



King County

Department of Development and Environmental Services

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FINAL CODE INTERPRETATION L08CI002

Background

The Department of Development and Environmental Services (DDES) has recently received several applications for lot recognition that rely upon “forest roads” or “logging roads” to satisfy the criteria set forth in K.C.C. 19A.08.070A.1.a. K.C.C. Title 19A does not include a definition of the term “road.”

K.C.C. 2.100.030A allows the Director of DDES to issue a code interpretation on the Director’s own initiative. The Director has determined that a code interpretation on this issue will provide certainty to permit applicants and ensure consistent application of the King County Code.

Discussion

Prior to 1937, the creation of lots did not receive any significant review by King County. There was no review to ensure that appropriate infrastructure, such as sewer, water, and roads, were available. Indeed, such infrastructure was often not in place when the lot was created. In many cases, lots were created in blocks of equal size, e.g. 5,000 square feet, that could then be combined in different combinations based on the desires of the property owner and potential purchasers. As a result, many pre-1937 lots are not consistent with King County’s current zoning.

In 1937, the Washington Legislature adopted the first state subdivision regulations. Those regulations for the first time included requirements for consideration of issues related to the public health, safety, and welfare as part of the subdivision process. In 1969, the Washington Legislature updated its subdivision regulations. Those regulations are codified in RCW Title 58. Current subdivision law continues to state that one purpose of the subdivision process is to ensure that the subdivision of land “promote[s] the public health, safety, and general welfare ...” RCW 58.17.010. The subdivision process accomplishes this by establishing uniform procedural standards, requiring consideration of factors relating to the public health and general welfare, and requiring public notice and an opportunity to comment.

K.C.C. Title 19A is King County’s implementation of RCW Chapter 58.17. Prior to January 1, 2000, the King County Code addressed lot recognition through its definition of “separate lot.” These were defined as lots “created in compliance with the subdivision or short subdivision laws

in effect at the time of the creation of the lot.” Former K.C.C. 19.04.420. This did not address those lots that were created prior to subdivision laws. Effective January 1, 2000, K.C.C. Title 19A was amended to include a specific provision establishing standards for when King County will recognize lots established under all of the prior regulatory schemes.

K.C.C. 19A.08.070A divides legal lot recognition standards into three different periods: One period covers years prior to 1937, before the adoption of state subdivision standards and consideration of public health, safety, and welfare. The second period covers the years between 1937 and 1972, when state law governed creation of more than four lots and King County regulations governed the creation of four or fewer lots. The third period covers the years since 1972, when King County adopted its regulations implementing the 1969 state subdivision statute.

With respect to recognition of pre-1937 lots, K.C.C. 19A.08.070A.1 provides:

A. A property owner may request that the department determine whether a lot was legally segregated. The property owner shall demonstrate to the satisfaction of the department that, [sic] a lot was created, [sic] in compliance with applicable state and local land segregation statutes or codes in effect at the time the lot was created, including, but not limited to, demonstrating that the lot was created:

1. Prior to June 9, 1937, and has been:

a. provided with approved sewage disposal or water systems or roads;

and

b.(1) conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase prior to October 1, 1972; or

(2) recognized prior to October 1, 1972, as a separate tax lot by the county assessor;

Thus, under existing K.C.C. 19A.08.070A, in order for a pre-1937 lot to receive recognition as a separate lot, it must meet two conditions. First, prior to October 1, 1972, the lot must either have been conveyed as an individual parcel or have been recognized by the county assessor as a separate tax lot. Second, the lot must have been provided with “approved” roads, sewage disposal, or water. K.C.C. Title 19A does not provide guidance on the approval process for this infrastructure or provide a definition for a road. Therefore, other relevant provisions of the King County Code must be examined in order to determine this provision’s meaning.

As noted above, prior to the January 1, 2000 effective date of K.C.C. Title 19A, King County’s subdivision law did not specifically address the issue of pre-1937 lots. The provision was recommended by the King County Executive in order to address a growing concern that pre-1937 lots, which were created during a period when no public health, safety, or welfare review was required, were being recognized without undergoing the subdivision process. These lots often lacked even basic infrastructure. The obvious purpose of the King County Council in adopting this provision was to limit the circumstances under which pre-1937 lots would be recognized as legal lots.

In a prior consideration of a related issue, DDES concluded that in order for a pre-1937 lot to be recognized, the approved infrastructure must have been provided to the lot prior to the January 1, 2000 effective date of K.C.C. Title 19A. See, *Regulatory Review Committee Meeting Minutes, September 28, 2006*. The Committee was not asked to consider the questions of how to determine when infrastructure has been provided, as required by K.C.C. 19A.08.070A.1., or what standards were to be used to determine if the infrastructure was approved.

For purposes of determining whether approved infrastructure has in fact been provided, the definitions and the standards used to approve infrastructure that were in effect on January 1, 2000 would be consistent with the Regulatory Review Committee's analysis of K.C.C.

19A.08.070A.1. This approach implements the intent of K.C.C. 19A.08.070A.1. to limit lot recognition to those circumstances where approved infrastructure has been provided. At the same time, it does not place the impossible burden on property owners to demonstrate that the infrastructure meets current standards. Requiring that the infrastructure criteria had to be approved prior to 1937 would impose too stringent a burden on applicants, because very few lots had any approved infrastructure prior to 1937.

Likewise, applying the definition of "road" in effect at the time of the application for lot recognition would also unnecessarily limit the recognition of lots. Road standards are updated on an ongoing basis. The most recent King County Road Standards were adopted in 2007. Limiting lot recognition by holding applicants to ever-evolving criteria could potentially prohibit future lot recognition.

On January 1, 2000, the 1993 King County Road Standards ("*1993 Road Standards*") were in effect. The 1993 Road Standards will be used to determine whether an approved road has been provided to a pre-1937 lot, as required by K.C.C. 19A.08.070A.1.

The 1993 Road Standards defined several terms that are relevant to an interpretation of K.C.C. 19A.08.070A.1.

The 1993 Road Standards define a "road" as "A facility providing public or private access including the roadway and all other improvements inside the right-of-way." The "right-of-way" is defined as "Land, property, or property interest (e.g., an easement), usually in a strip, acquired for or devoted to transportation purposes." A "roadway" is defined as "Pavement width plus any non-paved shoulders." By way of contrast, a "driveway" is "a privately maintained access to residential, commercial, or industrial properties." *1993 Roads Standards*.

From these definitions, several characteristics of a road can be gleaned. One important characteristic is that the road must be located within a right-of-way, easement or similar instrument that was dedicated for transportation purposes prior to 2000. The road must also be used or devoted to transportation purposes. For example, a driveway does not meet this test because it is not devoted to transportation purposes – it only provides access to the property. In this respect, a logging road that only provides access to forest lands for hauling timber on a temporary basis is not devoted to transportation purposes.

A second important characteristic for a road is that the road must have a defined form and must be surfaced. For example, an unimproved track that follows a right-of-way is not a roadway.

Assuming that a road meets these standards, K.C.C. 19A.08.070A.1 also requires that the road was “approved.” To meet this element of the test, the road must have been constructed to the standards in effect at the time the road was approved by King County or other public agency with authority to approve the road.

Under this requirement, a public road or highway constructed to county or state highway standards at the time would be considered approved. However, even if it meets the standard for a road, a logging road or forest service road would generally not meet the test for approval. The Washington State Forest Practice Rules establish standards for logging roads. These standards (see *Chapter 222.24 WAC* and *Forest Practice Board Manual, Chapter 3*) are intended to promote forest management, protect water quality and riparian habitats and prevent potential or actual damage to public resources. These standards are not intended to promote or protect the public health, safety and general welfare, the standards that apply under the subdivision statutes. As a result, logging roads will generally not meet this test.

In summary, roads built for the primary use of providing safe access to local residences and businesses or to provide safe transportation within urban and rural areas are approved roads within the meaning of K.C.C. 19A.08.070A.1. These roads are built within a right-of-way and consist of a smooth, durable surface.

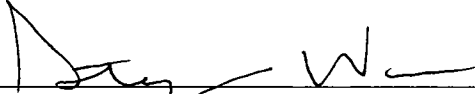
In contrast, “logging roads,” “forest service roads,” and other similar rudimentary access roads are not approved roads for purposes of K.C.C. 19A.08.070A.1. These roads are built for the purposes of the logging industry for logging and forest management purposes, not for transportation purposes, and were not subject to an appropriate approval process. In a similar manner, temporary construction access or dozer bladed access do not qualify.

Decision

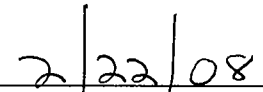
Under K.C.C. 19A.08.070A.1.a, in order for a pre-1937 lot to be recognized, it must have been provided with approved water, sewerage, or roads prior to January 1, 2000. A forest service or logging road that has been constructed under state forest practice regulations or similar regulations does not meet the definition of “road” for purposes of lot recognition under K.C.C. 19A.08.070A.1.a. For purposes of K.C.C. 19A.08.070A.1.a, a road must have been constructed prior to January 1, 2000 and meet the requirements of the 1993 King County Road Standards.

Appeal of Code Interpretations

Under K.C.C. 2.100.050, a code interpretation that is not related to permit or code enforcement action that is pending before the Department is final when the Director issues the Code Interpretation. The Director determines that this code interpretation is final on the date it is issued.



Stephanie Warden
Director
Development and Environmental Services



Date