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COMMUNITY PLANNING

MEMORANDUM

TO: Board of County Commissioners
FROM: Oliver Orjiako, Director
DATE: June 26, 2014
SUBJECT: Resource land designation

INTRODUCTION

The Board of County Commissioners' office has received numerous e-mails from Clark County Citizens United (CCCU) with regard to zoning in rural Clark County. CCCU has raised arguments indicating that the county should revisit the Agriculture and Forest resource land designations and the smaller minimum parcel sizes of 1 and 2.5 acres that were in effect prior to the adoption of the first comprehensive plan under the Growth Management Act (GMA) in 1994.

Staff has revisited records dating to the adoption of the 1994 comprehensive plan and subsequent appeals. This memo tracks separately the historical context from approximately 1993-1998 related to each of the two issues: designation of resource land and rural parcel size. For each issue the chronology includes the lead up to adoption of the comprehensive plan followed by appeal to the Growth Management Hearings Board (GMHB), followed by appeal to Superior Court and Clark County's responses to the appellate rulings.

Designation of Resource Land

In 1993, the Board of County Commissioners convened a Rural and Natural Resource Lands Advisory Committee. Two sub-committees were formed, the Farm Focus Group and the Forest Focus Group, and were charged with classifying and designating farm resource lands and forest resource lands, respectively. The work of the Advisory Committee was based in large part on the minimum guidelines required by the growth management legislation as found in Chapter 365-190 of the Washington Administrative Code (WAC). In their respective reports they cite guidelines issued by the Washington State Department of Community Development; these are the same guidelines that are in the WAC 365-190.

The Farm Focus Group issued its report December 9, 1993. The report includes the delineation methodology that was used by the group. The group used the criteria as set

out by the Washington State Department of Community Development (DCD) to designate agricultural land. The agency criteria required use of the land capability classification system of the U.S. Department of Agriculture Soil Conservation Service as a prime factor. WAC 365-190-050 also provides ten indicators to use in the designation assessment. This is addressed in an October 25, 1994 memo to the Planning Commission from Jeri Bohard, GMA Section Supervisor.

The Forest Focus Group issued its report December 5, 1993. Forest lands designation also had specific criteria to be used, including quality soils. However, to classify forest land the DCD criteria required the use of the private forest land grading system from the Department of Revenue. In addition, WAC 365-190-060 had seven other indicators to consider in designating forest land.

The Rural and Natural Resource Lands Advisory Committee began the process of designating Agri-Forest for areas north of the East Fork of the Lewis River. The process was completed by staff subsequent to the issuance of the draft supplemental environmental impact statement (DSEIS). The Agri-Forest designation was added for the following reasons per memo from Craig Greenleaf, Planning Director, to the Planning Commission dated October 13, 1994:

- *The committee separated the selection process into independent determinations of agriculture and forestry characteristics, leaving some land inappropriately considered;*
- *The farm focus group did not include heavily forested lands; some of those lands were commingled with agricultural lands and were overlooked by both focus groups;*
- *Factors which are not objective tended to carry less weight (e.g. Settlement patterns and their compatibility with agricultural practices.*
- *The forest focus group discounted the role of soils as a factor because they were found to be uniformly of high quality;*
- *The farm focus group's failure to agree on "long term commercial significance" lead to severe difficulty in defining agricultural lands on a consensual basis and narrowed the committee's outcome to things over which agreement was reached.*

Growth Management Appeals

CCCU was one of 67 appellants that filed appeals of the adopted comprehensive plan with the Growth Management Hearings Board in 1994. CCCU raised the following issues in its petition to the Hearings Board:

- *Did the County's designation of agricultural resource lands comply with the GMA?*
- *Did the County's designation of ag-forest resource lands comply with the GMA?*
- *Did the County's designation of forest resource lands comply with the GMA?*

In its Final Order and Decision dated September 9, 1995 the GMHB affirmed the County's designation of agricultural, forest and agri-forest resource lands.

"Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were lands of 'long-term commercial significance' Petitioners have failed to carry their burden of proving the decision was an erroneous application of goals and requirements of the GMA. The County chose a decision that was within the reasonable range of discretion afforded by the act."

Superior Court Appeals

CCCU and others appealed the GMHB decision to Superior Court. The court ruled on April 4, 1997 that the Agri-Forest designation was invalid but it upheld the GMHB decision on resource land. The order found:

- *The EIS issued by the County was in violation of SEPA because the Agri-forest designations were disclosed subsequent to the publication of the Final EIS;*

The court also stated:

"There is substantial evidence in the record to support the County's designation of agricultural resource lands."

The County did not appeal the Superior Court decision and instead began a process to comply with the Court's order on remand to the Hearings Board. The County put together two task forces, one to deal with Agri-Forest and the other with Rural Centers.

Rural Parcel Size

The adopted 1994 comprehensive plan had established only one rural (non-resource) zone, R-5. The staff recommendation to the Planning Commission had been 5-acre minimum south and west of the Rural Resource line (East Fork of the Lewis River) and 10 acres north and east of the rural resource line. Staff had also recommended eliminating the rural centers due to GMHB decisions in which the OFM forecasts were determined to be both a floor and a ceiling.

Growth Management Appeals

CCCU raised issues identified below related to the parcel sizes in the rural area.

- *Did the County's designation of land use densities in rural areas comply with the GMA?*
- *Does a comprehensive plan that would make more than seventy percent (70%) of the properties in rural areas non-conforming comply with the GMA?*
- *Does a comprehensive plan which bases its land use densities strictly on OFM population projections comply with the GMA, when the County knows or should have known that those population projections underestimate anticipated population growth?*
- *May the County disregard its adopted framework plan policies when it adopts a comprehensive plan under the GMA and, if not, is the comprehensive plan consistent with the County's adopted framework plan policies?*
- *Does a comprehensive plan that ignores existing conditions in rural areas comply with the GMA?*
- *Did the County comply with the requirements of the State Environmental Policy Act, RCW Ch. 43.21C (SEPA)?*

The GMHB decision stated there was no evidence in the record to support 5-acre minimum parcel size designation north of the Rural Resource line. The GMHB had two major concerns. First, that the 5-acre size was insufficient to buffer adjacent resource lands, and second was the amount of parcelization that had occurred in the rural and resource areas between 1990 and 1993.

"At the time of adoption of the emergency moratoria on clusters, subdivision planned unit developments, and large lot developments in April of 1993, an estimated 19 square miles of segregations had occurred since May 1, 1990... There are implementation measures the County could take to level this playing field and reinject some fairness into the situation... If they do not, the unfair position that many of these site-specific petitioners find themselves in will be perpetuated."

"...the farm focus group established what became known as the 'rural resource line'. South and west of this resource line, the focus group, staff, and the Planning Commission recognized that segregations and parcelizations had occurred involving thousands of lots ranging from 1 to 2.5 acres....A major omission that the BOCC made in establishing a 5-acre minimum lot size for all rural areas was ignoring the differences that existed north and south of the 'resource line...The BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990."

These issues were ultimately addressed through the recommendations of the Agri-Forest and Rural Center task forces described below.

Superior Court Appeals

In its April 1997 ruling on CCCU's appeal from the GMHB, the Superior Court stated that the County needed to provide a variety of rural densities to be compliant with the GMA, and that could be achieved by designating rural centers as envisioned in the Community Framework Plan.

- *The removal of rural activity centers was not addressed in the EIS; and*
- *Rural development regulations were inconsistent with GMA; and*
- *The eradication of the rural activity centers violates the planning goal requiring a variety of residential densities;*

Agri-Forest and Rural Centers

Upon receipt of the remand from the GMHB to comply with the Superior Court ruling the BOCC convened a 13-member task force which in March of 1998 reported its recommendations on re-designating the 35,000 acres of Agri-Forest designated land. The task force recommended approximately 99% of the land be designated, R-5, R-10 and R-20. There were two minority report issued by members of the task force. One questioned the designation of 3,500 acres to rural as opposed to resource use, and the other recommended 5- and 10-acre zoning similar to the 1980 plan. The BOCC adopted the original task force recommendation. In May of 1999, the GMHB upheld the re-designation of the 35,000 acres except for the 3,500 acres mentioned in the minority report and remanded that back to the county.

"We find that Clark County is not in compliance with the GMA as relates to the 3,500 acres. In order to comply with the Act, the County must review the 3,500 acres in light of the Supreme Court's holding in Redmond and the appropriate criteria stated therein to determine if RL designation is appropriate."

The County subsequently reviewed the designation of the 3,500 acres and found that the task force's original recommendation of a non-resource designation of R-5, R-10 and R-20 was appropriate per Resolution 2003-09-12.

The BOCC also convened a task force to address the rural centers. Ultimately, the BOCC approved six rural center designations and boundaries which were upheld by the GMHB in a decision of May 1999.

Summary

Regarding resource designations of agriculture and forest land both the GMHB and Superior Court decisions affirmed the County's designation as compliant with the GMA. The AG-20, FR-40 and FR-80 in place today are the same as adopted in 1994 and upheld by both the GMHB and Superior Court. The Agri-Forest designation was deleted

and those 35,000 acres were re-designated to R-5, R-10 and R-20 uses to comply with the Court's decision.

The updates of the 2004 and 2007 comprehensive plans re-adopted the previous land use actions consistent with GMA. While Clark County has been successful in some instances in de-designating agricultural lands to non-resource uses, the requirements for doing so are very difficult to meet. Whether to re-consider resource designations and rural lot sizes is ultimately a policy decision for the BOCC in compliance with state law.