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SEP 11 2014
K. Anderson
City of Kirkland

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SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

POTALA VILLAGE KIRKLAND, LLC, a
Washington limited liability company, and
LOBSANG DARGEY and TAMARA AGASSI
DARGEY, a married couple,

Plaintiffs/Petitioners,

vs.

THE CITY OF KIRKLAND, a Washington
municipal corporation,

Defendant/Respondent.

NO.

LAND USE PETITION AND
COMPLAINT FOR DECLARATORY
JUDGMENT, WRIT OF MANDAMUS,
CONSTITUTIONAL WRIT, AND
INJUNCTION

Potala Village Kirkland, LLC, a Washington corporation, and Lobsang Dargey and Tamara Agassi Dargey, a married couple, (collectively "Plaintiff") for their Land Use Petition and Complaint against defendant the City of Kirkland, a Washington municipal corporation, ("Defendant") allege as follows:

I. PARTIES

1.1 Potala Village Kirkland, LLC, and Lobsang Dargey and Tamara Agassi Dargey, a married couple, own property, have a legal interest in property, or are the applicant(s) for a land use permit related to property located within the City of Kirkland. Unless otherwise indicated, collectively the aforementioned entities shall be referred to hereafter as "Plaintiff."

1.2 Plaintiff may be contacted by and through the undersigned attorneys.

1.3 Defendant City of Kirkland is a Washington municipal corporation.

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II. JURISDICTION AND VENUE

2.1 This court has jurisdiction over this action pursuant to RCW 2.08.010; 7.16.160; and 7.24.010.

2.2 Venue is proper in King County, pursuant to RCW 4.12.020 and RCW 4.12.025, because the real property which is the subject of this action, the City action affecting the real property, and the Defendant City whose conduct is at issue, are all located in King County.

III. FACTS

3.1 The City of Kirkland is a Code City, operating pursuant to Title 35A RCW.

3.2 Plaintiff owns property located at the southeast corner of 10th Avenue South and Lake Street South in the City of Kirkland, site addresses of 21 10th Avenue South, 1006 Lake Street South, and 6700 Lake Washington Boulevard and comprised of tax parcel numbers 935490-0220, 935490-0240 and 082505-9233 (collectively referred to herein as the "Property").

3.3 On February 23, 2011, Plaintiff submitted an application for a Shoreline Substantial Development permit ("shoreline development permit") for Potala Village, reflecting the 143-unit design with just under 6,000 square feet of commercial space on the ground floor. Plaintiff submitted information under the shoreline development application that comprehensively addressed the significant aspects of the total proposed development, for example parking, building footprints, unit count, lot coverage and zoning considerations. The City advised Plaintiff that if they submitted a building permit application, the City would put that application on hold until the City completed its review of the shoreline development permit.

1 3.4 Despite processing Plaintiff's shoreline substantial development and associated
2 environmental review, and without clearly indicating any need or emergency, the City Council
3 imposed a moratorium on November 15, 2011, barring any new applications for all
4 Neighborhood Business ("BN") zoned properties. Ordinance 4335A. The moratorium was
5 clearly intended to respond to public comment regarding Plaintiffs' proposed development of
6 the Property: the shoreline development application was the only development application
7 pending among properties subject to the moratorium.
8

9 3.5 Despite statutory limits to the contrary, the City Council unanimously extended
10 the moratorium until December 31, 2012. After statutory mandate would have required
11 expiration of the moratorium, on October 16, 2012, Plaintiff attempted to submit a building
12 permit application. Defendant rejected that application based on the ongoing moratorium.
13

14 3.6 In December, 2012, Defendant adopted extensive changes to the BN zone...
15 After making such changes, Defendant lifted the moratorium.

16 3.7 Plaintiff subsequently filed legal action requesting judicial review of whether the
17 shoreline development permit application vested the project to the zoning and other land use
18 regulations in effect at the time of the complete application.

19 3.8 On May 10, 2013, King County Superior Court issued a decision in favor of
20 Plaintiffs, ruling that the shoreline substantial development permit application was subject to
21 the vested rights doctrine and that said application did in fact vest to those zoning laws and
22 land use regulations in force on February 23, 2011.

23 3.9 The Court ordered that: "This Court hereby enters declaratory judgment in favor
24 of Plaintiffs that Plaintiffs are entitled to apply for, and the City of Kirkland is required to issue
25

1 a decision on, building and other land development permit applications based on the zoning
2 and land use regulations in effect on the date of the shoreline substantial development permit
3 application, i.e. February 23, 2011.”

4 3.10 As part of that decision, the Court entered a peremptory writ of mandamus
5 ordering Defendant to accept and process an application for building permit by Plaintiffs based
6 on the on the zoning and land use regulations in effect on the date of the shoreline substantial
7 development permit application.
8

9 3.11 The Court denied a reconsideration request by Defendant. Defendant
10 subsequently appealed the King County Superior Court Decision to the Court of Appeals,
11 Division 1.

12 3.12 Despite the Superior Court’s express mandates under the declaratory judgment
13 and writ, Defendant did not file a request for stay under Rule of Appellate Procedure 8.1, or
14 RCW 36.70C.100 or other applicable legal authority.
15

16 3.13 In the meantime, Plaintiff expended significant resources to compile a building
17 permit application consistent with the Superior Court decision. Plaintiff submitted that
18 application on June 20, 2013. Defendant acknowledged receipt of said application on June 21,
19 2013.
20

21 3.14 On July 18, 2013, Defendant determined that the application submittal was
22 complete but that Plaintiff needed yet to pay certain fees (the ‘Determination of
23 Completeness”).

24 3.15 Upon substantive review, Defendant and Plaintiff had discussions as to whether
25 an updated traffic concurrency analysis was necessary. This discussion was resolved and

1 Plaintiff and Defendant continued processing of the building permit application. There was
2 email communication ongoing regarding the application's completeness and vesting which
3 ultimately concluded on January 8, 2014, with an email from Defendant's Building Plans
4 Examiner, Tom Bradford, confirming that the building permit application was deemed
5 complete and further submittals were technically revisions to a complete building permit
6 application.
7

8 3.16 Plaintiff worked diligently between 2013 and 2014 to process the building
9 permit at significant expense. That processing included extensive design review and detailed
10 construction review with Defendant as well as other Washington State agencies.

11 3.17 Defendant processed every aspect of the building permit application without any
12 indication that it would condition or deny the building permit application in the event of a
13 decision by the Court of Appeals in Defendant's favor.
14

15 3.18 During any point during its review of the building permit, Defendant could have
16 requested a stay but did not do so.

17 3.19 To the contrary, on November 19, 2013, Defendant's City Manager, Kurt
18 Triplett, issued a public letter to interested neighbors advising that Plaintiff had submitted a
19 building permit application and that the City was bound to follow the Superior Court decision.
20 Mr. Triplett recognized that the building permit process is ministerial and that only the 2011
21 regulations, i.e. those in effect for the shoreline permit and deemed vested to by the Superior
22 Court, apply to the building permit.
23

24 3.20 On July 31, 2014, Mr. Radford, advised Plaintiff by email that the building
25 permit was ready for pick up, i.e. was issued, as soon as Plaintiff was able to pay fees and

1 provide a 'lot consolidation' document (the "Building Permit"). Defendant required a lot
2 consolidation document so long as there was more than one owner of the properties underlying
3 the project.

4 3.21 Once Defendant notified Plaintiff that the building permit was ready for
5 issuance, Defendant had no legal excuse to refuse to issue the permit.

6 3.22 Attached to Mr. Radford's July 31, 2014 email was a list of building permit
7 conditions. A condition set forth in that list stated that Defendant would require Plaintiff to
8 agree that any building constructed under this building permit would have to be revised to
9 conform to current zoning requirements, regardless of the stage of construction, were the Court
10 of Appeals to rule in Defendant's favor (the "Revision Condition"). Prior to Mr. Radford's
11 July 31, 2014, email, Defendant did not provide any notice to Plaintiff that Defendant would
12 attempt to impose such a condition.

13 3.23 During the month of August, Plaintiff worked diligently to complete purchase of
14 the parcel that it held under a long term land lease. Plaintiff advised Defendant of this active
15 purchase process. On Monday, August 25, 2014, Plaintiff closed on the purchase of said
16 property and notified Defendant, via Mr. Radford, by email that Plaintiff had closed on the
17 property and was ready to pay building permit fees, submit the lot consolidation document and
18 collect the waiting Building Permit. Plaintiff advised that it would do so on the following day,
19 August 26, 2014, as that was the date the deed demonstrating fee simple ownership would
20 record.

21 3.24 On that very day, August 25, 2014, the Court of Appeals issued its decision,
22 reversing the Superior Court and finding in favor of Defendant, based in part on a decision
23

1 issued by the Washington State Supreme Court in May of 2014, i.e. almost a year after the
2 Superior Court decision.

3 3.25 At no time during the fourteen months between the Superior Court decision and
4 the Court of Appeals decision, did Defendant ever move to obtain a stay. To the contrary,
5 Defendant processed every aspect of the building permit application, recognizing its role was
6 purely ministerial and expressly recognizing that the building permit vested to 2011
7 regulations.
8

9 3.26 On Monday, August 25, 2014, at 5:18 p.m., Defendant, via Mr. Radford,
10 emailed Plaintiff advising that it would not issue the building permit as a result of the Court of
11 Appeals ruling earlier that day and that all construction activities were to be halted.

12 3.27 On Tuesday, September 2, 2014, Defendant's Building Services Manager, sent a
13 letter to Plaintiff admitting that Defendant had deemed the building permit complete as of July
14 18, 2013, but now wishing to 'correct' that determination, more than one year later, to advise
15 Plaintiff that Defendant would be issuing a Letter of Incompleteness.
16

17 3.28 Defendant issued said Letter of Incompleteness on Friday, September 5, 2014,
18 fourteen months after the City's Determination of Completeness.
19

20 **IV. FIRST CAUSE OF ACTION**

21 **LAND USE PETITION – CHAPTER 36.70C RCW**

22 4.1 Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
23 herein.
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2 4.2 Names and Mailing Addresses of Petitioner, which is identical to Plaintiff
3 herein, and which shall be referred to as Petitioner in this Fifth Cause of Action, are as
4 previously set forth in paragraph 1.1, above.

5 4.3 **Name and Mailing Address of Petitioners' Attorney.**

6 Duana T. Koloušková
7 Johns Monroe Mitsunaga Koloušková, PLLC
8 1601 114th Ave. S.E., Suite 110
9 Bellevue, WA 98004

10 4.4 **Name and Mailing Address of Local Jurisdiction.**

11 City of Kirkland
12 123 5th Avenue
13 Kirkland, WA 98033

14 4.5 **Identification of Decision Making Officer.** Tom Phillips, Building Services
15 Manager, City of Kirkland, was the Decision Making Officer. Additionally, Tom Radford,
16 Plans Examiner, and/or Angela Rugeri, were Decision Making Officers based on the
17 August 25, 2014, email and the September 5, 2014 letter of incompleteness. The Land Use
18 Decision consists of the September 2, 2014 letter attempting to retract the Determination of
19 Completeness, the September 5, 2014, Letter of Incompleteness, and Mr. Radford's August 25,
20 2014 email. Exhibits A-C.

21 4.6 Identification of Each Party under RCW 36.70C.040 (2) (b)-(d). All such
22 parties are Petitioners in this matter.

23 4.7 Facts Demonstrating Petitioner has Standing. Petitioner has standing under
24 RCW 36.70C.060 as the owner, holder of property interests and applicant concerning the
25 property to which the Land Use Decisions apply.

4.8 Petitioner's Statement of Error.

4.8.1. The Land Use Decision at issue was the result of unlawful procedure
and/or the City's failure to follow prescribed process because the City does not have legal

1 authority to (a) impose the Revision Condition, (b) retract a final Determination of
2 Completeness (c) refuse to release the building permit, (d) issue a new Letter of
3 Incompleteness, or (e) otherwise exceed its role in reviewing and issuing a ministerial permit
4 based on the Determination of Completeness. The City had ample opportunity to appeal its
5 original July 18, 203 Determination of Completeness and/or to obtain a stay of the Superior
6 Court decision but failed to do so. The City was bound by its role in reviewing and approving a
7 ministerial permit based on the final and binding Determination of Completeness, to issue the
8 Building Permit without the Revision Condition. Further, Defendant's Revision Condition and
9 refusal to issue the Building Permit without the Revision Condition constitutes a violation of
10 Defendant's obligation to file a request for stay under Rule of Appellate Procedure 8.1, or
11 RCW 36.70C.100 or other applicable legal authority.

12 4.8.2 The Land Use Decision is a clearly erroneous application of the law to
13 the facts, an erroneous interpretation and application of the law, not based on substantial
14 evidence, and outside the authority or jurisdiction of the City because the City does not have
15 legal authority, including but not limited to under RCW 19.27.095 et seq., Washington State
16 constitutional and common law and City of Kirkland regulations, to (a) impose the Revision
17 Condition, (b) retract a final Determination of Completeness (c) refuse to release the building
18 permit, (d) issue a new Letter of Incompleteness, or (e) otherwise exceed its role in reviewing
19 and issuing a ministerial permit based on the Determination of Completeness.

20 4.8.3 The Land Use Decision is a violation of Petitioner's right to substantive
21 and procedural due process of law, equal protection of the law, and to be free from arbitrary,
22 capricious and unlawful conduct because the City does not have legal authority to (a) impose
23 the Revision Condition, (b) retract a final Determination of Completeness (c) refuse to release
24 the building permit, (d) issue a new Letter of Incompleteness, or (e) otherwise exceed its role in
25 reviewing and issuing a ministerial permit based on the Determination of Completeness.

1 Defendant's Revision Condition and refusal to issue the Building Permit without the Revision
2 Condition constitutes a violation of Plaintiff's right to due process as Defendant failed to file a
3 request for stay under Rule of Appellate Procedure 8.1, or RCW 36.70C.100 or other applicable
4 legal authority.

5 4.9 Statements of Facts Relied Upon to Sustain Petitioner's Statement of Error.

6 Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein.

7 4.10 Petitioner requests the following relief pursuant to the Land Use Petition Act:

8 4.10.1 A determination that Petitioner has met its burden of proof under one or
9 more of the standards listed in RCW 36.70C.130.

10 4.10.2 Reversal of the Land Use Decision and remand to the City directing the
11 City to allow Petitioner to pay fees, pick up the Building Permit without imposition of the
12 Revision Condition, and construct the building as approved under the Building Permit.

13
14 **V. SECOND CAUSE OF ACTION**
15 **DECLARATORY RELIEF—CHAPTER 7.24 RCW**

16 5.1 Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
17 herein.

18 5.2 Defendant has a public duty to act within the public's interest and use its
19 authority to legitimately exercise its police powers.

20 5.3 Defendant's actions in (a) imposing the Revision Condition, (b) retracting a final
21 Determination of Completeness (c) refusing to release the building permit, and (d) and issuing
22 a new Letter of Incompleteness individually and/or collectively violated applicable Washington
23 State law, including but not limited to RCW 19.27.095 et seq., Washington State constitutional
24 and common law and City of Kirkland regulations. Defendant had the duty to review and issue
25 a ministerial building permit based on a final Determination of Completeness and the building

1 permit application without condition or change to the vested-to laws and regulations as were in
2 place based on the July 18, 2013, Determination of Completeness. Defendant's Revision
3 Condition and refusal to issue the Building Permit without the Revision Condition constitutes a
4 violation of Defendant's obligation to file a request for stay under Rule of Appellate Procedure
5 8.1, or RCW 36.70C.100 or other applicable legal authority.

6 5.4 For the reasons stated herein, a real, justiciable controversy exists between
7 Plaintiffs and Defendant regarding Defendant's refusal to allow Plaintiff to pick up the building
8 permit and Defendant's attempt to impose the Revision Condition and subsequently issue a
9 new Letter of Incompleteness. Plaintiff is entitled, pursuant to the Uniform Declaratory
10 Judgments Act, chapter 7.24 RCW, to a declaration that Defendant's conduct is in violation of
11 RCW 19.27.095 and Washington State law and City of Kirkland regulations, and that
12 Defendant is required to allow Plaintiff to pick up the Building Permit without imposition of
13 the Revision Condition, and construct the building as approved under the Building Permit.

14 **VI. THIRD CAUSE OF ACTION**
15 **WRIT OF MANDAMUS- RCW 7.16.150 et seq.**

16 6.1 Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
17 herein.

18 6.2 In the event the Court will not entertain Plaintiff's Declaratory Judgment so as to
19 allow complete and full relief to Plaintiff, then it will have no plain, speedy or adequate remedy
20 at law.

21 6.3 For the reasons stated herein, a real, justiciable controversy exists between
22 Plaintiff and Defendants regarding whether Defendant's actions in (a) imposing the Revision
23 Condition, (b) retracting a final Determination of Completeness (c) refusing to release the
24 building permit, and (d) and issuing a new Letter of Incompleteness violated applicable
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1 Washington State law, including but not limited to RCW 19.27.095 and Defendant's duty to
2 review and issue a ministerial permit based on a final Determination of Completeness.

3 6.4 Further, a real, justiciable controversy exists between Plaintiff and Defendants
4 regarding whether Defendant's Revision Condition and refusal to issue the Building Permit
5 without the Revision Condition constitutes a violation of Defendant's obligation to file a
6 request for stay under Rule of Appellate Procedure 8.1, or RCW 36.70C.100 or other applicable
7 legal authority.

8 6.5 Defendant's refusal to allow Plaintiff to pick up the Building Permit without
9 imposition of the Revision Condition, and construct the building as approved under the
10 Building Permit and is an act for which a Writ of Mandamus lies. Plaintiff is entitled to apply
11 for and obtain issuance of a statutory Writ of Mandamus, pursuant to RCW 7.16.150 et seq., to
12 order Defendant allow Plaintiff to pick up the Building Permit without imposition of the
13 Revision Condition, and construct the building as approved under the Building Permit.

14 **VII. FOURTH CAUSE OF ACTION**
15 **CONSTITUTIONAL WRIT, EXTRAORDINARY WRIT,**
16 **WRIT OF CERTIORARI 7.16.030-140 et seq.**

17 7.1 Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
18 herein.

19 7.2 In the event the court will not entertain Plaintiff's Declaratory Judgment so as to
20 allow complete and full relief to Plaintiff, then Plaintiff will have no plain, speedy or adequate
21 remedy at law.

22 7.3 For the reasons set forth above, the Court should issue a Writ of Certiorari or
23 Review, pursuant to RCW 7.16.030 et seq., declaring Defendant's actions to be unlawful for
24 the reasons set forth above, that Defendant lacked authority or legal basis to require the
25 Revision Condition, to issue the Letter of Incompleteness, and to refuse to allow Plaintiff to

1 pick up the Building Permit without imposition of the Revision Condition, and construct the
2 building as approved under the Building Permit. Further, the Court should issue a Writ of
3 Certiorari or Review declaring that Defendant's Revision Condition and refusal to issue the
4 Building Permit without the Revision Condition violate Defendant's obligation to file a request
5 for stay under Rule of Appellate Procedure 8.1, or RCW 36.70C.100 or other applicable legal
6 authority.

7 7.4 In the alternative, or the reasons set forth above, the Court should issue an order
8 based on Constitutional Writ declaring Defendant's actions to be unlawful for the reasons set
9 forth above, that Defendant lacked authority or legal basis to require the Revision Condition, to
10 issue the Letter of Incompleteness, and to refuse to allow Plaintiff to pick up the Building
11 Permit without imposition of the Revision Condition, and construct the building as approved
12 under the Building Permit. Further, the Court should issue a Constitutional Writ declaring
13 Defendant's Revision Condition and refusal to issue the Building Permit without the Revision
14 Condition violate Defendant's obligation to file a request for stay under Rule of Appellate
15 Procedure 8.1, or RCW 36.70C.100 or other applicable legal authority.

16
17 **VIII. FIFTH CAUSE OF ACTION**
 INJUNCTIVE RELIEF—CHAPTER 7.40 RCW

18 8.1 Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
19 herein.

20 8.2 Plaintiff will suffer irreparable harm from Defendant's refusal to allow Plaintiff
21 to pick up the Building Permit without imposition of the Revision Condition, and construct the
22 building as approved under the Building Permit. Plaintiff is entitled to a temporary injunction,
23 permanent injunction or both, as may be necessary to restrain Defendant from attempting to
24 impede Plaintiff from picking up the Building Permit without imposition of the Revision
25 Condition, and constructing the building as approved under the Building Permit. Further,

1 Plaintiff is entitled to a temporary injunction, permanent injunction or both, as may be
2 necessary to restrain Defendant from taking any other further action that would interfere with
3 Plaintiff's right to pick up the Building Permit without imposition of the Revision Condition,
4 and construct the building as approved under the Building Permit.
5

6 **IX. RELIEF REQUESTED**

7 Plaintiff prays for judgment as follows:

8 1. For an order directing a speedy hearing in this action for declaratory judgment
9 and advancing such hearing on the court's calendar pursuant to CR 57;

10 2. For relief under the Land Use Petition Act as set forth in Section 4.10, above

11 3. For a declaratory judgment in favor of Plaintiff that Defendant's conduct is in
12 violation of Washington law and City of Kirkland regulations and that Defendant is required to
13 allow Plaintiffs to pick up the Building Permit without imposition of the Revision Condition,
14 and construct the building as approved under the Building Permit;

15 4. For a Writ of Mandamus ordering Defendant to allow Plaintiff to pick up the
16 Building Permit without imposition of the Revision Condition, and construct the building as
17 approved under the Building Permit;

18 5. For a Writ of Certiorari ordering Defendant to allow Plaintiff to pick up the
19 Building Permit without imposition of the Revision Condition, and construct the building as
20 approved under the Building Permit;

21 6. For injunctive relief to restrain Defendant from attempting to impede Plaintiff
22 from picking up the Building Permit without imposition of the Revision Condition, and
23 constructing the building as approved under the Building Permit;

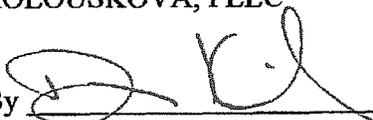
24 7. For permission to amend the pleadings to conform to the proof; and

25 8. For such other and further relief as may be just and equitable.

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DATED this 11th day of September, 2014.

JOHNS MONROE MITSUNAGA &
KOLOUŠKOVÁ, PLLC

By 
Duana T. Koloušková, WSBA #27532
Attorneys for Plaintiffs/Petitioners

435-1 LUPA Complaint for Building Permit Issuance 9-10-14.doc

Duana Kolouskova

Subject: FW: CONFIDENTIAL AND PRIVILEGED
Attachments: 70542-3.pdf

From: Tom Jensen [mailto:TJensen@kirklandwa.gov]
Sent: Monday, August 25, 2014 5:18 PM
To: Joe Zlab
Cc: Tom Radford; Angela Ruggeri; John Burkhalter
Subject: FW: CONFIDENTIAL AND PRIVILEGED

Good afternoon Joe,

I am responding to your earlier email in Tom Radford's absence.

As you know, the zoning and other land use controls, rules and regulations applicable to the development project pursued by Potala Village in the City of Kirkland have been the subject of litigation. It has been Potala Village's position that the project is vested in the zoning and other land use controls in effect on the date it filed a complete Shoreline Substantial Development Permit, which occurred on February 23, 2011. It has been the City's position that the project is not vested until the date the applicant filed a complete Building Permit application, which did not occur until July 18, 2013.

On May 9, 2013, the trial court entered an order holding that the project was vested as of the date Potala Village filed its Shoreline Substantial Development Permit. The City appealed this order to the Court of Appeals in a timely manner, Potala Village Kirkland, LLC v. City of Kirkland, No. 70542-3-I. As you know, Potala Village's project has always been subject to the outcome of this appeal. *See, for instance*, the courtesy copy of the draft "Specific Permit Conditions" the City provided to Potala Village on July 31, 2014, which clearly continued the City's notification to Potala Village that the zoning and other land use regulations applicable to its project would be determined at the conclusion of the appeal.

Today, August 25, 2014, the Washington Court of Appeals issued its opinion in Potala Village, LLC v. City of Kirkland, No. 70542-3-1, reversing the decision of the trial court and holding that Washington's vested rights doctrine does not apply to the Shoreline Substantial Development permit application filed by Potala Village on February 23, 2011. Instead, Potala Village's project did not obtain vested rights until the date it filed a complete building permit application with the City, which did not occur until July 18, 2013. A copy of the Court of Appeal's opinion is attached. The Court of Appeal's stated: "[W]e hold that the filing of the application for the shoreline substantial development permit, without filing an application for a building permit, did not vest rights to zoning or other land use control ordinances." (Page 12 of opinion.) At this time, the City and Potala Village must both comply with the Court of Appeal's decision. If you have any further questions about this decision, you should contact your own attorney.

Zoning and Land Use Laws Applicable to the Potala Village Project

On December 11, 2011, the Kirkland City Council enacted Ordinances O-4389 and O-4390 amending the Comprehensive Plan and Zoning Code provisions applicable to Potala Village's development project. In addition, the City Council passed Resolution R-4945 approving amended design guidelines also applicable to Potala Village's development project. Based upon the Court of Appeal's decision issued today, the building permit application filed by Potala Village on July 18, 2013 is subject to the zoning and other land use ordinances in effect on that date, including, but not limited to, Ord. Nos. O-4389 and O-04390 and Res. 4945. Please submit revisions to amend the building permit application to comply with the zoning or other land use ordinances in effect on July 18, 2013.

EXHIBIT A

Furthermore, Potala Village is not now authorized to conduct any grubbing (including tree removal), shoring, or construction activity unless or until appropriate permits are issued. On the other hand, the installation of the ground monitoring wells under the right-of-way permit (PUB14-04905) under the Voluntary Cleanup with the Washington State Department of Ecology may proceed.

Best regards,
Tom Jensen



September 2, 2014

Joe Zlab
Path America
2804 Grand Avenue, Suite 308
Everett, WA 98201

Subject: Applications for Shoring/Excavation and Building Permits
Permit Numbers: Building BNR13-03290/Shoring BNR14-01940

Dear Mr. Zlab:

Because of the Washington Court of Appeals decision issued on August 25, 2014, in Potala Village, LLC v. City of Kirkland, No. 70542-3-1, and as explained in the email from Plan Review Supervisor Tom Jensen on the same date, the building permit application for the Potala Village project cannot be approved as submitted. A correction does, however, need to be made to the City's August 25, 2014, email. In the first and third paragraphs of the email, reference was made to July 18, 2013, as having been the date that the Potala Village building permit was determined to be complete. While the permit was previously determined to have been complete, that determination was based upon the zoning and other land use ordinances in effect in on February 23, 2011. This was done because King County Superior Court Judge Benton ordered the City to accept and process the Potala Village building permit application under the zoning and land use regulations in effect on February 23, 2011. Based upon the Court of Appeals recent decision, however, the Potala Village building permit application is no longer compliant with the City's applicable zoning and other land use ordinances and, thus, is not complete under RCW 19.27.095(1).

We want to let you know that the Potala Village project cannot be approved as currently designed and a Determination of Incompleteness is being issued. Furthermore, consistent with the recent Court of Appeals decision in Potala Village, LLC v. City of Kirkland, No. 70542-3-1, the Determination of Incompleteness will require Potala Village to submit updated application materials consistent with the City's current zoning code and other land use regulations, including, but not limited to, the 2012 editions of the building related codes. You will not be asked to submit an entirely new building permit application at this time, but simply to update the application on file. The updated Potala Village building permit application will be considered under the zoning and other land used controls in effect when it is fully complete. When you submit the updated building permit application, recall that the submittal will be subject to review by the Design Review Board (DRB). Following DRB review, your building permit application may need to be further revised.

Sincerely,

A handwritten signature in black ink that reads "Tom Phillips".

Tom Phillips
Building Services Manager

EXHIBIT B

September 5, 2014



Joe Zlab
Path America
2804 Grand Avenue, Suite 308
Everett, WA 98201

Dear Mr. Zlab:

Subject: Building Permit Nos. BNR13-03290 (Building) and BNR14-01940 (Shoring)

As explained in the letter from Building Services Manager Tom Phillips, dated September 2, 2014, the Potala Village project cannot be approved as currently designed and, as a result, the building permit application is incomplete. In order to update the building permit application, the following additional application material is requested:

- The building plans do not meet the current Zoning Code regulations for the BN zone where the property is located. The plans must be updated to meet density limits, commercial frontage requirements, and all other Zoning Code regulations.
- The plans must also be updated to conform to all other current City codes and ordinances.

Please submit the updated material to Mybuildingpermit.com, in order to continue the review process. Submittal of the updated material does not guarantee approval of your permit.

- The Zoning Code also requires Design Review per Chapter 142 for development in the BN zone. The Design Review Board must issue their approval or conditional approval prior to the issuance of a building permit per ZC Section 142.35.10.

Please go to Mybuildingpermit.com to submit the Design Review Application. Once there, go to "Apply" under "Quick links." The basic permit information that is required is below:

Jurisdiction	Application Type	Project Type	Activity Type	Scope of Work
<i>Kirkland</i>	<i>Land Use</i>	<i>Any Project Type</i>	<i>Project or Site Plan Approval</i>	<i>Conceptual Design Conference</i>

If you have any further questions regarding the requested information listed above, please do not hesitate to contact me at 425-587-3256. If you have any other questions, please telephone your plan reviewer from the appropriate department directly.

Sincerely,

PLANNING AND COMMUNITY DEVELOPMENT

Angela Ruggieri
Senior Planner

EXHIBIT C

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

POTALA VILLAGE KIRKLAND,
LLC

Petitioner(s),

vs.

CITY OF KIRKLAND

Respondent(s)

NO. 14-2-25112-2 SEA

ORDER SETTING LAND USE CASE SCHEDULE

ASSIGNED JUDGE: Schubert, Kenneth, Dept. 40

FILED DATE: 9/11/2014

TRIAL DATE: 2/9/2015

SCOMIS CODE: *ORSCS

A Petition Seeking Review of a Land Use decision under the Revised Code of Washington (RCW) 36.70C has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

THE PERSON (PETITIONER) SEEKING REVIEW OF A LAND USE DECISION MUST:

1. File a *Land Use Petition* within the time frames as instructed by applicable RCW 36.70C.040.
2. Serve a copy of the *Land Use Petition* and this *Order Setting Case Schedule (Land Use Petition)* (including these Notices) on all other parties to this action. You, as the person who started this *Petition*, must make sure the other person and/or agency is notified of your action and gets a copy of the Schedule. See Revised Code of Washington RCW 36.70C.040 (5). Your signature must appear on this form showing that you understand that you must make sure the other person and/or agency gets a copy of this form.
3. Pay the statutory filing fee to the Clerk of the Superior Court in which the *Petition* is filed.

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the rules of the court -- especially those referred to in this Schedule. In order to comply with the Schedule, it will be necessary for attorneys and parties to pursue their appeals vigorously from the day they are filed. All events must occur promptly. If they are late, the Superior Court Clerk is authorized by the *King County Superior Court Local Rules* to schedule the petition for a dismissal hearing.

"I understand that I am required to give a copy of these documents to all parties in this case."

PRINT NAME

SIGN NAME

I. NOTICES (continued)

STIPULATION/MOTION TO CHANGE INITIAL HEARING:

Parties may file a stipulation or any party may file a motion to change the initial hearing prior to the deadline as shown on the Schedule. A copy of the stipulation or motion must be filed with the assigned Judge. Preliminary hearings must be set on Fridays. Stipulated change of hearing dates must be within +/- 7 days of the original date and must be approved by the assigned judge.

MOTIONS ON JURISDICTIONAL AND PROCEDURAL ISSUES:

Motions on jurisdictional and procedural issues shall comply with Civil Rule 7 and King County Local Rule 7, except that the minimum notice of hearing requirement shall be 8 days.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff of the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

NOTICE OF NON-COMPLIANCE FEES:

ALL parties will be assessed a fee authorized by King County Code 4A.630.020 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements as per Local Rule 4 and/or dismissal of actions as per Local Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/courts/clerk.

II. CASE SCHEDULE

√	CASE EVENTS	DATE
√	Petition for Review of Land Use Decision Filed and Schedule Issued [See RCW 36.70C.040].	9/11/2014
	DEADLINE to Contact Assigned Judge to Confirm Initial Hearing [See RCW 36.70C.080].	9/18/2014
√	DEADLINE to Stipulate or File a Motion for Change of Hearing Date or Adjustment of Schedule [See RCW 36.70C.080(1); RCW 36.70.090].	10/9/2014
	Initial Hearing on Jurisdictional and Preliminary Matters (FRIDAYS ONLY) [See RCW 36.70C.080].	10/31/2014
√	DEADLINE for Filing Certified Copy of the Local Jurisdiction Record [See RCW 36.70C.110].	12/15/2014
√	DEADLINE for filing Brief of Petitioner [See RCW 36.70C.080(4)].	1/5/2015
√	DEADLINE for filing Brief of Respondent [See RCW 36.70C.080(4)].	1/26/2015
√	DEADLINE for filing Reply Briefs [See RCW 36.70C.080(4)].	2/2/2015
	Review Hearing/Trial Date [See RCW 36.70C.090].	2/9/2015

The √ indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

III. ORDER

Pursuant to King County Local Rule 4 (KCLCR 4), it is **ORDERED** that all parties involved in this action shall comply with the schedule listed above and that failure to meet these event dates will result in the dismissal of the appeal. It is **FURTHER ORDERED** that the party filing this action **must** serve this *Order Setting Land Use Petition Case Schedule* and attachment on all other parties.

Susan J. Craighead

DATED: 9/11/2014

PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE.

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

CASE SCHEDULE AND REQUIREMENTS: Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report:

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx>. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

C. Trial: Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Non-dispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other

motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Emergency Motions: Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

B. Original Documents/Working Copies/ Filing of Documents: All original documents must be filed with the Clerk's Office. Please see information on the Clerk's Office website at www.kingcounty.gov/courts/clerk regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at www.kingcounty.gov/courts/clerk.

Service of documents: E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at www.kingcounty.gov/courts/clerk regarding E-Service.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

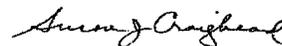
Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. **If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.**

C. Form

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for non-dispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PEITITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

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5 **SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING**

6
7 POTALA VILAGE KIRKLAND, LLC, a
Washington limited liability company, and
8 LOBSANG DARGEY and TAMARA AGASSI
DARGEY, a married couple,

9
10 Plaintiffs,

11 vs.

12 THE CITY OF KIRKLAND, a Washington
municipal corporation,

13
14 Defendant.

NO.

SEA

SUMMONS

15 THE STATE OF WASHINGTON TO: THE CITY OF KIRKLAND, DEFENDANT

16 1. A lawsuit has been started against you in the above-entitled court by the
17 plaintiffs.

18 2. Plaintiffs' claim is stated in the written complaint, a copy of which is served
19 upon you with this summons.

20 3. In order to defend against this lawsuit, you must respond to the complaint by
21 stating your defense in writing, and serve a copy upon the undersigned person within 20
22 days (if service is made on you within the state of Washington), or within 60 days (if
23 service is made on you outside the state of Washington), after the date of service on you of
24 this summons, excluding the day of service, or a default judgment may be entered against
25

1 you without notice. A default judgment is one where the plaintiffs may be entitled to what
2 is asked for because you have not responded.

3 4. If you serve a notice of appearance on the undersigned person you are
4 entitled to notice before a default judgment may be entered.

5 5. If not previously filed, you may demand that the plaintiffs file this lawsuit
6 with the court. If you do so your demand must be in writing and must be served upon the
7 undersigned person. Within 14 days after you serve your demand, the plaintiffs must file
8 this lawsuit with the court, or the service on you of this summons and complaint will be
9 void.
10

11 6. If you wish to seek the advice of a lawyer in this matter, you should do so
12 promptly so that your written response, if any, may be served on time.

13 7. This summons is issued pursuant to Rule 4 of the Civil Rules for Superior
14 Court of the State of Washington.
15

16 DATED this 11th day of September, 2014.

17
18 JOHNS MONROE MITSUNAGA
KOLOUŠKOVÁ, PLLC

19
20 By 
21 Duana Kolouskova, WSBA #27532
22 Attorneys for Plaintiffs

23 *435-1 Summons 09-11-14.doc*
24
25