

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

FRIENDS OF SKAGIT COUNTY,)	
)	No. 95-2-0075
Petitioner,)	
)	FINDING OF
vs.)	COMPLIANCE
)	
SKAGIT COUNTY,)	
)	
Respondent.)	
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On August 27, 1997, a Compliance Hearing was held in the above-captioned case. The hearing was held telephonically. Les Eldridge and Nan Henriksen were present for the Board. William Nielsen read the briefs and listened to the tapes of the hearing. Mr. John Moffat represented Skagit County and Mr. Gerald Steel represented Friends of Skagit County. The hearing was to determine whether the County had complied with our April 9, 1997, order regarding 40-acre minimum lot size in the County Rural Resource designation. We had called upon the County either to preclude subdivision of 40-acre parcels into 20-acre parcels inside the Rural Resource designation or include hitherto-excluded 20-acre parcels in the Rural Resource designation. The County had precluded 20-acre parcels within the Rural Resource designation because it maintained they were difficult to protect against competing uses. At the same time, it allowed the 40-acre parcels within the Rural Resource designation to be subdivided into 20-acre parcels. We found this inconsistent, and required the County to choose, in its terms, to "sort" to either a 40-acre or 20-acre standard.

In response to our order, Skagit County adopted Ordinance 16640 on August 19, 1997. The County argued that the ordinance complied with our order and the Growth Management Act (GMA, Act) because it "sorted" to 40 acres. Skagit County Code (SCC) 14.04.107(5)(a) as amended by 16640 now states in part: "minimum lot size-1/16th of a section or larger or 40 acres or larger if the land is not capable of description as a fraction of a section." The next sentence of the amended section addresses residential density within the 40 acres and reads: "a maximum residential gross density of 1 dwelling unit per 10 acres or 1/64th of a section for Conservation and Reserve Development (CaRD) land division."

Friends argued that the latter sentence failed to comply with our order and the Act. Friends maintained that creating three lots of suburban size (approximately 1 to 1 1/2 acres) and a large 37-acre lot presented the same "obstacles" or problems which the County cited in precluding 20-acre lots in the Rural Resource designation. Friends maintained that problems from spraying, from dust, from manure, and complaints from residents of the smaller lots created the same obstacles to management of resources that the County's expert Mr. Nissley referred to in his testimony before the Planning Commission, supporting preclusion of 20-acre lots in the Rural Resource designation.

The County pointed out that the CaRD Ordinance was not yet in existence and that the revised section now in effect complied with the Board's order by "sorting" to 40 acres. It asserted that Friends' concerns and allegations regarding obstacles created by clustering at a 1 to 10 density in a 40-acre parcel could only be adjudged by review of the extensive record attached to the Comprehensive Plan (CP). It reminded the Board that the question raised here by Friends was also raised by Friends in their challenge to the CP, Case #97-2-0060c. It suggested that the issue would be resolved by the Board's review of the CP case long before the CaRD Ordinance would be passed and open to challenge. The County agreed to stipulate that, upon passage of the CaRD Ordinance, this issue, if still unresolved, could be raised by Friends. It contended that there simply was not adequate briefing in this hearing to provide a thorough review of the question.

CONCLUSION

We agree with the County that the appropriate place to address a challenge to the use of the CaRD concept in resource lands is during the review of the CP in Case 97-2-0060c. As the County pointed out, the rationale for CaRD is in the CP record. Accordingly, we find that the County is in compliance with our April 9, 1997, order in that it has established a minimum lot size in the Rural Resource designation of 40 acres. We specifically do not find compliance for, and we reserve judgment upon, the sentence in SCC section .107(5)(a) which calls for a maximum residential density of 1 per 10 in a Rural Resource Conservation and Reserve Development land division. The 1:10 density and that portion of the SCC have been challenged as already-identified issues in Case 97-2-0060c, or may be challenged upon passage of a CaRD Ordinance.

So ORDERED this 3rd day of September, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member