

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

TAXPAYERS FOR RESPONSIBLE GOVERNMENT,)	
)	
Petitioner,)	No. 96-2-0002
)	
vs.)	COMPLIANCE
)	ORDER
CITY OF OAK HARBOR,)	
)	
Respondent.)	
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In our final decision and order (FDO) dated July 16, 1996, we held that the City of Oak Harbor had not complied with the requirements of RCW 37.70A.020(12) (goal 12) with regard to its capital facilitates plan (CFP) adopted within its comprehensive plan (CP). In the FDO we summarized goal 12 as requiring a local government to adopt policies and/or regulations that provide reasonable assurances the locally-defined public facilities and services necessary for future growth are adequate and within previously established levels of service (LOS) standards necessary to serve new growth under an appropriately timed phasing, all of which are connected to a clear and specific funding strategy. We further determined that the locally-defined public facilities and services necessary for future growth must be within the parameters established by the Growth Management Act (GMA, Act). We noted that Oak Harbor had done an excellent job to the point at which the FDO was issued, but needed further analysis to determine which public facilities and services were necessary to support new growth, what mechanisms to use that would ensure adequacy of those public facilities and services, and what the future capacities and financial strategies to meet the impact of new growth were.

During the remand period the City engaged in a comprehensive discussion of compliance with goal 12, rather than just a short discussion on why it had chosen sewer, water, and transportation for concurrency and not any additional capital facilities and services. As the foundation for this broader discussion, the City began with a Citizen's Comprehensive Plan Task Force who held a series of 23 meetings, all of which were open to the public. Fifteen of the meetings were limited

to discussion of goal 12 issues, while the remainder incorporated other matters of the CP update. Petitioners were represented on the Task Force, along with a wide diversity of other citizen members.

After the Task Force report was completed the Planning Commission held a public hearing on May 27, 1997. The City Council held an additional public hearing on July 8, 1997. The amendments to the CP were adopted on August 5, 1997.

Within the timeframes provided by the GMA, Taxpayers for Responsible Government (TRG) filed a petition challenging certain parts of the amendments. That case was assigned #97-2-0061. The hearing on the merits in that case and the compliance hearing in this case were held contemporaneously on February 10, 1998. We have decided to issue separate orders in the two proceedings for ease of future reference. Both orders should be read together because the issues are interrelated.

The GMA now clearly establishes that for compliance issues, the burden is on petitioners to establish noncompliance under the clearly erroneous standard. RCW 36.70A.320(2). The amendments to the CP are presumed valid, RCW 36.70A.320(1) and increased deference is to be accorded to the City's decisions, RCW 36.70A.3201. The ultimate issue to be decided is whether the City now complies with the Act, not whether adherence to each specific remand issue has been achieved.

TRG contended that the amendments which were adopted in response to the remand actually introduced "more uncertainty regarding infrastructure support with respect to adequacy, financial feasibility, and timeliness than in the original 1995 CP." Specifically included as examples of the "increased uncertainty" were the deletions of major capital projects and non-growth related capital facilities from the CP, the change in the LOS standard for water supply and the use of the "budget process", as opposed to the GMA process, as the mechanism for establishing funding levels.

The City countered that it had taken major steps to ensure concurrency. Examples of those steps included a large part of the CP devoted transportation, the passage of a concurrency ordinance for

transportation along with an impact fee ordinance, and a budgeted item for updating transportation studies in 1998. The City adopted a water plan and regulatory concurrency for it, and raised water system development charges imposed on new connections. Oak Harbor adopted a sewer plan and regulatory concurrency in its CP, raised rates for necessary improvements and imposed higher development charges. Further, the City adopted a stormwater utility ordinance and passed other stormwater management ordinances to implement the stormwater management plan of the CP. Finally, Oak Harbor adopted a park improvement plan and imposed impact fees for parks.

The Cemetery Road extension was specifically listed by TRG as a deficiency and noncompliant change. We do not find that the record supports TRG's contention. This record demonstrated that there was no change in the Cemetery Road extension listing from the original CP, since it was never originally listed as a project to be funded within the initial 6-year phase of the CP in order to maintain LOS standards. It was, and continues to be, listed as a project to serve growth over the latter part of the 20-year CP. It was a listed project so that future development could reference the proposed alignment in planning or platting projects. Additionally, if development is proposed in the area, which is out of phase with the City's concentric growth pattern, private funding for public facilities and services in that area would become necessary. Rather than being criticized for this approach, the City is to be commended.

The CFP at pages 39-42 identified the sources of funds available for the capital facilities and services necessary to ensure adequacy and maintain appropriate levels of services for new growth. Other projects which the City determined were not related to new growth, such as the stormwater plan, the water plan, the sewer plan, and the park plan, all of which were incorporated into the CP, contained sufficient information to comply with the Act. TRG's complaint that the City could not rely upon its bonding capacity as a revenue source, was not sustained by this record. The CFP directed that bonding capacity was generally to be used as a backup, using the proposed revenue streams to complete necessary projects. In any event, general bonding capacity is available to determine whether adequate sources of funds are set forth in the CFP. *Robison, et al. v. City of Bainbridge Island*, CPSGMHB, #94-3-0025.

TRG contended that the change in the LOS standard for water uses from fire flow standards to a

lower domestic water standard was not supported by the record. While it is clear that the change was made, it is also clear that the change was based upon a reasoned decision by the City. Analysis of the use of a fire flow LOS led to the conclusion that approximately \$5 million in improvements would have to be made. Rather than impose such a huge financial impact to its water system, the City determined that the lower domestic water LOS standard was sufficient, particularly since new development would still be required to meet fire flow standards set forth in the City's Fire Code. The City had the right to take that action under GMA, particularly since it used a reasoned decision-making process. *See* WAC 365-195-510(3)(b).

TRG's complaint that the budget process, rather than GMA planning, directed the funding process is simply misplaced. As noted in the CFP at page 3:

“...Oak Harbor has determined that arterials, domestic water and sanitary sewers are Category 1 capital facilities and will be subject to the concurrency regulatory requirements of the Growth Management Act....

The City has determined that Fire Protection, Law Enforcement, Parks and Recreation, Solid Waste, Stormwater Detention and Treatment, and Corrections and Detention are all Category 2 capital facilities. For fire protection, this decision was based on the ability of current laws to assure that new growth will meet minimum fire protection standards. For the remaining facilities and services, it was based on the range of acceptability in service levels for these facilities, and the less quantifiable impacts these facilities have directly on public health and safety. It is the City's intent that these capital facilities will be funded as part of the ongoing adopted capital facilities budget of the City of Oak Harbor. This budget process, upon approval of the City Council, will become the funding level for these facilities.”

This is a decision that, based upon this record, complies with the Act.

In the FDO, we noted that the City had concluded that a new reservoir would be necessary within the next 6 years, but that a source of funding had not been established. During the remand period, the City entered into an agreement with the Department of the Navy to allow inter-ties with the Navy water system as a means of postponing the need for a new reservoir. Funding for the “interim” solution of the inter-ties was established. This “interim” solution is anticipated to be at least 8 years in duration and relates to access to “emergency standby storage” of water.

Although it is not as clear that the Washington State Department of Health believes that 8 years is an acceptable “interim” solution as the City contended, in light of this record and the fact that the issue involves “emergency standby storage” of water, and in light of the increased deference to local government decisions, we find that TRG has not sustained its burden of showing noncompliance.

The changes adopted by Oak Harbor in response to our initial remand are in compliance with the Act.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 5th day of March, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member