

**STATE OF WASHINGTON
GROWTHMANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

GRANT COUNTY ASSOCIATION
OF
REALTORS, a Washington
Corporation
Petitioner,
v.
GRANTCOUNTY,
Respondent

Case No.: 99-1-0018
FINAL DECISION AND ORDER

I.PROCEDURAL HISTORY

On November 30, 1999, Grant County Association of Realtors filed a Petition for Review regarding issues of classification of agricultural lands, potential conflicts of interest among members of the Grant County Planning Commission reviewing those classifications, and the consistency of assigned rural densities with the goals of the Growth Management Act (GMA) (Petition No. 99-1-0018).

Petitioner was represented by Jeffrey S. Tindal of Schultheis & Tabler. Respondent was represented by Stephen J. Hallstrom, Chief Civil Deputy Prosecuting Attorney and Williams, Kastner & Gibbs PLLC, by Dennis D. Reynolds and John A. Knox, Special Counsel. A prehearing conference was held on January 7, 2000. A prehearing order was entered on January 19, 2000. The prehearing order identified the following issues for consideration at the hearing on the merits:

1. Are lands classified as “irrigated agriculture” under Grant County’s Comprehensive Plan consistent with the Growth Management Act’s definition of “agricultural” land?
2. Did members of the Grant County Planning Commission have conflicts of interest and/or engage in self-dealing when deciding what lands would be classified “rural residential” rather than “agricultural”?
3. Are the classifications of rural densities identified in the Grant County Comprehensive Plan consistent with the stated goals of the Growth Management Act?

On February 9, 2000, the Board entered an Agreed Order granting Respondent Grant County’s motion for partial summary judgment dismissing Petitioner’s conflict of interest/appearance of fairness claim (Issue No. 2). Thus, only the first and third issues raised by Petitioner remain for decision by the Board.

This matter was scheduled for a hearing on the merits on April 26, 2000. Before hearing argument

on the merits, the Board resolved two pretrial motions brought by Respondent. First, the Board granted as unopposed Respondent's Motion to Supplement Record with errata sheets, interim zoning ordinances, building permit activity statistics and a January 19, 2000, letter from the Department of Commerce, Trade and Economic Development (CTED). Second, the Board granted Respondent's Motion to Strike Petitioner's Exhibits B and C to its Prehearing Brief because (1) procedurally, Petitioner did not file a motion to supplement and (2) substantively, neither exhibit was before the Board of County Commissioners during the process of adopting the Comprehensive Plan and neither exhibit is necessary or of substantial assistance to the Board in reaching its decision.

After hearing argument on the merits from both parties, and after thoroughly reviewing the briefs and exhibits submitted by both sides, the Board concludes that Petitioner failed to prove that the County's adoption of its Comprehensive Plan was clearly erroneous as to either of the remaining issues. The Board's conclusion is supported by the findings of fact and discussion that follow.

II. FINDINGS OF FACT

1. The majority of all lands under Grant County's jurisdiction are in agricultural use (63%). Nearly 1,100,000 acres are devoted to some form of agricultural production. Much of this acreage is made usable for agriculture by the Columbia Basin Project, one of the largest agricultural irrigation projects in the western United States.

2. According to a 1992 report from the Washington Agricultural Statistics Service, 1,695 individual farms operated in Grant County, farming over one million acres. Grant County's economy is heavily dependent on the agricultural industry.

3. Irrigation is the backbone of the County's agricultural economy. According to the County's Agricultural Land Use Inventory, nearly 40% of all agricultural uses now existing in Grant County rely on irrigation. The vitality and sustainability of the Columbia Basin's and Grant County's agriculturally-based economy are inextricably tied to the continuing availability of irrigable lands and irrigation water.

4. On September 29, 1999, Grant County adopted its Comprehensive Plan and designated 1,264,281 acres as agricultural resource lands. The Plan divided these agricultural lands into three categories: dryland agricultural, irrigated agricultural, and rangeland.

5. Grant County's Comprehensive Plan defines Dryland Agricultural Land as land used primarily for grain or feed crop production, including ground in the Federal Conservation Reserve Program. Parcels meeting the following criteria are classified as Dryland Agricultural Lands of Long-term Commercial Significance:

1. Agricultural Use – Property shall be considered in Agricultural Use" if it meets any one of the following criteria:

- (a) Property is enrolled, as of December 31, 1997, in the Agricultural current Use Classification property tax classification pursuant to Chapter 84.34 RCW, as recorded by the Grant County Assessor, or is owned by a state or local government body with long-term agricultural management as its primary use;
- or

(b) Parcel is currently in agricultural use, as of December 31, 1997, or has been in agricultural use at some time since January 1, 1990, as recorded by the Grant County Assessor in his/her land appraisal tables; or

(c) More than fifty percent (50%) of parcel has soil characteristics of Soil Class I, II, III or IV as defined and designated by the Soil Survey of Grant County, Washington, and the U.S. Department of the Interior, Bureau of Reclamation Soil Ratings Survey; or

(d) Parcel abuts on more than one side property that meets the classification criteria (a) or (b), above, irrespective of its consistency with classification of criteria (a) or (b); or

(e) More than fifty percent (50%) of the length of the perimeter of a parcel abuts property that meets the classification of criteria (a) or (b), above, irrespective of its consistency with classification criteria (a) or (b); and

2. Size of Non-contiguous Parcel: Parcel that is not contiguous to parcel(s) meeting classification criteria 1 above is larger than 640 acres; and

3. Property is not classified as Irrigated Agricultural Land or Rangeland (as specified in the Plan).

6. Grant County's Comprehensive Plan defines Irrigated Agricultural Land as land used for the production of hard and soft fruits as well as forage and grain crops and vegetables.

Parcels meeting the following criteria are classified as Irrigated Agricultural Lands of Long-term Commercial Significance:

1. Parcel meets classification criteria 1 for Dryland Agricultural Lands (above); and

2. Size of Non-contiguous Parcel: Parcel that is not contiguous to parcel(s) meeting classification criteria 1 for Dryland Agricultural Lands (above) is larger than 640 acres; and

3. Irrigated or Irrigable Land:

(a) Parcel lies within, either partially or totally, a Farm Unit (Irrigation) Block currently receiving irrigation water provided by the Quincy Columbia Basin Irrigation District, the East Columbia Basin Irrigation District, or the South Columbia Basin Irrigation District, as shown in figure 5RE-2 of the Plan (page 5RE-11), Department of the Interior, Bureau of Reclamation Columbia Basin Project, Revised January 1995; or

(b) Parcel lies within, either partially or totally, a Farm Unit (Irrigation) Block designated as having potential to receive irrigation from the Quincy Columbia Basin Irrigation District (currently Blocks 90, 91, 731, 742, 771, 831, and 891); or the South Columbia Basin Irrigation District (currently Blocks 27, 36, and 37), as shown on Figure 5RE-2 of the Plan; or

(c) Parcel lies within, either partially or totally, an area designated as

having potential to receive irrigation water from the East Columbia Basin Irrigation District (currently East High Irrigation Area Tentative Blocks A, B, C, D, E, F, G, J, K, Q, and T), as shown on Figure 5RE-2 of the Plan; or

(d) Parcel receives irrigation water from or lies within, either partially or totally, the Black Sands Irrigation District or the Moses Lake Irrigation District; or

(e) Parcel receives irrigation water from a private irrigation system or groundwater well.

III. LEGAL ISSUES AND DISCUSSION

ISSUE NO. 1: ARE LANDS CLASSIFIED AS “IRRIGATED AGRICULTURE” UNDER GRANT COUNTY’S COMPREHENSIVE PLAN CONSISTENT WITH THE GROWTH MANAGEMENT ACT’S DEFINITION OF “AGRICULTURAL” LAND?

Petitioner’s position:

Petitioner asserts the lands Grant County designated as “irrigated agricultural” in its comprehensive plan cannot meet the GMA’s definition of “agricultural lands.” Petitioner contends the GMA’s definition of agricultural land contained in RCW 36.70A.030 is two-pronged. “First, the land must be *primarily devoted* to agricultural production. Second, the land must have *long-term commercial significance* for agricultural production.” Petitioner’s Prehearing Brief, at 3 (emphasis added).

Petitioner points out the Washington Supreme Court recently ruled in City of Redmond v. Central Puget Sound Growth Management Hearings Bd., 136 Wn.2d 38 (1998), that “land is in an area ‘primarily devoted’ to agriculture, within the meaning of the GMA and as an element of the GMA definition of ‘agricultural land,’ if the land is in an area where the land is actually used or is capable of being used for agricultural production.” Petitioner’s Prehearing Brief, at 4. Petitioner further notes the City of Redmond court focused on soil studies and previous agricultural use of the land in question to determine its proper characterization.

Petitioner argues the Respondent’s multi-criteria approach to classifying “irrigated agricultural” lands cannot meet the definition of “agricultural lands” as set out in City of Redmond. First, Petitioner asserts that much of the designated lands are not actually used for agriculture. Second, Petitioner contends much of the designated lands will never be irrigated because it is highly unlikely Phase II of the Columbia Basin Project will ever be completed. Third, Petitioner contends soil studies indicate that much of the designated lands have not been used for agriculture precisely because their soils are unsuited for agriculture, containing significant amounts of gravel and a predisposition to soil erosion. In sum, Petitioner argues that Respondent’s criteria can be used to classify specific parcels of land as agricultural without ever considering their growing capacity or soil composition, resulting in misclassification of lands that cannot and will never be farmed. Petitioner requests the challenged lands be redesignated with a rural residential classification. Petitioner concedes its challenge is to the Plan’s general approach to classifying irrigated agricultural lands and is not a site-specific challenge.

Respondent's position:

Respondent contends it followed the CTED guidelines in determining how to identify and classify its agricultural resource lands. Respondent used a two step process to classify its "irrigated agricultural" land. First, any candidate lands must qualify as "dryland agricultural" before being considered for "irrigated agricultural" classification. To qualify as dryland agricultural land, the land must be (a) in a current use agricultural property tax classification, or (b) currently in agricultural use (or has been at some time since January 1, 1990), or (c) have more than 50% of Class I, II, III or IV soils as defined in the U.S. Dept. of the Interior's "Soil Survey for Grant County," or (d) about a parcel meeting requirement (a) or (b) on more than one side, or (e) about a parcel meeting requirement (a) or (b) along more than 50% of its perimeter. Respondent's Hearing Brief, at 17.

Once land is classified as "agricultural" under Respondent's process, it may be classified as "irrigated agricultural" if it is located within a farm service unit served by an irrigation district, or if it has "potential" to receive irrigation waters from Phase II of the Columbia Basin Project, or if it receives irrigation water from a private system or ground water well. Respondent's Hearing Brief, at 18.

Respondent asserts this process fully complies with the GMA. Respondent contends if it has classified some marginally productive lands as agricultural lands of long-term significance, as Petitioner argues, this potential "overclassification" does not violate the GMA because (1) it is intended to protect the region's agricultural economy from irreversible incompatible uses and (2) there is no proven need for additional rural residential lands, as requested by Petitioner.

Respondent argues that preserving potential irrigable lands of the future now, before residential development makes them permanently unavailable, not only complies with the GMA goals of encouraging, maintaining, and enhancing natural resource-based industries, but also protects a common good for the region.

Conclusion:

Grant County's Comprehensive Plan is presumed valid. The burden of proof is upon the Petitioner to demonstrate to the Board that Grant County's agricultural lands designations are not in compliance with the GMA. The Board is further directed to find compliance unless it determines the action by the County is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320 and .3201.

RCW 36.70A.030(2) and (11) define the terms "agricultural land" and "long-term commercial significance" as follows:

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticulture, floriculture, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, fin fish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

...

(11) "Long-term commercial significance" includes the growing capacity,

productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

According to the Department of Commerce, Trade and Economic Development (CTED), the minimum guidelines for classifying agricultural lands provide that:

(1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (a) The availability of public facilities;
- (b) Tax status;
- (c) The availability of public services;
- (d) Relationship or proximity to urban growth areas;
- (e) Predominant parcel size;
- (f) Land use settlement patterns and their compatibility with agricultural practices;
- (g) Intensity of nearby land uses;
- (h) History of land development permits issued nearby;
- (i) Land values under alternative uses; and
- (j) Proximity of markets.

(2) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to department of community development.

(3) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include consultation with the board of the local conservation district and the local agricultural stabilization and conservation service committee. ...

WAC 365-190-050 (emphasis supplied). These GMA definitions and CTED guidelines create a standard for analyzing, classifying and designating agricultural lands of long-term commercial significance but do not compel any particular outcome or result.

As noted in Petitioner's brief, the Supreme Court recently provided additional guidance in its City of Redmond decision. Having previously analyzed that case shortly after its publication,

see Williams v. Kittitas County, EWGMHB No. 95-1-0009 (11-6-98), we will not repeat that discussion here. In short, the Court reminded the Central Puget Sound Growth Management Hearings Board that one of the GMA's 13 goals requires counties and cities to "maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries." RCW 36.70A.020(8). The Court cited RCW 36.70A.177, a recent modification to the GMA urges use of "innovative zoning techniques" to conserve agricultural lands, as evidencing the Legislature's continuing concern with preserving agricultural lands. The Court stated that in designating agricultural land, no one factor (including current use) is controlling. The Court concluded a local government should make efforts to include, rather than exclude, agricultural lands, preserving those parcels for future natural resource-based industries.

In this case, Respondent has followed the guidance found in both the City of Redmond and Williams v. Kittitas County cases. Although the designated "irrigated agricultural" lands may not be currently used for those purposes, they most certainly are "capable of being used for agricultural production" at some time in the future. As Petitioner pointed out, "natural resource lands are protected not for the sake of their ecological role but to assure the viability of the resource-based industries that depend on them." Petitioner's Prehearing Brief, at p. 3. Given Grant County's dependence on its agricultural economy, conserving a sufficient land base for its successful continuation and future growth is sensible and meets the requirements of the GMA. We recognize that much of the lands designated as "irrigated agricultural" are not currently devoted to such use. However, there is still a potential that these lands will be farmed productively in the future. As Respondent points out, the Columbia Basin Project was developed at substantial public expense and still has over half a million acres slated to receive additional irrigation waters once Congress authorizes additional funding. Our state government continues to reserve water rights associated with this potential future farming. Given this situation, we cannot conclude the lands designated as "irrigated agricultural" by Respondent are incapable of being farmed. Petitioner's argument the relatively poor soil properties of those lands and their current fallow state should prevent their classification as "agricultural" resource lands is incorrect and short sighted. If Respondent took no action to protect lands that could be benefited by a continuation of the Columbia Basin Project, there may not be sufficient suitable land left to efficiently and economically irrigate when Congress determines it is ready to finish what it started. As technology improves, the soils that are marginal today may become more than sufficient to support the crops of tomorrow. Respondent should be commended for its conservationist approach to the most economically important resource lands in its jurisdiction.

In addition, we note Respondent has considerable discretion in carrying out its duties under the GMA. So long as a local governing body is not exploiting this discretion to a level that becomes "clearly erroneous," we will defer to the wisdom and judgment of the local decision-making process. When it comes to implementing the CTED guidelines in reference to soil class and quality, we have approved local classifications of agricultural land when they err more toward the side of inclusion of lands, rather than exclusion. Respondent's actions meet this standard, taking the CTED guidelines as direction to consider including "at least" lands with prime and unique

soils, not “at most” those lands. See WAC 365-190-050(3) (allowing a county to classify “additional lands of local importance” beyond those classified after consideration of the factors specified in subsections (1) and (2), which include consideration of the Soil Conservation Service’s published soil analysis).

We approve of this approach and conclude the Respondent has achieved this goal within the framework of the GMA and the CTED guidelines.

Petitioner has not met its burden of demonstrating that Respondent’s classification of “irrigated agricultural” lands was clearly erroneous under the GMA. Grant County’s Comprehensive Plan complies with the GMA in this regard.

ISSUE NO. 3: ARE THE CLASSIFICATIONS OF RURAL DENSITIES IDENTIFIED IN THE GRANT COUNTY COMPREHENSIVE PLAN CONSISTENT WITH THE STATED GOALS OF THE GROWTH MANAGEMENT ACT?

Petitioner’s position:

Petitioner contends the three levels of rural density contained in the rural element of Respondent’s comprehensive plan, 1 DU/2.5 acres, 1 DU/5 acres, and 1 DU/20 acres, do not meet the GMA’s requirement for “a variety of rural densities” if the Board voids the 1 DU/2.5 acres density in a separate case brought by the City of Moses Lake. In that event, Petitioner argues the Respondent is required to include a 1 DU/10 acres density to meet the GMA’s requirements for a variety of rural densities.

Respondent’s position:

Respondent contends it has provided for a variety of rural densities beyond that recognized by Petitioner, including 1 DU/40 acres for resource lands. Additionally, Respondent asserts the Petitioner has conceded that the Plan provides a variety of rural densities, and the Board cannot issue advisory opinions based on what might happen in another case. Finally, Respondent asserts Petitioner lacks standing to argue for a 1 DU/10 acres rural density because it failed to raise this issue in the administrative process.

Conclusion:

RCW 36.70A.070(5)(b) states:

Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

Petitioner concedes, and we find, the Comprehensive Plan provides for a “variety of rural densities”. The Board cannot issue a ruling in this case based on Petitioner’s concern about the possible outcome of an issue in the City of Moses Lake case (No. 99-1-0016). If Petitioner was concerned about an issue in that case, it could have sought to intervene in it, but Petitioner failed

to do so.

IV.ORDER

1.The Board finds Grant County has complied with the Growth Management Act in designating its agricultural resource lands of long-term commercial significance, including those designated as “irrigated agricultural,” and in adopting its Comprehensive Plan.

2.The Board finds Grant County has complied with the Growth Management Act in providing a “variety of rural densities” as required by RCW 36.70A.070(5).

This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5).

Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.

SO ORDERED this 23rd day of May, 2000.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

D.E. “Skip” Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member