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CLARK COUNTY  
WASHINGTON

## COMMUNITY PLANNING

### STAFF REPORT

TO: Clark County Planning Commission

FROM: Oliver Orjiako, Director

DATE: January 29, 2014

SUBJECT: Amendment to Urban Reserve (UDC40.210.040)

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### BACKGROUND

In the 2007 adoption of the Comprehensive Plan certain areas were designated Urban Reserve. The purpose of that action was to identify property that would likely be added to a jurisdiction's future urban growth area. The urban reserve designation is intended to preserve larger parcels from further division until they are brought into an urban growth area. The parcels affected were all surrounding the La Center UGA and in addition to the overlay zone they maintained an underlying zoning of R-5 and R-10, which has a 5 and 10 acre minimum, respectively.

The issue that has arisen is that a property owner proposes a boundary line adjustment and has two properties that are less than 10 acres but greater than 5 acres. The property is in an R-5 zone with an Urban Reserve-10 overlay zone. Under a Washington Court of Appeals decision (Mason v King County) the County could not grant a boundary line adjustment if either parcel, after adjustment, is less than the 10 acre minimum lot size of the Urban Reserve-10 zone unless there was a specific provision in the zone to allow a lot size below the minimum.

### PROPOSED ACTION

Amend the Unified Development Code (UDC) 40.210.040 Urban Reserve Districts (UR-40, UR-20, UR-10) to allow a boundary line adjustment if each legal non-conforming lot meets the minimum lot area of the underlying zone.

### RECOMMENDATION AND CONCLUSIONS

The purpose of the Urban Reserve-10 designation is to protect land identified on the fringe of urban growth boundaries from premature land division and development that would preclude efficient transition to urban development.

Staff finds that allowing a boundary line adjustment would not preclude efficient transition to urban development, in those circumstances, where non-conforming properties with Urban Reserve designations meet the minimum lot area of the underlying zone.

Based upon the information presented in this report and in the supporting documents, staff recommends that the Planning Commission forward to the Board of Clark County Commissioners a recommendation of **APPROVAL** of the proposed amendment to the UDC.

1 **40.210.040 Urban Reserve Districts (UR-40, UR-20, UR-10)**

2 A. Purpose.

3 1. Urban Reserve-20. The urban reserve-20 zone is to protect rural land identified as  
4 industrial reserve on the fringe of urban growth boundaries from premature land division  
5 and development that would preclude efficient transition to large-scale industrial  
6 development.

7 2. Urban Reserve-10. The urban reserve-10 zone is to protect land identified on the fringe of  
8 urban growth boundaries from premature land division and development that would  
9 preclude efficient transition to urban development. These areas are identified as being  
10 future additions to the urban growth areas which will be added to the urban area as  
11 needed, through amendments to the comprehensive plan.

12 3. Urban Reserve-40. The urban reserve-40 zone is to protect land identified for urban  
13 reserve that is characterized by larger parcels of eighty (80) acres and larger outside of  
14 urban growth boundaries to protect the land from premature land division and  
15 development that would preclude efficient transition to large-scale industrial, or urban  
16 business park development.

17 *(Amended: Ord. 2004-09-02; Ord. 2009-12-01; Ord. 2012-12-14)*

18 B. Uses.

19 The uses set out in Table 40.210.040-1 are examples of uses allowable in urban reserve zone  
20 districts. The appropriate review authority is mandatory.

- 21 • “P” – Uses allowed subject to approval of applicable permits.
- 22 • “R/A” – Uses permitted upon review and approval as set forth in Section [40.520.020](#).
- 23 • “C” – Conditional uses which may be permitted subject to the approval of a conditional use permit  
24 as set forth in Section [40.520.030](#).

25 In addition to the criteria in Section [40.520.030](#), in order to be approved, the following criteria shall be  
26 met by all conditional uses:

27 1. Permanent structures or facilities shall be designed and located to provide for the orderly  
28 extension of public roads, water and sewer to the site and surrounding urban reserve  
29 properties.

30 2. All necessary road, drainage and other rights-of-way or easements necessary to ensure  
31 that future urban development will occur in an orderly manner shall be identified and  
32 approved by the county engineer and dedicated or otherwise protected.

33 3. Signed agreements between the property owner and the service provider(s) to connect to  
34 public sewer and water when they become available within three hundred (300) feet of  
35 the site shall be provided prior to commencing the authorized use; provided, such  
36 extension or connection does not require pump stations or capital facilities, such as  
37 larger pipes, to increase the capacity of the system.

- 1           4. In addition to the criteria in Section 40.520.030, in order to be approved, the following  
2           criteria shall be met by all schools:
- 3           a. The proponent shall demonstrate that the proposed site is more suitable than specific  
4           alternative sites within the existing urban growth area. The proponent shall address  
5           suitability criteria, which includes property size, topography, zoning, surrounding land  
6           uses, transportation (including adequacy of roads and transit services), environmental  
7           concerns and location within the area to be served.
- 8           b. Schools shall be located within one-quarter (1/4) mile of the urban growth boundary  
9           unless the applicant demonstrates no suitable property is available.
- 10       • “X” – Uses specifically prohibited.

11 Where there are special use standards or restrictions for a listed use, the applicable code section(s) in  
12 Chapter 40.260, Special Uses and Standards, or other applicable chapter is noted in the  
13 “Special Standards” column.

14

<b>Table 40.210.040-1. Uses</b>			
	<b>UR-20 &amp; UR-40</b>	<b>UR-10</b>	<b>Special Standards</b>
1. Residential.			
a. Single-family dwellings and accessory buildings, including 1 guest house	P	P	40.260.010
b. Family day care centers	P	P	40.260.160
c. Adult family homes	P	P	40.260.190
d. Home business – Type I	P	P	40.260.100
e. Home business – Type II	R/A	R/A	40.260.100
f. Bed and breakfast establishments (up to 2 guest bedrooms)	R/A	R/A	40.260.050
g. Bed and breakfast establishments (3 or more guest bedrooms)	C	C	40.260.050
h. Garage sales	P	P	40.260.090
i. Residential care homes	C	C	40.260.180
j. Temporary dwellings	P	P	40.260.210
2. Services, Business.			
a. Commercial nurseries predominantly marketing locally	R/A	R/A	

produced plants and associated landscaping materials			
b. Roadside farm stand	P	P	40.260.025
c. Agricultural market	P	P	40.260.025
d. Veterinary clinics	C	C	
e. Commercial kennels on a parcel or parcels 5 acres or more	R/A	R/A	40.260.110
f. Private kennels	P	P	40.260.110
g. Animal boarding and day use facilities	P	P	40.260.040
3. Services, Amusement.			
a. Publicly owned recreational facilities, services, parks and playgrounds	P	P	
b. Private recreation facilities, such as country clubs and golf courses, including such intensive commercial recreational uses as golf driving range, race track, amusement park, paintball facilities, or gun club	C	C	
c. Golf courses	C	C	
d. Equestrian facility on parcels less than 5 acres	C	C	40.260.040
e. Equestrian facility on parcels 5 acres or greater	P	P	40.260.040
f. Equestrian events center	C	C	40.260.040
g. Outdoor public entertainments, amusements and assemblies	R/A	R/A	Chapter <a href="#">5.32</a>
4. Services, Membership Organization.			
a. Churches	C	C	
5. Services, Educational.			
a. Public or private schools, but not including business, dancing or technical schools	C	C	40.260.160
6. Public Service and Facilities.			
a. Ambulance dispatch facilities	C	C	40.260.030
b. Government facilities	C <sup>1</sup>	C <sup>1</sup>	
7. Resource Activities.			
a. Agricultural and forestry, including any accessory buildings and activities	P	P	40.260.080
b. Silviculture	P	P	40.260.080

c. Housing for temporary workers	P	P	40.260.105
8. Other.			
a. Utilities, structures and uses including but not limited to utility substations, pump stations, wells, watershed intake facilities, gas and water transmission lines	P	P	40.260.240
b. Solid waste handling and disposal sites	C	C	40.260.200
c. Wireless communication facilities	P/C <sup>2</sup>	P/C <sup>2</sup>	40.260.250
d. Cemeteries and mausoleums, crematoria, columbaria, and mortuaries within cemeteries; provided, that no crematoria is within two hundred (200) feet of a lot in a residential district	C	C	
e. Temporary uses	P	P	40.260.220
f. Electric vehicle infrastructure	P	P	40.260.075

1 <sup>1</sup> Government facilities necessary to predominantly serve the area outside urban growth boundaries,  
2 including fire stations, ambulance dispatch facilities and storage yards, warehouses, or similar uses.

3 <sup>2</sup> See Table 40.260.250-1.

4 (Amended: Ord. 2004-09-02; Ord. 2005-04-12; Ord. 2007-06-05; Ord. 2011-03-09; Ord. 2011-06-14;  
5 Ord. 2011-08-08; Ord. 2011-12-09; Ord. 2012-02-03; Ord. 2012-06-02)

6 C. Development Standards.

7 1. New lots and structures and additions to structures subject to this section shall comply  
8 with the applicable standards for lots and building height, and setbacks in Tables  
9 40.210.040-2 and 40.210.040-3, subject to the provisions of Chapter 40.200 and  
10 Section 40.550.020.

11

Table 40.210.040-2. Lot Requirements			
Zoning District	Minimum Lot Area (acres)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)
UR-20	20 <sup>1,3</sup>	350 <sup>2</sup>	None
UR-10	10 <sup>1,3</sup>	350 <sup>2</sup>	None
UR-40	40 <sup>1,3</sup>	350 <sup>2</sup>	None

12 <sup>1</sup> Utilities, structures and uses including but not limited to utility substations, pump stations, wells,  
13 watershed intake facilities, gas and water transmission lines and telecommunication facilities may be  
14 permitted on newly approved lots of less than the minimum parcel size.

15 <sup>2</sup> Unless a greater width shall be required by the Clark County fire code.

1 <sup>3</sup> Legal non-conforming lots are eligible for boundary line adjustments if each lot meets the minimum  
 2 parcel size of the underlying zone and the lots are contiguous.

3 (Amended: Ord. 2004-09-02)

<b>Table 40.210.040-3. Setbacks, Lot Coverage and Building Height</b>						
Zoning District	Minimum Setbacks <sup>4</sup>				Maximum Lot Coverage	Maximum Building Height (feet)
	Front (feet)	Side		Rear (feet)		
		Street (feet)	Interior (feet)			
UR-20	50	20, 50 <sup>1</sup>	20, 50 <sup>1</sup>	20, 50 <sup>2</sup>	N/A	35, 50 <sup>3</sup>
UR-10	50	20, 50 <sup>1</sup>	20, 50 <sup>1</sup>	20, 50 <sup>2</sup>	N/A	35, 50 <sup>3</sup>
UR-40	50	20, 50 <sup>1</sup>	20, 50 <sup>1</sup>	20, 50 <sup>2</sup>	N/A	35, 50 <sup>3</sup>

4 <sup>1</sup> *Side Setback. Minimum side setback on each side of the residential dwelling and incidental*  
 5 *buildings shall be twenty (20) feet, and fifty (50) feet for accessory buildings used for agricultural*  
 6 *purposes. Side setbacks from abutting property zoned for natural resource or surface mining uses*  
 7 *shall be a minimum of fifty (50) feet for all structures.*

8 <sup>2</sup> *Rear Setback. Minimum rear setback shall be fifty (50) feet when abutting property zoned for*  
 9 *natural resource or surface mining uses.*

10 <sup>3</sup> *Thirty-five (35) feet for residential structures, fifty (50) feet for nonresidential structures.*

11 <sup>4</sup> *Nonconforming lots subject to the provisions of Section [40.530.010\(D\)\(2\)](#).*

12 (Amended: Ord. 2005-04-12; Ord. 2010-08-06)

13 2. Signs. Signs shall be permitted according to the provisions of Chapter [40.310](#).

14 3. Off-Street Parking. Off-street parking shall be provided as required in Chapter [40.340](#).

15 (Amended: Ord. 2004-09-02)

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## Court of Appeals of Washington, Division 1.

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# MASON v. KING COUNTY

**Ralph R. MASON, Appellant, v. KING COUNTY, and Michael L. Parker, Sr., and Kimberly Parker, and Partel, Inc., a Washington corporation, and Michael L. Parker, Sr., President, Partel, Inc., Respondents.**

**No. 56341-6-I.**

**-- August 28, 2006**

Craig Magnusson, Oles Morrison Rinker & Baker LLP, Seattle, for Appellant. John Furse Briggs, Office of the Prosecuting Attorney, Seattle, Michael Reynolds, Auburn, for Respondents.

¶ 1 Ralph Mason appeals the trial court's dismissal of his Land Use Petition Act (LUPA) petition challenging King County's approval of Parker's <sup>1</sup> boundary line adjustment (BLA) application. Mason contends that the county's approval of the Parker BLA was erroneous as a matter of law because the BLA, as granted, created a substandard, undersized lot <sup>2</sup> pursuant to county zoning regulations and that the BLA was, therefore, not exempt from the subdivision statutes set forth in RCW 58.17.040(6). We agree. RCW 58.17.040(6) does not permit a local jurisdiction to approve a BLA application that would transform a legally created lot into a substandard, undersized lot. Accordingly, we reverse the trial court's dismissal of Mason's petition.

### FACTS

¶ 2 Parker owns two adjacent lots that were legally created by a short plat recorded in 1977. Parker's property is in a portion of King County that is zoned "A-10" (Agricultural-10 acre minimum lot size). Under the county code, new lots in an A-10 zone must be a minimum of 10 acres in size and residential density cannot exceed one dwelling unit per 10 acres. Parker applied for a BLA to move the boundary between his two lots, increasing one lot from 9.34 acres to 11.78 acres, and decreasing the other lot from 9.98 acres to 7.54 acres.

The King County Department of Development and Environmental Services (DDES) approved Parker's BLA.

¶ 3 Parker's neighbor, Ralph Mason, appealed the approval of Parker's BLA pursuant to the LUPA. In superior court, Mason argued, as he does on appeal, that Parker's BLA was erroneously approved because the resulting 7.5 acre lot does not conform to dimensional requirements for new lots in an A-10 zone. The trial court dismissed Mason's LUPA petition with prejudice. Mason appeals.

## DISCUSSION

### I. Standards of Review

¶ 4 Appellate review of a land use decision is made pursuant to the LUPA. RCW 36.70C.130(1). When reviewing an administrative decision, we stand in the shoes of the superior court. *Citizens to Preserve Pioneer Park, L.L.C. v. City of Mercer Island*, 106 Wash.App. 461, 470, 24 P.3d 1079 (2001). Thus, we limit our review to the record before the administrative tribunal. *HJS Dev., Inc. v. Pierce County*, 148 Wash.2d 451, 483-84, 61 P.3d 1141 (2003). A court may grant relief on a land use decision only if the party seeking relief has carried the burden of establishing that one of the following standards is met:

- (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;
- (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 expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts;
- (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.

RCW 36.70C.130(1).

¶ 5 Although Mason fails to specifically identify which of the foregoing provisions underlies his appeal, his argument involves the proper application of local and state land use regulations, i.e., an "interpretation of the law." Thus, RCW 36.70C.130(1)(b) applies.

¶ 6 We review questions of law de novo. *HJS Dev., Inc.*, 148 Wash.2d at 468, 61 P.3d 1141. We will not reverse the land use decision of a local governmental entity unless we

find that its application of law to the facts was clearly erroneous. *Citizens*, 106 Wash.App. at 473, 24 P.3d 1079.

### III. Boundary Line Adjustments

¶ 7 We begin with a brief description of Washington state land use regulations. The Washington state legislature has enacted statutes regulating the process by which land may be subdivided. See RCW 58.17.010-920. King County has adopted regulations implementing the requirements of state law. In general, persons wishing to divide land must apply for a subdivision or short subdivision, depending on the number of lots to be created.

¶ 8 However, not all divisions of land must be accomplished through the mechanism of a subdivision. Some lots may be adjusted through the boundary line adjustment procedure. RCW 58.17.040 lists nine types of property divisions that are exempt from the subdivision regulations contained in Title 58 RCW. RCW 58.17.040(6) specifically exempts:

A division made for the purpose of alteration by adjusting the boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.

Chapter 58.17 RCW does not contain a definition of “building site.”

¶ 9 The county interprets RCW 58.17.040(6) to mean that “[l]ots adjusted through the boundary line procedure are not required to comply with a local jurisdiction's minimum lot size requirements.”<sup>3</sup> The county further contends that a local jurisdiction must approve a BLA application as long as the resulting property would not contain an additional lot or a lot that did not qualify as a “building site.”

¶ 10 In so concluding, the county cites *City of Seattle v. Crispin*, 149 Wash.2d 896, 71 P.3d 208 (2003). In that case, the property owner, Crispin, argued that a previous division of his land that created his lot qualified as a BLA for purposes of the exemption from the subdivision statutes set forth in RCW 58.17.040(6). *Crispin*, 149 Wash.2d at 902, 71 P.3d 208. The Court ruled in favor of Crispin, finding that his lot was legally created by a BLA that was exempt from the requirements of RCW 58.17 because the property division did not create additional lots. *Crispin*, 149 Wash.2d at 905-06, 71 P.3d 208 (citing *Island County v. Dillingham Dev. Co.*, 99 Wash.2d 215, 662 P.2d 32 (1983)).

¶ 11 The *Crispin* Court also explained that its construction of RCW 58.17.040(6) gave effect to the principle that “the regulation of land use must proceed under an express written code and not be based on ad hoc unwritten rules so vague that a person of common intelligence must guess at the law's meaning and application.” *Crispin*, 149 Wash.2d at 905, 71 P.3d 208 (citing *Burien Bark Supply v. King County*, 106 Wash.2d 868, 725 P.2d 994 (1986)).

¶ 12 Crispin does not address whether a local jurisdiction may grant a BLA that would transform a legally created lot into a substandard, undersized lot. Nonetheless, the county argues that the Court in Crispin broadly held that local land use restrictions may not be applied to preclude approval of a BLA that would not create an additional lot. We disagree. Neither Crispin nor any other authority cited to us construes chapter 58.17 RCW as allowing a BLA to transform a legally created lot into a substandard, undersized lot.

¶ 13 To the contrary, Mason cogently urges that the county must look to its applicable minimum lot size requirements when determining whether a new lot following a BLA qualifies as a “building site” pursuant to RCW 58.17.040(6). Because RCW 58.17.040(6) provides only that a lot resulting from a BLA may not contain “insufficient area and dimension to meet minimum requirements for width and area for a building site,” local governments are free to define the dimensions of a “building site” so long as that definition is consistent with applicable local zoning requirements.

¶ 14 Under the county code provisions in effect in 2004, when Parker applied for the BLA, KCC 19A.28.020 set forth the procedures and limitations of the BLA process. KCC 19A.28.020(C)(2) prohibits approval of a BLA that would “[r]esult in a lot that does not qualify as a building site pursuant to [KCC Title 19A].” KCC 19A.04.060(A) defines “building site” as an area of land that meets the requirements of various federal, state, and local land use regulations. Among those regulations are the locally defined “dimensional standards, minimum lot area, minimum lot area for construction, [and] minimum lot width.” Of particular importance in this case is the requirement that a building site conform to the county's applicable restrictions on minimum lot area which, in an A-10 zone, requires that new lots be no smaller than 10 acres. It therefore follows that, in an A-10 zone, a proposed modified lot consisting of fewer than 10 acres does not meet the definition of a building site for the purpose of a BLA application.

¶ 15 Because the KCC provides these guidelines with respect to the county's definition of a “building site,” we find unpersuasive the county's argument that it may review a BLA application only for compliance with the portion of the zoning code relating to “minimum lot area for construction,” KCC. 21A.12.100.<sup>4</sup> By looking to its minimum requirement for a construction site in an A-10 zone, rather than the primary issue of whether a 7.5 acre lot may be created in an A-10 zone in the first place, the county would allow Parker to obviate the broader constraints of the zoning regulations. In other words, the county's approach to this case, if affirmed, might require the county to approve future BLAs, which are adjudicated without public notice, whereby land owners could avoid the formal short plat and subdivision processes otherwise required under the county code. Such a result would be contrary to the dictates of RCW 58.17.040(6), Crispin, and the requirement that land use regulations be applied in a consistent, predictable, and logical manner.

¶ 16 Accordingly, because the Parker BLA would transform a legally created lot into a substandard, undersized lot, the DDES erred as a matter of law in approving Parker's application.

¶ 17 Reversed.

#### FOOTNOTES

- [1.](#) For clarity, we refer to the respondents collectively as “Parker.”
- [2.](#) When referring to the property at issue here, we use the term “lot,” as that is the term used in the applicable King County Code (KCC) provisions.
- [3.](#) Br. of Resp't King County at 5.
- [4.](#) Clerk's Papers at 34. KCC 21A.12.100(B) provides that the minimum lot area for construction in an agricultural zone is 5,000 square feet, or .12 acre, an area far smaller than Parker's post-BLA 7.5 acre lot.

DWYER, J.

WE CONCUR: BAKER and BECKER, JJ.

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