

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

FRIENDS OF SKAGIT COUNTY,	)	
BARBARA RUDGE, and ANDREA XAVER,	)	No. 95-2-0065
	)	
Petitioners,	)	THIRD ORDER OF
vs.	)	CONTINUED NON-
	)	COMPLIANCE AND
SKAGIT COUNTY,	)	ORDER RE: MOTION
	)	TO CLARIFY
Respondent,	)	FINDING OF
	)	INVALIDITY AND
and	)	MOTION
	)	REQUESTING
CITY OF ANACORTES and CITY OF MOUNT	)	RECOMMENDATION
VERNON, municipal corporations,	)	FOR SANCTIONS
	)	
Intervenors.	)	
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	)	

On November 21, 1996, a Compliance Hearing was held to consider the above-referenced motions and whether Skagit County had achieved compliance with the Growth Management Act (GMA, Act) in response to our remand of August 30, 1995, and our Second Order, Finding of Continued Non-Compliance, August 28, 1996. The Hearing was held at the Swinomish Tribal Center in Skagit County. All three Board members were present. Friends of Skagit County (Friends) was represented by Gerald Steel. Petitioner Barbara Rudge was present. Skagit County was represented by Chief Civil Deputy Prosecutor John Moffat.

Exhibits 138 through 152 were admitted to the record. They pertained in the main land use activity in the County subsequent to our February 7, 1996, Finding of Invalidity. We noted in our Second Finding of Non-Compliance that "aspects of the Ordinance regarding.... urban densities in rural areas still substantially interfere with the goals of the Act" we further observed that "the County is also, by its own declaration, close to passage of a clustering cap ordinance which would apply to PUDs." This has not yet occurred. We find the County in continued non-compliance.

The County has now expressed its intent to deal with the non-compliant aspects of its IUGA and PUD ordinances as part of passage of its Comprehensive Plan (CP) and Development Regulations (DRs). We accordingly require the County to provide a firm schedule within 30 days of this Order for CP and DR passage. The time for passage may not exceed 120 days from the date of this Order.

### MOTION REGARDING CLARIFICATION

The County requested that we clarify our February Order by making clear that lots larger than five acres would not be precluded in the three rural residential zones found invalid, and that subdivisions in those zones to densities no greater than 1 dwelling unit (DU) per 5 acres would likewise not be precluded. The County argued that this request was similar to its previous request for clarification to which we responded that pre-existing lots were not precluded from buildout.

Friends countered that this request, unlike the previous one, asked us to lift invalidity for a portion of three zones, and therefore was a revision of an ordinance rather than a mere clarification. Friends argued that in acceding to the County's request we would be identifying or "permitting" uses only defined by County ordinance.

In response to a question the County asserted that clarification was needed because residents now wishing to build on rural lots five acres or larger needed to sign a disclaimer acknowledging that buildout must conform to a future ordinance found compliant by us. This, the County contended, placed a "cloud" over these applications.

### CONCLUSIONS

We are persuaded that granting this motion would put us in the permitting and ordinance-writing business, a position which we have previously stated we intend to avoid. *Achen, et al. v. Clark County #95-2-0067*, Order on Reconsideration, November 20, 1996. Once the County has adopted an ordinance which complies with the Act, the "cloud" will be lifted. The motion is denied.

### MOTION REQUESTING SANCTIONS RECOMMENDATION

Friends argued that, through the course of several compliance hearings, the Planned Unit Development (PUD) Ordinance had not been modified. This failure to respond to our Order, it declared, was an egregious delay deserving a recommendation for sanctions.

The County responded that it had been making steady progress toward overall compliance and that the failure to address then PUD Ordinance was owing to workload and higher priorities. It noted that we recommend sanctions only when it is clear that a jurisdiction is making no progress and is deliberate by failing to comply.

### CONCLUSION

Petitioners have not shown that the County's failure to modify its PUD Ordinance is a bad faith failure to comply with the goals and requirements of the Growth Management Act. Although the County's progress has at times been painfully slow, we do not find that it deserves recommendation for sanctions. If the County fails to adhere to its schedule we will strongly consider this issue at the next compliance hearing. The motion is denied.

SO ORDERED this 27th day of January, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge  
Board Member

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Nan A. Henriksen  
Board Member

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W<sup>m</sup> H. Nielsen

Board Member