



CP16#0483

RECEIVED BY ALL COMMISSIONERS NOV 25 2014

Board of Commissioners

Hello Ike,

I am sending you additional information regarding our Superior Court Orders. These excerpts from the Published Opinion clearly show confirmation of the Superior Court Orders, No. 96-2-00080-2. This written opinion partially explains how the 83% non-conforming lots throughout the rural and resource lands came to be.

Judge Poyfair's ruling is still relevant today.

"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."

The county's parcel sizes for rural and resource lands have never been based on the proper GMA criteria. The county's unique and historical land use patterns of development and parcelizations have never been defined and acknowledged in the comp. plan. Instead, thousands of parcels of rural and resource lands were unjustly downzoned in the county's attempt to satisfy the ill-conceived directives of the WWGMHB that incorrectly tied the rural lands to the OFM population projections. The county's rural character was artificially created. This results in an incorrect definition of the true unique qualities of the county's rural character. This results in a mere 17% of all rural lots conforming to their zone size.

The Published Court Opinion: Court of Appeals, No. 22164-1-II, Filed March 12, 1999 Page 3;

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."

The plan stated "that all rural lands would have a minimum lot size of 5 acres."

In September 1995, after weeks of hearings, the Board ruled, among other things, that Clark County's plan did not adequately restrict rural growth. Legally, the Board rested its ruling on two premises allegedly drawn from the GMA: (1) that the 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 nonurban 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." 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.

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 the 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.

Page 4:

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.

Page 5:

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."

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:

Page 6:

(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 with 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. 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.

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 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.

Page 7:

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.

Page 8:

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.**

Best regards to you,
Susan Rasmussen, for the Board of Directors
Clark County Citizens United, Inc.

From: sprazz@outlook.com
To: cndental@yahoo.com
CC: zmcisaac@ashbaughbeal.com; firfarmer@yahoo.com; donalddmcisaac@msn.com; leahnwhomes@gmail.com; Peter.Silliman@clark.wa.gov; david.madore@clark.wa.gov; tom.mielke@clark.wa.gov; ed.barnes@clark.wa.gov; comp.plan@clark.wa.gov; Jeff.Wilson@commerce.wa.gov; wcrolsons@tds.net; j.malinowski@ieee.org; lon@moss-wriston.com; nickredinger@hotmail.com; ejnickson@gmail.com; ralan1953@gmail.com; billrita@pacifier.com; marcus35@msn.com; benjaminmoss@johnlscott.com; axel.swanson@clark.wa.gov
Subject: Fw: Superior Court Orders
Date: Sun, 23 Nov 2014 06:23:28 +0000

Sent from Windows Mail

From: susan.rasmussen
Sent: Saturday, November 22, 2014 10:23 PM
To: ike.nwankwo@commerce.wa.gov

Hello Ike,

In response to your request, I want to confirm that these are indeed superior court orders for cause No. 96-2-00080-2. Page 7, FINDINGS OF FACT, and CONCLUSIONS OF LAW AND ORDER; April 4, 1997, Honorable Edwin J. Poyfair states in his ORDER: **“Based on the forgoing 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 the direction to enter a decision in accord with this order mandating Clark County to correct the violations of the GMA identified herein.”

Clark County still hasn't complied with the court order as written on Page 6:
“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.”

The present comp. plan failed to accurately capture and define Clark County's unique **“rural character.”** The courts have defined rural character;
“The existing and preferred patterns of land use and development established for lands designated as rural areas or lands under this comprehensive plan.”

I agree whole heartedly in giving deference to local Clark County citizens in crafting the design for their county land use plans. Local citizens are the best resources for defining their unique, “rural character.” I don't agree with how the rural communities and their citizens are eliminated from collaborative work sessions. Attempts at open collaboration during the open house meetings is discouraged. Local deference within Clark County should be employed to best insure that the needs, interests, culture, and desires of the rural communities and their citizens are respectfully acknowledged.

There has been very little, if any, new lot creation in the rural and resource lands in the past twenty years. It is unreasonable to extend this no-growth policy an additional twenty years. There is nothing written in the GMA that supports rural and resource lands being frozen like this.

The BURK Study, 2012, shows that the face of agriculture has changed substantially in Clark County. The study details the proliferation of the many, “very small to small farms.” This trend is a drastic change away from the large commercial dairy farms that once prevailed thirty years ago. Dairy farming requires vast acres of land. The county's comp. plan needs to reflect the major shift in trends within the agricultural community to accommodate the smaller farms, and very small life-style farming endeavors.

Best regards,

Susan Rasmussen, for the Board of Directors
Clark County Citizens United, Inc.