

1 SUPERIOR COURT OF WASHINGTON  
2 COUNTY OF CLALLAM

3 SAVE OUR SEQUIM, a Washington 501(c)(4)  
4 Corporation; and

5 PARKWOOD MANUFACTURED HOUSING  
6 COMMUNITY, LLC, a Washington Limited  
7 Liability Company

8 Plaintiff

9 and

10 CITY OF SEQUIM, A Washington Municipal  
11 Corporation; and

12 JAMESTOWN S'KLALLAM TRIBE,

13 Defendant.

NO. 20-2-00304-05

MEMORANDUM OPINION

14 **I. Question Presented**

15 Should Plaintiffs' motion for a Temporary Restraining Order and Injunction be granted?

16 **II. Decision**

17 No.

18 **III. Facts**

19 Defendant Jamestown S'Klallam Tribe [Tribe] seeks approval for a building project  
20 within the City of Sequim. Defendant City of Sequim [City] has granted preliminary approval  
21 for the Tribe's project. Plaintiff Save Our Sequim and Plaintiff Parkwood Manufacturing  
22 Housing Community, LLC, [Plaintiffs] challenge the constitutionality and application of the  
23 municipal code provisions utilized by the City in the application process. The City's code  
24 includes provisions for Plaintiffs to appeal the City's decisions, and Plaintiffs affirm that they  
25 have appealed all decisions they believe are incorrect.

1 In addition to the municipal appellate process that they are pursuing, Plaintiffs filed the  
2 above captioned matter on May 5, 2020, seeking Declaratory, Injunctive, and Mandamus  
3 Relief. Further, On May 22, 2020, Plaintiffs filed an emergency motion for a temporary  
4 restraining order and injunction. It is that emergency motion which is before the court.<sup>1</sup>

#### 5 IV. Analysis

6 The issue before this court is not the merits of the Tribe's project. The issue is the  
7 proper method that should be employed to address the merits of the Tribe's application.<sup>2</sup>

8 Under RCW 7.40.020, a court may grant injunctive relieve when an applicant (1) has a  
9 clear, legal, or equitable right to relief; (2) has a well-grounded fear of immediate invasion of  
10 that right; and (3) has a basis to believe that the actions of the party against whom an injunction  
11 is sought are resulting in or will result in substantial damage to the applicant. *Port of Seattle v.*  
12 *Int'l Longshormen's & Warehousemen's Union*, 52 Wn. 2d 317, 319 (1958).

13 To the degree that the Plaintiffs' request seeks protections on behalf of others who  
14 might file a permit application with the City, the court denies that request. See *Whatcom Cty.*  
15 *v. Kane*, 31 Wn. App. 250, 253 (1981) (holding that a trial court should be careful not to issue a  
16 more comprehensive injunction than is necessary to remedy a proven abuse).  
17

18 Application of the requirements for an injunction, as it relates to Plaintiffs themselves,  
19 requires the court to consider the provisions of RCW 36.70C. This consideration leads to the  
20 conclusion that an injunction should be denied.

21 The Washington Legislature has enacted a very specific statutory scheme to be utilized  
22 to address complaints about the land use decisions of local jurisdictions. RCW 36.70C et seq.

23  
24 <sup>1</sup> The delay in handling this hearing was at the court's request for scheduling purposes. The court draws no  
inferences related to the merits of this motion based upon that continuance.

25 <sup>2</sup> It is unfortunate that such a large volume of material has been provided on extraneous issues.

1 Known as the Land Use Petition Act (LUPA), this law provides for “uniform, expedited appeal  
2 procedures and uniform criteria for reviewing [land use decisions] in order to provide  
3 consistent, predictable, and timely judicial review.” *Id.* at 010.

4 The phrase “land use decision” has two important aspects. *Id.* at 020(2). First, the  
5 statute describes the types of decisions that can become land use decisions. In relevant part, the  
6 statute defines qualifying decisions as those which relate to

- 7 (a) An application for a project permit or other governmental approval required  
8 by law before real property may be improved, developed, modified, sold,  
9 transferred, or used . . . ;  
10 (b) An interpretative or declaratory decision regarding the application to a  
specific property of zoning or other ordinances or rules regulating the  
improvement, development, modification, maintenance, or use of real property;

11 Second, a decision does not become a “land use decision” until there has been “a final  
12 determination by a local jurisdiction's body or officer with the highest level of authority to  
13 make the determination.”

14 With limited exceptions that are not applicable here, following the provisions of LUPA  
15 is the exclusive means of obtaining judicial review of land use decisions. *Id.* at 030.

16 In applying these statutes, the court concludes that the decisions made by the City fall  
17 squarely within the types of decisions covered by LUPA. As such, judicial review at this time  
18 is premature because a final determination has not been made “by a local jurisdiction's body or  
19 officer with the highest level of authority to make the determination.”

20 All parties agree that the City has hired a hearing examiner to review the Plaintiffs’  
21 challenges. In that administrative review process, the Plaintiffs will be able to present evidence  
22 and argue why they believe the decision is incorrect. During that process, the City and Tribe’s  
23 actions are on hold until a final decision is made. Once a decision is made, either party may  
24

1 file a LUPA petition and seek court review. At that time, either party may seek a stay during  
2 the judicial review period. *Id.* at 100.

3 Because LUPA applies to this case, the court concludes that Plaintiffs do not have a  
4 clear legal and equitable right to an injunction at this stage of the proceedings. Their remedy is  
5 to pursue an appeal in accordance with the City's administrative review process and then  
6 appeal that final land use decision to the superior court if they are dissatisfied. Neither the  
7 party nor the courts should presume a decision will be adverse or favorable before the final  
8 decision is made.

9 Additionally, Plaintiffs do not have a well-grounded fear of immediate invasion of a  
10 right. It is somewhat unclear to the court what right is at risk other than Plaintiffs' assertion  
11 that various constitutional rights are not protected by the City's code, or more generally that  
12 they are entitled to a process which is fair. Following a final land use determination and  
13 subsequent LUPA petition, a reviewing court would consider whether the following occurred:  
14

- 15 (a) The body or officer that made the land use decision engaged in unlawful procedure  
or failed to follow a prescribed process, unless the error was harmless;  
16 (b) The land use decision is an erroneous interpretation of the law, after allowing for  
such deference as is due the construction of a law by a local jurisdiction with  
17 expertise;  
18 (c) The land use decision is not supported by evidence that is substantial when viewed  
in light of the whole record before the court;  
19 (d) The land use decision is a clearly erroneous application of the law to the facts;  
20 (e) The land use decision is outside the authority or jurisdiction of the body or officer  
making the decision; or  
(f) The land use decision violates the constitutional rights of the party seeking relief.

21 RCW 36.70C.130(1). In simple terms, LUPA contemplates a review of such claims as a  
22 violation of constitutional rights and whether the decision maker who made the decision acted  
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1 unlawfully. Accordingly, there is no immediate invasion of these rights given that they are  
2 subject to review.

3 The court will note that Plaintiffs raised a question regarding whether they are parties of  
4 record. Neither the City nor Tribe has raised that question. Given that the parties agree as to  
5 their status, the court's intervention on this point is unnecessary. More importantly, the motion  
6 before the court does not seek to determine party status.

7 Finally, there is no basis to believe that the actions of the City or Tribe are resulting in  
8 or will result in substantial damage to the applicant. Those actions, at this point, consist of  
9 seeking and granting permit approval, all subject to further review within the City's decision  
10 making process. This project is still in the application stage. That process must be allowed to  
11 be completed. Once completed, judicial review can be sought. LUPA is meant to avoid  
12 judicial review of uncompleted processes.

13 Although not argued by the parties, one exception to the requirements to file a LUPA  
14 petition is judicial review of applications for a writ of mandamus. *Id.* at 030(1)(b). Here, the  
15 Plaintiffs have styled their complaint, in part, as a mandamus action. They seek a writ which  
16 would prevent the City from continuing its application review process for the Tribe's project.

17 The provisions of LUPA cannot be avoided simply because the title attached to the  
18 action filed would, on its face, constitute a statutory exception. The court must look at the  
19 substance of the request to determine LUPA's application. The decisions that Plaintiffs seek to  
20 have reviewed fall within the definition of land use decisions. Even if the City had taken some  
21 illegal action the challenge must still occur under LUPA. *Asche v. Bloomquist*, 132 Wn. App.  
22 784, 795 (2006) (citations omitted).  
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1 Mandamus would likely be appropriate in some circumstances. For example, if the City  
2 refused to accept a land use permit, or once received, refused to act upon that permit, an order  
3 directing action could be sought. Similarly if the City refused to recognize an appropriate  
4 person or entity as a party of record, mandamus might be warranted. However, mandamus is  
5 not available to compel the City to stop its appeal process which, ultimately, will result in a  
6 decision reviewable under LUPA.

7 Finally, Plaintiffs cite RCW 7.24.190 as the authority for the court to grant injunctive  
8 relief in this matter. This statute provides that such relief may be granted in order to “secure  
9 the benefits and preserve and protect the rights of all parties” to a proceeding. This statutory  
10 provision is part of the Uniform Declaratory Judgment Act. Case law is clear that declaratory  
11 judgment actions are properly reviewed under LUPA. *Chelan City v. Nykreim*, 146 Wn.2d 904,  
12 929 (2002); *Grandmaster Sheng-Yen Lu v. King Cty.*, 110 Wn.App. 92, 98-99 (2002).

13  
14 V. Conclusion

15 For the above reasons, the court denies the Plaintiffs’ motion for injunctive relief. The  
16 court will not consider other requests without motions and affidavits being filed in support of  
17 such requests. Should other motions be filed, the parties may incorporate, by reference,  
18 previously filed pleadings.

19 DATED this 24 day of June, 2020.

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22 BRENT BASDEN  
23 J U D G E

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25  
BRENT BASDEN  
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