

MEMORANDUM

CHELAN COUNTY, WASHINGTON MINIMUM LOT SIZE INTERIM ORDINANCE

MAY 9, 2000

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SUMMARY OF REQUEST

NAR has requested review and comment on the proposed extension of Interim Zoning Resolution No. 99-183, adopted by Chelan County on December 28, 1999. The Interim Zoning Resolution, which expires on June 28, 2000, establishes a minimum lot size of ten (10) acres for unincorporated lands located outside urban growth areas (“UGAs”). The North Central Washington Association of Realtors[®] (“NCWAR”) has asked for analysis and comments that it can use at the upcoming public hearing to oppose the proposed extension of the interim resolution. We have based our analysis on the materials received through NAR, including a copy of the interim resolution, but note that we have not been provided with or reviewed any other Chelan County planning and zoning documents.

EXECUTIVE SUMMARY

Based on our review and analysis of the materials received and our research, we have concentrated our discussion on policy considerations and strategic choices relevant to the proposed extension of the Interim Resolution. While we briefly reviewed the procedural and substantive requirements for adoption and extension of the resolution, our analysis is not a legal opinion as to the interpretation and effect of Washington law. We encourage you to consult with local counsel to the extent that you require a legal opinion on any of the issues discussed below.

ANALYSIS

Interim Zoning Resolution No. 99-183 was passed by the Board of Chelan County Commissioners on December 28, 1999, apparently without notice or public hearing. According to the materials we received through NAR, the County Commissioners held a public hearing and affirmed the interim resolution on January 25, 2000. Pursuant to Rev. Code Wash. § 36.70A.390, moratoria and interim zoning controls may be enacted without notice or public hearing, as long as the governing body conducts a public hearing and adopts findings of fact justifying its action within 60 days thereafter. Interim zoning resolutions may also be extended for “one or more six-month periods,” if public hearings are held and findings are made *prior* to each extension. *Id.* The County Commissioners, therefore, must hold a public hearing before extending the interim resolution beyond its expiration date of June 28, 2000.

The interim resolution currently in force includes findings of fact, provided by the commissioners as justification for increasing the minimum lot size outside UGAs. Specifically, the commissioners found that: (1) under the Washington Growth Management Act¹ (“GMA”), the county is not allowed to approve development proposals outside urban growth areas that are “urban in character;”² (2) development proposals recently approved in county areas outside UGAs have been “urban in character,” as defined in the GMA and in various Growth Hearings Board decisions; (3) the county is currently in the process of developing a county comprehensive plan and implementing regulations that propose “an array of rural densities consisting of two and one-half (2 ½), five (5), ten (10), and twenty (20) acres per lot;” (4) the current limitation on rural

¹ Rev. Code Wash §§ 36.70A.010 - .902.

² See Interim Resolution at p. 1 (Purporting to rely on Growth Management Hearings Board decisions and on GMA definitions; although the GMA defines “urban growth,” “rural development,” and “rural character,” it does not specifically define “urban in character”).

lots of two and one-half (2 ½) acres is “considerably smaller than proposed by the draft comprehensive plan;” and (5) the interim resolution is necessary to preserve the status quo until development regulations can be adopted.

The GMA does not define “urban in character,” and only vaguely defines “urban growth.”³ As a result, what constitutes “urban” versus “rural” development is evolving as local governments enact plans and regulations, and as the Growth Management Hearings Boards review those actions. Although we have not performed a thorough review of relevant caselaw, we note that the courts have considered some hearings board decisions that directly address allowable lot sizes outside UGAs. In one recent case, for example, a Washington Court of Appeals affirmed a hearings board finding that rural lot sizes as small as 2.5 acres and “rural activity center” lot sizes of 0.5 to 0.125 acres are urban in nature and, therefore, impermissible outside UGAs.⁴ In that same case, it was noted that according to several other hearings board decisions, “1-acre to 2.5-acre lot sizes are *per se* urban densities and rural densities should average 10 to 80 acre lots.”⁵

In another recent case, the court affirmed a hearings board finding that an overall rural density of one unit per 1.13 acres, in a planned unit development where 71 of the 123 acres would be left as open space, constituted impermissible urban growth outside a UGA.⁶ The court further noted, however, that “the term ‘urban growth’ will be subject to further definition as local agencies develop their plans and regulations under the GMA and obtain review and approval by the hearings boards. . . . [and that] [t]he specific densities, lot sizes, clustering rules, and infrastructure that constitute ‘urban growth’ may vary from area to area.”⁷ This court, therefore, recognized that acceptable minimum lot sizes outside UGAs may vary by locality and circumstance, including, for example, when part of a rural cluster development.

According to one commentator, hearings boards that have considered acceptable densities in rural areas have tended to deem those densities greater than one residence per five acres as suspect.⁸ Chelan County may be relying on these and/or similar hearings board decisions as a basis for the interim resolution increasing minimum lot size outside UGAs from two and one-half (2 ½) acres to ten (10) acres. While these decisions indicate that the GMA may require minimum rural lot sizes to be greater than 2 ½ acres generally, there does not appear to be a legal requirement under the GMA for the ten-acre minimum, as required by the Interim Resolution.

TALKING POINTS

³ Rev. Code Wash. § 36.70A.030(17) defines “urban growth” as “growth that makes intensive use of land . . . to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands . . . [but] [a] pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth [and] [w]hen allowed to spread over wide areas, urban growth typically requires urban governmental services.”

⁴ *Diehl v. Mason County*, 94 Wn. App. 645, 972 P.2d 543, 548, 550 (Wash. Ct. App. 1999) (Upholding Hearings Board’s invalidation of county comprehensive growth management plan because it allowed “urban” development in rural areas).

⁵ *Diehl*, 972 P.2d at 548.

⁶ *Association of Rural Residents v. Kitsap County*, 95 Wn. App. 383, 974 P.2d 863, 870 (Wash. Ct. App. 1999).

⁷ *Id.*

⁸ Richard L. Settle, *Symposium: Revisiting the Growth Management Act: Washington’s Growth Management Revolution Goes to Court*, 23 Seattle Univ. L. R. 5, *16 (1999) (citing three hearings boards decisions).

Although it appears that some increase in the minimum lot size in rural areas or outside UGAs in Chelan County may be consistent with evolving Washington law, there are several policy considerations and strategic choices that NCWAR can present to the County Commissioners as they consider extension of the resolution.

Interim Resolution Is Overbroad As Compared to Draft Comprehensive Plan

According to the Interim Resolution, Chelan County is proposing a draft Comprehensive Growth Management Plan that will allow rural areas to include not only ten (10) and twenty (20) acre lots, but also two and one-half (2 ½) and five (5) acre lots. Interim Resolution, Finding No. 13. Given the fact that the proposed Comprehensive Plan does not require all rural lots to be ten or more acres in size, the Interim Resolution is overly broad and inconsistent with the proposed Comprehensive Plan.

Recommendation: The county should be encouraged to revise the Interim Resolution to make it consistent with the proposed Comprehensive Plan, either by reducing the minimum lot size overall or by applying different minimum lot sizes to various areas, perhaps to include clustering, a technique suggested by the GMA.⁹

The Interim Resolution Eliminates the Possibility of Rural Cluster Development

Zoning is often used to provide incentives to encourage more compact development. This is especially important for the areas outside UGAs, where clustering of homes helps to maintain rural open spaces. By placing a blanket prohibition on rural lots of less than ten acres, Chelan County is eliminating the option of rural cluster developments. Also, the GMA specifically envisions that the rural element of a local comprehensive plan will provide for “limited areas of more intensive rural development.”¹⁰ Clustering rural development achieves the dual goals of providing more rural residential options and maintaining the rural character of areas outside UGAs.

Recommendation: The county should revise the Interim Resolution to provide an option for a maximum density, in lieu of minimum lot-size, thereby allowing the development of rural clustered housing.

Increasing Lot Sizes Outside UGAs Negatively Impacts Housing Affordability In Both Urban and Rural Areas

As minimum lot sizes increase outside UGAs, housing prices increase as well. Residents wanting to construct new homes will be required to purchase larger parcels, driving up prices for new homes and, consequently, impacting prices for existing homes. According to information received through NAR, the county’s imposition of the present 2 ½-acre minimum lot size requirement outside UGAs has already severely affected housing costs by causing land prices to

⁹ See *Association of Rural Residents v. Kitsap County*, 95 Wn. App. 383, 974 P.2d 863, 870, 871 (Wash. Ct. App. 1999) (Wherein court assumes without discussion that GMA authorizes clustering; also dissenting opinion stating GMA expressly allows clustering pursuant to Rev. Code Wash. § 36.70A.070(5)(d)).

¹⁰ Rev. Code Wash. § 36.70A.070(5)(d).

nearly double. One might expect this increase to be exacerbated as minimum lot size is further raised to 10 acres.

Furthermore, as minimum lot size increases outside the UGA, the total number of modestly-sized building lots available to county residents decreases. As a result, the smaller lots available only inside the UGA will be placed in greater demand and prices for those urban lots will likely rise. Chelan County is required to include, as an element of its Comprehensive Plan, a housing element that provides for, among other things, housing for low-income families. Rev. Code Wash. § 36.70A.070. Actions that result in higher housing costs county-wide present major obstacles to achieving this affordable housing requirement.

Recommendation: The county should re-consider its selection of minimum lot size outside UGAs and/or consider placing limitations on the areas in which the minimum lot sizes will apply, in order to avoid negative impacts on the overall availability of affordable housing.

Imposing Large Minimum Lot Sizes Outside UGAs Severely Restricts the Range of Housing Options Available to County Residents

Increasing minimum lot size outside UGAs to 10 acres limits the range of housing choices in Chelan County. Residents will no longer have the option of owning a modestly-sized 2 ½-acre parcel in a rural environment. Some residents who may prefer to live in rural settings will be financially unable to acquire a ten-acre parcel or may prefer not to have to maintain a large property. The ten-acre minimum lot size requirement, therefore, limits the range of residential life-style choices available to county residents.

Recommendation: The county's zoning should provide for the full range of housing opportunities that the market demands.