

TRI-CITY HERALD

Appeals court upholds \$1 award in suit over Richland storm water

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The Washington State Court of Appeals has upheld the award of \$1 from the city of Richland to a Spokane developer in Benton County Superior Court.

At issue was 21.6 acres of undeveloped land at Keene and Shockley Roads in south Richland.

The lower court found that the owner of the land, Keene Valley Ventures of Spokane, had proved that city storm water management in the area had caused a problem on the acreage, raising the water table significantly and causing occasional flooding. But the damage to the land was temporary because Richland could reroute the water to flow away from the land, the court found.

It also ruled that Keene Valley Ventures failed to prove that it had a specific amount of damage.

Keene Valley Ventures argued in the appeal that it had no burden to prove the amount of its damages, but a three-judge panel for the Court of Appeals disagreed.

The land was bought by Baines Corp. for \$47,500 in 2000 and then sold to Keene Valley Ventures three years later for \$189,170, according to court documents. Ron Johnson was the owner of both companies.

After Johnson bought the property, he discovered three man-made wetlands caused by irrigation of neighboring properties, according to documents. Filling them would require 27,000 cubic yards of dirt.

Development above the property continued throughout the decade and more water was funneled down toward the Keene Valley Ventures property, according to court documents.

Six test pits were drilled by two different companies in 2005, finding groundwater at 1.1 feet to 7.5 feet deep. Filling the areas was calculated then to require 145,000 to 150,000 cubic yards of fill.

Water regularly collects in a ditch on the north side of Keene Road and occasionally flows onto the Keene Valley Ventures property. When Johnson complained to the city about the water in the ditch and the rising water table, the city said the water was routed to the Keene Road ditch consistent with its storm water management plan.

In 2006, Keene Valley Ventures entered an agreement to sell the land for \$541,500, but the sale did not close. Another agreement was negotiated a year later to sell the land for \$575,000, but that sale also did not close.

Two years later, Keene Valley Ventures filed a lawsuit in Benton County Superior Court and a four-day, non-jury trial was held in 2011.

The appeals court said that Keene Valley Ventures did not prove that the fair market value of the property had been diminished. No appraisal was done and no sale was made. But the sales agreement did suggest the value of the land had significantly appreciated in less than a decade despite the rising groundwater level, according to court documents.

Although Johnson provided evidence of the cost of restoring the property with fill dirt, trial Judge Bruce Spanner did not find it persuasive and it was within his prerogative to decide how persuasive the evidence was, the appeals court ruled.