

Can the City of Yelm Approve New Development Without Proof of an Adequate Water Supply? The Court Says "No!"



On Friday, November 7, 2008, Thurston County Superior Court Judge Chris Wickham entered a final judgment, reversing the City of Yelm's attempt to approve five proposed new developments without adequate proof of a sufficient water supply. The five projects would have added 568 new residential units within the City of Yelm and would have worsened the City's water rights deficit, which the City of Yelm has been refusing to acknowledge. The court's final ruling ends a long-running legal battle that started in July of 2007 when local resident, JZ Knight, presented evidence at five public hearings showing that the City of Yelm's water rights are not adequate to serve these five subdivisions. The City's Hearing Examiner entered decisions in December of 2007 that would have allowed the City to defer proof of an adequate water supply until after final subdivision approvals. ***Knight had argued that this would have allowed new residential lots to be sold to unsuspecting buyers without disclosing the lack of water rights to serve those lots, and would have also posed a threat to Knight's legal water rights.*** The Yelm City Council ignored Knight's warnings and agreed with the Hearing Examiner in a decision issued in February of 2008. Knight appealed the City's decision to the Thurston County Superior Court.

After Knight's lawsuit was filed, the City of Yelm brought two separate motions in the spring and summer of 2008, which sought to prevent Knight from pursuing her lawsuit based on claims that Knight did not have a sufficient interest in the City's subdivision and water supply determinations for these five projects. Judge Wickham disagreed and ruled in favor of Knight on both challenges, holding that Knight had legal "standing" to maintain her lawsuit.

Over the City of Yelm's objections, the Washington Department of Ecology obtained permission to submit a legal brief to the court on the issue of Yelm's water rights. Ecology's brief supported Knight's arguments that the City of Yelm lacked sufficient water rights to serve the proposed developments and that in fact the City has been exceeding its legal water rights since 2001.

Following a final hearing on the merits of Knight's lawsuit held on October 1st, 2008, Judge Wickham issued a Letter Opinion on October 7 ruling that the City's approval of the five subdivisions did not meet state and local law requirements for proving the potable water supply was adequate and sufficient for the proposed developments. On November 7, Knight's attorneys presented a final judgment with proposed findings of fact and conclusions of law to document the court's ruling.

The City of Yelm objected to Knight's proposed judgment, findings, and conclusions, claiming that the final judgment documents proposed by Knight would be "unlawful," would result in "flagrant impropriety and inaccuracy," and would "far exceed the scope of the Court's actual decision."

Judge Wickham disagreed with the City's objections and entered a final judgment, findings of fact, and conclusions of law in support of the judge's decision to reverse the City of Yelm's approval of these five subdivisions based on Knight's water supply challenge.

The Judge's ruling included the following findings of fact:

- "The record contains evidence that [the City of] Yelm has been issuing building permits and other approvals since 2001 that committed Yelm to the supply of water in excess of its Department of Ecology ("Ecology") approved water rights. ... ***Yelm's usage records show that the amount of water used by the City since 2001 exceeded its legal water rights.***"

- "After the record in this case was closed, Yelm acquired and Ecology approved for municipal supply 77 afy of additional primary water rights. This brings Yelm's total primary water rights to 796.66 afy. According to Ecology, the resulting demand on Yelm's water supply following final approval of the subdivisions at issue in this case will be 910.53 afy, which does not consider other developments approved by Yelm.

At present, therefore, the City does not have 'a potable water supply adequate to serve the development.'

The judge's ruling also included the following conclusions of law:

- "[State law] prohibits approval of a proposed subdivision unless written findings are made that "[a]ppropriate provisions are made for ... potable water supplies." Therefore, all requirements must be met and confirmed in written findings before final approval pursuant to RCW 58.17.110. The law is clear that these conditions, including the provision of a potable water supply, must be met before the building permit stage. ***Thus, the hearing examiner's condition, as written and as adopted by the Yelm City Council, is an erroneous interpretation of the law.***"

- "[The City of] Yelm must make findings of "appropriate provisions" for potable water supplies by the time of final plat approval. Based upon the present record and this Court's interpretation of the law, such findings would require a showing of approved and available water rights sufficient to serve all currently approved and to-be approved subdivisions.

A finding of "reasonable expectation" of potable water based upon Yelm's historical provision of potable water would be insufficient to satisfy this requirement."

Citizens of the City of Yelm and other communities in this region should note and ask:

- ***Why did the City of Yelm spend over \$145,000 defending subdivision approvals that were clearly contrary to state law and Yelm Municipal Code requirements that demand proof of an adequate supply of water for new development?***

- ***Why would the City of Yelm attempt to prevent a court of law from reviewing accurate water rights information from the Department of Ecology?***

- ***Why has the City of Yelm been approving new development projects since 2001 without requiring any documentation of an adequate water supply?***

- ***Why has the City of Yelm been exceeding its lawful water rights since 2001?***

- ***Why has the City of Yelm not adopted a temporary moratorium on new development until it solves this water supply shortage?***

- ***When the draft environmental impact statement was issued for Thurston Highlands (a proposed development of 5000 homes and 1.5 million square feet of commercial and office development), why did the City of Yelm refuse to require any evaluation of the water supply that would be needed to serve this gigantic development?***

- ***Are City of Yelm staff and elected officials protecting the interests of local developers more than they are protecting the rights of its residents and taxpayers?***

For a complete copy of Judge Wickham's decision reversing the City of Yelm's approval of these five subdivisions and for a copy of the Department of Ecology's court brief regarding the City of Yelm's miscalculation of its water rights, go to: [<http://www.jzknight.com/>]