

CC'd - Bacci Silliman
Orjato
O'Donnell

Clark County Board of Councilors
P O Box 5000
Vancouver, Washington 98666



January 26, 2015

CP16#0506

Dear Councilors,

May 8, 2006, an **Order to Show Cause Re: Compliance** was issued by the Western Washington Growth Management Hearing Board. It states a *"motion for parties in this case to show cause why compliance should not be found on the remaining issues in this case"* and *"Compliance for several issues in this case has not been found ...this case has been open for a number of years without action by any party"*. This regards the Poyfair order and Court of Appeals opinion. The reason CCCU/Achen did not act was because too much trust was given Clark County (CCCU, Inc now submits a binder called Table of Contents - Case 95-2-0010 - 95-2-0067 - 95-2-0067c, that describes the various court actions concerning these cases. Having an understanding of the issues, is important

After going through the WWGMHB and court actions, CCCU, Inc waited for Clark County to comply with the various court orders and opinions. From April 4, 1997 to 2004, nothing happened. The WWBMHB was to direct the county to comply and that didn't happen either. When Clark County did a Comprehensive Plan update in 2004 to 2007, CCCU, Inc was ordered not to get involved, as testimony would not be considered for rural and resource areas. The reason given was the county was only looking at urban lands and would do rural lands later. Regardless, CCCU, Inc submitted testimony over many concerns with the EIS, but it was disregarded. Year after year, commissioners promised they were working on changes to the Plan to comply with the court rulings, and as soon as the urban areas were complete, they would have a plan. CCCU made a grave mistake by trusting their word and should have went back into the courts to force compliance, instead of continuing to wait for compliance that never happened and promises that never came true.

It's clear Clark County was not compliant with the court rulings when the Hearing Board states there were *"remaining issues"* *"several issues"* and *"the unchallenged portions have not been corrected"*. But, the Hearing Board made no effort to assure compliance either, when they said, *"this case has been open for a number of years without action"*. Even the compliance notice did not give enough time to respond with legal documents. It was written on May 8, 2006 and gave May 22, 2006 as the deadline. Given the mailing time and the week-end, there was not sufficient time to act or respond.

Clark County Citizens United, Inc has now come to collect what is due, in the 2016 Comprehensive Plan update. Promises must be kept and court orders followed. CCCU, Inc deserves and expects everything that is in the compliance order, and nothing less.

Sincerely,

Carol Levanen, Ex Secretary
Clark County Citizens United, Inc
P O Box 2188, Battle Ground, Washington 98604



Clark County Citizens United

"Promoting Rural Interests"

P.O. Box 2188, Battle Ground, WA 98604

TABLE OF CONTENTS

Western Washington Growth Management Hearing Board
Case - 95-2-0010 - 95-2-0067 - 95-2-0067c

Our vision:

- *Clark County will be a place where rural values are reflected in land-use policies, and where local regulations are acceptable to rural landowners*

Our mission:

- *To serve the interests of present and future rural landowners*
- *To protect rural people from unreasonable regulation*
- *To preserve the affordability of rural living*

Our principles:

- *Rural living should be an option for those who want it*
- *Property ownership should be encouraged*
- *Landowners are the best stewards of the land*
- *Private property rights must be respected*
- *Rural residents require lower levels of service and fewer regulations*

TABLE OF CONTENTS

**Western Washington Growth Management Hearing Board
Case - 95-2-0010 - 95-2-0067 - 95-2-0067c**

- 1. Clark County Citizens United, Inc. Brief- 95-2-0010**
- 2. WWGMHB changes name and case number**
- 3. WWGMHB Declaration of Service - 95-2-0067c**
- 4. CCCU, Inc. Supplement/Clarify Record 95-2-0010**
- 5. WWGMHB - Final Decision and Order- 95-2-0067**
- 6. CCCU, Inc.- Achen -Superior Court Petition**
- 7. Superior Court Law and Order - 96-2-00080-2**
- 8. CCCU, Inc.-Achen - Reconsideration 96-200080-2**
- 9. Superior Court Judgment - 96-2-05498-8**
- 10. Court of Appeals-II Published Opinion 22164-1-II**
- 11. WWGMHB Order to Show Cause/Compliance**

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

Original name on Case
CLARK COUNTY CITIZENS UNITED,)
INC ,)
)
Petitioner,)
)
v)
)
CLARK COUNTY,)
)
Respondent)

original Case #

NO 95-2-0010

PETITIONER'S BRIEF

*changed to # 95-2-0067c
when cases were
combined*

COPY

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101 2338
(206) 223 7000

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3 I INTRODUCTION	1
4	
5 II BACKGROUND	4
6 A County-Wide Planning Policies and Framework Plan	4
7 B The Rural and Natural Resource Planning Process	6
8 C SEPA Process	8
9 1 Community Framework Plan EIS	8
10 2 Growth Management Plan EIS	8
11 D Final Recommendations and Plan Adoption	11
12	
13 III ARGUMENT	13
14 A Clark County Violated the Growth Management Act by	
15 Improperly Designating Resource Lands	13
16 1 The GMA Provides a Framework for Resource	
17 Land Designation	15
18 2 The GMA Required the County to Base Its	
19 Resource Land Designations on a Deliberated,	
20 Well-Reasoned Process	17
21 3 The County's Designation of "Agri-Forest"	
22 Resource Lands Is Arbitrary and Capricious	18
23 a "Agri-Forest" Lands, Whatever They May	
24 Be, Are Not Resource Lands Under the	
25 GMA	18
26	

		<u>Page</u>
1	b The Designation of "Agri-Forest"	
2	Resource Lands Is Not Supported by the	
3	Evidence in the Record	23
4	4 The Designation of Agricultural Resource	
5	Lands Is Not Supported by the Evidence in the	
6	Record	25
7	5 Clark County Failed to Consider "Long-Term	
8	Commercial Significance," a Key Component of	
9	Resource Land Designation	26
10	B The County's Development Regulations for Rural and	
11	Resource Lands Violate the GMA	30
12	1 Residential Densities in Rural and Resource	
13	Areas Violate the GMA	30
14	2 The County's Development Regulations for	
15	Nonconforming Parcels Are Arbitrary,	
16	Capricious, and Unsupportable	36
17	C The County Failed to Comply With the State	
18	Environmental Policy Act, RCW Ch 43 21C ("SEPA")	37
19	1 SEPA Requires an EIS Disclose, Discuss and	
20	Substantiate an Adequate Analysis of	
21	Environmental Effects	37
22	2 The EIS Failed to Disclose the Potential	
23	Impacts of Designating Agricultural Resource	
24	Land	39
25	3 The Final EIS Failed to Respond to Comments	41
26		

		<u>Page</u>
1	4	
2		
3	SEPA	42
4	5	
5	EIS	44
6		
7	IV CONCLUSION	47
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VIII.

CONCLUSION

If there is a record supporting many of the County's actions concerning resource and rural lands, the Index fails to disclose it. If there is no record, the County must now show how its decisions were reached and how land was chosen to be designated as resource land. Where no evidence exists in the record--e.g., (1) concerning the impacts of increased agriculture resource designation and (2) considering the commercial viability of agricultural uses--testimony on these issues should be allowed.

Petitioners thus request that the Board grant the relief described in Section VI above.

RESPECTFULLY SUBMITTED this 17th day of April, 1995

LANE POWELL SPEARS LUBERSKY

By Joyce C. Kling, WSBA No 7062, fo
Glenn J. Amster
WSBA No 8372
Attorneys for Petitioner Clark
County Citizens United, Inc

2

CC. 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

*CC -
HB - changed name on case when petitions
were combined*

ACHEN, et al ,

were combined

Petitioners,

No 95-2-0067

v

CLARK COUNTY, et al ,

Respondents

and

CLARK COUNTY SCHOOL DISTRICTS,
et al ,

Intervenors

reconsideration was denied

**CLARK COUNTY
MOTION FOR RECONSIDERATION
OF
2-5-98 COMPLIANCE ORDER AND ORDER OF INVALIDITY**

CLARK COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
1013 FRANKLIN ST • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 699-2478 (OFFICE)
(360) 699-2184 (FAX)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

n) Case No 95-2-0056 (Dullenty) - Zoning designation

o) Case No 95-2-0057 (Sadri) - Zoning designation

p) Case No 95-2-0067 (Thomas) - Zoning designation

2 The claims challenging the County's actions as constituting unconstitutional takings of the petitioners' property rights Takings claims are set forth in the petitions in the following matters

a) Case No 95-2-0011 (Lawhead)

b) Case No 95-2-0020 (Wolverton)

c) Case No 95-2-0022 (Holsinger)

d) Case No 95-2-0035 (Greene)

e) Case No 95-2-0036 (Janulewicz)

f) Case No 95-2-0037 (North Lacamas)

g) Case No 95-2-0040 (Jorgensen)

h) Case No 95-2-0042 (Barner)

i) Case No 95-2-0053 (Ratermann)

j) Case No 95-2-0054 (Elliott)

k) Case No 95-2-0056 (Dullenty)

l) Case No 95-2-0057 (Sadri)

3 Challenges to the County's interim development regulations Claims contesting the County's interim regulations are set forth in Case No 95-2-0012 (CCNRC) and Case No 95-2-0013 (RCCPA)

4 Claims based upon violations of laws other than

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS - LACK OF
SUBJECT MATTER JURISDICTION - 3

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P O BOX 5000
VANCOUVER WASHINGTON 98668
(360) 699 2261

1 RCW 36 70(A) and RCW 43 21(C) The petitions in the following
2 cases complain of violations of state and federal statutes and
3 regulations (WACs) other than RCW 36 70(A) and RCW 43 21(C), and
4 noncompliance with the County Comprehensive Plan

- 5 a) Case No 95-2-0012 (CCNRC)
- 6 b) Case No 95-2-0013 (RCCPA)
- 7 c) Case No 95-2-0020 (Wolverton)
- 8 d) Case No 95-2-0022 (Holsinger)
- 9 e) Case No 95-2-0010 (CCCU)
- 10 f) Case No 95-2-0031 (DeTour)
- 11 g) Case No 95-2-0036 (Janulewicz)
- 12 h) Case No 95-2-0037 (North Lacamas)
- 13 i) Case No 95-2-0040 (Jorgensen)
- 14 j) Case No 95-2-0041 (North Salmon Creek)
- 15 k) Case No 95-2-0042 (Barner)
- 16 l) Case No 95-2-0046 (NE 82nd Street)
- 17 m) Case No 95-2-0053 (Ratermann)
- 18 n) Case No 95-2-0054 (Elliott)
- 19 o) Case No 95-2-0056 (Dullenty)
- 20 p) Case No 95-2-0057 (Sadri)

*CCCU name
was changed to
Action
with the combining
of cases*

21 5 Miscellaneous Other cases raise issues other than the
22 failure to comply with RCW 36 70(A) and RCW 43 21(C) In Case
23 No 95-2-0012 (CCNRC) includes a claim based upon the failure to
24 provide adequate notice of the adoption of interim ordinances

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS - LACK OF
SUBJECT MATTER JURISDICTION - 4

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P O BOX 5000
VANCOUVER WASHINGTON 98666
(360) 699 2261

010691

RECEIVED
APR 18 1995
LPSL

BEFORE THE WESTERN WASHINGTON
GROWTH PLANNING HEARINGS BOARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

In the Matter of) Case No 95-2-0010 (Citizens
) United)
) Case No 95-2-0011 (Lawhead)
) Case No 95-2-0012 (CCNRC)
) Case No 95-2-0013 (RCCPA)
) Case No 95-2-0014 (RCCPA)
) Case No 95-2-0020 (Wolverton)
) Case No 95-2-0022 (Holsinger)
) Case No 95-2-0026 (Baumgartner)
CLARK COUNTY GMA APPEALS) Case No 95-2-0031 (DeTour)
) Case No 95-2-0035 (Greene)
) Case No 95-2-0036 (Janulewicz)
) Case No 95-2-0037 (N Lacamas)
) Case No 95-2-0038 (Rominger)
) Case No 95-2-0040 (Jorgensen)
) Case No 95-2-0041 (N Salmon Crk)
) Case No 95-2-0042 (Barner)
) Case No 95-2-0046 (NE 82nd St)
) Case No 95-2-0053 (Ratermann)
) Case No 95-2-0054 (Elliott)
) Case No 95-2-0056 (Dullenty)
) Case No 95-2-0057 (Sadri)
) Case No 95-2-0067 (Thomas)

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS - LACK OF
SUBJECT MATTER JURISDICTION

I. FACTS

Clark County has moved to dismiss claims asserted in the above-designated matters on the basis that the Board lacks the subject matter jurisdiction to hear those claims Principally, this motion addresses the following categories of claims

1 "As applied" challenges to the treatment of a petitioner's particular piece of property These claims include

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS - LACK OF
SUBJECT MATTER JURISDICTION - 1

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P O BOX 5000
VANCOUVER WASHINGTON 98666
(360) 899 2261

- 1 complaints relating to specific development applications, the
2 zoning designation for particular pieces of property, the
3 exclusion of particular pieces of property from urban growth
4 areas and the failure to provide for cluster developments "As
5 Applied" challenges have been brought in the following matters
- 6 a) Case No 95-2-0011 (Lawhead) - Absence of cluster
7 developments
 - 8 b) Case No 95-2-0014 (RCCPA) - Challenge to Windward
9 Hills and Jensen Ridge Development Proposals
 - 10 c) Case No 95-2-0020 (Wolverton) - Exclusion from UGA
 - 11 d) Case No 95-2-0026 (Baumgartner) - Zoning designation
 - 12 e) Case No 95-2-0036 (Janulewicz) - Zoning designation
 - 13 f) Case No 95-2-0037 (North Lacamas) - Exclusion from
14 UGA and zoning designation
 - 15 g) Case No 95-2-0038 (Rominger) - Zoning designation
 - 16 h) Case No 95-2-0040 (Jorgensen) - Zoning designation
 - 17 i) Case No 95-2-0041 (North Salmon Creek) - Zoning
18 designation
 - 19 j) Case No 95-2-0042 (Barner) - Exclusion from UGA and
20 zoning designation
 - 21 k) Case No 95-2-0046 (NE 82nd Street) - Challenge of
22 specific development proposal
 - 23 l) Case No 95-2-0053 (Ratermann) - Zoning designation
 - 24 m) Case No 95-2-0054 (Elliott) - Zoning designation

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS - LACK OF
SUBJECT MATTER JURISDICTION - 2

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN
P O BOX 5000
VANCOUVER WASHINGTON 98666
(360) 699 2261

010693

3

1 **WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD**

2 *Achen, et al , v Clark County, et al , and Clark County School Districts, et al*
3 *Case No 95-2-0067c*

4 **DECLARATION OF SERVICE**

5
6 I, PATRICIA DAVIS, under penalty of perjury under the laws of the State of Washington,
7 declare as follows

8 I am the Executive Assistant for the Western Washington Growth Management Hearings
9 Board On the date indicated below a copy of an ORDER TO SHOW CAUSE RE
10 COMPLIANCE in the above-captioned case was sent to the following through the United
11 States postal mail service

12
13 RICHARD S LOWRY
14 PROSECUTING ATTORNEY FOR
15 CLARK COUNTY
16 1013 FRANKLIN STREET
17 PO BOX 5000
18 VANCOUVER WA 98666-5000

J TAYLOE WASHBURN
ATTORNEY FOR CLARK COUNTY
1111 THIRD AVENUE, SUITE 3400
VANCOUVER WA 98101-3299

17 RANDALL B PRINTZ
18 ATTORNEY FOR CLARK CTY
19 HOMBUILDERS ASSOC
20 PO BOX 1086
21 VANCOUVER WA 98666-1086

JOHN S KARPINSKI
ATTORNEY FOR CCNRC, LOOT-WIT,
VANCOUVER AUDUBON SOCIETY, CERES
2612 EAST 20TH STREET
VANCOUVER WA 98661

21 GLEN J AMSTER
22 ATTORNEY FOR CCU INC
23 1420 FIFTH AVENUE SUITE 4100
24 SEATTLE WA 98101-2338

CLARK COUNTY CITIZENS UNITED, INC
P O BOX 2188
BATTLE GROUND, WA 98604

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CCNRC
1701 BROADWAY, SUITE 231
VANCOUVER, WA 98663

VANCOUVER AUDUBON SOCIETY
C/O 308 NE 124TH AVENUE
VANCOUVER, WA 98684

WILLIAM V BAUMGARTNER
C/O RANDALL B PRINTZ
PO BOX 1086
VANCOUVER WA 98666-1086

WALTER & MARY WENTHIN
27412 NE 29TH AVENUE
RIDGEFIELD, WA 98642

CLARK COUNTY AUDITOR
P O BOX 5000
VANCOUVER, WA 98666-5000

CLARK COUNTY COMMISSIONERS
P O BOX 5000
VANCOUVER, WA 98666-5000

JERRI BOHARD
CLARK COUNTY PLANNING
DEPT
P O BOX 9810
VANCOUVER, WA 98666-9810

CLARK COUNTY HOMEBUILDERS
ASSOCIATION
5007 NE ST JOHNS ROAD
VANCOUVER WA 98661

MR BRENT GARRETT
WASHOUGAL SCHOOL DISTRICT
2349 B STREET
WASHOUGAL WA 98671

TODD HORENSTEIN
VANCOUVER SCHOOL DISTRICT
PO BOX 8937
VANCOUVER WA 98668-8937

STEVE DEARBORN
VANCOUVER CHAMBER OF
COMMERCE
404 E 15TH STREET SUITE 11
VANCOUVER WA 98663

DR MILT DENNISON
CAMAS SCHOOL DISTRICT
2041 NE LONE STREET
CAMAS WA 98607

DR DALE SCOTT,
SUPERINTENDENT
RIDGEFIELD SCHOOL DISTRICT
2724 S HILLHURST
RIDGEFIELD WAS 98642

FRIENDS OF THE EAST FORK
PO BOX 1277
BATTLEGROUND WA 98604

Declaration of Service
Case No 95-2-0067c
May 8, 2006
Page 2 of 6

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia WA 98502
P O Box 40953
Olympia, Washington 98504-0953
Phone 360-664-8966
Fax 360-664-8975

1	DAVID MCDONALD ATTORNEY FOR FOEF 510 SW THIRD AVENUE SUITE 302 PORTLAND WA 97204	MICHAEL & CATHERINE ACHEN 20926 NE ALLWORTH ROAD BATTLEGROUND WA 98604
2		
3		
4	RURAL CLARK COUNTY PRESERVATION ASSOC BOX 1973 BATTLE GROUND WA 98604	RAYMOND & MERRY WOODSIDE 5015 NE JA MOORE ROAD LACENTER WA 98629
5		
6		
7	RUDY & BETTY MAY PODHORA 8510 NE 76 TH STREET VANCOUVER WA 98662	MARILYN LANDERS 58146 NEHALEM HWY SOUTH VERNONIA OR 97064
8		
9	DAVID R BECKER 23007 NE 179 TH STREET BRUSH PRAIRIE WA 98606	JENNIFER BELCHER COMMISSIONER OF PUBLIC LANDS DNR MS 47001
10		
11		
12	ASGHAR R SADRI 203 EAST RESERVE VANCOUVER WA 98661	LINCOLN AND JOAN WOLVERTON 35011 NE NORTH FORK AVENUE LACENTER WA 98629
13		
14	JENS E AND MARCIA JORGENSEN 32102 NE 136 TH AVENUE BATTLE GROUND WA 98604	FRANK AND BETTY JANULEWICZ 22208 139 TH STREET BRUSH PRARIE WA 98606-2914
15		
16		
17	DELORES B THOMAS 13560 SW ASH AVENUE TIGARD OR 97223-4943	KATHIE HUSTER 600 WILLOW ROAD, #11 MENLO PARK CA 94025
18		
19	WILLIAM AND JEANETTE BECKER 31415 NE 122 ND AVENUE BATTLE GROUND WA 98604	VANCOUVER AUDUBON SOCIETY C/O 308 NE 124 TH AVENUE VANCOUVER WA 98684
20		
21	WALTER AND MARY WENTHIN 27412 NE 29 TH AVENUE RIDGFILED WA 99642	FREINDS OF COLUMBIA RIVER GORGE C/O GARY KAHN PO BOX 86100 PORTLAND OR 97286-0100
22		
23		
24		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

LOO-WIT GROUP SIERRA CLUB
CONSERVATION CHAIR
P O BOX 84594
VANCOUVER, WA 98684

DOROTHY, RAYMOND & RITA
RATERMAN
8002 NE HWY 99 #203
VANCOUVER WA 98682

NORTH LACKAMAS
CORPORATION
105 SE GARFILED
CAMAS WA 98607

PHILIP AND MILDRED THOMAS
20708 NE 72ND AVENUE
BATTLE GROUND WA 98604

CLARK COUNTY AUDITOR
1200 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666

DONALD L DULLENTY & DULSI
CORP
19100 NE MERRIT DRIVE
BATTLE GROUND WA 98604

RICHARD SEEKINS
10718 NE 94TH AVENUE
VANCOUVER WA 98662

ALBERT & LENA GERMANN
3762 US HWY 12
MOSSYROCK WA 98564

SUN COUNTRY HOMES
13000 NE 93RD STREET
VANCOUVER WA 98682

JOAN BECK
PO BOX 29
LACENTER WA 98629

ELIZABETH BARNER
18104 NE 142ND AVENUE
BATTLE GROUND WA 98604

TAYLOE WASHBURN RICHARD SETTLE
ATTORNEYS FOR CLARK COUNTY
1111 THIRD AVENUE SUITE 3400
SEATTLE WA 98101-3299

NEWLAND NORTHWEST
16510 SE 24TH
VANCOUVER WA 98629

LEWIS RIVER LAND COMLPANY
C/O NUTTER CORPORATION
5419 NE 88TH STREET BOX G
VANCOUVER WA 98665-0935

RICHARD & MARLYNE JOHNSON
12000 NE 154TH STREET
BRUSH PRAIRIE, WA 98606

SHARON SEEKINS
13208 A NW 13TH PLACE
VANCOUVER WA 98665

GEORGE R MORRIS
7503 NE 219TH STREET
BATTLE GROUND WA 98604

1 DARYL GERMANN
2 29004 NW 61ST AVE
3 RIDGEFIELD WA 98642-9350

KAREN EDWARDS
3762 US HWY 12
MOSSYROCK WA 98564

4 JIM BYRNE
5 RURAL CLARK COUNTY
6 PRESERVATION ASSOCIATION
7 28501 NW 7TH AVENUE
8 RIDGEFIELD WA 98642

JERRI BOHARD
CLARK COUNTY PLANNING DEPARTMENT
PO BOX 9810
VANCOUVER WA 98666-9810

7 ROSALEE MACRAE
8 2900 NW ALPINE LANE
9 CAMAS WA 98607

CLARK COUNTY COMMISSIONERS
PO BOX 5000
VANCOUVER WA 98666-5000

10 MIKE WYNNE
11 PO BOX 26
12 VANCOUVER WA 98666

MAYOR FOR CITY OF CAMAS
PO BOX 1055
CAMAS WA 98607

12 DONALD G HOLSINGER
13 DONCO INC
14 406 NE 139TH STREET
15 VANCOUVER WA 98685

JAMES L OLMSTED
214 TRAILSIDE LOOP
EUGENE OR 97405

16 CLERK FOR CITY OF YACOLT
17 105 EAST YACOLT ROAD
18 YACOLT WA 98675

MAYOR FOR THE CITY OF YACOLT
105 EAST YACOLT ROAD
YACOLT WA 98675

18 MAYOR FOR LA CENTER
19 214 E 4TH ST
20 LA CENTER WA 98629

MAYOR FOR CITY OF RIDGEFIELD
PO BOX 608
RIDGEFIELD WA 98642-0608

21 MAYOR FOR THE CITY OF
22 VANCOUVER
23 PO BOX 1995
24 VANCOUVER, WA 98668-1995

MARK MAGGIORA
PO BOX 5888
VANCOUVER WA 98668

25 Declaration of Service
26 Case No 95-2-0067c
May 8, 2006
Page 5 of 6

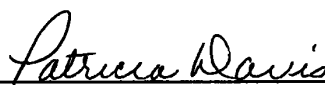
Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P O Box 40953
Olympia, Washington 98504-0953
Phone 360-664-8966
Fax 360-664-8975

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CLERK FOR THE CITY OF LA
CENTER
214 E 4TH ST
LA CENTER, WA 98629

THE REFLECTOR
MARVIN CASE
PO BOX 2020
BATTLEGROUND WA 98604

DATED this 8th day of May 2006



Patricia Davis
Executive Assistant

Declaration of Service
Case No 95-2-0067c
May 8, 2006
Page 6 of 6

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P O Box 40953
Olympia, Washington 98504-0953
Phone 360-664-8966
Fax 360-664-8975

4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WESTERN WASHINGTON GROWTH PLANNING HEARINGS BOARD
STATE OF WASHINGTON

CLARK COUNTY CITIZENS UNITED, INC)		
)		
	)	Petitioner,	NO 95-2-0010
)		
v	)		MOTION AND
	)		MEMORANDUM IN SUPPORT OF
CLARK COUNTY	)		CLARK COUNTY CITIZENS
	)		UNITED, INC.'S MOTION TO
	)	Respondent	CLARIFY AND SUPPLEMENT THE
	)		RECORD, PERMIT DISCOVERY
	)		AND TO ALLOW ADDITIONAL
	)		EVIDENCE

I.

MOTION

Clark County Citizens United ("CCCU") requests the Board enter an order requiring Clark County to clarify and supplement the record as more fully described in Section VI below

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II.

GROUND

This motion is based on RCW Chapter 36 70A, the record on file herein, the subjoined memorandum and the Declarations of Lonnie Moss and Cynthia Straatman filed herewith

III.

TIME REQUIRED FOR HEARING

We understand this motion will be heard on April 26 or 27, 1995 and request the board set aside one hour for argument The names and telephone numbers of the parties served are listed in the affidavit of service accompanying this motion

IV.

INTRODUCTION

Clark County Citizens United seeks clarification and supplementation of the Record because (1) the County has failed to index and produce all material relied upon in the comprehensive plan process, (2) CCCU challenges the County's classification of resource lands and thus should be allowed to present evidence regarding the long term commercial significance of agricultural and forest lands in Clark County; (3) CCCU challenges the adequacy of the environmental impact statement and must be allowed to present evidence about environmental impacts, and (4) the information presented by the County fails to describe accurately its public participation procedures, which were inadequate and flawed

The Index to the Record fails to comply with the requirements of WAC 242.02.820 because (1) it does not identify

1 documents with sufficient specificity to enable them to be found,
2 (2) the index has undergone several revisions and even at the time
3 of CCCU's appointments at the GMA library, the available record did
4 not include certain transcripts and staff memoranda listed on the
5 Index, and (3) some documents are not only not available, but have
6 not been identified or indexed CCCU is thus unable to determine
7 what material might have been relied upon by the County in reaching
8 certain decisions, and must request relief from the Board in the
9 form of an order requiring the County to fully specify materials
10 relied upon and to allow CCCU to depose staff who might shed light
11 on what those materials may be and the reason for their absence

12 V.

13 FACTS

14 The Clark County comprehensive plan and development
15 regulations at issue severely restrict the potential use of vast
16 acres of rural land The severity of these restrictions
17 represented an eleventh-hour shift in the County's planning
18 direction for rural and resource lands In one stroke of the pen,
19 for example, the County created a new category of resource lands,
20 "Agri-Forest " This designation, which appeared for the first time
21 in September 1994, affects more than 35,000 acres of land Yet
22 according to the index, the County did not produce any information
23 or material during the six months preceding this announcement The
24 record does not contain a single document stating objective
25 criteria for the "AG-Forest" classification or any analysis
26 justifying the designation of these 35,000 acres of land

1 centers, the Agri-Forest designation, and its designation of other
2 resource lands, including but not limited to any studies, public
3 testimony, field inspection notes, other staff notes,
4 correspondence, telephone memoranda, individual maps, draft maps,
5 photographs, drafts, or computer disks or files This material
6 should include

7 a A full description of each Map identified in the
8 Index at X N

9 b A full and accurate description of all
10 correspondence bearing upon the question of the Agriculture and
11 Agri-Forest land classifications, including site-specific change
12 requests

13 c Draft maps identified by date and title

14 d Memoranda, staff reports or notes concerning rural
15 and resource lands prepared between December 5, 1993, and
16 September 22, 1994

17 e Aerial photos of all areas that indicate designated
18 resource lands

19 f Any staff or consultant studies or reports or other
20 documents on the commercial significance of resource lands

21 g. A description of the data base and criteria used in
22 generating the G.I S maps

23 h Any documentation of the work done by the consulting
24 firm of Daggert and Simpson

25 2 CCCU should be permitted to depose all County employees
26 and/or officials who have knowledge of the process used to create

1 the Rural and Resource designations and to determine what lands are
2 subject to them, so that all materials, meetings, hearings and
3 conversations leading to the designations can be identified

4 3 The hearing schedule should be modified to enable CCCU to
5 determine what record, if any, exists to support the County's
6 decisions, and to prepare its case appropriately

7 4 CCCU should be allowed to supplement the record with
8 testimony on the probable adverse impacts of (1) agricultural
9 resource land designations and (2) the long-term commercial
10 significance of agricultural lands in Clark County

11 5 CCCU should be allowed to supplement the record with
12 testimony on the procedures for public review and comments

13 VII.

14 LEGAL ARGUMENT

15 A The Record Must be Supplemented and Clarified Because It Fails
16 to Identify Materials Used in the Growth Management Planning
17 Process and Insufficiently Identifies Others

18 The Board's rules require the County to file and serve an
19 Index, the function of which is to enable Petitioners to locate and
20 identify the material in the record they intend to use as exhibits
21 The requirements for the Index are explicit

22
23 [T]he respondent shall file with the board and serve a
24 copy on petitioner(s) of an index of all material used in
25 taking the action which is the subject of the petition
26 for review. The index shall contain sufficient
identifying information to enable unique documents to be
distinguished.

1 The Index fails to meet these requirements For example, it
2 is inconceivable that it lists "all material" used to create
3 Agri-Forest parcels It contains references to almost no
4 correspondence and no staff reports for the six-month period
5 between March 11 and September 22, 1994, the period during which
6 Clark County staff designated 35,000 acres Agri-Forest

7 Finding virtually no pertinent material in the Index,
8 Ms Straatman asked Jerri Bohard of the Planning Department where
9 the basis for the Agri-Forest decision could be found Ms Bohard
10 replied there were three sources The work of the focus groups,
11 maps compiled from the GIS data base, and aerial photos
12 (Straatman Declaration). The Index specifically lists six items
13 that seem to refer to the materials Ms Bohard described Farm
14 Focus Group Final Report, Forest Focus Final Report, the
15 Agricultural Capability map, the Forest Capability map, Notebook of
16 Agriculture Candidate Areas-Evaluation Forms, and Working Maps

17 The two listed Focus Group reports are dated 1993 and contain
18 nothing about the Agri-Forest designation No notes, minutes,
19 studies or additional reports are listed on the Index Nor do
20 there appear to be any transcripts, minutes, agendas or recordings
21 memorializing the work of the groups The Notebook of Agriculture
22 Areas contains nothing about Agri-Forest areas The Notebook
23 contains a sheet of questions for large areas proposed in 1993 to
24 be candidates for Agricultural Resource (not "Agri-Forest")
25 classification Very few of the questions on the sheets have
26 answers inserted Each sheet is stamped either "Approved" or,

1 inexplicably, "Past Due," but there is no explanation why each
2 worksheet is so stamped No similar Notebook is listed for
3 Agri-Forest or Forest parcels

4 Ms Bohard identified maps as the third source for the
5 resource land designation. In its Index, the County lists two
6 critically important sets of working maps--apparently the only
7 record of the work of the Focus Groups They are described as
8 follows

9 N Resource Working Maps

10 1 Series of working maps used by each of the
11 focus groups (mineral, agricultural and forestry) in the
12 development of recommendations regarding resource
13 designations Each focus group divided the County into
14 a number of planning areas and within those planning
areas evaluated information on soils, cover, available
infrastructure, parcel size, current use tax status,
slopes and other environmental issues such as wetlands,
flood plains, etc

15 2. There were also working maps utilized for the
16 rural resource area in which the County was divided into
rural planning areas.

17 There are more than thirty working maps, and they are not listed on
18 the Index with sufficient specificity to allow designation The
19 maps themselves bear both titles and dates, but this information
20 has not been transferred to the Index It would have been
21 impossible in the four hours allotted to even identify the
22 pertinent maps, let alone study them

23 The aerial photographs which apparently provided the only
24 basis for determining whether a parcel had "agricultural cover" are
25 not listed at all The County's astonishing rationale for this
26 serious gap in the available information is that the cost of

1 reproduction, if possible, would be \$2,000 (Straatman
2 Declaration) Copies of these photos must be provided, they
3 provide the only evidence of what was actually on the ground on
4 these now severely restricted parcels

5 In addition, CCCU members have identified numerous letters
6 they sent to various Clark County agencies during the planning
7 process, none of which can be located in the Index C Straatman
8 Declaration

9 The index itself reveals the shortcomings of the County's
10 record production to date One letter, from Mr John Karpinski is
11 dated May 16, 1994, but listed in the Index as dated 12/12/94 See
12 Exhibit A to Straatman Declaration Another item attributed to Mr
13 Karpinski also is incorrectly dated and is described in the index
14 as "Response to Staff Memo 4/21/94 on the 'CERES Unified
15 Alternative '" See Exhibit B to Straatman Declaration The
16 memorandum, however, is not listed on the Index, nor is there any
17 listed record of any response to any of Karpinski's letters

18 B CCCU Should be Allowed Discovery to Identify the Rest of the
19 Record

20 With the exception of staff memos, CCCU cannot determine from
21 the material they have so far been able to cull from the County's
22 mass of paper why or how the Agri-Forest designation was created
23 and why or how it was used to severely restrict the use of vast
24 areas of rural Clark County Insofar as the County attempted to
25 rely on aerial photographs or maps, these must be specifically
26 identified and produced Under the circumstances present here, the

1 burden to identify evidence must be with the County CCCU has
2 identified every document it can identify in the record as bearing
3 upon the Agri-Forest and Agricultural Resource issue Insofar as
4 the County's own Index makes it impossible to identify the others,
5 the County must supplement that Index Given the startling paucity
6 of documentation, petitioners should be permitted an opportunity to
7 depose everyone in any way involved in the decision-making process
8 and to demand production of every piece of material used in that
9 process The fact that the Index discloses no material of any kind
10 prepared during the six-month period in which the Agri-Forest
11 designation was created, for example, raises serious questions
12 about the comprehensive plan that resulted from this process CCCU
13 should be allowed to fill this information gap

14 C Supplemental Evidence is Necessary for a Decision

15 The Board's rules allow new or supplemental evidence as
16 follows

17 A party by motion may request that a board allow such
18 additional evidence as would be necessary or of
19 substantial assistance to the board in reaching its
20 decision, and shall state its reasons A board may at
any time prior to, during, or after the hearing order
that new or supplemental evidence be provided

21 WAC 242.02.540 Additional evidence is necessary on a number of
22 issues raised by CCCU

23 1 The Record Contains Insufficient Information on the
24 Impacts of Increased Agriculture on the Quantity and Quality of
25 Water

26 Agriculture, a heavily chemical-dependent industry, can have
significant adverse impacts on groundwater and surface water

1 Neither the Environmental Impact Statement nor any other identified
2 study or report accompanying the plan has any discussion about
3 these impacts. The EIS discussion is limited to recognition that
4 animal wastes applied to fields can move through the soil to the
5 groundwater. But there is no discussion whatever of the potential
6 impacts of chemical sprays and treatments upon tens of thousands of
7 acres of land being dedicated to agricultural use for at least the
8 next twenty years. The Board cannot make an informed decision on
9 the adequacy of the EIS without such information. Without expert
10 testimony to point to the deficiencies in the EIS, petitioners
11 would be deprived of their opportunity to make an effective case.
12 Nor does the record anywhere discuss the impact of the quantity of
13 water that must be used to grow crops on such extensive acreage.

14 The Board clearly has authority to permit additional evidence
15 on this issue both under its own rules and pursuant to the rule
16 enunciated in Leschi v Highway Comm'n, 84 Wn 2d 271, 286, 525
17 P 2d 774 (1974), that even in a writ of review proceeding,
18 otherwise limited to the record, "[t]rial courts may conduct
19 additional fact finding in order to rule on the adequacy of an
20 impact statement." "

21 2 The record contains insufficient information about the
22 long-term commercial significance of agricultural lands in Clark
23 County.

24 Serious questions have been raised about the long-term
25 commercial significance of agriculture in Clark County. The
26 Agricultural Focus group was unable to reach consensus on this

1 issue There is nothing in the record to support the County's
2 determination of long-term commercial significance of vast areas of
3 land identified as agricultural resource land, a critical element
4 of resource land designation under the GMA Of course, there also
5 are no facts or studies in the record to support the County's
6 designation of "Agri-Forest" resource lands There is nothing in
7 the record to indicate that the County gave any consideration to
8 the economic viability of the only use to which it permits these
9 lands to be put CCCU therefore requests the Board permit
10 testimony to fill this void

11 3 Testimony Should Be Allowed Describing the Public
12 Process The County's documentation suggests a wide and
13 far-reaching public process leading to its determinations In
14 fact, many of the public forums were not designed or used to gather
15 information Draft documents were often not available to the
16 public until hours before hearings intended to consider them, and
17 public comment was ignored [Declaration of Lonnie Moss attached
18 hereto] Throughout the course of this process, staff's oral
19 representations to many citizens differed markedly from the
20 discussion going on behind the scenes Id Testimony by citizens
21 who attempted to make themselves heard throughout the planning
22 process will provide important information to the Board about the
23 inadequacy of the County's public participation process
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VIII.

CONCLUSION

If there is a record supporting many of the County's actions concerning resource and rural lands, the Index fails to disclose it. If there is no record, the County must now show how its decisions were reached and how land was chosen to be designated as resource land. Where no evidence exists in the record--e.g., (1) concerning the impacts of increased agriculture resource designation and (2) considering the commercial viability of agricultural uses--testimony on these issues should be allowed.

Petitioners thus request that the Board grant the relief described in Section VI above.

RESPECTFULLY SUBMITTED this 17th day of April, 1995

LANE POWELL SPEARS LUBERSKY

By Joyce C. Kling, WSBA No 7062, fo
Glenn J. Amster
WSBA No 8372
Attorneys for Petitioner Clark
County Citizens United, Inc

5

FILE COPY

RECEIVED

SEP 21 1995

LPSL

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

ACHEN, et al ,)	
)	
)	
)	
Petitioners,)	
vs	)	No 95-2-0067
)	
)	
CLARK COUNTY, et al ,	)	FINAL DECISION
	)	AND ORDER
)	
Respondents,)	
)	
and)	
)	
)	
CLARK COUNTY SCHOOL DISTRICTS, et al ,)	
)	
Intervenors)	
)	

And so begins the tome

During the last stages of the most recent ice age, some 12,000 to 14,000 years ago, the most significant catastrophic geological event in the history of the planet left its mark on eastern Washington and on Clark County. The Lake Missoula - Columbia River catastrophic flood events of that time deposited sand, gravel, and silt over the floor of Clark County, raising it to an elevation of 350 feet. During those events, millions of gallons of water flowed at 60 m p h or more throughout eastern Washington to the mouth of the Columbia River. Flooding occurred from as far south as Eugene to an area north of Clark County. Volumes of water, one-half the size of Lake Michigan, would empty in a period of two days and wreak havoc throughout and around the course of the Columbia. While these catastrophic flood events, first discovered by Jay Harlan Bretz in the 1920's, affected eastern Washington to a greater degree, the geological impact to Clark County was significant and remains today.

Western Washington
 Growth Management Hearings Board
 McCleary Mansion
 111 West 21st Avenue Suite #1
 Olympia Washington 98504-0953
 Phone 360-664-8966

1 Forty-one miles of the imposing Columbia River form the western and southern
2 boundaries of Clark County. Its northern boundary follows the course of the Lewis
3 River. The foothills of the Cascades form the only non-river boundary to the east.
4 Approximately 110 miles inland from the Pacific Ocean, at the confluence of the
5 Willamette and Columbia rivers, lies the urban core of the Portland metropolitan area.
6 The southern cities of Clark County adjoining the Columbia River form a quadrant of
7 that metropolitan area, and are greatly influenced by it in terms of economic,
8 transportation, and cultural factors. That metropolitan area constitutes the largest
9 economic and population center on the west coast between San Francisco and Seattle.
10 With a land area of 627 square miles, Clark County ranks 35th in the State, but as of
11 1990, ranked fifth in terms of population. As of 1990, only 30% of the population lived
12 within the incorporated cities of Clark County (Ex 77).

13 Not unlike the Missoula floods, an unprecedented volume of petitions began arriving at
14 our office on February 28, 1995. Eighty-five different petitioners filed 61 separate
15 petitions that challenged Clark County's comprehensive plan (CP) and development
16 regulations (DRs) adopted December 29, 1994. Some of the petitions also challenged
17 the comprehensive plans and development regulations adopted by the cities of
18 Vancouver, Camas, Battle Ground and Ridgefield, which plans were adopted shortly
19 before or after the action of Clark County. During the entire 3-year growth management
20 planning process, all the cities and Clark County had worked together with the goal of
21 achieving consistent CPs and DRs that would be adopted within the same general time
22 frame.

23 Subsequent to the formal adoption of Clark County's comprehensive plan and
24 development regulations, staff noted the presence of scrivener errors in the printed
25 documents. Subsequently, a public hearing was held to correct the errors and resulted in
26

Western Washington
Growth Management Hearings Board
McCleary Mansion
111 West 21st Avenue Suite #1
Olympia Washington 98504-0953
Phone 360-664-8966

1 a change of designation to what was originally intended in a portion of Clark County
2 Yet another petition was filed on April 3, 1995, which was within the 60-day period
3 after publication of the corrected designation
4

5 Ultimately, nine days of hearings on the merits were held in Vancouver The hearings
6 occurred over a 3 week period commencing June 19, 1995, and ending July 7, 1995 In
7 the intervening months between the filings of the petitions and the hearings on the
8 merits, weeks of prehearing conferences and motions hearings were held

9
10 During the interlude between filing and hearings, Clark County acknowledged that some
11 revisions to the CP and DRs were needed Seven of the original 62 petitions were
12 voluntarily remanded by stipulation between the parties Five other petitions were
13 dismissed either voluntarily or by stipulation During the motions portion of our
14 process, we dismissed 3 other cases, one for filing beyond the 60-day period of RCW
15 36 70A 290(2), one because the petitioners failed to participate in either the prehearings
16 or motions process, and one that involved plat covenants that were unaffected by the
17 County's actions

18 Forty-four different parties were granted intervenor status in various petitions Of the
19 original 85 petitioners, approximately one half involved property specific challenges
20 while the remainder set forth more generalized issues Intervenors consisted of entities
21 such as all school districts in Clark County, the Clark County Homebuilders
22 Associations, Vancouver Chamber of Commerce and various individuals and
23 corporations Most of the intervenors involved parties who supported the actions taken
24 by the County and the various cities A small number of intervenors were involved in
25 the property specific challenges, generally in support of the actions of Clark County
26

Western Washington
Growth Management Hearings Board
McCleary Mansion
111 West 21st Avenue Suite #1
Olympia Washington 98504-0953
Phone 360-664-8966

1 Over 20 attorneys represented different parties While there was not a breath of conflict
2 of interest from the multiple representations, there were occasionally some very
3 interesting changes in the dynamics of arguments Of the original 62 petitions, 23 were
4 consolidated for purposes of argument We declined to consolidate all cases prior to the
5 hearings on the merits to avoid each petitioner having to serve pleadings on over 100
6 other parties Ultimately, on July 19, 1995, after all the hearings had been completed,
7 we did issue an Order of Consolidation for all pending cases for purposes of issuing one
8 final order and dealing with any subsequent motions

9
10 During the motions portion of the process, Clark County challenged the right of a
11 number of petitioners to proceed with their cases Of the approximately 35 *pro se*
12 petitions, Clark County challenged most for the failure to serve a copy of the petition on
13 the County Some of the petitioners failed to serve a copy on any representative of
14 Clark County, some failed to serve the Auditor, and some failed to serve the Auditor
15 until weeks after filing the petitions Clark County acknowledged that it suffered no
16 prejudice as a result of these late or nonexistent services since all of the ones not served
17 by a petitioner had been received from our office By a series of orders we declined to
18 dismiss any of the cases under the provision of WAC 242-02-230, since there was no
19 showing of prejudice to the County The City of Battle Ground filed a similar motion on
20 a petition challenging its comprehensive plan, which was also denied

21 Clark County also moved to dismiss the State Environmental Policy Act (SEPA)
22 challenges asserted in 5 different petitions The County acknowledged that each of the
23 petitioners had standing under the Act but asked that we impose a different standing
24 requirement for SEPA challenges By Order dated May 24, 1995, we declined to do so
25 and held each of the petitioners had standing to challenge SEPA actions or nonactions
26

Western Washington
Growth Management Hearings Board
McCleary Mansion
111 West 21st Avenue Suite #1
Olympia Washington 98504-0953
Phone 360-664-8966

6

.

e

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLARK COUNTY CITIZENS UNITED,)
INC , MICHAEL ACHEN and CATHERINE)
ACHEN, husband and wife,)

Petitioners,)

v)

WESTERN WASHINGTON GROWTH)
MANAGEMENT HEARINGS BOARD,)
a Washington agency,)

Respondent)

NO

PETITION FOR
REVIEW

COMES NOW Clark County Citizens United, Inc and Michael and Catherine Achen ("Petitioners" herein), by and through their attorneys, Lane Powell Spears Lubersky, and for their Petition for Review, pursuant to RCW 36 70A 300, RCW 34 05 514 - 598, allege as follows

I

IDENTIFICATION OF PARTIES

1 1 Petitioners' names and mailing addresses are

Clark County Citizens United, Inc
P O Box 2188
Battle Ground, WA 98604

Michael and Catherine Achen
21604 NW Allworth Road
Battle Ground, WA 98604

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 2 Clark County Citizens United, Inc ("CCCU" herein) is a Washington non-profit
2 corporation whose members own property, reside and work in Clark County, Washington
3 CCCU and its members are directly affected by the land use plans, policies and regulations of
4 Clark County CCCU and its members have appeared before the County regarding the
5 comprehensive plan and development regulations at issue and brought an appeal to the Growth
6 Management Hearings Board upon which this petition is based

7 1 3 Michael and Catherine Achen ("Achen" herein) are residents and property owners
8 in Clark County, Washington Petitioner Achen appeared before the County regarding the
9 comprehensive plan and development regulations at issue and brought an appeal to the Growth
10 Management Hearings Board upon which this petition is based

11 1 4 Petitioners are represented by

Glenn J Amster
LANE POWELL SPEARS LUBERSKY
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338
(206) 223-7000

15 1 5 Defendant Western Washington Growth Management Hearings Board ("GMHB"
16 herein) is a Washington state agency created pursuant to the Growth Management Act ("GMA"
17 herein), RCW ch 36 70A, and located at

Western Washington Growth Management Hearings Board
McCleary Mansion, 111 West 21st Ave, Suite 1
P O Box 40953
Olympia, WA 98504-0953

21 1 6 Venue in Clark County is proper pursuant to RCW 36 70A 300, RCW 34 05 514
22 and RCW 36 01 050, because property owned by CCCU's members and Achen and affected by
23 the decision is located in Clark County

II

AGENCY ACTION AND PARTIES TO ADJUDICATIVE PROCEEDING

25 2 1 This appeal challenges the decision of the GMHB regarding the validity of the
26 Clark County Comprehensive Plan adopted on December 20, 1994 ("CCCP" herein) The

1 GMHB issued a Final Decision and Order on September 20, 1995 Several parties moved for
2 reconsideration On December 6, 1995, the GMHB issued an Order on Reconsideration The
3 December 6, 1995 Order on Reconsideration represents the final decision of the GMHB pursuant
4 to RCW 36 70A 300 and WAC 242-02-830 A true and correct copy of the September 20 and
5 December 6 decisions are attached hereto as **Exhibit A** and **Exhibit B**, respectively

6 2 2 Petitioners and Clark County were parties to the proceedings below In addition,
7 sixty-one (61) individual petitions challenging the CCCP were filed with the GMHB The
8 GMHB issued its decision in response to all of the petitions which were not otherwise dismissed
9 There were numerous parties to the consolidated action in question The GMHB issued an Order
10 on Consolidation on July 19, 1995 The various parties consolidated into this single action are
11 identified by name and case number in the Order on Consolidation, a copy of which is attached
12 hereto as **Exhibit C**

13 III

14 STANDING

15 3 1 Pursuant to RCW 36 70A 300, any "party aggrieved" has the right to obtain
16 judicial review of a hearings board final decision

17 3 2 Petitioners have standing because they were parties to the consolidated action
18 before the GMHB, Case No 95-2-0067

19 3 3 Petitioner CCCU also has standing because it is a Washington corporation whose
20 members own property, reside and work in Clark County and who will be directly affected by
21 the GMHB decision Petitioner Achen also has standing because they live in and own property
22 in Clark County and will be directly affected by the GMHB decision As property owners in
23 Clark County, CCCU's members' and Achens' interests are among those Clark County was
24 required to consider in adopting its comprehensive plan pursuant to the GMA, RCW ch 36 70A
25 Furthermore, a judgment in Petitioners' favor would redress the prejudice to Petitioners caused
26 by the GMHB decision

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV.

RELIEF SHOULD BE GRANTED

4 1 For the reasons set forth below in Section VII of this Petition, the GMHB
4 committed an error of law by failing to remand the CCCP to Clark County for violations of the
5 GMA and the State Environmental Policy Act, RCW Ch 43 21C ("SEPA")

V

RELIEF REQUESTED

5 1 Petitioners respectfully request this Court issue an Order declaring the GMHB final
9 decision issued on December 6, 1995 to be arbitrary, capricious, clearly erroneous, or otherwise
10 based on an error of law

5 2 Petitioners further respectfully request this Court order the GMHB to remand the
12 CCCP and development regulations to Clark County and order Clark County to

1 Comply with the procedural requirements of SEPA, including the preparation of
a supplemental EIS, and

2 Review and revise its rural and resource land designations and rural and resource
land development regulations to conform with all requirements of the GMA

VI

SUMMARY OF THE FACTS

6 1 Sometime in 1992, Clark County initiated a growth management planning process
19 pursuant to the GMA On July 22, 1992, the County adopted County-Wide Planning Policies
20 ("CWPPs") pursuant to RCW 36 70A 210 to be "used solely for establishing a county-wide
21 framework from which county and city comprehensive plans shall be developed " The
22 CWPPs contained two (2) policies addressing resource lands There are no policies for rural
23 land planning

6 2 Following adoption of the CWPPs, the County adopted a Community Framework
25 Plan ("CFP") The CFP envisioned future growth in Clark County occurring in centers, both
26 urban and rural Outside of urban growth areas, rural activity centers would provide the focus

7

RECEIVED

APR 09 1997

LPSL

Honorable Edwin J Poyfair
PRESENTATION Friday, April 4 1997, at 10 30 AM

FIL EN

APR 04 1997

JOANNE BRUNNER, OWNER, WESTK CO.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLARK COUNTY CITIZENS UNITED,)
INC , MICHAEL ACHEN and)
CATHERINE ACHEN, husband and wife, et)
al ,)

Petitioners and)
Additional Parties of Record,)

v)

WESTERN WASHINGTON GROWTH)
MANAGEMENT HEARINGS BOARD, a)
Washington agency,)
Respondent)

NO 96-2-00080-2

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER came on for hearing before the above-entitled Court on October 16, 1996, upon the Petition for Review of Petitioners Clark County Citizens United, Inc , Michael and Catherine Achen (collectively referred to herein as "Petitioners"), appearing by and through their attorneys of record, Lane Powell Spears Lubersky LLP and Glenn J Amster, and Respondents, Western Washington Growth Management Hearings Board (hereinafter referred to as "WWGMHB"), appearing by and through the Office of the Attorney General and Marjorie T Smitch, Assistant Attorney General, Clark County, appearing by and through the Office of

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER - I
LPSLCAI K VCGINPLK111110PLK PLD

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101 1139
(06) 222 7000

1 the Prosecuting Attorney, and Richard S Lowry, Chief Civil Prosecuting Attorney, additional
2 parties of record Clark County Natural Resources Council, Vancouver Audubon Society, Loo-
3 Wit Group Sierra Club, Coalition for Environmental Responsibility and Economic Sustainability
4 and Native Footprints, appearing by and through their attorney, John S Karpinski, David R
5 Becker and Joan Becker, et al , appearing by and through their attorneys, Richard T Howsley
6 and Lisa M Graham, William W. Saunders and Clark County Home Builders Association,
7 appearing by and through their attorneys, Landerholm, Memovich, Lansverk & Whitesides, P S
8 and Randall B Printz, Rural Clark County Preservation Association, appearing by and through
9 its representative Robert Yoesle, pro se; and W Dale DeTour, appearing pro se, and the Court,
10 having considered the complete record before the WWGMHB, and the pleadings and exhibits
11 herein, having heard argument of counsel and taken the matter under advisement, and having
12 rendered an oral decision on February 21, 1997, now enters the following Findings of Fact,
13 Conclusions of Law and Order

14 **FINDINGS OF FACT**

15 1 This case was brought before this Court on Petitioners' Petition for Review
16 pursuant to the Growth Management Act ("GMA"), RCW 36 70A 300 Petitioners challenged
17 several elements of the Clark County Comprehensive Plan, which was adopted by the Clark
18 County Board of County Commissioners in December 1994 Petitioners brought this appeal
19 following the Western Washington Growth Management Hearings Board's ("the Board") final
20 decision on December 6, 1995, denying Petitioners' claim that the Clark County Comprehensive
21 Plan violated the GMA

22 2 Clark County began its comprehensive planning process, pursuant to the GMA,
23 RCW Ch 36 70A, in 1991 The County adopted County-Wide Planning Policies, under RCW
24 36 70A 210, and then a Community Framework Plan, to form a vision of Clark County's future
25 Following adoption of this Plan, the County formed a Rural and Natural Resource Committee
26 ("RNRAC") This committee was delegated the task of identifying lands within the County to

1 be designated natural resource lands, as required by RCW 36 70A 050 The designated resource
2 lands would become part of the County's 20-year growth plan, the Clark County Comprehensive
3 Plan

4 3 In addition to designating agricultural and forest resource lands, Comprehensive
5 Plan adopted by Clark County designated 36,000 acres of "agri-forest" resource land This
6 classification was a hybrid of two GMA resource lands, agricultural and forest resource land
7 This hybrid resource category and the lands designated in this category were never considered
8 by RNRAC

9 4 The agri-forest lands were also not a part of the County's environmental review
10 process completed in conjunction with the County's comprehensive planning The County issued
11 an Environmental Impact Statement ("EIS") prior to the release of the draft Comprehensive Plan
12 in September 1994 However, none of the alternatives for planning addressed in the
13 environmental review document discussed the 36,000 acres of agri-forest resource land

14 5 The adopted Plan also eliminated an element of the Community Framework Plan,
15 the concept of rural town centers, known as "villages" and "hamlets " These rural activity
16 centers were focussed on identified pre-existing development patterns and designed to maintain
17 the existing character of rural growth The centers were eradicated and replaced with a county-
18 wide uniform lot density in the final Comprehensive Plan Clark County issued a policy memo
19 stating that the reason the rural activity centers were removed from the plan was that previous
20 Growth Management Board decisions appeared to prevent the County from allowing any growth
21 in rural areas Specifically, according to Board decisions, the sum of the urban and rural
22 population was required to equal the population projection developed by the State Office of
23 Financial Management (OFM) Given the population growth allocated to Clark County's urban
24 growth areas, the Plan would violate this requirement if virtually any growth was allowed in the
25 rural areas
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

6 Any Findings of Fact which is more properly a Conclusion of Law shall be deemed a Conclusion of Law

CONCLUSIONS OF LAW

1 Jurisdiction This Court has jurisdiction over this case pursuant to RCW 36 70A 300 and RCW 34 05 514

2 Standard of Review This Court reviews the Board's decision concerning questions of law de novo to determine whether the Board erroneously interpreted or applied the GMA RCW 36 70A 320(1), RCW 34 05 570(3)(d) As for questions of fact, this Court reviews the entire record before the Board to determine whether its decision is supported by substantial evidence in the record RCW 36 70A 270, 320, WAC 365-195-640(10), RCW 34 05 570(3)

3 Statutory Mandate In reviewing Clark County's Comprehensive Plan, the Board was required to comply with the statutory mandates and guidelines set forth in the GMA The legislature created the Board in the GMA The Board is not above the law which gave it its existence The Board must not only comply with express statutory mandates, but, in reviewing a County's record, must also assess whether the planning goals set forth in the GMA were utilized and consider those goals when deciding whether a county complied with the GMA

4 Agri-Forest Lands The agri-forest resource designations violate the GMA Although it is arguably within a county's administrative discretion to create a new hybrid resource classification, Clark County's method of designating "agri-forest" resource lands does not comport with the definition of either agricultural or forest resource lands and is therefore invalid The Board had an end in sight (restricting growth in rural areas), but failed to develop the factors from the record and the GMA necessary to support its decision The Board erroneously interpreted and applied the GMA when it failed to require the agri-forest resource lands meet the statutorily mandated definitional criteria for resource lands Furthermore, there

1 is no substantial evidence in the record to support the designation of agri-forest lands as resource
2 lands under the GMA

3 Additionally, the failure to solicit meaningful public input for the agri-forest resource
4 lands violated the public participation provisions of the GMA requiring early and continuous
5 public participation in the development and adoption of comprehensive plans

6 5 Agricultural Resource Lands There is ~~not~~ substantial evidence in the record to
7 support the County's designation of agricultural resource lands ~~In particular, there is not~~
8 ~~substantial evidence to demonstrate how those lands designated satisfy the GMA definitional~~
9 ~~criteria, that is, that those lands are primarily devoted to agricultural production and are of long-~~
10 ~~term commercial significance for the production of agricultural products The only explanation~~
11 ~~provided regarding the designation of agricultural resource lands is contained in a staff report~~
12 ~~prepared after the RNRAC had completed its work which states, "soils was a critical factor "~~
13 ~~This is not to suggest the County was incapable of analyzing the required statutory criteria the~~
14 ~~County undertook a comprehensive analysis of resource land designations in urban reserve areas~~
15 ~~when it was compelled by the Board to re-examine these designations The County should have~~
16 ~~undertaken a similar analysis before designating any agricultural resource lands~~

17 Because there is not substantial evidence in the record that satisfies the GMA's
18 ~~definitional criteria, the agricultural resource land designations are invalid~~

19 6 Comprehensive Plan EIS The Comprehensive Plan EIS issued by the County
20 violates the State Environmental Policy Act ("SEPA"), RCW Ch 43 21C The agri-forest
21 resource land designations were disclosed subsequent to the publication of the final Plan EIS and
22 were not disclosed or discussed in any way in the EIS alternatives The removal of rural activity
23 centers also was not addressed in the EIS The County did not require additional environmental
24 review and did not solicit additional public comments The County failed to comply with
25 SEPA's requirement for additional environmental review when a proposal changes substantially
26 from the one addressed in the initial EIS The Board's decision to uphold the adequacy of the

1 EIS absent additional environmental analysis regarding the agri-forest designations and changes
2 to the pattern of rural development was clearly erroneous

3 7 Rural Land Densities The County's rural and resource development regulations
4 are inconsistent with the GMA The GMA requires counties to determine that planning goals
5 are utilized and are a part of the consideration supporting its decisions One of the planning
6 goals requires a variety of residential densities and housing types, which the Clark County
7 Community Framework Plan met by identifying pre-existing small development patterns in rural
8 areas and creating rural activity centers with a variety of rural densities The eradication of the
9 centers and their replacement with a uniform lot density violates the planning goal requiring a
10 variety of residential densities

11 It is evident the rural land use density regulations were driven in part by earlier Growth
12 Management Hearing Board decisions requiring urban population plus rural population to equal
13 Office of Financial Management population forecasts See Exhibit 5, p 15 to Petitioners'
14 Opening Brief, Box No 2 to Record, Clark County Exhibit No 93 This formulaic view of
15 the GMA requirements is fatally flawed There is no requirement in the GMA that the OFM
16 projections be used in any manner other than as a measure to ensure urban growth areas are
17 adequately sized and infrastructure in those growth areas is provided for This Board decision,
18 however, compelled the County to downzone substantial portions of the rural areas in order to
19 meet the Board's apparent requirements

20 The only requirement for rural areas in the GMA is that growth in rural areas not be
21 urban in character While the GMA contains no restrictions on rural growth, it does require a
22 variety of residential densities By trying to comply with the Board's errant decision, the
23 County violated a GMA planning goal

24 Through no fault of the County's, the Board had an end in sight and disregarded the
25 GMA's mandate in applying an unauthorized formula to the review of the Clark County
26 Comprehensive Plan's land use densities The Board's interpretation was erroneous, and the

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER - 6
LPSEAI K VCGIPLKV11110PLK PLD

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101-3338
(206) 223 7000

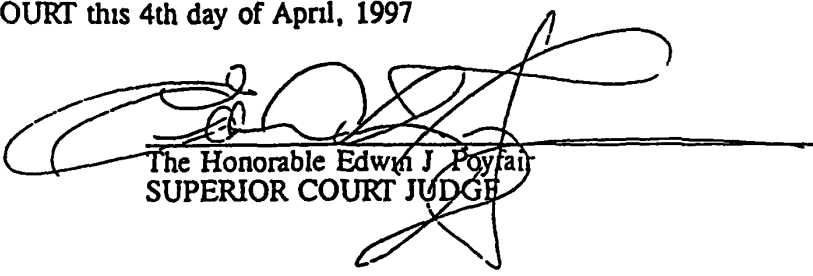
1 County's decision to follow the Board's lead was unfortunate The result is a plan that gives
2 little regard for the realities of existing rural development in direct contradiction of the terms
3 of the GMA

4 ORDER

5 Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY
6 ORDERED, ADJUDGED AND DECREED that the Clark County Comprehensive Plan
7 and Development Regulations adopted in Ordinance 1994-12-47 on December 20, 1994 are
8 remanded to the Western Washington Growth Management Hearings Board with direction to
9 enter a decision in accord with this Order mandating County action to correct the violations of
10 the GMA identified herein, ~~and IT IS HEREBY~~

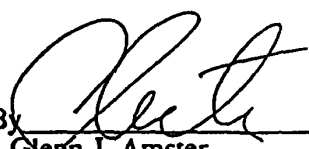
11 ~~FURTHER ORDERED, ADJUDGED AND DECREED that Petitioners shall be awarded~~
12 ~~costs against Respondent WWGMHB pursuant to RCW 34.05.566 and RCW 4.84.010 in the~~
13 ~~amount of \$468.50, pursuant to the Cost Bill filed herein.~~

4 DONE IN OPEN COURT this 4th day of April, 1997

15
16 
17 The Honorable Edw. J. Poyfair
18 SUPERIOR COURT JUDGE

19 Presented by

20 LANE POWELL SPEARS
21 LUBERSKY LLP

22
23 By 
24 Glenn J. Amster
25 WSBA No 8372
26 Attorneys for Petitioner Clark
County Citizens United, Inc and
Michael and Catherine Achen

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER - 7
LPSEA1 & VCG1PLK 11110PLK P1 D

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101 2338
(206) 337-7000

8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED

JUN 18 1997

The Honorable Edwin J Poyfair

LPSL

COPY ORIGINAL FILED
JUN 11 1997
JULIENNE MCCORMICK, Clerk, CLARK CO

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLARK COUNTY CITIZENS UNITED,)
INC, MICHAEL ACHEN and)
CATHERINE ACHEN, husband and wife, et)
al,)

Petitioners and)
Additional Parties of Record,)

NO 96-2-00080-2

v

WESTERN WASHINGTON GROWTH)
MANAGEMENT HEARINGS BOARD, a)
Washington agency,)

ORDER ON
RECONSIDERATION

Respondent)

THIS MATTER came on for hearing before the above-entitled Court on May 30, 1997, upon CCNRC, et al 's Motion for Reconsideration/Clarification Four (4) days earlier, 1000 Friends of Washington ("1000 Friends" herein) filed a Motion to File Brief of Amicus Curiae Clark County Citizens United, Inc, Michael and Catherine Achen (collectively referred to herein as "CCCU"), appearing by and through their attorneys of record, Lane Powell Spears Lubersky LLP and Glenn J Amster, and Respondents, Western Washington Growth

COPY

1 Management Hearings Board (hereinafter referred to as "WWGMHB"), appearing by and
2 through the Office of the Attorney General and Marjorie T Smitch, Assistant Attorney General,
3 Clark County, appearing by and through the Office of the Prosecuting Attorney, and Richard
4 S Lowry, Chief Civil Prosecuting Attorney, additional parties of record Clark County Natural
5 Resources Council, Vancouver Audubon Society, Loo-Wit Group Sierra Club, Coalition for
6 Environmental Responsibility and Economic Sustainability and Native Footprints, appearing by
7 and through their attorney, John S Karpinski, and the Court, having once again considered the
8 record before the WWGMHB, and the pleadings and exhibits herein, and having entered
9 Findings of Fact, Conclusions of Law and Order on April 4, 1997, and having determined 1000
10 Friends' motion is untimely, and having rendered an oral decision on the pending motions
11 following argument,

12 IT IS HEREBY,

13 ORDERED, ADJUDGED AND DECREED that 1000 Friends of Washington's Motion
14 to File Brief of Amicus Curiae is DENIED, and

15 FURTHER ORDERED, ADJUDGED AND DECREED that CCNRC, et al 's Motion
16 for Reconsideration/Clarification is DENIED, and

17 FURTHER ORDERED, ADJUDGED AND DECREED that the Findings of Fact,
18 Conclusions of Law and Order dated April 4, 1997 are confirmed, except Conclusion No 7 is
19 amended to read, in accordance with the parties' stipulation in open Court, as follows

20
21 7 Rural Land Densities The County's rural development regulations
22 are inconsistent with the GMA. The GMA requires counties to determine that
23 planning goals are utilized and are a part of the consideration supporting its
24 decisions. One of the planning goals requires a variety of residential densities
25 and housing types, which the Clark County Community Framework Plan met by
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

identifying pre-existing small development patterns in rural areas and creating rural activity centers with a variety of rural densities. The eradication of the centers violates the planning goal requiring a variety of residential densities.

It is evident the rural land use density regulations were driven in part by earlier Growth Management Hearing Board decisions requiring urban population plus rural population to equal Office of Financial Management population forecasts. See Exhibit 5, p 15 to Petitioners' Opening Brief, Box No 2 to Record, Clark County Exhibit No 93. This formulaic view of the GMA requirements is fatally flawed. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for. The Board's requirement to, in essence, require a vacant buildable lands analysis for the rural area was erroneous. This Board decision, however, compelled the County to downzone substantial portions of the rural areas in order to meet the Board's apparent requirements.

A central requirement for rural areas in the GMA is that growth in rural areas not be urban in character. By trying to comply with the Board's errant decision, the County violated a GMA planning goal.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

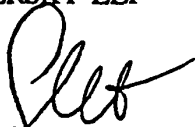
realities of existing rural development in direct contradiction of the terms of the
GMA

DONE IN OPEN COURT this 11 day of June, 1997

/s/ JAMES D. LADLEY
~~The Honorable Edwin J. Poyfah~~
SUPERIOR COURT JUDGE

Presented by

LANE POWELL SPEARS
LUBERSKY LLP

By 
Glenn J. Amster
WSBA No 08372
Attorneys for Petitioners
Clark County Citizens United, Inc
and Michael and Catherine Achen

9

*Nichols
vs
Administrative Hearings Board*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY**

CLARK COUNTY, a municipal
corporation,

Petitioner,

v

WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,

Respondent

Case No 96-2-05498-8

JUDGMENT

THIS MATTER came on before the Honorable John F Nichols on October 29, 1997 for hearing based on the administrative record produced by the Western Washington Growth Management Hearings Board, the parties being represented by counsel, and the court having considered the oral argument of counsel and having reviewed the administrative record, pleadings and papers filed herein and having considered the following documents

- 1 Clark County's Motion for Stay of Western Washington Growth Management Hearings Board Orders, dated April 8, 1997,
- 2 Declaration of Richard S Lowry in Support of Clark County's Motion for Stay, dated April 8, 1997,
- 3 Clark County's Proposed Order Granting Clark County's Motion for Stay of Western Washington Growth Management Hearings Board Orders,
- 4 RCCPA's Memorandum in Opposition of Motion for Stay of WWGMHB Orders, dated August 8, 1997,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- 5 RCCPA's Motion to Dismiss, dated August 8, 1997,
- 6 CCNRC, et al 's, Memorandum in Opposition to Request for Stay, dated August 8, 1997,
- 7 CCNRC's Motion to Dismiss 1995 Claims - Statute of Limitations, dated August 8, 1997,
- 8 Second Declaration of Richard S Lowry with Exhibits in Support of Petitioner Clark County's Reply Memorandum in Support of its Motion for Stay of Western GMA Board Orders and Response to Respondent's Motion to Dismiss, dated August 21, 1997,
- 9 Petitioner Clark County's Reply Memorandum in Support of its Stay of Western GMA Board Orders and Responses to Respondents' Motion to Dismiss, dated August 21, 1997,
- 10 CCNRC's Motion and Declaration to Dismiss all Claims - Failure to Serve all Parties, dated August 21, 1997,
- 11 CCNRC's Memorandum in Support of Motion to Dismiss, dated August 21, 1997,
- 12 Memorandum of Respondent Western Washington Growth Management Hearings Board in Response to Motion to Dismiss, dated August 25, 1997,
- 13 Clark County's Response to CCNRC's Motion to Dismiss, dated August 27, 1997,
- 14 Affidavit of Susan Rasmussen, dated August 27, 1997,
- 15 Affidavit of Glenn J Amster, dated August 27, 1997,
- 16 RCCPA's Supplemental Memorandum in Opposition of Motion for Stay of WWGMHB Orders, dated August 28, 1997,
- 17 Petitioner Clark County's Order Denying Motion to Dismiss by Judge Nichols,
- 18 Petitioner Clark County's Prehearing Opening Brief, dated September, 1997,

1 adopted its amended Plan Drs (including resubmittals without changes) (hereinafter "Plan") on
2 May 3, 1996

3 4 After a compliance hearing on the amended Plan, the Western Board issued its
4 Compliance Order and Order of Invalidity (collectively referred to herein as "Compliance
5 Order") on October 1, 1996. The Compliance Order found the County's Plan, as amended, to
6 be in violation of GMA for many of the same reasons contained in the 1995 Order. The
7 Compliance Order also included an Order of Invalidity based on this noncompliance.

9 5 At page 2 of the Compliance Order, the Western Board stated "the burden of
10 proof to show compliance was placed on the local government [Clark County] "

12 6 Clark County subsequently moved for reconsideration of the Compliance Order
13 and on November 20, 1996, the Western Board issued an "Order on Reconsideration,"
14 reaffirming in large part its Compliance Order and keeping in place its Declaration of Invalidity.
15 The County did not request reconsideration on the burden of proof issues.

17 7 This appeal was filed on December 19, 1996 by Clark County ("County Petition")
18 alleging various errors under the Administrative Procedures Act, RCW 34.05, with the
19 Compliance Order and related Declaration of Invalidity for both the 1995 and 1996 decisions.

20 8 The County Petition appealed the following components of the "Compliance
21 Order and Order of Invalidity" entered by the Western Board on October 1, 1996 and the
22 "Order on Reconsideration" entered by the Board on November 20, 1996,
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- a Its order finding that the County policies and development regulations relating to future adjustments to the County's Urban Growth Areas fail to comply with GMA,
- b Its order finding that the County's designation of policies and development regulations designed to buffer resource lands and limit development in rural and resource areas, including County provisions for lot reconfiguration and lack of provisions requiring aggregation of nonconforming lots fail to comply with GMA,
- c Its order finding that the County's establishment of a residential density of 1 unit per 5 acres in rural areas north of the East Fork of the Lewis River fails to comply with GMA,
- d Its order finding that the County's designation of "non-prime" industrial lands in the designated urban reserve areas fails to comply with GMA, and
- e Its order and declaration of invalidity finding that the following County development regulations and corresponding comprehensive plan policies failed to comply with and were invalid under GMA CCC 18 610, CCC 18 302, and CCC 18 305

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law

1 The review of the County's Petition is conducted under RCW 34 05 570(3)

Relief from the Western Board Order is granted only if it is

- a Unconstitutional,
- b Outside the Board's statutory authority,
- c The result of an unlawful procedure,
- d Erroneous interpretation or application of the law,
- e Not supported by the evidence, or
- f Arbitrary or capricious

2 Clark County's challenge to the 1995 decision is dismissed as untimely

3 Under RCW 36 70A 320, the County Plan, as amended and presented to the Board at the compliance hearing, is to be found in compliance with the GMA unless the Western Board determines, based on a preponderance of the evidence, that the County erroneously interpreted or applied the law This presumption of validity is further supported by WAC 242-02-630, 242-02-632, and 242-02-634 The legal standard before the Board at the compliance hearing was whether or not the County Plan, as amended, complied with the GMA, and not whether it complied with the earlier Board Order issued after the Final Decision and Order on the original County Comprehensive Plan appeal

1 4 The conclusion by the Western Board at page 2 of its "Compliance Order and
2 Order of Invalidity" that the burden of proof was on the County was an erroneous interpretation
3 of GMA

4 5 Because the Western Board's Declaration of Invalidity was based upon this
5 fundamental flaw in assigning the burden of proof, the Declaration of Invalidity was issued
6 based upon an erroneous interpretation of the law and must at this time be set aside, effective
7 immediately After applying the correct standard of review and giving proper deference to the
8 actions taken by the County on compliance, the Western Board is free to find compliance or
9 noncompliance, as authorized by the Act
10

11 6 Clark County did not waive its right to raise the issue of the burden of proof
12 Waiver is essentially a matter of intention Negligence, oversight or thoughtlessness does not
13 create it Reynolds Metal Company v Electric Smith Construction & Equipment Company, 4
14 Wn App 695, 700, 483 P 2d 880 (1971) Under the facts of this case, there was no waiver
15

16 7 Under GMA, the Board must grant deference to the GMA determinations of any
17 city or county A county is presumed to have taken into consideration the regional preferences
18 and historical development and practices in formulating its comprehensive plan
19

20 8 Under the facts of this case, the importance of this deference is reflected
21 especially in the area of rural minimum lot size ~~In hopes of providing constructive guidance~~
22 ~~and avoiding unnecessary future litigation, the Court encourages the Western Board to give~~
23

24

1 ~~full deference to the County determinations, along with the requisite presumption of~~
2 ~~compliance, upon remand~~

3 **ORDER OF JUDGMENT**

4 Based on the foregoing Findings of Fact and Conclusions of Law, and the Court having
5 considered the arguments of counsel, and being duly advised in the premises, it is hereby
6
7 **ORDERED, ADJUDGED, AND DECREED** that

8 1 The Western Board's October 1, 1996 and November 20, 1996 Orders are set
9 aside in the following areas

- 10 a Its order finding that the County policies and development regulations
11 relating to future adjustments to the County's Urban Growth Areas fail to
12 comply with GMA,
- 13
14 b Its order finding that the County's designation of policies and development
15 regulations designed to buffer resource lands and limit development in
16 rural and resource areas, including County provisions for lot
17 reconfiguration and lack of provisions requiring aggregation of
18 nonconforming lots fail to comply with GMA,
- 19
20 c Its order finding that the County's establishment of a residential density of
21 1 unit per 5 acres in rural areas north of the East Fork of the Lewis River
22 fails to comply with GMA,
- 23
- 24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

d Its order finding that the County's designation of "non-prime" industrial lands in the designated urban reserve areas fails to comply with GMA, and

e Its order and declaration of invalidity finding that the County's declaration that the following development regulations and corresponding comprehensive plan policies were deemed invalid under GMA CCC 18 610, CCC 18 302 and CCC 18 305 fails to comply with GMA

2 The Western Board's Declaration of Invalidity is set aside, effective immediately

3 Judgment is entered in favor of Clark County setting aside the Western Board's decision and remanding to the Western Board in the areas included in the County Petition, based on its incorrect assignment of the burden of proof at the compliance hearing

4 This matter is remanded to the Western Board with directions to apply the correct burden of proof and accord the County Plan, as amended, appropriate discretion and local deference. 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, so long as there is compliance with the Act. In the event the Board determines at some future date to reinstate a Declaration of Invalidity, it is directed to precisely identify the GMA errors

5 Finally, the Board is directed to give full credence to the County's determinations, especially in the area of rural minimum lot size, as the County is presumed to have taken into

1 consideration the regional preferences and historical development and practices in formulating
2 its comprehensive plan The Court expects and instructs that ~~significant~~ deference be given,
3 along with the requisite presumption of compliance, to the County Plan upon remand

4 ENTERED this 31 day of December, 1997

6 **ISI JOHN F NICHOLS**

7 _____
8 Judge John Nichols
Clark County Superior Court

9 Presented by

10 CLARK COUNTY PROSECUTING ATTORNEY

11
12 By RS
13 Richard S Lowry, WSBA #4894
14 Chief Civil Deputy

10

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CLARK COUNTY NATURAL RESOURCES
COUNCIL, VANCOUVER AUDUBON
SOCIETY, COALITION FOR
ENVIRONMENTAL RESPONSIBILITY
AND ECONOMIC SUSTAINABILITY
(CERES), RURAL CLARK COUNTY
PRESERVATION ASSOCIATION (RCCPA)
and LOO-WIT GROUP SIERRA CLUB,

Appellants,

v

CLARK COUNTY CITIZENS UNITED,
INC ,

Respondents

No 22164-1-II

PUBLISHED OPINION

Filed MAR 12 1999

MORGAN, J – The Clark County Natural Resources appeals a superior court determination that the Growth Management Act does not empower the Western Washington Growth Management Board to order a county to use as a cap on non-urban growth, population projections made by the Office of Financial Management We affirm

The Growth Management Act (GMA) is codified as RCW 36 70A It was enacted in 1990 It applies in many but not all counties ¹

A county subject to the GMA is required to adopt county-wide planning policies, development regulations and, in most cases, a comprehensive plan ² Such a county must

¹ See RCW 36 70A 040(1), (2)

² RCW 36 70A 040(3)

designate urban growth areas,³ as well as agricultural lands, forest lands, mineral resource lands, and critical areas.⁴ By operation of law, such a county designates as “rural” any land “not designated for urban growth, agriculture, forest, or mineral resources.”⁵

When designating urban growth areas, a county must include land and densities “sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period.”⁶ In doing this, a county must consider “the growth management population projection made for the county by the office of financial management [OFM].”⁷ OFM makes its projection pursuant to RCW 43.62.035.

Having designated urban growth areas, a county may not allow urban growth outside those areas.⁸ “Urban” growth is “growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands.”⁹

³ RCW 36.70A.040(3)(c), RCW 36.70A.110(1)

⁴ RCW 36.70A.040(3)(b), RCW 36.70A.170(1), RCW 36.70A.030(2), (5), (8), (11), (17), (18), (19), (20). In 1994, subsections 17-20 were numbered 14-17, respectively.

⁵ RCW 36.70A.070(5)

⁶ RCW 36.70A.110(2), *see* RCW 43.62.035

⁷ RCW 36.70A.110(2)

⁸ RCW 36.70A.110(1), RCW 36.70A.010(1), (2)

⁹ RCW 36.70A.030(17). In 1994, this subsection was numbered 14 rather than 17.

Notwithstanding the designation of urban growth areas, a county may allow *non-urban* or “rural” growth outside those areas¹⁰ “Non-urban” or “rural” growth encompasses “a variety of uses and residential densities, including clustered residential development,”¹¹ provided that such uses and densities are “not characterized by urban growth,” and are “consistent with rural character”¹²

Clark County is subject to the GMA. It has about 500,000 acres, many of which are urban or suburban in character. In December 1994, it adopted a comprehensive plan that designated about 83,500 acres as rural. The plan stated “that *all* rural lands would have a minimum lot size of 5 acres”¹³

Numerous parties appealed the plan to the Western Washington Growth Management Board (“the Board”), including the Clark County Natural Resources Council (CCNRC) and Clark County Citizens United, Inc (CCCU). CCNRC sought stricter controls on land use, while CCCU sought less strict controls on land use.

In September 1995, after weeks of hearings, the Board ruled, among other things, that Clark County’s plan did not adequately restrict rural growth.¹⁴ Legally, the Board

¹⁰ RCW 36 70A 110(1) (“Each county that is required or chooses to plan under RCW 36 70A 040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.”)

¹¹ RCW 36 70A 030(15). We use this subsection as a present indicator of legislative intent, even though it was not enacted until 1997. See Wash. Laws 1997, ch. 429, § 3.

¹² RCW 36 70A 070(5)(b), as amended in 1997. In 1994, the GMA allowed “uses that are compatible with the rural character of such lands,” and “a variety of rural densities.” Former RCW 36 70A 070(5), Wash. Laws 1990, ch. 17, § 7.

¹³ Clerk’s Papers at 38.

¹⁴ The Board also made many other holdings that we are not asked to review.

22164-1-II

rested its ruling on two premises allegedly drawn from the GMA (1) that population projections and allocations are not solely for use in urban areas, and (2) that the population projections for urban areas plus the population projections for non-urban areas must total the population projection for the entire county. Factually, the Board observed (1) “that the County allocated 15,000 of the population projection number for non-urban growth,” (2) that the County had “an excess of 13,500 preexisting undeveloped tax lots,” and (3) that the County had based its planning on an average of 2.33 persons per household. As a result, according to the Board, “there would be more than twice the number of lots available to house the allocated 15,000 population projection, even without additional divisions of land that would likely occur over the next 20 years.”¹⁵ Based on this view of the law and facts, the Board ruled that the GMA precluded 5-acre lots in rural areas, and it ordered the County to “increase the minimum lot sizes” in such areas.¹⁶

CCCU appealed to the Clark County Superior Court, which reversed the Board’s order. The court ruled that the GMA did not require the County to use OFM’s population projections as a fixed cap on non-urban growth, and that the Board had exceeded its authority by creating and imposing such a cap on the County.¹⁷

¹⁵ Clerk’s Papers at 39-40

¹⁶ Clerk’s Papers at 79

¹⁷ The superior court said in part

It is evident the rural land use density regulations were driven in part by earlier Growth Management Hearing Board decisions requiring urban population plus rural population to equal Office of Financial Management population forecasts [Citation omitted]. This formulaic view of the GMA requirement is fatally flawed. There is no requirement

CCNRC now appeals to this court. Its primary contention is that the trial court “erroneously concluded OFM population projections are not a restraint/cap on rural growth.”¹⁸ This contention involves a question of law¹⁹ that we review without deference to the trial court,²⁰ but arguably with deference to the Board.²¹ According to CCCU, the question is whether “the GMA requires [that] the OFM population projections be used as the defining element in establishing land use densities in rural areas.”²² In simpler terms, the question is whether the GMA requires a county to use OFM’s population projections as a cap on non-urban growth.

The GMA requires a county to consider OFM population projections when sizing urban growth areas. Thus, RCW 36 70A 110 provides in pertinent part

in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for. The Board’s requirement to, in essence, require a vacant buildable lands analysis for the rural area was erroneous. This Board decision, however, compelled the County to downzone substantial portions of the rural areas in order to meet the Board’s apparent requirements.

Clerk’s Papers at 739-740

¹⁸ Appellant’s Brief at 11

¹⁹ *City of Pasco v Public Employment Relations Comm’n*, 119 Wn 2d 504, 507, 833 P 2d 381 (1992) (construction of statute is question of law)

²⁰ *City of Redmond v Central Puget Sound Growth Management Hearings Board*, 136 Wn 2d 38, 46, 959 P 2d 1091 (1998). In other words, we review the trial court’s ruling “de novo.”

²¹ We discuss due deference to the Board later in this opinion.

²² Respondent’s Brief at 22

(1) Each county that is required or chooses to plan under RCW 36 70A 040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period

Nothing in the GMA provides that a county must use OFM's population projections for any other purpose. More particularly, nothing in the GMA provides that a county must use OFM's population projections as a cap or ceiling when planning for non-urban growth.²³ Construed according to its plain meaning, then, the GMA does not require counties to use OFM's population projections as a cap or ceiling on non-urban growth.

Attempting to forestall a holding based on the GMA's plain meaning, CCNRC argues that "the conclusion that the OFM population projection is a hard cap not to be exceeded is supported by a review of the Growth Management Act ('GMA') as a whole."²⁴ It is our view, however, that such a review tends to detract from, not support, CCNRC's position. As already observed, the GMA requires counties to use OFM's projections when planning for *urban* growth. It omits any reference to counties using OFM's projections when planning for *non-urban* growth. The implications are (1) that the legislature considered how OFM's projections should be used, (2) that the legislature

²³ Without so holding, we assume that the GMA *permits* a county to use OFM's population projections when planning for lands outside its urban growth areas. That question is not presented by this appeal.

²⁴ Appellant's Brief at 19.

decided to require that counties use OFM's projections when planning for urban growth, and (3) that the legislature decided *not* to require that counties use OFM's projections when planning for non-urban growth²⁵

CCNRC argues that the trial court was required to defer to the Board's interpretation of the GMA, and that this court must also. Although a court will defer to an agency's interpretation when that will help the court achieve a proper understanding of the statute,²⁶ "it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law."²⁷ Here, in our view, the Board misread the statute and exceeded its authority. If we were to defer to its ruling, we would perpetuate, not correct, its error. Under these circumstances, we hold that deference is not due.

3

²⁵ *Snohomish County v Anderson*, 123 Wn 2d 151, 157, 868 P 2d 116 (1994), quoting *Washington Natural Gas Co v PUD 1*, 77 Wn 2d 94, 98, 459 P 2d 633 (1969) ("Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature"), *Bour v Johnson*, 122 Wn 2d 829, 836, 864 P 2d 380 (1993), *State v Roadhs*, 71 Wn 2d 705, 707, 430 P 2d 586 (1967)

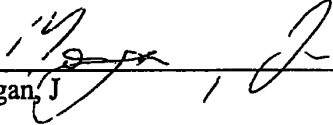
²⁶ *City of Redmond*, 136 Wn 2d at 46, *City of Pasco*, 119 Wn 2d at 507, *Cowiche Canyon Conservancy v Bosley*, 118 Wn 2d 801, 813-14, 828 P 2d 549 (1992), *Overton v Economic Assistance Auth*, 96 Wn 2d 552, 555, 637 P 2d 652 (1981)

²⁷ *Overton*, 96 Wn 2d at 555 (citation omitted), *see also Cowiche*, 118 Wn 2d at 815

22164-1-II

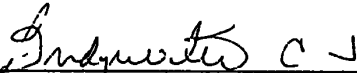
Based on the foregoing, we conclude that the GMA does not require counties to use OFM's projections as a cap on non-urban growth. The Board exceeded its authority, and the trial court did not err by reversing the Board's ruling.

Affirmed




Morgan, J

We concur



Bridgewater, C J



Reynolds, J P T

11

RECEIVED
JAN 21 2015
BOARD OF
COUNTY COUNCILORS

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 ACHEN, et al ,

4 Petitioners,

Case No 95-2-0067c

5
6 v

**ORDER TO SHOW CAUSE
RE COMPLIANCE**

7 CLARK COUNTY, et al ,

8 Respondents,

9
10 and

11 CLARK COUNTY SCHOOL DISTRICTS, et al ,

12 Intervenor

13
14
15
16 THIS Matter is brought by the Western Washington Growth Management Hearings Board
17 upon its own motion for parties in this case to show cause why compliance should not be
18 found on the remaining issues in this case, and the case closed
19

20
21 Compliance for several issues in this case has not been found and this case has been open
22 for a number of years without action by any party However, on September 7, 2004, Clark
23 County adopted a revised comprehensive plan Several aspects of this revised
24 comprehensive plan were challenged and eventually found compliant See *Building*
25 *Association of Clark County, et al , v Clark County*, WWGMHB Case No 04-2-0038c
26 (Amended Final Decision and Order, November 23, 2005) The unchallenged portions of
27 the revised comprehensive plan are presumed valid and deemed compliant RCW
28 36 70A 320(1)
29

30
31 Therefore, with the adoption of a revised comprehensive plan and the issuance of the
32 November 23, 2005, Amended Decision and Order in *Building Association of Clark County*,

- ORDER TO SHOW CAUSE RE COMPLIANCE
Case No 95-2-0067c
May 8 2006
Page 1 of 2

Western Washington
Growth Management Hearings Board
905 24th Way SW Suite B 2
Olympia WA 98502
P O Box 40953
Olympia Washington 98504 0953
Phone 360 664 8966
Fax 360-664 8975

010758


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

et al , v *Clark County*, WWGMHB Case No 04-2-0038c, it appears to the Board that the compliance issues remaining in this case have been most likely resolved

ORDER

Based on the foregoing, the parties are required to show cause no later than **May 22, 2006**, as to why this Board should not find compliance on the remaining issues in this case. If parties fail to show such cause, compliance will be found on the remaining issues and the case will be closed.

SO ORDERED this the 8th day of May 2006



Holly Gadbow
Presiding Officer