

SEP 04 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 305589

COURT OF APPEALS FOR DIVISION III**STATE OF WASHINGTON**

WILLIAM L. and KATHLEEN SCHORER,
husband and wife; BARTON E. and
CORIENE K. SCHORER, husband and
wife; WILLIAM SPURGEON, a single
man; BONNIE DUNHAM; JAMIE and
TINA MUNSON, husband and wife;
CURT and NORMA WILLIAMS, husband
and wife; DIANA L. MAXWELL, single
woman; TOM J. and TAMI S.
LaFORTUNE, husband and wife.

Respondent,

vs.

BENTON COUNTY, a political subdivision
Of the State of Washington; WALTER
BEAR and JANE DOE BEAR, husband and
wife; SCOTT and SHEILA A. LOSEY,
husband and wife.

Appellant.

RESPONDENTS BRIEF

WILLIAM L. and KATHLEEN SCHORER,
husband and wife; BARTON E. and
CORIENE K. SCHORER, husband and
wife; WILLIAM SPURGEON, a single
man; BONNIE DUNHAM; JAMIE and
TINA MUNSON, husband and wife;
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woman; TOM J. and TAMI S.
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Plaintiff/Respondent

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Table of Contents

I.	Legal Property Description	Page 4
II.	Special Use Permit and Restrictions	Pages 5-6
	Total	6 Pages

TABLE OF AUTHORITIES

Benton County Code Title 11 BCC Chapter 11.16A

Legal property description

The legal description in the covenants does include Cynthia Bear's property. Judge Cameron Mitchell has already found the legal description contained in the covenants to be adequate. The Assessor's Office currently references Cynthia Bear's property as Short Plat 2907. The number 2907 was only designated to this property after Gene Ragsdale and Angie Glidden sub-divided the property in 2005. Sub-dividing and receiving a different numeral designation to the short plat does not release the property from any prior covenant restrictions.

The original orchestrators of the covenants, David and Linda Godwin and also Edgar and Betty Mckay, specifically intended Cynthia Bear's property to be included in the covenants. Cynthia Bear was privy to the fact that the covenants pertained to her property, the covenants are on record and were provided by the title company at time of purchase.

Special Use Permit and Restrictions

It is undisputed that Cynthia Bear intended to purchase her property and use it as a place of business for Walter Bear. It is also undisputed that the other residents intended to purchase their property and use it as the covenants intended and as allowed by the Benton County Zoning and Code Enforcement.

Walter Bear received a Special Use Permit from the Benton County Board of Adjustments in 2008. With this special use permit he was required to make special provisions in order to continue business. To this day none of the special provisions have been met and he is still running his business.

Regardless of the Special Use Permit or a reverse judgment by the courts with regards to specific equipment, Walter Bear's business would not be compliant. Our development is zoned RL-5 (Rural Lands 5 Acre District). The zoning expectations are explicitly outlined in Benton County Codes Chapter 11.16A. Chapter 11.16A parallels the purpose and mission of our covenants and compliments the restrictions imposed by Judge Cameron Mitchell.

This neighborhood is under continual improvement with regards to landscapes, and home improvement, and property development. A trucking and excavating business would substantially negate any capital improvements. More so than a trucking and excavating company, Walter Bear utilizes trucks for pulling low boy trailers. These are special use trailers designed for hauling some of the largest loads allowable on state highways. The negative impact this would have on our private road along with the onsite storage of equipment was the basis for our original appeal to the Special Use Permit. The asphalt road, Terril Rd, that Walter Bear turns off of to access our private road has already undergone repairs with Benton County bearing the costs. The repairs were necessary to patch and repair a portion of the road that had failed as a result of the truck traffic.

Walter Bear has not sufficiently proved that his trucking and excavation company would be allowable under RL-5. 11.16A.050 Uses Requiring a Conditional Use Permit states (w) "Business activities, other than those set forth above, that are compatible with the principal uses and purposes of the underlying zone and the surrounding land uses may be conducted from within an approved accessory building

detached from all dwelling units if the following criteria as well as any other conditions required by the Board of Adjustments are satisfied:"

First and foremost he has not met any of the Special Use Conditions outlined in 2008 by the Board of Adjustments. Walter Bear has also failed to meet the requirements of the following:

11.16A.050 (1) requires "... at least one of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located..." The Benton County Assessor lists Cynthia Bear as the sole property owner, not Walter Bear.

11.16A.050 (3) "The business activity, including all storage space, shall not occupy more than eighteen hundred square feet of total floor area within the detached accessory building." Cynthia Bear's property does contain a large shop, however, Walter Bear would not be able to contain all storage and business activity within the detached shop. Currently the property is being used as storage for multiple business vehicles, including two, non-operating refrigeration containers that could only be removed or moved via semi truck. The storage of the trailers also violate 11.16A.050 (6) which does not permit the use of outside storage and limits vehicles to a maximum of three.

The covenants, along with the Benton County Zoning Codes do not allow the continuation of Walter Bears Trucking and Excavating business to be conducted on Cynthia Bear's Property. Walter Bear's Business activity is not comparable with the allowable light agriculture activity permitted by the covenants and code authority.



Barton Schorer



Tina Munson