

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

POINT ROBERTS REGISTERED VOTERS ASSOCIATION,)	
)	No. 00-2-0052
Petitioner,)	
)	FINAL DECISION
v.)	AND ORDER
)	
)	
WHATCOM COUNTY,)	
)	
Respondent,)	
)	
)	

Where do recreational vehicles (RVs) belong? More precisely, in the adoption of Ordinance #2000-040 did Whatcom County fail to comply with any provisions of the Growth Management Act (GMA, Act)?

By all appearances RVs dominate the motorized recreational field. A far cry from tents and campfires, these comfort laden behemoths allow for a highly mobile, self-contained mini-residence. The creature comfort interior offers RV owners an ability to travel to a variety of recreational areas without loss of amenities.

While commercial RV parks are an obvious answer to the question of location, Whatcom County was faced with the question of where else temporary or even semi-permanent RV usage should occur. The County decided that one of those other locations were two specified areas within the peninsula known as Point Roberts.

The Point Roberts area is unique for many reasons. Geographically it is isolated from the rest of Whatcom County, and the rest of the United States, by the lower mainland of British Columbia. To travel by land to any other part of Whatcom County requires two international border crossings. Of the approximate 2,100 square miles of Whatcom County, Point Roberts consists of

5 square miles. Water supplies are limited and are partially dependent upon supplies from the Greater Vancouver Regional District. There is no public sewer nor is there a hospital. There is no public transportation within the area and transit service to the city of Bellingham is limited to twice per month. The only school in Point Roberts serves kindergarten through third grade. Historically almost 65% of the residents of Point Roberts lived there only seasonally or temporarily. Surrounded by the Strait of Georgia and Boundary Bay, Point Roberts contains an area of “natural beauty and peacefulness” (Ex. #73).

Since 1978 the placement of a RV on a vacant lot in Point Roberts was illegal under Whatcom County zoning regulations. The Point Roberts Registered Voters Association (PRVA) was formed, in part, to deal with the many violations by RV use on vacant lots. Its membership consists of US citizens and voters who own improved (with a permanent building) property in the Point Roberts area. PRVA participated extensively in the public process leading to adoption of the ordinance, including preparation of studies and alternatives presented to the Whatcom County Council (WCC).

Ordinance #2000-040 was adopted by the WCC on September 26, 2000, and approved by the County Executive on October 3, 2000. Generally it provides that a non-commercial RV (or “park model trailer”) could be located on a vacant lot in different areas of Whatcom County. An RV that remains onsite for more than 14 consecutive days is required to be connected to an onsite sewage system or to public sewer. The maximum amount of time an RV could occupy a lot may not exceed 120 days each year. Screening from “neighboring properties not using RVs” and from public roads is required. No commercial RV uses are allowed. Single-family residence setback requirements apply to the location of the RV.

Use of the RV on a vacant lot in the Point Roberts area is limited to two specified locations, commonly known as Maple Beach and South Beach. In these two locations in Point Roberts, unlike the other locations in the County to which the ordinance applies, administrative (staff) approval is required prior to the use of the RV on a vacant lot.

On October 20, 2000, PRVA filed a petition for review challenging Ordinance #2000-040. The hearing on the merits was held February 22, 2001. During the initial part of the hearing the

County withdrew part of its motion to supplement which had been filed February 5, 2001. After listening to arguments, we admitted the County's supplemental exhibits 305, 306, 307, 308 and 309. We also admitted petitioner's supplemental exhibits from its February 12, 2001 request, numbers 401 and 402.

Presumption of Validity, Burden of Proof, and Standard of Review

Pursuant to RCW 36.70A.320(1), Ordinance #2000-040 is presumed valid upon adoption. The burden is on the Petitioner to demonstrate that the action taken by Whatcom County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action by [Whatcom County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find the County's action clearly erroneous, the Board 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).

Petitioner challenged Whatcom County's compliance with Goals 1, 5, 6 and 12 contained in RCW 36.70A.020. We find that PRVA has failed in its burden of proof to show that Whatcom County failed to comply with the Act.

Petitioner's first claim that the ordinance did not comply with Goal 1 to encourage development in urban areas. Petitioner pointed out the variety of changes to Point Roberts over the years and the existence of an intensely developed urban area immediately north of the border dividing Canada from the US. The claim was predicated upon an assumption that Point Roberts could or should be an urban growth area (UGA).

Regardless of the merits of Petitioner's arguments the issue is precluded from consideration by us. Whatcom County adopted its Comprehensive Plan (CP) on May 20, 1997 and designated the Point Roberts area as "resort recreational subdivision". As shown in Ex. #243 the designation includes a "mixture of recreational and residential development." That designation is consistent with and implemented by Ordinance #2000-040. No appeal of the 1997 CP designation was taken. Under RCW 36.70A.290(2) the issue is foreclosed.

Petitioner's next claim involved Goal 5 of the Act which reads as follows:

“Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.”

The lack of compliance with this goal, from Petitioner's point of view, involved evidence that the allowance of RVs on vacant lots, instead of insisting on permanent residential buildings, would ultimately result in loss of significant tax revenue for the citizens of Whatcom County. Thus, the argument was presented that Whatcom County had failed to “promote economic opportunity for all citizens of this state,…”

Petitioner's reading of Goal 5 is much too limited in scope. Goal 5 is designed to “encourage” local and state governments to plan for and promote economic development throughout the state with special emphasis for unemployed and disadvantaged persons and the boosting of economic development in areas otherwise experiencing insufficient economic growth. All of these actions must be consistent with CPs and within the capacity of natural resources and public services and facilities. Goal 5 is not designed to require a local government to engage in some type of asset/liability analysis for each specific decision it makes.

Even if Petitioner's reading of Goal 5 was correct, this record contains evidence that the increased tourism dollars likely to result from implementation of the ordinance, would more than offset the somewhat speculative claimed taxed revenue loss. The record does not sustain Petitioner's burden of showing the County's action was clearly erroneous.

Petitioner claimed that their individual property rights “were not protected from arbitrary and discriminatory actions” because of the adoption of Ordinance #2000-040. In *Achen v. Clark County (Achen)*, 95-2-0067 (FDO 9-20-95) we examined the second prong of Goal 6 as follows:

“The second prong of Goal 6 relates to protection of “property rights of landowners” from “arbitrary and discriminatory action”. Since neither “property rights of the landowners” nor “arbitrary and discriminatory actions” are defined in the Act we must discern legislative intent to reach a general definition that can apply throughout this and future cases.

In attempting to define “arbitrary and discriminatory” actions, we note first that the Legislature has used the conjunctive (and) rather than the disjunctive (or) form. This indicates a legislative intent that the protection is to be from actions which are together “arbitrary and discriminatory”. The term arbitrary connotes actions that are ill-conceived, unreasoned, or ill-considered. The term discriminatory involves actions that single out a particular person or class of persons for different treatment without a rational basis upon which to make the segregation.

The term “property rights of landowners” could not have been intended by the Legislature to mean any of the penumbra of “rights” thought to exist by some, if not many, landowners in today’s society. Such unrecognized “rights” as the right to divide portions of land for inheritance or financing, or “rights” involving local government never having the ability to change zoning, or “rights” to subdivide and develop land for maximum personal financial gain regardless of the cost to the general populace, are not included in the definition in this prong of Goal 6. Rather the “rights” intended by the Legislature could only have been those which are legally recognized, e.g., statutory, constitutional, and/or by court decision.

We conclude then that this prong of Goal 6 involves a requirement of protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action.”

We were not asked by the County to decide if a “group” petitioner could claim “individual” rights.

In its presentation and in response to a Board question, PRVA candidly acknowledged that the property right upon which it relied to show noncompliance with Goal 6 involved the maintenance and enhancement of the value of the “improved owners property” (e.g. a lot with a permanently attached building). Particularly, PRVA claimed that the value of the “improved” property was reduced by the allowance of RVs on vacant lots even within the limitations established by the ordinance.

This is not the kind of legally recognized property right intended by the Legislature to be encompassed by Goal 6. Even if it was, the record did not sustain Petitioner’s burden of showing the County was clearly erroneous in adopting the ordinance. The examples cited by Petitioner’s of diminished property values do not exclude other reasons for the loss of value. While on a preponderance of the evidence standard we might reach a different conclusion, under the clearly erroneous standard Petitioner’s claim must fail.

Additionally, Petitioner has failed to show that the action, even if it violated a landowner's property rights, was arbitrary and discriminatory. Initially, PRVA's argument concerning arbitrariness is based on traditional Euclidian zoning concepts of use segregation. The Act, and the County's CP designation for Point Roberts, provide for a more mixed-use concept. The County's decision to allow RVs on vacant lots (for only one-third of the year) in the Maple Beach and South Beach areas was based upon a determination that the "improved" 70% of the lots largely involved seasonal recreational buildings. Mixing temporary seasonal use RVs with mostly seasonal-use permanent buildings is not an arbitrary action by Whatcom County.

PRVA also claimed that improved property owners were discriminated against because similar recreational areas of Birch Bay and Sudden Valley were excluded from the Ordinance. Petitioner's claim fails because Birch Bay is designated an UGA, unlike Point Roberts. While Sudden Valley has the same CP designation, it is a private development with restrictive covenants that prohibit the type of RV usage allowed under this ordinance. The County's failure to authorize limited RV usage of vacant property in Sudden Valley and Birch Bay did not discriminate against the entirely different situation involved in Point Roberts.

Petitioner also claimed that Goal 6 was violated because application of the Ordinance in the Maple Beach and South Beach areas constituted "spot zoning." Petitioner answered the County's claim of no jurisdiction over spot zoning issues by commenting that "common sense suggests that when two laws, namely the GMA and the Spot Zoning Law, are linked by the common thread of land use, that the Board should have such discretion to rule on the issue." Regardless of whether we agree with the common-sensible approach of Petitioner, the Act clearly does not allow a GMHB jurisdiction over "spot zoning" challenges.

The claim of PRVA that the County failed to comply with Goal 10 to protect the environment is based upon the claimed introduction of a:

"risk of environment damage not possible before passage of this ordinance. Since RVs were not allowed on vacant lots prior to passage of the Ordinance and since the record demonstrated a very difficult history of enforcement, at least to some degree because of the geographical isolation of the Point Roberts, this complaint driven ordinance very likely would not protect the environment because RV owners would not hook-up or dump

wastewater in approved disposal stations”

We cannot presume that requirements imposed in a DR will be violated, at least not without penalty. While Petitioner is correct that there is probably some increased risk of environmental damage, the requirements of hook-ups, the nature of RV wastewater disposal, even on a temporary basis, and the administrative approval process are appropriate standards and criteria for Whatcom County to impose in allowing RVs on vacant lots in the Maple Beach and South Beach areas of Point Roberts. Petitioner has not sustained its burden of proof as to Goal 10.

The Goal 12 public facilities and services lack of compliance challenge involved a claim that a finite number (750) of water hook-ups for Point Roberts will ever exist. By allowing such hook-ups to be used by RVs on vacant lots, their use for “future full-time residents” will be precluded. Therefore, according to PRVA the County has failed to ensure that public facilities and services to support the ultimate development of full-time residential buildings would be adequate at the time such development is available.

This is an unusual reading of Goal 12 of the Act. Nonetheless, the argument is once again predicated upon Petitioner’s belief that Point Roberts is or will become an UGA. As noted in the Goal 1 analysis, that issue is precluded from consideration by us.

We commend the Petitioner and the County for the manner in which this case was heard. The briefing and the arguments by both parties were concise and logical. While we see logic in most of our cases, conciseness is still often an unfulfilled dream.

We find that adoption of Ordinance #2000-040 by Whatcom County complies with the GMA.

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 6th day of April, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

APPENDIX I

Findings of Fact

Pursuant to RCW 36.70A.270(6)

1. Ordinance #2000-040 was passed by the WCC on September 26, 2000, and signed by the executive on October 3, 2000.
2. Petitioner has failed to sustain its burden of proving the ordinance fails to comply with the Act.