

Schroader, Kathy



From: susan rasmussen <sprazz@outlook.com>
Sent: Wednesday, May 25, 2016 11:23 PM
To: steve djulio@foster.com
Cc: Madore, David, Stewart, Jeanne, Mielke, Tom, Olson, Julie (Councilor), Boldt, Marc, Cnty 2016 Comp Plan
Subject: The Poyfair Remand

Dear Mr. DiJulio,

On behalf of the membership of Clark County Citizens United, thank you for your guidance on Clark County's comprehensive plan update. My letter concerns the testimony from Mrs. Loretta Steele at last night's hearing. In part, Mrs. Steele's testimony centered on the Superior Court Orders of Judge Poyfair. Her testimony generated many questions that warrant honest answers.

The Superior Court Orders by Judge Poyfair, April 4, 1997, remain relevant today. They should also be important to Clark County since the rulings are tied to the county's GMA planning history and issues still allude compliance. Included among CCCU's large body of testimony in the public record, are frequent references to the Superior Court Orders, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, Honorable Edwin Poyfair, No. 96-2-00080-2, and the PUBLISHED OPINION of the Court of Appeals, Division II, March 12, 1999.

A well-reasoned understanding of Judge Poyfair's decisions, clearly indicates three elements in the court ruling. Revealed in last night's proceedings (5/24), Dr. Orjiako lent recognition to only two of the three elements ("limiting of two rulings"). I'm guessing the two elements he references include:

1. Return of the rural centers
2. Corrections of the agri-forest zoning

Dr. Orjiako's statement indicates a major concern. There is a gross misunderstanding of the Superior Court Orders and a failure to recognize a third element in the Poyfair Decision. Either Dr. Orjiako was directed by the Board of County Councilors to ignore particular elements of the Superior Court Orders, or he has intentionally chosen to disregard the third element in the ruling. Both actions risk non-compliance. Regardless of how, when, or who made the ill-fated decision to cherry-pick particular Superior Court Orders, this action resulted in only partial compliance. Why are elements of Judge Poyfair's Decision, all concerning the *erroneous formula*, fail even to be acknowledged, let alone rectified? Many consider this action unlawful. It most certainly is shamefully immoral. This is where we have a profound difference of opinions.

Additionally, the Poyfair Decision contains much language on the county's misguided choice to apply the "*erroneous formula*," and the consequential impacts to the plan. Because this is defined as an overarching decision, it is the most critical element in the Superior Court Orders. By inference, this includes any element that suffers from impacts as a result of the county's reliance on the *erroneous formula*. This includes the comprehensive plan, county-wide planning policies, all land use, and zoning regulations.

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. (Superior Court, Judge Poyfair, Pg. 6)

It is crucial to thoroughly comprehend all the nuances and various complexities of this element contained in the ruling. Because the county based the comprehensive plan, all county-wide planning policies, all land use and zoning regulations on the *erroneous formula*, the plan fails to have a lawful foundation. It not only requires a tremendous undertaking to correct the many wrongs, but a fundamental shift in staff's policy direction. Despite this important

ruling, there has never been a full accounting, an inventory, an analysis of all the various implications stemming from the *erroneous formula* Its not perplexing why the county conveniently ignores the guts of the Poyfair Remand

The Superior 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 (Court of Appeals, No 22164-1-II, Judge Pg 4)

The impacts, (stemming from the unauthorized formula that drove the county to put a cap on rural growth,) are evidenced in the massive downzoning that occurred, and the overwhelming numbers of non-conforming parcels to their zone size To this day, only 7% of all FR-40 parcels, and 17% AG-20 parcels conform to their zone size The same overwhelming non-conformity exists throughout all Rural zones The problem is compounded in the R zones by Urban Reserve and Holding overlays lingering over 22 years on most of the parcels All the non-conformity means the county's plan fails to reflect the unique rural character The population projections are routinely set low There has been a failure to acknowledge and accommodate the migrating people to Clark County from the Portland area The County is poised to accept 85% of the next 20 yr projected growth rate of the Portland-Metro area Numbers for all vacant buildable lands are always healthy However, housing has become increasingly unaffordable The resource lands were designated via aerial photography and staff "reports " The resource land have never benefited from an honest GMA compliant designation that incorporates the NRCS Soils manual and productivity analysis (GIS metadata) Entire chapters in the comprehensive plan update are devoted to Design Elements, Housing, and the Environment There has never been recognition of protections for private property rights and a balancing of all GMA planning goals There is no recognition of the State Dept of Revenue updates for the Current Use Taxation Program, Forestry, that recognizes 5 acres of trees These is no recognition of the shifting trends in the agriculture industry to smaller farms, the robust equine, 4-H, and Master Gardener communities

The citizens were denied a range of alternative plans from which to choose, let alone a broad range of plans that recognizes the needs of rural landowners Our rural lands have been frozen over 22 years The losses to the landowners regarding property values, and rural cultural impacts are ignored Successive generations are forced into living urban lifestyles The county routinely uses exclusionary practices during the planning process This effectively eliminates rural land owner issues, and effectively disadvantages rural landowner concerns This also demonstrates non-compliance to the important public participation process

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. (Superior Court, Judge Poyfair, Pg 7)

All things considered, the flawed formula in not being dismantled it is being reinforced The, "***cap on rural growth,***" remains strongly woven throughout the comprehensive plan in place today CCCU's members duly advanced our concerns through all proper judicial channels CCCU expects the county to completely honor the Superior Court Orders, make the necessary corrective measures to remedy and rid the county from all the impacts rooted in the illegal formula

Our concerns are valid, and an honest answer is long-overdue to our question **Has Clark County fully complied with all aspects and intentions of the Superior Court Orders?**

The membership of CCCU appreciates your work on behalf of the county's comprehensive plan

Best regards,
Susan Rasmussen for
Clark County Citizens United, Inc