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Attorneys at Law

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RECEIVED

APR 14 2010

April 14, 2010

1st ___ 2nd ___ 3rd ___
KITTITAS COUNTY BOARD OF COMMISSIONERS

Kittitas County
Board of Commissioners
205 W 5th AVE STE 108
Ellensburg WA 98926-2887

RE: Notice of Administrative Appeal and Administrative Appeal

BACKGROUND

This office represents D&H Ranch, Inc., SDL Properties, Inc. and L&D Land Corporation, Inc. (The Appellants). The Appellants are all Washington corporations that own property within Section 36, Township 17 North, Range 18 and are in the process of short-platting their property. The Appellants are represented by Cruse & Associates, a surveying firm in Ellensburg, Washington.

This appeal is filed pursuant to KCC 15A.07.010 and is an appeal of an administrative determination or decision. These Appellants, as noted above, all have pending short plat applications. On April 2, 2010, the Appellants sent a letter to Jeff Watson with Kittitas County Community Development Services, a true and correct copy of which is attached hereto as Exhibit A. On April 2, 2010, the applicant sent a letter to Catherine Bambrick with the Kittitas County Health Department, a true and correct copy of which is attached hereto as Exhibit B. These letters were delivered to Mr. Watson and Ms. Bambrick in response to a letter that Cruse & Associates, the authorized agent in the above-referenced plats, received from Catherine Bambrick on March 23, 2010, a true and correct copy of which is attached hereto as Exhibit C.

Mr. Watson responded to applicant's letter on April 2, 2010, a copy of which is attached hereto as Exhibit D. Ms. Bambrick has not yet responded; however, based upon the applicant's letter, Ms. Bambrick's non-response is taken as an administrative action which is appealable under Chapter 15A.07 Kittitas County Code.

Several of the short plats have already received preliminary approval. Washington law prohibits the imposition of new terms and conditions on a short plat after a short plat has been given preliminary approval. The Appellants with short plats that have received preliminary approval are as follows:

Owner	Short Plat Name	Short Plat Number	Preliminary Approval Date
SDL Properties, Inc.	Galaxy Short Plat	SP-07-139	11/24/08
SDL Properties, Inc.	Turf Ranchettes Short Plat	SP-07-148	10/31/08
SDL Properties, Inc.	Valley Run Short Plat	SP-07-160	2/18/09
L&D Land Corp.	Moon View Short Plat	SP-08-51	1/23/09

In addition, D&H Ranch, Inc. has a pending short plat, SP-08-53, which was filed on November 21, 2008 and, as a result, under applicable Code, has been deemed complete. The notice of that short plat went out to the general public on January 8, 2009. As discussed below, this short plat is vested to the rules and regulations existing on November 21, 2008.

1. The Decision Being Appealed.

The administrative decision by Kittitas County Community Development Services and Kittitas County Environmental Health to refuse to process vested pending short plat applications until the applicants drill wells on the property with a known, but undefined, demonstrative flow capacity through a minimum of 4-hour pump test and/or comply with the terms and conditions of Ms. Bambrick's letter (Exhibit C).

2. Appellant.

D&H Ranch, Inc.; SDL Properties, Inc.; and L&D Land Corporation, Inc.

3. Specific Reasons Applicant Believes Decision is Wrong.

3.1 **Violation of the Appellants' Vested Rights.** For the short plats in which preliminary approval has been given and the drilling of wells prior to final plat approval was not made a specific condition of preliminary approval, the County administrative decision violates the Vested Rights Doctrine. Additionally, the plat applications which are deemed complete under Kittitas County Code and are therefore vested to the rules and regulations which applied on the date the application was filed are also vested and requiring those applicants to drill a well at or before final plat approval violates the Vested Rights Doctrine as explained in the letter attached hereto as Exhibit A.

3.2 **The Appellant is Entitled to Damages Under Chapter 64.40 RCW.** The decision by Kittitas County to implement the rules and regulations set forth in the letter from Catherine Bambrick attached hereto as Exhibit C and to refuse to process pending vested short plat applications as a result of the imposition of these new rules and regulations is an arbitrary and capricious action by Kittitas County which is unlawful and exceeds Kittitas County's lawful authority. As a result of Kittitas County's actions, the Appellants have a cause of action against Kittitas County for monetary damages under Chapter 64.40 RCW and for their attorney fees and costs.

3.3 Violation of the Appellants' Civil Rights. The decision by Kittitas County to implement the rules and regulations set forth in the letter from Catherine Bambrick attached hereto as Exhibit C and to refuse to process pending vested short plat applications as a result of the imposition of these new rules and regulations is arbitrary and capricious, is unlawful and exceeds Kittitas County's lawful authority and, as a result, is a deprivation of property without due process and violates the Appellants' constitutional rights for which the Appellants are entitled to damages and attorney fees under 42 U.S.C. Section 1983.


4. Desired Outcome or Changes to the Decision.

The appellants desire that their short plat applications be processed according to law and, specifically, that they not be required to drill a well prior to final plat approval and that, instead, they be required to drill a well prior to issuance of a building permit. The Appellants also demand payment of monetary damages and their costs and attorney fees, all of which will be proven with particularity at the appeal hearing.

5. Appeal Fee.

The applicable \$500 appeal fee is enclosed herewith and is hereby tendered to the County.

Submitted by:



JEFF SLOTHOWER, WSBA #14526
Attorney for D&H Ranch, Inc.;
SDL Properties, Inc.; and L&D Land Corporation, Inc.

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Enclosure

cc: Clients
Cruse & Associates

Exhibit A
Letter to Jeff Watson

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
Attorneys at Law

Post Office Box 1088, 201 West Seventh Avenue, Ellensburg, WA 98926

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Tel (509) 925-6916
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April 2, 2010

Jeff Watson
Kittitas County Community Development Services
411 North Ruby Street
Ellensburg, WA 98926

RE: SP-08-53

Dear Mr. Watson:

I represent D&H Ranch, Inc. D&H Ranch is the owner of property which is the subject of a pending short plat application. The short plat is referred to as Green Pasture Short Plat and is identified by Kittitas County SP-08-53. This short plat application was submitted on November 21, 2008. Notice went out in this matter on January 8, 2009 and public comment has been received. My client requests that this short plat be processed and given preliminary approval so that we can proceed to final approval.

If this office has not received confirmation within five (5) days of the County's intent to process the applications, my clients will assume you do not intend to move forward with preliminary approval of the applications and we will treat your inaction as an appealable decision.

Very truly yours,



Jeff Slothower

JS:rcj

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cc: Clients
Cruse & Associates

Exhibit B
Letter to Catherine Bambrick

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.

Attorneys at Law

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April 2, 2010

Catherine Bambrick
Kittitas County Public Health Department
507 Nanum Street
Ellensburg, WA 98926

Dear Ms. Bambrick:

I represent D&H Ranch, Inc., SDL Properties, Inc. and L&D Land Corporation, Inc. My clients are all Washington corporations that own property within Section 36, Township 17 North, Range 18 and are in the process of short-platting their property. All of my clients are represented by Cruse & Associates, a surveying firm in Ellensburg, Washington. Cruse & Associates recently received a letter from you dated March 23, 2010 in which you indicated the Kittitas County Public Health Department is initiating "changes to the platting requirements for water availability, for preliminary and final approval beginning March 2010". You further indicate these changes will affect new applications as well as those currently submitted to the County that are being considered for preliminary and final plat approval.

Several of the short plats have already received preliminary approval. As discussed below, Washington law prohibits the imposition of new terms and conditions on a short plat after a short plat has been given preliminary approval. My clients with short plats that have received preliminary approval are as follows:

Owner	Short Plat Name	Short Plat Number	Preliminary Approval Date
SDL Properties, Inc.	Galaxy Short Plat	SP-07-139	11/24/08
SDL Properties, Inc.	Turf Ranchettes Short Plat	SP-07-148	10/31/08
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In addition, D&H Ranch, Inc. has a pending short plat, SP-08-53, which was filed on November 21, 2008 and, as a result, under applicable Code, has been deemed complete. The notice of that short plat went out to the general public on January 8, 2009. As discussed below, this short plat is vested to the rules and regulations existing on November 21, 2008.

Exhibit B
(continued)

Catherine Bambrick
Kittitas Co. Health Dept.
April 2, 2010
Page 2

The purpose of this letter is to put you and Kittitas County on notice that your changing of the platting requirements violates Kittitas County Code and Washington State law.

The vested rights doctrine is a common law doctrine under which a land use application will be considered only under the land use statutes and ordinances in effect at the time of the application's submission. *Friends of the Law v. King County*, 123 Wn.2d 518, 522, 869 P.2d 1056 (1994). "The purpose of vesting is to provide a measure of certainty to developers, and to protect their expectations against fluctuating land use policy." *Id.*

The purpose of the vesting doctrine is to allow developers to determine, or "fix," the rules that will govern their land development. The doctrine is supported by notions of fundamental fairness. As James Madison stressed, citizens should be protected from the "fluctuating policy" of the legislature. Persons should be able to plan their conduct with reasonable certainty of the legal consequences. Society suffers if property owners cannot plan developments with reasonable certainty, and cannot carry out the developments they begin. (Citations omitted). *West Main Associates v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782 (1986).

The Vesting Doctrine is "rooted in concepts of fundamental fairness and due process." *Schneider Homes, Inc. v. Kent*, 87 Wn. App. 774, 942 P.2d 1096 (1997), *review denied*, 134 Wn.2d 1021 (1998). Over time, the common law doctrine has been applied to a number of different types of land use permits. *Friends of the Law*, 123 Wn.2d at 522 (citing *Norco Constr., Inc. v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982)).

In 1987, the Washington Legislature codified the vested rights doctrine for both building permits and the subdivision of land. Laws of 1987, Ch. 104. RCW 19.27.095 codified the common law doctrine for building permits. *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 275, 943 P.2d 1378 (1997). RCW 58.17.033 expressly applied the vested rights doctrine to the subdivision of land. *Id.* My client's pending short plat applications are included within the types of land subdivision legislature intended to be vested by RCW 58.17.033.

In addition to statutory expansions such as RCW 58.17.033, local governments are free to enact vesting ordinances. "Within the parameters of the doctrine established by statutory and case law, municipalities are free to develop vesting schemes best suited to the needs of a particular locality." *Erickson & Associates, Inc. v. McLerran*, 123 Wn.2d 864, 872-73, 872 P.2d 1090 (1994). Consistent with these requirements, the Kittitas County Code specifically applies the doctrine of vested rights to short plat applications as well as other types of permits in Chapter 15A.03 Kittitas County Code.

Under clear Washington law, these applications are vested to the platting requirements that are in place on the date they were deemed complete. State law and Kittitas County Code prohibits the imposition of new platting requirements. I request, on behalf of my clients, that each of their pending short-plat applications be processed under the rules, regulations and requirements in

Exhibit B
(continued)

Catherine Bambrick
Kittitas Co. Health Dept.
April 2, 2010
Page 3

place when the applications were deemed complete. Should you fail to do this, my clients have instructed me to exercise any and all remedies available to them to protect their recognized property rights.

By arbitrarily and without legal authority imposing new conditions upon vested short plat applications, Kittitas County is violating my client's Civil Rights and any action my clients bring for damages as a result of Kittitas County's violation of the Vested Rights Doctrine as applied to my clients will include a cause of action for a Civil Rights violation. The Civil Rights violation will obligate a payment of my client's attorney fees and costs by Kittitas County.

My clients demand you notify me within five (5) days if you intend to process these plat applications under the new rules, regulations and requirements. If we do not hear from you within five (5) days, we will assume you intend to apply the new rules, regulations and requirements to these plat applications and we will immediately take the necessary steps to appeal that decision.

Very truly yours,



Jeff Stothower

JS:cej
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cc: Clients
Cruse & Associates

Exhibit C
Letter from Catherine Bambrick



To Protect and Promote the Health and the Environment of the People of Kittitas County

March 23, 2010

Cruse and Associates
217 E 4th Street
Ellensburg, WA 98926

To Whom It May Concern,

Kittitas County Public Health Department is initiating changes to the platting requirements for water availability for preliminary and final approval beginning in March of 2010. These changes will affect new applications and those currently submitted to the county that are being considered for preliminary and final approval, please inform all of your clients of the changes.

The following requirements shall be enforced:

Individual Wells:

For preliminary plat approval, the number of wells and which parcels will be served by each well must be identified by the applicant. If individual wells are proposed for the parcels and there is an existing well located on the plat, a well log from the State of Washington, Department of Ecology (Ecology) and a recent passing bacteriological and nitrate test will meet the water availability requirement.

If there is not currently an existing well located on the plat, the applicant must demonstrate evidence of the water supply type that they intend on making available to the proposed lots and that adequacy will be achieved. This requirement can be achieved by submitting a hydrogeological report prepared by a licensed Professional Engineer or Hydrogeologist or by conducting a well survey of proximate wells. Such a survey shall include current information regarding capacity and a recent passing bacteriological and nitrate tests from proximate wells.

In either case, current information that identifies or estimates anticipated capacity of the existing or planned wells must demonstrate that the wells will provide sufficient water to the number of residences that may be connected to them.

Final approval will be conditioned upon the conditions of preliminary approval, and all wells must be drilled, flow capacity known (minimum of a 4 hour pump test), water storage mitigations resolved and bacteriological and nitrate tests must be performed and satisfactory to

Kittitas County
Public Health Department
507 N. Nanum Street, Suite 102
Ellensburg, WA 98926
T: 509.962.7515
F: 509.962.7561



www.co.kittitas.wa.us/health/

Environmental
Health Services
507 N. Nanum Street, Suite 102

Ellensburg, WA 98926
T: 509.962.7515
F: 509.962.7052

**Exhibit C
(continued)**

be used for domestic use. Final mylars must have well head protection zone(s) established before final approval can be recommended.

Public Water System:

For preliminary approval, if a public water system is proposed for the plat, the future or current location of the well(s) must be identified on the plat map and the applicant must demonstrate that adequacy will be achieved. This requirement can be achieved by submitting a hydrogeological report prepared by a licensed Professional Engineer or Hydrogeologist or by conducting a well survey of proximate wells. Such a survey must include current information regarding capacity and a recent passing bacteriological and nitrate tests from proximate wells. If there is an existing well, a well log from Ecology and a recent passing bacteriological and nitrate test will meet the water availability requirement.

For final approval, the public water system application shall be submitted, reviewed and approved by Kittitas County Public Health Department or the State of Washington, Department of Health which includes final issuance of the water system ID number to meet the water availability requirement for plat approval. For Group B Public Water Systems reviewed and approved by Kittitas County Public Health Department, bonding is allowed for completion of the system as stated in Kittitas County Code 13.09. Final mylars must have the well head protection zone(s) established before final approval can be recommended.

In upper Kittitas County, the following requirements shall be enforced:

In upper Kittitas County, if the property owner has not already put the well or wells in question to beneficial use, a determination of water neutrality from Ecology will be required to satisfy the water availability requirement for individual wells and Group B Public Water Systems.

This requirement may be waived at the final approval stage if Ecology has modified the Upper Kittitas County Ground Water Rule in such a way that a determination is no longer required and the applicant has met all requirements of the modified rule.

If you have any questions or seek clarification, please feel free to contact me directly at (509) 962-7515.

Sincerely,



Catherine Bambrick, Administrator

Exhibit D
Letter from Jeff Watson



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships - Building Communities"

April 2, 2010

RECEIVED

Jeff Slothower
201 West Seventh Avenue
Ellensburg WA 98926

APR 02 2010

LATHROP, WINBAUER, HARREL
SLOTHOWER & DENISON L.L.P

RE: SP-08-00053 Green Pasture Short Plat

Dear Mr. Slothower,

Please see the attached letter from Cathy Bambrick of Kittitas County Public Health regarding additional information required for the continued processing of the above mentioned Short Plat. This application will be placed on hold, until confirmation is received from Public Health that the necessary information has been provided. Should you have any additional questions pertaining to this application please feel free to contact me in any method listed below which is convenient for you.

Jeffrey A. Watson
Staff Planner

Kittitas County Community Development Services
411 N. Ruby Street, Suite 2
Ellensburg, WA 98926
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Community Planning • Building Inspection • Plan Review • Administration • Permit Services • Code Enforcement • Fire Investigation

APRIL 2, 2010

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Page 1 of 1