



Leslie Clark

Subject: Councilor concerns regarding adopting the November 24, 2015 Preferred Alternative - For the Public Record and the 2016 Comprehensive Plan update.

From: Carol Levanen
Sent: Thursday, March 3, 2016 12:46 PM
To: Jeanne Stewart; Tom Mielke; David Madore; Marc Boldt; Julie Olson
Subject: Councilor concerns regarding adopting the November 24, 2015 Preferred Alternative - For the Public Record and the 2016 Comprehensive Plan update.

Dear Councilors,

This email is regarding a request to the Council, by CCCU, at the March 1, 2016 hearing, to show any legal reason as to why the November 24, 2015 Preferred Alternative in its entirety, should not be adopted. Only Councilor Olson responded to CCCU President, Susan Rasmussen, and the following information is in response to the information received by her from Councilor Olson.

Hello Julie,

Susan forwarded me information you provided regarding Hearing Board and court case as it relates to the legalities of the concepts in Alt 4. As you may suspect, in the last two years, CCCU has combed court records throughout the state to determine the legality of the proposal. Our two years of research is extensive. Unfortunately, you have not had an opportunity to review that information, nor did the Planning Commission or the other new council members. I am concerned that there are those who may be giving you information, to encourage you to oppose the concepts, where the application of the case was meant for other purposes and does not fit Alt 4. I think John Matson said it well. *"It is all so simple, it simply calls it what it is"*. That is what all of the Clark County Comprehensive Plans did since 1960, and until 1994. In those former Plans, it remained as the criteria for recognizing the small existing rural lots that are talked about in the previous Plans. Unfortunately, the long accepted recognition of these lots in the community framework plan of the former Plans, up until 1992, was destroyed, along with the Plans, when Mr. Karpinski came on the scene in 1993. Fred Pickering and two other CCCU Board members were on the original farm and forest task forces in 1991-93 who spent two years carefully applying the GMA concepts for the new 1994 Plan. As he told you in testimony, just as they were going to submit their information to the planning staff, to compose the EIS, Mr. Karpinski stopped the process and their information was replaced with his. Other CCCU Board members were in attendance to this meeting and can attest to the accuracy of his testimony. In our court cases, we compelled the county to show minutes, maps and documents that the original group created, but those documents had been removed from the record and could not be found. CCCU compelled the county to deliver the resource lands maps that were in the record, but they too, could not be found. Oliver Orjiako was a lead planner at that time, along with Peggy Scolnick. She sent the letter to Mr. Karpinski asking for a complete, one and only alternative, to the 1994 Comprehensive Plan. That is what you have in place today, You can imagine how upset the original task force was over those changes, as two years of their lives were wasted. As Fred told you in testimony, the map the Committee had created, looked just like the Alternative 4 map. The Preferred Alternative adopted on November 24, 2016, was a composite of Alternatives 1, 2, 3, and 4, with 4 addressing the rural and resource areas. While you believe Alternative 2 gives something to the landowners, it actually does very little to compensate for losses incurred by all of the landowners in 1994. The 10 and 20 acre proposal addressed specific parcels in resource lands and those parcels are already smaller than those zones.

With the remand of the Agri-forest 36,000 acres, the outcome was driven by county staff and consisted of a 9, environmentalists, to 4, landowners, ratio of members on the Task Force. The result is that only 12 of the 155 lots reflected the actual lot size in the 5 acre zone, and the rest of the parcels were given large lot zoning of 10 and 20 acres, regardless of their size. Even though the initial criteria of the Task Force was to "call it what it is", that did not happen. Three of CCCU's members were on the Task Force and the record reflects that over 90% of their recommendations were for 5 acre zoning for the majority of the lots, because that is what they were.

Originally, CCCU submitted in the record on September 9, 2014 a list of requests that looks very different than Alternative 4. We based our original information on what was on the ground, what was in case law, what other counties did, what the GMA said and what the landowners lost under Mr. Karpinski's plan. The Commissioners asked staff to meet with CCCU to consider those proposals. They refused to consider any of it. Those requests were as follows:

1. Separate Resource Element from Rural Element in the EIS
2. Correct all resource soils maps
3. Recognize existing parcelization
4. Agriculture zoning of 2.5, 5, and 10 acres
5. Forest zones of 5, 10 and 20 acres

(new 11)

6. Rural zones of 2.5, 5 acres
7. Cluster of all zones - at 2.5 and 5 acre density
8. Remove rural and resource lots from the OFM

Alternative 4 looks very different than these original requests, even though they were based on sound data. Councilor Madore, with Councilor Mielke saw merit in the proposal and asked staff to create something that might reflect similar information. Staff refused to do as directed and indicated to Councilor Madore that he would have to do it himself. He then decided to see what he could do and set about contacting all those persons and experts in the community who related to such a project, to gather data for consideration. He then composed a map reflecting that information. Alternative 4 is based on the GMA, WAC, court cases, hearing board cases, historical data, current scientific data and what all of the other counties did for their Plans. Those counties recognized existing parcels in some way to reflect what they were, and most of the other counties used predominant parcel size to determine that. The Alt 4 map was based on that very concept. As you can see, even though there were many 2.5 acre lots in the ag zone, the minimum lot in Alt 4 map is 5 acres. The same is true for forest zone that went to 10 acres instead of 5 acres, which was actually the predominant parcel size. So you see, landowners have compromised a great deal in the creation of the Alt 4 map. CCCU, inc. is not inclined to further compromise the landowners property rights that were taken from them and their families, in 1994. Councilor Madore was just the messenger for the rural and resource landowners. As the record demonstrates, Alternative 4 and it's map, is acceptable legal policy for councilors to support and adopt.

Staff proposed Alternatives 1, 2, and 3 with very little meaningful public process. They will mention the Rural Lands Task Force, but CCCU has submitted in the record that the final recommendation of that Task Force was for rural and resource lands to go to 5 acre zoning. The actual result of the referenced survey by staff was that landowners wanted smaller zones than what they had, even though staff claims Alt 2 is a result of that survey. The primary reference seen in determining staff proposals was meetings between the Responsible Growth Forum and Friends of Clark County. There is no mention of rural and resource landowner representation to that process. Alt 1, 2, and 3 were then presented to the commissioners as a final document and went to the public as such.

You mentioned the 1 acre and 2.5 acre zones to be excessive, but, Councilor Madore was adamant that in the creation of the map, that only those parcels that already existed, would be designated as such. CCCU will review the maps to confirm that, but we do believe that is true. There is a great deal of scientific data and research information in the record that indicates that the resource lands were improperly designated in 1994 and those mistakes have remained in those designations, ever since. Following the exact directives of the GMA and WAC, CCCU determined that what that land should look like, is very different than what was designated. That was another compromise that CCCU agreed to. Rather than change the map designations for resource land, simply recognize the existing predominant parcels area wide with consideration of a better use of the land under GMA criteria. Alternative 4 was fully compliant with the GMA. But, if the county had to correct the resource land map, the whole plan would have to be done over again, as that would change everything. That was the intent of the Poyfair decision, when he said the county used an erroneous unauthorized formula for the creation of the land use densities. CCCU is not asking that the county change the resource lands designations, although that would be in order to correct the mistakes. We are simply asking that the property rights that were lost in 1994 be returned to the landowners and their families, as it reflects what already exists in rural and resource lands of Clark County.

Keep in mind, that the Hearing Board is not the courts, and only determine whether, in their opinion, the Plan complies with the GMA. But, in CCCU's former legal actions, the WWGMHB disregarded all of CCCU's claims, and yet the courts reversed their decision while chiding the Board for going outside their jurisdictional boundaries. That has been the case in much of the Hearing Board decisions. It is the courts that determine the law, not the Hearing Board. CCCU, Inc is prepared to continue to the courts, if history is repeated at the Board level. But, with the new information that has been gathered throughout the last two years, CCCU's appeal will look very different than the last one and will encompass much more than what was decided in the past.

Oliver Orjiako was overheard by a landowner, telling staff that he *"doesn't care if he is in the courts for 20 years, he is not going to make changes to the rural lands"*. Landowners do not believe such policy making is in the jurisdiction of Clark County Community Development. Without a return of the Alternative 4 map and meaningful changes to the rural and resource zoning in the 2016 Clark County Comprehensive Plan, Clark County Citizens United, Inc, representing 6,000 members and supporters, will meet that challenge to assure the Clark County Comprehensive Plan is fair, honest and complies with the GMA.

Sincerely,

Carol Levanen, Ex. Secretary
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