

Schroader, Kathy



From: Orjiako, Oliver
Sent: Wednesday, May 25, 2016 12:04 PM
To: Albrecht, Gary, Alvarez, Jose, Anderson, Colete, Euler, Gordon, Hermen, Matt, Kamp, Jacqueline, Lebowsky, Laurie, Lumbantobing, Sharon, Orjiako, Oliver, Schroader, Kathy, Wisner, Sonja
Subject: FW Poyfair and the Comprehensive Plan
Attachments: Poyfair 4-97 ZIP

FYI

From: Elisasue@aol.com [<mailto:Elisasue@aol.com>]
Sent: Wednesday, May 25, 2016 11:20 AM
To: Madore, David; Stewart, Jeanne; Olson, Julie (Councilor); Boldt, Marc; Mielke, Tom
Cc: steve.djulio@foster.com; Orjiako, Oliver
Subject: Poyfair and the Comprehensive Plan

Dear County Councilors and Planning Commissioners,

At last evening's joint hearing on the Comprehensive Plan update Councilor Madore, in response to discussion about the "Poyfair Remand," ask for a concise list of its directives. He asked to know "Exactly what they were" and the county's responses to those directives

I'm certain legal counsel will enumerate those, but since I served on the Clark County Board of Commissioners between 1996 and 2008 and was a key player in developing policies to comply with the Poyfair orders, I will relate those directives as well as the steps the then BOC took to reach compliance.

I have also attached a copy of both Poyfair decisions, although I am certain they are already present in your record. They are easy to read and they are the clear authority for the directives Councilor Madore asked about.

Also attached is a short graphic. (I am not good with graphics so my columns are not perfect)

Please include this email and attachments in the official record.

This is as concise as I can be:

The Poyfair decision addressed two major areas of the 1994 plan: those areas designated as "agriforest," and the elimination of formerly designated "villages" and "hamlets."

Judge Poyfair ruled that "Agri-forest" was not an authorized zone under GMA and furthermore the county's designation of those lands was done without proper public process and those lands were not considered in the capital facilities plan.

Judge Poyfair also found that the county's elimination of "hamlets" and "villages" violated the GMA requirement for a variety of lot sizes and densities in the rural lands. He directed the county to restore a variety of rural densities.

What did the county do to comply?

Agri-forest

There were 36,000 acres of land zoned Agri-forest in the 1994 plan. The BOC appointed a very large task force to review those lands and suggest the appropriate re-zones. It was a long and laborious process with lots of anxious and angry land owners as well as strife and differences of opinion within the task force. But they completed their assignment and forwarded to the BOC their recommendations. Of the 35,000 acres rezoned, only 3500 were left as resource lands.

Variety of densities and lot sizes in the rural lands

The county designed a number of "rural centers" outside of urban growth boundaries where more intense residential and limited commercial activities could occur. Those rural centers were Brush Prairie, Dollars Corner, Amboy, Hockinson, Meadow Glade, Chelatchie prairie and later, Farger Lake

There are no outstanding issues related to the Poyfair remand and I am constantly mystified by claims that there are.

Thank you - Betty Sue Morris

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Honorable Edwin J. Poyfair
PRESENTATION: Friday, April 4, 1997, at 10:30 AM

FILED

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JOHNS MANVILLE, WASH. STATE CO.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLARK COUNTY CITIZENS UNITED,)
INC.; MICHAEL ACHEN and)
CATHERINE ACHEN, husband and wife, et)
al.,)

Petitioners and)
Additional Parties of Record,)

v.

WESTERN WASHINGTON GROWTH)
MANAGEMENT HEARINGS BOARD, a)
Washington agency,)
Respondent.)

NO. 96-2-00080-2

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

THIS MATTER came on for hearing before the above-entitled Court on October 16, 1996, upon the Petition for Review of Petitioners. Clark County Citizens United, Inc., Michael and Catherine Achen (collectively referred to herein as "Petitioners"), appearing by and through their attorneys of record, Lane Powell Spears Lubersky LLP and Glenn J. Amster; and Respondents, Western Washington Growth Management Hearings Board (hereinafter referred to as "WWGMHB"), appearing by and through the Office of the Attorney General and Marjorie T. Smitch, Assistant Attorney General; Clark County, appearing by and through the Office of

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER - 1
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JA

1 the Prosecuting Attorney, and Richard S. Lowry, Chief Civil Prosecuting Attorney; additional
2 parties of record Clark County Natural Resources Council, Vancouver Audubon Society, Loo-
3 Wit Group Sierra Club, Coalition for Environmental Responsibility and Economic Sustainability
4 and Native Footprints, appearing by and through their attorney, John S. Karpinski; David R.
5 Becker and Joan Becker, et al., appearing by and through their attorneys, Richard T. Howsley
6 and Lisa M. Graham; William W. Saunders and Clark County Home Builders Association,
7 appearing by and through their attorneys, Landerholm, Memovich, Lansverk & Whitesides, P.S.
8 and Randall B. Printz; Rural Clark County Preservation Association, appearing by and through
9 its representative Robert Yoesle, pro se; and W. Dale DeTour, appearing pro se; and the Court,
10 having considered the complete record before the WWGMHB, and the pleadings and exhibits
11 herein, having heard argument of counsel and taken the matter under advisement, and having
12 rendered an oral decision on February 21, 1997, now enters the following Findings of Fact,
13 Conclusions of Law and Order:

14 **FINDINGS OF FACT**

15 1. This case was brought before this Court on Petitioners' Petition for Review
16 pursuant to the Growth Management Act ("GMA"), RCW 36.70A.300. Petitioners challenged
17 several elements of the Clark County Comprehensive Plan, which was adopted by the Clark
18 County Board of County Commissioners in December 1994. Petitioners brought this appeal
19 following the Western Washington Growth Management Hearings Board's ("the Board") final
20 decision on December 6, 1995, denying Petitioners' claim that the Clark County Comprehensive
21 Plan violated the GMA.

22 2. Clark County began its comprehensive planning process, pursuant to the GMA,
23 RCW Ch. 36.70A, in 1991. The County adopted County-Wide Planning Policies, under RCW
24 36.70A.210, and then a Community Framework Plan, to form a vision of Clark County's future.
25 Following adoption of this Plan, the County formed a Rural and Natural Resource Committee
26 ("RNRAC"). This committee was delegated the task of identifying lands within the County to

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be designated natural resource lands, as required by RCW 36.70A.050. The designated resource lands would become part of the County's 20-year growth plan, the Clark County Comprehensive Plan.

3. In addition to designating agricultural and forest resource lands, Comprehensive Plan adopted by Clark County designated 36,000 acres of "agri-forest" resource land. This classification was a hybrid of two GMA resource lands, agricultural and forest resource land. This hybrid resource category and the lands designated in this category were never considered by RNRAC.

4. The agri-forest lands were also not a part of the County's environmental review process completed in conjunction with the County's comprehensive planning. The County issued an Environmental Impact Statement ("EIS") prior to the release of the draft Comprehensive Plan in September 1994. However, none of the alternatives for planning addressed in the environmental review document discussed the 36,000 acres of agri-forest resource land.

5. The adopted Plan also eliminated an element of the Community Framework Plan, the concept of rural town centers, known as "villages" and "hamlets." These rural activity centers were focussed on identified pre-existing development patterns and designed to maintain the existing character of rural growth. The centers were eradicated and replaced with a county-wide uniform lot density in the final Comprehensive Plan. Clark County issued a policy memo stating that the reason the rural activity centers were removed from the plan was that previous Growth Management Board decisions appeared to prevent the County from allowing any growth in rural areas. Specifically, according to Board decisions, the sum of the urban and rural population was required to equal the population projection developed by the State Office of Financial Management (OFM). Given the population growth allocated to Clark County's urban growth areas, the Plan would violate this requirement if virtually any growth was allowed in the rural areas.

1 is no substantial evidence in the record to support the designation of agri-forest lands as resource
2 lands under the GMA.

3 Additionally, the failure to solicit meaningful public input for the agri-forest resource
4 lands violated the public participation provisions of the GMA requiring early and continuous
5 public participation in the development and adoption of comprehensive plans.

6 5. Agricultural Resource Lands. There is ~~not~~ substantial evidence in the record to
7 support the County's designation of agricultural resource lands. ~~In particular, there is not~~
8 ~~substantial evidence to demonstrate how those lands designated satisfy the GMA definitional~~
9 ~~criteria; that is, that those lands are primarily devoted to agricultural production and are of long-~~
10 ~~term commercial significance for the production of agricultural products. The only explanation~~
11 ~~provided regarding the designation of agricultural resource lands is contained in a staff report~~
12 ~~prepared after the RNRAC had completed its work which states, "soils was a critical factor."~~
13 ~~This is not to suggest the County was incapable of analyzing the required statutory criteria: the~~
14 ~~County undertook a comprehensive analysis of resource land designations in urban reserve areas~~
15 ~~when it was compelled by the Board to re-examine these designations. The County should have~~
16 ~~undertaken a similar analysis before designating any agricultural resource lands.~~

17 ~~Because there is not substantial evidence in the record that satisfies the GMA's~~
18 ~~definitional criteria, the agricultural resource land designations are invalid.~~

19 6. Comprehensive Plan EIS. The Comprehensive Plan EIS issued by the County
20 violates the State Environmental Policy Act ("SEPA"), RCW Ch. 43.21C. The agri-forest
21 resource land designations were disclosed subsequent to the publication of the final Plan EIS and
22 were not disclosed or discussed in any way in the EIS alternatives. The removal of rural activity
23 centers also was not addressed in the EIS. The County did not require additional environmental
24 review and did not solicit additional public comments. The County failed to comply with
25 SEPA's requirement for additional environmental review when a proposal changes substantially
26 from the one addressed in the initial EIS. The Board's decision to uphold the adequacy of the

1 EIS absent additional environmental analysis regarding the agri-forest designations and changes
2 to the pattern of rural development was clearly erroneous.

3 7. Rural Land Densities. The County's rural and resource development regulations
4 are inconsistent with the GMA. The GMA requires counties to determine that planning goals
5 are utilized and are a part of the consideration supporting its decisions. One of the planning
6 goals requires a variety of residential densities and housing types, which the Clark County
7 Community Framework Plan met by identifying pre-existing small development patterns in rural
8 areas and creating rural activity centers with a variety of rural densities. The eradication of the
9 centers and their replacement with a uniform lot density violates the planning goal requiring a
10 variety of residential densities.

11 It is evident the rural land use density regulations were driven in part by earlier Growth
12 Management Hearing Board decisions requiring urban population plus rural population to equal
13 Office of Financial Management population forecasts. See Exhibit 5, p. 15 to Petitioners'
14 Opening Brief, Box. No. 2 to Record, Clark County Exhibit No. 93. This formulaic view of
15 the GMA requirements is fatally flawed. There is no requirement in the GMA that the OFM
16 projections be used in any manner other than as a measure to ensure urban growth areas are
17 adequately sized and infrastructure in those growth areas is provided for. This Board decision,
18 however, compelled the County to downzone substantial portions of the rural areas in order to
19 meet the Board's apparent requirements.

20 The only requirement for rural areas in the GMA is that growth in rural areas not be
21 urban in character. While the GMA contains no restrictions on rural growth, it does require a
22 variety of residential densities. By trying to comply with the Board's errant decision, the
23 County violated a GMA planning goal.

24 Through no fault of the County's, the Board had an end in sight and disregarded the
25 GMA's mandate in applying an unauthorized formula to the review of the Clark County
26 Comprehensive Plan's land use densities. The Board's interpretation was erroneous, and the

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County's decision to follow the Board's lead was unfortunate. 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.

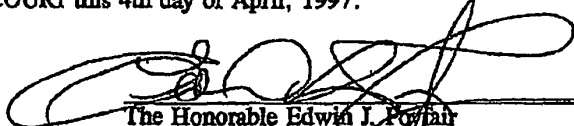
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY:

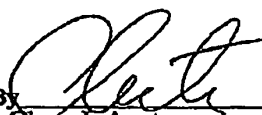
ORDERED, ADJUDGED AND DECREED that the Clark County Comprehensive Plan and Development Regulations adopted in Ordinance 1994-12-47 on December 20, 1994 are remanded to the Western Washington Growth Management Hearings Board with direction to enter a decision in accord with this Order mandating County action to correct the violations of the GMA identified herein; ~~and IT IS HEREBY~~

~~FURTHER ORDERED, ADJUDGED AND DECREED that Petitioners shall be awarded costs against Respondent WWGMPB pursuant to RCW 34.05.566 and RCW 4.84.010 in the amount of \$468.50, pursuant to the Cost Bill filed herein.~~

DONE IN OPEN COURT this 4th day of April, 1997.


The Honorable Edwin J. Poylan
SUPERIOR COURT JUDGE

Presented by:
LANE POWELL SPEARS
LUBERSKY LLP

By 
Glenn J. Amster
WSEA No. 8372
Attorneys for Petitioner Clark
County Citizens United, Inc. and
Michael and Catherine Achen

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The H **06-11-1997**

**JoAnne McBride, Clerk
Clark County**

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

**CLARK COUNTY CITIZENS UNITED,
INC.; MICHAEL ACHEN and
CATHERINE ACHEN, husband and wife, et
al.,**

Petitioners and
Additional Parties of Record,

v.

**WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD, a
Washington agency,**

Respondent.)

NO 96-2-00080-2

**ORDER ON
RECONSIDERATION**

THIS MATTER came on for hearing before the above-entitled Court on May 30, 1997, upon CCNRC, et al 's Motion for Reconsideration/Clarification. Four (4) days earlier, 1000 Friends of Washington ("1000 Friends" herein) filed a Motion to File Brief of Amicus Curiae Clark County Citizens United, Inc., Michael and Catherine Achen (collectively referred to herein as "CCCU"), appearing by and through their attorneys of record, Lane Powell Spears Lubersky LLP and Glenn J. Amster; and Respondents, Western Washington Growth

ORDER ON RECONSIDERATION - 1
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1 Management Hearings Board (hereinafter referred to as "WWGMHB"), appearing by and
2 through the Office of the Attorney General and Marjorie T. Smith, Assistant Attorney General;
3 Clark County, appearing by and through the Office of the Prosecuting Attorney, and Richard
4 S. Lowry, Chief Civil Prosecuting Attorney, additional parties of record Clark County Natural
5 Resources Council, Vancouver Audubon Society, Loo-Wit Group Sierra Club, Coalition for
6 Environmental Responsibility and Economic Sustainability and Native Footprints, appearing by
7 and through their attorney, John S. Karpinski; and the Court, having once again considered the
8 record before the WWGMHB, and the pleadings and exhibits herein, and having entered
9 Findings of Fact, Conclusions of Law and Order on April 4, 1997, and having determined 1000
10 Friends' motion is untimely, and having rendered an oral decision on the pending motions
11 following argument;

12 IT IS HEREBY,

13 ORDERED, ADJUDGED AND DECREED that 1000 Friends of Washington's Motion
14 to File Brief of Amicus Curiae is DENIED, and

15 FURTHER ORDERED, ADJUDGED AND DECREED that CCNRC, et al.'s Motion
16 for Reconsideration/Clarification is DENIED, and

17 FURTHER ORDERED, ADJUDGED AND DECREED that the Findings of Fact,
18 Conclusions of Law and Order dated April 4, 1997 are confirmed, except Conclusion No. 7 is
19 amended to read, in accordance with the parties' stipulation in open Court, as follows:

20
21 7. Rural Land Densities. The County's rural development regulations
22 are inconsistent with the GMA. The GMA requires counties to determine that
23 planning goals are utilized and are a part of the consideration supporting its
24 decisions. One of the planning goals requires a variety of residential densities
25 and housing types, which the Clark County Community Framework Plan met by
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identifying pre-existing small development patterns in rural areas and creating rural activity centers with a variety of rural densities. The eradication of the centers violates the planning goal requiring a variety of residential densities.

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 See Exhibit 5, p. 15 to Petitioners' Opening Brief, Box. No 2 to Record, Clark County Exhibit No. 93. This formulaic view of the GMA requirements is fatally flawed. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for The Board's requirement to, in essence, require a vacant buildable lands analysis for the rural area was erroneous. This Board decision, however, compelled the County to downzone substantial portions of the rural areas in order to meet the Board's apparent requirements

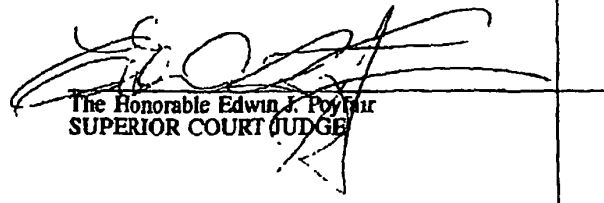
A central requirement for rural areas in the GMA is that growth in rural areas not be urban in character By trying to comply with the Board's errant decision, the County violated a GMA planning goal.

Through no fault of the County's, the Board had an end in sight and disregarded the GMA's mandate in applying an unauthorized formula to the review of the Clark County Comprehensive Plan's land use densities The Board's interpretation was erroneous, and the County's decision to follow the Board's lead was unfortunate The result is a plan that gives little regard for the


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realities of existing rural development in direct contradiction of the terms of the
GMA.

DONE IN OPEN COURT this 5th day of June, 1997.


The Honorable Edwin J. Poyhar
SUPERIOR COURT JUDGE

Presented by
LANE POWELL SPEARS
LUBERSKY LLP

By 
Glenn Amster
WSBA No 08372
Attorneys for Petitioners
Clark County Citizens United, Inc.
and Michael and Catherine Achen

Poyfair Conclusions of Law relevant to county

County response

“The Agriforest resource designations violate the GMA”

County rezoned 36,000 acres out of Agriforest.

Public participation in agriforest designation was Inadequate to meet GMA requirements

County had task forces and extensive public participation and hearings on the rezones.

Neither Agriforest or elimination of rural activity centers were addressed in EIS.

Elimination of Agriforest muted that requirement and addition of rural centers were included in the supplemental EIS.

Rural land densities. GMA requires variety. County did not comply

County established “Rural Centers” for with smaller residential lot sizes and limited commercial uses

County limited rural growth by using OFM population forecast as lid

County added population to rural areas irrespective of population forecast.