

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3
4 FUTUREWISE,

5
6 Petitioner,

CASE NO. 05-2-0012

7 v.

8 SKAGIT COUNTY,

**ORDER FINDING
COMPLIANCE
(SCHOOL DISTRICT
PROPERTY)**

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10 Respondent,

11 And

12 Mount Vernon School District 320, WJY Associates,
13 and City of Mount Vernon,

14
15 Intervenors.

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17 This matter comes to the Board on Skagit County's April 6, 2006 Statement of Actions to
18 Achieve Compliance. The Statement reports that Skagit County adopted a recorded
19 motion restoring the previous designation of agricultural resource land to the Mount Vernon
20 School District 320 Property (School District) and removing it from the Mount Vernon Urban
21 Growth Area (UGA). Later on April 10, 2006, the County adopted the action described
22 above with Ordinance 020060005. Updated Statement of Actions Taken to Achieve
23 Compliance May 12, 2006. No objection to a finding of compliance was filed by Petitioner
24 Futurewise or any of the Intervenors in this case.
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28 **I. SYNOPSIS OF DECISION**

29 The Board finds that the County has achieved compliance by restoring the School District
30 property's designation to agricultural resource land and by removing the School District
31 Property from the Mount Vernon UGA.
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1 **II. PERTINENT PROCEDURAL HISTORY**

2 On December 20, 2004, Skagit County approved its annual amendments by adopting
3 Ordinance No. 020050001. These annual amendments included approval of Proposal
4 PL03-0980 regarding changes to property owned by WJY, and Proposal PL03-0981,
5 regarding changes to property owned by the School District. Ordinance No. 020050001 de-
6 designated both these properties as AG-RLs and added them to the Mount Vernon UGA.
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9 On March 25, 2005, Futurewise filed a petition for review challenging the changes adopted
10 for the WJY and School District's properties.
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13 On April 5, 2005, the School District filed a motion to intervene on Issues 1 and 3. On
14 April 13, 2005, WJY filed a motion to intervene on Issues 1 and 3. Futurewise did not object
15 to the intervention of either party. On April 15, 2005, the Board allowed both these parties
16 to intervene on these issues. On April 18, 2005, WJY filed a motion to intervene on all three
17 issues raised in the petition. Futurewise did not object to this amended motion. On
18 April 21, 2005, the Board granted intervention to WJY on all three issues.
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21 On May 16, 2005, the City of Mount Vernon filed a motion to intervene. Petitioner did not
22 object to the City's intervention. The Board issued an order allowing the City to intervene
23 and requiring all parties to adhere to the prehearing order on May 31, 2005.
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25 On September 21, 2005, the Board issued a Final Decision and Order that found the
26 following:
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- 28 • Ordinance No. 020050001 complies with the County's comprehensive
29 plan and RCW 36.70A.170, RCW 36.70A.060, and RCW 36.70A.020(8)
30 in regard to the de-designation of the WJY property from AG-RL.
- 31 • Ordinance No. 020050001 does not comply with the Skagit County's
32 comprehensive plan policies, SCC 14.18.020(5)(d), RCW 36.70A.170,

1 and RCW 36.70A.020(2) and (8) in regard to de-designating the School
2 District property.

- 3 • Ordinance 020050001 expanding the Mount Vernon UGA boundaries
4 to include the WJY property does not comply with the County's
5 comprehensive plan policies for mapping changes for expanding UGA
6 boundaries, SCC 14.18.020(5)(b), RCW 36.70A.020(2), and RCW
7 36.70A.110.
- 8 • Ordinance 020050001 expanding the Mount Vernon UGA boundaries
9 to include the School District property does not comply with Skagit
10 County comprehensive plan policies and RCW 36.70A.060(4).

11 On February 17, 2006, the Board granted an extension of the compliance deadline for the
12 WJY property until September 18, 2006.

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14 On April 6, 2006, the County filed its Statement of Actions to Achieve Compliance. Skagit
15 County adopted Ordinance 020060005 that removed the Mount Vernon School District
16 Property from the Mount Vernon Urban Growth Area (UGA) and restored the previous
17 designation of agricultural resource land on April 10, 2006. On April 20, 2006, Skagit County
18 published the adoption of Ordinance 020060005. On May 12, 2006, the County filed its
19 Updated Statement to Achieve Compliance.
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22 On May 19, 2006, the Board held a telephonic compliance hearing. Mr. Don Anderson
23 represented the County, Mr. John Zilavy represented Futurewise, Mr. Kevin Rogerson
24 represented the City of Mount Vernon, and Mr. Thomas Moser represented WJY
25 Associates. All three Board members attended.
26

27 28 **III. BURDEN OF PROOF**

29 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
30 of time to adopt a legislative enactment to achieve compliance. RCW 36.70A.300(3)(b).
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32 After the period for compliance has expired, the board is required to hold a hearing to

1 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and
2 (2). For purposes of board review of the comprehensive plans and development regulations
3 adopted by local governments in response to a non-compliance finding, the presumption of
4 validity applies and the burden is on the challenger to establish that the new adoption is
5 clearly erroneous. RCW 36.70A.320(1),(2) and (3). If a finding of invalidity has been
6 entered, the burden is on the local jurisdiction to demonstrate that the ordinance or
7 resolution it has enacted in response to the finding of invalidity no longer substantially
8 interferes with the goals of the GMA. RCW 36.70A.320(4).

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11 In order to find the County's action clearly erroneous, the Board must be "left with the firm
12 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
13 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

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16 Within the framework of state goals and requirements, the boards must grant deference to
17 local governments in how they plan for growth:

18 In recognition of the broad range of discretion that may be exercised by counties and
19 cities in how they plan for growth, consistent with the requirements and goals of this
20 chapter, the legislature intends for the boards to grant deference to the counties and
21 cities in how they plan for growth, consistent with the requirements and goals of this
22 chapter. Local comprehensive plans and development regulations require counties
23 and cities to balance priorities and options for action in full consideration of local
24 circumstances. The legislature finds that while this chapter requires local planning to
25 take place within a framework of state goals and requirements, the ultimate burden
26 and responsibility for planning, harmonizing the planning goals of this chapter, and
27 implementing a county's or city's future rests with that community.

28 RCW 36.70A.3201 (in part).

29 In sum, the burden is on the Petitioner to overcome the presumption of validity and
30 demonstrate that any action taken by the County is clearly erroneous in light of the goals
31 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
32 Where not clearly erroneous and thus within the framework of state goals and requirements,
the planning choices of the local government must be granted deference.

1 IV. ISSUES PRESENTED

2 *Does the designation of the School District Property comply with Skagit County*
3 *comprehensive plan policies, SCC 14.18.020(5)(b), RCW 36.70A.020(2), and RCW*
4 *36.70A.110? (Conclusion of Law D, Compliance Order, September 21, 2005)*

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7 *Do the Mount Vernon UGA boundaries comply with the county’s comprehensive plan*
8 *policies and RCW 36.70.060(4)? (Conclusion of Law F, Compliance Order, September*
9 *21, 2005)*

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11 V. DISCUSSION OF THE ISSUES

12 *Does the designation of the School District Property comply with Skagit County*
13 *comprehensive plan policies, SCC 14.18.020(5)(b), RCW 36.70A.020(2), and RCW*
14 *36.70A.110?*

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16 The Board’s September 21, 2005 Final Decision and Order found the County’s de-
17 designation of the School District’s property as AG-RL was clearly erroneous because the
18 School District’s property still meets the County’s AG-RL designation criteria, and does not
19 fall within the County’s provisions for making a comprehensive plan amendment mapping
20 change. Ordinance 020060005 re-designates the School District property Agriculture –
21 Resource Lands consistent with its previous compliant designation. Ordinance 020060005
22 at 1. No party objects to this re-designation.
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25 Conclusion: Pursuant to RCW 36.70A.320 the County’s actions are considered valid upon
26 adoption. Further, the County’s action now complies with the County’s comprehensive plan
27 policies, SCC 14.18.020(5)(b), and with GMA provisions RCW 36.70A.020(2), and RCW
28 36.70A.110.
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30
31 *Do the Mount Vernon UGA boundaries comply with the county’s comprehensive plan*
32 *policies and RCW 36.70.060(4)?*

1 In its September 21, 2006, Final Decision and Order, the Board found that because the
2 School District property still met the County's criteria for agricultural resource land
3 designation, its de-designation did not comply with the GMA, and for that reason could not
4 be included in a UGA. Policy 4A-1.7 CP. Ordinance 020060005 redesignates this
5 property as agricultural resource land and removes it from the Mount Vernon UGA.
6 Ordinance 020060005 at 1. No party objects to this action.
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9 Conclusion: Ordinance 020060005 is presumed valid on adoption. Further, the removal of
10 the School District Property from the Mount Vernon UGA, and which is now re-designated
11 Agricultural Resource Land, complies with the county's comprehensive plan policies and
12 with RCW 36.70A.060(4).
13

14 **VI. FINDINGS OF FACT**

- 15
- 16 1. Skagit County is a county located west of the crest of the Cascade Mountains which is
 - 17 required to plan pursuant to RCW 36.70A.040.
 - 18 2. On April 10, 2006, the County adopted Ordinance 020060005.
 - 19 3. Ordinance 020060005 restores the previous designation of Agricultural Resource Land
 - 20 to the Mount Vernon School District Property.
 - 21 4. Ordinance 020060005 removes the Mount Vernon School District Property from the
 - 22 Mount Vernon Urban Growth Area (UGA).
 - 23 5. No party objects to the County actions taken by Ordinance 020060005.
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26 **VII. CONCLUSIONS OF LAW**

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- 28 A. The Board has jurisdiction over the parties and the subject matter of this compliance
 - 29 action.
 - 30 B. Ordinance 020060005, by re-designating the School District property to Agricultural
 - 31 Resource land complies with the County's comprehensive plan policies, SCC
 - 32 14.18.020(5)(b) and GMA provisions RCW 36.70A.020(2), and RCW 36.70A.110.

1 C. Ordinance 020060005, by removing the School District Property from the Mount Vernon
2 UGA, complies with the county's comprehensive plan policies and with RCW 36.70A.060(4).
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5 VIII. ORDER

6 The designation of the School District property as Agricultural Resource Land outside the
7 boundaries of an urban growth area COMPLIES with the Growth Management Act. The
8 portion of this case that relates to the School District Property is now CLOSED.
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10 Pursuant to RCW 36.70A.300 this is a final order of the Board.
11

12 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
13 of mailing of this Order to file a petition for reconsideration. The original and three
14 copies of a motion for reconsideration, together with any argument in support
15 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
16 original and three copies of the motion for reconsideration directly to the Board, with
17 a copy to all other parties of record. **Filing means actual receipt of the document at**
18 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
19 of a motion for reconsideration is not a prerequisite for filing a petition for judicial
20 review.

21 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
22 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
23 judicial review may be instituted by filing a petition in superior court according to the
24 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
25 Enforcement. The petition for judicial review of this Order shall be filed with the
26 appropriate court and served on the Board, the Office of the Attorney General, and all
27 parties within thirty days after service of the final order, as provided in RCW
28 34.05.542. Service on the Board may be accomplished in person or by mail, but
29 service on the Board means **actual receipt of the document at the Board office** within
30 thirty days after service of the final order. A petition for judicial review may not be
31 served on the Board by fax or by electronic mail.
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1 **Service. This Order was served on you the day it was deposited in the United States**
2 **mail. RCW 34.05.010(19)**

3 Entered this 27th day of June 2006.
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8 _____
9 Holly Gadbaw, Board Member

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11 Margery Hite, Board Member

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13 Gayle Rothrock, Board Member
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