

HOUSE BILL REPORT

HB 1039

As Reported by House Committee On:
Local Government

Title: An act relating to vesting of short subdivisions.

Brief Description: Revising rules for vesting of short subdivisions.

Sponsors: Representatives Simpson, G. and Chase.

Brief History:

Committee Activity:

Local Government: 1/15/04, 2/4/04 [DPS].

Brief Summary of Substitute Bill

- Establishes that the development of a short subdivision is governed by the terms of the approval of the short subdivision issued by the local government authority.
- Establishes that for a period of five years following the approval of the short subdivision, the statutes, ordinances, and regulations in effect at the time of its approval shall govern the development of the short subdivision.
- Exempts from the five year vesting limitation those short subdivisions zoned for single-family homes and which receive short plat approval on or before the effective date of the act.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Romero, Chair; Simpson, D., Vice Chair; Clibborn, Edwards, Moeller and Upthegrove.

Minority Report: Do not pass. Signed by 5 members: Representatives Schindler, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Ahern, Ericksen and Mielke.

Staff: Thamas Osborn (786-7129).

Background:

A property owner generally must have a proposed division of land reviewed and approved by the county, city or town in which the land is located. Such divisions of land are generally categorized as either "subdivisions" or "short subdivisions." Subdivisions are defined as land divisions resulting in five or more lots, tracts, or parcels. Short subdivisions are defined as land divisions resulting in four or fewer lots, tracts, or parcels. However, a city, town or Growth Management Act planning county may adopt a local ordinance increasing to a maximum of nine the number of lots, tracts, or parcels that may be contained within a short subdivision.

State law distinguishes between subdivisions and short subdivisions with respect to their regulation following the approval of the land division by the local government authority. First, the development of a subdivision is governed by the terms of the approval of the final plat issued by such authority. Second, for a period of five years following the approval of the final plat, the development of the subdivision is subject to the laws and regulations in effect at the time of its approval. In other words, with respect to applicable laws and regulations, the development rights of the owner of a subdivision remain vested for a period of five years following approval of the final plat. If the property is not developed within this five year period, a local government authority can act to enforce laws and regulations enacted subsequent to the approval of the final plat. However, a local government may also take such regulatory action prior to the expiration of this five year period if necessary in order to respond to a change of conditions that creates a serious threat to public health or safety.

Short subdivisions, on the other hand, are not subject to the same regulatory requirements that are applicable to subdivisions. For example, the laws and regulations governing the development of a short subdivision, and which are in effect at the time of its approval, are not subject to the five year limitation that is applicable to a subdivision, nor are they subject to the exception created for threats to public health or safety.

Summary of Substitute Bill:

The development of a short subdivision is governed by the terms of the approval of the short subdivision issued by the local governmental authority. Also, for a period of five years following the approval of the short subdivision, the statutes, ordinances, and regulations in effect at the time of its approval shall govern the development of the short subdivision. However, a local government may - prior to the expiration of this five year period - enforce laws and regulations enacted subsequent to the approval of the short subdivision in order to respond to a change of conditions that creates a serious threat to public health or safety.

Short subdivisions that are zoned for single family homes, and which receive short plat

approval on or before the effective date of the bill, are exempt from the five year vesting limitation described above. Accordingly, those short subdivisions that are covered by this exemption are subject to the application of those statutes, ordinances, and regulations in effect at the time of short plat approval, and which shall continue to apply without any time limitation.

Substitute Bill Compared to Original Bill:

The substitute bill creates an exemption from the five year vesting limitation with respect to short subdivisions that are zoned for single family homes and which receive short plat approval on or before the effective date of the bill. Accordingly, those short subdivisions that are covered by this exemption are subject to the application of those statutes, ordinances, and regulations in effect at the time of short plat approval, and which shall continue to apply without any time limitation.

The substitute bill also removes the emergency clause and makes the bill effective 90 days after the adjournment of the session in which the bill is passed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill is made necessary by a recent court decision suggesting that - under current law - short subdivisions may be vested in perpetuity. This is creating confusion with respect to the regulation of development. Also, the law is unclear as to whether or not a local government may impose new development regulations on a short subdivision if necessary in order to protect the public health and safety. The bill is needed, therefore, in order to clarify these issues. Furthermore, the bill represents good public policy insofar as local governments should be allowed to change development regulations as time goes on in order to respond to changing circumstances in our communities. Current law creates uncertainty in the planning process, since it can allow inconsistent development to occur in the same area. Allowing perpetual vesting prevents communities from controlling long term development. The bill would give communities a means of preventing inconsistent development from occurring and of preventing pockets of substandard housing from cropping up. The bill would enhance business development because it would enable predictable patterns of development.

Testimony Against: The bill chips away at the property rights of small landowners and is contrary to the public interest. Under the bill, property rights all but disappear after five years. By taking away vested rights, the bill creates uncertainty with respect to

investments in small parcels of property, which, in turn, decreases the value of the property. Allowing development rights to remain vested is the only fair and equitable course of action, and it creates greater certainty with respect to future property development. The health and safety provisions of the bill already exist under case law, and thus there is no need for statutory change. Furthermore, zoning regulations and the Growth Management Act already have a negative impact on small landowners and this bill would only add to the regulatory burdens they are subject to. The provisions of the bill would permit the imposition of regulations that could limit the number of houses allowed on a parcel of land and could bar the building of a home on a nonconforming lot. Preventing people from building homes on their property constitutes a taking of property that violates the Constitution.

Persons Testifying: (In Support) Representative G. Simpson, Prime Sponsor; Genesee Adkins, 1000 Friends of Washington; and Joel Wingard, Peninsula Neighborhood Association.

(Opposed) Timothy Harris, Building Industry Association of Washington; Vivian Henderson, Kitsap Alliance of Property Owners; and Gary Tripp, Bainbridge Concerned Citizens.

Persons Signed In To Testify But Not Testifying: None.