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CASE REPORT

GROWTH MANAGEMENT ACT – COMPREHENSIVE PLANNING AND DESIGNATION OF PROPERTY UNDER GMA – PUBLIC PARTICIPATION -- INDIVIDUAL NOTICE TO PROPERTY OWNER IS NOT REQUIRED. No statute, regulation, or constitutional principle requires a city or county to individually notify non-resident landowners of the GMA process to designate natural resource lands. Holbrook, Inc. v. Clark County, 2002 Wash. App. LEXIS 1493, 49 P.3d 142 (2002).

I. Facts. The plaintiff, Holbrook, Inc., has its principal place of business in Olympia. In 1993 it purchased forested land in Clark County. The plaintiff intended to log the land and subdivide it into five-acre lots for development under the zoning at that time. When the plaintiff purchased the property, the County was in the process of developing its comprehensive plan, including designation of natural resource lands. The County had proposed that the property be designated rural or forest resource land. The plan was area-wide rather than site-specific. After the County issued its proposed comprehensive plan, it held many public meetings, including three specifically dedicated to natural resource lands designations. As a result, some property owners successfully removed their properties from resource lands designation. The County adopted a final comprehensive plan, designating plaintiff's property as forest resource land, which allows one residential lot per 40 acres.

The County used mailings, newsletters, news releases, a telephone hotline, speaker's bureau, public workshops, fairs and open houses, print and television advertisements and legal notices in newspapers to publicize the comprehensive plan process. Mailed notices and newsletters were sent to all Clark County residents. The County did not attempt to notify Holbrook individually even though it had Holbrook's Olympia address from assessor's records.

The plaintiff tried to persuade the County to amend its comprehensive plan as to its property's designation, but the Board denied its request. The plaintiff then sued the County for declaratory relief and damages under 42 U.S.C. §1983, claiming that the County violated its statutory and constitutional rights to due process by down-zoning its property without adequate notice.

II. Applicable Law and Analysis. The Court of Appeals based its decision on the requirements of the Growth Management Act (GMA) and the due process and equal protection provisions of the state and federal constitutions. GMA encourages public participation with a goal of broadly disseminating proposals and alternatives, giving opportunity for written

comments, holding public meetings after effective notice, providing for open discussion, communication programs, information services and considering and responding to public comments. The Act's public notice provisions require notice procedures that are reasonably calculated to provide notice to property owners, including posting the property for site-specific proposals and notifying groups with a known interest in a particular proposal being considered. The methods of reasonable notice are not expressly listed or required by the statute. As the court noted, a requirement of personal notice to individual property owners is "[c]onspicuous by its absence." The court rejected the plaintiff's argument that WAC 365-190-040(2)(a)(i) ("[t]he public participation program should include early and timely public notice of pending designations and regulations") requires individual notice to property owners. No statute or regulation gives the plaintiff a right to individual notice of the designation of land under GMA.

The plaintiff also argued that the state constitution privileges and immunities clause and the federal constitution due process clause require individual notice. The court determined that the adoption of a comprehensive plan is a legislative act, and that the legislative process provides all the process that is due. The parties in this case stipulated that the County's designation was premised on an area-wide analysis and that the plaintiff's land was not specifically targeted. Because the designation was a legislative, not a quasi-judicial, act, constitutional due process did not require the County to give individual notice to the plaintiff.

The Court also held that the County did not violate the equal protection clauses of the state and federal constitutions, which require that legislation must apply alike to all persons within a class and a reasonable ground must exist for making a distinction between those within and those without the class. The relevant class in this case was all County residents, not just landowners. It was rational to distinguish residents living in the County planning under GMA from those who reside in other counties.

III. Conclusion. Cities and counties are not required by any state statute or constitutional requirement to give individual notice to property owners when considering area-wide amendments to a comprehensive plan and to other legislative actions under GMA.