



King County
Department of Development and Environmental Services
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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: July 25, 2002

TO: Building Services Division Staff
Chris Ricketts
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Land Use Services Division Staff
Joe Miles
Greg Borba
Lisa Pringle

Stephanie Warden, Director
Harry Reinert, Special Projects Manager
Tim Barnes, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Greg Borba, Pam Dhanapal, Lisa Pringle, Jim Chan, Joe Miles, Ray Florent, Tom Slade, and Harry Reinert

1. Is the site area of a lot determined by using the calculated area of the lot based on a current survey or can the site area be based on the assumed area of an "aliquot" portion of a section as contained in the legal description?

Background

A short plat is proposed for a parcel whose legal description is a "1/4 of a 1/4" section. A parcel described in terms of fractions of a section is an aliquot portion. In this particular case, a field survey determined the property to be about 39.18 acres, not a full 40 acres that would be expected of 1/4 of 1/4 of a section. The discrepancy is due to the fact that the original surveys for sections, townships, and ranges occurred during the late 1800's with less precise instruments and lower error tolerances.

If the original section survey did not meet the error tolerances of that time, government lots were created. Government lots are not considered to be aliquot portions of a section.

A modern surveyor retraces the steps of the original survey, right, wrong, or otherwise. The original monuments or their replacements govern the location of a point and not a theoretical breakdown of a perfect section that would have exactly 40.00 acres as $\frac{1}{4}$ of $\frac{1}{4}$ of a section.

Discussion

K.C.C. 21A.12.030 establishes density standards for residential uses. These are expressed in terms of number of dwelling units per acre. For example, in the RA-5 zone, the base density is 0.2 dwelling units per acre. In the RA-10 zone, it is 0.1 dwelling units per acre. The number of lots or dwelling units is determined by multiplying the base density by the site area. K.C.C. 21A.12.070. The "site area" is "the total horizontal area of a project site...." K.C.C.

21A.06.1172. Except for subdivisions and short subdivisions in the RA and A zones, if the calculation for the number of lots results in a fraction, the number of lots allowed is rounded to the nearest whole number. Rounding up is not allowed for subdivisions and short subdivisions in the RA and A zones. K.C.C. 21A.12.070.

Title 21A does not include a definition of "acre" or how the horizontal area of a site is measured. K.C.C. 19A.04.010 defines an acre as 43,560 square feet.

The Land Segregation code recognizes that land may be described either in terms of acreage or in terms of aliquot portions (fractions of a section). See, e.g., K.C.C. 19A.08.040B, which exempts from the land segregation code divisions of land that are greater than $\frac{1}{16}$ th of a section, or forty acres, if the land "is not capable of description as a fraction of a section of land ..." State law has a similar provision. RCW 58.17.040(2).

Prior K.C.C. Title 21 included a similar recognition that land could be described either in acres or in aliquot portions. For example, former K.C.C. 21.04.405 defined "five acres" as "five acres or one one-hundred-twenty-eighth of the section in which the property is located." This definition and a similar definition for twenty acres were not included when Title 21A was adopted. DDES staff involved in development of the proposed ordinance believe that the language was not included in the draft transmitted to the council because it was thought that it would create confusion.

The current zoning code does not specifically address the circumstance presented by this case. Under a strict reading of the code, the fact that the parcel has been surveyed at 39.18 acres could lead to the conclusion that in the RA-10 zone, only three lots may be created because the base density is .10 dwelling units per acre and rounding up is not allowed in the RA zone.

The prohibition on rounding up the number of lots in RA and A zones was added in 2000. The intent was to ensure that the density in the rural area did not exceed the expected base density. Prior to these amendments, creative use of subdivisions and short subdivisions allowed more lots to be created than the base density would allow.

In a circumstance like that presented in this case, allowing the parcel to be divided into four lots will not allow developments that exceed the base density when considered at a larger scale. Because of the error tolerances in the old surveys, the aliquot portions are not exactly the same size. One parcel that is described as one-sixteenth of a section may be less than forty acres and another may be more than forty acres. Overall, though, the total density will remain the same.

Since government lots are not considered to be aliquot portions, if the legal description indicates a parcel was created as a government lot, the base density is based on the surveyed site area.

Conclusion

For purposes of calculating base density, if a parcel is described only in terms of true aliquot portions, the base density may be determined using the standard of five acres being equivalent to 1/128th of a section. Parcels created from government lots are not described in terms of aliquot portions.

An amendment to the zoning code should be proposed that would clarify this point.