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LAND USE - WASHINGTON

[Durland v. San Juan County](#)

Supreme Court of Washington, En Banc. - December 11, 2014 - P.3d - 2014 WL 7003787

Objectors filed a petition under Land Use Petition Act (LUPA), challenging county's grant of a building permit. County and applicant moved to dismiss the action. The Superior Court dismissed with prejudice. In a second action, objectors filed a complaint and land use petition challenging the dismissal as a violation of their constitutional right to due process. The San Juan County hearing examiner dismissed the appeal as untimely. Objectors then filed a § 1983 claim. The Superior Court dismissed the LUPA petition and granted county and applicant's motion for summary judgment. Objectors appealed both Superior Court judgments. The Court of Appeals affirmed. Further review was sought.

Following consolidation, the Supreme Court of Washington held that:

- In the first action challenging county's grant of a building permit, the Superior Court lacked jurisdiction to hear the petition;
- In the first action, objectors' failure to exhaust administrative remedies deprived them of standing to file a LUPA petition;
- County code provision that imposed a height and size limitation on the construction of residential structures, including garages, did not create a property interest in neighbors' view of the water, or in the denial of a third-party's building permit for purposes of the Due Process Clause;
- Under statutory provision allowing for an award of attorney fees to a prevailing party on appeal of a land use decision, fees may be awarded to private parties who prevail on procedural or substantive grounds, but may be awarded to a public entity that made the permitting decision only when it succeeds in defending its decision on the merits, disapproving *Coy v. City of Duvall*, 174 Wash.App. 272, 298 P.3d 134, *Witt v. Port of Olympia*, 126 Wash.App. 752, 759, 109 P.3d 489, *Overhulse Neighborhood Ass'n v. Thurston County*, 94 Wash.App. 593, 601, 972 P.2d 470, and *Northshore Investors, LLC v. City of Tacoma*, 174 Wash.App. 678, 700-01, 301 P.3d 1049;
- Applicants were entitled to an attorney fee award in first action; and
- While applicants were not entitled to attorney fee award with regard to objectors' § 1983 complaint in second action, they were entitled to attorney fee award to the extent objectors' action related to their LUPA petition.