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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF SPOKANE

8 BRAD CHINN,  
9 Petitioner/Plaintiff,  
10 v.  
11 CITY OF SPOKANE and WEST  
12 CENTRAL DEVELOPMENT,  
13 Respondents/Defendants,

NO. 10202556-6

**PETITIONER'S REPLY BRIEF**

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16 Petitioner, Brad Chinn, by and through his undersigned attorney, Lisa J. Dickinson of  
17 the Dickinson Law Firm, PLLC, hereby submits his reply brief to this Court, asking to reverse  
18 the decision of the Spokane City Council, who unlawfully allowed a rezone of land from  
19 Office 35 to Office 150. In response to Respondent's Brief, Petitioner submits the following  
20 reply:  
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22 **I. The Entire Comprehensive Plan Must be Considered**

23 In the prior case involving this land, the Court may recall that the sole section of the  
24 Comprehensive Plan that was considered was Land Use Policy 1.5 for various reasons, one of  
25 which was that other sections were found not to be able to be mentioned for the first time on  
26 appeal. (Decision on Land Use Policy by Judge R. Baker, December 30, 2008 .p 9, footnote  
27 5). To the contrary, in the present case, other sections of the Land Use Policy have been  
28 previously raised along with statutory authority. (See, e.g. R. p. 222). So, while this Court  
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1 previously found that this was not a “new office use”, LU Policy 1.5 does not describe when a  
2 variation in height is allowed. LU 1.5 is not determinative of the issue at hand. If the rezone  
3 is inconsistent with the Comprehensive Plan designation and goals, objectives and policy, the  
4 application must be denied. SMC 17G.060.170(C)(2). Further, the issue in the present case is  
5 not determining whether or not the rezone changes the **underlying land use**, so the legal  
6 analysis in regard to “office” in the prior case is not determinative in this case, as the  
7 underlying land use (office) is not being changed, and is not at issue. *See, Chinn v. City of*  
8 *Spokane*, 157 Wn. App. 294 (2010). The pertinent issue in this appeal is solely a height  
9 change.  
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13 The more definitive section of the Comprehensive Plan in regard to this rezone is  
14 Chapter 3, Section 3.5 which describes Land Use Designations and states that, “Higher  
15 intensity office areas should be located around downtown Spokane in the North Bank and  
16 Medical district shown in the Downtown Plan”. Comprehensive Plan Ch 3, Section 3.5., page  
17 34. In this case, the pertinent code sections, which the rezone also must comply with, are also  
18 definitive, as the rezone must also comply with the pertinent SMC Code sections which are  
19 further examined below.  
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## 22 23 **II. Low Intensity and Small Scale Offices do Not Include 150 Foot Towers**

24 It is an undisputed fact that the Property at issue is not located in an area designated for  
25 high intensity use. *Chinn v. City of Spokane*, 157 Wn. App. 294, 302 (2010). The record  
26 reflects that the area surrounding the Property is developed with low intensity office use and  
27 various residential uses. *Id.*, R. Sec. 1 p. 7, 17, 19. These factual findings have not changed.  
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1 The Comprehensive Plan, Chapter 3, Section 3.5 page 34 is only describing “office”  
2 designations. Therefore, there is a difference between a low-intensity office and a higher  
3 intensity office type. While the Comprehensive Plan is silent on the definition of “intensity”,  
4 it is also codified that an “Office” zone as defined by the SMC is “used on small sites in or  
5 near residential areas or between residential and commercial areas. It is intended to be a low  
6 intensity office zone that allows for **small scale offices** in or adjacent to residential  
7 neighborhoods... Development is intended to be of a scale and character similar to nearby  
8 residential development to promote compatibility with the surrounding area”. SMC  
9 17C.120.030 (emphasis added). Petitioner respectfully submits that a 150 foot monstrosity of  
10 a tower is neither low intensity nor a small scale office. To allow such a deviation from the  
11 surrounding residential and other offices nearby is a misinterpretation of law and of fact.

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15 As the SMC and Comprehensive Plan do not define “intensity”, synonyms should be  
16 looked to for assistance: <sup>1</sup>

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18 "intensity" n. force, concentration, strength, power, magnitude, severity, potency,  
19 vigor, depth, volume, ferocity, violence, sharpness, passion, earnestness, ardor, fervor.

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21 "intensify" v. concentrate, strengthen, deepen, sharpen, **HEIGHTEN**, magnify,  
22 amplify, escalate, raise \*beef up, step up, redouble.

23 *Roget's Super Thesaurus*, Writer's Digest Books, 1995 Edition, p. 278 (1995)  
24 (emphasis added).

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26 Following logically, a higher intensity would mean to heighten the building, or to  
27 increase in volume, and lower intensity would mean a lower height. It also is logical to find

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29 <sup>1</sup> synonym n 1: one of two or more words or expressions of the same language that have the same or nearly the  
30 same meaning in some or all senses. *Merriam Webster's Collegiate Dictionary*, Tenth Edition, p. 1197 (1999).

1 that a 150 foot tower is not a “small scale office”, and does not fit with the character of this  
2 neighborhood.  
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### 5 **III. Precedence and the Significant Adverse Effect on Surrounding Areas**

6 The proposal will have a significant adverse effect on surrounding properties, and will  
7 interfere with the use of neighboring property and of the surrounding area considering the  
8 design and intensity of the proposed use. SMC 17G.060.170(C)(5). As described in the  
9 opening brief, the property adjacent to this site contains residential areas, which Petitioner  
10 himself resides in. R Sec 1, p. 7, 17, 19. Granting this particular application near residences  
11 and office buildings of 35 feet in size opens the door to set dangerous precedent to allow  
12 rezoning for heights of 150 feet for all office buildings not in centers, corridors, or in the North  
13 Bank, Medical District as shown in the Downtown Plan. To say this property is “different” as  
14 each case is viewed on its own facts, just because the Courthouse complex is nearby  
15 (Courthouse zoned CB and designated Institutional, not Office), is not supported. *See*, R. Sec.  
16 1, p.7. Even then, is the City saying that any property zoned Office near any CB zone may be  
17 rezoned to O-150? In terms of the composition of this neighborhood, (and in other similarly  
18 situated neighborhoods in Spokane) a 150 foot office building is an abomination and will  
19 severely have an adverse effect on the surrounding neighborhood considering the design and  
20 intensity of the proposed use.  
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### 26 **VII. CONCLUSION**

27 The City Council erred when approving this rezone request from O-35 to O-150.  
28 Relief should be granted to Plaintiff/Petitioner pursuant to RCW 36.70C.130 as the land use  
29 decision was an erroneous interpretation of the law, the decision is not supported by  
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1 substantial evidence when viewed in light of the whole record, and the land use decision is a  
2 clearly erroneous application of the law to the facts. Petitioner/Plaintiff respectfully requests  
3 an order reversing the City's decision, and denying the application for a rezone to O-150.  
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6 RESPECTFULLY SUBMITTED this \_\_\_\_ day of December, 2010.

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8 DICKINSON LAW FIRM, PLLC

9  
10 LISA J. DICKINSON, WSBA #29402

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3 **CERTIFICATE OF SERVICE**  
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5 I, the undersigned, certify that on the \_\_\_\_\_ day of December, 2010, I caused a true  
6 and correct copy of the foregoing PETITIONER’S REPLY BRIEF to be forwarded, with all  
7 required charges prepaid, by the methods indicated below to the following persons:  
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9  
10 Michael Piccolo [ ] VIA U.S. MAIL  
11 Assistant City Attorney [ ] VIA FACSIMILE  
12 5<sup>th</sup> Floor Municipal Building [ ] VIA MESSENGER  
13 Spokane WA 99201-3326 [ ] VIA PERSONAL DELIVERY  
14

15 Stacy Bjordahl [ ] VIA U.S. MAIL  
16 Parsons/Burnett/Bjordahl [ ] VIA FACSIMILE  
17 505 W. Riverside Ave., #500 [ ] VIA MESSENGER  
18 Spokane WA 99201 [ ] VIA PERSONAL DELIVERY  
19

20 Judge Rebecca Baker [x] VIA U.S. MAIL  
21 (bench copy) [ ] VIA FACSIMILE  
22 215 S. Oak Street [ ] VIA MESSENGER  
23 Colville WA 99114 [ ] VIA PERSONAL DELIVERY  
24

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