



CASE REPORT

Site Specific Rezone Decision Making: Courts Defer to Local Government Decision Making Supported by Substantial Evidence. Phoenix Development, Inc. v. City of Woodinville, Docket No. 84296-5, _____ Wn.2d._____, _____ P.3d._____.

I. **Facts.** Developer Phoenix Development, Inc. (“Phoenix”) made application for the rezone of two parcels of land in the City of Woodinville zoned R-1 to the R-4 residential density designation, along with applications for preliminary subdivision approvals. City staff recommended approval of the two rezones and related preliminary plats, subject to a determination by the City Council of the *need* for the rezones. *Determination of need* was one of the listed criteria for a rezone in the Woodinville Municipal Code. The City Council must be the final decision maker on a rezone application pursuant to RCW 35A.63.170. Following public hearing, a hearing examiner forwarded recommendations of approval to the City Council. The hearing examiner determined Phoenix had demonstrated need for the project by submitting evidence that the City, unlike surrounding jurisdictions, continued to have the majority of its residential land zoned R-1, that there was a market for R-4 developed properties in the City and that the Central Puget Sound Growth Management Hearing’s Board in a 1997 decision had determined that the City’s R-1 zoning was non-compliant with the state’s Growth Management Act (“GMA”) and that the City in response to that decision had adopted a zoning code provision mandating that the City approve R-1 to R-4 rezone requests where *adequate facilities* (sewer) to support R-4 development were available. The City Council however, denied the rezones and preliminary plat applications after concluding that there was no demonstrated need for the rezones due to record evidence that the City was already meeting its 20 year growth requirements with its existing zoning designations and that higher residential density development in its R-1 area would conflict with its comprehensive plan goals of greater residential development in the City’s downtown core and protecting Woodinville’s woodland character and existing neighborhood character. The Council disagreed with the Hearing Examiner’s interpretation that the earlier growth board decision and zoning code provisions required the rezone and also disagreed that the applicant had demonstrated need for the rezone.

Phoenix sought judicial review of the City Council’s decisions under the Land Use Petition Act (“LUPA”). The Superior Court affirmed the decision of the City Council after noting in oral remarks that the decision was “easy” after looking at Washington caselaw designating the City

Council as the decision maker and that deference must be given to the final administrative decision maker in a rezone decision. The Court of Appeals, Division One, however, reversed the decision of the Superior Court agreeing with the Hearing Examiner in all respects and giving little if any deference to the decision of the City Council under the LUPA's criteria for judicial review of a land use decision. The City sought discretionary review by the State Supreme Court. Review was granted and after additional briefing and oral argument, the State Supreme Court in a unanimous 9-0 decision reversed the Court of Appeals on all the legal grounds cited by the appeals court in their decision, reinstating the decision of the Superior Court.

11. Applicable Law and Analysis. The unanimous decision clearly reflects the position of the state's highest court on the issues presented in this appeal. The court agreed with the City that the state court's must defer to the construction of a challenged ordinance given by the officials charged with its enforcement. It further agreed with the City that the GMA is to be construed "*with the requisite flexibility to allow local governments to accommodate local needs.*" The court applied these principles in deciding to defer to the City's determination of what constitutes "demonstrated need" for a rezone under WMC 21.44.070(1) and in holding that the City properly interpreted its own ordinance to require a showing that a rezone is needed to achieve larger policy objectives.

The City determined that the rezone was not needed at this time and the court agreed that this decision was supported by substantial evidence in the hearing record largely ignored by the Court of Appeals. The record included the CNW¹ three-volume set of information and reports from the city planning staff. This decision alone supports the denial of the rezone under WMC 21.44.070, but the court also agreed with the City that a rezone to R-4 was not consistent and compatible with the uses and zoning of the surrounding R-1 developed properties, that conditions had not changed since the original zoning, and that the rezone did not bear a substantial relationship to the public health, safety, morals, or welfare. In other words, none of the Woodinville zoning code's criteria for rezone approval were met.

Perhaps most significant to Woodinville, the court agreed with the Woodinville City Council that WMC 21.04.080(1) does not require that the City approve a rezone application for property currently zoned R-1, even if "adequate services can be provided" to support R-4 zoning. This determination is important should new rezone applications for R-1 land to higher residential density be forth coming under the zoning code as currently written.

On another issue of significance, the court determined that the City did not err in concluding that the proposed rezones were inconsistent with the comprehensive plan. The court gave special note to the first goal listed in the land use section, that goal being to maintain or improve

¹ CNW stands for the Concerned Neighbors of Wellington, a citizens group from the R-1 zoned Wellington neighborhood of Woodinville. CNW was also an appellant with the City on the appeal.

Woodinville's quality of life, environmental attributes, and Northwest woodland character. The City's native tree cover and wooded hillsides were recognized as the primary elements that define Northwest Woodland Character.

The final issue addressed by the court was whether or not the City engaged in an unlawful procedure undermining its findings because it characterized its decision as being made in its legislative capacity. Under existing case law a decision on a rezone application was characterized as a legislative decision. The court agreed with Phoenix that the decision was quasi-judicial rather than legislative, but since the City followed a quasi-judicial process, the mischaracterization was harmless and did not undermine the City's findings, conclusions and decision as determined by the Court of Appeals.

III. Conclusion. This case restores confidence to city and town councils that the deference given the councils in deciding site specific rezone requests has been maintained, even though a quasi-judicial land use decision subject to LUPA standards of review. It also re-emphasizes earlier Supreme Court decisions that flexibility in residential zoning densities remains with local jurisdictions responding to local conditions, despite the repeated attempts by the building industry and the Central Puget Sound Growth Management Hearings Board to quash all attempts at urban zoning densities below four units per acre.