BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

RAYMOND AND LIANN VINES,	)	
	)	No. 98-2-0018
Petitioner,	)	
	)	FINAL DECISION
v.	)	AND ORDER
	)	
JEFFERSON COUNTY,	)	
	)	
Respondent.	)	
	)	

On September 2, 1998, Jefferson County adopted its comprehensive plan (CP). The petition for review was filed on November 2, 1998. The Hearing on the Merits was held in Port Townsend on March 2, 1999. Petitioners prefaced their opening brief of February 5, 1999, with a motion for a stay. We addressed the motion by order dated February 12, 1999, and denied the request.

Outside of the request for a stay, petitioners pointed out that at CP 3-20 the Port Hadlock Rural Village Center (RVC), was referred to as "interim" because it was adjacent to the Tri-Area special study location. The CP directed that when the study was completed the RVC boundary would be revisited in light of the study results.

Regardless of the characterization by petitioners, and even the County, the RVC designations are permanent for Growth Management Act (GMA, Act) purposes. A CP is not a static document. Under RCW 36.70A.130(1) every CP "shall be subject to continuing review and evaluation" by the adopting local government. The Jefferson County CP has been adopted, implemented, and is being used currently. It has no sunset date. Therefore, for GMA purposes, the CP is not considered interim.

Petitioners are the owners of Lots 1, 2, and 3 of the plat of Melwood Terrace. While there was some dispute in the CP and subsequent County actions as to whether Lot 1 was designated as part of the commercial zone within the RVC, the parties stipulated that for purposes of this order Lot

1 carried a commercial designation. Lots 2 and 3 were designated as rural residential under the CP.

Petitioners' complaint focused on the exclusion of Lot 2 from commercial designation. Petitioners challenged the exclusion of Lot 2 because:

1. Lot 2 was only usable as a commercial lot and exclusion of Lot 2 made Lot 1 commercially undevelopable; and
2. Exclusion of Lot 2 violated the provisions of ESB 6094, which amended RCW 36.70A.070(5) in 1997, relating to more intensive rural commercial development.

Petitioners contended that because Lot 2 was located atop a critical aquifer recharge area it could not be used as residential property. Thus, its only realistic use would be as an adjunct for a septic system to Lot 1. Because of the unusual configuration of Lot 1, the use of current setback provisions and septic system regulations made Lot 1 "undevelopable" (br. p. 9) or at least significantly reduce the "reasonably developable" (br. p. 10) potential of Lot 1 unless Lot 2 was included as commercial designation. The failure to designate Lot 2 also violated the criteria for designation set forth at CP 3-15, 16 and did not take local conditions into account as set forth in CP 3-9, 10 according to petitioners.
Thus, petitioners contended, the decision of Jefferson County violated RCW 36.70A.020(6) (Goal 6) which prohibits arbitrary and discriminatory actions by local governments.

Petitioners' challenge starts with two misconstrued premises. First, p. 11 of petitioners' brief requested that we as a Growth Management Hearings Board (GMHB) must "balance the equities" in deciding this case. That is clearly not the role of a GMHB. Our role is to determine if compliance with the GMA has been achieved. In making that determination the GMA requires that a petitioner sustain the burden of showing that the action of the local government was clearly erroneous, RCW 36.70A.320, and local governments are afforded a "broad range of discretion," RCW 36.70A.3201. Even if noncompliance is found, a GMHB only remands the issue to the local government and does not make a final decision on the merits of the noncompliance, RCW 36.70A.300(3)(b).

The second premise is found at p. 8 wherein petitioners state that "rural development consisting of the infill of commercial parcels is *mandated*" (emphasis supplied) under the 1997 amendments to RCW 36.70A.070(5). The amendments found in ESB 6094 do not mandate infill of commercial parcels, but rather allows them subject to very strict requirements. RCW 36.70A.070 (5)(d) provides that "…the rural element *may allow* for limited areas of more intense rural development,…" (emphasis supplied).

Petitioners challenged compliance with Goal 6 of the Act. CP 3-26 discussed property rights that were considered in reaching the County's CP decisions. The GMA requires consideration of property rights but does not mandate a specific result. Jefferson County complied with the GMA in its consideration.

Petitioners' claim of arbitrary and discriminatory actions was related to the claim that the criteria for designation contained in CP 3-15, 16 were too restrictive and thus excluded Lot 2. Petitioners cited *Wells v. Whatcom County*, #97-2-0030c, for the proposition that existing zoning could not be used as the sole criterion for designation of areas of more intense rural development. That statement is accurate. However, here existing zoning from the 1994 zoning ordinance was used as an exclusionary criterion. That is allowable under the GMA.

The fact that exclusion of Lot 2 may have potential negative economic impacts to petitioners does not establish arbitrary and discriminatory action under Goal 6. Additionally, petitioners failed to show where properties similarly situated were treated differently than their own.

As their second challenge to the County's action petitioners asserted that various sections of the recent amendments to RCW 36.70A.070(5) were violated. Petitioners contended that RCW 36.70A.070(5)(a) requiring a local government to develop a written record explaining how the rural element harmonizes the planning goals and meets the requirements of the GMA was not complied with. The County argued that the land use and rural element (Chapter 3) of the CP provided such a written record, especially in light of the record of planning commission meetings found in Ex. 2-10, 2-13, 2-16, and the material found in Ex. 8-31.

Certainly a separate document or report adopted by the local decision-makers which specifically

addressed this issue would have clearly complied with the written record requirement of the GMA. However, under the limited scope of the challenge contained in this case and the record provided by the County, we find that petitioners have not sustained their burden of proving that the action of the County in failing to provide a separate document was clearly erroneous.

Petitioners also contended that the provisions of RCW 36.70A.070(5)(d)(iv) for the establishment of a "logical outer boundary" were violated because the inclusion of Lot 2 did not prevent an "abnormally irregular" boundary as required by the GMA. The County asserted that in its efforts to "minimize and contain" the more intensive rural development areas or uses it focused predominately on existing areas that were clearly identifiable, and established the boundary predominately based upon the built environment as it existed on July 1, 1990.

We reviewed the established boundary for the RVC found at CP 3-36. Additionally, the CP contained a designation and classification of rural commercial lands analysis beginning at p. 3-10 through 3-27. This is exactly the type of analysis and consideration that the ESB 6094 amendments call for. The boundary map at CP 3-36 contained many irregular boundaries far more significant than the one claimed between Lot 1 and 2 of petitioners' properties. The County was called upon to balance the need to minimize and contain more intensive rural development boundaries with the desire to prevent abnormally irregular boundaries. The delineation of such boundaries does not require a concentric circle nor a squared- off block. The approach taken by Jefferson County complied with the Act.

Findings of fact pursuant to RCW 36.70A.270(6) are adopted and appended as Appendix I.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED 5th day of April, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen
Board Member

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Les Eldridge
Board Member