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

THE GLENROSE ASSOCIATION, a
Washington non-profit corporation,

Petitioner,

v.

JOHN PEDERSON, DIRECTOR OF
BUILDING AND PLANNING,
SPOKANE COUNTY,

Respondent.

NO. 19204762-32

**PETITIONER’S REPLY IN
SUPPORT OF ISSUANCE OF
PEREMPTORY WRIT OF
MANDAMUS**

I. INTRODUCTION

In our opening memorandum, we demonstrated that the writ of mandamus should issue because all of the prerequisites for issuance of the writ are present here: The law imposes a duty on John Pederson (the Director of Planning) to issue an administrative interpretation when a request for an interpretation is made and Glenrose requested an interpretation; Mr. Pederson refused to perform his legal duty to issue an interpretation; there is no other plain, speedy, or adequate remedy available to Glenrose; and Glenrose and its members are beneficially interested.¹

¹ The County’s response brief notes that the Glenrose Association is “dedicated to preservation of the rural character of property zoned Urban Reserve.” Response at 2. The “Urban Reserve” (UR) zone is a rural zone. It is reserved for possible urban development in the future, but currently is regulated “to provide for a traditional rural

1 Mr. Pederson largely does not dispute most of these elements. He challenges only one: that
2 Glenrose has another remedy -- an administrative appeal – and failed to use it.. As demonstrated
3 below, there was no administrative appeal available to challenge Mr. Pederson’s failure to issue an
4 administrative interpretation. Therefore, the writ should issue.

5 II. ARGUMENT

6 A. Mr. Pederson Does Not Contest Most Elements of Glenrose’s Case.

7 The applicant for a Writ of Mandamus is required to satisfy three elements before the writ
8 will be issued: (1) the party subject to the writ is under a clear duty to act; (2) the applicant has no
9 plain, speedy and adequate remedy in the ordinary course of law; and (3) the applicant is
10 beneficially interested. *Eugster v. City of Spokane*, 118 Wn. App. 383 (2003), *rev. den.*, 151 Wn.2d
11 1027; RCW 7.16.160, -.170.

12 Here, Mr. Pederson concedes that “the Director has a clear legal duty to issue administrative
13 interpretations.” Response Brief at 5. He does not dispute that a request for an interpretation was
14 made and that he did not provide the requested interpretation. He does not dispute that Glenrose
15 has a beneficial interest in this matter. This leaves the sole matter for consideration before this
16 Court as to whether Glenrose has a plain, speedy, and adequate remedy.

17 B. The Spokane County Code Does Not Provide a Plain, Speedy, and Adequate 18 Remedy for Mr. Pederson’s Failure to Issue an Administrative Interpretation- 19 -It Does Not Provide Any Remedy at All.

20 Mr. Pederson’s sole argument in opposing the writ of mandamus is that Glenrose failed to
21 exercise a remedy available under the County Code. However, this argument fails because: (1) Mr.
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26 landscape including residential, agricultural and open space uses.” SCC 14.618.100. The Glenrose Association is
dedicated to the preservation of the rural character of the Glenrose neighborhood, including lands in the UR rural zone.
Glenrose expects the County Code to be respected when decisions are made regardless of zone category.

1 Pederson declined to issue an administrative interpretation and (2) the County Code does not
2 provide a remedy for Mr. Pederson’s failure to act.

3 First, Mr. Pederson clearly declined to issue an administrative interpretation in response to
4 Glenrose’s recent request, stating:

5 I find your request for an administrative interpretation as to use of
6 the property was previously made and is binding. Therefore, I have
7 elected to return your request and fee for an Administrative
8 Interpretation and have enclosed the same. Any future permit
9 application may be appealed consistent with applicable statutory
10 requirements.

11 Eichstaedt Decl, Ex. L at 2 (“Refusal to Issue Administrative Interpretation” or “Refusal”). It is
12 beyond dispute that Mr. Pederson sent back the filing fee, refused to issue a decision because he
13 believed a binding decision had already been made, and, instead, told Glenrose that an appeal could
14 be made challenging a permit, once a permit was issued. No administrative interpretation was
15 made.

16 Past practice of the County indicates that it is clear when the County issues an
17 administrative interpretation. Second Eichstaedt, Decl., Ex. M (“Administrative Interpretation AI-
18 01-7”). As Administrative Interpretation AI-01-7 indicates, the County’s administrative
19 interpretations are labelled as such, specifically respond to the issues in the request, and identify
20 a party’s appeal rights under Chapter 14.504 of the County Code. *Id.* This did not occur in Mr.
21 Pederson’s Refusal to Issue Administrative Interpretation.

22 Moreover, as we discussed in our opening brief, the Planning Department’s 2008 pre-
23 application notes were not an “administrative interpretation” (as that term is defined in the code).
24 It was not made by the Director; it was advisory, not a binding determination; and it was not
25 appealable – all hallmarks of a formal “administrative determination.” Petitioner’s Motion and
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1 Memorandum at 13-14. Thus, there was no administrative interpretation –in 2008 or in in 2019.
2 Mr. Pederson’s reliance on the right to appeal a formal interpretation is misplaced.

3 That leaves the second matter – is there a remedy under the County Code for *failing to issue*
4 an administrative interpretation as Mr. Pederson asserts? The answer is no.

5 The County Code, SCC 13.900.106, further provides that certain “administrative decisions”
6 may be appealed to the County hearing examiner.

7 The County Code defines the term “Administrative Determinations” to refer to six types of
8 administrative decisions – none of them include *the failure* to issue an administrative interpretation:
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10 Administrative determinations include decisions related to the
11 following administrative actions:

- 12 a. Administrative Interpretation (14.504)
- 13 b. Administrative Permits (14.506)
- 14 c. Nonconforming Provisions (14.508)
- 15 d. Administrative Exceptions (14.510)
- 16 e. Alternative Methods (14.512)
- 17 f. Urban Design (14.900)

18 SCC 14.502.020.

19 Notably absent from this list of appealable “administrative decisions” is a failure to provide
20 an administrative interpretation.

21 The closest item on the list to the *failure to issue* an administrative interpretation is the polar
22 opposite: the affirmative issuance of an administrative interpretation. The County Code, SCC
23 14.504.200(1), defines an “administrative interpretation” in a manner that does not include the
24 failure to issue an administrative interpretation. Rather, an “administrative interpretation” is
25 defined as an affirmative action—either a ruling or an interpretation, specifically, “[r]ulings and/or
26 interpretations as to the meaning, intent, or proper general applications of the Zoning Code, and its
impact to development and use of land or structures.”

1 Here, Mr. Pederson refused to issue a ruling or interpretation. Instead, he determined
2 (erroneously) that such rulings or interpretations had previously occurred in the Planning
3 Department's 2008 pre-application notes or the 2010 Hearing Examiner decision. As a result, he
4 sent back Glenrose's check and request. There was no administrative interpretation to appeal
5 pursuant to the County Code.
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7 In sum, there was no plain, speedy and adequate remedy under the County Code to appeal
8 Mr. Pederson's refusal to act. Therefore, the issuance of a writ of mandamus is the appropriate
9 remedy. *Eugster*, 118 Wn. App. 383.

10 **C. Mr. Pederson's Affidavit Raises a Number of Issues Not Argued in the**
11 **Response Brief for which No Response is Required.**

12 The only argument presented in Mr. Pederson's response brief is the supposed failure of
13 Glenrose to exhaust its remedies under the County Code. However, the Affidavit of Mr. Pederson,
14 submitted with the response brief, includes a number of factual assertions that are not addressed in
15 anyway in Mr. Pederson's arguments.² These assertions cannot be considered in the Court's
16 consideration of this matter and cannot be later raised at oral argument. *Cowiche Canyon*
17 *Conservancy v. Bosley*, 118 Wn.2d 801, 809 (1992) (arguments not briefed are waived).
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20 ² The matters raised in the affidavit have been thoroughly addressed in Glenrose's opening brief. For
21 example, Mr. Pederson asserts in his affidavit that he is bound by notes made by a junior staff person during the 2008
22 pre-application process. Affidavit ¶ 19. The staff notes were not made by the Director and, therefore, as a matter of
23 law, are not an administrative interpretation because the Code specifies that only the planning director can make a
24 formal administrative determination. SCC 14.504.200(1). Similarly, the staff notation did not purport to be a binding
25 determination. *See generally* 2008 Plan Review Comments. The file notes were not a final decision and were not
26 subject to appeal. The County Code makes it clear that these type of pre-application meetings are not intended to
provide definitive determinations and certainly are not binding on the County. SCC 13.200.001 ("Many times they are
based on conceptual proposals and are not intended to provide an exhaustive regulatory review of a proposal. Detailed
review and comment are provided after submission of a complete application"). The affidavit also asserts that there
was no land use or building permit for Mr. Pederson to consider in making a determination in 2019. Affidavit ¶ 21.
The County Code provides separately for applications for permits and applications for administrative interpretations.
SCC 14.502.020(a) (administrative interpretations); SCC 14.502.020(b) (permits). An application for one is not a pre-
condition for the other. In particular, there is no requirement for a permit application as a pre-requisite for an
administrative interpretation application. *Id.*; SCC 14.502.080.

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III. CONCLUSION

For the reasons set forth above and in the opening memorandum, Glenrose requests that the Court issue the Peremptory Writ of Mandamus compelling respondent John Pederson, the Director of Planning for Spokane County, to issue the administrative interpretation requested by Glenrose.

Dated this 18th day of June, 2020.

Respectfully submitted,

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