

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 SKAGIT HILL RECYCLING, INC. AND SCOTT
3 WALDAL,

Case No. 09-2-0011

4 Petitioners,

ORDER ON MOTIONS

5
6 v.

7 SKAGIT COUNTY AND SKAGIT COUNTY
8 COMMISSIONERS,

9 Respondents.
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13 THIS Matter comes before the Board on three substantive motions from Skagit County and
14 Motions to Supplement the Record filed by both the County and Skagit Hill Recycling. The
15 Motions are as follows:

16 Skagit County Substantive Motions:¹

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- 18 • County's 1st Substantive Motion RE: Issue 1
 - 19 • County's 2nd Substantive Motion RE: Issue 2
 - 20 • County's 3rd Substantive Motion RE: Issue 3

21 Motions to Supplement the Record:

- 22
- 23 • County's 1st Motion to Supplement the Record².
 - 24 • County's 2nd Motion to Supplement the Record³
 - 25 • Skagit Hill Recycling's Motion to Supplement the Record⁴

26 The Board held a telephonic hearing allowing the parties to present oral argument on
27 September 3, 2009. Petitioners were represented by Brad Doll. Skagit County was
28 represented by Arne Denny. Board members Nina Carter, William Roehl and James
29 McNamara were present, with Ms. Carter presiding.
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32 ¹ All three of the County's Substantive Motions were filed concurrently on August 10, 2009.

² Filed August 10, 2009

³ Filed August 17, 2009

⁴ Filed August 17, 2009

1 **PRELIMINARY MATTERS**

2 With its two Motions to Supplement the Record, Skagit County seeks the addition of 20
3 exhibits.⁵ Skagit Hill Recycling, with its Motion to Supplement, seeks the addition of 51
4 exhibits.⁶ At the motions hearing, the County and Petitioner were given the opportunity to
5 present information addressing how the proposed exhibits would assist the Board.

6 Following their presentations, the Board denied all exhibits except:

- 7
- 8 • Skagit County’s Exhibit #11 - Lakewood City Ordinance
 - 9 • Petitioner’s Exhibit #32 - Chapter 4 from the Skagit County Comprehensive
10 Solid Waste Management Plan.

11 In addition, after further discussion amongst the parties, the Board determined that the
12 entire Skagit County Comprehensive Solid Waste Management Plan would be of assistance
13 to the Board and requested submittal of this document by Skagit County.⁷
14

15 **DISCUSSION**

16 It is undisputed that Petitioners operate a solid waste handling facility within Skagit County.
17 and such a facility is considered an essential public facility (EPF) by the County.⁸ However,
18 the Petitioners’ facility has operated, and currently operates, without a special use permit or
19 an unclassified use permit.⁹ Therefore, in February 2009, Petitioners prepared materials for
20 a pre-development meeting with the County to seek a mechanism by which to permit their
21 facility.¹⁰
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24 Upon review of its permitting process for solid waste handling facilities, Skagit County
25 discovered conflicting requirements in its code for the application process related to solid
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28 ⁵ County 1st Motion to Supplement (7 Exhibits), County 2nd Motion to Supplement (13 Exhibits).

29 ⁶ Skagit Hill Recycling Motion to Supplement.

30 ⁷ Skagit County, via email September 8, 2009, provided the Board with a link to the Solid Waste Management
31 Plan. The Board notes statements were made by the County within this email to direct the Board’s attention to
32 certain portions of the Plan. However, all the Board requested of the County was the submittal of the Plan
and not commentary. Thus, the County’s statements were disregarded by the Board.

⁸ Skagit Hill Recycling Response, at 2. Skagit Hill notes that it operates a sand, gravel, and inert solid waste
landfill which it uses to store and process construction and demolition debris.

⁹ County 1st Substantive Motion, at 3-4.

¹⁰ Skagit Hill Recycling’s Response to Skagit County’s Motion to Dismiss at 2.

1 waste facilities. The County noted that its development regulations appear to allow the
2 permitting of a solid waste facility as a special use while also subjecting such facilities to a
3 higher level of scrutiny as an unclassified use due to their classification as an EPF.¹¹
4

5 Due to this confusion in permitting processes, the County decided to impose an interim
6 moratorium until the code had been reviewed. On March 23, 2009, using the authority
7 granted to local governments in RCW 36.70A.390, Skagit County declared an interim
8 moratorium with the adoption of Ordinance O20090002. That Ordinance prohibited the
9 acceptance of special use permit applications for minor or major utility developments that
10 propose to transport, process, or store solid waste within certain rural and natural resource
11 lands for a period of six months.¹²
12

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14 On May 21, 2009, Skagit Hill Recycling filed a Petition for Review (PFR) challenging the
15 County's enactment of this moratorium asserting that it precluded the siting of EPFs in
16 violation of the Growth Management Act (GMA).
17

18 As with all legislative enactments, Skagit County's adoption of Ordinance O20090002 is
19 presumed valid and the Board must grant deference to the planning decisions of the County
20 so long as those decisions are consistent with the GMA.¹³
21

22 **1st Substantive Motion RE: Issue #1: Does Ordinance O20090002 preclude the siting of**
23 **essential public facilities, specifically solid waste handling facilities, in violation of RCW**
24 **36.70A.200(5)?¹⁴**

25
26 RCW 36.70A.200(5) provides that no comprehensive plan or development regulation may
27 preclude the siting of an EPF. RCW 36.70A.200(1) expressly lists solid waste handling
28 facilities as a type of EPF. This issue is the foundation of Petitioners' case as they assert
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31 ¹¹ Skagit County 1st Substantive Motion, at 4; See also, Ordinance O20090002 – Whereas/Recitals.

32 ¹² Ordinance O20090002, Section 1 and Section 4. Zoning districts impacted by the interim moratorium
include the Rural Reserve (RRv) zone. Petitioners' property is zoned RRv.

¹³ RCW 36.70A.320(1), .3201.

¹⁴ Issue as set forth in the Board's July 28, 2009 Prehearing Order.

1 that since the moratorium prohibits the processing of Special Use Permit applications for
2 solid waste handling facilities, Skagit County is in effect precluding the siting of a type of
3 EPF.
4

5 Although the Board would agree that a moratorium can have a preclusive effect in some
6 situations, here the process by which EPFs are sited in Skagit County is to be by the
7 Unclassified Use Permit process and not the Special Use Permit process.¹⁵ As with RCW
8 36.70A.200(1), a solid waste handling facility is specifically among those uses listed as a
9 type of EPF requiring an Unclassified Use Permit by Skagit County's development
10 regulations.¹⁶ The interim moratorium enacted by Ordinance O20090002 has limited
11 application – prohibiting the acceptance of Special Use Permit applications. The
12 moratorium does not prohibit the submittal of an application for an Unclassified Use Permit.
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15 **Conclusion:** The County was within its legal rights to analyze and correct inconsistencies
16 found between its development regulations by imposing a temporary moratorium. The
17 County's actions did not violate RCW 36.70A.200 when it adopted an interim moratorium
18 prohibiting the acceptance of Special Use Permit applications for solid waste handling
19 facilities. The County requires such facilities, a type of Essential Public Facility, to be sited
20 by the Unclassified Use Permit process. Ordinance O20090002 establishes no prohibition
21 on the acceptance or processing of Unclassified Use Permits. Therefore, the County did not
22 violate RCW 36.70A.200(5) by precluding the siting of an EPF in Skagit County.
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25 **2nd Substantive Motion RE: Issue #2:** *Whether Ordinance O20090002 impacts the ability*
26 *to site EPFs in rural areas of the County as required by RCW 36.70A.070(5)(b).*
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30 ¹⁵ SCC 14.16.600(1) Unclassified Use Permit is used to provide a siting and review process for major,
31 regional facilities with potential significant built and natural environmental impacts on the surrounding area.
32 Unclassified uses are typically major facilities with a presence that may impact or alter the character of the
community. They include most of the more intensive uses considered to be "essential public facilities" in RCW
36.70A.200.

¹⁶ SCC 14.16.600(2)(d).

1 RCW 36.70A.070(5)(b) provides that the Rural Element of Skagit County's Comprehensive
2 Plan shall provide for a variety of rural densities, uses, essential public facilities, and rural
3 governmental services. As was noted with Issue 1, the interim moratorium does not impact
4 the County's Unclassified Use Permit process and it is this process which is to be utilized
5 when reviewing the siting of an EPF.
6

7 The Ordinance does not eliminate the possibility of siting an EPF within the rural areas of
8 Skagit County.¹⁷ Pursuant to SCC 14.16.600, a variety of EPFs are permitted within
9 numerous rural zoning districts. These provisions were not amended by Ordinance
10 O20090002 and are, therefore, not open to challenge.¹⁸
11

12 **Conclusion:** For the same reasons noted in Issue 1, the adoption of an interim moratorium
13 does not impact the ability to site EPFs in rural areas of Skagit County.
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15 **3rd Substantive Motion RE: Issue #3:** *Whether Ordinance O20090002 violates GMA*
16 *goals in 36.70A.020 (5), (7), (11).*
17

18 As to RCW 36.70A.020(5), the economic development goal and (7), the permitting goal, the
19 County cannot be said to have violated these goals by pausing to analyze its development
20 regulations in order to cure any conflicts in its permitting processes. This analysis, and the
21 subsequent streamlining of permitting practices, will only help businesses understand the
22 procedures they must follow to obtain proper permits for their businesses. Instead, the
23 interim Ordinance can be seen as an opportunity for the County to provide an efficient, fair,
24 and coordinated process. Given both the very nature of the GMA's goals and the deference
25 to be granted Skagit County in their planning decisions, the goals are not always balanced.
26 An attempt to advance one or more of these goals, even at the expense of others, does not
27 automatically result in a violation. For these reasons, the Board finds no violation of Goals 5
28 and 7.
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32 ¹⁷ Skagit County's Interim Ordinance O20090002 at 2.

¹⁸ SCC 14.16.600, although referenced in within Ordinance O20090002, was note amended. SCC 14.16.600 was adopted in 2000 and, thus, any challenge to its provisions would be untimely.

1 With regard to RCW 36.70A.020(11), the citizen participation goal, RCW 36.70A.390
2 permits the adoption of a moratorium without a public hearing so long as a hearing is held
3 within 60 days of its adoption and findings of fact justifying the action are adopted. The
4 County held a public hearing on May 12, 2009 and the Ordinance sets forth the required
5 findings. Therefore, the County followed every required step needed in order to comply
6 with RCW 36.70A.390 in adopting a moratorium. Since this provision expressly authorizes
7 a deviation from the GMA's public participation requirements, the Board finds no violation of
8 RCW 36.70A.020(11).
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11 **Conclusion:** The Board finds and concludes that with the adoption of Ordinance
12 O20090002 Skagit County did not violate RCW 36.70A.020(5), (7) or (11).
13

14 ORDER

15 Based upon a review of the record in this case and having considered the briefing submitted
16 by the parties, the Board orders the following:

- 17 1. With the exception of Exhibit No. 11, Skagit County's 1st and 2nd Motions to
18 Supplement the Record are DENIED.
- 19 2. With the exception of Exhibit No. 32, Skagit Hill Recycling's Motion to Supplement
20 the Record is DENIED.
- 21 3. Skagit County's 1st Substantive Motion RE: Issue 1 is GRANTED.
- 22 4. Skagit County's 2nd Substantive Motion RE: Issue 2 is GRANTED.
- 23 5. Skagit County's 3rd Substantive Motion RE: Issue 3 is GRANTED.
- 24 6. The Board having granted the County's motions dismissing all the issues brought in
25 this appeal, the case is CLOSED.
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28 Dated this day of September, 2009.
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31 Nina Carter, Board Member

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James McNamara, Board Member

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William Roehl, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means **actual receipt of the document at the Board office** within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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