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STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT NO. 98343-7

CAPE ST. MARY ASSOCIATES,

Petitioner,

v.

SAN JUAN COUNTY,

Respondent.

SAN JUAN COUNTY'S ANSWER TO CAPE ST. MARY
ASSOCIATES' PETITION FOR REVIEW

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I. INTRODUCTION

This is an appeal of well-established land use principles under Washington law. Petitioner requested an administrative determination from the Director of San Juan County Community Development. The Director issued the requested determination. Petitioner appealed to the San Juan County Hearing Examiner. The Hearing Examiner upheld the Administrative Decision. Petitioner appealed. Skagit County Superior Court and the Washington State Court of Appeals upheld the Hearing Examiner decision. This case presents no conflicting case law or novel issue of public concern. Petitioner now asks this Court to grant further review. Respondent San Juan County files this brief opposing the petition for review.

II. ISSUE PRESENTED FOR REVIEW

Respondent San Juan County concurs with the restated issue as presented by Respondents-Intervenors:

May a plat incorporate restrictions by reference to another document on the face of the plat?

Answer: Yes.

III. STATEMENT OF THE CASE

Cape St. Mary Plat

The plat of Cape St. Mary Estates was recorded in 1981. CP 42-45.

The face of the plat contains 15 enumerated “Restrictions”. *Id.* Underneath these 15 restrictions, the face of the plat states:

For further restrictions, see the Declarations of Covenants, Conditions, Easements, Liens and restrictions for Cape St. Mary Estates as recorded at Auditor’s File No. 117735, records of San Juan County, Washington.

Id. Section VIII of AFN 117735 is titled: “Miscellaneous Use Restrictions on the Cape Saint Mary Ranch Tract.” CP 93. Miscellaneous Use Restriction VIII(A)(1) states: “The Tract is to be used primarily for agricultural purposes.” *Id.*

Administrative Determination

San Juan County Code (SJCC) 18.10.030(B) provides that upon request the administrator may issue a determination regarding the administration of the county code. SJCC 18.10.030(D)(4) goes on to provide that a party appealing such an administrative determination has the burden of presenting the evidence necessary to prove to the hearing examiner that the administrator’s determination was clearly erroneous.

In this case, Petitioner submitted a seven-page “Request for Code Interpretation and Administrative Determination” pursuant to SJCC 18.10.030. CP 35-41. The Administrator, Planning Director Erika Shook, issued Administrative Determination PINT00 17-0001 on April 18, 2017. CP 27-34. The Administrative Determination addressed Petitioner’s two

questions as follows:

1. Are only your client's signatures required on an application to vacate the 88-acre Ranch Tract (Lot 30) from the Cape St. Mary's Estates plat (CSM) under San Juan County Code (SJCC) 18.70.080 and RCW 58.17.212?

Administrative Determination: An application to vacate the Ranch Tract from the CSM plat is subject to SJCC 18.70.080(B) and RCW 58.17.212. It requires an agreement signed by all parties subject to the covenants recorded in AF 117735. All parties must agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

2. Are only your client's signatures required on an application to subdivide the 88-acre Ranch Tract?

Administrative Determination: An application to subdivide the Ranch Tract is a plat alteration application. Pursuant to SJCC 18.70.080(A) and RCW 58.17.215, a plat alteration application must contain an agreement signed by all parties subject to the covenants recorded in AF 117735. The parties must agree to terminate or alter the relevant covenants to accomplish the purpose of the subdivision alteration or portion thereof.

CP 33.

Hearing Examiner Decision

Petitioner appealed the Administrative Determination. Following a two-day public hearing, the Hearing Examiner issued a detailed, 24-page, decision denying the appeal and affirming the Administrative Determination. CP 573-596. The Hearing Examiner concluded that the

Administrative Determination “is fully supported by substantial and credible evidence. [The Administrator’s] Administrative Determination was not a mistake. It was not clearly erroneous, but was instead a reasonable and accurate application of facts to the codes, plat conditions and legislative history at hand.” CP 595, Conclusion 1.

The Hearing Examiner found that the evidence showing that the Ranch Tract was included as part of the Cape St. Mary Plat in order to lower the density and impact of the subdivision, was far more than just substantial evidence and was unrebutted, credible, convincing and reliable. CP 583, Finding 25.

Petitioner filed an appeal in Skagit County Superior Court. Judge Stiles issued a letter decision affirming the Hearing Examiner’s decision and adopting the Hearing Examiner’s Findings and Conclusions. CP 597-598.

Court of Appeals Decision

The Court of Appeals, in an unpublished decision, affirmed, stating,

Because the Cape St. Mary plat unambiguously incorporated a restrictive covenant requiring that the Ranch Tract be used only for “primarily agricultural” purposes, RCW 58.17.212 requires that all the lot owners in the subdivision provide signatures showing their approval of any alteration proposal.

Decision at 1. Indeed, the Court of Appeals found the Hearing Examiner appropriately interpreted the unambiguous language on the face of the plat and concluded that restrictions on the face of the plat are not private

covenants; they are plat restrictions, which implicate the involvement of the County and trigger the signature requirements contained in RCW 58.17.212 and RCW 58.17.215. This decision is consistent with Washington law. This Court should deny further review.

IV. ARGUMENT

The Court of Appeals' decision is consistent with well-established Washington case law and does not involve issues of substantial public interest. Review should be denied in this case.

A. The Court of Appeals Correctly Applied the Holding in *Roeder*.

The Court of Appeals correctly applied *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d 269, 273, 714 P.2d 1170 (1986) for the principal that the intention of the dedicator controls. The Court held that the CC&R provision restricting the Ranch Tract primarily to agricultural uses is a plat restriction. Decision at 8-9. The Court goes on to state that “the hearing examiner did not err in deciding that the plat unambiguously included the Ranch Tract as a Lot 30 and incorporated a restriction limiting it to primarily agricultural use ‘instead of residential use.’” Decision at 9.

The Hearing Examiner specifically found that the intent was clear from the face of the plat:

The record for this appeal established that the restrictions noted on the face of the plat in this matter are not simply private covenants, but are also the means through which specific terms of approval

applicable to the Cape St. Mary Estates Plat were implemented and memorialized in the recorded instrument.

CP 590.

If a plat is ambiguous to intent, courts may consider surrounding circumstances, including extrinsic evidence. *Rainer View Court Homeowners Ass'n v. Zenker*, 157 Wn.App. 710, 720, 238 P.3d 1217 (2010). Here no ambiguity surrounds the following facts: i. the Ranch Tract is included as part of the plat, numbered as Lot 30 therein; and ii. "Restrictions" applying to the plat, including Lot 30, include provisions that mandate primarily agricultural instead of residential use of Lot 30.

CP 591. In construing a plat, the intention of the dedicator controls. ... But this intention must be adduced from the plat itself, where possible, as that furnishes the best evidence thereof. *Frye v. King County.*, 151 Wash. 179, 182, 275 P. 547 (1929). However, where the plat is ambiguous, surrounding circumstances may be considered to determine intention. *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d at 273.

In this case, the plat was unambiguous therefore the language on the face of the plat controls. This is the correct application of *Roeder*. The best evidence of intent is that shown on the plat itself. Petitioner's argument that the dedicator did not intend the restriction is farcical. The record shows that the Ranch Tract was included in the subdivision subject to all restrictions, including that it be for agricultural purposes, as a condition of plat approval. CP 587, finding 43; Decision at 2-3. Regardless of the dedicator's opinion of this restriction, it was a condition of plat approval. The dedicator

included the restriction and the plat was approved.¹ It is both nonsensical and disingenuous for Petitioner to now argue it was not the intent of the dedicator to meet the condition of approval. The language on the face of the plat is clear and unambiguous.

B. The Restrictions on Petitioner’s Property are Shown on the Face of the Plat, a Recorded Document.

This case does not raise any issues of substantial public interest. Despite Petitioner’s claims, nothing in the Hearing Examiner or Court of Appeals’ decisions create any novel interpretation of property rights in Washington. The Hearing Examiner found that the restrictions *on the face of the plat* control. This is a well recognized legal principle in Washington. *See, Jones v. Town of Hunts Point*, 166 Wn. App. 452, 272 P.3d 853 (2011) (stating that the inference that the restriction was a term of approval is supported by the fact that it was printed on the face of the plat.); *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 974 P.2d 836 (1999)(writings containing covenants are often recorded as declaration of covenants, however the restrictions may also be contained on the face of the subdivision plat). Plats are recorded documents. Purchasers of property need not search for extrinsic evidence

¹ See Hearing Examiner Finding 43, “In her rebuttal testimony, Ms. Oles confirmed that the SJC BOCC had adopted the SJC Planning Commission’s recommendation and required that the 90-acre ranch tract be included in the plat. Further, she specifically conceded that the Oles moved forward to develop the Plat as approved, including the ranch tract as Lot 30 of the Plat, and they chose not to appeal. CP 587 (internal citations omitted).

to discover what controls apply to the property they are purchasing; they need look only to recorded documents including the plat and documents incorporated by reference on the face of the plat.

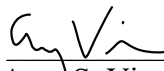
The Court of Appeals summarily dismissed Petitioner's argument as "an indirect attack on incorporation by reference, an issue we have resolved." Decision at 14. This Court should do so as well.

V. CONCLUSION

For all of the above reasons, San Juan County respectfully asks this Court to deny discretionary review.

Respectfully submitted this 21st day of April, 2020.

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