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No. 67712-8-I

COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

KHUSHDEV MANGAT, et. ux.,
Appellants,

vs.

SNOHOMISH COUNTY, et. al.,

Respondents.

APPEAL FROM SUPERIOR COURT
FOR SNOHOMISH COUNTY

APPELLANTS' OPENING BRIEF

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ORIGINAL

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I. INTRODUCTION

This case deals with the nature of rights to a subdivision application prior to preliminary plat approval. Appellants are developers who applied to Appellee Snohomish County ("the County") to subdivide certain parcels of real property which they had a contract to purchase from Appellee property owners. The project was to develop 30 dwellings. The application vested by operation of law on October 22, 2007. Subsequent ordinances passed by the County would permit significantly less dwellings on the parcel.

The appellants defaulted in December 2009 before the project received preliminary plat approval and the property owners sought to continue the application over the appellants' objections. The County permitted the application to continue, stating that land use applications run with the land. The Appellants attempted to stay and brought this action enjoin the proceedings and declare ownership of the developer rights. A preliminary injunction was denied and the County Hearing Examiner approved the application. The trial court granted motions for summary judgment brought by the Appellees and denied the Appellants motion for summary judgment on the issue of taking. Appellants seek review and reversal of the trial courts decisions.

II. ASSIGNMENTS OF ERROR

A. Whether the Trial Court erred in granting the County's and Defendant's Motions for Summary Judgment?

B. Whether the Trial Court erred in finding vested rights that accrue under a land use application attach to real property prior to preliminary plat approval?

C. Whether the Trial Court erred in denying Plaintiffs' Motion for Summary Judgment?

D. Whether the Trial Court erred in finding the County had the authority to allow the underlying landowners benefit from the application's Oct. 22, 2007 vesting date?

E. Whether the Trial Court erred in not finding a taking?

III. STATEMENT OF ISSUES

Here the primary dispute is whether Appellees were entitled to a judgment as a matter of law that the right(s) to have a subdivision application considered under the laws in effect (at the time it was fully completed) inures to the underlying landowners over the objections of developer/applicants. Or to phrase it another way, whether such a "vested right" granted under RCW 58.17.033(1) was "in rem" or "in personam" right prior to preliminary plat approval?

This necessarily implicates whether such developers right(s) is/are exclusively held by applicants; or whether the county official otherwise had the authority to allow the underlying landowners the application's Oct. 22, 2007 vesting date. This may further implicate genuine issues of

fact regarding the language of the contract and intent of the parties regarding whether their objections were proper; and/or what is recoverable in damages for a taking.

IV. STATEMENT OF CASE

A. Background

Khushdev and Harbhajen Mangat ("Mangats") are developers who entered into contracts (Purchase and Sale Agreements and Addendums) to purchase two adjacent parcels of certain real property owned by Defendants Luigi Gallo, and Johannes and Martha Dankers respectively ("Gallo and Dankers"). CP at 199-212 (Agreements and Addendums). The contract contemplated the Mangats would file a subdivision application. *Id.* But, in the event Plaintiffs were unable to complete the purchase of the property they would turn over all documents, reports and studies.[1] *Id.* The proposed subdivision would be named *Trombley Heights*. *See* CP at 141-42 (Decl. G. Miller ¶ 2).

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[1] The Court below did not reach its decision on the contract provisions. *See* Verbatim Report of Proceedings ("VROP") at 29-30 ("boils down to one central legal issue [***] are the vested rights from the application in rem or in personam? [***]"); *c.f.*, CP 12 (note future motion on fees under contract). More specifically, VROP at 31-35:

> [***] that the vested rights from the application do run with the land. The rights are tied to the real property, and in this Court's view it makes little sense if the interests are somehow separated and divorced from the land.
> [***page 34]
> MR. DAVIDSON: Your Honor, I have one question. In our pleadings we had asked for reasonable attorney's fees under the contract, and since this action arguably concerns the contract and we had referenced that in our response to their motion, because they have in their motion

B. Vesting Date

It is undisputed that on or about September 24, 2007, the Mangats submitted a Subdivision Application to Snohomish County requesting preliminary plat approval for developing real property for which they had a contract to purchase. CP at 125-6 (Decl. H. Mangat at ¶ 2), 196 (Decl. H. Mangat at ¶ 2), 219 (Decl. G. Miller at ¶ 6). The application was signed only by the Mangats. CP at 410 (Dep. E. Caine), 481:3-10.

The County never told the Mangats the underlying property owners had a controlling interest in the subdivision application. *See* CP 37:18-38:5 (Decl. S. Stafne); CP at 196-97 (Decl. H. Mangat at ¶ 5-6). At a deposition, Plaintiffs 30(b)(6) designee, Tom Rowe, indicated there is no statute, ordinance or regulation which establishes a substantive legal

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> argued that the contract does not include an obligation to turn over the, quote, application.
> THE COURT: Counsel, that was frankly not the focus of the pleadings. I will let you -- frankly, it was, in the vast amount of things that I was considering, not something I focused on. If you feel that that is appropriate I guess I'll invite you to renote that and that can be addressed further and I'll give the opposing parties an opportunity to respond. So I think I'm going [page 35] to leave my decision today fairly brief. If you feel that that does follow, I'll give you an opportunity to renote it and it can be addressed if it can't otherwise be resolved.

VROP 31-35. Furthermore, meaning of the contract terms and intent of the parties upon default are factually in dispute, *e.g.,* and Mangat's assert their intent was to provide the documents so that a new application could be submitted; and Mangat's assert Gallo and Dankers required the Mangats' agree to convey their application to them to get additional extensions. *Compare*, CP at 98-100 (¶ 2-6), 443-445 (Dep. J. Dankers), *with* CP at 196 (Decl. H. Mangat); *and* CP 125-126 (Decl. H. Mangat). Additionally, Gallo and Dankers' agents drafted the agreements and addendums. CP at 195 (Decl. H. Mangat), 445 (Dep. J. Dankers).

requirement that the owners of the property be made applicants. CP 56:15-59:25 (Dep. T. Rowe); *see also*, CP 29:22-33:8 (Decl. S. Stafne), 46:11-48:10 (Dep. T. Rowe), (applicant does not need to be fee simple owner, applicant has rights to application, no requirement owner sign at original application); *c.f.*, CP 38:6-39:2 (Decl. S. Stafne) (regarding disagreements between land owners).

The Mangats' application was deemed complete on October 22, 2007. CP at 219 (Decl. G. Miller ¶ 6). After this date, the land use laws changed such that the Trombley Heights project could build more houses then if the application were applied for today.[2] CP at 142 (Decl. G. Miller at ¶ 4). The Mangats' incurred substantial costs in submitting and processing their application. CP at 196 (Decl. H. Mangat at ¶ 2). The Mangats were never advised by the County until Feb. 22, 2010 that underlying landowners would have a right to their application. CP at 127 (Decl. H. Mangat at ¶ 3).

Snohomish County took considerably longer than expected to process the application, and the Mangats and Gallo and Dankers

[2]Mangats' experts testified that 17 dwellings was the difference between the old and new regulations. CP at 129 (Decl. E. Cassel at ¶ 6); CP 142 (Decl. G. Miller at ¶ 3). The average value of such a vested right would be: $225,700 (in July 2011) and $311,000 (in December of 2009). CP at 129-132 (Decl. E. Cassel at ¶ 8, with calculation method below).

negotiated extensions for fees.[3] CP at 196 (Decl. H. Mangat at ¶ 3). The County made a further request for additional information on May 5, 2009. CP at 219 (Decl. G. Miller at ¶ 11). Then, on December 16, 2009, the Purchase and Sale Agreements expired. CP at 443:16-17 (Dep. J. Dankers).

C. Change in Applicants

The parties then sought to clarify their rights with respect to the application. CP at 120:3-17, 196-97 (Decl. H. Mangat at ¶ 5-6). On January 10, 2010, Gallo met with Project Manager Ed Caine to discuss the application. CP at 120:5-7, 416:6-17 (Dep. E. Caine), 446:4-14 (Dep. J. Dankers). Thereafter Ed Caine made the determination that Mangats' Application and Vested Rights ran with the land. CP at 419:8-421:12 (Dep. E. Caine), 429:6-13 (Dep. E. Caine), 430:6-17 (Dep. E. Caine). The Mangats also corresponded with County officials and Snohomish County Prosecuting Attorney's Office and objected to the County's actions. CP at

[3] Snohomish County requires that a Notice of Final Decision on a project permit application issue within 120-days unless otherwise provided by ordinance or State law. Snohomish County Code (SCC) 30.70.110(1). *See* CP 39:3-40:23 (Decl. S. Stafne), 196 (Decl. H. Mangat), 216-220 (Decl. G. Miller). While the specific amount of countable days delayed may be in dispute, the County Hearing Examiner acknowledged more than 120-day period had elapsed. *See id.*; CP at 255 (Hearing Examiner Findings of Fact page 2 at ¶ marked 1); *c.f.*, CP 431(Review Completion document "PDS is very late in providing a review"). Mangat's claims for unlawful delay are the subject of a different lawsuit *Mangat v. Snohomish Co.*, Cause No. 11-2-06519-5 (Sno. Co. Sup. Ct. filed July 5, 2011) (CP 331-349) not before this court. *See Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 98, 117 P.3d 1117 (2005) (limiting judicial notice of other matters with same parties); *see also*, RAP 9.11.

196-97 (Decl. H. Mangat at ¶ 5), 420:12-421:24 (Dep. E. Caine). On February 22, 2010, the County Prosecuting Attorney's Office sent a letter indicating the subdivision application "the Subdivision Application is currently owned by Gallo and Dankers." CP at 214-215 (letter from Snohomish Co. Prosecutor to T. Graafstra). PDS then requested Gallo and Dankers execute forms to change the applicants. CP at 415-417 (Dep. E. Caine). Thereafter Gallo and Dankers filed applications on or after June, 18, 2010 and May 6, 2010 respectively. CP at 417 (Dep. E. Caine), 447-449 (Dep. J. Dankers).

Gallo and Dankers then worked to complete the project. CP at 424 (Dep. E. Caine). The County planning staff completed their staff report recommending approval of the subdivision application, with conditions, and a hearing on preliminary approval was set for April 12, 2011. *See* CP at 242 (Decl. S. Stafne at ¶ 3), 254-268 (Decision of Snohomish Co. Hearing Examiner).

D. Procedural History

The Mangats then filed this action on March 22, 2011. CP at 242 (Decl. S. Stafne at ¶ 5). The Mangats moved for a stay of the April 12, 2012 hearing; which the hearing examiner denied on April 5, 2011. CP at 245 (Order Calling for Additional Information), 319-320 (Order Denying Motion to Stay). On April 8, 2011, the Mangats moved for a Temporary

Restraining Order which was entered by the Court Commissioner of Snohomish County Superior Court; and was later quashed whereupon the Hearing Examiner rescheduled the hearing. CP at 242 (Decl. S. Stafne at ¶ 6). On May 3, 2011, the Mangats' motion for a preliminary injunction staying proceedings came on hearing before Court of Appeals Judge Robert Leach,[4] who entered his written decision on May 16, 2011 denying the injunction. CP at 242 (Decl. S. Stafne at ¶ 7), 248-251 (Order Den. Prelim. Inj.). Therein, Judge Leach decided:

> While the filing of an application vests certain development rights as they relate to the subject property, there can be no ownership interest in the application itself independent of the real property to which it pertains...There is nothing left for them to own.

CP 250. Subsequently the County approved Trombley Heights and issued the permit, which the Mangats appealed, and a partial summary judgment ordered against the Mangats; but that matter is not before this Court. *See* Supra Note 3; *see* generally, CP at 245 (Order Calling for Additional Information), 254-284 (Decision of Snohomish Co. Hearing Examiner, Appeal of Decision of Snohomish Co. Hearing Examiner), 304-314 (Mot. for Summ. Dismissal), 327-29 (County Council Dismissal), 331-349 (Pet. and Compl.).

[4]serving as pro tem of the Snohomish County Superior Court.

The County moved for summary judgment, which was re-noted for August 17, 2011, and the Mangats and Gallo and Dankers brought cross motions. *See* CP at 221 (Pl.'s Mot. Summ.J.), 445 (Dep. J. Dankers), 478 (Def. Snohomish Co. Mot. Summ. J.). Judge Kurtz issued a decision granting the County and Gallo and Dankers motions and denying the Mangats Motion. CP at 9-13 (Order Granting Def. Snohomish Co. Mot. Summ. J.).

V. ARGUMENT

A. Standard of Review

In reviewing a decision of the court of appeals affirming an order of summary judgment, this Court engages in the same inquiry as the trial court. *See, e.g., Hayes v. City of Seattle*, 131 Wn.2d 706, 711, 934 P.2d 1179, *modified on other grounds*, 943 P.2d 265 (1997). This requires this court consider facts in the light most favorable to the non-moving party. Summary judgment should only be granted where "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); *Harrington v. Pailthorp*, 67 Wn. App. 901, 905, 841 P.2d 1258, *review denied*, 121 Wn.2d 1018 (1992).

For the reasons mentioned below, this court should reverse the trial court's decisions because: the Mangats' right to have a subdivision application considered under the laws in effect (at the time it was fully

completed) is (1) their personal right, (2) held exclusively by applicant until preliminary plat approval; and (3) the County officials were without lawful authority to grant such a right to Gallo and Dankers.

B. RCW 58.17.033(1) Is a Personal Right Limiting Government Authority

For the reasons stated below, Vested Rights are personal rights (1) acting as limitations on government authority, (2) which were derived from Due Process rights under State and Federal Constitutions, and (3) later codified in RCW 58.17.033.

1. Government Authority Is Limited by the State and Federal Constitutions

Government's authority to regulate the use of property comes directly from inherent legislative police power, delegated by the Washington Constitution to municipal corporations. Const. art. XI, § 11 ("Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.").The state's police power is limited only by the State and Federal Constitutions, which together delineate the proper realm of governmental action in the State of Washington. *State v. City of Seattle*, 94 Wn.2d 162, 166-67, 615 P.2d 461, 463 (1980); *Winkenwerder v. City of Yakima*, 52 Wn.2d 617, 622, 328 P.2d 873, 877 (1958). The police power has long been interpreted to allow state and local governments to regulate

the use of property through zoning ordinances and environmental regulation. *See, e.g.*, *McNaughton v. Boeing*, 68 Wn.2d 659, 414 P.2d 778 (1966); *Sittner v. City of Seattle*, 62 Wn.2d 834, 384 P.2d 859 (1963) (holding that regulation of air contaminant emissions is valid exercise of police power).

The state's capacity to regulate land use is subject to the requirements of procedural and substantive due process, equal protection, and free speech, and to the prohibition against takings without adequate compensation. *See* U.S. Const. amend. V; U.S. Const. amend. XIV; Const. art. I, § 16 ("No private property shall be taken or damaged for public or private use without just compensation having first been made . . . ."); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S. Ct. 158, 67 L. Ed. 322 (1922); *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 357, 13 P.3d 183 (2000); *Collier v. City of Tacoma*, 121 Wn.2d 737, 854 P.2d 1046 (1993); *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 787 P.2d 907, *cert. denied*, 498 U.S. 911 (1990). Some commentators propose that substantive due process and the takings clauses of the Washington and U. S. Constitutions form the basis of most adjudicated land use actions. *See, e.g.*, Gregory M. Mohrman, Police Power, Gifts, and the Washington Constitution, 71 Wash. L. Rev. 461, 466 (1996).

2. Vested Rights Doctrine Are Derived From Developer's Due Process Rights and Fundamentally Personal

Vested Rights Doctrine is a limitation of government legislative authority derived from "***constitutional principles of fundamental fairness and due process***." *Weyerhaeuser v. Pierce County*, 95 Wn. App. 883, 891, 976 P.2d 1279 (1999) (emphasis supplied); *Vashon Island v. Washington State Boundary Review Bd. for King County*, 127 Wn.2d 759, 768, 903 P.2d 953 (1995); *Erickson & Associates v. Danz*, 123 Wn.2d 864, 870, 872 P.2d 1090 (1994); *see also*, Frederick D. Huebner, Washington's Zoning Vested Rights Doctrine, 57 Wash. L. Rev. 139, n.11 (1981) (characterizing certain rights as "vested" signifies a conclusory description of a right or interest that is sufficiently secure or fixed such that divestment of that right is unfair or violates due process); *Valley View Indus. Park v Redmond*, 107 Wn.2d 621, 636, 733 P.2d 182 (1987); *Hull v. Hunt*, 53 Wn.2d 125, 130, 331 P.2d 856 (1958); The purpose of vesting is to provide a measure of certainty to developers, and to protect their expectations against fluctuating land use policy. *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 50-51, 720 P.2d 782 (1986); *see Abbey Road Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250-51, 218 P.3d 180 (2009) (The public purpose of the doctrine is to ensure "certainty and

predictability in land use regulations" for the person undertaking the development).

The constitutional principals in operation here are fundamentally personal, the land does not (in and of itself) enjoy the due process rights as indicated by the text: "***No person shall be*** [***] ***deprived of*** life, ***liberty***, or ***property***, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. V (emphasis supplied). "***No person shall be deprived of*** life, ***liberty***, or ***property***, without due process of law." Const. Art. I, § 3. Substantive due process requires governments act ***fairly*** and reasonably. *See* U.S. Const. amend. XIV, § 1. (emphasis supplied to denote "fairness" is a component of due process as applied to States by U.S. Const. amend. XIV and not derived from other doctrine).

These rights thus come from the parties and are *in personam*:

> An action is said to be in personam when its object is to determine the rights and interests of the parties themselves in the subject-matter of the action, however the action may arise, and the effect of a judgment of such an action is merely to bind the parties to it. A normal action brought by one person against another for breach of contract is a common example of an action in personam.

R.H. Gravson, Conflict of Laws 98 (7th ed. 1974).[5]

[5] Due process rights have long been held to be ideas embodying social compact and natural rights which limit government:

And this is recognized in common law deriving vested rights. Washington's version of the Vested Rights Doctrine is different from the rules adopted by other states because the doctrine recognizes vesting at the application stage to avoid the necessity of determining whether a sufficient change in position has occurred. *See Hull v. Hunt*, 53 Wn.2d 125, 331 P.2d 856 (1958). In rejecting the vested rules adopted by other States,[6] Washington Courts find "that the right vests when the party, *property*

> *In Loan Ass'n v. Topeka*, 87 U.S. (20 Wall.) 655, 22 L. Ed. 455 (1875), ideas embodying the social compact and natural rights, which had been espoused by Justice Bradley in dissent in the *Slaughter-House Cases*, had been transformed tentatively into constitutionally enforceable limitations upon legislatures.
>
> Next in the development of the due process doctrine, the court engrafted currently fashionable theories of laissezfaire economics onto its natural rights theories of liberty and property to the end that "liberty," in the particular, became synonymous with governmental hands-off in the field of private economic regulations such as that which the act here before us embraces.

Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Assn., 83 Wn.2d 523, 532-533 (1974); *see also*, *Morehead v. New York*, 298 U.S. 587, 56 S. Ct. 918, 80 L. Ed. 1347 (1936) (natural rights are those inalienable rights with which man was endowed by his Creator); *Natural Right*, Black's Law Dictionary, 1348 (Dex.8th Ed.2004) ("natural right. A right that is conceived as part of natural law and that is therefore thought to exist independently of rights created by government or society, ***such as the right to life, liberty and property***.") (emphasis supplied). In *Bowes v. Aberdeen*, the Washington Supreme Court described the right of property as a "legal and not a natural right." *Bowes v. Aberdeen*, 58 Wash. 535, 541-542, 109 P. 369 (1910). As such, it "must be measured always by reference to the rights of others and of the public." *Bowes v. Aberdeen*, 58 Wash. at 541-542.

[6] *Hull* rejects the majority rule which is described as:

> any substantial change of position, expenditures or incurrence of obligations under a permit entitles the ***permittee*** to complete the construction and use the premises for the purpose authorized irrespective of subsequent zoning or changes in zoning. . . . 8 McQuillin on Municipal Corporations (3d ed. 1949), § 25.157 at 360.

Eastlake Cmty. Council v. Roanoke Assocs., 82 Wn.2d 475, 480, 513 P.2d 36 (1973)

owner or not, applies for his building permit, if that permit is thereafter issued." *Id.*, at 130 (emphasis supplied).[7] *see also*, *Schneider Homes, Inc. v. City of Kent*, 87 Wn. App. 774, 942 P.2d 1096 (1997), *Review denied*, 134 Wn.2d 1021, 958 P.2d 316 (1998) ("When the developer submitted its preliminary plat application to the county"). In *Erickson*, the Court reiterated the foundational policies behind Washington's Minority doctrine as "striking a certain balance." *Erickson*, 123 Wn.2d at 874 (the Supreme Court "balanced the private property and due process rights against the public interest by selecting a vesting point which 'permit speculation,' and which demonstrates substantial commitment by the developer such that the good faith of the applicant is generally assured").

As the Supreme Court explained, protecting "developers" through the vested rights doctrine comes at a cost to the public interest because the

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[7] *Hull* goes on to explain that the County's fear of permit speculation by non-owners, does not counterbalance the benefits of their ruling as to Washington's minority rule:

> The corporation counsel of the city of Seattle in his brief amicus curiae expresses the fear that such a rule -- coupled with a holding that the ***applicant for the permit does not have to be the property owner -- will result in speculation in building permits***. However, the cost of preparing plans and meeting the requirements of most building departments is such that there will generally be a good faith expectation of acquiring title or possession for the purposes of building, particularly in view of the time limitations which require that the permit becomes null and void if the building or work authorized by such permit is not commenced within a specified period (one hundred and eighty days under the City of Seattle Building Code? <sic> 302 (h)).

Hull, 53 Wn.2d at 130 (emphasis supplied).

practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use which is fundamentally against the public interest. *See Noble Manor v. Pierce County*, 133 Wn.2d 269, 275, 943 P.2d 1378 (1997); *Erickson,* 123 Wn.2d at 873-74. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws; if a vested right is too easily granted, the public interest is subverted. *See Erickson*, 123 Wn.2d at 873-74.

Here the Mangats incurred substantial costs, "the cost of preparing plans and meeting the requirements," in submitting and processing their application. CP at 196; *Hull,* 53 Wn.2d at 130. The application was signed only by the Mangats. CP at 410, 481:3-10. The Mangats had an expectation of acquiring title or possession because of the time limitations imposed upon the County to process their permit, which the County failed to meet. CP at 39:3-40:23, 196, 216-220, 255, 431. The County said nothing about the relationship of underlying property owners when the Mangats applied. *See* CP at 37:18-38:5; CP at 196-97. Nor could the County provide their position, since the policy of giving these applications to the landowners was seemingly implemented later, and without legislative action. CP at 56:15-59:25, 127, 214-215; *see also*, 29:22-33:8, 46:11-48:10, 419:8-421:12, 429:6-13, 430:6-17; *c.f.*, CP at 38:6-39:2.

Finding that the right can be transferred or enjoyed by a party (other than the applicant) and over the express objection of the applicant, erodes the desirable outcome of rewarding fairness and certainty in an application. Additionally, such an outcome would have a chilling effect on investors in development projects who expend considerable resources in preparing plans and meeting the requirements.

Furthermore, the appellees position would allow a non-legislative power to substitute applicants on land use applications. This would circumvent the balance struck by our Supreme Court between the natural rights of persons to due process and authorizing new nonconforming uses which are fundamentally against the public interest.[8]

3. Legislature Codified Common Law Into RCW 58.17.033 and County Adopted Regulations, Which Vested the Right to Process the Application With the Applicant.

a. Ch. 58.17 RCW

When engaging in statutory construction, our primary objective is to ascertain and give effect to the intent and purpose of the legislature in creating the statute. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004). First, we must attempt to derive legislative intent from the statute itself, and if the statute is clear on its face, its meaning must be ascertained from that language. *Am. Cont'l*, 151 Wn.2d at 518. In addition,

[8] Consider also the effect such a decision would have on standing under LUPA or administrative law. *See e.g.,* RCW 36.70C.060.

legislative definitions included in the statute are controlling. *Am. Cont'l*, 151 Wn.2d at 518. But in the absence of a statutory definition, we give the term its plain and ordinary meaning ascertained from a standard dictionary. *Am. Cont'l*, 151 Wn.2d at 518. If a statute is ambiguous, we resort to principles of statutory construction, legislative history, and relevant case law (*see supra.* above) to assist in interpreting it. *Am. Cont'l*, 151 Wn.2d at 518. Generally,"'[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.'" *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (*quoting Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)) *see also*, *Tunstall v. Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000) (favoring more specific or recent statutes). The Legislature is presumed to be aware of existing Washington case law on the subjects about which it is legislating. *Woodson v. State*, 95 Wash.2d 257, 623 P.2d 683 (1980). Here, the party who benefits from the rights in RCW 58.17.033 is not defined; therefore if ambiguous to this court, it may turn to principles of statutory construction, legislative history, and relevant case law.

In 1987, the Legislature (1) codified the traditional common-law Vested Rights Doctrine regarding vesting for building permits, and (2) enlarged the vesting doctrine to also apply to subdivision and short

subdivision applications. Laws of 1987, ch. 104; *see Noble Manor*, 133 Wn.2d at 275. The two parts of that statute were codified at RCW 19.27.095 (in the state building code statute) and RCW 58.17.033 (in the plats and subdivision statute). *See* Laws of 1987, ch. 104; RCW 19.27.095; RCW 58.17.033. The Final Legislative Report on the bill enacting RCW 58.17.033 states:

> **Background:** Washington State has adhered to the current vested rights doctrine since the Supreme Court case of *State ex. rel. Ogden v. Bellevue,* 45 Wn.2d 492, 275 P.2d 899 (1954). ***The doctrine provides that a party filing a timely and sufficiently complete building permit application obtains a vested right to have that application processed according to zoning, land use and building ordinances in effect at the time of the application.*** The doctrine is applicable if the permit application is sufficiently complete, complies with existing zoning ordinances and building codes, and is filed during the period the zoning ordinances under which the developer seeks to develop are in effect. ***If a developer complies with these requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes.*** *West Main Associates v. Bellevue*, 106 Wn.2d 47, 50, 720 P.2d 782 (1986) (emphasis supplied).
>
> The vesting of rights doctrine has not been applied to ***applications for preliminary or short plat approva***l.
>
> **Summary:** The vested rights doctrine established by case law is made statutory, with the additional requirement that a permit application be fully completed for the doctrine to apply. The vesting of rights doctrine is extended to ***applications for preliminary or short plat approval.*** The requirements for a fully completed building permit application or preliminary or short plat application shall be defined by local ordinance.

> Limitations contained in sections 1 and 2 shall not restrict conditions imposed under the State Environmental Protection Act.

Final Legislative Report, 50th Legis., 1st Reg. Sess. 255 (1987) (emphasis supplied). Here the legislature is aware of prior court opinions in vested rights and chooses to apply them to subdivisions with two modifications: (1) applications must be fully complete and (2) granting county legislative authority to decide what constitutes a complete application. The legislature recognized and applied the common law of vesting rights to applications for preliminary plat approval like the application at issue here. Furthermore, as evidenced by the report, the Legislature specifically contemplated that the party in interest was the developer, not the underlying land owner (if "***a developer complies with these requirements***").

The final language states:

> (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.
>
> (2) The requirements for a fully completed application shall be defined by local ordinance.

> (3) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW.

RCW 58.17.033.

All the language used is given effect, with no portion rendered meaningless or superfluous. Here the language of the remaining provisions of Ch. 58.17 RCW, contemplate a specific process for applying and approving a subdivision project. *See generally*, Ch. 58.17 RCW. For e.g., the statute contemplates "applicant" as opposed to "owner" as the individual with indicia of ownership with respect to the application. *Compare* RCW 58.17.070 ("unless the applicant requests...") *with, e.g.*, RCW 58.17.020(2) ("'Dedication' is the deliberate appropriation of land by an owner for any general and public uses"). The statute requires notice to owners of property affected by the project. RCW 58.17.090. The requirement of getting landowner sign-off on the project comes at the end of the process. RCW 58.17.165 states: "Every final or short plat of a subdivision or short subdivision filed for record must contain a... statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners"). Similarly, the Land Project Review Act, Ch. 36.70B RCW, intended the applicant, not the owner, as holder of rights and duties of the application which are indicia of its ownership. See generally, Ch. 36.70B RCW; *see*

also, Ch. 36.70C RCW (owner and applicant are considered separate for standing purposes under LUPA).

b. Ch. 30.70 Snohomish County Code (SCC)

RCW 58.17.033(2) allowed the requirements for a fully completed application to be defined by local ordinance. However, the authority under RCW 58.17.033(2) is still limited. *See, e.g., Adams v. Thurston County*, 70 Wn. App. 471, 855 P.2d 284 (1993) (requiring the inclusion of an environmental impact statement as a contingent requirement for a fully completed plat application would have violated the intent of this section); *see also, Graham Neighborhood Ass'n v. F.G. Assocs.*, 162 Wn. App. 98, 101-102, 252 P.3d 898 (Div. 1, Wash. Ct. App. 2011) (authority to determine "fully completed" is legislative). "[T]he duty of those empowered to enforce the codes and ordinances of the [county] is to ensure compliance therewith and not to devise anonymous procedures available . . . in an arbitrary and uncertain fashion." *Eastlake Comty. Council,* 82 Wn.2d at 482. Administrative authorities are properly concerned with questions of compliance with the ordinance, not with its wisdom. *State ex rel. Ogden*, 45 Wn.2d at 495.

The ordinances passed by Snohomish County, Ch. 30.70 SCC clearly contemplate the "applicant" (not owners, taxpayers, or ownership interests) possess the rights and duties related to the application. *See, e.g.*,

SCC 30.70.040 (The applicant "or applicant's representative" is the party entitled to a completeness determination for the purpose of vesting rights); SCC 30.70.090 (the applicant may request combining county and agency hearings); SCC 30.70.120(2) (same for consolidate permit review); SCC 30.70.110(3)(b) (the applicant may revise the application restarting the 120-day time period and completeness determination); SCC 30.70.110(3)(b) (the applicant may consent to extension of the application); SCC 30.70.140(2) (same for requesting an extension); SCC 30.70.110(2)(g) (The applicant may agree to an alternative processing timeline); SCC 30.70.110(5) (The applicant is owed notice if the project has been delayed beyond the 120-day time limitations for processing).

Here, clearly there is a legal relationship between the County and the Mangats, the developer/applicant. But, the County has passed no ordinance creating a legal relationship between the County and the landowner with respect to land use application to develop their property. CP at 56:15-59:25; *see also*, CP at 29:22-33:8, 46:11- 48:10. Additionally, the application of codes appears to devise anonymous procedures available and caused an arbitrary and uncertain situation and decision by County officials; who did not utilize County Legislative authority to change their code. CP at 419:8-421:12, 429:6-13, 430:6-17.

C. At the Time the County Acted, the Legal Relationship For the Application Was Exclusive Between the Mangats and the County.

The Processing of the Application is exclusive between the applicants and the County until the development rights are attached to land they cannot be enjoyed by a non-applicant.

1. Vested Rights Cannot Attach Until Preliminary Approval.

Applications are not like those rights acquired by resources on the land under doctrine of *ratione soli*, i.e., "by reason of the soil". *See e.g., State v. Long*, 98 Wn. App. 669, 675, 991 P.2d 102 (2000) (discussing the limited right to wild game on property). Instead attachment of a right to land, so that it is "in rem" or runs with the land requires a certain processes. *In rem* has been defined as:

> An action in rem is one in which the judgment of the court determines the title to property and the rights of the parties not merely as between themselves, but also as against all persons at any time dealing with them or with the property upon which the court had adjudicated.

R.H. Gravson, Conflict of Laws 98 (7th ed. 1974). This necessarily implicates three requirements: (1) specification of property, (2) notice to persons, (3) authorization; i.e., Attachment of a right to land requires notice and a hearing, such as recordation of the title, writ of attachment for rights to become in rem and run with the land; otherwise the County lacks such jurisdiction. *See King County v. Lesh*, 24 Wn.2d 414, 416, 114 P.2d

534 (1946) (a description of the property involved by reference to an unrecorded plat is insufficient to confer in rem jurisdiction to proceed against the property) (*citing* to *Napier v. Runkel*, 9 Wn.2d 246, 249, 114 P.2d 534 (1941).

Such requirements have been encoded into the current subdivision statute and county code. Specification of property, for example, is required by: RCW 58.17.020 (definition of plat); RCW 58.17.033 (proposed division of land); RCW 58.17.092 (Identification of affected property). Notice provisions include: RCW 58.17.080-.090; RCW 58.17.065; SCC 30.70.045-.080.Authorization provisions include: RCW 58.17.065 (shall not be deemed approved until recorded); RCW 58.17.070 (applicant submitted for approval with city, town, or county within which the plat is situated); RCW 58.17.095-.120 (review, approval and disapproval); SCC 30.70.110-.130 (Processing timelines).[9]

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[9] Furthermore, authority of other jurisdictions goes to attachment after governmental approval:

In a California Conditional Use Permit case, the Court found that a "granted" conditioned use permit for a parking facility was in rem or runs with the land; and application for a conditional use permit. *Anza Parking Corp. v. City of Burlingame,* 195 Cal. App. 3d 855, 857-58 (Cal. App. 1st Dist. 1987).

In New York, the purchaser obtained building permits for construction of the apartment houses was in rem or runs with the land; and the application for a building permit was not at issue. *Lefrak Forest Hills Corp. v. Galvin*, 40 A.D.2d 211 (N.Y. App. Div. 2d Dep't 1972).

Attachment is required in a number of other contexts to have it run with the land; otherwise they are personal rights. It is well-settled that personal contracts do not run with the land. *See, e.g., CLS Mortgage, Inc. v. Bruno*, 86 Wn. App. 390, 937 P.2d 1106 (1997); *Davis v. Oregon Mut. Ins. Co.*, 71 Wn.2d 579, 429 P.2d 886 (1967). *Fireman's Fund Ins. Co. v. Devonshire*, 170 Wash 207, 16 P.2d 202 (1932) (Fire insurance policies). Rights and Duties which run with the land occur in the following instances, each of which impose a process before attaching to land:

Covenants running with land. For a covenant to run with the land, a number of conditions must be met:

> (1) the covenants must have been enforceable between the original parties, such enforceability being a question of contract law except insofar as the covenant must satisfy the statute of frauds; (2) the covenant must "touch and concern" both the land to be benefitted and the land to be burdened; (3) the covenanting parties must have intended to bind their successors in interest; (4) there must be vertical privity of estate, i.e., privity between the original parties to the covenant and the present disputants; and (5) there must be horizontal privity of estate, or privity between the original parties. W. Stoebuck, [Running Covenants: An Analytical Primer, 52 Wash. L. Rev. 861 (1977)].(Footnotes omitted.) *Leighton v. Leonard*, 22 Wn. App. 136, 139, 589 P.2d 279 (1978), quoted in *Feider v. Feider*, 40 Wn. App. 589, 593, 699 P.2d 801 (1985).

In Ohio, a grant of a variance runs with the land; but the application was not at issue. *State ex rel. Parker v. Konopka*, 119 Ohio App. 513, 513-515 (Ohio Ct. App., Summit County 1963).

Lake Arrowhead Cmty. Club v. Looney, 112 Wn.2d 288, 294-295, 770 P.2d 1046 (1989).

Conditions running with the land. "These conditions, or contracts, run with the land ***and were imposed at a public hearing through careful deliberation and in the public interest.***" *Donwood, Inc. v. Spokane County*, 90 Wn. App. 389, 393, 396-398, 957 P.2d 775 (1998) (Based on this language, the County intended to continue the conditions imposed as part of the 1977 freeway commercial designation on Donwood's property). *Materialman and Professional Service providers' Lien. See* RCW 60.04.031; RCW 18.27.114; RCW 19.27.095; RCW 60.04.230; *see e.g., McAndrews Group Ltd. v. Ehmke*, 121 Wn. App. 759, 90 P.3d 1123 (2004); RCW 60.04.091. *McMullen & Co. v. Croft*, 96 Wash. 275, 164 Pac. 930 (1927).

Forfeiture in rem. Under RCW 69.50.505, the property owner is entitled to a pre-seizure hearing.

Here, the Mangat's preliminary plat application did not have a hearing or received approval until after Ed Caine allowed Gallo and Dankers to continue the application based on his determination that the vested right run with the land. CP at 419:8-421:12, 429:6-13, 430:6-17. It was the County's act of stepping in to state that such rights belong to the landowners that superseded their authority.

Between December 16, 2009 and this act, a conflict existed between Gallo and Dankers and the Mangats, as to the ownership of the application or transfer of such rights, which likely would have prevailed on a factual adjudication of the terms of the contract. *See* Note 1 supra. The County official did not have authority to adjudicate that dispute; his proper role was to apply the code. Furthermore, such facts as to meaning of terms and intent regarding such rights have not been developed, are genuinely disputed, and are not properly before this Court today as the trial court decided the case on summary judgment based on the fact that the application ran with the land. *See Id.*[10] Such determination was without authority as the right had not yet been attached to land through the process of specification, notice and authorization.

D. Limitations on County's Authority to Issue Permits and Regulate Land

If the rights associated with an application to develop land belong to the applicant before attaching to land, then this case necessarily implicates due process and takings clause of the Washington and U.S. Constitution.

[10] Legal relief could have been claimed by the landowners against the Mangats to stop the expiration of the application one year from May 17, 2009, by operation of SCC 30.70.140(1). *See generally*, Ch. 7.40 RCW. The right (power) to consume, destroy or alienate the thing is an indicia of ownership. *See* A.M. Honore, Ownership, in OXFORD ESSAYS IN JURISPRUDENCE 107 (A.G. Guest ed., 1961).

Here Mangats received their last request for information on May 5, 2009. CP at 219. The Mangats lost contract option to purchase on December 16, 2009. CP at 443:16-17. Ed Caine met with Gallo on or about January 10, 2010. CP at 120:5-7, 416:6-17. Thereafter, Ed Caine made the determination that Gallo and Dankers enjoyed the application. CP at 419:8-421:12. Gallo and Dankers submitted new applications on or after May 6, 2010, and June, 18, 2010 respectively. CP at 417.

For the reasons stated above and below, a Snohomish County Official is limited in his authority, (1) he cannot allow another party to enjoy valuable "vesting rights" obtained by the efforts of the developer/applicants; (2) he cannot reinstate an expired application; (3) nor can he create a new application with a back-dated vesting date; he is simply limited to implementation of the code.

1. Allowing Gallo and Dankers to Enjoy Mangats' "Vested Rights" Was a Private Taking

Vested rights constitute valuable and protected property interests. *Vashon Island*, 127 Wn.2d at 768; *Erickson*, 123 Wn.2d at 870; *Valley View*, 107 Wn.2d at 636. Regarding the limitation on government to take such rights, the Washington Constitution provides in pertinent part:

> ***Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes.*** No private property shall

> be taken or damaged for public ***or private use*** without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. ***Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public***: *Provided,* That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use.

Const. art. I, § 16 (emphasis supplied). This section protects private property from being taken for public or private use without payment of just compensation. *See id.* The relevant provisions of Title 8 RCW ("Eminent Domain") and Chapter 8.08 RCW (Eminent Domain by Counties). The statutes define the term "Property" broadly. *See, e.g.*, RCW 8.08.100 ("[***] necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations."); *c.f.*, *Power, Inc. v. Huntley*, 39 Wn.2d 191, 194, 235 P.2d 173 (1951) (categorizing property). It is significant the legislature defines the term "property" for purposes of a

"taking" pursuant to Const. art. I, § 16 as "all rights, properties, and interests in or appurtenant to land." The law requires that before "rights" are taken from persons counties must proceed under the same procedures as apply to any similar condemnation or appropriation by other cases.

Business and intangible property constitute property in this context. *See e.g.*, *Kimball Laundry v. United States*, 338 U.S. 1, 8, 69 S.Ct. 1434, 93 L.Ed. 1765 (1949) ("taking" of laundry business expectancy of "trade routes", i.e., lists of customers built up by solicitation over the years and for continued hold of the Laundry upon their patronage); *Porter v. United States*, 473 F.2d 1329, 1333-1335 (5th Cir. 1973) ("taking" right to exploit "collector's value" of personal effects of Lee Harvey Oswald"); *Liggett & Meyer v. United States*, 274 U.S. 215, 220, 47 S.Ct. 581, 71 L.Ed. 1006 (1927) ("taking" contract to provide tobacco products); *Bradley v. State*, 73 Wn.2d 914, 442 P.2d 1009 (1968) ("taking of tavern equipment); *City of Oakland v. Oakland Raiders*, 32 Cal. 3d 60 (1982) (city eminent domain action to "take" a sports franchise); *In re Fifth Ave Coach Lines, Inc.*, 18 N.Y.2d 212, 221 N.Y.S.2d 52, 56, 219 N.E.2s 410 (N.Y. 1966) ("taking" bus system, including coach routes, operating schedules, etc. – "intangible assets are...equally essential to the city's" purpose).

The County is further limited from giving incidents of ownership to private persons. In *Manufactured Housing Communities of Washington,* the Washington Supreme Court held a governmental taking of private property by giving other private persons incidents of ownership violates Const. art. I, § 16 Constitutional Provision. *See Manufactured Housing*, 142 Wn.2d at 374. Once the County with the power of eminent domain has made the initial determination that condemnation is necessary, the matter moves into court for a three-stage proceeding. *See generally*, Ch. 8.08 RCW (stage 1: decree of public use and necessity; stage 2: just compensation determined; stage 3: just compensation paid and title transferred); *accord*, *City of Des Moines v. Hemenway*, 73 Wn.2d 130, 138, 437 P.2d 171 (1968); 17 William B. Stoebuck & John W. Weaver, Washington Practice, Real Estate: Property Law (2d ed. 2004) at 635 (§9.28).

Here, it is undisputed the Mangats submitted and paid for the application which "vested" on October 22, 2007. CP at 219; *see also*, SCC 30.70.030. Such rights have been judicially recognized as valuable and protected property interests (*See e.g.*, *Vashon Island*, 127 Wn.2d at 768); especially the right (power) to consume, destroy or alienate the thing. And here the application such a thing, it is an intangible expectancy like those found in other takings cases like *Kimball Laundry,* and *Fifth Ave Coach*

Lines and *Oakland Raiders. See Kimball Laundry*, 338 U.S. at 8; *Oakland Raiders*, 32 Cal. 3d 60; *Fifth Ave Coach Lines, Inc.*, 18 N.Y.2d 212.

It is undisputed that Snohomish County did not follow any of the statutory requirements of Ch. 8.08 RCW, (i.e. there was no finding of public use or necessity, no hearing to determine just compensation, and insufficient notice); when it decided Gallo and Dankers "now own" the Mangats' application. CP at 214-215 (even though the County Prosecuting Attorney recognized there was a dispute between the parties that the County was not involved in, the County took the side which was not consistent with code interpretation).[11]

Judge Leach's decision and the appellees argued that the Mangats had no vested rights because their contract expired. *See* CP at 250. But this is precisely the point. If the Mangats' vested rights expired, how could the County give them to Gallo and Dankers? Such a finding is an error, what remains are the Mangats' power to consume, destroy and alienate their application.

2. Application Expired by Operation of SCC, Official Without Authority to Revive Application

[11] Furthermore, the County benefited from the additional fees and processing costs obtained through continuation of the application. CP at 446:12-16, 426:1-16.

Even if the County's action did not constitute a taking of private and intangible property, the County cannot nonetheless revive an expired application. County Code states that:

> an application shall expire one year after the last date that additional information is requested if the applicant has failed to provide the information; except that (a) The department may grant one or more extensions pursuant to SCC 30.70.140(2) and (3) below.

SCC 30.70.140(1). Under the operation of the County's code there are only two ways that the application does not then expire: The applicant may request an extension in writing prior to expiration; or the department may extend the expiration date without written request when additional time for county processing or scheduling appointments is required or under other similar circumstances. Further, in *Graham Neighborhood*, this Court found that where:

> a county ordinance mandates that land use permit applications not timely acted upon be cancelled, and such an application is cancelled pursuant to that ordinance, the county planning agency lacks the authority to thereafter reinstate that application in contravention of the pertinent ordinance.

Graham Neighborhood Ass'n v. F.G. Assocs., 162 Wn. App. at 101-102.

> Although RCW 58.17.033(2) confers upon the local government the authority to determine when land use applications are complete and how such applications must move forward, the statute explicitly grants such authority ***to the local legislative body***. See RCW 58.17.033(2) [***] Thus, Belieu, an employee of PALS, an executive branch

> agency, had no independent authority to "revive" the preliminary plat application.

Id. (emphasis supplied).

Additionally, the Mangats received their last request for information on May 5, 2009. Arguably the soonest Gallo and Dankers submitted new applications were one year and a day later; and it was much later in which they provided additional information in response as required by the statute. PDS did not formally provide an extension; and applicants do not appear to have provided a written request.

Furthermore, like the official in *Graham*, these County officials, by reactivating an owner's preliminary plat application, did so without exercising proper authority to revive the application. Given that the owner's application could not be reinstated by the official, no application should have existed when the hearing examiner purportedly approved it.

3. County Official Without Authority to Backdate Vested Right

Even if there was no taking and the application had not expired, the County official has no authority to backdate an application. The legislature made the definition of "a fully completed application" contingent upon local law. RCW 58.17.033.[12] Pursuant to its authority

[12]The common law required only that an application be "sufficiently complete," while the legislature decided that the application must be "fully complete." *Compare* RCW 58.17.033, *with*, *Valley View Indus. Park*, 107 Wn.2d at 638. The legislature abrogated the common law rule when it substituted "fully" for "sufficiently," "taking a 'zero

under RCW 58.17.033(2), the County enacted an ordinance to determine when an application is complete:

> The department shall determine whether a project permit application is complete or incomplete within 28 days after receiving an application. The determination shall be in writing and mailed, faxed, e-emailed, or delivered to the applicant or the applicant's representative within the required time period, except as set forth in SCC 30.70.040(2). When an application is determined incomplete, the determination shall state what is necessary to make the application complete.
>
> (2) an application is complete for purposes of this section if the department does not provide a written determination to the applicant within the required time period. [***]

SCC 30.70.040(1)-(2). There is no alternative process or authority for officials to select when an application is "fully complete" for purposes of RCW 61.24.033(1). *See Graham Neighborhood Ass'n v. F.G. Assocs.*, 162 Wn. App. at 118; *c.f., Adams*, 70 Wn. App. 471 (efforts to interpose process between filing of the application and vesting impermissibly conflicts with intent of vesting); *Erickson*, 123 Wn.2d at 873-74 (If a vested right is too easily granted, the public interest is subverted).

Gallo and Dankers submitted new applications in May and June 2010, and constituted new applications, than, the County official had no authority to backdate the vesting date of the application. CP at 417, 447-449. Allowing such actions would subvert the statute and public interest

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tolerance' approach to completeness." *Friends of the Law v. King County*, 123 Wn.2d 518, 524 n.3, 869 P.2d 1056 (1994).

by allowing the county an alternative procedure to a party submitting a fully complete application.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse the Trial Court's granting of Snohomish County and Gallo and Dankers Motions for Summary Judgment; grant the Plaintiffs Motion for Summary Judgment with regards to both vesting issues and taking issues, and remand for further relief with regards to the vesting and taking issues.

Respectfully Submitted,

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No. 67712-8-I

COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

KHUSHDEV MANGAT, et ux.,
Appellants

vs.

SNOHOMISH COUNTY, et. al.,
Respondents/Appellees

APPEAL FROM SUPERIOR COURT
FOR SNOHOMISH COUNTY

DECLARATION OF SERVICE

I, Carl Alvarado, declare under the penalty of perjury that an electronic copy of Appellant's Opening Brief was forwarded to ABC Legal Carrier Service to be served upon and addressed to the following individuals:

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I, Carl Alvarado, also declare under the penalty of perjury that I filed a copy of Appellant's Opening Brief with the Clerk of the Court of Appeals Division One, by forwarding an electronic version of same to ABC Legal for delivery to the Appellate Court Division I Seattle, WA.

Dated: February 2, 2012, at Arlington, Washington.

Carl Alvarado

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