

June 27, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**DECISION DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT;
GRANTING THE DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL
SERVICES MOTION FOR SUMMARY JUDGMENT; AND ORDER
DENYING THE APPEAL**

SUBJECT: Department of Development and Environmental Services File No. **B06L0727**

HOUSHOLDER
Building Permit Appeal

Location: Parcel no. 281721-0150

Appellant: Dan Housholder and Trevi Winters
represented by **Bill H. Williamson**, Attorney
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King County: Department of Development and Environmental Services (DDES)
represented by **Barbara Heavey** and Steve Bottheim
900 Oakesdale Avenue Southwest
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DECISION

Appellants contend that an application for building permit to construct a single-family residence on lot 15 of the plat of Gold Beach No. 4 is not subject to King County's current Critical Areas Ordinance. The Department of Development and Environmental Services (DDES) contends that the Critical Areas Ordinance in effect on the date of submission of a complete application for building permit will apply.

The Plat of Gold Beach No. 4 was recorded on April 19, 1977. An alteration to the Plat of Gold Beach No. 4 was recorded on October 3, 1978. The plat alteration reduced the building set back from the line of ordinary high water on lots nos. 3 through no. 16 from 100 feet to 50 feet, providing that:

“Improvements to lots no. 1 through no. 16, including residences, accessory structures, bulkheads and substantial grading, are subject to the provisions of the King County Shoreline Management Master Program as amended, and to the provisions of Shoreline Management Substantial Development Permit No. 026-75-SH as now or hereafter amended.”

On the dates that the plat of Gold Beach No. 4 and the plat alteration referred to above were recorded, the plat was governed by laws of 1969, First Ex. Sess., Chapter 271, Section 17, which provided:

“ . . . Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing.”

The common law of “vesting” in the State of Washington applies to applications for building permits and certain other non-discretionary permits. In substance, the common law provides that such permits shall be reviewed pursuant to the laws, ordinances and other applicable regulations in effect at the time a complete application for the building permit (or other non-discretionary permit) is submitted to the governing authority.

Washington’s common law of vesting does not apply to subdivisions. However, vesting was extended to subdivision applications by the Washington legislature in 1987. (Laws of 1987, Chapter 104, Section 2) The Washington Supreme Court has interpreted this extension to imply the right to proceed with construction that is consistent with the land uses that were permitted on the date of the complete application for a subdivision (or short subdivision). In doing so, the Supreme Court also acknowledged the legislature’s limitation on that right with respect to subdivisions (but not short subdivisions) as set forth in the laws of 1969 (quoted above), now codified in RCW 58.17.170.

The foregoing provision of RCW 58.17.170, which is applicable to this appeal, is clear and unambiguous. The terms of approval of a final plat govern development on the lots within the plat *for a period of five years* from the date of filing the plat. Consequently, upon expiration of that five year period all development is subject to applicable laws, codes and regulations in effect at the time of application for the permits necessary to authorize the development. Since more than five years have passed since the plat and plat alteration of Gold Beach No. 4 were filed for record, an application for a building permit to construct a residence on lot 15 of the Plat of Gold Beach will be subject to the applicable laws, codes and regulations in effect at the time a complete application for building permit is submitted to King County.

ORDER:

The appeal by Dan Housholder and Trevi Winters of the January 26, 2007 determination by the Department of Development and Environmental Services is **DENIED**. Any applications for development permits for the construction of improvements on lot 15 of the plat of Gold Beach No. 4 shall be subject to applicable statutes, ordinances and regulations in effect at the time a complete application is submitted.

ORDERED this 27th day of June, 2007.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED this 27th day of June, 2007, to the following parties and interested persons of record:

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