SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

JOHN POSTEMA and MARIJKE POSTEMA, husband and wife, Petitioners, vs. SNOHOMISH COUNTY Respondent.	No. 25-2-06240-31 **Petitioners' Reply Brief Under the Land Use Petition Act**

Introduction

The County's Response Brief (Resp. Br.) fundamentally reframes Flower World—a 200-acre agricultural enterprise that grows over 90% of what it sells—as if it were indistinguishable from a hardware store's garden center. That misunderstanding drives each of the County's legal errors.

The Hearing Examiner's decision must be reversed because it (1) misconstrues the County Code's definition of "agricultural activities," (2) ignores the Code's plain text requiring broad exemption for agricultural uses, (3) applies

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an interpretation to Flower World that County officials admit has never been applied to any other agricultural operation, and (4) ignores that gravel beds used for both growing plants in containers and parking for customers were found to be "co-equal" uses of the site. AR 665-66 (F.35).

The County cannot avoid these errors by simply repeating the mistaken premise that **onsite sale of plants grown onsite is somehow not "in connection with" the commercial production of farm products**. That position is inconsistent with the Code, incompatible with common agricultural practice, unsupported by evidence, and—as County witnesses admitted—unprecedented. *See* Tr. 127–28 (testimony summarized in Opening Br. at 24).

The primary issues are these: Are uses of property, namely customer parking, to accommodate the sales of farm products on the farm either agricultural uses themselves or "in connection with" agricultural uses and, if not, does this use trump the clearly agricultural use of growing plants in containers?

Undergirding these issues is a basic issue whether any deference is due either to the County's Planning and Development Services (PDS) or the Hearing Examiner for their interpretation of the codes, when there is absolutely no history of such an interpretation. Under Supreme Court precedent more current than that cited by the County, the answer is clearly "no." *See infra* at __. For all the reasons that follow, the Hearing Examiner's Decision below should be reversed.

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Response to County's Statement of Facts

The County's Response Brief's statement of facts is primarily a lengthy description or verbatim quotes of the Hearing Examiner's findings. The Postemas, however, highlight only a few issues with this section of the County's Response Brief.

First, the Court should be aware that the County inserts photos of the Postema's site that can be misleading. Resp. Br. at 4, 20 (copies of Exhibits Q.10z (AR 289) and Q.10y (AR 288). These photos were taken by satellite and don't differentiate between gravel and asphalt. Tr. 95-97. Other photos clearly show that the surface is gravel with asphalt aisles between them. *See, e.g.,* AR 272, 276-77, 281. Moreover, the County's briefing reinforces an easily made mistake when it states: "Petitioners … **paved** the front (Westerly) half of the property." Resp. Br., at 3 (emphasis added). The Postemas did not pave half of their property. To the contrary, the Hearing Examiner found they "**graveled** in the front (westerly) portion" of their property. AR 667 (emphasis added). The switch from the Hearing Examiner's finding of "graveled" to the County's assertion it was "paved" is hardly an oversight. These graveled areas were used for growing plants in large containers. *See, e.g.* AR 272.

Second, the Postemas assert that "agricultural activities" includes the efforts to sell the agricultural products grown onsite. On page 14 of the Response Brief, the County claims the "Hearing Examiner rejected this interpretation of SCC 30.91A.090 noting that **the definition itself only includes a limited class** of

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related retail sales activity consisting of "… marketed produce at roadside stands or farm markets.'" Resp. Br. at 14 (emphasis added) (citing Conclusion of Law C.3, at AR 670). While C.3 relates to this issue, it in no way supports the County's characterization that these two types of retail establishments related to agriculture are "a limited class" or that they are the "only" ones. The Hearing Examiner logically did not adopt what the County now asserts because the code (left out by the County's ellipsis) says that agricultural activities **include** those that occur on a farm "in connection with the commercial production of farm products and includes, **but is not limited to** …" roadside stands and farm markets. AR 670 (C.3.) (emphasis added). There is no basis for the County's position that retails sales of agricultural products are only allowed at farmers markets or at farm stands.

Third, regarding the road running north and south connecting to the access to 200th Street SE, the Postemas contend that the road portion could easily be under the 2000 square foot threshold for LDA permits. Op. Br. at 33. It also qualifies as a farm road which is expressly recognized by the Code as an agricultural activity exempt from LDA permits. *See* SCC 30.91A.090. Mr. Postema testified that there were asphalt roads throughout Flower World. Tr. at 102-03. The County argues that the Hearing Examiner found that the access "was constructed in conjunction with a roadway extension." Resp. Br., at 18 (quoting AR 667). There is no evidence—let alone substantial evidence—to support any conclusion that the roadway extension could not exist independently of the modified access to 200th Street SE.

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Fourth, the County misleads with its heading of "40,000 Square feet of Grading and Paving for Parking Lot." Resp. Br. at 19. Like the switch from the Hearing Examiner's reference to "graveled" to the County's brief substituting the word "paved," the County's brief substitutes these terms. As the Hearing Examiner found, the County's Notice of Violation accused the Postemas of adding more than "40,000 square feet of new impervious surface, **in the form of gravel.**" AR 657 (emphasis added). There is no evidence that the Postemas added 40,000 square feet of paving. And by stating that it was "for Parking Lot," the County again ignores what the Hearing Examiner found—that it was for both parking and growing plants as "co-equal" uses. AR 665-66 (F.35).

Fifth, the County asserts that "Petitioners argue that because the area is used part of the time for **staging** and growing of container plants." Resp. Br., at 22 (emphasis added). The County knows well that the Postemas have never asserted that the area is used for "staging" plants, as if putting them on display. In fact, the Postemas filed a motion for reconsideration to the Hearing Examiner because he originally used the word "stage" or some derivation of the word. AR 498-510. The Hearing Examiner agreed that "staging" was not the appropriate term. AR 644. The Postemas are not displaying plants on the gravel beds but growing them in containers in that area for roughly half of the year. Tr. 89, 98 (the Postemas have been growing plants in containers on gravel for the last 40 years).

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Argument

A. Deference to the Hearing Examiner or PDS is not appropriate because there is no history to support the interpretation applied to the Postemas in this case.

At issue are the interpretation of several County code provisions, including the agricultural exemptions (SCC 30.63B.070 and SCC 30.91A.090) and the meaning of "incidental" or "in connection with" as they relate to parking at a farm. To the extent that any are ambiguous, the question arises whether deference should be given to the County's interpretation. The County did not sustain its burden of proof to show that its interpretation in this case, whether by PDS or the Hearing Examiner, is entitled to any deference whatsoever.

The County completely ignores the Postemas' briefing based on LUPA recognizing that sometimes deference is appropriate and sometimes not when it refers to "the deference as is due." RCW 36.70C.130(b) (addressed in Opening Br. at 13). Moreover, the County fails to address *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643 (2007) and *Ellensburg Cement Products, Inc. v. Kittitas County*, 179 Wn.2d 737 (2014), which the Postemas cited in their Opening. Br., at 24-25. Deference is not appropriate unless the interpretation is supported by an "established practice of enforcement." 159 Wn.2d at 646 and here there is none. Tr. 127-28.

Instead, the County cites two Court of Appeals cases generally on deference which predate the Supreme Court's analysis in both *Sleasman* and *Ellensburg Cement*. Resp. Br., at 24 (citing *Timberlake Christian Fellowship v. King County*,

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114 Wn.App. 174, 180 (2002) and *Schofield v. Spokane County*, 96 Wn.App. 581, 589 (1999)). Neither of the County's citations deal with the prerequisite of past enforcement or any conditions for the application of deference.

Additionally, the County cites *Phoenix Dev. v. City of Woodinville*, 171 Wn.2d 820, 830 (2011), *cited in* Resp. Br., at 26. Again, there is no analysis of the prerequisite of past enforcement for deference. Instead, *Phoenix Development* simply recognizes that courts should afford under LUPA whatever deference is due, without creating a hard and fast rule that governs every case. Any notion that *Phoenix Development* calls for deference to the local jurisdiction in every situation is dispelled by the Supreme Court's later decision in *Ellenburg Cement.*

> The statute (LUPA) does not require a court to show complete deference, but rather, "such deference as is due." *Id.* **Thus, deference is not always due.**

179 Wn.2d at 753 (emphasis added). And, continuing, "[n]o deference is due a local entity's interpretation that 'was not part of a patter of past enforcement, but a by-product of current litigation.'" *Id.* (quoting *Sleasman,* 159 Wn.2d at 646).

In summary, under *Sleasman* and *Ellensburg Cement,* deference to an agency interpretation arises only when:

- the interpretation is consistent with a **long-standing agency practice**,
- the interpretation is **not created for litigation**, and
- the code language is ambiguous.

Here, the PDS supervisor admitted:

- They had never investigated parking on any other agricultural operation used in part for retail sales.

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- They had never taken the position that parking for customers of farm-grown products is not exempt. Tr. 127–28.

The County's interpretation thus lacks the only justification for deference—established practice. The Court owes no deference to a litigation-driven interpretation created solely for Flower World in this case.

B. The County's interpretation of "agricultural activities" contradicts both the Code and common sense.

The County insists that "commercial retail activities"—*i.e.*, selling the plants Flower World grows onsite—are not agricultural activities. Resp. Br. at 12–16. But that argument collapses under the plain text of SCC 30.91A.090 and 30.91F.120:

- "Agricultural activities" include "construction and maintenance of … roads … ponds … and similar features" **when done on a farm in connection with commercial production**.
- A "farm" expressly includes activities "arising from or incidental to agriculture," including "promotion, sale, packaging and distribution of agricultural products … from the farm site."

The County's definition therefore fails for three independent reasons:

1. Sales of plants grown onsite are expressly part of farm operations under SCC 30.91F.120.

The Hearing Examiner's contrary conclusion disregards mandatory statutory text incorporated directly into the definition of "farm." *See* Opening Brief at 14–17. The County's Response Brief repeatedly refers to Flower World as a "commercial retail nursery," not a farm. *See* Resp. Br. at 2–3, 14–18. But the record shows:

- Flower World is a 200-acre horticultural operation.

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- It grows the plants it sells.
- It qualifies as a "nursery" under SCC 30.91N.120, which by definition is agricultural.

PDS itself proposed a finding that Flower World is a farm. *See* Opening Brief at 15–16 (quoting PDS Proposed Findings). The County cannot now retreat from its own administrative position to manufacture an appellate defense.

2. Nothing in SCC 30.91A.090's definition of agricultural activities excludes retail sales of farm products occurring on the farm where the product was grown.

SCC 90.91A.90 defines "agricultural activities" to include any activity which "occurs on a farm in connection with" the commercial production of farm products. *Id.* The Postemas contend, as has been their experience for decades, that selling the products they grow is "in connection with" growing them. The County offered no evidence of any longstanding interpretation that sales of farm products at the farm is not "in connection with" growing the products. Nor did the County provide any response to the Postema's argument that Flower World is a farm. *See* Opening Br. at 15-18.

The County repeatedly emphasizes that the code authorizes farm stands and farmers' markets as agricultural uses as if all other sales of farm products are not. In fact, the County concludes that the Hearing Examiner excluded commercial retails sales "except for that permitted under the limited exception for farmers' market and farm stands." Resp. Br., at 26. Of course, that will be distressing news to the pumpkin patches open every October or the hay grower

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who sells hay from her barn. As addressed above, the reference to farm stands and farmers' markets is not exclusive, but merely two examples of agricultural use because the code says such use "includes but is not limited to" these specific types of selling locations. The County's interpretation that "includes but is not limited to" really means "only these and no other" is a butchering of the code. The reasons farm stands and farmers' markets are explicitly listed is because they involve *off-farm* sales locations. They do not restrict *on-farm* sales.

The County also argues that agricultural activities do not include "farm support businesses" which have their own regulations. Resp. Br., at 27. The County excludes from its brief the examples given of farm support businesses: "blacksmithing, farriers, farm implement sales and repair, and feed and fertilizer sales." SCC 90.91F.175. These are businesses which support agricultural activities but are not agricultural enterprises themselves. A tractor-repair mechanic supports agriculture but is not growing anything for sale. The County's unreasonable position in this case is that selling the products grown on a farm is as disconnected from growing products as shoeing horses or opening a tractor repair mechanics shop. Selling the grown products is part and parcel of the agricultural activity of growing, fertilizing, weeding, harvesting and packaging the products. See SCC 90.91F.120 (farm means land used for "sale, packaging and distribution of agricultural products wholly or partly from the farm site").

The County's erroneous conclusion that agricultural activities completely exclude any retail sales except farm stands and farmers' markets is belied by the

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examples of "farm" in SCC 30.91F.120. It expressly includes holiday tree sales, corn mazes, bakeries and cider press operations—all of which are retail sales.

3. The County's interpretation violates the rule of narrow construction for land-use restrictions.

Land-use prohibitions must be "strictly construed in favor of the property owner." *Morin v. Johnson*, 49 Wn.2d 275 (1956). The County essentially asks the Court to graft a prohibition into the Code that does not exist and has never before existed.

C. The County's Argument on Incidental Uses is extreme, unwarranted by the code, history and common sense.

The County argues that the Hearing Examiner found that parking for customers of Flower World was not incidental to growing plants—an unquestionably agricultural activity. Resp. Br. at 25 (citing C.12-C.13). It argues that the code defines "incidental uses" as follows:

> Uses which are incidental to a conforming permitted, condition, or administrative conditional use may be placed on lots in conjunction with the permitted, condition or administrative conditional use.

SCC 30.22.025. That is no definition of "incidental uses" at all. It just provides that incidental uses may be placed on lots where there are allowed uses.

The County goes on to explain—rightly—that if the use is *not incidental* to an allowed use, then the so-called incidental use is prohibited, creating an extreme result. "If the proposed use is not incidental to the permitted use, then the proposed use itself must be listed as a permitted use to be allowed." Resp. Br., at

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25. In other words, if parking for retail customers is not incidental to the agricultural use of Flower World, then the Postemas' problem is not merely the lack of a permit, but that parking would not be allowed—at all—ever. That extreme result comes from the conclusion that parking for an agricultural enterprise is not incidental to the agricultural enterprise. Common sense dictates it is.

Nevertheless, the Code does define "incidental use." It is

> a use which occurs as a result of, or in connection with, a permitted use, conditional use, or administrative use. The incidental use must be secondary or minor in nature, but associated with, the permitted use, conditional use, or administrative conditional use.

SCC 90.91I.030. To be sure, PDS has not proven that sales of products grown on a farm and parking for such sales are not in connection with growing the products. Nor has it proven that either sales or parking for sales is not minor in nature or not associated with the existing agricultural use.[1]

Other statutes recognize incidental uses to agricultural uses. For instance, RCW 84.34.020 provides rules for designating land for agricultural use for taxation purposes. Subsection (e) includes "lands including incidental uses and the land on which appurtenances **necessary to the** production, preparation, or

[1] If more is needed on this point, courts sometimes look to dictionaries for definitions of statutory terms. *Branson v. Washington Fine Wine & Spirits, LLC,* 574 P.3d 1031, 1035 (2025). The term "incidental" means "happening … in conjunction with." *See* dictionary.com. Certainly, selling farm products is something in conjunction with all the activities to grow them.

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sale of the agricultural products exist in conjunction with the land producing such products." RCW 84.34.020(2) (e) (emphasis added).[2] Common sense dictates that parking for customers is necessary for the sale of the agricultural products grown on site.

The County continues with complaints that to exempt parking for agricultural use would avoid stormwater drainage water quality issue to deal "where vehicles drip oil." Resp. Br. at 26. The Hearing Examiner apparently did not accept this "dripping oil" reasoning. There are no findings related to water quality. And no testimony at the hearing either. While dripping oil has a certain emotional element to it, the Hearing Examiner was not persuaded.

The County also asserts that the Hearing Examiner concluded that "agricultural activities" excluded retail sales except at farm stands or farmer's markets. Resp. Br. at 26. As addressed above, excluding all retail sales based on statutory text that "includes… but is not limited to" is plainly an erroneous interpretation and application of the law.

[2] In fact, the Legislature amended the agricultural land tax provisions with HB 1261 to promote agri-tourism. Sales of agricultural products on site are not merely incidental, but crucial to the survival of commercial agriculture apart from purely industrial farming.

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D. The County ignores that the Hearing Examiner found use of the graveled area for growing plants in containers was "co-equal" with parking for Flower World customers.

Even if parking for customers at a farm were not agricultural activities, incidental to agricultural activities or in connection with agricultural activities, the use of the area for growing plants in containers is clearly an agricultural use. The Hearing Examiner concluded that parking for customers was "co-equal" with the growing of plants. *See* Decision excerpts summarized in Opening Brief at 19–21.

But no provision of SCC 30.63B.070 conditions agricultural exemptions on which of two simultaneous uses is dominant or what percentage of time gravel areas contain plants. This test was invented for this enforcement action alone—and County witnesses admitted **no precedent exists** for applying such a rule to any other farm. *See* Tr. 127–28 (PDS: "not that I'm aware of").

If growing plants on gravel during part of the year makes the gravel agricultural (the County concedes it does), the fact that the same area also accommodates customer parking when not used for plants does not eliminate the exemption. No authority supports a "use-purity" doctrine.

Farm uses are cyclical. Pumpkin patches use their fields for parking after harvest. Orchards use areas differently depending on season. The County's position in the Postemas' case contradicts the nature of agriculture use itself.

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E. The County's argument regarding the access permit misstates SCC 13.10.010.

The County argues a permit was needed for the new driveway access. Resp. Br. at 7–12. But SCC 13.10.010 prohibits use of a right-of-way only for uses **other than transportation** unless a permit is obtained.

Here:

- Using a driveway to enter a public road is a **transportation use**.
- Transportation uses are expressly exempt from permit requirements.
- The Hearing Examiner issued no finding of fact that the modest relocation and combination of two existing accesses expanded the right-of-way, obstructed it, or created a safety issue.

Even if the code required permits for transportation uses, at most, the permit could only be required for work *within* the right-of-way—but PDS never quantified how much paving, if any, occurred in the right-of-way versus onsite. *See* Opening Brief at 32–33. Because the County bears the burden of proof (SCC 30.85.200(6)), lack of evidence is fatal.

F. The north building is exempt from LDA permitting because it is an agricultural building, and the LDA exemption does not vanish because a building permit is also required.

The County argues that because a building permit was required for the north building, the agricultural exemption from the LDA code no longer applies. Resp. Br. at 6–7. But nothing in SCC 30.63B.070(5) provides:

- that agricultural activities lose LDA exemptions when **any other** permit is required, or

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- that the phrase "no other permit" refers to building permits rather than the wetland/flood hazard permits described in subsections (b)–(c).

The County's circular reading—"you can't get an LDA exemption because you need a building permit, but you can't get the building permit because you need an LDA permit"—would nullify the agricultural exemption entirely. The Court should reject an interpretation that defeats the Code's stated purpose: protecting and encouraging agricultural activity.

G. The County's substantial-evidence arguments ignore the requirement to view the whole record and the agency's burden of proof.

The County argues substantial evidence supports the Examiner's findings. Resp. Br. at 27–29. But under RCW 36.70C.130(1)(c), the Court must consider **evidence that detracts** from the agency's findings.

The relevant detrimental evidence includes

- Photographs showing many periods when gravel areas contained **numerous plants**, not cars. *See* AR 286–87, 325–26.
- County witnesses' lack of agricultural expertise.
- Mr. Postema's unrefuted testimony that the gravel areas were used seasonally for **growing** plants and that plants grow for months in those areas, not just "holding them.". Tr. 89–90, 111.

The County did not—and cannot—prove that parking was the exclusive, dominant, or primary use. As a finding of fact (F.44), the notion that using an area for parking part-time (as a "co-equal" use with growing plants) is not related to agriculture is not supported by substantial evidence and not a legal conclusion

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of law. In either event, parking to accommodate sales of farm products on the farm where they are grown is, as both a matter of fact and law, related to the agricultural activity of growing the plants for sale.

Conclusion

The Court should not defer to a completely new interpretation of the County Code that would change decades of history of recognizing Flower World is an agricultural enterprise and that selling the products it grows is an integral part of that enterprise.

The County's Response Brief does not cure the Examiner's multiple errors of law addressed herein. The Examiner's decision should be reversed and the Notices of Violation vacated.

RESPECTFULLY SUBMITTED this 24th day of November 2025.

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