



CLARK COUNTY

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Supreme Court snubs 'road to nowhere' case

■ Failure to review the Court of Appeals decision that involved Clark County's road code could open the county to a developer's lawsuit

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VANCOUVER — The Washington Supreme Court has refused to review a Court of Appeals decision that discarded a key part of Clark County's road code.

The ruling this month in what has been called the "road to nowhere" case could open the county to a lawsuit by developer Lance Burton for more than \$300,000 in damages.

And although the county has since modified the ordinance, Burton's lawyer, Mark A. Erikson of Vancouver, thinks the revised ordinance also is unconstitutional.

Erikson said last week that the statute of limitations for "takings" claims is 10 years, and the court might face an avalanche of similar damage suits.

The appeals court ruling in July 1998 involved a complex case that focused on whether the county legally could compel Burton to build a public road through his property without compensation as the price for gaining approval to build a three-house development.

Burton's fight with the county began in 1994, when he proposed splitting his parcel into three lots. Each could be reached by driveways into a cul-de-sac at Northeast 65th Street, which abutted his property line.

County planners said that someday the 65th Street dead-end would tie into Northeast 20th Avenue. That also dead-ends at the undeveloped property next to Burton's.

However, county planners never indicated when, if ever, they expected the two roads to be joined.

Among the county's claims to

the appellate court was that Burton's development would create more traffic — a problem in the county's view — and that extending 65th would help resolve that problem.

But the court noted that there was no indication when the 65th Street extension through Burton's property would link with 20th Avenue.

Before the litigation, the case wound through various proceedings before hearings officers and the Clark County commissioners.

Whenever one side lost, it would appeal.

The root of the controversy involved knotty legal concepts about what the county should be required to prove before it could compel a developer to build a road.

The case went to Clark County Superior Court and then to the Court of Appeals, where the county lost, then to the Supreme Court, where the county lost again this month.

In its unanimous decision, the appeals court ruled in favor of Burton. It rejected all of the county's arguments supporting its action of taking a portion of a landowner's property without compensation.

At the time, Erikson said, "This is extortion. The United States Supreme Court in its takings decisions uses the word 'extortion' frequently."

Erikson said the appeals court decision said it was unconstitutional for the county to force developers to pay for dead-end roads through their property as the price of development.

And although the county since has amended the ordinance, Erikson said Friday he thinks the fix "fails to pass constitutional muster."

As a result, he said, any developer who has been forced by the county to build a road to nowhere might be able to sue to recover costs and attorney fees.