



Jury favors Whitefish couple in slope lawsuit

By LYNNETTE HINTZE *The Daily Inter Lake*

A Flathead District Court jury has ruled in favor of a Whitefish couple in the remaining issues of a lawsuit over construction on slopes greater than 30 percent.

William and Theodora Walton sued the city of Whitefish last year after Whitefish Planning and Building Director Bob Horne, acting as zoning administrator, denied the couple's plan to build a 4,900-square-foot home on a 45-degree slope in the Houston Point area overlooking Whitefish Lake. Horne maintained the Waltons could build on a flatter portion of their property and thereby didn't qualify for a "reasonable use" exemption from zoning regulations.

In May, District Court Judge Ted Lympus ruled in favor of the city, denying seven procedural claims by the Waltons that Whitefish's interim "urgency" ordinance for drainage-sensitive areas was arbitrary and too restrictive.

What remained was the question of whether or not the Waltons' right to equal protection of the law had been violated. The jury unanimously sided with the Waltons on that issue. That decision led to a subsequent determination that the Waltons are entitled to damages, and that they should be awarded \$300,000 in damages.

"A 12-0 verdict on the first question of equal protection is an overwhelming message that Horne and the city acted arbitrarily and unlawfully in the way they treated the Waltons," said Whitefish attorney Sean Frampton, who represents the Waltons.

In making his case on the equal protection issue, Frampton pointed out to the jury that Horne had granted the developer of Grouse Mountain Estates reasonable-use exemptions to build on 11 lots with slopes up to 40 percent. One of those lots, on a cliff, has a slope of nearly 80 percent, Frampton said.

The Waltons' property was the only reasonable-use exemption request that has been denied by the city, he added.

"If you have people in similar situations, you have to treat them the same," he said. "The trial was really about how the city of Whitefish treats people. The verdict speaks volumes."

Frampton said jurors told him afterwards they spent about 15 minutes deliberating over the equal-protection issue, and spent more than five hours deciding on the issue of damages.

The plaintiffs opted not to proceed with a claim they should be compensated for a “taking” of the property because the urgency ordinance in question is a temporary law, Frampton said.

Whitefish City Attorney John Phelps and City Manager Gary Marks are both on vacation and were unavailable to talk about the jury verdict and what the city’s response will be.

Features editor Lynnette Hintze may be reached at 758-4421 or by e-mail at lhintze@dailyinterlake.com