

To: The Board of County Commissioners Tuesday, February 15, 2011 page 1 of 2
From: June Kite – Friends of Skagit County
Re: Hearing Examiner Findings, Conclusions and Recommendations
 Preliminary Plat for David Welts Subdivision – PL 96-0058

Item #29 of Findings the Hearing Examiner states “***the development of this plat at the density sought would not be allowed under today’s regulations implementing the Growth Management Act.***” Vesting and zoning are the issues.

** An illegal development cannot be vested. A proposed development project can be approved only if it is permitted in zoning ordinance. The State vesting doctrine generally states that vesting is based on a “complete application”. If it does not fit, you cannot permit.

Item #3 of Conclusions of Law states ***the proposed preliminary plat is vested to the local regulations in effect on February 7, 1996. These were pre-growth management regulations which were not subsequently invalidated.***”

In fact the pre-GMA regulation that allowed small lot development in RURAL zones WAS INVALIDATED IN 1993 by adoption of the Interim Ordinance limiting creation of new lots in rural zones to 5 acres. Creation of one-acre lots was illegal outside of urban growth areas. Long subdivisions with small lots have not been permitted since GMA was adopted.

Item #2. Conclusions of law - ***a completed application is a local determination... and the determination made here was not appealed.***

In fact the Planning Services Report – Departmental Findings – Item #2 Processing states “***Letters of completeness were not issued for any of the applications.***” Not in 1996, not in 2006. A review of the application most likely included the 1993 Interim Ordinance. Instead the Board of County Commissioners were persuaded to revoke the 1993 Interim Ordinance (bend the law) to create a 3 month “window of opportunity” for this development to be vested. AND THAT WAS APPEALED. County actions were ruled invalid – not legally binding, not in compliance with GMA.

Vesting points out that the doctrine is to immunize developers from the impacts of changes in the law made during the review process. It is also true that laws are enacted to protect land from the impacts of development not permitted by zoning. It was argued that small lots were permitted in “rural residential” zone where small lots existed. There was no existing development on the land proposed for the plat and the Section maps illustrate 40-acre parcels that are adjacent to lands zoned forestry.

There were four (4) small lot long subdivisions applications being processed from 1990 to 1996: Nookachamp Hills, Starbird Golf and Residential, Swan Ridge and Weltz Lake Sixteen. Starbird was ruled urban by the courts and not permitted. Swan Ridge was withdrawn. Nookachamps was vested before 1990. In the twenty plus years since GMA there has been no long subdivision approved in rural Skagit County.

The Weltz application could not be vested in 1996 because of the 1993 Interim Ordinance. The proposal did not move to a public hearing and was never approved. Ten years later in 2006, the same application was resubmitted. So what happened in the 10 years after 1996?

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A real estate developer, Keith Johnson, short platted one 40-acre parcel in 1993 and 1994 into 5-acre lots that are legal lots of record. Comments were submitted at that time noting a sanitary landfill that would not permit development to proceed. Johnson then sold to Weltz the short plat and the other parcels for the proposed sixty (60) lot subdivision.

In 1998 a developer hired by Weltz started road construction. The sanitary landfill site was interrupted and there was no application for a forest practices conversion. A moratorium was placed on the property and no permits were granted.

In 2006 the same application was submitted without modification. A public notice of a complete application was not seen in 2004 and there was no “letter of complete application” issued by the Planning & Development staff. There was no public hearing and no approval granted. There was community opposition. If the Hearing Examiner had recommended approval it would have been appealed to the Board of County Commissioners and then to the Courts if need be on the grounds that the proposal is urban in nature and urban development has not been permitted in rural Skagit County since 1990.

In 2007 Mr. Tosti and Real Estate Investments acquired the parcels with the Weltz proposed 60-lot development. In a 3-year period Welts and Tosti worked with Planning and Development Services to modify the proposal to bring it in line to current Critical Areas, roads, and health codes. But it did not bring it in line with current zoning codes. And the sanitary land-fill problem was not fixed.

It is recognized that this Board of County Commissioners were not in office in 1996 when this proposal was first submitted, but you have inherited the problems of the past. To fix the sanitary land-fill in a “Settlement agreement” was negotiated in 2009 and this Board agreed to support the approval of the preliminary plat. The Welts application then was re-submitted in 2010 and public comment periods provided.

In the public hearing of December 8, 2010, the attorney for the Welts application testified in defense of the road construction and forest practice errors made in 1998 because Mr. Weltz was neither a developer nor a forester. But Mr. Weltz was a lawyer and knew the law.

This Board has the responsibility of upholding the law by your decisions and actions, and now must decide if the legally adopted Interim Ordinance of 1993 was valid in 1996, and must decide if revoking the legally adopted zoning ordinances is legally binding (or an illegal act). Was the agreement to support approval before the public process and hearings bending the rules to grant a special privilege?

Respectfully submitted,
June Kite, Vice President, Friends of Skagit County

Note to readers: June Kite came to Skagit County in 1964 and in 1965 Skagit County adopted its first Comprehensive Plan that introduced zoning. Rural areas were 5-acres since then. She has been following land use planning, GMA, zoning and environmental issues since that time.