

ANALYSIS

Potts argues that he timely served the City on February 27, 2014, under CR 5(b)(1) and 71(a), when he mailed a copy of the notice to the deputy prosecutor who represented the City in the forfeiture proceeding. In a footnote in its brief, the City states that it “has now withdrawn its claim that the Petition for Review was not timely served.” Br. of Resp’t at 2 n.1. We treat the City’s statement as a concession that the superior court erred in dismissing Potts’s appeal on this basis, and accept that concession.

However, the City now argues that the order dismissing the notice of appeal should be affirmed because Potts’s notice did not comply with the requirements for such a notice as set forth in RCW 34.05.546, and therefore the superior had no subject matter jurisdiction.¹ It contends that Potts’s notice of appeal did not contain “facts that demonstrate that the petitioner is entitled to obtain judicial review,” Potts’s “reasons for believing that relief should be granted,” or a “request for relief, specifying the type and extent of relief requested,” as required under RCW 34.05.546(6), (7), and (8).² Br. of Resp’t at 2.

Under RAP 2.5(a), we generally do not address arguments raised for the first time on appeal. The City argues that it asserted noncompliance with RCW 34.05.546 in its superior court motion. We disagree. Although the motion to dismiss noted the requirements of RCW 34.05.546, the City did not argue for dismissal on that basis. It argued only that the superior

¹ Appeals from civil forfeiture orders must be brought under Chapter 34.05 RCW, the Administrative Procedure Act. RCW 69.50.505(5).

² Potts argues that the record shows that he did comply with the requirements of RCW 34.05.546.

court should dismiss the notice of appeal because Potts “has failed to serve the City within the thirty (30) day time requirement established by RCW 34.05.542.” Clerk’s Papers at 30. As a result, Potts had no reason to address in the superior court whether he complied with RCW 34.05.546 and the superior court did not rule on this issue.

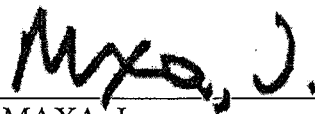
A party generally may raise lack of subject matter jurisdiction at any time. *Kelsey v. Kelsey*, 179 Wn. App. 360, 368, 317 P.3d 1096, *review denied*, 180 Wn.2d 1017 (2014). However, the City cites no authority supporting its argument that the requirements of RCW 34.05.546 are jurisdictional. The case it cites, *City of Seattle v. Public Employment Relations Commission*, holds that a superior court’s appellate jurisdiction is invoked when a party timely files and serves a petition for review. 116 Wn.2d 923, 926-27, 809 P.2d 1377 (1991). Potts complied with this requirement. *City of Seattle* does not hold that noncompliance with the requirements of RCW 34.05.546 deprives the superior court of jurisdiction.³ In fact, our Supreme Court has expressly declined to hold that strict compliance with RCW 34.05.546 is a jurisdictional requirement. *Skagit Surveyors and Eng’rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 557, 958 P.2d 962 (1998).

We hold that the superior court erred in dismissing Potts’s notice of appeal based on untimely service, and that the City cannot argue for the first time on appeal that Potts did not

³ The City also cites *Musselman v. Department of Social & Health Services*, 132 Wn. App. 841, 134 P.3d 248 (2006) to support this proposition. However, *Musselman* does not address whether noncompliance with RCW 34.05.546 affects the superior court’s jurisdiction. *Id.* at 853-54

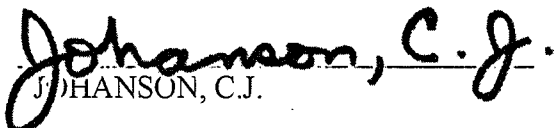
comply with RCW 34.05.546. Accordingly, we reverse the order dismissing Potts's notice of appeal and remand to the superior court for further proceedings. On remand, the City is free to argue that Potts's notice of appeal did not comply with RCW 34.05.546.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

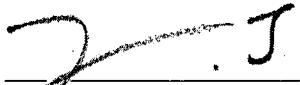


MAXA, J.

We concur:



JOHANSON, C.J.



LEE, J.