ShoreScore Update

Feb. 18, 2012

Washington Sensible Shorelines Association

Next Planning Commission Meeting – Wed. Feb. 22nd, 6:30 PM City Hall.

Topics to be discussed include: Nonconformities, docks, stabilization, and public access.
To read the staff report for the meeting, click here.

WSSA Response to Seattle Times Article

On Feb. 1st the Times published an article concerning Bellevue Planning Commission appointments. It contended that the composition of the Commission was being manipulated to provide an advantage to **shoreline property owners who find shoreline regulations "inconvenient"**. Despite a lengthy conversation with WSSA Board member Marty Nizlek, none of WSSA's perspective on the SMP process and how it has evolved was included. WSSA has responded to the Times and has also assured more thorough and accurate coverage of its position by taking out an ad in the Bellevue Reporter. In case you do not read the Reporter, the article is posted on WSSA's web page. We hope you'll CLICK HERE and take the time to read our response. The original Times article can be found at this link.

Your Property and Your Government's Right to It

WSSA believes it's important to represent shoreline property owners during the City's deliberation of new regulations for our properties. We're concerned that the final rules be legal, logical, and result in achievement of measurable goals. WSSA also believes it's important that residents be aware of broader, related issues, such as the following.

Former Bellevue Planning Commissioner Daniel Himebaugh[1] recently addressed a meeting of the group Women of Washington (WOW). Daniel spoke on the topic of government acquiring private property and following is a summary of his address.

Government can "take" your property in two broad ways. One is called "**eminent domain**" and the other is known as a "**regulatory taking**". Most of us who are older are familiar with the first method. Recall the building of the U.S. Interstate highway system. To create the road network, many homes and properties across the country were purchased at fair market value to make way for this public system. The key under eminent domain is that there needs to be a public use, and just compensation must be provided to the owner.

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[1] Daniel Himebaugh is an attorney with the nonprofit Pacific Legal Foundation in Bellevue. PLF is the oldest and most successful public interest legal foundation litigating for property rights and a balanced approach to environmental regulation.

Himebaugh described, however, that the interpretation of a "**taking for a public use**" has been more and more perverted in recent years by court rulings. Higher courts are allowing that local legislatures can define what is "**good for the public**," with minimal judicial oversight. Some recent cases have allowed use of eminent domain where there is a thin line between, say, a private developer benefiting from the local government "taking" your property only to allow the developer to use it. Bottom line – property rights have been diminished by this more liberal interpretation.

Regulatory takings come about through legislation. More subtle than a direct taking, laws are passed that essentially accomplish the same thing by controlling how you may use your property. This is allowed where some combination of need for **health, safety, morals, or general welfare** can be cited. But within this category, too, courts have unfortunately tolerated a variety of means to relieve you of your property.

Under a "**total taking**" your entire use would be wiped out. But the need to do so is difficult to prove, so it is not the most popular route. In fact, sometimes government rules seek to avoid the total taking problem by allowing you to retain a "sliver" of use, so that the taking is not technically "total."

A "**partial taking**" is just that. You're left with some portion of your property, allowing you to retain something of economic value or without completely changing the character of what you had. Numerous court cases have taken place over "partial takings."

Finally, there are "**exactions**". Rather than acquire your property outright, you're asked to give something up in exchange for a government approval. Typically, this occurs when you ask your local government administrators to allow you to do something with your property – say a remodel to your house. Here local regulations will have established what you'll be "asked" to give up in return for permission to do your remodel. Familiar examples are easements and "buffers." This latter area is quite common in Washington, and relates to shoreline regulation. Under most types of activity such as repair, remodel, replacement, additions, etc., shoreline property owners will face exactions. (WSSA has been representing you to make certain such exactions are not excessive and will result in detectable environmental benefits.)

After Daniel Himebaugh's presentation, we asked, given his prior involvement with Bellevue's shoreline update process, for any additional comments. He noted, "Shoreline property owners would do well to acquire some basic knowledge about 'takings' so they can recognize when regulations go too far. To its credit, WSSA understands that potential 'takings' problems must be spotted early in the regulatory process and fixed before they impact property owners' rights."

Your Support –

As we have in the past, we continue to need your support to stay engaged in the City SMP process. We have achieved many changes, but can only continue to do so with your financial assistance. We thank those who have given. You have made the difference. It's difficult to have to ask again but we must. Please continue to help. And, those who haven't given, we urge you to do so. Here's how you can contribute.

By check payable to **WSSA, P.O. Box 6773, Bellevue WA 98008** or use PayPal at our home page - **http://sensibleshorelines.org/**