

When does a project vest?

by Gordy Van

In the case of *Potala Village Kirkland, LLC v. City of Kirkland*, P.3d (2014), the City of Kirkland had a developer plan a mixed-use (business and residential) development. He consulted with city planners and was told that it was zoned commercial with no residential density limit. He had an additional meeting with the city wherein they confirmed development potential; he then closed on purchase of the property. He later filed a complete Shoreline Substantial Development Permit Application, but did not file an Application for a Building Permit.

A moratorium on neighborhood business zones was subsequently enacted and later extended. An ordinance to rezone the site to bring it in line with the Comprehensive plan followed, decreasing the residential density allowed. As a result of this ordinance, the project could not be constructed as originally planned, resulting in a loss of 83 dwelling units and a corresponding financial impact on the developer. There was danger that the developer would prevail with a takings claim, claiming detrimental reliance on the assurances regarding density and zoning prior to purchasing the property.

A lawsuit was filed, claiming the project was vested to the zoning in force at the time they filed their complete Shoreline Substantial Development Permit Application. Opposing Summary Judgment Motions were filed. Plaintiff argued that the Shoreline Permit Application entitled them to vest to regulations in force for the entire project at the time of the application. The city argued that vesting for the entire project does not occur until a completed Building Permit Application is filed. The Superior Court disagreed with our position and found in favor of the plaintiff. The Court denied our Motion for Reconsideration. We filed an appeal and the Court of Appeals reversed the Superior Court in a published decision, finding that per RCW 19.27.095(1) an applicant vests to regulations in force at the time a completed Building Permit Application is filed. They noted that the vesting doctrine applies as well to subdivision and short subdivision applications. The Court of Appeals found that per Supreme Court decisions, while it originated at common law, the vested rights doctrine is now statutory. The plaintiff filed a Motion for Supreme Court discretionary review, which was declined.

Noting the complexity of the issues involved, the city requested pre-defense very early in the process. Questions were asked and advice was given, including defense counsel attendance at several City Council meetings. The city's early engagement of pre-defense assisted in investigation of the issues and defense of the lawsuit. The city attorney worked with assigned counsel Stephanie Croll to prepare argument that ultimately allowed the city to prevail in this lawsuit. We strongly encourage our members to request pre-defense assistance early where guidance may be able to stave off potential claims.

Thanks to the City of Kirkland and Stephanie Croll for their perseverance and victory!