BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

WHIDBEY ENVIRONMENTAL ACTION NETWORK,	)	
	)	No. 95-2-0063
Petitioner,	)	
	)	ORDER
v.	)	RESCINDING
	)	INVALIDITY
ISLAND COUNTY,	)	AND FINDING
	)	COMPLIANCE
Respondent.	)	
	)	

This is the latest order in a long history of actions and inactions by Island County. Our second compliance order, dated April 10, 1996, found that no comprehensive plan (CP) nor implementing development regulations (DRs) had yet been adopted by Island County as required by the Growth Management Act (GMA, Act). In that order we determined portions of Island County's pre-GMA zoning code invalid.

A third compliance order, dated October 6, 1997, determined that additional portions of the pre-GMA zoning code were invalid. Island County did not appeal either of those orders.

On December 8, 1997, the Board of County Commissioners of Island County adopted Ordinance C-78-97 as an interim control pursuant to RCW 36.70A.302(7)(a). On January 26, 1998, we issued an order denying Island County's request for recision of invalidity. We held that the ordinance did not provide sufficient criteria to remove substantial interference. Island County appealed that decision to Superior Court.

On May 15, 1998, the Court entered an order reversing a part of our order and affirming the remainder. The reversal was conditioned upon certain actions to be taken by Island County and conditioned upon certain vesting consequences prior to a determination by us that the CP and/or DRs removed substantial interference with the goals of the Act. The County amended Ordinance

C-78-97 by the adoption of Ordinance C-50-98 to include additional criteria required by the Court. On June 25, 1998, we conditionally rescinded invalidity upon the conditions set forth in the Superior Court remand order dated May 15, 1998.

Coincidentally, that same day the Supreme Court issued its decision in *Skagit Surveyors v. Friends*, 135 Wn.2d 542 (1998). The gravamen of that decision was that Growth Management Hearings Boards did not possess statutory authority to invalidate pre-GMA ordinances. The Court noted at p. 567 that Growth Management Hearings Boards did possess the authority to find pre-GMA ordinances noncompliant.

Following the *Skagit Surveyors* case, on July 10, 1998, the County filed a motion to vacate the April 10, 1996, and October 6, 1997, invalidity orders. The County contemporaneously filed a motion in Superior Court to amend the May 15, 1998, remand order. We received a response from petitioners on July 24, 1998. That same day, the Superior Court issued an amended order of remand and judgement eliminating paragraph 4 (dealing with vesting and other issues) from its May 15, 1998, order. The July 24, 1998, order continued the first three remand provisions that formed much of the basis of our June 25, 1998, conditional recision of invalidity.

On August 4, 1998, we issued a memo to the parties indicating that any additional written material concerning the County's motion to vacate was to be received by August 14, 1998. We received a short letter from the County and no additional response from petitioners.

We agree with Island County that under the *Skagit Surveyors* case there was no subject matter jurisdiction for us to enter the April 10, 1996, and October 6, 1997, orders. Accordingly, those two orders are vacated.

We further conclude, in accordance with the July 24, 1998, Superior Court Order, that the adoption of Ordinance C-78-97 as amended by Ordinance C-50-98 complies with the interim controls provision of the GMA. Compliance is conditioned upon the limitations set forth by the Superior Court. If Island County does not fulfill those conditions, or changes the interim controls, we will schedule a hearing to determine if compliance continues. We would also consider the issue of invalidity at that hearing.

It is ORDERED that:

1. The previous findings of invalidity are vacated.
2. The interim controls provided in Ordinance C-78-97 as amended by Ordinance C-50-98 are in compliance with the GMA.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 25th day of August, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
William H. Nielsen
Board Member

_____
Les Eldridge
Board Member

_____
Nan A. Henriksen
Board Member