

Rocky Robbins

From: Heinrich Burkho <hcburkho@hotmail.com>
Sent: Thursday, December 27, 2018 6:05 AM
To: Rocky Robbins
Cc: Perry Huston
Subject: Comments Regarding Proposed Revision of Okanogan County Comprehensive Plan

Hi Rocky,

As you know, I learned from Anne Fox, the President of the Pine Forest Owners Association, that the County was revising its Comprehensive Plan with the goal of having the revision in place during 2019 and wanted comments on the first draft by January 4, 2019. I am traveling out-of-state and must provide my comments via email. I apologize for this informality and my failure to provide copies of the References. Fortunately, Perry already has copies of those documents. Based on my personal experience, **I am concerned that the presently proposed revision takes a step back from the progress that was made by the 2014 Plan and misses an opportunity to join the rest of the State in fully complying with RCW 36.70A, the so-called "Growth Management Act of 1990".**

A Summary of My Land Development Experience in Okanogan County

To help you understand my perspective, I want to start by summarizing my experience.

In December of 1995, Jack Barron, the developer of the Twin Lakes and Pine Forest Subdivisions, as well as Sun Mountain Lodge, died, and shortly thereafter, his estate contacted me with a proposal that I buy the two 40-acre parcels located south of Pine Forest and east of my home in Pine Forest. Jack had planned to develop that land as Pine Forest Area No. 2, and with that in mind, he had platted a "gap" in the greenbelt surrounding Pine Forest Area No. 1 that was the entire width of the westernmost of the two 40-acre parcels. That greenbelt "gap" permitted direct access to the 80 acres from what is now Yellow Leaf Road in the Pine Forest Subdivision.

At that time (early 1986), those 80 acres were zoned "5-acre minimum", just like the "base" zoning of the immediately adjacent Pine Forest Subdivision, allowing me to develop the land by "short plat", 20 acres at a time. However, by some unknown process and without notice to me, the 80 acres were rezoned to "20-acre minimum" before I could initiate development following closure of the sale in 1986. That rezone cut off my option to develop the land by "short plat" and made an **exception** to the "20-acre minimum" zoning, a "planned unit development" (PUD), the only viable development option.

In 1990, the Washington Legislature passed RCW 36.70A, the so-called "Growth Management Act of 1990", **The primary focus of that act is the preservation of "open space" and the prevention of "urban sprawl" by encouraging new development to proceed continuously outward from existing development. Thus, conformance with that act would have required the rezone of my 80 acres back to "5-acre minimum", the same as the "base" zoning of the immediately adjacent Pine Forest Subdivision.** However, the Act allowed counties with populations less than 50,000 to "opt-out", and the Okanogan County Commissioners at the time made a conscious decision to take that option and keep my 80 acres zoned "20-acre minimum". Thus, in 1990, Okanogan County chose to manage its growth in **non-conformance** with the rest of the State.

In 1992, I filed Ground Water Application G4-31284 and applied to develop that PUD. However, PUDs in Okanogan County require both primary and secondary road accesses, something I could not provide at that time. **Thus, the County's spurious rezone and its decision not to follow RCW 36.70A, the "Growth Management Act of 1990" made any development of that 80-acres impossible!**

However, in 1993, Ole Bardahl died. Ole owned the 100 acres directly east of the 80 acres (and the 2.5-acre parcel containing Patty's Pond). That 100 acres included land on both sides of Okanogan County Road No. 1097 (Elbow Coulee Road). Because Ole's land gave me direct access to the county road, I purchased it from his estate in 1994. At that point, I had the two access points necessary for a PUD.

In early 1995, I met with Darlene Frye of Ecology, and she expressed a willingness to approve an appropriation of "bedrock" water if I could demonstrate that a sufficient quantity existed. However, she qualified the final permit decision with the words "as time and staff permitted". That led me to proceed with preparations for a "primary access road" from Elbow Coulee Road through the 100-acre parcel into the 80-acre parcel. In 2003, I constructed that "primary access road" to "Okanogan County Subdivision Standards". The County approved the constructed road, subject to later proper finishing after all the infrastructure work of my PUD had been completed. (Actually, the Public Works Department liked my road design and "open bid" construction contract so well that it asked me to apply for the job of "County Engineer" when Joe Nott retired, even though I was not a civil engineer.)

Now, having the required physical access, I went back to Ecology with a request that my original water right application (G4-31284) and additional applications I had filed in 2003 be processed. Ecology now took the position that it had insufficient staff and funding to process my applications and proposed that I enter into a "Cost Reimbursement Agreement" to allow Ecology to hire a consultant to do work that Ecology would ordinarily do. The estimated cost was \$15,000 to \$18,000. Given the reasonableness of the cost, I agreed to the contract in early 2004, and Ecology (Mark Schuppe and Anna Hoselton) hired Pacific Groundwater Group, without any participation by me.

Because my water right application was "first in line", the work immediately focused on whether: 1) the boundaries of the "Thompson Creek Basin" were properly located and 2) the near-surface aquifer under my 80 acres drained to the "Thompson Creek Basin" or what we now call the "Elbow Coulee Terminal Basin". **From the very start of the work, Ecology recognized that the boundary between the two basins was actually somewhere on the north side of the long, continuous "wetland" that began on my 100 acres and ended at an old beaver dam on the adjacent property to the south, just as it is shown on the WDNR Resource Map in Reference 1.** When I discussed why the boundary was incorrectly located with Ecology's Phil Crane, he stated that he had used a topographic map with 80-ft contours to locate it and thus could not "see" the drainage of my land to the south, **away from** the "Thompson Creek Basin" and **into** the "Elbow Coulee Terminal Basin". Clearly, Phil had not visited the site before he first located the Thompson Creek Basin boundaries.

After spending somewhat more than the estimated cost, Pacific Groundwater proposed a second phase of work to Ecology that was focused on precisely locating the "divide" between the two basins. I estimated that this follow-on work would cost about \$200,000 and realized that it was likely cheaper to just assume that the near-surface groundwater under my 80 acres drained to the "Thompson Creek Basin" and obtain my water for development of that original 80 acres from exempt wells drilled into the "bedrock" aquifers rather than non-exempt wells drilled into the near-surface aquifer. Thus, I stopped Pacific Groundwater's work as quickly as I could.

By now, the Campbell and Gwinn decision was available, and I realized that I might need a "bedrock" well for each housing unit. Thus, in order to proceed with development, the 80 acres needed to be zoned "5-acre minimum" in conformance with RCW 36.70A, just like the base zoning of the immediately adjacent Pine Forest Subdivision. Once that conforming zoning was in place, I could subdivide using "short plats", just as I had originally planned at the time of purchase in 1986.

By December of 2005, I had successfully subdivided and reclassified the original 80 acres into four, 20-acre parcels of "designated forest land" and the additional 100 acres into five, 20-acre parcels of "open-space timber". The "subdivisions" were done to prevent the possibility that future spurious zoning changes would make the "base" zoning **even larger than** "20-acre minimum", and the "reclassifications" were done to minimize property taxes while I worked to develop the land.

Finally, in 2008, Okanogan County began the process of revising its Comprehensive Plan and Zoning Ordinance, and I participated in that effort from the outset. In 2012, while reviewing Planning-Department-generated documents, I **suddenly discovered that all of my 180 acres were now classified as "designated forest land", in what appeared to be an attempt by someone to make my land seem like an extension of the adjoining National Forest to the south and thus, justify making its "base" zoning different from the immediately-adjacent Pine Forest Subdivision to the north.** As described in Reference 2, because my original "reclassifications" had been so well-documented, including the use of Certified Mail, I was easily able to have those errors corrected. **Like the rezone from "5-acre minimum" to "20-acre minimum" sometime around 1986, this reclassification from "open-space timber" to "designated forest land" in 2012 was done by some unknown process, without any notice to me or participation by me!**

In 2014, the County asked for comments on the May 9, 2014 Draft of the Comprehensive Plan. As shown in Reference 3, that draft contained the "Okanogan County Interim-Zone Map of May 1, 2014". That map, which the Planning Department proposed that the Commissioners approve, showed about 70% of the existing Pine Forest Subdivision in the "5-acre minimum" classification and the remaining 30% in the "20-acre minimum" classification, **together with the nine, 20-acre parcels of my 180 acres.** I responded as follows:

"There is NO set of fact-based decision criteria that can be logically applied to justify such a zoning arrangement! Furthermore, when the zoning configuration shows a part of the Pine Forest Subdivision in the same classification as my 80 acres, it implicitly acknowledges the absence of any underlying set of facts and logic that differentiates my land from that of the Subdivision. Clearly, the "base" zoning for my land must be made the same as the "base" zoning for the Subdivision at a 5-acre minimum lot size. FROM THE FOREGOING, WE KNOW, WITHOUT DOING ANY OTHER ANALYSIS, THAT THE PRESENT ZONING ARRANGEMENT IS ARBITRARY AND DISCRIMINATES AGAINST ME IN A WAY THAT CAUSES SIGNIFICANT FINANCIAL DAMAGE. CLEARLY, LAND DEVELOPABLE TO A 5-ACRE MINIMUM LOT SIZE IS SIGNIFICANTLY MORE VALUABLE THAN LAND DEVELOPABLE TO A 20-ACRE MINIMUM LOT SIZE." (emphasis from the original reference)

The above argument was obviously compelling, and when the Okanogan County Commissioners approved the new Comprehensive Plan in 2014 and the new Zoning Ordinance in July of 2016, my 180 acres were all zoned "5-acre minimum" in conformance with RCW 36.70A, the "Growth Management Act of 1990". **Unfortunately, the County did not formally "opt-in" and join the rest of the State in following RCW 36.70A, and thus, today, it is free to reverse that proper rezone of my land at any time, forcing me to incur the time and costs of challenging it in Court.**

My Comments

Clearly, my development odyssey was directly caused by Okanogan County's decision not to follow RCW 36.70A and thus manage its growth in non-conformance with the rest of the State. Thus, I believe the two draft alternatives that the County is proposing to the 2014 version of the Comprehensive Plan will certainly cause other County land developers in the future to repeat my experience. Thus, I recommend that the County replace those two draft alternatives by a single alternative that I would describe as "**Full Compliance with RCW 36.70A**". RCW 36.70A is a really good law that obviously protects the environment much better than RCW 36.70. The County should not miss this opportunity to join the rest of the State in following it.

In addition, following RCW 36.70A would encourage land development in Okanogan County to proceed in compliance with the Zoning Ordinance by "short plat" and "long plat" rather than as **exception** to that ordinance by "planned unit development". That would establish a consistency between the County's management of land development and Ecology's management of the State's water resources in conformance with recent Court decisions, and it would significantly constrain the ability of individuals and small minorities to obstruct the County's growth. At present, land development obstruction in Okanogan County is "out-of-control".

References

1. WDNR Resource Map for Sections 20 and 21 of Township 34N, Range 21E, W.M.
2. Letter, H. C. Burkholder to Scott Furman, June 7, 2012
3. Letter, H. C. Burkholder to Okanogan County Board of Commissioners, July 18, 2014

Harry Burkholder