



Long v. Town of Naches

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The Town of Naches preliminarily approved Ronald Long's subdivision plat application subject to 12 conditions. He appealed the decision, challenging all 12 conditions, but in the review proceedings in Yakima County Superior Court he narrowed his challenge to only those conditions regarding roads and waste disposal. The court upheld Naches's conditions, finding Mr. Long failed to establish grounds that would entitle him to relief under RCW 36.70C.130¹ and that the conditions are supported by substantial evidence. On appeal to this court, Mr. Long contends Naches's conditions violate his constitutional right to due process because the town has not adopted its own subdivision ordinance, with objective standards governing subdivision plat requirements, and his application meets state standards set forth in RCW 58.17.020(4) and .110. We reverse one condition and affirm the others.²

In 1993 Mr. Long took the first steps toward developing a small residential subdivision in a cherry orchard at the edge of Naches. In February he obtained approval from the Naches Town Council for up to eight water and sewer service permits for the property. In June he informed Naches he planned to begin annexation proceedings. He apparently did not follow through at that time, but he did submit a proposed preliminary subdivision plat to the Yakima County Planning Department, which forwarded it to interested agencies. After reviewing his proposal, and available site and soil data, the Yakima County Health District advised Mr. Long in September 1993 that it had determined it was in the best interest of Naches and the Health District that the project be connected to Naches's water and municipal sewer systems. The Health District estimated the cost of installing on-site septic systems versus connection to Naches's sewer, found little difference between the two estimates, and decided connection to the sewer was the best long-term solution for sanitary waste disposal. Mr. Long objected and pointed out he had planned to install a private septic system, which he believed would be far less expensive. Nevertheless, in 1994 Mr. Long commenced annexation proceedings to reduce the costs of water and sewer rates for the proposed subdivision. The property was annexed to Naches as of April 1, 1995.

Meanwhile, in January 1995 Mr. Long submitted a preliminary plat application for an 8-lot subdivision called Cherry Blossom Estates. The initial public hearing on the proposal was held February 6 before the Naches Planning Commission. A representative from the Health Department explained how the department decided it was proper to require connection to the municipal sewer system. Public comments on the proposal were received by the Naches Town Council on February 13. At the March 13 Town Council meeting, when annexation was approved, Mr. Long indicated he was considering changing the size of the subdivision. In April Mr. Long amended his application, changing it to a 10-lot phased development. He presented his amended proposal to the Town Council



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at its meetings on April 10 and May 8. After a public hearing on the amended proposal June 12, the Town Council preliminarily approved the 10-lot subdivision, subject to a dozen conditions.

Mr. Long appealed the decision to the superior court. By letter opinion issued in May 1996 the court first decided review should be under RCW 36.70C, which took effect after the Town Council rendered its decision but before Mr. Long filed his petition for review. The court determined the Town Council's findings were inadequate and decided the case should be remanded. In addition, the court confirmed that Mr. Long had narrowed his challenge to cover only the sewer and road conditions. After Mr. Long moved for modification of the court's ruling, the parties stipulated to remand for the entry of adequate findings regarding the sewer and road conditions and, because the report of proceedings was defective, agreed both parties could first introduce additional evidence on these issues.

The Town Council held a public meeting August 12, 1996, and issued amended findings and conditional approval of the subdivision application on August 26. The court considered the new material submitted by the parties and on November 14, 1996, issued a second letter opinion, affirming the amended findings and Conclusions and upholding the Town Council's conditions. Mr. Long appeals the court's decision and its corresponding order denying his petition for relief.

Consonant with the sixth standard established by RCW 36.70C.130 for granting relief from land use decisions, Mr. Long contends Naches's conditional approval violates his state and federal constitutional rights to due process. He argues Naches lacks objective standards to guide its land use decisions because it has not adopted a subdivision ordinance. The trial court agreed with Mr. Long that local policies and ordinances relating to the development of property must be clear enough to afford due process, but it disagreed that Naches's failure to adopt a subdivision ordinance necessarily violates due process. The court found RCW 58.17.110, which lists the factors Naches must consider, adequately limits discretion as long as it is carefully followed and Naches's conditions are supported by substantial evidence.

RCW 58.17 establishes a statewide framework for the regulation of subdivisions (five lots or more) and directs local governments to adopt regulations and procedures for dealing with short subdivisions (four lots or fewer). RCW 58.17.010, .020, .060. All government entities are bound by it and all subdivisions must comply with its provisions. RCW 58.17.030. Despite Mr. Long's contrary assertion, RCW 58.17.033 does not require local governments to adopt subdivision ordinances, it codifies the previous common law vesting doctrine. In other words, the statute specifies what regulations apply those in effect at the time a fully completed application is submitted, not laws enacted later and directs local governments to define what constitutes a fully completed application. See *Adams v. Thurston County*, 70 Wn. App. 471, 475, 855 P.2d 284 (1993). There is no vesting issue in this case. Because Naches had not adopted a subdivision ordinance at the time Mr. Long's application was submitted, the regulations to be applied were those found in RCW 58.17. See *Jones v. Town of Woodway*, 70 Wn.2d 977, 983-84, 425 P.2d 904 (1967) (holding a local government has



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statutory authority under state regulations to approve or disapprove a proposed subdivision plat even though it has not adopted any platting regulations of its own).

RCW 58.17.110 directs local legislative bodies to inquire into the public use and interest to be served by a proposed subdivision, and to determine whether appropriate provisions have been made for a wide variety of factors, including streets and waste disposal, and to consider all other relevant facts, including sidewalks and features that assure safe conditions for children walking to school. The legislative body cannot approve the subdivision without making written findings that appropriate provisions have been made for all listed factors and that the public interest will be served by the subdivision. Approval may be conditioned on the dedication of land and/or provision of public improvements to serve the subdivision, as long as they do not constitute an unconstitutional taking of private property, but it cannot be conditioned on the procurement of a release from damages from other property owners. RCW 58.17.110(2). A dedication of property cannot be required unless the need for dedication arises from the subdivision proposal. *Luxembourg Group, Inc. v. Snohomish County*, 76 Wn. App. 502, 505-06, 887 P.2d 446, review denied, 127 Wn.2d 1005 (1995).

RCW 58.17 clearly empowers local legislative bodies to deny a subdivision application for failure to make appropriate provisions for the specified factors; indeed, it obliges them to do so unless they can make written findings that provisions for all listed factors are appropriate and the public use and interest will be served by the subdivision. See *Department of Natural Resources v. Thurston County*, 92 Wn.2d 656, 663, 601 P.2d 494 (1979). The absence of specific criteria is immaterial, because the discretion to decide whether a particular provision is "appropriate" is necessarily inherent in the platting statute's broad directive. *Id.* at 664-67. As with any exercise of discretion, the town's decision must not be arbitrary and must be reasonable, defensible and supported by substantial evidence. See *Norco Constr., Inc. v. King County*, 97 Wn.2d 680, 689, 649 P.2d 103 (1982); RCW 36.70C.130. Mr. Long has not established that Naches's lack of a subdivision ordinance violates his constitutional rights.

Next, Mr. Long contends Naches's requirement that he connect to the municipal sewer³ is a clearly erroneous application of the law to the facts. He argues he should be able to install a private septic system under Town of Naches Sewer Ordinance No. 141, sections 204 and 205, because there is no public sewer line within 200 feet of the property.

Ordinance No. 141, which predates Mr. Long's application, states that it regulates the construction, installation and maintenance of public and private sewers in Naches. Section 203 prohibits the construction of septic systems, except as specifically provided. Section 204 requires each owner of a lot with an existing habitable structure to connect to the municipal sewer within a certain period of time after a public sewer line is installed within 200 feet of the property line. Section 205 provides: "Where a public sewer line is not available under the provisions of Section 204, a private sewer and sewage disposal system shall be constructed, connected, and maintained in accordance with provisions herein." Section 304 requires a private sewage system to comply with all recommendations



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and regulations of the State Department of Public Health. Section 305 requires connection to the municipal system whenever it becomes available to a lot served by a private system in the manner provided in section 204, and abandonment of the private system.

We do not agree with the trial court that the ordinance applies only to property with existing buildings; section 204 does, but section 205 is ambiguous. By the reference to the provisions of section 204, section 205 may apply only to property with an existing structure. But Ordinance No. 141 is comprehensive, so section 205 may apply to undeveloped property as well as property with an existing habitable structure; it arguably must, since no other section does. Even if it applies, however, the sewer connection condition is not necessarily inappropriate.

Naches is charged with determining that the public use and interest is served by the division of the property into multiple lots. Mr. Long has not shown that his proposal complies with state standards so that it meets the requirements of section 304. In addition, if a public line ever becomes available, each subdivision property owner would have to connect to it at his or her own expense under section 305. Thus, because Mr. Long is not simply proposing a single private sewer for his own property (which section 205 arguably allows) with the section 305 risk of future expense his alone, Naches could reasonably find that connection to the public sewer best serves public use and interest and is the only appropriate provision for the public health, safety and welfare. RCW 58.17.110(1). That finding is supported by a reading of Ordinance No. 141 in its entirety and the Public Health Department recommendations, particularly when considered with the lack of evidence that the proposed septic system complies with section 305. Mr. Long has not established the condition is a clearly erroneous application of the law to the facts.

Finally, Mr. Long contends three aspects of Naches's conditions relating to roads⁴ are clearly erroneous applications of the law to the facts. He argues there is no basis for requiring (1) dedication of public road rights-of-way to and within the subdivision, (2) stringent construction standards including elimination of the right angle turns in the access road, and (3) the signature of the servient easement holder (the Church of Jesus Christ of Latter Day Saints) on the plat. We will not disturb the trial court's determination that the dedication and construction conditions are reasonable, supported by the evidence, consistent with RCW 58.17.110, and not inconsistent with state guidelines for streets in cities and towns codified in RCW 35.78.030. As the court notes, Naches is charged with making sure the people who live in the subdivision will have safe and adequate access and it has imposed the same kinds of roadway standards on others similarly situated. Given Naches's broad discretion in deciding what roadway provisions are appropriate and whether the subdivision serves the public use and interest, RCW 58.17.110, the dedication and construction conditions are not a clearly erroneous application of the law to the facts.

We agree with Mr. Long, however, that Naches cannot condition plat approval on the Church's consent. Despite the dispute between Mr. Long and the Church over the scope of the easement, there is no legal authority for requiring the Church's signature on the plat. When a subdivision plat is



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subject to a dedication, as this one is, RCW 58.17.165 requires a certificate bearing the notarized signatures of "all parties having any ownership interest in the lands subdivided" be recorded as part of the final plat. But the Church does not have any ownership interest in the lands being subdivided. Although the Church may have a damage claim for trespass, *Mielke v. Yellowstone Pipeline Co.*, 73 Wn. App. 621, 624, 870 P.2d 1005, review denied, 124 Wn.2d 1030 (1994), RCW 58.17.110 specifically prohibits conditioning approval on the procurement of a release from damages from other property owners. This condition is a clearly erroneous application of the law to the facts.

As the prevailing party before the superior court and the substantially prevailing party before this court, Naches is entitled to its attorney fees under RCW 4.84.370.

The superior court's decision is affirmed, except for that part affirming the requirement that the Church sign the plat, which is reversed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Schultheis, J.

WE CONCUR:

Sweeney, C.J.

Thompson, J.P.T.

1. RCW 36.70C.130(1) authorizes the court to grant relief from a land use decision "only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met." Two standards are relevant to this appeal: (d) the land use decision is a clearly erroneous application of the law to the facts; and (f) the land use decision violates the constitutional rights of the party seeking relief.

2. At oral argument the Longs' attorney stated they no longer own the property, but asserted without dispute that the appeal is not moot because damage claims are yet to be decided.

3. Condition 2 reads: "The lots within the subdivision must be serviced with the Town public sewer system provided by an 8" schedule 3034 PVC line connected at Naches Avenue and 4th."

4. Condition 1 reads: "A minimum 40-foot wide non-exclusive access easement must be provided over and across the existing private roadway known as Naches Extension from the Naches Corporate Limits to the south line of the proposed subdivision. "A minimum 40-foot wide dedicated public road right-of-way must be dedicated within the plat from the south line northerly to the proposed cul-de-sac. The cul-de-sac must also be dedicated public road right-of-way and have a minimum radius of 50 feet. "Within the 40-foot wide non-exclusive easement and dedicated right-of-way must be



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constructed a 24-foot wide hard surfaced roadway consisting of 8-inches of Crushed Surfacing Base Course and 2-inches of Asphalt Concrete Pavement. Rolled curb and gutter must be provided on both sides of this roadway and along the radius of the cul-de-sac. A 5-foot wide sidewalk must be constructed along one side of the roadway to the throat of the cul-de-sac. Prior to plat approval, the applicant must certify that the road has been built as requested and the owner of the lands over which the proposed non-exclusive easement will lie must sign on the final plat." Condition 8 reads: "The 90° turns located within the Church property must be redesigned to provide a maximum of 45° turns."

