



CP16#0482

Clark County Board of Commissioners
P.O. Box 5000
Vancouver, Washington 988666

November 22, 2014

Re: Judge Nichols Decision

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ALL COMMISSIONERS

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Dear Commissioners,

Board of Commissioners

The legislative intent in establishing the Growth Management Act was to encourage counties and cities to plan for future growth while balancing thirteen conflicting goals. It clearly was written to encourage bottoms up planning and not to impose statewide standards from Olympia. The Hearings Boards which were established as part of the GMA have, to a significant extent, ignored the bottoms up mandate of the Act. They have attempted to, in varying degrees, impose their own agendas on the local governments under their jurisdictions. The Western Washington Growth Management Hearings Board has been the worst offender. Clark County has a moral and legal obligation to propose and adopt a Comprehensive Plan that reflects that bottoms up approach intended by the GMA, and Clark County Citizens United, Inc. asks them to do that.

In his written decision, Case No. 96-2-00080-2, in favor of CCCU, The Honorable Edwin J. Poyfair, of Superior Court stated, *"Through no fault of the County's, the Board had an end in sight and disregarded the GMA's mandate in applying an unauthorized formula to the review of the Clark County Comprehensive Plan's land use densities. The Board's interpretation was erroneous, and the County's decision to follow the Board's lead was unfortunate. The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the terms of the GMA."* Judge Poyfair stated that it appeared that the Hearings Board members considered themselves above the law.

In subsequent decisions, the WWGMHB has attempted to impose a requirement that the county force recombination of the thousands of non-conforming, but legal lots, created by the extreme downzoning of the current plan. As a result of that order, the county established a moratorium on construction on hundreds of contiguous non-conforming lots while they appealed this Hearings Board Remand Order.

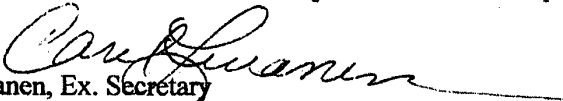
On December 31, 1997, the Honorable John F. Nichols, Superior Court, entered a judgment, Case No. 96-2-05498-8, in favor of the county and CCCU, when he set aside the Hearings Board decision. He said, *"The board is directed not to substitute its own perceptions or those of another region, in contradiction to those adopted by the lawful representatives of the County"* During oral arguments associated with adopting this decision, environmental attorneys asked the judge to maintain the moratorium on construction on contiguous non-conforming lots, saying that the Hearings Board could reinstate their remand order. Judge Nichols agreed that the Board could do that, but that they would be wrong and therefore he would not rule that the moratorium should be maintained. On February 5, 1998, the Hearings Board reinstated their order of invalidity, which the County appealed. In their new order, the WWGMHB made this following

Page 2 of 2

statement. *"The first paragraph of the County's letter requested that we take official notice of the appeal trial briefs concerning "the deference issue breached by Judge Nichols only in dicta. We decline that invitation".* As Judge Poyfair stated, this Board appears to consider itself above the law and not subject to legislative intent or Superior Court rulings. The arrogant and unlawful behavior of the Western Board and the tendency for the other boards to attempt to impose their own interpretation of the GMA over local elected officials should support abolishment of these boards made up of political appointees who are not accountable to the public.

One can clearly see, non-conforming, contiguous but legal lots are at the mercy of government officials who have little regard for the vested rights of such lots. In addition to this, Clark County imposed an ordinance that required only those lots to be sprinkled along with other draconian measures to assure they would never be developed. The Board of Commissioners have a moral and legal responsibility to protect the property rights of these landowners from arbitrary regulation that singles their land out for preservation. Clark County Citizens United, Inc., representing many thousands of landowners, ask the commissioners to abolish the non-conforming status of these lots and make them conforming to their zones, using predominant parcel size in each section. Using 2.5, and 5 acres in the rural zones; 2.5, 5, and 10 in the agriculture zones; and 5, 10 and 20 acres in the forest zones a fair, reasonable and balanced approach will be created, that reflects the development and parcelization that is legally and currently in place today.

We ask legislators to retire the hearings boards or severely reduce their ability to force their interpretation of the law on local jurisdictions and taxpayers of Washington state

Sincerely, 
Carol Levanen, Ex. Secretary
Clark County Citizens United, Inc.
P.O. Box 2188

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