



Supreme Court denies orchardists in Rocky Reach trail lawsuit

by Jefferson Robbins

June 7, 2013, 1:12 p.m.

OLYMPIA — A ruling Thursday from the state Supreme Court appears to clear the way for a long-planned extension of the Apple Capital Recreation Loop Trail north to Lincoln Rock State Park.

The nine justices unanimously turned down an appeal from Jack Feil, the late John Tontz and a coalition of orchardists along the proposed 5.1-mile Rocky Reach Trail extension, who claimed permits to build the trail were illegally issued by Douglas County.

“We’re as shocked as the orchardists are,” said Seattle lawyer James Klauser, who with partner Robert R. Rowley argued the Feil case.

Contacted Thursday afternoon, Jack Feil said he would wait to speak with his lawyers before commenting on the decision. He said future court action might depend on how much orchard land is taken for the trail’s width.

“If they only take 12, 24 feet, it’s no big deal,” Feil said. “But if they intend to take all the land, then that is a big deal.”

The legal battle over the trail dates from 2004, when growers along the route argued that the project was illegal under the state’s Growth Management Act. The argument was rejected by both Douglas County Superior Court and the state Court of Appeals en route to the Supreme Court, which heard oral arguments March 8.

Feil, Tontz and other orchardists lease agricultural land on a right of way owned by the state since the 1950s, when it was condemned for a highway that was never built. The corridor is 10 feet wide, with a 100-foot buffer zone on either side, stretching from the Odabashian Bridge to Lincoln Rock.

Over the decades the corridor and buffer became home to acres of mature orchard. Plans and permitting began in 1997 for an extension from the existing 11-mile Loop Trail.

Douglas County granted a recreational overlay permit to the Washington State Parks and Recreation Commission, allowing the planned bike-and-pedestrian trail to travel through a longstanding agriculturally zoned area. The orchardists sued, saying the overlay permit violated the Growth Management Act.

Prior courts ruled against the petitioners, in part because their GMA suit came too late to meet the act's legal window for appeal. The Supreme Court agreed.

"... The land use planning schemes at issue here present seemingly competing goals to preserve agricultural lands and develop recreational opportunities," Justice Gerry Alexander wrote for the majority. "The orchardists did challenge the development regulations at issue, but their challenge came too late."

Klauser said he hadn't had time to fully review the ruling Thursday morning to say whether a federal appeal is possible. "All I can say is we're disappointed."

John Tontz died in 2010, while the Supreme Court appeal was still pending.

Jefferson Robbins: 664-7123

robbins@wenatcheeworld.com