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The Growth Management Act and Vested Rights

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Growth Management Act (GMA)

The GMA limits "uncoordinated and unplanned growth" that "pose[s] a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed [by Washington] residents."

RCW 36.70A.010

GMA: City/County Obligations

- Develop comprehensive plans
- Issue development regulations to implement comprehensive plans (e.g., critical areas ordinances)
- Designate urban growth areas (UGAs)
- Protect land uses in rural areas (e.g., agriculture, timber, mining)

Urban Growth Area – the UGA

- All cities in a county must be part of the UGA, and a county may also define its UGA to include territory outside a city, but only if the area is already characterized by urban growth or adjacent to an area already characterized by urban growth.
- Urban growth usually requires urban governmental services and it is generally not appropriate to extend to expand urban services in rural areas unless necessary to protect basic public health and safety and the environment – provided it makes fiscal sense and won't trigger urban development.
- Consistent with this objective, counties may only designate rural areas as part of the UGA based on the existence of public facilities and service capacities, with a preference for areas already characterized by urban growth with adequate existing facilities and services.

WHAT IS PERMITTED OUTSIDE THE UGA?

- Large-scale residential, commercial, and industrial development is generally limited outside the UGA, except:
  - New fully contained communities, if the county reserves a portion of the 20-year population projection and offsets the UGA accordingly
  - Master planned resorts
  - Major industrial developments if the proposal requires
    - (a) a large parcel that is not available within a UGA;
    - (b) proximity to land with natural resources or infrastructure not available in a UGA (e.g., agricultural, mining, transportation).

Growth Mgmt. Hearings Board

- 2010 ~ One Board; Hearings in Three Regions
  Eastern WA, Western WA & Central Puget Sound
- Exclusive jurisdiction: Is the comprehensive plan, development regulation, or amendments thereto in compliance with the GMA, the Shoreline Management Act or the State Environmental Policy Act?
- The GMA provides the GMHB with limited remedies:
  - Remand to government with up to 180 days to amend
  - Declare "invalid" if "continued validity… of the plan or regulation would substantially interfere with the fulfillment of the [GMA]."

Washington's Vested Rights Doctrine

Under the vested rights doctrine, "a land use application . . . will be considered only under the land use statutes and ordinances in effect at the time of the application's submission."

Noble Manor v. Pierce County, 133 Wn.2d 269 (1997)

- Although the vested rights doctrine originally developed through case law, the Legislature codified the doctrine in 1987 for:
  - Building permit applications, RCW 19.27.095
  - Subdivision applications, RCW 58.17.033
  - Development agreements, RCW 36.70B.180

Vested Rights = The Default Rule

(With A Few Caveats)

- Unless a subdivision application (or application inextricably linked to a subdivision application) is involved, or
- Unless local jurisdiction allows an earlier vesting time – by ordinance or development agreement, or
- Unless local jurisdiction precludes a developer from filing a building permit at any time, then
- The only act triggering vested rights is the filing of a building permit application.

Town of Woodway v. Snohomish County Sup. Ct No. 88405-6 (April 10, 2014)

- Town of Woodway – Population 1200+/-
- "Point Wells" - 61 acre waterfront site in unincorporated Snohomish County used for industrial purposes for 100 years.
- In 2006, the landowner (BSRE Point Wells LP) wanted to redevelop the site as a mixed use development
  - 3000+ housing units
  - 100,000+ square feet of commercial and retail space.
- Woodway and nearby unincorporated Richmond Beach objected to expansion of their utility services to serve the project and to lack of roads serving the increased traffic.

Town of Woodway v. Snohomish Cty.

- Snohomish County adopted 4 ordinances amending its comprehensive plan and building regulations and issued an Environmental Impact Statement (EIS) to allow the BSRE proposal to proceed.
- Woodway appealed all 4 ordinances to the GMHB and won. During the GMHB appeal but before the Board issued its order, BSRE filed two permit applications for its proposal.
- Woodway sued in Superior court for a declaration that the permits did not vest because the ordinances were "void" at all times under GMA and SEPA – and won.
- County appealed – Court of Appeals reversed.

Town of Woodway v. Snohomish Cty.

Holding: "[W]hether or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested before the [GMHB's] final order remain vested after the order is issued."

- Majority: Look at the GMA's plain language – "A determination of invalidity is prospective in effect and does not extinguish rights that vested… before receipt of the [GMHB's] order"
- Dissent: Rationale for protecting vested rights does not apply where the proposed development was illegal at all times.

…The GMA plainly states:

A determination of invalidity is *prospective in effect* and does not extinguish rights that vested under state or local law before receipt of the [growth] board's order by the city or county. *The determination of invalidity does not apply to a completed development permit application* for a project that vested under state or local law before receipt of the [growth] board's order by the county or city or to related construction permits for that project. RCW 36.70A.302(2) (emphasis added). Thus, whether or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested before the growth board's final order remain vested after the order is issued.

Woodway v. Snohomish County, pg 9

What is the Legal Impact of *Woodway*?

- Clearly reaffirms *Erickson v. McLerran (1994)* holding – Vested Rights Doctrine is purely statutory right & only Legislature can expand it beyond:
  - building permits - RCW 19.27.095
  - subdivision applications - RCW 58.17.033
  - development agreements – RCW 36.70B.180
- BUT: The developer will be allowed to build or the UGA will be expanded even if local laws or plans that govern the terms of vesting rights violate state law (GMA or SEPA)
- Still a fundamental conflict between two statutes:
  - GMHB: Declare law "invalid" if "continued validity… of the plan or regulation would substantially interfere with the fulfillment of the [GMA]."
  - VRD: "[W]hether or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested before the [GMHB's] final order remain vested…"

What Is the Impact To Local Governments?

- Courts have made it clear the Legislature must fix this statutory inconsistency – Courts can only interpret laws as written
- Local governments can jointly legislate local solutions to avoid local conflicts in land use & GMA planning for:
  - Permitting Jurisdictions – avoid conflicting rules to apply to projects/developers in same geographic area
  - Neighboring Jurisdictions – facilitate planning for utility and emergency response services
  - State/local transportation providers – facilitate planning for highways, streets, signalization warrants, transit
  - Benefits Developers/Neighborhoods/HOAs/Property-owners – Provides certainty & avoids future conflicts in neighboring land uses

Questions?

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