

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

TOWN OF FRIDAY HARBOR, FRED R. KLEIN, JOHN M.  
CAMPBELL, LYNN BAHRYCH, et al.,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent,

and

JOE SYMONS, FRIENDS OF THE SAN JUANS, and  
KAREN J. KEY SPECK, et al.,

Intervenors.

No. 99-2-0010c

ORDER ON  
RECONSIDERATION

Subsequent to the November 30, 2000, order in this case we received a motion for reconsideration from Intervenor Eagle Lake Development Limited Partnership (Eagle Lake) on December 8, 2000. On December 11, 2000, we received San Juan County's motion for reconsideration. The County also filed a motion to supplement the record that same day. On December 15, 2000, we received briefing from petitioners Bahrych, et al., (Bahrych) opposing the reconsideration. On December 21, 2000, we notified the parties that because of scheduling conflicts we would enter an order regarding the reconsideration at some point beyond the 20-day "default" provision of WAC 242-02-832(3).

Eagle Lake requested that we reconsider the finding of noncompliance and the determination of invalidity as to its property set forth in the November 30, 2000, order. San Juan County supported Eagle Lake's request and further requested reconsideration of three additional areas: The Deer Harbor Community Hall, the Westlund property and the Sandwith property.

Bahrych generally opposed the two motions although they acknowledged uncertainty with regard

to the Deer Harbor Community Hall.

We grant the County's motion to supplement the record with the agreement between the Sandwith family and San Juan County dated December 18, 1984. We deny the motion to reconsider our finding of noncompliance as to the four properties, but grant the County's motion to rescind the invalidity finding as to the Deer Harbor Community Hall. The other requests for reconsideration of invalidity are denied.

Fundamentally, the November 30, 2000, order found that the County was not authorized to redesignate resource lands (RLs) under the authority of RCW 36.70A.130(2)(b) which reads in part:

“...however, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter...to resolve an appeal of a comprehensive plan filed with a growth management hearings board....”

Initially, as again pointed out by Bahrych, RL designations were specifically rejected as an issue in the original FDO on July 21, 1999. While we agree with the County and Eagle Lake (and have repeatedly held) that the question to be decided in a compliance hearing is whether the County now complies with the Growth Management Act (GMA, Act) that principle is not applicable to these facts.

The RL redesignations by the County were not intended to “resolve an appeal” but to specifically allow relief for property owners who were previously under a five or ten acre minimum lot size in the agricultural and forest RL areas. As Eagle Lake candidly acknowledged in its briefing and argument for the November 30, 2000, hearing and in its motion for reconsideration, the initial forest RL designation of its property was of no concern until the determination of invalidity from the July 21, 1999, FDO. Eagle Lake's claim that its RL designation was inappropriate because of the lack of active management of forest activities is answered by the Supreme Court in *Redmond v. Growth Hearings Bd.* 136 Wd. 2d 38 (1998). Current use is not a determinative factor on the appropriateness of RL designation.

Additionally, even if RCW 36.70A.130(2)(b) applied, it is clear from this record that “appropriate

public participation” did not exist. The redesignations did not use the County’s own adopted process found in UDC 9.3. Rather, they became a secondary issue in the rural land density remand. While the record does contain discussion (minimal) concerning the Eagle Lake property and the other properties in the County’s request for reconsideration, it does not contain an analysis of the appropriate factors to be considered and which were previously adopted by the County. Succinctly, the provisions of RCW 36.70A.130 (2)(b) cannot be used under these facts as a methodology to circumvent the County’s own process.

While it was not made clear in the briefing and argument leading to the November 30, 2000, order, we recognize the County’s point for rescission of invalidity with regard to the Deer Harbor Community Center. The property is a one acre location that is virtually filled with the community center building and provides no further opportunity for development and substantial interference with Goal 8. However, that is not the case with the other three properties under consideration.

Eagle Lake is a large rural development which involves five acre lot minimums, designation of significant open space, and completion of some of the development at the present time. The Westlund property is a 20-acre parcel adjoining what was recently redesignated as the Lopez Village UGA and is currently being challenged in the companion case of *Durland, et al., v. San Juan County*, 00-2-0062c, (*Durland*). The County noted that the “property had never been farmed” and was bordered by existing subdivisions and commercial establishments. The Sandwith property consists of 350 acres on San Juan Island. In 1984, the County and the Sandwith family executed an agreement that limited the number of single family residences on the 350 acres to a total of 54 houses. The County asked for reconsideration based on its claim that the November 30, 2000 order “impaired” the 1984 contract.

Much of the County’s and Eagle Lake’s request for reconsideration of the invalidity finding is based on a misreading of RCW 36.70A.302. That statute specifically provides in subsection (2) that:

“A determination of invalidity is perspective in effect and does not extinguish *rights that vested* under state or local law before receipt of the board’s order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board’s

order by the county or city or to related construction permits for that project.” (Emphasis supplied)

Simply put, if Eagle Lake and/or the Sandwiths have vested rights, the determination of invalidity does not apply to them. Thus, there can be no impairment of the contract between the County and the Sandwiths unless the contract was not sufficient to grant vesting. Eagle Lake’s development is not affected for rights previously vested.

We note that in *Durland*, Eagle Lake has requested intervention in part because of a preliminary plat recently submitted to San Juan County for an undeveloped portion of its property.

In light of the extremely liberal vesting laws of this state, and the strong language in *King County v. Growth Hearings Board* \_\_\_ W. 2d \_\_\_ (2000) (Soccer Fields Case) concerning conservation of RLs, we continue to find that substantial interference exists for any redesignations of RLs where vesting has not previously occurred.

We are not authorized by the Legislature to determine whether or where vesting may have occurred, but we are most clearly directed by the GMA and the Supreme Court to “encourage the conservation of productive forest lands and productive agricultural lands...”. Under these facts, the only way to comply with that directive is to continue the finding of invalidity.

Except as to the Deer Harbor Community Center invalidity recision, the balance of the County and Eagle Lake’s motions are denied.

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

So ORDERED this 3<sup>rd</sup> day of January, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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