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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT**

ANNIE JANICKI,

Petitioner,

v.

CITY OF SEDRO-WOOLLEY, a municipal corporation; DELUXE RECYCLING AND DISPOSAL LLC, a Washington limited liability company; and FIRE RIDGE LLC, an Oregon limited liability company,

Respondents,

v.

SKAGIT COUNTY, a political subdivision of the State of Washington,

Intervenor.

No. 08-2-01130-8

**SKAGIT COUNTY'S OPPOSITION  
TO CITY / DELUXE MOTION TO  
DISMISS**

**I. SUMMARY**

The County regularly defends against LUPA actions, and agrees that proper initiation of a LUPA action is jurisdictional. But the City and Deluxe mischaracterize the

SKAGIT COUNTY'S OPPOSITION TO  
CITY / DELUXE MOTION TO DISMISS

**ORIGINAL**

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1 LUPA statute, attempting to create requirements that do not appear in the plain language  
2 of the statute.

3 A LUPA petitioner must serve the applicant or landowner identifiable by name and  
4 address in the administrative decision below. RCW 36.70C.040(2)(b). If neither can be  
5 identified in the administrative decision below, then the petitioner must serve the  
6 landowner listed in the county assessor's records. RCW 36.70C.040(c). If an applicant  
7 is identifiable by name and address in the administrative decision below, then a LUPA  
8 petitioner has no obligation to search the county assessor's records and serve the  
9 landowner per RCW 36.70C.040(2)(c).

10 Deluxe is the project applicant identified in the administrative decision below, and  
11 was properly served by Petitioner. Fire Ridge LLC was not identified in the administrative  
12 decision below, and, thus, Petitioner was not required to serve Fire Ridge LLC.

13 Undaunted, the City and Deluxe argue that this case should be dismissed simply  
14 because Petitioner did not serve Fire Ridge LLC, a newly-created Oregon entity related  
15 to Deluxe that first appeared in the county assessor's records eight days after the  
16 Hearing Examiner's decision. The LUPA statute makes the applicant (Deluxe)  
17 responsible for identifying additional parties not identified in the administrative decision.  
18 RCW 36.70C.050. It is Deluxe that violated the LUPA statute, not Petitioner.

19 In addition, Deluxe moves to dismiss on grounds that Petitioner allegedly failed to  
20 timely file the initial administrative appeal. Deluxe's argument is just as meritless now as  
21 it was when rejected by the Hearing Examiner. It should be rejected again.

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## II. EVIDENCE RELIED UPON

The City and Deluxe attempt to characterize this as a simple procedural motion to be decided at the initial LUPA hearing, but the City/Deluxe motion relies on evidence and witness testimony generated after the hearing, produced for the first time on this motion. In particular, the City/Deluxe motion to dismiss relies on the Declaration of Steve Seeger for the questionable proposition that Deluxe “has no interest in [Fire Ridge LLC]”, finely-tuned wordsmithing that does not rule out what appears to be the case here, i.e., that Deluxe and Fire Ridge LLC are related through an unseen business relationship that additional discovery would expose. In other words, the City/Deluxe motion is seeking summary judgment on the basis of new witness testimony extrinsic to the record, which the County and Petitioner should, in all fairness, have opportunity to develop through discovery. Moreover, many of the “exhibits” included in the Hearing Examiner’s May 22, 2008 decision were simply materials transmitted to the Hearing Examiner by City staff at some unknown point, made available for the first time when the City posted them on the City website on July 10, 2008. See, Fallquist Dec. Exh. P. Suffice to say, the factual handicap under which the County and Petitioner have been placed on this motion renders the extraordinary events leading up to this motion highly relevant.

This motion is not about “inexcusable neglect,” as Deluxe would have the Court believe. To the contrary, Petitioner Janicki is the only party with standing at this point because of a highly irregular effort to suppress lawful opportunities for well-grounded challenge to the Deluxe proposal in general and this MDNS in particular. If granted, the City/Deluxe motion to dismiss would injure the County: it would end this litigation and uphold the decision below, a decision that is highly problematic in both process and

1 substance. In light of all the foregoing, this brief will explain the unusual background on  
2 which this motion comes before the Court. It is highly relevant.

3 In rebuttal of facts asserted by the moving parties about Fire Ridge LLC, the  
4 County introduces Exhibits C and O. The County also offers Exhibits D, L, M, N and P  
5 because they are relevant and/or should have been included in the Hearing Examiner's  
6 record, yet were disclosed by the City for the first time on July 9, 2008 in response to a  
7 public records request. See further discussion in Fallquist Declaration. **Other than**  
8 **these well-justified exceptions, the County relies exclusively on documents in the**  
9 **administrative record below as the basis for the factual discussion that follows.**  
10

### 11 III. FACTUAL BACKGROUND

12 On May 22, 2007, seven months before Deluxe applied to the City for a permit,  
13 Deluxe and City officials arranged a joint meeting with the Skagit County Board of  
14 Commissioners.<sup>1</sup> Having assembled the county commissioners, Deluxe and City officials  
15 unveiled a plan to build and operate a regional garbage facility inside city limits, two  
16 blocks from the City's central business district, on a parcel of land bounded on three  
17 sides, respectively, by the Sedro-Woolley High School; a historic residential  
18 neighborhood; and the Skagit River's floodway.<sup>2</sup> See, Attachment 1 to this brief.  
19 According to the Sedro-Woolley Mayor, this idea made sense because the regional  
20 garbage facility could generate money for City government.<sup>3</sup>  
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24 <sup>1</sup> Transcript of May 22, 2007 Deluxe/City meeting with Skagit County Commissioners, Exhibit B at 4 to  
25 Appellant Response to Staff Report dated April 25, 2008. Hearing Examiner Exh. C, Attachment C,  
26 **Exhibit A** to the accompanying Declaration of Steve Fallquist.

27 <sup>2</sup> *Id.* at 1-3.

28 <sup>3</sup> *Id.* at 4 (Sedro-Woolley Mayor Anderson: "[T]here could be a tax that our city, which we don't have a  
mall, we don't have an oil refinery to help our city, so this is something that could be real beneficial to  
Sedro-Woolley.")

1 The Board of Commissioners expressed concern about the idea of a regional  
2 solid waste facility next to the Sedro-Woolley High School, a concern voiced in part  
3 because City officials were asking the Board of County Commissioners to approve  
4 funding for infrastructure to accommodate the Deluxe facility.<sup>4</sup> The Board of County  
5 Commissioners also raised concerns about the impacts to the countywide Solid Waste  
6 System,<sup>5</sup> the functioning of which is a statutory responsibility placed on Skagit County,  
7 which involves a regional interlocal agreement between the County and eight other  
8 jurisdictions (including the City of Sedro-Woolley), an arrangement that has major  
9 financial significance for the County and other participating jurisdictions.<sup>6</sup>

10  
11 The next day, on May 23, 2007, without disclosing the county commissioners'  
12 grave concerns, City officials convinced a divided City Council to pass a resolution  
13 endorsing and welcoming Deluxe.<sup>7</sup> On its first reading and with scant prior notice to the  
14 public, the resolution passed 4-2, with one councilmember abstaining.<sup>8</sup> Over the course  
15 of the ensuing seven months, City officials nevertheless continued working with Deluxe  
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21 <sup>4</sup> *Id.* at 3 (County Commissioner Ken Dahlstedt: "I recall very recently we had approved a grant of  
22 funding to do some road improvements in Sedro-Woolley...and because of some additional traffic in a  
23 residential area there was a significant amount of concern that was brought forward... So I am a little  
24 concerned about seeing a garbage facility right in downtown Sedro-Woolley, especially right next door  
25 to a high school.")

26 <sup>5</sup> *Id.* at 5 (County Commissioner Don Munks: "I'm not objecting, I'm just saying that there are things that  
27 need to be looked at so we can put a comprehensive county program together, because we want to  
28 cooperatively work with whatever happens, but is an overall county transfer facility that would occur.")

<sup>6</sup> *See, e.g.*, 2004 Interlocal Agreement, listed as Attachment D to Exhibit B to Hearing Examiner's  
Decision dated May 22, 2008. This appears to be an error by the Hearing Examiner; this exhibit was  
actually submitted as an attachment to the Petitioner's initial Notice of Appeal, HE Exh. A.

<sup>7</sup> Minutes of May 23, 2007 Sedro-Woolley City Council Meeting, Exhibit A to Appellant's Response to  
Staff Report. Hearing Examiner Exh. C, Attachment A. Fallquist Dec. **Exh.A**.

<sup>8</sup> *Id.*

1 to facilitate their project plans.<sup>9</sup> It was only many months later, on December 17, 2007,  
2 that Deluxe actually submitted a permit application to the City.<sup>10</sup>

3 On January 16, 2008, the City announced that the Deluxe project was a permitted  
4 use, and declared its intention to issue a determination of environmental non-significance  
5 for the Deluxe project.<sup>11</sup> The City accepted public comment to that end until February 6,  
6 2008.<sup>12</sup> According to the City's SEPA notice, this was to be the one and only opportunity  
7 for the public to weigh in.<sup>13</sup> During the SEPA comment period, the City was deluged by  
8 comment letters from citizens and agencies opposing the project and its location, and  
9 asking at minimum for an environmental impact statement (EIS).<sup>14</sup>

10 On March 7, 2008, City officials decided that the Deluxe project would involve no  
11 significant environmental impacts, and thus required no EIS.<sup>15</sup> The City published its  
12 mitigated determination of non-significance (MDNS) for the Deluxe application on March  
13 12, 2008.<sup>16</sup>

14 On March 5, 2008 – just two days before the City finalized the MDNS at issue in  
15 this litigation – the City radically modified its administrative appeal regulations.<sup>17</sup> Among  
16 other things, these amendments shortened the appeal filing period and placed any  
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21 <sup>9</sup> See, e.g., Email chain between Sedro-Woolley City Supervisor Eron Berg and Deluxe principal Steve  
22 Snell dated October 27, 2007 (Fallquist Dec. **Exh. D**).

23 <sup>10</sup> See Mitigated Determination of Non-Significance for BP 111-07 dated March 7, 2008. Hearing  
24 Examiner Decision Exh. G. Fallquist Dec. **Exh. H**.

25 <sup>11</sup> City of Sedro-Woolley Notice of Application and SEPA Comment Period, dated January 16, 2008.  
26 Hearing Examiner Exh. O. Fallquist Dec. **Exh. E**.

27 <sup>12</sup> City Staff Report to Hearing Examiner dated May 5, 2008 at 1. Hearing Examiner Exh. B. Fallquist  
28 Dec. **Exh. F**.

<sup>13</sup> Fallquist Dec. **Exh. E**.

<sup>14</sup> Hearing Examiner Exhs. P through Y. Fallquist Dec. **Exh. G**.

<sup>15</sup> March 7, 2008 MDNS. Hearing Examiner Exh. G. Fallquist Dec. **Exh. H**.

<sup>16</sup> *Id.*

<sup>17</sup> City of Sedro-Woolley Ordinance No. 1607-08 amending Sedro-Woolley Municipal Code (SMC),  
effective March 5, 2008. Admissible via judicial notice. ER 201. Fallquist Dec. **Exh. I**.

1 challenge to the Deluxe MDNS in the hands of a hearing examiner to be selected, hired  
2 and paid by the City Administration.<sup>18</sup> And on March 12, 2008 (the same day the MDNS  
3 was published), the City approved raising the appeal filing fee by a factor of five, from  
4 \$200 to \$1,000, also adding a requirement that any appellant pay, on top of the \$1,000  
5 filing fee, whatever amount of money the hearing examiner decides to invoice the City for  
6 his time, regardless of which party prevails.<sup>19</sup> Even though the resolution raising the  
7 appeal fee wasn't signed and thus effective until March 25, 2008, City staff nevertheless  
8 represented to citizens that the higher fee applied to appeals filed prior to March 25,  
9 2008.<sup>20</sup> This appears to have improperly dissuaded Sedro-Woolley resident Shelley  
10 Carroll Burgett from proceeding with her appeal, which was filed prior to March 25, 2008.  
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12  
13 Despite all of this, Petitioner Annie Janicki paid the \$1,000 fee, and timely  
14 appealed the MDNS on March 26, 2008.<sup>21</sup> Partly as a result of the events discussed  
15 above, Mrs. Janicki is the only Petitioner in this action. Dismissal of her case would  
16 uphold the decision below, which would injure the County for the reasons set forth in  
17 the County's motion to intervene and this opposition brief.

18 The City hired Mr. Donald Largen as hearing examiner to decide Mrs. Janicki's  
19 appeal. Mr. Largen is a non-attorney land use consultant employed by WSP  
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23 <sup>18</sup> See, Comparison Analysis of selected Sedro-Woolley Municipal Code Sections modified by  
Ordinance No. 1607-08 on March 5, 2008. Admissible as summary per ER 1006. Fallquist Dec. **Exh. J.**

24 <sup>19</sup> City Resolution No. 765-08, signed March 25, 2008 (Fallquist Dec. **Exh. K**). Admissible per judicial  
notice. ER 201.

25 <sup>20</sup> See, appeal and email chain between City staff and Sedro-Woolley resident and would-be appellant  
26 Shelley Burgett dated March 22, 2008 (Fallquist Dec. **Exh. L**) ("There is a \$1,000 appeal fee that must  
be filed with your appeal request.") This document was just produced by the City on or about July 9,  
2008. Should be included in the record per RCW 36.70C.120(4).

27 <sup>21</sup> City Staff Report to Hearing Examiner at 2. Hearing Examiner Exh. B. Fallquist Dec. **Exh.F**

1 Environment & Energy, a global concern based in Reston, Virginia.<sup>22</sup> According to its  
2 website, WSP provides clients with “innovative solutions to environment related  
3 business issues.”<sup>23</sup> To the County’s knowledge, Mr. Largen has never been utilized as  
4 a hearing examiner in Skagit County prior to this matter.

5  
6 Mr. Largen conducted the appeal hearing on May 5, 2008 at Sedro-Woolley City  
7 Hall. The City’s Notice of Public Hearing published on April 26, 2008 in various local  
8 newspapers announced that “[i]nterested persons may appear and provide testimony at  
9 the [May 5, 2008] hearing,” making clear that it was to be “an open record public  
10 hearing.”<sup>24</sup> Nevertheless, Mr. Largen refused to allow anyone to speak at the hearing  
11 besides the City, Deluxe and its consultants, and Petitioner Janicki.<sup>25</sup> Nevertheless,  
12 hundreds of citizens, students and entities attended the hearing, submitting letters and  
13 petition signatures into the record in opposition to the Deluxe facility.<sup>26</sup>  
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18 <sup>22</sup> See, Invoice from City/WSP to Petitioner Janicki dated July 14, 2008, at 2 (Fallquist Dec. **Exh. M**).

19 <sup>23</sup> <http://www1.wspgroup.com/environmental> (last visited July 9, 2008). Sedro-Woolley Ordinance No.  
20 1607-08 says that the hearing examiner must “comply with the cannons (sic) of judicial conduct as  
21 promulgated by the Washington Supreme Court.” See, Fallquist Dec. **Exh. I** at 1. Consider, CJC  
22 Canons 1,2,3,5 and 6. Throughout this matter, we anticipate that the City and Deluxe will assert great  
23 deference is owed to Hearing Examiner Largen’s substantive decision. The County disagrees. The  
24 same City officials who called the Deluxe project a “win-win” a year prior to Mr. Largen’s decision were  
25 also responsible for changing City regulations to allow a hearing examiner and then selecting, hiring and  
26 paying Mr. Largen to serve as the Hearing Examiner in this matter several days later. Under the  
27 circumstances, the Hearing Examiner is simply not entitled to a presumption of impartiality and  
28 deference. The County reserves the right to seek through discovery a more complete picture of Mr.  
Largen’s background and his history of decisions involving SEPA determinations such as this one. For  
example, it would be relevant if Mr. Largen has never overturned a municipal MDNS on legal grounds.  
See, RCW 36.70C.120(2)(a).

<sup>24</sup> City of Sedro-Woolley Notice of Public Hearing published in local newspapers on April 23, 2008.  
Fallquist Dec. **Exh. N**. This should have been included in the Hearing Examiner’s decision, but  
seemingly was not. It should be admitted by this Court. RCW 36.70C.120(4).

<sup>25</sup> Decision of the Hearing Examiner, May 22, 2008, at 3 ¶ 3. (Fallquist Dec. **Exh. B**).

<sup>26</sup> Hearing Examiner Exhs. P through Y. Fallquist Dec. **Exh. G**.

1 Mr. Largen issued his decision on May 22, 2008.<sup>27</sup> The decision flatly affirms the  
2 City's MDNS, dismissively rejecting as "outside the scope of the appeal" all of the  
3 meritorious legal issues raised by Petitioner.<sup>28</sup>

4 Mr. Largen's decision is somewhat muddled in its identification of the parties to  
5 the appeal. At one point the decision identifies Phil Serka (attorney for Deluxe) as a  
6 party to the appeal by name and address, naming Mr. Serka as Deluxe's representative  
7 in various other places.<sup>29</sup> Other places in the decision identify Deluxe Recycling and  
8 Disposal LLC as the applicant and/or project proponent by name and address.<sup>30</sup> In  
9 particular, the MDNS dated March 7, 2008, the basic decision at issue, is referenced  
10 throughout and incorporated as Exhibit G to Mr. Largen's decision, and specifically lists  
11 "Deluxe Recycling and Disposal LLC" as the project proponent, by name and address.<sup>31</sup>

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14 On May 30, 2008, the property at issue in this appeal was recorded in the county  
15 assessor's records as having been transferred to Fire Ridge LLC, an Oregon limited  
16 liability company formed 10 days prior, on May 20, 2008.<sup>32</sup> According to statements in a  
17 July 3, 2008 newspaper article attributed to Deluxe owner Larry McCarter, Deluxe "does  
18 own 109 Jameson St., [the property at issue in this litigation]" but "technically the property  
19 owner is Fire Ridge LLC, an investment firm associated with Deluxe."<sup>33</sup>

21  
22 <sup>27</sup> Fallquist Dec. **Exh. B** at 10.

23 <sup>28</sup> *Id.* at 3,4 (Sections C & D).

24 <sup>29</sup> *Id.* at 13.

25 <sup>30</sup> See, e.g., *Id.* at 3 ¶ A & HE Decision Exhs. G – O. See in particular the March 7, 2008 MDNS, Exh. G  
26 to the Hearing Examiner's decision (Fallquist Dec. **Exh. B**).

27 <sup>31</sup> Fallquist Dec. **Exh. H**.

28 <sup>32</sup> Corporate Registration for Fire Ridge LLC, filed with Oregon Secretary of State on May 20, 2008  
(Fallquist Dec. **Exh. C**). See also Deluxe's motion to dismiss, on file with Court.

<sup>33</sup> E. Wilson, "Sedro-Woolley Files Motion to Dismiss Deluxe Appeal," Skagit Valley Herald, July 3, 2008  
(Fallquist Dec. **Exh. O**). Skagit County submits this newspaper article in evidence not for the truth of  
matters asserted therein, but rather as evidence that reasonable grounds exist for belief that Deluxe and

1 On June 12, 2008, Petitioner Janicki filed this LUPA petition, serving Deluxe, its  
2 registered agent, and Attorney Serka. On June 17, 2008, Skagit County filed a motion to  
3 intervene, which this Court granted on July 17, 2008.

4 Petitioner Janicki apparently discovered on her own that the property had been  
5 transferred to Fire Ridge LLC. Although not obligated to do so under the LUPA statute,  
6 Petitioner nevertheless filed a Notice of Joinder on the afternoon of June 30, 2008,  
7 seeking to join Fire Ridge LLC to this action. The next morning, on July 1, 2008, Deluxe  
8 filed this motion to dismiss, including the declaration, exhibits and memorandum of law  
9 presently before the Court on this motion, papers prepared well in advance of Petitioner  
10 Janicki's June 30, 2008 Notice of Joinder.<sup>34</sup> Briefing from the City's outside legal counsel  
11 in support of Deluxe's motion to dismiss followed less than three hours later.  
12

13  
14 The record reflects that this motion is simply the latest in a long line of efforts to  
15 suppress lawful opportunities for well-founded objection to the pre-decided Deluxe  
16 proposal. Because of that history, Petitioner Janicki is the sole party with standing in this  
17 matter. If Annie Janicki's case is dismissed, the Hearing Examiner decision will be  
18 upheld, and the County will be injured.

19 Fortunately, the legal arguments offered by Deluxe and the City on this motion are  
20 inconsistent with the plain language of the LUPA statute. The City/Deluxe motion to  
21 dismiss must be denied.  
22

23 //

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26 Fire Ridge LLC are related companies, contrary to the carefully-parsed impression the City and Deluxe  
27 proffer through the Declaration of Steve Seeger and briefing from counsel.

28 <sup>34</sup> For example, the Declaration of Steve Seeger in support of Deluxe's motion to dismiss was signed on  
June 26, 2008. On file with Court.

1 IV. ARGUMENT AND AUTHORITY

2 A. The City/Deluxe Motion Alleging Failure To Serve Fire Ridge LLC  
3 Must Be Denied.

4 The Deluxe and the City move in tandem to dismiss, arguing that the current  
5 landowner, Fire Ridge LLC, was not served by Petitioner within 21 days of the Hearing  
6 Examiner’s May 22, 2008 decision. As set forth below, Petitioner fully complied with the  
7 LUPA statute’s service of process requirements. The City/Deluxe motion to dismiss must  
8 be denied.

9 1. Both the City and Deluxe Mischaracterize the LUPA Statute’s Service of  
10 Process Requirements.

11 RCW 36.70C.040(2)(b) provides that a LUPA Petitioner must serve:

- 12 (i) *Each person identified by name and address in the local  
13 jurisdiction’s written decision as an applicant for the permit or  
14 approval at issue; and*
- 15 (ii) *Each person identified by name and address in the local  
16 jurisdiction’s written decision as an owner of the property at issue.*

17 This ensures that the project proponent, if identified in the administrative decision below,  
18 receives prompt notice of the LUPA action. It would be highly unusual if a project  
19 proponent could not be identified by name and address by looking to the administrative  
20 decision under review. (The County has never seen such a case, including the present  
21 one.) Nevertheless, RCW 36.70C.040(2)(c) creates a backstop for this rare situation:

22 *If no person is identified in a written decision as provided in (b) of  
23 this subsection, each person identified by name and address as a  
24 taxpayer for the property at issue in the records of the county  
25 assessor, based upon the description of the property in the  
26 application...*

27 **In summary: if an applicant is identifiable in the administrative decision below,  
28 then a LUPA petitioner has no obligation to search the county assessor’s records  
and serve the landowner per RCW 36.70C.040(2)(c).**

1 It is plainly evident in reviewing the administrative decision below that Deluxe  
2 Recycling and Disposal LLC is the applicant / proponent, something that is undisputed by  
3 any party to this motion.<sup>35</sup> Attorney Serka, representing Deluxe both below and before  
4 this Court, is listed by name and address as a party in the Hearing Examiner's decision,  
5 and the decision identifies Serka as Applicant Deluxe's representative. And the March  
6 12, 2008 MDNS at issue in this litigation, referenced throughout and attached as an  
7 exhibit to the Hearing Examiner's decision, identifies Deluxe Recycling and Disposal LLC  
8 by name and address as the proponent.<sup>36</sup>

9 Deluxe, its registered agent, and its attorney of record were all timely served by  
10 Petitioner, something undisputed by the City or Deluxe. The Petitioner clearly satisfied  
11 the initial process service requirements of the LUPA statute.

12 2. Deluxe Had The Statutory Obligation To Notify The Other Parties About Fire  
13 Ridge LLC, But Has Brought This Motion To Dismiss Instead.

14 Where an applicant is served with a LUPA petition but believes that the landowner  
15 is a necessary party and should properly be joined, the LUPA statute provides that the  
16 applicant is responsible for identifying the landowner and any other necessary parties  
17 that were not included in the administrative decision below. RCW 36.70C.050. In other  
18 words, the law recognizes that the permit applicant is best positioned to decide whether  
19 any unseen business arrangements require additional parties be joined to the LUPA  
20 action, and, therefore, the law expressly places the burden on the applicant to disclose  
21 those additional parties. *Id.* It appears that Deluxe prepared an ambush using  
22 information it was obligated to disclose under the statute, and now attempts to capitalize  
23 on its improper concealment with a motion to dismiss. Less understandably, the City has  
24 chosen to enthusiastically participate.

25  
26 <sup>35</sup> See, Fallquist Dec. **Exh. B.**

27 <sup>36</sup> *Id.*

1           3. Fire Ridge LLC Was Not The Landowner Until More Than A Week After The  
2           Hearing Examiner's Decision.

3           Deluxe was identifiable by name and address in the administrative decision under  
4 review, Deluxe was properly and timely served by the Petitioner, and Deluxe has  
5 appeared in this action through its counsel. That ought to end the debate. But in the  
6 event the moving parties still harbor doubt, it is useful to note that the City/Deluxe motion  
7 fails for additional reasons. In particular, the City/Deluxe motion relies on the specious  
8 argument that Petitioner Janicki should have immediately checked with the county  
9 assessor to divine the interest of Fire Ridge LLC in this matter. In addition to this being  
10 inconsistent with the plain language of the LUPA statute, Fire Ridge LLC was not a  
11 landowner in the county assessor's records when the Hearing Examiner's decision was  
12 issued on May 22, 2008. Fire Ridge LLC did not even exist as a corporate entity until  
13 May 20, 2008, and was recorded with the county assessor as the landowner on May 30,  
14 2008.

15           Petitioner Janicki had no obligation to search the county assessor records in the  
16 first place, because Deluxe, the project applicant, was identifiable in the administrative  
17 decision and was appropriately served. Moreover, Fire Ridge LLC appeared neither in  
18 the Hearing Examiner's decision itself nor the county assessor's records at the time the  
19 Hearing Examiner's decision was rendered. Petitioner was not obligated serve Fire  
20 Ridge LLC when initiating this LUPA action. The City/Deluxe motion is meritless.

21           4. This Is Ultimately A Question Of Statutory Interpretation. The LUPA Statute  
22           Should Not Be Interpreted In A Manner That Encourages Sophisticated  
23           Procedural Machinations To Avoid Legitimate Substantive Grievances.

24           At its essence, the City/Deluxe motion to dismiss related to Fire Ridge LLC is a  
25 question of statutory interpretation. When interpreting a statute, "the court must  
26 remain careful to avoid 'unlikely, absurd or strained' results." *Berrocal v. Fernandez*,  
27 155 Wn.2d 585, 590 (2005).

1 If the Court were to accept the City/Deluxe interpretation of the LUPA statute, it  
2 would mean that any LUPA petition could be defeated simply by the applicant arranging  
3 a transfer of the property to a newly-minted shell company just before the 21-day LUPA  
4 filing deadline expires, i.e., exactly what seems to have occurred here. Plainly, this  
5 would constitute an “unlikely, absurd [and] strained result.” *Id.*

6  
7 By contrast, Skagit County's interpretation of the LUPA statute is based on a  
8 common-sense, balanced view, one that facilitates reasonable notice to the proponent of  
9 the challenged decision without unnecessarily reading into the statute various hyper-  
10 technical traps for legitimately aggrieved parties.

11 Governmental entities such as Skagit County and the City of Sedro-Woolley are  
12 charged by the State of Washington with balancing a broad range of competing interests,  
13 and, accordingly, have an obligation to assign laws such as LUPA and SEPA a  
14 reasonable, balanced and consistent interpretation. This ensures the public's First  
15 Amendment right to petition its government for redress of grievances. See, *Thomas v.*  
16 *Collins*, 323 U.S. 516, 530 (1945).<sup>37</sup> This principle holds true whether a jurisdiction is  
17 acting in a regulatory capacity, or pursuing a hoped-for new funding source.<sup>38</sup>

18  
19 The Court should reject the interpretation of the LUPA statute offered by the City  
20 and Deluxe, and deny the motion to dismiss.

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25 <sup>37</sup> See also *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (“There can be no equal justice where the kind of  
26 trial a man gets depends on the amount of money he has.”).

27 <sup>38</sup> Sedro-Woolley Mayor Anderson, May 22, 2007: “[T]here could be a tax...It looks like a win-win...”  
Hearing Examiner Exh. C, Attachment B. Exhibit A to Fallquist Dec. **Exhibit B.**, at 4.

1           **B. Deluxe's Motion to Dismiss Was Already Denied Out Of Hand By The**  
2           **Hearing Examiner. It Should Similarly Be Rejected By This Court.**

3           The City finalized its MDNS at issue on March 7, 2008.<sup>39</sup> The MDNS provides by  
4 its own terms that the publication date is March 12, 2008.<sup>40</sup> The MDNS further states:

5           Per SMC 2.88.170, you may appeal this threshold determination in  
6 writing to the City of Sedro-Woolley Planning Department within 14  
7 days from the date of publication. Written appeals must be submitted  
8 by 4:30 p.m., Wednesday, March 26, 2008, to the Associate Planner,  
9 City of Sedro-Woolley...<sup>41</sup>

10           Petitioner fully complied with the City's instructions, timely appealing the MDNS  
11 on March 26, 2008. The City readily admitted before the Hearing Examiner that  
12 Petitioner's appeal was timely.<sup>42</sup> Nevertheless, Deluxe argued that the 14-day  
13 administrative appeal period should have run from March 7, 2008, before anyone knew  
14 about the MDNS. Hearing Examiner Largen apparently felt Deluxe's argument was  
15 sufficiently meritless to reject it from the bench, as later explained in the written  
16 decision.<sup>43</sup> Even the City and Hearing Examiner Largen rejected this argument. It  
17 should be rejected again by the Court.

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24 <sup>39</sup> Mitigated Determination of Non-Significance. Fallquist Dec. **Exh. H.**

25 <sup>40</sup> *Id.* at 2.

26 <sup>41</sup> *Id.* at 2. The 14 day appeal timeline is reflective of the changes to City Code put in place just two  
27 days prior to this communication. See, Fallquist **Exh. I.**

28 <sup>42</sup> City Staff Report at 2 (Fallquist Dec. **Exh. F**)("On March 26, 2008, Annie Janicki, by and through her  
attorney, C. Thomas Moser, filed a timely appeal of the SEPA threshold determination (MDNS).")

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**V. CONCLUSION**

Petitioner has fully complied with the LUPA statute and administrative appeal requirements in bringing this matter before the Court. Petitioner Janicki was not obligated to serve Fire Ridge LLC. Deluxe is the project applicant identified in the administrative decision below, has been properly served, and has appeared in this action through its counsel. The Court should deny the City/Deluxe motion to dismiss, affording the County and the Petitioner an opportunity to be heard on the merits.

DATED this 18 th day of July, 2008.

SKAGIT COUNTY PROSECUTING ATTORNEY

By 

Stephen Fallquist, WSBA No. 31678  
William Honea, WSBA No. 33528  
Attorneys for Skagit County

27 <sup>43</sup> Hearing Examiner decision dated May 22, 2008, at 3 ¶ 4 (Fallquist Dec. **Exh. B**).



SEDRO-WOOLLEY  
HIGH SCHOOL

PROPOSED  
SOLID WASTE  
FACILITY

RESIDENTIAL  
NEIGHBORHOOD