



CASE REPORT

LAND USE – STAY OF DEVELOPMENT APPROVAL DURING LUPA APPEAL. If a superior court revokes a development approval, the applicant need not request a stay of the approval during appeal to the court of appeals. *Kelly v. Chelan County*, ___ Wn.2d ___, January 7, 2010.

I. Facts. A developer applied for a conditional use permit as part of its plan to develop property on the shoreline of Lake Chelan. In August 2005 the hearing examiner approved the conditional use permit subject to conditions. Failure to meet those conditions within two years from the date of the decision would nullify the conditional use permit. Neighbors opposed the development and appealed the examiner's decision to the Superior Court under the Land Use Petition Act (LUPA). In May 2006 the Superior Court reversed the examiner's decision and revoked the conditional use permit. The developer timely appealed but did not seek a stay of the Superior Court decision or the conditional use permit's time limit, as authorized under RCW 36.70C.100(1). Two years after the conditional use permit was issued, the neighbors moved to dismiss the appeal as moot arguing that the permit had expired since the developer failed to satisfy the permit conditions within the two-year period. The Court of Appeals dismissed the case on that basis. The developer appealed to the Supreme Court.

II. Applicable Law and Analysis. In a unanimous decision, the Supreme Court reversed the decision of the Court of Appeals. The Supreme Court stated that the effect of the Superior Court's decision was to terminate the permit, and because the developers were not permitted to develop their property, they had no legal right that could be affected by a stay. The only action available to the developer was the appeal. As such the Supreme Court held that when a superior court denies a permit previously granted by a hearing examiner, that permit's time limit is terminated unless the permit is reinstated on appeal. Because the developer here was not required to obtain a stay of the permit approval during appeal, the Supreme Court remanded the matter to the Court of Appeals for a decision on the merits.

III. Conclusion. This case clarified that when a development approval is revoked by a superior court the developer need not seek a stay of the approval because there is no right to preserve. If a superior court affirms the approval on review, any time limits in the development approval will continue to run unless the developer obtains a stay of the decision.