

Citizens' Alliance for Property Rights Whatcom Chapter

May 21 2013

Whatcom County Council
311 Grand Ave
Bellingham WA 98225

Re: Rural Element Draft, AB 2013 180

UNDER AB 2013 : 180
DATE RECEIVED: 5-21-13
SUBMITTED BY: ROGER
AMSCALL
 COUNCIL MEETING
 COMMITTEE
EXHIBIT: C

Dear Council Members:

On behalf our member households and businesses, I am submitting this testimony on one major issue in the Planning staff and Planning Commission proposals for your May 21 2013 public hearing.

We are a county wide public interest group affiliated with the larger regional CAPR organization, with several county based chapters in our state and California. We have actively participated in this Rural Element process since fall, 2009, or over 3 years. Many of our members along with many other residents own acreage and businesses in the county and have been severely affected by this long drawn out process.

Issue 2: Lot Clustering

There are three major reasons why the present and proposed % requirements for reserve areas for some cluster plats in some Rural zones are too high, and should be reduced to more reasonable levels.

First, we support the Planning Commission's addition of the "Reserve Area" concept together with the Reserve Tract (see p 3 and 10 etc). However, we are concerned that when owners apply for a short plat, they will have to meet the often high % standards for the Reserve Area (eg 65 % in R-5A with public water, and 75% in the Agricultural Protection Overlay (APO) in R-5 and R-10).

error This reserve area ~~cannot~~ be developed, even for one house. In order to provide a building site in the larger, overall required Reserve Tract portion, and live within the 4 lot limit for short plats, the owner will have to increase the size of the required Reserve ~~Area~~ by enough area to build a house and normal landscaping and non-farm outbuildings on it. This could amount to 5000 sq ft. *Tract*

That may sound insignificant, but in our experience, many owners have been deprived of potential lots allowed by zoning. This is due having to meet often arbitrary critical area/shoreline buffers, setbacks from wells, etc, within the tight limits due to the high reserve percentages. For example, the APO does not allow septic systems in the reserve, even if farming it is impossible or makes no sense.

The only alternative to making the Reserve Area larger than required while and creating 4 lots as a short plat would be to do a long plat, which are far more costly and time consuming. They are generally not feasible for the typical small, low density rural land division, especially for the typical owner of say 20 acres.

Second, the hearings board and preservationist groups are demanding that all rural cluster reserve areas be set aside forever, no matter what might happen in the future. The draft contains only one exception, if the parcel is included in a future Urban Growth Area (UGA). For example, see 20.36.315, p 10. This is not likely to happen for most such tracts.

As stated in the board's January 4 3013 Order, p34, this demand is not based on the GMA statute nor on prior board decisions or case law, but one very short and simple "should" statement in a long and complex state Department of Commerce (DoC) regulation:

The open space portion [the reserve area]...should be held by an easement... for open space or resource [farming or forestry] use. This [portion] should be held in perpetuity, without an expiration date. WAC 365-196-425 (5) (b)(ii) [underlining added]

Apparently it never occurred to the professional planners at DoC that some Rural designated areas in the state just might be needed for urban land uses someday, in order to accommodate the inevitable population growth over the next 20 to 100 years!


Also, the state planners support allowing density bonuses for rural cluster plats in the same rule, in exchange for the public benefit of long term protection of open space, critical areas and resource land. WAC 365-196-425 (5)(b)(iii). But you don't see the board or Futurewise bringing that radical idea up! If the perpetuity rule is adopted, then there is a need to reduce these high values in order to provide reasonable treatment for the affected owners of larger rural tracts.

Third, there is no reason or public purpose stated anywhere in the Comp Plan nor Zoning Ordinance for the high, 60 to 70 % values in the R zone, nor the great differences between the low values of 10 and 25% in the RR zone. We know that the 75% rule in some R zone lots is based on the Agriculture Protection Overlay zone (APO), which needs some reform itself. Thus these values are arbitrary and need review and reform.

In conclusion, we have provided three reasons why the cluster reserve requirements in the rural zones are high and arbitrary. We appreciate that the Planning Commission in its findings called for this issue to be docketed for future review.

But the council can reduce them, especially as a tradeoff against the negative impacts on land owners of the perpetuity rule. If you leave the record open, we will propose some more reasonable values. Thanks for your consideration of these statements.

Whatcom Chapter, Citizens' Alliance for Property Rights



Roger Almskaar, President

cc: Planning Department