

**Comments of Bob Benze
on behalf of the Kitsap Alliance of Property Owners
to the Kitsap County Shoreline Master Program Task Force
on June 17, 2010**

This evening we are looking at Community Visioning and the Overarching Goals of the SMP.

In our deliberation, I would ask you to consider a fundamental question: Who owns the shorelines. Is it the state? Is it the private property owner? Or is it some combination of the two?

We were given a homework assignment to read sections 171, 176, 181, 186 and 221 of WAC 173-26 in preparation for the meeting. These sections cover the Act's purpose, goals, governing principles, and provide the guidelines for allowable shoreline modifications. A cursory reading might lead you to believe that the state has ownership rights – to the point of calling shoreline property "Shorelines of the state".

But buried in Section 186 is a sentence that should not be overlooked. It says that "Local governments should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights."

Thus, an equally important homework assignment might have been to read the Washington State Constitution, Article I, Declaration of Rights. In it you will find:

Section 1: All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to *protect and maintain individual rights*.

Section 3: No person shall be deprived of life, liberty, or *property*, without due process of law.

Section 16: ...No *private property* shall be taken or damaged for public or private use without just compensation having been first made... Whenever an attempt is made to take *private property* for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public...

The framers of both our federal Bill of Rights and our state constitution's Declaration of Rights were singularly concerned with limiting the power of the government to control and coerce its populace. The rights they designed were intended to guarantee people freedom from abuse by an overzealous government. Nothing more!

The right to own property and to use it and enjoy it without government interference was considered fundamental by our founders – who placed its importance right up there with

the right to life and liberty. A serious student of social studies and economics knows that the unencumbered ownership of private property is one of the historic cornerstones of free and prosperous societies – and where governments have assumed ownership, either outright or indirectly through land use and environmental regulations, the results have invariably proven inimical to the interests and welfare of its citizens.

Yet today we find our government assuming they have the right to control private property. The premise appears to be that the rights of the collective society outweigh the rights of the individual – a position diametrically opposed to that of our constitution.

This results in things like the Community Visioning process, where the community is encouraged to decide how private property owners will be able to use and develop their property.

Some of you may think that this is fine and that people shouldn't be free to do any old thing they want to with their property. I would agree, within limits – people shouldn't be allowed to do things that are a nuisance to their neighbors or things that would pollute the environment. But I would suggest that the existing building codes, zoning ordinances, environmental laws, and health regulations do virtually everything that is needed. (I would also suggest that shoreline private property owners are highly motivated to take good care of their property and the surrounding environment.)

And on top of that, for shorelines, we have the Shorelines Management Act and WAC 173-26, which add additional controls. The fly in the ointment is that these laws leave significant discretion to local governments – who are afforded a wide range of latitude in deciding how stringent and precautionary the controls will be. Environmental activist organizations and the tribes have a history of putting pressure on counties to implement overly-protective regulations – in most cases finding willing partners and successfully achieving their objectives; and the Department of Ecology is unlikely to tell the county they have gone too far in their zeal to protect shorelines.

So the need to provide balance rests squarely on the shoulders of citizens like you and me. I believe we should advise the county to resist the temptation to push regulatory controls and restrictions to the limits of the SMA and the WAC. Rather, I would argue, that the plan the county is putting together should be minimalistic -- purposely designed and reviewed to ensure that it: 1) meets the minimum WAC requirements, 2) that its environmental protection plan is scientifically sound and defensible, and 3) that it does not impose any unnecessary regulatory hardship on shoreline property owners.

The bottom line is that a community vision for the shoreline might be an interesting exercise, but the county has a legal obligation in this SMP update to ensure that neither this vision, nor any other part of the plan, is allowed to infringe on the constitutional private property rights of the shoreline's property owners.

Bob Benze