

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)	
)	
ROBERT WEEKS,)	APPEAL FILE: PL 11-0056
)	LAND USE FILE: PL 10-0493
Appellant,)	
)	SUPPLEMENTARY FINDINGS
v.)	AND CONCLUSIONS ON REMAND
)	
SKAGIT COUNTY, LARRY DENT,)	
)	
Respondents,)	
)	
EVERGREEN ISLANDS,)	
)	
Intervenor.)	
_____)	

BACKGROUND

This matter was remanded to the Hearing Examiner by the Board of County Commissioners by Resolution #R20110404 on December 13, 2011. The resolution stated:

The Board remands this matter for further fact finding and deliberation by the Hearing Examiner, consistent with this decision, on the question of whether Respondent Dent succeeded to the permit rights associated with the Property. It is the Board's intention that new evidence be limited to this specific issue.

A Prehearing Conference on the remand proceedings was held on February 8, 2012. At the conference a schedule of submissions was established and the hearing was set for April 18, 2012. Limited discovery was allowed.

After Respondent Dent submitted interrogatories and requests for production and served notices of deposition, the County moved for a Protective Order asking that it not be required to respond to questions or requests relating to the County's past practices in the processing of land use permit applications sought by successors to the original applicant.

After responses from the parties, the Examiner granted the motion. In so doing, he ruled that the County cannot by its course of conduct create real property rights that run with the land. He held that the matter is a question of law, and that the prior pattern or practice of the County is not relevant.

The hearing was held on April 18, 2012, as scheduled. Respondent Dent was represented by Robert Carmichael and Simi Jain, Attorneys at Law. The County was represented by Arne Denny and Jill Dvorkin, Deputy Prosecuting Attorneys. Appellant Weeks was represented by Tom Moser, Attorney at Law. Intervenor Evergreen Islands was represented by Jeff Eustis, Attorney at Law.

At the outset, the Examiner ruled that Respondent Dent could, as an offer of proof, present evidence respecting the matter of the County's past practices on applications pursued by successors.

Seventeen additional exhibits were admitted to the record of the case. Eighteen more exhibits were included in the offer of proof.

At the end of the hearing a briefing schedule was established. Appellant and Intervenor filed a joint brief. Respondent filed a reply. The County did not file a post-hearing brief. The record closed on May 11, 2012.

MODIFIED FINDING

1. The Examiner has determined that the Findings in the Revised Decision entered on October 13, 2011, do not need to be changed, except as follows.

Finding No. 10 should be deleted and replaced with the following:

"10. San Juan Fidalgo Holding Company filed for Chapter 11 bankruptcy in August 1991, but the bankruptcy proceedings are irrelevant here. The property in question was the subject of a deed of trust with Covenant Mortgage as beneficiary. Because the debt to Covenant was secured by the deed of trust, the property was not disposed of in the bankruptcy. Rather, with the secured debt still owing, the trustee foreclosed on the deed of trust in a nonjudicial trustee's sale and Covenant Mortgage took title through a trustee's deed dated July 3, 1996. Larry Dent subsequently bought the property from Covenant Mortgage on December 17, 1996."

SUPPLEMENTARY FINDINGS

1. The documents in the chain of title make no mention of the Short Plat application.
2. There is no evidence that the Short Plat application was assigned or otherwise transferred to Dent in a separate document.
3. The Short Plat application was forwarded to Dent via a letter from the Vice President of Covenant Mortgage dated January 3, 1997, over two weeks after the execution of the Statutory Warranty deed that conveyed the property to Dent. The letter simply notifies Dent that

prior to Covenant's ownership a short plat application was submitted to the County by San Juan Fidalgo Holding Company and that Covenant does not know its present status.

MODIFIED CONCLUSION

1. The Examiner has concluded that the Conclusions in the Revised Decision entered on October 13, 2011, do not need to be changed, except as follows:

Conclusion 11 should be deleted and replaced with the following:

"11. The Examiner has concluded that a completed short plat application constitutes an interest in the realty that runs with the land. This has apparently been assumed by practitioners, planners and title companies over time because no cases have been found that explicitly deal with the issue."

SUPPLEMENTARY CONCLUSIONS

1. Development rights are a basic part of the bundle of sticks comprising ownership. The scope of such rights is, in general, defined by land use laws and regulations. A land use permit is an expression of development rights for a particular parcel. The rights expressed in a permit run with the land and may be exercised by a successor in interest to the real property, regardless of who applied for the permit. *Clark v. Sunset Hills Memorial Park*, 45 Wn.2d 180, 273 P.2d 645 (1954).

2. A completed land use permit application evidences an intent to develop property consistent with the land use laws and regulations in effect at the time the completed application is submitted. The right to develop under those laws and regulations is protected by the vested rights doctrine. RCW 58.17.033 is a statutory expression of that doctrine in the land division context.

3. Under the vested rights doctrine, the permissibility of a development relates back to the date it was applied for. A project which is ultimately approved is the expression of development rights as they existed at the time of application. Eventual approval through a permit is, thus, merely evidence of those rights. Logically, therefore, the rights protected by the doctrine must, as with permits, run with the land.

4. While not determinative, the Examiner takes notice that a contrary conclusion would have far reaching consequences in terms of the practices of lenders, realtors, title insurers, application preparers and government reviewers -- without an identified benefit.

5. Water rights cases are inapposite. Water rights can be severed from the land, sold separately, and transferred to other property. Water rights permits and certificates thus represent a sort of commodity, unlike the development rights dealt with here.

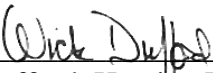
6. The real problem in this case is that the vested status of the application lasted 17 years before a "permit" decision was made. Clearly, the possibility of multiple cases where old regulations might spring to life after such a long sleep would be inimical to effective land use planning. However, this potentiality has been dealt with by the County through the adoption of SCC 14.06.105. Under that new section, when additional information is sought in regard to a completed application, the information must be received within 120 days (or within an extension granted by the County). If the mandated time frame is not met, the application must be denied. This procedural amendment should prevent future 17-year gaps between the date of application and the processing of permits.

ORDER

The decision of October 13, 2011, is hereby amended to include the Supplementary Findings and Conclusions set forth herein. Reconsideration and appeal rights shall be as stated in the Notice of Supplementary Findings and Conclusions annexed hereto as Attachment A.

The Preliminary Plat Approval on Short Plat 93-0040 is affirmed.

DONE, this 29th day of May, 2012.



Wick Dufford, Hearing Examiner

Transmitted to the Parties on May 29, 2012.

Attachment A

NOTICE OF SUPPLEMENTARY FINDINGS AND CONCLUSIONS

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

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File Nos: PL 10-0493, PL 11-0056

Summary of Case: Appeal of preliminary approval of Short Plat 93-0040, a three lot short plat, submitted June 10, 1993, approved November 3, 2010.

Project Location: At the intersection of Rosario Road and Edith Point Road, within a portion of SW1/4NW1/4 Sec.11, T34N, R1E, W.M.

Public Hearing: Initially heard January 26, 2011. Revised decision on October 13, 2011. Remanded to Examiner by Commissioners, December 13, 2011. Remand hearing April 18, 2012.

Decision/Date: The preliminary approval of Short Plat 93-0040 is affirmed. Dated May 29, 2012.

Reconsideration/Appeal: A Request for Reconsideration limited to the issue on remand may be filed with PDS within 10 days of this decision. The Supplementary Findings and Conclusions may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 days of date of decision or decision on reconsideration, if applicable.

Online Text: Both the Supplementary Findings and Conclusions and the Revised Decision are at: www.skagitcounty.net/hearing_examiner