

Schroader, Kathy



From: Orjiako, Oliver
Sent: Tuesday, August 25, 2015 4:56 PM
To: Euler, Gordon; Alvarez, Jose
Cc: Schroader, Kathy
Subject: FW: MRSC - Planning Land division by testamentary provisions - For the Public Record

For the record!

From: Carol Levanen [mailto:cnldental@yahoo.com]
Sent: Tuesday, July 07, 2015 2:27 PM
To: Silliman, Peter; Mielke, Tom; Madore, David; Stewart, Jeanne; Orjiako, Oliver; Susan Rasmussen; Leah Higgins; Rick Dunning; Rita Dietrich; Jerry Olson; Fred Pickering; Jim Malinowski; Frank White; Benjamin Moss; Lonnie Moss; Melinda Zamora; Nick Redinger; Curt Massie; Marcus Becker; Zachary McIsaac; Carol Levanen; Clark County Citizens United Inc.
Subject: Fw: MRSC - Planning Land division by testamentary provisions - For the Public Record

Information in reference to the Kysar Trust development requirements

----- Forwarded Message -----

From: susan rasmussen <sprazz@outlook.com>
To: "cnldental@yahoo.com" <cnldental@yahoo.com>; "brutusb24@aol.com" <brutusb24@aol.com>
Sent: Tuesday, July 7, 2015 11:10 AM
Subject: MRSC - Planning Land division by testamentary provisions

MRSC - Planning

<http://mrsc.org/Home/Research-Tools/Ask-MRSC-Archives/Planning.aspx#Questions-regarding-division-of-land-by-testamenta>

Sent from Windows Mail



Ask MRSC - Planning

Request for information on regulating the keeping of chickens in residential zones.

Reviewed: 07/15

Can a city or county regulate the design and location of mailboxes?

Reviewed: 06/15

Does the removal of the interior lot line between two lots constitute a plat alteration or a boundary line adjustment?

Reviewed: 04/15

How is a conditional use permit affected by the sale of the property for which the permit was issued?

Reviewed: 02/15

Does the county have the option to withdraw from fully planning under the GMA?

Reviewed: 02/15

May a city or county amend its building code to provide for a hearing examiner in place of a building code board of appeals? If so, is State Building Code Council approval required for this type of amendment?

Reviewed: 02/15

What cities and counties require separation between marijuana stores?

Reviewed: 11/14

Request for sample ordinances regulating electric fences.

Reviewed: 08/14

Can counties allow final plats to be submitted in phases, with some of them submitted at a date beyond the five, seven, or ten-year deadlines stated in RCW 58.17.140(3) without adopting an ordinance that authorizes extensions?

Reviewed: 07/14

Questions regarding division of land by testamentary provisions: (1) how does the county determine if a quit claim deed recorded by the executor of an estate is in conformance with RCW 58.17.040(3)?; and (2) does the executor have the right to subdivide property has he or she sees fit, or is it more complicated than that?

Reviewed: 06/14

There's a good discussion of the testamentary exception to the subdivision statutes in *In re Estate of Telfer* (http://r20.rs6.net/tn.jsp?f=001hRx-hyalOs4Z3-OdKG4zO6a8R7uJK_V_t5enl0mq_51wYQSYUzP6MA6wb7PKd6Ndt7x29gDbN-hTsbBtCpM9zW7Y9dyRAHnu9l7wXQ38um7zZ_fdAtakGbBMpgwrYOwnu8ltA92m8ku4SEEsBeLRuaylDPPS5fpllrR2lKzrTAn-QQjslMjQZqRA==&c=3yfY7TEaZ7K4eO008LTMKLeqMqmGdnCXl4f-MurkTeur3io3jHGwg==&ch=cnMMRujrAaoRgB-4lGi3KfTqSDb5UXAd33GQl8i5vvjRf6bhX-1eSg==), 71 Wn. App. 833, 836-37 (1993):

Laws of descent are those governing transmission of an intestate's real property. Heirs take property by laws of descent as tenants in common. Creating a tenancy in common does not constitute a property division because it does not create new parcels. Statutes should not be interpreted in such a manner as to render any portion meaningless, superfluous or questionable. To give substantive meaning to the phrase "[d]ivisions made by . . . the laws of descent", the property held in tenancy in common resulting from intestacy must be divisible into separate parcels without complying with the platting requirements. Under this reading, "divisions" does not mean that the property is legally divided ipso facto by the laws of descent, but that the division, by agreement or partition action, which ensues following the operation of the laws of descent is exempt from platting requirements.

Given the meaning of "division" with regard to the laws of descent, established principles of statutory construction and normal rules of grammar require that "division" have the same meaning as applied to "testamentary provisions". That is, *a will need not divide the property into separate parcels, but a division of the property by those taking under the residuary clause may be made without complying with short plat requirements.*

(Our emphasis; footnotes omitted.) So, either the will would divide the property or that would be done by the executor, or, we suppose, by agreement of the heirs. We think it's not more complicated than that.

But a division made by testamentary provisions does not mean that the lots created thereby can be developed. The court in *Telford* also stated: "[W]e emphasize that our holding is not to be understood as intimating that the parcels resulting from the division are exempt from any other land use regulations." Id. at 837. See also, *Dykstra v. Skagit County* (http://r20.rs6.net/tn.jsp?f=001hRx-hyalOs4Z3-QdKG4zO6a8R7uJK_V_t5enlOmQ_51wYQSYUzP6MA6wb7PKd6NdlT9YYl8mEKWrfzt5WllhyQ55s2FTkePes02s3iU6qq-9w_6oSlGjDXwaNVwhjLFX2mtbB12zwOjllhAB1qLpV_aK8C7-EPBdu8Hls2qqfzwSswRh_BwCJuKmRpWGE1Mv2pwnV7_69fOnPGoK4WLCyzi6s5PS-i86KXt7aVwqWZ4b5DdZXyeQ==&c=3yfY7TEaZ7K4eO008LTMKLeqMqmGdnCXl4fF-MurkTeur3io3jHGwg==&ch=cnMMRujrAaoRgB-4jG3KfTqSDb5UXAd33GQj8j5vjrF6bhX-1eSg==), 97 Wn. App. 670, 679 (1999) ("Nothing in the statute suggests the legislature intended to exempt lots created by testamentary devise from the other land use regulations of the County.").

([Link to this question](#)) ([/Home/Research-Tools/Ask-MRSC-Archives/Planning.aspx#Questions-regarding-division-of-land-by-testamenta](#))

[Request for information on other cities that allow vacation rentals, how they regulate them, and their successes and problems.](#)

Reviewed: 05/14

[Do counties have jurisdiction over a proposed subdivision of fee simple land within a reservation that is owned by the tribe \(or tribal members\).](#)

Reviewed: 03/14

[May cities and counties provide additional land supply in an urban growth area \(UGA\) beyond what is needed to accommodate the 20-year growth projection?](#)

Reviewed: 02/14

[Is a short plat approved by the county in February 2006 in an area that was later annexed into the city still vested to county standards?](#)

Reviewed: 01/14

[What is the legal framework related to establishing affordable housing inclusionary requirements for designated districts of the city? Is this allowed under Washington law?](#)

Reviewed: 01/14

[Does a developer have a vested right to a connection fee at a certain level?](#)

Reviewed: 01/14

Would a land use application submitted just prior to the adoption of a traffic impact fee ordinance vest to the current no-fee regulations or would such fees apply regardless of when a completed land use application was submitted?

Reviewed: 01/14

What is the legal nature of a dedicated right-of-way in a subdivision?

Reviewed: 01/14

Whether the county can allow for deferral of installation of required improvements in a short plat and approve a short plat where only one of the proposed lots has adequate provisions for water, sewer/septic, etc.?

Reviewed: 01/14

Are there any laws or policies that relate to disclosure of potential conflicts of interest for planning commission members? If there is a disclosure process, how should that be done in order to ensure fairness? Do other jurisdictions have set procedures regarding what a commissioner does if it is discovered they have a conflict?

Reviewed: 01/14

Request for information on what other jurisdictions do to buffer the impacts between commercial and residential zones.

Reviewed: 01/14

Is an Optional Municipal Code city allowed to adopt an ordinance authorizing all plat approvals (preliminary, final, short) to be decided by a hearing examiner, rather than by the city council?

Reviewed: 01/14

How does Initiative 1183, relating to liquor privatization, affect local zoning authority?

Reviewed: 01/14

Must a code city have a citizens' advisory planning commission or may it use city staff?

Reviewed: 01/14

Must the county take local action to implement the provisions of HB 1653, which clarifies the integration of the Shoreline Management Act (SMA) policies with the Growth Management Act (GMA) relating to critical areas?

Reviewed: 01/14

Is it legal for cities to incorporate an annual construction cost index adjustment into their impact fee calculations?

Reviewed: 01/14

Do you have any examples of ordinances that allow extensions of project deadlines (plats) due to consideration of the economic conditions?

Reviewed: 01/14

May a city planning under Growth Management Act (GMA) extend sewer service to a property that is contiguous to the city limits but not within its urban growth area (UGA)?

Reviewed: 01/14

What is the maximum allowable time for an emergency moratorium?

Reviewed: 01/14

Does RCW 58.08.040, requiring a deposit to cover anticipated taxes and assessments for plats, apply to short plats?

Reviewed: 01/14

May contract rezones still be used as a tool, or have they been replaced by development agreements?

Reviewed: 01/14

May a city control the location of a sex offender residential housing unit through the adoption of zoning regulations?

Reviewed: 01/14

Can transportation impact fees be used to fund the transportation impact fee study update for the same area?

Reviewed: 01/14

If a property owner owns contiguous lots and wants to short plat each one (with total number of lots being greater than four), may the city or county require full subdivision process?

Reviewed: 01/14

Can the city and county planning commissions combine to form a joint planning commission?

Reviewed: 01/14

Does state law allow a city or county to delegate authority for approval of preliminary plats to the planning commission?

Reviewed: 01/14

Must a city or county establish an administrative procedure under state law to review and approve short plat applications?

Reviewed: 01/14

May a preliminary plat be denied on the basis of community opposition?

Reviewed: 01/14

Are subdivisions considered development for shoreline purposes?

Reviewed: 01/14

Can a county require a property owner to obtain subdivision (or short subdivision) approval to lease one acre of a 100-acre parcel for a cellular tower site?

Reviewed: 01/14

Request for information about what a preliminary plat is and its relationship to final plat.

Reviewed: 01/14

Request for information on transfer of development rights (TDR)

Reviewed: 01/14

What zoning applies when one lot is located in two zoning districts?

Reviewed: 01/14

May local zoning regulations cover amateur radio facilities?

Reviewed: 01/14

Is a private covenant enforceable if it is more restrictive than city zoning rules?

Reviewed: 01/14

Is the city council required to issue findings of fact and conclusions of law when ruling on a request for a rezone?

Reviewed: 01/14

May a city prohibit the location of a day-care facility that provides for eight children in a residential zone?

Reviewed: 01/14

May city require a conditional use permit for a group home for persons considered disabled or handicapped?

Reviewed: 01/14

Request for information on density bonuses.

Reviewed: 01/14

How do other cities and counties handle unlisted uses that are not addressed in the zoning code?

Reviewed: 01/14

Request for information on regulation/prohibition of "formula" retail or restaurant uses.

Reviewed: 01/14

What is spot zoning (particularly in the case of a rezone) and is it always illegal?

Reviewed: 01/14

Does a rezone affect an existing water right?

Reviewed: 01/14

May a city or county enact a moratorium as an emergency measure?

Reviewed: 01/14

May the hearing for a renewed moratorium be held after a moratorium has been renewed?

Reviewed: 01/14

Can the powers of initiative and referendum be used to amend a city's zoning ordinance and impose a moratorium on rezones for a limited time period?

Reviewed: 01/14

May a city or county enact a zoning regulation that prohibits wireless telecommunications antennas from being placed in residential zones?

Reviewed: 01/14

Has the state preempted zoning for adult homes located within cities?

Reviewed: 01/14

May the county prohibit how long in advance of an election that political signs may be posted?

Reviewed: 12/13

Can cities and counties prohibit the placement of signs on wireless antenna facilities?

Reviewed: 12/13

Request for small lot development standards

Reviewed: 12/13

Whether a dedication of a right-of-way through a lot, by itself, effects a division of land that is subject to short plat requirements.

Reviewed: 12/13

May a city or county approve, without going through subdivision procedures, a lot line adjustment between two contiguous lots where no new lot is created and where both lots would remain in compliance with minimum zoning and subdivision requirements?

Reviewed: 12/13

Is a city or county responsible for enforcing private covenants on a plat?

Reviewed: 12/13

May a city reduce impact fees below the amount needed to cover projected transportation system needs for new development?

Reviewed: 12/13

May transportation impact fees be used to fund pedestrian and bicycle facilities?

Reviewed: 12/13

May impact fees be used to fund a community center or a library?

Reviewed: 12/13

Request for examples of studies on the economic impacts of Wal-Marts on a community.

Reviewed: 12/13

Can a planned unit development create a legal lot of record?

Reviewed: 12/13

Must members of a planning commission reside within the city limits?

Reviewed: 12/13

Request for sample planning commission application forms.

Reviewed: 12/13

Must a city or county provide verbatim minutes of a public hearing held before the planning commission if the council or board of county commissioners is reviewing the recommendation of the commission?

Reviewed: 12/13

Request for information about requirements for membership on a planning commission in a code city and for notice to fill a planning commission vacancy.

Reviewed: 12/13

May county planning commission and board of adjustment meetings be shifted to different locations around the county?

Reviewed: 12/13

Request for information on one percent for art programs

Reviewed: 12/13

Request for examples of neighborhood sign programs and benefits.

Reviewed: 12/13

Is the city legally bound to provide public services and facilities to developments within the UGA on demand?

Reviewed: 12/13

What are the notice requirements for amendment of a comprehensive plan?

Reviewed: 12/13

Request for a sample script for holding a quasi-judicial hearing including procedures and information on how to stay out of trouble.

Reviewed: 12/13

Request for information on the use of hearing examiners.

Reviewed: 12/13

What is the effect of a hearing examiner's decision in a code city?

Reviewed: 12/13

Request for information about other jurisdictions that have developed standards for cottage housing

Reviewed: 12/13

Request for sample ordinances and information on innovative single-family infill development

Reviewed: 12/13

Does recent legislation, enacted in 2004 and 2008 - to prohibit cities and counties from treating manufactured homes differently than site-built single-family homes, mean that cities and counties have to allow single-wide manufactured homes?

Reviewed: 12/13

Request for farm worker housing standards from other communities.

Reviewed: 12/13

Request for information on affordable housing.

Reviewed: 12/13

Request for sample housing plans.

Reviewed: 12/13

Must modular homes be allowed in areas of a city that are zoned for residential development in the same manner as manufactured and mobile homes?

Reviewed: 12/13

Can cities and towns still restrict the placement of manufactured or mobile homes based upon their age and size?

Reviewed: 12/13

Do other cities use fire impact fees for apparatus such as fire engines?

Reviewed: 12/13

May the rate for impact fees authorized by the Growth Management Act (GMA) be equal to the full cost of new facilities needed to serve new growth and development?

Reviewed: 12/13

What are impact fees?

Reviewed: 12/13

Must a city charge impact fees?

Reviewed: 12/13

What can the different types of impact fees be used for?

Reviewed: 12/13

May impact fees for water and sewer be imposed under the Growth Management Act?

Reviewed: 12/13

Is it possible to use impact fees to fund transit improvements?

Reviewed: 12/13

If, under RCW 82.02.060(4), a city adjusts impact fees downward in certain unusual circumstances, must it make up for the adjustment with public funds?

Reviewed: 12/13

What is the effect of impact fees on affordable housing?

Reviewed: 12/13

What is the effect of impact fees on general business activity?

Reviewed: 12/13

May a city require impact fees for development in the urban growth area?

Reviewed: 12/13

May communities provide additional land supply beyond that needed to exactly accommodate the 20-year growth projection?

Reviewed: 12/13

Does the drawing of urban growth boundaries increase property costs?

Reviewed: 12/13

What are communities doing to phase growth within urban growth areas?

Reviewed: 12/13

Can cities gain authority to administer their regulations outside city boundaries within the city's urban growth area?

Reviewed: 12/13

May a city require development in urban growth areas to conform to city standards in exchange for provision of utility services?

Reviewed: 12/13

Does the Growth Management Act (GMA) discourage agricultural land designation within urban areas? May a city designate agricultural lands within its urban growth area?

Reviewed: 12/13

Must comprehensive plans prepared under GMA provide substantive policy direction for development regulation?

Reviewed: 12/13

May a city set level-of-service standards below the level used as a basis for impact fees?

Reviewed: 12/13

Does the Growth Management Act (GMA) require concurrency for sewer and water?

Reviewed: 12/13

Must the city have a separate concurrency ordinance or may it use SEPA and other existing ordinances to implement concurrency?

Reviewed: 12/13

Must cities or counties planning under the GMA include economic development elements in their comprehensive plans before the state provides funding for this?

Reviewed: 12/13

Must a city or county subject to the Growth Management Act have a separate transportation concurrency ordinance or may it use SEPA and other existing ordinances to implement concurrency?

Reviewed: 12/13

What are capital facilities?

Reviewed: 12/13

What must be included in a capital facilities plan element?

Reviewed: 12/13

Should the capital facilities plan be prepared for the city or for the entire urban growth area?

Reviewed: 12/13

Should the inventory of public facilities be limited to just city-owned facilities?

Reviewed: 12/13

Is a capital facility plan required before expending Growth Management Act real estate excise tax (REET) funds?

Reviewed: 12/13

How can a city establish level-of-service standards for roads that would ensure adequate circulation without closing down development in urban growth areas?

Reviewed: 12/13

What are critical areas?

Reviewed: 12/13

What are the notice and hearing requirements for adoption of a critical areas ordinance under the Growth Management Act?

Reviewed: 12/13

May a city adopt performance standards to comply with growth management requirements for critical areas designation?

Reviewed: 12/13

What is the legality of downzoning for critical areas protection?

Reviewed: 12/13

What are urban growth areas (UGAs)?

Reviewed: 12/13

How are urban growth areas established?

Reviewed: 12/13

Request for information on the use of visual preference surveys and studies for community development planning.

Reviewed: 12/13

Must a comprehensive plan or plan amendment be adopted by ordinance?

Reviewed: 12/13

Request for scope of work for a comprehensive plan update.

Reviewed: 12/13

Would amendments to the comprehensive plan for an area being annexed be subject to the once-a-year comprehensive plan amendment restriction?

Reviewed: 12/13

May a city restrict the conversion of apartments to condominiums within the city?

Reviewed: 12/13

Are local governments subject to a 120-day timeline for project permit review? Are cities liable if they fail to act on project permits within a 120-day time period?

Reviewed: 12/13

Must landscaping plans be stamped by a licensed landscape architect?

Reviewed: 12/13

Is there any penalty if a city or county fails to send out a notice of completeness with respect to a project permit application?

Reviewed: 12/13

Request for sample design guidelines for corporate franchise establishments, including fast-food restaurants.

Reviewed: 12/13

Is it permissible for board of adjustment members to independently visit sites under consideration?

Reviewed: 12/13

Request for information and sample ordinances on innovative lot design

Reviewed: 12/13

Request for sample grading permit requirements.

Reviewed: 12/13

Request for basic pro and con information relating to the Growth Management Act.

Reviewed: 12/13

Does the Growth Management Act (GMA) require that cities have an average density of four houses per acre?

Reviewed: 12/13

May a city refuse a request for utility service outside its boundaries but within its UGA and where the city's water and sewer service area plan defines the city's water and sewer service area as its UGA?

Reviewed: 12/13

Request for information on experiences of cities and counties that have signed interlocal agreements to manage development review and planning for their urban growth areas.

Reviewed: 12/13

May board of adjustment go into executive session to deliberate about quasi-judicial matter?

Reviewed: 12/13

Must a code city with a population over 2,500 establish a board of adjustment?

Reviewed: 12/13

What kinds of land uses are allowed on property near major natural gas or hazardous liquid pipelines - and how close can buildings be built to those big pipelines? Do federal regulations set limits?

Reviewed: 11/13

Must a port district comply with city zoning regulations over an airport?

Reviewed: 11/13

Must an access easement to a proposed plat be permanent in order to be considered adequate access?

Reviewed: 11/13

What are the county's obligations when reviewing and collecting impact fees on behalf of a school district?

Reviewed: 11/13

Does the Growth Management Act prohibit cities from extending utility services (water and/or sewer) outside the urban growth area to serve proposed development?

Reviewed: 09/13

Are there any laws that apply to a person raising bees?

Reviewed: 07/13

How can a city restrict undesirable uses while it is working on a downtown redevelopment strategy involving changes to zoning and design standards?

Reviewed: 06/13

Does the vested rights doctrine apply to binding site plans?

Reviewed: 05/13

What is the relationship between the county's six-year transportation improvement plan (TIP) and the comprehensive plan?

Reviewed: 04/13

May a local government apply development regulations and require permits for a privately owned and operated project proposed to be built on federally owned property?

Reviewed: 03/13

Request for code provisions allowing small-scale corner stores (grocery, coffee shop, hair salon) in residential neighborhoods

Reviewed: 02/13

Have any other cities recently reduced or deferred transportation impact fees?

Reviewed: 10/12

Request for information on regulating and siting essential public facilities such as group homes, secure residential treatment facilities, and correctional or work release facilities.

Reviewed: 08/11

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