

Joe Kear
501 Bishop Rd
Washougal, WA 98671
503-957-9663 / 360-837-8907
kearjoe@aol.com

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Sharon Rice
Skamania County Hearings Examiner

Re: File No. CMP-19-01 and REZ-19-01
Kellett Rd West End Community Comprehensive Subarea Plan Amendment and
Rezone Application

Examiner Rice:

I live on 50 acres zoned West End Forest Lands 20, and was involved in the community meetings that produced the West End Community Comprehensive Plan over the course of 2001-2004, as well as subsequent meetings and discussions in the community regarding adoption and implementation of the plan.

This letter intends to show the proposed amendment does not meet the criteria for approval.

Criterion a. A text and/or map amendment is not necessary to resolve inconsistencies within the plan.

The applicants propose that there is an inconsistency because the “framers of the plan failed to anticipate in the lack of willingness of landowners to divide their property to allow for creation of more lots.” The applicants further state that this amendment “will better implement the framers’ vision of controlled growth while still maintaining a rural setting.” (Comprehensive Plan Change Application Narrative).

The West End Community Comprehensive Subarea Plan was developed by community meetings of residents beginning November 12, 2001 and lasting through 2004. More than 250 people participated. The applicants and their agent however were not among the participants and are not versed in what the framers’ vision was. (Appendix from West End Community Comprehensive Subarea Plan, attached.)

The community intended that the 2 acre designation not be expanded. In general the adopted plan maintained the existing 2 acre areas but didn’t seek to enlarge the

2 acre designation. Many 2 acre lots were grandfathered in other designations instead of being designated as Rural Lands 2. The majority of the new RL 2 designation covered areas previously designated for 2 acres. The West End Subarea Plan was explicit in respect to the intent of the Rural Lands 2 designation: "Existing areas of more intense rural residential development (2 acre lots) should be acknowledged and maintained, but should not be expanded." (General Goal 7, West End Community Comprehensive Subarea Plan).

This quote from the Subarea Plan is reason alone to reject this application. But in regard to the applicant's argument that the "framers" didn't anticipate that owners would lack willingness "to divide their property to allow for creation of more lots," creating an inconsistency in the plan, they are wrong.

As one of over 250 framers, I know the plan was crafted to cover the needs of the West End over the course of 20 years or so, integrating "long-range considerations (comprehensive planning) into the determinations of short-term action (individual development applications)." (General Goals). Short-term ups and downs in activity in sales or divisions in the RL2 designation are consistent with this long-term plan. The intent was to limit the expansion of 2 acre parcels and as stated in the plan, "Rural Residential areas should generally be developed at low levels of intensity (5 acre and 10 acre lots) so that demands will not be created for high levels of public services and facilities. County requirements for housing in rural areas should encourage residential development that is compatible with farming, open space, outdoor recreation, protection of significant cultural resources, rural service levels, and generally with the rural character. Existing areas of more intense rural development (2 acre lots) should be acknowledged and maintained, *but should not be expanded.*" (emphasis added).

This language is important to examine in the context of the entirety of the West End Community Comprehensive Subarea Plan. The plan was crafted through discussions and debate where the community agreed to allow the continuation of a 2 acre designation, with the ability to divide larger parcels in the designation to 2 acre lots. The capacity tables on page 33 of the Subarea Plan indicate the ability to divide all existing parcels in the RL2 designation to 2 acre lots. By inference, the language that "existing areas of more intense rural development (2 acre lots)...should not be expanded" refers not to property divisions within the RL2 designation but to expansion of the RL2 designation. Expansion of the area was not intended to be allowed.

This language should be followed; the intent of the community in crafting the plan should be recognized.

The applicants claim that the Subarea plan language stating that 2 acre lots “should not be expanded,” is currently interpreted by the Planning Department as to not allow “acreage rezoned to the RL2 zone to be divided to less than 5 acre parcels.” This makes no sense. If owners were to be allowed to move to an RL2 designation and zoning, nothing in the zoning ordinance would prohibit lots comports to this zone (2 acres).

I inquired of the Planning Division regarding this interpretation, as claimed by the applicants and was told it was puzzling to them. I also inquired as to any history of re-designations to RL2 under the current Subarea plan.

There have been NO re-designations to RL2 under the current Subarea Plan since its adoption. This is consistent with the intent of the plan. Expanding the area of the RL2 designation is not.

Criterion b. Conditions have not significantly changed since the adoption of the Comprehensive Plan.

As an example of a significant change in condition, the comprehensive plan offers: “sixty percent (60%) infill of existing lots within the entire mapping designation being proposed for change.” The applicants present information at length in this regard.

To avoid confusion in calculating this percentage, Skamania County Code now defines a significant change in circumstances as follows:

“Substantial change in circumstances” means a significant change in conditions affecting the planning area as a whole or a substantial portion thereof. Examples include, but are not limited to, substantial development affecting the rural character of a community, sixty percent of full buildout has been achieved within the proposed zoning designation. “Full buildout” means the total number of existing and potential future lots based on the minimum parcel size within the zoning designation. Percent of full buildout is equal to (number of existing developed lots) divided by (total number of existing and potential lots based on acreage within the land use designation) times one hundred, or legal circumstances sufficient to defeat the purposes of a policy established in the comprehensive plan or subarea plan. However, the creation of the National Scenic Area and any zone changes or existing zone districts within adjacent counties will not be considered to be a substantial change in circumstance..

The calculation of full buildout (infill) is now an explicit formula. The staff report used this formula to report that the percent of buildout of the RL2 designation is 38%, far from being over the 60% threshold. (Staff Report and Recommendation).

The applicants admit that “Sixty percent of full buildout potential has not been achieved” but go on to argue “however the strict calculations do not take into account the property owners’ willingness to sell or divide their parcels.” (Rezone Application Narrative). This argument is not relevant.

A lull in divisions in the RL2 designation would not create an inconsistency with the language in the Subarea Plan. However the applicants are wrong in arguing there has been an unwillingness to develop properties in the RL2 designation. Development has kept pace with the rest of the West End, which itself has developed at a pace consistent with the projections of the West End Community Comprehensive Subarea Plan.

The application does not meet this example of significantly changed conditions.

The second example in the Comprehensive Plan of significantly changed conditions is “new technology and uses not originally considered in the text have been developed.”

The applicants offer that “since 2007 there has been a significant increase in internet connectivity and speed that has increased to the point where it is now feasible for many to work from home...”

It is true that internet speeds have increased but working from home and using the internet is not a new circumstance since the Subarea Plan was adopted; it was considered in the creation of the plan. It is not new technology. All designations/zones allow for working from home. One could as easily work from home on a property zoned 5, 10 or 20 acres as from a property zoned 2 acres.

The application does not meet this example of significantly changed conditions either.

Criterion c. The proposed text and/or map amendment is not consistent with the overall intent of the goals, maps and land use element of the Comprehensive Plan.

The proposed amendment is not consistent with the Subarea Plan in many respects.

1) The RL2 designation should not be expanded: “Existing areas of more intense rural residential development (2 acre lots)should not be expanded.” (General Goal 7).

2) The RL2 designation is concentrated in the area of more intense development near the Community Commercial and Neighborhood Commercial designations where the fire station is located as well as a telecom facility that supports digital

subscriber lines. The applicants are proposing a RL2 designation for a parcel that would make it the RL2 property farthest away from this area of services.

3) The expansion of the RL2 designation conflicts with the general vision of the West End Community Comprehensive Subarea Plan. Unnecessary expansion of areas of smaller lots (RL2 or RL5) at the expense of Forest Land 20 contradicts the vision and mission of the plan:

West Skamania County will continue to be a predominately rural environment with large open tracts of field and forest lands with residential and limited small scale commercial development. Water quality and quantity will be maintained or improved, and wildlife will continue to abound. It will be a place where its residents can find refuge from the bustle and clamor of the urban and suburban areas of Clark County, Washington and Portland, Oregon. - Vision Statement

To promote conservancy by ensuring abundant natural spaces, preserving peace and quiet, protecting and maintaining air and water quality, and sustaining native flora and fauna. – Mission Statement

The application is not consistent with the intent, maps and goals of the Subarea Plan.

Criterion g. Potential ramifications of the proposed text and/or map amendment to Comprehensive Plan Elements and official controls.

Approval of this application will have many ramifications for the future of the Subarea plan, its elements and controls.

1) If approved, this application would set a precedent for spot zoning. The applicants are seeking approval for 6 acre lots which would have required a RL5 designation. Unable to meet the requirement for being contiguous with property currently designated RL5, they are proposing a work-around with a deed restriction. Because there is no RL5 designated property adjoining the area, this is in effect spot zoning RL5. The precedent would allow any other similarly situated owner to seek the benefit of a workaround in conflict with the actual map designation amendment process.

The West End Community Comprehensive Subarea Plan was designed not to stop growth but to make sure it was in the places and at the density the community selected to ensure the area continued to be predominately rural. Approving this application allows individuals to circumvent that process.

2) If approved, this application would set a precedent for ignoring the requirement to prove a significant change in conditions. The current RL2 designation is only at

38% buildout according to the staff report. The RL5 designation, which is what the applicants are really seeking with their workaroud, is likewise below the 60% threshold indicating a significant change in conditions. None of the map designations in the West End Subarea are near the 60% threshold. Instead, future applicants could argue, as do the applicants here that the threshold doesn't matter, it is the number of sales that matter in determining the status of the area regarding density.

3) If approved, this application would set a precedent for a number of subsequent individual rezone requests, including the likelihood of land speculation and a disregard for the community vision. Owners or buyers of property neighboring this newly created RL2 parcel could take advantage of the situation, as well as owners or buyers of other large parcels abutting RL2 in the West End.

Between the years from 1990 to 2001 over 1200 acres in the West End were rezoned with no end in sight, prompting a moratorium and the development of the Subarea Plan. The West End Community Comprehensive Subarea Plan was developed "to provide for orderly planned growth that protects the rural character of the West End Community." There is plenty of room for growth in all the area designations of the plan without unleashing a repeat of the problem that the plan was crafted to address: numerous requests for rezones on a piecemeal basis.

4) If approved, this application would set a precedent for the Planning Division and future applicants to ignore the map designations and zoning by relying on covenants and restrictions in conflict with and bypassing the actual map designations and zoning. This is the proverbial "can of worms." This could be a major precedent for undoing the organized and systematic growth envisioned in the West End Community Comprehensive Subarea Plan.

5) Approval of this application could be the start of obfuscating the effective zoning from view. If the County can effect zoning with deed restrictions instead of the proper map designations and appropriate zoning, there would be less visibility for the public than the zoning and map designations provide. Interested citizens would be required to search deeds. This would contravene the general goal: "to provide opportunities for citizen participation in making governmental decisions regarding land development," as well as the Land Use Element General Policy: "Opportunities shall be provided for citizen involvement and input on issues in advance of making land use decisions." Citizen involvement is difficult when the effective zoning is hidden in deed restrictions.

6) If approved, this application would set a precedent of disregarding the land use element guideline that states: "Land use patterns should follow along roads, rivers, township lines, range lines, section lines or quarter section lines rather than individual parcel lines to provide for uniform regular boundaries between land use designations." This application follows an individual parcel boundary, and makes

the vast majority of that boundary an artificial division with the surrounding designation of FL 20. Only a minor portion of the total property line abuts the RL 2 map designation, while the entirety of the parcel juts into the FL 20 designation.

The applicants argue that while “the purpose of the FL 20 designation is to provide land for present and future non-industrial forestry operations and to provide buffers between Commercial Resource Lands and Rural Lands designations,” re-designating the subject parcel to RL 2 will not impact this. But changing the designation will begin the process of breaking up the FL 20 buffer. The FL 20 designation is intended to cover larger swaths of land and provide a larger area of buffer. Placing a high-density designation within the existing area neither promotes forestry nor maintains the integrity of the buffer.

The applicants propose 6 acre lots with 5 of the acres reserved for timber production. Nothing requires future owners of the lots to maintain their property in timber. It would be their choice to utilize a timber deferment or do something else with their property.

7) If approved, the application will reduce the amount of available water remaining for the West End according to the WIRA 28 water allocation and the water reservation with the State Department of Ecology that took effect in 2009. There is a hard cap on the number of wells that can be developed. The current West End Community Comprehensive Subarea Plan designations provide room for buildout that is at the limit of that cap. There isn't room to add to the number of potential lots.

The applicants' property currently can be developed into 5 lots of 20 acres. The proposal is for 17 lots. The proposed zoning would allow 52 lots. The result of this rezone will be 12 additional wells, (potentially 47 additional wells if subsequently divided into 2 acre lots). These are numbers that eventually will not be available in the West End to owners of undeveloped properties who nevertheless have the right to develop their properties under the existing zoning.

Conclusion

There are a number of complications with this application. Many have been noted above. There are a few others that should be considered.

The applicants and the Planning Division know there should not be an expansion of the RL2 designation and the desired designation is actually RL5. But the subject property doesn't abut RL5; it abuts RL2. They propose a deed restriction to solve this dilemma. The solution is ill considered and problematic on many fronts.

Joe Kear

Take a look at Land Use Element General Policy 8: "All land uses in the West End Community shall be classified with a land use designation and shown on the comprehensive Subarea Plan map (figure 3-1) and all implementing ordinances shall be in conformance with such map and Plan policies."

It would seem that a County zoning ordinance imposing deed restrictions on the proposed lot divisions in the subject property (making them effectively zoned 5 acre instead of 2) would not be in conformance with the map and Plan policies.

Whether a deed restriction would last is also a question. Could it be challenged by future owners? Would future County officials lift it or choose to just not enforce it?

The applicants rest their case on the argument that lots are not being developed in the existing RL2 designation. This is similar to the argument put forward in the matter of CMP-16-02/REZ-16-03, where the applicants offered the argument that there were low numbers of sales in the RL5 designation. In that matter the Hearing Examiner offered a solution not requiring amendment of the Comprehensive Plan. Interested parties could purchase larger parcels within the RL 5 zone and subdivide. The lead applicant in that matter did exactly that and is in the process of developing 5 acre lots in the West End.

The question before the Hearing Examiner is whether to allow an expansion of the RL2 designation. The West End Community Comprehensive Subarea Plan was crafted with the intent of not allowing future expansion of a 2 acre designation and the language supports this conclusion.

The recommendation should be that the applicants' request for a comprehensive plan amendment and accompanying rezone be denied.

Sincerely,



Joe Kear

CHAPTER 6: APPENDICES

Appendix Item 1:

West End Community Meetings Attendance for Comprehensive Subarea Planning November 2001 through July 2004

The Skamania County Planning Staff would like to extend their thanks to the following people who attended the West End Community Meetings and volunteered their time and assistance in making the Subarea Plan possible:

A

Beverly Alford
Mike Adams
Orchard Agency
Tom Aspitarte
Linda Anderson
Victor Anderson

B

Kathy Barnes
Brad Barnes
Steven Baunach
Rick Balogh
Sherrill Balogh
Don Bryden
Gigi Bryden
Bob Brown
Jon Brobst
Gary Burnett
David Berry
Steven Berry
Ramona Bennett
Keith Brown
Bill Benson
Shirley Benson
Dean Burk
Gary Burnett
Kathy Burnett
Ken Brundidge
Carolyn Brundidge
Steve Bye
Laura Bye
Le Roy Burns
Robert Burns

Christina Brittain
Larry Baldwin
Helen Baldwin
Laura Barton
Colonel Barton
Craig Burnett
Mark Bowman
Madeleine Bowman
Dennis Brown
Priscilla Brown
Matt Bancroft
Peggy Bancroft
Debbie Buchanan
Josh Bard

C

Judy Craine
Patrick Corrby
Silvia Calvo
Wilfred Compher
Kathy Chritz
Jeff Chritz
Kevin Cornell
Chris Cornell
Jerry Cates
Lyle Chaffee
Wilma Chaffee
Warren Chandler
Janett Chandler
Dave Czech
Rhonda Cartan
Fred Cartan
Kathy Clark
Peter Clark

Chris Clark

D

Pat Dolan
Darlene Dolan
Bert Dolan
John Dalen
Laurie Dalen
Wayne Dalen

E

Harvey Erickson
Larry M. Erickson
Eric Erickson
Victor Erickson
Brett Eakins
Kyle Eakins
Stephanie Eakins
Leo Erickson
Kim Erion
Jim Erion
John Ensley
Sharon Ensley
Craig Elliott

F

Chris Fuller
Marcus Fuller
Leo Finck
Bill Fosburg
Therone Faris
Chris Frick
Laura Frick

Shannon Frame

G

Dennis Gogolski
Linda Gogolski
Vena Gaines
George Gaines
Jim Gassaway
Dale Grams
John Granholm
J. Michael Garvison

H

Michael Hart
Marian Hays
Marshall Hays
Stephanie Huntington
Ole Helland
June Hays
Don Hays
Mark Hastings
Jack Harper
William Harness
Marie Harness
Alan Harness
Mary Harness
Debbie Harrell
Jerry Harteloo
Bud Harris
Philip Hammill
Les Humes
Ron Huff
Lorraine Huff
Jim Hutchison
Gene Hamilton
Andrea Houts
Nancy Hammrich
Woodrow Hall
Jim Hoffman
Teri Hosman
Maurice Halleck

I

J

Rhonda Johnson
Robert Jackson
Jay Jones
Barbara Jones
Sally Tucker Jones
Shane Jundt
Melissa Jundt
Jon Jordens

K

Rudie Klopman
Muriel Klopman
Steven Klopman
Jon Kolstad
Kathy Kolstad
Joe Kear
Leouard Krutson
Beth Keeth
John Kadow
Pete Kettler
Nancy Kettler
Ken Klaas

L

Pam Lyon
Troy Lester
Dave Lester
Ted Lester
Todd Lester
John Leasure
Liz LaRue
Teresa Lundeen
Jeff Lagerquist
Anna Lehman
Gene Lehman
Jim Lawson
Sandi Lawson
Phil Long
Pam Long

M

Daryl Madden
Karen Mabry
Luther Mabry
Kaye Masco

Eric McCuan
Lou Morisette
Richard Morisette
Shelby Morisette
Fred Morgan
Harlan McIntosh
Flora McIntosh
Gary Morris
Orissa McGlothin
Julie Moon
Sierra Moon

N

Cliff Nutting
Lori Nutting
Wil Niosi
Sharron Nelson
Karl Nense

O

P

Brian Pimm
Kathy Pimm
Rob Pabst
Richard Potter
Stephania Potter
Randy Polland
Rick Pfeifer
Howard Pelky
Lynn Pelky
Linda Peters
J.W. Peters
Janie Perman
Todd Perman
Mitch Patton
Bruce Pfaender
Irene Pfaender
Dean Pfaender
Paul Pearce

Q

Dave Querry
Donnarae Querry

R

Mary Robbins
 Teresa Robins
 Jim Robson
 Archie Rodgers
 Anita Rodgers
 Jay Richards
 Norita Richards
 Mike Rieinhart
 Roxanne Renton

S

Cyndi Soliz-Smith
 Paul Smith
 Daryel Schorr
 David Sanchez
 Al Seaman
 Jim Stein
 Deb Stein
 Kathy Sheehan
 Bill Sowles
 Izetta Sowles
 Susan Stauffer
 Leo Snyder
 Donna Snyder
 Mary Sauter
 Richard Sauter
 Lynnette Short
 Bob Seafini
 William Smith
 Steven Schell
 Thelma Speights
 Henry Stephens
 Robert Sutton
 Nancy Sutton
 JoAnne Skimas
 John Skimas
 Beverly Schwartz
 Honna Sheffield

T

Bud Thorp
 Gary Talboy
 Elya Talboy
 Gary Taylor

J. Taska
 Georgia Taska

U**V**

Allen Vraspir
 John Vraspir
 Bernette Vraspir
 Rodger VanHoy
 Jan VanHoy
 Jeremy Vandaam

W

Dorothy Wear
 Denver Wear
 Dan Wear
 Lawrence Whitmire
 Jeff Wallua
 Larry Whitney
 Ed Wiemken
 Jeff Wiemken
 Kathy Walker
 Josie Weltman
 Tammy Weissenfluh
 David Williams
 Jeff Williams
 Vera Winton
 Darrel Wilhoit
 Amy Weissfeld

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