

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

|                           |   |               |
|---------------------------|---|---------------|
| FRIENDS OF SKAGIT COUNTY, | ) | No. 96-2-0009 |
|                           | ) |               |
|                           | ) | ORDER RE:     |
|                           | ) | PETITION FOR  |
| Petitioner                | ) | DECLARATORY   |
|                           | ) | RULING        |
|                           | ) |               |
|                           | ) |               |

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**PROCEDURAL HISTORY**

On April 8, 1996, we received a Petition for Declaratory Ruling from Friends of Skagit County (“Friends”), requesting a determination of when this Board’s invalidity order in case #95-2-0065, entered on February 7, 1996, and received by Skagit County at 11:38 a.m. that day, became effective. We also received a memorandum in opposition to the request from Skagit County, and a motion from Skagit County requiring Friends to join additional parties. Further, the Board identified all other parties to case #95-2-0065, and Gary Van Luven, William Burk, and David Welts as “interested persons” pursuant to WAC 242-02-920 and invited them to submit materials regarding the petition. David Welts (“Welts”) submitted a memorandum in opposition. Mr. William H. Nielsen, Board Member, did not participate in this case in any manner whatsoever.

**DISCUSSION**

Friends contended that the phrase “after the date” found in RCW 36.70A.300(3)(b) refers to the day and time that the Board’s order becomes effective. Friends maintained that in the case of this finding of invalidity any development application that vests after 11:38 a.m. February 7, 1996, is subject to the ordinance or resolution to be adopted in response to the order of remand and finding of invalidity. They pointed out that Section .300(3)(a) addresses vesting “before the date” of the order and, as (3)(b) addresses vesting “after the date” of the Board’s order, it would be unreasonable to assume that “the date” refers only to a day, as it would leave a day between “before the date” and “after the date” without legislative interpretation for vesting. They cited

several cases in which the prime meaning of “date” is “day and time” including; Conner v. Motors Ins. Co., La.App., 216 So.2d 555, 557; In re Muldoon, 123 N.Y.S.2d 711, 712 and Michel v. Aetna Cas.&Sur.Co., C.A.Okl., 252 F.2d 40, 42, all of which state that “date” refers to a particular point in time at which an event or transaction occurs and not the calendar day upon which it occurs.

The County and Welts maintained that .300(3)(b) implies that any application not filed “after the date” of the Board’s order would vest to preexisting regulations. Neither the County nor Welts addressed the language in .300(3)(a) which states that a determination of invalidity shall “not extinguish rights that vested under state or local law before the date of the Board’s order”( emphasis added). The County and Welts contended that “all development applications received through the close of the day on February 7, 1996, vest to the County’s regulations in effect prior to February 8, 1996, (the first day “after the date” of the Board’s order of invalidity).”

### CONCLUSION

The language of .300(3)(a) and (b) regarding invalidity states clearly that rights vested under state or local law before the date of the Board’s order shall not be extinguished, and that applications vesting after the date of the Board’s order are subject to ordinance or resolution enacted in response to the order. The point in time at which the Board’s invalidity order becomes effective must be determined by a reading of both .300(3)(a) and (b). Reading only (b), as did the County and Welts, it is possible to reach their conclusion. Reading both (a) and (b), we conclude that the Legislature did not intend to leave a day in between the day before the order and the day after the order which would be subject to interpretation as to which of two sets of regulations would govern vesting. We rule that the phrase “the date” found in RCW 36.70A.300(3)(a) and (b) refers to the day and time of the Board’s order and further rule that that time is the moment when the jurisdiction has been served with or has actual knowledge of the order.

So Ordered this 24th day of July, 1996.

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Les Eldridge  
Presiding Officer

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Nan A. Henriksen  
Board Member