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STATE OF WASHINGTON

BY _____

DEPUTY

Court of Appeals No. 37282-7-II

GRACE GROUP, INC., a Washington corporation, EDWARD
C. BECKER, III; THEODORE R. COLLINS, JR., and MICHELLE E.
COLLINS; PIERCE COUNTY, a Washington municipal corporation

Appellants,

v.

WILLIAM SYLVESTER and BETTY SYLVESTER,
Husband and Wife,

Respondents.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

This case involves Title 18 E of the Pierce County Code (Development Regulations – Critical Areas), and the issuance of “reasonable use exceptions” to the appellants (hereinafter referred to as Collins and Becker) to allow them to construct three single-family residences in wetlands and wetland buffers. Under the Pierce County Code reasonable use exceptions can only be granted by a Hearing Examiner after notice and a hearing and only if certain criteria are met. The three parcels of property that are at issue in this case (hereinafter referred to as Collins and Becker Lots) are part of a ten acre parcel located east of the City of Bonney Lake in rural Pierce County that was segregated into seven separate tax parcels by the Pierce County Assessor-Treasurer in August of 2005. The property is zoned Agricultural Resource and Rural 10. The base residential density in those zones is one residence per ten acres.

The Respondents, William and Betty Sylvester, own and reside on eighty one acres near the subject property. They and some of their neighbors attended the required hearing, questioned how the ten acre parcel with a home already on it somehow became seven home sites, and opposed the issuance of reasonable use exceptions. When the exceptions were granted, they appealed the Hearing Examiner’s decision to the trial court. The trial court reversed the

Hearing Examiner. This appeal followed.

II. COUNTERSTATEMENT OF ISSUES PERTAINING
TO ASSIGNMENTS OF ERROR

A. Under RCW 58.17.040(3) Can The Executor Of A Decedent's Estate Sell And Convey Ten Acres Of Undivided Estate Real Property To Third Parties As Seven Separate Building Sites?

B. Under RCW 58.17.040(3) Can The Executor Of A Decedent's Estate Separate Ten Acres Of Undivided Estate Real Property Into Seven Building Sites Even If The Applicable Zoning Allows One Residence Per Ten Acres?

C. Does Chapter 18.160 Of The Pierce County Code Codify The "Vested Rights Doctrine?"

D. Who Was Responsible For Having the Hunter Ten Acres Mapped and Surveyed as Seven Separate Building Sites?

III. COUNTERSTATEMENT OF CASE

A. The Buckley Plateau.

The subject properties are located on the Buckley plateau. The Buckley plateau, as well as the Enumclaw plateau, was covered by the Osceola mudflow about 4800 years ago. Land on the Buckley plateau consists of a topsoil layer up to about a foot in depth over the mudflow clay layer which is approximately seven (7)

to ten (10) feet deep. Underlying the mudflow clay are several feet of glacial sand and fine gravel. AR, 220-222.¹

The portion of the Buckley plateau that surrounds the subject properties stretches from Mundy Loss Road on the east to about 252nd Avenue East on the west and from Entwhistle Road on the south to the White River valley. The area contains about five hundred (500) cleared acres and has three (3) of the seven (7) dairy farms remaining in all of Pierce County. The majority of the houses on that portion of the Buckley plateau were built from 50 – 100 years ago. Most new houses either were given a “grandfathered” septic permit from a pre-existing dwelling or have pumped their sewage into the White River valley where drain fields can function properly in the sand and gravel. Of about forty (40) test holes dug within approximately a ½ mile radius of the proposed site during the last 30+ years, none have been approved. AR, 220-222.

For example, the Roland Jankelson development (about 20 houses on approximately 60 acres) is immediately west of the proposed project. In the 1970s for that development, about twenty (20) test holes were dug throughout the sixty (60) acres and none of them perked. That development proceeded only by a septic

¹ The references herein to clerk’s papers, the administrative record and the verbatim transcript are consistent with the references used in the Appellants’ Opening Brief.

pumping system down into a properly functioning drain field in the sand and gravel of the White River valley. AR, 220-222.

Approximately thirty (30) years ago, Dennis Forslund split the ten-acre site now owned by Collins and Becker and others off of his fifteen (15) acre parcel. He had several test holes dug at that time, including two (2) in the same area as the nine (9) dug for this proposed project. None of Forslund's test holes perked. The Marion Water Company has a community well immediately south of the proposed project. Only after Forslund dug a dry well, which was not acceptable, and after much conflict with the Marion Water Company over possible ground water pollution which could affect the well, did the county allow one house to be built on the ten (10) acre parcel using a septic system. AR, 220-222.

B. Chronology of Relevant Events (February 2005 Through August 2006).

On or about February 22, 2005, the Grace Group, one of the appellants, engaged Evergreen Precision Surveying, LLC, to:

- a. survey approximately ten (10) acres of pasture land located on the Buckley plateau that had been previously improved with one single family home; and
- b. map the property as seven (7) separate parcels.

The Record of Survey that Evergreen Precision Surveying, LLC, prepared (AR,

302) contains at the bottom a job number and date and the following Surveyor's

Certificate:

“This map correctly represents a survey made by me or under my direction in conformance with the requirements of the ‘survey recording act’ at the request of Edward Becker in April of 2005.”

On July 8, 2005, Mr. Becker recorded the Evergreen Precision Surveying, LLC, and Record of Survey with the Pierce County Auditor.

(AR, Page 302). The recorded Record of Survey contains the following

Auditor's Certificate:

“Filed for record this 8th day of July, 2005 at the request of Edward Becker.
Auditor's Fee No. 200507085009”

A copy of the recorded Record of Survey is attached to this brief as Appendix A.

On May 31, 2005, the Personal Representative of the Estate of WILLIAM L. HUNTER and ETHEL K. HUNTER, for ten dollars and other valuable consideration, conveyed to Collins and Becker and others by Statutory Warranty Deed the ten acres of rural property that had been surveyed at the request of Mr. Becker. (AR, pages 303-306) Pierce County collected \$8,900 in real estate excise tax in connection with the transaction, so the conveyance was not in full or partial distribution of the Hunter estates.

If it had been, the conveyance would have been exempt from real estate excise tax. WAC 458-61A-202. The deed to Collins and Becker and others was recorded on June 6, 2005, under Pierce County Auditor recording number 200506060573. At the time, the property conveyed consisted of two (2) tax parcels: numbers 0620311018 and 0620311031. A copy of that deed is attached to this brief as Appendix B. The information set forth above appears on the face of the deed (AR 303) and at the bottom of the last page of Exhibit A to the deed (AR 305).

On August 22, 2005, after the Record of Survey had been recorded, the Pierce County Assessor Treasurer replaced the two (2) tax parcel numbers that identified the ten acres of property that had been conveyed to Becker and Collins and others by the deed dated May 31, 2005, with seven (7) new tax parcel numbers. AR, 307, 308, and 309. The tax segregation was approved by Jill Guernsey, a Deputy Pierce County Prosecuting Attorney. The Hearing Examiner apparently questioned Ms Guernsey about the transaction off the record at some point in time because on March 30, 2007, (nine days after the hearing) she sent him the following email (AR 267):

“Yup. I approved them in 2005. Don’t remember them but my initials are on them as having approved them.”

On November 28, 2005, a Master Application, a Critical Fish and Wildlife Application and a Wetland Single Family Certification Application were received by Pierce County Planning and Land Services for Lot 3. AR, 42. On November 29, 2005, similar applications were filed for Lots 4 and 5. AR, 49 and 53. Thereafter, it was discovered that Lot 3 was half wetlands and Lots 4 and 5 were mostly wetlands. (AR 31) Pierce County then suggested that the applicants file for reasonable use exceptions. AR, 98-99.

C. Criteria For Granting A Reasonable Use Exception.

The eight criteria for granting a reasonable use exception are set forth in Pierce County Code § 18E.20.050(c)(2). The eight criteria are reproduced at pages 6 and 7 of the Appellants' Initial Brief . The two criteria that are at issue in this case are criteria "a" and "e." Those criteria read as follows:

"Decision Criteria. The Hearing Examiner may approve a reasonable use exception if the Examiner determines all of the following criteria are met:

a. The proposed development is located on a lot that was vested (see Chapter 18.160) prior to March 1, 2005, and there is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area(s) and/or associated buffers including phasing or project implementation, change in timing of activities, buffer averaging or reduction, setback variance, relocation of driveway, or placement of structure.

....

e. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in

subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this Title.

....”

D. Applications and Hearing.

Collins and Becker filed applications for reasonable use exceptions on August 28, 2006. The application process is described at pages 7 and 8 of the Appellants’ Initial Brief. An applicant is required to document that all of the necessary criteria are met. Collins and Becker supported their applications with a report from their consultant, H&S Consulting, dated August 24, 2006. The H&S Consulting Report is found at pages 61- 88 of the Administrative Record. At pages 1 and 2 (AR 61-62) the Report reads in part as follows:

“August 24, 2006

Ms. Lisa Spurrier, Env. Biologist
Pierce County Planning and land Services
2401 South 35th Street
Tacoma, WA 98409-7490

RE: Required Findings for Wetland and Critical Fish and Wildlife Habitat Areas Reasonable Use Exception – Grace Group Homesites Parcels #0620311051, 0620311052 and 0620311053

Dear Ms. Spurrier:

The Grace Group wishes to obtain a Reasonable Use Exception (RUE) for development of single-family homesites on parcels

#0620311051, 0620311052 and 0620311053. The following details the Required Findings which are necessary for the application for RUE.

A. The proposed development is located on a lot that was vested (see Chapter 18.160) prior to March 1, 2005 and there is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area(s) and/or associated buffers including phasing or project implementation, change in timing of activities, buffer averaging or reduction, setback variance, relocation of driveway, or placement of structure:

Response: The proposed development is located on a lot that was vested prior to March 1, 2005 (see attached letter). (AR 61) . . .

x x x x

E. The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this Title;

Response: The lots proposed for development have not been created by the applicant. Lots resulted from testamentary division of original parcel (See Attached letter).” (AR 62)

There is no letter attached to the H&S Consulting Report. There is no letter in the administrative record written on behalf of the applicants that addresses vesting or the division of the property. There is not even further reference to such a letter in the administrative record.

The hearing in this case was held on March 21, 2007. At the hearing,

a neighbor, Rod Hodel, complained to the Hearing Examiner that none of the exhibits to the Staff Report were available to interested parties. He testified (Vrbt. Trans., page 40, line 18, to page 41, line 9):

“I’m concerned about the process itself and the role here of the county staff being an impartial ruler of the process. Starting with the reporting, the report does not include any exhibits. I can’t compare this if I don’t have any exhibits in my hand. There’s a whole list of exhibits on the back of the staff report. I didn’t get them when I asked for them. Lack of information is because of lack of documentation. They didn’t give me documentation or any of the public in order for us to make an informed decision. I’m very concerned about how the two parcels became seven parcels. I think the intent of that law was to grandfather a family parcel. It was not designed to allow a developer to go around a (inaudible). I don’t believe that was the intent of that law.”

At the conclusion of the hearing, the following exchange took place (Vrbt. Trans., page 53, line 11, to page 54, line 4):

“DEPUTY EXAMINER: Ms. Spurrier, about the attachments to the staff report, are they available for review next-door if someone wants to look at them:
MS. SPURRIER: I don’t think they’re available.
DEPUTY EXAMINER: Is there a way of making them available? I’d ask that you make them available and what we’ll do is have these available next-door for public review. I will keep the record open for two weeks so that there can be a public review and written comments. This way people who do want to look a the attachments will have an

opportunity, so will you make certain that those are there starting, let's hope this afternoon, and I will ask that any written comments be made to the County and the County then can forward them to me. After this period of two weeks. Then the record will close.”

During the period March 21, 2007, through April 5, 2007, the exhibits to the Staff Report were made available to interested parties and Exhibits 2 through 17 were submitted. (AR, pages 240 to 300). On April 6, 2007, the Deputy Hearings Examiner left the record open until April 20, 2007, to allow the applicants the opportunity to respond (AR, page 27).

On April 12, 2007, two letters were filed. Lisa Spurrier, the Staff Biologist, wrote to the Hearing Examiner (Exhibit 18, AR 301) regarding the division of the property. On that same date Mr. and Mrs. Sylvester submitted a letter (Exhibit 19, AR 310-344) to which they attached a letter from their attorney, addressing the division of the property and other legal issues.

E. Hearing Examiners Decision.

On April 26, 2007, the Hearing Examiner filed findings, conclusions and a decision granting the request for reasonable use exceptions, subject to conditions. In making his decision, the Hearing Examiner relied heavily on

Exhibit 18 while rejecting Exhibit 19, which was filed on the same day.

The Hearing Examiner's Finding No. 5 reads as follows:

“FINDINGS:

“5. The lots were created from a testamentary segregation which was duly approved by the Prosecuting Attorney's Office. Exhibit 18. The records of the Pierce County Assessor Treasurer attached to Exhibit 18 reflect the segregation of the lots. The record of survey showing the segregated parcels dated February 22, 2005, was filed with the Pierce County Auditor on July 8, 2005 according to Attachment 1-F of the staff report. While there may be a dispute whether the segregation was testamentary or as a result of actions by the trustee of a revocable trust of the deceased predecessors in interest, there is no evidence before the hearing examiner that the subdivision of the lots was as a result of actions of the applicants. PCC 16.02.010 indicated that such subdivisions may arise from either testamentary division or the laws of descent and are exempt from compliance with Chapter 16 PCC. According to RCW 11.04.250 real estate title vests upon death in the heirs ((the quotation of the statute is omitted)

“Evidence before the Hearing Examiner indicates that the applicants are bona fide purchasers of lots 3, 4, and 5 created prior to their purchase. (Exhibit 1 f and 18). ‘a bona fide purchaser is one who has acquired land for a valuable consideration and who {is} innocent of a prior claim against the land with which he is sought to be charged.’ 17 Wash. Pract., sec. 3.16 at 155.”

The Hearing Examiner's Finding No. 24 reads in part as follows:

24. Pursuant to the reasonable use exception requirements of PCC 18E.20.050 the following findings are made:

x x x x

5. The segregation was created by a testamentary segregation prior to March 1, 2005. The current owners are not responsible for the segregation. See also finding 5 for further findings of the creation of the various lots.

The Hearing Examiner's Conclusions 2 and 8 read as follows:

CONCLUSIONS:

2. The applicants have shown that there is sufficient basis for a reasonable use exception as provided by PCC 18E.20.050 for the proposed construction of single family residences as proposed in the application. The project is consistent with the criteria set out by the ordinance for approval of the exception to wetland regulations and fish and wildlife area regulations.

8. The issue of establishment of a vesting date as it applies to these lots created by testamentary segregation was not fully briefed by either the applicants or those in opposition to the project. As found previously title vesting occurs on the death of the owner. However, the courts have also ruled:

“In Washington, ‘vesting’ refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application’s submission. Friends of the Law v. King County, 123 Wn.2d 518, 522, 869 P.2d 1056 (1994); Vashon Island Comm. For Self-Gov’t v. Washington State Boundary Review Bd., 767-68, 903 P.2d 953 (1995).’ Noble Manor v. Pierce County, 133 Wn.2d 269, 275, 943 P.2d 1378. As previously found the applications on the parcels in the application were filed on November 28 and 29, 2005. As an aid in balancing the applicable date reference is made again to Noble Manor:

“We recognize there are important competing policy concerns regarding vested rights for land use. As we explained in Erickson, development interest protected by the vested rights doctrine come at a cost to the public interest because the practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. If a vested right is too easily granted, the public interest is subverted. Erickson, 123 Wn. 2d at 873-74. However, we also recognize developers’ needs for certainty and fairness in planning their developments. In extending the common-law vested rights doctrine to include

short and long plat applications, the Legislature has made the policy decision that developers should be able to develop their property according to the laws in effect at the time they make completed application for subdivision or short subdivision of their property. We do not accept the county's argument that the only right that vests upon a subdivision application is to draw lines on a map to create smaller legal parcels of property. This would be an empty right and would conflict with the Legislature's intent to extend the protections of the vested rights doctrine to subdivision applications." P. 280

Thus it is concluded that the reasonable use exception rules provided in PCC 18E,.20.050 cited at the beginning of this decision apply to this project."

F. LUPA Petition and Trial Court Decision.

On May 17, 2007, the Sylvesters timely filed a petition to the Pierce County Superior Court under the Land Use Petition Act, R.C.W. 36.70C. C.P. 1-30. In accordance with LUPA, the Sylvesters set forth in their petition the following assignments of error:

“17. The Deputy Examiner erred in concluding that the three “lots” that are the subject of the request were vested prior to March 1, 2005. The Sylvesters assign error to Findings of Fact 5 and 24 and Conclusions of Law 2 and 8.

18. The Deputy Examiner erred in finding and concluding that the Hunter ten acres was divided into seven “lots” by “testamentary provisions, or the laws of descent,” as those terms are used in RCW 58.17.040(3). The

Sylvesters assign error to Findings of Fact 5 and 24, and Conclusions of Law 2 and 8.

19. The Deputy Examiner erred in finding and concluding that the inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of Title 18E, Pierce County Code. The Sylvesters assign error to Deputy Examiner's Findings of Fact 5 and 24, and Conclusions of Law 2 and 8." C.P. 5.

On July 13, 2007, an agreed order was entered pursuant to RCW 36.70C.080 and a date for argument was set. C.P. 31-35. The trial court then reviewed the administrative record, heard argument of counsel and found and concluded that the Hearing Examiner's decision was not supported by the record. A formal order was entered on December 7, 2007. (C.P. 75-78) Thereafter, the appellants filed a motion for reconsideration. (C.P.93-120) The appellants supported their motion with four fact declarations. (C.P. 83-92) On the motion of the Sylvesters (C.P. 121-122) those declarations were stricken and the motion for reconsideration was denied. (C.P. 128-129) This appeal followed.

G. Standard For Review.

Under the Land Use Petition Act (“LUPA”) this Court should affirm the trial court if this Court concludes that the Hearing Examiner decision represents an erroneous interpretation of the law, a clearly erroneous application of the law or is not supported by the substantial evidence when viewed in light of the whole record before the court. RCW 36.70C.130(c). “Substantial evidence is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’” *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 694, 49 P.3d 860 (2002). Under LUPA, a Court of Appeals stands in the shoes of the superior court, and reviews the hearing examiner’s land use decision de novo on the basis of the administrative record. *Girton v. City of Seattle* (1999) 97 Wash. App. 360, 983 P.2d 1135, review denied 140 Wash. 2d 1007, 999 P.2d 1259.

IV. ARGUMENT

A. The Trial Court Properly Reversed the Hearing Examiner.

1. Every Issue Presented To The Trial Court And To This Court By The Sylvesters Was Raised At The Hearing And Addressed By The Hearings Examiner

At page 15 of their Initial Brief, Collins and Becker state:

“Notably, neither the Sylvesters, nor any other party at the

hearing, raised an issue with the division of the property.”

At pages 33-39 of their Initial Brief, Collins and Becker again argue that the issues and arguments made by the Sylvesters in their LUPA petition were not raised at the hearing on March 21, 2007, and were not addressed by the Hearing Examiner. There is no merit to that argument.

At the hearing on March 21, 2007, before any of the neighboring landowners had had an opportunity to see any of the exhibits to the Staff Report, one of the Sylvesters’ neighbors, Rod Hodel, testified (Transcript of Proceedings, page 40, line 18, to page 41, line 9):

“I’m concerned about the process itself and the role here of the county staff being an impartial ruler of the process. Starting with the reporting, the report does not include any exhibits. I can’t compare this if I don’t have any exhibits in my hand. There’s a whole list of exhibits on the back of the staff report. I didn’t get them when I asked for them. Lack of information is because of lack of documentation. They didn’t give me documentation or any of the public in order for us to make an informed decision. I’m very concerned about how the two parcels became seven parcels. I think the intent of that law was to grandfather a family parcel. It was not designed to allow a developer to go around a (inaudible). I don’t believe that was the intent of that law.”

The Hearing Examiner, in his Report and Decision, acknowledged

that testimony. At page 6 the Hearing Examiner wrote: “[H]e (Mr. Hodel) disagrees with the testamentary segregation of the property.” At pages 7 and 8 of his Report and Decision, with reference to Exhibits 13, 17 and 19 the Hearing Examiner wrote:

“EXHIBIT “13” Faxed Letter. JAMES ANDERSON and Dianne MESERVE are neighbors to the proposed project oppose the project. They question the perc tests, the water run-off, the testamentary segregation, and the reasonable use of the land.

EXHIBIT “17” Letter. RODNEY AND DONNA HODEL are neighbors to the project and oppose the project They dispute the legality of the testamentary segregation. They dispute that the project is in the public interest. They dispute the credibility of the applicants.

Exhibit “19” Letter. Bill Sylvester is a neighbor to the project. He attached a letter he received from Attorney Steve Larson regarding the segregation of parcels within the project. Attorney Larson’s opinion is that the parcels were not created by a proper testamentary segregation, nor were they created by the deadline set out by Pierce County code. (Note: this response was sent to the hearing examiner during the period when the record was only open for the PALS Biologist to respond to a written request from the hearing examiner and for the applicants to respond to the written responses received during the period of open record. As it was not timely submitted it is not part of the record of consideration of the application..”

On April 9, 2007, Becker and Collins responded in writing to their neighbors’ opposition to the project. Their letter to the Hearing Examiner of that date (AR 347-348) reads in part as follows:

“This letter is in response to the opposition towards the

Reasonable Use Exception of our property located on 259th Avenue East, Buckley, Washington.

Although we have complied to all the recommendations of Pierce County regarding the Wetlands on our property, neighboring opposition towards us compels us to address the non wetland related issues put forth in the letter titled "Rodney Hodel" as it is slanderous to our integrity and character.

To provide context to the division of the property, it was a Testamentary Segregation, approved by Jill Guernsey of the Pierce County Prosecutor's office and then processed by Janet Ungers of the Assessor's office. This was the option of the heirs of the property in order for them to receive maximum benefit of sale. It was never a "subdivision" under any deadlines."

Collins and Becker had every opportunity to provide the Hearing Examiner with facts establishing that:

- a. the lots "vested" prior to March 1, 2005;
- b. the lots were lawfully created by the Hunter heirs or devisees dividing the ten acres among themselves; and
- c. someone else (not them) was responsible for establishing the boundaries of the seven new parcels.

They did not do so. They (or their consultant) chose not to provide the County and the Hearing Examiner with the letter that their consultant said explained how the Hunter ten acres became seven separate building sites and how those sites "vested" prior to March 1, 2005.

2. The Hearings Examiner Erred In Finding And Concluding That The Becker And Collins Lots Were Lawfully Created.

a. Overview of the Subdivision of Land in Washington.

The subdivision of land in Washington is regulated by Chapter 58.17 of the RCW. The reason for regulation is set forth in RCW 58.17.010, which reads as follows:

“58.17.010. Purpose

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 school grounds 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 subdivision and conveyancing by accurate legal description. “

The power to approve or deny subdivision applications rests solely with local legislative bodies. RCW 58.17.100.

What is now codified as Chapter 58.17 of the RCW was first

enacted in 1969. The subdivision process under RCW 58.17 is summarized by Professors Stoebuck and Weaver in Volume 17 of the Washington Practice Series at pages 273-274 as follows:

“A landowner who wishes to subdivide land into a certain minimum number of parcels must follow the statutory and local procedures. In Washington, with some exceptions, the minimum number is five parcels for a “subdivision” and two parcels for a “short subdivision.” A “preliminary plat” is submitted to the city or county government, most often to the planning commission or agency if there is one. The preliminary plat is a working document, copies of which are examined by various city or county agencies that are concerned with land development, such as building departments, health departments, and of course the planning agency itself. To the extent the plat as originally submitted does not conform to state law or to applicable local regulations, the applicant will be required to make amendments or to abandon the application. In practice a process of negotiation may well find it expedient to accommodate to their wishes. If the applicant requires some form of zoning relief, such as an amendment, variance, or conditional-use permit, application for this relief usually will go forward simultaneously. A public hearing on notice must be had on the subdivision application, generally before the planning agency. The agency that conducts the hearing makes an advisory recommendation to the local legislative body whether the preliminary plat should be approved. Final decision is with the legislative body. If the application is approved, a “final plat” is prepared for signatures and recording. Assuming dedication of improvements, such as streets, curbs, and gutters is required, approval will be dependent upon their either being installed or upon the applicant’s posting a bond for their completion.”

Certain subdivisions of land such as the creation of burial plots, are

not governed by Chapter 58.17. As originally enacted in 1969, Section 4 of the act read as follows:

“The provisions of this act shall not apply to:

- (1) Cemeteries and other burial plots while used for that purpose;
- (2) Divisions of land into lots or tracts where the smallest lot is twenty acres or more and not containing a dedication of public right-of-way;
- (3) Divisions of land into lots or tracts none of which are smaller than five acres and not containing a dedication unless the governing authority of the city, town or county in which the land is situated shall have by ordinance provided otherwise.
- (4) Divisions made by testamentary provisions, the law of descent, or upon court order. “

See the Historical and Statutory Notes that follow RCW 58.17.040 at page 279 in the RCW A.

In 1974, Section 4 was rewritten to combine Subsections 2 and 3 and delete the words “or upon court order” from Subsection 4.

At present, Subsection 3 of RCW 58.17.040 reads as follows:

“58.17.040. Chapter inapplicable, when

The provisions of this chapter shall not apply to:

x x x x

(3) Divisions made by testamentary provisions, or the laws of descent;”

b. Testamentary Divisions.

RCW 58.17.040(3) has not yet been interpreted by the Washington Supreme Court. It has, however, been addressed in several reported decisions. In Estate of Telfer v. County Commr's, (1993) 71 Wash. App. 833, 862 P.2d 637, review denied, 123 Wash. 2d 1028, 877 P.2d 695, Telfer died testate leaving real property on Orcas Island, San Juan County. His will, which was executed prior to his acquisition of the property in question, left the property equally to his three adult sons under the residuary clause. The estate applied to the San Juan County Planning Department for leave to divide the property among the beneficiaries pursuant to RCW 58.17.040(3). The Department denied the application. The estate eventually appealed the decision to the San Juan County Superior Court, which upheld the Planning Department. The case was appealed to the Court of Appeals. At issue was whether real property passing under the residuary clause of a will could be divided among the devisees without compliance with the short plat requirements. The Court of Appeals

concluded that it could. The Court said:

“Laws of descent are those governing transmission of an intestate’s real property. Heirs take property by laws of descent as tenants in common. Creating a tenancy in common does not constitute a property division because it does not create new parcels. Statutes should not be interpreted in such a manner as to render any portion meaningless, superfluous or questionable. To give substantive meaning to the phrase “[d]ivisions made by . . . the laws of descent”, the property held in tenancy in common resulting from intestacy must be divisible into separate parcels without complying with the platting requirements. Under this reading, “divisions” does not mean that the property is legally divided ipso facto by the laws of descent, but that the division, by agreement or partition action, which ensues following the operation of the laws of descent is exempt from platting requirements.

Given the meaning of “division” with regard to the laws of descent, established principles of statutory construction and normal rules of grammar require that “division” have the same meaning as applied to “testamentary provisions”. That is, a will need not divide the property into separate parcels, but a division of the property by those taking under the residuary clause may be made without complying with short plat requirements.”

Toulouse v. Bd. Of Commrs., 89 Wn. App. 525, 949 P.2d 829

(1998) follows Telfer. In Toulouse, Division One of this court said

(89 Wn. App. At 528):

“RCW 58.17.030 requires that any subdivision of property comply with the requirements for approval of plats and subdivisions before any division of the property may be recorded. Under RCW 58.17.040(3), however, “[d]ivisions made by testamentary provisions, or the laws of descent’ are exempt from this requirement. In *Telfer*, we held that this

means that undivided property received under the residuary clause of a will may be divided among the devisees into separate parcels without complying with platting requirements.”

See also Friend v. Friend, 92 Wn. App. 799, 964 P.2d 1219 (1998), review denied, 137 Wn.2d 1030 (1999), and Dykstra v. Skagit County, 97 Wn. App. 670, 985 P.2d 424 (1999), review denied 140 Wn. 2d 1016 (2000).

The Telfer and Toulouse cases stand for the proposition that under RCW 58.17.040(3) “undivided property received under the residuary clause of a will may be divided among the devisees into separate parcels without complying with platting requirements.” Toulouse, supra, at page 528 (emphasis added). It does not mean that every parcel of undivided property that passes under the residuary clause of a will automatically divides into as many separate parcels as there are devisees.

c. Tax Parcel Segregation.

RCW 84.40.042(1) reads as follows:

“(1) When real property is divided in accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically provided otherwise by law. For purposes of this section, “lot” has the same definition as in RCW 58.17.020.”

Divisions of property under “testamentary provisions or the laws of

descent “occur when a decedent’s estate is probated in a county superior court. One of the things that a probate court does under RCW 11.76.050 in connection with the entry of a decree of distribution is to “partition among the persons entitled thereto, the estate held in common and undivided ...”. The beneficiaries then take a copy of the decree of distribution to the County Assessor, who “segregates” the former tax parcel into new tax parcels pursuant to RCW 84.40.042(1). The County Assessor does not “divide” property (that is a legislative or judicial function). What the Assessor does is to assign new tax numbers to parcels that have been lawfully divided.

d. The Hunter Ten Acres Was Not Divided by the Hunter Heirs or Beneficiaries Into Seven Building Sites.

The Telfer case holds that under RCW 58.17.040 (3) heirs or beneficiaries of a decedent’s estate may divide property among themselves without going through the subdivision process. That is not what happened here. The Hunter ten acres was not divided by the heirs or beneficiaries of the estate. On the contrary, it was sold to third parties.

e. The Hunter Ten Acres Could Not Have Been Divided By the Hunter Heirs or Beneficiaries Into Seven building Sites.

In Telfer, Division One of this Court said:

“Although the issue is not directly presented, and was not argued, we emphasize that our holding is not to be understood as intimating that the parcels resulting from the division are exempt from any other land use regulations.”

In the Dykstra case, *supra*, the appellants sought to divide 15 acres, zoned Agricultural (minimum lot size – 40 acres) into seven lots. In affirming a summary judgment for Skagit County, Division One of this court said:

“Skagit County granted permits for testamentary lots created before the decision in *In re Estate of Telfer*, 71 Wn. App. 833, 862 P.2d 637 (1993), and denied permits to those created afterwards. Dykstras argue that the county should have legislated the new policy rather than simply implement its attorney’s reading of *Telfer*. But new legislation is not necessary for enforcement of existing code provisions. The statement in *Telfer* that caused the change in the county’s practice may be cautionary dicta, but it is accurate:

“[W]e hold that the estate is entitled to divide the property into no more than three discrete parcels without meeting the requirements for a short plat. Although the issue is not directly presented, and was not argued, we emphasize that our holding is not to be understood as intimating that the parcels resulting from the division are exempt from any other land use regulations.”

Telfer, 71 Wn. App. At 837.

Sound policy supports the *Telfer* court’s caution. While the legislature in RCW 58.17.040(3) gave effect to testamentary devise of real property without the burdens of the short plat process, it gave no indication whatsoever that an exemption from local short plat requirements carried with it other unstated exemptions from land use regulations generally.

As noted by the *Telfer* court, there may be no prejudice to local land use policies in allowing the creation of new parcels without satisfaction of short plat requirements. But if testamentary devise of nonstandard parcels creates automatic development rights, without regard to the provisions of the local land use code, then nothing whatsoever will exist to preserve lot size requirements or use restrictions in any area. Fundamental principles of land use regulation would be easily subverted. Nothing in the statute suggests the legislature intended to exempt lots created by testamentary devise from the other land use regulations of the County, and we decline to so hold.

We agree with the County that Planning Department officials had been engaged in an informal, illegal act, which they corrected after the *Telfer* opinion was published. No new legislation was necessary to effect the change in enforcement practices, only an understanding of the correct interpretation of the existing code. Dykstras cannot claim any vested right because they did not apply for development permits until several months after Skagit County had aligned its enforcement practices to comply with its code. *See Friends of the Law v. King County*, 123 Wn.2d 518, 522, 869 P.2d 1056 (1994). To the extent Dykstras' argument is in the nature of an estoppel claim, it fails for the same reason. *See Buechel*, 125 Wn. 2d at 211. The trial court correctly denied Dykstras' due process claims.

Affirmed.”

In Friend v. Friend, this court said:

“Friend cites *Estate of Telfer v. Board of County Comm'rs*, 71 Wn. App. 833, 862 P.2d 637 (1993), *review denied*, 123 Wn. 2d 1028 (1994), arguing that real property may be divided among devisees of a will without compliance with the short plat statute. But that holding is based upon a section of the short plat statute that exempts divisions made by the laws of

descent. RCW 58.17.040(3); *see Telfer*, 71 Wn. App. At 835-36. There is no similar exemption for divisions made in partition actions. Moreover, the court in *Telfer* “emphasize[d] that our holding is not to be understood as intimating that the parcels resulting from the division are exempt from any other land use regulations.” *Telfer*, 71 Wn. App. At 837. Among those other land use regulations are lot size restrictions. Thus, *Telfer* supports the conclusion that divisions made under the partition statute are not exempt from land use regulations.”

The Hunter property is zoned Agricultural Resource and Rural 10. The base residential density in those zones is one residence per ten acres. See Appendices C and D attached hereto. For that reason, the Hunter property could not legally be divided under RCW 58.17.040(3) into seven separate building sites.

3. The Hearing Examiner Erred in Finding and Concluding that the Becker and Collins Lots Vested Prior to March 1, 2005. Those Lots “Vested” for Purposes of Title 18E on November 28 and 29, 2005, When Master Applications Were filed.

The first criteria set forth in Section 18E.20.050 of Title 18 E reads in part as follows:

“The proposed development is located on a lot that was vested (see Chapter 18.160) prior to March, 1, 2005. . . .”

Chapter 18.160 of the Pierce County Code is entitled “vesting.” A copy of Chapter 18.160 of the Pierce County Code is attached to this brief as Appendix E. What Chapter 18.160 does is to codify the “vested rights

doctrine” formulated by the Washington Supreme court in Noble Manor v. Pierce County, 133 Wn. 2d 269, 943 P.2d 1378 (1997), and other cases. In Section 18.160.010(c) of Chapter 18.160 the term “vesting” is defined as the “date that is used to determine which development regulations the Department and Hearing Examiner will apply to a completed application or approved development permit.” That date is, as set forth in Section 18.160.050, “the date the application is deemed complete.” Thus, under the first criteria set forth in Section 18E.20.050 of Title 18E an application for a reasonable use exception must be denied unless a development application, e.g., a master application, was complete on March 1, 2005.

In his Report and Decision addressing the date on which Lots 3, 4 and 5 vested, the Hearing Examiner wrote:

“8. The issue of establishment of a vesting date as it applies to these lots created by testamentary segregation was not fully briefed by either the applicants or those in opposition to the project. As found previously title vesting occurs on the death of the owner. However, the courts have also ruled:

“In Washington, ‘vesting’ refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application’s submission. Friends of the Law v. King County, 123 Wn.2d 518, 522, 869 P.2d 1056

(1994); Vashon Island Comm. For Self-Gov't v. Washington State Boundary Review Bd., 767-68, 903 P.2d 953 (1995).⁷ Noble Manor v. Pierce County, 133 Wn.2d 269, 275, 943 P.2d 1378. As previously found the applications on the parcels in the application were filed on November 28 and 29, 2005. As an aid in balancing the applicable date reference is made again to Noble Manor: (a quotation from the Noble Manor case is omitted)

Thus it is concluded that the reasonable use exception rules provided in PCC 18E,.20.050 cited at the beginning of this decision apply to this project.”

The Hearing Examiner’s ruling that Lots 3, 4 and 5 vested prior to March 1, 2005, is contrary to law and not supported by evidence of record. The term “vesting” in the first criteria set forth in Section 18E.20.050 of Title 18E is not ambiguous. The cross reference to Chapter 18.160 makes perfectly clear that the “vested rights doctrine” does apply.

4. The Hearing Examiner Erred in Finding and Concluding that The Inability of the Applicants to Derive Reasonable use of the Property is Not the Result of Actions by the Applicants in Subdividing the Property or Adjusting a Boundary Line After February 2, 1998.

The fifth criteria set forth in Section 18E.20.050 of Title 18E reads as follows:

“e. the inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of

this Title.”

Title 18E of the Pierce County Code – Development Regulations – Critical Areas – became effective February 2, 1998, as Section 8 of Pierce County Ordinance No. 97-84. The Hearing Examiner knew that. The Staff Report in this case, in discussing the fifth criteria for a reasonable use exception, states:

“COMMENT: The segregation was created before Title 18E became effective February 2, 1998. The revised Title 18E as re-codified under the Directions Package.”

At page 10 of his decision (AR 10) the Hearing Examiner states: “There is no evidence before the hearing examiner that the subdivision of the lots was the result of actions of the applicants.” The Hearing Examiner obviously did not read Exhibit 1F to the Staff Report (AR, page 101). The Record of Survey attached to the Staff Report as Exhibit 1F states on its face that it was ordered in February of 2005 by Grace Group, that it was made “at the request of Edward Becker” in April of 2005, and that it was “recorded at the request of Edward Becker” on July 8, 2005. See AR, Page 101 and Appendix A. There is not a shred of evidence in the record made by the Hearing Examiner that the boundaries of the seven separate parcels given new tax parcel numbers by the Pierce County Assessor Treasurer in

August of 2005 were drawn by anyone other than Evergreen Precision Surveying, LLC, the surveyor used by Grace Group, Collins and Becker.

B. The Trial Court Properly Struck The Declarations Filed In the Trial Court By Becker and Collins on December 17, 2007, and Denied Their Motion For Reconsideration.

On December 17, 2007, Becker and Collins asked the trial court to reconsider its decision. (C.P. 93-120) They supported their motion with declarations signed by Theodore Collins, Eduard Quiles, Edward C. Becker and Dave Walker, a licensed realtor. (C.P. 83-92) The Collins, Quiles and Becker declarations say, in effect, that the lots had been presented to them as approved building sites. The Walker declaration describes his role in the transaction.

RCW 36.70C.120(1) Reads as follows:

“(1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.”

The land use decision under review in this proceeding was made by a quasi-judicial officer (a hearings examiner). One of the factual

issues in the proceeding before the Hearing Examiner was whether the inability of the applicant to derive reasonable use of the property was the result of actions by the applicant in subdividing the property or adjusting the boundary line thereby creating the undevelopable condition after February 2, 1998, the effective date of Title 18E. The applicants were well aware of that criterion at the time they filed their application for reasonable use exceptions. They and their consultants knew that they had to demonstrate that that criterion had been met. The appellants could have presented at the hearing the evidence that they sought to submit to the trial court in the form of declarations. Not having done so the appellants are bound by the record of the hearing. The trial court did not err in striking the declarations of Theodore Collins, Dave Walker, Eduard Quiles, and Edward C. Becker filed on December 17, 2007, and denying the motion for reconsideration.

C. This Case Should Not Be Remanded to the Hearing Examiner.

RCW 36.70C.140 reads as follows:

“36.70C.140. Decision of the court

The court may affirm or reverse the land use decision under review or remand it for modification or further proceedings. If the decision is remanded for modification or further

proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction.”

There is no reason to remand this case to the Hearing Examiner for further proceedings. Collins and Becker had every opportunity to establish that they met the required criteria. They failed to do so. The trial court’s reversal of the Hearing Examiner was correct.

V. CONCLUSION

This is a troubling case. The Collins and Becker properties are located in an area that is zoned Agricultural Resource and Rural 10. The base density in those zones allows one residence (not seven) per ten acres. The Collins and Becker properties contain wetlands and wetland buffers. Under Pierce County’s critical areas regulations, wetlands and wetland buffers are supposed to remain undisturbed. Nevertheless, the Hearing Examiner’s Finding No. 25 reads as follows:

“25. The proposed residential use of the property is in harmony with other surrounding uses which include both residential to agricultural uses. The proposed residential use is in the public interest by providing attractive housing for three families, improving the condition of the wetland and buffers to handle storm run off and increase wildlife and bio-diversity, and increasing the use, productivity, and value of the property.”

How can something that is so contrary to public policy be in the public interest?

The Hearing Examiner's decision in this case that the Becker and Collins lots were created by testamentary division represents an erroneous interpretation of the law and is not supported by substantial evidence. There never was a testamentary division of the Hunter property. There never should have been a tax segregation of the Hunter property into seven tax parcels. The Becker and Collins lots were not vested prior to March 1, 2005. The Hearing Examiner's decision that they were represents an erroneous interpretation of the law and is not supported by substantial evidence. The Examiner's decision in this case that the inability of Becker and Collins to build homes on their lots is not the result of their action in subdividing the property or adjusting a boundary line is not supported by the substantial evidence, since Grace Group and Edward Becker had the subject ten acres surveyed and mapped as seven separate parcels. This court should affirm the trial court.

May 6, 2008.



STEVEN L. LARSON, WSB 01240
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Tacoma, Washington 98402
(253) 272-5101

CERTIFICATE OF SERVICE

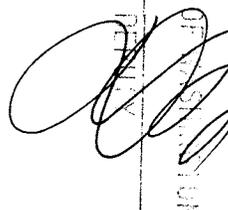
THIS IS TO CERTIFY that on this 7 day of May, 2008, I did serve true and correct copies of the foregoing BRIEF OF RESPONDENTS by personally delivering said copies to the following at the addresses below:

Counsel for Appellants:

John T. Cooke
Gordon, Thomas, et al.
1201 Pacific Avenue, Suite 2100
Tacoma, Washington 98402

Counsel for Pierce County:

Jill Guernsey
Pierce County Prosecutor's Office
Civil Division
955 Tacoma Avenue S., #301
Tacoma, Washington 98402

FILED
COURT OF APPEALS
DIVISION II
MAY -7 AM 11:53
STATE OF WASHINGTON
BY 

Steven L. Larson

APPENDIX “A”

APPENDIX "B"

2

Talon Group

432712

A Division of First American Title Insurance Company
AFTER RECORDING MAIL TO
Grace Group
23108 60th Street East
Buckley, WA 98321

200506060573 4 PGS
06-06-2005 11:41am \$22.00
PIERCE COUNTY, WASHINGTON

Filed for Record at Request of
Evergreen Escrow
Escrow Number: 05-1043TD

Statutory Warranty Deed

Grantor: John Patrick Palmer
Grantees: Edward C. Becker III, Eduardo Quiles, Donna Renee Quiles, Edward C. Becker III,
Theodore R. Collins, Jr. and Michelle E. Warner

SE corner of NE 1/4 of the NE 1/4 of Section 31, Township 20 North, Range 6 East of the W.M.

Additional legal(s) on page: 2
Assessor's Tax Parcel Number(s): 0620311018, 0620311031

THE GRANTOR John Patrick Palmer, the Personal Representative of The Estate of William L. Hunter and Ethel K. Hunter for and in consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION in hand paid, conveys and warrants to Edward C. Becker III, an unmarried individual, as to Parcels A, D, & E; and Eduardo Quiles and Donna Renee Quiles, husband and wife, as to Parcels B & G; and Edward C. Becker III, an unmarried individual, DBA as Grace Group, as to Parcel C, and Theodore R. Collins, Jr. and Michelle E. Warner, husband and wife, as to Parcel E. the following described real estate, situated in the County of Pierce, State of Washington

SEE ATTACHED EXHIBIT "A" HERETO FOR LEGAL DESCRIPTION

SUBJECT TO the encumbrances, easements, restrictions, provisions, and reservations as listed on Exhibit "B" attached hereto and incorporated herein by this reference.

Dated May 31, 2005

John Patrick Palmer
John Patrick Palmer

For reference only, not for re-sale.

STATE OF Washington
County of Pierce, SS:

I certify that I know or have satisfactory evidence that John Patrick Palmer signed this instrument, on oath stated that he authorized to execute the instrument and acknowledged it as the Personal Representative of The Estate of William L. Hunter and Ethel K. Hunter to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: June 2, 2005



Tami M. Dittmore
Tami M. Dittmore
Notary Public in and for the State of Washington
Residing at Puyallup
My appointment expires: 09/23/08

EXHIBIT A

Real property in the Unincorporated Area County of Pierce, State of Washington, described as follows:

Parcel A

The South 242.09 feet of the East 260 feet of the West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision; thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

Except Sumner-Buckley Highway

Parcel B

The North 251.31 feet of the South 493.40 feet of the East 260 feet of the West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

Parcel C

The North 167.54 feet of the South 660.94 feet of the East 260 feet of the West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

Parcel D

The East 260 feet of the West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

Parcel E

The West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

Parcel F

The North 167.54 feet of the West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

For reference only, not for re-sale.

For reference only, not for re-sale.

Parcel G

The North 167.54 feet of the West 192.15 feet of the West half of the following described property: Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

Together with an easement for ingress, egress and utilities over under and across the South 15 feet of The North 167.54 feet of the West half of the following described property

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision, thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning.

PARCEL H:

A non-exclusive easement for ingress and egress over and across the following:

COMMENCING at the Southwest corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the West 30 feet of the Willamette Meridian; thence East along the South line of said subdivision 338 feet to the POINT OF BEGINNING; thence Southwesterly along the southeasterly line of property conveyed to Warren D. Pedersen and Violet M. Pedersen, husband and wife by deed dated March 13, 1961 and recorded under Auditor's File No. 1918491 to the Northeasterly line of Summer-Buckley Highway; thence Northwesterly along said line to intersect a line running parallel with and 30 feet Northwesterly of said Southeasterly line of Pedersen's property; thence Northeasterly along said parallel line and an extension thereof to the North line of the South 30 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said North line to the East line of the Northeast quarter of the Northeast quarter of said Section 31; thence South along said East line 30 feet to the Southeast corner of said subdivision; thence West along the South line of the Northeast quarter of the Northeast quarter of said Section 31 to the POINT OF BEGINNING in Pierce County, Washington.

EXCEPT that portion thereof within the East half of the following described property:

BEGINNING at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision; thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the POINT OF BEGINNING.

AND EXCEPT that portion of said easement lying within the above described tract of land.

Parcel I:

An easement 25 feet in width for ingress, egress and utilities, over, under and across the West 25 feet of the East 260 feet of the West half of the following described property:

Beginning at the Southeast corner of the Northeast quarter of the Northeast quarter of Section 31, Township 20 North, Range 6 East of the Willamette Meridian; thence West along the South line of said subdivision to the East line of the West 30 feet of said subdivision; thence North along said East line to the South line of the North 307 feet of the Northeast quarter of the Northeast quarter of said Section 31; thence East along said South line to the East line of said subdivision; thence South along said East line to the point of beginning

Tax Parcel Number: 0620311018 and 0620311031

Exhibit B

An oil and gas lease and the terms and conditions thereof.

Lessor: Dennis H. Forslund & Barbara J. Forslund, husband and wife
Lessee: J.Q. Anderson
Term: 5 years
Dated: February 9, 1974
Recording Information: 2553732
Affects: Parcels E, F, G and Portion of Parcel D

Easement, including terms and provisions contained therein:
Recording information: 2240522, 2244976 and 2248564
For: Ingress and egress over and across the South 30 feet of Parcel A

Easement, including terms and provisions contained therein:
Recorded: February 12, 1998
Recording Information: 9802120028

For reference only, not for re-sale.

APPENDIX "C"



AGRICULTURAL RESOURCE LANDS (ARL) SUMMARY SHEET

DENSITY

One dwelling unit per 10 acres (0.1 x acreage)

BASIC RULES FOR DENSITY CALCULATIONS

- Accessory dwelling units are not considered an extra dwelling unit in density calculations.
- If the density calculation results in a partial dwelling unit, it shall be rounded to the nearest whole number. Numbers less than 0.5 shall be rounded down, numbers greater than or equal to .5 shall be rounded up.

Examples:

138 acres x .1 = 13.8 (14 dwelling units)

110 acres x .1 = 11.1 (11 dwelling units)

MINIMUM LOT SIZE

Minimum lot size of 10 acres

SETBACKS

- 25 feet when abutting any street, road, or State Highway.
- 30 feet for interior setbacks.
- 30 feet for rear setbacks.

MAXIMUM HEIGHT

40 feet

ACCESSORY DWELLING UNITS

Permitted (maximum 1,250 square feet)

SINGLE-WIDE MOBILE HOMES

Permitted unless located in the Gig Harbor or Summit-Waller Community Plan Areas

MOBILE HOME PARKS

Not Permitted

TEMPORARY HOUSING UNITS

Permitted per Pierce County Code Section 18A.33.400

TWO-FAMILY (Duplex)

Permitted and considered as two principal dwelling units. **Note:** Parcel size must accommodate density for two dwelling units.

MULTI-FAMILY (structures containing three or more dwelling units)

Not Permitted

ALLOWED USES

The Agricultural Resource Lands Classification allows residential and agricultural uses. Refer to Pierce County Code Section 18A.17.020 of the Pierce County Development Regulations.

THIS IS A REFERENCE TOOL ONLY AND NOT A SUBSTITUTE FOR ZONING REGULATIONS

APPENDIX "D"



RURAL RESIDENTIAL

Rural 10 and 20, & Rural Separator

SUMMARY SHEET

DENSITY

Rural 10 (R10)

- One dwelling unit per 10 acres (0.1 x acreage)
- Two dwelling units per 10 acres (0.2 x acreage) if 50% of acreage is designated as permanent open space

Rural 20 (R20)

- One dwelling unit per 20 acres (0.05 x acreage).
- Two dwelling units per 20 acres (0.1 x acreage) if 50% of acreage is designated as permanent open space

Rural Separator

- One dwelling unit per 5 acres (0.2 x acreage)
- Two dwelling units per 5 acres if 50% of acreage is designated as permanent open space

BASIC RULES FOR CALCULATING DENSITY

- Accessory dwelling units are not considered an extra dwelling unit in density calculations.
- If the density calculation results in a partial dwelling unit, round to the nearest whole number. Numbers less than 0.5 shall be rounded down, numbers greater than or equal to 0.5 shall be rounded up.

Examples

138 acres x 0.1 = 13.8 (14 dwelling units)
 110 acres x 0.1 = 11.1 (11 dwelling units)

MINIMUM LOT SIZE

- Minimum lot size may be reduced to 1 acre when utilizing a formal subdivision or short subdivision process.
- Rural 10: 10 acres
- Rural 20: 20 acres

SETBACKS

- 25 feet when abutting any street, road, or State Highway.
- 10 feet for interior setbacks.
- 30 feet for rear setbacks.

MAXIMUM HEIGHT

40 feet

ACCESSORY DWELLING UNITS

Permitted (maximum 1,250 square feet)

SINGLE-WIDE MOBILE HOMES

Permitted unless located in the Gig Harbor, Summit-Waller, or Parkland-Spanaway-Midland Plan Areas.

MOBILE HOME PARKS

Not Permitted

TEMPORARY HOUSING UNITS

Permitted per Pierce County Code Section 18A.33.400

TWO-FAMILY (Duplex)

Permitted and considered as two principal dwellings. Note: Parcel size must accommodate density for two dwelling units.

MULTI-FAMILY (structures containing three dwelling units or more)

Not Permitted

ALLOWED USES

The Rural Residential Classifications allows residential and resource uses. Refer to Pierce County Code 18A.17.010 of the Pierce County Development Regulations.

THIS IS A REFERENCE TOOL ONLY AND NOT A SUBSTITUTE FOR ZONING REGULATIONS

Pierce County Development Center, 2401 South 35th Street, Tacoma, WA 98409
 Hours: M,T,Th,F 8:00-4:30 W 9:00-4:30 (253) 798-7200 Revised 06/27/05
www.piercecountywa.org/pals

APPENDIX “E”

Chapter 18.160

VESTING

Sections:

- 18.160.010** Definitions.
- 18.160.020** Purpose.
- 18.160.030** Applicability.
- 18.160.050** Vesting of Applications.
- 18.160.060** Duration of Approvals.
- 18.160.070** Modification.
- 18.160.080** Expiration of Applications.
- 18.160.090** Waiver of Vesting.

18.160.010 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. "Complete Application" means an application submitted to the County pursuant to Title 18 that contain all of the information described in Section 18.40.020.
- B. "Development Regulations," also referred to as "Land Use Controls", means the following controls placed on development or land use activities by the County, including but not limited to, comprehensive plan policies, zoning regulations, subdivision regulations, shoreline management regulations, road design standards, site development regulations (other than stormwater standards and erosion/sediment control requirements), forest practice regulations, sign regulations, critical areas and resource lands regulations, and Hearing Examiner conditions and all development regulations and land use controls that must be satisfied as a prerequisite to obtaining approval. For purposes of this Title, construction and utility regulations such as stormwater standards and erosion/sediment control requirements contained in the Site Development Regulations, building standards, fire standards, sewer utility standards, and Health Department standards are not considered development regulations or land use controls.
- C. "Vesting" means the establishment of a date that is used to determine which development regulations the Department and Hearing Examiner will apply to the review of a complete application or approved development permit.

(Ord. 98-66S § 1 (part), 1999)

18.160.020 Purpose.

The purpose of this Chapter is to implement plan policies and state laws that provide for vesting. This Chapter is intended to provide property owners, permit applicants, and the general public assurance that regulations for project development will remain consistent during the lifetime of the application. The Chapter also establishes time limitations on vesting for permit approvals and clarifies that once those time limitations expire, all current development regulations and current land use controls apply. (Ord. 98-66S § 1 (part), 1999)

18.160.030 Applicability.

This Chapter applies to complete applications and permit approvals required by Pierce County pursuant to Title 18, including and limited to, use permits, preliminary plats, final plats, short plats, large lot divisions, binding site plans, shoreline development permits and any other land use permit application that is determined by the Washington State legislature to be subject to the Vested Rights Doctrine. Vesting of building permit applications are governed by the rules of RCW 19.27.095 and Title 15 PCC. (Ord. 98-66S § 1 (part), 1999)

18.160.050 Vesting of Applications.

- A. An application described in Section 18.160.030 shall be reviewed for consistency with the applicable development regulations in effect on the date the application is deemed complete.
- B. An application described in Section 18.160.030 shall be reviewed for consistency with the construction and utility standards in effect on the date the separate application for a construction or utility permit is deemed complete. An applicant may submit a separate construction or utility permit application simultaneously with any application described in Section 18.160.030 to vest for a construction or utility standard. A site development application for stormwater design and construction may vest on the date of preliminary plat or use permit application if the applicant submits the stormwater site development application within 180 days of completed preliminary plat or use permit application and adheres to the process outlined in 18.40.010 D. The application or approval of a construction or utility permit or the payment of connection charges or administrative fees to a public utility does not constitute a binding agreement for service and shall not establish a vesting date for development regulations used in the review of applications described in 18.160.030.
- C. An application described in Section 18.160.030 utilizing vested rights shall be subject to all development regulations in effect on the vesting date.
- D. An application described in Section 18.160.030 that is deemed complete is vested for the specific use, density, and physical development that is identified in the application submittal.
- E. Applications submitted pursuant to Title 18 that are not listed in Section 18.160.030 shall be governed by those standards which apply to said application. These applications shall not vest for any additional development regulations.
- F. The property owner is responsible for monitoring the time limitations and review deadlines for the application. The County shall not be responsible for maintaining a valid application. If the application expires, a new application may be filed with the Department, but shall be subject to the development regulations in effect on the date of the new application.

(Ord. 98-66S § 1 (part), 1999)

18.160.060 Duration of Approvals.

- A. **Use Permits.** An approved use permit shall be allowed to develop for a period of one year from the effective date of the permit approval unless a different time limitation was specifically authorized in the final approval. The development of an approved use permit shall be governed by the terms of approval of the permit unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.

- B. **Preliminary Plat.** Development of an approved preliminary plat shall be based on the controls contained in the Hearing Examiner's decision. A final plat meeting all of the requirements of the preliminary plat approval shall be submitted within five years of the effective date of the Hearing Examiner's decision. Any extension of time beyond this five year limitation may contain additional or altered conditions and requirements based on current development regulations and other land use controls.
 - C. **Use Permits Associated with a Preliminary Plat.** Use Permit applications, such as Planned Development District applications, that are approved as a companion to a preliminary plat application, shall remain valid for the duration of the preliminary and final plat as provided in subsections B. and D.
 - D. **Final Plat.** The lots in a final plat may be developed by the terms of approval of the final plat, and the development regulations in effect at the time the preliminary plat application was deemed complete for a period of five years from the recording date unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
 - E. **Short Plat, Large Lot Division.** The lots in a short plat or large lot division may be developed by the terms and conditions of approval, and the development regulations in effect at the time the application was deemed complete for a period of five years from the recording date unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
 - F. **Binding Site Plan.** The lots in a Binding Site Plan may be developed by the terms of approval of the Binding Site Plan, and the development regulations in effect at the time the application was deemed complete for a period of five years from the recording date unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare.
 - G. All approvals described in this Section shall be vested for the specific use, density, and physical development that is identified in the permit approval.
- (Ord. 98-66S § 1 (part), 1999)

18.160.070 Modification.

Proposed modifications to an application which has been deemed to be complete by the Department shall be treated as follows:

- A. Modifications proposed by the Department to an application shall not be considered a new application.
- B. Any modification to an application may require revised public notice and/or additional review fees.
- C. Modifications proposed by the applicant to a pending application which meet or exceed any of the criteria in Sections C.1.- C.8. as determined by the Department shall require a new application. The new application shall conform to the development regulations which are in effect at the time the new application is submitted. The Department shall apply the following criteria to determine if a substantial modification is proposed:
 - 1. the perimeter boundaries of the original site are extended by more than 5 percent of the original lot area;
 - 2. the modification adds more than 25 percent gross square footage to proposed structures on the site;
 - 3. the modification increases the overall impervious surface on the site by more than 25 percent;

4. the modification increases the overall residential density of a site by more than 20 percent;
5. the modification reduces designated open space by more than 10 percent;
6. the modification increases or substantially relocates points of access unless supported by a revised traffic analysis;
7. the modification consists of changing the original application's primary use category to a new primary use category of greater intensity, as determined by the new use's impacts, including but not limited to traffic, impervious surface, noise, glare, dust, and hours of operation; or
8. the modification will result in a substantial change in the project's impacts and/or use.

D. Proposed modifications to applications that do not exceed the criteria described in C.1. through C.7. shall be reviewed for the development regulations in effect on the date of the original complete application.

(Ord. 2004-52s § 1 (part), 2004; Ord. 98-66S § 1 (part), 1999)

18.160.080 Expiration of Applications.

Any application type described in Section 18.160.030 that was pending on July 28, 1996, that does not contain all submittal items and required studies that are necessary for a public hearing or has not been reviewed by the Hearing Examiner in a public hearing shall become null and void one year after registered notice is mailed to the applicant and property owner. A one time, one year time extension may be granted by the Hearing Examiner after a public hearing if the extension request is submitted within one year of the effective date of this Chapter and applicant has demonstrated due diligence and reasonable reliance towards project completion. In considering due diligence and reasonable reliance the Examiner shall consider the following:

- A. Date of initial application
- B. Time period the applicant had to submit required studies
- C. Availability of necessary information
- D. Potential to provide necessary information within one year
- E. Applicant's rationale or purpose for delay
- F. Applicant's ability to show reliance together with an expectation that the application would not expire.

(Ord. 98-66S § 1 (part), 1999)

18.160.090 Waiver of Vesting

A property owner may voluntarily waive vested rights at any time during the processing of an application by delivering a written and signed waiver to the Director stating that the property owner agrees to comply with all development regulations in effect on the date of delivery of the waiver. Any change to the application is subject to the modification criteria described in Section 18.160.070 and may require revised public notice and/or additional review fees. (Ord. 98-66S § 1 (part), 1999)