



## Verdict in 30 percent slope case

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Whitefish Pilot

Chalk up another win for Whitefish attorney Sean Frampton and a setback for the city's critical areas ordinance.

Frampton, who won a \$271,621 decision for K&R Partnership in 2005, won another jury trial against the city last week.

In a unanimous decision June 28, eight women and five men in Flathead County District Court agreed that Whitefish had violated William and Theodora Walton's equal protection rights when the city denied them the right to build a home on a steep portion of their property overlooking Whitefish Lake.

The jury also awarded the Waltons \$300,000 in damages. Frampton said the city could also be ordered to pay the Waltons' legal costs, which could run about \$100,000.

Whitefish city manager Gary Marks and city attorney John Phelps were not available for comment.

The case began April 25, 2006, when architect Nick Fullerton presented a site plan to the city planning office for the Waltons' three lots on Houston Drive.

Bob Horne, acting as the zoning administrator at the time, denied their request, noting that the site was "in the neighborhood of 45 percent," clearly in violation of the urgency measure's prohibition of building on slopes exceeding 30 percent.



Travis Adams, 15, of Whitefish flies off a jump he built with his brother Alex and friend Ryan Porter on opening day at Logan Pass, July 1. Adams said he started skiing when he was two years old. The final three miles of Going-to-the-Sun Road on the west side of the pass were opened up at 10:30 a.m. Sunday, and the parking lot at the top quickly filled with hikers, bikers, skiers and snowboarders taking advantage of a beautiful day in Glacier National Park. For more Logan Pass pictures, visit our photo gallery by clicking the photo reprints link. David Erickson / Whitefish Pilot

That prohibition is part of a wider body of measures contained in Ordinance 06-08, the urgency ordinance aimed at protecting the city's critical areas by providing setbacks for streams, lakes and wetlands. An ad hoc committee is currently holding public hearings for a permanent critical areas ordinance.

Because the Waltons were denied a building permit under a temporary and not a permanent ordinance, Frampton dropped one of his 10 claims against the city.

Using a report from William Frazier, of Frazier Appraisal Services, in Whitefish, the Waltons had claimed their property decreased in value from \$5.3 million to \$650,000 because they were not allowed to build on a steep slope. The Waltons dropped their takings claim against the city for \$4.65 million.

Earlier this year, Flathead County District Court Judge Ted Lympus ruled against seven of Frampton's claims against the city. Lympus ruled that the temporary ordinance had not violated the U.S. and Montana constitution on procedural grounds — a shot in the arm for the critical areas ordinance in general.

That left two of Frampton's initial 10 claims — did the city violate the Waltons' rights to equal protection under the law, and if so, were the Waltons entitled to damages? In other words, if the ordinance was constitutional, was it used fairly?

Critics of the critical areas ordinance have said that while the ordinance provides for reasonable-use exemptions, it doesn't provide good criteria to judge when those exemptions should be made. The decision was left to the zoning administrator — in the Waltons' case, former city planning director Bob Horne.

Frampton said he became aware of crucial evidence favoring the Waltons three weeks before the two-day trial began. Horne had granted reasonable-use exemptions to 11 properties in Grouse Mountain Estates when developer Greg Carter tried to clarify where potential clients could build, Frampton said.

Like the Waltons' property on Houston Point, the Grouse Mountain sites had sufficient flat land for building homes, but the reasonable-use exemptions granted by Horne allowed construction on slopes exceeding 30 percent.

Carter missed his flight out of Glacier Park International Airport to San Francisco on June 28 in order to provide testimony as a rebuttal witness against Horne and the city. The Waltons offered to give him a ride to San Francisco on their corporate jet.

Frampton said there were two other cases of reasonable-use exemptions granted by the city that appeared to violate the Waltons' right to equal protection under the law.

"As far as I know, this is the first time Whitefish policy and its implementation has been presented to a jury," Frampton said.

He said when the jury rendered its 12-0 verdict on the question of equal protection, "they were clearly saying Bob Horne and the city acted arbitrarily and capriciously toward the Waltons."

Frampton said the jury deliberated about 5 1/2 hours, but they only spent 15 minutes deciding if the city had

violated the Waltons' right to equal protection. The rest of the time was spent discussing damages. The \$300,000 verdict was based on the estimated increase in building costs caused by delaying when the Waltons could build their home.

"The 12-0 verdict was very telling," Frampton said. "After the verdict was delivered, one woman raised her hand and asked if the Waltons could go ahead and build their home."

Frampton said he advised the city's attorneys, Jim Ramlow and Dan Hileman, numerous times to settle the case.

"The Waltons' property on Whitefish Lake was the poster child for the urgency ordinance," Frampton said, saying once the city took a position, they weren't willing to back down. But "they didn't have a legally defensible position," he said.

Frampton said he will file a post-trial motion to order the city to approve the Waltons' building permit. The city could appeal the jury's decision.