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SUPREME COURT
STATE OF WASHINGTON
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MICHAEL DURLAND, KATHLEEN
FENNELL, and DEER HARBOR
BOATWORKS,

Appellants,

v.

SAN JUAN COUNTY, WES
HEINMILLER, and ALAN
STAMEISEN,

Respondents.

NO. 89293-8
NO. 89745-0
(Consolidated)

STATEMENT OF
SUPPLEMENTAL
AUTHORITIES

Pursuant to RAP 10.8, appellants Michael Durland, Kathleen Fennell, and Deer Harbor Boatworks provide the Court with the following additional authorities.

1. Regarding the issue of whether the San Juan County Code creates a property interest because its mandatory provisions were adopted to protect adjacent property views, *see* SJCC 18.80.110(I)(3)(a)(iii) (copy attached).

2. Regarding the issue of whether the Court may waive the exhaustion requirement even if the definition of land use decision in RCW 36.70C.020(2)(a) is interpreted to require exhaustion, *see Ward v. Board of Skagit County Commissioners*, 86 Wn. App. 266, 936 P.2d 42 (1997).

3. Regarding the issue of whether the Land Use Petition Act, ch. 36.70C RCW, requires general public notice of a land use decision to start the clock ticking for an appeal, *see Samuels Furniture v. DOE*, 147 Wn.2d 440, 462 (2002) (LUPA requires that a local jurisdiction provide general public notice by virtue of publication of the land use decision).

4. Regarding the issue of whether general notice of the land use decision was provided in *Samuels Furniture v. DOE*, 147 Wn.2d 440 (2002), *see* that case at 461-462 (Ecology had general notice of the project because it received the SEPA checklist for the project).

Dated this 27th day of March, 2014.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By:



Claudia M. Newman
WSBA No. 24928
Attorneys for Appellants

18.80.110 Shoreline permit and exemption procedures.

A. Purpose and Applicability.

1. This section includes the procedures necessary to ensure that the provisions of the Shoreline Master Program (Element 3 of the Comprehensive Plan and Chapter 18.50 SJCC) are implemented and enforced, and to ensure that all persons affected by the master program are treated in a fair and equitable manner.....

>>> {irrelevant sections omitted} >>>

I. Shoreline Variances.

1. General. The purpose of a variance is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances related to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

2. Other Local Regulations. Variances or exemptions granted from the provisions of other local regulations shall not be construed to constitute variances from the provisions of the Shoreline Master Program.

3. Criteria for Approval of Shoreline Variances. Variances from the provisions of the Shoreline Master Program may be granted when the applicant has proved that the following criteria have been met:

a. Variances for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated as wetlands pursuant to Chapter 173-22 WAC, may be authorized; provided, the applicant can demonstrate all of the following:

i. That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program. The fact that a greater profit might result from using the property in a manner contrary to the intent of the Shoreline Master Program is not sufficient reason for granting a variance;

ii. That the hardship described in this section is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of the Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;

iii. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;

iv. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

v. That the public interest will suffer no substantial detrimental effect.

b. Variances for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within wetlands as designated under Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

i. Strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable use of the property not otherwise prohibited by the master program;

ii. Proposal is consistent with the criteria established under subsection (I)(3)(a)(ii) through (v) of this section; and

iii. Public rights of navigation and use of the shorelines will not be adversely affected.

c. In the granting of shoreline variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

d. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in subsection (J) of this section. Variances from the use regulations are prohibited.

e. Filing of variances with and review by the Washington Department of Ecology are described in subsection (L) of this section.

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elizabethh@sanjuanco.com; mjohnsen@karrtuttle.com; Claudia M. Newman Henry
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Rec'd 3-27-14

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Subject: Durland v. San Juan County, No. 89293-8, 89745-0

Dear Clerk:

Attached for filing please find appellants' Statement of Supplemental Authorities and Declaration of Service in *Durland, et al. v. San Juan County, et al.*, No. 89293-8 and No. 89745-0.

Appellants are represented by Claudia M. Newman, WSBA No. 24928, Telephone 206-264-8600, e-mail address: newman@bnd-law.com.

Thank you for your attention to this matter.

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