Supreme Court No. 93933-1

SUPREME COURT

OF THE STATE OF WASHINGTON

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

petitioners,

v.

CEDARS GOLF, LLC,

respondent.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Federal Cases

Washington Statutes

Washington Constitution

Battle Ground Municipal Code

FACTUAL CORRECTIONS

Respondent Cedars Golf alleges, albeit under guise of argument, that "no constitutional issues have been previously raised at any level." *Answer to Petition* at 9. To the contrary, **separation of powers** was argued at every level, including the **Superior Court** as follows:

> [K]nowledge, skills, expertise, and experience in land use law . . . does not qualify the examiner to interpret and enforce restrictive covenants. Shackling courts to administrative determinations on issues common to land use proceedings would result not merely in unlawful delegation of Superior Court's power and original jurisdiction, but violation of the separation of powers doctrine.

CP 193, ln. 1-12; citing RCW 2.08.010; WA. Const., art. IV, §4; BGMC 2.10.040 (Ord. 98-020 §1(A) (part), 1998: Ord. 98-019 §1(A) (part), 1998).

Separation of powers was also argued before the **Court of Appeals**:

> We acknowledge that *Haslund* antedated LUPA; however, LUPA cannot violate the separation of powers doctrine by interfering with the Superior Court's power and original jurisdiction under RCW 2.08.010.

Brief of Appellants at 12; citing WA. Const., art. IV, §4.

> Appellants' briefing in the present action discloses arguments not raised in the land use proceeding concerning administrative competence, Superior Court jurisdiction, separation of powers, impairment of contractual relationships, collateral estoppel and *res judicata*.

Reply Brief of Appellants at 9. "Washington's constitution does not contain a formal separation of powers clause, but Washington courts have presumed its vitality throughout our state history from the division of our state government into three separate branches." *State v. Ramos*, 149 Wash.App. 266, 270, 202 P.3d 383 (2009).

Impairment of contract was argued before the **Court of Appeals** as follows:

> If, on the other hand, the *Subdivision Act* does authorize hearing examiners to determine that restrictive covenants are unenforceable, then it "operated as a substantial impairment of a contractual relationship," in violation of constitutional prohibitions. *Estate of Hambleton*, 181 Wash.2d 802, 830-31, 335 P.3d 398 (2014), *certiorari denied*, 136 S. Ct. 318 (2015); citing U.S. Const. art. I, §23; U.S. Const. art I. §10, cl. 1. The impaired relationship is clearly contractual; and the examiner's interpretation alters terms, imposes new conditions for enforcement, and lessens the value of the restrictive covenant. The impairment is substantial for persons living in The Cedars, such as the appellants, who relied 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*.

Brief of Appellant at 18-19.

Procedural due process was argued before **Superior Court**:

> In *Shoemaker*, the lack of procedural rules governing administrative hearing was satisfied by default to the governing statute:

> Where a city has not adopted an ordinance accomplishing the purposes of RCW 41.12, the statute itself controls. . . . This court has held that the procedural protections provided for in that chapter do meet due process.

Brief of Appellants at 12; citing *Shoemaker v. Bremerton*, 109 Wash.2d 504, 510-11, 745 P.2d 858 (1987); and *Vancouver v. Jarvis*, 76 Wash.2d 110, 115, 455 P.2d 591 (1969). Appellants' brief went on to discuss, by analogy, the lack of procedural protections under RCW 58.17.215 and local ordinance.

Moreover, "manifest error affecting a constitutional right may be raised for the first time on appeal:

> RAP 2.5(a) . . . provides that a party may raise a claim of "manifest error affecting a constitutional right" for the first time in the appellate court. It is consistent with RAP 2.5(a) for a party to raise the issue of denial of procedural due process in a civil case at the appellate level for the first time.

Conner v. Universal Utilities, 105 Wash.2d 168, 171, 712 P.2d 849 (1986); citing *Esmieu v. Schrag*, 88 Wash.2d 490, 497, 563 P.2d 203 (1977). See also, *Ramos*, 149 Wash.App. at 270 n. 2 (appellant may raise separation of powers for first time on appeal); *State v. Aguirre*, 73 Wash.App. 682, 687, 871 P.2d 616 (1994) ("appellate courts have an obligation to correct manifest constitutional error"); *State v. David*, 134 Wash.App. 470, 478-79, 141 P.3d 646 (2006), *review denied*, 160 Wash.2d 1012 (2007).

REPLY TO RESPONDENT'S "CONTINGENT CLAIMS"

Respondent attempts to preserve "claims made before the Court of Appeals," including attorney fees under RCW 4.84.370. *Answer to Petition* at 20-21. The Court of Appeals denied attorney fees because the present action "is not an appeal from a land use decision," nor "so devoid of merit that there was no possibility of reversal." *Avolio*, 48016-6-II, 2016 WL 6708089 at 9. Rules governing appellate procedure require "a concise statement of the issues presented for review," and answering parties must raise "in an answer" any issues not raised in the petition. RAP 13.4(c)(5) and (d). "This [C]ourt has required that the petition for review state the issues with specificity." *State v. Collins*, 121 Wash.2d 168, 178, 847 P.2d 919 (1993); citing *Clam Shacks of America v. Skagit County,* 109 Wash.2d 91, 98, 743 P.2d 265 (1987).

Rules of Appeal further provide that "the Supreme Court will review only the questions raised in . . . the petition for review and the answer, unless the Supreme Court orders otherwise upon the granting of the . . . petition." RAP 13.7(b). Respondent's statement of "issues presented for review" fails to mention the "contingent claims," *Answer to Petition* at 8; hence, the Court should reject respondent's requested "preservation" of issues.

LUPA Jurisdiction versus General Jurisdiction

Nonetheless, we reply to respondent's "contingent claims" in case the Court should consider them. Respondent argues that "[t]he sole jurisdiction for petitioners' claim is under LUPA, . . . thus the courts lack jurisdiction to hear the petitioner's claim for declaratory relief." *Answer to Petition* at 20-21. Respondent cannot intend that the City of Battle Ground has jurisdiction to interpret and enforce restrictive covenants; to the contrary, "Superior Courts have original jurisdiction in all cases . . . which involve the title or possession of real property." WA Const. art. IV, §6; RCW 2.08.010. "This original jurisdiction includes contract claims." *Outsource Services Management v. Nooksack*, 181 Wash.2d 272, 276, 333 P.3d 380 (2014).

A conflict lingers between Divisions II and III as to whether restrictive covenants affect title to real property. *Foster v. Nehls*, 15 Wash.App. 749, 753, 551 P.2d 768 (1976), *review denied* 88 Wash.2d 1001 (1977) ("The present action is to enforce a restrictive covenant, which has no effect on title, thus a lis pendens is unnecessary.") But see *Schwab v. Seattle*, 64 Wash.App. 742, 750, 826 P.2d 1089 (1992) ("Division III of this Court has determined that an action to enforce the terms of a restrictive covenant does not affect title to real property. . . . We decline to follow it.")

Superior Courts have original jurisdiction to render declaratory judgments, and to construe or determine the validity of instruments, contracts and franchises. RCW 7.24.010, 020. Superior Courts have original jurisdiction to grant injunctions. WA Const. art. IV, §6; RCW 2.08.010. The present case seeks interpretation and enforcement of a restrictive covenant, including declaratory judgment and a permanent injunction.

In attempt to give respondent's argument a sympathetic reading, we suggest that it refers to the doctrine of primary jurisdiction, which functions "to guide a court in determining whether it should refrain from exercising its jurisdiction until an administrative agency with special competence has resolved an issue arising in the proceeding before the court." *Real Estate Brokerage Antitrust Litigation*, 95 Wash.2d 297, 301, 622 P.2d 1185 (1980). As further noted by the Court, the doctrine does not decide final jurisdiction, but whether an agency will initially decide the issue. *Id.* "[J]udicial deference called for in the rule of primary jurisdiction requires that:

> (1) The administrative agency has the authority to resolve the issues that would be referred to it by the court. . . .;
>
> (2) The agency must have special competence over all or some part of the controversy which renders the agency better able than the court to resolve the issues . . .; and

> (3) The claim before the court must involve issues that fall within the scope of a pervasive regulatory scheme so that a danger exists that judicial action would conflict with the regulatory scheme.

Real Estate Brokerage, 95 Wash.2d at 302-03. In *Real Estate Brokerage*, powers delegated under Chapter 18.85 RCW to regulate licensing of real estate brokers did not confer competence to resolve antitrust issues. *Id.* In the present case, RCW 58.17.215 delegates authority to determine whether subdivisions are subject to restrictive covenants that would be violated by proposed plat alterations. Such delegation does not confer competence to determine whether covenants are enforceable by, and against, particular parties, nor grant the relief of declaratory judgment and injunction. "The subject matter of a suit, when reference is made to questions of jurisdiction, means the nature of the cause of action, and the relief sought." *Silver Surprize v. Sunshine Mining*, 74 Wash.2d 519, 522, 445 P.2d 334 (1968).

The City does not possess special competence to determine the enforceability of restrictive covenants. To the contrary, agency competence "is limited to an administrative proceeding to determine whether or not a particular piece of property is subject to a . . . land ordinance." *Chaussee v. Snohomish County*, 38 Wash.App. 630, 638, 689 P.2d 1084, 1091 (1984).

As in *Real Estate Brokerage*, "the standards to be applied . . . are within the conventional competence of the courts and the judgment of the agencies is not likely to be helpful in the application of these standards . . ." *Real Estate Brokerage*, 95 Wash.2d at 304.

Finally, claims seeking interpretation and enforcement of restrictive covenants do not fall within a pervasive regulatory scheme intended "to regulate the subdivision of land and to promote the public health, safety and general welfare." RCW 58.17.010. This conclusion is supported by the lack of authority to grant declaratory judgment and injunctive relief. "[A]n administrative agency should not be accorded primary jurisdiction if the agency is powerless to grant the relief requested." *Id.*

A decision to enforce the covenant will not conflict with regulation of subdivisions any more than the myriad of collateral requirements that developers must satisfy. Wetlands impacts are regulated under the *Clean Water Act* and local ordinance. *Rapanos v. United States*, 547 U.S. 715, 742, 126 S. Ct. 2208, 2226, 165 L. Ed. 2d 159 (2006), citing 33 U.S.C. §1344; Chapter 18.270 Battle Ground Municipal Code (BGMC). Proximity to shorelines is prohibited. Chapter 90.58 RCW; and Chapter 18.320 BGMC. Transportation impacts limit the number of units. Chapter 12.116 BGMC.

Geologic hazards constrain design. Chapter 18.300 BGMC. Stormwater regulations limit the creation of impermeable surfaces. Chapter 18.250 BGMC.

In addition, the owners of subdivided property are required to sign a certification of consent under RCW 58.17.165; hence, they must actually own the entire property. Depending upon how the Court resolves the issue of whether restrictive covenants affect title, *supra*, covenant rights are merely another stick in the bundle of rights that defines real property. *Pope Resources v. DNR*, 47861-7-II, 2016 WL 7449399, at 4 (2016). There is no significant difference between proof of ownership and evidence that such ownership includes the right to subdivide at proposed densities.

Based upon the foregoing analysis, the holding of Division II in the present case, *Avolio v. Cedars Golf*, 48016-6-II, 2016 WL 6708089, conflicts with this Court's decision in *Real Estate Brokerage Antitrust Litigation*, 95 Wash.2d 297, 622 P.2d 1185 (1980).

Respondent argues that "[t]he claim for declaratory relief is not consistent with LUPA timing and filing requirements." *Answer to Petition* at 20-21. This argument would appear to apply LUPA procedures to any collateral proceeding after a LUPA petition has been filed. Such a rule would

conflict with the decision in *Halverson v. Bellevue*, that once the City of Bellevue was put on notice of an adverse possession claim, approval of a subdivision plat was improper. *Halverson v. Bellevue*, 41 Wash.App. 457, 460, 704 P.2d 1232 (1985); citing RCW 58.17.170. Bellevue determined, under RCW 58.17.165, that all parties having an ownership interest in the proposed subdivision had duly signed a certificate of consent. *Halverson*, 41 Wash.App. at 459. However, this determination did not preclude the court from invalidating the recorded plat because the adverse claimant was an owner who had not signed the certification. Title claims could not be resolved outside of Superior Court; hence, the administrative decision constituted error. By extension, a determination that all owners have signed the certificate would not preclude actions to quiet title between owners, or to determine separate property in a divorce. Although staff are authorized to render determinations of compliance with RCW 58.17.165, they lack competence to resolve title issues, and the administrative judgment should not be preclusive upon the court. Likewise, staff are authorized to determine compliance with RCW 58.17.215, but lack competence to decide whether a restrictive covenant is enforceable by and against particular parties; hence, the administrative decision should not be preclusive.

Attorney Fees

Cedars Golf attempts to "reserve" claims for attorney fees under RCW 4.84.370, or in equity. *Answer to Petition* at 21. Cedars Golf fails to identify the issue previously adjudicated; however, the record reveals no cause of action seeking enforcement of the covenant joined with the LUPA appeal. Hence, Superior Court jurisdiction was limited by statute:

> 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 RCW 36.70C.010, .040(1).

Moreover, the petitioners do not seek reversal of a "land use decision." In *Brotherton v. Jefferson County*, the plaintiff sought *reversal* of a "final determination on the enforcement of ordinances regulating the use of real property;" hence, "requested relief demonstrate[d] that they [were] ultimately challenging the County's land use decision." *Brotherton v. Jefferson County*, 160 Wash.App. 699, 704-05, 249 P.3d 666 (2011). The present case does not challenge the examiner decision; rather, petitioners seek "[j]udgment permanently enjoining the defendant and its successors or

assigns from re-subdividing Lots 1 and 8." *CP 6*, ln. 5-6. Unlike reversal of the hearing examiner's decision, a permanent injunction would foreclose *any* further division of respondent's property regardless of whether the present subdivision is completed or abandoned.

Cedars Golf confuses *reversal* with enforcement of the 1973 Declaration. Just as the developer in *Halverson* had to possess signatures evidencing authority to subdivide, Cedars Golf must possess authority to proceed with the approved subdivision. The hearing examiner could not confer that authority any more than he could enforce the covenant because neither act is a land use decision as defined in RCW 36.70C.020(2). Land use regulations and private covenants are separate sources of authority.

"[P]arties are entitled to attorney fees [under RCW 4.84.370] only if a county, city, or town's decision is rendered in their favor and at least two courts affirm that decision." *Habitat Watch v. Skagit County*, 155 Wash.2d 397, 413, 120 P.3d 56 (2005). In the present case, the land use decision was not within the Superior Court's jurisdiction any more than covenant enforcement was within examiner competence in the LUPA proceeding. Only one court has affirmed the decision of the Battle Ground hearing examiner; hence, statutory prerequisites for attorney fees remain unsatisfied.

The Supreme Court in *Habitat Watch* held "that even illegal decisions must be challenged in an appropriate manner." *Habitat Watch*, 155 Wash.2d at 413. The present case does not *challenge* the examiner's decision; legal or not, regulatory approval remains final regardless of covenant enforcement. On appeal, Cedars Golf couched its argument in terms of the *result* that either regulation or covenant enforcement can stop "resubdivision." However, "affect upon the landowner" is not a criteria under RCW 4.84.370.

Neither does any equitable basis support attorney fees in the present case. "Washington courts traditionally follow the American rule in not awarding attorney fees as costs absent a contract, statute, or recognized equitable exception." *Seattle v. McCready*, 131 Wash.2d 266, 273-74, 931 P.2d 156 (1997). The Court recognized four exceptions to the American rule:

> (1) the common fund theory, . . .; (2) actions by a third person subjecting a party to litigation, . . .; (3) bad faith or misconduct of a party, . . .; and (4) dissolving wrongfully issued temporary injunctions or restraining orders.

McCready, 131 Wash.2d at; citing, *Miotke v. Spokane*, 101 Wash.2d 307, 338, 678 P.2d 803 (1984), abrogated on other grounds in *Blue Sky Advocates v. State*, 107 Wash.2d 112, 727 P.2d 644 (1986).

Only the third exception, bad faith, could possibly apply in the present case. The decision in *Miotke* noted that no award of fees for bad faith had been approved by this Court, and held that discharge of raw sewage into the Spokane River in violation of a sewage disposal permit, "although possibly exhibiting a lack of concern for the sensibilities of plaintiffs, does not rise to a level of bad faith which would distinguish it from other cases where plaintiffs' rights are infringed." *Miotke*, 101 Wash.2d at 338. This Court has held that the bad faith "exception does not apply [where] the trial court did not find any bad faith conduct." *Hsu Ying Li v. Tang*, 87 Wash.2d 796, 798, 557 P.2d 342 (1976). Likewise in the present case, there is no finding that petitioners acted in bad faith; hence, no exception to the American rule applies.

* * *

CONCLUSION

Respondent's statement of "contingent claims" does not satisfy appellate rules for raising issues in answer to the petition for review. RAP 13.4(d). The "contingent claims" were neither raised in the answer nor stated with specificity. Hence, the court should not consider claims which the respondent attempts to "preserve for review."

However, respondent's contingent claim regarding LUPA jurisdiction identifies a conflict between Divisions II and III regarding the issue of whether restrictive covenants affect title to real property. This conflict constitutes yet another basis to accept review of the appellate court decision.

Neither is the doctrine of primary jurisdiction of any help to the respondent because that doctrine requires agency authority, competence and a pervasive regulatory scheme, which are absent from the present case. However, if restrictive covenants are merely another stick in the bundle of rights that define title to real property, then this Court's holding in *Real Estate Brokerage Antitrust Litigation* conflicts with the appellate decision in the present case, another basis to accept review.

Respondent's claim for attorney fees must be denied based upon the unappealed Court of Appeals decision that the present action "is not an appeal from a land use decision," nor "so devoid of merit that there is no possibility of reversal;" and upon a lack of finding of bad faith.

RESPECTFULLY SUBMITTED this 30th day of January, 2017.

ERIKSON & ASSOCIATES, PLLC
Attorney for the petitioners

By: _____
Mark A. Erikson, WSBA #23106

CERTIFICATE OF SERVICE

#48016-6-II

I certify that on January 30, 2017, I caused a true and correct copy of this *Reply in Support of Petition for Discretionary Review* to be served on the following in the manner indicated below:

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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

A - 1

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.84. Costs (Refs & Annos)

West's RCWA 4.84.370

4.84.370. Appeal of land use decisions--Fees and costs

Currentness

(1) Notwithstanding any other provisions of this chapter, reasonable 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. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, or in a decision involving a substantial development permit under chapter 90.58 RCW, the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shoreline[s] hearings board; and

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.

Credits
[1995 c 347 § 718.]

West's RCWA 4.84.370, WA ST 4.84.370
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

A - 2

West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.24. Uniform Declaratory Judgments Act (Refs & Annos)

West's RCWA 7.24.010

7.24.010. Authority of courts to render

Currentness

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

Credits

[1937 c 14 § 1; 1935 c 113 § 1; RRS § 784-1.]

West's RCWA 7.24.010, WA ST 7.24.010
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

A - 3

West's Revised Code of Washington Annotated
Title 7. Special Proceedings and Actions (Refs & Annos)
Chapter 7.24. Uniform Declaratory Judgments Act (Refs & Annos)

West's RCWA 7.24.020

7.24.020. Rights and status under written instruments, statutes, ordinances

Currentness

A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Credits
[1935 c 113 § 2; RRS § 784-2.]

West's RCWA 7.24.020, WA ST 7.24.020
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.

End of Document

A - 5

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.020

36.70C.020. Definitions

Effective: June 10, 2010
Currentness

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

A - 6

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020.

Credits

[2010 c 59 § 1, eff. June 10, 2010; 2009 c 419 § 1, eff. July 26, 2009; 1995 c 347 § 703.]

West's RCWA 36.70C.020, WA ST 36.70C.020

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

End of Document

A - 7

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:

A - 98

(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.

End of Document

A - 9

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 58.17.010

58.17.010. Purpose

Currentness

The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description.

Credits
[1981 c 293 § 1; 1969 ex.s. c 271 § 1.]

West's RCWA 58.17.010, WA ST 58.17.010
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

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 58.17.165

58.17.165. Certificate giving description and statement of owners must accompany final plat--Dedication, certificate requirements if plat contains--Waiver

Currentness

Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

If the plat or short plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.

Every plat and short plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid.

Credits
[1981 c 293 § 9; 1969 ex.s. c 271 § 30.]

West's RCWA 58.17.165, WA ST 58.17.165
The statutes and Constitution are current with all laws from the 2016 Regular and First Special Sessions of the Washington legislature.

End of Document

A - 11

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 58.17.170

58.17.170. Written approval of subdivision--Original of final plat to be filed--Copies--Periods of validity, governance

Effective: July 28, 2013
Currentness

(1) When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance.

(2)(a) Except as provided by (b) of this subsection, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015.

(b) Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.

(3)(a) Except as provided by (b) of this subsection, a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of seven years after final plat approval if the date of final plat approval is on or before December 31, 2014, and for a period of five years after final plat approval if the date of final plat approval is on or after January 1, 2015, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of ten years after final plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

Credits

[2013 c 16 § 2, eff. July 28, 2013; 2012 c 92 § 2, eff. June 7, 2012; 2010 c 79 § 2, eff. June 10, 2010; 1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

A - 12

West's RCWA 58.17.170, WA ST 58.17.170
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 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.

End of Document

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 4. The Judiciary (Refs & Annos)

West's RCWA Const. Art. 4, § 4

§ 4. Jurisdiction

Currentness

The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars ($200) unless the action involves the legality of a tax, impost, assessment, tool, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

Credits
Adopted 1889.

West's RCWA Const. Art. 4, § 4, WA CONST Art. 4, § 4
Current through amendments approved 11-3-2015.

End of Document

West's Revised Code of Washington Annotated
Constitution of the State of Washington (Refs & Annos)
Article 4. The Judiciary (Refs & Annos)

West's RCWA Const. Art. 4, § 6

§ 6. Jurisdiction of Superior Courts

Currentness

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction 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 thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, 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. The superior court 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 said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. 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 and served on legal holidays and nonjudicial days.

Credits

Adopted 1889. Amended by Amendment 28 (Laws 1951, Sub. H.J.R. No. 13, p. 962, approved Nov. 4, 1952); Amendment 65 (Laws 1977, S.J.R. No. 113, approved Nov. 8, 1977); Amendment 87 (Laws 1993, H.J.R. No. 4201, approved Nov. 2, 1993).

West's RCWA Const. Art. 4, § 6, WA CONST Art. 4, § 6
Current through amendments approved 11-3-2015.

End of Document

2.10.040 Qualifications and appointments.

The examiner shall have demonstrated knowledge, skills, expertise and experience in matters of local and state land use law and its implementation, the Washington State Growth Management Act, and procedures for the conduct of administrative or quasi-judicial hearings on regulatory enactments. Examiners shall be appointed by the city manager solely with regard to their qualifications. Examiners shall hold no other elective or appointive office or position in county government. (Ord. 98-020 § 1(A) (part), 1998: Ord. 98-019 § 1(A) (part), 1998)

A - 17