

Schroader, Kathy



From: Orjiako, Oliver
Sent: Tuesday, May 31, 2016 1:03 PM
To: Albrecht, Gary; Alvarez, Jose; Anderson, Colete; Euler, Gordon; Hermen, Matt; Kamp, Jacqueline; Lebowsky, Laurie; Lumbantobing, Sharon; Orjiako, Oliver; Schroader, Kathy; Wiser, Sonja
Subject: FW: Compliance to the Superior Court Rulings are distinct issues

Just FYI. You may have gotten this email from me already for the record. Thanks.

From: Stephen DiJulio [<mailto:steve.dijulio@foster.com>]
Sent: Thursday, May 26, 2016 11:41 AM
To: McCauley, Mark
Cc: Orjiako, Oliver; Euler, Gordon
Subject: FW: Compliance to the Superior Court Rulings are distinct issues

Mark,

I am receiving multiple emails from various sources:

- County record comments (from Planning Department);
- County Councilors;
- Planning Commission; and
- Citizens (such as that below).

I am not going to read most of these emails until this weekend. I will not respond to the individual County record comments and Citizen comments (although I will be familiar with them). So far, Planning Commission questions have been addressed or will be addressed next Thursday night.

You have previously directed that I not spend time on the past comprehensive plan compliance issues and history. You may want to advise Council of that approach. The issue may come up at Planning Commission meeting next Thursday and I will respond as follows:

That from my review of the most recent decisions of the courts and the GMHB, and based on direction from County Administration regarding that review, the County is in current compliance, and there are no outstanding issues of noncompliance.

Because this issue is likely to recur and become more politicized than it should, I want to both be responsive and economic in my services to the County. Until I get direction from you or a majority of the Council, I will proceed as noted above. Let me know if my direction is otherwise on any of these points.

Thanks,

Steve

P. Stephen (Steve) DiJulio
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From: susan rasmussen [<mailto:sprazz@outlook.com>]
Sent: Thursday, May 26, 2016 10:29 AM
To: david.madore@clark.wa.gov; tom.mielke@clark.wa.gov; jeanne.stewart@clark.wa.gov; julie.olson2@clark.wa.gov;
Boldt, Marc; Stephen DiJulio
Subject: Compliance to the Superior Court Rulings are distinct issues

These are quotes, direct from the Court Of Appeals of the State of Washington
Division II, No. 22164-1-II, March 12, 1999.

PUBLISHED OPINION

Page 7:

*Although a court will defer to an agency's interpretation when that will help
The court achieve a proper understanding of the statute, (26) "it is ultimately
For the court to determine the purpose and meaning of statutes, even when the
Court's interpretation is contrary to that of the agency charged with carrying
Out the law." Here, in our view, the Board misread the statute and exceeded
Its authority. If we were to defer it its ruling, we would perpetuate, not correct,
Its error. Under these circumstances, we hold that deference is not due.*

This discussion concerns the Poyfair Decision and the wrongly assumed authoritative powers of the Hearings Board. The Poyfair Decision says the Board overstepped their legal jurisdiction in taking a formulaic view of planning, devising an unlawful formula to advance that view, and forcing the county to use it. The formula puts a ceiling on rural growth. The Superior Court said that action was wrong, and the *use of the formula is in direct contradiction of the terms of the GMA*. However, the county still perpetuates the illegal formula since it has failed to make corrections. This is in error.

The county may think it compliant to the Hearings Board due to granting deference to the Board's erroneous Formula. This is not compliant to the Court Orders since the Court has ruled this formula illegal. The Court of Appeals clearly grants deference to the Superior Court, over the Hearings Board. There needs to be a distinction between the two.

The Poyfair Decision addresses non-urban densities. For the most part, the county hasn't addressed rural and resource issues until this update.

The language quoted from the Court of Appeals, PUBLISHED OPNION, is important to recognize. The Court has ruled that if deference is not granted to the Superior Court Orders, and corrections made to reconcile the issues, then the erroneous formula is allowed to maintain. Perpetuating the unlawful formula, as is being proposed in this comprehensive plan update, does not correct the problem and advances it another 20 years.

Best,
Susan Rasmussen for
Clark County Citizens United, Inc.
Sent from [Mail](#) for Windows 10