IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RUSSELL OLSON, Appellant, v. PIERCE COUNTY, Respondent.	No. 39687-4-II UNPUBLISHED OPINION

Worswick, a.c.j. — Russell Olson appeals the superior court's order affirming the Pierce County Hearing Examiner's (hearing examiner) decision denying him the right to build a single family home on property that he acquired through a tax foreclosure sale. He asserts that the examiner misconstrued the status of the property, failed to comply with Pierce County regulations regarding the development of the property, made findings not supported by substantial evidence, and violated his constitutional rights. He also argues that equitable estoppel bars Pierce County

from denying his development application. We affirm.

FACTS

This case involves a dispute regarding a parcel of property located in Pierce County on Fox Island. Olson claims the property, which he acquired in a tax foreclosure sale, is a buildable lot. Pierce County disputes that claim, citing restrictions on the subdivision plat and land use regulations.

In 1993, the owner of a 24-acre parcel sought to divide it into 23 single-family lots. In October 1993, the hearing examiner held a public hearing to review this subdivision plat request for "Pilchuck View Estates." AR at 69. Two distinct areas of the proposed plat posed a series of development challenges, however. Although these two areas were initially not accessible for road or utility purposes, the property owner still wanted to retain the ability to develop them when it became practicable to do so.[1]

The hearing examiner approved the plat and, as part of its decision, addressed the issues involving the two tracts. The hearing examiner made a series of findings and conclusions, including that (1) the entire parcel must be included in the subdivision; (2) tracts A and B are not required as open space but the tracts were not proposed as building sites and information necessary to review them as building sites was not submitted or considered; and (3) tracts A and B are not approved building sites or lots and any development may only be considered as a major amendment to the Pilchuck View Estates plat.

Final plat approval was awarded in 1994. A general note on the plat approval documents

[1] These two tracts are referred to as "Tract A" and "Tract B." Olson's property is "Tract B."

described the status of Tracts A and B as follows:

> 5. Tracts A and B on this plat shall be developed in accordance with the Development Regulations for the Gig Harbor Peninsula, and applicable state law. No clearing, grading, fill or construction of any kind will be allowed within these tracts, except for the removal of diseased or dangerous trees and the placement of underground utility lines and supplemental landscaping . . . Prior to the development of tract A and B see condition 4(A) of the Office of the Hearing Examiner of Pierce County report and decision dated November 19, 1993.

AR at 94. An additional note on the final plat described Tract B as "reserved area private ownership." AR at 8.

Pilchuck View Estates was located within the rural residential environment of the applicable Gig Harbor Peninsula Comprehensive Plan and Development Regulations, which allowed a maximum density of one dwelling unit per acre. Tract A and Tract B both met these lot size and density requirements at the time the plat was approved. But the original property owner never took steps to develop Tracts A or B.

In 1995, pursuant to the requirements of the newly-enacted Growth Management Act (GMA), chapter 36.70A RCW, Pierce County adopted its comprehensive plan, which downzoned much of Fox Island to "Rural 10" (R10) to allow for only one dwelling unit per every 10 acres. Pierce County Ordinance 95-79s; Pierce County Code (PCC) 18A.35.020. Tract A and Tract B were each less than 10 acres.

Olson purchased Tract B at a 2003 tax foreclosure sale for $1,026.55. Olson did not take any immediate steps to develop the property. Then in 2005, Pierce County adopted PCC

18F.40.080, which prohibits the creation of additional lots through the plat alteration process.[2] Pierce County Ord. 2005-11s2. It was not until late 2007 that Olson began his attempt to convert Tract B into a building site. Olson first applied for a pre-filing meeting with Pierce County Planning and Land Services (PALS) staff in order to discuss the feasibility of converting Tract B to a buildable lot. At that meeting, staff indicated that further discussion was necessary to determine the appropriate process to convert Tract B to a buildable lot. After that meeting, PALS told Olson that a plat alteration was necessary and that he must meet all current regulations and requirements in order to build on the lot. And an email from a PALS planner sent to Olson's attorney stated that in order for the project to go forward, a plat alteration would be required. The email also stated that the signature of a majority of property owners within the plat would be required for the project and that the lot/tract complies with PCC 18F.40.080(D), because the "lot/tract is larger than one acre in size (R10 zone)." AR at 46.

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[2] PCC 18F.40.080 provides in pertinent part:

> Plat alterations typically apply to those elements which are common to the entire plat such as, but not limited to, trails, roads, buffers, open space, drainage easements, park and recreation sites, etc. A plat alteration provides a process to alter or modify a portion of a recorded final plat.
> A. General Requirements.
> 1. The provisions of this Section shall not apply to the following:
> a. Boundary line adjustments. . .;
> b. Vacation of a public road in a final plat. . .;
> c. An affidavit of correction pertaining to scrivener's errors;
> d. Alteration or replatting of any plat of state-granted tidelands or shorelands;
> e. Short plats or large lots;
> f. Binding site plans; or
> g. The creation of additional lots.

Then in March 2008, Olson submitted a plat alteration application, which PALS initially accepted. But two months later PALS determined that Tract B could not be converted to a building site because a plat alteration or major amendment was not appropriate and because it would exceed the current R10 zoning limitations.

Olson appealed PALS's decision and in late 2008, the matter came before the hearing examiner. The hearing examiner made a series of findings and conclusions and ultimately determined that Olson could not alter Tract B and develop it because of the expiration of the five year vesting period under former RCW 58.17.170 (1981) coupled with the necessity of major changes to the subdivision.[3] Olson appealed the hearing examiner's decision to the superior

[3] The Examiner summarized Olson's position and its ultimate determination as follows:

> Russell Olson . . . appeals the decision of a Pierce County Planning and Land Services (PALS) Administrative Official to cancel a plat alteration application that would have allowed conversion of a Tract in the Pilchuck View Estates subdivision to a buildable, single family residential lot. At the hearing the Appellant and PALS staff agreed that changing a tract to a buildable lot utilizing the plat alteration procedure is not proper. However, PALS asserts that Section 18.160.060(B) of the Pierce County Code (PCC) and RCW 58.17.170 prohibit conversion of the tract to a building lot in the present case because of the adoption of more restrictive zoning and because the Appellant did not submit a completed application until more than five years had elapsed from the effective date of final plat approval. The Appellant asserts that both the PCC and RCW include "lot" within the definition of "tract"; that the Examiner's decision approving the preliminary plat specifically recognizes the tract as a building site; that the tract met all requirements of the applicable zone at the time of creation; that the Appellant has fulfilled all conditions precedent to development; and therefore the County should issue a building permit for a single family residential dwelling. For the reasons set forth hereinafter, expiration of the five year vesting period coupled with the necessity of major changes to the previously approved subdivision not reviewed by staff prohibits conversion of the tract to a building lot. The issues raised at the hearing exceeded the

court, which affirmed the decision. Olson now appeals.

ANALYSIS

Olson contends that the hearing examiner's decision to preclude him from converting Tract B into a building lot was improper. He assigns error to a series of the hearing examiner's findings and conclusions, including its ultimate determination that no public process exists to lift the development restrictions on Tract B. Olson also raises several arguments, including (1) that striking the plat note would not create a new lot or change its use, (2) that future development of Tract B is controlled by Pierce County regulations for development of a nonconforming lot, (3) that the county's determination that Tract B could only be developed under the zoning designations that existed in 1993 was an erroneous interpretation of the law, (4) that a process exists to strike the plat note, (5) that equitable estoppel bars the County from asserting that the plat alteration cannot be processed, and (6) that the County's decision violated his constitutional rights.

I. Standard of Review

When reviewing Land Use Petition Act (LUPA) matters, this court stands in the shoes of the superior court and reviews the hearing examiner's land use decision de novo, based on the administrative record. *Girton v. City of Seattle*, 97 Wn. App. 360, 363, 983 P.2d 1135 (1999).

> issues raised in the appeal which were limited to PALS' determination that the plat alteration procedure was not proper. However, PALS and the Appellant agreed that the Examiner should determine whether the Appellant could, using any procedure, convert the tract into a buildable lot.

AR at 7 (Finding of Fact No. 4).

This court may grant relief from a land use decision here if Olson can carry his burden of establishing one of the six standards of relief. RCW 36.70C.130(1) provides the following standards for relief:

> (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
> (d) The land use decision is a clearly erroneous application of the law to the facts;
> (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
> (f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1).

Olson bears the burden of proving that the hearing examiner erred. *N. Pac. Union Conf. Ass'n of the Seventh-Day Adventists v. Clark County*, 118 Wn. App. 22, 28, 74 P.3d 140 (2003). This court reviews the hearing examiner's findings of fact for substantial evidence, that is, evidence sufficient to persuade a fair-minded person of the order's truth or correctness. *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 694, 49 P.3d 860 (2002). We review questions of law de novo. *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assocs.*, 151 Wn.2d 279, 290, 87 P.3d 1176 (2004). When we review an asserted error under LUPA, we grant "such deference as is due the construction of a law by a local jurisdiction with expertise" so long as that interpretation is not contrary to the statute's plain language. RCW 36.70C.130(1)(b);

See Port of Seattle v. Pollution Control Hearings Board, 151 Wn.2d 568, 587, 90 P.3d 659 (2004).

II. Status of Tract B

The threshold question is the status of Tract B. The hearing examiner held, and Pierce County agrees, that the "site plan approval for Pilchuck View Estates created Tract B as a native growth or greenbelt area, but not as an approved building site or building lot." AR at 16. In making this determination, the hearing examiner then concluded that because it is not a "lot," the R10 classification, which allows only one home for every ten acres, precludes development.

Olson disagrees, arguing that he "neither seeks to create a new lot nor convert or change the assigned zoning or any official land use designation for Tract B, only to strike the 'private reserve label.'" Br. of Appellant at 24. Olson further argues that this label "is not a mandated open space or native vegetation/greenbelt designation" and that this label "served only as notice to the public of a holding category until access and utilities were obtained." Br. of Appellant at 24.

While Olson makes a valid point, that the 1993 plat approval did not actually establish Tracts A and B as "greenbelts" or "open space areas" as part of the plat, he ignores other portions of the plain language in condition four. The condition explicitly states that "Tracts A and B are not approved as building sites or lots" and that "[a]ny proposed use or development of Tracts A and B may only be considered as a major amendment to the plat[.]" AR at 74. These provisions suggest a more complicated process was envisioned to develop Tract B, not a simple action to strike the plat note, as Olson suggests.

Olson also argues that Tract B is simply a nonconforming lot, which can be developed under the Pierce County Code.[4] Olson references PCC 18A.35.020, which provides in part:

> "In any zone that permits a single-family dwelling unit, a single-family dwelling unit and permitted accessory structures may be constructed or enlarged on a lot which cannot satisfy the density requirements of the zone where the lot was legally created prior to the effective date of this Title. This Section shall not waive the requirements for setbacks and height of the zone in which the lot is created."

PCC 18.A.35.020 (G)(1)(b). But as Pierce County correctly points out, this argument lacks merit, because no such use had been occurring prior to the 1995 rezoning.

Olson has not met his burden to show that the hearing examiner erroneously applied the law to the facts or any other basis for relief under RCW 36.70C.130(1). Tract B is not presently a "lot" for development purposes. His argument fails on this point.

III. Vesting under RCW 58.17.170

Olson next contends that the hearing examiner's determination that his rights to convert and develop Tract B were divested was an erroneous interpretation of the law. In 1995, Pierce County downzoned much of Fox Island to R10 to allow for only one dwelling unit per every 10 acres. PCC 18A.35.020. Nonetheless, former RCW 58.17.170[5] allowed property owners to build under prior zoning regulations for up to five years. The hearing examiner determined that the roughly one acre Tract B could no longer be developed, in part, because the five year vesting

[4] The Building Industry Association of Washington (BIAW) also makes this argument in its amicus brief.

[5] The legislature amended RCW 58.17.170 in 2010 after the parties filed their briefs in this case. Laws of 2010, ch. 79, § 2. The amendment changed the vesting period from five years to seven. This amendment is not outcome determinative.

period had lapsed.

Olson argues that Tract B was "specifically excluded from the plat approval in 1993 and so is not subject to the body of law that has grown up around plats and subdivisions . . . ." Br. of Appellant at 31. Olson also argues that even though Tract B was located within the physical boundaries of the plat, it was separate from the plat approval and thus, not subject to the five year vesting period. Olson has not demonstrated an erroneous interpretation of the law with regard to this issue. And even if Olson's argument is correct, alterations to a final plat that create additional lots are precluded under PCC 18F.40.080(A). Thus, his argument fails.

IV. Conversion of Tract B to a Building Site

Olson contends that the examiner erred when it determined that no process exists to convert Tract B into a buildable lot. Olson suggests there are several options, including (1) complying with 1993 Gig Harbor Development regulations, which contained a process for site plan amendment under former PCC 18.50.915, (2) making a minor amendment to an accepted land use application under PCC 18.80.020, and (3) modifying any permit or approval which was issued pursuant to the hearing examiner's review, under PCC 18.140.060 and PCC 18.25.020. In making these arguments, however, Olson ignores the express language of the conditions imposed in the 1993 plat approval, which provided, in part, that "Tracts A and B are not approved building sites or lots . . . Any proposed use or development of Tracts A and B may only be considered as a major amendment to the plat of Pilchuck Estates, and as a major amendment to the approved site plan, requiring notice and a public hearing."[6] AR at 74. And he also ignores PCC

[6] Olson also argues in passing that the hearing examiner erred when it misassigned the burden to

18F.40.080(A), which expressly prohibits alterations to a recorded final plat that would create additional lots. Due to the downzoning, the vesting statute, and the various provisions of the Pierce County Code, there is no process by which Tract B can be converted into a building lot or site for the use that he seeks. Thus, his argument fails.

V. Findings and Substantial Evidence

Olson also contends that substantial evidence does not support several of the hearing examiner's findings. Substantial evidence is evidence sufficient to convince an unprejudiced, rational person that a finding is true. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002). But this review is a deferential one, requiring us to view all of the evidence and reasonable inferences "in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority[.]" *Freeburg v. Seattle*, 71 Wn. App. 367, 371-72, 859 P.2d 610 (1993) (quoting *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992)).

As both parties suggest, the hearing examiner's "Report and Decision" appears to include conclusions of law under its findings section and vice versa. We are not bound by such designations and we treat findings of fact that are really conclusions of law as such. *See Robel v. Roundup Corp.*, 103 Wn. App. 75, 85, 10 P.3d 1104 (2000), *aff'd in part, rev'd in part on other grounds*, 148 Wn.2d 35, 59 P.3d 611 (2002). As a result, Olson actually only assigns error to one true finding. Finding of Fact No. 10 provides in part:

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him to demonstrate that a process did in fact exist to alter the face of the plat. The record does not support this argument.

> It appears that the plat proponent attempted to exclude portions of the plat parcel from the subdivision area and keep them under its ownership. However, the condition required the plat proponent to maintain Tracts A and B as part of the plat parcel.

AR at 10. But this finding is supported by substantial evidence stemming from the records from the 1993 decision at issue in this case, including testimony by the original owner's attorney and conclusion four of the hearing examiner's decision at that time, which provided that "Tracts A and B are not approved as building sites or lots" and that "[t]he restrictions applicable to Tracts A and B shall be set forth on the face of the plat." AR at 74. Thus, Olson's argument here fails.

VI. Equitable Estoppel

Alternatively, Olson contends that PALS is estopped from asserting that the plat alteration cannot be processed.[7] Equitable estoppel is based on the view that "a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon." *Lybbert v. Grant County*, 141 Wn.2d 29, 35, 1 P.3d 1124 (2000) (quoting *Kramarevcky v. Dep't of Social & Health Svcs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993) (internal quotations omitted)).

Equitable estoppel requires: (1) an admission, statement, or act inconsistent with the claim afterwards asserted; (2) an action by the other party on the faith of such admission, statement, or act; and (3) injury to the other party if the claimant is allowed to contradict or repudiate his earlier

[7] The hearing examiner did not reach this equitable estoppel argument due to a lack of authority to consider equitable issues. *See Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 638-40, 689 P.2d 1084 (1984) (hearing examiner has no discretion to exempt a land owner based on equitable estoppel).

admission, statement, or act. *Liebergesell v. Evans*, 93 Wn.2d 881, 888-89, 613 P.2d 1170 (1980). "Assertions of equitable estoppel against the government are not favored, and parties must demonstrate that equitable estoppel is necessary to prevent a manifest injustice and that the exercise of governmental functions will not be impaired as a result of the estoppel." *City of Seattle v. St. John*, 166 Wn.2d 941, 949, 215 P.3d 194 (2009).

Olson argues that the preliminary approval of his plat alteration request, sent to him by email, is sufficient to estop PALS from revoking its preliminary approval. In making this argument, however, Olson fails to provide any cases or other authority that supports it. Because Olson has not demonstrated a manifest injustice, and because Olson fails to adequately show all of the elements against the government have been met, including that he took some actions as the result of the PALS decision or that he suffered an injury as a result of such action, his argument fails.

VII. Constitutional Error

Olson finally contends that Pierce County's decision, "as a whole, as applied" violates his constitutional rights. He specifically argues that the county's decision not to accept his application denied him substantive due process.[8]

"Land use regulations may be challenged as unconstitutional takings, violations of substantive due process, or both." *Peste v. Mason County*, 133 Wn. App. 456, 470, 136 P.3d 140 (2006) (citing *Guimont v. Clarke*, 121 Wn.2d 586, 594, 854 P.2d 1 (1993) (*Guimont* I)).

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[8] BIAW also argues in its amicus brief that the county's actions violated Olson's constitutional rights and constituted a regulatory taking.

When a party challenges a land use regulation on both grounds, we analyze the takings claim first. *Guimont* I, 121 Wn.2d at 594. Land use regulations that do not amount to a taking must still comply with substantive due process requirements. *Guimont v. Seattle*, 77 Wn. App. 74, 86, 896 P.2d 70 (1995) (*Guimont* II).

A. Regulatory Taking

As part of its takings analysis, we inquire, as a threshold matter, whether the challenged regulations destroy any fundamental attribute of property ownership, such as the right to possess, exclude others, dispose of, and make some economically viable use of the property. *Peste*, 133 Wn. App. at 471. Case law in Washington tends to focus on only the right to make some economically viable use of the property. *Peste*, 133 Wn. App. at 471.

A party asserting a takings challenge may raise either a "facial challenge" or an "as applied" challenge. *Peste*, 133 Wn. App. at 471. "Facial challenges allege that the application of a given land use regulation to any property constitutes a taking." *Peste*, 133 Wn. App. at 471. We analyze facial challenges under the threshold inquiry of whether they destroy a fundamental attribute of property ownership. *Peste*, 133 Wn. App. at 471. "As applied" challenges assert that a land use regulation constitutes a taking as applied to a specific parcel of property. *Peste*, 133 Wn. App. at 471. Olson only makes an "as applied" challenge.

If the enactment of a land use regulation does not destroy any fundamental attributes of property ownership, we then analyze whether the challenged regulation goes beyond preventing a public harm to producing a public benefit. *Guimont* I, 121 Wn.2d at 601. Otherwise, we must

decide whether the regulation substantially advances a legitimate state interest. *Guimont* II, 77 Wn. App. at 81. If so, we consider whether the adverse economic impact on the affected landowner outweighs legitimate state interests. *Guimont* I, 121 Wn.2d at 603-04; *Guimont* II, 77 Wn. App. at 81. Specifically, we consider (1) the regulation's economic impact on the property, (2) the investment-backed expectations, and (3) the character of the government action. *Guimont* I, 121 Wn.2d at 604.

"As applied" claims are not ripe until "the initial government decision maker has arrived at a definite position, conclusively determining whether the property owner was denied 'all reasonable beneficial use of its property[.]'" *Guimont* II, 77 Wn. App. at 85 (quoting *Orion Corp. v. State*, 109 Wn.2d 621, 632, 747 P.2d 1062 (1987) (internal quotations omitted)). Only after a court concludes that a permit application for any use would be futile is an "as applied" claim ripe for review. *Orion Corp.*, 109 Wn.2d at 632. "This determination is necessary because an 'as applied' regulatory takings claim requires the court to compare the present value of the regulated property and the value of the property before imposition of the regulation to determine whether the regulation has diminished the economic uses of the land to such an extent that an unconstitutional taking has occurred." *Peste*, 133 Wn. App. at 473.

As Pierce County points out, Olson's "as applied" challenge is not yet ripe. Although the hearing examiner reached a final determination that it would not permit Olson to convert Tract B to a buildable lot, it did not determine what other uses may be permitted on the property. *See Peste*, 133 Wn. App. at 474. Additionally, Olson has not shown that it would be futile to pursue

other uses of Tract B. *See Peste*, 133 Wn. App. at 474. Thus, his "as applied" takings claim fails.

B. Substantive Due Process

In addition to his "as applied" takings challenge, Olson lastly contends that the County's decision violated his substantive due process rights. The 14th Amendment prohibits states from depriving any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1. In order to determine whether a regulation violates due process, we apply a three-prong test. *Guimont* I, 121 Wn.2d at 609. We must determine (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether the regulation is unduly oppressive on the landowner. *Guimont* I, 121 Wn.2d at 609.

Our primary interest is with the "unduly oppressive" prong of the analysis. *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330-31, 787 P.2d 907 (1990). This inquiry "lodges wide discretion in the court and implies a balancing of the public's interests against those of the regulated landowner." *Peste*, 133 Wn. App. at 475. Several factors are considered as a part of this analysis, including the seriousness of the public problem, the extent to which the owner's land contributes to it, the degree to which the regulation solves it, and the feasibility of less oppressive solutions. *Presbytery*, 114 Wn.2d at 330-31. We also consider the amount and percentage of value lost, the extent of remaining use, past, present, and future uses, the temporary or permanent nature of the regulation, the extent to which the owner should have anticipated such regulation, and the feasibility of the owner altering present or currently planned uses. *Presbytery*, 114 Wn.2d

at 330-31.

Although the record is limited because the constitutional challenge was not considered below, the factors here weigh in favor of Pierce County because Olson has not met his burden to demonstrate a substantive due process violation. Olson suggests that the public interest is served by allowing him to develop Tract B because doing so would promote infill development. But as Pierce County points out, this infill development argument lacks merit because the property at issue is within a rural area. And as the hearing examiner stated, allowing Olson to move forward with his proposed development of Tract B would have an adverse impact on comprehensive planning.[9]

With regard to the amount and percentage of value lost, Olson has not shown a significant diminution in value due to the county's decision and there is no information in the record that discusses the property's present or future value in light of the county's decision. Also, as to the

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[9] The examiner alluded to these policy considerations in its conclusions:

> Accepting [Olson's] position would adversely impact comprehensive planning under GMA, especially in rural areas. Allowing conversion of tracts in overly dense subdivisions into substandard lots would create numerous non-conforming lots and subdivisions throughout rural areas where counties do not provide services. In the present case, Olson or other owners would have the opportunity to create two substandard lots within a plat which greatly exceeds the density of the applicable R10 zone. If the definition of tract is interpreted to mean buildable lot then potential owners could apply to change tracts designated for various purposes to buildable lots. Furthermore, a plat proponent could attempt to circumvent the subdivision process by proposing ten building lots and ten open space tracts. The proponent could then make separate application to convert the tracts to building sites.

AR at 17.

impact of the county's decision on the land's prior or current use, Tract B has been an undeveloped and unused piece of land at all times. While the future use of Tract B is obviously limited, the true extent of the limitation is unclear because Olson has not sought any other uses. And finally, Olson should have anticipated problems with the development of the property at the outset, because the downzoning to R10 was in effect before he acquired Tract B at the tax foreclosure sale and because of the plat notes limiting its use.

In light of all of this, Olson has failed to demonstrate a substantive due process violation.[10] Thus, his argument fails.

VIII. Attorney Fees

Pierce County requests reasonable attorney fees under RCW 4.84.370.[11] Because Pierce

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[10] Olsen also contends that his procedural due process rights were violated. But he fails to adequately discuss this constitutional issue. *See Peste* 133 Wn. App. at 469 n. 10 (we do not address constitutional arguments that are not supported by adequate briefing); RAP 10.3(a)(5). Thus, we do not reach this argument.

[11] RCW 4.84.370 provides:

> (1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:
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> (a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, or in a decision involving a substantial development permit under chapter 90.58 RCW, the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shoreline[s] hearings board; and
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> (b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

County is the prevailing party, it is entitled to an award of reasonable attorneys fees and costs associated with Olson's appeal. We grant such an award, pursuant to RAP 18.1.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

Taylor, J.P.T.

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(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.