



## CASE REPORT

**LAND USE DECISIONS.** A code provision that authorizes revocation of a preliminary plat does not conflict with the state subdivision law and is thus not preempted. **HJS Development, Inc. v. Pierce County, WA. State Supreme Court (January 23, 2003)**

**I. Facts.** The developer sought preliminary plat approval for a 71-acre parcel on Fox Island in unincorporated Pierce County. The property was steeply sloped with forested areas containing protected trees. The MDNS conditions specifically required a large buffer zone from the steep slopes and prohibited any cutting of trees within this protected area. Evidence developed by the staff and a local citizens group at the public hearing on the preliminary plat reinforce the necessity for imposing conditions to protect the trees and steep sloped areas. Accordingly, the hearing examiner imposed specific and detailed conditions on the preliminary plat which prohibited disturbance of certain of the steep slope areas and the cutting of trees or removal of vegetation in this area. After preliminary plat approval had been obtained, the developer began construction. However, in complete violation of the conditions of approval, he clear cut and graded the land well within the area that was supposed to be preserved. The County imposed a Stop Work Order and scheduled a hearing to revoke the preliminary plat approval. Evidence was produced showing the extent of violation by the developer. The developer did not dispute the violation, although he argued that it was not as extensive as represented by the staff. The hearing examiner found that the developer had knowingly and deliberately violated the conditions of preliminary plat approval and revoked the plat.

The developer appealed to superior court which held that the specific language in the Pierce County Code authorizing revocation did not apply to preliminary plats and that in any event such a provision would conflict with the State subdivision statute set forth in Chapter 58.17 RCW and therefore would be preempted. The County appealed to the Supreme Court.

**II. Application Law And Analysis.** The Supreme Court first held that the language in the Pierce County Code, while not specifically mentioning preliminary plats, was broad enough so that it could be construed to include preliminary plats. The Court then turned to the issue of preemption. The developer argued that revocation of a preliminary plat would conflict with RCW 58.17.140 which provides that a final plat meeting all requirements of the chapter must be approved if submitted within five years of preliminary plat approval. The Court pointed out that the law requires that the City or County approving the final plat also determined that all conditions and requirements of the preliminary plat have been met. Thus, revocation would not be inconsistent with the State law, since State law does not grant an unqualified right to final plat approval. The developer also argued that the hearing examiner failed to consider whether lesser conditions could have been imposed in order to remedy the situation other than revocation. The Supreme Court held that in this particular case, because of the developer's deliberate and

intentional actions, the conditions of the preliminary plat could never be met. Because of the clear cutting and grading that occurred within the restricted areas, the situation could not be returned to its original state given the age and height of the trees that had been cut. Thus, the Court found that there was no need for the hearing examiner to consider lesser options since no conditions could have been imposed which would have allowed the developer to meet the preliminary plat conditions.

**III. Conclusion.** A provision in a local ordinance that specifically authorizes revocation of a preliminary plat does not conflict with State law and may be utilized if there are sufficient facts showing that compliance with preliminary plat conditions would be impossible or futile.