

SUPREME COURT OF WASHINGTON

Whatcom County Fire District No. 21 v. Whatcom County, 171 Wash. 2d 421

256 P.3d 295 (2011) · No. No. 83611-6 · Decided May 5, 2011

SUMMARY

The Washington Supreme Court held that Whatcom County Code 20.80.212 required a concurrency letter from the fire protection provider before certain development applications could be approved. Because Whatcom County Fire District No. 21 declined to issue the required letters, the County clearly erred by independently determining that adequate fire protection capacity existed. The court reversed the Court of Appeals, granted the Fire District's LUPA petition, and reversed approval of the three development applications.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Barbara A. Madsen, Chief Justice; Charles W. Johnson, Justice; Mary E. Fairhurst, Justice; Debra L. Stephens, Justice; Charles K. Wiggins, Justice; Gerry L. Alexander, Justice; James M. Johnson, Justice; Chambers, J.
JURISDICTION	Washington
DECIDED	May 5, 2011
DOCKET	No. 83611-6
DISPOSITION	reversed
PROCEDURAL POSTURE	Whatcom County approved three development applications in the Birch Bay urban growth area despite the absence of concurrency letters from Whatcom County Fire District No. 21. The Fire District filed consolidated petitions under Washington's Land Use Petition Act. The superior court granted the petitions, the Court of Appeals reversed and reinstated the County's approvals, and the Washington Supreme Court granted review.

STANDARD OF REVIEW	Under LUPA, the appellate court occupies the same position as the superior court and applies RCW 36.70C.130(1) directly to the administrative record. Questions of law, including interpretation of statutes and ordinances, are reviewed de novo. An application of law to facts is reviewed for clear error.
PRECEDENTIAL VALUE	Published, precedential en banc opinion of the Supreme Court of Washington.
PARTIES	Whatcom County Fire District No. 21 v. Whatcom County, Birch Point Village, L.L.C., Schmidt Constructing, Inc., Bright Haven Builders, LLC, Mayflower Equities, Inc., Lisa Schenk, Mike Sumner

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QUESTIONS PRESENTED

1. Whether Whatcom County erred under Whatcom County Code 20.80.212 by approving the development applications without concurrency letters from the Fire District.
2. Whether the County, rather than the Fire District as the relevant fire-protection provider, could independently determine that adequate fire-protection capacity existed.
3. Whether the County's comprehensive plan conclusively established the availability and adequacy of fire-protection services for purposes of project review.

HOLDINGS

1. WCC 20.80.212 is a development regulation that prohibits approval of the covered land uses unless the provider of fire-protection services issues a letter stating that adequate capacity exists or that arrangements have been made to provide adequate services.
2. The County could not independently determine that adequate fire-protection capacity existed after its ordinance assigned the concurrency determination to the Fire District.
3. The County's comprehensive plan did not establish the availability and adequacy of fire-protection services because it did not provide funding for all necessary improvements.

KEY QUOTATIONS

“As it applies to the present case, WCC 20.80.212 prohibits approval of certain land uses without a letter from the Fire District stating either that capacity to adequately serve the proposed development currently

exists or that arrangements have been made to ensure that adequate capacity will exist.” (at 428)

“Under a proper construction of WCC 20.80.212, this ends the inquiry; the applications cannot be approved without the required letters.” (at 429)

“Absent provision for necessary funding, the comprehensive plan cannot be considered determinative of the availability of fire protection services.” (at 429)

FACTUAL BACKGROUND

In 2006, Whatcom County approved three development applications in the Birch Bay urban growth area. Fire District No. 21 believed the proposed developments would reduce fire protection services below an adequate level and therefore refused to issue letters stating that adequate capacity existed or that arrangements had been made to provide it. The County nevertheless approved the applications after its hearing examiner independently determined that adequate services would be available through existing funding mechanisms, increased taxes, and fees from new development.

PROCEDURAL HISTORY

The County hearing examiner recommended approval of three development applications after finding that adequate fire protection and emergency response services would remain available. The County Council adopted those recommendations. The superior court granted the Fire District's LUPA petitions, but the Court of Appeals reversed. The Supreme Court reversed the Court of Appeals, granted the LUPA petitions, and reversed the County's approvals.

DISPOSITION

reversed

CASES CITED

- Griffin v. Thurston County Bd. of Health, 165 Wash. 2d 50, 54-55, 196 P.3d 141 (2008)
- Isla Verde Int'l Holdings, Inc. v. City of Camas, 146 Wash. 2d 740, 751, 49 P.3d 867 (2002)
- Abbey Rd. Grp., LLC v. City of Bonney Lake, 167 Wash. 2d 242, 250, 218 P.3d 180 (2009)
- Norway Hill Pres. & Prot. Ass'n v. King County Council, 87 Wash. 2d 267, 274, 552 P.2d 674 (1976)
- Ancheta v. Daly, 77 Wash. 2d 255, 259-60, 461 P.2d 531 (1969)
- In re Pers. Restraint of Cruze, 169 Wash. 2d 422, 426, 237 P.3d 274 (2010)
- Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash. 2d 861, 873, 947 P.2d 1208 (1997)
- Barrie v. Kitsap County, 93 Wash. 2d 843, 849, 613 P.2d 1148 (1980)
- City of Seattle v. Yes for Seattle, 122 Wash. App. 382, 391, 93 P.3d 176 (2004)
- Woods v. Kittitas County, 162 Wash. 2d 597, 613, 174 P.3d 25 (2007)
- Wash. Waste Sys., Inc. v. Clark County, 115 Wash. 2d 74, 80, 794 P.2d 508 (1990)
- Whatcom County Fire Dist. No. 21 v. Whatcom County, 151 Wash. App. 601, 612, 614, 215 P.3d 956 (2009)
- Whatcom County Fire Dist. No. 21 v. Whatcom County, 168 Wash. 2d 1005, 226 P.3d 782 (2010)

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