

1
2
3
4
5
6
7
8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

9	Clark County; City of LaCenter;)	
	GM Camas, LLC; MacDonald Living)	
10	Trust; and Renaissance Homes,)	
)	Consolidated No. 08-2-03625-5
11	Petitioners on review,)	
	Respondents below,)	MEMORANDUM OF DECISION
12)	
	and)	
13)	
	Birchwood Farms, LLC,)	
14)	
	Intervenor on Review,)	
15)	
	vs.)	
16)	
	Western Washington Growth)	
17	Management Hearings Board; John)	
	Karpinski, Clark County Natural)	
18	Resources Council, and Futurewise,)	
)	
19	Respondents.)	
20)	

21
22
23
24
25

This matter came before the Court for oral argument on February 26, 2009, with the consolidated hearing dealing with the various parties effected by the decision of the Growth Management Board of Western Washington (hereinafter GMB) on June 3rd, 2008.

1 Clark County commenced a process to amend its comprehensive plan in
2 accordance with the goals and requirements of RCW 36.70A (GMA)
3 conducting the public hearings. Materials were received from various
4 parties over a two year period of time prior to the final adoption on
5 the 25th day of September, 2007. This adoption de-designated
6 approximately four thousand (4,000) acres, previously designated as
7 agriculture, and provided further inclusion within the urban growth
8 boundary of Battle Ground, Camas, LaCenter, Ridgefield, Vancouver and
9 Washougal. The plan was revised in part to accommodate a new twenty
10 (20) year OFM population projection, which had adjusted the population
11 growth from 1.7 percent annually to 2 percent annually, reflecting
12 more correctly the actual County growth that had been taking place for
13 a substantial period of time.

14
15 The parties have all agreed that the de-designation of the
16 agricultural lands by the Board of County Commissioners, who had the
17 responsibility of legislatively determining the policies of the County
18 in relation to growth management, was to be given deference by the GMB
19 in rendering any decision as to whether or not the plan as adopted
20 conformed to the statutory requirements as set forth in RCW
21 36.70A(GMA). The parties further agree that the same standards apply
22 for the de-designation of agricultural land if the Board determined to
23 de-designate agriculture lands. See *Lewis County vs. The Western*
24 *Washington Growth Management Hearings Board*, 157 Wn.2d 488. They
25 state:

1 parcels being within the areas in question of five acres or slightly
2 larger.

3
4 It is fairly obvious that an annual income of \$25,000 is not
5 sufficient to support a family in today's current economy. And that
6 the farming, if any, that might be developed on the small parcels
7 would be more likened to a hobby farm rather than representing long-
8 term productive growth of agricultural product.

9
10 The third factor of long-term commercial significance is perhaps the
11 key area in which the Board failed to give deference to the Board of
12 County Commissioners in their adoption. *Lewis County, supra*. The Mt.
13 Norway site, which is part of the Washougal growth management, has
14 never been a productive farming area.

15
16 Washougal having its easterly boundary subject to the Columbia River
17 Gorge zoning requirements basically limits anything that may detract
18 from the scenic development of the gorge. That limitation has been so
19 designated by Congress as it placed controls requiring a common
20 agreement of the States of Washington and Oregon regarding any
21 development that may be allowed within that regulated area.

22 Therefore, the North development of the Mt. Norway site is the only
23 location for Washougal's growth as the Camas growth management area is
24 a buffer to the West limiting any further expansion.

1 expand and grow, with indication that these patterns are already
2 occurring. Major portions of the land in question for tax purposes
3 have been listed as agricultural; and if removed from that designation
4 has the responsibility to pay accrued taxes on the higher appraised
5 value that would be attributed to the property, having been removed
6 from the conservation designation. Seemingly both petitioners and the
7 Board place great reliance on those particular factors and not taking
8 into account that this tax holding pattern is fully taxable in its

9 higher and greater use dating back from the time it was placed in this
10 designation.

11
12 The second factor that the Board and the petitioners stress was the
13 soil, and that great portions of the land in question contained prime
14 agricultural soils. Globalwise, acting as a consultant, supplied a
15 report to the County, which was used in their decision making and
16 seemingly was given little weight by the Board. The agricultural
17 census of 2002 found only 145 commercial farms in Clark County, almost
18 none within the urban growth boundaries that these appeals deal with.

19
20 The Board further discounts the income level used in Globalwise's
21 report of \$25,000 annual income indicating that it merely is an intent
22 of the owner, not recognizing the capability of producing agricultural
23 products on a sustained basis. Clark County experienced substantial
24 development in small parcels of five acres or more, having been exempt
25 from the platting consideration which led to a substantial number of

1 Camas, MacDonald Living Trust and Renaissance Homes. After the
2 decision by GMB, the City of Camas completed its annexation of the
3 substantial portion of the properties that were added to the Camas
4 urban boundary and an order was entered dismissing those properties
5 from these hearings as they were no longer subject to the jurisdiction
6 of GMB and Clark County.

7
8 The Board of County Commissioners was affirmed insofar as their
9 determination of RB-1. I've been advised that RB-2, part of the City
10 of Ridgefield growth management, was a subject matter of annexation
11 and would no longer be under the jurisdiction of the GMB. As a
12 result, that will not be considered in this opinion.

13
14 The CB-2 portion of the property for the City of Camas basically has
15 lost its utilization as agricultural land because a substantial
16 portion of the properties are within golf courses, condominiums, and a
17 continuation of the growth property surrounding Lacamas Lake. The
18 area is a logical extension and has a growth projection from the City
19 of Vancouver immediately adjacent, which includes the location of a
20 major high school in the Evergreen School District, Union High School,
21 which has approximately 1,400 students.

22
23 The properties in question have a common characteristic in that they
24 are adjacent to existing urban growth boundaries and represent a
25 logical extension of how the cities in question would continue to

1 "we hold that agricultural land is land: (a) not already characterized
2 by urban growth (b) that is primarily devoted to the commercial
3 productions of agricultural products enumerated in RCW 36.70A.030(2),
4 including land in areas used or capable of being used for production
5 based on land characteristics, and (c) that has long-term commercial
6 significance for agricultural production, as indicated by soil, growing
7 capacity, productivity, and whether it is near population areas or
8 vulnerable to more intense uses. We further hold that counties may
9 consider the development-related factors enumerated in WAC 365-190-
10 050(1) in determining which lands have long-term commercial
11 significance."

12 Additionally, the parties agree that if the Court finds that GMB has
13 given deference to the Findings of the Board of County Commissioners
14 but reversed based upon the statutory requirements as provided under
15 the growth management, that the courts are to give deference to GMB's
16 Findings. And that further, since this is a mixed question of fact
17 and law, that the reviewing appellate court is not required to give
18 deference to the Superior Court's Findings but may treat it de novo.

19
20 After the decision by the Board of County Commissioners had been filed
21 with GMB, John Karpinski, Clark County Natural Resources Council and
22 Futurewise filed petitions for review with GMB. City of LaCenter; GM
23 Camas, LLC; MacDonald Living Trust and Renaissance Homes filed
24 petitions to intervene, which were granted, as were others. After the
25 decision by GMB, Clark County appealed as did the City of LaCenter, GM

1 The site for Vancouver growth management, VA and VA-2, is influenced
2 by growth from the four year college of Washington State University
3 and Legacy General Hospital, a trauma center and indicates that there
4 will be continued urban development within that area and the urban
5 plan of 179th Street.

6
7 In the agricultural study that was presented by Globalwise, it is
8 clear that no agricultural activity of any significance has taken

9 place within those two areas. With some utilities, major highway
10 expansion as well as the natural consequences in the decision making
11 of locating the college, a continued development towards 179th is a
12 foregone conclusion.

13
14 The La Center growth management sites LB, LB-2 and LE, while having
15 agricultural lands, face the same general fate that all major
16 interchanges of I-5 in Clark County having led to commercial
17 development. A proposed casino operated by the Cowlitz Indian Tribe
18 would exceed anything currently operated in the Northwest and has been
19 a subject of much discussion and its impact on surrounding properties.
20 The casino would not be subject to growth management. The Board in
21 ignoring these growth stimulators and relying solely upon the soils
22 did not take into consideration the other factors as set forth in WAC
23 365-109.

24
25 The County conducted hearings over a period of two years and received

1 testimony from numerous individuals, including reports from
2 specialists dealing with the nature and extent of agricultural
3 productivity and likely future in being able to maintain the property
4 for such a specialized use. Over 2,000 pages of material were
5 considered, plus the recognition that the County expansion growth
6 continues to outpace available lands for development, it was necessary
7 to expand the growth boundaries of the various cities to reflect the
8 reality of the current situation. The GMB did not give deference to
9 the county's decision-making, which has experienced problems
10 associated the reality of present day influx of individuals and the
11 necessary planning for the future.

12
13 Therefore, having considered the decision of the GMB, I hereby reverse
14 the decision as to WB, CB, LB-1, LB-2, LE, VA, VA-2. And if the
15 representation is correct, RB-2 by annexation is no longer an issue.
16 The balance of the GMB decision is affirmed.

17
18 Dated this _____ day of May, 2009.

19
20
21 _____
Robert L. Harris
Superior Court Judge, Dept. 5

22
23 RLH:lmk