

State of Washington

GROWTH MANAGEMENT HEARINGS BOARD

FOR EASTERN WASHINGTON

VICTOR W. BELAIRE and MARY L.
BELAIRE,
Petitioners Case No. 99-1-0003
vs. FINAL DECISION AND ORDER
YAKIMA COUNTY,
Respondent

I. Procedural History

On February 16, 1999, Victor W. and Mary L. Belaire, by and through their counsel, James C. Carmody of Velikanje, Moore & Shore, filed a Petition for Review before this Board. On July 9, 1999 this Board held the Hearing on the Merits in its office in Yakima, Washington at 10:00 a.m. Present were Presiding Officer Judy Wall and Board members Skip Chilberg and Dennis Dellwo. All parties were in attendance or represented.

II. Findings of Fact

1. The Belaire property was zoned Exclusive Agriculture in 1982 by Yakima County.
2. The Exclusive Agriculture (EA) designation is to preserve and maintain areas for the continued practice of agriculture and to permit only those new uses which are compatible with agricultural activities.
3. The specified intent of the EA designation is, among other things, to protect the best agricultural areas from conflicting non-farm uses and influences, maintain large parcels for agricultural uses, and limit the creation of non-farm parcels. Yakima County Code (YCC) 15.21.010.
4. Permitted uses in the EA District are limited to agriculture, plants for processing and storing of agriculture products; single family residences, and accessory uses such as farm labor shelters. YCC 15.21.020
5. The minimum lot size in the EA District is 40 acres.
6. The subject property has a current use classification of "Agricultural" for purposes of real property taxation and assessment pursuant to the provisions of RCW 84.34.
7. The subject parcel contains two soil types, Willis silt loam and Esquazel silt loam, which meet the requirements of prime farm land if irrigated. Exhibit 9.
8. Most of the subject parcel is not considered prime farm land.

9. The parcel contains 62 acres and has 31 shares of irrigation water rights.
10. Yakima County adopted Resolution No. 239-1992 on May 12, 1992 and the subject property was designated as Agricultural resource land therein.
11. Yakima County adopted Plan 2015 in May of 1997, which established the criteria for mapping agricultural resource land as well as goals and policies for the protection of such lands.
12. Plan 2015 continued the agricultural resource lands designation of the Belaire property.
13. In 1998, the Belaires applied to have the comprehensive Plan amended to redesignate the property from Agricultural Resource land (AR) to Rural Self-Sufficient (RSS).
14. County Planning staff recommended denial of the proposed amendment to reclassify the 62 acres as RSS. Exhibit 3.
15. The Planning Commission recommended County approval of the Petitioner's application.
16. The Board of County Commissioners declined to follow the recommendation of the Planning Commission and retained the Agricultural Resource designation of the Belaire property. Ord. 19-1998.
17. The Board of County Commissioners found "that this area has not changed significantly since it reviewed this site last year prior to adoption of Plan 2015; that the site is bordered by commercial agriculture and a number of vacant buildable lots; that the land looks like it may have potential for wine grapes; that while there may be a need to change the designation in the future, that time has not arrived..."

III. Legal Issues and Discussion

Issue 1: Is the designation of the subject property consistent with the Growth Management Act (GMA) as designated as "Agricultural Land" as defined in RCW 36.70A.030?

Petitioners' Position: The Petitioners contend Yakima County's designation of the subject property as "Agricultural Resource Land" is not consistent with the goals and requirements of the GMA. The Petitioners cite Redmond v. Growth Hearings Board 136 Wn.App.38, 53054 (1998) where the court recognized the designation of agricultural lands is based on two primary elements: (1) that the land be primarily devoted to agricultural purposes, and (2) that the property have long-term commercial significance for agricultural production. The Petitioners contend the subject property does not satisfy either element established for "Ag land". The property is not "actually used or capable of being used for agricultural production".

The Petitioners further contend there is insufficient water available for farming purposes and the soil composition is insufficient to support commercial capacities and production.

The Petitioners also contend the County did not follow the criteria for changes in land use designation and the County's decision not to change the designation as requested by Petitioner was contrary to the recommendation of the Planning Commission.-

Respondent's Position: The County believes the designation and protection of agricultural resource lands is one of the primary requirements of the GMA. The County contends they took steps to protect agricultural resource lands well in advance of the comprehensive planning

process mandated by the Act. The County also cites Redmond v. Growth Hearing Board 136 Wn.2d 38, 959 p.2d 1091 (1998) where the court considered the issue of whether an owner's current or intended use of land was a conclusive factor in determining whether property is "ag land" under RCW 36.70A.030(2). The court found in designating property as agricultural resource land under GMA, neither the current use nor the owner's intended use of the property is determinative.

The County found, when applying these principles to the Belaire property and the surrounding area, there is simply no question the land is devoted to agricultural use. The Belaire parcel has been used for hay and alfalfa production. It is bordered on two sides by land in active hop production. It has been zoned for agricultural usage for many years and designated as agricultural resource land since the beginning of Yakima County's GMA planning process.

In addressing the second element in RCW 36.70A.030 whether the land is of "long-term commercial significance for agricultural production" the County again cites the Redmond case. "Under the statutory definition of the second element, the Board must evaluate growing capacity, productivity and soil composition, proximity to population areas, and the possibility of more intense uses of the land in question before the area can be designated "ag land.""

The County also refers to the CTED regulations which guide counties in assessing the long-term commercial significance of agricultural land. The County contends consideration of these issues necessarily involves a balancing of interests and value judgments. In light of the GMA's mandate a local government has great discretion in carrying out the state's goals and policies, Washington courts have granted deference to a local government's determination that its resource lands are of long-term commercial significance. Manke Lumber Co. v. Biehl, 91 Wn. App. 793, 803 (1998).

The County also states the Belaire property does contain some prime agricultural soil, has no public facilities available and very few public services. They also point out that while the parcels bordering on the West and North are smaller parcels, the bordering property on the east and south are larger and in agricultural production. The County further states there are no high intensity land uses nearby and no indication the low density residential usage that does exist compromises the viability of the property for agricultural production. The County also contends the property has a history of agricultural use and there is no evidence it has ever been used for any other purpose.

Discussion:

RCW 36.70A.170(1)(a) provides: "On or before September 1, 1991, each county and each city shall designate where appropriate: Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products."

Richard L. Settle & Charles G. Gavigan, in *The Growth Management Revolution in Washington: Past, Present and Future*, 16 U Puget Sound L. Rev., p.67 at 907 (1993) states: "...natural resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource based industries that depend on them. Allowing conversion or resource lands to other uses or allowing incompatible uses nearby impairs the viability of the resource industry,"

Both the Petitioner and Respondent cite the Redmond v. Growth Hearings Board, supra, where

the Washington Supreme Court considered the issue of whether an owner's current or intended use of land was a conclusive factor in determining whether property is "agricultural land" under RCW 36.70A.030(2). The court found in designating property as agricultural resource land under GMA, neither the current use nor the owner's intended use of the property is determinative. The court noted if current uses were a criterion, GMA comprehensive plans would not be plans at all, but "mere inventories of current land uses."

The court further found if the landowners intended use were a criterion, local jurisdictions would be powerless to preserve natural resource lands: "presumably, in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture". Redmond, supra, at 52. The Court found there are two elements of the statutory definition of agriculture land contained in RCW 36.70A.030:(1) That the land be primarily devoted to agricultural purposes; and (2) that the property has long-term commercial significance for agricultural production.

The Redmond court held "...land is 'devoted to' agricultural use under RCW 36.70A.030 if it is in an area where land is actually used or capable of being used for agricultural production...". The land in this case has long been zoned for agricultural use. While the land use on a particular parcel and the owner's intended uses for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor landowner intent of the particular parcel is conclusive for purposes of this element of the statutory definition. Redmond, supra at 53.-

The Belaire property has been used for hay and alfalfa production. It is bordered on 2 sides by land in active hop production. It has been zoned agricultural since 1982 and has been designated agricultural resource land since the beginning of Yakima County's GMA planning process.

The Redmond court addressed the second element as follows:

"Under the statutory definition of the second element, the Board must evaluate growing capacity, productivity and soil composition, proximity to population areas, and the possibility of more intense uses of the land in question before the area can be designated "ag land"."

WAC 365-190-050 guides the counties in assessing the long-term commercial significance of agricultural land as follows:

"(1) In classifying agricultural land of long term commercial significance for the production of food or other agricultural products, counties and cities shall use the land capability classification system of the U/S. Department of Agriculture Soil Conservation Services as defined in Ag Handbook No. 210.... 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) predominate 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."

When considering these elements the county must balance interests and make value judgments.

The legislature has mandated local governments be given great discretion when carrying out the goals and policies of the GMA. The county has found the Belaire property has some prime agricultural soil, that there are no public facilities available and very few public services. The county admits there are some smaller parcels across Beane Road to the west and Postma Road to the north, but the parcels bordering the property on the east and south are larger and in agricultural production. The county also found no high intensity land uses nearby and no indication that the low density residential usage that does exist compromises the viability of the property for agricultural production. The county also found the property has a history of agricultural use and that the land has never been used for any other purpose.

This is a case where the county could have chosen to designate this property as agricultural resource land or Rural Self-Sufficient lands as the Petitioners requested. This Board will not substitute its judgment for that of the County. The legislature and the courts have been very clear on this issue.

Conclusion: The Board finds the designation of the Belaire property as agricultural resource lands is consistent with the GMA. RCW 36.70A.030.

Issue 2: Is Yakima County's denial of the proposed plan amendment and retention of "Agricultural Land" designation supported by substantial evidence and consistent with the provisions of Yakima County Comprehensive Plan as required by RCW 36.70A.070?

Petitioners' position: The Petitioners contend Yakima County designated the subject property "agricultural resource lands" by simply adopting prior agricultural zoning categories. The Petitioners also contend the designation was based upon a generalized reference to prior zoning. The County's 2015 plan set forth, in part, the following directive: "The intent of Yakima County's agricultural resource land use category is to implement the GMA planning goal related to maintain and enhancing natural resource based industries, which includes productive agricultural industries. This category is intended to preserve, stabilize and enhance the primary agricultural land base which is being used for, or offers the greatest potential for continued production of agricultural products and harvesting." The Petitioners contend this property does not meet the identified purpose. The Petitioners state the mapping criteria includes consideration of soil composition, availability of irrigation water and capability of maintaining high value crops. The Petitioners contend the subject property does not meet these criteria. The Petitioners further state Plan 2015 recognizes a land use category known as "Rural Self-Sufficient". The Petitioners state the Rural Self-Sufficient category allows minimum lot size of (5) acres and is less dense than adjoining properties to the north and west which are presently designated Rural Self-Sufficient. The Petitioners contend the subject property is not internally consistent with plan definitions and directives.

Respondent's position: "With the adoption of Plan 2015, Yakima County adopted policies for the mapping of agricultural resource lands as well as policies and goals for the preservation of those lands. The purpose of the Agricultural Resource designation is identified in Plan 2015 as follows: "Purpose. The intent of Yakima County's Agricultural Resource land use category is to implement the Growth Management Act planning goal related to maintaining and enhancing natural

resource-based industries, which includes productive agricultural industries. This category is intended to preserve, stabilize and enhance the primary agricultural land base, which is being used for or offers the greatest potential for, continued production of agricultural products and harvesting. The Agricultural resource land use category carries out this goal by establishing a single agricultural zone, allowing flexible parcel sizing on large lots, limiting small lot segregations, and establishing a special exemption process to review potentially conflicting uses. The Plan identifies mapping criteria for Agricultural Resource lands as follows:

1. Generally meets criteria for agricultural resource lands of long-term commercial significance as defined by state laws and regulations.

A. May contain prime soils according to the Natural Resource Conservation Service;

B. May include "pockets" of nonagricultural lands uses.

C. May contain high value crops; specifically, areas where tree fruits, vineyards, hop yards, specialty field crops and dairies are located.

D. May include a variety of residential uses related to agricultural activities including farm worker housing and family farm dwellings.

E. May include compatible uses such as packing and cold storage plants.

2. Land is historically zoned Exclusive Agricultural or General Agricultural.

3. Lands located within an irrigation district and receiving water, or

4. Lands where dry land farming, pasture or grazing outside of irrigation districts is predominate.

5. Enrolled in one of the current use assessment programs.

6. Lands located outside established urban growth areas. " Respondent brief, p.8,9.

The County contends the Belaire property meets all the mapping criteria except #4, which relates to lands outside irrigation districts. The County further contends the area meets the GMA definition of agricultural resource lands of long-term commercial significance as it contains prime agricultural soils, pockets of non-agricultural land uses, has high value crops in the area, the subject property is located in an irrigation district, is receiving water, the property is enrolled in the current use assessment program, and lands in the area are located outside an established urban growth area.

The County further contends the agricultural resource definition furthers Plan 2015 goal LU-ER-AG1 which is to maintain and enhance productive agricultural land and discourage uses that are incompatible with farming activities.

Discussion: RCW 36.70A.070. Comprehensive plans-Mandatory element in part states as follows:

"The comprehensive plan of a county or cities that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objective, principles, and standards used to development the Comprehensive Plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture...."

Plan 2015 has policies for mapping of agricultural resource lands as well as policies and goals for the preservation of these lands. Agriculture resource designation is identified in Plan 2015 as seen

above.

The County Commissioners found that the Belaire property meets all the mapping criteria except #4 which relates to lands outside of irrigation districts. And, as shown in Issue #1 of this case, the County also found the area of the subject property and the specific parcel contain prime agricultural soils; the area includes pockets of nonagricultural land uses; there are high value crops in the area, specifically hop yards; lands in the area are historically zoned Exclusive Agricultural; lands in the area where the subject property is located are within an irrigation district and are receiving water; the subject property is enrolled in the Current Use Assessment program; and lands in the area are located outside an established urban growth area. The agricultural resource designation furthers Plan 2015 goal LU-ER-AG1 which is to maintain and enhance productive agricultural land and discourage uses that are incompatible with farming activities. As in Issue #1, The Board will not substitute its judgment for that of the County.

Conclusion: The Board finds Yakima County's denial of the proposed plan amendment and retention of the "agricultural land" designation are consistent with the provision of the Yakima County Comprehensive Plan as required by RCW 36.70A.070.

Issue 3: Was Yakima County's decision denying designation of the subject property as "Rural Self-Sufficient" clearly erroneous in view of the entire record and in light of the goals and requirements of the Comprehensive Plan and GMA as established by RCW 36.70A.320(3)?

Petitioners' position: The Petitioners cite Indian Trail Property Owners Association v. Spokane County, 76 Wn. App. 430, 443 (1194); Pease Hill v. Spokane County, Wn. App. 800, 809 (1991) where the court interpreted the "clearly erroneous" standard in other contexts and recognized that a decision must be reversed where there is "a definite and firm conviction that a mistake has been committed." The Petitioners contend the county's action is clearly erroneous and inconsistent with the goals and requirements of the GMA.

Respondent's position: The Respondent County contends the only change in circumstances was the adoption of the Yakima County Emergency ordinance, which implemented the density, and lot size elements of Plan 2015. The County also contends that the record does not support a need for further designation of lands.

The County submits that the implementation of GMA polices are not the kind of changed circumstances that justifies the re-designation of resource lands.

The County believes the subject property meets both the designation requirements of the GMA and Plan 2015. The County also contends the legislature intended the counties to have a large range of discretion in complying with the requirements of the GMA.

Discussion: RCW 36.70A.3201 in part states, "...the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter."

WAC 365-190-040(g) sets the standards for changing the designation of resource lands under GMA. Designation changes should be based on consistency with one or more of the following criteria:

- (i) Change in circumstances pertaining to the comprehensive plan or public policy.-
- (ii) A change in circumstances beyond the control of the landowner pertaining to the subject property.
- (iii) An error in designation.
- (iv) New information on natural resource land or critical area status.

The Board must allow the county the discretion the legislature intended and recognize and defer to the expertise of the county in designating its resource lands. This Board will not substitute its judgment for that of the county.

Conclusion: The Board finds the County's decision to retain the subject property's agricultural resource lands designation was not "clearly erroneously" and is in compliance with RCW 36.70A.320(3).

IV. ORDER

1. The Board finds the designation of the subject property as agricultural resource lands inconsistent with the GMA.

2. The County's denial of the petitioner's proposed amendment and the retention of the "agricultural land" designation are consistent with the Yakima County Comprehensive Plan as required by RCW 36.70A.070.

3. The Board finds the County did not act "clearly erroneously" when retaining the Belaire property as agricultural resource lands, and is in compliance with RCW 36.70A.320(3).

This is a final order for purposes of appeal.

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 22nd day of July, 1999.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

Judy Wall, Presiding Officer

D. E. "Skip" Chilberg, Board Member

Dennis A. Dellwo, Board Member