

COURT OF APPEALS
DIVISION II

No. 41298-5-II

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COURT OF APPEALS DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY *CS*
DEPUTY

JOHN R. WYSS
Plaintiff/Appellant

vs.

GRAYS HARBOR COUNTY, RESPONDENT

Defendant/Appellee

APPEAL FROM SUPERIOR COURT
FOR THURSTON COUNTY

APPELLANTS' OPENING BRIEF AND APPENDIX

Scott E. Stafne, WSBA # 6964
Attorney for Appellants

Stafne Law Firm
239 N. Olympic Avenue
Arlington, WA 98223
Phone: 360-403-8700
Fax: 360-386-4005

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I. INTRODUCTION

This appeal is the third one brought by John Wyss in this Court of Appeals related to his creation of an illegal subdivision dividing one lot into two lots in 1999¹. *See* unpublished decisions of this Court at Clerk's Papers (CP) pp. 31 - 34 and 53 - 58. This appeal is different than Wyss previous unsuccessful appeals because it challenges the rescission of the two lot illegal subdivision a decade later by the Grays Harbor Auditor based on an informal request by the Hoquiam City Attorney. The City Attorney's request claimed that a Grays Harbor Superior Court had invalidated Wyss' illegal subdivision in a case between Wyss and Hoquiam which was brought before the Grays Harbor Court pursuant to its original jurisdiction in 2005, well after LUPA's 21 day limitation period² had expired. The purpose of the City Attorney's request was to apply a 2007 assessment lien, which had been assessed by the City of Hoquiam against one of the lots, to

¹ Wyss transferred to his son, James Beamer Wyss, "the North 40' of the Southerly 84 feet of Lots 7 & 8, block 8, Karrs Hill Addition to the Town, now City of Hoquiam as per plat recorded in Volume 1 of Plats, page 123 records of Grays Harbor County ...". Clerk's Papers (CP) p. 136.

² "LUPA" refers to the Land Use Petition Act, RCW Chapter 36.70C. LUPA's 21 day filing requirement to challenge a final land use decisions is set forth in RCW 36.70C.040 (2) and (3).

also cover the other lot so that both could be foreclosed upon imminently³.

Wyss claims that the agreement between the Hoquiam City Attorney and the Grays Harbor Auditor that the 2005 judicial decision by the Grays Harbor rescinded Mr. Wyss illegal subdivision was contrary to law. Wyss seeks a declaratory judgment that the subdivision he created is legitimate as a matter of law and injunctive relief barring the rescission of the subdivision so as to extend an assessment to the second lot of the subdivision.

II. ASSIGNMENTS OF ERROR

ASSIGNMENTS OF ERROR 1. The Superior Court erred in holding that it had authority to entertain a collateral attack on Wyss' illegal subdivision based on the 2005 decision of the Grays Harbor Court in a case brought by Wyss against Hoquiam pursuant to that Court's original, not appellate, jurisdiction.

ISSUES RELATED TO ASSIGNMENT OF ERROR 1

A. Has the legislature divested Superior Courts from jurisdiction to decide cases which constitute a collateral attack

³ RCW 84.64.050 requires a three year waiting period before foreclosure of property. By having the County Auditor informally rescind the second lot the City of Hoquiam was able to foreclose both lots in the entire subdivision without waiting until three years expired after the notice of delinquency.

on a final land use decision after LUPA's limitation period expires?

B. If so, to what extent, if any, did the Grays Harbor Court have jurisdiction, *i.e.* judicial authority, to issue a decision in 2005 nullifying the 1999 final land use decision creating Wyss' subdivision?

ASSIGNMENT OF ERROR 2. The Superior Court erred in holding that the Hoquiam City Attorney and the Grays Harbor Auditor had authority to rescind Wyss' subdivision in 2009 so that the City could apply its abatement lien to all of Wyss' lots, rather than the lot which had been identified during the lien proceedings.

A. Did the Hoquiam City Attorney and Grays Harbor County Auditor have authority to rescind John Wyss' two lot subdivision in order to allow an early foreclosure on both of the lots in the Wyss' subdivision?

B. Has the legislature prohibited the administrative dissolution of a subdivision where the procedures set forth in LUPA and RCW 58.17.190 are not followed?

III. STATEMENT OF THE CASE

Washington has a strong policy favoring the finality of land use decisions. This policy is reflected in both its land use statutes and the

decisions of Washington Courts generally. *See infra*. Because of these short limitations periods and their substantive affect on the ability of a Superior Court to decide "final land use decisions" this statement of facts will focus primarily upon the timing of final land use decisions and the impact, if any, previous judicial decisions had with regard to the Assessor's rescinding Wyss' illegal two lot subdivision created in September 1999.

A timeline is helpful for understanding the facts of this case.

On **December 2, 1998** Eleanor V. Mc Carty transferred to John Wyss "the southerly 84 feet of Lots 7 & 8 block 8, Karrs Hill Addition to the Town, now City of Hoquiam as per plat recorded in Volume 1 of Plats, page 123 records of Grays Harbor County ...". Clerk's Papers (CP) p. 134. On September 21, 1999 Wyss transferred the "North 40 ' of the south 84 ft. of lots 7 & 8, Block 8, Karr's Hill" to his son James Beamer Wyss. Assessor Cherri Rose-Konschau testified in her declaration:

2. Upon receipt of a quit claim deed executed September 21, 1999, and recorded under Grays Harbor recording No. 1999-09210019, my office assigned tax parcel No 053800800703 to the described parcel, as prescribed by RCW 84.40.160, which was a portion of the parcel identified by Tax Parcel No. 0538008800702. The Assessor's office does not approve or establish real property subdivisions within incorporated or unincorporated areas of the County." CP, p. 59:19 - 24.

At all material times, RCW 58.17.190, provided:

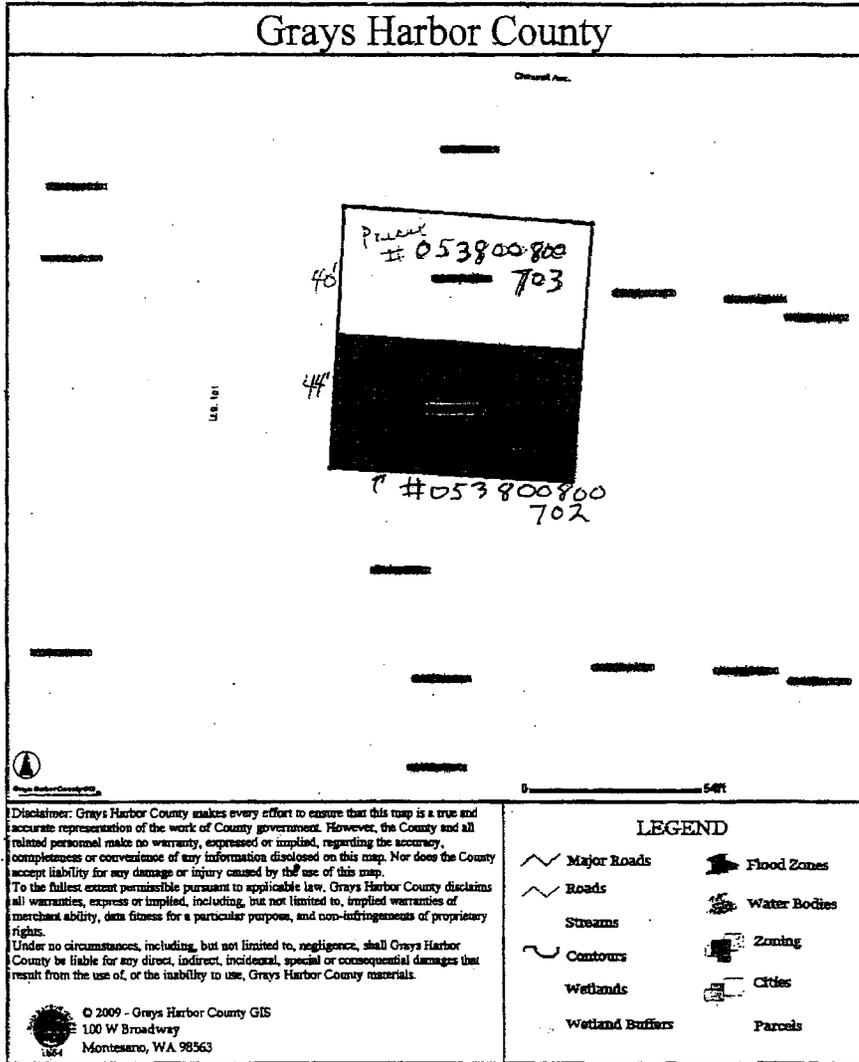
"The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove their files or records of the unapproved plat, or dedication of record."

For purpose of this appeal Wyss asserts that the legal result of the County's partitioning his lot into two lots was the creation of an illegal two lot subdivision⁴. From the time the illegal subdivision was created (in 1999) until the lots were administratively combined on or about March 16, 2009⁵ the Wyss subdivision appeared as the following short plat subdivision in County records. CP. pp. 138 - 139.

⁴ This is the same conclusion this Court came to in 2006 in *Hoquiam v Wyss*, Docket No. 34048-8-II. CP pp. 53 - 58. In that appeal, this Court held:

"The trial court properly found that the deed from Wyss to James was illegal. Wyss's transfer of the North 40 feet effectively divided the property and created a short subdivision. RCW 58.17.020(6). Therefore, Wyss had to comply with the local regulations including Chapter 9.34 of the Hoquiam Municipal Code, before dividing his property. ... Because the short subdivision he attempted to transfer was not created legally, the transfer was illegal. See RCW 58.17.030."

⁵ See Declaration of Cherri Rose-Konschu, including exhibits. CP 59 - 61; Declaration of John R. Wyss, CP pp 124:13 - 22 and exhibits depicting plat map at CP pp. 138 - 139.



On **December 8, 1999** Hoquiam issued a decision condemning an apartment building located on parcel 053800800702. Wyss attempted to appeal that decision to Superior Court, but the Court held on **March 23, 2000** that LUPA applied to the city's abatement

decision. The Court found Wyss' failure to file a land use petition within 21 days of the City's abatement decision barred judicial review.

On **April 5, 2002** this Court of Appeals affirmed the Superior Court's holding that LUPA's limitations period barred Wyss challenge to the City Council's land use decision condemning the building which existed on parcel #053800800702. CP. pp 31 - 34. Wyss sought review of this Court's unpublished decision in the Supreme Court. Review was denied. *Wyss v City of Hoquiam*, 147 Wash.2d 1025 (2002).

Wyss next turned to the United States District Court for the Western District of Washington to secure relief. CP pp 36 - 47. Wyss' complaint contained the following causes of action (1) deprivation of home and property without compensation; (2) denial of due process and (3) physical invasion and the taking of plaintiff's property. CP 37 - 38. In addition to defending itself, Hoquiam for the first time sought affirmative relief against Wyss. "The City argues John Wyss's conveyance of a portion of the property was an unlawful subdivision of the property and the court should nullify the conveyance". CP. 38:7-8. Ultimately, the District Court granted summary judgment in favor of Hoquiam with regard to Wyss' claims. However, the Court dismissed Hoquiam's request to nullify Wyss' transfer of one lot in the

illegal subdivision to his son because this claim involved a matter of state property law. CP 46 - 47.

Hoquiam then brought an action against Wyss to nullify the transfer of one of the subdivision's lots into his son's name. On **October 17, 2006** the Grays Harbor Superior Court entered a summary judgment granting a

"Declaratory Judgment that the purported transfer of a portion of the property located at 314 Lincoln Street, Hoquiam, Washington, to wit: the Northerly 40 feet of the Southerly 84 feet of lots 7 and 8, Karr's Hill Addition to the City of Hoquiam is enjoined, declared unlawful and invalid, and Defendants are barred from attempting to transfer a portion of said realty without first complying with Title 9 of the Hoquiam Code." CP., p. 7:15 - 20.

Wyss appealed the Superior Court's decision. On **December 5, 2006** this Court affirmed that ruling in an unpublished decision. CP pp. 53 - 58. This Court held that Wyss' actions created an illegal subdivision. CP. p 56. In response to Wyss' argument that Hoquiam's suit was time barred, this Court held (without any consideration of LUPA or RCW 58.17.190) that no statute of applications was applicable to the City of Hoquiam with regard to their claims against Wyss.

"C. The statute of limitations does not bar the City's claim because the statute of limitations does not apply to actions 'in the name of the benefit of the state' RCW 14.16.160. Municipal actions are brought 'for the

benefit of the state' when those actions arise out of powers traceable to the sovereign powers of the state that have not been delegated to the municipality. [cite] The focus of the cases interpreting RCW 4.16.160 has not been on the municipal conduct's effect, but on its nature and character. [cites]

The power to regulate platting is traceable to the state's sovereign power. [site] In Washington the legislature has effectively designated platting issues to the municipalities. RCW 58.17.030 .060 (1). Therefore because the City was acting for the state's benefit by enforcing the short plat regulations, the declaratory judgment action to void the deed was not time barred because no statute of limitations applied. RCW 4.16.160

It is important to note that neither the decision of the Superior Court nor this Court explicitly states that it is rescinding the illegal subdivision which Wyss created on **September 21, 1999** and which was never appealed pursuant to the provisions of LUPA or RCW 58.17.190.

On **March 12, 2007** the Hoquiam City Council passed Resolution No. 2007-06. Section 2 of that resolution provided:

"The charge of \$25,988.00 shall be assessed against the property at 314 Lincoln Street Hoquiam, described as follows:
The Southerly 84 feet of Lots 7 & 8, Block 8, Karrs Hill addition to the City of Hoquiam, Grays Harbor County, Washington (**Parcel Number 53800800702**)"
Emphasis Supplied, CP 90:9-23

On **April 24, 2007** Hoquiam certified the cost of tearing down Wyss' house (approximately \$26,000.00 without interest) as a lien on the tax parcel 53800800702. *The City did not certify the lien applied*

to the second tax parcel (lot 53800800702). CP 124: 13 - 22; 145 - 147.

Hoquiam has adopted the Uniform Code for the Abatement of Dangerous Buildings. CP, p 154. Section 906 of that Code provides:

"The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is placed on the assessment roll as provided herein. Any appeal from a final judgment in such proceeding must be perfected within 30 days after the entry of such judgment." CP 151.

Neither Wyss nor the County appealed the assessment. Wyss continued to pay the property taxes owed on the tax parcel which had not been assessed.

Almost two years later, on **March 11, 2009**, Hoquiam, through its attorney Steven R. Johnson, wrote the Grays Harbor Assessor, Ms. Cherri Rose-Konshu, a letter which stated:

"Dear Ms. Rose-Konshu:

In 2007, the City of Hoquiam recorded on the assessment roll a lien for costs associated with the abatement of a dangerous building located at 314 Lincoln Street, Hoquiam, Washington. The assessment was in the amount of \$25,998.00. Apparently, the Assessor's office still shows this property as being divided into two tax parcels. ***Mr. Wyss, the owner, had made an illegal subdivision of this property*** by quitclaiming a portion of his lot to his then six year old son. The City of Hoquiam was forced to file a lawsuit against Mr. Wyss to seek declaratory judgment that the transfer to his son was unlawful and invalid. On October 17, 2005, Judge Mark McCauley granted the City's

Motion for Summary Judgment, which among other things, declared the transfer to be invalid.

Please find enclosed a copy of the City's Motion for Summary Judgment, and a conformed copy of Judge McCauley's Order Granting Summary Judgment to the City.

Thank you for your cooperation in this matter. [Emphasis Supplied]" CP p. 178

On **March 27, 2009** the County sent Wyss a Corrected Statement. Wyss Declaration, CP 156 - 157. Handwritten on the statement was the following: "* Per a court order - the taxes for 2006, 2007, 2008, 2009 tax years have been added to parcel 053800800702" and "*Parcel has been deleted". Id. On April 7, 2009 Wyss wrote a letter to the treasurer of Grays Harbor requesting the Treasurer "fully explain your actions and your authority to take what actions were taken to result in the corrected statement." CP 159. Grays Harbor County responded:

"Dear Mr. Wyss:

In response to your letter inquiring why you received a corrected statement on the parcel listed above, I have enclosed a copy of the letter received by Grays Harbor County from the City of Hoquiam explaining the subdivision of the parcel had been deemed unlawful and invalid by Judge Mark McCauley.

With that information, ***Grays Harbor rescinded the subdivision*** and mailed you a corrected statement with the full assessed value being placed on one parcel.

If you have further questions, please contact me.

Sincerely,

Debra Mattson,
Collections/Foreclosure
Grays Harbor County Treasurer's Office" CP 162.

Mr. Wyss brought this lawsuit against Grays Harbor County seeking a declaratory judgment that the Assessor had no legal authority to rescind Wyss' subdivision. Wyss also asked for injunctive relief requiring the restoration of the subdivision.

The County moved for a summary judgment dismissing Wyss case. This motion was granted. CP 211 - 214. Wyss appealed.

While this appeal was pending Grays Harbor brought a foreclosure action to foreclose both lots in Wyss' subdivision. The Grays Harbor Superior Court issued an order which allowed the foreclosure of both lots. Wyss has also appealed that decision to this Court and is contemplating moving for consolidation of both appeals when he files an opening brief in that appeal. *See* RAP 3.3

IV. ARGUMENT

A.) The extent of a court's authority to decide administrative appeals is "prescribed by law".

The standard of review for a summary judgment is de novo. *Hadley v. Maxwell*, 144 Wn.2d 306, 310, 27 P.3d 600 (2001).

Whether a court may exercise jurisdiction is a question of law subject to de novo review. *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005).

Appeals of final administrative land use decisions under RCW Chapter 36.70C invoke the Superior Courts' appellate jurisdiction, which is limited "as may be prescribed by law". Const. Art. 1, Sec. 6. *See also Conom v. Snohomish County, supra.; Keep Watson Cutoff Rural v. Kittitas County*, 184 P.3d 1278, 145 Wn. App. 31 (2008). When hearing appeals all statutory jurisdictional requirements must be met before the Superior Court's appellate jurisdiction is properly invoked. *Fay v. Northwest Airlines, Inc.*, 115 Wash.2d 194, 197, 796 P.2d 412 (1990).

Last week, on March 2, 2011, the United States Supreme Court considered whether the time limit for filing a Veterans Appeal constituted a jurisdictional requirement or a procedural rule. *See Henderson v Shinseki*, a copy of this ruling is included in Appellant's appendix. The Court concluded that the touchstone for determining whether a statute is jurisdictional or procedural depends on the intent of Congress.

Among the types of rules that should not be described as jurisdictional are what we have called "claim-processing progress of litigation by requiring that the parties take

certain procedural steps at certain specified times. *Id.*, at ___ (slip op., at 14); *Eberhart, supra*, at 19; *Scarborough, supra*, at 413–414; *Kontrick, supra*, at 455–456. Filing deadlines, such as the 120-day filing deadline at issue here, are quintessential claim-processing rules. Accordingly, if we were simply to apply the strict definition of jurisdiction that we have recommended in our recent cases, we would reverse the decision of the Federal Circuit, and this opinion could end at this point.

Unfortunately, the question before us is not quite that simple because Congress is free to attach the conditions that go with the jurisdictional label to a rule that we would prefer to call a claim-processing rule. See *Bowles, supra*, at 212–213. The question here, therefore, is whether Congress mandated that the 120-day deadline be “jurisdictional.”

The Supreme Court's ruling in *Shesinki* is analytically the same as that employed by Washington Courts under *Conom v. Snohomish County*, 155 Wn.2d 154, 118 P.3d 344 (2005) and *Keep Watson Cutoff Rural v. Kittitas County*, 184 P.3d 1278, 145 Wn. App. 31 (2008) with regard to determining whether statutory provisions are jurisdictional or procedural.

RCW 36.70C.040 (1) and (2) bar Superior Courts from considering land use appeals which are not timely filed. RCW 36.70C.040 (1) provides LUPA: "shall be the exclusive means of judicial review of land use decisions...". However, LUPA does not apply to writs of mandate.

B.) Wyss' illegal subdivision was legitimized as a result of no appealing that final land use decision.

It is undisputed that Wyss' actions created an illegal subdivision. See CP 56, 59:19 - 24; 61; 156 - 166. It is also undisputed that the final land use decision creating this subdivision in September 1999 was not timely appealed under LUPA or RCW 58.17.190.

The failure by anyone to timely file a LUPA appeal or writ of mandate pursuant to RCW 58.17.190 has legitimized Wyss' subdivision as a result of Washington's longstanding policy favoring the finality of land use decisions. See e.g. *Woods v Kittitas County*, 174 P.2d 25, 30 - 35, 162 Wn.2d 597 (2009); *Chelan County v Nykreim*, 146 Wn.2d 904, 917 - 938, 52 P.3rd 1 (2002); *Wenatchee Sportsmen v Ass'n v. Chelan County*, 141 Wash.2d 169, 4 P.3rd 123 (2000). In *Thurston County v. Western Washington Growth Management Hearings Board*, 190 P.3d 38, 45, 164 Wash.2d 329 (2008) the Supreme Court explained part of the reasoning behind Washington's strong finality policy by reiterating "[i]f there were not finality, no owner of land would ever be safe in proceeding with development of his property."⁶

As Division One observed in *Stientjes Family Trust v. Thurston County*, 152 Wash.App. 616, note 8, 217 P.3d 379 (2009):

⁶ This quote was taken from *Deschenes v King County*, 83 Wn.2d 714, 717, 521 P. 2d 1181 (1974) which was overruled in part by *Clark County PUB. Util. District No. 1 v Wilkinson*, 139 Wn.2d 840, 991 P.2d 161 (2000)

Our Supreme Court has held that " even illegal decisions must be challenged in a timely, appropriate manner."*Habitat Watch [v Skagit County,]* 155 Wash.2d [397] at 407, 120 P.3rd 56 (citing *Pierce v. King County*, 62 Wash.2d 324, 334, 382 P.2d 628 (1963)). Thus, challenges brought after the expiration of deadlines for filing local administrative appeals or after LUPA's 21-day time period for filing an appeal constitute impermissible collateral attacks. *Habitat Watch*, 155 Wash.2d at 410-11, 120 P.3rd 56. *See also*, [*Chelan County v] Nykreim*, 146 Wash.2d at 933, 52 P.3rd 1; *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 181, 4 P.3rd 123 (2000).

The legislature provided two statutory avenues to obtain relief from the creation of an illegal subdivision in violation of a local municipality's ordinances. Those statutory avenues are LUPA and RCW 58.17.190. Both require the County be a party to any Superior Court appeal or writ of mandate to correct a subdivision error recorded in violation of municipal ordinances.

Here the City chose to sue only Wyss with regards to a final land use decision, *i.e.* subdivision, approved by the County. Wyss had no power to undo the subdivision. The County was a necessary party to any appeal or writ action seeking such relief. *Grundy v. Thurston County*, *supra*.

C.) The legislature has prohibited Courts from exercising original action over final land use decisions.

1. LUPA's 21 day limitations period is jurisdictional.

This Court noted in *Nickum v. City of Bainbridge Island*, 153 Wn.App. 366, 381 - 382, 223 P.3d 1172 (2009) that LUPA's limitations period is jurisdictional.

"The LUPA deadline controls access to the trial court's jurisdiction over LUPA appeals, unlike the 14 day administrative statute of limitations previously discussed with respect to standing, and, thus, cannot be equitably tolled. *Hoisington*, 99 Wn. App. at 431. RCW 36.70C.040(2) clearly states that "[a] land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served." Although the statute does not use the word "jurisdiction," the legislature's use of the phrases "is barred" and "may not grant review" demonstrate the legislature's intent to prevent a court from considering untimely filings."

The failure of Hoquiam to file a timely LUPA appeal barred any Court from deciding a collateral attack on the legitimacy of the subdivision in a subsequent action brought pursuant to the Court's broad original jurisdiction.

2. The 30 day limitations period for filing an appeal of an assessment decision is jurisdictional. Alternatively, if the limitations period is a procedural rule it has not been substantially complied with.

At the outset it should be noted that it is an open question in the Supreme Court as to whether LUPA applies to fines and monetary assessments. *Post v. City of Tacoma*, 167 Wash.2d 300, 217 P.3d 1179, 1184 Wash. 2009 ("This court has never had the occasion to determine whether LUPA applies to a city's determination of violations and

assessments of penalties." *Id.*, at 1184.) *See also Emery v. Pierce County*, 2010 WL 545530, *5 (W.D. Wash.) (*Post* does not apply to enforcement actions which do not impose monetary sanctions.)

If LUPA were to apply to assessment proceedings, then the time to appeal the decision imposing an assessment on parcel 053800800702 would have been 21 days after the assessment decision *regardless* of the language of the Grays Harbor County ordinance that an appeal must be perfected within 30 days. *Mellish v. Frog Mountain Pet Care*, 154 Wn.App. 395, 225 P.3d 439 (2010) (Municipality cannot extend 21 day limitation period by through creation of a procedure for the reconsideration of final land use decisions). As LUPA's limitation period is jurisdictional, the decision applying the assessment would be final and not subject to a belated collateral attack. *Nickum v. City of Bainbridge Island*, 153 Wn.App. 366, 381 - 382, 223 P.3d 1172 (2009).

As Wyss did not raise this issue of subject matter jurisdiction with the Superior Court the question arises as to whether this Court should consider this issue on appeal. If this Court were to rely on the latest "subject matter jurisdiction" precedent from the United States Supreme Court, it would appear so. In *Shinseki* the Supreme Court stated:

Courts do not usually raise claims or arguments on their own. But federal courts have an independent obligation to ensure that they do not exceed the scope of their

jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press. See *Arbaugh, supra*, at 514.

Jurisdictional rules may also result in the waste of judicial resources and may unfairly prejudice litigants. For purposes of efficiency and fairness, our legal system is replete with rules requiring that certain matters be raised at particular times. See *Sanchez-Llamas, supra*, at 356– 357. Objections to subject-matter jurisdiction, however, may be raised at any time. Thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction. *Arbaugh*, 546 U. S., at 508. Indeed, a party may raise such an objection even if the party had previously acknowledged the trial court’s jurisdiction. *Ibid*. And if the trial court lacked jurisdiction, many months of work on the part of the attorneys and the court may be wasted.

Washington courts appear to follow this same principle. For example in *Stafne v Snohomish County*, 156 Wn. App. 667; 234 P.3d 225 (2011) (review granted March 3, 2011) Division One dismissed Stafne's appeal for failure to comply with LUPA's 21 day limitations period even though both sides agreed that LUPA was not applicable to the legislative land use decision before the court. See *Coffey v Walla Walla*, 145 Wn. App. 435, 187 P.3d 272 (2008) (LUPA does not apply to municipal legislative decisions.)

This Court probably need not resolve the LUPA issue framed above as there was no attempt by either Mr. Wyss or Hoquiam to ever perfect an appeal of the decision applying the abatement assessment to only lot 053800800702. The reason this Court need not determine

whether LUPA's filing deadline preempts the 30 day deadline set forth in the ordinance is that no one ever attempted to comply with either deadline. Thus, there has never been substantial compliance with either deadline⁷.

Our Supreme Court recently indicated that as a general matter substantial compliance with procedural requirements requires meeting statutory deadlines. *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 242 P.3d 846, 851 - 853 (2010).

[S]ubstantial compliance with a statutory deadline, including a specified time such as that contained in RCW 25.15.460, is impossible-one either complies with it or not. See Pet. for Review at 9 (citing *City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d 923, 928-29, 809 P.2d 1377 (1991); *Westcott Homes, LLC v. Chamness*, 146 Wn. App., 735, 192 P.3d 394 (2008); *Petta v. Dep't of Labor & Indus.*, 68 Wn. App. 406, 409-10, 842 P.2d 1006 (1992))

Id. at 151.

⁷ Jurisdictional requirements of appeal statutes must be strictly complied with. *Haynes v Seattle School District*, 111 Wn.2d 250, 254, 758 P. 2d 7 (1988). Procedural requirements necessary to fulfill the purposes of appeal statutes must be substantially complied with. *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005); *Keep Watson Cutoff Rural v. Kittitas County*, 184 P.3d 1278, 145 Wash.App. 31 (2008).

In *City of Seattle v Pub. Employment Relations Comm'n (PERC)*, 116 Wn.2d 923, 928, 809 P.2d 1371 (1991) the Supreme Court stated substantial compliance requires "actual compliance in respect to the substance essential to every reasonable objective of [a] statute." In this case a reasonable objective of the ordinance was to have an appeal perfected within 30 days. That reasonable objective was not achieved as no appeal of the decision was ever perfected.

The assessment ordinance gave both sides a right to an appeal of the assessment decision based on the record before the City Council. It gave neither party the right to bring an action pursuant to the Court's original judgment to collaterally attack the City Council's assessment decision placing the lien on only one lot in a two lot subdivision years later.

3. The County was required to correct any mistakes in the subdivision through a writ of mandate action filed in Superior Court pursuant to RCW 58.17.190.

RCW 58.17.190 provides:

"The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove their files or records of the unapproved plat, or dedication of record."

It is the County, not Wyss, which legitimized the subdivision in violation of Hoquiam's ordinances. Therefore, the legislature has determined that it is the County which must seek to reverse its mistake through pursuing a writ of mandate. An original action pursuant the Superior Court's general subject matter jurisdiction by Hoquiam against Wyss to nullify his transfer of one lot in a subdivision does not resolve the issue of whether the subdivision created by the County in 1999 has been rescinded. *Grundy v. Thurston County*, supra.

RCW 58.17.190 makes clear the legislature intended that mistakes by the auditor would be corrected via a judicial writ of mandate; not by a letter from a City Attorney to an Auditor asking her to administratively dissolve a decade old subdivision so that the City can instantly apply an abatement lien to an additional lot⁸.

D.) Wyss properly brought a declaratory judgment to determine his rights. In ruling on those rights the Superior Court did not have

⁸ RCW 84.64.050 requires that three years pass before property can be foreclosed upon. The record establishes that at the time the abatement lien was placed on parcel number 053800800702 (April 2007) it was one lot in a two lot subdivision. CP 124:13 - 22; 138 - 139; 156 - 166. Further the record establishes that the lien was applied to the second lot by illegally rescinding the subdivision in 2009 thus providing a pretext to allow the second lot to be foreclosed upon in less than three years. To the extent the initial description was inadequate it does not provide a legitimate basis for the foreclosure which the Superior Court of Grays Harbor recently allowed to proceed. *Kupka v. Reid*, 50 Wn.2d 465, 467, 312 P.2d 1056 (1957) (citing *Napier v. Runkel*, 9 Wn.2d 246, 114 P.2d 534, 137 A.L.R. 175 (1941)).

judicial authority to revisit the 1999 final land use decision creating a subdivision.

In *Chelan County v Nykreim*, 146 Wn.2d at 114, the Washington Supreme Court held:

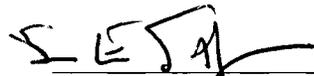
"Under RCW 7.24.020, '[a] person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.'"

This statute gives Wyss standing to determine whether the City Attorney and Auditor acting together informally can rescind an existing subdivision so that Hoquiam can foreclose on a lot to which an assessment lien was never applied. In resolving the issues raised by this declaratory judgment action the Superior Court must consider the land use decision creating Wyss subdivision as a final land use decision which cannot be collaterally attacked even if the subdivision's creation was the result of a mistake. See *Stientjes Family Trust v. Thurston County*, 152 Wash.App. 616, note 8, 217 P.3d 379 (2009) ("[C] challenges brought after the expiration of deadlines for filing local administrative appeals or after LUPA's 21-day time period for filing an appeal constitute impermissible collateral attacks, citing *Habitat Watch*, 155 Wash.2d at 410-11, 120 P.3rd 56. See also, [*Chelan County v*] *Nykreim*, 146 Wash.2d at 933, 52 P.3rd 1;

Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wash.2d 169, 181, 4 P.3rd 123 (2000).

CONCLUSION

This Court should reverse the summary judgment of the Superior Court and declare as a matter of law that Wyss' two lot subdivision remains viable because the Hoquiam and Grays Harbor County have not complied with those statutes necessary to invalidate Wyss' subdivision in a timely fashion. This Court should also enjoin the illegal rescission of Wyss' subdivision by the County Assessor.



Scott E. Stafne, WSBA #6964

APPENDIX

Applicable Provisions from the Land Use Petition Act

RCW 36.70C.030

Chapter exclusive means of judicial review of land use decisions — Exceptions.

(1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(a) Judicial review of:

(i) Land use decisions made by bodies that are not part of a local jurisdiction;

(ii) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board;

(b) Judicial review of applications for a writ of mandamus or prohibition; or

(c) Claims provided by any law for monetary damages or compensation. If one or more claims for damages or compensation are set forth in the same complaint with a land use petition brought under this chapter, the claims are not subject to the procedures and standards, including deadlines, provided in this chapter for review of the petition. The judge who hears the land use petition may, if appropriate, preside at a trial for damages or compensation.

(2) The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter.

RCW 36.70C.040

Commencement of review — Land use petition — Procedure.

(1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's

corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first-class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury.

**Applicable provisions of RCW Chapter 58.17
relating to "Plats-Subdivisions-Dedications"**

RCW 58.17.190

**Approval of plat required before
filing — Procedure when
unapproved plat filed.**

The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record.

**Applicable provisions relating to RCW 84.64
relating to "Lien Foreclosure"**

**Certificate to county — Foreclosure
— Notice — Sale of certain
residential property eligible for
deferral prohibited.**

After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs: PROVIDED, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

Certificates of delinquency shall be prima facie evidence that:

- (1) The property described was subject to taxation at the time the same was assessed;
- (2) The property was assessed as required by law;
- (3) The taxes or assessments were not paid at any time before the issuance of the certificate;

(4) Such certificate shall have the same force and effect as a lis pendens required under chapter 4.28 RCW.

The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer, and "interest" means interest and penalties unless the context requires otherwise.

The treasurer shall file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer shall send notice by regular first-class mail. The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property shall be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property shall be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder: PROVIDED, That prior to the sale of the property, the treasurer shall order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of the property for the purpose of this section, and shall be entitled to the notice provided for in this section. Such title search shall be included in the costs of foreclosure.

The county treasurer shall not sell property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW.

**Applicable provisions relating to RCW 4.16
relating to "Limitations of Actions"**

RCW 4.16.160

Application of limitations to actions by state, counties, municipalities.

The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute.

Applicable provisions relating to RCW 7.24 relating to "Special Proceeding and Actions"

RCW 7.24.020

Rights and status under written instruments, statutes, ordinances.

A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HENDERSON, AUTHORIZED REPRESENTATIVE OF HENDERSON, DECEASED v. SHINSEKI, SECRETARY OF VETERANS AFFAIRS**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

No. 09–1036. Argued December 6, 2010—Decided March 1, 2011

The Department of Veterans Affairs (VA) has a two-step process for adjudicating veterans' benefits claims for service-connected disabilities: A VA regional office makes an initial decision on the claim; and a veteran dissatisfied with the decision may then seek *de novo* review in the Board of Veterans' Appeals. Before 1988, a veteran whose claim was denied by the Board generally could not obtain further review, but the Veterans' Judicial Review Act (VJRA) created the Court of Appeals for Veterans Claims (Veterans Court), an Article I tribunal, to review Board decisions adverse to veterans. A veteran must file a notice of appeal with that court within 120 days of the date when the Board's final decision is properly mailed. 38 U. S. C. §7266(a).

After the VA denied David Henderson's claim for supplemental disability benefits, he filed a notice of appeal in the Veterans Court, missing the 120-day filing deadline by 15 days. Henderson argued that his failure to timely file should be excused under equitable tolling principles. While his appeal was pending, this Court decided *Bowles v. Russell*, 551 U. S. 205, which held that the statutory limitation on the length of an extension of time to file a notice of appeal in an ordinary civil case is "jurisdictional," so that a party's failure to file within that period could not be excused. The Veterans Court concluded that *Bowles* compelled jurisdictional treatment of the 120-day deadline and dismissed Henderson's untimely appeal. The Federal Circuit affirmed.

Held: The deadline for filing a notice of appeal with the Veterans Court

Syllabus

does not have jurisdictional consequences. Pp. 4–13.

(a) Branding a procedural rule as going to a court’s subject-matter jurisdiction alters the normal operation of the adversarial system. Federal courts have an independent obligation to ensure that they do not exceed the scope of their subject-matter jurisdiction and thus must raise and decide jurisdictional questions that the parties either overlook or elect not to press. Jurisdictional rules may also cause a waste of judicial resources and may unfairly prejudice litigants, since objections may be raised at any time, even after trial. Because of these drastic consequences, this Court has urged that a rule should not be referred to as jurisdictional unless it governs a court’s adjudicatory capacity, *i.e.*, its subject-matter or personal jurisdiction. *E.g.*, *Reed Elsevier, Inc. v. Muchnick*, 559 U. S. ___, ___. Among the rules that should not be described as jurisdictional are “claim-processing rules,” which seek to promote the orderly progress of litigation by requiring parties to take certain procedural steps at specified times. Although filing deadlines are quintessential claim-processing rules, Congress is free to attach jurisdictional consequences to such rules. *Arbaugh v. Y & H Corp.*, 546 U. S. 500, applied a “readily administrable bright line” rule to determine whether Congress has done so: There must be a “clear” indication that Congress wanted the rule to be “jurisdictional.” *Id.*, at 515–516. “[C]ontext, including this Court’s interpretation of similar provisions in many years past, is relevant,” *Reed Elsevier, supra*, at ___, to whether Congress has spoken clearly on this point. Pp. 4–6.

(b) Congress did not clearly prescribe that the 120-day deadline here be jurisdictional. Pp. 7–12.

(1) None of the precedents cited by the parties controls here. All of the cases they cite—*e.g.*, *Bowles, supra*; *Stone v. INS*, 514 U. S. 386; and *Bowen v. City of New York*, 476 U. S. 467—involved review by Article III courts. This case, by contrast, involves review by an Article I tribunal as part of a unique administrative scheme. Instead of applying a categorical rule regarding review of administrative decisions, this Court attempts to ascertain Congress’ intent regarding the particular type of review at issue. Pp. 7–8.

(2) Several factors indicate that 120-day deadline was not meant to be jurisdictional. The terms of §7266(a), which sets the deadline, provide no clear indication that the provision was meant to carry jurisdictional consequences. It neither speaks in “jurisdictional terms” nor refers “in any way to the jurisdiction of the [Veterans Court],” *Zipes v. Trans World Airlines, Inc.*, 455 U. S. 385, 394. Nor does §7266’s placement within the VJRA provide such an indication. Its placement in a subchapter entitled “Procedure,” and not in the subchapter entitled “Organization and Jurisdiction,” suggests that Con-

Syllabus

gress regarded the 120-day limit as a claim-processing rule. Most telling, however, are the singular characteristics of the review scheme that Congress created for adjudicating veterans' benefits claims. Congress' longstanding solicitude for veterans, *United States v. Oregon*, 366 U. S. 643, 647, is plainly reflected in the VJRA and in subsequent laws that place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions. The contrast between ordinary civil litigation—which provided the context in *Bowles*—and the system Congress created for veterans is dramatic. In ordinary civil litigation suits must generally be commenced within a specified limitations period; the litigation is adversarial; plaintiffs must gather the evidence supporting their claims and generally bear the burden of production and persuasion; both parties may appeal an adverse decision; and a final judgment may be reopened only in narrow circumstances. By contrast, a veteran need not file an initial benefits claim within any fixed period; the VA proceedings are informal and nonadversarial; and the VA assists veterans in developing their supporting evidence and must give them the benefit of any doubt in evaluating that evidence. A veteran who loses before the Board may obtain review in the Veterans Court, but a Board decision in the veteran's favor is final. And a veteran may reopen a claim simply by presenting new and material evidence. Rigid jurisdictional treatment of the 120-day period would clash sharply with this scheme. Particularly in light of “the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor,” *King v. St. Vincent's Hospital*, 502 U. S. 215, 220–221, n. 9, this Court sees no clear indication that the 120-day limit was intended to carry the harsh consequences that accompany the jurisdiction tag. Contrary to the Government's argument, the lack of review opportunities for veterans before 1988 is of little help in interpreting §7266(a). Section 7266(a) was enacted as part of the VJRA, and that legislation was decidedly favorable to veterans. Pp. 8–12.

589 F. 3d 1201, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 09–1036

DORETHA H. HENDERSON, AUTHORIZED REPRESENTATIVE OF DAVID L. HENDERSON, DECEASED,
PETITIONER *v.* ERIC K. SHINSEKI, SECRETARY OF VETERANS AFFAIRS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[March 1, 2011]

JUSTICE ALITO delivered the opinion of the Court.

A veteran whose claim for federal benefits is denied by the Board of Veterans' Appeals may appeal to the United States Court of Appeals for Veterans Claims (Veterans Court). To do so, the veteran must file a notice of appeal with the Veterans Court within 120 days after the date when the Board's final decision is properly mailed. 38 U. S. C. §7266(a). This case presents the question whether a veteran's failure to file a notice of appeal within the 120-day period should be regarded as having "jurisdictional" consequences. We hold that it should not.

I
A

The Department of Veterans Affairs (VA) administers the federal program that provides benefits to veterans with service-connected disabilities. The VA has a two-step process for the adjudication of these claims. First, a VA regional office receives and processes veterans' claims and makes an initial decision on whether to grant or deny

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benefits. Second, if a veteran is dissatisfied with the regional office's decision, the veteran may obtain *de novo* review by the Board of Veterans' Appeals. The Board is a body within the VA that makes the agency's final decision in cases appealed to it. §§7101, 7104(a).

The VA's adjudicatory "process is designed to function throughout with a high degree of informality and solicitude for the claimant." *Walters v. National Assn. of Radiation Survivors*, 473 U. S. 305, 311 (1985). A veteran faces no time limit for filing a claim, and once a claim is filed, the VA's process for adjudicating it at the regional office and the Board is *ex parte* and nonadversarial, 38 CFR §§3.103(a), 20.700(c) (2010). The VA has a statutory duty to assist veterans in developing the evidence necessary to substantiate their claims. 38 U. S. C. §§5103(a) (2006 ed., Supp. III), 5103A (2006 ed.). And when evaluating claims, the VA must give veterans the "benefit of the doubt" whenever positive and negative evidence on a material issue is roughly equal. §5107(b). If a regional office denies a claim, the veteran has a generous one-year time limit to initiate an appeal to the Board. §7105(b)(1); 38 CFR §20.302(a). A veteran may also reopen a previously denied claim at any time by presenting "new and material evidence," 38 U. S. C. §5108, and decisions by a regional office or the Board are subject to challenge at any time based on "clear and unmistakable error," §§5109A, 7111.

Before 1988, a veteran whose claim was rejected by the VA was generally unable to obtain further review. 38 U. S. C. §211(a) (1988 ed.).¹ But the Veterans' Judicial Review Act (VJRA), 102 Stat. 4105 (codified, as amended,

¹Section 211(a) did not foreclose judicial review of constitutional challenges to veterans' benefits legislation, *Johnson v. Robison*, 415 U. S. 361, 366–374 (1974), or of challenges to VA benefits regulations based on later-in-time statutes that the VA did not administer exclusively, *Traynor v. Turnage*, 485 U. S. 535, 541–545 (1988).

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in various sections of 38 U. S. C. (2006 ed. and Supp. III)), created the Veterans Court, an Article I tribunal, and authorized that court to review Board decisions adverse to veterans.² §§7251, 7252(a) (2006 ed.). While proceedings before the Veterans Court are adversarial, see §7263, veterans have a remarkable record of success before that tribunal. Statistics compiled by the Veterans Court show that in the last decade, the court ordered some form of relief in around 79 percent of its “merits decisions.”³

Review of Veterans Court decisions on certain issues of law is available in the United States Court of Appeals for the Federal Circuit. §7292. Federal Circuit decisions may in turn be reviewed by this Court by writ of certiorari.

B

David Henderson served in the military during the Korean War. In 1992, the VA gave Henderson a 100-percent disability rating for paranoid schizophrenia, and in 2001, he filed a claim for supplemental benefits based on his need for in-home care. After a VA regional office and the Board denied his claim, he filed a notice of appeal with the Veterans Court, but he missed the 120-day filing deadline by 15 days. See §7266(a).

The Veterans Court initially dismissed Henderson’s appeal as untimely. It concluded that Henderson was not entitled to equitable tolling of the deadline because he had not shown that his illness had caused his tardy filing. Later, the court granted Henderson’s motion for reconsideration, revoked the dismissal, and set the case for argu-

²When such an appeal is taken, the Veterans Court’s scope of review, §7261, is similar to that of an Article III court reviewing agency action under the Administrative Procedure Act, 5 U. S. C. §706.

³See United States Court of Appeals for Veterans Claims, Annual Reports 2000–2009, http://uscourts.cavc.gov/documents/Annual_Report_FY_2009_October_1_2008_to_September_30_2009.pdf (as visited Feb. 25, 2011, and available in Clerk of Court’s case file).

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jurisdiction alters the normal operation of our adversarial system. Under that system, courts are generally limited to addressing the claims and arguments advanced by the parties. See *Sanchez-Llamas v. Oregon*, 548 U. S. 331, 356–357 (2006). Courts do not usually raise claims or arguments on their own. But federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press. See *Arbaugh, supra*, at 514.

Jurisdictional rules may also result in the waste of judicial resources and may unfairly prejudice litigants. For purposes of efficiency and fairness, our legal system is replete with rules requiring that certain matters be raised at particular times. See *Sanchez-Llamas, supra*, at 356–357. Objections to subject-matter jurisdiction, however, may be raised at any time. Thus, a party, after losing at trial, may move to dismiss the case because the trial court lacked subject-matter jurisdiction. *Arbaugh*, 546 U. S., at 508. Indeed, a party may raise such an objection even if the party had previously acknowledged the trial court’s jurisdiction. *Ibid.* And if the trial court lacked jurisdiction, many months of work on the part of the attorneys and the court may be wasted.

Because the consequences that attach to the jurisdictional label may be so drastic, we have tried in recent cases to bring some discipline to the use of this term. We have urged that a rule should not be referred to as jurisdictional unless it governs a court’s adjudicatory capacity, that is, its subject-matter or personal jurisdiction. *Reed Elsevier, supra*, at ____ (slip op., at 6); *Kontrick, supra*, at 455. Other rules, even if important and mandatory, we have said, should not be given the jurisdictional brand. See *Union Pacific*, 558 U. S., at ____ (slip op., at 12).

Among the types of rules that should not be described as jurisdictional are what we have called “claim-processing

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III

With these principles in mind, we consider whether Congress clearly prescribed that the deadline for filing a notice of appeal with the Veterans Court should be “jurisdictional.”

A

Contending that the 120-day filing deadline was meant to be jurisdictional, the Government maintains that *Bowles* is controlling. The Government reads *Bowles* to mean that all statutory deadlines for taking appeals in civil cases are jurisdictional. Since §7266(a) establishes a statutory deadline for taking an appeal in a civil case, the Government reasons, that deadline is jurisdictional.

We reject the major premise of this syllogism. *Bowles* did not hold categorically that every deadline for seeking judicial review in civil litigation is jurisdictional. Instead, *Bowles* concerned an appeal from one court to another court. The “century’s worth of precedent and practice in American courts” on which *Bowles* relied involved appeals of that type. See 551 U. S., at 209–210, and n. 2.

Contending that *Bowles*’ reasoning extends to the judicial review of administrative decisions, the Government relies on *Stone v. INS*, 514 U. S. 386 (1995). There, without elaboration, we described as “‘mandatory and jurisdictional’” the deadline for seeking review in the courts of appeals of final removal orders of the Board of Immigration Appeals. *Id.*, at 405 (quoting *Missouri v. Jenkins*, 495 U. S. 33, 45 (1990)). The Government also notes that lower court decisions have uniformly held that the Hobbs Act’s 60-day time limit for filing a petition for review of certain final agency decisions, 28 U. S. C. §2344, is jurisdictional. Brief for United States 18.

Petitioner correctly observes, however, that Veterans Court review of a VA decision denying benefits differs in many respects from court of appeals review of an agency

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decision under the Hobbs Act. Cf. *Shinseki v. Sanders*, 556 U. S. ___, ___ (2009) (slip op., at 15) (“Congress has made clear that the VA is not an ordinary agency”). And there is force to petitioner’s argument that a more appropriate analog is judicial review of an administrative decision denying Social Security disability benefits. The Social Security disability benefits program, like the veterans benefits program, is “unusually protective” of claimants, *Heckler v. Day*, 467 U. S. 104, 106–107 (1984). See also *Sims v. Apfel*, 530 U. S. 103, 110–112 (2000) (plurality opinion). Indeed, the Government acknowledges that “the Social Security and veterans-benefit review mechanisms share significant common attributes.” Brief for United States 16. And long before Congress enacted the VJRA, we held that the deadline for obtaining review of Social Security benefits decisions in district court, 42 U. S. C. §405(g), is not jurisdictional. *Bowen v. City of New York*, 476 U. S. 467, 478, and n. 10 (1986); *Mathews v. Eldridge*, 424 U. S. 319, 328, n. 9 (1976); *Weinberger v. Salfi*, 422 U. S. 749, 763–764 (1975).

In the end, however, none of the precedents cited by the parties controls our decision here. All of those cases involved review by Article III courts. This case, by contrast, involves review by an Article I tribunal as part of a unique administrative scheme. Instead of applying a categorical rule regarding review of administrative decisions, we attempt to ascertain Congress’ intent regarding the particular type of review at issue in this case.

B

Several factors convince us that the 120-day deadline for seeking Veterans Court review was not meant to have jurisdictional attributes.

The terms of the provision setting that deadline, 38 U. S. C. §7266(a), do not suggest, much less provide clear evidence, that the provision was meant to carry jurisdic-

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tional consequences. Section 7266(a) provides:

“In order to obtain review by the Court of Appeals for Veterans Claims of a final decision of the Board of Veterans’ Appeals, a person adversely affected by such decision shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.”

This provision “does not speak in jurisdictional terms or refer in any way to the jurisdiction of the [Veterans Court],” *Zipes v. Trans World Airlines, Inc.*, 455 U. S. 385, 394 (1982). If Congress had wanted the 120-day time to be treated as jurisdictional, it could have cast that provision in language like that in the provision of the VJRA that governs Federal Circuit review of decisions of the Veterans Court. This latter provision states that Federal Circuit review must be obtained “within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts.” §7292(a). Because the time for taking an appeal from a district court to a court of appeals in a civil case has long been understood to be jurisdictional, see *Bowles, supra*, at 209–210, and n. 2, this language clearly signals an intent to impose the same restrictions on appeals from the Veterans Court to the Federal Circuit. But the 120-day limit at issue in this case is not framed in comparable terms. It is true that §7266 is cast in mandatory language, but we have rejected the notion that “all mandatory prescriptions, however emphatic, are . . . properly typed jurisdictional.” *Union Pacific*, 558 U. S., at ____ (slip op., at 12) (quoting *Arbaugh*, 546 U. S., at 510; internal quotation marks omitted). Thus, the language of §7266 provides no clear indication that Congress wanted that provision to be treated as having jurisdictional attributes.

Nor does §7266’s placement within the VJRA provide

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such an indication. Congress placed §7266, numbered §4066 in the enacting legislation, in a subchapter entitled “Procedure.” See VJRA, §301, 102 Stat. 4113, 4115–4116. That placement suggests Congress regarded the 120-day limit as a claim-processing rule. Cf. *INS v. National Center for Immigrants’ Rights, Inc.*, 502 U. S. 183, 189 (1991) (“[T]he title of a statute or section can aid in resolving an ambiguity in the legislation’s text”). Congress elected not to place the 120-day limit in the VJRA subchapter entitled “Organization and Jurisdiction.” See 102 Stat. 4113–4115.

Within that subchapter, a separate provision, captioned “Jurisdiction; finality of decisions,” prescribes the jurisdiction of the Veterans Court. *Id.*, at 4113–4114. Subsection (a) of that provision, numbered §4052 in the enacting legislation, grants the Veterans Court “exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals” and the “power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.” *Id.*, at 4113. It also prohibits the court from hearing appeals by the VA Secretary. Subsection (b) limits the court’s review to “the record of proceedings before the [VA],” specifies the scope of that review, and precludes review of the VA’s disability ratings schedule. *Ibid.* Nothing in this provision or in the “Organization and Jurisdiction” subchapter addresses the time for seeking Veterans Court review.

While the terms and placement of §7266 provide some indication of Congress’ intent, what is most telling here are the singular characteristics of the review scheme that Congress created for the adjudication of veterans’ benefits claims. “The solicitude of Congress for veterans is of long standing.” *United States v. Oregon*, 366 U. S. 643, 647 (1961); see also *Sanders*, 556 U. S., at ___ (slip op., at 15). And that solicitude is plainly reflected in the VJRA, as well as in subsequent laws that “place a thumb on the

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scale in the veteran's favor in the course of administrative and judicial review of VA decisions," *id.*, at ____ (Souter, J., dissenting) (slip op., at 2). See, e.g., Veterans Claims Assistance Act of 2000, 114 Stat. 2096; Act of Nov. 21, 1997, 111 Stat. 2271; VJRA, §103, 102 Stat. 4106–4107.

The contrast between ordinary civil litigation—which provided the context of our decision in *Bowles*—and the system that Congress created for the adjudication of veterans' benefits claims could hardly be more dramatic. In ordinary civil litigation, plaintiffs must generally commence their suits within the time specified in a statute of limitations, see 28 U. S. C. §1658, and the litigation is adversarial. Plaintiffs must gather the evidence that supports their claims and generally bear the burden of production and persuasion. Both parties may appeal an adverse trial-court decision, see §1291, and a final judgment may be reopened only in narrow circumstances. See Fed. Rule Civ. Proc. 60.

By contrast, a veteran seeking benefits need not file an initial claim within any fixed period after the alleged onset of disability or separation from service. When a claim is filed, proceedings before the VA are informal and nonadversarial. The VA is charged with the responsibility of assisting veterans in developing evidence that supports their claims, and in evaluating that evidence, the VA must give the veteran the benefit of any doubt. If a veteran is unsuccessful before a regional office, the veteran may obtain *de novo* review before the Board, and if the veteran loses before the Board, the veteran can obtain further review in the Veterans Court. A Board decision in the veteran's favor, on the other hand, is final. And even if a veteran is denied benefits after exhausting all avenues of administrative and judicial review, a veteran may reopen a claim simply by presenting "new and material evidence." Rigid jurisdictional treatment of the 120-day period for filing a notice of appeal in the Veterans Court would clash

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sharply with this scheme.

We have long applied “the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries’ favor.” *King v. St. Vincent’s Hospital*, 502 U. S. 215, 220–221, n. 9 (1991); see also *Coffy v. Republic Steel Corp.*, 447 U. S. 191, 196 (1980); *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U. S. 275, 285 (1946). Particularly in light this canon, we do not find any clear indication that the 120-day limit was intended to carry the harsh consequences that accompany the jurisdiction tag.

The Government argues that there is no reason to think that jurisdictionally time-limited review is inconsistent with a pro-veteran administrative scheme because, prior to the enactment of the VJRA in 1988, VA decisions were not subject to any further review at all. Brief for United States 29. The provision at issue here, however, was enacted as part of the VJRA, and that legislation was decidedly favorable to veterans. Accordingly, the review opportunities available to veterans before the VJRA was enacted are of little help in interpreting 38 U. S. C. §7266(a).

IV

We hold that the deadline for filing a notice of appeal with the Veterans Court does not have jurisdictional attributes. The 120-day limit is nevertheless an important procedural rule. Whether this case falls within any exception to the rule is a question to be considered on remand.⁴

The judgment of the United States Court of Appeals for the Federal Circuit is reversed, and the case is remanded

⁴The parties have not asked us to address whether the 120-day deadline in 38 U. S. C. §7266(a) is subject to equitable tolling, nor has the Government disputed that the deadline is subject to equitable tolling if it is not jurisdictional. See Brief for Petitioner 18. Accordingly, we express no view on this question.

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for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KAGAN took no part in the consideration or decision of this case.

COURT OF APPEALS
DIVISION II

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No. 41298-5-II
COURT OF APPEALS DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY 
DEPUTY

JOHN R. WYSS
Plaintiff/Appellant

vs.

GRAYS HARBOR COUNTY, RESPONDENT

Defendant/Appellee

APPEAL FROM SUPERIOR COURT
FOR THURSTON COUNTY

DECLARATION OF SERVICE

I, Jennifer Robinson, declare under the penalty of perjury that I served a copy of appellant's Opening Brief on appellee's attorney by depositing a copy of that document with the U.S. postal service addressed to James G. Baker, Senior Prosecuting Attorney, 102 W. Broadway, Room 102, Montesano, Washington, 98563, and by faxing to 360-249-6064.

Dated: March 7, 2011, at Arlington, Washington.


Jennifer Robinson

 ORIGINAL