IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

HANS VOGEL and DANA VOGEL, husband and wife,	)	**No. 28415-8-III**
Appellants,	)	**Division Three**
v.	)	
CITY OF RICHLAND, a political subdivision of the State of Washington and MILO BAUDER,	)	**UNPUBLISHED OPINION**
Respondents.	)	

Siddoway, J. — Hans and Dana Vogel appeal the superior court's decision affirming the Richland City Council's approval of a preliminary plat and rezone of a 41-acre subdivision known as "The Crest." We conclude that the city council's decision to approve the recommended plat and rezone was supported by evidence in the record; that its failure to enter all findings required by statute and the municipal code was harmless; and that the Vogels have demonstrated no other basis for relief under RCW 36.70C.130. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Hans and Dana Vogel live in a subdivision known as Crested Hills, located in the city of Richland. In June 2006, developer Milo Bauder applied to the city planning commission for a rezone and approval of a preliminary plat for a 41-acre site adjacent to Crested Hills to accommodate development of a new subdivision, "The Crest." Mr. Bauder's proposal would change the zoning of the site from single family residential (R-1-10) to planned unit development (PUD). Under the existing residential zoning, development would have been limited to 205 detached single-family homes. With the rezone, Mr. Bauder would limit development to 145 residences, but only 58 would be detached single-family residences; 87 would be attached townhouses. In addition, his preliminary plat and rezone application included a small shopping center and recreational center. Twenty-seven acres of the parcel would be dedicated to the city for open space purposes and trail construction. The rezone was required because the existing R-1-10 classification prohibits the construction of townhouses and commercial enterprises.

The Vogels and several of their neighbors attended the planning commission hearings and city council meetings to protest the rezone and preliminary plat application. The primary motivation for the Vogels' opposition to The Crest was based on the plat's reliance on Morency Drive, on which the Vogels live, for access. The Vogels and their neighbors testified that Morency Drive was too narrow to accommodate additional traffic.

The planning commission conducted three hearings on the rezone application and

preliminary plat over a period of 15 months. The first hearing, an open record hearing, was conducted on August 23, 2006; it was continued in light of questions raised about traffic concerns, with leave to Mr. Bauder to submit a traffic study. A second open record hearing, limited to matters relating to the traffic study thereafter submitted by Mr. Bauder, was conducted on October 3, 2007.

During the second hearing, a point of contention arose as to the classification of Morency Drive under the city's street functional classification plan. The Vogels, relying on a street map available on the city's website as a part of the comprehensive plan, contend that Morency Drive is a local street. Local streets are intended by the comprehensive plan to have average daily trips, generally, of less than 1,000 vehicles per day. According to the city, Morency Drive is a collector street, designed for 400 to 1,500 trips per day. The city traffic engineer testified that the map included in the comprehensive plan posted on the city's website was in error. The city's position is that the city council has never affirmatively acted to make that change from the street's original, intended "collector" status notwithstanding that it has voted to improve comprehensive plans in which the map was included.

The planning commission ultimately voted to recommend to the city council that it approve the rezone and preliminary plat, subject to conditions of approval. The planning commission adopted findings of fact and conclusions of law, including determinations

that the rezone and preliminary plat were consistent and compatible with the city's comprehensive plan, were compatible with the adjacent residential neighborhoods, and were in the public interest.

City council members were provided with the written record of the planning commission proceedings on The Crest and, at a November 20, 2007 city council meeting, most council members expressed concern about the traffic issues identified by the Morency Drive residents, which were discussed at length. The council ultimately conditionally approved the preliminary plat by a 3-2 vote, but revised the conditions of approval to include a requirement that the south access to the development, Rachel Road, be built with the initial phase of development, in an effort to mitigate traffic impact on Morency Drive. The city council also engaged in a first reading of the ordinance to rezone the property as a PUD.

Two weeks later, on December 4, the city council voted on the ordinance for the rezone. At that time, based on a staff report that the council's prior amendment requiring construction of Rachel Road might not protect Morency Drive from traffic incursion as much as council members intended, the council voted to further revise the conditions of approval to require construction of a physical barrier restricting northbound access to Morency Drive from The Crest, thereby leaving Rachel Road as the only access to the development until some alternative connection, easing the traffic burden on Morency,

was completed. Subject to that changed condition, the council passed the rezone ordinance by a vote of 4-2.

The Vogels appealed the council's decision to the Benton County Superior Court under the Land Use Petition Act (LUPA), chapter 36.70C RCW, on a variety of grounds. The superior court determined that grounds for reversal under LUPA did not exist and dismissed the petition. This appeal followed.

ANALYSIS

I.

Before turning to the Vogels' assignments of error, we briefly review the legal process and standards applied in the proceedings leading to this appeal.

The Richland Municipal Code (RMC) allows planned unit developments, describing their purpose as follows:

> The purpose of a planned unit development is to provide opportunities to create a more desirable environment through the application of flexible design and development standards to tracts of land under common ownership or control. Planned unit development is intended to encourage the use of new and improved techniques and technology in community development and continued maintenance. It is intended to achieve economics in development and maintenance while providing privacy, usable open space, safe pedestrian and vehicular circulation, and compatible relationships between different uses.

RMC 23.50.010. A PUD district may be approved for any use or combination of uses listed in chapters 23.14 through 23.30 of the municipal code. Townhouses ("Dwelling,

One Family Attached") are permitted in R-2, R-2S, and R-3 zones by RMC 23.18.030.

The municipal code requires that a request for reclassification as a PUD and preliminary PUD plan approval be considered by the city's planning commission at an open record public hearing. After considering the presentations of planning staff, the developer, and citizens, the planning commission, by majority vote, recommends to the city council that the application be granted or denied. The planning commission is to base its recommendation on its determination of whether:

> 1. The PUD district development will be compatible with nearby developments and uses;
>
> 2. Peripheral treatment insures proper transition between PUD uses and nearby external uses and developments;
>
> 3. The development will be consistent with the comprehensive plan and with the purpose of the PUD district;
>
> 4. The development can be completed within a reasonable period of time.

RMC 23.50.040(B).

Upon receiving the planning commission's recommendation, the city council may adopt, adopt with modifications, or deny the application for reclassification to PUD and preliminary PUD plan approval. RMC 23.50.040(C). In approving a subdivision, the city is required to find that appropriate provision has been made for certain facilities, services, community concerns, and the public welfare. *E.g.*, RCW 58.17.100, .110 (city council action approving preliminary plat shall be in writing and include findings of fact

and conclusions supporting the decision); RMC 19.60.095 (city council approval of development application for a Type III permit (including preliminary plats and rezones) is to be supported by findings and conclusions of conformity with comprehensive plan, public benefit, and mitigation of adverse impacts).

A superior court may grant relief from a challenged land use decision only if the party seeking relief carries its burden of establishing that one or more of the six standards set forth in RCW 36.70C.130(1) has been met. The Vogels assert that they met their burden of establishing three of the standards for relief in the superior court, those being:

> "(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of the 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 records before the Court;
>
> (d) The land use decision is a clearly erroneous application of the law to the facts."

Br. of Appellant at 27-28 (quoting RCW 36.70C.130(1)).

When conducting judicial review under LUPA, we sit in the same position as the superior court and give no deference to its findings. *Griffin v. Thurston County Bd. of Health*, 165 Wn.2d 50, 54-55, 196 P.3d 141 (2008). We review the action based upon the administrative record before the court. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751, 49 P.3d 867 (2002); *Kahuna Land Co. v. Spokane County*,

94 Wn. App. 836, 841, 974 P.2d 1249 (1999). Just as the trial court, we grant relief only if the petitioners carry the burden of establishing that one of the standards in RCW 36.70C.130(1)(a)-(f) has been met.

II.

The Vogels first argue that the city council's approval of the project constitutes an illegal spot zone. Br. of Appellant at 29. Spot zoning is "zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan." *Smith v. Skagit County*, 75 Wn.2d 715, 743, 453 P.2d 832 (1969); *Lutz v. City of Longview*, 83 Wn.2d 566, 573-74, 520 P.2d 1374 (1974). The main inquiry is whether the zoning action bears a substantial relationship to the general welfare of the affected community. *E.g.*, *Parkridge v. City of Seattle*, 89 Wn.2d 454, 460, 573 P.2d 359 (1978). Only where the spot zone grants a discriminatory benefit to one or a group of owners to the detriment of their neighbors or the community at large without adequate public advantage or justification will a county's rezone be overturned. *Anderson v. Island County*, 81 Wn.2d 312, 325, 501 P.2d 594 (1972). Approval of a PUD constitutes an act of rezoning. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 874, 947 P.2d 1208 (1997).

As a threshold matter, Mr. Bauder argues that we should not entertain the Vogels'

argument that the city engaged in an illegal spot zone because they did not exhaust their administrative remedies by raising the spot zoning argument before the planning commission and city council. Exhaustion of administrative remedies to the extent required by law is one of the statutory requirements of standing to file a land use petition. RCW 36.70C.060(2)(d). The interpretation of this requirement under LUPA has been guided by the Administrative Procedure Act, chapter 34.05 RCW, which requires that for remedies to be exhausted, issues must first be raised before the administrative agency. *Mount Vernon*, 133 Wn.2d at 868.

The exhaustion doctrine is founded on the principle that we should give deference to a body possessing expertise in areas outside the conventional experience of judges, so that the administrative process will not be interrupted prematurely, so that the agency can develop the necessary factual background on which to reach its decision, so that the agency will have the opportunity to exercise its expertise and to correct its own errors, and so as not to encourage individuals to ignore administrative procedures by resorting to the courts prematurely. *Phillips v. King County*, 87 Wn. App. 468, 479-80, 943 P.2d 306 (1997), *aff'd*, 136 Wn.2d 946, 968 P.2d 871 (1998). "[T]here must be more than simply a hint or a slight reference to the issue in the record" for the exhaustion requirement to be satisfied; however, citizens "[do] not have to raise technical, legal arguments with the specificity and to the satisfaction of a trained land use attorney during a public hearing"

to satisfy the requirement. *Mount Vernon*, 133 Wn.2d at 869-70 (citing *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 670, 860 P.2d 1024 (1993)).

Mr. Bauder points out that the term "spot zoning" was never used at any point in the hearings. But "spot zoning" has been characterized as "only a label" foreshadowing that the zoning will be declared void; it "does not tell us the underlying reasons of law that the rezoning was bad." 17 William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Property Law § 4.18, at 244 (2d ed. 2004). The record of the hearings reveals a number of citizen comments directed to the city planning commission, written and oral, questioning the validity of the rezoning and discussing the anticipated negative impact that the zoning change would have on the Crested Hills community. These challenges to validity, alleging problems with the project that, if found, could support a characterization as spot zoning, were more than a hint or slight reference, and accomplished the objective of the exhaustion requirement: they caused the planning commission to develop the necessary factual background on which to reach its decision and to exercise its expertise.

We therefore turn to the Vogels' challenge to the legality of the rezone. Unlike original comprehensive zoning, which is legislative in nature, a rezone action is adjudicatory, deciding between rights sought by the proponents and those claimed by the opponents of the zoning change. *Parkridge*, 89 Wn.2d at 463. While all zoning must be

shown to have a substantial relationship to the public health, safety, morals, or welfare, with a rezone the required relationship will not be presumed, as it would be if the action were legislative. *Id.* at 460. Instead, the proponents of the rezone must demonstrate that relationship; they also have the burden of demonstrating that conditions have substantially changed since the original zoning. *Id.* at 462. However, the general rule is that "a rezone will not be disturbed by the courts absent arbitrary and capricious conduct by the local legislative tribunal." *Teed v. King County*, 36 Wn. App. 635, 644, 677 P.2d 179 (1984) (citing *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County*, 96 Wn.2d 201, 211, 634 P.2d 853 (1981)). Arbitrary and capricious conduct is "conduct that is willful and unreasonable without consideration and in disregard of facts or circumstances." *Id.* (citing *Barrie v. Kitsap County*, 93 Wn.2d 843, 849, 613 P.2d 1148 (1980)).

A charge that a rezone is an illegal spot zone falls within LUPA's authorization of challenges to land use decisions reflecting a clearly erroneous application of the law to the facts. RCW 36.70C.130(1)(d). Under the "clearly erroneous" standard, we determine whether we are left with a definite and firm conviction that a mistake has been committed. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006).

The Vogels ask us to find the rezone and approval of the PUD to be spot zoning

because (1) the rezone is inconsistent with the city's comprehensive plan, (2) it bears no substantial relationship to the welfare of the affected community, and (3) no change in circumstances exists to justify it. We discuss their charges in turn.

Relationship to comprehensive plan. Nonconformance with a comprehensive plan does not necessarily render a rezone illegal. *Cathcart*, 96 Wn.2d at 212. Comprehensive plans are not ordinarily used to make specific land use decisions but rather function as a "guide" or "blueprint" to be used when making land use decisions. *Barrie*, 93 Wn.2d at 849. All that is required is general conformance, not substantial conformance, with the general blueprint provided by the comprehensive plan. *Cathcart*, 96 Wn.2d at 212.

The record demonstrates general conformance with the comprehensive plan. The proposed rezone and preliminary plat would provide for residential development with an overall density of approximately 3.5 dwelling units per acre, consistent with the 0-to-5 dwellings per acre density for low density residential provided by the comprehensive plan. Policies within the comprehensive plan "encourage a broad range of residential land uses." Clerk's Papers (CP) at 464. The dedication of 27 acres for open space and public trails is consistent with the comprehensive plan. In support of alleged inconsistency, the Vogels point only to the housing element, section two, of the comprehensive plan, providing that new housing within urban growth areas "shall be compatible in character and standards with that of the adjacent city area." CP at 219

(City of Richland Comprehensive Land Use Plan, Housing Element, § 2, Goals & Policies, Benton County-Wide Planning Policies, Policy 15, at H 2-1 (2007)). Evidently they would have us construe "compatible" to mean "identical." While low profile, low density townhouses are not identical to detached single-family homes, the construction of some townhouses, separated from adjacent subdivisions by a substantial buffer and consistent with other policies of the comprehensive plan, can reasonably be viewed as compatible.

This case does not involve the kind of "dramatic" change or incongruity that is voided as arbitrary and capricious spot zoning. As was the case in *Cathcart*, it simply substitutes a different sort of overwhelmingly residential use, the average density of which will be no more than what would have been permitted had Mr. Bauder constructed detached single-family homes.

Community welfare. Planned developments have been held to serve the public welfare because they promote the broad policy of harmonious land use. *Cathcart*, 96 Wn.2d at 212 (citing *Lutz*, 83 Wn.2d 566; Ferdinand S. Tinio, Annotation, *Zoning: Planned Unit, Cluster, or Greenbelt Zoning*, 43 A.L.R.3d 888 (1972)). Advantages of and justifications for the rezone cited by planning commission and city council members in public hearings and meetings included the 27 acres to be dedicated to a public trail system; the ability to impose site and height limitations that would keep rooftops below

the ridge line; and the increased interest in and demand for residences, such as townhouses, that require less yard maintenance. Given this public advantage and justification reflected in the record, we are not left with any conviction that a mistake has been committed, let alone a definite and firm conviction.

Substantial change in conditions. The proponent of a rezone has the burden of showing that conditions have substantially changed; it does not require a "strong" showing of change. *Bassani v. Bd. of County Comm'rs for Yakima County*, 70 Wn. App. 389, 394, 853 P.2d 945, *review denied*, 122 Wn.2d 1027 (1993). The requirement that an applicant show a substantial change of conditions justifying a rezone is flexible and allows for consideration of each case on its own facts. *Id.* Where the rezone implements the comprehensive plan, the substantial change rule does not apply. *Save our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370, 662 P.2d 816 (1983); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846-47, 899 P.2d 1290 (1995) (holding that "where the proposed rezone and PUD implements policies of the comprehensive plan, changed circumstances are not required").

As discussed in the previous section, the planning commission recognized that the rezone would be consistent with the comprehensive plan. That plan mentions that one goal is to:

> Provide a range of housing types for all economic segments of the Richland community [by] allow[ing] for a variety of housing types and lot configurations including multi-family housing, mixed use development, . . .

> *planned unit development*, and non traditional housing forms such as group homes as alternative means of accommodating residential growth and providing affordable housing options.

CP at 220-21 (emphasis added) (City of Richland Comprehensive Land Use Plan, Housing Element, § 2, Goals & Policies, Goals & Policies Developed for the Comprehensive Plan, Goal 2, Policy 1, at H 2-2 – H 2-3 (2007)). The plan goes on to state that a policy under this goal is to "[a]llow for a variety of lot sizes in low density residential districts," and another is to "[s]trive to locate new housing along transit routes and near retail and professional service areas." CP at 221 (City of Richland Comprehensive Land Use Plan, Housing Element, § 2, Goals & Policies, Goals & Policies Developed for the Comprehensive Plan, Goal 2, Policy 1(a), (b), at H 2-3 (2007)). Since this rezone encourages the development of a range of housing types, including PUDs, and allows for a variety of lot sizes in low density residential districts, it appears to implement policies of the comprehensive plan. Here again, we are left with no conviction that a mistake was made by the city council.

III.

The Vogels contend that Morency Drive was improperly treated as a neighborhood collector street by the planning commission, a street classification that permits up to 1,500 car trips per day, instead of a local street, which permits up to 1,000 trips per day. Without explanation, the Vogels assert that this error is "the difference between project

approval and denial." Br. of Appellant at 34. Though it is by no means clear, the Vogels appear to be arguing that this alleged mistake, when viewed in conjunction with the July 2007 traffic impact analysis report estimating current usage at 1,100 trips per day, renders the planning commission's approval of the PUD and preliminary plat in conflict with the comprehensive plan, which in turn means that the planning commission's findings of fact and conclusions of law indicating compliance with the plan were not based upon substantial evidence.[1] For his part, Mr. Bauder dismisses this issue as a red herring.

Either the planning commission was correct regarding the classification of Morency Drive, or it was not. If it was correct, the Vogels concede there are no grounds here to substantiate an appeal. Even if we assume that the planning commission should have treated Morency Drive as a local street, however, it is unclear how that would have contradicted the comprehensive plan or otherwise required denial. The planning commission found that the project does conform to the comprehensive plan in several other ways. There need not be strict adherence to a comprehensive plan, only general conformance. *Barrie*, 93 Wn.2d at 849. Neither the planning commission nor the city

[1] The comprehensive plan provides that "[n]ew residential collector street corridors should be designed and constructed through areas that are not already developed with single family housing" and that "[e]xisting local residential streets should not be converted into collector street routes. In instances where [they must be converted], these streets shall be brought up to the minimum design standards for collector roads." CP at 203 (City of Richland Comprehensive Land Use Plan, Transportation Element, § 2, Goals & Policies, Goals & Policies Developed for the Comprehensive Plan, Goal 4, Policy 3(a), (b), at T 2-3 (2007)).

council was required to make a finding of fact regarding the status of Morency Drive prior to approving the PUD and preliminary plat. RMC 23.50.040(B); RMC 24.12.053. And ultimately, of course, the city council required that Mr. Bauder construct a physical barrier preventing Morency Drive from serving as ingress or egress for The Crest until the construction of alternative access.

Finally, even assuming that the Vogels' worst fears are ultimately realized and future city councils making decisions are not as solicitous of the Morency Drive residents' concerns, the plain language of the comprehensive plan permits existing local roads to be converted into neighborhood collector streets, albeit with a requirement to bring them up to collector standards. *See supra* note 1. The municipal code does not prohibit through traffic and no findings are required to be made regarding through traffic prior to approval.

Incongruity between the intended usage of Morency Drive reflected in the functional street map and its actual existing usage, if any, is simply not a basis for reversing the city's land use decisions on The Crest.

IV.

The Vogels next argue that the city ignored the requirement, both statutory and under its municipal code, that development proposals not be approved if they will cause the traffic levels of service to decline below standards adopted in the transportation

element of its comprehensive plan (in the case of the city's comprehensive plan, level of service D), unless transportation improvements or strategies to accommodate the impacts of the development are made concurrent with the development. RCW 36.70A.070(6)(b); RMC 19.60.095; RMC 24.12.053. "Concurrency" for this purpose means that the improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. RCW 36.70A.070(6)(b).

The Vogels have not called to our attention where, in the sizeable record, there is evidence of an anticipated decline in service below level of service D that is not addressed by conditions adopted by the city council. A traffic study submitted by Mr. Bauder projected that road capacities were adequate for development, subject to some recommended additional access the construction of which was made a condition of development. At least 3 of the 15 "Traffic & Streets" conditions to development approved by the city council address concurrency issues. CP at 410. Concurrent with the construction of phase 1, the developer is required to reconstruct and widen Gage Boulevard (Condition 14) and to build Rachel Road to the south (Condition 15). A second connection is required to be constructed prior to the final platting of the phase that constructs the 50th residential unit, with development beyond the 50th unit contingent on such construction and an associated trip reduction called out by the conditions (Condition

16). The traffic analysis projected that development of The Crest will not cause the level of service to drop below level of service C with only one exception, that being an intersection at Leslie Road and Rachel Road. That potential decline in level of service was addressed by Condition 18, requiring that The Crest pay a pro-rata share in the development of the traffic control improvement (traffic signal or roundabout) projected by the traffic analysis to address the problem. CP at 411.

The Vogels' argument of this issue does not address any of these projected improvements or strategies, however; it focuses instead on their overarching concern about traffic on Morency Drive. Here, however, we agree with Mr. Bauder that the city council's addition of a condition of approval requiring construction of a physical barrier restricting northbound access to Morency Drive from The Crest is a strategy to address the impact, required to be in place concurrent with development.

In reply, the Vogels turn from arguing that there was a substantive failure to satisfy the concurrency requirement and focus on a procedural argument: that the city council did not make a "finding of project concurrency" as part of its preliminary plat approval. Br. of Appellant at 39. We address that, along with their other procedural arguments, next.

V.

Finally, the Vogels contend that because the planning commission and city council

failed to enter required findings, the project fails to comply with the decision criteria contained in the Richland Municipal Code for PUDs and plat approval. They argue in a similar vein that the municipal code expressly requires a finding of project concurrency as part of preliminary plat approval, a finding they claim is lacking here.

Where a procedural argument of this sort is made, the appropriate standard of review is that contained under RCW 36.70C.130(1)(a), under which we determine whether "[t]he 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." *See Tugwell v. Kittitas County*, 90 Wn. App. 1, 13, 951 P.2d 272 (1997). In determining whether findings are sufficient, we look to the purpose for their requirement; generally, the purpose is that a court reviewing the record have available a verbatim record of elements that the council considered, and an indication of the process used by the council to resolve factual disputes. *Hayden v. City of Port Townsend*, 28 Wn. App. 192, 195, 622 P.2d 1291 (1981).

Much of the Vogels' argument of unlawful procedure or failure to follow a prescribed process is not addressed to proceedings before the city council—the body that made the land use decision—but to proceedings of the planning commission, which recommended it. Mr. Bauder has not disputed that procedural irregularities by a body other than the decision-making body can be a basis for challenging a land use decision

under RCW 36.70C.130(1)(a), so we address all of the alleged procedural problems.

The Vogels argue first that the city failed to make specific findings on the matters identified in RMC 23.50.040(B)(1)-(4) as criteria the planning commission is to consider in determining whether to recommend approval of the plat to the city council, as discussed in section I, above. The provision makes no reference to a requirement that the planning commission enter findings of fact on these criteria. The lack of any mention is significant, where other provisions of the municipal code do require the planning commission to enter findings in connection with actions taken on permit or project approval. *E.g.*, RMC 24.12.053 (requiring that the planning commission "adopt[ ] written findings" in recommending approval of preliminary plat application). These drafting distinctions show that when the city council intends for the municipal code to require a decision-making body to enter findings, it does so expressly. *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005) (noting that "[a] fundamental rule of statutory construction is that the legislature is deemed to intend a different meaning when it uses different terms"); RCW 36.70C.130(1)(b) (where a local statute is ambiguous, we give deference to the local jurisdiction's interpretation).

The record shows that the planning commission was advised of the need to consider these criteria (CP at 681-82), that it did consider each of these criteria on the record (CP at 782), and that it did enter express written findings regarding the first three

(CP at 464-65). The Vogels have not demonstrated that the planning commission failed to comply with the municipal code, let alone that the failure would rise to a basis for relief under RCW 36.70C.130(1)(a).

Next, the Vogels point to RMC 24.12.053, which provides:

> The planning commission shall not recommend approval of any preliminary plat application, unless it adopts written findings that:
>
> A. The preliminary plat conforms to the requirements of this title;
>
> B. Appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, street or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;
>
> C. The public use and interest will be served by the platting of such subdivision and dedication; and
>
> D. The application is consistent with the requirements of RMC 19.60.095.[2]

The Vogels concede that the planning commission entered findings supporting criteria A and B, but argue that no finding supports criterion C and that the planning commission "simply states, without citation to any evidence, that the preliminary plat is consistent with the requirements of RMC 19.60.095." Br. of Appellant at 47.

[2] RMC 19.60.095 sets forth the findings and conclusions that must support the city's approval of a Type II, Type III, or Type IV permit. PUDs and preliminary plats require Type III permits under RMC 19.20.030.

Regarding criterion C, it is true that the planning commission entered no finding of fact that literally states that the platting and dedication of the subdivision is in the public interest—although had the planning commission literally tracked that language, the Vogels might dismiss it as conclusory, as they do the planning commission's treatment of criterion D. But several of the planning commission's findings address public interest aspects of the project, including finding of fact 3 ("[city] [p]olicies . . . encourage the public or private acquisition of prominent ridges to preserve views, protect habitat and provide public access"), finding 5 ("[t]he proposed features of the development that provide for a pedestrian trail around the development site are consistent with the policies of the comprehensive plan"), and finding 7 ("[t]he proposed PUD . . . will provide for development of the site with both single family detached housing and single family attached housing"). CP at 464. Giving appropriate deference to the planning commission's understanding of the extent and character of findings required by the municipal code, the Vogels have not demonstrated that the findings are insufficient to address the public interest element. Any insufficiency would be harmless in any event, given explicit reference in the record to the public interest and to conditions of approval including the dedication of 27 acres of land for open space purposes and trail construction.

As for criterion D, it is ultimately the city council, under RMC 19.60.095, that is

not to approve a development application for a Type III permit without the support of the five findings and conclusions set forth in that provision. We therefore see no inherent problem with the planning commission's entering the conclusory finding, required of it, that "[t]he application is consistent with the requirements of RMC 19.60.095." RMC 24.12.053(D). We therefore again defer to its understanding of the extent and character of findings required by RMC 24.12.053.

We finally turn to the adequacy of findings required for city council approval of the development application. RMC 19.60.095 provides:

> No development application for a Type II, Type III or Type IV permit shall be approved by the city of Richland, unless the decision to approve the permit application is supported by the following findings and conclusions:
>
> A. The development application is consistent with the adopted comprehensive plan and meets the requirements and intent of the Richland Municipal Code.
>
> B. Impacts of the development have been appropriately identified and mitigated under Chapter 22.09 RMC.
>
> C. The development application is beneficial to the public health, safety and welfare and is in the public interest.
>
> D. The development does not lower the level of service of transportation facilities below the level of service D, as identified in the comprehensive plan; provided, that if a development application is projected to decrease the level of service lower than level of service D, the development may still be approved if improvements or strategies to raise the level of service above the minimum level of service are made concurrent with development. For the purposes of this section, "concurrent with development" means that required improvements or strategies are in place at the time of occupancy of the project, or a financial commitment is in place to complete the required

> improvements within six years of approval of the development.
>
> E. Any conditions attached to a project approval are as a direct result of the impacts of the development proposal and are reasonably needed to mitigate the impacts of the development proposal.

The operative language—that the council's decision be "supported by the following findings and conclusions" also differs from the requirement of RMC 24.12.053 that the planning commission "adopt[ ] written findings," suggesting latitude to incorporate findings and conclusions or state them in the record. State law also imposes requirements for approval of proposed subdivisions by the city council, however, explicitly requiring certain written findings. RCW 58.17.100, .110.

Prior to the November 20, 2007 meeting at which the city council had its first reading of the ordinance, it was provided with a four-page, single-spaced memorandum prepared by Rick Simon, its development services manager, that included the planning commission's recommendation, staff's assessment of impact on community priorities, fiscal impact, the background of the application, staff's detailed analysis of project density as compared to the requirements of the comprehensive plan, citizen concerns expressed during the process, mitigation, conditions of approval, public benefit, and an additional two-page summary of all records comprising the record of the PUD and plat. It concluded with the development services manager's view that

> [a]s conditioned, the proposed preliminary plat and PUD meet the City's subdivision standards and would provide for development that is in conformance with the adopted Comprehensive Land Use Plan. Mitigation

> measures attached to the project will ensure that traffic generated by the proposal will be adequately mitigated.

CP at 420. The motion to approve the preliminary plat that was later made by a city council member and passed by a majority of the council was based on the memorandum, which presented the action to be taken as being to concur with the findings and conclusions of the planning commission and approve the preliminary plat subject to the conditions of approval set forth in a technical advisory report dated September 27, 2007. CP at 417, 1010-11. The city council's action therefore incorporated all conditions in the technical advisory report.

The record of the land use decision includes transcripts of the two city council meetings at which members discussed and took action on the preliminary plat and rezone. The transcript of the November 20, 2007 meeting includes 24 pages reflecting the individual city council members' substantive discussion of the proposal, including statements of how they intended to vote and why. CP at 987-1011. The record also includes a transcript of the portion of the December 4, 2007 meeting at which the city council further discussed the ordinance and further amended the conditions of approval to require construction of a physical barrier restricting northbound access to Morency Drive from The Crest. This transcript includes another 19 pages' worth of individual council members' discussion and statements of their reasons for supporting or opposing approval, prior to their 4-2 vote approving the ordinance. CP at 1018-37.

The ordinance itself includes a finding, "as an exercise of the City's police power, that the best land use classification for the lands described below is Planned Unit Development (PUD) when consideration is given to the interest of the general public." CP at 398. It also recites that "the Richland City Council has considered the recommendations and all reports submitted to it and all comments and arguments made to it at the public hearing." CP at 397. But it does not otherwise include any other written findings or conclusions.

As was the case in *Tugwell*, 90 Wn. App. 1, however, this record clearly implies the council members' conclusions on the major issues involved, and especially the issue of traffic on Morency Drive that the Vogels acknowledge to be their principal concern. Br. of Appellant at 1. The Vogels have not devoted any argument to the exception under standard (a) of RCW 36.70C.130(1) for procedural error that is harmless. We conclude that in light of the substantial record of planning commission and city council action available for the superior court's and our review, the failure of the ordinance and the transcript to more clearly identify the required findings, while procedurally an error, was harmless.

Finding no basis for review of the city council's decision, we affirm.

Mr. Bauder has requested an award of attorney fees. Under RCW 4.84.370, attorney fees are available if a land use decision is rendered in a party's favor and at least

two courts affirm that decision. We award Mr. Bauder his reasonable attorney fees on appeal upon compliance with RAP 18.1.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Siddoway, J.

WE CONCUR:

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Korsmo, A.C.J.

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Brown, J.