

Land use victory for community, trees, bald eagles, and Betty DaGradi on San Juan Island

Elizabeth Dagradi's legal battle is not completely out of the woods yet, but most likely the trees she and her late husband planted 30 years ago won't be chopped down. San Juan County Superior Court Judge Alan Hancock was ready to issue a summary judgment in Degradi's favor June 2, 2003.

Dagradi's trees block the view from a lot David and Julianne Rossiter purchased in 1996 in the Channel View plat on Turn Point on San Juan Island. The Rossiter's attorney argued the 1987 amendments to the codes, covenants and restrictions (CC&Rs) prohibited planting or maintaining trees in such a way as to block the view. The original 1967 CC&Rs were amended in 1980 and 1987.

Attorney John Karpinski, an attorney for Dagradi, argued:

The plaintiffs who do not live in the San Juans and have not applied for any permit to build here, are apparently real estate speculators trying to get the best deal on their investment. That they are legally entitled to do. However, they are not legally entitled to force an elderly lady to spend her hard earned retirement money cutting down trees she planted with her now deceased husband, because the plaintiffs want to make a greater profit on their land speculation by getting a better view of the water.

Hancock ruled the amendments to the CC&Rs were not enforceable because they did not meet the Statute of Frauds requirement. Interest in lands must be signed and acknowledged by the property owners. The courts in Washington haven't said clearly yes or no whether the Statute of Frauds apply to CCRs. If Hancock's decision is appealed and upheld, his ruling would set a precedent according to Dagradi's attorney Christopher Hodgkin.

The 1980 and 1987 amendments were not signed and notarized by property owners. The CC&Rs were recorded at the auditor's office with documentation from the Channel Heights Homeowner Association Board of Directors. Hancock noted the board's minutes indicate Attorney John Linde recommended the board obtain the signatures of the property owners, but "unfortunately for the plaintiffs it wasn't done."

During the Monday hearing, Hancock announced he would be dismissing the case based on the unenforceability of the amendments. He noted the 1967 CCRs were valid. The Rossiters' attorney Frank Siderius then said, "They (Rossiters) have cause of action under those (1967) covenants."

Hancock agreed to hear that argument at another time. Asked about his case after the hearing, Siderius said the 1967 CCRs have a height restriction for structures. According to him there is case law in Washington which considers trees to be structures. The lots in the back were exempt from the height restrictions apparently because they would not be blocking views.

In a phone interview Monday evening, Hodgkin said, "He (Siderius) is not going to win that. He is grabbing for straws." Hodgkin said Dagradi was ecstatic over Hancock's apparent dismissal of the case. "This was a win for the community and the environment," he said.

The Friends of the San Juans supported Dagradi's argument. After the hearing, Friends of the San Juans Director Stephanie Buffum said, "It was a good day for trees." posted on www.sanjuanislander.com

Superior Court Judge Alan Hancock ruled Monday 6/4/03 that David Rossiter and his wife, Julianne, cannot demand that their neighbor, Betty DaGradi, cut down 65 trees on her property to "restore" the view from their undeveloped lot. Link to full story on www.sanjuanjournal.com