

Schroader, Kathy



From: Orjiako, Oliver
Sent: Friday, November 13, 2015 7:55 AM
To: Euler, Gordon; Alvarez, Jose; Anderson, Colette; Albrecht, Gary; Hermen, Matt; Kamp, Jacqueline; Lebowsky, Laurie; Lumbantobing, Sharon
Cc: Schroader, Kathy
Subject: FW: Using OFM projections for a cap on rural growth not allowed in the courts - For the public record and the 2016 Comprehensive Plan update

FYI and for the record Thanks

From: Carol Levanen [mailto:cnldental@yahoo.com]
Sent: Thursday, November 12, 2015 10:24 PM
To: Madore, David; Stewart, Jeanne; Mielke, Tom; Orjiako, Oliver; DONALD MCISAAC
Subject: Using OFM projections for a cap on rural growth not allowed in the courts - For the public record and the 2016 Comprehensive Plan update

Re: Using OFM projections for cap on rural growth not allowed by the courts - For the Public Record November 11, 2015

Dear Councilors,

As you review the data in the DSEIS, for accuracy, keep in mind what the courts have said regarding the OFM projections and rural growth. In the Court of Appeals of the State of Washington Division II, March 12, 1999, Published Opinion Case No. 22164-1-II, Affirmed J. Morgan, C.J. Bridgewater, J.P.T. Reynolds, it states:

"By operation of law, such a county designates as "rural" any land "not designated for urban growth, agriculture, forest or mineral resources. 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. In doing this, a county must consider "the growth management population projection made for the county by the office of financial management (OFM) " Having designated urban growth areas, a county may not allow urban growth outside those areas.

"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."

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

"In September 1995, the Board ruled, that Clark County's plan did not adequately restrict rural growth. Legally the Board rested its ruling on two premises drawn from the GMA: (1) that population projections and allocation 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 for the entire county."

"CCCU appealed to the Clark County Superior Court, which reversed the Board 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."

"The GMA requires a county to consider OFM population projections when sizing urban growth areas. "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 land analysis for the rural area was erroneous."

"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."

"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 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 growth."

"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. 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."

Sincerely,

Carol Levanen, Ex Secretary, CCCU, Inc