

Schroader, Kathy



From: Orjiako, Oliver
Sent: Thursday, November 19, 2015 8:54 AM
To: Wiser, Sonja
Cc: Schroader, Kathy
Subject: FW: Comments for the PC Record
Attachments: PC-Ltr-Assumptions-151119.pdf

Please, forward to the PC Thanks

From: David McDonald [<mailto:david@mcdonaldpc.com>]
Sent: Thursday, November 19, 2015 8:41 AM
To: Orjiako, Oliver
Cc: Horne, Chris; Cook, Christine
Subject: Comments for the PC Record

Dr. Orjiako.

Attached please find comments for the record on the Comp Plan update

Could you please forward these to the planning commission members.

Thank you,

David T McDonald

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Planning Commission Members
% Oliver Orjiako
Clark County Community Planning
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

Via pdf and e-mail to PC members

Dear Commissioners:

I have submitted multiple, detailed and lengthy documents and they are in the record regarding the history of GMA in this county, the current plan, specific reasons why Alternative #4 does not comply with state law, is inconsistent with specific provisions of the GMA, runs afoul of appellate court decisions and mandates and how our current plan is in full compliance with GMA. I have sent those to you by separate e-mail.

Regarding the (at least) fourth version of Councilor Madore's proposal. I want to emphasize that I doubt you will see any "redline" version by staff of this November 15, 2015 proposal as I detail below as Councilor Madore does not want to "confuse" the public. However, if you review the "redline" version of the November 4, 2015 version you will glean where the New Alternative proposed by Councilor Madore is incorrect and fails to show his work. Below are a few examples:

1. There is no support for the assumption that cluster development remainders will not develop:

Table 1 reference 1 B proposal from November 4 states:

Parcels that cannot reasonably be expected to develop should not be counted as likely to develop. Those include remainder lots of already developed cluster developments that are prohibited from further development.

Table 1 reference 1 B proposal from November 15 states:

These rural VBLM assumptions should be used not to

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reflect what is possible, but to reasonably plan for what is likely. Parcels that cannot reasonably be expected to develop should not be counted as parcels likely to develop. Cluster development remainder parcels that are known to be prohibited from further development should not be counted as parcels likely to develop.

These are two different assumptions and there is no explanation or detail as to why they are different. Plus the councilor directed staff as follows "*we do not wish for staff to change anything or go back and find every possible cluster remainder lot*".¹ It is unclear who the "we" is in this sentence but

The record fails to provide any planning methodology to support the proposal that "these rural VBLM assumptions should be used not to reflect what is possible, but to reasonably plan for what is likely", and legal staff commented:

These parcels have not been legally identified. Plat notes have not been reviewed to determine whether further division is actually precluded on these parcels. *Staff has not been advised which land is excluded as cluster remainders, and has no basis to conclude how much land is excluded, or whether the exclusion of this land is appropriate.* (emphasis supplied)

The record contains no legal authority, scholarly authority or any authority for the above premise. It is impossible to evaluate the validity of this assumption without reference.

2. The November 15, 2015 proposal fails to define "operations likely to continue" contained in Table #1 reference #2. Although it is possible that there are some operations that may continue, there is no evaluation of what operations exist, what operations have been contacted, what operations may do if there land is upzoned and available for more intensive land development. Thus, the proposal fails to identify the commercial operations or any input from them as to whether or not they will or will not continue to operate. There is no data, planning theory or supporting document to support your claim that these parcels should not be counted other the councilor's personal opinion. The proposal fails to respond to the legal staff determination that the assumption is "contrary to law". Further the definitions of this assumption have been altered since the work session with no explanation for the change in the assumption or the implications, if any, of the change. Specifically,

¹ E-mail from Madore to staff dated November 10, 2015.

Table 1 reference 2 B proposal from November 4:

Parcels located in areas far from any infrastructure with continuous long-term commercial forestry operations likely to continue should not be counted as likely to develop.

Table 1 reference 2 B proposal from November 15:

Parcels located in areas far from infrastructure with long term commercial forestry operations likely to continue should not be counted as likely to develop. These assumptions are not used to authorize or to prohibit the development of individual parcels. Rather, these assumptions should only be used for tallying parcel totals for general planning information.

3. There is ample support for the Assumption that constrained lands will develop and the new assumption ignores the likelihood of development on constrained lands²:

-In Table I reference 3 B the assumption eliminates rural parcels that have less than 1 acre of unconstrained land

-CCC 40.440.020 that states “This chapter shall not be used to deny or reduce the number of lots of a proposed rural land division allowed under applicable zoning density.”

-The proposal fails to recognize that whether a particular parcel can be developed must be reviewed on an individual basis.

-The proposal fails to recognize that rural parcels may share wells with neighbors, and septic drain fields may be placed on neighboring properties

-The proposal is not supported by any studies, statutes, articles, learned treatises or regulations that support this theory

-No one in GIS has affirmed the methodology and, in fact, GIS simple did

² Ironically, I personally opposed the county ordinance that currently allows for such development but it was put in place, in my view, for the benefit of rural residents and at the urging of those who now support your Alternative #4.

as directed by the Councilor and did not make any substantive determinations as to the validity of his assumptions.

In Table 1 Reference 4 you state the following:

4. There is no support for the theory that the same assumptions that have been vetted County wide *as to the urban areas*, should apply to the rural areas including but not limited to, the “never to convert”, market factor and infrastructure deduction.

-During the development of the original plan, and as part of the various updates, the assumptions regarding the urban areas these assumptions were vetted during the planning processes for the urban areas. As far as I am aware, neither you, nor staff, nor the cities, nor the city planners nor the public through a technical advisory committee has ever studied if these same assumptions should apply to the rural area and your proposal provides no scientific studies, or any other studies, to support the application of these planning principles to the rural area. Specifically:

- The “history” regarding this planning assumptions *only* applies to the urban areas. There is no history of which I am aware, or which has been referenced in the record, that these assumptions that are applied in the urban area have any applicability to the rural area.
- The proposal has not been fully vetted by the cities, planning staff or any public technical advisory committee. There are no statistics, no references to other GMA planning counties, no references laws or regulations and no references to the main MRSC website (mrsc.org) that supports the claim that 30 % of dividable parcels, much less 10% of vacant dividable parcels, in the rural area will not further development.
- An infrastructure deduction in the rural area is unsupported because infrastructure needs do not reduce the number of available lots there, given code allowances for inclusion of land associated with roads and private stormwater facilities.
- The application of the market factor in the urban area is written into the Growth Management Act *for urban areas only* in order to set urban growth boundaries. WAC³ 365-196-310(4)(b)(ii)(F) and, according to

³ The GMA also provides that when determining the size of a UGA, a reasonable land

staff, "The market factor is an *addition* to the land needed in an urban growth area to accommodate 20-year growth projections, because of assumed fluctuating demand for that area. WAC 365-196-310(4)(b)(ii)(F)" See WAC 365-196-310(2)(3)(e) Urban Growth Areas.⁴

- "what is good for the goose is good for the gander" is not a legal argument in support of a planning assumption nor is there any evidenced in the record that analyzes that the urban assumptions should apply to the rural area.

5. Changing the VBL analysis violates GMA.

Regarding tax lots in the rural area: the proposed maps and assumptions do not differentiate between segregated tax lots and legally developable non-conforming lots. As far as I am aware, there is been no effort to identify which non-conforming lots that the Councilor proposes to upzone are merely segregated tax lots that have no development rights.

Clark County had to review the results of the Buildable Lands report as part of its periodic update. This report is due one year prior to the due date of the periodic review and forms the basis of the county planning along with the OFM number and the "County-Wide Planning Policies." Our county wide planning policies set the general framework for coordinated land use planning between the county and its cities to ensure respective comprehensive plans are consistent with each other. In addition, this new

market supply factor may be utilized and local circumstances may be considered in arriving at this market factor determination. RCW 36.70A.110(2). The Washington Supreme Court has held:

... [A]lthough the GMA does not explicitly limit the size of a UGA, to give meaning to the market supply factor provision and in light of the GMA goal of reducing sprawl, we hold a county's UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor. *Thurston County v. WWGMHB*; Docket No. 80115-1, at 29 (Aug. 14, 2008, En Banc); See *Thurston County v. WWGMHB*, 164 Wash 2d 329 (2008)

The market factor is a "land supply market factor" used in determining the sizes of UGAs and applies to the calculation of land availability rather than to the calculation of the number of people to be accommodated.

⁴ "The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. See WAC 365-196-310(2)(3)(e).

proposal changes planning assumptions regarding buildable lands that were adopted over a year ago.⁵

6. The urban rural allocation of population and jobs was adopted by resolution after public hearing by the BOCC. There is no evidence that has been repealed. There is no evidence in the record to support changing the previously adopted

⁵ - (4) Buildable lands program reporting:

(a) No later than one year prior to the deadline for review of comprehensive plans and development regulations required by RCW 36.70A.130, the buildable lands program must compile and publish an evaluation, known as the buildable lands report. Each buildable lands report must be submitted to the department upon publication.

(b) The buildable lands reports must compare growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred since the last required buildable lands report. The results of this analysis are intended to aid counties and cities in reviewing and adjusting planning strategies.

(c) The publication, "Buildable Lands Program Guidelines," available from the department, may be used as a source for suggested approaches for meeting the requirements of the program.

(5) Criteria for determining consistency or inconsistency.

(a) The determination of consistency or inconsistency for each county or city maintaining a buildable lands program must be made under RCW 36.70A.215(3).

(i) Evaluation under RCW 36.70A.215 (3)(a) should determine whether the comprehensive plan and development regulations sufficiently accommodate the population projection established for the county and allocated within the county and between the county and its cities, consistent with the requirements in RCW 36.70A.110.

(ii) Evaluation under RCW 36.70A.215 (3)(b) should compare the achieved densities, type and density range for commercial, industrial and residential land uses with the assumed densities that were envisioned in the applicable county-wide planning policies, and the comprehensive plan.

(iii) Evaluation under RCW 36.70A.215 (3)(c) should determine, based on actual development densities determined in the evaluation under RCW 36.70A.215 (3)(b), the amount of land needed for commercial, industrial and residential uses for the remaining portion of the twenty-year planning period. This evaluation should consider the type and densities of each type of land use as envisioned in the county-wide planning policies, comprehensive plan.

(b) The evaluation used to determine whether there is a consistency or inconsistency should include any additional standards identified in the county-wide planning policies or in other policies that are specifically directed for use in the evaluation. See WAC 365-196-315

resolution. According to staff, and unrefuted in this new proposal:

Urban/Rural split is a planning assumption used to determine the percentage of growth that is anticipated in the urban and rural areas respectively. The 1994 plan used an 80/20 split. The 2004 and 2007 plan updates both used a 90/10 split. The attached table indicates the total annual population of the county and rural areas from 1994 to 2014. The percentage of county population residing in the rural area has declined from 15.47% to 13.87% in the 20 year period. This decline is captured in the 11.18% percent of total growth going to the rural area in the same time interval. From 2007 to 2014 the percent of rural growth has been 10.42% of total county growth. See 6th column on page 5 that was put in by staff and excluded from your November 19, 2015 proposal. The urban/rural split is based on the future growth, not the population, for a particular year. Over the years, the average has been approximately 89-11.

At the Open House in Ridgefield on Tuesday, I stated the following:

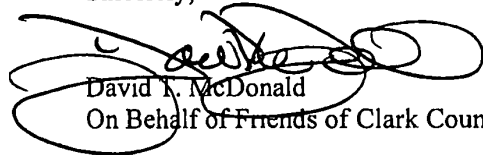
1. Staff had not been provided the November 15 materials in advance to redline;
2. The two prior proposals (November 3rd and 4th with redlines) were on the Grid and I had copies to distribute.
3. Staff had "redlined" the November 3, 2015 and November 4, 2015 proposals, however staff has not been directed to conduct the same analysis as to the November 15, 2015 proposal.
4. The redlined versions of the November 3, 2015 and November 4, 2015 (which is the one that was discussed at the Joint PC/BOCC meeting on November 9, 2015 work session) were not available for the public to see at the Open Houses but for members of the public obtaining them off of the Planning Commission Grid and handing them out;
5. The November 15, 2015 proposal is different from the proposal that was presented on November 9, 2015 to the Work Session; and
6. The November 3, 2015 and November 4, 2015 "red-lined" proposals were posted on the Planning Commission Grid

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Those are facts not opinions. In addition, Councilor Madore sent an e-mail to staff prior to the Open Houses that states: "It is very important that we focus only on the maps, tables, and assumptions of Column B and not confuse citizens with other previous version or previous plans"⁶ (emphasis supplied) and "As we related yesterday and as stated in our documentation supporting Column B, we do not wish for staff to change anything or go back and find every possible cluster remainder lot. As written in the proposal, we are good with maps, assumptions and numbers as proposed." (emphasis supplied). So much for transparency and wanting the public to have all the relevant information.

I apologize for the timing of the presentation of these comments to you but it has been difficult to keep up with the continually morphing versions of the current proposal that will be before you tonight. In addition, the Councilor's proposal unwinds years of work putting together and vetting the current assumptions (all of which have been continually vetted and approved by, not only the current BOCC and PC, but prior BOCC and PC hearings and votes.

Sincerely,



David L. McDonald
On Behalf of Friends of Clark County

⁶ Ms. Gillespie posted this e-mail from you to staff dated November 10th