

Seller Beware

By Ralph Baker

We often hear “buyer beware” in our society, but I was surprised recently to find out about a situation where “seller beware” is appropriate.

I recently met with the good people of the Cities of Spokane and Spokane Valley Planning Services. They wanted to discuss with me what they call “non-legal lots”. It seems there has been an increase in the number of citizens coming to them to get a building permit on properties too small for the zoning requirements. The citizens are sometimes upset that the city won’t allow a permit. Often the citizen just bought the property with the intent to build. Sometimes, the citizen has owned the property for years but only recently decided to build on it. The purpose of the meeting was to see if we in the Assessor’s office could stop doing the segregations (subdividing) of the new “non-legal lots” so that citizens don’t get to the building permit office and find out they can’t get a permit because the lot is too small. At the very least, they asked that we advise owners that the new tax parcel won’t meet size/zoning requirements to build. Their request seemed logical and reasonable.

The planning folks referenced RCW 58-17 Boundaries and Plats. More specifically, they pointed out RCW 58-17.210, Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations – Exceptions – Damages – Rescission by purchaser. It states:

No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby.

After the meeting, during my research on the subject, I found that RCW 64 also has something to offer on the subject. One of the disclosures required by our legislature when a residential property is being sold is codified in RCW 64.06.015, Unimproved residential real property-Seller’s duty-Format of disclosure statement-Minimum Information. It requires the seller to answer the question: Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

During the meeting, I explained that we do indeed suggest that people coming to us wanting to segregate their property first check with the appropriate planning department

to make sure the new planned properties meet zoning requirements. I also pointed out that many times, we find out that a property has been subdivided and new deeds have been recorded in the Auditor's office without anyone first consulting the Assessor. I pointed out that property owners are not required to seek my approval to sell or transfer their property. We wish they would consult with us first, but it's not required. We receive notice of property transfers when real estate excise tax affidavits reach our office. Since our mission is to apply property taxes to the appropriate owners, we must segregate the property according to the new deed so that the appropriate owner pays the appropriate property taxes. We are required to do that. Our mission is fair property taxes. We want to help people avoid problems with building requirements if we can, but we often don't get the opportunity.

Who should you consult prior to dividing your property for eventual sale?

If the property is within city limits, contact the city planning department. If the property is in the county, contact the county planning department. The assessor is not involved with zoning decisions or changes; planning departments do that.

I was not aware, as I think many people are not aware, that the seller (person, firm, corporation or agent) may have to pay the expenses of rectifying an errant sale as stated in RCW 58-17.210. That sounds like it could be very expensive and in this instance, Seller Beware is appropriate.

And then I read RCW 58-17.300 Violations –Penalties. Oh my.