Conclusion</u>. The *Grandmaster* case reaffirms that judicial review of local land use decisions is available only for a local government's final — rather than preliminary — determination. The Court of Appeals' conclusion is also significant in its rejection of the *Nykreim* case by creating a judicial split which will almost certainly require resolution by the Washington Supreme Court. Our office will continue to monitor this case, and update our municipal clients regarding any further developments.