Court of Appeals No. 48016-6-II

SUPREME COURT

OF THE STATE OF WASHINGTON

MARK AVOLIO, JOHN BAKER, MAUREEN DeARMOND, and ANDY MERKO,

petitioners,

v.

CEDARS GOLF, LLC,

respondent.

PETITION FOR DISCRETIONARY REVIEW BY THE WASHINGTON SUPREME COURT

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I. IDENTITY OF PETITIONER

Mark Avolio, John Baker, Maureen DeArmond, and Andrew Merko, plaintiffs and appellants in prior proceedings, seek discretionary review by the Washington Supreme Court of the following decision terminating review:

* * *

II. CITATION TO THE COURT OF APPEALS DECISION

Petitioners seek review of the Court of Appeals decision terminating review in *Avolio, et al., v. Cedars Golf*, No. 48016-6-II, 2016 WL 6708089, entered November 15, 2016, a copy of which is appended hereto as *A-1*.

* * *

III. ISSUES PRESENTED FOR REVIEW

ISSUE 1: Whether this petition involves an issue of substantial public interest that should be resolved by the Supreme Court regarding competence limitations governing administrative collateral estoppel?

ISSUE 2: Whether the decision of the Court of Appeals is in conflict with a decision of the Supreme Court?

ISSUE 3: Whether a significant question of law under the Constitution of the State of Washington or the United States is involved?

* * *

IV. STATEMENT OF THE CASE

A plat of The Cedars – Phase I, residential subdivision, was "approved and accepted" by the Board of Clark County Commissioners on December 14, 1972. *CP 272*. A "Declaration of Covenants, Conditions and Restrictions" dated February 23, 1973, was filed for record at Clark County Auditor's File No. G27415 on March 5, 1973, encumbering "The Cedars" (the "1973 Declaration") *CP 203*; *231*. The 1973 Declaration includes a prohibition that "[n]o lot as platted shall be resubdivided into separate building sites." *CP 209*. The term "lot" is defined to include designated building lots "plus any Towne House erected on Towne House areas." *CP 204*.

The 1973 Declaration includes usual language defining the property encumbered:

> WHEREAS, Declarant is the owner of certain property in Clark County, State of Washington, which is more particularly described in **Exhibit "A"** attached and by this reference made a part hereof. . . .

CP 203, emphasis added. A potential ambiguity results from incorporation of an Exhibit C from which additional land that may be annexed:

> "Properties" shall mean and refer to that certain real property hereinbefore described, together with such additional land within the area described on **Exhibit "C"** attached as may be

> annexed by the Declarant or assignees without the consent of the members within seven (7) years of the date of this instrument. . . .

CP 204, 217, emphasis added. Exhibit A to the 1973 Declaration describes all of The Cedars, while Exhibit C is nearly coextensive with Exhibit A, with the exception of approximately ten acres located in the northeast corner, not at issue in the present case. *CP 202*, ln. 5-14, *CP 232*.

The Dedication of the Cedars Phase II, dated June 12, 1980, incorporates "any protective covenants, conditions and restrictions" by reference:

> We, the undersigned owners of the above described land do hereby lay out and Plat the same into streets and lots, as shown upon the official plat of "THE CEDARS PHASE II", filed concurrently herewith in the plat records of Clark County, Washington. However the ownership, use and enjoinment of the lots therein are subject to the easements as shown thereon and to **any protective covenants, conditions and restrictions**, which shall run with the land and be for the mutual benefit and protection of all lots within the land and be for the mutual benefit and protection of all lots within said plat and the owners thereof, and which **by reference is made a part hereof.**

CP 336, CP 343, emphasis added. The plat of Phase II includes a note incorporating the 1973 Declaration:

> The Cedar Pacific Properties, Inc., in recording this plat of the "Cedars Phase-II" has designated certain areas of land as Nature Trails intended for use by the Homeowners in "The

> Cedars-Phase II" for recreation and other related activities. The designated areas are not dedicated for use by the general public but are dedicated for the common use and enjoyment of the Homeowners of "The Cedars-Phase II" as more fully provided for in **the Declaration of Covenants, Conditions and Restrictions applicable to "The Cedars-Phase I" dated February 23, 1973, and is incorporated in, and made a part of this plat.**

CP 236, emphasis added. No provision in the 1973 Declaration deals with "Nature Trails."

Petitioner Avolio owns Lot 6, and petitioners DeArmond and Merko own Lot 7, located in Phase II of the Cedars, *CP 1-2*, depicted at *CP 236*. Petitioner Baker owns Lot 9 located in Phase I. *CP 2*. Respondent Cedars Golf owns Lots 1 and 8 located in Phase II, comprising 6.93 acres which remain vacant. *CP 2-3*, depicted at *CP 236*.

After annexation to the City of Battle Ground, Haertl Development (Cedars Golf's predecessor in interest) filed an application to subdivide its Lots 1 and 8 of Phase II into 13 residential lots and four environmental tracts. *CP 45*; depicted at *CP 268*. The City required a plat alteration under RCW 58.17.215 because the proposal required deletion of a note on the recorded plat designating the subject property as "Townhouse Area." *CP 236*.

All of the petitioners submitted comment to the hearing examiner, opposing the proposed plat alteration. Petitioners Avolio, DeArmond and

Merko were represented by legal counsel, who argued non-compliance with RCW 58.17.215. *CP 101-05*; *CP 143-46.* Petitioner Baker was not represented by counsel, and argued environmental impacts:

> I am a long-term resident in the Cedars I community. As you know, much of the Cedars and Salmon Creek is high-quality riparian habitat. A 200-foot buffer is required on Salmon Creek, and this must be respected during any development plans. I am concerned that property development might be given priority over environmental needs (as they too often are).

CP 139.

On July 22, 2014, Cedars Golf received approval from the Battle Ground hearing examiner to subdivide its property into 13 residential lots and four environmental tracts. *CP 262*; depicted at *CP 268.* The examiner's decision included a finding that "the plat alteration complies with RCW 58.17.215," and that "the proposed subdivision will not result in a violation of a covenant" because "restrictive covenants were never adopted by The Cedars Phase II subdivision." *CP 257.* Hence, the examiner concluded that the proposal "should be approved, because it does or can comply with the applicable standards of the Battle Ground Municipal Code and the Revised Code of Washington." *CP 257.*

Petitioner Avolio appealed the approval under LUPA; however, the

other petitioners did not participate. Clark County Superior Court affirmed the hearing examiner's decision on March 20, 2015. *CP 151-153*, ln. 18-20. The petitioners did not appeal the Superior Court's decision.

Petitioners filed the underlying action on June 3, 2015, to enforce the prohibition against further subdivision in the 1973 Declaration. *CP 1*. The trial court granted Cedars Golf's motion for summary judgment from the bench on August 20, 2015. *CP 369*. An order denying petitioner's motion for reconsideration was entered August 28, 2015. *CP 369-70*. An order granting Cedar's Golf's motion for summary judgment, and denying petitioners' cross-motion, was entered September 4, 2015. *CP 371-74*.

All of the petitioners appealed and the Court of Appeals affirmed the Superior Court decision on November 15, 2016, holding as follows:

> [A] party who either declines to challenge a hearing examiner's final order or who challenges a hearing examiner's decision by way of a LUPA petition and then declines to exhaust its right to appeal beyond the superior court may not then bring an entirely separate suit seeking a second determination of the same rights and remedies at issue during the earlier proceeding.

Avolio at 8. While noting that "[t]he doctrine of collateral estoppel prevents the endless relitigation of issues already litigated by the parties and decided by a competent tribunal," *Avolio* at 4; the Court of Appeals held that "the

examiner did not 'interpret or enforce' the CCRs [because] he found that the CCRs did not apply to Phase II," and because: "it would be illogical to conclude that a hearing examiner may deny or approve applications for subdivision alterations under RCW 58.17.215 without considering the very submission criteria that the statute requires." *Avolio* at 6. As to petitioner Avolio, the Court held that "the prior adjudication at issue was before the superior court, not the hearing examiner." *Avolio* at 5.

* * *

V. ARGUMENT

ISSUE 1: Whether this petition involves an issue of substantial public interest that should be resolved by the Supreme Court regarding competence limitations on administrative collateral estoppel?

Although the present case is not moot, and conflicting decisions are discussed below, the element of substantial public interest raises a compelling basis for discretionary review:

> This analysis comprises three factors: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur."

Philadelphia II v. Gregoire, 128 Wash.2d 707, 712, 911 P.2d 389 (1996).

In the present case, the Court of Appeals held that "the doctrine of

collateral estoppel bars the petitioners' declaratory judgment action." *Avolio* at 1. In addition to standard elements,[1] three factors are unique in the application of collateral estoppel to administrative findings:

> (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations.

Reninger v. DOC, 134 Wash.2d 437, 450, 951 P.2d 782 (1998); citing *Stevedoring Services v. Eggert*, 129 Wash.2d 17, 40, 914 P.2d 737 (1996); and *Shoemaker v. Bremerton*, 109 Wash.2d 504, 508, 745 P.2d 858 (1987).

Administrative collateral estoppel is limited to factual findings, while "[i]nterpretation of a restrictive covenant is a question of law." *Wilkinson v. Chiwawa Communities*, 180 Wash.2d 241, 250-51, 327 P.3d 614 (2014). The U.S. Supreme Court applies preclusion to administrative determinations when the "agency is acting in a judicial capacity and resolves disputed *issues of fact properly before it* which the parties have had an adequate opportunity to litigate." *United States v. Utah Construction & Mining*, 384 U.S. 394, 422, 86 S.Ct. 1545, 1560, 16 L.Ed.2d 642 (1966), emphasis added.

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[1]Collateral estoppel requires that: "(1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied." *Christensen v. Grant County Hospital*, 152 Wash.2d 299, 307, 96 P.3d 957 (2004).

The Court's holding that "the examiner did not 'interpret or enforce' the CCRs [because] he found that the CCRs did not apply to Phase II," *Avolio* at 6, raises an issue of law governed by the parol evidence rule:

> [T]he "parol evidence rule" precludes use of parol evidence to add to, subtract from, modify, or contradict the terms of a fully integrated written contract, i.e., one which is intended as a final expression of the terms of the agreement.

DePhillips v. Zolt Construction, 136 Wash.2d 26, 32, 959 P.2d 1104 (1998).

Black's defines the term "parol evidence" as follows:

> Oral or verbal evidence; that which is given by word of mouth; the ordinary kind of evidence given by witnesses in court. In a particular sense, and with reference to contracts, deeds, wills, and other writings, parol evidence is the same as extraneous evidence or evidence *aliunde*.

Black's Law Dictionary, 6th Ed., at 1117.

While not all parole evidence is factual in nature, any factual evidence showing that Phase II is not encumbered would be parol or extraneous to the 1973 Declaration. The parol evidence rule precludes administrative findings regarding the only real issue in the present case: whether Phase II is encumbered by the 1973 Declaration. Hence, there is simply no administrative determination that could preclude court review; determinations of law have no preclusive effect, and factual determinations regarding the 1973 Declaration are prohibited by the parole evidence rule.

The first prong of the collateral estoppel rule includes a second criteria: whether the agency acted "within its competence." *Reninger*, 134 Wash.2d at 450. Administrative competence under the *Land Use Petition Act*, Chapter 36.70C RCW (LUPA) is limited to land use regulations, interpretations and approvals. *Viking Properties v. Holm*, 155 Wash.2d 112, 130, 118 P.3d 322 (2005) (city had no authority to enforce or invalidate restrictive covenants). The plat alteration statute provides as follows:

> If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, **the application shall contain** an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof. . . .

RCW 58.17.215, emphasis added. The foregoing paragraph is a *submittal requirement* ("the application shall contain"); it includes *no* authority to interpret restrictive covenants. Even under the most sympathetic reading, the foregoing delegates authority only to determine whether the subdivision is subject to a restrictive covenant that *would* preclude the proposed alteration, not to construe legal descriptions and apply rules of law interpreting the covenant. We note that the subjunctive "would" is more often used to designate counter-factual propositions than factual assertions.

The governing statute goes on to confer competence upon the examiner to determine "public use and interest:"

> The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. . . .

RCW 58.17.215, emphasis added. This is the same criteria that applies to plat approval generally. RCW 58.17.110(1), (2). The foregoing provision does *not* "necessarily imply" authority to interpret covenants because the express delegation is limited to *public* use and interest, not *private* use and interest. A restrictive covenant is inherently private, and the examiner is not competent to resolve disputes between private parties. BGMC 2.10.080(A).

In 1999 the Washington Supreme Court held that "the Berg ['context rule'] applies to judicial interpretation of restrictive covenants," noting that "the primary goal in interpreting covenants that run with the land is to determine the intent or purpose of the covenants." *Hollis v. Garwall*, 137 Wash.2d 683, 686, 693-95, 974 P.2d 836 (1999); citing *Berg v. Hudesman*, 115 Wash.2d 657, 668-69, 801 P.2d 222 (1990); and *Riss v. Angel*, 131 Wash.2d 612, 623, 934 P.2d 669 (1997). The *Hollis* decision noted that "admissible evidence does not include:

> • Evidence of a party's unilateral or subjective intent as to the meaning of a contract word or term;

> • Evidence that would show an intention independent of the instrument; or
>
> • Evidence that would vary, contradict or modify the written word.

Hollis, 683 Wash.2d at 695. In applying the context rule, the Court excluded the affidavit of an original owner attesting that "the developers intended the restriction to apply to the smaller lots but not to the larger ones," as "unilateral and subjective intent of 1 of 10 of the original contracting parties." *Hollis*, 137 Wash.2d at 696. In addition, the Court observed that the affidavit "contradicts the language of the plat which, itself, terms the limitation on use a 'restriction:'

> *This plat is approved as a residential subdivision and no tract is to have more than one single family residential unit.* Conversion of any lot to other than its authorized occupancy must be in accordance with authorizations associated with separate application and procedure.

Hollis, 137 Wash.2d at 696, 687, emphasis original.

In the present case, context for the 1973 Declaration did not include the *Growth Management Act*, Chapter 36.70A RCW (1990 1st ex.s. c 17), which requires counties to "designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature." RCW 36.70A.110(1). The *Act*

requires a land use element including "population densities, building intensities, and estimates of future population growth." RCW 36.70A.070. As a result of growth management, large remainders left over from county subdivisions are annexed by municipalities at zoning densities incompatible with restrictive covenants, which were adopted consistent with historic limitations based upon maximum rather than minimum density.

Although interpretation and enforcement of the 1970 Declaration is a private concern, the generalization of similar concerns across entire counties reveals the public nature of the issue. This issue is likely to recur as municipalities continue to annex historic subdivisions, including remainders, as is their mandate under the *Growth Management Act*. Hence, an authoritative determination is desirable to provide future guidance to public officers, as well as landowners facing present and future zoning conflicts, from the clash between historic development patterns and LUPA rules.

* * *

ISSUE 2: Whether the decision of the Court of Appeals is in conflict with decisions of the Supreme Court?

The Court of Appeals decision conflicts with this Court's decision in *Lakey v. Puget Sound Energy*, 176 Wash.2d 909, 296 P.3d 860 (2013).

In *Lakey,* neighbors who failed to appeal under LUPA were not barred from inverse condemnation claims alleging that electro-magnetic fields from an approved power substation threatened their use and enjoyment of land, because: (i) they sought compensation, "not . . . judicial review or reversal of the height, setback, or buffer variances," and (ii) they were "not invoking the superior court's appellate jurisdiction and LUPA [did] not govern their claim." *Lakey*, 176 Wash.2d at 926, 928. Accord *Woods View II v. Kitsap County*, 188 Wash.App. 1, 25, 352 P.3d 807, *review denied*, 184 Wash.2d 1015, 360 P.3d 818 (2015). In the present case, the petitioners do not challenge the administrative determination nor LUPA review thereof. They did not invoke the Superior Court's appellate jurisdiction, and LUPA does not govern their claims.

The Court in *Woods View II* summarized the holding in *Ashe v. Bloomquist*, that "a damage claim may still be controlled by LUPA if it is dependent on 'an interpretive decision regarding the application of a zoning ordinance.'" *Woods View II*, at 9, quoting *Asche v. Bloomquist,* 132 Wash.App. 784, 801, 133 P.3d 475 (2006), *review denied,* 159 Wash.2d 1005, 153 P.3d 195 (2007). The Court in *Asche* noted:

> The Asches' public nuisance claim depends entirely upon finding the building permit violates the zoning ordinance.

> Specifically, they argue, "[b]ecause the project violates the zoning code, the project constitutes a public nuisance."

Asche, 132 Wash.App. at 801. In *Asche*, the administrative decision was preclusive as to land ordinance violations *within administrative competence*. In the present case, enforcement of the covenant is *not* dependent upon administrative determinations regarding the application of land ordinances. Land ordinances regulate plat amendment, not restrictive covenants; hence, covenant enforcement is outside of administrative competence.

The Court of Appeals reasoned "it would be illogical to conclude that a hearing examiner may deny or approve applications for subdivision alterations under RCW 58.17.215 without considering the very submission criteria that the statute requires." *Avolio* at 6. Petitioners maintain that this contention is rebutted by the discussion of authority delegated under the statute, *supra* at 10-11; however, it is also pertinent to note a political discord between civil litigants and the inevitable position in which hearing examiners are thrust. In the present case, the examiner was charged with enforcement of "R-3" zoning (three units per acre maximum), as designated when the remainder lots were annexed into the City, *CP 49*; however, the 13 lots approved by the examiner average 14,766.19 square feet, which satisfies zoning because four environmental tracts make up the remainder. *CP 268*.

The rest of the lots in Phase II opposed annexation, and remain in a County "R1-20" zone (20,000 square foot minimum), *CP 49*; however, they average in excess of one acre per lot (43,874.5 square feet) because they include wetlands and environmental constraints. *CP 236.* Asking a hearing examiner to preserve the status quo protected under the 1973 Declaration was tantamount to inciting a mutiny against zoning regulations. Hence, the examiner lacks competence to interpret restrictive covenants due not only to lack of delegation, but also due to delegated bias.

The appellate decision also conflicts with this Court's decision in *Hayes v. Seattle*, 131 Wash.2d 706, 934 P.2d 1179 (1997), holding that reversal of arbitrary and capricious approval conditions did not preclude subsequent action under 42 U.S.C. §1983 based on the same conditions:

> We are satisfied that the two lawsuits with which we are here concerned do not involve the same subject matter simply because they both arise out of the same set of facts. . . .
>
> We reach that conclusion because the nature of the two claims is entirely disparate. The action for judicial review focused exclusively on the propriety of the decision making process of the Seattle City Council. On the other hand, the subsequent action was for a judgment for money to compensate Hayes for the damages he allegedly suffered as a result of the Council's action.

Hayes, 131 Wash.2d at 712-13.

In the present case, the LUPA decision focused upon the propriety of the hearing examiner's decision interpreting RCW 58.17.215; while the underlying action focused on enforcement of the 1973 Declaration. This distinction results in a possibility of conflicting decisions between overlapping regulatory and civil jurisdiction, but that is as it should be; otherwise, we risk delivering the law of civil covenants over to the politics of local rulemaking and administration.

The Court of Appeals observed that the "adjudication that occurred immediately prior to . . . the declaratory judgment action . . . was before the superior court [on LUPA appeal; hence,] it is the superior court's decision . . . that is relevant to . . . collateral estoppel." *Avolio* at 5. However, Superior Courts are limited to appellate jurisdiction in reviewing examiner decisions:

> A superior court hearing a LUPA petition acts in an appellate capacity and has only the jurisdiction conferred by law. . . . Under LUPA, the superior court review is limited to actions defined by LUPA as land use decisions.

Durland v. San Juan County, 182 Wash.2d 55, 64, 340 P.3d 191 (2014); citing *Knight v. Yelm*, 173 Wash.2d 325, 337, 267 P.3d 973 (2011); *Post v. Tacoma,* 167 Wash.2d 300, 309, 217 P.3d 1179 (2009); and RCW 36.70C.010; RCW 36.70C.040. Hence, the LUPA court had no more competence to interpret the 1973 Declaration than the examiner.

ISSUE 3: Whether a significant question of law under the Constitution of the State of Washington or the United States is involved?

Impairment of Contractual Relationship

> Article 1, section 10 of the United States Constitution declares that "No state shall . . . pass any . . . law impairing the obligation of contracts . . ." Similarly, article 1, section 23 of the Washington State Constitution states that "No . . . law impairing the obligation of contracts shall ever be passed."

Tyrpak v. Daniels, 124 Wash.2d 146, 151, 874 P.2d 1374 (1994); citing *Ruano v. Spellman,* 81 Wash.2d 820, 825, 505 P.2d 447 (1973).

Section 58.17.215 was enacted in 1987. If it authorizes the hearing examiner to determine that the 1973 Declaration is unenforceable, then it "operate[s] as a substantial impairment of a contractual relationship," in violation of the foregoing prohibitions. *Estate of Hambleton*, 181 Wash.2d 802, 830-31, 335 P.3d 398 (2014), *certiorari denied*, 136 S. Ct. 318 (2015). The impaired relationship is contractual; and the examiner's interpretation alters terms, imposes new conditions for enforcement, and lessens the value of the 1973 Declaration. Impairment is substantial for persons living in The Cedars, who purchased in reliance upon the clause prohibiting further subdivision. There is no way they could have anticipated new legislation in area not previously regulated under the *Subdivision Act*. *Id.*

Separation of Powers

"Superior Courts have original jurisdiction in all cases . . . which involve the title or possession of real property." RCW 2.08.010. LUPA cannot violate the separation of powers doctrine by interfering with the Superior Court's power and original jurisdiction under RCW 2.08.010. WA. Const., art. 4, §4. Restrictive covenants affect title to real property. *Schwab v. Seattle*, 64 Wash.App. 742, 750 fn. 5, 826 P.2d 1089 (1992).

Due Process

Due process is protected by the 5th and 14th amendments to the U.S. Constitution, and article 1, section 3 of the Washington State Constitution.

> Essential elements of procedural due process include notice and a meaningful opportunity to be heard. "A meaningful opportunity to be heard means 'at a meaningful time and in a meaningful manner.'"

Didlake v. Washington, 186 Wash.App. 417, 426, 345 P.3d 43, *review denied*, 184 Wash. 2d 100 (2015). The only meaningful time and manner is before a Superior Court judge qualified to enforce the 1973 Declaration. The Court of Appeals reasoned that the "relief would have been identical" at all forums. *Avolio* at 7. Actually, differing subdivision applications may be submitted *ad infinitum*, while declaratory judgment will prohibit any further division of the property. The difference in cost to petitioners is significant.

CONCLUSION

Discretionary review should be granted because the present petition raises an issue of substantial public interest regarding administrative collateral estoppel which is limited to factual findings, while factual findings are precluded from covenant interpretation by the parol evidence rule. Moreover, the statute governing plat alterations delegates authority only to determine public use and interest, while covenant interpretation and enforcement involves a purely private use. The issue is likely to recur because the *Growth Management Act* forbids urban growth outside of urban growth areas, and requires densities that are inconsistent with restrictive covenants governing large remainders left over from County subdivisions.

The Court of Appeals decision conflicts with this Court's decisions in *Lakey v. Puget Sound Energy* and *Hayes v. Seattle*; and raises significant constitutional questions regarding impairment of contract, separation of powers, and due process.

RESPECTFULLY SUBMITTED this 14th of December, 2016.

ERIKSON & ASSOCIATES, PLLC
Attorneys for the petitioners

By: _____
Mark A. Erikson, WSBA #23106

CERTIFICATE OF SERVICE

#48016-6-II

I certify that on December 14, 2016, I caused a true and correct copy of this *Petition for Discretionary Review* to be served on the following in the manner indicated below:

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2016 WL 6708089
Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

Court of Appeals of Washington,
Division 2.

Mark Avolio; John Baker; Maureen Dearmond; and Andrew Merko, Appellants,
v.
Cedars Golf, LLC, Respondent.

No. 48016–6–II
|
November 15, 2016

Appeal from Clark Superior Court, Docket No: 15–2–01546–3, Honorable Robert A. Lewis, J.

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UNPUBLISHED OPINION

JOHANSON, J.

*1 This case involves a dispute over the effect of restrictive covenants in a residential neighborhood in Battle Ground. In 2014, Cedars Golf LLC (CG) applied to the City of Battle Ground (the City) requesting approval to alter the plat and to subdivide two lots it owned in the neighborhood. The appellants [1] opposed CG's efforts. After the hearing examiner ruled for CG and the superior court affirmed, the appellants chose not to appeal further. Appellants later sued for declaratory judgment and injunctive relief. [2] The superior court granted summary judgment for CG and dismissed the declaratory judgment action. The appellants appeal from this dismissal order. We hold that the doctrine of collateral estoppel bars the appellants' declaratory judgment action. We affirm the superior court's summary judgment ruling.

FACTS

I. BACKGROUND

Appellants Mark Avolio, John Baker, Maureen DeArmond, and Andy Merko are property owners in a subdivision known as "The Cedars." The Cedars has been developed and platted over multiple "phases" since the early 1970s. CG owns two lots—lots "1" and "8" in The Cedars "Phase II."

In 1972, developers platted "Phase I," comprising 40 total lots. In March 1973, the declaration of covenants, conditions, and restrictions (CCRs) was recorded. The Cedars Phase II is an upscale 8–lot planned unit development in Battle Ground platted by recording in June 1980. Avolio, DeArmond, and Merko also own lots of real property in Phase II, and Baker owns a lot in Phase I of the development.

In 1973, the CCRs encumbered only the Phase I properties because only Phase I was developed. Among the restrictions in the CCRs was a provision that prohibited any further subdivision of properties to which they applied.

Although the CCRs applied to only Phase I lots, the declaration also contained provisions that envisioned potential future extension of the CCRs to other phases of the development. Specifically, the section titled "*Annexation*" provided that

> [a]dditional residential property and Common Area may be annexed to the Properties by a two-thirds (2/3) vote of the members. Provided, however, that [certain additional properties] may be annexed by the Declarant or assignee without the consent of the members within seven (7) years of the date of this instrument.

Clerk's Papers (CP) at 217.

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II. 2014 SUBDIVISION APPLICATION AND OPPOSITION

In 2014, CG applied to alter The Cedars Phase II subdivision plat and to subdivide lots 1 and 8 of The Cedars Phase II. CG sought to subdivide their 2 lots, which had a "townhomes" designation, into 13 buildable lots for single-family residences. The appellants believed that the CCRs proscribed further subdivision of the lots, and they voiced their opposition to the application. In part, the appellants believed that CG should not be permitted to subdivide its lots because the "face of the plat of The Cedars Phase II incorporates by reference the [CCRs]." CP at 102. As support for this contention, the appellants rely on a notation on the Phase II plat document that provides,

> *2 —Nature Trails—
>
> The Cedar Pacific Properties, Inc., in recording this plat of the "Cedars Phase–II" has designated certain areas of land as Nature Trails intended for use by the Homeowners in "The Cedars–Phase II" for recreation and other related activities. The designated areas are not dedicated for use by the general public but are dedicated for the common use and enjoyment of the Homeowners of "The Cedars–Phase II" as more fully provided for in the Declaration of Covenants, Conditions and Restrictions applicable to "The Cedars–Phase I" dated February 23, 2973 [sic], and is incorporated in, and made a part of this plat.

CP at 68–69.

Because the appellants believed that the CCRs precluded any further subdivision of CG's lots, they also believed that RCW 58.17.215, which governs the procedure required for subdivision alterations, required that CG obtain the agreement of all parties subject to the CCRs to accomplish the proposed alteration of the subdivision or portion thereof.

A. PUBLIC HEARING

A hearing examiner held a public hearing to consider CG's application, at which each of the appellants participated. An attorney represented Avolio, DeArmond, and Merko and sent letters detailing their opposition to community development representatives before the hearing. The attorney also appeared at the public hearing on behalf of his clients and urged the hearing examiner to deny CG's applications for the reasons mentioned above. Baker, DeArmond, and Merko also submitted e-mails or letters expressly requesting to be parties of record and to be notified of decisions and appeal rights relating to CG's application.

B. HEARING EXAMINER FINAL ORDER

After hearing testimony and considering accompanying exhibits, the hearing examiner rendered a final decision approving CG's application. The hearing examiner memorialized his decision in detailed findings, including, relevant to this appeal:

> 3. The examiner finds that the plat alteration application complies with RCW 58.17.215.
>
> a. The applicant is requesting alteration of the plat to remove the "townhomes" designation on Lots 1 and 8. Lots 1 and 8 of Cedars Phase II are the only portion of the subdivision proposed to be altered. Therefore RCW 58.17.215 only requires the signature of the majority of persons with an ownership interest in Lots 1 and 8 of Cedars Phase II. The further division of these platted lots is not a "plat alteration" subject to RCW 58.17.215.
>
> b. The proposed subdivision will not result in violation of a covenant applicable to The Cedars Phase II subdivision. As discussed in Exhibit 31, the CC&Rs for "The Cedars" dated February 23, 1973 were never adopted by The Cedars Phase II subdivision. There is no substantial evidence to the contrary.
>
> i. The CC&Rs authorize "the Declarant," the original developer of The Cedars, to annex certain additional properties without the consent of the members. ... However such annexation must occur within seven years form [sic] the date of the CC&Rs. The CC&Rs were executed on March 2, 1973. The Cedars Phase II subdivision was platted June 6, 1980, more than seven years after the CC&Rs were signed. Therefore the Declarant had no authority to unilaterally include The Cedars Phase II subdivision in the CC&Rs.
>
> *3 ii. The CC&Rs require a two-thirds majority vote to annex additional property into the CC&Rs. ... There

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is no evidence that a vote to include The Cedars Phase II subdivision ever occurred.

iii. The Cedars Phase II subdivision plat did not adopt or incorporate by reference all of the CC&Rs applicable to The Cedars Phase I. The second plat note on the face of The Cedars Phase II subdivision plat is titled "Nature Trails." The text of the plat note discusses the ownership and use of the nature trails within The Cedars Phase II subdivision site. By its terms, The Cedars Phase II subdivision plat note only incorporates those portions of The Cedars Phase I CC&Rs regulating the use and enjoyment of trails. There is no evidence that The Cedars Phase II subdivision plat was intended to adopt and incorporate all of The Cedars Phase I CC&Rs.

CP at 257.

C. LUPA PETITION

Avolio filed a petition under the Land Use Petition Act (LUPA), ch. 36.70C RCW, in the superior court challenging the hearing examiner's final order. Neither Baker, DeArmond, nor Merko joined in this petition. In his petition, Avolio alleged that the City and the hearing examiner erred by concluding that CG's application met all requirements of a plat alteration under RCW 58.17.215. The superior court entered a judgment affirming the hearing examiner's decision. The superior court agreed that the hearing examiner correctly found that the CCRs were not applicable to Phase II and therefore CG's proposed subdivision would not constitute a violation of the same. No party appealed the superior court's ruling.

III. DECLARATORY JUDGMENT ACTION AND SUMMARY JUDGMENT

Some months later, the original four parties sued in superior court. This time, the parties sought a declaratory judgment that the CCRs prohibit "re-subdivision" of any lots in The Cedars, including CG's. CP at 6. They also asked the superior court to permanently enjoin CG and its successors from further subdividing its property. In response, CG moved for summary judgment. The appellants then moved for cross summary judgment.

The superior court granted summary judgment in CG's favor. The superior court dismissed the complaint with prejudice, ruling that the doctrines of res judicata and collateral estoppel precluded Avolio from bringing a subsequent action and that the remaining three parties were collaterally estopped from doing so. The appellants appeal the dismissal order.

ANALYSIS

I. STANDARD OF REVIEW —SUMMARY JUDGMENT

We review summary judgment orders de novo and view the facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). Superior courts properly grant summary judgment where the pleadings and affidavits show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

II. COLLATERAL ESTOPPEL

The appellants argue on several grounds that the doctrine of collateral estoppel should not preclude their subsequent declaratory judgment action. We reject their claims. [3]

A. STANDARD OF REVIEW AND RULES OF LAW: COLLATERAL ESTOPPEL

*4 We review de novo whether collateral estoppel applies to bar relitigation of an issue. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004). The doctrine of collateral estoppel prevents the endless relitigation of issues already litigated by the parties and decided by a competent tribunal. *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). "Collateral estoppel promotes judicial economy and prevents inconvenience, and even harassment, of parties." *Reninger*, 134 Wn.2d at 449.

Collateral estoppel, or issue preclusion, bars relitigation of the same issue in a subsequent action when that issue

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has been litigated and necessarily and finally determined in the earlier proceeding. *Christensen*, 152 Wn.2d at 306–07. The inquiry focuses on whether "the party against whom the doctrine is asserted ... had a full and fair opportunity to litigate the issue in the earlier proceeding." *Christensen*, 152 Wn.2d at 307. Collateral estoppel is distinguished from claim preclusion " 'in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of *issues* between the parties, even though a different claim or cause of action is asserted.' " *Christensen*, 152 Wn.2d at 306 (internal quotation marks omitted) (quoting *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983)).

The party seeking the doctrine's application must show that "(1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied." *Christensen*, 152 Wn.2d at 307.

B. COLLATERAL ESTOPPEL AS APPLIED TO ADMINISTRATIVE DECISIONS

Initially, Avolio contends that his declaratory judgment action should not be precluded by collateral estoppel because the hearing examiner did not make a "factual decision" while acting within its "competence." Br. of Appellant at 10. This requirement applies when determining whether an administrative ruling should be given collateral estoppel effect. *Reninger*, 134 Wn.2d at 450. The competence requirement does not apply to our determination of whether the superior court's decision estops Avolio from bringing the declaratory judgment action. And we hold that the hearing examiner made a factual determination within its competence so that the hearing examiner's decision may preclude Baker, DeArmond, and Merko from joining in the declaratory judgment action.

1. COMPETENCE REQUIREMENT

The requirement that a hearing examiner make a factual determination within its competence before the hearing examiner's ruling can collaterally estop a party is at issue when courts are asked to determine whether to apply only collateral estoppel to the findings of an administrative body. When faced with that question, our courts have employed three additional criteria: (1) whether the agency acting within its competence made a factual decision, (2) agency and court procedural differences, and (3) policy considerations. *Reninger*, 134 Wn.2d at 450 (quoting *Stevedoring Servs. of Am., Inc. v. Eggert*, 129 Wn.2d 17, 40, 914 P.2d 737 (1996)).

2. AVOLIO

***5** In each case that the appellants cite to support their assertion that the "competence" requirement should apply, the parties either opted not to appeal to the superior court following an administrative body's decision or sought to appeal the administrative decision but failed to follow the necessary procedure. *See Reninger*, 134 Wn.2d at 440, 442 n.1 (parties attempted to appeal a state Personnel Appeals Board determination but failed to file timely notice of appeal); *Stevedoring Servs. of Am., Inc.*, 129 Wn.2d at 21 (neither party appealed administrative law judge order); *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987) (party initially appealed Civil Service Commission decision to superior court, but voluntarily dismissed).

These cases all stand for the proposition that these additional criteria are considered where the immediately prior adjudication took place before only an administrative body. But relevant to Avolio, the prior adjudication at issue was before the superior court, not the hearing examiner. Avolio appealed the hearing examiner's decision to the superior court, and the superior court affirmed. The adjudication that occurred immediately prior to Avolio's filing of the declaratory judgment action was not before an administrative body but instead was before the superior court. Accordingly, we conclude it is the superior court's decision, and not the administrative decision, that is relevant to determine whether collateral estoppel bars Avolio from bringing the declaratory judgment action. Thus, we hold that whether the hearing examiner made a factual determination while acting within its competence is immaterial to our holding relating to Avolio.

2. BAKER, DEARMOND, AND MARKO

The appellants raise the hearing examiner's "competence" to decide the issues involved as part of CG's original

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subdivision application.[4] The appellants appear to assert that the hearing examiner had no authority to make certain findings regarding the CCRs because it "lacks competence to resolve issues of law inherent in covenant interpretation and enforcement." Br. of Appellant at 11. Therefore, according to the appellants, the hearing examiner's decision should have no preclusive effect. We reject the appellants' contentions.

The authority to grant or deny an application for subdivision alteration includes a determination of whether the CCRs applied to the property.

RCW 58.17.215 provides,

> When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

***6** Importantly, RCW 58.17.217 states that any hearing required by RCW 58.17.215 may be administered by a hearing examiner as provided in RCW 58.17.330.[5] At the local level, the Battle Ground municipal code (BMC) sets forth its own guidelines regarding what subjects and what kinds of matters a hearing examiner may decide. These include all "Type III" land use actions that are site specific. BMC 17.200.040. Subdivision applications and plat alterations are considered "Type III" applications. BMC 17.200.035. In the procedure it describes for the alteration of approved subdivisions, the BMC specifies that where a public hearing is requested or required for an alteration proposal, the application shall be referred to the hearing examiner for consideration. BMC 16.135.020.

Having reviewed this authority, both state and local law may confer the authority to decide matters of this nature to hearing examiners in some instances. This is one such instance. The argument that the hearing examiner here did not have the authority to determine matters specifically related to the application of the CCRs is unavailing for at least two reasons.

First, to the extent that the appellants aver that the hearing examiner here could not "interpret or enforce" CCRs, this argument fails because the hearing examiner did neither. Br. of Appellant at 30. Instead, he found that the CCRs did not apply to Phase II and, therefore, the procedural requirements of RCW 58.17.215 had been satisfied. Second, even if the hearing examiner's determination under RCW 58.17.215 could be considered "interpretation" of a covenant, it would be illogical to conclude that a hearing examiner may deny or approve applications for subdivision alterations under RCW 58.17.215 without considering the very submission criteria that the statute requires. We hold that the hearing examiner was within its authority to consider whether the CCRs applied as part of its decision to approve CG's application.

We reject the appellants' arguments that the hearing examiner lacked competence to decide the issues in appellants' subdivision application and hold that the hearing examiner's decision may preclude Baker, DeArmond, and Marko from bringing the declaratory judgment action. Accordingly, we turn to the application of collateral estoppel's four factors to Avolio, Baker, DeArmond, and Marko.

C. COLLATERAL ESTOPPEL'S FOUR FACTORS

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First, collateral estoppel applies only if the issue decided in the earlier proceedings is identical to the issue presented in the later proceeding and "necessarily ... determined." *Christensen*, 152 Wn.2d at 307. Here, the issue before the superior court in the LUPA petition and before the hearing examiner was whether CG should be prohibited from further subdividing its lots by operation of the CCRs. In their subsequent declaratory judgment action, the appellants again asked the superior court to declare that the CCRs preclude "re-subdivid[ing]" CG's lots and permanently enjoin them from doing so. CP at 6. The issue was again whether the CCRs impeded CG's proposed subdivision. The issue was the same in the LUPA action and before the hearing examiner as in the declaratory judgment action.

Further, appellants argue that the superior court apparently made superfluous findings such that the issue was not "necessarily ... determined." Br. of Appellant at 9 (quoting *Christensen*, 152 Wn.2d at 307). This argument is unavailing. RCW 58.17.215 requires that any person seeking an alteration of any subdivision shall submit an application along with the signatures of the majority of owners of property subject to the proposed alteration. And if the subdivision is subject to restrictive covenants, then the application shall contain an agreement signed by all parties subject to the covenants that the parties agree to terminate or alter the relevant covenants. RCW 58.17.215. The superior court agreed that the hearing examiner correctly found that the CCRs were not applicable to Phase II and therefore CG's proposed subdivision would not constitute a violation of the same. The superior court made findings to satisfy RCW 58.17.215's requirements, and thus the superior court's findings were necessary to its decision.

*7 Second, the prior proceeding must end with a judgment on the merits. *Christensen*, 152 Wn.2d at 307. There can be little doubt this factor is established under the circumstances. The hearing examiner rendered a final decision, which neither Baker, DeArmond, nor Marko appealed. And the superior court affirmed the hearing examiner's decision in a final order, which no party appealed.

Third, the parties against whom collateral estoppel is asserted must have been parties to, or in privity with a party to, the earlier proceeding. *Christensen*, 152 Wn.2d at 307. Here, Avolio was a party to the appeal, and each appellant was also a party to the administrative proceeding before the hearing examiner. Avolio, Merko, and DeArmond hired an attorney to represent them before the hearing examiner. Through their attorney, they submitted letters outlining their position before the hearing took place, and the attorney testified on their behalf. Baker, DeArmond, and Merko submitted e-mails or letters expressly requesting to be parties of record and to be notified of decisions and appeal rights relating to CG's application. Avolio then filed the LUPA petition in the superior court. The third factor is established.

Fourth, application of collateral estoppel may not work an injustice on a party against whom it is applied. *Christensen*, 152 Wn.2d at 307. The party must have had a full and fair opportunity to litigate an issue before collateral estoppel will apply. *Christensen*, 152 Wn.2d at 307. The injustice component is regularly concerned with procedural, not substantive, irregularity. *Christensen*, 152 Wn.2d at 309. Injustice can arise when the disparity of relief is so great that a party would be unlikely to have vigorously litigated the crucial issues in the first forum such that it would be unfair to preclude relitigation of the issues in a second forum. *Reninger*, 134 Wn.2d at 453.

Here, the appellants had a full and fair opportunity to litigate the issue before the hearing examiner and on appeal to the superior court and, importantly, they were represented by counsel. Procedurally, collateral estoppel here does not work an injustice. Appellants claim that collateral estoppel works an injustice based on "disparity of relief." Br. of Appellant at 24. However, there is no such disparity of relief despite the appellants' suggestion otherwise. The relief would have been identical had the appellants succeeded before the hearing examiner, in the superior court LUPA petition, or in the superior court declaratory judgment action. The relief sought was a prohibition on CG's ability to subdivide their properties in one of two ways. Either the hearing examiner would have declined to approve CG's application (or the superior court would have reversed and vacated the approval) in the first proceeding or the superior court would have enjoined CG from doing so in the later proceeding. The appellants did not request damages or any form of relief otherwise.

For the foregoing reasons, we hold that the doctrine of collateral estoppel bars the appellants from bringing a subsequent claim to relitigate issues previously

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determined. Therefore, the superior court properly granted summary judgment.

D. PUBLIC POLICY CONSIDERATIONS

Avolio contends that public policy considerations should also compel this court to hold that collateral estoppel does not apply on the facts of this case. Again, we reject this argument.

***8** The appellants' argument in this respect is twofold. First, they again raise the notion of "disparity in relief." Br. of Appellant at 25. However, any relief would have been identical. The appellants have made no showing that any disparity of requested relief should preclude the application of collateral estoppel to their subsequent complaint.

Second, they argue that policy considerations should prohibit the application of collateral estoppel because if collateral estoppel applies, parties who oppose local land use applications would be required to forgo certain rights and forced to make an unfair choice of remedies.

This second argument is equally unpersuasive—that would not be the effect of our holding even if we agree with CG. We do not hold that participating in a public hearing before a hearing examiner means that no future lawsuit could be filed to challenge either that decision itself or any subsequent alteration of the status quo as it pertains to a land use decision. Rather, we hold that a party who either declines to challenge a hearing examiner's final order or who challenges a hearing examiner's decision by way of a LUPA petition and then declines to exhaust its right to appeal beyond the superior court may not then bring an entirely separate suit seeking a second determination of the same rights and remedies at issue during the earlier proceeding. This entirely follows the recognized policies underlying collateral estoppel.

The appellants appear to assert that it is unfair to require a party who wishes to challenge a land use decision to do so by seeking an administrative remedy only, rather than to have the choice to proceed by filing other causes of action in superior court. But such an argument must also fail because LUPA grants superior courts exclusive jurisdiction for challenges to land use decisions in Washington. RCW 36.70C.030(1)(a)(ii). We decline to hold that public policy mandates that collateral estoppel not be applied to this case. [6]

III. ATTORNEY FEES

CG argues that it is entitled to attorney fees on appeal under both RCW 4.84.370(1) and RAP 18.9. We disagree.

RCW 4.84.370(1) provides,

> [R]easonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision.

RAP 18.9(a) authorizes an appellate court, on its own initiative or on motion of a party, to order a party or counsel who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." Such compensatory damages may include attorney fees. *Kinney v. Cook*, 150 Wn. App. 187, 195, 208 P.3d 1 (2009) (quoting *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008)).

***9** We decline to award attorney fees under either of the cited provisions. First, we decline to award fees under RCW 4.84.370(1) because this is not an appeal from a land use decision. And although the appellants' arguments are unpersuasive, their appeal is not one that presents no debatable issues upon which reasonable minds might differ or that is so devoid of merit that there was no possibility of reversal. *Kinney*, 150 Wn. App. at 195 (quoting *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007)). We decline to award fees on the basis of RAP 18.9.

We affirm the superior court's summary judgment ruling.

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

BJORGEN, C.J.

MAXA, J.

All Citations

Not Reported in P.3d, 2016 WL 6708089

We concur:

Footnotes

1 We refer to the plaintiffs/appellants collectively as "appellants" for clarity because the names of each individual are important at various stages in the analysis.

2 Although the appellants sought both a declaratory judgment and injunctive relief, we frequently refer to the second lawsuit as "the declaratory judgment action" for ease of reference.

3 We do not reach CG's jurisdictional argument because CG did not raise it before the trial court, and because we affirm the trial court on the basis of collateral estoppel, we need not reach it.

4 The appellants also contend that their declaratory judgment action should not be barred because part of the hearing examiner's decision was surplusage. They argue that because this surplusage was not material to the controversy it does not become res judicata. *See Luisi Truck Lines, Inc. v. Wash. Utils. & Transp. Comm'n*, 72 Wn.2d 887, 894, 435 P.2d 654 (1967). In particular, the appellants rely on the hearing examiner's statement that CG's proposed subdivision was "not a 'plat alteration' subject to RCW 58.17.215." CP at 54. The appellants contend that if further subdivision is not a plat alteration under the statute, the hearing examiner did not need to further interpret the CCRs. Although the appellants are correct that there is such a rule, the hearing examiner clearly made a scrivener's error. Elsewhere in its findings, the hearing examiner stated specifically that the plat alteration application complies with RCW 58.17.215.

5 RCW 58.17.330 simply explains the procedures required of the hearing examiner system, including that the decision be in writing and that there be findings and conclusions based on the record to support the decision.

6 Each party also raises issues pertaining to their respective motions for summary judgment and the merits of the underlying claims. For instance, the appellants contend that the CCRs are unambiguous in that they clearly apply to all property within The Cedars. We decline to address these issues. First, we need not address these matters because we hold that the superior court properly dismissed this action. Second, the superior court made no ruling regarding these issues. Third, the record is insufficiently developed to address the merits even if we felt compelled to do so.

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West's Revised Code of Washington Annotated
Title 2. Courts of Record (Refs & Annos)
Chapter 2.08. Superior Courts (Refs & Annos)

West's RCWA 2.08.010

2.08.010. Original jurisdiction

Currentness

The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days.

Credits
[1955 c 38 § 3; 1890 p 342 § 5; RRS § 15.]

West's RCWA 2.08.010, WA ST 2.08.010
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 36. Counties (Refs & Annos)
Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

West's RCWA 36.70A.070

36.70A.070. Comprehensive plans--Mandatory elements

Effective: September 1, 2016
Currentness

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

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(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

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(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

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(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

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(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Credits

[2015 c 241 § 2, eff. Sept. 1, 2016; 2010 1st sp.s. c 26 § 6, eff. July 13, 2010; 2005 c 360 § 2, eff. July 24, 2005; (2005 c 477 § 1 expired August 31, 2005); 2004 c 196 § 1, eff. June 10, 2004; 2003 c 152 § 1, eff. July 27, 2003. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

West's RCWA 36.70A.070, WA ST 36.70A.070

The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 36. Counties (Refs & Annos)
Chapter 36.70A. Growth Management--Planning by Selected Counties and Cities (Refs & Annos)

West's RCWA 36.70A.110

36.70A.110. Comprehensive plans--Urban growth areas

Effective: July 1, 2010
Currentness

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

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(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and under this section. Such action may be appealed to the growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

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(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

Credits

[2010 c 211 § 1, eff. July 1, 2010. Prior: 2009 c 342 § 1, eff. July 26, 2009; 2009 c 121 § 1, eff. July 26, 2009; 2004 c 206 § 1, eff. June 10, 2004; 2003 c 299 § 5, eff. July 27, 2003; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

West's RCWA 36.70A.110, WA ST 36.70A.110

The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

West's Revised Code of Washington Annotated
Title 36. Counties (Refs & Annos)
Chapter 36.70C. Judicial Review of Land Use Decisions (Refs & Annos)

West's RCWA 36.70C.010

36.70C.010. Purpose

Currentness

The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.

Credits
[1995 c 347 § 702.]

West's RCWA 36.70C.010, WA ST 36.70C.010
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 36. Counties (Refs & Annos)
Chapter 36.70C. Judicial Review of Land Use Decisions (Refs & Annos)

West's RCWA 36.70C.040

36.70C.040. Commencement of review--Land use petition--Procedure

Currentness

(1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

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(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first-class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury.

Credits
[1995 c 347 § 705.]

West's RCWA 36.70C.040, WA ST 36.70C.040
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

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West's Revised Code of Washington Annotated
Title 58. Boundaries and Plats (Refs & Annos)
Chapter 58.17. Plats--Subdivisions--Dedications (Refs & Annos)

West's RCWA 58.17.110

58.17.110. Approval or disapproval of subdivision and dedication--Factors to be considered--Conditions for approval--Finding--Release from damages

Currentness

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The legislative body shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

(3) If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city, town, or county legislative body must adopt the designated name.

Credits

[1995 c 32 § 3; 1990 1st ex.s. c 17 § 52; 1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

West's RCWA 58.17.110, WA ST 58.17.110
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

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West's Revised Code of Washington Annotated
Title 58. Boundaries and Plats (Refs & Annos)
Chapter 58.17. Plats--Subdivisions--Dedications (Refs & Annos)

West's RCWA 58.17.215

58.17.215. Alteration of subdivision--Procedure

Currentness

When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands.

Credits
[1987 c 354 § 4.]

West's RCWA 58.17.215, WA ST 58.17.215
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

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2.10.080Powers.

A. Except as provided for in subsection B of this section, the examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter final decisions, subject to application, notice, public hearing and appeal procedures of BGMC 17.102, on the following matters:

1. Hearing and reporting on any proposal to amend a zoning ordinance or comprehensive plan map amendment proposals to change the land use and implementing zoning designation of specific parcels of land, including such annual reviews which are applied for and are not of general applicability;

2. Revisions or rescissions of agreements concomitant to rezones;

3. Preliminary subdivision plat applications;

4. The authority herein to decide variances in lieu of provisions for boards of adjustment under RCW 35A.63.110;

5. All other applications for permits or approvals, including appeals, under Titles 16, 17and 18of this code which call for an appeal of an administrative decision or a hearing on a quasi-judicial decision.

B. Notwithstanding the provisions of subsection A of this section, the following matters shall be heard by the planning commission:

1. Rezone applications initiated by the city to implement a newly adopted or amended comprehensive land use plan which is of general applicability, until such time as the comprehensive plan designations and implementing zoning function are separated, and;

2. All legislative amendments to the development code (Titles 16, 17and 18). (Ord. 98-020 § 1(A) (part), 1998: Ord. 98-019 § 1(A) (part), 1998)

2.10.090Continuances.

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