

FILED
SUPREME COURT
STATE OF WASHINGTON
11/18/2019 3:14 PM
BY SUSAN L. CARLSON
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No. 97719-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLARK COUNTY,
Respondent,

FRIENDS OF CLARK COUNTY; FUTUREWISE,
Respondents
and

CLARK COUNTY; CITY OF RIDGEFIELD; CITY OF LA CENTER;
RDGB ROYAL ESTATE FARMS, LLC; RDGK REST VIEW ESTATES
LLC; RDGM RAWHIDE ESTATES LLC; RDGF RIVER VIEW
ESTATES LLC; RDGS REAL VIEW LLC; and 3B NORTHWEST LLC,
Respondents
and

CLARK COUNTY CITIZENS UNITED, INC.,
Petitioner

v.

GROWTH MANAGEMENT HEARINGS BOARD,
Respondent.

**CLARK COUNTY CITIZENS UNITED, INC.'S REPLY TO
ANSWER TO PETITION FOR REVIEW**

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INTRODUCTION

Petitioner Clark County Citizens United (CCCU) filed a Petition for Review regarding a fundamental component of the Growth Management Act (GMA), chapter 36.70A RCW—the designation, and review of such designation, of land for long term commercial significance for agricultural and forestry. Clark County and Futurewise with Friends of Clark County (hereinafter “Futurewise”) filed Answers.¹ The latter Answer by Futurewise raised new issues presented for review. CCCU now files this reply to address these new issues pursuant to RAP 13.4(d).

The two new issues offered by Futurewise are as follows:

Issue 1. Whether annexations immunize comprehensive plan amendments from Board appeals or moot out ongoing Board appeals?

Issue 2. Whether the Board must review comprehensive plan and development regulation amendments adopted to

¹ Both Futurewise and Clark County note an error in CCCU’s Petition for Review in attributing a statement to the Court of Appeals on pages 5 and 7 of the Petition for Review. They are correct that what was formatted in the Petition for Review as a quotation is not a quotation, but rather argument. This is a serious error, but an unintended one and one which CCCU’s counsel is grateful for the error being disclosed.

correct violations of the GMA to determine if the amendments comply with the GMA?

Futurewise Answer, at 2.

ARGUMENT

I

FUTUREWISE'S ISSUE 1 REGARDING THE INTERPLAY OF ANNEXATION AND GMA REQUIREMENTS IS AN ISSUE WHICH CALLS FOR THIS COURT'S REVIEW

CCCU agrees with Futurewise that Issue 1 meets the criteria for review in RAP 13.4(b). Issue 1 involves a question of substantial public interest that should be resolved by this Court, namely the relationship between annexation statutes and Growth Management Act (GMA) requirements.

The facts of this case set up the important issue between the interplay of annexation statutes and the GMA requirements that land designated for long term commercial agriculture be limited to those purposes, making them unlikely candidates for being included within city limits. *See* RCW 36.70A.060(4) (agricultural land cannot be included within urban growth area unless city has a program of transferable development rights). Review of the land is necessary under the GMA, but the

unanswered question is whether the GMA trumps the annexation statutes or vice versa?

If the annexation process is not a wild card that allows a free pass on the GMA requirements, then the resolution of this issue may be that land designated for long term commercial agricultural production that is proposed to be moved into City limits must first be reviewed as to whether the land no longer qualifies for designation for long term commercial agricultural production.

This issue is closely tied to CCCU's issue presented for review since they both involve reviewing the designation of land for long term commercial agriculture as part of the regular comprehensive plan process. Futurewise is mistaken that the County explained how it used other data to overwhelm the basic soils data.² The County is mistaken as to its claimed non-

² Futurewise asserts that this Court rejected the "primacy of soils" in *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502 fn. 11 (2006). That is simply reading too much into this footnote that logically recognizes that there are other factors that relate to long term commercial significance. But this Court did not state that soil which cannot support commercial agriculture is properly designated as commercial agriculture any more than a desert is appropriate for growing wetland plants. Futurewise asserts: "So at least in some

existence of its analysis. While the County may not have changed designations (except for land that was going to be annexed), it did review its designations as it is required to do in a comprehensive plan review process. The propriety of that review should be subject to GMA review.

II

FUTUREWISE’S ISSUE 2 REGARDING REVIEW OF AMENDMENTS OF COMPREHENSIVE PLANS DOES NOT CALL FOR THIS COURT’S REVIEW

However, CCCU contends that Futurewise’s Issue 2 does not meet the criteria for review in RAP 13.4. Amendments to comprehensive plans and development regulations are always reviewable by the Board if a timely petition is filed. If the Court of Appeals erred, that does not necessarily call for this Court’s review. This is not an issue that needs this Court’s attention.

circumstances agricultural lands designations can be based on factors other than soils.” Futurewise Answer at 6. CCCU agrees that the lack of some necessary elements of commercial agriculture may cause land with good soils to not qualify—lack of water, lack of markets, etc. But this Court has never ruled that land without good soil for growing agricultural products can qualify for long term commercial significance.

CONCLUSION

The Court should grant the pending Petition for Review and join within it Futurewise's Issue 1.

Respectfully submitted this 18th day of November, 2019

STEPHENS & KLINGE LLP

s/ Richard M. Stephens

Richard M. Stephens, WSBA 21776
Attorneys for CCCU

DECLARATION OF SERVICE

I, Richard M. Stephens, declare as follows pursuant to GR 13 and RCW 9A.72.085:

I am a citizen of the United States, a resident of the State of Washington, and an employee of Stephens & Klinge LLP. I am over twenty-one years of age, not a party to this action, and am competent to be a witness herein.

On November 18, 2019, I caused the foregoing document to be served on the following persons via the Court of Appeals' electronic filing and service process:

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Clark Co. Prosc. Attny Office, Civil Di

I declare under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct.

Executed this 18th day of November, 2019 at Woodinville,
Washington.

_____ *s/ Richard M. Stephens* _____
Richard M. Stephens

STEPHENS & KLINGE LLP

November 18, 2019 - 3:14 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97719-4
Appellate Court Case Title: Clark County Citizens United, Inc. v. Growth Management Hearings Board
Superior Court Case Number: 17-2-00929-0

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