OGDEN MURPHY WALLACE
ATTORNEYS

OGDEN MURPHY WALLACE, PLLC
901 FIFTH AVENUE, SUITE 3500
SEATTLE, WA 98164-2008

T 206.447.7000
F 206.447.0215

OMWLAW.COM

CASE REPORT

VESTED RIGHTS DOCTRINE - SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS. Filing a complete application for a shoreline substantial development permit does not vest a developer to existing zoning or other land use control ordinances in the absence of filing a building permit. ***Potala Village Kirkland, LLC v. City of Kirkland*****, No. 70542-3-I, Wash. Ct. of Appeals Div. I (Aug. 25, 2014).**

I. Facts. Potala Village filed a complete application for a shoreline substantial development permit (SSDP), but did not file an application for a building permit before the City of Kirkland imposed a development moratorium in the zone in which the desired mixed-use project would be located. Prior to the termination of the moratorium, the City amended the zoning code to limit residential density in the zone, which adversely affected the Potala Village project. Potala Village filed a lawsuit seeking declaratory relief and a writ of mandamus to compel the City to accept its building permit application and process it under the pre-moratorium zoning code.

II. Applicable Law and Analysis. The Court of Appeals rejected Potala Village's argument that the filing of its completed SSDP application was sufficient to vest rights to the zoning or other land use control ordinances in effect for the entire project. Under the vested rights doctrine, developers are entitled to have a proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations. In rejecting Potala Village's argument, the Court of Appeals essentially overruled a previous case, *Talbot v. Gray*, 11 Wn. App. 807 (1974), widely recognized as having extended the vested rights doctrine to SSDP applications.

To reach its decision, the Court extensively discussed the development of the vested rights doctrine. At its inception, it was a judicially-created doctrine and, over the years, the courts extended the vested rights doctrine to other types of permit applications beyond building permits, including conditional use permit applications, grading permit applications, septic permit applications, and SSDP applications. However, in 1987, the legislature added two sections to Chapters 19.27 and 58.17 RCW, referring only to vesting of building permit applications and subdivision applications. Subsequently, Washington courts declined to extend the doctrine to other types of permit applications, such as master use permit and site plan applications in the absence of filing a building permit. Most recently, the Supreme Court reiterated that while the vested rights doctrine originated in case law, the vested rights doctrine is now statutory. Consequently, where the above-mentioned statutes are limited to allowing vested rights in the context of building permit and subdivision applications (application for preliminary plat approval or short plat approval), the Court concluded it could no longer apply the doctrine to SSDP

applications. The Court further addressed *Talbot v. Gray*, stating that, in that case, the property owners had actually applied for and received what could be properly described as a building permit. Thus, it cannot be read as extending vested rights to developers upon filing only an SSDP application.

III. Conclusion. In this case, the Court of Appeals continued the trend of declining to judicially extend the vested rights doctrine, clearly holding that it is purely statutory in nature following the 1987 legislative amendments to Chapter 19.27 and 58.17 RCW. Although the Court of Appeals emphasized that it expressed "no opinion on whether or to what extent the vested rights doctrine applies to permits other than shoreline substantial development permits," its reasoning certainly casts doubt on those cases that previously extended the doctrine beyond building permit and subdivision applications. Should you have questions about the application of the vested rights doctrine, do not hesitate to contact your city attorney.