

## Vesting

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## Early Vesting Cases

*Hardy v. Superior Court*, 155 Wash. 244 (1930)

- Where a building permit for a business use was refused because the underlying zone changed to residential shortly after the permit was requested.
- Court ruled that permit should issue if it was in accord with the zoning classification in effect at the time it was sought.

## *Hull v. Hunt*, 53 Wn. 2d 125 (1954)

“The more practical rule to administer, we feel, is that the right vests when the party, property owner or not, applies for his building permit, if that permit is thereafter issued. This rule, of course, assumes that the permit applied for and granted be consistent with the zoning ordinances and building codes in force at the time of application for the permit.”

## *Beach v. Board of Adjustment* 73 Wn. 2d 343 (1968).

“The applicant’s right to a hearing vested at the time the application was properly filed with the Board and furthermore, the subsequent change in the zoning ordinance does not operate retroactively so as to affect vested rights.”

*But see Potala Village*

## Vested rights pertained to the application filed

- Hardy – Building permit for a business use
- Hull – Building permit for a 12 story structure (the day after it was filed the an ordinance passed limiting the height of such buildings)
- Beach – Conditional use permit for a wrecking yard ( Initial hearing remanded due to lack of a record. Laws changed in the interim)

## Common

### Law Extensions of Vesting Rules

- Conditional use permits – *Beach v. Board of Adjustment*, 73 Wn. 2d 343 (1968)
- Grading permits – *Juanita Bay Valley v. City of Kirkland*, 9 Wn. App. 59 (1973)
- Shoreline substantial development permits-*Talbot v. Gray*, 11 Wn. App. 807 (1974)[*but see Potala Village*]
- Septic tank installations – *Ford v. Bellingham-Whatcom County Dist. Bd. Of Health*, 16 Wn. App. 709 (1974),*Thurston County Rental Owners v. Thurston County*, 85 Wn. App. 171 (1997)

### Vested rights not extended

- Subdivisions – *Norco Construction, Inc. v. King County*, 97 Wn. 2d 680 (1982)
- Preliminary site plans – *Burley Lagoon Imp. Assn. v. Pierce County*, 38 Wn. App. 534 (1984)
- Binding site plans – *Valley View Indus. Park v. City of Redmond*, 107 Wn. 2d 621 (1987)

### Legislative Action

In 1987 the legislature adopted RCW 19.27.095 and RCW 58.17.033.

- The first codified the vesting rules with respect to building permits;
- The second extended vesting rights to preliminary plat applications.

### 19.27.095

(1) A valid and fully complete building permit application for a structure, that is permitted under the zoning and other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, **and the zoning and other land use controls ordinances** in effect on the date of application.

### 58.17.033

(1) A **proposed division of land**, as defined in RCW 58.17.020, **shall be considered** under the subdivision or short subdivision ordinances, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted ...

### Court rulings subsequent to legislative action

*Erickson and Assocs., Inc. v. McLerran*, 123 Wn. 2d 864 (1994).

- Refused to extend doctrine to Master Use Permit.

*Abbey Road Group LLC v. City of Bonney Lake*, 167 Wn. 2d 242 (2009)

- Refused to extend doctrine to site development plan

### Distinction between land use regulations and “health and safety regulations”

*Hass v. City of Kirkland*, 78 Wn. 2d 929 (1971)

- Right extinguished through the exercise of police power (fire code provisions)

*Rhod-A-Zalea v. Snohomish County*, 136 Wn. 2d 1 (1998)

- Vested rights doctrine not applicable to health and safety and welfare regulations

*Noble Manor v. Pierce County*, 133 Wn. 2d 269, (2000)

“Not all conceivable uses allowed by the laws in effect at the time of a short plat application are vested development rights of the applicant. However, when a developer makes an application for a specific use, then the applicant has a right to have that application considered under the zoning and land use laws existing at the time the completed plat application is submitted.”

Abrogation recognized by *Potala Village*

*Weyerhaeuser v. Pierce County*, 95 Wn. App. 883 (1999)

- Review accepted then withdrawn
- Activity clearly identified
- Issue was whether a conditional use permit could require compliance with wetland laws in existence after the application was filed

*Westside Business Park, LLC v. Pierce County*, 100 Wn. App. 599, (review denied, 2000)

- Specific uses clearly identified informally, (not in application)
- “If the application had called for this information or if the county had taken the stance that it was unaware of the proposed use, our decision might differ.”
- Not followed by *Potala Village*

Court rulings subsequent to legislative action

*Town of Woodway v. Snohomish County*, 180 Wn. 2d 165 (2014)

- While the doctrine originated at common law, the doctrine is now statutory.
- Applications under statutory vesting laws, vest in spite of subsequent rulings by the GMHB.

*Portal Village Kirkland, LLC v. City of Kirkland*, No. 70542-3-1

Noble Manor and RCW 19.27.095

- The holding in Noble Manor appears to both expand the statutory right of vesting set forth in RCW 58.17.033 which is applicable to “A proposed division of land”, and the express language of RCW 19.27.095 which requires building permits to be considered under, “the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

RCW 58.17.170 and RCW 19.27.095

When a final plat is approved RCW 58.17.170 states in part:

“a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval.”

The question is what subsequent permits this applies to?

### Rules adopted after preliminary plat approval

#### The issue

Jurisdictions often adopt new rules, both substantive and procedural, concerning the timeliness of filing final plats, processing final plats, bonding requirements, phasing, altering or amending preliminary approvals. Often these changes are made at the request of the developers. The question is whether or not they can be applied to pending approved preliminary plats.

### Choices

1. Process the preliminary plat pursuant to the rules in existence at the time the initial application is made. *Noble Manor, RCW 58.17.033*
2. Limit the vesting rights to the initial application, i.e. the preliminary plat application, not any subsequent applications that may be made. But see *East County Reclamation Company v. Bjornsen*, 125 Wn. App. 432 (2005).
3. Apply only the new rules that are considered procedural, not substantive. *Graham Neighborhood Ass'n v. F.G. Assocs.* 162 Wn. App. 98 (review denied, 2011)

### Short Plats – What rules apply

RCW 58.17.140 states in pertinent part:

(2) Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period.

### Short Plats – What rules apply?

- Does the 30 day deadline apply to consideration of the preliminary short plat application? The final short plat application?
- What must be accomplished within 30 days? Preliminary approval? Final approval and filing with the County Assessor?

### Short Plats – What rules apply?

- RCW 58.17.060, states in pertinent part:
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- The legislative body ... shall adopt regulations and procedures ... for the summary approval of short plats and short subdivisions ... Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and **may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions ... and shall require filing of a short plat ... for record in the office of the county auditor ...** An ordinance requiring a survey shall require that the survey be completed and filed with **the application for approval of the short subdivision.**

### Short Plats – What rules apply?

- RCW 58.17.065, states as follows:
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- **Each short plat and short subdivision granted pursuant to local regulations after July 1, 1974, shall be filed with the county auditor and shall not be deemed “approved” until so filed.**
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### Short Plats – What Rules apply?

A short plat is defined as follows:

(8) "Short plat" is the map or representation of a short subdivision."

### Legislative Approval of Final Plats

Can it be delegated?

### Final Plats

RCW 58.17.100 states: "**sole authority to approve final plats**, and to adopt or amend platting ordinances **shall reside in the legislative bodies.**" RCW 58.17.190 further states: the county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body."

### Final Plats

Authority to transfer "those provisions of this chapter requiring a planning commission to hear and to issue recommendations for plat approval" to a hearing examiner is found in RCW 58.17.330. The hearing examiner decision can be deemed a recommendation, an appealable administrative decision or a final decision.

### Final Plats

Authority to delegate certain land use decisions to a hearing examiner is found in RCW 35A.63.170 which states in part: "In addition, the legislative body may vest in a hearing examiner the power to hear and decide those issues it believes should be reviewed and decided by a hearing examiner, including but not limited to:

Applications for conditional uses, variances, subdivisions, shoreline permits, **or any other class of applications for or pertaining to development of land or land use.**"

### Final Plats

RCW 35A.63.170 states in part:

"Each city legislative body electing to use a hearing examiner system pursuant to this section shall by ordinance specify the legal effect of the decisions made by the examiner. The legal effect of such decisions may vary for the different classes of applications decided by the examiner but shall include one of the following:

(b) **Except in the case of a rezone**, the decision may be given the effect of a final decision of the legislative body."

### Application Contents

RCW 36.70B.080 states in part as follows:

Development regulations must, for each type of permit application, specify the contents of a completed project permit application necessary for the complete compliance with the time periods and procedures.

### Staff Reports

The review process mandated by chapter 36.70B RCW requires staff reports to include the following:

1. Decisions made to date on permits that are included in a consolidated permit process that do not require a hearing
  2. Recommendations
  3. Any mitigation proposed or required under RCW 43.21C.060 along with the threshold determination
  4. The report may be the local permit.
- RCW 36.70B.060 (5)

### Compliance with Comprehensive Plan

1. Zoning amendments and actions relating to growth management compliance– Required
2. Other project permits – in the absence of applicable recommendations or where expressly called for in the development code.

### Compliance with Comprehensive Plan

- RCW 36.70B.030
- WAC 365-196-210(8)
- WAC 365-196-800(1)
- WAC 365-197-010
- *Cougar Mountain Assocs. v. King County*, 111 Wn. 2d 742, 757 (1988)
- *Weyerhaeuser v. Pierce County*, 124 Wn. 2d 26, 43 (1994)
- *Lakeside Industries v. Thurston County*, 119 Wn. App. 886 (rev. denied 2004)
- *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756 (2006)
- *Woods v. Kittitas County*, 162 Wn. 2d 597 (2007)
- *Deer Creek Developers, LLC v. Spokane County*, 157 Wn. App. 1, 18 (2010)