

1-1-2000

Plotkin v. Washington County, 165 Or. App. 246 (Or. Ct. App. 2000)

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Jason Wells, Court Report, Plotkin v. Washington County, 165 Or. App. 246 (Or. Ct. App. 2000), 3 U. Denv. Water L. Rev. 480 (2000).

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legislature imposed on agencies the requirement of trial-like proceedings, culminating in a record, findings of fact, and conclusions of law that must have accompanied the agency's final order. Further, judicial review for substantial evidence of the whole record was required. The court found no suggestion in the Act that the legislature intended the record in an other than contested case proceeding to be less complete or more developed than the record in a contested case proceeding. The court concluded that the parties in an other than contested case proceeding are afforded the same opportunity to develop a record as those parties in a contested case proceeding.

On the second issue of substantial evidence, both sides presented documentary and testimonial evidence. The supreme court found, however, that the record, when viewed as a whole, would permit a reasonable person to conclude that the water arising from the spring on Norden's property would run off her property if not diverted. Accordingly, Norden was required to obtain a water right permit.

Elizabeth Appleton

Plotkin v. Washington County, 165 Or. App. 246 (Or. Ct. App. 2000) (reversing Land Use Board of Appeals' decision to disallow county's approval of a subdivision in a designated wildlife habitat because the habitat was neither identified as protected in the county's community plan nor was it adjacent to an area of significant natural resources identified under the plan).

A Washington County, Oregon hearings officer approved a twelve-lot residential subdivision on a parcel of land designated as a "wildlife habitat." The Plotkins and Wilsons (collectively the "Plotkins") appealed the county's decision to the Land Use Board of Appeals ("LUBA"), which held that as a riparian zone, the area in question was protected from development under the county's Community Development Code ("CDC").

The CDC regulated development in areas that possessed "significant natural resources." Section 422-2 stated that areas subject to the terms of the CDC are "[t]hose areas identified in the applicable Community Plan or the Rural/Natural Resource Plan Element as Significant Natural Resources." The plot of land in dispute was not identified under the county's plan. On the Plotkins' appeal, however, LUBA found that as a riparian zone, the identification requirement of section 422-2 did not apply to the habitat, but rather that section 422-3.3A governed the area independent of the primary provision. Section 422-3.3A stated that "[n]o new or expanded alteration of the vegetation or terrain of the Riparian Zone . . . or significant water area or wetland [as identified in the applicable Community Plan or the Rural/Natural Resource Plan Element] shall be allowed subject to exceptions." According to the LUBA interpretation, this provision prohibited development in the riparian zone as contemplated by the county regardless of the area not being identified

within the county's development plan.

The CDC defined a riparian zone as "the area, adjacent to a water area, which is characterized by moisture dependent vegetation." By definition, all riparian zones bordered other significant natural resources, including wetlands.

In rejecting the LUBA ruling, this court construed section 422-3.3A as protecting only those riparian zones that were adjacent to significant natural resources specifically identified under the Community Plan. The court found this construction to be reasonable considering the natural relationship of riparian zones to other water areas, identifiable under section 422-2. The court thus understood the intention of the section was to apply only to those riparian zones that bore some relationship to an *identified* protected area such as wetlands. Since the plot of land in dispute did not border an identified habitat and was not itself an identified habitat, it was not afforded protection under section 422-3.3A.

Although section 422-3.3A addressed developmental restrictions on riparian zones without specifically requiring that they be listed in a Community Plan, the court held that this provision was nevertheless subject to such a restriction under section 422-2. Contrary to the LUBA interpretation, the court held that other than the exception of riparian zones adjacent to identified significant natural resources, all lands that were not distinguished within the Community Plans were not subject to regulation under any provision of section 422. LUBA held that the limitations imposed by section 422-2 applied to all the subsequent provisions of that section. The parcel of land slated for development by the county, by limitation, was not subject to CDC protection. Therefore, the court found that LUBA erred in prohibiting the county's approval of the subdivision upon the land at issue.

Jason Wells

Shasta View Irrigation Dist. v. Amoco Chems. Corp., 986 P.2d 536 (Or. 1999) (holding that the irrigation district was a public corporation, which was exempt from general statutes of limitation, but not exempt from statute of ultimate repose in products liability action).

The members of the Shasta View Irrigation District ("Shasta"), organized and formed in Oregon on December 5, 1917, own irrigable land within the geographic boundaries of Shasta and farm or lease their land to others. As part of a betterment project, Shasta replaced over twenty-one miles of existing unlined canals with buried pressure pipeline. Shasta received a sixty-five year loan for the work from the United States Bureau of Reclamation, with a specification requirement that the pressure pipe used in constructing the irrigation system must last for at least sixty-five years.

Shasta used Techite, a brand of reinforced plastic mortar pipe manufactured by Amoco Reinforced Plastics Co. ("Amoco"), in the