

GENDLER & MANN, LLP

ATTORNEYS-AT-LAW

Michael W. Gendler
David S. Mann
Melissa S. Arias

1424 FOURTH AVENUE, SUITE 1015
SEATTLE WA 98101

(206) 621-8868
Fax (206) 621-0512
gendler@gendlermann.com
www.gendlermann.com

*Also admitted in Oregon

March 8, 2004

Mason County Board of County Commissioners
Shelton, WA

Re: *Rezone Request Number 02-13 A*

Dear County Commissioners:

We represent Jim Christen, who owns property and resides in Tahuya. We write to request that the Commissioners not approve Manke Lumber Company=s request to rezone 3,430 acres from RR20 to RR5.

LARGE LOT SUBDIVISION NOT VALID

The only justification stated to support the request in the Planning Advisory Commission report is the belief that this acreage was platted in 1990. Because the large lot subdivision on which the rezone request is premised is not valid, the rezone cannot be approved on this basis. Accordingly, the Commissioners should direct Staff to investigate the status of the large lot subdivision for the reasons explained in this letter, and should not act on the rezone request until the status of the subdivision is determined in light of our questions regarding its validity.

The rezone request cites a purported large lot subdivision of 3,430 acres into five acres parcels by Manke=s predecessor, Kirk, in 1990. There are two irregularities regarding this large lot subdivision. First, some of the parcels are less than five acres. These parcels appear to include five acres, but the land necessary to make up the five acres includes tidelands. This violates Mason County Code Section 16.08.310, which unambiguously provides (and has provided since before 1990) that tidelands and shorelands shall not be considered land nor considered part of the dimensional requirements for minimum lot size. (emphasis added) Accordingly, the large lot subdivision contains parcels which do not meet County or state law requirements for minimum lot size.

Kirk did not obtain county approval for the large lot subdivision. Therefore this is not a matter of anything having been reviewed or approved at that time. State law is clear that a subdivision which includes any lots less than five acres in size was not exempt from the requirements for obtaining subdivision approval. RCW 58.17.040(2) exempts from the subdivision statute:

Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions.

(emphasis added). Here, not each of the lots are five acres or larger. Moreover, RCW 58.17.040(2) makes clear that Mason County had full authority to exclude submerged lands from the calculation of lot size in its subdivision ordinance. This statute provided for county subdivision ordinances which require plat approval of large lot subdivisions even if they could have been exempt under the statute. By excluding submerged lands, Mason County did just that. Kirk's large lot subdivision, on which Manke Lumber now relies, did not meet the minimum lot size requirements of Mason County Code Section 16.08.310 and therefore was not eligible for recording without subdivision review and approval.

Second, the large lot subdivision appears to have a lot size discrepancy. On page 2 of the plat document, the Notes state that each of the 32 lots in _____ is 5.33 acres. There are 160 acres in a quarter section. However, 32 lots of 5.33 acres is 170.56 acres. Obviously there cannot be 32 lots of 5.33 acres in a quarter section. The purported recording of such a large lot subdivision therefore appears to contain a fundamental error.

THE REZONE APPLICATION DOES NOT MEET THE REZONE CRITERIA

We recognize that the Staff and Planning Commission both have recommended approval of this rezone. However, the Planning Commission Report makes clear that the recommendation is based entirely on the assumption that the land already has been platted validly into five acre parcels, which as shown above is not accurate. When it is taken into account that the large lot subdivision is not valid, it can be seen that the rezone does not meet the rezone criteria. Of course, the applicant has the burden to demonstrate that a rezone application meets the governing criteria.¹

For example, the rezone is not consistent with the Comprehensive Plan (Criterion 2). The Plan designates this area as RR20, with 20 acre lot minimums. Report, p. 3. The Report suggests that the 2000 Plan amendments overlooked the 1990 subdivision, and that this might have been a county error. Report, pp. 3, 5. But as shown above it was the landowner who made the error, by including lots less than five acres and failing to seek and obtain county approval as required by MCC 16.08.310. The assumption in the Report

¹ This section will show that the application does not meet six of the eight rezone criteria cited in the Report. We do not address Criteria 1 and 6, primarily because we have not had sufficient time to investigate to confirm whether these criteria were met. Also, the Report does not state whether there has been SEPA review for this proposal. We have attempted to contact the County to ascertain this but have not yet been able to do so. If there was no SEPA review, that would constitute a further reason to not approve the application.

growth in rural areas. Thus, this request is contrary to both of the reasons set forth in Criterion 7. The criterion uses the term or, precluding a rezone when either criterion is not met.

Finally, Criterion 8 provides for consideration of whether a clerical or similar error has been made. The error here was by the original subdivider, who recorded a large lot subdivision which was in fact not exempt from County subdivision review. Criterion 8 is not met.

CONCLUSION

This rezone application is based on the erroneous premise that a lawful large lot subdivision was recorded for these lands in 1990. Once that error is recognized, it is clear that the rezone application fails to meet at least six of the eight rezone criteria (Nos. 2, 3, 4, 5, 7, and 8). The Board should not approve this request until there has been a review sufficient to verify the status of the 1990 subdivision. If as we contend it was not exempt and therefore is not valid, the rezone application fails to meet at least six of the eight criteria and would then have to be denied.

Very truly yours,

GENDLER & MANN, LLP

Michael W. Gendler

MWG
cc: Jim Christen



MANKE LUMBER COMPANY, INC.

826 Fairmount Avenue
Shelton, Washington 98584

Tacoma (253) 572-6252
Seattle (206) 624-2090
Shelton (360) 426-5536

RECEIVED
MAR 15 2004

March 12, 2004

MASON CO. PLANNING DEPT.

Mason County Commissioners
411 North 5th Street
Shelton, Wa 98584

RE: Rezone Request Number 02-13A

Dear Commissioners:

Manke Lumber Company hereby requests the retraction of Rezone Request Number 02-13A. This portion of Rezone Request Number 02-13 is limited to the Large Lot Subdivision of the Tahuya Estates recorded under Auditors File Numbers 518226 and 536820.

Manke Lumber continues to assert the validity of said Large Lot Subdivision and its creation of five acre parcels and larger.

Sincerely,

Harry Rydell, PLS
Manke Lumber Company, Inc.

HR:kp

LUMBER • LOGS • LAND

526393

M C T I Mason County Title Insurance Company

Recd 482 F# 906

MASON COUNTY TITLE INSURANCE CO.
RECORDED

MAY 14 1991

1208
482-906-911

After Recording Mail To:

MANKE LUMBER CO.
1717 Marine View Drive
Tacoma, WA 98422

MCTI FILE NO. 61243

STATUTORY WARRANTY DEED
(CORPORATE FORM)

THE GRANTOR G. R. KIRK CO., a Washington corporation

for and in consideration of Ten Dollars (\$10.00) and other valuable consideration

in hand paid, conveys and warrants to MANKE LUMBER CO., a Washington corporation

the following described real estate, situated in the County of Mason, State of Washington

IT IS UNDERSTOOD AND AGREED THAT in accordance with spacing requirements and procedures as agreed to between the parties herein, that Grantor shall have three years from May 10, 1991 in which to cut Christmas trees located on the within described property. After May 10, 1994 Grantor shall have the first right of refusal on future cutting of Christmas trees on the property.

SEE "EXHIBIT A" ATTACHED HERETO, INCORPORATED HEREIN AND MADE A PART HEREOF

DATED: MAY 6, 1991

G. R. Kirk Co.:

By: Morris L. Kirk
Ann Kirk Davis

AFFIDAVIT
No. 1208B
WIN REAL ESTATE
EXCISE TAX
PAID 35,840.00

MAY 14 '91 MB

DORENE RAE
Treas. Mason County

STATE OF WASHINGTON

COUNTY OF Franklin

On this 10 day of May, 1991 before me the undersigned Notary Public, personally appeared Morris L. Kirk & Ann Kirk Davis (proven to be on the basis of satisfactory evidence or personally known to me) to be the Vice President and Secretary of G. R. Kirk Co. the corporation who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath state they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[Signature]
Notary Public in and for the State
of Washington residing at Franklin
My appointment expires 9/2/91



Parcel	32210 00 00000	Taxpayer	MANKE LUMBER COMPANY
Tax Cd	0257 1 403 T P3 E8 L H	Owner	MANKE LUMBER COMPANY
Use Cd	8800 DESIGNATED	Contract	
Land AV	72,960	Tax Yr	2005
Bldg AV		Loan	
		Total AV	72,960

Instrument M/D	5/06 Yr 1991	Chg ID	CKH
Affidavit Date	5/15/1991	Chg Date	8/24/1992
Affidavit #	12088		
Instrument Type	WD	WARRANTY DEED	
Auditor's File #	0000 0526393	Vol/Page	/
Previous Owner	G R KIRK CO		
Comment	MANKE LUMBER CO		

Probate #

Gross Sale Amt		
P/P Sale Amt		P/P Parcel
Net R/P Sale		
Multiple Sale?	Y	Incorporated Area?
Rejection Cd		
Reason / Comment	WITH OTHER PROPERTIES - TWN 22, RGE 3 W	

Cmd 7 for EOJ

Enter to Continue
Cmd 9 - Reselect Parcel