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Clark County Board of Councilors
P.O. Box 5000
Vancouver, Washington 98666

December 1, 2016

Agri-forest - Rural Centers a diversion - For the public record and 2016 Comprehensive Plan update

The 1994 Comprehensive Plan Agri-forest and Rural centers policies were used as a diversion to prevent appeals against a massive downzone of rural, agriculture and forest land. The county admitted they had nothing in the record to justify what was done. The five acre rural zone prevented a variety of lots, thus allowing the county to make even larger lots in that zone at remand. The goal was to downzone all rural and resource lands and keep them static for 40 years to create a new rural "character" of large lots, even though very few existed. When CCCU appealed these policies and won in court in 1997, the remand process was manipulated to include only the agri-forest and rural center issues. All of the other court orders were ignored. Staff then used rural centers to claim a variety of lots, with no change to other rural zoning. The Plan was proposed to remain status quo in the 2016 update, until Councilor Madore recognized something was amiss, and asked staff to review all rural zones for accuracy. Staff did not follow directives, so he asked GIS to help with the research. The result is Alternative 4.

Judge Poyfair ruled much more than Agri-forest and rural centers. **Conclusions of Law and Order:** state, (1, 2) 3. *statutory mandate - the Board is not above the law*

4. *Agri-forest - the Board erroneously interpreted the law - failure to solicit meaningful public participation*

(5) 6. *Comprehensive Plan EIS - violates the State Environmental Policy Act - changes to the pattern of rural development was clearly erroneous.*

7. *Rural land density - The county's rural and resource development regulations are inconsistent with the GMA - It is evident the rural land density regulations were driven by earlier GMHB decisions - This formulaic view ...is fatally flawed - ...the county to downzone substantial portions of the rural areas in order to meet the Board's apparent requirements - The only requirement for rural areas in the GMA is that growth in rural areas not be urban in character. While the GMA contains no restrictions on rural growth, it does require a variety of residential densities. - the county violated a GMA planning goal.*

******the Board had an end in sight and disregarded the GMA's mandate in applying an unauthorized formula to the review.....of theland use densities. The board's interpretation was erroneous and The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the GMA. He did not isolate his discussions to agri-forest and rural centers. He said the whole plan in the rural areas used an unauthorized formula and was erroneous. The commissioners kicked this sham down the road year after year. In the 2004 update, CCCU was ordered by the county not to get involved because rural lands were not being considered and would come later. Even so, CCCU gave testimony regarding the EIS, but was ignored. The Hearing Board closed the case in 2006, with outstanding items, assuming the 2004 Plan corrected them. It did not.*

The courts will look closely at compliance of previous court orders. The Poyfair remand was extensive and the Court of Appeals upheld the OFM portion of it. Under **RCW 36.70.710 - Final authority**, states, **"and final determination shall rest with the administrative body..."** It's time for Clark County to get it right.

Sincerely, 

Carol Levanen, Ex. Secretary
Clark County Citizens United, Inc.
P.O. Box 2188
Battle Ground, Washington 98604

County ordered to revise rural decisions

"This could be used ... to get the entire rural portion of the comprehensive plan."

JOHN KARPINSKI
environmental attorney

Clark County Citizens United's court victory further muddies rural growth picture

By JEFF MIZE
Columbian staff writer

A judge has signed an order that could open up large tracts of rural Clark County to more intensive development.

Superior Court Judge Edwin Poyfair's ruling Friday hands Clark County Citizens United a clear victory in its three-year battle to provide rural landowners with greater property rights.

The decision further complicates Clark County's management of rural lands. The Western Washington Growth Management Hearings Board has told the county to place further restrictions on rural development. Friday's court ruling pulls the county in the opposite direction.

Poyfair's order, unless overturned on appeal, will force the county to abandon its decision to place 35,700 acres in a special zone for farming and

tree growing. It also will require the county to review and possibly change rural land densities, particularly whether more intensive development can take place in Amboy, Brush Prairie, Hutchinson, Dollars Corner and other rural activity centers.

Clark County Citizens United didn't get everything it wanted. Poyfair rejected the group's argument that Clark County reserved too much land for farming when it zoned 38,100 acres for agriculture.

Nevertheless, Clark County Citizens United President Jim Malinowski considered Friday's decision "almost a complete victory."

"We were disappointed that we didn't get the agriculture designation, but we're going to continue to argue that case," Malinowski said.

In a Feb. 21 oral decision, Poyfair said Clark County did not follow state law when it placed 35,700 acres in a hybrid "agri-forest" category. Friday's written order expands the scope of his oral decision.

John Karpinski, a Vancouver attorney representing environmental groups, said he was "astounded" by Poyfair's order. He had expected the judge to deal only with the agri-forest

REVISION/ *Meese* see A13

"What was done before was wrong, and it was done in a very flawed public process."

JIM MALINOWSKI
Clark County Citizens United president

SUNDAY, APRIL 6, 1997

Revision

All three commissioners who voted for the plan are no longer in office

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designation, not with other rural issues.

"This could be used as an opportunity to gut the entire rural portion of the comprehensive plan," Karpinski said. "It opens the door for a more conservative set of commissioners to undo what was done before."

"That was our objective," Malinowski replied when told of Karpinski's last comment. "What was done before was wrong, and it was done in a very flawed public process."

"The key flaw the judge found in this was there was no evidence in the record to support the county's comprehensive plan," he said. "The plan that was adopted never saw the light of day in any public process."

The county adopted its 20-year growth plan in December 1994. All three commissioners who voted for the plan are no longer in office.

Busse Nutley was defeated in her bid for a second term in November 1994; John Magnano resigned in May 1996 to take a job in rail transportation; and Dave Sturdevant decided not to run for a fifth term last November.

Poyfair's decision sends the issue back to the Western Washington Growth Management Hearings Board, which approved portions of the 20-year growth plan in September 1995.

Rich Lowry, Clark County's chief civil attorney, said Friday's ruling will require the county to determine the proper zoning for the 35,700 agri-forest acres and to review rural activity centers to see if they can support higher density development.

"The big issue there is going to be infrastructure," Lowry said. The agri-forest category is a Clark County creation not used in any other Washington county. It is intended to cover land that has both farming and forestry characteristics.

In his Feb. 21 oral decision, Poyfair did not find the agri-forest designation itself to be illegal. Rather, he ruled the county failed to justify its decision to create the special zoning and did not provide the public with sufficient opportunity to participate in the process.

However, the order Poyfair signed Friday says the agri-forest

hybrid does not comply with definitions for agriculture or farmland and therefore is invalid.

Poyfair's written order also says the county erred by following the Western Washington Growth Management Hearings Board's past decisions requiring urban and rural populations to equate state forecasts.

These decisions, Poyfair's order says, "compelled the county to down-zone substantial portions of the rural areas in order to meet the board's apparent requirements. . . The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the terms of the GM/

(Growth Management Act)."

Glean Amster, a Seattle attorney representing Clark County Citizens United, drafted the order Poyfair signed Friday. Amster said the hearings board doesn't have any new growth in rural areas.

"This objective, this end result, is not recognized by the Growth Management Act," he told Poyfair.

JEFF MIZE writes about rural issues for The Columbian. He can be reached by calling 699-6006, Ext. 2306; by writing to Jeff Mize, The Columbian, P.O. Box 180, Vancouver, WA 98666; or by sending e-mail to jeff.mize@columbian.com

ISSUE AT A GLANCE

■ **What happened:** Judge Poyfair signed an order requiring Clark County to reconsider rural growth issues.

■ **What's affected:** 35,700 acres zoned "agri-forest," plus rural land densities and rural activity centers, including Amboy, Brush Prairie, Hutchinson and Dollars Corner.

■ **What's not affected:** 38,100 acres zoned for agriculture.

■ **What's next:** Issues go back to Western Washington Growth Management Hearings Board, which will remand them to Clark County. Observers suspect commissioners will ease regulations and allow more rural development.

Legal Report



Greg Overstreet
General Counsel

BIAW wins two important court cases in one day

Builders in the state scored two important victories this month when the Washington State Court of Appeals handed down two rulings on the same day—one on growth management and a second on traffic impact issues—in favor of property rights in Clark County.

GMA Rural Densities

The first case, *Clark County Citizens United v. Western Washington Growth Management Hearings Board*, addressed the issue of how counties can use state-generated twenty-year population forecasts when drawing up their comprehensive plans. The case began in 1995 when a grassroots Clark County property rights group, Clark County Citizens United, challenged Clark County's decision to use the forecasts to severely restrict building activity in rural areas.

The Growth Management Act (GMA) requires local governments to use the state-generated twenty-year population projections to determine the size of urban growth boundaries, which are the rings around cities where growth is channeled. However, Clark County (which wanted to restrict as much growth as possible in rural areas)

claimed that the urban-only projections applied to both urban and rural areas. That is, instead of using the population projections merely to determine how large the urban growth boundaries should be, Clark County claimed that the projections applied in rural areas also. Therefore, because the urban growth boundaries were sized to accommodate almost all the population increases, the County claimed that almost no population could be located in rural areas. This, the County thought, would result in little or no building in rural areas.

After hearing the case, the Growth Management Hearings Board sided with the County. Clark County Citizens United appealed the decision and in 1997 the Clark County Superior Court ruled against the County and the Growth Board in a sharply worded opinion.

Environmentalist allies of the Growth Board filed an appeal. BIAW donated \$22,500 and filed an in-house supporting brief. The Court of Appeals upheld the Superior Court's decision, holding that state population forecasts can only be used to set urban growth boundaries, not set rural densities. In yet another blow to the Growth Management Hearings Board, the Court of Appeals ruled that the Board "misread" the Growth Management Act and "exceeded its authority."

Limits on Impact Fees

The second victory came in the case of *City of Battle Ground v. Benchmark Land Co., Inc.*, where BIAW donated \$5,000 to file a supporting brief on behalf of Benchmark Land Co. The case began when the city required Benchmark to provide expensive half-street improvements as a condition to approving Benchmark's request to build a small subdivision. But the city's own expert engineer admitted that the proposed subdivision's new residents would not significantly increase traffic flows.

Undeterred, the city demanded the traffic improvements. A lower court ruled in favor of Benchmark and the city appealed the decision.

The Court of Appeals held that the city's attempt to obtain expensive street improvements "does not necessarily relate to the additional use the development will impose on the street" and was therefore an unconstitutional "taking" of private property. The court further ruled that the city must pay Benchmark an unspecified amount of damages and attorneys fees to be determined later.

BIAW is dedicated to defending builders against government overstepping its bounds. If you have a case that could help builders across the state, please contact me at 1-800-228-4229. ☐

Washington State Court of Appeals					
Case	Issue Affecting BIAW Member	Outcome	BIAW Participation in Case	Judges Ruling with BIAW's Position	Judges Ruling against BIAW's Position
Clark County Citizens United v. Growth Board	GMA Population projections—rural densities	Population projections cannot be used to artificially lower rural densities.	Yes. Donated \$22,500 and filed in-house supporting brief.	Bridgewater Morgan Reynolds* (pro-tem)	
City of Battle Ground v. Benchmark Land Co., Inc.	Traffic Impact fees and street improvements	Cities cannot require impact fees and costly improvements unless city proves "nexus" and "rough proportionality" to actual impact.	Yes. Donated \$5,000 for supporting brief.	Armstrong Bridgewater Morgan	

Schroader, Kathy

From: Tilton, Rebecca
Sent: Friday, December 04, 2015 9:20 AM
To: Orjiako, Oliver, Schroader, Kathy
Subject: Comp Plan comments for Dec 1
Attachments: Levanen_Carol_12-01-15 Comp Plan Comments pdf, Rasmussen_Susan_12-01-15 Comp Plan Comments pdf

Attached for your records are copies of comments received from Susan Rasmussen and Carol Levanen, Dec. 1, 2015

Thanks, and have a great day.

Rebecca

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