

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

FRIENDS OF SKAGIT COUNTY,)	
)	No. 95-2-0075
Petitioner,)	
))	FINDING OF
vs.)	CONTINUED NON-
)	COMPLIANCE &
SKAGIT COUNTY,)	ORDER RE:
)	REQUEST FOR
Respondent.))
INVALIDITY &)	
_____)	SANCTIONS

Procedural History

On January 22, 1996, we entered an order remanding Ordinance #15841 and requiring Skagit County to bring its natural resource lands ordinance into compliance with the Growth Management Act (GMA, Act) within 90 days. The order required the County to: specify how pre-existing ordinances would conserve natural resource lands, provide for effective public participation, remove the exclusionary criterion that only forest lands previously zoned would be designated, and remove the requirement that in order to be designated agricultural land be the sole source of income for the owner. We noted that the record showed no discussion nor consideration of the recommendations from the staff regarding mineral lands. The order required the County to designate natural resource lands (NRL) within interim urban growth areas (IUGAs) prior to establishment of the boundary or to explain why such designations were not made before establishing IUGAs.

On May 8, 1996, Friends of Skagit County (Friends) moved for a compliance hearing. On June 14, 1996, Friends asked for a recommendation of sanctions and a determination of invalidity if an ordinance in response to our order was not adopted by the June 26, 1996, compliance hearing. At the compliance hearing the following exhibits were added to the record: Exhibits 60, (addendum to the environmental impact statement for the land use element of the comprehensive plan); Exhibit 61, 62 (notices of public hearing and DNS); Exhibit 64 (correspondence in connection with the natural resource lands designation); Exhibit 68 (testimony and graphs by Mary Ann Manville-

Ailles); and Exhibits 63 (Sign-in Sheets for the June 3 Hearing), 65 (Friends' comments Re: May 15 NRL Draft), and 67 (Report of Public Hearing June 2, 1996, NRL Designation). Motions to admit Exhibit 66 (Friends' June 7, comments on Designation and Protection of NRL) and the request for an order in regard to facsimile submission were denied. Declarations from Mr. Christensen and Mr. Moffat were stricken.

Discussion

The County argued that it had made “substantial progress” in response to the January 22, 1996, order. It cited Exhibit 60 as a demonstration of that progress. The County acknowledged that it had not yet adopted a formal ordinance regarding compliance, but noted that the planning commission and staff were working diligently toward that end. The County expects to have such an ordinance adopted by the end of August, 1996.

Friends argued that the substantial delay in responding to the January order had placed over 60,000 acres of resource land at risk of being lost. It requested a determination of invalidity to stop the vesting of subdivisions of parcels 20 acres and larger in the rural zoning district. Friends admitted “the County has made excellent progress toward designation and protection of natural resource lands with the issuance of the EIS addendum and with the Board of County Commissioner hearing held June 3, 1996.” Nonetheless, Friends believed that a few members on the planning commission desired to continue a window of opportunity to allow further subdivision in the resource lands and also asserted that there was a “second land rush” occurring because of the submission of applications for such subdivisions.

In rebuttal, the County contended that the record did not show an abnormal number of subdivisions taking place in resource lands. The County noted that close to half of the potential lands were already protected by existing resource lands zoning, or by this Board’s order of invalidity in a companion case, #95-2-0065 (IUGA).

Conclusion

It is apparent to us that the County is making substantial progress toward complying with he

January order. The record contained no compelling evidence of a purposeful delay or of an abnormal number of applications for subdivision in potential resource lands as a result of such a delay. We have previously held that invalidity and a recommendation for sanctions are to be used only in the most egregious cases. The record in this case does not show such a circumstance. The County has declared its firm intent to have an ordinance adopted by the end of August. The first date available for us to review the adoption of such an ordinance and determine its compliance is October 8, 1996. We will hold another compliance hearing on that date at a location to be determined.

We find Skagit County does not yet comply with the Act regarding natural resource lands. We deny the request for a finding of invalidity and a recommendation for sanctions.

SO ORDERED this 15th day of August, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member