

**Schroader, Kathy**

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**From:** Cook, Christine  
**Sent:** Thursday, September 17, 2015 1:37 PM  
**To:** Orjiako, Oliver; Schroader, Kathy  
**Subject:** 1994 plan appeals -- for the record  
**Attachments:** 97.04.04.Poyfair-FOF-COL-Ord.pdf; 97.06.11.Poyfair-Ord-Reconsideration.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Oliver -- I have asked Thelma to make binders with the docs that David sent me. In the meantime, I would like these to go into the record for this plan update, given the confusion that Carol and Susan have been spreading about the actual results of the appeals. I will email you each document separately, as that is how I received them.

Thanks,  
Chris

Christine M. Cook  
Sr. Deputy Prosecuting Attorney  
x4775

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

**FILED**

**APR 04 1997**

*JoAnne M... 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,**

Respondent.)

**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. Smith, Assistant Attorney General; Clark County, appearing by and through the Office of

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 1**  
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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.

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

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

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

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

6. Comprehensive Plan EIS. The Comprehensive Plan EIS issued by the County violates the State Environmental Policy Act ("SEPA"), RCW Ch. 43.21C. The agri-forest resource land designations were disclosed subsequent to the publication of the final Plan EIS and were not disclosed or discussed in any way in the EIS alternatives. The removal of rural activity centers also was not addressed in the EIS. The County did not require additional environmental review and did not solicit additional public comments. The County failed to comply with SEPA's requirement for additional environmental review when a proposal changes substantially 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  
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County's decision to follow the Board's lead was unfortunate. The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the terms of the GMA.

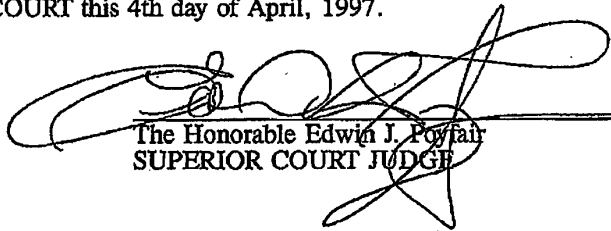
**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY:

ORDERED, ADJUDGED AND DECREED that the Clark County Comprehensive Plan and Development Regulations adopted in Ordinance 1994-12-47 on December 20, 1994 are remanded to the Western Washington Growth Management Hearings Board with direction to enter a decision in accord with this Order mandating County action to correct the violations of the GMA identified herein; ~~and IT IS HEREBY:~~

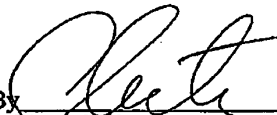
~~FURTHER ORDERED, ADJUDGED AND DECREED that Petitioners shall be awarded costs against Respondent WVGMBH pursuant to RCW 34.05.566 and RCW 4.84.010 in the amount of \$468.50, pursuant to the Cost Bill filed herein.~~

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

  
The Honorable Edwin J. Poyfai  
SUPERIOR COURT JUDGE

Presented by:

LANE POWELL SPEARS  
LUBERSKY LLP

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



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The H **06-11-1997**

**JoAnne McBride, Clerk  
Clark County**

**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

**ORDER ON  
RECONSIDERATION**

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

ORDER ON RECONSIDERATION - 1  
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*Wit*

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  
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ORDER ON RECONSIDERATION - 2  
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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

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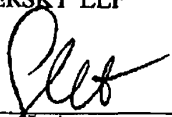
realities of existing rural development in direct contradiction of the terms of the  
GMA.

DONE IN OPEN COURT this 5<sup>th</sup> day of June, 1997.

  
The Honorable Edwin J. Poyfair  
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

ORDER ON RECONSIDERATION - 4  
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