

GOVERNMENT STATE BOARD TO WHATCOM: PROTECT RURAL LANDS

CALVIN BRATT, LYNDEN TRIBUNE, JULY 31, 2013



WHATCOM — The county is not doing enough to protect rural land character and both surface water and groundwater quality and quantity, a state oversight board says.

The wide-ranging June 7 ruling from the Growth Management Hearings Board for Western Washington claims that the county's rural zoning plan and development regulations do not comply with state Growth Management Act goals for protecting resource lands.

The Whatcom County Council has appealed the ruling. But otherwise, by order of the board, the county must make changes in its Rural Element to get into compliance by Dec. 4.

The ruling is also the latest salvo in a back-and-forth legal battle between the county and some residents who want land-use rules protecting Whatcom rural areas to be made tighter. One of four litigants who sued in this case, challenging existing county policy, in October 2012 is David Stalheim, former county planning director and a candidate for county executive. The others are Eric Hirst, Laura Leigh Brakke and Wendy Harris, all of Bellingham, along with the FutureWise environmental-watch group.

The ruling, while still being sorted out and contested, has already set off anxiety in the real estate and construction sectors as to possible adverse impacts.

Attorney Jack Swanson, a member of the Building Industry Association of Whatcom County, warns that the hearings board decision could end residential construction in the rurally zoned areas of the county and so deal a blow to BIAWC members' livelihood.

Two specific areas of impact are seen:

- so-called “exempt wells” for up to 5,000 gallons drawn per day for residential use.

The hearing board says that to get a permit to dig a residential well, a landowner should have to prove first that the well will not impact streams that have been found to have low flows. The Nooksack River is one such stream.

- inspection of rural septic systems.

So far, the county has sought to educate septic system owners yet allow them to inspect their own systems. The hearing board argues for requiring homeowners to pay a professional for an annual inspection instead.

Both of those issues represent a major expense to rural landowners, the BIA claims.

Potential gains to the environment remain questionable, said Linda Twitchell, the group’s government affairs director. At a recent water symposium, wells’ impacts on stream flows could not be proven, she said, and in regard to septic systems the county has allowed owners to do their own inspections because that works — problem systems are the exception.

BIAWC member attorneys believe the hearing board overstepped its authority in regard to water quality and quantity, Twitchell said.

B&C Well Drilling, based on Kelly Road, has seen a significant increase in wells drilled, even with its small crew, since word of the June 7 ruling has filtered out, said owner Mike Florence.

“In a short period of three weeks, we put in over 30 wells, and they’re still coming in,” Florence said.

Larry Stoner, a Bellingham-based land development consultant, is putting out notice of his services saying the new ruling “adds policing of private wells within Rural zoning area.” Stoner believes Whatcom County or state Ecology “will most likely be required to review, approve or deny well drilling for building permits, short plats, etc.”

In order to precede stricter rules possibly by the end of 2013, he says, “We suggest that all Realtors review their listings for land that has development potential, and advise clients to seriously consider making application soon.”

Stoner’s price to help steer a land owner’s shortplat application, including surveying and wetlands reconnaissance and counting in the county’s fees, is in the range to \$2,000 to \$3,000.

The 51-page ruling is a broad-ranging analysis of how Whatcom County is failing to protect surface and groundwater quantity and quality. It draws from many documents and reports dealing with watershed health, Indian fisheries, water availability, nitrates in groundwater, instream flow and water supply planning. Sources of information include the Northwest Indian Fisheries, the Puget Sound Partnership and the county’s own Water Resource Plan.

This is one quote from the ruling: “A 2012 Department of Ecology report on nitrate contamination for wells in the Sumas-Blaine Aquifer states that 29 percent of wells in northwestern Whatcom County exceeded

maximum nitrate contamination levels and 14 percent of wells had more than double the maximum allowed rate of contamination. Thirty-six percent of shallow wells (less than 40 feet in depth) exceed allowable nitrate contamination levels, while 20 percent of deeper wells also exceed the standard.” Nitrates in groundwater are especially a consequence of intensive agricultural application of fertilizer.

In terms of water pollution, causes range from increasing urbanization to malfunctioning septic systems, agricultural runoff and removal of riparian vegetation, the report states.

At one point, the board states that it “is left with a firm and definite conviction that a mistake has been made” in the county’s policy on rural lands’ water protection.

This is a concluding section:

“In sum, the county is left without Rural Element measures to protect rural character by ensuring land use and development patterns are consistent with protection of surface water and groundwater resources throughout its Rural Area. This is especially critical given the water supply limitations and water quality impairment documented in this case and the intensity of rural development allowed under the county’s plan.

“The record shows that the county has many options for adopting measures to reverse water resource degradation in its Rural Area through land use controls. As is discussed by state agency reports and the county’s own Comprehensive Plan, the county may limit growth in areas where water availability is limited or water quality is jeopardized by stormwater runoff. It may reduce densities or intensities of uses, limit impervious surfaces to maximize stream recharge, impose low impact development standards throughout the Rural Area, require water conservation and reuse, or develop mitigation options. ... It may direct growth to urban rather than rural areas.”