

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

MOORE-CLARK CO., INC., a Washington Corporation)	
)	
)	No. 94-2-0021
Petitioner,)	
)	FINAL DECISION
vs.)	AND ORDER
)	
TOWN OF LACONNER,)	
)	
Respondent,)	
)	
FRIENDS OF LACONNER,)	
)	
Intervenor.)	
_____)	

SYNOPSIS OF THE CASE

The Town of LaConner adopted its Comprehensive Plan by Resolution on June 20, 1994, and did not publish notice of its adoption. On April 19, 1994, prior to passage of the Comprehensive Plan, the Town unilaterally changed its projected population growth rate from 2.9% per year to 1%. The next week, it changed its draft zoning for the South Industrial Area, an area partially covered by the Town's Shoreline Management Program, from Mixed Use to Industrial. LaConner held numerous hearings during the process of adoption, but sometimes did not specify which aspects of the plan were to be discussed.

A. PROCEDURAL HISTORY OF THE CASE

Because of the lengthy nature of the procedural history in this case, it is attached as Appendix 1 to this Final Decision and Order.

ARGUMENT, DISCUSSION AND CONCLUSIONS

ISSUE 1 - DOES THE GROWTH MANAGEMENT HEARINGS BOARD (BOARD) HAVE JURISDICTION OVER A COMPREHENSIVE PLAN (PLAN) ADOPTED BY RESOLUTION; AND IS THE TOWN REQUIRED TO ADOPT ITS COMPREHENSIVE PLAN BY ORDINANCE RATHER THAN BY RESOLUTION?

This issue was decided by the February 2, 1995, Order Regarding Dispositive Motions in which the Board held "that the Town may adopt its comprehensive plan by ordinance or by resolution" (Pg. 3 at line 17). Therefore, the Town's adoption of the Plan by Resolution was in compliance with the Growth Management Act (GMA, Act). Additionally, the Board had jurisdiction.

The Town submitted a request for reconsideration in its hearing brief of February 17, 1995. WAC 242-02-830(2) provides that a "petition for reconsideration must be filed within ten days of service of the final decision". Thus, the request for reconsideration was not timely filed. Had it been, the petition for reconsideration would have been denied despite the following arguments: The Town argued that adoption by resolution absolved it of the requirement to publish (see Issue 3). It asserted that only "ordinance-adopted" plans need be published. The Town cited *Baker v. Lake City Sewer District*, 30 Wn.2d 510, 191 P.2d 844 (1948), stating that "the term 'resolution' as applied to the act of an official body such as a city council ordinarily denotes something less solemn or formal than the term 'ordinance'". The Town further asserted that "the Legislature clearly anticipated adoption of comprehensive plans by resolution". It is difficult to envision the

Legislature anticipating that one kind of comprehensive plan, that adopted by resolution, was somehow less "formal" or less "solemn" than a plan adopted by ordinance. We find the intent of the Act clear: publication of a comprehensive plan's adoption is an essential part of involving the public in the planning process and invoking a 60-day period from which to petition for relief.

The Town argued that,

"even if the Board perceives that the Legislature intended that the sixty day period commence after publication because it was concerned that potential appellants have notice of the action taken, applying a sixty day cut-off to this appellant does not violate that legislative policy since the appellant's representative was present at the time that the action was taken to adopt the resolution in question."

This begs the question of how many more potential appellants or petitioners were not availed of the opportunity to petition because of the Town's failure to publish its action? Must a citizen be present at the act of adoption in order to have the right and opportunity to petition? We think not.

ISSUE 2 - DOES THE BOARD HAVE JURISDICTION TO DETERMINE IF THE COMPREHENSIVE PLAN ELEMENTS WERE CONSISTENT WITH THE POLICIES AND REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT AND THE SHORELINE MASTER PROGRAM? IF SO, WERE THEY CONSISTENT?

In the Order Regarding Dispositive Motions, the Board also held that it had jurisdiction to determine the consistency of a comprehensive plan as it relates to the Shoreline Management Act, when as here, the Plan itself called for such consistency.

The Petitioners argued that the Shoreline Management Program handbook, page H25, calls for consistency with comprehensive plans among the GMA, the Shoreline Management Act (SMA) and Shoreline Management Program (SMP) Policies when it says under "relationship between comprehensive plans and SMPs" that,

"a Local Government Comprehensive Plan contains a jurisdiction's vision of its future. Local governments need to include the State perspective in this vision. The state perspective is reflected in the GMA's comprehensive planning goals found in RCW 36.70A.020. For local governments with shoreline areas within their jurisdiction, a local vision should also consider and incorporate the policies of the SMA (RCW 90.58.020)".

Appendix A, page H513, of the SMP Handbook 1994 edition, alludes to the discussion, presented in the summary section, concerning the SMA, the GMA, and finally the relationship between SMPs and Comprehensive Plans. It cites figure 1, illustrating the relationship among the SMA, these programs and plans. The relationships among the Comprehensive Plan, the SMA, and SMP Policies all are categorized under the heading: "required consistency for adjacent lands." Clearly, the Shoreline Management Act Handbook envisions consistency between GMA's comprehensive plan and SMP Policies. We specifically do not refer to SMP development regulations.

Petitioner cited *Gutschmidt v. Mercer Island CPSGMHB* # 92-3-0006, as underscoring the Board's ability to consider other statutes as it decides issues of GMA compliance. In that case, the Central Board stated, in part, that "the lack of jurisdiction over issues of compliance with

other statutes does not mean that the Board will not take official notice of ‘other’ statutes.”

In arguing the question of consistency, the Town pointed out that it thoroughly considered the SMA and the SMP policies in its decision on the appropriateness of mixed-use zoning in the South Industrial Area (SIA). The Town cited a letter from Langebeer to Wilman (Ex. 163) in which Mr. Langebeer expressed the desirability of multi-family residential within the mixed-use category. The Town pointed out that the GMA handbook (Ex. 167) specifically notes that multi-family residential is not a water-oriented classification. The Town presented examples of the sea water intake permit of Moore-Clark, as well as tow boats, a dry dock and barge operations as existing water-dependent uses consistent with maintaining industrial zoning in the SIA. They stressed that the water-enjoyment category did not include neither multi-family residential or condos. The Town asserted in argument that "LaConner has made a fundamental decision and wants to retain water-oriented industry within the shoreline boundaries."

Moore-Clark argued that the SMA, SMP, and the Shoreline Management Guide Book were specifically incorporated into LaConner’s Comprehensive Plan and that the elimination of the mixed-use designation from the comprehensive plan draft late in the process, without proper analysis or consideration of Shoreline goals and policies, constituted a failure to adequately consider the policies contained therein.

CONCLUSION 2

In reviewing the comprehensive plan elements, the Board holds that the Plan was consistent with policies and requirements of the Shoreline Management Act and the Shoreline Master Program policies.

ISSUE 3 - DOES THE DOCTRINE OF LACHES APPLY TO THE FILING OF PETITION FOR REVIEW? IF SO, WAS THE FILING OF THE PETITION FOR REVIEW IN VIOLATION?

This issue was also decided in the Board's February 2, 1995, Order Regarding Dispositive Motions. We held that the doctrine of Laches does not apply and that the petition was timely filed. The Town failed to publish its adoption of its comprehensive plan, thereby removing any ability of the Town to claim undue delay on the part of a petitioner. The Act clearly contemplates that it is unreasonable to expect every citizen to be aware of the adoption of a comprehensive plan without publication of notice of that action.

ISSUE 4 - WAS THE TOWN REQUIRED UNDER THE SKAGIT COUNTY COUNTY-WIDE PLANNING POLICIES (CPPs) OR THE GMA OR BY PRIOR AGREEMENT TO APPLY A 2.9% ANNUAL POPULATION GROWTH RATE IN ITS COMPREHENSIVE PLAN? IF NOT, WAS THE TOWN'S ADOPTION OF A 1% ANNUAL POPULATION GROWTH RATE IN ITS COMPREHENSIVE PLAN IN COMPLIANCE WITH THE GOALS AND REQUIREMENTS OF THE CPPs AND GMA?

Petitioner argued that Respondent failed to plan for and accept its allocated share of population growth as determined by Skagit County. Petitioner also stated in its Brief in Opposition to the Dispositive Motion, "it is unclear exactly how the 'LaConner/Skagit County estimated population growth rate was determined." The Respondent countered that its initial use in the draft comprehensive plan of the 2.9% annual growth rate was derived at a time when the LaConner

Interim Urban Growth Area (IUGA) stretched north through Highway 20 and east to Pleasant Ridge (Ex. 132). Later, the IUGA was drastically reduced, but the 2.9% growth rate remained in the initial drafts of the comprehensive plan. The Town argued that there was “no evidence that the County imposed a 2.9% growth rate on the LaConner UGA”. The Town maintained that the CPPs do not require each town to accept 80% of the projected growth of the County. On May 4, 1994, Town Planner Vibbert notified Mr. Hough, Director of Skagit County Planning, that the Town was planning at 1% population growth rate, and subsequently received no response to her letter. The Town therefore concluded that if the 2.9% had been imposed previously, the County would have either appealed LaConner’s comprehensive plan or at least responded to the change from 2.9% to 1%. The Town argued that because the IUGA was based on a "gigantic" sphere of influence that was later reduced to protect agricultural land, it was therefore logical to reduce the growth rate accordingly.

Exhibit 43, entitled "Designation of Urban Growth Areas in Skagit County" April 6, 1994, showed that in early 1993 the County requested proposals on urban growth areas from each of the cities and towns. Subsequent to the adoption of the IUGAs, County staff met with City staff to resolve differences noted as “special study areas” on the adopted IUGAs. Agreements were reached with Town of LaConner and the City of Sedro-Wooley. Specific analysis of each city or town’s proposed urban growth areas included an estimated population capacity. The agreement which was reached between the Town of LaConner staff and the County planners reduced the urban growth area from the large IUGA that had matched the sphere of influence to the smaller IUGA which excluded agricultural lands. The population growth forecast for the year 2014, however, remained at 1,131, approximately the previously agreed-to 2.9% annual growth rate. Nothing in the record indicates that the Town Council or the County Commissioners were ever

party to the agreement, or ever formally adopted the proposed agreements. The growth rate percentage was changed twelve days later, unilaterally, by the Town Council.

Moore-Clark argued that discussion on the reduction from 2.9% to 1% focused "on the available vacant residential land as the determining factor for the growth rate". They alleged that "this result-oriented planning is obviously contrary to the spirit of the GMA to make decisions based on objectives, principles and standards".

Moore-Clark further asserted that the Town "agreed to accommodate its proportionate share of" the population growth by supporting the CPPs. CPP 1.2 states that "cities and towns and their urban growth areas shall include areas and densities sufficient to accommodate as a target 80% of the County's 20 year population". On April 29, 1992, Mayor O'Donnell wrote the County Commissioners that "the Town of LaConner concurs with the CPPs and makes a commitment to affordable housing, concurrency and density." (Petitioner's Ex. 10).

1000 Friends of Washington, in its amicus brief to the Thurston County Superior Court on *City of Lynnwood v. Central Puget Sound Growth Management Hearings Board and Snohomish County*, July 11, 1994, said "in order to properly establish the size of individual city's UGA, the County must allocate its population for the succeeding 20 year period. It is within the County-Wide Planning Policies as the regional frame work that these coordinated and consistent population allocations must be established. The collaborative forum of the CPPs provides the only venue for consistent coordinated implementation of UGAs." In an amicus brief for the same case (in opposition to 1000 Friends' position), the Association of Washington Cities stated that the "agreement of affected cities" is "virtually required".

This Board, in *Reading, et.al., Mahr, et.al, v. City of Olympia and Thurston County*, WWGMHB #94-2-0019, said:

"Petitioners challenged the adoption of the Olympia urban growth area. A number of challenges were made and superficially appeared to be directed to the City of Olympia's part of the Joint Comprehensive Plan. Nonetheless, it is clear under RCW 36.70A.110(1) that a county has the ultimate responsibility of determining population figures and urban growth boundaries. Obviously, any city involved in the location of the boundary would have a great deal of influence in the final decision by the county. Nevertheless, any challenge to the urban growth area must necessarily be leveled against the particular county involved."

As Central Puget Sound Growth Management Hearings Board observed, in *Edmonds and Lynnwood v. Snohomish County*, #92-3-0005, the Act's first two planning goals (RCW 36.70A.020) are central to the purposes of the Act:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

Planning to a lower-than-agreed-to figure without coordination with the County is inconsistent with these two "anchor" planning goals.

CONCLUSION 4

While it may have been logical to reduce population growth from 2.9% to 1% when the IUGA boundary was significantly reduced, it is not proper to adopt a comprehensive plan based on a

growth rate that is unilaterally decided by the Town Council.

The Act cannot function without close cooperation between the regional county government and the municipal governments within it. Projected population allocation must take place with consultation at a minimum between the Legislative Authority of the County and the Town. If there was even an implicit agreement to apply a 2.9% annual population growth rate, as in the case here, then a unilateral reduction and the assumption by the Town that the County's silence was ratification, does not comply with the Act's requirements.

ISSUE 5 - WAS THE TOWN'S ADOPTION OF A 1% POPULATION GROWTH RATE IN COMPLIANCE WITH THE PUBLIC PARTICIPATION GOALS AND REQUIREMENTS OF THE GMA IN THAT THE TOWN COUNCIL AMENDED THE POPULATION GROWTH RATE AT A SPECIAL MEETING HELD ON APRIL 19, 1994, FOLLOWING A LIMITED PRIOR NOTICE WHICH ALLEGEDLY FAILED TO ADVISE INTERESTED PARTIES THAT ANY CHANGE TO THE POPULATION GROWTH RATE WAS CONTEMPLATED BY THE TOWN?

Moore-Clark's salient point on this issue was that the Town, contrary to public participation requirements of the Act, decided on April 19, 1994, to reduce the percentage of growth figure for the Town of LaConner from 2.9% to 1% without "effective notice" (RCW 36.70A.140). The notice for that meeting simply stated that there would be a "Public Hearing Continuation-Comp Plan. Mixed-use will not be discussed." (Ex. 87). In argument, Moore-Clark pointed out that there was no mention of a discussion on reducing the growth rate. In Petitioner's Brief in Opposition to Dispositive Motion, Moore-Clark pointed out that notices of public hearings on the comprehensive plan were published for December 14, 1993, December 28, 1993, January 11,

1994, February 22, 1994, and March 8, 1994. Each of those public hearings was postponed or tabled during the meeting in which it was scheduled. Moore-Clark alleged the Respondent's repeated postponement of comprehensive plan hearings discouraged public input. Further, Moore-Clark noted that one factor in population growth rate, that is, the size of the urban growth area, had been significantly reduced from the original IUGA more than a year before the meeting during which the growth rate was reduced. There had apparently been no discussion of the population growth rate in the intervening months.

In response, Town of LaConner claimed that there has been a long tradition in LaConner that "you'll get a chance to have your say" and that Petitioner's representatives were present at all of the meetings in which the comprehensive plan was discussed. In referring to the public participation process, the Town Counsel conceded that "maybe it should have been done better" but that Petitioner did have an opportunity, which was taken at the April 19, 1995, meeting, to comment prior to the vote on the motion to reduce the growth percentage. (Ex. 47, p. 94).

Intervenor, Friends of LaConner, pointed out that Moore-Clark had the opportunity to express its opinion over a considerable period of time.

Intervenor and the Town failed to observe that the discussion on population growth rate, a major factor for consideration for a mixed-use designation, was a surprise at the April 19th meeting. The lack of effective notice, in the context of the record shown here, impaired the ability of citizens to participate effectively on the question.

CONCLUSION 5

RCW 36.70A.140 calls for broad dissemination of proposals and alternatives, opportunity for

written comments, public meetings after effective notice, and provision for open discussion. For a space of the five or six meetings where the notices called for a continuation of discussion on the comprehensive plan with no further detail, one could argue that effective notice was not provided. Section .140 also states that "errors and exact compliance with the established procedure shall not render the comprehensive land use plan invalid if the spirit of the procedures is observed." It is the spirit here which was in question. For the period in which hearings were postponed or tabled as referenced above, the spirit was weak. We conclude that the Town was not in compliance with the public participation goals and requirements of the Act during this period.

ISSUE 6 - DID THE TOWN COMPLY WITH THE PUBLIC PARTICIPATION GOALS AND REQUIREMENTS OF THE GMA IN DEVELOPING ITS COMPREHENSIVE PLAN?

A) IN THAT, THE TOWN FAILED TO ADEQUATELY CONSIDER THE RECOMMENDATIONS OF THE COMPREHENSIVE PLAN CITIZEN ADVISORY COMMITTEE AND THE ECONOMIC DEVELOPMENT CITIZEN ADVISORY COMMITTEE TO APPLY MIXED-USE POLICY IN THE SOUTH INDUSTRIAL AREA?

Although unaddressed in argument, Petitioner's Brief in Opposition to Dispositive Motion noted that the mixed-use proposal received positive endorsements from the Economic Development Citizens Advisory Committee and the Comprehensive Plan Citizen Advisory Committee and that the Town Council on October 12, 1994, (*sic*) (probably 1993) approved the mixed-use policy for inclusion in the comprehensive plan draft. This policy was subsequently removed by Council motion on April 26, 1994. With the extensive discussion of

the Council on this issue, it is difficult to argue that the Town failed to adequately consider the recommendations of the two citizen committees.

B) IN THAT, BEGINNING AFTER NOVEMBER 9, 1993, THE TOWN'S NOTICES FOR TOWN COUNCIL MEETINGS OR HEARINGS ON THE COMPREHENSIVE PLAN ROUTINELY PLACED THE COMPREHENSIVE PLAN AT THE END OF THE TOWN COUNCIL AGENDA, AND AS A RESULT, NUMEROUS SCHEDULED MEETINGS OR HEARINGS ON THE COMPREHENSIVE PLAN HELD AFTER NOVEMBER 9, 1993, WERE POSTPONED AND CONTINUED DESPITE THE PRESENCE OF PETITIONER'S REPRESENTATIVES AND OTHER MEMBERS OF THE PUBLIC AWAITING THE COMPREHENSIVE PLAN MEETING OR HEARING?

The Board has addressed the arguments, discussion and conclusion on this item under Issue 5. We hold that the Council's actions failed to comply with the goals and requirements of the GMA.

C) IN THAT, THE TOWN'S OFFICIALS ALLEGEDLY DIRECTED DEROGATORY STATEMENTS TOWARDS PETITIONER'S REPRESENTATIVES DURING PUBLIC HEARINGS OR MEETINGS HELD BEFORE THE TOWN COUNCIL ON OR ABOUT MARCH 22, 1994, AND APRIL 12, 1994, AND OFFICIALS ALLEGEDLY THREATENED PETITIONER'S REPRESENTATIVE WITH FORCIBLE REMOVAL FROM THE PUBLIC HEARING OR MEETING OF THE TOWN COUNCIL HELD ON OR ABOUT APRIL 12, 1994, WHEN PETITIONER'S REPRESENTATIVE ATTEMPTED TO SPEAK ON A COMPREHENSIVE PLAN ISSUE BECAUSE SUCH ISSUE WAS NOT ON THE

AGENDA?

The Town, in its Memorandum in Support of Respondent's Dispositive Motion, page 15, acknowledges "one somewhat unpleasant exchange" occurred between the Town staff and Petitioner's representatives and attorneys whose attitude the Town characterizes as "belligerent". The Town goes on to say that "in no instance were Petitioner's representatives not allowed full access to the Citizens Advisory Committee, Planning Commission and Town Council, on the substantive issues before the Town". The Board agrees that the exchange was unfortunate, but holds that the exchange does not, in and of itself, constitute a failure to comply with the goals and requirements of the Act.

D) IN THAT, THE TOWN'S PUBLIC NOTICES OF MEETINGS OR HEARINGS ON THE COMPREHENSIVE PLAN HELD AFTER NOVEMBER 9, 1993, WERE GENERAL IN NATURE AND FAILED TO ADEQUATELY APPRISE INTERESTED INDIVIDUALS OF THE NATURE AND CHARACTER OF THE PROPOSED ACTION ON THE COMPREHENSIVE PLAN?

This question has been addressed by the Board in its comments on Issue 5.

ISSUE 7 - DID THE COMPREHENSIVE ELEMENTS INVOLVING THE VISION STATEMENT, LAND USE, HOUSING, UTILITIES, TRANSPORTATION, CAPITAL FACILITIES, URBAN GROWTH BOUNDARY AND MAPS AFFECTING THE SIA, ADEQUATELY MEET THE GOALS AND REQUIREMENTS OF GMA BY ANTICIPATING THE DEMAND FOR HOUSING, EMPLOYMENT, COMMERCIAL USES, PUBLIC USES,

WATERFRONT RECREATION, WATER ACCESS, WATER-RELATED AND WATER-DEPENDENT SHORELINE USES IN THE URBAN AREA, ABSENT MIXED-USE ZONING IN THE SIA?

The question here hinges on the actions of the Council in reducing the growth rate and therefore the need for housing, and, also, in deciding between the need for industrial capacity, (particularly water-related) and the need for mixed-use zoning which would include housing to accommodate future growth. The Plan, the public input and staff preparation of data for the Council all addressed the elements of housing, industry, commercial enterprise and population. It is hard to agree that the Council failed to adequately consider these elements in what is ultimately a decision on competing demands within a comprehensive plan. The Plan's consistency with the GMA, the CPPs, and internally, except as noted above, is as thorough as can be expected of a plan encompassing such competing interests and values. The Petitioner, in his Brief of Opposition to the Dispositive Motion, remarked that the Town had retained the following policies applicable to the shoreline area:

- ◆ Retention of Commercial and industrial uses which are water- dependent or water-related.
- ◆ Encouragement of renovation and reuse of under-utilized structures.
- ◆ Encouragement of preferred shoreline uses.
- ◆ Limited mixed-use development including open space and recreational uses.

Upon review, it seems that the absence of a mixed-use zone in the SIA does not legislate against any of these possible outcomes. What remains unanswered is the extent to which these elements

and others can be provided for if the 1% growth rate is determined not to be viable.

ANALYSIS

Outlining the Board's four-question analytical framework applied throughout this Final Decision and Order leads us to the following responses.

1. **IS THE ORDINANCE A RESULT OF A CONSIDERED APPLICATION OF APPROPRIATE GOALS AND REQUIREMENTS OF THE ACT?**

LaConner's process has provided discussion and review of the appropriate sections of the Act. This question is answered in the affirmative.

2. **DID THE PROCESS COMPLY WITH THE PUBLIC PARTICIPATION REQUIREMENTS OF THE ACT?**

During the period in 1994 noted above, this compliance was absent.

3. **WAS THE DELIBERATION AND DECISION-MAKING PROCESS REASONED?**

(a) Is the resolution supported by reasoned choices based upon appropriate factors actually considered as contained in the record?

A critical appropriate factor absent in the record is the allocation of a new and reduced population growth rate to the Town.

(b) Were inappropriate factors avoided?

The Town needs to guard against a process in which a desirable result was identified first and other factors molded to suit that conclusion. In the Town Council discussion on April 19, 1994 (Petitioner's Ex. 31), Council members commented that the "people don't want more people" or density, and that the Council "could change the figures." Mr. Furlong, Town Counsel, remarked that it wasn't necessary to use a pro rata figure from the County and that "Burlington and Mt. Vernon could take it" (presumably, the difference between 2.9% and 1%). Another Councilmember said "we're a drop in the bucket for the whole county." The Mayor remarked that "you could use any figure you want" and that the townspeople could "protect ourselves by using more conservative figures" like the historic 1% per year. No mention was made of modifying an agreement with the County.

Appropriate factors that were discussed included the need under a 2.9% rate, for 260 new residences and the potential use of the SIA for that purpose, with the resultant lack of room for industry. The process is not served, however, by choosing the desired outcome and then choosing criteria to reach it.

4. DOES THE RESOLUTION FALL WITHIN THE DISCRETION GRANTED TO THE DECISION-MAKER TO CHOOSE FROM A RANGE OF REASONABLE OPTIONS?

Not until the question of the proper population projection is addressed, can we decide this question.

ORDER

Having reviewed the record, having reviewed and considered the parties' and intervenor's briefs

and the arguments of counsel and having entered the foregoing conclusions, we find that the CPPs and Comprehensive Plan of the Town of LaConner is not in compliance with the requirements of the Growth Management Act, because the Plan was drawn absent a proper determination of population allocation and, because the public participation process did not comply with the Act. The Comprehensive Plan is remanded to the Town with instructions to bring it into compliance with the Act. We suggest particular attention be paid to the section of the Plan's Land Use element concerning population and demographics. The efforts to achieve compliance should result in a growth rate decision and a subsequent public hearing involving effective notice. The Town is required to bring its plan into compliance by September 18, 1995.

This is a Final Order under RCW 37.70A.300 for purposes of appeal.

So ordered this _____ day of May, 1995.

Les Eldridge
Board Member

Nan Henriksen
Board Member

William H. Nielsen
Board Member

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A. PROCEDURAL HISTORY OF THE CASE

On November 14, 1994, the Western Washington Growth Management Hearings Board received a Petition for Review from Moore-Clark Company, Inc. alleging that the Town of LaConner (Town), in adoption of its comprehensive plan (Plan), inhibited the public process, used an unrealistic low and unsubstantiated growth percentage for population projections, failed to provide a mixed-use zoning policy for the south industrial area (SIA), thereby rendering land use, shoreline, housing and urban growth boundary elements out of compliance with the Growth Management Act (Act or GMA), and rendering the Plan internally inconsistent. Moore-Clark further alleged that, in adopting the Plan by resolution rather than by ordinance, the Town failed to comply with the Act and also failed to comply with the Act by failing to publish the adoption of the Plan.

On December 7, 1994, a Notice of Hearing was entered. Also on December 7, 1994, the Board received a Cross Petition for Review from the Town stipulating to a number of allegations in the petition for review and denying others. The Town presented affirmative defenses in regard to standing, failure to timely file, Laches, and the ripeness of adjudication of population projections adopted by a town in a county which has not yet adopted the county population projections, nor has allocated them. The Town requested by Cross Petition for Review an extension of the 180-day time frame.

On December 13, 1994, the Board received the Town's Motion for Permission to Conduct

Limited Discovery.

A Prehearing Conference was held on December 15, 1994, at which time a schedule was finalized. The Town submitted its indices. The Board adjudged the Cross Petition for Review as merely a response to petitioner's claims and declined to extend the 180-day time frame. The other Cross Petition issues were responded to in the February 2, 1995, Orders Responding to Motions. At the Prehearing Conference, issues were discussed and the parties agreed to collaborate on an effort to state the issues with more detail. Petitioners (Moore-Clark) agreed to submit a memorandum of specificity. Respondents (Town) agreed to respond. On December 28, 1994, the Board received Moore-Clark's statement of issues and on January 3, 1995, the Town's objections to the proposed statement of issues. A telephonic discussion on specificity of issues was held on January 6, 1995.

On December 16, 1994, the Board received a motion from Moore-Clark to exclude supplemental evidence. The Board responded to this motion on December 22, 1994, declining to rule until a motion requesting inclusion of supplemental evidence had been submitted.

On December 20, 1994, the Town submitted renumbered indices.

A Prehearing Order was entered on January 9, 1995, fixing deadlines for various motions and establishing the issues.

The following motions were received:

1. Motion for an Order Granting Intervention to the Friends of LaConner represented by Allan E. Olson, Attorney, and a memorandum in support of the motion from Mr. Olson filed January 10, 1995.
2. Motion to Conduct a Site Tour for the Board from Moore-Clark filed on January 12, 1995.
3. A Motion for Additions to the Record submitted by Moore-Clark on January 12, 1995.
4. Town's Dispositive Motion, received January 12, 1995.

On January 12, 1995, the Town's supplemental index of documents was received.

The following briefs and responses were received on the Hearing on the Motions:

1. Memorandum in support of the Town's Dispositive Motion, received January 12, 1995.
2. Town's Response to Motions received January 20, 1995.
3. Moore-Clark's brief in opposition to the Town's Dispositive Motions, received January 20, 1995

On January 23, 1995, a motions hearing was held on the following motions. 1. Allan E. Olson's motion for Order Granting Intervention to Friends of LaConner.

2. Moore-Clark's motion for additions to the record.
3. Moore-Clark's motion to conduct a site tour for the Board
4. Town of LaConner's dispositive motion (5 elements).

On January 25, 1995, the Board issued an Order granting intervenor status to Friends of LaConner. On February 1, 1995, the Board issued an Order granting Moore-Clark's motion to conduct a site tour for the Board. On February 2, 1995, the Board issued an Order on Moore-Clark's motion for additions to the record, as follows:

The Board:

1. Admitted 6 items as additions to the index as part of "the record developed" and not objected to by the Town.
2. Admitted the draft environmental impact statement from Skagit County but excluded the final environmental impact statement as it was issued subsequent to LaConner's Comprehensive Plan adoption and therefore not available to the Town Council.
3. Admitted a series of public documents which were officially noted.
4. Admitted four items of correspondence, comments and information between

Respondent and private parties as additions to the index, if relevant.

5. Admitted the policies portion of the Shorelines Master Program so as to assure full review on consistency of Shorelines Management Act and Growth Management Act, with the Plan, but excluded the current draft Shoreline Management Program.
6. Denied item 14, stating that newspaper articles have no place as part of the record.
7. Admitted information and materials from the advisory committees concerning the Plan as additions to the index.

On February 2, 1995, the Board issued an Order Regarding Dispositive Motions in which it held that the Town may adopt its comprehensive plan by ordinance or by resolution, but must publish in order to activate the 60-day filing time frame. The Board also held that the doctrine of Laches does not apply and that the petition was timely filed, as the Town had failed to publish.

The Board denied the motion for disposition of issues concerning a) the use of a particular population growth percentage for forecasting, b) internal consistency of the comprehensive plan with the County-wide Planning Policies or the Growth Management Act, and c) the Town's compliance with public participation requirements, all because of their complexity and because they required substantial review of the record.

The Board further held that it had jurisdiction to determine the consistency of a comprehensive plan as it relates to the Shoreline Management Act and reserved its decision on whether or not consistency had been achieved. The dispositive motion concerning the Shorelines Management Act was denied.

On February 3, 1995, the Board received Petitioner's additions to the index.

The following pre-hearing briefs, responses and replies were received by the Board:

1. Moore-Clark's brief on the merits, received February 6, 1995.
2. Town of LaConner's hearing brief, filed February 17, 1995.
3. Hearing brief of Intervenor, Friends of LaConner, filed February 21, 1995.
4. Moore-Clark's reply brief, filed February 21, 1995.

On February 21, 1995, the Board received the Town's additions to the index. The Board is grateful for Town Counsel's suggestion that exhibits be enumerated with their index numbers.

The Hearing on the Merits was held March 1, 1995. Present were the three members of the Board: Nan Henriksen, William H. Nielsen, and Les Eldridge, Presiding Officer. Representing Moore-Clark was Andrew I. Davis, representing Town of LaConner was Bradford Furlong, representing Intervenor Friends of LaConner was Allan E. Olson. Court reporting services

were provided by Leslie Andres with Bartholomew, Moughton and Associates.