BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FRIENDS OF SKAGIT COUNTY	)	
	)	No. 99-2-0016
Petitioner,	)	
	)	FINAL DECISION
v.	)	AND
ORDER	)	(Issue 1 and
Portions	)	of Issue 5)
SKAGIT COUNTY,	)	
	)	
Respondent.	)	
	)	
and	)	
	)	
	)	
W.M. AND JOANNE LENNOX, et al.,	)	
	)	
Intervenors.		
) _____	)	

SYNOPSIS OF THE ORDER

We find Skagit County in compliance with the Growth Management Act regarding its redesignations of several properties to Rural Intermediate. We find that the Petitioners have failed to meet their burden of proof regarding charges that the County improperly failed to apply the requirements of RCW 36.70A.070(5)(d) and that its process went beyond correction of misapplication of appropriate criteria and technical errors. We note the County's declaration that the process of error correction subsequent to the adoption of the comprehensive plan (CP) was a one-time approach made necessary by the magnitude of the effects of CP adoption in a short time frame. We further note the County's acknowledgement that future redesignation amendments will include application of all requirements of RCW 36.70A and CP p. 2-5.

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PROCEDURAL HISTORY

On August 12, 1999, the hearing on the merits regarding Issue 1 and portions of Issue 5 was held at the Skagit County Courthouse. The balance of the issues have been postponed to allow time for the parties to reach a settlement. RCW 36.70A.300(b)(ii). Present for Friends of Skagit

County (FOSC) was Mr. Gerald Steel. Mr. John Moffat, Chief Civil Deputy Prosecuting Attorney, represented Skagit County. Mr. Tom Ehrlichman appeared for Intervenors W.M. Lennox and Joanne Lennox, as well as for Intervenors Harry W. and Ruth T. Adamitz. Intervenor John Miller represented himself and Intervenor Phyllis Lamb.

Skagit County's August 2, 1999 motion to admit additional evidence into the record as Exhibit Nos. 106, 107, and 108, was granted. No objections were received to this motion.

W.M. Lennox's and Joanne Lennox's motion to dismiss Friends of Skagit County's Amended Petition for Review challenging the designation of the Lennox property was denied.

W.M. Lennox's and Joanne Lennox's motion to strike portions of Friends of Skagit County's Corrected Opening Brief on Issue 1 and portions of Issue 5 and to enter an Order Clarifying Scope of Review was denied.

Skagit County complained in its brief that aerial photos in Exhibit No. 105 were of poor quality and that it was impossible to tell what they show. We ruled that those photos and their originals as presented at the hearing on the merits by Friends of Skagit County would be afforded weight appropriate to their clarity.

We noted FOSC's withdrawal of its challenge to the Weyer property. (Amendment B-51). We ruled that the Peek property issue, unbriefed by FOSC, would be afforded appropriate weight.

On August 10, 1999, we received a Motion to Dismiss from Intervenor George Klein, and on August 20, 1999, we received FOSC's response. We found FOSC's response to be persuasive. We denied a similar motion from Intervenors Lennox on August 12, 1999. See *Lennox* Motion to Dismiss, August 11, 1999. The motion from Intervenor Klein is denied.

The County requested in its argument that the Heilman property be remanded because of confusion over the PUD application including both the 68-acre and the 18-acre parcels. We grant the County's request that the approval of the 16-acre parcel be remanded to the County for further consideration.

DISCUSSION AND CONCLUSION

In 1999 the County redesignated nine individual properties and portions of three study areas to Rural Intermediate. The County believed it was impossible under the duress of adopting the CP in 1997, with all of its required elements, to give individual attention to every parcel of property in its designation of 1.1 million acres. Recognizing this and the fact that numerous property owners had come forward during the public participation process leading up to the adoption of the CP expressing displeasure at individual property designation, the County chose to take a more detailed look at various individual properties during its first annual amendments. Finding 1.26 of Ordinance 16550 authorized such individuals to request redesignation by July 31, 1997 on the basis of inadvertent application of designation criteria or technical mapping error. The 1999 redesignations were in response to the 1997 requests.

Friends of Skagit County (FOSC) argued that some of the new designations of Rural Intermediate (RI) in the County's recent CP Amendments were, in effect, limited areas of more intensive rural development (LAMIRDS) that should have been subject to the requirements of Engrossed Senate Bill (ESB) 6094, codified as RCW 36.70A.070(5)(d). (logical outer boundaries delineated by the built environment, etc.) FOSC also asserted that the County did not develop a written record explaining how each amendment to the rural element met the requirements of RCW 36.70A.070 (5). FOSC contended that the CP criteria for RI had been misapplied in several individual designations.

FOSC further declared that there was no evidence that mapping errors occurred and that the amendments were not consistent with the Comprehensive Plan, particularly CP page 2-5, Amending the Comprehensive Plan, and Section 7.8.2. FOSC asserted that under the CP criteria the process of changing Rural Reserve to Rural Intermediate must show consistency, must go through an amendment process, and that the presence of forest lands next to many of the properties "throws off" the applied criteria. FOSC asserted that the amendments were not "corrections of errors" but new choices, and so must comply with the cited CP criteria. FOSC argued that the study areas were not de minimus, as the County had characterized them, but were large areas in which the County was not merely correcting errors but was reevaluating

designations throughout.

In summary, FOSC said that in the County's process there were no "errors" corrected, just choices made. FOSC contended that the County's changes should have been subject to the CP annual amendment criteria and the requirements of the Growth Management Act (GMA, Act) through ESB 6094 including the creation of LAMIRDS, but were not.

The County responded that FOSC erred when it characterized the amendments involving these properties as limited areas of more intensive rural development. The County asserted that the changes were rural densities under .070(5)(b), not (d), and meet the requirement for rural densities approved in *Abenroth, et al., v. Skagit County*, #97-2-0060c (*Abenroth*).

The County pointed out that the study areas contained only a few lots that were subject to additional subdivision. The County stated that it had done what it said it would do in the 1997 CP by reevaluating and correcting errors brought to its attention after its invitation to individual property owners.

The County pointed out that Rural Village or Rural Intermediate classification requirements are more stringent than Rural Reserve. These parcels, it maintained, could have been Rural Reserve if they didn't qualify for Rural Intermediate or Rural Village. CP sections 2.5 and 2.6 allow amendments for errors. The County asserted it was merely following its CP and its promise to its citizens. The County stated that it intended to look at any questions of LAMIRDS under .070(5)(d) when it passes its new amendments to the Commercial/Industrial section, which are not part of this case.

Mr. Ehrlichman, representing petitioners Adamitz and Lennox, reminded us that the County had already completed a written record which had been discussed under the *Abenroth* case, and therefore complied with .070(5)(b). Mr. Ehrlichman asserted that the Rural Intermediate criteria applied to the Adamitz's southern five acres, which were not appealed, and that the northern acreage was a technical correction creating a more logical parcel boundary. He contended that it was the staff's original intent to include the entire parcel. He noted that the Adamitzes had asked

for another parcel to the north to be included under Rural Intermediate, but the Planning Commission and the Board of County Commissioners had said “no”. He characterized this as an example of application of the criteria in an even-handed manner. He asserted that these corrections were within the discretion of the Board of Commissioners under the GMA.

Mr. Miller maintained that the application of the amendment to his property was only a correction of an error.

In reply, FOSC expressed concern that the changes represented new patterns of rural growth and that the redesignation would have a “domino effect”.

In response to questions, the County contended it did not have to use ESB 6094. The County observed that subsection (b) of .070 was the appropriate section governing the amendments. The County said the findings in the adoptive ordinance met the CP criteria and constituted a significant part of the written record.

The County acknowledged that the approach used to accommodate CP amendments in this instance was made necessary by the magnitude of the effect of CP adoption within a relatively short time frame. The County noted that future redesignation amendments would involve the application of all requirements of Section .070. It observed that the amendment process under petition for review here was unique because of the initial CP adoption and the timing of the passage of ESB 6094.

CONCLUSION

Although the County ignored ESB 6094 in considering the RI redesignations, we conclude that the result of its actions would have been the same had it considered ESB 6094 requirements. We are cognizant of FOSC’s concerns that County actions not pave the road to new subdivision or limited areas of more intensive rural development not subjected to the requirements of section .070(5)(d). The County clearly stated that it had not used its subdivision criteria, but merely its RI criteria from the CP. We conclude that the redesignations were limited to properties that should have been designated RI in the CP adoption process and were not. We believe that FOSC’s scenario of a domino effect of redesignation is precluded by the requirement

that the County apply all the provisions of section .070 and the CP amendment process in any further redesignation considerations.

In Ordinance 16550, Section 1.26, the County stated that "It may be possible that an individual's property receives a Comprehensive Plan land use designation based on a technical mapping error or by inadvertent application of designation criteria to the subject property. To address inadvertent mapping errors, in the first year of Comprehensive Plan review, a property owner may present the County with information through May 1, 1997". The County made good its promise to consider these alleged errors within the first amendment period. The record shows the methodology used by staff and the Planning Commission in each case was consistent with the CP policy 7.8.7. The record shows the individual redesignations "Blanton through Semays", eight all told, each sufficiently met the CP criteria.

We conclude that, in applying Section 1.26, the County did not wrongfully ignore ESB 6094, but instead made a decision within its range of discretion that the changes made to Rural Intermediate were in response to mapping or technical errors or misapplication of criteria. The County recognized existing parcelization patterns and included these parcels within its Rural Intermediate zone because they met the criteria as set forth in its CP.

We are mindful of FOSC's concern that the designation process for the study areas not become an end-run to avoid the requirements of Section .070(5)(d). We share this concern. An examination of the record shows that this is not the case here. The Birdsview, Alger and Trafton Lake study areas all were subject to the application of the CP criteria for Rural Intermediate in the Planning Department's 1997 Annual Review of Land Use Redesignation Petitions as remanded by Resolution 16853, which was adopted by the Skagit County Board of Commissioners on January 29, 1998. A report was provided in March, 1998. Its recommendations were adopted by Ordinance 17294, January 29, 1999. The Ordinance states that the CP criteria for Rural Intermediate were applied in identifying the study area portions to be redesignated Rural Intermediate.

> "…The Department provided a GIS generated 2.5 acre or less parcel size for the study area (Department's 1997 Annual Review of Landuse Redesignation Petitions as Remanded by Resolution #16853 (March 1998)). The Planning Commission concurs

> with the Department's recommendation that those parcels in the above referenced report be redesignated to Rural Intermediate based on the land use designation criteria."

Section 7.8.2, Rural Intermediate, of the Comprehensive Plan states that the RI designation applies only to "rural areas where existing and/or surrounding parcel density is predominantly greater than or equal to 1 dwelling unit per 2.5 acres".

In the Birdsview area there are 46 parcels whose density is equal to or greater than 1 unit per 2.5 acres. There are 6 parcels whose acreage is more than 2.5 but less than 5 acres. There is 1 parcel with an acreage greater than 5.

In the Alger area there are 26 parcels equal to or greater than 1 unit per 2.5 acres and 6 parcels larger than 2.5 but smaller than 5 acres and therefore unsubdividable.

In Trafton Lake there are 65 parcels equal to or greater than a density of 1 unit per 2.5 acres, and 11 with acreage greater than 2.5, but less than 5 acres. One unit's acreage is greater than 5 acres.

These three areas therefore meet the requirement in the CP that "existing….parcel density is predominantly greater than or equal to 1 dwelling unit per 2.5 acres".

Although the study areas were large, the recommendations for change within the study areas were limited to parcels contiguous or almost contiguous to one another, which met the Rural Intermediate criteria. Changes within the three study areas resulted in the inclusion of only two parcels subject to subdivision under the density criterion of Rural Intermediate; 1du/2.5 acre zoning. We agree with the County that the inclusion of the above-mentioned parcels will not increase the amount of development rights due to the fact that all the parcels (save two) are under five acres in size. The County has thus followed our admonition from *Abenroth* to limit the potential for increased low-density sprawl.

The record does not show that parcels or blocks of parcels within the study areas meet the criteria for existing limited areas of more intensive rural development scattered through RCW 36.70A(5)(d)(i) thru (v). Further, Section .070(5)(d) <u>permits</u> the County to allow LAMIRDS. The Rural

Intermediate category as applied here simply recognizes the existing parcel size and concentration (in the study areas) and constitutes compliance within the dictates of Section .070 (b), which calls for a "variety of rural densities".

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We conclude that Petitioners have failed to meet their burden of demonstrating a clear error on the part of the County in allowing individual property owners to submit evidence of technical errors or misapplication of CP criteria by May 1, 1997 and in subsequently reviewing and acting upon those submissions. The record shows that the County did examine the requests to determine whether an error had been made and applied its CP designation criteria.

We conclude that the petitioners have failed to show clear error on the part of the County in failing to "develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter". RCW 36.70A.070(5)(a). As we said in *Cotton v. Jefferson*, #99-2-0017, it is not a requirement that the County develop a separate statement if its CP is clear in its description of how its amendments harmonize with the overall goals in Section .020. The Petitioners have failed to show misapplication of criteria or a failure to comply with RCW 36.70A.070(5).

We find the County in compliance regarding the amendments in Ordinance 17294.

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 7th day of September, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan Henriksen
Board Member

William H. Nielsen
Board Member