BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ABENROTH, et al.,	)	
	)	No. 97-2-0060c
Petitioners,	)	
	)	COMPLIANCE
v.	)	ORDER RE:
	)	SHORT-TERM
SKAGIT COUNTY,	)	STIPULATED
	)	ISSUES
Respondent,	)	
	)	
and	)	
	)	
TOM and SHEILA BUGGIA, et al.,	)	
	)	
Intervenors.	)	
	)	

On September 23, 1998, we issued a Final Decision and Order for Short-Term Stipulated Issues (FDO) in this matter. In the FDO we ordered the County to do the following:

> "Before compliance can be found on issue (2), transformance of urban governmental services, the following actions must be taken:
>
> - Within 180 days, interlocal agreements with cities and towns which preclude uncoordinated development within UGAs, ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforceable. These agreements must reflect the holdings made in this decision and the prior FDO.
>
> - Regarding the March Point portion of Anacortes' UGA, within 90 days the County must address its timing issues with the BRB. It must also reaffirm in writing its commitment to live up to its self-imposed duties to the City in its CP and interlocal agreement and the assurances made to us regarding commercial and industrial development in the March Point UGA.
>
> In order to achieve compliance in issue (3), minimum densities allowed inside UGAs, the County must:

- Within 180 days, complete tasks 1 and 2 set out on page 16 of Attachment A to Exhibit A of Ordinance 17029.

Tasks 1 and 2 are the following:

1. Work with the cities/towns/tribe to arrive at an appropriate range of densities that reflect an overall density of 4 or more units per 1 acre. This will require that each city/ town/tribe amend its zoning code to reflect this cooperative work effort.

2. Amend the Comprehensive Plan Map legends for all of the residential zoning districts in each UGA, as well as in the corresponding descriptions of these districts in the Comprehensive Plan to indicate a minimum and maximum lot size that is consistent with recommendations 1 and 2 above."

We received the following briefs on these matters:

4/16/99	Skagit County's Brief of Actions Taken;
4/22/99	City of Anacortes, (City) Brief;
4/29/99	Friends of Skagit County's, (FOSC) Opening Brief;
5/6/99	FOSC Response to City's Brief;
5/10/99	Skagit County's Responding Brief;
5/13/99	FOSC Reply Brief; and
5/17/99	City's Reply Brief.

On May 12, 1999, the City filed a Motion to Supplement the Record.

The Compliance Hearing was held May 18, 1999, in Hearing Room B of the Skagit County Administration Building. All three Board members were present. Representing Skagit County was John Moffat, representing FOSC was Gerald Steel, and representing the City of Anacortes was Ian Munce.

At the hearing, we admitted the City's proposed exhibits 7100, 7101 and 7102.

Transformance of Urban Governmental Service Within UGAs

On December 7, 1998, the Skagit County Board of County Commissioners (BOCC) sent a letter to the Washington State Boundary Review Board of Skagit County (BRB) indicating that the County "has no objection to this or any annexation petition presented by the City for the annexation of property within its UGA." Further, the letter stated that the County:

> "…stands ready to honor and comply with the Growth Management Act, the County Comprehensive Plan, Countywide Planning Policies, the 1996 Interlocal Agreement with the City (County Resolution No. 16210), Ordinance No. 17005 (which implements the City's development standards within the UGA), and with all final decisions of the Western Washington Growth Management Hearings Board with respect to development in the Anacortes UGA."

The County claimed that this letter brought it into compliance with the March Point prong of the FDO under transformance of urban governmental services. The County further claimed that Interlocal Agreements regarding development within the UGAs with the cities of Anacortes, Mount Vernon, Burlington and Sedro Woolley, when read in conjunction with its ordinances adopting these cities' development standards satisfied the FDO requirements to assure coordinated growth within the UGAs consistent with the Growth Management Act (GMA, Act).

Anacortes responded:

> "Skagit County has chosen to adopt the highest of concurrency standards for development within UGAs: "Provide urban governmental services which include urban level public facilities and services…prior to or concurrent with development." CP 7-7, UGA Policy 1.1. Rather than meeting these standards by providing urban facilities and services itself, though, either directly or by contract, the County has chosen to rely on the city annexation mechanism. See e.g. City of Anacortes Interlocal Agreement (Exhibit 1521, p.48, Section 5)("Skagit County and the City agree that it is desirable to annex properties prior to securing development approvals."). However, the County's current interim regulation system does allow development approvals in a UGA prior to annexation subject to Annexation Agreements between property owners and cities and annexation can and has blocked by the Boundary Review Board for Skagit County ("BRB"). Exhibit 1521.
>
> The WWGMHB has found this internal inconsistency to require attention by Skagit County. FDO Short-Term Stipulated Issues, p. 18 ("Regarding the March Point portion of Anacortes' UGA, within 90 days the County must address its timing issues

with the BRB.”). However, the County has failed to address these issues. The County does claim to have addressed a second, related issue, namely its support of an annexation of a limited portion of South March Point but fails to report to the WWGMHB that it did not seek the inclusion of the entire South March Point area and that its support was not, in fact, unconditional….

….Skagit County has adopted concurrency standards that require annexations to occur whether or not special districts object, some residents would like a UGA to retain a rural character, or a BRB considers that the County tax base would be adversely affected. A BRB assertion of authority to preempt GMA planning is simply unacceptable in a county that has **chosen** to design its entire concurrency system around annexations.”

FOSC disagreed with Anacortes on the source of the problem, stating in part:

“Anacortes errs in looking at the BRB as the source of this problem. The source of this problem is the faulty nature of the Interlocal Agreement. This problem is not only a problem with the Anacortes Interlocal Agreement, but it is also a problem with the Mount Vernon, Sedro-Woolley, and Burlington Interlocal Agreements (to Friends’ knowledge there are no other GMA Interlocal Agreements). None of these agreements adequately provide for urban services and concurrency inside the unincorporated UGAs. As Friends of Skagit County (Friends) stated in its Opening Brief:

> The establishment of appropriate rural and urban levels of service and concurrency are long-term stipulated issues which the County is scheduled to complete by December 31, 1999. See January 23, 1998 Order Extending Time.

Therefore, while Friends agrees that the County is out of compliance with [the] Act with respect to the provision of urban governmental services and concurrency for development in the unincorporated UGA, Friends does not link this problem to the BRB. The reason that the BRB has rejected annexation attempts by the City of Anacortes is because in the opinion of the BRB, the City of Anacortes was not capable of providing adequate urban governmental services. So it is not the BRB that is the problem, but rather the problem is with the regulations and agreements of the County and Anacortes (and the other cities). As Anacortes demonstrates in its brief (at 1), these regulations and agreements do not comply with CP Policy 1.1 at 7-7. The Board should urge the County to work with the cities to assure that appropriate urban services are provided concurrently with development in the unincorporated UGAs with regulations and agreements that are in place by December 31, 1999. The

Board should reject the attempt by Anacortes to have the Board address the issue of whether or not the BRB should be dissolved."

FOSC also stated:

> "Although the interlocal agreements coordinated development, Friends has not been able to find provisions in each interlocal agreement or in the adopted development standards that address timing, and phasing of commercial and industrial uses and the efficient provision of services to this development. The County in its Brief of Actions Taken, does not identify any provision that addresses these issues….
>
> ….The Board should not find the County in compliance with transfromance (*sic*) of Urban Governmental Services until the County has interlocal agreements with the cities and towns that allow development consistent with the CP including provisions for phasing and timing of development. The agreements must preclude development that is inconsistent with the County's Comprehensive Plan."

The County replied to Anacortes that we had no authority to require the County to disband the BRB. The County went on to state in part:

> "The purpose of the "transformance of urban governmental services" requirement is to assure that growth and development within the UGAs are "timed, phased and efficiently provided with services" (FDO at 14). The County has assured that, in the municipal UGAs, by adopting the urban development standards of Anacortes, Mount Vernon, Burlington and Sedro Woolley….
>
> ….The County has adopted development regulations to assure that development takes place at urban standards prior to annexation."

As to FOSC's arguments, the County responded in part:

> "However, a close reading of FOSC's brief shows that what it is really asking for now is a level of detail not required by the FDO or GMA. The County's actions taken are in compliance with GMA and the Board should so rule.
>
> When this matter came before this Board last summer, this Board's concern (regarding the issues raised by FOSC) was that the County had not yet adopted development regulations to assure that commercial and industrial growth within the UGAs would occur at urban standards. The County has now done that by adopting the development standards of each city. FOSC now says the County must do more. The County need not do more. FOSC has failed to show that <u>any</u> of the four cities' development regulations adopted by the County do not assure development at urban

> levels of service. FOSC has failed to carry its burden under RCW 36.70A.320(3) on that basis alone. Even if FOSC were able to support such a charge regarding the regulations of a city, it should be required to take that issue up with that city, not with Skagit County….
>
> ….FOSC's second contention, that the County has failed to address the timing and phasing of commercial and industrial uses, is also without merit. With respect to Anacortes, since Anacortes has no residential development within its UGA, commercial and industrial uses are all that Interlocal Agreement addresses. As noted above, with respect to Anacortes and the other cities, the County has adopted each City's urban development standards. This assures that all development will take place within the UGAs at each City's urban standards. This assures that "urban growth" as defined in RCW 36.70A.030(17), will take place within the UGAs. This is what GMA requires. RCW 36.70A.110. As this Board has frequently noted, it is compliance with GMA, not the recommendations in a FDO, that is the test at a compliance hearing. Port Townsend v. Jefferson County, No. 94-2-0006, Compliance Hearing Order, December 14, 1994, (CPC 639 at 640). The County's actions meet that test. The County's implementation of the Interlocal Agreements, through the adoption of city regulations providing urban standards, assures urban growth in the UGAs….
>
> ….The County has committed, through the Interlocal Agreements, to impose city standards of development. Each city will address the timing and phasing of development independently, based on each municipality's capital facilities plans, existing infrastructure and development standards."

FOSC reiterated in its reply that there are no provisions in any of the interlocal agreements or in the adopted development standards that address timing and phasing of commercial and industrial uses or provisions that address the efficient provision of services. Further, FOSC, in its response pointed out that the County has not identified in its response any provisions that address these issues.

FOSC concluded:

> "Simply readopting city development regulations without specific provisions that address the issues before this Board cannot bring the County into compliance."

Anacortes replied to the County in part:

"First, this Board has made it clear that the issue here is "transformance of local governance within the UGA", *FDO at 14*, and that development within the Anacortes UGA is to conform to the City's "…plan, standards and concurrency requirements." *FDO at 12.* Second, the BRB's jurisdiction applies to sewer extension in the UGA as well as annexations….

….The second annexation petition does ensure that as of the effective date of March 2, 1999 much of the South March Point UGA will be developed with the full range of urban services provided by the City. *Exhibit 7102.* In this regard, the City has begun to follow through on its commitments made to the Board in earlier proceedings. However, the eastern end of the South March Point UGA has not only not been annexed but the BRB has prevented the City from extending sewer service. *Exhibit 7100.* The BRB did so based on an appeal from a fire district, *Id. at page 1,* after opining that "…no such need is evident at this time in the Padilla Heights area…", *Id. at page 2*, and observing that "…extension to that area may not be efficient or cost effective…, *Id. at page 2*. The BRB did so despite its own finding that "A sewer system in the subject area would protect environmentally sensitive surrounding areas from damage due to reported sewage currently found in ditches, *Id. at page 3,* and despite approval of the City's Sewer Plan by the Washington State Department of Ecology, *Exhibit 1521 at 9.* The BRB went so far as to find, without any explanation whatsoever, as follows:

> The decision to limit the approval of the proposed sewer extension to Phase I is consistent with RCW 36.60A.020 (*sic*) (Planning goals), 36.70A.110 (Urban Growth Area) and 36.70A.210 (County-wide Planning Policies). This decision facilitates the implementation of the interlocal agreements between the city and the county.

The City submits that, contrary to Friends assertions in its Brief and Reply, the problem goes beyond the Interlocal Agreements to reach the matter of the continued operation of a pre-GMA institution, namely the BRB, in a GMA context, which the BRB neither understands nor respects….

….Skagit County continues to refuse to accept that urban development standards do not equate to urban levels of service. Urban development standards are currently called for in the City's UGA and water service is available but without sewer and without urban levels of fire and police protection. This Board has stated that under these circumstances "…the required concurrency cannot be achieved…". *FDO at 13.* This can only be achieved under the current Interlocal Agreement framework through annexation. This is why the City continues to assert that the County has

designed its entire concurrency system around annexations and why this Board has held that "…annexations must occur…". *FDO at 14*.

Contrary to the County's assertion, this Board did require the County to "…address its timing issue with the BRB." *FDO at 18.* The County has done nothing to comply with this directive."

In the September 23, 1998 FDO we stated in part:

"The large March Point industrial UGA must not be allowed to be wasted through uncoordinated, unplanned growth. Compact urban development and provisions of efficient and well planned and phased urban services cannot be achieved if water is supplied by others according to their own criteria and timing. The required concurrency cannot be achieved if water is supplied without sewer and without urban levels of fire and police protection….

….As concerns new urban commercial and industrial land uses without urban services within the UGA, the County has not met the requirements of RCW 36.70A.110(3), CP at 4-7 and objectives 3 and 4 at 7-9 of the CP. **Interlocal agreements with cities ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforced before compliance can be found.**

The transformance of governance issue as originally set forth in FOSC's petition for review stated:

> "Whether the Plan violates RCW 36.70A.110(4) by not providing for a transformance of local governance where cities are to become the units of local government most appropriate to provide urban governmental services."

In this regard, Anacortes and FOSC have asked us to adopt the holdings of the Central Board that (1) "That which is urban should be municipal", (2)"Implicit in RCW 36.70A.110 (4) is the principle that "incorporations and annexations must occur", and (3) One of the three "fundamental purposes" of CPs is to "achieve the transformation of local governance within the UGA such that cities are the primary providers of urban services." *Snoqualmie v. King County*, CPSGMHB, #92-3-0004, and *Bremerton v. Kitsap County*, CPSGMHB, 95-3-0039. **We adopt those holdings.**

We made it clear in the FDO that water service without sewer and other urban services being available would not lead to logically-phased and efficiently-served urban development. We have no authority to require the County to disband the BRB. However, the BRB's blocking of sewer extension within the UGA is a concern. This may have been a strong message from the BRB that neither the County nor the City have the proper planning in place to ensure orderly, well-planned growth and efficient use of taxpayer dollars.

We stated in the FDO:

> "Interlocal Agreements with cities ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforced before compliance can be found."

This has not been accomplished. Appropriate urban levels of public services and concurrency are part of the Long-Term Stipulated Issues which the County has until December 31, 1999, to accomplish. In addition to those tasks the County and cities must work together to achieve compliance on this issue.

Minimum Densities Allowed Within UGAs

We are happy to see that Skagit County has adopted DRs to assure that residential development shall occur within UGAs at a minimum of four or more units per acre. Task 1 in the FDO has been completed.

Task 2 stated:

> "Amend the Comprehensive Plan Map legends for all of the residential zoning districts in each UGA, as well as in the corresponding descriptions of these districts in the Comprehensive Plan to indicate a minimum and maximum lot size that is consistent with recommendations 1 and 2 above."

As to this issue the County stated:

> "FOSC contends that the County cannot be found in compliance with GMA on the minimum density issues until it amends the CP map legends to assure maximum and minimum lot sizes in order to meet urban development standards. The County has

> achieved this goal in a different way: by amending the Zoning Map legends for each municipal UGA through the Ordinance regulating development in that City [Exhibit No. 6902 (Burlington), No. 6905 (Sedro Woolley) and No. 6845 (Mount Vernon)] and establishing minimum densities and maximum lot sizes in the unincorporated UGAs (Exhibit No. 7016). By so doing, the County has implemented its CP policies assuring an urban level of residential development in its UGAs. The County should be found in compliance with GMA under the rationale in Port Townsend v. Jefferson County since it has achieved compliance with GMA, albeit not in the specific manner ordered by the Board in the FDO.

Friends responded in part:

> "….it is not adequate to adopt development regulations to cure a defect in the CP. The Board should find the County in continued non-compliance until it complies with its Task 2 in the FDO at 18."

We have held in many cases that the question at a compliance hearing is whether compliance with the GMA has been achieved, not whether compliance with the specific manner ordered by the Board in the FDO has occurred. However, in this case our order quoted the County's own ordinance. We said the County must live up to the commitment of its own ordinance. The County has not completed Task 2. Therefore there is still an inconsistency with Task 2 in Attachment A to Exhibit A of Ordinance 17029. In order to achieve compliance the County must complete the work on the CP map or amend the task statement in Attachment A.

Order

In order to achieve compliance the County must, within 180 days:

(1) Amend DRs and interlocal agreements with cities to ensure that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services; and

(2) Complete Task 2 in the FDO by amending the CP or by amending the task statement in Attachment A of Ordinance 17029.

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 10th day of June, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan Henriksen
Board Member

_____
William H. Nielsen
Board Member

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Les Eldridge
Board Member