The Honorable Julie McKay

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 MOTION FOR ISSUANCE OF PEREMPTORY WRIT OF MANDAMUS AND MEMORANDUM IN SUPPORT**

I. MOTION AND INTRODUCTION

This case is about a public official failing his legal duty to issue an administrative interpretation of the Spokane County Code ("Code" or "SCC").[1]

Petitioner Glenrose Association ("Glenrose") moves for issuance of a writ of mandamus to compel respondent John Pederson, the Director of Planning for Spokane County, to issue an administrative interpretation regarding the meaning, intent and impact of certain definitions in the

[1] A copy of the relevant portions of the Code are included as Exhibit A to the attached Declaration of Rick Eichstaedt ("Eichstaedt Decl.").

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Code as they relate to the development of a proposed sports field complex in the Glenrose neighborhood.

The writ should issue because all of the prerequisites for issuance of the writ are present here: The law imposes a duty on Pederson to issue an administrative interpretation when requested for an interpretation is made; Glenrose requested an interpretation; Pederson has 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.

II. STATEMENT OF FACTS

A. The Subject Property and Its Zoning.

The Spokane Youth Spokane Association ("SYSA") seeks to develop a multi-sport athletic complex on approximately 19.4 acres of land located at the intersection of Glenrose Road and 37th Avenue. Eichstaedt Decl., Ex. B at 1 ("RCO Grant Application"). The site is in unincorporated Spokane County in the Glenrose neighborhood. *Id.*

The site is zoned by the County as "Urban Reserve" ("UR"). Eichstaedt Decl, Ex. C ("Zoning Map"). Uses classified as a "Community Recreational Facility" are an allowed use in the UR zone. SCC 14.618.220. However, uses classified as "Participant Sports and Recreation" are not an allowed use in the UR zone. *Id*.

B. The Prior Little League's Sport Field Proposal.

The first significant development proposal for the subject property was the Spokane South Little League's ("Little League") plan to use the same site for the development of baseball and football fields and parking with expansion to include additional facilities. Eichstaedt Decl., Ex. D at 1-2, ¶¶ 1, 6-7. ("2010 Hearing Examiner Decision"). On June 17, 2008, the Little League met with the county planning department to discuss the forthcoming application. Eichstaedt Decl., Ex.

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E at 1 ("2008 Plan Review Comments"). The meeting was to provide the Little League with insights to the County's permitting requirements. *See* SCC 13.300.104(a)(2) (describes the purpose of pre-application meetings). The Planning Department prepared "review comments" that summarized "information [that] must be submitted in order for [the Planning Department] to proceed with … review." 2008 Plan Review Comments at 1. Those notes indicate that the staffer viewed the proposal as fitting the zoning code definition of a "Community Recreation Facility." *Id.*

Almost a year after the pre-application meeting, on May 26, 2009, the Little League submitted its application for a grading permit. 2010 Hearing Examiner Decision at 1, ¶ 1.

On October 14, 2009, the Planning Department issued a Mitigated Determination of Nonsignificance ("MDNS") pursuant to the State Environmental Policy Act ("SEPA") for the Little League grading permit. 2010 Hearing Examiner Decision at 2, ¶ 13. An MDNS documents an agency's SEPA determination that with prescribed mitigation, the project's impacts will not be significant and, therefore, a comprehensive environmental review in the form of an environmental impact statement will not be required. WAC 197-11-350.

On October 28, 2009, Glenrose filed an appeal of the MDNS to the Spokane County Hearing Examiner. 2010 Hearing Examiner Decision at 2, ¶ 14. The appeal to the Examiner did not include review of any building permit. *Id.* During the course of the appeal, Glenrose argued that the proposed use of the property for a sports field complex was mischaracterized as a Community Recreation Facility by the County. *Id.* at 10, ¶ 70. In response, the County and the Little League asserted that the Hearing Examiner lacked jurisdiction in a SEPA appeal to determine whether the proposal is a permitted use or to review the use classification. *Id.,* ¶ 71.

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On January 8, 2010, the Spokane County Hearing Examiner issued a decision on Glenrose's appeal. *See generally, id*. The Hearing Examiner agreed with the Planning Department and the Little League. He stated that he lacked jurisdiction in the SEPA appeal to consider the zoning code issue. *Id.* at 10-11, ¶¶ 74-77. He noted that while the appellant had appealed the SEPA/MDNS decision that the impacts would not be significant, the appellant has not requested a ruling on the zoning code classification of the proposed use: "The appellant did not submit an application to the Director for an administrative interpretation regarding the classification of the proposed use of the site under the Zoning Code." *Id.* at 11, ¶ 77. The Hearing Examiner acknowledged that Glenrose could in the future seek an administrative interpretation to resolve the matter. *Id.* at 10-11, ¶ 76-77.

On February 25, 2010, the Planning Department issued a grading permit for the project. Eichstaedt Decl., Ex. F. The grading permit was silent as to the zoning code classification of the approved use. *Id.*

Despite the issuance of the grading permit, no building permit was ever issued to the Little League for construction. The sport fields and associated facilities were not constructed. Sometime after the expiration of the grading permit in 2013, the property was transferred to SYSA.

C. The Current SYSA Proposal.

SYSA proposes to develop 4 youth baseball fields, 2 multi-sport fields with lights, a basketball court, restrooms, and a walking path with a parking lot and storage facilities. RCO Grant Application at 1. The facility would be used year-round, 84 hours per week in the summer and 46.5 hours per week during the remainder of the year. *Id.* SYSA has indicated that the facility would serve athletic teams in multiple sports from across the region with a service area of 60,000 people. *Id.* at 7.

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On September 21, 2017, SYSA met with county permitting staff in advance of submitting permit applications. Eichstaedt Decl, Ex. G at 4 ("2017 Plan Review Comments"). Jim Millgard, a planner in the Spokane County Department of Building and Planning attended the meeting. *Id.* at 11. Mr. Millgard's notes indicate that he viewed the proposed regional, multi-sport complex as falling within the zoning code classification of "Community Recreation Facility." *Id.* at 4.

On July 16, 2018, SYSA submitted a detailed description of the multi-sport complex proposal to the State's Recreation and Conservation Office as part of an application for a state grant of $350,000. RCO Grant Application at 1.

On January 7, 2020, SYSA filed an application with the County for the grading of 15,000 cubic yards of material associated with the development of the sport fields and parking. Eichstaedt Decl, Ex. H.

On February 11, 2020, the County issued an MDNS for the proposal. Eichstaedt Decl, Ex. I. On February 25, 2020, Glenrose filed an appeal of the MDNS with the County Hearing Examiner. Eichstaedt Decl, Ex. J. That appeal is still pending.

D. The Glenrose Administrative Interpretation Request and Refusal by the Planning Director to Act.

On July 9, 2019, Glenrose submitted a request for an administrative interpretation seeking a determination of whether the "community recreation facility" use applies to the proposed SYSA sports facility. Eichstaedt Decl, Ex. K ("Request for Administrative Interpretation" or "Request"). The Request for Administrative Interpretation included a check for $1,152 per the County's fee schedule. *Id.* at 1. The Request was spurred, in part, by the Examiner's 2010 admonition that he could not address the zoning classification decision in the SEPA appeal because Glenrose had not requested an administrative interpretation in that case.

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In the Request for Administrative Interpretation, Glenrose argued that the "Participant Sports and Recreation" use and not the "Community Recreational Facility" use is the appropriate designation for the proposed SYSA sport fields.[2] Request for Administrative Interpretation at 2-4. Glenrose stated, in part:

> Given the scope and scale of this proposal, the Glenrose Association believes that the "community recreation facility" is clearly the wrong classification under the Spokane County Code. The "participant sports and recreation (outdoor only)" use more accurately describes the intense use proposed for the Glenrose area.

Id. at 2. Because of the disagreement with the County's application of the use classification to the proposed SYSA proposal, Glenrose stated that an administrative interpretation was essential:

> The Glenrose Association seeks an administrative interpretation of the meaning, intent and impact of the "community recreation facility" and the "participant sports and recreation" classifications as they relate to this proposal.

Id.

On August 27, 2019, John Pederson sent counsel for the Glenrose Association a letter declining to issue an administrative interpretation and returning the check. Mr. Pederson offered three reasons for refusing to issue the interpretation: (1) the County had previously ruled on the matter on June 7, 2008 in Planning Department staff notes; (2) the Hearing Examiner in 2010 previously determined this matter; and (3) an administrative interpretation could not be issued

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[2] The Code, SCC 14.300.100, includes definitions of both classifications:

> Community Recreational Facility: Any public or private building, structure, or area which provides amusement, relaxation, or diversion from normal activities for persons within the area in which it is located and which is not operated for profit.
>
> Participant sports and recreation (outdoor only): Participant sports and recreation use in which the sport or recreation is conducted outside of an enclosed structure. Examples include tennis courts, water slides, and driving ranges.

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because an application for development of the sport complex had not yet been received. Eichstaedt Decl, Ex. L ("Refusal to Issue Administrative Interpretation" or "Refusal").

Following the Refusal to Issue Administrative Interpretation, Glenrose filed this lawsuit to compel Mr. Pederson to comply with his legal obligation to issue the requested interpretation.

III. ARGUMENT

A. Summary of Argument.

A writ of mandamus is a judicial tool to compel a public official to perform a mandatory duty. Here, Mr. Pederson has refused to issue an administrative interpretation, as required by state law and the county code. A writ of mandamus should issue.

State law requires counties to provide a mechanism by which the public can obtain an administrative determination of the meaning of land use regulations. In turn, Spokane County has adopted an ordinance governing the process for making administrative determinations. The ordinance places the responsibility for making administrative determinations on the Planning Director.

Glenrose followed the proper procedure for obtaining an administrative interpretation, but the Planning Director, John Pederson, refused to issue one. A writ of mandamus is necessary to obtain the requested administrative interpretation.

Glenrose does not ask this court to direct Mr. Pederson on the substance of his interpretation. He may rule either way. But a ruling one way or the other is required. Mr. Pederson does not have the discretion to ignore the state and county legislative scheme which gives the public the right to obtain an administrative interpretation of land use regulations.

Mr. Pederson provided three reasons for refusing to issue the interpretation. None of those reasons provide adequate justification for refusing to do his duty.

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First, Mr. Pederson argues that the 2008 Planning Department staff notes from the pre-application conference are a binding decision. Refusal of Administrative Interpretation at 1. However, both the Code and state law are clear that notes from a pre-application meeting are not a binding or appealable decision.

Second, Mr. Pederson argues that the Hearing Examiner's 2010 decision resolved the matter. *Id.* However, the Hearing Examiner did not resolve the matter. To the contrary, he ruled that he lacked jurisdiction to resolve the matter and that Glenrose should file an administrative interpretation if it wants the matter resolved. Glenrose now has done so.

Third, Mr. Pederson argues that he could not issue an administrative interpretation because there was no pending land use application. *Id.* However, the requirements for an administrative interpretation do not require a pending application for development and such a requirement would defeat the purposes of administrative interpretations.

In addition to demonstrating that Mr. Pederson has a duty to act, Glenrose must satisfy two other criteria to obtain the writ. One, Glenrose must show that there is no other plain, speedy, or adequate remedy available to Glenrose. That is the case here. The failure to issue an administrative interpretation is not administratively appealable under the County Code nor does any statute authorize an appeal to superior court. Only a writ will remedy Pederson's inaction.

Lastly, Glenrose and its members must show that they are beneficially interested. They are. Glenrose's members live and own property in the area surrounding the proposed SYSA complex. They will suffer from increased traffic, noise, and light from the complex. They will suffer from impacts to property values.

Because Glenrose satisfies the three criteria for issuance of the writ, the court should issue the writ and command Mr. Pederson to issue the requested administrative interpretation.

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B. The Requirements for Issuing a Writ of Mandamus.

A writ of mandamus is an appropriate means of compelling a public official to comply with the law when the claim is clear and the official has a duty to act. *Paxton v. City of Bellingham*,129 Wn. App. 439 (2005); RCW 7.16.150. A mandamus action should lie when there is an "arbitrary refusal to perform a plain duty." *State ex rel. Clark v. City of Seattle*, 137 Wash. 455, 459 (1926). The applicant for a Writ of Mandamus is required to satisfy three elements before the writ will be issued: (1) the party subject to the writ is under a clear duty to act; (2) the applicant has no plain, speedy and adequate remedy in the ordinary course of law; and (3) the applicant is beneficially interested. *Eugster v. City of Spokane*, 118 Wn. App. 383 (2003), *rev. den.,* 151 Wn.2d 1027; RCW 7.16.160, -.170.

As to the first criterion, a writ of mandamus will be issued to compel the performance of a specific, ministerial duty, but not a discretionary act or general course of conduct. *Burg v. Seattle*, 32 Wn. App. 286, 290 (1982), *rev. den.*, 98 Wn.2d 1007; *County of Spokane v. Local No. 1553*, 76 Wn. App. 765 (1995). In *City of Hoquiam v. Grays Harbor County*, the court illustrated nondiscretionary acts as follows:

> It is a frequently asserted and universally recognized rule that mandamus only lies to enforce a ministerial act or duty; in this sense a ministerial duty may be briefly defined to be some duty imposed expressly by law, not by contract or arising necessarily as an incident to the office, involving no discretion in its exercise, but mandatory and imperative. The distinction between merely ministerial and judicial and other official acts is that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise or discretion or judgment, it is not to be deemed merely ministerial.

24 Wn.2d 533, 540 (1946) (quoting 18 R.C.L. (Mandamus) 116) (emphasis added).

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When a public official has discretion in how to exercise a mandatory duty, mandamus can direct the public official to exercise the mandatory discretionary duty, but it does direct the manner of exercising that discretion. *Peterson v. Dep't of Ecology*, 92 Wn.2d 306, 314 (1979). Courts have stated, "Although mandamus will not lie to control exercise of discretion, it will lie to require that discretion be exercised." *Whitney v. Buckner*, 107 Wn.2d 861, 865 (1987) (*citing Bullock v. Superior Court*, 84 Wn.2d 101, 103 (1974)).

C. Glenrose Is Entitled to a Writ of Mandamus.

1. Mr. Pederson has a clear duty to act.

a. <u>The County Code imposes on Mr. Pederson a non-discretionary duty to issue an administrative interpretation.</u>

An administrative interpretation is the administrative analogue of a declaratory judgment action in superior court. It provides a mechanism to obtain a ruling about the meaning of a zoning code provision without going through the process of seeking a permit.

In 1995, the Legislature adopted a statute to reform the land use regulatory process used by local governments. 1995 Laws of Washington, ch. 347 (codified at ch. 36.70B RCW). The Legislature recognized that the "increasing number of local and state land use permits and separate environmental review processes required by agencies has generated continuing potential for conflict, overlap, and duplication between the various permit and review processes." RCW 36.70B.010(2). The old system "has made it difficult for the public to know how and when to provide timely comments on land use proposals that require multiple permits and have separate environmental review processes." RCW 36.70B.010(3). Among the various reforms in the legislation was a mandate that counties and cities provide for a mechanism for the public to obtain administrative interpretations of their land use laws. "Each local government planning under RCW

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36.70A.040 shall adopt procedures for administrative interpretation of its development regulations." RCW 36.70B.110(11). (Spokane County is a local government planning under RCW 36.70A.040.)

Accordingly, the Spokane County Code includes a mechanism for members of the public to obtain an administrative interpretation of the County's development regulations. The procedure is codified in chapter 14.502 of the Code. The first section of that chapter explains the intent of the chapter is to provide procedures for "administrative interpretations" and other kinds of Administrative Determinations:

> The intent of this chapter is to provide procedures for Administrative Determinations made by the Division of Building and Planning. These decisions include interpretation of the Zoning Code and various administrative permits or decisions as may be authorized.

SCC 14.502.000.

The chapter uses the term "Administrative Determinations" to refer to six types of administrative decisions. One of them is the administrative interpretation required by the state law.

> Administrative determinations include decisions related to the following administrative actions: . . .
>
> a. Administrative Interpretation.

SCC 14.502.020.

The Code then details the procedures to be employed in making administrative determinations, including administrative interpretations. Applications are to be made on forms supplied by the department and are subject to an application fee. SCC 14.502.040(1). The Director should make the determination within thirty days. SCC 14.502.040(2). The Code exempts administrative interpretations from notice requirements, but provides that they are subject to administrative appeals. SCC 14.502.040(3)(c).

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The next chapter of the Code provides more detail about administrative interpretations and specifies that the planning director (currently, Mr. Pederson) shall make the administrative interpretation:

> Rulings and/or 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 **shall be made by the Director.**

SCC 14.504.200(1) (emphasis supplied).

The foregoing demonstrates that the Spokane planning director has a non-discretionary decision to issue an administrative interpretation when an applicant follows the procedures for seeking an administrative interpretation. The Code states that the administrative interpretation "shall be made" by the planning department director. There is no room for discretion there. Nor could there be. The Legislature mandated that counties and cities adopt these procedures. RCW 36.70B.110(11). The local implementing ordinance should be construed consistent with the state legislative mandate. *Employco Personnel Services v. Seattle*' 117 Wn.2d 606, 617 (1991) (local ordinances are valid only to the extent that they are consistent with state law); Wash. Const. art. XI, §§ 11 (requiring that county legislation be consistent with and subject to state law).

b. Glenrose met the conditions required for the issuance of an administrative interpretation.

Glenrose met the conditions set forth in the Code for the issuance of an administrative interpretation. Glenrose filed a request and paid the fee. Request for Administrative Interpretation at 1. Despite this, its check was returned and no interpretation was issued. Because no interpretation was issued, neither Glenrose nor the project proponent could file an appeal with the County Hearing Examiner, as would have been the right of an aggrieved party, if the administrative interpretation had been issued. SCC 14.502.040(3)(c).

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c. Mr. Pederson's excuses for failing to issue the administrative interpretation are not valid.

Mr. Pederson has not claimed that the Code does not impose on him a duty to issue an administrative interpretation in response to an application for an administrative interpretation. Instead, he has argued that facts unique to this case eliminate the duty here. In this section, Glenrose demonstrates that the Code does not admit of these exceptions and that Mr. Pederson's assertion of them lacks an adequate factual and legal foundation.

i. The Planning Department 2008 pre-application notes were not an interpretation made by the Director and were not a binding determination.

Mr. Pederson claims that he did not need to provide an administrative interpretation because department staff already had provided one – twelve years earlier in the form of a staff notation in a file regarding a different application for a similar project on this property. The staff notes were not made by the Director and, therefore, as a matter of law, do not substitute for the administrative interpretation required by the Code which must be made by the planning director. SCC 14.504.200(1). Similarly, the staff notation did not purport to be a binding determination. *See generally* 2008 Plan Review Comments. The file notes were not a final decision and were not subject to appeal. Mr. Pederson's reliance on the old file note is terribly misplaced.

The context of the June 17, 2008 notes is instructive. The Code requires applicants to meet with staff before filing a permit application. The pre-filing meeting is to assist the applicant in filing an application that meets county requirements. SCC 13.300.104(a)(2). The 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:

> "Pre-application meetings" are meetings between county or agency staff and an applicant or their representatives prior to formal submission of a detailed

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> application. They are intended to acquaint the applicant with an overview of the regulatory requirements, application process and procedural submission requirements. 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.

SCC 13.200.001 (emphasis added). The Code makes it clear that "[p]re-application meetings are not intended to provide an exhaustive review of all regulations or potential issues for a given application. The procedures do not prevent the county from later applying other relevant laws to an application." SCC 13.300.104(a)(2). By definition, the County is not bound by a comment made at these pre-application meetings nor in the resulting notes. Because the file notes were not binding on the county and because they were not made by the Planning Director, Pederson was wrong to cite them as a reason for not responding to Glenrose's current request for an administrative interpretation.

Mr. Pederson's Refusal states that "[a]ny appeal period associated with the 2008 determination in classifying the project as a community recreation facility has long since expired." Refusal of Administrative Interpretation at 1. However, the issue is not whether an appeal period for the old notes has expired. The old notes were not an administrative interpretation by the planning director and, therefore, do not justify Mr. Pederson's reliance on them for not providing an interpretation now.[3]

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[3] Moreover, Mr. Pederson is wrong to assert that the appeal period for challenging the notes has expired. As the Court might suspect, there is no mechanism to administratively appeal a staff notation made in the course of a pre-application meeting. The Code allows appeals of "project permits," administrative interpretations, and certain other carefully described administrative actions. SCC 14.502.060. However, nothing in the Code allows an appeal of file notes resulting from a pre-application meeting.

Nor would a judicial appeal have been available to challenge notes in a file. LUPA is the mechanism to challenge land use decisions, but only final decisions may be challenged. RCW 36.70C.020. The definition of a "final determination" is narrow, intended to eliminate the risk of premature judicial intrusion into the complex field of land use decisions. *Sheng–Yen Lu v. King County*, 110 Wn. App. 92, 100–01 (2002). The Supreme Court has explained that a "final decision" under LUPA "is '[o]ne which leaves nothing open to further dispute and which sets at rest [the]

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ii. The Hearing Examiner did not resolve the matter in 2010.

Mr. Pederson also justified his failure to issue an administrative interpretation on the 2010 Hearing Examiner decision, particularly the Examiner's Findings of Fact 69 and 70. Refusal of Administrative Interpretation at 1. However, Pederson misreads that decision. The Hearing Examiner expressly declined to decide the issue presented in Glenrose's current application for an administrative interpretation: determining the proper zoning classification of the proposed use ("community recreation facility" or "participant sports and recreation"). Rather than decide that issue, the Hearing Examiner suggested that Glenrose use the administrative interpretation process to resolve the matter. Indeed, that ruling came at the request of Mr. Pederson's department that the examiner *not* address that zoning classification issue in the context of that SEPA appeal. 2010 Hearing Examiner Decision at 10-11, ¶ 76-77. Mr. Pederson not only mischaracterizes the Examiner's decision, but fails to acknowledge his own department's position that the zoning issue should not be decided in the 2010 SEPA appeal.

Contrary to Mr. Pederson's characterization, the 2010 Hearing Examiner decision supports that (1) no binding or appealable decision had been made by the County, (2) the Examiner lacked jurisdiction to make a determination as to the applicability of the "community recreational facility" in the context of the 2010 SEPA appeal; (3) an administrative interpretation was a proper mechanism to obtain an appeal decision on the matter in the future; and (4) the Planning Department advocated for that result. For all of these reasons, the Court should reject Mr. Pederson's second excuse for not rendering an administrative interpretation now.

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cause of action between parties.'" *Samuel's Furniture, Inc. v. Department of Ecology*, 147 Wn.2d 440, 452 (2002) (quoting Black's Law Dictionary 567 (5th ed.1979)). The pre-application file notes were not a final decision. No judicial appeal was available.

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iii. Mr. Pederson does not need a land use or building application to issue an administrative interpretation.

Finally, Mr. Pederson asserts that he was unable to issue an administrative interpretation because there was no pending "land use or building permit application." Refusal of Administrative Interpretation at 1. However, there is no requirement for a pending land use or building permit application for the issuance of an administrative interpretation. Indeed, administrative interpretations are provided to allow resolution of issues without the need for filing a permit application. The Legislature did not need to mandate a procedure to obtain an administrative interpretation in the course of reviewing an application; such determinations are necessarily made in the application review process. The Legislature mandated administrative interpretations to assure local governments provided a mechanism to obtain an interpretation without the need for filing an application (or waiting for someone else to file).

Thus, the Spokane 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. There is no basis in law for Mr. Pederson's third excuse.

The purpose of an administrative interpretation is to provide "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." SCC 14.504.200(1). A requirement for a pending permit makes no sense. Once a permit application is submitted, a decision is made as part of the application review and approval process. Moreover, imposing that requirement would mean that only a landowner or

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his/her agent may obtain an interpretation of these matters, because they are the only ones that can submit a land use or building permit application. This interpretation would preclude the public, including concerned neighbors, from seeking an interpretation of the Code.

In sum, Mr. Pederson had a clear legal duty to provide an administrative interpretation in response to Glenrose's duly filed application. None of Mr. Pederson's excuses are valid. The first criterion for issuance of the writ has been satisfied.

2. No other plain, speedy, or adequate remedy exists to compel Pederson to compel the issuance of the administrative interpretation.

A writ of mandamus should only be issued when there is no plain, speedy, and adequate remedy in the ordinary course of law. *City of Kirkland v. Ellis*, 82 Wn. App. 819, 827 (1996). The remedy issue turns on whether the duty the petitioner seeks to enforce "cannot be directly enforced" by any means other than mandamus. *Eugster, supra*, 118 Wn. App. at 414.

Glenrose has no other adequate remedy because Mr. Pederson's mandatory duty cannot be directly enforced by any means other than mandamus. The only public official tasked with authority to issue an administrative interpretation is the Director of Planning. SCC 14.504.200. The County Code provides no mechanism to compel the Director of Planning to exercise his nondiscretionary duties. No other judicial cause of action exists. The second criterion has been satisfied.

3. Glenrose and its members have a beneficial interest in Mr. Pederson exercising his nondiscretionary duties.

For a writ of mandamus to be issued, the petitioning party must have standing, *i.e.,* be "beneficially interested." *Eugster,* 118 Wn. App. 383 at 402**.** A party has standing to bring an action for mandamus and, therefore, is considered to be beneficially interested, if the party has an interest in the action beyond that shared in common with other citizens. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 616 (2003).

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Glenrose and its members meet this test. Glenrose is a 501(c)(3) neighborhood organization with a mission to protect the rural character of the Glenrose neighborhood, the area impacted by the proposed sports fields. Hyslop Affidavit (Nov. 5, 2019) ¶ 3.[4] Glenrose's members live in the immediate vicinity of the proposed sports field complex and would suffer the impacts of the development. These impacts include interference with the use and enjoyment of their property from the increased traffic, increased noise, light pollution, and the resulting decrease in property values. *Id.* ¶ 8.

Glenrose has consistently asserted this interest in any forum that may address the impacts of the development participated extensively in opposing the SYSA development. Hyslop Affidavit ¶¶ 10-16. That included appealing the SEPA documents for the prior Little League proposal and, now, requesting an administrative interpretation on the SYSA proposal. *Id.* ¶ 11, 16.

Glenrose requested an administrative interpretation to resolve a long-standing dispute with the County that could significantly impact the character of the Glenrose neighborhood. The failure to provide an administrative interpretation deprives Glenrose and its members of their right to seek review, as specifically provided in the County Code and in LUPA. *See* SCC 14.502.060.

IV. CONCLUSION

For the reasons set forth above, 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.

[4] The Hyslop Affidavit was filed with the Petition for Peremptory Writ of Mandamus.

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Respectfully submitted,

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