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KITTTAS COUNTY BOARD OF COMMISSIONERS

IN RE SEGREGATION APPEALS:)	
ANSELMO LAND)	NO. SG-12-00002
ORPHAN GIRL)	SG-12-00003
NEVERSWEAT LAND.)	SG-12-00004
)	
)	KITTTAS COUNTY'S BRIEF
)	
)	

I. INTRODUCTION

Plum Creek Timber Company submitted a series of administrative segregation applications that neither received preliminary approval nor were completed by the deadlines outlined in Ch. 16.06 KCC and so were voided. Plum Creek has appealed these decisions claiming that their applications were subject to vested rights and that the County's regulation did not apply to them. The vested rights doctrine does not apply to administrative segregation applications, and even if it did, the County's new regulation setting timeframes for project completion would still be applicable to all existing applications because such regulation is not a "land use control" and hence, not something to which or from which one could vest. The County's "sunset" provisions in KCC 16.06.040 expressly apply to these applications. The Board of County Commissioners (BOCC) must affirm the voiding of these applications.

II. FACTS

1 The facts are not really what are at dispute in this matter, rather what is the effect of the law
2 applied to those facts. At page 4 of its brief, Plum Creek asserts that the County's decision
3 violates the 120-day deadline referenced in KCC 15A.030.090(7). KCC 15A.03.080(1) exempts
4 administrative segregations from the 120-day provision, and, given that no declaration of
5 complete application was given, that 120-day clock never started to run, much less expired.
6 Plum Creek also complains that there was no document of analysis from the Prosecutor's Office,
7 yet none was required.

III. ARGUMENT

A. The vested rights doctrine does not apply to the County's Administrative Segregation provisions.

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12 Petitioners mistakenly argue on pages 5 through 12 of their brief that their applications were
13 vested to prior regulation and so the application of the County's new regulation to these three
14 matters was improper. The vested rights doctrine does not apply to the County's Administrative
15 Segregation process, and so application of the new regulation to their applications was proper.

16 Under Washington common law, the vested rights doctrine only applies to shoreline
17 development permits, grading permits, septic permits, (*Erickson & Assoc., Inc. v. McLerran*, 123
18 Wn.2d 864, 871, 872 P.2d 1090(1994)) and conditional use permits (*Abbey Road Group, LLC v.*
19 *City of Bonnie Lake*, 167 Wn.2d 242, 253, 218 P.3d 180 (2009)). "The vested rights doctrine is
20 codified in statute for only two types of land use permit applications, building permits, RCW
21 19.27.095, and subdivision permits, RCW 58.17.033." *Weyerhaeuser v. Pierce County*, 95
22 Wn.App. 883, 891, 976 P.2d 1279 (1999). There are no local regulations creating vested rights
23 for the County's administrative segregation process. The courts in this state refuse to expand the
24 application of the vested rights doctrine beyond those six things. *See Deer Creek Developers,*
25 *LLC v. Spokane County*, 157 Wn.App. 1, 12, 236 P.3d 906 (2010). The vested rights doctrine

1 does not apply to administrative segregations because an administrative segregation is not one of
2 the six things to which the doctrine applies.

3 An administrative segregation does not qualify as a subdivision under Ch. 58.17 RCW and
4 so the vested rights doctrine does not apply. An administrative segregation is obviously neither a
5 building permit, shoreline development permit, septic permit, grading permit, nor a conditional
6 use permit. Therefore, for the vested rights doctrine to apply, it would have to be a subdivision
7 as defined in Ch. 58.17 RCW because that is the only other thing to which the doctrine applies.
8 RCW 58.17.033 states in pertinent part that “[a] proposed division of land, as defined in RCW
9 58.17.020” is subject to vested rights. So the question becomes, is an administrative segregation
10 a “division of land, as defined in RCW 58.17.020”? RCW 58.17.020 defines three types of
11 divisions-“subdivision” under (1) which under RCW 58.17.030 is a long plat as defined and
12 regulated by that chapter, a “short-subdivision” under (6) which under RCW 58.17.030 is
13 regulated by local code, and a “binding site plan” under (7) which is also regulated and defined
14 in Ch. 58.17 RCW. An administrative segregation is none of these.

15 An administrative segregation is not a division of land as defined in Ch. 58.17 RCW and so
16 the vested rights doctrine does not apply. The requirements for a complete application are
17 defined by local regulation. RCW 58.17.033(2). An administrative segregation’s process for
18 approval and required submissions is completely different than that required for a long plat.
19 There is no required survey as part of the application and there is no public process to name a
20 few differences. An administrative segregation cannot be subject to vested rights by being equal
21 to a long plat because it is by no means equal to a long plat.

22 Similarly, an administrative segregation application does not meet the local requirements for
23 a short subdivision (RCW 58.17.030 and 58.17.060). It does not include the required drawing,
24 design standards, nor required improvements, road standards, nor irrigation easements required
25

1 under Ch. 16.32 KCC. An administrative segregation cannot be subject to vested rights by being
2 equal to a short subdivision because it is by no means equal to a short subdivision.

3 Similarly, an administrative segregation application does not meet the local requirements for
4 a binding site plan. These are set forth in KCC 16.05.020. None of the requirements in (A)(1)
5 are present in an administrative segregation application and the process for approval found in Ch.
6 16.05 KCC for a binding site plan bears no resemblance to that of an administrative segregation.
7 An administrative segregation cannot be subject to vested rights by being equal to a binding site
8 plan because it is by no means equal to a binding site plan.

9 Because an administrative segregation is not equivalent to any of the “divisions of land, as
10 defined in RCW 58.17.020” it is not subject to vested rights. Indeed, it not requiring the level of
11 submission and the degree of review of these other three forms was one of the chief reasons that
12 it was abolished. It is a common misconception that all land use applications vest. But unless
13 the application is for one of the four things subject to vested rights under state common law or
14 one of the two things subject to vested rights by statute, that application does not vest. An
15 administrative segregation was none of those six things and so was never subject to vested rights.

16 Because administrative segregations were not subject to vested rights, they remained subject
17 to new regulation. In this case, that new regulation provides for sun setting. Those existing
18 applications that failed to comply with the new timelines become void. That is precisely what
19 happened here. The BOCC must affirm the voiding of these three applications.¹

20 **B. Regulating the time limits on a permit process is not a land use control.**

21 Even if Plum Creek’s applications were subject to vested rights (which they are not) they
22 would still be subject to the new permit time limit requirements. For those six types of
23

24 ¹ Plum Creek’s arguments in this case would render the County’s regulation a nullity because the regulation would
25 not apply to any existing application. This is because, according to Plum Creek’s argument, all existing applications
would be vested to some previous regulation that does not include our new sun set provisions. Hence, our
regulation, whose central purpose is sun setting existing applications, would have no impact upon existing
applications.

1 applications subject to vested rights, the only thing they vest to are “land use controls.” RCW
2 58.17.033(1). “Land use controls” have been defined by the courts as those regulations that
3 control what can or cannot occur on the ground, that which is akin to zoning regulations.
4 *Graham Neighborhood Assoc. v. F.G. Assoc.*, 162 Wn.App. 98, 115, 252 P.3d 898 (2011).
5 Regulations that do something other than control what occurs on the ground are not land use
6 controls and so changes to which are something the application remains subject. *Id.* In *Graham*
7 *Neighborhood Assoc.* a developer whose project was voided by a sun set regulation imposed
8 after his submission of a complete application, argued that he was vested to a regime that was
9 free from that later regulation. *Id.* The Court of Appeals rejected that argument holding that a
10 regulation on permit processing time limits had no effect upon what could or could not occur on
11 the ground in the proposed development, but rather only regulated the time the developer was
12 allowed to get his “ducks in a row.” *Id.* This regulation was therefore not a land use control and
13 so the developer was subject to the new regulation.

14 Our sun setting provisions are not land use controls and so Plum Creek is subject to them
15 regardless of when they submitted their application. The County’s provisions for finishing up
16 these existing applications has no impact upon what is done upon the subject property of these
17 applications. It does not control number or configuration of lots, roads, or utilities. It merely sets
18 a time frame for finishing the application process. As such, the County’s new regulation is not a
19 “land use control” and so is not something that an application would vest to, or better said, vest
20 to the absence from. Even if the Plum Creek applications were subject to vested rights, which
21 they are not, they would still be subject to the sun setting provisions because those provisions are
22 not “land use controls.” The BOCC must affirm the voiding of these three applications.

23 **C. Kittitas County did not violate any timing requirements.**

24 Plum Creek argues on pages 12 and 13 of its brief that the County violated various notice
25 requirements. KCC 15A.03.080(1) exempts administrative segregations from that chapter’s

1 notice requirements. Hence, the County could not have violated them as they did not apply.
2 Indeed, the lack of required process related to administrative segregations was another of the
3 chief reasons they were abolished. The County did not fail to meet required notice deadlines as
4 none applied to administrative segregations. The BOCC must affirm the CDS decision to void
5 these applications.

6 **D. Plum Creek’s applications are subject to the sun set limits of KCC 16.06.040.**

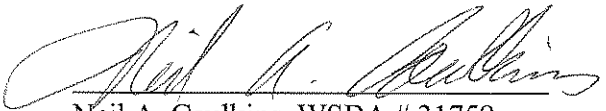
7 On pages 13 through 15 of its brief, Plum Creek argues that the County Ordinance does
8 not specifically apply to applications that have not received preliminary approval, and so does
9 not apply to their applications. Our regulation states “Applications that neither finish nor
10 complete the conversion process by the deadlines herein shall be expired and void...All
11 applications by applicants who fail to request final administrative segregation approval ... within
12 the time limits provided in this ordinance, are expired and void.” This is clear language that the
13 regulation applies to all existing applications, including those that do not have preliminary
14 approval like Plum Creek’s. This is clear language that the regulation expressly applies to
15 applications like Plum Creek’s. It is also clear from the County’s regulation that the intent of the
16 regulation was to sun set all existing applications. This would include those of Plum Creek. The
17 County’s regulation accomplishes that intent. Plum Creek has not met the deadlines found in
18 KCC 16.06.040 and so these three applications are void. The BOCC must affirm the voiding of
19 these applications.

20
21 **IV. CONCLUSION**

22 The BOCC should affirm the voiding of these three applications belonging to Plum Creek.
23 The applications are not subject to vested rights and so are properly regulated under our current
24 ordinance. Even if the applications were subject to vested rights, the applications would be
25 subject to our current ordinance because the sun setting provisions in the ordinance are not “land

1 use controls” to which or from which one vests. The County has not violated any deadlines
2 because none applied. The County’s ordinance clearly expresses that it applies to all
3 applications and so applies to those applications of Plum Creek.

4 Respectfully submitted this 19th day of August, 2013.

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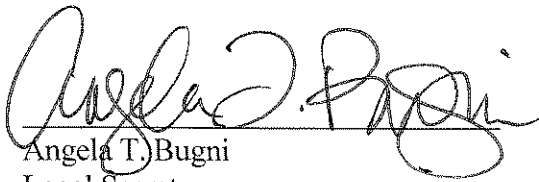
7 Neil A. Caulkins, WSBA # 31759
8 Deputy Prosecuting Attorney
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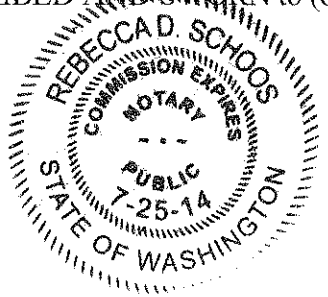
placing said copies in a sealed envelope with postage prepaid thereon.


On August 19, 2013, I delivered a copy via inter-county mail of KITTITAS COUNTY'S BRIEF, to the following individuals at the specified addresses,

Mr. Jeffrey A. Watson
411 N. Ruby, Suite 4
Ellensburg, WA 98926


Angela T. Bugni
Legal Secretary

SUBSCRIBED AND SWORN to (or affirmed) before me this 19th day of August, 2013.




NOTARY PUBLIC in and for the
State of Washington.
My Commission Expires: 7/25/2014