

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

FRIENDS OF SKAGIT COUNTY,)	
BARBARA RUDGE, and ANDREA XAVER,)	No. 95-2-0065
)	
Petitioners,)	
vs.)	
)	ORDER REGARDING
SKAGIT COUNTY,)	MOTIONS FOR
)	RECONSIDERATION
Respondent,)	
)	
and)	
)	
CITY OF ANACORTES and CITY OF MOUNT)	
VERNON, municipal corporations,)	
)	
Intervenors.)	
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On September 6, 1995, we received a motion for reconsideration from Friends of Skagit County (“Friends”) in the above-referenced case. On September 8, 1995, a request for reconsideration was received from intervenor City of Anacortes. We later received the County’s memoranda in opposition to the motions, a response in opposition from intervenor City of Mt. Vernon, and a rebuttal from Friends. A hearing on reconsideration was held in Skagit County on October 10, 1995.

The motions cumulatively centered around three issues:

Issue 1. Should the Board alter its decision and order, and find that the Interim Urban Growth Area (IUGA) established by the County for the City of Anacortes is valid and is to remain in place? Also, is the question of the IUGA for City of Anacortes no longer a valid issue presented for resolution by the Board?

Issue 2. Should the Board clarify the intent of the order by changing it to read:

Item 2. “Clarify the language of the ordinances to preclude new urban residential, commercial, or industrial development outside a properly designated IUGA or UGA within 60 days of the date of this order. Clarify the language of the ordinances to preclude extension of urban governmental services in accordance with CPP 1.8 outside a property designated IUGA or UGA within 60 days of this order.”

Item 3. “Base any new IUGA designation upon the OFM population forecast and the required land capacity, capital facilities and fiscal impact analyses. The new ordinance must identify open spaces and green belts?”

(This change would obviate the extremely remote possibility of the County maintaining city UGAs at city limits and thereby creating the possibility of extension of urban services outside of UGAs.)

Issue 3. Should the Board determine Ordinance 15794 (Ex. R39) invalid because it substantially interferes with

the fulfillment of the goals of GMA?

DISCUSSION

Issue 1. Friends argued that the inclusion of Anacortes in the Order requiring elimination of urban growth designations outside city limits is inappropriate, as the May 25, 1995, Stipulated Order of Partial Dismissal dismissed “with prejudice any claims set forth in the amended petition which challenged the . . . (Anacortes) IUGA or Skagit County’s adoption process as it relates to that IUGA.” Anacortes cited the same order.

At the May 16, 1995, Motions Hearing, when the stipulated order of dismissal was presented, we pointed out that the dismissal of claims as to Anacortes would not affect the Board’s ability to remand the entire IUGA ordinance. In that hearing, Mr. Washburn, representing Anacortes, stated that the City did not want the stipulation to preclude its participation “in the event this case is remanded.” Presiding Officer Eldridge stated that if dismissal was granted, the broader question of IUGA adoption process review still remained and that Anacortes would be part of that review. Mr. Moffat, representing Skagit County, noted that the IUGA designation involved a County-wide process and voiced a concern as to how one city could shield itself from that process. Board Member Nielsen underscored Mr. Moffat’s point and reiterated that dismissal would not preclude a remanded IUGA decision from being made on a County-wide basis. He remarked that Anacortes’ status as an inactive party would not preclude a remand that included Anacortes. Mr. Washburn indicated that he fully understood that possibility.

Anacortes’ current argument that it would have participated in the hearing on the merits had it known of the Board’s intention to address the City’s IUGA in the final decision and order, is weakened by its on-the-record acknowledgment.

The City of Anacortes further asserted “the Board found at Conclusion 5.1 that the record included fiscal analysis and a capital facilities plan for the City.” Anacortes alleged that the record supports its claims of having performed the proper analyses (index items 50-78). As a point of clarification, in Conclusion 5.1 of our Final Decision and Order, we did not find “that the record included fiscal analysis and a capital facilities plan for the City,” as the City asserts, but merely noted that in exhibit R20 there is a mention of an Anacortes Capital Facilities Plan.

Friends contended that the motion hearing discussion of Anacortes’ inclusion in a remand was not mentioned in the Stipulated of Partial Dismissal Order, and was therefore no longer valid. We point out that not everything on the record in argument (or exhibit) is noted in an order. Only those highlights necessary to illuminate the decision appear. The acknowledgment from parties was not, in this case, viewed as necessary for inclusion in the order. It remains, however, part of the record.

Even without the motions hearing record, the Act precludes parties from stipulating an act of noncompliance. When the County IUGA Ordinance was remanded, the assumption that Anacortes would remain beyond the reach of a County-wide IUGA redraw became, in essence, a noncompliant expectation.

There is no question that substantial work was done by Anacortes, in cooperation with the County, on its IUGA. Nonetheless, as the County and City of Mt. Vernon point out, other cities may have done equally

substantial work, but did not expect to be excluded from the County's review process on that basis, owing to the Board's clear statement that all IUGAs would be subject to remand.

Issue 2 - Clarification of Language. The County had no objection to the revised language, save for the insertion of "UGA" into the order. We are grateful for the clarifications from petitioners and respondent regarding Ordinance 15794 and the scrivener's error regarding the date of the hearing. (Pg. 23, Line 1, Final Decision and Order, should read "July" instead of "June".)

Issue 3 - Invalidity. Friends argued that the provisions of Ordinance #15794 (readopting #15589) regarding aggregation of lots outside IUGAs to areas as small as 8,400 square feet constitute a "substantial interference with the fulfillment of the goals of this chapter" (RCW 36.70A.300(2)(a)). The County argued that no figures showing massive applications for lot certification of this type appear in the record, and that, absent such documentation, this is "not the type of emergent situation warranting a determination of invalidity."

We do not find support in this record for a determination of invalidity. Such a determination should be made only in the most severe of circumstances.

ORDER

Issue 1. Despite the fine quality of work accomplished by Anacortes in its March Pt. IUGA effort, County-wide considerations must prevail. The motion is denied.

Issue 2. The motion is granted in part, clarifying the language of the order as requested, but without reference to "UGAs." An amended order is attached.

Issue 3. The motion for a finding of invalidity is denied.

So ordered this 31st day of October, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge

Presiding Officer

Nan A. Henriksen

Board Member

Wm H. Nielsen

Board Member

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-

We find that Skagit County is not in compliance with the GMA with the adoption of its ordinances pertaining to IUGA's: Skagit County Code #14.04 as amended, #15038, #15280 (amending), and #15794 (readopting #15589); and with its use of the EES high projection as its population forecast. In order to achieve compliance the following actions must be taken within the time frame specified.

1. Eliminate any urban growth area designations outside of the city or town limits of Anacortes, Mt. Vernon, Burlington, Hamilton, La Conner, Sedro Woolley, Lyman, and Concrete within 30 days of this Order. No other interim growth areas may be designated until the information and analysis required by the GMA is completed.

2. Clarify the language of the ordinances to preclude new urban residential, commercial, or industrial development outside a property designated IUGA within 60 days of the date of this order. Clarify the language of the ordinances to preclude extension of urban governmental services in accordance with CPP 1.8 outside a property designated IUGA within 60 days of the date of this order.

3. Base any new IUGA designation upon the OFM population forecast and the required land capacity, capital facilities and fiscal impact analyses. The new ordinance must identify open spaces and green belts.

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