

Wetlands/Inverse Condemnation: Washington Appellate Court Addresses Application of Subsequent Purchaser Doctrine



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The Court of Appeals of Washington (“Court of Appeals”) addressed in an October 14th Opinion an inverse condemnation issue. *See Mark D. Stephens & Lynn Stephens, Appellants, v. Town of Steilacoom, a municipal corporation, Respondent.*, No. 60051-0-II, 2025 WL 2912243 (Wash. Ct. App. Oct. 14, 2025).

The Court considered the application of the subsequent purchaser doctrine.

A ditch runs along the southern border of the property at issue (“Stephens’ property”). The Town of Steilacoom (“Town”) between 2010-2014 approved the preparation/installation of a stormwater plan, and a bioswale and a drainage pipe along the southern border of the Stephens’ property.

Mark and Lynn Stephens (“Stephens”) inspected the property before the purchase and observed no water in the ditch. They only noted that the property was “covered [with] sticker bushes, trees, and other thick vegetation.”

The previous owners of the Stephens’ property provided them with a report indicating that wetland areas were identified on a portion of the property. The report’s determination was made in accordance with the Washington State Wetlands Identification and Delineation Manual for Western Washington.

The Stephens purchased the property in 2018. Shortly thereafter they cleared all vegetation, excluding the bioswale, and trucked in fill dirt in preparation for building on the property. After receiving a stop work order from the Town, the Stephens commissioned their own study of the property. It concluded that the wetland characteristics exhibited by the Stephens’ property were “attributable to construction in the surrounding area that directed runoff water onto the Stephens’ property.” The United States Army Corps of Engineers also sent a cease-and-desist letter to the Stephens. It cited their discharge of fill dirt into the wetland.

The Stephens brought suit against the Town in response to the stop work order, pursuing six causes of action:

1. quiet title;
2. injunctive relief;
3. trespass;

4. nuisance;
5. inverse condemnation; and,
6. substantive due process violation under 42 U.S.C. § 1983.

The Town removed the action to the United States District Court for the Western District of Washington. Both parties moved for summary judgment.

The District Court granted the Town's motion in part. It dismissed the Stephens' quiet title and substantive due process claims. The case was remanded back to the Superior Court for Pierce County, Washington. Both parties again moved for summary judgment.

The Town contended that all claims brought by the Stephens, even if true, were barred by the subsequent purchaser doctrine. It argued the Stephens were ultimately on notice that a wetland was located on the property due to the report provided by the previous owner. In response, the Stephens, while acknowledging that they had received the report from the previous owner, noted that no public records in the County's office existed purporting the property to be a regulated wetland.

The Superior Court of Pierce County granted the Town's motion for summary judgment. It dismissed the Stephens' inverse condemnation claim and related causes of action. The Stephens' appealed to the Court of Appeals. It affirmed the district court's ruling.

The Court of Appeals first held that Stephens lacked standing to bring an inverse condemnation claim. The subsequent purchaser doctrine prohibits a subsequent purchaser "from asserting the legal rights of the owner at the time of the alleged taking." *Maslonka v. Pub. Util. Dist. No. 1 of Pend Orielle County*, 1 Wash. 3d 815, 827, 533 P. 3d 400, 406 (2023). The Stephens as subsequent purchasers to the owner in possession when the city implemented the stormwater plan, were barred from bringing a claim. The Court of Appeals noted that the subsequent purchaser doctrine aims to prevent a later buyer who paid a reduced price for property because of an existing defect from also recovering damages for that same defect.

The Stephens, in an attempt to circumvent the subsequent purchaser doctrine, contended that they lacked notice of the wetland's existence at the time they purchased the property. The Court of Appeals, citing *Maslonka*, stated that notice is immaterial to the subsequent purchaser doctrine.

The Stephens also argued that the wetland on the property was a latent condition. The therefore contended that there should be an exception to the subsequent purchaser doctrine. The Court of Appeals declined to recognize such an exception here, again relying on the *Maslonka* decision.

The Court of Appeals held in addressing the remaining tort claims that they were subsumed from the Stephens' inverse condemnation claim. Again, relying on *Maslonka*, the Court of Appeals stated that the subsummation of related tort claims is not dependent on the success of the inverse condemnation claim. "Rather, related tort claims are subsumed when (1) the defendant is an entity to which eminent domain principles apply, and (2) the plaintiffs seek damages for loss of property rights."

The Court of Appeals affirmed the dismissal of the Stephens' inverse condemnation and related tort claims. It held that, as subsequent purchasers, they lacked standing under the subsequent purchaser doctrine. It emphasized that notice of the condition and alleged latent defects were immaterial, and that related tort claims were subsumed regardless of the success of the inverse condemnation claim.

A copy of the Opinion can be downloaded [here](#).