

NEWS

# Kirkland's Potala Village developer appeals to State Supreme Court

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MARTINELLI,  
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A rendering of the Potala Village project on Lake Washington Boulevard. — Image Credit: Reporter File Art

Potala  
Village  
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Attorneys  
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Potala  
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Supreme Court in response to a recent ruling by the Court of Appeals, which sided with the city over whether or not the developer had vested rights to their property on Lake Washington Boulevard prior to zoning code changes that would limit the number of units allowed.

Potala Village planned to have 143 units, but under the new zoning regulations only 60 would be allowed.

The Court of Appeals ruling overturned a King County Superior Court decision, which concluded Potala Village had vested rights before the city imposed a six-month emergency moratorium on all building permits in the business neighborhood zones.

The City Council eventually passed new zoning regulations placing a maximum limit on the number of units per acre allowed in business neighborhood zoning.

Before the November 2011 moratorium, Potala Village had submitted a completed shoreline substantial development permit, which the city approved in January 2013, but had not filed for a building permit application. In their ruling, the Court of Appeals concluded the building permit was necessary to have vested rights and that Potala Village failed to cite any law preventing them from filing a building permit application before the moratorium.

In their petition to the Supreme Court, the Potala Village attorneys claim they did not file for a building permit application because the city informed them that they would not have accepted it until after changes were made.

Additionally, when they attempted to submit one during the moratorium, the petition further reads, it was rejected by the city.

"Instead, Kirkland would 'place the application on hold pending approval of the Shoreline Permit,'" the petition reads. "By doing so, Kirkland preserved an ability to require a new building permit application if it decided to substantially change the project through the shoreline substantial development permit process."

The petition further argues that a shoreline permit is all that is necessary to have vested rights, because it is "the most environmentally protective regulation and takes into account all applicable zoning and land use regulations."

The city only changed its mind about the site's vested rights, they claim, when public opposition to the project grew over traffic concerns, as the mixed-use building is located off of a one-lane road in both directions. The petition cites a Washington State Supreme Court ruling, *City of Bellevue v. West Main Assoc.*, in which the court found that the city's discretion to change zoning regulations based upon the developer's proposals violated the property owner's right to due process.

The petition also claims the Court of Appeals ruling contradicts at least 60 years of common law doctrine protecting vested rights to property and in doing making the vested rights doctrine "only available on a statutory basis."

Kirkland City Manager Kurt Triplett said the city stands behind their decisions.

"We believe the Supreme Court will uphold the Appeals Court decision," he said.

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