

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

FRIENDS OF SKAGIT COUNTY,)	
BARBARA RUDGE, and ANDREA XAVER,)	No. 95-2-0065
)	
Petitioners,)	ORDER
)	RESCINDING
vs.)	INVALIDITY
)	
SKAGIT COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
CITY OF ANACORTES and CITY OF MOUNT)	
VERNON, municipal corporations,)	
)	
Intervenors.)	
<hr style="width:60%; margin-left:0;"/>		

SYNOPSIS OF THE ORDER

-

The County has adopted its comprehensive plan (CP) and an interim development regulation (DR) which address most aspects of our previous orders regarding invalidity and noncompliance. We find that these adoptions have removed substantial interference with the goals of the Growth Management Act (GMA, Act) regarding urban densities, and new commercial and industrial development in rural areas, except for Section 7(2) of Ordinance 16559 regarding expansion of non-conforming uses. We rescind our declaration of invalidity regarding other sections of Skagit County Code (SCC) 14.04 previously noted.

Our January 27, 1997, order called for the preclusion of urban densities in rural areas. We noted

the County's intent to so preclude by the adoption of its CP and DR which would address, among other subjects, planned unit development (PUD) ordinances, clustering ordinances, and interim urban growth areas (UGA) ordinances. Our June 30, 1997, hearing centered on whether substantial interference with the goals of the Act had been removed.

As we did in *Seaview Coast Conservation Coalition vs. Pacific County* (95-2-0076), we have made a facial review of the new ordinances in this proceeding solely for the purpose of determining whether they constitute a valid, good-faith attempt to comply with the requirements of the Act. As we noted in *Seaview*, the scope of issues to be decided in invalidity rescission hearings subject, as is this one, to the 45-day limitation has presented all three Boards with a great strain on their abilities to provide adequate review. The new ordinances are entitled to the presumptions of validity set forth in RCW 36.70A.320. As in *Seaview*, there is no evidence in this record that the new ordinances substantially interfere with the goals of the Act, with one exception. Here, Skagit County adopted a CP and DR of several hundred pages after a public participation process of several years and an index of over 170 items. It would be an absurd result to conclude that the Legislature intended a thorough substantive review of those ordinances and a determination of compliance within 45 days after the filing of the County's motion. We decline to review the CP and interim DR for substantive compliance. Whether the CP and the interim DR adoption comply with the Act is a question that will only be reviewed upon filing of new petitions by those with standing under the provisions of the GMA.

Additionally, anyone with standing has the legislatively-mandated right under RCW 36.70A.920 (2) to file a petition challenging compliance within 60 days after publication of the appropriate notice by the County of adoption of the CP and interim DR. Obviously, if we were to determine

compliance or noncompliance under the 45-day time limitation in Section .330(2), the 60-day appeal period would be rendered meaningless, or alternatively, another hearing concerning challenges to the ordinance would be necessary. Either is an absurd result. In interpreting the GMA, our role is to give effect to Legislative intent and to avoid unlikely or absurd results. *Kennewick v. Board For Firefighters*, 85 Wn. App. 366 (1997).

PROCEDURAL HISTORY

On May 30, 1997, Skagit County filed a motion requesting that we find Skagit County in compliance with our August 30, 1995, final decision and order and subsequent supplemental orders and that we lift our February 7, 1996, finding of invalidity. That order and subsequent orders are listed under Procedural History, Appendix 1. A hearing on Skagit County's motion was held June 30, 1997, in the Skagit County Courthouse, Mt. Vernon, Washington. A memorandum in support of the motion was received May 30, 1997. Memoranda from Intervenors City of Mt. Vernon and City of Anacortes were also received. A memorandum from Friends of Skagit County (Friends) in opposition of the motion was received June 16, 1997, and a reply in support of the motion received June 20, 1997, from Skagit County. All three Board members were present for the hearing on June 30, 1997. Chief Civil Deputy John Moffat and Mr. Samuel W. Plauche appeared for the County. Friends of Skagit County were represented by Gerald Steel. Petitioner Barbara Rudge was present as was Anacortes City Planner Ian Munce, representing the City.

ANACORTES MOTION

In its brief, Friends implored the Board to leave the Anacortes UGA under invalidity because of an alleged oversizing of the UGA "over three times the commercial and industrial acreage necessary"

according to Friends. In response, the City of Anacortes requested that we deny Friends' request and pointed out that the 1995 stipulation between Friends and the City had removed the City's IUGA from consideration under this case. The City asserted that the request by Friends was untimely and a challenge to the UGA should be brought under a new action. The City also requested that we require Friends to pay attorney fees for City costs associated with its response to Friends' request for UGA invalidity. We granted the motion of the City to deny Friends' request for a finding of invalidity regarding the UGA. We concur with its observation that such a challenge is appropriately brought in a new petition. We denied its motion for fees as we have no authority to award such costs.

On July 9, 1997, Friends moved for reconsideration of our decision regarding its request. We have carefully read Friends' motion. Issue 6.2 of Friends' amended petition, October 31, 1995, involved, in part, "identification ofcommercial and industrial areas within an IUGA." Friends does not challenge the boundary of the Anacortes UGA. Issue 6.2 was dismissed with prejudice by stipulation of Friends and the City of Anacortes. Challenges to commercial and industrial acreage within the UGA must therefore be brought in a new petition. The motion for reconsideration is denied.

MOTIONS TO ADD TO THE RECORD

We next considered motions to add to the record from Friends and from Skagit County. On June 13, 1997, Friends moved to add proposed Exhibits 165 through 169 to the record. The County expressed opposition to the admission of proposed Exhibit 167, a letter from Barbara Rudge to Gerald Steel with Appendices 1 to 3, dated June 12, 1997. We granted Friends' motion to add to the record with the exception of the letter and Appendix 1 of Exhibit 167. On June 20, 1997, the

County moved to add to the record proposed Exhibits 170 through 172. Their motion was granted. On June 27, 1997, the working day immediately prior to the hearing, Friends moved to add proposed Exhibits 173 through 183. We held that the parties had insufficient time to respond to the motion and that providing them a 10-day response time would preclude our order being complete by the statutory 45-day deadline. We denied the motion. The County's motion to admit proposed Exhibits 152 through 164 was granted. We renumbered proposed Exhibit 152, (comprehensive plan Ordinance 16550) to Exhibit 173 as 152 had been used for a previous exhibit. Friends expressed their intent to move for reconsideration of our decision on proposed Exhibits 167 and 173 through 183.

DISCUSSION

SEPA

Friends challenged the declaration of non-significance (DNS) adopted by the Board of County Commissioners (BOCC). Friends contended that a DNS is inappropriate for DRs that implement a CP. The County responded that Friends had no standing for such a challenge because it had failed to exhaust its administrative remedies by neglecting to pay the fee required for an appeal to the hearing examiner. The County further noted that it had included by reference the environmental impact statement (EIS) previously completed regarding the CP with the DNS. The County asserted that the EIS addressed all probable significant adverse environmental impacts. Friends responded that the exhaustion argument was meaningless because the BOCC, to which the hearings examiner is subordinate, had already adopted the DNS and so no administrative process existed.

SEPA CONCLUSION

We concur with the County's position that the EIS for the CP adequately addressed probable significant adverse environmental impacts. The DNS for the interim DR which dealt with the same impacts was properly adopted.

PRECLUSION OF NEW COMMERCIAL, INDUSTRIAL, AND URBAN RESIDENTIAL DEVELOPMENT IN THE RURAL AREA

-

The newly adopted CP and interim DRs designate 533,120 acres in natural resource lands and rural lands. CP, page 4-5. Fewer than two percent of those lands (9,374 acres) were challenged in this proceeding by Friends as substantially interfering with the goals of the Act. Those challenges involved rural intermediate and rural village land use designations. Friends raised further challenges regarding commercial and light industrial zoning and permitting in the rural area and requested a finding of invalidity in Section 7, Ordinance 16559, Commercial and Industrial Uses Outside of UGAs.

The County responded that Friends had not shown Section 7 of Ordinance 16559 must be invalidated. It pointed to Section 7's restrictions only for neighborhood business on commercial and industrial vacant parcels outside of UGAs. The County noted that we had already upheld neighborhood business as a use outside IUGAs and had further concluded that resource-based uses were also permissible under the GMA. The County noted that parcels with commercial or industrial uses that are not neighborhood business or resource-related may only expand to the extent of their parcel size. The County contended that the record showed no evidence of substantial interference with the Act through the provisions of Section 7.

The County also asserted that densities greater than 1 unit per 5 acres were placed only in limited areas where existing parcel density was predominantly greater than 1 per 2.5 acres or where historical rural communities existed. The County contended that this did not justify continued invalidity in these areas.

CONCLUSION - RURAL AREAS

We conclude that, with adoption of the CP, interim DRs, and the natural resource lands ordinance called for in Case #95-2-0075, substantial interference with the goals of the Act has been removed. The exception to this removal lies in Section 7(2) of Ordinance 16559 which allows Expansion of Existing Commercial or Industrial Use Other Than Resource-based or Neighborhood Business. Section 7(2) allows expansion to the legal parcel limits of any lawfully-existing commercial or industrial use on the date of the ordinance. In contrast, the intent section of SCC 14.04.270 allows continuance of the established legal use of the land at the time of adoption of a regulation, permitting these "nonconformities" to continue "until they are removed." It does not, however, "encourage their survival." SCC 14.04.270 (1) and Ordinance 16559 7(2) are inconsistent. Additionally, Section 7(2) allows expansion which is not limited to neighborhood business or resource-based businesses. As such, it allows urban growth in rural areas and substantially interferes with RCW 36.70A.020 (1) and (2).

The question of whether the new CP and DRs are in compliance with the Act must be reserved for new petitions challenging the adoption to be filed within 60 days after publication of adoption.

ORDER

1. Our finding of invalidity regarding the following sections of the SCC is lifted:
 - a) .080 Multi-Family Residential District (MFR)
 - b) .090 Residential District (R)
 - c) .095 Residential Reserve (RR)
 - d) .105 Rural Intermediate (RI)
 - e) .055 Office District (O)
 - f) .060 Industrial District (M)
 - g) .063 Industrial-MP District (M-MP)
 - h) 070 Commercial-Limited Industrial District (C-LI)
 - i) Maps and amendments thereto, called for under 0.50 pertaining to new urban residential, urban commercial, or urban industrial development outside IUGAs that implement invalidated sections.
2. Section 7(2) of Ordinance 16559 is found to substantially interfere with the goals of the Act and is declared invalid.
3. The County has 180 days from the date of this order to bring this section into compliance.
4. Challenges regarding the compliance of Ordinances 16550 and 16559 must be made in new petitions for review.

Findings of Fact and Conclusions of Law are attached under Appendix 2 and 3.

SO ORDERED this 14th day of July, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member
APPENDIX I

PROCEDURAL HISTORY

1. *Friends of Skagit County v. Skagit County*, WWGMHB #95-2-0065 (Final Decision and Order, 8/30/95, amended 10/31/95).
2. *Friends of Skagit County v. Skagit County*, WWGMHB #95-2-0065 (Compliance Hearing Order Regarding Designation and Protection of Critical Areas, 12/21/95).
3. *Friends of Skagit County v. Skagit County*, WWGMHB #95-2-0065 (Finding of Noncompliance and Finding of Invalidity Regarding IUGAs, 2/7/96).
4. *Friends of Skagit County v. Skagit County*, WWGMHB #95-2-0065 (Order Re: Modifying of Rescinding Invalidity (IUGA), 4/4/96).

5. *Friends of Skagit County v. Skagit County*, WWGMHB #95-2-0065 (Finding of Compliance Regarding Critical Areas Ordinance 5/16/96).
6. *Friends of Skagit County v. Skagit County*, WWGMHB #95-2-0065, (Second Order Re: Modifying or Rescinding Invalidity & Finding of Continued Noncompliance, 8/28/96).
7. *Friends of Skagit County v. Skagit County*, WWGMHB #95-02-0065, (Third Order of Continued Noncompliance and Order re: Motion to Clarify Finding of Invalidity and Motion Requesting Recommendation for Sanctions, 1/27/97).

APPENDIX 2

-

FINDINGS OF FACT

-

-

1. Section 7(2) of Skagit County Ordinance 16559 allows expansion of lawfully- existing commercial and industrial uses at the time of its adoption in zones otherwise limited to neighborhood business and natural resource land uses.
2. SCC 14.04.270(1) allows such uses to "continue until they are removed" but does not "encourage their survival."
3. The inconsistency of these sections fails to comply with the GMA.
4. Section 7(2) allows expansion which is not limited to neighborhood business and resource-based business. As such, it allows urban growth in rural areas.

APPENDIX 3

-

CONCLUSION OF LAW

-

-

Section 7(2) of Skagit County Ordinance 16559 substantially interferes with the fulfillment of RCW 37.70A.020 (1) and (2).

-