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

THE GLENROSE ASSOCIATION, a  
Washington non-profit corporation

Petitioner,

v.

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

Respondents.

Case No. 19-2-04762-32

RESPONSE IN OPPOSITION TO  
MOTION FOR ISSUANCE WRIT OF  
MANDAMUS

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COMES NOW Defendant, John Pederson, Planning Director, Spokane County Department of Building and Planning (“Director”), in his official capacity, by and through Senor Deputy Prosecuting Attorney Dan L. Catt, and submits this *Response to Petitioner’s Motion for Issuance of Writ of Mandamus*.

**I. STATEMENT OF FACTS**

The following facts are supported by the record to date and the Affidavit of John Pederson, Planning Director, Spokane County Department of Building and Planning attached and incorporated here by reference as if fully restated).

1 The Glenrose Association (the “Association”) is comprised of residents dedicated to  
2 preservation of the rural character of property zoned Urban Reserve. The Association is  
3 fighting a battle they can only hope to delay and not win. The Urban Reserve (UR) zone in  
4 SCC 14.618.100 is characterized as follows:

5 The Urban Reserve (UR) zone includes lands outside the Urban Growth  
6 Area that are preserved for expansion of urban development in the long  
7 term. These areas are given development standards and incentives so that  
8 land uses established in the near future do not preclude their eventual  
9 conversion to urban densities. Residential clustering is encouraged to allow  
10 residential development rights while ensuring that these areas will be  
11 available for future development.

12 The Association unsuccessfully opposed a prior the application to develop a community  
13 recreational facility including baseball and football fields as well as primary and secondary  
14 structures on approximately 18.4 acres of undeveloped land located at 5814 E. 37<sup>th</sup> Avenue,  
15 Spokane. The Association’s prior opposition included the appeal of a Mitigation  
16 Determination of Non-Significance. In the appeal, the Association alleged the proposal did  
17 not qualify as a community recreational facility but was a commercial facility or other non-  
18 identified classification. The Hearing Examiner issued a decision dated January 8, 2010 in  
19 which he approved the MDNS with additional conditions (copy located at  
20 [ftp.spokanecounty.org/BuildingandPlanning/GlenroseBaseball](http://ftp.spokanecounty.org/BuildingandPlanning/GlenroseBaseball)). The Examiner found the  
21 Association’s issue concerning the determination of the proposal as a community recreational  
22 facility could have been heard and determined but for the Association’s failure to timely raise  
23 the issue and bring it before the Hearing Examiner. The Association did not appeal the Hearing  
24 Examiner’s decision.

1 The Association presently opposes a similar proposal for development of a community  
2 recreational facility including soccer and baseball fields and primary and secondary structures  
3 on the same property by Spokane Youth Sports Association (SYSA). The Association has  
4 again appealed the MDNS determination by the Department to the Hearing Examiner. The  
5 Parties have agreed to await the determination regarding a grading permit before further  
6 prosecuting the appeal.

7 The Association a written request to John Pederson, Director of Building and Planning  
8 (Director) for an administrative interpretation of the meaning, intent, and impact of  
9 classifications as they relate to the SYSA proposal. The two classifications, defined in SCC  
10 Chapter 14.300 SCC are: “Community Recreational Facility” and “Participant sports and  
11 recreation (outdoor only)”.

12 In response to the request, the Director reviewed the file on the property and confirmed  
13 based on the information presently submitted to the Department, there was no material  
14 difference between SYSA’s proposal and the previously approved League proposal. The  
15 Director further determined that absent additional project detail or application establishing a  
16 substantial change from the prior proposal the prior determinations it met the Community  
17 Recreation Facility classification, a permitted in the UR zone, was binding.

18 The Director’s then conveyed his findings and determination to the Association and  
19 based elected to return their check.

20 The Association is dissatisfied with the Director’s response and now brings this Petition  
21 for a Writ of Mandamus to compel the Director to issue a different response.  
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## II. LAW AND ARGUMENT

### A. Writ of Mandate

A Writ of Mandate is a constitutional and statutory cause of action provided for in chapter 7.16 RCW. Mandamus is an extraordinary remedy to be used sparingly. *Burg v. City of Seattle*, 32 Wn. App. 286, 290, 647 P.2d 517 (1982). It is such an extraordinary remedy it only issues under certain conditions.

First, Mandamus will issue *only* against a public officer in their official capacity to compel a duty imposed by law. *Eugster v. City of Spokane*, 118 Wn. App. 383, 403-404, 76 P.3d 741 (2003), *review denied*, 151 Wn.2d 1027 (2004); *Adams v. City of Seattle*, 31 Wn.2d 147, 151, 195 P.2d 634 (1948). In addition, Mandamus will not lie to compel the performance of acts or duties that call for the exercise of discretion on the part of public officers. *Lillions v. Gibbs*, 47 Wn.2d 629, 633, 289 P.2d 203 (1955), *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969). A discretionary act is one that involves a policy, program, or objective, and requires the exercise of a basic policy evaluation, judgment, and expertise on the part of an officer or agency. *Bridle Trails Comty. Club v. City of Bellevue*, 45 Wn. App. 248, 724 P.2d 1110 (1986).

Second, RCW 7.16.170 provides guidance on when Mandamus is appropriate, "... where there is not a plain, speedy and adequate remedy in the ordinary course of law.". The courts hold Mandamus can only issue when there is no plain, speedy and adequate remedy at law. *Staples v. Benton County*, 151 Wn.2d 460, 89 P.3d 706 (2004). (See, RCW 7.16.170).

Third, the applicant must be "beneficially interested." *Eugster* at 402. Establishing the burdens to prove all elements to justify mandamus is on the applicant. *Id.* at 403 citing, *Mallard*

1 v. U. S. Dist. Court for S. Dist. of Iowa, 490 U.S. 296, 309, 109 S. Ct. 1814, 104 L. Ed.2d 318  
2 (1989).

3 Distilled the elements needed to support the issuance of a writ of mandamus may be  
4 summarized as (1) the official must have a clear duty to act; (2) there is no plain, speedy, and  
5 adequate remedy in the ordinary course of law; and (3) the applicant must be “beneficially  
6 interested.” *Eugster at 402.*

7 **B. Director’s Duty**

8 It’s undisputed the Director has a clear legal duty to issue administrative determinations  
9 Spokane County Zoning Code (SCZC) 14.504.200. However, the Director is vested with  
10 discretionary authority as to the interpretations. SCZC 14.504.200 Interpretation of the Zoning  
11 Text provides in pertinent part “1. Rulings and/or interpretations as to the meaning, intent, or  
12 proper general applications of the Zoning Code, and its impact to development and use of land  
13 or structures shall be made by the Director.”

14 The Director is also charged with the duty to enforce provisions of the Zoning Code.  
15 SCZO 14.408.020(1), “It shall be the duty of the Planning Director, except as otherwise  
16 provided herein, to interpret and enforce the provisions of the Zoning Code and conditions of  
17 approval imposed by actions of the Board of County Commissioners, Hearing Body and/or  
18 Division of Building and Planning.”

19 The Association seeks this Court issue a Writ to compel the Director to issue an  
20 administrative interpretation as to how specific classifications relate to SYSA’s proposal on  
21 July 9, 2019. The Director did not ignore the Associations request but diligently reviewed the  
22 file and information received from SYSA relating to the proposal. Only after determining  
23

1 there was no substantial difference in scope, scale, and intensity between the proposal and the  
2 proposal previously submitted by the League did he determine the prior classifications as a  
3 community recreational facility was binding.

4 The Association is dissatisfied with the Directors existing determination the proposal  
5 was a Community Recreation Facility, a permitted use in UR Zones is a petition of form over  
6 substance. The Director's response was appealable under:

7 SCZC 14.502.060 Appeal of an Administrative Determination

8 Any appeal of an administrative determination must be filed with the  
9 Hearing Examiner within the limited timeframe consistent with the  
10 procedures required in Title 13.

11 The Petition for a Writ of Mandamus should be denied as the Director did respond to  
12 their request, did fulfill his duty and exercised discretion in determining the Community  
13 Recreation Facility classification applied to the SYSA proposal.

14 **C. Plain, speedy, and adequate remedy**

15 SCC 13.900.106 – Administrative decision appeals, provides as follows:

16 An appeal of an administrative decision made pursuant to the Spokane County  
17 Zoning Code or the Spokane County Subdivision Ordinance not classified as Type I  
18 or Type II project permits/applications will be processed pursuant to the provisions  
for the notice of hearing and appeals for Type I project permit applications.

19 (Res. 01-0700 Attachment A (part), 2001)

20 SCC 13.900.106 – Type I project permit decision appeals.

- 21 (a) An appeal of a decision regarding a Type I application or other administrative decisions, as  
22 appropriate, may be filed with the review authority by a party with standing to appeal only if,  
23 within fourteen calendar days after permit issuance, or the written decision or a notice of the  
decision is mailed, a written appeal is filed with the review authority, together with the  
designated appeal fee. The issuance of a building permit is a ministerial act and as such is  
not appealable under the provisions of this section.

1 (b) The hearing examiner or other designated appeal body shall hear appeals of Type I project  
2 permit application decisions and appeals of administrative decisions, including any  
3 procedural or substantive SEPA appeals, in an open-record appeal hearing according to  
4 statutes, rules or procedures established for the hearing examiner or other appeal body or  
5 the Spokane Environmental Ordinance. Administrative shoreline permit decisions are  
6 appealable to the hearing examiner for an open record appeal hearing and decision.

(Res. 01-0700 Attachment A (part), 2001)

7 The Association failed to exhaust their administrative remedies. In Cost Mgmt.  
8 Servs., Inc. v. City of Lakewood, 178 Wash. 2d 635, 641, 310 P.3d 804, 808 (2013),  
9 Lakewood appealed the issuance of a writ arguing error in that failure to exhaust  
10 administrative remedies was not a defense. The Court upheld the lower court’s decision that  
11 Exhaustion Doctrine did not apply in the case because Lakewood had failed to respond to  
12 Cost’s demand. Unlike the Lakewood, here the Director did respond. The Exhaustion  
13 Doctrine should apply.

14 The Association had a plain, speedy and adequate remedy at law and did not exercise it. The  
15 fact Association did not exercise the available remedy does not support their request for a Writ  
16 of Mandamus. In Brock v. State, 91 Wn 2d 94, 95, 586 P.2d 1173 (1978), Brock’s petition  
17 for a writ was denied. The court noted:

[T]he statutes governing the extraordinary writs of mandamus and prohibition  
allow the issuance of those only “where there is not a plain, speedy[,] and  
adequate remedy in the ordinary course of law.” Appellant’s loss of the  
remedy provided by the APA through failure to file a timely petition for  
review does not render that remedy inadequate, or give rise to a right to  
extraordinary writs.

20 The Associations’ Petition should be denied as they failed to exercise a plain, speedy and  
21 adequate remedy.

### 22 **III. CONCLUSION**

1 The Director has a duty to issue administration determinations, including  
2 interpretations of the Zoning Code but discretion in interpreting and determining the Zoning  
3 Code Text. Spokane County provides a plain, speedy and adequate remedy for challenging a  
4 determination/decision by the Director and the Association elected not to use it. The  
5 Association has failed to establish all the elements required to justify the issuance of a Writ of  
6 Mandamus, the Petition should be denied.

7 DATED this 10<sup>nd</sup> day of June 2020.

8  
9 LAWRENCE H. HASKELL  
Spokane County Prosecuting Attorney

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11 \_\_\_\_\_/S/\_\_\_\_\_  
12 DAN L. CATT, WSBA #11606  
13 Sr. Deputy Prosecuting Attorney  
14 Attorneys for Respondent  
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