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Washington Court of Appeals Division Three

No. 238423

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

**DAVID L. HORNBACK and SUSAN HORNBACK, husband and
wife,
Appellants/Plaintiffs,**

v.

**KEN WENTWORTH and DIANE WENTWORTH, husband and
wife
Cross Appellants/Defendants.**

Appellant/Cross Respondent

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1. RCW 58.17. Authorizes Statutory Rescission Essentially Wentworths' position is that no relief can be granted pursuant to RCW 58.17.210 to Hornbacks because neither RCW 58.17.200 or a local ordinance forbade the sale prior to segregation of a short subdivision. Wentworths fail to recognize the import of the Grant County 1976 Short Plat and Subdivision Ordinance Sections 5, Section 23, Section 31, Section 32 and Section 34. (Appx. 1). These sections of the ordinance spells out the requirement of a seller or transferor to submit an application for a short plat approval and makes it unlawful to transfer, sell or lease land in violation of the ordinance. The Wentworths were obligated to comply with the terms of the Grant County Ordinance regardless of what they believed the contract stated.

A. County Ordinance Requires Subdivision Before A Sale.

Wentworths assert the Grant County Ordinance is “entirely silent” on the question of whether or not the seller has to subdivide a parcel before sale. The first sentence of Section 31 states: “It shall be unlawful for any person firm or corporation to transfer, sell, or lease any land in violation of the requirements of this Ordinance.” Grant County 1976 Short Plat and Subdivision Ordinance, Section 31. Section 5 states: “Any person desiring to

divide land situated within an unincorporated area of Grant County into two, three or four lots ... shall submit an application for short plat approval to the Administrator.” The phrase “desiring to” contemplates a future sale, not a completed sale. These sections make it clear it is illegal to sell a lot in violation of the Ordinance. It is a clear expression that compliance with the short subdivision ordinance is required prior to a sale and not afterwards.

B. Section 34 of the Grant County 1976 Short Subdivision Ordinance Should Be Given Meaning. Wentworths’ interpretation under the facts of this case makes a mockery of the Section 34 of the Grant County 1976 Ordinance Relating To Short Plats and Short Subdivisions (hereinafter the 1976 Short Subdivision Ordinance). This section is intended to provide a remedy to a buyer confronted with a seller who has failed or refused to comply with the subdivision statute or local regulations. If the Wentworths’ position were deemed to be correct (relief can not be granted under the statute or ordinance because the ordinance does not require a short subdivision prior to a sale) Section 34 of the ordinance would have no meaning. Nor would that portion of RCW 58.17.210 that provides relief in event of a violation of local regulations have any

meaning. Section 34 would not apply if there was a subdivision because a building permit would issue. Under Wentworths theory Section 34 would not apply if there was no subdivision even though a building permit could not issue for that reason. Section 34 was enacted for a purpose. That purpose was to require a seller to subdivide the property so that a buyer could develop the property in compliance with the Grant County development code. The fact the Hornbacks could not obtain a building permit, because the property was not subdivided, is a violation of a local ordinance and establishes some other provision of the ordinance was violated. The violation of the Grant County Ordinance is a violation of a local ordinance within the definition of RCW 58.17.210. Here the Wentworths intentionally refused to subdivide the property or comply with the short subdivision ordinance at any time. The remedy of rescission and damages authorized by RCW 58.17.210 should have been granted to Hornbacks.

- C. Ordinance Requires A Subdivision Prior To Sale. Wentworths argue the Hornbacks can neither require compliance or rescind the contract pursuant to RCW 58.17.210 because it is effective only if the local ordinance requires compliance prior to sale. The

ordinance does require the Wentworths to subdivide the property prior to the sale. Second, RCW 58.17.210 does not have such a requirement.

Wentworth relies on the holding of Valley Quality Homes, Inc. v. Bodie, 52 Wn. App. 743, 763 P.2d 840 (1988). Distilled to its simplest terms Valley Quality Homes, Inc. holds that RCW 58.17.200 authorized a cause of action for rescission for failure to file a final plat prior to sale if the subdivision results in five or more lots. The buyer in Valley Quality Homes sought to rescind the sale of property claiming that pursuant to RCW 58.17.200 a final plat was required prior to the sale and they were therefore entitled to rescind because a final plat had not been filed. The appellate court sustained the trial courts finding that the purchase involved a short subdivision and RCW 58.17.200 only applied to subdivisions of more than five lots and not to short subdivisions. RCW 58.17.200 states that a final plat is required prior to sale if a parcel is subdivided into 5 or more lots. The logical extension is that a final plat of a short subdivision is not required prior to sale. It does not necessarily follow that there is never a failure to comply with local regulations within the meaning of RCW 58.17.210

merely because a final plat is not required prior to sale. To the extent that Valley Quality Homes, Inc. v. Bodie, supra seems to hold otherwise the holding may be attributed to the specific facts of that case. The sole basis for the relief sought was a failure to file a final plat prior to the sale. If the holding is that a violation of local regulations can not occur unless the ordinance also requires the filing of a final plat of a short plat prior to sale, it is, in my opinion, incorrect. RCW 58.17.210 requires only that there is a failure to comply with local regulations and does not limit when or which local regulation has to be violated. Wentworths intentionally failed to comply with the Grant County short subdivision regulations. It is apparent they intentionally failed because they have consistently maintained they were not required to comply, the court made an unchallenged finding of fact they did not comply and the fact the Grant County Planning Department would not issue Hornbacks a building permit because the property had not been subdivided according to local regulations. Section 34 authorizes a transferee to recover damages if the transferee cannot secure a building permit if the seller failed to comply with the short subdivision ordinance. Hornbacks could not secure a building

permit for this reason. (CP 36, FF 17). Rescission and damages are therefore awardable to Hornbacks pursuant to RCW 58.17.210 because the Wentworths failed to comply with local regulations. Otherwise a building permit would have been issued. Even if we do not know which regulation it is, the Wentworths failed to comply with some regulation, which is all that RCW 58.17.210 requires. The Hornbacks are also entitled to relief pursuant to Section 34 because it authorizes an award of damages and reasonable attorney fees in the event the buyer cannot secure a building permit. The court should have awarded the Hornbacks the damages and reasonable attorney's fees authorized by RCW 58.17.210 and Section 34 of the local ordinance.

2. Pre-Judgment Interest Is Awarded When Damages Are Liquidated Regardless Of Whether The Money Is Improperly Withheld. The Wentworths have cited Hansen v. Rothaus, 107 Wn.2d 468, 473-475, 730 P.2d 662 (1986) and Prier v. Refrigeration Engineering Co., 74 Wn.2d 25, 32 (1968). in support of their argument that prejudgment interest should not be awarded unless there was an improper withholding of the money. Part of the holding of Hansen v. Rothaus, supra states: "Prejudgment interest is not a penalty imposed on a defendant for wrongdoing nor is its

purpose to deter wrongdoing.” The Wentworths did not have to commit a wrongful act in holding the funds. The fact that they held the funds is sufficient. All of the cases cited by the Wentworths clearly hold that the purpose of prejudgment interest is to compensate the plaintiff for the use value of the money when the damages are liquidated or determinable. The sums owed the Hornbacks were liquidated from the date each payment was made. Thomas v. Ruddell Lease-Sales, Inc., 43 Wn. App. 208, 216, 716 P.2d 911 (1986); Finch v. Sprague, 117 Wash. 650, 657-658, 202 P. 257 (1921). The total sum due could be determined by simply adding the three payments. This is what the court did in reaching the monetary judgment of \$15,000.00 to restore the Hornbacks. The Wentworths had an opportunity to pay the \$15,000.00 without any interest but refused to do so. (CP 37, FF 23). The trial court did not err in awarding prejudgment interest but did err in determining when the interest should commence. Prejudgment interest should have commenced on the date of receipt of each payment. Thomas v. Ruddell Lease-Sales, Inc., supra.

A. A Rescinded Contract Has No Force or Effect. The Wentworths have set forth a long argument regarding the application of the legal interest rate versus the contract rate. Rescission negates the contract as if it did not exist. Busch v.

Nervik, 38 Wn. App. 541, 547, 687 P.2d 872 (1984). Therefore whatever interest rate applied while the contract was in effect is irrelevant to the interest rate after the contract is rescinded unless the contract has a specific provision providing for an interest rate in the event of termination. Herzog Aluminum, Inc. v. General American Window Corp., 39 Wn. App. 188, 192-193, 692 P.2d 867 (1984). The contract provided for an 11% interest rate the Hornbacks were required to pay on the declining balance. The contract does not have a provision fixing an interest rate in the event of a default or termination of the contract. Absent an agreement of the parties the legal interest rate is therefore the correct rate. Finch v. Sprague, supra.

3. The Trial Court Did Not Err In Granting Common Law Rescission of the Contract. The Hornbacks did not acquiesce in Wentworth's failure to perform the contract. The Hornbacks did not know until December of 1999 that the Wentworths had not subdivided the property. The Hornbacks had secured a loan to pay the balance due on the real estate contract. (CP 35, FF 12; Ex. 6). However, an actual tender would have been a useless act, as the Wentworths could not convey good marketable title to the 1.19-acre parcel. (CP 37, FF 22). The Hornbacks were not

required to perform this useless act. Finch v. Sprague, supra, page 655.

The Hornbacks brought the cause of action for rescission against the Wentworths in a timely manner after they knew that Wentworths were not going to be able to deliver good marketable title to the 1.19-acre parcel. In summary, the Wentworths had granted a forbearance to the Hornbacks, took no steps to forfeit the real estate contract and the acceptance of the \$5,000.00 payment in August of 1999 was a waiver of any previous breach.

- A. Standard of Review. The trial court took evidence from the parties for two days, reviewed the various exhibits and heard testimony regarding the exhibits. Based on the evidence received the court granted equitable relief of common law rescission of the real estate to the Hornbacks. The proper standard of review of relief in this case is an abuse of discretion. SAC Downtown Ltd. P'ship v. Kahn (In re Proceedings of King County), 123 Wn.2d 197, 204 (1994).
- B. The Court Did Not Abuse Its Discretion In Granting Common Law Rescission. The Wentworths and Hornbacks entered into a real estate contract whereby the Wentworths agreed to convey a good marketable title to the Hornbacks in exchange for the Hornbacks

paying the sum of \$20,000.00 to the Wentworths. (Ex.1). The Hornbacks arranged for a loan that would have paid the balance due on the contract. (CP 37, FF 22). Upon payment of the balance due the Wentworths were then obligated to convey the parcel by a statutory warranty deed. The court also found the Wentworths could not convey the promised title. (CP 37, FF 22). The inability to convey was caused by the fact they had not and could not in the future subdivide the 1.19-acre parcel from the parent parcel. (CP 37, FF 22). Within its broad discretionary authority the court concluded equity required the Wentworths to refund all of the purchase money. SAC Downtown Ltd. P'ship v. Kahn (In re Proceedings of King County), 123 Wn.2d 197, 204 (1994). The trial court did not err in granting common law rescission.

- C. Separate Grounds For Denying Rescission Asserted By Wentworths. The separate grounds asserted by the Wentworths on which the court should have relied to deny rescission are (1) the Hornbacks acquiesced in the Wentworths breach, (2) the Hornbacks failed to tender the full purchase price, (3) a three year statute of limitations bars a recovery, and (4) because the contract was not properly modified.

- i. Hornbacks Did Not Waive The Right To Rescission By Acquiescence. The agreement between the parties requires the Wentworths to deliver good marketable title by statutory warranty deed to the 1.19-acre parcel upon payment of the full purchase price. The Wentworths selected the form of the contract and prepared the agreement. It should therefore be construed most strongly against them. Brown v. State, 130 Wn.2d 430, 457, 924 P.2d 908 (1996). The contract does not contain any provision or term stating the Hornbacks had to pay the full purchase price before the Wentworths would undertake to subdivide the 1.19-acre parcel from the a parent parcel. The parties' agreement requires delivery of the statutory warranty deed within a reasonable time after full payment is received. There is no doubt the Wentworths were required by local ordinance to subdivide the parent parcel prior to selling the 1.19-acres to the Hornbacks. Sections 5 and 31 of the Grant County 1976 Short Subdivision Ordinance. However, the Hornbacks were unaware, at the time they signed the real estate contract that the 1.19-acre

parcel described in the contract had not been subdivided from the parent parcel. While it is true in fact that the Wentworths could not have delivered a title in January of 1986, the Hornbacks were not aware of Wentworths' disability. The Hornbacks first learned the Wentworths could not deliver a deed on December 7 of 1999. The Wentworths by accepting the August 1999 \$5,000.00 payment, computing the balance due (Ex. 4) were reaffirming their promise to deliver a good marketable title to the Hornbacks and waived any prior monetary breach by the Hornbacks. These acts by the Wentworths and the Hornbacks are contradictory to acquiescence and are not the acts of parties who believe the agreement was no longer enforceable.

ii. Failure To Subdivide Is A Cause Of The Breach. The Failure To Deliver Good Marketable Title Is The Breach.

The breach on which the Hornbacks have relied to seek rescission is Wentworths' inability to deliver good merchantable title in December of 1999. Contrary to the Wentworths assertion the failure to subdivide the parent

parcel in compliance with local regulations is the cause of the breach but is not itself the breach. It is the failure and inability to deliver a good marketable title that is the actual breach by the Wentworths. They confuse the cause of the breach (the failure to subdivide) with the actual breach (the failure to deliver good marketable title). The Wentworths could not avoid this breach due to the change in the Grant County short plat and short subdivision ordinance. The change in the ordinance prevented and prevents them from subdividing the parent parcel. (CP 36, FF 17). The Hornbacks did not acquiesce in the breach and did not waive the breach resulting from the failure to deliver the title. They did not know until December 7 of 1999 that the Wentworths could never perform. Gillmore v. Green, 39 Wn.2d 431, 435, 235 P.2d 998 (1951). Absent knowledge of all of the facts and circumstances sufficient to put them on notice of their peril the statute of limitations would not commence running. Even after the revelation in December of 1999, the Wentworths continued to assure the Hornbacks they would perform.

The Wentworths argue the agreement of the parties provides that they had no duty to subdivide the parent parcel until they received full payment of the \$20,000.00 purchase price. The agreement does not contain a provision that mentions subdivision of the parent parcel. The Wentworths misread the contract and the findings of fact of the court. Further they cite no testimony or other evidence in the record to support this contention. Rather they cite the Wentworths departure for Mexico and their failure to subdivide the property as creating an implied conditional term of the contract. The Wentworths could not by an unexpressed unilateral intent create a conditional term to the written agreement. The court did find that *the Wentworths did not intend* (emphasis added) to subdivide the property prior to January 10, 1996 and that when they left for Mexico they did not intend to deliver a statutory warranty deed on January 10, 1996. The court did not find the Wentworths subjective intent implied the parties had agreed the Wentworths did not have to subdivide the parent parcel until after the Hornbacks had paid the full purchase

price. The Hornbacks would have to know of this subjective intent and agree before it could become a term of the agreement. Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177-178, 94 P.3d 945 (2004). The Wentworths have not submitted any reference to the record pointing to evidence that there was a mutual agreement on this issue. Nor do they cite any finding of fact that supports this contention. The Wentworths unexpressed unilateral intent was not a mutually agreed upon term of the written agreement of the parties. Hearst Communs., Inc. v. Seattle Times Co., 2005 Wash. 549, 16-17 (2005).

The written agreement does not have any language regarding when a subdivision would occur. The date of the survey (recorded 8/1/95; Ex. 3; CP 34, FF 7) and the fact the parties waited until the survey was completed to prepare and execute the contract implies the subdivision had occurred prior to execution of the contract. (Ex 1). The Hornbacks were not familiar with the subdivision process or what it took to subdivide a parent parcel. (CP 35, FF 10). None of the findings of fact supports that they

knew the Wentworths subjective intent to not subdivide the property until they had received full payment. There is no ambiguity in the written contract and it should therefore be given its plain meaning. Berg v. Hudesman, 115 Wn.2d 657, 669, 801 P.2d 222 (1990). The language of the written contract provides that upon full payment of the purchase price, the Wentworths were to deliver a statutory warranty deed delivering good marketable title. There is nothing ambiguous about these terms. There is no basis to imply there were mutual agreed conditions precedent not expressed in the written agreement. Berg v. Hudesman, supra, pages 666-667. Quite simply the Hornbacks were exchanging money for good marketable title.

- iii. Tender of the Balance of Purchase Price Excused. The Wentworths also argue that they were excused from subdividing the property because the Hornbacks had not paid the balance of the contract. The Grant County 1976 Short Subdivision Ordinance required the Wentworths to subdivide the property prior to sale. Regardless of the requirement of the Ordinance, the Hornbacks were

prepared to tender the balance of the contract payment from a loan they had secured. (CP 35, FF 12). In Munson v. McGregor, 49 Wash. 276, 94 P. 1085 (S. Ct. 1908) the seller had entered into a contract to sell a parcel of property to the purchaser. Prior to closing on the contract, the seller sold the parcel to a third person, “thereby putting it beyond his power to comply with his contract . . .”. The seller argued in that case that the purchaser had not tendered performance and the purchaser could not therefore recover because he was in breach of the contract. At page 278 the court stated:

“A tender under such circumstances would have been but a useless ceremony, and no litigant is required to do a useless thing in order to maintain his action.”

The Wentworths could not deliver a good marketable title in 1999 when they were called upon to do so. Nor could they subdivide the parent parcel to place themselves in a position to deliver good marketable title. (CP 37, FF 22). It would have been a totally useless act for the Hornbacks to tender the balance of the purchase price.

Delivery of the balance of the purchase price would only have resulted in a suit and eventual judgment for a larger amount of money. No amount of money paid by the Hornbacks would have enabled the Wentworths to deliver good marketable title. The Hornbacks were not required to engage in a useless act to maintain their cause of action. Finch v. Sprague, supra page 655; Munson V. McGregor, supra.

4. Hornbacks Cause Of Action Was Timely. The six-year statute of limitations is the applicable statute and not the three-year statute because all of the essential terms of the agreement between the parties is in writing. The agreement identifies the parties, describes the property to be conveyed, sets the total purchase price of \$20,000.00, sets the interest rate to be paid on the declining balance, sets the terms of when the Wentworths must deliver good marketable title to the described parcel and provides remedies for the seller in event of breach by the buyer. Browning v. Howerton, 92 Wn. App. 644, 649 (Wash. Ct. App., 1998). Extrinsic evidence is not admissible to vary the terms of the written contract. There are no findings of fact or evidence that points to an agreement between the parties providing that payment in full was required before the parent

parcel would be subdivided. The Wentworths do not point out any evidence in the trial record that establishes that the parties made the subdivision a term of their contract. Nor is there any reference in the trial record that the court was even requested to rule on the statute of limitations question. The six-year statute of limitations applies to the Hornbacks rescission cause of action as all of the essential terms are expressed in the written contract.

A. Cause Of Action Brought Within Three Years Of Default. The Wentworths were called upon to perform their duty under the contract in October or November of 1999 and deliver good marketable title to the Hornbacks. The Hornbacks were not aware of the facts supporting a breach of contract until December 7, 1999 when they learned a building permit could not issue for their parcel because it had not been subdivided from the 5.26¹ acre parcel. (Ex. 9; CP 36, FF 17). The Hornbacks right to rescind arose in December of 1999 when they learned Wentworths could not perform by delivering the title to their parcel. Sutthoff v. Maruca, 57 Wash. 102, 106 Pac. 632 (1910). The statute of limitations, whether a three year or a six year statute, commenced running on December 7, 1999. Suit was commenced against Wentworths May

of 2001, less than three years from the time Hornbacks learned sufficient facts that would alert a reasonable man it was probable the Wentworths were unable to deliver a good marketable title.

5. Modification of the Contract Was Not Argued As Basis to Bar Rescission. The Wentworths did not assert an improper modification of the contract as a defense to the Hornbacks claim for rescission. The trial court did not grant rescission on the basis of improper modification of the contract. The court pointed out instances where the parties failed to comply with the contract. For example, (1) the Hornbacks did not make the payment due on January 10, 1996, (2) the Wentworths did not order a title report or supply a preliminary title report to the Hornbacks, (3) the Wentworths did not pay the excise taxes or record the contract, and (4) the Hornbacks did not pay the property taxes on the 1.19-acres. It was virtually impossible for the Hornbacks to determine the correct amount of real property taxes to pay on their 1.19 acres. Grant County could not assess property taxes against their parcel because the county did not recognize its existence. Absent a separate legal lot the county not only could not but also would not determine its value and issue a property tax assessment and statement for the parcel. The Wentworths did not demand any sum as taxes on the parcel. There was no practical way for Hornbacks

to pay the taxes. When the Hornbacks were unable to pay the final installment on time the Wentworths stated they would wait for payment. None of these failures to abide by the contract actually changed any of the written terms of the agreement.

Judge Sperline's conclusion of law that the contract had been modified is in error. The parties simply failed to enforce some of the terms of the agreement but did not change them. The Wentworths granted forbearance to the Hornbacks regarding the final \$9,000.00 principal payment but did not change the term. The Hornbacks reliance on the forbearance is sufficient consideration. The rescission of the contract granted by Judge Sperline did not arise out of his conclusion of law that the contract was modified. Rather he used this conclusion of law as an equitable basis to deny the Hornbacks some of the damages suffered by them. Judge Sperline does not even set forth what terms he believed were modified. It is impossible to see how some supposed modification in Judge Sperline's view affected the Wentworths to such an extent as to exonerate any performance by them. The Hornbacks were still obligated to pay a total of \$20,000.00 for the 1.19-acre parcel and the Wentworths were required to deliver good marketable title to the parcel. The Hornbacks were prepared to pay the full amount due but the Wentworths

could not perform. If the Wentworths wanted to withdraw the forbearance granted to the Hornbacks, the first paragraph of page 2 of the agreement authorizes a forfeiture of the contract on 90 days notice to the Hornbacks. (Ex 1).

A. 90 Day Forfeiture Notice Not Given To Hornbacks. The Wentworths did not take advantage of the contractual provision to forfeit the contract nor did they take advantage of the statutory procedure to terminate a real estate contract. The Hornbacks failure to make the payment does not prevent them from bringing a rescission action. In Ashford v. Reese, 132 Wash. 649, 651, 233 P. 29 (1925), the buyer under a conditional sales contract brought an action to rescind for failure of consideration because a fire destroyed the building being purchased. The seller defended in part, that the buyer was in breach of the contract for failing to make the installment payments as due. The court at page 651 held:

Under the terms of the contract, if the payments were not promptly made, the appellant could take advantage of this fact only by giving thirty days' notice, and the record here shows that no such notice was given . . .

At no time did the Wentworths give notice of intent to declare forfeiture pursuant to the terms of the contract or the Real

Estate Forfeiture Act, RCW 61.30. (CP 35, FF 11). Even had the Wentworths not granted forbearances, the failure to make the installment payment was not a defense to the Plaintiffs' action to rescind the contract and recover the payments made thereunder. It was incumbent upon the Wentworths to take advantage of the contract forfeiture clause, which they did not do. Ashford v. Reese, supra. The contract between the parties and RCW 61.30 required Wentworths to give Hornbacks a 90 day notice of intent to forfeit and to give them an opportunity to cure any claimed default. Regardless of any claimed modification of the contract the Wentworths remained bound to perform the contract by delivering good marketable title.

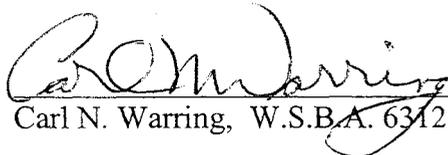
6. Attorney's Fees On Appeal. Wentworths have requested attorney's fees on appeal pursuant to RCW 4.84.250. This statute applies to suits involving damages of \$10,000.00 or less. The Hornbacks suit was a suit in equity and recovery of \$15,000.00 in payments. Further the Wentworths did not comply with RCW 4.84.280. RCW 4.84.250 is inapplicable to this cause of action. The Wentworths request is without merit.

CONCLUSION

The findings of fact in this case support the judge's decision to grant rescission of the contract to Hornbacks. Once it became clear that the Wentworths could not perform rescission of the contract was a proper remedy. Sutthoff v. Maruca, 57 Wash. 102, 104-105, 106 P. 632 (1910). The trial court did not therefore abuse its discretion in rescinding the contract and awarding Hornbacks judgment for the amount of the payments made. The court did err in not granting damages and reasonable fees authorized by RCW 58.17.210 and Section 34 of the Grant County 1976 Short Subdivision Ordinance. The Hornbacks therefore request the appellate court to sustain the award of the common law rescission and remand the case to the trial court with the instructions to award the statutory damages and the damages authorized by the Grant County ordinances and reasonable attorney's fees and to calculate the interest from the date of each payment at the legal rate.

Respectfully Submitted this 27 day of July, 2005

Warring Law Firm, P.S.
Attorneys for Appellants


Carl N. Warring, W.S.B.A. 6312

¹ The building department refers to “segging” the 1.19 acres from 5.82 acres (Ex 9) rather than from the 3.6 acres shown on the survey (Ex3). The Grant County Assessor had issued a tax parcel number for the Snegosky parcel. The Grant County Building Department and the Planning Department records did not reflect the segregation of the Snegosky parcel. If the 3.6 surveyed acres are added to the Snegosky acreage and to the Wentworth acreage it results in a 5.82 acre parcel. Depending on the reasons for this difference in Grant County records the subdivision process could have been affected.

APPENDIX 1

- (12) Board: is the legislative authority of Grant County.
- (13) Subdivider: is a person, including a corporate person, who undertakes to create a subdivision.
- (14) Administrator: is the Grant County Planning Director and/or Engineer, or person(s) duly authorized by said officials.
- (15) Farmstead: is that area of agricultural land devoted to but not limited to dwellings, outbuildings, corrals, gardens and orchards for personal and non-commercial use or as determined by the Administrator.
- (16) Lease: for the purpose of this ordinance, is contract between the owner and lessee giving the right to use the land for more than 10 years.

SECTION 4. PROCEDURE - ADMINISTRATOR'S DUTIES The Grant County Planning Director and/or Public Works Director referred to in this ordinance as the Administrator, is vested with the duty of administering the provisions of this ordinance and with authority to summarily approve or disapprove short plats. The Administrator may prepare and require the use of such forms as he deems essential to his duties.

SECTION 5. PROCEDURE - APPLICATION AND FEE Any person desiring to divide land situated within an unincorporated area of Grant County into two, three or four lots in which the smallest lot created by the division equals 40 acres or less for the purpose of lease or sale shall submit an application for short plat approval to the Administrator. The application shall be accompanied by a file fee of 50.00 for deposit with the County Treasurer.

SECTION 6. PROCEDURE - PLATS AND PLANS REQUIRED. A subdivider shall submit with his application for short plat approval:

- (1) Six copies of a short plat;
- (2) A sketch of proposed roads, utilities and other improvements;
- (3) A copy of the survey and field notes.

SECTION 7. ADEQUACY AND DISTRIBUTION OF PLATS AND PLANS If the Administrator determines that the proposed short plat contains sufficient elements and data to furnish a basis for its approval or disapproval, and that the sketch of proposed roads, utilities and other improvements are adequate to aid the County Public Works Director in approving or disapproving the construction of future improvements, the Administrator shall affix a file number and date of receipt to the application and promptly forward the sketch of proposed roads, utilities and other improvements to the County Public Works Director. The Administrator shall promptly forward one copy of the proposed plat each to the County Public Works Department, County Health District, P.U.D, State Highway Department, County Assessor, Department of Ecology and/or Department of Social and Health Services, telephone and gas companies, and irrigation Districts where applicable.

SECTION 20. APPROVAL - APPEAL MEETING, DECISION In reviewing an appeal, the Planning Commission shall consider all matters submitted by the Administrator together with such other evidence as it deems relevant, and shall either affirm or reverse the Administrator's decision, or remand the matter for further investigation by the Administrator.

SECTION 21. APPROVAL - RECONSIDERATION OF APPEAL If the Administrator approves the application on remand from the Planning Commission, the Board shall, on the original appellant's petition therefor, consider the appeal.

SECTION 22. DEDICATIONS - REQUIRED No short plat shall be approved unless adequate provision is made in the short subdivision for such drainage ways, roads, and other general purposes as may be required to protect the public health, safety and welfare.

SECTION 23. DESIGN - CONFORMANCE TO COMPREHENSIVE PLAN AND ZONING All short subdivisions shall conform to the Grant County Comprehensive Plan and all zoning controls in effect at the time a short plat is filed for approval.

SECTION 24. DESIGN - EASEMENTS Easements shall be granted to assure that land within each short subdivision is adequately drained and that all lots can be provided with water, fire protection and utilities.

SECTION 25. DESIGN - ACCESS TO LOTS Every lot shall be provided with an adequate public or private access connecting to an existing improved public road.

SECTION 26. SURVEY STANDARDS Every subdivision of land shall be surveyed by, or under the supervision of a registered land surveyor, unless there exists an accurate amount of survey data. The preparation of preliminary and final short plats thereof shall be certified on the plat by said registered land surveyor that it is a true and correct presentation of the lands actually surveyed, where applicable. All surveys shall conform to the practices and principles for land surveying of the State of Washington.

SECTION 27. SURVEY - MONUMENTS AND MARKERS All permanent monuments within the subdivision shall be located and described as shown on the plat and all controlling corners on the boundaries of the short subdivision shall be marked with a 3/4" x 18" long galvanized iron pipe or approved equivalent driven into the ground. All monuments and markers shall be shown on the face of the plat.

SECTION 28. DEDICATIONS Land for public use may be acquired by:

- (1) Dedicating land for public use.
- (2) By reserving land for future public acquisition and development.
- (3) By conveying land or easements therein to nonprofit corporations for use by all or a limited segment of the public.

SECTION 29. DEDICATIONS - SHOWN ON THE FACE OF SHORT PLAT All dedications and reservations shall be clearly and precisely recited on the face of the plat.

SECTION 30. SHORT SUBDIVISIONS - PLAT STANDARDS Every short plat required to be recorded with the Auditor shall consist of one or more pages clearly and legibly drawn on reproducible material and shall contain a map of the short subdivision. The Plat shall be produced on an 18" x 24" sheet; the horizontal scale of which shall be 100 ft. to the inch (1" = 100') together with written data in such form that when read together, disclose the following information:

- (1) The legal description of the land.
- (2) The names, addresses and telephone numbers of all persons holding interest in the land.
- (3) The name, address, telephone number and seal of the registered land surveyor who made, or under owner whose direction was made, a survey of the subdivision.
- (4) The date of the survey.
- (5) The boundary lines of the short subdivision.
- (6) The boundaries of lots within the short subdivision.
- (7) The location of roads and existing important natural features and improvements within the short subdivision.
- (8) A layout of roads and easements.
- (9) The boundaries of all parcels dedicated or reserved for public or community uses.
- (10) Plans of proposed water distribution systems, sewage disposal systems, drainage systems, utility and irrigation easements when applicable.
- (11) A certificate bearing the typed or printed names of all persons having an interest in the divided land, signed and acknowledged by them before a Notary Public which:
 - (a) States their consent to the division of land.
 - (b) Recites a dedication by them and their successors of all claims for damages against any governmental authority.
 - (c) Grants a waiver by them and their successors of all claims for damages against any governmental authority.
- (12) The approval of the Administrator.
- (13) Total acreage within the short subdivision.
- (14) Space for signatures of Grant County Treasurer, Grant County Subdivision Administrator, Grant County Auditor.
- (15) The approval of the Irrigation District where applicable.
- (16) The approval and space for signatures for the Board of County Commissioners; Chairman, Clerk of the Board; and the County Engineer.

SECTION 31. ILLEGAL TRANSFER - MISDEMEANOR It shall be unlawful for any person, firm or corporation to transfer, sell, or lease any land in violation of the requirements of this Ordinance. Any person convicted of violating any provision of this Ordinance shall be guilty of a misdemeanor, and shall be punished by a fine of not more than \$300.00 or by imprisonment in the county jail for a period not to exceed 90 days or both, for each said violation.

SECTION 32. ILLEGAL TRANSFER INJUNCTIVE RELIEF Whenever land is divided in violation of the provisions of this Ordinance, or any person, firm or corporation transfers, sells, leases, or rents any part of such land, the Prosecuting Attorney may commence an action to enjoin further violations or attempted violations of this Ordinance by the said person, firm, corporation, or successors thereof, and to compel compliance with this Ordinance.

SECTION 33. ILLEGAL TRANSFER - ASSURANCE OF DISCONTINUANCE

The Prosecuting Attorney may accept a written assurance of discontinuance of any act or practice violative of this Ordinance from any person who has committed or is committing such act or practice to be filed with and approved by the Superior Court of Grant County. The assurance may include a promise to file a proposed short plat for approval and to satisfy all reasonable conditions required to affect its approval. Any willful failure to perform a promise contained in such an assurance shall constitute a separate misdemeanor, punishable to the same extent as other misdemeanors defined by this Ordinance.

SECTION 34. ILLEGAL TRANSFER - DAMAGE RECOVERY FOR PURCHASER

A transferee who cannot secure a building permit, septic tank permit or other developmental permit for the reason that his transferor failed to comply with any provision of this Ordinance may recover damages from his transferor, to include compensation for the loss of his bargain, actual costs of investigation and suit reasonable attorney's fees and such additional elements as the law allows.

SECTION 35. UNAPPROVED SHORT PLAT - NOT TO BE RECORDED

The Auditor shall refuse to accept for recording, any short plat which does not bear the Administrator's certificate of approval. Should a short plat be recorded without such a certificate, the Prosecuting Attorney shall apply for a writ of mandate on behalf of the Administrator, directing the Auditor to remove the unapproved plat from the Auditor's records.

SECTION 36. METES AND BOUNDS FILINGS - AUDITOR TO QUESTION

The County Auditor shall inquire of every person who tenders for recording a deed or contract for the sale of land in which appears one or more metes and bounds legal description of land, as to whether the land so described is a new division of a larger tract. In the event that it is a new division, or if the inquiry is not answered, the Auditor shall promptly notify the Administrator of the recording. Upon learning of any such recording, the Administrator shall investigate the same to determine whether a division of land in violation of this Ordinance may have occurred.

SECTION 37. NEW SEGREGATION - ASSESSOR TO NOTIFY ADMINISTRATOR

The Assessor shall promptly notify the Administrator of every new segregation of land made upon the Assessor's records. Upon learning of such segregation the Administrator shall investigate the same to determine whether a division of land in violation of this Ordinance may have occurred.

SECTION 38. RE-SUBDIVISION REQUIREMENTS

Land within a short subdivision, the short plat of which has been approved within five years immediately preceding may not be further divided until a final plat thereof has been approved and filed for record pursuant to the Ordinance dealing with subdivision of five or more lots.

SECTION 39. SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or the application of this provision to other persons or circumstances shall not be affected.

SECTION 40. EFFECTIVE DATE

This Ordinance shall become effective on 1st day of November 1976.