

CASE LAW UPDATE. The state Court of Appeals has recently handed down several decisions of interest to builders and developers.

The first case concerns a defamation action against Spokane's Spokesman Review. Clardy v. Cowles Publishing, 81 Wn. App. 53 (1996). Mr. Clardy spearheaded the largest planned unit development ever proposed for Spokane County with a mortgage value of \$45,000,000.00. The newspaper ran many articles on the project, two of the headlines of which screamed "Tax felon to get HUD insurance-huge project under protest" and the other "Developer's address fictitious."

The question in this case concerned whether Mr. Clardy was a public figure.

Proof of defamation requires a showing of 1) falsity, 2) an unprivileged communication, 3) fault, and 4) damages. When the plaintiff is a public figure or public official, the degree of fault required is actual malice.

The court in Clardy adopted the limited purpose public figure rationale, which asks if the plaintiff engaged the public's attention in an attempt to influence the outcome and whether the plaintiff thrust himself into the vortex of the public issue.

The court held that even though the paper had incorrectly reported on several aspects of the proposed development, the paper either ran a correction or the reporter's statements, though ambiguous and misleading, were not false. Moreover, the publisher argued that all statements in a news article need not be literally true so long as the gist of the article is true. The court agreed.

In addition Mr. Clardy failed to establish damages since the project obtained HUD's commitment to insure financing.

In another matter the developer of a residential housing project sought damages from Pierce County for delays associated with stop work orders issued by the county. Noble Manor v. Pierce County, 81 Wn. App. 141 (1996). The stop work orders were issued because parts of the project did not meet the requirements of an interim zoning ordinance adopted after the developer had submitted a completed short plat application.

Noble Manor claimed vested rights to develop; the court held that the submission of a completed short plat application vested the right to develop, not merely divide, the land under the regulations in effect at the time of the submission. The application expressly stated that the developer proposed to build three multi-family residential units. The county accepted one but refused to accept two other building permit applications pending approval of the short subdivision.

A county counter technician, unfamiliar with the history of the case, issued the other two building permits. After construction began, the county "red tagged" the errant building permits, stopping construction.

The county hearing examiner reversed the Planning and Land Services Department, allowed completion of the project, and the developer sued the county claiming delay damages.

Washington's common law doctrine of vested rights is a minority rule: most other states are not so kind to developers. Since the short plat application was completed, and the statute unambiguously subjects short plat applications to land use control ordinances in effect at the

time of submission, the court held that vesting occurred when the builder submitted its completed short plat application.

In the third case a landowner sought damages from the state and a county for taking and deprivation of civil rights. Ventures Northwest v. State, 81 Wn. App. 353 (1996). In Ventures the developers were stymied by wetlands regulations. The parties had purchased 6.5 acres in Silverdale for \$572,000.00 for investment purposes; the parcels are located within a one hundred year flood plain and were undeveloped at the time of purchase.

After numerous developers were denied permits because of wetlands regulations, the plaintiffs brought this action for taking and deprivation of civil rights and to reduce the tax bite: the properties are currently assessed at just about the purchase price. The parties sought to reduce their tax assessment to \$25,000.00.

The court held that the plaintiffs failed to provide requested alternative analysis information and failed to exhaust administrative remedies or to demonstrate that exhaustion would be futile. To add insult to injury the court instructed the plaintiffs to seek redress on the tax assessment issue at the Board of Tax Appeals.