

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

TAXPAYERS FOR RESPONSIBLE GOVERNMENT,	)	
	)	
Petitioner,	)	No. 96-2-0002
	)	
vs.	)	ORDER ON
	)	DISPOSITIVE
CITY OF OAK HARBOR,	)	MOTIONS
	)	
Respondent.	)	
_____	)	

Petitioner Taxpayers for Responsible Government (TRG) filed a petition for review which was received February 12, 1996. During the prehearing conference of March 27, 1996, the petition was reviewed in full with petitioners and the City of Oak Harbor (City) and the issues determined. A prehearing order, entered April 4, 1996, listed the four issues presented by the petition.

On April 15, 1996, the City filed dispositive motions with regard to issues 1, 3 and 4. After a telephonic hearing, we notified the parties on May 2, 1996, that the City's motions as to issues 1 and 3 were granted and that we would reserve ruling on issue 4. We made that summary notification in order to allow the parties to comply with the briefing schedule and preparation for the May 29, 1996, hearing on the merits. This Order formally reflects our decision and the reasons for it.

Issue #1 was stated in the prehearing order as follows:

“Does the transportation and/or capital facilities element of the Oak Harbor Comprehensive Plan (CP) fail to comply with RCW 36.70A.060(6)(e) because the plan recognizes a funding shortfall without a corresponding reduction in the level of services to be provided?”

This issue was drawn from the petition statement of issues #4 which stated:

“The Transportation and/or Capital Facilities Element of the Oak Harbor

Comprehensive Plan fails to comply with RCW 36.70A.060(6)(e) because it acknowledges that probable funding falls short of meeting identified needs, yet shows level of service standards will be met.”

The plain language of RCW 36.70A.060(6)(e) directs the adoption of development regulations that prohibit established levels of service standards to decline below those designated in the comprehensive plan. *Reading v. Thurston County*, WWGMHB #94-2-0019. As the City pointed out, section .070(6)(e) does not impose any duty to include a policy in either the transportation element or the capital facilities element of a comprehensive plan concerning funding shortfalls.

DRG’s major thrust to counter the City’s argument was a request to amend the issue to reference RCW 36.70A.070(6)(c)(iii). Petitioners requested that we allow such an amendment to reflect the citation they intended and deny the City's motions to dismiss issue #1.

WAC 242-02-558 provides that an objection to any of the items contained in the prehearing order must be made in writing within seven days. The prehearing order controls subsequent proceedings unless modified for good cause. WAC 242-02-260 allows amendment of a petition. Amendments, however, "shall not be freely granted" and a showing by the adverse party of "unreasonable and unavoidable hardship" are sufficient grounds for denial.

Clearly, petitioners failed to comply with the requirements of WAC 242-02. Petitioners did not show that good cause existed for modifying the prehearing order, nor did they show sufficient grounds to amend their petition. The City forcefully argued that it had already invested substantial staff time and energies in dealing with issue #1 as stated. The short period of time prior to the hearing on the merits also dictated against making the requested changes. We agree with the City, deny the motion to amend and grant the motion to dismiss. There is nothing in .070(6)(e) that requires a local government to deal with funding shortfalls in the CP. Whether .070(6)(c)(iii) imposes such a duty is not properly an issue in this case.

Issue #3 was stated in the prehearing order as follows:

"Does the capital facilities element of the CP violate RCW 36.70A.070(3)(a)(b)(c) and/or .140 because it refers to and/or relies upon previous studies and plans without adoption by reference in the CP and without provision for effective public

participation?"

With regard to the portion of the issue dealing with the failure to incorporate the plans and studies by reference, the City pointed out that p. 7 of the CP listed the various plans which were adopted by reference. Thus, the City moved to dismiss that portion of issue #3 contending that incorporation by reference was not properly done.

TRG argued that:

"...TRG has never disputed that these previous studies were incorporated into the plan. Our point is that they were not adequate to meet GMA requirements and that they were not formally "adopted" by the City...."

Once again at this late date, petitioners have changed the focus of the issue. The issue presented did not relate solely to "adoption" but rather to "adoption by reference". This term was taken directly from issue #6 of the petition. Petitioners participated in the prehearing process and failed to dispute or clarify the clear meaning set forth in the petition and in the prehearing order that their complaint involved a failure to adopt by reference. That portion of issue #3 will be stricken. The remainder of issue #3 dealing with public process remains in the case.

Issue #4 reads:

"Does the capital facilities element of the CP fail to comply with RCW 36.70A.020 (12) because it applies the concept of concurrency only to water, sewer, and transportation, rather than all public facilities and services?"

The concept of concurrency is set forth in Goal 12. The scope of Goal 12 has not yet been addressed in any of our cases. The complexity and potential impact of a ruling on this issue leads us to conclude that it is better suited for determination after reviewing all aspects of the case. We do not require the parties to engage in further briefing or argument on this issue, but will allow such argument if the parties choose to do so.

DATED this \_\_\_\_\_ of May, 1996.

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William H. Nielsen  
Presiding Officer

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Les Eldridge  
Board Member

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Nan A. Henriksen  
Presiding Officer