



Schroader, Kathy

From: Orjiako, Oliver
Sent: Wednesday, February 17, 2016 3:33 PM
To: Schroader, Kathy
Subject: FW: Comments on Poyfair Decision and 2016 implications
Attachments: An Analysis of the Judge Poyfair 1997 decision and the impact on the 2016 Comp Plan.docx

Hi Kathy

For the record Thanks

From: Heidi Owens [<mailto:heidi.owens@comcast.net>]
Sent: Friday, February 12, 2016 10:23 PM
To: Boldt, Marc; Stewart, Jeanne; Tilton, Rebecca
Cc: Orjiako, Oliver
Subject: Comments on Poyfair Decision and 2016 implications

Hello All,

Attached is a brief summary/analysis of the Poyfair case, county actions, and what they might mean for the current comp planning process. It is important to note that, in 1996, Judge Poyfair concluded that the Agricultural Resource designation was compliant. Furthermore, the Judge raised SEPA issues when the pattern of rural development was not consistent with the SEPA docs. As GMA requires measures are applied to rural development so as to protect rural character, the use of planning assumptions that do not count, but still allow rural development is particularly problematic. Finally, it is interesting to note that in 1996, the argument was made against the use of OFM allocations or Vacant Land projects to downsize rural areas. And Judge Poyfair agreed as the basis for his conclusion that the County did not provide for enough variety in rural densities. The current preferred alternative applies the same mechanisms to upzone rural areas, including the R-10 and R-20 protection zones. It will be interesting to see if this holds in appeal, given that the Rural Center's inclusion in 1997 provides RC-1 and RC-2.5 zones, and the record will show that the Council at the time had the goal to encourage growth in the rural areas (which is inconsistent with GMA).

Please include the attached write-up and these comments in the record

Thank you and Regards,
Heidi Owens

An Analysis of the Judge Poyfair 1997 decision and the impact on the 2016 Comp Plan

Heidi Owens, Ph D

The Case and Order

In 1994, the governing Board of Commissioners for Clark County, approved a Comprehensive Plan as required under the planning requirements of the Growth Management Act for the State of Washington. The approved plan was appealed to the Western Washington Growth Management Hearing Board (WWGMHB) by a number of parties which resulted in rulings regarding GMA compliance issues with the County's Comp Plan. Several appeals from the WWGMHB were made, including one petitioned by Clark County Citizens United (CCCU) in October 1996 and brought to Clark County Superior Court Judge Poyfair. The Findings of Fact and Order Issued in April 1997 for this particular case concluded the following opinions: 1) the agri-forest resource designation violated the GMA because the designation does not conform with the definition of either agricultural or forest resource land, 2) the failure to solicit meaningful public input for the agri-forest designation violated the public participation provision of GMA, which requires early and continuous public participation in the development and adoption of comprehensive plans, 3) there is substantial evidence in the record to support the County's designation of agricultural resource lands; 4) the EIS for the Comp Plan violated SEPA because the final EIS did not address the agri-forest resource designation or the removal of rural centers, 5) the County's removal of rural centers and uniform lot density violated the GMA planning requirement to provide for a variety of residential densities. In the Order, the Honorable Judge Poyfair remanded the case back to WWGMHB to render a decision and mandate County action to correct the violations.

County Action

What followed this decision were changes to the 1994 Comp Plan to address the Findings of Fact. First, the agri-forest resource designation was eliminated. The almost 36,000 acres of agri-forest were rezoned to the rural designation. Almost 10,000 acres of agri-forest were rezoned to be R-5, the remaining 26,600 acres were zoned either R-10 or R-20 to provide a buffer around other resource areas. The County also reinstated six Rural Centers and provided for 1 acre and 2.5 acre zoning in these centers. These changes allowed for the variety of rural residential densities required by GMA. CCCU did not appeal the final outcome and decisions of these changes in 1997 with respect to either the reclassification of agri-forest to R-5, R-10, and R-20 zones or the Rural Center RC-1 and RC-2 5 zones. Hence, the County complied with the Judge's order and addressed the Conclusions of Law and Order made by Judge Poyfair.

County Resource Lands are GMA Compliant

There are two additional points to be made regarding the 1996 case and ruling by Judge Poyfair. CCCU, in the case brought before Judge Poyfair, did not raise any issues regarding forest resource land. At issue were the agri-forest resource designation and the agricultural resource land designation. While Judge Poyfair agreed with CCCU on the agri-forest designation, he did not agree with them regarding the County's designation of agricultural resource, those he found consistent with GMA. In fact, he crossed out the Agricultural Resource Land section, written by Attorney Glenn Amster for CCCU, to instead conclude that "there is substantial evidence in the record to support the County's designation of agricultural resource lands." CCCU did not appeal this decision.

Additional GMA Approved Density Option

Then in 1999, Clark County restored rural clustering to please rural landowners and still ensure protection of resource lands. Rural clusters enable property owners to create 1+ acre residential lots in a cluster on dividable property (where parcel size exceeds zoning district size) and reserve the larger parcel for resource use. Clustering has two benefits: a) the effect of creating non-conforming, legal, buildable lots which further allows for a variety of densities in the rural area, and b) the continued protection of resource land.

Judge Poyfair's SEPA Concerns

Another issue which must be raised is the SEPA compliance issue raised by Judge Poyfair in 1997. Section 6 of Conclusions of Law for the 1997 ruling states "the County failed to comply with SEPA's requirement for additional environmental review when a proposal changes substantially from the one addressed in the initial EIS." Furthermore, the Judge ruled that the Board's decision to uphold the adequacy of EIS absent of further environmental analysis regarding "changes to the pattern of rural development was clearly erroneous." This same opinion will be relevant to the use of revised planning assumptions of Alt 4B, introduced and revised by Mr. Madore from the period of Oct. 20, 2015 through Nov. 18, 2015, as the basis for the preferred alternative approved by the Council on Nov. 24, 2015. Given the analysis by staff, issues raised by citizen testimony, and evaluation by Thorpe and Associates, there is substantial public record substantiating the invalidity of these assumptions. Should the current council move forward with the use of any of the identified invalid assumptions, the compliance with SEPA will certainly be an issue because the current DSEIS does not consider the impact of these assumptions on the changes to the pattern of rural development.

Judge Poyfair Concluded that Vacant Buildable Land Analysis is Erroneous in Rural Area

Judge Poyfair also gave Clark County legislative body and Planning direction for future Comp Planning Processes in the Order on Reconsideration for Case 96-2-00080-2 in June 1997. In this order the Rural Land Density section was amended to include the following statement: "The Board's requirement to, in essence, require a vacant buildable lands analysis for the rural area was erroneous." Furthermore, the following statement was removed: "While the GMA contains no restrictions on rural growth, it does require a variety of residential densities." And, the statement "The only requirement for rural areas in the GMA is that growth in rural areas not be urban in character" was changed to "A central requirement for rural areas in the GMA . . ." These changes indicate the Judge's opinion that using a RVBLM or requiring an analysis of the VBL in the rural area is inconsistent with GMA because "there is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure UGAs are adequately sized." In addition, the judge addressed to the Board's application of the OFM projections to the rural area as applying an "unauthorized formula" to land use densities.

The argument by CCCU against the use of an OFM allocations or Rural Vacant land projections to downzone rural areas in 1994 equally applies to upzoning of areas in 2016. There is no provision in GMA to use a RVBLM or OFM projections for rural areas, in fact, the Judge viewed their use as erroneous. Was there any other ruling by a higher court on the use of Vacant Land Analysis and OFM allocations in the rural areas?

While the Judge noted a "central requirement for rural areas" under GMA to not be urban in nature, it is also crucial to note that GMA seeks 1st to protect Resource Lands through encouraging development in urban areas and through encouraging the conservation of productive forest and agricultural lands and discourage incompatible uses in rural areas.