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I. INTRODUCTION

The City of Vancouver has struggled with this dispute between Respondents and Appellants for several years. It viewed this matter as a private dispute involving CC&R's and ownership interests in plat common areas. The City was called upon, however, to decide whether application of RCW 58.17.060 or 58.17.215 or both was required to divide Respondents' lot. This is the central issue in this case. Effectively, if 58.17.060 is applied, the Respondents' get their lot division because the City has no reason to deny it since the division is consistent with the Vancouver Municipal Code (VMC). If 58.17.215 is applied, the Appellants' effectively get a veto over the lot division under the terms of that statute with such veto no doubt exercised.

When called upon to pick one statute or the other, the City staff had little clear guidance in statute and none in Washington case law. A review of the briefs and the proceedings below show that the parties take different positions on which statute should be applied and the set of facts that would trigger a plat alteration in place of short plat:

1. Respondents contend that the plat alteration statute only applies if public infrastructure is changed in a plat.
2. Appellants argue that the plat alteration statute applies to any change to the plat including a change that only divides a platted lot.
3. The City argued in the proceedings below and will argue here that the plat alteration statute applies to any change to the plat except the division of a lot.¹

¹ The Appellants have noted what they call the City's change in position. That is not the case. The City, while acknowledging this matter is a close legal question, has continued to maintain the legal conclusions expressed in the letter of December 8, 2008. Administrative Record (AR) at 59. After the Superior Court's

The City has limited interest in the outcome of this particular case. However, after reviewing the briefs of the other parties, the City does not agree completely with either. Accordingly, the City submits this argument in role similar to that of a party amicus curie.

II. ARGUMENT

A. RESPONDENTS ARE CORRECT THAT THE MERE DIVISION OF A PLATTED LOT DOES NOT REQUIRE A PLAT ALTERATION

As noted in the City's December 8, 2008 letter², a division of a lot that is part of an established plat, standing alone, does not require a plat alteration. As a basis for this conclusion, the letter noted a 1980 Attorney General opinion³ that apparently prompted a change in the law mandating a more broad application of the short plat statute. The Attorney General concluded that the short plat statute could not further divide a lot within a plat:

“...the further division of a lot within an existing plat or subdivision, whether established pursuant to chapter 58.16 or chapter 58.17 RCW, constitutes a ‘resubdivision’ within the meaning of RCW 58.17.020(1), supra. Such action therefore must thus comply with the provisions of chapter 58.17 RCW relating to ‘subdivision,’ regardless of the number of new lots which result from the action in question. We therefore answer your first question in the negative and your second question in the affirmative.”⁴

ruling in the first case, the City determined to accept the short plat application to get a matter that was most likely bound for this Court to it. The City could refuse to accept the short plat application, but this matter would have likely been before this Court in any case. A ruling from the courts will likely end this matter without additional proceedings.

² AR 59.

³ Op. WA. Atty. Gen. 1980, No. 5.

⁴ Id.

At the time of the opinion, the Washington Plat Map Act did not include the word “redivision” within the definition of short plat. 58.17.020(6) read:

“(6) 'Short subdivision' is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease.”

The following year, RCW 58.17.020 was amended to include “redivision” within the definition of short plat, indicating that the legislature wanted a different result than requiring every lot within a subdivision to be processed through the more formal subdivision procedures in Chapter 58.17 RCW. Thus the legislature intended the short plat statute to apply to the division of platted lots.

Accordingly, the City disagrees with the contention of the Respondents that any division of a platted statute requires a plat alteration.

The City’s basis, however, for requiring application of the plat alteration statute was not because it was a platted lot.⁵ The basis was dividing the platted lot would change the application of Note 4.⁶ On this point the City agrees with the Appellant.⁷

⁵ The December 8, 2008 letter noted that some jurisdictions in Washington have interpreted RCW 58.17.215 to require a plat alteration for any division of a platted lot. Other jurisdictions do not have such a requirement. Guidance from this court on this point would clarify this issue. AR 59, page 2.

⁶ The Respondents have argued that the Appellant has waived this argument even though it is the basis of why the City acted the way it did below. As noted, the City did not appeal the Superior Court’s ruling because it has limited interest in the outcome of this case other than getting clarification of the application of RCW 58.17.215.

⁷ The Appellants have noted what they call the City’s change in position. That is not the case. The City, while acknowledging this matter is a close legal question, has continued to maintain the legal conclusions expressed in the letter of December 8, 2008. After the Superior Court’s ruling, the City determined to accept the short plat application to get a matter that was most likely bound for this Court to it. The City could have refused to accept the short plat application, but this matter would have likely been before this Court in any case. A ruling from the courts will effectively settle this matter.

B. BECAUSE THE SHORT PLAT APPLICATION EFFECTIVELY ALTERS A PLAT NOTE, A PLAT ALTERATION IS REQUIRED.

Respondents state in their opposition brief that “the plat alteration procedures in RCW 58.17.215 are only intended to apply to proposals that alter public dedications or some other interests held in common by owners of the parent plat.”⁸ The City contends that this contention is too narrow. However, even this statement, if accepted by the court, would not necessarily obviate the need for a plat alteration in the case at bar.

The plat in question includes Tract A, a common area held by the other lots in the plat each with an undivided interest in it. Even under the Respondents’ stated position, this is an interest held in common by the owners of the parent plat. Note 4 of the Plat provides for an undivided 1/13th ownership interest in the Tract A. The re-division of the lot would create an undivided 1/14th ownership interest in Tract A, thus diluting its ownership. Respondents purport to deal with this inconsistency by providing that the newly created lot will have no undivided ownership interest in Tract A.⁹

Potentially the removal of the lot creates issues such as calling into question whether other plat conditions and the CC&R’s will continue to apply to the new lot in other respects. If the lot remains in the plat, it creates a new class of lots—one with an undivided ownership interest and one without it.

One of the reasons behind platting and subdivision statutes is to promote the orderly division of land. Altering the boundaries of plats or creating different rights for

⁸ Respondent’s Brief in Opposition (12:21-25).

⁹ See Finding 13 of the Hearing Examiner Order (AR 1, page 7).

classes of lots inside of a plat to avoid technically altering a plat note does not promote the orderly division of land.¹⁰

Changes to notations on plats, whether direct or indirect, can be significant. For example, it is entirely possible that a notation on a plat could provide for mitigation such as a buffer area to protect a critical area. The notation could apply to a parcel of land that gets divided as this one does. Even though the Respondents' attempt to create a special rule for this new lot might purport to take it out of having a common ownership interest, it could well create other problems such as an obligation to maintain the common area.

A broad rule that might come out of this case that plat alterations only apply where public infrastructure is changed, might result in different unforeseen consequences that the legislature did not intend. For example, what if the division was not just creating one additional lot, but several that impacted common areas? This could burden the infrastructure—whether public or private-- provided for in a plat beyond its capacity. What if a note imposes an obligation of the lot removed to maintain a common area? Removing a piece of the plat from being burdened by that note could easily impact the maintenance of the common area.

Accordingly, the City submits that this court not limit the application of the plat alteration statute to the extent Respondents propose. It should apply to any change to a plat other than the mere redivision of land.

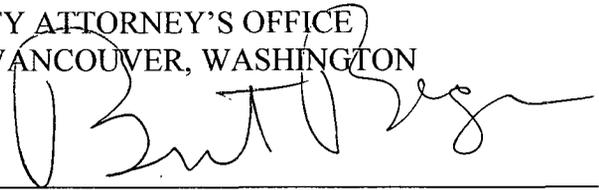
¹⁰ RCW 58.17.010.

III. CONCLUSION

For the foregoing reasons, City submits to this court that it remand this case to the Superior Court with instructions that a plat alteration is required to divide the lot as proposed by the Respondents.

DATED this 27th day of June, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing OPENING BRIEF OF RESPONDENTS / CROSS-APPELLANTS to be served on the following:

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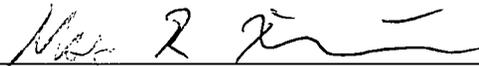
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