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

SPANAWAY CONCERNED
CITIZENS,

Petitioner,

v.

PIERCE COUNTY; TACOMA RESCUE
MISSION; AHBL, INC.,

Respondents.

NO.

LAND USE PETITION

1. Name and Mailing Address of the Petitioner

The name and mailing address of the petitioner is Spanaway Concerned Citizens, 1709 169th Street Ct. S, Spanaway, WA, 98387-9141.

2. Name and Mailing Address of the Petitioner's Attorney

The names and mailing address of the petitioner's attorneys are David A. Bricklin and Zachary K. Griefen, Bricklin & Newman, LLP, 123 NW 36th Street, Suite 205, Seattle, WA 98107, telephone 206-264-8600, bricklin@bnd-law.com; griefen@bnd-law.com (with copies to shaffer@bnd-law.com).

1 3. The Name and Mailing Address of the Local Jurisdiction Whose Land Use Decision is at Issue

2 The name and address of the local jurisdiction whose land use decisions are at issue is Pierce
3 County, 930 Tacoma Avenue S., Tacoma, WA 98402.

4 4. Identification of the Decision-Making Body or Officer

5 This lawsuit challenges a decision issued by the Pierce County hearing examiner on June 3,
6 2024. The decision was modified in rulings on cross-motions for reconsideration, entered by a
7 different hearing examiner, on September 12, 2024. Copies of the original determination and the
8 reconsideration ruling are attached to this appeal as Exhibit A and Exhibit B, respectively.

9
10 5. Respondents and Identification of Each Person to be Made a Party Under RCW
11 36.70C.040(2)(b)-(d)

12 Pierce County
13 930 Tacoma Avenue S.,
14 Tacoma, WA 98402

15 Tacoma Rescue Mission (Owner)
16 P.O. Box 1442
17 Graham, WA 98338-1442

18 Tacoma Rescue Mission (Applicant)
19 Attn: Duke Paulson, Exec. Director
20 425 South Tacoma Way
21 Tacoma, WA 98402

22 AHBL, Inc. (Applicant's Agent)
23 Attn: Todd Sawin, P.E.
24 2215 North 30th Street, Suite 300
25 Tacoma, WA 98406

26 6. Facts Demonstrating that the Petitioner Has Standing to Seek Judicial Review

6.1 Spanaway Concerned Citizens and its members are prejudiced or likely to be
prejudiced by the decisions on appeal.

1 6.2 The Tacoma Rescue Mission has proposed development of four parcels totaling 86.32
2 acres in the Spanaway neighborhood in Pierce County. Final build-out of the development will consist
3 of 189 park model style recreational vehicles, 96 micro sleeping units, maintenance buildings, an
4 administrative building, a civic building, 285 parking spaces, and more.

5
6 6.3 Spanaway Concerned Citizens and its members will be directly harmed and adversely
7 aggrieved and affected by the proposed development. Spanaway Concerned Citizens is a not-for-profit
8 community organization and Washington nonprofit corporation with a mission to advocate for
9 responsible land use policies and decisions in Pierce County.

10 6.4 Members of Spanaway Concerned Citizens own property and live directly adjacent to,
11 in close proximity to, and near the proposed Tacoma Rescue Mission shared housing village
12 development. Members drive on the neighborhood's roads and hike on neighborhood trails, enjoy
13 watching birds and wildlife in their backyards and on JBLM land and Spanaway Marsh immediately
14 to the south of the proposed development, and otherwise peacefully and quietly enjoy their properties
15 and their natural surroundings.

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17 6.5 The approved development would substantially and adversely change the character of
18 the Spanaway neighborhood. The approved development would add noise, traffic, smoke, and highly
19 visible commercial-type structures (the agriculture building and civic building) with extensive parking
20 areas, to the existing residential neighborhood. It would also increase the risk of loss of an endangered
21 species' primary habitat and loss of important wetland functions, thereby injuring Spanaway
22 Concerned Citizens' members who live, use, and enjoy life in the Spanaway neighborhood.

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24 6.6 The interests at stake in this matter are germane to appellant's organizational purposes.
25 Spanaway Concerned Citizens is particularly concerned about ensuring that the proper version of the
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1 development code is applied to the applications and that the application is consistent with the density
2 provisions of the Comprehensive Plan.

3 6.7 Spanaway Concerned Citizens has a strong interest in ensuring that both the county
4 and the applicant apply the proper version of the development code and ensuring consistency with the
5 Comprehensive Plan.

6 6.8 Compliance with SEPA's requirements would protect Spanaway Concerned Citizens'
7 members by forcing consideration and analysis of the project's impacts on the state-endangered
8 western gray squirrel and its habitat, wetlands, and other elements of the environment.

9 6.9 Spanaway Concerned Citizens' interests are among those that the Pierce County
10 hearing examiner was required consider when issuing the decisions. The laws implicated by this
11 project were written for the very purpose of addressing and mitigating the harms that will be caused
12 to its members.

13 6.10 A judgment in favor of Spanaway Concerned Citizens would substantially eliminate
14 or redress the prejudice to them. Compliance with the laws at issue would protect the Spanaway
15 Concerned Citizens' members by forcing consideration and analysis of the project's impacts to the
16 character of their neighborhood, to the state-endangered western gray squirrel and its habitat, to
17 wetlands, and to other elements of the environment.

18 6.11 Spanaway Concerned Citizens have exhausted their administrative remedies to the
19 extent required by law. The group's representatives and members appeared and submitted oral
20 argument, testimony, and exhibits in the hearings held by the examiner on their SEPA appeal and the
21 underlying Planned Development District and Conditional Use Permit applications. The examiner's
22 decision on reconsideration is a final land use decision as defined by RCW 36.70C.020.

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1 7. A Separate and Concise Statement of Each Error Alleged to Have Been Committed and the
2 Facts Upon Which the Petitioner Relies to Sustain the Statements of Error

3 7.1 The examiner erred by applying the wrong version of the development code to the
4 application. The examiner applied the code that was in effect when the application was filed, not the
5 version of the code in effect when the examiner entered his decision. The examiner applied the
6 outdated version of the code because he believed that the application vested to the code in effect when
7 the application was filed. The examiner recognized that the application would vest to that earlier code
8 only if it was “complete” when filed. The examiner also recognized that the code defines a complete
9 application as one that includes authorizations from all owners of the property. The examiner erred
10 when he concluded that all owners authorized the application and, therefore, was complete and vested
11 to the code then in effect. In fact, a portion of the property had been condemned by a drainage district
12 100 years ago. The application was not signed by the owners of that part of the property. The examiner
13 erroneously concluded that the drainage district had not condemned the property in fee but only took
14 an easement. The examiner committed an error of law in concluding that the drainage district
15 condemned only an easement and, consequently, that the application was complete and vested to the
16 now repealed land use code. The examiner’s decision on this issue also was not supported by
17 substantial evidence and was a clearly erroneous application of the law to the facts.

18 7.2 The examiner erred on reconsideration by not accepting or considering documents that
19 Spanaway Concerned Citizens submitted in support of its vesting argument with its request for
20 reconsideration. Spanaway Concerned Citizens did not have adequate time to respond to the
21 applicant’s information, which was submitted only the day before oral argument on the vesting issue.
22 The information submitted in support of Spanaway Concerned Citizens’ vesting argument with its
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1 request for reconsideration is highly relevant to the examiner’s erroneous conclusion that the drainage
2 district had not condemned the property in fee but only took an easement.

3 7.3 The examiner misapplied PCC 1.22.130 in the Sept. 12, 2024 final decision on
4 reconsideration to preclude appellant Spanaway Concerned Citizens’ argument that there was a
5 misinterpretation of fact in the June 3, 2024 decision. The examiner ruled that PCC 1.22.130.B
6 applicable to the irregularity in the proceedings before the examiner precluded review under PCC
7 1.22.130.A of the provision for a misinterpretation of fact. Either would be sufficient grounds for
8 reconsideration. The request for reconsideration detailed pertinent information in the existing record
9 without requiring re-opening of the record, including a superior court order and decree.

10
11 7.4 The examiner erred in concluding that the application is consistent with the density
12 provisions of the Comprehensive Plan. A proposal that is inconsistent with the Comprehensive Plan
13 cannot vest. PCC 18.40.020.B. Nor can it be approved. PCC 18A.75.030.A & B.1.b. The examiner’s
14 erroneous conclusion regarding Comprehensive Plan consistency thus spawned two additional errors
15 (that it was vested and could be approved).

16
17 The Parkland-Spanaway-Midland (PSM) Community Plan is an element of the
18 Comprehensive Plan. That community plan sets a maximum density of three dwelling units per acre.
19 The proposal includes 289 sleeping units, each of which is a dwelling for purposes of calculating
20 density in the Comprehensive Plan. The resulting density (289 units/72.71 acres) is 3.97 units per
21 acre—far more than the three unit per acre cap in the PSM Community Plan/Comprehensive Plan.

22
23 The examiner committed an error of law by borrowing the zoning code’s 4:1 conversion factor
24 (sleeping units to dwelling units) and applying it to density calculations in the Comprehensive Plan.
25 No provision of the Comprehensive Plan authorizes or by implication imports zoning code definitions
26 for use in construing the terms of the Comprehensive Plan. Further, to the extent that some conversion

1 factor was appropriate, the examiner's use of a 4:1 conversion factor was an erroneous interpretation
2 of the law, was not supported by substantial evidence, and was a clearly erroneous application of the
3 law to the facts.

4 7.5 The examiner erred when, in response to a motion for reconsideration, he modified
5 conditions 24 and 25 to add "the uses allowed outright or conditionally under PCC 18A.28.010" to
6 the uses that would be allowed in the proposed agriculture building and civic building. The examiner
7 had it right the first time. In his original decision, the examiner limited the project to uses that conform
8 with the uses allowed in a Shared Housing Village per the chapter of the zoning code specific to Shared
9 Housing Villages (ch. 18A.45 PCC). But a different examiner, in response to the motion for
10 reconsideration allowed uses that are not permitted by chapter 18A.45 PCC. The second examiner
11 modified the conditions and expanded the allowed uses to include uses prohibited by chapter 18A.45
12 PCC. Some of the expanded allowed uses are also prohibited by other sections of the code. The
13 examiner's decision on this issue was based on an erroneous interpretation of law, clearly erroneous
14 application of law to facts, and/or not supported by substantial evidence.
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16 7.6 The county's MDNS was issued in error and in violation of SEPA because the county
17 lacked sufficient information to consider and assess the proposed project's probable, significant,
18 adverse impacts on the environment. Further, the information that was made available to the county
19 demonstrated that the proposed project may have a probable, significant, adverse impact on the
20 environment.
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22 7.7 The examiner erred in concluding that the state-listed endangered western gray squirrel
23 and its habitat are not present on the subject property and that therefore the proposed project will not
24 have probable significant adverse impacts on the western gray squirrel or its habitat. The examiner
25 should have deferred to the determination of the Washington Department of Fish and Wildlife, an
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1 agency with expertise in assessing impacts to wildlife habitat. WDFW informed the county and the
2 examiner in a letter admitted as Exhibit 398 that: “This development proposal will further encroach
3 upon and will reduce the existing WGS primary habitat.” Reducing the primary habitat of an
4 endangered species may result in probable significant adverse impacts on the environment, requiring
5 a threshold determination of significance under SEPA.
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7 7.8 The examiner erred in concluding that the county had sufficient information to
8 consider and assess under SEPA the impacts of the project on the state-listed endangered western gray
9 squirrel and its habitat. The western gray squirrel was not mentioned at all in the county’s MDNS, the
10 applicant’s SEPA checklist, the county’s MDNS staff report, or the applicant’s “Shoreline, Wetland
11 and Fish and Wildlife Habitat Assessment.” No habitat assessment study for the western gray squirrel
12 was prepared under PCC 18E.40.030.B or PCC 18E.40.070. The only mention of the western gray
13 squirrel in the county’s core documents was in a summary of public comments. The county’s and
14 applicant’s failure to address, consider, or analyze impacts to the western gray squirrel and its habitat
15 means that the county lacked sufficient information to assess the probable, significant, adverse
16 environmental impacts of the project and issue the threshold determination under SEPA.
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18 7.9 The examiner erred in concluding that off-site Wetland 1 (so-called “Spanaway
19 Marsh”) and onsite Wetlands A and B are Category II wetlands with 150-foot standard buffers, rather
20 than Category I wetlands with standard 300-foot buffers. Dr. Sarah Cooke provided credible testimony
21 that Spanaway Marsh, Wetland A, and Wetland B are Category I wetlands, based on the Department
22 of Ecology’s Wetland Ratings Manual. Dr. Cooke submitted a written expert report explaining why
23 Spanaway Marsh, Wetland A, and Wetland B are Category I wetlands. Wetland A is hydrologically
24 connected to Wetland 2, with water flowing between Wetland A and Wetland 2 in either direction,
25 depending on the time of year, the amount of precipitation, and other factors. The one-kilometer
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1 polygon surrounding Wetland A, Wetland B, and Wetland 1 should be rated as “relatively
2 undisturbed,” with more than 50 percent of the polygon undisturbed, with little high-intensity
3 disturbance in the areas that were disturbed. Taken together, these facts should have led the examiner
4 to conclude that Spanaway Marsh, Wetland A, and Wetland B are Category I wetlands and the
5 examiner’s conclusion to the contrary was erroneous.
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7 7.10 The examiner erred in concluding that Wasmund Road is a “major roadway”
8 interrupting the required wetland buffers. Wasmund Road is gated at one end, blocked off with
9 concrete blocks at the other end, with low overhanging trees over the roadway, forest duff covering
10 large areas of the roadway, and vegetation growing in the middle of the roadway. Wasmund Road is
11 not a “major roadway.”
12

13 7.11 The examiner erred in concluding that the county had sufficient information to
14 consider and assess under SEPA the impacts of the project on wetlands. The applicant only provided
15 a single data point for Wetlands A and B. Wetlands A and B should have 4–5 data points given their
16 size and numbers of different vegetation communities. The wetland delineation was performed in the
17 winter outside of the recommended growing season as identified by the Army Corps of Engineers
18 1987 Wetland Delineation Manual. There are 62 citations throughout the 1987 manual that identify
19 the features, characteristics, and indicators for vegetation, soils, and hydrology that should be
20 evaluated “during the growing season.”
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22 8. Request for Relief

23 Petitioner respectfully requests that the Court issue an order or orders under the Land Use
24 Petition Act, RCW 36.70C.130(1), which:

25 8.1 Vacates the decisions of the Pierce County hearing examiner identified above;
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8.2 Remands the Planned Development District and Conditional Use Permit Applications to Pierce County to consider them under the current development regulations;

8.3 Orders the county to withdraw the MDNS and directs county staff to issue a threshold determination of significance for the proposed project and to reevaluate the Planned Development District and Conditional Use Permit Applications using the information in the resulting environmental impact statement;

8.4 Awards petitioner its statutory and reasonable attorney’s fees and costs; and

8.5 Provides such other relief as is just and equitable under the circumstances.

Dated this 16th day of September, 2024.

Respectfully submitted,

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