



PROSECUTING ATTORNEY | ANTHONY F. GOLIK

SCOTT D. JACKSON
Chief Deputy

CAMARA L. J. BANFIELD
Chief Criminal Deputy

CHRISTOPHER HORNE
Chief Civil Deputy

SHARI JENSEN
Administrator

MEMORANDUM

DATE:	September 26, 2017
TO:	Oliver Orjiako
FROM:	Christine Cook, Sr. Deputy Prosecuting Attorney <i>Cull</i>
SUBJECT:	Compliance with <i>Hirst</i>

One issue that may be raised in compliance proceedings is whether Clark County must show that it has taken further actions to comply with the Supreme Court's decision in *Hirst v. Whatcom County*.¹ This office disagrees that the Growth Management Hearings Board (Board) ruled against the County on the *Hirst* issue. If there was such a ruling, however, the addition of this memo and its attachment to the compliance record should demonstrate that the County has complied with the requirements of *Hirst*.

In the Board's review of an action challenged under GMA, the petitioner bears the burden of proving that the respondent's action was clearly erroneous.² "The board shall find compliance unless it determines that the action ... is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter."³ The Board may only decide on an issue if the issue is presented in a petition for review.⁴ Petitioners did not argue that the County's comprehensive plan and regulations, as they existed before the 2016 Plan Update, violated GMA on *Hirst* grounds, and the Board therefore did not rule on whether they did so. In its Final Decision and Order, issued March 23, 2017 (FDO), the Board neither discussed nor made any determination that the County plan and code fail to comply with *Hirst*.

¹ *Whatcom County v. Hirst*, 186 Wn.2d 648, 381 P.3d 1 (2016).

² RCW 36.70A.320(2).

³ RCW 36.70A.320(3); *Clark County Citizens United v. Clark County*, Growth Management Hearings Board, Western Region, Case No. 16-2-0005c (Final Decision and Order, March 23, 2017) (FDO) at 5.

⁴ RCW 36.70A.290(1).

The legislature has directed that a county enactment can be held to violate GMA only if the Board finds it clearly erroneous, based on an issue presented in a petition for review. The Petitioners presented no *Hirst* issue, and the Board made no analysis or adverse finding, with respect to the County's comprehensive plan and development regulations, apart from the addressing the 2016 Comprehensive Plan Update. Therefore, the Board did not make a *Hirst* ruling that finds the County plan and code noncompliant other than by reason of the 2016 Plan Update.

To the extent that it did make (without explicitly saying so) a *Hirst* ruling against the County, the Board could have done so only with respect to Petitioner FOCC's Issue 11.⁵ That issue complained of reductions in minimum lot sizes from creation of the AG-10 and FR-20 zones, alleging that allowing smaller lot sizes failed to protect the quality and quantity of groundwater.⁶

Clark County has returned zoning in Agriculture lands and Forest Tier II lands to AG-20 and FR-40, the zoning that had been in effect for approximately 2 prior decades, and has been ruled compliant by the Board 3 times. If the creation of AG-10 and FR-20 zoning did implicate *Hirst* issues, that violation has been cured by returning resource zoning to their long-time states. It cannot be said that Clark County violates *Hirst* by reason of zoning that no longer exists.

The Board dismissed Petitioners' Issue 21, the only other issue remotely addressing water supply, so the County has no compliance obligation with respect to that issue.

Attached hereto is the Declaration of Charles Harman, dated December 22, 2016 (Harman Dec.). The Harman Dec. explains the scope and details of Clark County's actions taken to require that water is both legally and actually available to proposed development in the County. The County's actions, as Mr. Harman relates, are routine and standard procedures that have been followed from before the adoption of Amended Ordinance 2016-06-12 through the present. The Board denied the County's motion to include the Harman Dec. in the record of the appeal, and thus did not have that evidence before it. Please include this memo and its attachment in the compliance record.

⁵ See FDO at 43-52.

⁶ See FDO at 43, 46.

1
2
3
4
5
6
7 **BEFORE THE WESTERN WASHINGTON**
8 **GROWTH MANAGEMENT HEARINGS BOARD**
9 **STATE OF WASHINGTON**

10 CLARK COUNTY CITIZENS UNITED, INC.,
11 FRIENDS OF CLARK COUNTY &
12 FUTUREWISE,

13 Petitioners,

14 v.

15 CLARK COUNTY,

16 Respondent,

17 And

18
19 3B NORTHWEST, LLC; CITY OF LA
20 CENTER; RDGB ROYAL FARMS, LLC;
21 RDGK REST VIEW ESTATES, LLC; RDGM
22 RAWHIDE ESTATES, LLC; RDGF RIVER
23 VIEW ESTATES, LLC; RDGS REAL VIEW,
24 LLC; CITY OF BATTLE GROUND; and
25 CITY OF RIDGEFIELD,

26 Intervenor.

Case No. 16-2-0005c

DECLARATION OF CHARLES HARMAN

27 I, Charles Harman, under penalty of perjury, declare as follows:

28 1. My name is Charles Harman. I am over 21 years of age and have personal
29 knowledge of the facts stated herein.

DECLARATION OF CHARLES HARMAN - 1 of 4

CLARK COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
1013 FRANKLIN ST. • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2478 (OFFICE) / (360) 397-2184 (FAX)

041369

1 2. I am employed as a Program Manager II in the Clark County Public Health
2 Department. I oversee Clark County's On-Site Septic Systems, Drinking Water Protection, Solid
3 Waste Operations and Enforcement, Local Source Control and Site Hazard Assessment
4 Programs. I have worked for Clark County since March of 2015 and previously worked for the
5 State of Oregon (Department of Environmental Quality, 2000-2015; Department of Agriculture,
6 1997-2000) in the areas of hazardous site assessment and remedial action; and groundwater and
7 surface water protection.
8

9
10 3. Below are my comments in regards to selected sections of Friends of Clark
11 County's and Futurewise's Petitioners' Pre-Hearing Brief (December 1, 2016).

12 4. With regard to the section titled "Clark county Comprehensive Plan Update fails
13 to protects water" on pages 32-33 of the Futurewise Prehearing Brief:
14

15 In coordination with the Community Planning and Community Development
16 Departments, the Clark County Public Health (CCPH) Department staff evaluate water adequacy
17 and quality through our Land Division Review (CCPH Policy #EPH-014) and Water Adequacy
18 Verification Evaluation (WAVE) (CCPH Policy #EPH-011) analyses. Land Division and related
19 land development reviews performed by CCPH staff are also guided by the Department of
20 Ecology in-stream rules established for the Lewis and Salmon-Washougal Basins (WAC 173-
21 527 & 528). WAC 173-527 and -528, adopted in December of 2008, identify available
22 'reservations' for permit-exempt groundwater wells. CCPH provides the permit-exempt well
23 approval information to Ecology, which per those rules, counts them against the established
24 reservations. WAC 173-527 and -528.
25
26
27
28
29

1 The in-stream water rules also provide procedures for evaluating surface and
2 groundwater well impacts to surface waters in cases where a reservation of water supply is not
3 available.
4

5 5. Responses to comments regarding Capital Facilities and Utilities – “The Capital
6 Facility Plan needs to be clear whether water will be available for the planned growth and how it
7 will paid for,” found on pages 43-45 of the Futurewise Prehearing Brief:
8

9 Clark County Community Planning and Public Health Departments coordinate with the
10 Clark Public Utilities, the City of Vancouver and County-located municipal public water supply
11 providers to develop, update and implement the Clark County Coordinated Water System Plan
12 (CWSP), which was last updated in November of 2011
13 (<https://www.clark.wa.gov/documents/coordinated-water-system-plan>). The CWSP evaluates
14 water service areas, water resources and water supply for the County, which includes evaluating
15 updates to state and local water use and land use law and code. The CWSP is due to be updated
16 soon.
17

18 Water reservations and provisions to evaluate water quantity for public utility water
19 providers in Clark County are also addressed in WAC 173-527 and -528.
20

21
22 /////

23
24
25 /////

26
27
28 /////
29

1 Through the CWSP and the in-stream rules, Clark County has an existing system to guide
2 water system development and evaluation of water quantity prior to land division and
3 development approvals.
4

5 I declare under the penalty of perjury according to the laws of the State of Washington
6 that the foregoing is true to the best of my knowledge and belief.
7

8 DATED this 22 day of December, 2016, in Vancouver, Washington.
9

10 
11 Charles Harman
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29