CCd: BOCC

10/1/1996

BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ACHEN, et al., Petitioners, vs. CLARK COUNTY, et al., Respondents, and CLARK COUNTY SCHOOL DISTRICTS, et al., Intervenors.	No. 95-2-0067 COMPLIANCE ORDER AND ORDER OF INVALIDITY To the Hearings Board

Subsequent to the September 20, 1995, Final Order in this case, and even during the period of time prior to the December 6, 1995, Order on Reconsideration, Clark County and the cities began work to comply with the items found to be violative of the Growth Management Act (GMA, Act). The GMA steering committee was resurrected and held at least four meetings to address regional issues. The Clark County Planning Commission (PC) and Board of County Commissioners (BOCC) met numerous times prior to 1996. Some ordinances concerning the remand items were adopted in 1995. In 1996 the PC began a series of twelve public hearings, ending in April. At the onset of the public hearings, a generalized mailing was sent by the County concerning the issues raised by the remand. The BOCC held public hearings on April 15, April 30 and May 1, 1996. BOCC deliberations occurred on May 2 and 3, 1996. A comprehensive ordinance was enacted May 3, 1996, (1996-05-01).

Some, but not all, original petitioners and intervenors participated in the compliance hearing process. Clark County, Vancouver, Camas, Battle Ground and Ridgefield participated. A compliance hearing prehearing order was entered June 25, 1996. Twenty-eight separate issues were presented for resolution. The participating petitioners raised issues concerning sanctions

other actions leads to the inescapable conclusion that the inaction of the County does not comply with the Act with regard to stormwater issues.

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RURAL/RESOURCE

Beginning at p. 26 of the Final Order and concluding at p. 32, we reviewed the resource buffering and rural lands decisions of Clark County. We specifically incorporate that discussion by reference into this Order. We do so because Clark County has refused to take any effective action to comply with the Act for buffering of resource lands and solving the rural lands problems of their own making. The record shows that the County took action that will make the situation worse. As we said at p. 42 of the Final Order in discussing the problems that many rural land owners found themselves in after adoption of the CP and DRs:

> "We understand the expressed frustration that many of the site-specific petitioners had toward the predicament they found themselves. Those who did not take advantage of the County's benign neglect between 1991 and 1994 now see their neighbors allowed unencumbered rights to load the landscape with incompatible uses. There are implementation measures the County could take to level this playing field and re-inject some fairness into the situation. Aggregation of the segregated lots, restrictions on lots under five acres in the vicinity of resource lands, and other vehicles are available. Whether the BOCC will adopt such measures remains to be seen. If they do not, the unfair position that many of the site-specific petitioners find themselves in will be perpetuated."

The BOCC did not, and the unfair position remains. The County refuses to comply with the Act and is continuing to allow egregious violations of the goals of the Act in the rural and resource areas.

In providing direction for the County to achieve compliance, we stated that the following actions needed to be taken:

> 3. "Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of non-conforming lot sizes, as well as, other techniques to reduce the impact of the parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas;
>
> 4. Increase the minimum lot sizes of rural areas located north of the "rural resource

line";...

Within the backdrop of this situation, Clark County amended its code (CCC) 18.302.060 to reduce rear and side setbacks for dwellings in the resource area from 200 ft. to 50 ft. The County increased the "buildability" of non-conforming lots by applying these reduced setbacks. Thus if anything the County, by this action, made available more building sites for residential purposes within the resource areas.

For urban-zoned lots that abut resource areas staff recommended increasing the landscaping buffer widths to 50 ft. for a single-family zone. The PC recommended that the maximum buffer also apply within multi-family zones. The BOCC did neither, but instead adopted an ordinance that would allow as little as 5 ft. of buffering (landscaping) between residential and resource lands. No attempt was made to change or make more difficult the continuing development of "urban-zoned lots" or "multi-family zones" in the rural areas. The County also amended CCC 18.302.095, which previously had permitted reconfiguration of existing non-conforming resource lots, to increase the ability of these non-conforming lots to have more residential buildings. Rather than find ways to limit or eliminate these non-conforming lots in resource areas, the County actually made the lots more attractive for residential development. For instance, the criteria to allow reconfiguration and reduction in size was increased from "buildable" to "reasonably buildable", whatever that term may mean.

The County expressly decided that "a lot aggregation program would be ineffective and should not be pursued". Most of the staff analysis involved setting forth reasons why various proposals suggested by petitioners and others would not work. Nothing in this record shows that the County ever considered or made proposals for techniques that would work.

The increase in minimum lot size north of the "rural resource line" (east fork of the Lewis River) was a classic example of manipulating figures and denying the need to comply. In what must have taken a significant amount of staff time, maps and tables were developed that reached a conclusion that only 8% of the potential "buffering" parcels north of the resource line would even be impacted by changing minimum lots sizes from 5 to 10 acres. The maps and tables only addressed parcels which were *adjacent to or within 100 ft. of resource lands.* The FEIS, prior

extensive staff reports and PC recommendations were directed at the entire rural landscape north of the resource line. To now draft this set of figures and hope that we would not notice the significant change in analysis is extremely disturbing and certainly not to the level of professionalism shown at the original hearing.

In any event, even if the conclusions were correct, the fact that some of the resource land buffering issues could still be addressed by increases in minimum lot sizes in this area is better than nothing. The attitude of Clark County now appears to be that since the area is already messed up, nothing can be done to save it. While that might be more true for the area south of the resource line the evidence in this record is that is not true for the area north of the east fork of the Lewis River.

Clark County has adopted a maximum population projection, maximum market factor, maximum vacant lands analysis and maximum urban growth areas. It must be consistent with that process by minimizing rural growth and doing anything and everything available to direct new growth into the urban growth areas. The rural growth protection of 25,071 does not provide for any new lots and only a 95% build-out of existing lots. Given the evidence contained in this record particularly the neglect of Clark County to take action from 1991 through 1994 for rural and resource lands, the current failure to take effective steps to conserve resource lands once they were designated and prevent the kind of sprawl in rural areas that the Act is designed to prohibit, the present rural zoning code DRs adopted at the time of the CP and as part of Ordinance #1996-05-01 substantially interfere with the goals of the Act and are found to be invalid under the test provided in RCW 36.70A.300. Specifically CCC 18.302, 18.303 and those sections of Ordinance #1996-05-01 relating to resource lands, rural lands and urban reserve areas are declared to be invalid. Those sections substantially interfere with goals 1, 8, 9 and 10.

We have set forth findings of fact and conclusions of law with regard to the invalidity sections of this Order. We incorporate those by reference.

ORDER

In order to comply with the Act Clark County must take appropriate action to:

12. The County has refused to adopt DRs that prevent incompatible uses from encroaching on resource land areas.

13. The County has refused to adopt techniques to buffer resource lands.

14. The County has refused to adopt techniques to reduce the impact of the tremendous number of parcelizations that occurred between 1991 and 1994 during the period the County had not complied with the September 1, 1991, designation and conservation requirements of the Act.

CONCLUSIONS OF LAW

1. The action of the County set forth in the findings of fact substantially interfere with the goals of the Act, specifically 1, 2, 8, 9 and 10.

2. CCC 18.302 is declared invalid under the test set forth in RCW 36.70A.300(2)(a).

3. The allowance of 5 acre minimum lot size north of the east fork of the Lewis River is declared to be invalid under the test set forth in RCW 36.70A.300(2)(a).

4. The allowance of resource lands to be included in the urban reserve area designations is found to be invalid under the test set forth in RCW 36.70A.300(2)(a).

5. Ordinance #1995-12-19 and/or CCC 18.610 is found to be invalid under the test provided in RCW 36.70A.300(2)(b).

12. Adopt effective implementing DRs for existing stormwater pollution.

13. Analyze and make appropriate changes to the capital facilities element taking into consideration the incorporated plans, the completed Vancouver capital facilities element and the increase population projection.

In order to comply with the Act, Ridgefield must take appropriate action to correctly designate and analyze all property within its boundaries.

The County is allowed 135 days to complete items 2 through 7. The County is allowed the full 180 days to complete items 1 and 8 through 13. Ridgefield is allowed the full 180 days to complete its reevaluation.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

SO ORDERED this 1st day of October, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
William H. Nielsen
Board Member

_____
Les Eldridge
Board Member

_____
Nan A. Henriksen
Board Member

FINDINGS OF FACT

Appendix I

1. The County has adopted the highest possible populations projections allowable by law.

2. The County has adopted a 25% market factor for residential and commercial areas within the UGAs.

3. The County has adopted a 50% market factor for industrial siting within the UGAs.

4. Ordinance #1995-12-19 and CCC 18.610.110 provide for expansion of UGAs into URAs. The criteria used allows for annual movement of the UGAs without adequate restrictions to prevent sprawl.

5. The established UGAs are very large and include maximum populations projections and maximum market factors.

6. The cities and Clark County have minimal density and infill regulations.

7. The County failed to adopt resource land and critical area designations (except for wetlands) by September 1, 1991, and did not do so until the CP adoption, December 1994.

8. The County did not have adequate rural lot sizes prior to the CP adoption in December 1994, and still does not have adequate minimum lot sizes in the rural area north of the east fork of the Lewis River.

9. The County has included thousands of acres of resource lands within the urban reserve area designations.

10. The purpose of the urban reserve area is to allow transition to urban development past the 2012 planning period. Designation and conservation of resource lands now designated within the urban reserve area will accomplish the same purpose. Placing such resource lands within urban reserve areas does not maintain and enhance natural resource based industries.

11. The County has allowed the rural areas to develop with a proliferation of 1 acre and 2.5 acre lots which are not conducive to resource-based industries.

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12. The County has refused to adopt DRs that prevent incompatible uses from encroaching on resource land areas.

13. The County has refused to adopt techniques to buffer resource lands.

14. The County has refused to adopt techniques to reduce the impact of the tremendous number of parcelizations that occurred between 1991 and 1994 during the period the County had not complied with the September 1, 1991, designation and conservation requirements of the Act.

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Schroader, Kathy

From: Tilton, Rebecca
Sent: Wednesday, February 24, 2016 12:07 PM
To: Orjiako, Oliver; Schroader, Kathy; Wiser, Sonja
Subject: Comp Plan Comments
Attachments: Rasmussen_Susan_022316CompPlanComments.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

I missed one.

These were received during "general" public comment at yesterday's hearing

I apologize in advance if any of the comments I've sent are duplicates

Thanks again,
Rebecca

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