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Viking JV, LLC v. City of Puyallup

Court of Appeals of Washington, Division 2 - May 10, 2022 - P.3d - 2022 WL 1467526

Commercial builder filed Land Use Petition Act (LUPA) petition challenging city hearing examiner's decision denying builder's request to reduce park impact fee assessed by city as condition of commercial building permit for commercial warehouse.

City filed motion to dismiss, and the Superior Court denied the motion and subsequently denied builder's petition on the merits. Builder appealed, and city cross appealed.

The Court of Appeals held that:

- City's two-tiered hearing examiner review process for reviewing local project permits was not preempted by state law, and
- Builder failed to exhaust its administrative remedies and thus lacked standing to bring LUPA petition.

City's two-tiered hearing examiner review process for reviewing local project permits was not preempted by state law; city code's allowance for no more than one open record hearing and one closed record appeal was consistent with statute governing local government review of project permit applications, city's designation that each examiner's decision may be given effect of final decision of legislative body was consistent with statute governing legal effect of decisions made by examiner, and nothing in statute governing hearing examiner system expressly prohibited two-tiered internal review system.

Commercial builder failed to exhaust its administrative remedies and thus lacked standing to bring Land Use Petition Act (LUPA) petition challenging city hearing examiner's decision denying builder's request to reduce park impact fee assessed by city as condition of commercial building permit for commercial warehouse; city's appellate examiner review process was lawful, builder failed to procure a final determination by city's officer with highest level of authority to make determination so there was no land use decision under LUPA that would permit judicial review of builder's claims, and there were no equitable exceptions to LUPA's exhaustion requirement.

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