

O'Donnell, Mary Beth

From: Orjiako, Oliver
Sent: Tuesday, April 21, 2015 8:42 AM
To: Euler, Gordon; Anderson, Colete; Alvarez, Jose
Cc: O'Donnell, Mary Beth
Subject: FW: Please add to the record on the 2016 CP Update



CP16#0716

Follow Up Flag: Follow up
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An email from David McDonald for our index. Thanks.

Oliver

From: David McDonald [mailto:david@mcdonaldpc.com]
Sent: Monday, April 20, 2015 5:47 PM
To: Orjiako, Oliver
Cc: Horne, Chris; chris.cook@clark.wa.gov
Subject: Please add to the record on the 2016 CP Update

Oliver:

Below is an e-mail exchange that I had with the Assessor.

Mr. Van Nortwick called me this morning in response to my e-mail and told me the following:

He agreed with my assessments regarding legal, build able lots and the fact that segregations for tax purposes does not make the lot legally developable.

He agreed many of these segregations occurred after the passage of the GMA and even after the passage of the 1994 Comp Plan.

He does not know if the Alternative #4 map represents reality on the ground or not.

Lots segregated for tax purposes could have illegal development on them.

His office sees approximately 3-4 such cases a year dealing with the illegal lot issue.

His office supports "in concept" his understanding of the premise of Alternative #4 which is to have the zoning reflect the segregations irrespective of whether or not they went through the legal subdivision or short plat process prior to the zoning changes.

Thank you for allowing me to continue to comment on the GMA update.

Best Regards,

David

Begin forwarded message:

From: "Van Nortwick, Peter" <Peter.VanNortwick@clark.wa.gov>
Subject: Re: Tax Issues
Date: April 17, 2015 10:30:02 AM PDT
To: David McDonald <david@mcdonaldpc.com>

David,
Send me your phone number and we can discuss.

I agree with what you have laid out, but there has been 20 years to muck the situation up. I have some ideas about how to clean it up going forward and will be discussing that internally.

A lot of the problem has been caused by lack of understanding by citizens that a seg done by the Assessor/GIS is for taxes only. A lot of the issues I see happened back in the late 90s and the property has sold or passed on to heirs that are now in possession of illegal lots. The way to make an illegal lot is to make a non-conforming lot more non-conforming.

Chris Horne told me the other day that he actually had to tell someone that he was going to press charges if they continued to try to sell illegal lots. I am not sure of the time frame of that situation.

I accept that much confusion has been caused by people not understanding and reading how to properly segregate their property.

Thanks

Peter Van Nortwick
Assessor

Sent from my iPad

On Apr 17, 2015, at 9:16 AM, David McDonald <david@mcdonaldpc.com> wrote:

Peter:

I was interested in the tax discussion on the Columbian Blog today and it raised some questions in my mind and am hoping that you can clarify them for me.

First, my understanding of non-conforming lots is that they can be legal and buildable and there are many such legal non-conforming lots in the county. One of the reasons for legal non-conforming lots is that if a property owner did a legal subdivision or short plat under a specific zoning law, they (and all subsequent purchasers) should retain the benefit of that legal subdivision despite new downzoning designations being applied. For example, if property was legally subdivided or short platted under the law prior to a zone change, those legally subdivided lots remain buildable under the zone in place at the time of the legal subdivision. So, if a 20 acre parcel was legally subdivided or short platted into four 5 acre lots prior to the property being zoned rural 20, then those four 5 acre parcels in a 20 acre zone remain legal and buildable. However, if a property owner simply did a segregation, rather than a legal subdivision or short plat on the same lots, then those same four 5 acre lots would not be legally buildable, the

20 acre piece would adopt the new zoning and only one dwelling could be built on it. Basically we reward the property owner who did a legal subdivision. Do I have that correct?

Also, I do not understand how a person makes illegal an otherwise true legal non-conforming lot of this nature. Could you explain that to me please?

Second, you said on the blog that it is your "understanding of how new zoning was selected was by reviewing what the current parcels sizes were and putting the zoning to match what is already reality on the ground. This could allow a 10 acre piece surrounded by 1 acre lots to be re-zoned to 10 1 acre lots,"

However, my understanding, is that many of those current parcels that are proposed for the zone changes under Alternative #4 are not necessarily legal and buildable non-conforming lots, is that correct? Meaning that these are not parcels that went through the legal subdivision or short plat. Is that also correct? Also, it is my understanding that some of those parcels proposed for zone change under Alt #4 may already be legal lots and all a property owner would have to do to insure that is comply with 40.520.010. Is that correct as well? So, although the zoning may reflect the parcelization on the ground, there is no way to determine if it reflects the legal buildable lots that were created according to the law. Therefore, unless we know which are legal buildable (and I would assume non-conforming) lots we are granting site specific zoning changes to those who have parcelized lots but that were not legally subdivided or short platted under the applicable county laws/codes (because if the lots--for example the 10 one acre lots under your example--had been legally subdivided or short platted, then they would be legally buildable non-conforming lots irrespective of the current zone).

Basically, and please correct me if I am wrong, it is my understanding that segregation of lots into different tax lots (or any segregations that did not comply with legal subdivision laws) are not/is not illegal per se but does not create valid legally buildable lots. So, If there is a 10 acre parcel in a ten acre zone, but it is segregated into 10 one acre tax lots, but those 10 parcels were not legally subdivided or short platted, then those parcels still have only one buildable legal lot for that 10 acres. If that is true, then my question is whether Alt #4 would make those ten lots, currently segregated but not legally buildable, into legal buildable lots? If that is the case then, under your scenario if we had 10 one acre parcels (not legally subdivided or short platted and so not legal non-conforming lots in the ten acre zone) and a 10 acre parcel next two them, Alt 4 would allow for 20 buildable lots where there are currently 2 existing legally buildable envelopes..

Third, you state the following on the blog:

"We don't know how many illegal lots there are in the county and a legal lot determination would cost an owner about \$800--and then you make the following argument--A property that has been deemed illegal, can not get any permits even to repair a roof or replace a hot water tank and per State law it is a illegal to sell an illegal lot (it is a misdemeanor). So what happens is people quit paying taxes on upon which they have illegally built a structure. The County forecloses on the unbuildable lot and must put it on the auction block as is buyer beware (by the way isn't the county committing a misdemeanor if they sell an illegal lot? maybe that is a discussion for another time). People come in and bid on these lots and sometimes spend 10s of 1000s of dollars because it looks like a beautiful lot to build their dream home. All tax sales are final, the taxes are paid off and the remainder goes to the owner that let the property go into foreclosure. Last sale, the county sold 3 lots that were unbuildable and a hard working man paid over \$100,000 for the lots. Only a \$1000 or so was owed in taxes so the remainder went to the previous owner. The

previous owner had bought them in a foreclosure auction for \$5,000. It happens with unbuilt able lots and illegal lots."

If you are correct, then some/many/all of the lots that are subject for site specific rezoning under Alt #4 could be illegal and/or legally segregated lots that are not legally buildable lots. Is that correct?

It seems that you are saying that we should grant up zoning to people who have acted illegally by developing on a lot that they had no legal right upon which to develop AND did so knowing that they could have gotten a "legal lot determination" from the county prior to developing but did not (assuming that if they had gotten such a determination, they would not have built on the lot or gotten an exception). Then when they discovered that it was not a legal lot, they refused to pay taxes on the tax lot and the county forecloses. Then the county auctions it off with a "buyer beware" clause that says..hey DO NOT BUY THIS PARCEL OF LAND unless you get a legal lot determination or, if you do buy it, recognize it may not be a legal buildable lot. So, then a person, with full knowledge it is may be neither buildable nor legal, takes a flyer and/or makes a risk assessment gamble and spends tens of thousands of dollars gambling it will be legal and buildable without paying \$800 for a legal lot determination. By the way, I have seen those auctions and many of those folks are well aware of the gamble and take the chance anyway. Moreover, under my reading of 40.520.010, there are multiple exceptions to the legal lot requirements including "Innocent Purchaser, Public Interest, Public Interest (discretionary) and De Minimis Lot sizes PLUS remedial measures. So, it seems to me that for your scenario would be pretty rare unless based upon deliberate or wildly reckless conduct by a landowner and/or buyer. So, under your scenario, Mr. Out \$100,000 dollars (meaning he refused to pay \$800 and it cost him \$100K) could still apply for an exception if, in fact, he was an innocent owner. Is that also correct?

Fourth (and finally), current use designations allow for anyone with a current use overlay to pay substantially less tax on their property. So, what happens to all that deferred tax money when the land is taken out of the deferred status under the current use designation?

Sorry for the long e-mail but your post raised more questions than it answered for me and I am trying to get a handle on the language that is being bandied about because what is "reality on the ground" seems to turn on what a person means by "reality".

Thanks and I look forward to hearing from you.

Best Regards,

David T. McDonald

David T. McDonald

This e-mail and related attachments and any response may be subject to public disclosure under state law.

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