IN THE SUPERIOR COURT OF WASHINGTON

IN AND FOR COUNTY OF SNOHOMISH

JEAN V. RITTMANN, a Washington resident,

Petitioner,

v.

CITY OF EVERETT, a Washington municipal corporation,

Respondent.

No.

SUMMONS

TO: The Mayor, City Manager, or, during normal office hours, to the Mayor's or City Manager's designated agent or the City Clerk thereof for the CITY OF EVERETT, a Washington municipal corporation
2930 Wetmore Ave, #10-A, Everett, WA 98201

A lawsuit has been started against you in the above-captioned Court by JEAN V. RITTMANN, a Washington state resident. Petitioner's claims are stated in the written MOTION TO VACATE AND / OR SET ASIDE ORDER GRANTING MOTION TO DISMISS PURSUANT TO CR 12(b)(6) OF CASE No. 19 2 01827 31 PURSUANT TO CR60(b)(4), a copy of which is serve upon you with this Summons.

JEAN V RITTMANN- Pro Se Petitioner
2016 Broadway Ave
Everett, WA 98201
(425) 317-9332

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned Petitioner within 20 days after the service of this Summons, excluding the day of service, if served within the State of Washington (or within 60 days after service of this Summons , if served outside the State of Washington), or a default judgment may be entered against you without notice . A default judgment is one where Petitioner is entitled to what it has asked for in the Complaint because you have not responded to the Summons. If you serve a notice of appearance on the undersigned Petitioner, you are entitled to notice before a default judgment may be entered.

You may demand that the Petitioner file this lawsuit with the Court if they have not already done so. If you do so, the demand must be in writing and must be served upon the Petitioner. Within fourteen (14) days after you serve the demand, the Petitioner must file this lawsuit with the Court, or the service on you of this Summons and Petition will be void. In this case, the lawsuit has already been filed with the Snohomish County Superior Court.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time. This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

DATED this 9th day of April, 2020.

Jean V. Rittmann – Petitioner

JEAN V RITTMANN – Pro Se Petitioner
2016 Broadway Ave
Everett, WA 98201
(425) 317-9332

SUPERIOR COURT OF WASHINGTON COUNTY OF SNOHOMISH

In re: JEAN V. RITTMAN, a Washington Resident, Petitioner, vs. CITY OF EVERETT, a Washington municipal Corporation, Respondent	**NO.** **MOTION TO VACATE AND/ OR SET ASIDE ORDER GRANTING MOTION TO DISMISS PURSUANT TO CR 12(b)(6) OF CASE No. 19 2 01827 31 PURSUANT TO CR 60(b)(4)**

COMES NOW Plaintiff Jean V. Rittmann, by and through herself, Pro Se, requesting the Court set aside Court's April 12th, 2019 order that granted Motion To Dismiss Pursuant To CR 12(b)(6) with prejudice. Order is **Exhibit J**, attached and incorporated herein by this reference.

Filed under Governor's Covid 19 Shelter-in-Place. City offices were closed after April 6, 2020, so personal service was approved as transmitted by email. A mailed copy was also sent.

I. MOTION TO VACATE LEGAL STANDARD AND AUTHORITIES/ JUDICIAL REVIEW BY A NEW JUDGE

Plaintiff objects to this motion being decided by Judge Okoloko, as he entered the 04/12/2019 dismissal order. Under CR 60(b)(4): **CR 60** RELIEF FROM JUDGMENT OR ORDER,

> *"(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:" "(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party."*

Plaintiff requests post-judgment relief under CR 60(b)(4). *Invalidating A Judgment For Fraud ... And The Significance Of Federal Rule 60(b)* By W. Dean Wagn[2] "*When it can be proved that a judgment of a court was obtained by fraud* ". (Case law on fraud is on page 25: *Cook v State, Texas En Banc, Jimenez v State, Mooney v Holohan, Strickler v Greene*.) Every 12(b)(6) statement mislead the Court; and City attorney Hall perjured in Court with abandon. 12(b)(6) Order was obtained based on zero evidence. Perhaps the pure audacity and boldness, of City actors turned the court to not notice the City had no evidence whatsoever, (Court only saw a ruling made by defacto alleged quid pro quo Examiner, who ruled LUPA despite LUPA not being an argument before her!). Sadly, Court ruled against facts /contrary to law. A grave injustice has been done that Plaintiff prays the Court will now correct with Order to Vacate.

II. SUMMARY OF THE ARGUMENTS

Substantially, City attorney Hall absurdly thought LUPA over-rode municipal code. That lie was not argued before Examiner, but he *ex parte* got her to *rule* LUPA, so misleading the Court that it had been vetted. Plaintiff granted 2 days to refute all 12(b)(6) lies, then Hall lied further in Court. Alleged, city attorney Hall corrupted the Planning Manager into believing, if no one caught officers cheating within 14 days of "approval", cheats were permanent. "Tree City" Everett is virtually treeless from Officers not requiring Everett EMC laws. Two restaurants that abut Plaintiff's property are in violation of near every EMC law, making life at home – hell.

12(b)(6) was replete with 30 unevidenced lies and convolutions: misrepresentation, intrinsic fraud, and misconduct. 12(b)(6) arguments were all new/never vetted: seeded by unoathed City attorney Hall abusing the Court's prejudice towards the City. Evidence of Judgment obtained by

[2] "*When it can be proved that a judgment of a court was obtained by fraud, ... Two different procedures are to be distinguished: 1. A motion in the court that rendered the judgment. 2. An independent action to set the judgment aside brought in the same court or a different court.*" "*A trial court abuses its discretion when it acts on untenable grounds or for untenable reasons.*" Little, 160 Wn.2d at 703.

actual fraud, perjury, duress, mistakes, misconduct, inadvertence, other City misconduct: alleged all presented by "City" was CR60(b)(4) violations. *Judge believed City based on no evidence.*

Plaintiff introduces into evidence all documents /motions of record from case 1920182731.

III. RITTMANN PROCEEDING IN PRO SE IS NOT TO BE HELD TO THE STANDARDS OF AN ATTORNEY

Though the Petitioner Rittmann is not seeking special treatment from the Court, it is not a violation of this Rule for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard. In *Haines v. Kerner*, 404 U.S. 519 (1972), a *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id., at 520 521, quoting *Conley v. Gibson*, 355 U.S. 41,45 46 (1957).

IV. ARGUMENTS / ISSUES PRESENTED FOR REVIEW:

(1) ALL CITY 12(b)(6) AND ORAL ARGUMENTS WERE FRAUDULENT (P. 3)

(2) CITY ATTORNEYS HAD NO OATH OF OFFICE (P. 15)

(3) DEFACTO EXAMINER RULED QUID PRO QUO ON MATTERS NOT BEFORE HER (18)

(4) PROSECUTORIAL MISCONDUCT (P. 23)

(5) IF ALLOWED TO REFILE, ALL WRIT ELEMENTS CAN BE PROVEN (P. 30)

V. FACTS IN SUPPORT

(1) ALL 12(b)(6) AND HALL'S ORAL ARGUMENTS WERE FRAUDULENT

This Argument incorporates pages 1 through 3 above as though fully set forth therein.

12(b)(6) falsely asserted collateral estoppel throughout, despite ZERO evidence: "LUPA" "Discretion", "beneficial interest", and unrelated McDonalds cases- none was ever litigated, directly determined, or supported 12(b0(6) in any prior judgment. And the City presented no evidence to support anything defacto Examiner" asserted in her Findings.

A. 12(b)(6) was premised on the lie that LUPA over-rode Everett Municipal Code (EMC). Basically by saying, if no one caught cheats within 14 days of an application "approval", there's no recourse: Landscaping/zoning plans are never even publicly posted, so no neighbor even has a *chance* to appeal plans in 14 days. Plans aren't required disclosed, as they're forever required to meet EMC. This led applicants to alleged conspire with Planning Officers to avoid meeting expensive EMC zoning requirements, like landscaping.

EMC proves LUPA doesn't over-ride EMC. EMC proves plans are invalid that don't meet all laws; City had duty; and staff and City are "guilty" if they don't verify code compliance. Plaintiff's Motion For Reconsideration, filed Apr. 22, 2019 also proved LUPA only applies to fully vetted large buildings, and has nothing to do with Review Process I applications like Jimmy Johns, or any EMC that Planning staff have refused to require. Staff's refusal of duty resulted in Plaintiff seeking remedy. April 29, 2019 City of Everett's Response to Petitioner's Motion For Reconsideration did not include any response to Plaintiff's proof that LUPA did not apply; proof-that-LUPA-did-not-apply went unrefuted: "silence is consent". Truth: LUPA is in only three EMC laws: for Review Process V and VI applications under SEPA, and when the City takes a property owner before Examiner, and the property owner does not agree with Examiner ruling. The 3 LUPA in three citations are below. A copy of the citations in **Exhibit I.** which is attached and incorporated herein from this reference.

EMC 15.24.310 SEPA appeals. B.Review Process V and VI—Judicial Appeal Only, Except for Determination of Significance. ….Any appeals of Review Process V and VI decisions shall be to Snohomish County superior court under Chapter 36.70C RCW (the **Land Use Petition Act or LUPA**).

"8.21.040 Violations.

A. It shall be unlawful to violate or be in conflict with this chapter. Each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which violation of this chapter occurs, shall constitute a separate violation.

B. Any person, firm, business, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of Chapter 1.20.In the event an appeal of an order issued pursuant to Chapter 1.20 is not subject to Chapter 36.70CRCW (the **Land Use Petition Act**), appeal shall be by writ of certiorari.

C. Upon a first violation of any part of this chapter, a notice of violation may issue to the offending person, firm, business, corporation, or association or any agent thereof. ..."

20.08.220 Enforcement—Violation—Penalty.

B. ... In the event an appeal of an order issued pursuant to Chapter 1.20 is not subject to Chapter36.70C RCW (the Land **Use Petiton Act**), appeal shall be by writ of certiorari.

More proof that LUPA didn't apply was disclosed in Plaintiff's Motion for Reconsideration:

P. 5, "EMC 16.005.040(A)(11)(4), which provisions, "The issuance or granting of a permit or approval of plans and/or specifications ***shall not be deemed or construed to be a permit for, or an approval of, any violations of any of the provisions of this Code or any other law or regulation.***

No permit presuming to give authority to violate or cancel the provision of this Code shall be valid,... " "

P. 7, "Pursuant to EMC 15.24.070 Review Process I—Minor administrative decisions which states: "***No public notice is required for Review Process I minor administrative decisions,*** ..." Material evidence provides that JJ's land use plans were never date-approved and therefore not capable of being appealed. The City is well aware that Review Process I plans are often approved without approval date, only "applied" for and "closed" dates. No "approved" date" and definitely no "notice of decision" Appeal rights are EMC 15.24.010B6, "*appeals must be filed with the city within fourteen days of the notice of decision*". *Cf. Deschenes v. Kin"*

P. 11, "*Comparatively, Review Process II, requires a notice of decision and clearly provide* ***approved dates...*** "

Just HOW City attorney David Hall concocted the ridiculous lie that LUPA allowed planning to approve-properties-that-met-no-EMC is unknown, as by law, no EMC may be violated. Alleged, Hall found it an easy trick to exculpate Planning Manager's fraud, and due to Quid pro quo Examiner (see that argument), once Hall said it applied, his error was ruled as true by every ascending authority, with no evidence whatsoever: no authority questioned that it was an absurd lie. But emperor Hall has no clothes; used City status to win over law.

City has duty under EMC 15.16.040..."administrative review is code compliance verification" ... "*Review Process I applications* ***shall*** *be reviewed administratively by the planning department to determine compliance with the city's zoning code and other applicable ordinances and regulations...* "

And, it is a *crime* for City and Staff to not meet EMC: EMC*16.005.050(12)(1)*

"...any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures" . EMC16.005.050 (11) 2.,*"Any person, firm or corporation who violates any provision of this Code shall be deemed guilty..."*

Further, even under *appealable* review processes, only the the building and layout is appealable, as EMC still always applies to the property: Reconsideration P. 3 states,

> Unlike Review Process I, EMC 15.24.010(1) provides that "Within fourteen days after a complete application is filed ("determination of completeness"), public notice is given of the proposed project ("notice of application")" " Even under different review processes, there is no provision to allow violations of EMC, *But where the permitting authority creates an administrative review process, a building permit does not become "final" for purposes of LUPA until administrative review concludes.* "

Further, after Reconsideration proved LUPA/ time bar did not apply to Jimmy Johns, Review Process I, or EMC zoning law, City made changes to Appeal process, separating building violations from EMC zoning violations. That information was sent ex parte to Examiner on July 1, 2019, **Exhibit L**, attached and incorporated herein by this reference.

With full proof that LUPA time-bar did not apply to Review Process I or EMC violations *the City* committed, the 12(b)(6) LUPA statements were fraudulent. RCW9A.72.080 states,

> ***"Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false."***

RCW 9A.72.020 "*(1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement...*"

Therein, the following statements made by the 12(b)(6) are fraudulent, mislead the court, and bluffed the Court into ruling against law:

> P. 4, *"...Petitioner could have sought the same relief as to her numerous issues with land use decisions associated with Jimmy Johns' restaurant from 2015 in a timely LUPA action."*
>
> P.6, "*Petitioner's complaint fails on its face... relating to land use decisions, because she could have (and in fact was required to) challenged the land use decisions in a timely Land Use Petition Act (LUPA) action, RCW 36.70C.030. LUPA is the exclusive method for such challenges. RCW 36.70C.3030. Whether the mandamus remedy is available "...turns on whether the duty the plaintiff seeks to enforce 'cannot be directly enforced' by any means other than mandamus."*
>
> P. 7, *"...These 2015 land use decisions are subject to LUPA, Chapter 36.70C RCW. 16 The only issue before the Hearing Examiner which was not time-barred by LUPA was the 10/17/2018 revision to the Jimmy John's restaurant landscaping plan (and the time period under LUPA has now lapsed for that as well). In considering whether a party may seek a writ of mandamus because an otherwise available cause of action was precluded due to the statute of limitations, ..." ;*

P. 7, *"Because she has a plain, speedy, and adequate remedy in the ordinary course of law, Petitioner is not entitled to a writ of mandamus"*;

P. 9 states, "*D. Petitioner's Due Process claims should be dismissed ... because LUPA applies*".

P.9 *"She could have challenged the 10/18/2019 Jimmy Johns restaurant landscape plan revisions in a timely LUPA claim. As noted, the fact that her LUPA claim would now be untimely does not mean she is entitled to avoid the time bar by dressing up the claim in other causes of action."*

P. 11, "All of the other numerous 2015 land use decisions appealed by X petitioner (and again raised in her 03/04/2019 petition) were denied because they were time-barred by the land Use Petition Act (LUPA)."

P.11 "Petitioner's issues in her complaints which are time-barred by LUPA 13 are intermixed with her requests..."

Then, to disguise their LUPA lie, 12(b)(6) "IV Authority" and under "V. Writ of Mandamus" P. 3-12 presented extensive law and cases, *as if* LUPA applied. Further fraud was even filing a 12(b)(6) and stating it makes argument *based on material facts*, but no material facts were presented in 12(b)(6) or in App8-006: 12(b)(6) states:

P. 1, *"The City makes this argument based on material facts raised by Petitioner (not Petitioner's unsubstantiated legal conclusions drawn from those material facts)."*

B. 12(b)(6), P. 1, claimed *"Evidence Relied Upon...City submits no matters outside of the pleadings 1" "1...no new or controverting facts"*. These two statements in **12(b)(6) are fraudulent, mislead the court, and bluffed the Court**, as evidenced by:

1. **Neither LUPA nor time-bar was argued in App18-006 by City** or Petitioner. APP18-006 appeal (EXHIBIT K), and City Staff Report of Court record *(April 4, 2019 Writ Exhibit F)*) shows an absence of evidence of ANY mention of LUPA or time-bar. 12(b)

(6) quoted NO passage from Staff report or Appeal stating LUPA or Time-bar; 12(b)(6) simply stated the LUPA lie as fact. (Alleged, Hall likely *thought* they were argued because City attorneys freely ex parte communicate with Examiner, and that is likely where Hall communicated the LUPA falsehood to Examiner) (see proof in Argument 3) . **Party (the City) asserting collateral estoppel must show that the issue of fact or law in the present lawsuit Was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment."** But the City did not litigate LUPA in a prior action (see APP18-006 Staff Report). The City received Examiner judgment that was not an argument presented in the course of legal proceedings. (City may have *thought* it litigated because of ex parte communication with Examiner detailed in Quid Pro Quo argument, but LUPA wasn't argued in app18-006).

2. P. 5 falsely stated City had **discretion**, *"It is, in fact, because the Petitioner knows-...the fact that the City has **discretion** in enforcement of land use code violation"*. Despite 12(b)(6) stating "fact" twice, it presented no evidence to support that conclusionary lie. Plaintiff presented proof: EMC 16.005.040(A)(11)() stated above, "***No permit.. to violate ...Code shall be valid"***, EMC 15.16.040 City has "shall" "code compliance verification" DUTY, and EMC16.005.050 (11) 2. "*Any person, firm or corporation who violates any provision of this Code shall be deemed guilty..*" Staff and City: "guilty" Citations on P. 3

C. The definition of a **12(b)(6): *"failure to state a claim upon which relief can be granted"*** The City REQUIRES itself to act: EMC*16.005.050(12)(1) "...any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures*". Relief could be granted because LUPA did not apply, and relief requested was

detailed I Plaintiff's claims of Rights in Mar 4, 2019 Writ in sections 4.13, 5.3, 5.6, 5.10, 5.11, 5.12, 5.16, 5.19, 5.27, 6.3, 8.2, 8.3e-g, 9.3f, and Prayer for Relief 1 f -g, and 2f. Relief was presented in Prayer for relief. **Therein filing the 12(b)(6): *"failure to state a claim upon which relief can be granted"* was fraudulent, mislead, bluffed the Court.**

D. 12(b)(6) P. 7 stated, "*City cannot lawfully undo a final land use decision*". **False.** Review Process I properties (like JJ) are *EMC 15.16.040* "code compliance verification", "EMC 16.005.040(A)(11)(4) provisions, "*No permit presuming to give authority to violate or cancel the provision of this Code shall be valid,*", EMC16.005.050(12)(1) "*... any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures*", and EMC16.005.050 (11) 2. "*Any person, firm or corporation who violates any provision of this Code shall be deemed guilty...*"

E. Last minute at 12(b)(6) hearing, attorney David Hall falsely testified that Plaintiff had notice by way of demolition on Jimmy Johns' property. Not only was "notice" not grounds for LUPA, demolition did not take place till months after plans were closed!! Hall's perjury was proven in Motion for Reconsideration, and unrefuted in City's Response. "Silence is consent". Alleged this final demolition lie is what moved the Court to rule with prejudice. Court orally granted 12(b)(6) with prejudice, and when Plaintiff asked him, "Why?""How", Judge Okoloko stated, "LUPA". So, indeed it was the LUPA lie that bluffed the Court to rule against Plaintiff. Motion for Reconsideration's proof that Hall's lied to the Court:

> P.8 "As evidenced, on the Snohomish County records, activity began on JJ's property months after plans were "closed", on June 15, 2015, and not within 14 days. Thereafter, according to public records, a demolition permit was issued on August 31, 2015 and finalized on October 14, 2015, with no formal approval date, only "applied" and "closed" dates."

p. 14 "This is in error. Jimmy Johns plans were never approved prior to, on or after May 15, 2019, when they were closed. (see **Exhibits A, p. 6/6**)".

For the Court's convenience, eTrakit records of June 15, 2015 plans closed date and 8/11/2015 demolition approved date, 8/31/15 issued date, and 10/14/2015 finaled date are attached and incorporated herein by this reference as **Exhibit N.**

F. 12(b)(6) P. 4, *"Petitioner has not identified any mandatory duties the City was required to perform"* **FALSE.** Plaintiff referenced many EMC duties that must be met that were not met on the Jimmy Johns property, (Mar. 4, 2019 Writ): P. 3: **"***EMC 19.35.130A", "EMC19.31A.040.B2 and"EMC19.31A.040F"; P. 5, "EMC 15.16.050(28)", "EMC 15.24.070", "EMC 15.16.040"; P. 15, "EMC 16.005.040""16.005.030", EMC 19.35.030"; P. 16, "18.28.080B, EMC 19.35.030A, EMC 19.35.115, EMC 19.35.100, EMC 19.35.120, ... EMC 19.31A.040 A.1, EMC 19.35.040, EMC 19.34.100, EMC 19.35.055A, EMC 19.41.030, 19.40"*; P. 15, *Table 35-1"*. A copy of these EMC laws is **Exhibit M,** and is attached and incorporated herein by this reference.

G1. P.5 stated **"***Petitioner admits that the actions she is requesting via writ of mandamus are discretionary***."** is convolution. EMC in section E above are "shall" requirements. **"Shall"** isn't discretionary. (JJ property marked "approved" violates *unnamed* discretionary EMC, but *those aren't referenced* in Writ. Because City is required to make JJ meet law, or else Staff and City itself be deemed guilty, the City is also in violation of all said EMC.

G2. *12(b)(6) P. 9 stated, "Petitioner has failed to demonstrate a "beneficial interest". Mar. 4, 2019 Writ, P. 1, Plaintiff states, "[her property, unit]#B overlooking Jimmy Johns' parking lot and rear of their building""Exhibit A 1 and 2 are views from [Plaintiff's] residence large windows""Exhibit B shows...2018 approved [jimmy Johns] plans, and alleged plans that would meet most Everett Development Standards"* Those Exhibit A pictures, along with

plans shown in Exhibit B, show virtually no landscaping on JJ's property, and Exhibit B P. 3 depicts that more than 2000sf of landscaping is missing that would be in sight of Plaintiff's #B, if Development Standards were met. That is a big "beneficial interest".

H. 12(b)(6) P. 5 quotes Rittmann, *"City laws are written saying city 'may' reply to complaints"* **Convolution**: Though it is true City 'may' **REPLY** to complaints, City law REQUIRES the city ACT on complaints. See **Exhibit I**: *16.005.050(12)* *1. *A violation of the provisions of this Code shall be subject to the City's Civil Enforcement Procedures"* (Plaintiff was disclosing how -City not *replying to the complainant*- is an issue.) **Therein,** and in context applied, **the above statement made by the 12(b)(6) was a convolution of separate and collateral issues, so, misleading and bluffing the Court.**

I. 12(b)(6) P. 9 states, "*D. Petitioner's Due Process claims should be dismissed because she had actual notice of 10/17/18 landscape plan revisions and because LUPA applies*". Truth: *"Had actual notice"* is never grounds to override EMC, and Reconsideration proved LUPA did not over-ride EMC on anything, including zoning laws. 12(b)(6) convolutes an inactionable "had notice" with their LUPA lie. **Therein, the above statement made by the 12(b)(6) was a convolution of separate and collateral issues, so, misleading the Court.**

J. 12(b)(6) p. 5 quotes Plaintiff, "*City attorney 'may' take action, but no requirement or city benefit to reply or act*". Reply: Just because the City attorney does not have to act, the City REQUIRES itself to act: EMC*16.005.050(12)(1) "...any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures*". ***16.005.050 (11)*** **2.** Any person, **firm or corporation** who violates any provision of this Code shall be deemed guilty..." That is, Planning *shall* do its duty of EMC verification or else EMC deems them guilty. City *shall* follow code enforcement procedure, THEN City

attorney then 'may' act. City didn't verify EMC and didn't act on the violations, so attorney wasn't prompted to act in this case. NOTE, those were the only two quotes/ evidence 12(b)(6) sited. Therein, the above statement made by the **2(b)(6) was a convolution of separate and collateral issues,** and in context applied, so misrepresenting a quote to the Court.

K. 12(b)(6) P. 3, "*On 02/21/2019 Petitioner's appeal of the 10/17/2018 landscape plan was denied*" defacto Examiner Argument evidences that defacto Examiner quid pro quo ruled for the City on matters not before her and ruled against law on matters not in evidence. 12(b)(6) quoting a ruling, not evidence. **Therein, the above statement made by the 12(b)(6) mislead the Court that matters had been vetted by an impartial party.**

L. 12(b)(6) exhibited A and B: two unrelated inadmissable McDonalds cases. They were not referenced in the 12(b)(6), but were used in David Hall's testimony referring to them at Writ hearing, so misleading the court to believe Writ matters had been ruled on their merits with McD, which was false: 12(b)(6) plus Hall's testimony convoluted separate and collateral issues. Case 17-2-10843-31 re McDonalds, Clerk dismissed for incompleteness and ~same matter was in case # 18-2 00105-31 which Rittmann misfiled as LUPA. Neither case was prosecuted on their merits. **Party (the City) asserting collateral estoppel must show that the issue of fact or law in the present lawsuit Was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment."** But the LUPA matter asserted by the City was not litigated, directly determined, or supported by prior judgement in the McDonalds cases. **Therein, Exhibit A and B by the 12(b)(6), along with Hall's testimony, was a convolution of separate and collateral issues, misleading and bluffing the Court that the matters before it had been vetted regarding two McDonalds cases.**

M. CONVOUTION: 12(b)(6) states, *P. 8"C. Petitioner is not "beneficially interested" and the mandamus action must be dismissed. As quoted supra on page 6, Petitioner is seeking an extraordinarily broad manamus writ -essentially removing the City's existing discretion when it comes to enforcement on land use complaints. Because she is seeking such a broad and general writ of mandamus, Petitioner fails to shoe that she is "beneficially interested . In order to be considered "beneficially interested," a Petitioner for a writ of mandamus much show he or she "has an interest in action beyond that shared in commons with other citizens."* So many convolutions and falsehoods: 1. Plaintiff showed "beneficial interest" as described in section H above. 12(b)(6) repeating "no beneficial interest" does not dissolve proven interest. Plaintiff's beneficial interest described in App18-006 (Exhibit K), starting with 3rd sentence:, "*Without the Development Standard, Rittmann's view of Jimmy Johns' parking lot are not softened, and her reputation with client Jimmy Johns alleged damaged.*" Plaintiff had interest more than any other property: Vet to the south had no windows facing Jimmy Johns, the hedge in the alley obstructed JJ's neighbor to the West from JJ's parking lot view, and blocked noise. "Broad sweeping" as other neighbor McDonalds was in violation of near every zoning requirement., See more explanation in MAXIMS and Plaintiff's Far-Sweeping Interest On P. 34.

N. *P. 9 "Petitioner's Due Process claims(18) should be dismissed pursuant to CR 12(b)(6) because Petitioner received all the due process that is required."* Not true, as City was required to "code compliance verification", the only way Petitioner got a "hearing" is because she worked with Jimmy Johns to correct their plans, therein found the date City

approved the updated plans, so Plaintiff filed Appeal. **There is no process in place for a neighbor** of Review Process I properties **to file an appeal.** That's cause EMC is mandatory.

O. *P.9 "She could have challenged the 10/18/2019 Jimmy Johns restaurant landscape plan revisions in a timely LUPA claim. As noted, the fact that her LUPA claim would now be untimely does not mean she is entitled to avoid the time bar by dressing up the claim in other causes of action.".* 12(b)(6) repeats the lie that LUPA applies.

(2) CITY ATTORNEYS HAD NO OATH OF OFFICE

This Argument incorporates pages 1 through 13 above as though fully set forth therein.

No council for the City had an oath of office: Neither city attorney had an oath, but acted as council, so misleading the Court to believe they could represent the City.

Council for the City of Everett had no oath of office at any time in responding to Writ. Hall and Diaz Flora by not having an oath of office, cannot legally act on behalf of the City. Records request March 25, 2019 (Ref# E000147-032519), not fulfilled till April 22, 2019 (after all motions filed). Records due within 5 business days. No authorized response from City under CR4 (b)(1)(iii) or 12(b)(6). Records requests stating both Flora Diaz and David Hall have no oath is attached and incorporated herein as **Exhibit A.**

Neither David C. Hall, WSBA No 44627 or Flora E. Diaz, WSBA No 15296 had an oath of office, as required under Everett Municipal Code (**EMC**), Article IV, sect. 4.10, such states,

> "**Oath of Office.** Every officer, before entering upon the duties of office, shall make and file with the Clerk an oath or affirmation to support the Constitution of the United States and the State of Washington, and to perform faithfully, honestly and impartially the duties of office."
>
> **"EMC 10.02.130 Officer—Public officer.** "Officer" and "public officer" means a person holding office under a city, county, or state government orthe federal government who performs a public function and in so doing is vested with the

> exercise of some sovereign power of government and includes all assistants, deputies, clerks and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer. (Ord. 1145-85 § 14(12), 1985)"
>
> **"EMC 2.10.070 Other appointive officers.** Other appointive officers of the city of Everett shall be as follows: ...Assistant city attorney (part-time), Assistant city attorney I, Assistant city attorney II, Assistant city attorney III, ...Deputy city attorney"
>
> **"EMC 1.01.010 Adoption**. Pursuant to the provisions of RCW 35.21.500 through 35.21.570, there is adopted the "Everett Municipal Code," as compiled, edited and published by Book Publishing Company, Seattle, Washington. (Ord. 354-75 § 1, 1975)"
>
> **RCW 42.12.010 Causes of vacancy,** ....(6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law:

A copy of the above code citations is **Exhibit B** and is attached and incorporated herein.

**<u>CASE LAW</u> shows an officer does not qualify and the <u>term of office does not commence until the prescribed oath is taken</u>. Many authorities have recognized that the statutory requirement of taking the oath of office is not discretionary:

> *"McIntosh*, 187 Wash. at 63-64 (quoting *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 528-29, 257 P. 411 (1927)). In addition, an "officer" must take and file an official oath, hold a commission or other written authority, and give an official bond, if the latter be required by proper authority. *McIntosh*, 187 Wash. at 64."

Oath of Office becomes the qualifying factor re State ex rel. Ferguson v. Superior Court for King County, Supreme Court of Washington, Department Two Oct 26, 1926 140 Wash. 636:

> "October 16, 1926, appointed Honorable Walter B. Beals to the position, who immediately qualified by taking his oath of office and thereupon became, for the time being, the duly qualified and acting incumbent of the position."

Other case law showing an officer does not qualify and the term of office does not commence until the prescribed oath is taken:

> In State ex rel. Gann v. Malone , 131 Tenn. 149,172 S.W. 257 (1915), the Tennessee Supreme Court stated that when the statute required the taking of an oath of office, the elected officer does not qualify and the term of office does not commence until the prescribed oath is taken.
>
> City of Evansville v. Brown, 171 Ind. App. 284, 356 N.E.2d 691 (1976); Kohler v. Cobb, 31 N.J. 369, 157 A.2d 681 (1960); Hickey v. Hargraves, 194 Ark. 64, 105 S.W.2d 88 (1937); Logan County Bd. Of Educ , 241 Ky. 166, 43 S.W.2d 691 (1931); see also R. Cooley, Handbook of the Law of Municipal Corporations '57, at 206-07 (1931); 3 E. McWuillen, The Law of Municipal Corporations '12.97 (3rd ed. 1982); 2 C. Sands & M. Libonati, Local Government Law '10.18 (1981)....

See MEMORANDUM OF POINTS AND AUTHORITIES *(***MPA),** RCW 2.48.220, "*without authority, appearing as attorney for a party to an action or proceeding*". Neither Hall or Diaz included an affidavit: "*Truth is expressed in the form of an affidavit*". By Hall and Diaz responding to Summons and proceeded,they misled the court that they were oathed; RCW 9A.72.020(1) "*A person is guilty...if in any official proceeding ...makes a materially false statement which he or she knows it to be false under an oath required .. *by law.*" Hall lied/ testified to matters not in evidence, and Diaz wrote 12(b)(6) alleged all falschoods. Summons, served to the Mayor, was answered by Hall and Diaz, and both emailed Court Clerk on Writ matter, despite their offices legally vacant. They mislead the court that they could legally represent the City.

Plaintiff CLAIMS the City had no legal representatives before the Court. Plaintiff requests the Court Vacate And/ Or Set Aside Order Granting Motion To Dismiss Pursuant to Cr 12(B)(6) of Case No. 19 2 01827 31 Pursuant To Cr60(B)(4), because Council acting for the City had no oath of office, Hall and Diaz misled the court that they could legally represent the City, when they could not, as their offices were vacant.

(3) DEFACTO EXAMINER RULED QUID PRO QUO ON MATTERS NOT BEFORE HER

This Argument incorporates pages 1 through 16 above as though fully set forth therein. **12(b)(6) misrepresented that matters had been vetted by Examiner:** Examiner's ruling, which 12(b)(6) and Court relied upon, was based on that *secret* groundless LUPA false argument that was never presented Hearing. Evidence shows City's unoathed "examiner" was offered meeting with City *ex parte*, Examiner was contractually required to defend the City, she ruled against law, ruled on 2015 matters (outside the scope of the appeal and outside her jurisdiction), ruled on matters outside of proceedings, wrote specious findings, and has pattern of violating procedure. Rittmann filed APP18-006 Oct. 30, 2018. App18-006 is **Exhibit K** is attached and incorporated herein by this reference.

Since acting Examiner was unoathed, therein her position vacant, Plaintiff will refer to her as Sharon A. Rice or Rice. Rice's APP18-006 ruling was fraudulent for the following newly discovered reasons:

(a) "Examiner" Sharon A. Rice, WSBA 28665, had no oath of office, as is required for an Administrative Law Judge; 28 U.S. Code § 453.Oaths of justices and judges states,

> " Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: ..."

> **Administrative Law Judge (ALJ)Definition:**
> *"An independent hearing examiner who presides at an administrative hearing. An ALJ has the power to administer oaths, receive evidence, take testimony, and make initial findings of fact or law. An ALJ's findings are subject to review and modification by agency heads. Also termed hearing examiner; hearing officer; and trial examiner."*

See CASE LAW on P. 16-17 that the term of office does not commence until the prescribed oath is taken. So unoathed Rice did not take office, so wasn't Examiner, and cannot legally rule. Citations & Record Request reply is attached and incorporated herein as **Exhibit C.**

(b) **Rice signed a contract, requiring her to *"defend the City from and against any claims, valid or otherwise."* Exhibit G,** top of page 2, ***"The Hearing Examiner agrees to indemnify and defend the city from and against any claims, valid or otherwise,*** *made against the City because of these obligations."* Pay in exchange for a specific act of defending the city for appearance of vetting. No document shows Rice agreed to be impartial. **Exhibit G** is attached and incorporated herein by this reference.

(c) **Rice ruled LUPA, but City didn't argue LUPA,** 12(b)(6) quoting from App18-006 Rice's Findings P. 11, 2, *"With respect to... other approvals issued for the subject property in 2015, any challenge to those decisions would have been required to be filed within the timeframes established in the Everett Municipal Code and/or the Land Use Petition act (LUPA, RCW 36.70C)"* How could Examiner have ruled LUPA when LUPA argument was not presented by the City? Further evidence below shows pattern of behavior of how "LUPA" lie was fed to Rice by City attorneys meeting *ex parte* with her, like meeting arranged in **Exhibit L,** attached, incorporated herein by this reference.

(d) **Rice violated RCW9A.72.080, which states,** *"Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false."* (see MPA) Rice didn't know LUPA applied, had no evidence that it applied, so she signed a false Finding she had no evidence to believe it true. Staff Report is of Court record (April 4, 2019 Writ Exhibit F) did not argue LUPA, didn't disclose Rice's Finding's specious reasons as to why EMC could be violated, and staff only spoke

on or about 10 words **at** Hearing. LUPA was not presented in Staff report or testimony at Hearing. Rice's Findings was used by City as evidence in legal proceedings. Rice had no disinterested source of information. LUPA did not apply. City used Rice's false findings in 12(b)(6) to mislead Court to believe Rice had vetted.

(e) Rice wrote against law: ruled LUPA applied, and ruled on 2015 matters she was judicially barred from ruling on: Exhibit H states only matters submitted in an appeal filed within 14 days are before an Examiner, "*Appellant is precluded from later raising any appeal issue other than those specifically noted in the written appeal statement.*" Flow chart of Examiner Review is attached and incorporated herein as **Exhibit H.**

(f) Neither City or Plaintiff argued 2015 in Appeal, so an Examiner was prohibited from ruling on 2015 matter; 2015 was not within 14 day appeal period on which Examiner may hear. See entirety of App18-006, **Exhibit K**. NO time-bar or LUPA argument was presented by the City at City App18-006 hearing. Staff Report April 4, 2019 Writ Exhibit F did not contain LUPA argument, and LUPA was not argued in oral arguments. (Staff Report presented OTHER lies, saying Category B applied, and JJ hadn't removed landscape: Plaintiff proved both false.) Absence of argument is more proof of *ex parte between Hall and Rice.*

(g) Rice has pattern of ruling for the city and against procedure and law: After Writ, Planning rushed through JJ landscape approval. Rittmann appealed. City never even sent APP19-002 to Examiner, never made Staff report, and there was no hearing: all procedurally required. Instead, right after APP19-002 filed, Rice met ex parte w/ city attorneys, Jul. 1, 2019, then ruled on some Rittmann email, NOT App19-002. Intentional disregard for procedure is willful and wanton conduct. As City never sent APP19-002 to

Examiner, though it was timely filed June 25, 2019, that appeal remains in limbo. By Rice ruling on an email, Aug. 1, 2019 not Rittmann's actual appeal, Rittmann couldn't appeal a non-existent case. **Rice quit immediately after she signed dismissal of email,** in the middle of her contract, Alleged so disgusted with laws she had to break in order to meet her contract of defending the city.

(h) **Rice knew BEFORE her Aug 1. ruling on the email that EMC requirements were not over-ruled by LUPA:** In Rice's July 1, 2019 email to City, Rice talks like a co-worker about EMC violations being handled separate from building violations- AND City Atty scheduled to meet *ex parte* with Examiner Rice BEFORE Rice ruled on the Rittmann email. **Exhibit L** are emails of Rice initiating contact, and City Atty offering ex parte meeting. "Examiner" Rice initiated *ex parte* conversation with City, "*If this change is made to building code violations... If EMC violations on the same property are not also handled this way, the same respondent could potentially be required to appear before the examiner in two separate proceedings with different burdens of proof...*" This shows Rice herself knew she had perjured by stating LUPA time-bar over-ruled EMC in her Findings. See MPA perjury RCW9A.72.080. When Rice ruled on the email, she knew LUPA didn't apply, said LUPA had been filed by Plaintiff (but Plaintiff hadn't filed LUPA). How could Rice have made such false statements if not told to her by *ex parte* communication with city attorney Hall? Rice ruling on the email, not APP19-002 is **Exhibit E**, and is attached and incorporated herein.

***Plaintiff requested records of the email from City's Anne Weech that may have prompted Examiner to violate Rule 2.9: Ex Parte Communications, but Mar 18, 2019 records request still has not been fulfilled, here weeks later.

(i) **City never even sent App19-002 appeal to Rice or her Clerk is in Exhibit E.**

(j) **City Attorney offered ex parte meeting with Examiner: Exhibit L,** City attorney Rathbun staing, "*I will be in a meeting this afternoon,....will recommend you be included in the early discussions*" This free flow talk between City attorneys and Examiner is evidence of how "Examiner" may have thought LUPA was part of App 18-006, because Rice alleged heard it from city council ex parte, she just assumed it was true. Alleged further conspiracy, and violation of Rule 2.9: Ex Parte Communications (see **MPA**).

(k) **Rice is paid quid pro quo for reviewing and ruling on cases.** Her contract requires her to *defend the city*. Rice signed no oath as judge. Rice defended the city without evidence to support her dismissals, *ex parte* talks with City: alleged fraud/ misrepresentation.

(l) **Hall used Examiner-ruling-LUPA to prevent Code Enforcement from ever acting again on any code violations at Jimmy Johns.** Plaintiff can't locate this email yet, but proof is that City has not acted on a single one of the ~30 zoning violation complaints, even after Plaintiff resubmitted all Apr 18, 2019, Apr. 19, 2019 presenting EMC 16.005.040 A.11.4 that proved no permit is valid that violates any EMC. Said resubmitted complaints are evidenced in Vacate Declaration, Exhibit A on P. 2.

Rice's APP18-006 Findings was presented to the Court in April 4, 2019 Writ Exhibit G. That, in combination with App18-006 (**Exhibit K**), Staff report (April 4, 2019 Writ Exhibit F) , and Flow chart (**Exhibit H**), is evidence that Rice ruled against law: on matters not in App18-006, on 2015 and LUPA matters outside her jurisdiction (beyond the 14 day appeal period on which an Examiner can rule), and on matters outside of proceedings.

Alleged this is like if a cop said a driver sped, driver went to traffic court to clear the lie, and instead was found guilty of murder – conviction from no evidence, arguments, or jurisdiction.

Therein, the City mislead the Court by presenting Rice as impartial jury, as if she ruled on matters in evidence, when Rice's Findings were based on matter not presented in the course of APP18-006, and not based on anyEMC law.

(4) PROSECUTORIAL MISCONDUCT

This Argument incorporates pages 1 through 21 above as though fully set forth therein. In WSBA oath, Hall and Diaz swore not to mislead judge, but did. WA Oath of Attorney, 5, states, " *I will never seek to mislead the judge or jury by any artifice or false statement.*" Evidence here proves they mislead the judge...by...artifice and false statements. Strict liability. See MPA **RCW 2.48.220** Grounds of disbarment or suspension.

12(b)(6) and Hall presented all lies and convolutions, mostly by saying LUPA applied, in all mass perjury before the court, submitting and referring to inadmissible cases; suppressing evidence (denied duty), and convoluting meaning of Plaintiffs statements. Attorneys deceived that they could represent the City, presented no evidence, misled by quoting inapplicable laws, deceived that matters had been vetted, and deceived by acting as City authority. Court did not require evidence, law, or citations; -all causing Rittmann to be wrongfully punished unjustifiably in "with prejudice" ruling, so preventing the implementation of clear EMC that required the City to require Jimmy Johns (JJ) to screen their parking lot, noise, and road hazard from Rittmann's property. Violation of Rule 8.4 (a-c, f)(see MPA) and Brady violation:

> [[527 U.S. 263 (1999) STRICKLER v. GREENE, WARDEN, No. 98-5864, **United States Supreme Court held that a Brady violation occurs when:**"*(1) evidence is favorable to exculpation or impeachment; (2) the evidence is either willfully or inadvertently withheld by the prosecution; and (3) the withholding of the evidence is prejudicial to the defendant."]]*

City Staff prosecuted /persecuted Rittmann, by stripping her of her rights under Everett laws by: not performing EMC duties, not correcting City errs, making up fake negative claims, freely

lying, conspiring with examiner, obstructing EMC, all to close Rittmann's valid claims

INADMISSABLE EVIDENCE: 12(b)(6) presented two unrelated inadmissable McDonalds cases that had merely been dismissed for being misfiled, not reviewed at all on their merits. It attached those dismissals as Exhibit A and B to its 12(b)(6), then Hall verbally touted them as evidence at Writ hearing, convoluting separate and collateral issues/ misrepresentation.

CITY ACTORS SUPPRESSED EVIDENCE: They prevented evidence from trial by filing last minute 12(b)(6): Rittmann didn't have time to refute its mass falsehoods. Court just seeing "12(b)(6)" written by "City" alleged misled the court to blindly believe 12(b)(6) on its face.

DECEIT: Judge mistakenly considering "City" arguments to be "reliable and relevant" when proffered information was all lies, like LUPA lie propagandized 6-plus times. Then 12(b)(6) deceived by citing 20 CASES where LUPA *actually* applied: 12(B)(6) citing:

> P. 4 "*Jackson v. Quality Loan Service Corp,... State ex rel. Gorman v Garlock, Inc,... de novo Id at 843, ...Bravo v Dolsen Cos.,... Tenore v. AT&T Wireless Servs.,... Haberman v Washington Pub Power Supply Sys,... Walker c Munro, ...Burg v City of Seattle,... Lillions v Gibbs,... State ex rel Ryder v Pasco.*" P. 5, "*Eugater v City of Spokane, ...Burg v City of Seattle,*" *P. 7-10, "Ex parte Rowland,..Chelan Cunty v Nykreim, ...Id. At 933,...Retired Pub. Employees Council, State ex rel. Lay v Simpson, State ex rel Pacific American Fisheries v Darwin, State ex rel Starrett v James, Habitat Watch v Sagit County."*

Deceit because LUPA did not apply to zoning violations! Cited 20 cases as if LUPA applied here. 12(b)(6) convoluted Rittmann quotes, Hall fluidly perjured at both Writ 12(b)(6) hearing, adding lies to further conceal City duty. 12(b)(6) deceived the court by quoting Rice in case APP18-006, quid pro quo which Plaintiff evidenced. "City" presented no supporting evidence. Rice and City attorneys didn't even have an Oath of Office.

BLUFF: 12(b)(6) bluffed Court into Order by being filed at last possible date, to get quick dismissal, so that none could see it contained no evidence & didn't meet 12(b)(6) requirements.

WRONGFUL PUNISHMENT: City actors illegally seized Rittmann's property by violating clearly written EMC rights (see landscaping's purpose in **Argument 5,** EMC 19.35.020 (P. 25)), without trial or *impartial* jury, violating her 4th , 6th, and 14th Constitutional Amendment rights.

> Cook v. State (Tex. Crim. App. 1996) 940 S.W.2d 623 (1996), *Conviction reversed for prosecutorial misconduct based on withholding potentially favorable evidence and using misleading and false testimony by expert witness".*
>
> Texas, En Banc. Jimenez v. State *(Tex. App. – San Antonio 2009):* "Serious and continuing prosecutorial misconduct undermines reliability of fact-finding process demanding new trial"
>
> Mooney c Holohan (U.S. 1935): "*Misconduct through "knowing use" of perjured testimony to convict a criminal defendant in violation of "due process*" of law. Ex Parte Davis (Tex. Crim. App. 1997): Conviction reversed for prosecutorial misconduct.
>
> 527 U.S. 263 (1999) STRICKLER v. GREENE, WARDEN No, 98-5864 **United States Supreme Court,** "*... the Commonwealth had failed to disclose important exculpatory evidence and that petitioner had not, in consequence, received a fair trial.*" Argued 3/3/1999. Decided 6/17/1999.

GROSS INCOMPETENCY: If Hall, Diaz, and Rice plea ignorance, their statements in official proceedings were unqualified: See MPA, guilt under RCW9A.72.080.

HYPOCRISY: Hall, Diaz, and Rice publicly presented themselves as acting on behalf of City (a desirable quality): a pretense of having virtues, moral principles; Instead of acting on behalf of EMC laws, they convoluted false claims, concealing city duty / covering crimes of City staff.

MATERIAL MISREPRESENTATION: A false statement that is likely to induce a reasonable person to assent or that the speaker of the false statement knows is likely to induce assent. See MPA Title 9 Essential Elements of Fraud and RPC 4.1 Truthfulness in Statement to Others; Rule 8.4 Misconduct & ELC 1.4 No Statute Of Limitation. City's Threat / Warning (See **MPA** Title 9 Washington Criminal Code 9A.04.110: Pattern of behavior (not fixing McD or JJ, quashing complaints, quid pro quo fraudulent Examiner Findings, false12(b)(6), false testimony,

and quashing later APP19-002 appeal. Predisposition warning to future residents that laws won't be applied to business properties:: suits not held to same level of proof as libel laws.

CULPABILITY: (see **MPA**) RCW Title 9A Culpability*: EMC 15.16.040* (Planning had Duty), *EMC16.005.050 (11)*2. "Any person, firm or corporation who violates any provision of this Code shall be deemed guilty". Alleged City acting with Culpability for commission of a crime.*

JUDICIAL CONDUCT: State of Washington Code of Judicial Conduct, Canons are:

> "**Canon 1:**A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."
>
> "**Canon 2**: A judge shall perform the duties of judicial office impartially, competently, and diligently."

Appearance of Partiality, Impropriety, Lack of Integrity and Due Diligence:

1. **Judge had no understanding of LUPA,** never asked, *mistakenly believed*/* presumed City's Hall and Diaz knew it applied, despite zero evidence, zero law citations, despite Rittmann's repeated protests that they were lying.*see **MPA** RCW 9A.72.020 "*actor's mistaken belief that his or her statement was not material is not a defense*" (mistaken ruling). "Diligence" would have meant Judge would at least *ask* how LUPA applied, but the judge did not. "Diligence" would be judge reviewing evidence which showed App18-006 Staff Report did not contain LUPA argument, or any other argument 12(b)(6) said it contained. *Impropriety: lack of due diligence;* failure to observe standards; lack of careful and persistent work or effort; Judge *rushing to judgment*, not even willing to give Rittmann more than 2 days to prove 12(b)(6)and Hallwere lying.
2. **Judge didn't grant Rittmann's Motion for Enlargement of Time** (30 days). Only Rittmann's protests, which judge cut short, did he grant her two days to respond to 12(b)(6), rewrite Writ and declaration: Judge **not** *diligent* careful and persistent in work

effort; Judge alleged pre-decided for "City", didn't know LUPA, and wanted case *over.*

3. **Judge demonstrated bias:** Cut Rittmann off at both hearings,wouldn't grant Enlargement of Time, didn't require any City evidence: depended on "City's" word. Reconsideration *proved* "City" lied, but instead of removing "with prejudice", Judge ruled another lie the City never evidenced. Bias for sister City is not "*careful and persistent work or effort*".
4. **Judge ruled for the City though no evidence submitted.** The judge orally ruled, "LUPA" despite zero evidence that LUPA applied. Judge Okoloko stated "LUPA" in official proceedings, making **a materially false statement.** Judge said "dismissed with prejudice", Rittmann asked "~Why?" "~How?", and judge stated, "LUPA". Judicial perjury: RCW 9A.72.020 First Degree Perjury and RCW9A.72.080 "Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows *to be false*." (See MPA) Rittmann protests that *City was lying* gave the judge no pause: "No evidence" gave him no pause. A judge can be censured for stating a biased opinion not based in evidence. Code of Conduct for United States Judges, Canon 1, "*The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances.*"
5. **Judge knew City actors had lied:** Judge received Plaintiff's Motion for Reconsideration, which laid out complete evidence that LUPA didn't apply, and proved Hall falsely testified. Hall's "demolition as notice" statement was seconds before Judge ruled "LUPA". Those two points alone should have moved Judge to remove "with prejudice", but the judge did not. *~Integrity is the quality of being honest and having strong moral principles; moral uprightness.* Judge knew City lied, knew he himself stating "LUPA"

was a lie. Judge saved his ruling over moral principals & uprightness.

6. **"Falsus in uno": a witness who testifies falsely about one matter is not credible to testify about any matter** - should have moved the judge to remove "with prejudice", but it didn't. Instead, the judge changed his ***reason:*** denying Rittmann's motion months later, 8/21/19, ruling, "*the substantial rights of the Petitioner were not materially affected by the causes alleged by the Petitioner*". Again, judge ruled without ANY City evidence to back his ruling. 12(b)(6) only made *conclusions* about beneficial interest: 12(b)(6) P. 8, "*beneficially interested [means] has an interest in the action beyond that shared in commons with other Citizens*". "Reasonable belief" Rittmann had beneficial interest was detailed in Writ and photographs. 2000sf of the 2220sf of missing JJ landscaping, 12 trees, directly in sight of Plaintiff's large living room windows (see **Exhibit D** photos, and Writ entries), traffic congestion caused by JJ's illegal 5' x 100' hedge in alley right-of-way and no landscape noise buffer. Further, Rittmann's property meets Purpose of Landscaping and Screening (EMC 19.35.020 in **Argument 5** below). Both pics and EMC citation EMC 19.35.020 is **Exhibit D** attached and incorporated herein.
7. **"Reasonable belief"** alleged is Rittmann had interest more than any other property, as described in section M on page 12 above.
8. **Judicial Misconduct:** Judge erred by orally stating "LUPA", Reconsideration proved LUPA was false, and that Hall perjured. So Judge denied Reconsideration based on *another* false City premise with no evidence. APP18-006 staff Report did not dispute Plaintiff's beneficial interest,. Canon 2: "*shall avoid impropriety and the appearance of impropriety*", Judge would not grant Rittmann her written request for Enlargement of Time, and he cut Rittmann off from speaking at the 12(b)(6) hearing after less than 5

minutes, then Hall spoke another lie.

9. **Impropriety / compromised judgment**: Okoloko was up for election. His campaign signs said "endorsed by law enforcement". Okoloko may have known *pro se had little chance* to appeal his ruling (as pro se would have to find an attorney in short order, and pay ~$20K+.). Impropriety: *a failure to observe standards or show due honesty or modesty; ... or character.* Ruling based on personal interests, and above the interests of law, justice, impartiality, fairness, and propriety.

10. **A judge is to review EVIDENCE**. A party's *conclusions* are *opinions,* to be expressed as, "In my opinion". 12(b)(6) and Hall freely lied about all; Plaintiff wrote *evidence* that Judge ignored on its face. Okoloko and Rice in violation of Principals of Law

11. **Fallout from the judicial community.** Though judges sign Oath that they'll be fair/ impartial, the **elephant-in-the-room** is the judicial community supports each other -and grants other judges and city attorneys *any* benefit of *any* doubts, like when ruling on vacating another judge's ruling. But only one man -David Hall – seeded the LUPA lie and all other lies, so starving Everett and Court from following laws. All "authorities" followed Hall like he was pied piper, all just going by his say-so, so taking the City and Court off a cliff; Letting 12(b)(6) ruling stand: tyranny to justice, disservice to the city, and emboldens corruption. Please now stand up for justice over prejudice. Truth must be freed. City is only as good as its worst actors. Every atty that hides Hall's rampage. See **MPT** Rule 8.3 and 8.4.

11. Hall and Diaz **not deserving of judge's gift:** evidence that LUPA didn't apply to EMC, 12(b)(6) was replete with lies, and Hall perjured. Despite proof that they lied, Okoloko gave them a break-- at Rittmann's expense. The City now knows LUPA didn't apply, but

they didn't step up and take corrective action. Instead, Hall and Rice covered up their torts by halting Rittmann's latest APP19-002 appeal (re JJ's final approval). City didn't even send it to Examiner, instead had Rice rule on some email, with no staff report, no hearing... See end part of **Quid Pro Quo** Argument. When Rittmann spoke before the Council, Hall said he supported land manager. Neither Hall nor Diaz threw themselves upon the court or City to admit they had lied about all. They used the power /title of office to violate near every aspect of law, and, so far, Court, Rice, Mayor have let them.

12 **Rule 8.3** (see MPA) required Judge to report Hall and Diaz's misconduct. He didn't.

13. **Rule 8.4** *"engage in conduct involving dishonesty, fraud deceit, or misrepresentation"*

(5) IF ALLOWED TO REFILE, ALL WRIT ELEMENTS CAN BE PROVEN

This Argument incorporates pages 1 through 28 above as though fully set forth therein.

Writ elements could be met if "with prejudice" is set aside. *"Mandamus will only be used to compel the performance of a duty enjoined by law, or where there is a clear duty to act, Id at 290 (internal citations omitted). ..applicant must satisfy three elements before a writ will issue;*

> *(1) [T]he party subject to the writ is under a clear duty to act, RCW 7.16.160;*
> *(2) [T]he applicant has no "plain, speedy and adequate remedy in the ordinary course of law." RCW 7.16.170; and*
> *(3) [T]he applicant is "beneficially interested" RCW 7.16.170*

DUTY

City duty is clearly defined in Everett Municipal Code (EMC), including in newly discovered evidence citations*, all **Exhibit I**, attached and incorporated herein by this reference:

> *"**EMC 15.16.040**...*administrative review **is** code compliance verification"... *"Review Process I applications **shall** be reviewed administratively by the planning department to determine compliance with the city's zoning code and other applicable ordinances and regulations"....,*

*EMC 19.35.030A New Development "**shall provide landscaping** in accordance with the requirements of this chapter".*

Errs of duty are prevented from being valid by the following:

EMC 16.005.040(A)(11) ... (4) The issuance or granting of a permit or approval of plans and/or specifications shall **not** be deemed or construed to be a permit for, or an approval of, any violations of any of the provisions of this Code or any other law or regulation. **No permit presuming to give authority to violate or cancel the provision of this Code shall be valid**, except insofar as the work or use, which it authorized, is lawful. * 5. The issuance or granting of a permit or approval of plans and/or specifications **shall not prevent the Building Official** or his or her designee **from thereafter requiring the correction of errors** in said plans and/or specifications or from preventing construction operation being carried on thereunder when in violation of this Code or of any other ordinance, law or regulations or from revoking any certification of approval when issued in error.

Punishment for errs of duty are that staff are deemed guilty:

***EMC 16.005.050(12)* *1. A violation of the provisions of this Code shall be subject to the City's Civil Enforcement Procedures** as set forth in Chapter 1.20 EMC and any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures...
***16.005.050 (12)* . (12) 1. Any violation** of this Code determined to exist after inspection by the Building Official, or his or her designee, is **hereby declared to be a nuisance**. "*16.005.050 (11)**2. **Any person**, firm or corporation **who violates any provision of this Code shall be deemed guilty** of a misdemeanor, and each such person , firm, or corporation shall be deeemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued, or permitted,..."

NO PLAIN, SPEEDY, ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW

Staff did not require Jimmy Johns (JJ) to meet near 30 zoning laws, as DUTY requires. Plaintiff filed code enforcement complaints about each and every violation. City did not respond or act on any violations. When Plaintiff redrew JJ's plans, with one violation corrected, City

staff forced the removal of that requirement from the plans. When Plaintiff took her complaints before Examiner, unoathed "Examiner" was contractually required to rule for the city, ex parte met with City, ruled against law, ruled on matters outside her jurisdiction, and ruled on matters not before her. When Plaintiff took her case before Superior court, Judge had no City evidence, but blindly believed all must have been vetted before it got to him, so judge himself ruled against law, orally stating "LUPA".was why he dismissed . Plaintiff complained to Mayor and Council, who relied on lying City attorneys, and when caught, all covered their crimes with further lies. Plaintiff never had an opportunity ever under law.

BENEFICIAL INTEREST

Rittmann had full beneficial interest: 2000sf of the 2220sf of missing JJ landscaping, 12 trees are missing, all would be in sight of three of Rittmann's large living room windows, and no landscape noise buffer. Traffic congestion is caused by JJ's illegal 5' x 100' hedge in alley right-of-way. **EMC 19.35.020** (see **Exhibit D**) states;

> "The purpose of this chapter [Landscaping and Screening Requirements] is to enhance compatibility between land uses and zones; screen undesirable views which have a blighting effect upon adjoining streets and properties; provide a visual buffer and physical separation between land uses of varying intensities on abutting properties; minimize the impacts of noise, light and glare; temper the extremes of microclimates; provide privacy; reduce dust; reduce the visual monotony of large expanses of paved parking lots;..."

Both the photo and EMC citation is **Exhibit D** and is attached and incorporated herein. Previously disclosed citations addressed traffic issues with Jimmy John's illegal hedge in alley.

PLAINTIFF'S FAR-SWEEPING INTEREST

The City failed duty at abutting neighbor McDonalds (McD): 1994, McD never submitted ANY landscape plan, and such was required. (violations included 4 disallowed ingress/egresses,

and placement of their dumpsters under Rittmann's windows); in 2008, McD expanded, plans violated ~30 EMC laws. Expansion violated more laws , like they reduced vehicle holding places from 8-required to 2, and holding blocked pedestrian crossing. Plans marked dense Type I landscaping abutting Rittmann's property, but such landscaping never was placed, and land there is near bare. In 2012, the City shoved through a variance that violated more undisclosed EMC. Also, variance had subject-to landscape requirements, required prior to the issuance of Variance, yet none of those conditions have been met to this day. Semi trucks now illegally idle parallel to Plaintiff's property, plus intercom noise exceeds allowed levels. Plaintiff complained, picketed, wrote Mayor, spoke to council, but City wouldn't act. Plaintiff's interest was expressed in APP18-006, "*Without the Development Standard, Rittmann's view of Jimmy Johns' parking lot are not softened, and her reputation with client Jimmy Johns alleged damaged.*" Steve Shaw of JJ stopped communication with Rittmann after City told him he didn't have to meet EMC requirements Rittmann had previously drawn in plans for him.

Rittmann's property is within one block of many other business properties alleged in violation of most zoning laws: KFC at 2702 Broadway, Taco Bell at 2727 Broadway, Jack in the Box at 2106 Everett Ave, Chevron at 2620 Broadway. Example: parking lots required to have 15' of landscaping facing streets have only 5'. Violations from excess curb-cuts to undersized plants.

EXTRAORDINARY WRIT NEEDED TO FIX DEEP CITY CORRUPTION:

City's own laws deem both planning staff and City itself – "guilty". Mayor and Council informed but take no action: stare blankly at Plaintiff. Example is Plaintiff spoke many times before both, like 3 minutes Feb. 5, 2020, **Exhibit F**, attached and incorporated herewith.

Code Enforcement follows what Attorney says, not law. In Everett, police handle residential violations, but business violations get sent back to the planner that allowed the violations to start

with. Lack of staff following EMC results in illegal seizure of property rights by partial staff. Such creates violations of 4th , 6th, and 14th Constitutional amendment rights.

MAXIMS:

1. "IT IS AGAINST EQUITY FOR FREEMEN NOT TO HAVE THE FREE DISPOSAL OF THEIR OWN PROPERTY." The City has illegally seized Rittmann's property rights by not requiring City's own laws that require JJ to meet ~30 zoning laws, which it is in violation of.
2. "EQUALITY BEFORE THE LAW" Not here: Court wouldn't grant Rittmann Enlargement of time to reply to the mountain of City lies, Court cut Rittmann from speaking after 5 minutes, court rules LUPA from no evidence, Court rules "with prejudice" based entirely on City lies.
3. "IN COMMERCE TRUTH IS SOVEREIGN" Though Reconsideration *proved* the City perjured and lied in 12(b)(6), yet judge not reversing "with prejudice" under **Falsus in uno,** shows judicial prejudice towards City actors and against pro se filings.

> It's "*not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard*". In ***Haines v. Kerner*, 404 U.S. 519 (1972), a *pro se* complaint,** "*however inartfully pleaded,*" *must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.*" Id., at 520 521, quoting ***Conley v. Gibson*, 355 U.S. 41,45 46 (1957).**

4. "TRUTH IS EXPRESSED IN THE FORM OF AN AFFIDAVIT": City actors were unoathed, and provided no affidavit. Rittmann provided affidavit.

5. "AN UNREBUTTED AFFIDAVIT STANDS AS TRUTH IN COMMERCE". Reconsideration proved LUPA did not reply and City perjured. City did not rebute Rittmann's evidence.

6. "AN UNREBUTTED AFFIDAVIT BECOMES THE JUDGMENT IN COMMERCE". Rittmann rebutted City's LUPA falsehood, along with proving Hall perjured. City's house of false-hoods was built on the LUPA lie, iced by other lies. Alleged, Court did not follow judicial Canons.

7. "IN COMMERCE FOR ANY MATTER TO BE RESOLVED MUST BE EXPRESSED". However inarticulate, Rittmann is doing her best to express unresolved issues. Rittmann speaks before the council,discloses evidence to Mayor, pickets, tried everything to get City to act: After JJ tore out all landscaping, built, and opened for business, Rittmann: submitted 20 code complaints, quoted EMC, but City did not act; emailed Planning, then Mayor; worked with JJ to correct its plans to meet at least *some* law, but Staff stopped corrections; uncovered how the normally-secret approval procedure was a source of staff cheating; twice paid $533 to appeal; and has proved the City lied, cheated, and colluded.

8. HE WHO LEAVES THE BATTLEFIELD FIRST LOSES BY DEFAULT. Rittmann has worked on this Set Aside since Judge denied Reconsideration. She'll continue to fight in every manner possible till City corruption is undone. Rittmann believes it is her duty.

9. SACRIFICE IS THE MEASURE OF CREDIBILITY: For 7 years Plaintiff worked to get City to enforce it's own EMC, starting with McD, whose garbage is still illegally under Plaintiff's windows. McDonalds owner was actually obstructed from moving garbage by City staff. City obstructed Jimmy Johns from complying to EMC. Plaintiff has picketed, been threatened by City, gone in for depression, downsized her business to devote time

to this fight, and learned some legal (as no attorney found to take on the City). Plaintiff continues sacrifice of time-energy-money to stop Staff from destroying Everett/ stop breaking City laws. Rittmann is in unique beneficial interest position, having two restaurant neighbors in violation of near all zoning law. Some great causes, sacrifice is the price that must be paid.

10. SATISFACTION OF A LIEN - Rittmann is merely asking the Court to set aside the courts "with prejudice" ruling, such that Rittmann can fight another day, more fully armed against city staff's falsehoods, convolutions, and illegal tactics.

VI. CONCLUSION

This Summary incorporates pages 1 through 34 above as though fully set forth therein.

LUPA only applies to SEPA properties and when City files violations: see 15.24.310 SEPA appeals 8.21.040 Violations and 20.08.220 Enforcement Violation Penalty.

One city attorney propagated the falsehood that LUPA over-rode all duty and zoning laws, like EMC 15.16.040, 19.35.030AE,16.005.040A11, and 16.005.050 where not meeting duty is a crime under EMC16.005.050 (11). That one attorney's arrogant lie appears to be why Planning officers thought it okay to take kickbacks in exchange for not requiring EMC on business properties. All staff just presumed the LUPA lie was true, because it exculpated everyone's duty. The head city attorney cut off the legs of vetting by requiring whomever acted as "Examiner" to "*indemnify and defend the city from and against any claims, valid or otherwise*". So, whatever the attorney told Examiner" ex parte, that is what Examiner ruled. A city attorney and his subordinate Diaz constructed a last-minute 12(b)(6), falsely asserting collateral estoppel when it actually was all arguments never vetted or even presented before defacto examiner.

12(b)(6) contained all new arguments, and all of it was fraud: lies and convolutions, misleading the Court. Duress: Judge only granted Plaintiff 2 days to reply to the cascade of 12(b)(6) lies. "Mistake"? City attorneys had no oath of office, so weren't even allowed to represent the City. Misconduct? Judge took City attorneys at their word, with no evidence to verify 12(b)(6) claims. When Reconsideration proved LUPA did not apply to EMC zoning laws, proved that Hall had perjured in court to get "with prejudice", and Reconsideration proof was unrefuted by the City. Despite despite Falsus in uno, judge himself was now caught in the quicksand. So judge dismissed Reconsideration based on *another* new, never before vetted City lie, constraining fairness and further disposing of Plaintiff like stinky trash. The thought of Manager, Examiner, attorneys, and staff all violating so many laws seemed too impossible to be true – but it was true **Extraordinary fraud, perjury, mistake, and misconduct** was beset upon the Court and **duress** beset upon the Plaintiff- all by City actors: The 12(b)(6) did not meet the requirement of "failed to state a claim which relief can be granted.

~~VII~~ *MEMORANDUM OF POINTS AND AUTHORITIES* (MPA)

CR 60 RELIEF FROM JUDGMENT OR ORDER

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

RCW 9A.72.020 First Degree Perjury:

> "(1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony."

CW9A.72.080

"Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false." [2011 c 336 § 394; 1975 1st ex.s. c 260 § 9A.72.080.]

RCW69.50.407 Conspiracy:

"*Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both....the commission of which was the object of the attempt or conspiracy.*"

RCW 9A.28.040 **Criminal conspiracy:**

"(1) *A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.*" **U.S. Supreme Court, Pinkerton v. United States, No. 719, Argued May 1, 1946, Decided June 10, 1946, 328 U.S. 640: Primary Holding, "***The actions of any member of a conspiracy can he attributed to any of the other members as long as the conspiracy lasts, even if there is no specific agreement regarding that act.*"

RCW 2.48.220 Grounds of disbarment or suspension:

"An attorney or counselor may be disbarred or suspended for any of the following causes arising after his or her admission to practice:

(4) Corruptly or willfully, and without authority, appearing as attorney for a party to an action or proceeding.*

(6) For the commission of any act involving moral turpitude, dishonesty**, or corruption, whether the same be committed in the course of his or her relations as an attorney or counselor at law, or otherwise, and whether the same constitute a felony or misdemeanor or not; and if the act constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.

(10) Gross incompetency in the practice of the profession.***

(11) Violation of the ethics of the profession."

RPC 4.1 Truthfulness in Statement to Others,

"In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a

third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6" [Adopted effective September 1, 1985.] "Comment , Misrepresentation [1] ...A misrepresentation can occur it the lawyer incorporates or affirms a statement of another person that the lawyer knows is false....Statements of Fact: Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation."

Title 8, Maintaining The Integrity of The Profession:

"[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud. [7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens.."

Rule 8.4 Misconduct (American Bar Association) states,

"It is professional misconduct for a lawyer to ... commit a criminal act that reflects advesely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. [or to] engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

RCW 9A.76.175, Making a false or misleading statement

"Making a false or misleading statement to a public servant., "A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties."

ELC 1.4 NO STATUTE OF LIMITATION

"No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules"

Robert Gougou, former Media's Market Research Adviser (1980-2014)
"In any democratic political system, the essential principles are the following:...
* "the government (Republic or monarchy) bound by and ruled by law;"
* "all citizens are equals before the law from the head of the state to the mass public;"
* "the establishment of law and order by independent and fairness a judicial system;"
* "the efficient and predictable of justice, and clear separation of powers..."
* "and the protection of human Rights by a charter of rights."

RCW 9A.60.040 FRAUD

"Criminal impersonation in the first degree (1)(b) 12Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose."

Title 9 Washington Criminal code RCW 9A.04.110 (28)

"Threat" means to communicate, directly or indirectly the intent"..."(h) To take wrongful action as an official against anyone or anything, or wrongfully withold official actions or cause such action or withholding"

ACTUAL FRAUD

"A false statement recklessly made, without knowledge of its truth or falsity, is the equivalent of actual fraud." (collecting authorities). The same principle was incorporated into the law of mail fraud nearly a century ago. Corliss v. United States, 7 F.2d 455, 456 (8th Cir. 1925) ("This is a criminal case, and the false representations, in order to come within the statute, must have been knowingly false or made with reckless disregard as to whether they were false or true.").

RCW 9A.08.010 General Requirements of Culpability

"*(3) Culpability (2) A person is legally accountable for the conduct of another person when (a) acting with the kind of culpability that is sufficient for the commission of a crime*".

Superior Court Civil Rules CR 12 DEFENSES AND OBJECTIONS (b)

"How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following.... defenses may at the option of the pleader be made by motion: (6) failure to state a claim upon which relief can be granted;"

Model rule 8.3 Reporting Professional misconduct:

"(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, **shall inform the appropriate professional authority**."

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

13Rule 8.4: Misconduct

"It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud. deceit or misrepresentation;..
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;"
(alleged, Hall's & Diaz's lies wouldn't have won if not "the City")
"(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;"
(Hall assisting Examiner *ex parte* to violate multiple laws)

Rule 2.9: Ex Parte Communications

A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter

VIII CLAIMS

These claims incorporate pages 1 through 41 above as though fully set forth therein.

NOW, THEREFORE, Jean V. Rittmann **CLAIMS:**

A. The Court should grant /Order Motion to Vacate and/or Set Aside Order Granting Motion To Dismiss Pursuant to Cr 12(B)(6) Of Case No. 19 2 01827 31 Pursuant to CR60(b)(4) and Plaintiff Jean V. Rittmann should be granted the right to refile a Writ over the matters of Case No. 19 2 01827 31 for the following reasons:

1. Newly discovered evidence shows LUPA only applies under EMC 15.24.310 SEPA appeals, 8.21.040 Violations, and 20.08.220 Enforcement Violation Penalty, and LUPA does not apply to any Everett Municipal Code violations committed by the City.

2. Evidence shows LUPA only applies under EMC 15.24.310, EMC 8.21.040, and EMC 20.08.220; and evidence shows LUPA does not apply to violations committed by the City {in example EMC 16.005.040(A)(11)(4) states, *"no permit presuming to give authority to violate or cancel the provision of this Code shall be valid,... "*, EMC 15.16.040, *"administrative review is code compliance verification"*, EMC 16.005.050(12((1) and EMC 16.005.050(11)2)}, AND there is *absence of evidence* to support 12(b)(6)'s claims of LUPA

applying to any Everett Municipal Code (EMC) violations committed by the City, therein 12(b)(6) Order alleged was obtained by actual fraud, misconduct and misrepresentation by the City of Everett stating the following "LUPA" falsehoods in the 12(b)(6), so misleading the court:

a. *"The City's 12(b)(6) making the "...Petitioner could have sought the same relief as to her numerous issues with land use decisions associated with Jimmy Johns' restaurant from 2015 in a timely LUPA action."*

b. *"Petitioner's complaint fails on its face... relating to land use decisions, because she could have (and in fact was required to) challenged the land use decisions in a timely Land Use Petition Act (LUPA) action, RCW 36.70C.030. LUPA is the exclusive method for such challenges. RCW 36.70C.3030.Whether the mandamus remedy is available "...turns on whether the duty the plaintiff seeks to enforce 'cannot be directly enforced' by any means other than mandamus."*

c. *"...These 2015 land use decisions are subject to LUPA, Chapter 36.70C RCW. 16 The only issue before the Hearing Examiner which was not time-barred by LUPA was the 10/17/2018 revision to the Jimmy John's restaurant landscaping plan (and the time period under LUPA has now lapsed for that as well). In considering whether a party may seek a writ of seek a writ of mandamus because an otherwise available cause of action was precluded due to the statute of limitations, ..." ;*

d. *"D. Petitioner's Due Process claims should be dismissed ... because LUPA applies".*

f. *"All of the other numerous 2015 land use decisions appealed by X petitioner (and again raised in her 03/04/2019 petition) were denied because they were time-barred by the Land Use Petition Act (LUPA)."*

g. *"Petitioner's issues in her complaints which are time-barred by LUPA 13 are intermixed with her requests..."*

h. *"She could have challenged the 10/18/2019 Jimmy Johns restaurant landscape plan revisions in a timely LUPA claim. As noted, the fact that her LUPA claim would now be untimely does not mean she is entitled to avoid the time bar by dressing up the claim in other causes of action."*

Plaintiff's Claims 1 and 2 are also supported by EMC 15.16.040,"administrative review is code compliance verification" ... *"Review Process I applications **shall** be reviewed administratively by the planning department to determine compliance with the city's zoning code and other applicable ordinances and regulations...", **EMC16.005.050(12)(I) "...any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures"*** and **EMC16.005.050 (11) 2.**,*"Any person, firm or corporation who violates any provision of this Code shall be deemed guilty..."* (ie, Staff and City itself are guilty for not doing duty of code compliance verification) and RCW9A.72.080, which states, "*Every*

unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false." Supported further in Argument 1, section **A & B**, P. 4-9.

3. Newly discovered evidence shows "LUPA"," beneficial interest" , "discretion", "duty" and "final land use decision" arguments were <u>not</u> presented by APP18-006 Staff Report, and 12(b)(6) presented no evidence to support such collateral estoppel claims, <u>therein</u> under RCW9A.72.080, all statements below are false and Order was alleged obtained by actual fraud, misconduct and misrepresentation by the City of Everett stating the following in the 12(b)(6), so misleading the court:

a. *"Because she has a plain, speedy, and adequate remedy in the ordinary course of law, Petitioner is not entitled to a writ of mandamus";*

b. *"Evidence Relied Upon...City submits no matters outside of the pleadings"*

c. *"I...no new or controverting facts".*

d. *"It is, in fact, because the Petitioner knows-...the fact that the City has discretion in enforcement of land use code violation"*

e. *"City cannot lawfully undo a final land use decision"*

g. *"Petitioner has failed to demonstrate a "beneficial interest""*

h. *"The City makes this argument based on material facts raised by Petitioner (not Petitioner's unsubstantiated legal conclusions drawn from those material facts)."*

i. *"C. Petitioner is not "beneficially interested" and the mandamus action must be dismissed. As quoted supra on page 6, Petitioner is seeking an extraordinarily broad manamus writ -essentially removing the City's existing discretion when it comes to enforcement on land use complaints. Because she is seeking such a broad and general writ of mandamus, Petitioner fails to shoe that she is "beneficially interested . In order to be considered "beneficially interested," a Petitioner for a writ of mandamus much show he or she "has an interest in action beyond that shared in commons with other citizens."*

Plaintiff's Claim 3 is supported by: absence of evidence in APP18-006 Staff report of any mention of "LUPA"," beneficial interest" , "discretion", "duty" or "final land use decision", and RCW9A.72.080. which states, "*Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.*".

4. Evidence shows Order was obtained by actual fraud, misconduct and misrepresentation by the City <u>filing</u> a 12(b)(6), alleged fraudulently misleading the Court that it met the 12(b)(6) criteria of "*failure to state a claim upon which relief can be granted*", when relief was requested by Plaintiff in Mar 4, 2019 Writ in sections 4.13, 5.3, 5.6, 5.10, 5.11, 5.12, 5.16, 5.19, 5.27, 6.3, 8.2, 8.3e-g, 9.3f, and Prayer for Relief 1 f-g, and 2f.

Plaintiff's Claim 4 is supported by Everett Municipal Code that the City was required to follow EMC 16.005.040(A)(11)(4), ""*no permit presuming to give authority to violate or cancel the provision of this Code shall be valid...*", EMC 15.16.040..."administrative review is code compliance verification" ... *"Review Process I applications* ***shall*** *be reviewed administratively by the planning department to determine compliance with the city's zoning code and other applicable ordinances and regulations...*", EMC16.005.050(12)(1) *"...any person, firm or corporation who violates any provision of this Code shall be subject to said enforcement procedures*" . EMC16.005.050 (11) 2.,*"Any person, firm or corporation who violates any provision of this Code shall be deemed guilty...*" (ie, Staff and City itself are guilty for not performing duty of code compliance verification)

5. 12(b)(6) stated the following alleged false, misleading statements:

   a. *"Petitioner admits that the actions she is requesting via writ of mandamus are discretionary."*

   b. *"Petitioner has failed to demonstrate a "beneficial interest".*

   c. *"D. Petitioner's Due Process claims should be dismissed because she had actual notice of 10/17/18 landscape plan revisions and because LUPA applies".*

   d. "Petitioner has not identified any mandatory duties the City was required to perform"

Plaintiff's Claim 5 is supported by arguments on P. 11, sections **F, G1, G2**, and P. 12, section **I.**

6. 12(b)(6) exhibits A and B were two unrelated inadmissable McDonalds cases, not mentioned in 12(b)(6) statements, but then attorney David Hall asserted collateral estoppel at Writ hearing (that the matters currently before the court had been dismissed in the McDonalds cases), when the McDonalds cases had been dismissed for filing errors and were not ruled on their merits, therein the City alleged committed misconduct and misrepresentation by convoluting separate and collateral issues, so misleading the Court.

Plaintiff's Claim 6 is supported by absence of evidence that McDonalds cases were ever ruled on their merits, directly determined, or supported the 12(b)(6) motion in any prior Court.

7. 12(b)(6) quoted Plaintiff only twice, both times convoluting quote's meaning, alleged misleading the Court:

   a. *"City laws are written saying city 'may' reply to complaints"*

   b. *"City attorney 'may' take action, but no requirement or city benefit to reply or act"*

Plaintiff's Claim 7 is supported by argument on P. 12, sections **H** and **J.**

8. Newly discovered: the City of Everett presented David Hall and Flora Diaz as oathed

officers, when they had no oath, and RCW 42.12.010 and case law shows the term of office does not commence until the prescribed oath is taken, therein alleged misrepresentation before the Court.

Plaintiff's Claim 8 is supported by Argument 2 on P. 15-17, including EMC Article IV, sect. 4.10, EMC 10.02.130 Officer—Public officer. EMC 2.10.070 Other appointive offices, and EMC 1.01.010 Adaption

9. Newly discovered reasons disclosing Order was alleged obtained by fraud and/or misrepresentation of vetting by:

   a. The City of Everett presenting Sharon A. Rice as an Examiner, when Rice had no oath of office, oath is required for all Administrative Law Judges, and case law shows the term of office does not commence until the prescribed oath is taken.

   b. The City of Everett having Sharon A. Rice sign her May 16th, 2017 contract between Rice and the City, contract stating, "*The Hearing Examiner agrees to indemnify and defend the city from and against any claims, valid or otherwise, made against the City because of these obligations.*"

   c. 12(b)(6) presenting fraudulent vetting by stating, "*On 02/21/2019 Petitioner's appeal of the 10/17/2018 landscape plan was denied*"

   d. Sharon A. Rice stating LUPA in her App18-006 Findings, when LUPA was not an argument presented by City of Everett Staff report or by Plaintiff, was Rice ruling: against law, on matters not before her, and on matters beyond the 14 day appeal period on which an Examiner can rule.

   e. The City of Everett presenting Examiner Sharon A. Rice's decision as impartial vetting in APP18-006, when the City offered *ex parte* meeting with Rice, and Rice ex parte emailed City attorneys, all while a Plaintiff Rittmann appeal was before her. (Exhibit N)

   d. Sharon A. Rice ruling on 2015 matters in her App18-006 Findings, when 2015 was not an argument presented by City of Everett Staff Report or in City's oral arguments, therein Rice ruled on 2015 matters not before her, 2015 matters were outside her jurisdiction, and Rice ruled against law on 2015 matters.

   f. 12(b)(6) presenting false vetting by stating, "*The only issue before the Hearing Examiner that was not time-barred by LUPA was the 10/17/2018 revision to the Jimmy John's landscaping plan (and the time period under LUPA has now lapsed as* well", when LUPA was not presented as an argument in APP18-006.

   g. The City of Everett paying Sharon A. Rice specifically for reviewing and ruling on cases for which Rice is contractually required to "*indemnify and defend the city from and against any claims, valid or otherwise, made against the City...*" and nowhere does Rice agree to be impartial.

Plaintiff's Claims 8 and 9a, are supported by Records from the City of Everett, **Exhibits A, B, C** showing Hall, Diaz, and Sharon Rice had no oath of office. City attorney's oath is required under Article IV, sect. 4.10 Oath of Office, EMC 10.02.130 Officer, EMC 2.10.070 Other appointive officers EMC 1.01.010 Adoption, RCW 42.12.010 Causes of vacancy. Rice's oath is required under EMC 28 U.S. Code § 453, and Rice did not meet the requirements of an Administrative Law Judge (ALJ)Definition:"*An independent hearing examiner who presides at an administrative hearing.*" because Rice's contract required her to defend the city: **Exhibit G. Claim 9 is fully supported** under Argument 3 on P 18-23.

10. City attorney David Hall committed perjury at 12(b)(6) Hearing, stating against fact and without evidence that Plaintiff had notice by way of demolition on the 2602 Broadway property, when demolition permit was not issued till Aug. 3, 2015: months after Jimmy Johns' plans were closed on June 15, 2015.

Claim 10 is supported by **Exhibit N** eTrakit records of June 15, 2015 plans closed date and 8/11/2015 demolition approved date, 8/31/15 issued date, and 10/14/2015 demo finaled date. Disclosure in Reconsideration of Hall claiming demo at notice at 12(b)(6) Hearing went unchallenged in City's Reply, such is "silence is consent" And RCW9A.72.080, which states, "*Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.*".

11. Judge Edirin Okoloko orally ruled "LUPA" immediately before signing 12(b)(6) Order, despite the City of Everett presenting no evidence that LUPA applied, so Judge in violation of RCW9A.72.080, which states, "*Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.*".

12. 12(b)(6) mislead the Court by citing on or about 20 LUPA cases, despite the fact that LUPA does not apply to zoning code violations, said cases cited by 12(b)(6) being "*Jackson v. Quality Loan Service Corp,... State ex rel. Gorman v Garlock, Inc,... de novo Id at 843, ...Bravo v Dolsen Cos.,... Tenore v. AT&T Wireless Servs.,... Haberman v Washington Pub Power Supply Sys,... Walker c Munro, ...Burg v City of Seattle,... Lillions v Gibbs,... State ex rel Ryder v Pasco,... "Eugater v City of Spokane, ...Burg v City of Seattle,...Ex parte Rowland,..Chelan Cunty v Nykreim, ...Id. At 933,...Retired Pub. Employees Council, ...State ex rel. Lay v Simpson,... State ex rel Pacific American Fisheries v Darwin, State ex rel... Starrett v James, ...Habitat Watch v Sagit County.*"

Plaintiff's Claim 12 is supported by Argument 5, DECEIT on P. 24.

B. The court should declare that, in case No. **19 2 01827 31,** City's12(b)(6) contained multiple fraudulent statements, and unoathed WSBA No. 44627 David Hall's demo-as-notice statement was fraudulent, so bluffing the Court to sign Order dismissing **CASE No. 19 2 01827 31 with prejudice,** based on no evidence.

C. The court should grant MOTION TO VACATE AND/ OR SET ASIDE ORDER GRANTING MOTION TO DISMISS PURSUANTTO CR 12(b)(6) OF CASE No. 19 2 01827 31 with prejudice that was signed by Snohomish County Superior Court Judge Okoloko on April 12, 2019.

D. The court should ORDER the ORDER GRANTING MOTION TO DISMISS PURSUANTTO CR 12(b)(6) OF CASE No. 19 2 01827 31 with prejudice that was signed by Snohomish County Superior Court Judge Okoloko on April 12, 2019 be VACATED AND/ OR SET ASIDE.

E. The court should hereby grant Plaintiff Jean V. Ritmann an opportunity to refile a new Writ regarding matters disclosed in **CASE No. 19 2 01827 31.**

Plaintiff asserted arguments of (1) All City 12(B)(6) And Oral Arguments Were Fraudulent, (2) City Attorneys Had No Oath Of Office, (3) Defacto examiner Ruled Quid Pro Quo On Matters Not Before Her, (4) Prosecutorial Misconduct, and (5) If Allowed To Refile, All Writ Elements Can Be Proven. Because Plaintiff asserts or reasserts claims of intrinsic fraud, perjury, duress, mistakes, misconduct, inadvertence, and other City misconduct related to Order granting 12(b)(6), the instant CR 60(b)(4) motion is properly construed as a successive motion to vacate filed pursuant to 28 U.S.C § 2255 ** (*or whatever CR rule is found to apply*) For the foregoing reasons, IT SHOULD BE HEREBY ORDERED that Plaintiff's "Motion for Relief from Judgment Pursuant to CR 60(b)(4) Fraud" received on April 8, 2020, is CONSTRUED as a successive motion to vacate filed pursuant to 28 U.S.C. § 2255 **. The Clerk of the Court SHOULD BE DIRECTED to open a new civil action for administrative purposes only; file the instant motion in that action as a § 2255** motion filed April 8, 2020; and without further judicial action, immediately transfer the new § 2255** action to the to the Snohomish County Superior Court.

IIX. PRAYER FOR RELIEF

This Prayer incorporate pages 1 through 46 above as though fully set forth therein.

NOW, THEREFORE, Jean V. Rittmann prays for relief as follows:

A. The Court grants/Orders Petitioner's Motion to Vacate and or Set Aside Order Granting Motion To Dismiss Pursuant to Cr 12(B)(6) Of Case No. 19 2 01827 31 Pursuant to CR60(b)(4) and grants Plaintiff Jean V. Rittmann the right to refile a Writ over the matters of Case No. 19 2 01827 31 for the following reasons:

1. Newly discovered evidence shows LUPA only applies under EMC 15.24.310 SEPA appeals, 8.21.040 Violations, and 20.08.220 Enforcement Violation Penalty, and LUPA does not apply to any Everett Municipal Code violations committed by the City.

2. Evidence shows LUPA only applies under EMC 15.24.310, EMC 8.21.040, and EMC 20.08.220; and evidence shows LUPA does not apply to violations committed by the City {in example EMC 16.005.040(A)(11)(4) states, "*no permit presuming to give authority to violate or cancel the provision of this Code shall be valid,...*", EMC 15.16.040, "*administrative review is code compliance verification*", EMC 16.005.050(12((1) and EMC 16.005.050(11)2)}, AND there is *absence of evidence* to support 12(b)(6)'s claims of LUPA applying to any Everett Municipal Code (EMC) violations committed by the City, therein 12(b)(6) Order was obtained by actual fraud, misconduct and misrepresentation by the City

of Everett stating the following "LUPA" falsehoods in the 12(b)(6), so misleading the court:

a. *"The City's 12(b)(6) making the "...Petitioner could have sought the same relief as to her numerous issues with land use decisions associated with Jimmy Johns' restaurant from 2015 in a timely LUPA action."*

b. *"Petitioner's complaint fails on its face... relating to land use decisions, because she could have (and in fact was required to) challenged the land use decisions in a timely Land Use Petition Act (LUPA) action, RCW 36.70C.030. LUPA is the exclusive method for such challenges. RCW 36.70C.3030.Whether the mandamus remedy is available "...turns on whether the duty the plaintiff seeks to enforce 'cannot be directly enforced' by any means other than mandamus."*

c. *"...These 2015 land use decisions are subject to LUPA, Chapter 36.70C RCW. 16 The only issue before the Hearing Examiner which was not time-barred by LUPA was the 10/17/2018 revision to the Jimmy John's restaurant landscaping plan (and the time period under LUPA has now lapsed for that as well). In considering whether a party may seek a writ of seek a writ of mandamus because an otherwise available cause of action was precluded due to the statute of limitations, ..." ;*

d. *"D. Petitioner's Due Process claims should be dismissed ... because LUPA applies".*

f. *"All of the other numerous 2015 land use decisions appealed by X petitioner (and again raised in her 03/04/2019 petition) were denied because they were time-barred by the Land Use Petition Act (LUPA)."*

g. *"Petitioner's issues in her complaints which are time-barred by LUPA 13 are intermixed with her requests..."*

h. *"She could have challenged the 10/18/2019 Jimmy Johns restaurant landscape plan revisions in a timely LUPA claim. As noted, the fact that her LUPA claim would now be untimely does not mean she is entitled to avoid the time bar by dressing up the claim in other causes of action."*

3. Newly discovered evidence shows "LUPA"," beneficial interest" , "discretion", "duty" and "final land use decision" arguments were <u>not</u> presented by APP18-006 Staff Report, and 12(b)(6) presented no evidence to support such collateral estoppel claims, <u>therein</u> under RCW9A.72.080, all statements below are false and Order was obtained by actual fraud, misconduct and misrepresentation by the City of Everett stating the following in the 12(b)(6), so misleading the court:

a. *"Because she has a plain, speedy, and adequate remedy in the ordinary course of law, Petitioner is not entitled to a writ of mandamus";*

b. *"Evidence Relied Upon...City submits no matters outside of the pleadings"*

c. *"I...no new or controverting facts".*

d. *"It is, in fact, because the Petitioner knows-...the fact that the City has* ***discretion*** *in enforcement of land use code violation"*

e. *"City cannot lawfully undo a final land use decision"*

g. *"Petitioner has failed to demonstrate a "beneficial interest""*

h. *"The City makes this argument based on material facts raised by Petitioner (not Petitioner's unsubstantiated legal conclusions drawn from those material facts)."*

i. *C. Petitioner is not "beneficially interested" and the mandamus action must be dismissed. As quoted supra on page 6, Petitioner is seeking an extraordinarily broad mandamus writ -essentially removing the City's existing discretion when it comes to enforcement on land use complaints. Because she is seeking such a broad and general writ of mandamus, Petitioner fails to shoe that she is "beneficially interested . In order to be considered "beneficially interested," a Petitioner for a writ of mandamus much show he or she "has an interest in action beyond that shared in commons with other citizens."*

4. Evidence shows Order was obtained by actual fraud, misconduct and misrepresentation by the City filing a 12(b)(6), so fraudulently misleading the Court that it met the 12(b)(6) criteria of *"failure to state a claim upon which relief can be granted"*, when relief was requested by Plaintiff in Mar 4, 2019 Writ in sections 4.13, 5.3, 5.6, 5.10, 5.11, 5.12, 5.16, 5.19, 5.27, 6.3, 8.2, 8.3e-g, 9.3f, and Prayer for Relief 1 f -g, and 2f.

5. 12(b)(6) stated the following false, misleading statements:

a. *"Petitioner admits that the actions she is requesting via writ of mandamus are discretionary."*

b. *"Petitioner has failed to demonstrate a "beneficial interest".*

c. *"D. Petitioner's Due Process claims should be dismissed because she had actual notice of 10/17/18 landscape plan revisions and because LUPA applies".*

d. *"Petitioner has not identified any mandatory duties the City was required to perform"*

6. 12(b)(6) exhibits A and B were two unrelated inadmissable McDonalds cases, not mentioned in 12(b)(6) statements, but then attorney David Hall asserted collateral estoppel at Writ hearing (that the matters currently before the court had been dismissed in the McDonalds cases), when the McDonalds cases had been dismissed for filing errors and

were not ruled on their merits, therein the City committed misconduct and misrepresentation by convoluting separate and collateral issues, so misleading the Court.

7. 12(b)(6) quoted Plaintiff only twice, both times convoluting quote's meaning, so misleading the Court:

   a. *"City laws are written saying city 'may' reply to complaints"*

   b. *"City attorney 'may' take action, but no requirement or city benefit to reply or act"*

8. Newly discovered: the City of Everett presented David Hall and Flora Diaz as oathed officers, when they had no oath, and RCW 42.12.010 and case law shows the term of office does not commence until the prescribed oath is taken, therein alleged misrepresentation before the Court.

9. Newly discovered reasons disclosing Order was obtained by fraud and/or misrepresentation of vetting by:

   a. The City of Everett presenting Sharon A. Rice as an Examiner, when Rice had no oath of office, oath is required for all Administrative Law Judges, and case law shows the term of office does not commence until the prescribed oath is taken.

   b. The City of Everett having Sharon A. Rice sign her May 16th, 2017 contract between Rice and the City, contract stating, *"The Hearing Examiner agrees to indemnify and defend the city from and against any claims, valid or otherwise, made against the City because of these obligations."*

   c. 12(b)(6) presenting fraudulent vetting by stating, *"On 02/21/2019 Petitioner's appeal of the 10/17/2018 landscape plan was denied"*

   d. Sharon A. Rice stating LUPA in her App18-006 Findings, when LUPA was not an argument presented by City of Everett Staff report or by Plaintiff, was Rice ruling: against law, on matters not before her, and on matters beyond the 14 day appeal period on which an Examiner can rule.

   e. The City of Everett presenting Examiner Sharon A. Rice's decision as impartial vetting in APP18-006, when the City offered *ex parte* meeting with Rice, and Rice ex parte emailed City attorneys, all while a Plaintiff Rittmann appeal was before her.

   d. Sharon A. Rice ruling on 2015 matters in her App18-006 Findings, when 2015 was not an argument presented by City of Everett Staff Report or in City's oral arguments, therein Rice ruled on 2015 matters not before her, 2015 matters were outside her jurisdiction, and Rice ruled against law on 2015 matters.

   f. 12(b)(6) presenting false vetting by stating, *"The only issue before the Hearing Examiner that was not time-barred by LUPA was the 10/17/2018 revision to the Jimmy*

John's landscaping plan (and the time period under LUPA has now lapsed as well", when LUPA was not presented as an argument in APP18-006.

g. The City of Everett paying Sharon A. Rice specifically for reviewing and ruling on cases for which Rice is contractually required to "*indemnify and defend the city from and against any claims, valid or otherwise, made against the City...*" and nowhere does Rice agree to be impartial.

10. Because Order was obtained by City attorney David Hall's perjury at 12(b)(6) Hearing, stating against fact, and stating without evidence, that Plaintiff had notice by way of demolition on the 2602 Broadway property, when demolition permit was not issued till Aug. 3, 2015: months after Jimmy Johns' plans were closed on June 15, 2015.

11. Judge Edirin Okoloko orally ruled "LUPA" immediately before signing 12(b)(6) Order, despite the City of Everett presenting no evidence that LUPA applied, so Judge in violation of RCW9A.72.080, which states, "*Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false.*".

12. 12(b)(6) mislead the Court by citing on or about 20 LUPA cases, despite the fact that LUPA does not apply to zoning code violations, said cases cited by 12(b)(6) being "*Jackson v. Quality Loan Service Corp,... State ex rel. Gorman v Garlock, Inc,... de novo Id at 843. ...Bravo v Dolsen Cos..... Tenore v. AT&T Wireless Servs.,... Haberman v Washington Pub Power Supply Sys.... Walker c Munro, ...Burg v City of Seattle,... Lillions v Gibbs,... State ex rel Ryder v Pasco.... "Eugater v City of Spokane, ...Burg v City of Seattle,...Ex parte Rowland,..Chelan Cunty v Nykreim, ...Id. At 933,...Retired Pub. Employees Council, ...State ex rel. Lay v Simpson,... State ex rel Pacific American Fisheries v Darwin, State ex rel... Starrett v James, ...Habitat Watch v Sagit County."*

B. The court declares that the 12(b)(6) filing and multiple statements, and unoathed WSBA No. 44627 David Hall's demo-as-notice statement in case No. **19 2 01827 31** were fraudulent and misrepresenting, so bluffing the Court to sign Order dismissing **CASE No. 19 2 01827 31 with prejudice**, based on no evidence.

C. The court hereby grants **MOTION TO VACATE AND/ OR SET ASIDE ORDER GRANTING MOTION TO DISMISS PURSUANTTO CR 12(b)(6) OF CASE No. 19 2 01827 31 with prejudice that was signed by Snohomish County Superior Court Judge Okoloko on April 12, 2019.**

D. The court **ORDERS** the ORDER GRANTING MOTION TO DISMISS PURSUANTTO CR 12(b)(6) OF CASE No. 19 2 01827 31 with prejudice that was signed by Snohomish County Superior Court Judge Okoloko on April 12, 2019 be **VACATED AND/ OR SET ASIDE.**

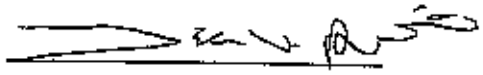
E. The court hereby grants Plaintiff Jean V. Ritmann an opportunity to refile a new Writ regarding matters disclosed in **CASE No. 19 2 01827 31**

Plaintiff asserted arguments of (1) All City 12(B)(6) And Oral Arguments Were Fraudulent, (2) City Attorneys Had No Oath Of Office, (3) Defacto examiner Ruled Quid Pro Quo On Matters Not Before Her, (4) Prosecutorial Misconduct, and (5) If Allowed To Refile, All Writ Elements Can Be Proven.

Because Plaintiff asserts or reasserts claims of intrinsic fraud, perjury, duress, mistakes, misconduct, inadvertence, and other City misconduct related to Order granting 12(b)(6), the instant CR 60(b)(4) motion is properly construed as a successive motion to vacate filed pursuant to 28 U.S.C § 2255 ** (*or whatever CR rule is found to apply*) For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff's "Motion for Relief from Judgment Pursuant to CR 60(b)(4) Fraud" received on April 8, 2020, is CONSTRUED as a successive motion to vacate filed pursuant to 28 U.S.C. § 2255 **. The Clerk of the Court IS HEREBY DIRECTED to open a new civil action for administrative purposes only; file the instant motion in that action as a § 2255** motion filed April 9, 2020; and without further judicial action, immediately transfer the new § 2255** action to the to the Snohomish County Superior Court.

VERIFICATION

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. On this 9th day of April, 2020.

Signature: 

Jean V. Rittmann -Petitioner *pro se*
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