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ORCR 139
Order Confirming Ruling
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SUPERIOR COURT
THURSTON COUNTY, WA

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LINDA MYHRE ENLOW
THURSTON COUNTY CLERK

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

THE YOUNG MEN’S CHRISTIAN
ASSOCIATION OF GREATER SEATTLE, a
Washington nonprofit corporation,

Petitioner,

v.

LEWIS COUNTY, a political subdivision of the
state of Washington,

Respondent.

NO. 22-2-03384-34

EX PARTE

~~PROPOSED~~ COURT’S RULING ON
LUPA APPEAL

THIS MATTER came on before the Court for hearing on the merits on November 17, 2023, arising out of the consolidated appeals by Petitioner The Young Men’s Christian Association of Greater Seattle’s (the “YMCA”) brought under the Land Use Petition Act, chapter 36.70C RCW (“LUPA”). The YMCA is challenging Lewis County’s (the “County”) denial of the YMCA’s application for a site specific-rezone and Master Planned Resort (“MPR”) overlay designation for approximately 500 acres of property the YMCA owns adjacent to and near Mineral Lake in Lewis County (the “Mineral Lake YMCA Rezone”). The Court has considered the briefing submitted by the parties, the pleadings, briefing, and entire record on file with the Court herein, and has heard the argument of counsel. Based on the following and as set forth below, the Court reverses the Lewis County Board of County Commissioner’s denial of the YMCA’s Mineral Lake YMCA Rezone as contained in Ordinance 1337 and Ordinance 1343

~~PROPOSED~~ COURT’S RULING ON LUPA APPEAL
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1 and remands this matter to Lewis County with instructions to approve the application and
2 Mineral Lake YMCA Rezone as set forth herein.

3 The YMCA applied to Lewis County for a site specific-rezone and MPR overlay
4 designation for approximately 500 acres of property the YMCA owns adjacent to and near
5 Mineral Lake in Lewis County, Washington.¹ On February 22, 2022, Lewis County issued a
6 Mitigated Determination of Nonsignificance (MDNS) under the State Environmental Policy Act
7 (SEPA) concluding that, as mitigated, the proposal did not have a probable significant adverse
8 impact on the environment. The Lewis County Planning Commission thereafter deliberated on
9 the proposal and determined that the proposal met all applicable review criteria, was in the public
10 interest, and unanimously recommended approval. On November 8, 2022, a draft ordinance was
11 presented to the Board of County Commissioners to approve the Mineral Lake YMCA Rezone.
12 On November 22, 2022, the Lewis County Board of County Commissioners denied the Mineral
13 Lake YMCA Rezone, which denial was formalized through the Board's adoption of Lewis
14 County Ordinance 1337. The YMCA appealed. Following the YMCA's appeal, on March 3,
15 2023, the Lewis County Board of County Commissioners adopted Lewis County Ordinance
16 1343, which upheld the Mineral Lake YMCA Rezone decision contained in Ordinance 1337.
17 The YMCA again appealed, and the appeals were consolidated in this matter.

18 The YMCA alleges that the Board of County Commissioners engaged in unlawful
19 procedure and failed to follow a prescribed process in adopting both Ordinance 1337 and
20 Ordinance 1343 under RCW 36.70C.130(1)(a). The County concedes error in adopting
21 Ordinance 1337. The Court agrees that the Board erred in adopting Ordinance 1337 as it pertains
22 to the Mineral Lake YMCA Rezone in failing to set forth any findings in support of its conclusion
23

24 ¹ The YMCA property subject to the Mineral Lake YMCA Rezone is identified by Lewis County Tax Parcel Nos:
25 038931011001; 038931011002; 038931011003; 038931011004; 038931011005; 038931011035; 038931011006;
26 038931011036; 038931011007; 038931011037; 038931011008; 038931011038; 038931011009; 038931011039;
27 038931011010; 038931011011; 038931011012; 038931011013; 038931011040; 038931011041; 038931011042;
038931011043; 038931011015; 038931011016; 038931011017; 038931011018; 038931011019; 038931011020;
038931011021; 038931011022; 038931011023; and 038931011024 and situated within a portion of Sections 3
and 4, Township 14 N., Range 5 E. W.M. and Sections 33 and 34, Township 15 N., Range 5 E. W.M., Lewis
County, Washington.

1 that the proposed rezone was “not in the public interest.” The Court further finds that the
2 decision and denial set forth in Ordinance 1337 was based on animus, bias, and a desire to restrict
3 the YMCA’s exercise of free speech. Following the YMCA’s appeal, the Board engaged in a
4 second process, resulting in the adoption of Ordinance 1343. The County asserts any error in
5 adopting Ordinance 1337 was subsequently cured through the adoption of Ordinance 1343. With
6 respect to Ordinance 1343, the YMCA alleges there was no pending application at the time the
7 County acted on Ordinance 1343, and the County lacked authority under state law and Lewis
8 County Code to rehear the matter and adopt additional findings to uphold its denial of the Mineral
9 Lake YMCA Rezone. The Court declines to find that the County’s procedure of having a
10 rehearing is sufficient error alone to void that decision. In this regard, the Court finds Lewis
11 County’s argument that it effectively volunteered the remedy that the YMCA may have received
12 if an appeal was successful on Ordinance 1337 to be persuasive. The YMCA also acceded to
13 the rehearing and accommodated it with a stay of its appeal. If there was any error in the
14 procedure and process involved in the County’s rehearing of the Mineral Lake YMCA Rezone
15 that led to and resulted in the adoption of Ordinance 1343, this Court concludes any such error-
16 -as to the procedure and process--was a harmless error as to the procedure and process engaged
17 in.

18 As to the above issues, however, the Court also finds that the County’s concession of
19 error in the adoption of Ordinance 1337 does not eradicate that the record supports finding, and
20 the Court does find, that impermissible racial animus, bias, and infringement of the YMCA’s
21 protected free speech rights through an intent to restrain speech and a desire to prevent the
22 YMCA from speaking in Lewis County were motivating factors in the Board’s decision reflected
23 in Ordinance 1337. That context provides a lens through which the Board of County
24 Commissioner’s subsequent new findings and decision in Ordinance 1343, upholding Ordinance
25 1337, must be evaluated. Based on this context, it is appropriate for this Court to review
26 Ordinance 1343 with critical ~~and strict~~ scrutiny and lessened deference.

1 The Court next turns its attention to review whether the Board of County Commissioner's
2 conclusions in Ordinance 1343, in support of the rezone denial and upholding Ordinance 1337,
3 are supported by evidence that is substantial when viewed in light of the whole record before the
4 court pursuant to RCW 36.70C.130(1)(c). They are not. By way of example, the Court finds
5 that the Board's conclusions contradicted and departed from, without evidentiary or factual
6 support, the detailed findings of fact made by the Lewis County Planning Commission, and
7 moreover, the findings of fact included in Exhibit A to Ordinance 1343, which was adopted by
8 the Board of County Commissioners, are inconsistent in large part with the Board's ultimate
9 findings and conclusions in Ordinance 1343. Further, the Board's ultimate findings and
10 conclusions in Ordinance 1343 ^{relied on} as bases to deny the Mineral Lake YMCA Rezone are
11 inconsistent with the significant body of evidence in the record before the Court. Based on the
12 record before the Court, the Court finds that the Board of County Commissioner's ultimate
13 findings and conclusions in Ordinance 1343 are not supported by substantial evidence. The
14 YMCA has carried its burden of establishing that the Board's denial of the Mineral Lake YMCA
15 Rezone is not supported by evidence that is substantial when viewed in light of the whole record
16 before the Court, entitling the YMCA to relief under subsection -.130(1)(c) of LUPA.

17 The Court next considers whether the County's denial of the Mineral Lake YMCA
18 Rezone as reflected in Ordinance 1343 is a clearly erroneous application of the law to the facts
19 pursuant to RCW 36.70C.130(1)(d). As to this issue, the Court finds and notes that the bases for
20 the Board of County Commissioner's denial set forth in Ordinance 1343, including, without
21 limitation, issues pertaining to water quality, law enforcement, and emergency services, and the
22 potential tax-exempt status of the YMCA, are issues and factors that are, in this context, more
23 appropriately considered at the project stage of MPR development, and are unknown or difficult
24 to determine at the current non-project rezone stage. The Court finds, and the County
25 acknowledges, the issues underlying these bases for denial typically are and can be addressed at
26 the project stage and, where necessary, can be mitigated. The Court finds that at this non-project
27 rezone stage it is premature to address specific speculative project-level impacts that would be

1 more appropriately considered at the time of project application, and it is not feasible to evaluate
2 the necessity and appropriateness of reasonable mitigation, if any. Turning to the specific
3 conclusions set forth in Ordinance 1343 as the basis for denial, the Court finds none of the
4 enumerated findings and conclusions provide sufficient bases to deny the Mineral Lake YMCA
5 Rezone. As the Court finds that the YMCA^g met all criteria necessary for approval of the site-
6 specific rezone and MPR designation under state law and Lewis County Code, the rezone should
7 have been approved. In reviewing the denial decisions under this standard, although there may
8 be some evidence to support the articulated findings in Ordinance 1343, the Court finds and
9 concludes that based on the entire record and evidence before the Court, the Court is left with a
10 definite and firm conviction that a mistake has been committed. As such, the YMCA has carried
11 its burden of establishing that the Board's denial of the Mineral Lake YMCA Rezone is a clearly
12 erroneous application of the law to the facts, entitling the YMCA to relief under subsection -
13 .130(1)(d) of LUPA.

14 The Court next considers whether the County's denial of the Mineral Lake YMCA
15 Rezone represented unconstitutional disparate treatment or a limitation on free speech within the
16 scope of the Federal and Washington State Constitutions. The YMCA alleges that the Board of
17 County Commissioner's actions and denial violated the YMCA's substantive due process rights
18 and equal protection rights under the Fourteenth Amendment to the United States Constitution
19 and Article I, §§ 3 and 12 of the Washington Constitution, and its free speech protections and
20 rights under the First Amendment to the United States Constitution and Article I, § 5 of the
21 Washington Constitution. With respect to these issues, first, the Court finds that Lewis County
22 did disparately treat the YMCA. The Court acknowledges the County's argument that there may
23 not be an applicant in Lewis County's recent history that is comparable to the YMCA. However,
24 the Court finds it significant that the issues such as the potential tax-exempt status of an
25 applicant, the application of State of Washington water quality standards and regulation, and law
26 enforcement levels of service, are not issues unique to the YMCA, and have not previously been
27 the bases for denial of a rezone of this type or other land use decision ^{by} as Lewis County ~~did as~~

And yet, these issues were the basis of the decision

1 ✓ against the YMCA’s Mineral Lake YMCA Rezone. The Court finds that bias, impermissible
2 animus, and a desire to prevent the YMCA of Greater Seattle from speaking from Lewis County
3 were motivating factors in the Board’s decisions.

4 The Court further finds that the YMCA met its burden and all applicable approval criteria
5 under state law and Lewis County Code in support of its rezone application and approval of the
6 Mineral Lake YMCA Rezone.

7 The Court holds that the YMCA is entitled to relief under RCW 36.70C.130. Having
8 found the YMCA is entitled to relief, RCW 36.70C.140 grants this Court authority to “reverse
9 the land use decision under review or remand it for modification or further proceedings.” RCW
10 36.70C.140 further provides that “[i]f the decision is remanded for modification or further
11 proceedings, the court may make such an order as it finds necessary to preserve the interests of
12 the parties and the public, pending further proceedings or action by the local jurisdiction.”
13 Based on authority provided in RCW 36.70C.140, and as further inherent in the Court’s
14 constitutional and mandamus authority, the Court reverses Lewis County’s denial of the
15 YMCA’s Mineral Lake YMCA Rezone in both Ordinance 1337 and Ordinance 1343. The matter
16 is remanded to the Lewis County Board of County Commissioners with instructions to approve
17 the Mineral Lake YMCA Rezone, subject to the conditions of approval set forth in the Draft
18 Ordinance 1337 and the MDNS dated February 22, 2022, as additionally set forth in Appendix
19 A. The County may engage in such process as required to approve the rezone and comply with
20 this Order, but such further proceedings shall not include additional open record hearings or
21 other fact-finding proceedings, nor the imposition of conditions of approval other than as set
22 forth herein.

23 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
24 FOLLOWS:

25 1. Lewis County’s denial of the Mineral Lake YMCA Rezone as set forth in
26 Ordinance 1337 and upheld in Ordinance 1343 is REVERSED.

27

1 2. The YMCA’s proposed Mineral Lake YMCA Rezone is REMANDED to the
2 Lewis County Board of County Commissioners with instructions to approve the YMCA’s
3 Mineral Lake YMCA Rezone consistent with this Order within thirty (30) days of the date of
4 entry, which may include those certain conditions set forth in Appendix A.

5 3. Pursuant to RCW 36.70C.140, which grants this Court the authority to make such
6 an order as it finds necessary to preserve the interests of the parties and the public, pending
7 further proceedings or action by the local jurisdiction, the Court retains jurisdiction over
8 implementation of this Order.

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DATED this 22 day of December 2023.


HONORABLE ALLYSON S. ZIPP

1 Presented by:
2 CASCADIA LAW GROUP PLLC

3
4 By: *s/ Joseph A. Rehberger* _____
5 Joseph A. Rehberger, WSBA No. 35556
6 Matthew Love, WSBA No. 25281
7 Margaret J. Lee, WSBA No. 39887

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11 *Attorneys for Petitioner The YMCA of
12 Greater Seattle*

13 Approved as to Form;
14 Notice of Presentation Waived:

15
16 JONATHAN L. MEYER
17 Prosecuting Attorney of Lewis County

18
19 By: *s/ Barbara Russell* _____
20 Barbara Russell, WSBA No. 57120
21 Deputy Prosecuting Attorney

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23 *Attorneys for Respondent Lewis County*

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Appendix A

(Permissible Conditions of Approval)

For parcels 038931011006, 038931011036, 038931011005, 038931011035, 038931011004, 038931011003, 38931011002, 038931011001, 038931011013, 038931011043, 038931011015, 038931011016, 038931011017, 038931011018, 038931011019, and 038931011020 (Lots 1-6, Lot 13 and Lots 15-20 of Record Survey recorded under Auditor File Number 3379875) of the MPR rezone associated with the Mineral Lake YMCA Rezone the permitted uses specified in 17.20E.030(1) through 17.20E.030(9) LCC are limited to:

- a. Lodges (including kitchen/dining facilities and meeting rooms), rental cabins, and appropriate support facilities for visitor-oriented accommodations, including caretaker accommodations;
- b. Recreational sport facilities and undeveloped recreational areas;
- c. Boat docks and marinas compatible with the Lewis County shoreline master program;
- d. Open space areas such as lakes, wetlands, greenbelts, buffers, and wildlife preserves;
- e. Facilities necessary for public safety such as fire and security stations, waste disposal, and utilities within the master planned resort or the county;
- f. Transportation related facilities, emergency medical facilities, and storage structures and areas, provided these uses are ancillary to the master planned resort; and
- g. Cultural community and entertainment facilities such as theaters, amphitheaters, galleries, arts and craft centers, and interpretive centers.

All other uses permitted by 17.20E.030(1) through 17.20E.030(9) LCC are prohibited.

For parcels 038931011007, 038931011037, 038931011012, 038931011042, 038931011011, 038931011041, 038931011010, 038931011040, 038931011009, 038931011039, 038931011008, 038931011038, 038931011021, 038931011022, 038931011023 and 038931011024 (Lots 7-12 and Lots 21-24 of Record Survey recorded under Auditor File Number 3379875) of the MPR rezone associated with the Mineral Lake YMCA Rezone the permitted uses specified in Lewis County Code 17.20E.030(1) through 17.20E.030(9) LCC are limited to:

- a. Recreational sport facilities and undeveloped recreational areas;
- b. Boat docks and marinas compatible with the Lewis County shoreline master program;
- c. Open space areas such as lakes, wetlands, greenbelts, buffers, and wildlife preserves;
- d. Facilities necessary for public safety such as fire and security stations, waste disposal, and utilities within the master planned resort or the county; and
- e. Transportation related facilities, emergency medical facilities, and storage structures and areas, provided these uses are ancillary to the master planned resort.

All other uses permitted by 17.20E.030(1) through 17.20E.030(9) LCC are prohibited.

If a Master Plan Resort development associated with the Mineral Lake YMCA Rezone is not approved through Master Plan Resort application and Binding Site Plan application within five (5) years of execution of this ordinance, the MPR overlay zone will expire and the zoning will revert to forest resource land of long-term significance (FRL) for all listed parcels. After the

1 Binding Site Plan is approved, if the subsequent site development permit(s) schedules as
2 described in the Binding Site Plan decision document are not met, or if the subsequent site
3 development permits are not obtained within fifteen (15) years of execution of this ordinance,
4 the MPR overlay zone will expire and the zoning will revert to FRL for all listed parcels. If either
5 of the reverters in this paragraph occur, no uses will be permitted to start, persist, or exist in the
6 affected zones unless consistent with FRL zoning (or its successor if renamed or amended in the
7 future), as such zoning exists in the LCC at the time of reverter or when such use begins,
8 whichever is later. If any use began and was consistent with the MPR overlay zone while it was
9 in effect, but is inconsistent with the zoning change described in the preceding sentence, such
10 use shall cease within six months. Nothing in this provision shall limit the BOCC's authority to
11 extend schedules or amend the Lewis County Comprehensive Plan designation or zoning for the
12 listed parcels subject to the MPR rezone.

13 The mitigating conditions set forth in Lewis County's Mitigated Determination of
14 Nonsignificance (MDNS) dated February 22, 2022 for the Mineral Lake YMCA are incorporated
15 herein.

16 Development and operation of any public water source and Group A public water system serving
17 the MPR subject to chapter 246-290 WAC shall be subject to the maximum contaminant level
18 (MCL) for arsenic as identified in WAC 246-290-310, regardless of whether the water system is
19 classified as a transient noncommunity water system (TNC) under WAC 246-290-020. The
20 property owner shall inform the State of Washington Department of Health (WSDOH) of this
21 condition as part of any request for source approval. WSDOH shall maintain regulatory authority
22 over any public water source and water system.