BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FRIENDS OF SKAGIT COUNTY	)	
	)	No. 99-2-0016
Petitioner,	)	
	)	FINAL
v.	)	DECISION
	)	AND ORDER #2
SKAGIT COUNTY,	)	(Issue 2, Portions
	)	of Issues 3 and 5)
Respondent.	)	
	)	
and	)	
	)	
	)	
W.M. AND JOANNE LENNOX, et al.,	)	
	)	
Intervenors.	)	
	)	

SYNOPSIS OF THE ORDER

When Skagit County adopted its 1997 Comprehensive Plan (CP) it promised a thorough review of several properties' designations. These properties had not been afforded a thorough review during the CP adoption process, owing to the press of a short timeframe for adoption. The County subsequently reviewed the properties and redesignated several in Ordinance #17294.

Friends of Skagit County (FOSC) challenged the County's action. In our September 1999 Final Decision and Order #1 (FDO) in this case we found the County compliant in its redesignations to Rural Intermediate.

In this second FDO, we now turn to two redesignations from Rural Reserve to Rural Resource, and three from Rural Resource to Rural Reserve.

We find the County's redesignation of the Colson and Portis properties from Rural Reserve to mineral resource lands noncompliant. The CP is inconsistent with the County's assumption that existing mineral operations need not meet marketability, minimum threshold, and block and parcel size criteria in order to demonstrate potential for long-term commercial significance. We find the Mathis and Cook redesignations noncompliant. The County based its decision to redesignate the two properties upon characteristics in adjacent lands which the County considered inappropriate for resource lands. Yet, the adjacent lands remain designated as resource lands. The record regarding the Goodell property, although rather unspecific, appears to indicate that the properties surrounding the Goodell property have been redesignated rural reserve. We find the Goodell property action in compliance with the Growth Management Act (GMA, Act).

PROCEDURAL HISTORY

On September 7, 1999, we entered FDO #1 in this case regarding Issue 1 and portions of Issue 5. Subsequent to that order the County and Petitioner carried on negotiations which resulted in the settlement of issues pertaining to Intervenors W.M. and Joanne Lennox, George Klein, Marine Construction and Dredging and Kenneth Youngsman, James E. Mathis, and Harry W. and Ruth T. Adamitz. All the above-named intervenors withdrew from the case.

A hearing on the merits for Issue 2 and portions of Issues 3 and 5 was held on July 11, 2000, at the Skagit County Courthouse. Les Eldridge, Nan Henriksen, and William H. Nielsen were present for the Board. FOSC were represented by Gerald Steel. Skagit County was represented by Chief Civil Deputy Prosecutor John Moffat. Intervenor Dean S. Goodell was present but opted not to offer argument. Neither Intervenors Miller and Lamb nor Intervenor Cook were present. Skagit County's June 30, 2000 motion for additions to the record was granted.

BURDEN OF PROOF & STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), the ordinance is presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the action taken by Skagit County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), a Board "shall find compliance unless it determines that the action by [Skagit County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." In order to find the County's action clearly erroneous, we must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

DISCUSSION – RURAL RESOURCE

FOSC argued that the redesignations of the Colson and Portis properties from rural reserve to rural resource with a mineral resource overlay were in direct conflict with the designation criteria for rural resource lands. These criteria included designation of blocks of contiguous parcels 160 acres and larger (Colson and Portis are 25 and 40 acre parcels). FOSC also contended that the record did not show these two parcels met the CP criteria for designation as mineral resource lands (MRA). FOSC pointed out that designation category MRA-3 (potential mineral lands) could only be approved when "adequate information indicates that marketability and minimum threshold value criteria have the potential to be met." Policy 6.5, CP. FOSC also pointed out that Policy 1.1 of the CP stated that mineral lands "must meet criteria for marketability and threshold values." Other criteria included existing land uses and surrounding parcel sizes.

FOSC expressed concern that there are "developed urban-sized lots….within a quarter mile of these sites." It requested invalidity for the redesignations because "with the Mineral Resource Land designation provided by the amendments, after July 24, 2000 the property owners will be able to vest a County mining permit for much expanded operations on these sites that could include large concrete and asphalt batch plants."

The County responded that the Mineral Resource Overlay (MRO) designation was inadvertently left off the properties and that the existing gravel mining operation had been present for more than 45 years. The County noted that the planning commission did not redesignate the properties based on a detailed analysis of the criteria but on the presence of the long-term existing mineral resource operation onsite as demonstrated by the staff analysis and information submitted from the property owners. That information, contended the County, showed that the Colson and Portis properties should have been designated as Rural Resource-Mineral Resource Overlay (RRc-MRO) in 1997 but were not, owing to mapping errors. With regard to the Portis property, the County noted that it had been used as a mineral resource since the 1930's, designated as a gravel pit site by the State Department of Transportation since 1957, and that the property owner currently used material from the site to build home sites and roads in connection with the owner's construction business. With regard to invalidity, the County maintained that petitioners had failed to demonstrate substantial interference with the goals of the Act from properties with existing mining operations, such as these.

CONCLUSION – RURAL RESOURCE

We conclude that the redesignation of the Colson and Portis properties from Rural Reserve to Rural Resource with a MRO fails to comply with the Act and is inconsistent with the CP. We have a firm and definite conviction that the County has failed to properly apply its own criteria in assessing whether or not these lands should have been redesignated. The County acknowledged it failed to specifically apply its own criteria. It is clear that both properties contained historic mineral activities; Colson with sand and gravel and Portis with an existing quarry. The County appears to have inferred that long-term commercial significance attached to the properties solely because of pre-existing mining activities. There is no provision in the CP for this inference. The

County chose not to apply the marketing and minimum yield criteria set forth in the CP. The CP criteria for mineral resource area and mineral resource overlay are silent regarding their application to already existing mineral operations.

From a reading of the criteria it appears that the CP intended that the criteria were to be applied to all potential mineral resource areas. Yet with regard to Portis, the Planning Commission determined from the report of the Planning Staff that the Portis site had "potential," and thus qualified for MRA-3 status. According to the record, the MRA-3 status can only be reached if the criteria for marketability and threshold values are applied.

It may be reasonable to infer that mineral properties, having been in operation for a number of years and commercially viable, would qualify for MRA status. However, the CP does not authorize a determination that existing commercially-viable properties provide an exception to its own rule that marketability and threshold criteria shall be applied. The County also failed to address the question of whether redesignation in the midst of a developed and designated rural residential area would provide requisite protection from incompatible uses for the redesignated resource land areas.

Existing mining operations should be protected from incompatible uses such as "urban-sized lots," which are created after the mining activity has begun. RCW 36.70A.020(8). Conversely, existing mining operations in the midst of rural residential areas should not be allowed unlimited expansion. RCW 36.70A.070(5)(c)(v).

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DISCUSSION – RURAL RESERVE

Petitioners maintained that the Goodell, Cook, and Mathis properties and their amendments were in noncompliance and substantially interfered with the Act because the amendments created islands and peninsulas of non-resource lands within blocks of Rural Resource lands. This, claimed FOSC, ran counter to the CP's designation criteria for rural resource lands.

The County responded, with regard to the Goodell property, that it is abutted on the east by Rural Reserve (a residential designation) and on the south and west by property part of the approved View Crest and Wibbleman subdivisions. It noted that the View Crest property had not been reclassified from Rural Resource to Rural Reserve because it was not included in the legal notice as part of Resolution #16853 and so was deferred to a subsequent amendment cycle.

The County argued that the Cook property, a 19-acre parcel near Birdsview, was not originally properly designated Rural Resource. The County justified a redesignation to Rural Reserve because Cook was surrounded by a camping club to the north, a sawmill to the west, and was smaller than the required rural resource 40-acre/160-acre block designation criterion. The Planning and Permit Center changed its recommendation for Cook to that of Rural Reserve (a residential designation) because of the sawmill and camping club and because of parcelization below the 40-acre criterion.

The County argued that the Mathis property was properly redesignated to Rural Reserve because of similar characteristics, and noted that the camping club is nearby. The Mathis property, said the County, was adjacent to Rural Reserve to the east and "is surrounded by short plats and a 160-lot camping club."

CONCLUSION – RURAL RESERVE

The Cook property has created an island of rural residential within a sea of rural resource land. The County argued that it was persuaded by the presence of adjoining sawmill and campground

uses. These uses were characterized as highly developed yet are permitted within resource land areas. This argument requires us to ask whether the surrounding highly-developed permitted resource land uses should lead the County to also redesignate those areas as something other than resource lands in order to be consistent. If the property should not have been designated Rural Resource in part because of the more intensive commercial uses on nearby properties, then the County should reconsider the designation of the nearby Rural Resource properties. The County may not both permit certain activities in resource areas and use those activities as reasons to redesignate resource areas to other categories. The Cook property action is remanded to be brought into compliance.

The Mathis property was characterized by Petitioners as a peninsula. It is surrounded by the same highly developed, yet permitted, uses as Cook; sawmill and campground. In addition, it is bordered by platted areas within the Rural Resource area and by some Rural Reserve, a rural residential designation. If the property should not have been designated Rural Resource in part because of the more intensive commercial uses on nearby properties, and because of platted areas within nearby Rural Resource properties, then the County should reconsider the designation of the nearby properties. The Mathis property action is remanded to be brought into compliance.

We note that the general review of campground zoning called for in Item 15, Planning Commission Motion of June 14, 2000, (Ex. #112), may be useful in considering campground redesignation.

The Goodell property is bounded by the View Crest plat and by the Wibbleman development. Petitioners maintained that the Wibbleman development was still designated as Rural Resource based on their reading of Ex. #112. The County declared that the phrase “and adjacent properties” line 2, pg. 34, Ex. #112, referred to Wibbleman and represented redesignation to Rural Reserve. It is clear from this record that View Crest and Wibbleman should be designated Rural Reserve.

Although Appendix Ex., Map 1, Ex. #112, could be construed as indicating only Goodell as Rural Reserve, we find persuasive the County’s declaration that the Rural Reserve designation applied to Wibbleman and View Crest as well. We find the Goodell action in compliance with

the Act.

We find that petitioners have not met their burden of demonstrating substantial interference with the fulfillment of the goals of the Act.

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ORDER

The Ordinance is remanded to the County to be brought into compliance with the GMA within 180 days. In order to achieve compliance the County must:

1. The CP must reflect the actual practice of the County in inferring or assuming that existing mineral operations automatically qualify as MRA-3 properties with potential for long-term commercial significance, and do not require application of CP mineral lands criteria.
2. Existing mining operations should be protected from incompatible uses such as "urban-sized lots," which are created after the mining activity has begun. RCW 36.70A.020(8). Conversely, existing mining operations in the midst of rural residential areas should not be allowed unlimited expansion. RCW 36.70A.070(5)(c)(v).
3. Redesignate lands adjacent to the Cook and Mathis properties, or withdraw the redesignation of the two properties.
4. In such a redesignation, reflect the zoning appropriate for conditions and uses in these adjacent lands upon which the County based its decision to redesignate Mathis and Cook. For example, if the reasons for the redesignation for the Mathis and Cook properties from resource to residential were the presence of campgrounds and sawmills on adjacent lands, then those uses should not be appropriate in resource lands in general. The County may not use a permitted resource activity as a reason to rezone resource land to another category.

Any findings of noncompliance in previous sections of the FDO are incorporated by reference.

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

incorporated herein by reference.

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 this 10th day of August, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge
Board Member

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Nan A. Henriksen
Board Member

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William H. Nielsen
Board Member

APPENDIX I

FINDINGS OF FACT

1. The County by its own admission did not apply criteria for marketability and threshold values in the process of designating the Colson and Portis properties as mineral resource land. Skagit County CP, Section 1.1 policies, p. 5-22.

2. CP Policy 1.1 states that “to be considered significant for the purpose of the classification of mineral lands, a mineral deposit or group of deposits that can be mined as a unit must meet the criteria for marketability and threshold values.”
3. CP Policy 2.1 states “mining districts shall assure conservation of commercially significant resources, reduce potential land conflicts and provide protection for mineral extraction operations.”
4. Policy Section 3.7 states “mineral extraction operations, which are operating under the ‘grandfather clause’ (preexisting non-conforming uses) shall be eligible for designation as a mineral resource overlay area *after satisfying the designation criteria and developing a County-approved operations plan.”* (emphasis supplied)
5. Sawmills and campgrounds are permitted uses in the Rural Resource designation.
6. The redesignation of the View Crest subdivision adjacent to the Goodell property from Rural Resource to Rural Reserve was deferred in 1998 to a subsequent amendment cycle. The redesignation took place in June 2000.