

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

CLARK COUNTY CITIZENS IN ACTION,	)	
Appellant	)	SHB NO. 93-71
v.	)	
	)	
VANPORT MFG., INC., CITY OF CAMAS, STATE OF WASH- INGTON DEPT. OF ECOLOGY, AND CERTAIN PROPERTY OWNERS IN LACAMAS SHORES SUBDIVISION, CAMAS	)	ORDER ON MOTION FOR SUMMARY JUDGMENT
Respondents.	)	
AND	)	
	)	
VANPORT MFG., INC.,	)	
Cross-Appellant	)	
v.	)	
	)	
CITY OF CAMAS, STATE OF WASHINGTON DEPT. OF ECOLOGY,	)	
Respondents	)	

On April 4, 1994, Respondent and Cross-Appellant Vanport Manufacturing, Inc. ("Vanport") moved the Board for summary judgment. The parties' pleadings, responses, reply, and supporting affidavits and exhibits were considered by the Board, and based thereon the Board makes the following

FINDINGS OF FACT

I.

On June 15, 1988, the City of Camas ("City") approved a Shoreline Substantial Development Permit and Conditional Use Permit for Vanport, Nos. C-2-87 Resubmittal and 590-14-7806. These permit approvals were submitted to the Department of Ecology ("Ecology") for

approval, were approved, but then were appealed to the Shorelines Hearings Board ("Board"), which designated the appeal SHB No. 88-33. After settlement negotiations among the parties, the Board issued an Agreed Order of Remand, authorizing the City to reissue the permits with conditions. The City did so on September 20, 1988. That reissued shoreline substantial development and conditional use permit is the original permit against which revisions must be judged ("Original Permit").

## II.

The Original Permit included a number of conditions designed to implement the Agreed Order of Remand and mitigate the adverse environmental effects of a housing subdivision of more than 200 houses being constructed on the shoreline of a relatively undeveloped lake. The specific protections extended to water quality, visual impact, wildlife protection, and public access to its shoreline, among others.

## III.

The Original Permit required Vanport to deed in fee to the City a 100 foot deep conservancy zone along the shoreline, which zone would contain the public trail and buffer the lakeshore from the development above. Vanport gave the City a deed of dedication which described the property deeded as a "one hundred foot (100') wide conservancy zone". The deed, however, reserved to Vanport, and its successors and assigns, an easement "for the free and uninterrupted access and enjoyment of light and view over and across the conservancy zone...".

## IV.

Vanport recorded lot lines for the subdivision which did not conform to the 100 foot conservancy zone they had deeded to the City. The Board makes no finding as to whether this misplating was intentional or a product of a surveyor's error. Many of the lots which were sold

by Vanport for the construction of homes overlapped and intruded into the 100 foot conservancy zone.

V.

Many of the homeowners whose lots abut the conservancy zone have taken advantage of the view easement recorded by Vanport in deeding the property to the City, and have cut trees and shrubs which lie within the 100 foot conservancy zone.

VI.

In a letter to Vanport dated February 4, 1992, Ecology concluded that there were several violations of the Original Permit, including encroachment of the lot lines into the 100 foot conservancy zone and the removal of vegetation to preserve views. In that letter, Ecology stated that "the 100 foot zone is crucial in protecting the slope integrity and vegetative cover that promotes stable slopes and adds to the aesthetics of the site." The actions by Vanport were deemed by Ecology to "violate the intent of the zone." By letter dated March 20, 1992, Ecology additionally stated that the vegetation removal for residential view corridors constituted an unpermitted residential use in conflict with the terms of the permit. On August 24, 1993, Ecology again affirmed its position that the actions of the applicants and homeowners within the development constituted violations of the permit.

Because, ~~inter alia~~, of the impact of the project on the conservancy zone and concerns about the stormwater drainage system for the subdivision, and because of Ecology's concerns regarding violations of the Original Permit, the City on September 15, 1993, approved and sent to Ecology a revision to the Original Permit. Ecology attached an additional condition to the revision, and with that condition approved the revision. The revision approved by the City, with Ecology's condition attached, is the revised permit ("Revised Permit") which must be judged against the Original Permit.

The Revised Permit approved by the City purported to legitimize the reduced depth of the conservancy zone, prohibited only houses within 100 feet of the shoreline, and addressed changes to the stormwater system. It required some replanting of vegetation improperly removed, but allowed the viewshed easement to continue in effect with specific view cuttings allowed for each lot. It also called for Vanport to deed an additional 0.6 acre parcel outside the original conservancy zone to the City. The condition attached by Ecology to the Revised Permit prohibited all structures, not just houses, within the 100 foot conservancy zone.

#### VII.

Clark County Citizens in Action appealed the Revised Permit to the Board; subsequently, Vanport cross-appealed; the appeal and cross-appeal have been considered throughout by the Board as one consolidated matter.

#### VIII.

We find that the 100 foot conservancy zone required by the original permit was necessary as a minimum protection for the environment of the shoreline and the public's interest therein. We also find that the shoreline of Lacamas Lake is a fragile environment, already reeling from the adverse impacts of this and other development, and that it cannot sustain further damage and habitat loss without significant adverse effects to that environment.

#### IX.

Any conclusion of law deemed to be a finding of fact is adopted as such.  
Based on the above findings of fact, the Board makes these

### CONCLUSIONS OF LAW

#### I.

The appeal and cross-appeal were timely, and the Board has jurisdiction under RCW 90.58.

## II.

Vanport moved the Board for summary judgment on the only issue which is appealable to the Board regarding a revision to a shoreline permit: whether the revised permit is within the scope and intent of the original permit.

## III.

Local government has authority to approve a revision to a shoreline permit, provided the revision is within the scope and intent of the original permit. WAC 173-14-064(1). When the revision involves a conditional use or variance, the revision must be submitted to Ecology for its approval, approval with conditions, or denial. WAC 173-14-064(5).

## IV.

"Scope" refers to the "area and volume of the substantial development", while "intent" refers to the "type of land use authorized". Geis v. Seattle, SHB No. 77-10 (1977); Department of Ecology v. Island County, SHB No. 216 (1976). The implementing regulations for the Shoreline Management Act define scope and intent more rigorously:

- (2) *"Within the scope and intent of the original permit" means all of the following:*
- (a) *No additional over water construction is involved except that pier, dock or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;*
  - (b) *Ground area coverage and height of each structure may be increased a maximum of ten percent from the provisions of the original permit;*
  - (c) *Additional separate structures may not exceed a total of two hundred fifty square feet;*
  - (d) *The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under the original permit;*
  - (e) *Additional landscaping is consistent with conditions (if any) attached to the original permit and with the applicable master program;*
  - (f) *The use authorized pursuant to the original permit is not changed; and*
  - (g) *No substantial adverse environmental impact will be caused by the project revision. WAC 173-14-064(2).*

A revision, to be valid, must not violate any of the above limitations.

## V.

WAC 173-14-064(2)(a), (b) and (d) do not apply to the Revised Permit in this case, and (c) was eliminated as an issue by the condition added by Ecology.

## VI.

WAC 173-14-064(2)(e) is more problematic. The Revised Permit would require some revegetation by Vanport; however, it also allows individual lot owners to remove trees and limbs up to six inches in diameter from the conservancy zone without any approval, and up to twelve inches in diameter with City approval, all for purposes of improving their views through the conservancy zone. All landscaping work in the conservancy zone for private enjoyment is inconsistent with the Original Permit, in that it does not "conserve" the zone in its natural condition.

## VII.

WAC 173-14-064(2)(f) also presents an issue. The use approved in the Original Permit for the conservancy zone is preservation in its natural condition for the benefit of the public, with the only permitted development being the public access trail. The Revised Permit, however, changes that use for the portion of the conservancy zone which has been usurped by private lots; that portion would now be an accessory residential use as private backyards, etc., for the homeowners. This change of use violates WAC 173-14-064(2)(f).

Just as important, the "viewshed easement" reserved by Vanport in its deed to the City would be incorporated and legitimized by the Revised Permit. This easement, however, violates the provision of the Original Permit, which required Vanport to "dedicate in fee to the City of Camas" the 100 foot conservancy zone. That permit did not allow reservation of property rights by Vanport for itself and its lot buyers. We conclude that the Revised Permit is outside the intent of the Original Permit in that it would convert the conservancy zone use to a viewshed use.

### VIII.

The difference between a 100 foot conservancy zone buffering the lakeshore with its wetland forest environment intact, and a smaller conservancy zone with trees cut for views and active backyard uses impinging toward the lake, is very real. The public's rights in that shoreline environment would potentially be degraded by ~~the likely~~ adverse environmental impacts of the Revised Permit: loss of animal habitat, loss of forest groundwater infiltration, increase in soil erosion and slope instability, increase in lakeshore temperatures due to reduction in shade, increase in noise levels in the lakeshore, loss of esthetic values. We conclude that the minimal protection afforded by the previously permitted 100-foot conservancy zone cannot be reduced without incurring substantial adverse environmental impacts. ~~substantial adverse environmental impacts would be likely, and to some extent unavoidable, under the Revised Permit.~~

### IX.

We conclude that the Revised Permit is outside the scope and intent of the Original Permit and violates WAC 173-14-064(2)(e), (f), and (g). The Revised Permit is presented as essentially a settlement agreement between Ecology and Vanport for violations of the Original Permit. A revised permit is an inappropriate vehicle for effecting this type of settlement where the underlying violations are based on actions by Vanport which are inconsistent with the scope and intent of the Original Permit. Without passing judgment on the merits of the settlement, the correct context for its substance would seem to be either an enforcement action by Ecology or the City, or a new permit application.

### X.

The five year history of Vanport's development of the Lacamas Shores project under the Original Permit is replete with clear ongoing violations of the permit and the Agreed Order of Remand from this Board. The City of Camas and the Department of Ecology have done a poor

job of protecting the public interest with their enforcement powers, and some of the damage done can never be undone. The public interest has suffered grievous harm.

X.

Any finding of fact deemed to be a conclusion of law is adopted as such.

Based on the above findings and conclusions, the Board enters the following

### ORDER

Summary judgment is granted on behalf of the nonmoving party, Clark County Citizens in Action.

The Revised Shoreline Substantial Development and Conditional Use Permit approved by the City of Camas and the Department of Ecology for the Lacamas Shores Subdivision is disapproved. The Original Permit remains in full force and effect.

DONE this 22nd day of June, 1994, in Lacey, Washington.

SHORELINES HEARINGS BOARD

RICHARD C. KELLEY, Presiding

ROBERT V. JENSEN, Chairman

BOBBI KREBS-McMULLEN, Member

MARIE BREMNER, Member

JIM LYNCH, Member