

Chalkline - Legal Corner by Jay A. Goldstein, OMB General Counsel

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COUNTING THE DAYS

Thurston County Development Services recently addressed interested OMB members on Thurston County's procedures for processing development permits. Questions arose regarding the County's duty to process subdivision applications within certain statutorily directed time periods. Mr. Krupp correctly explained the law, which offers little solace for subdivision applicants.

The problem is that the recent regulatory reform legislation sought to limit the amount of time that a local jurisdiction can take for permit processing. But the laws are inconsistent. For example, the Growth Management Act (GMA) requires 120 days for permit processing under RCW 36.70B.090 for GMA counties and cities including Thurston County. But, the subdivision statute requires permit processing in 90 days for subdivision and 30 days for short plats. RCW 58.17.140. Cities and counties are supposed to comply with both sections, which are incompatible not only in their length but in how time periods are calculated. Moreover, local jurisdiction carry liability under RCW 64.40 for failing to comply with the time limit in RCW 58.17.140 but not for failing to comply with the time limit in RCW 36.70B.090.

Moreover, liability under RCW 64.40 requires commencement of the action within 30 days of the local jurisdiction's failure to meet the time limit, which most applicants seek to avoid. If the applicant fails to file within 30 days, the applicant loses the statutory right, and attorney fees if successful.

On the other hand if the local jurisdiction misses the deadline, and the applicant misses the 30 day deadline as well, the applicant may have a common law remedy such as negligence, but without an award of attorney fees if the applicant prevails at trial.

As for vested rights, the subdivision approval process commences by filing a complete application. A GMA county or city will determine the application's completeness for purposes of commencement of the 120 day processing period under RCW 36.70B.090. The local jurisdiction may also determine the completeness of the application for purpose of the subdivision vesting statute under RCW 58.17.030. Some local governments will use the same standards for both determinations. In other words if the application is complete for one purpose it is complete for the other. But other jurisdictions will use different standards.

By statute the county auditor must refuse to accept any plat that has not been approved by the local jurisdiction's legislative body, and a city or county need not recognize improperly divided lots as legal building sites. Moreover, it is a gross misdemeanor to violate the subdivision statute or local subdivision regulations, and each sale of a lot or offer to sell is a separate offense. As a practical matter public attorneys rarely bring either criminal or civil actions to redress violations of subdivision laws. Most violations carry their own punishment: either the lots are not recognized as buildable, or litigation ensues between buyer and seller.