BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ABENROTH, et al.,	)	
	)	No. 97-2-0060c
Petitioners,	)	
	)	ORDER ON
v.	)	RECONSIDERATION
	)	REGARDING
SKAGIT COUNTY,	)	BAYVIEW UGA
	)	
Respondent,	)	
	)	
and	)	
	)	
TOM and SHEILA BUGGIA, et al.,	)	
	)	
Intervenors.	)	
	)	

On June 10, 1998, we entered an order in this case denying the County's motion for recision of invalidity for the non-Port owned property in a designated urban growth area (UGA) located at the Bayview Ridge (Bayview) area. On June 19, 1998, we received a motion for reconsideration from Skagit County. On June 22, 1998, we received a motion for reconsideration from intervenor Wallace.

In its motion, Skagit County focused on our statement at p. 5 of the June 10, 1998, order, that we had previously ruled that CPP 1.1 was inconsistent with the Growth Management Act (GMA, Act). The County contended that we had made no such ruling in the final decision and order (FDO). The County argued that CPP 1.1 had never been challenged since its adoption in 1996. The County further argued that consistency of CPP 1.1 with the GMA was not an issue specifically presented in the FDO. Therefore, the County concluded that our ruling in the June 10, 1998, order was beyond our authority under RCW 36.70A.290(1), and that we had once again "raised the bar" on the County and had "ambushed" it by this determination. The County is correct in its assertions about the legal effect of RCW 36.70A.290(1), but incorrect in its reading

of the June 10, 1998, order and the conclusions it reached therefrom.

First, a reading of the summary located at p. 9 of the June 10, 1998, order reveals the CPP 1.1 issue was a small portion of the decision denying recision. Secondly, the County's reading of our statement at p. 5 fails to take into account that it was the County's assertion in this proceeding that CPP 1.1 provided the County with the authority for the new designation and hence its claim for recision. The specific issue of whether CPP 1.1 is consistent with the GMA was raised by the County in this proceeding.

Additionally, our statement at p. 5 involved the commercial/light industrial (C/LI) designations set forth in the comprehensive plan (CP) that included the Bayview UGA under consideration here. We noted at p. 4 of the June 10, 1998, order that the FDO discussed the C/LI designations at p. 22, 23, 36, and 47 as well as the finding contained at line 16. The FDO found the C/LI designations did not comply with the Act. The sentence cited by the County must be read in the context of the entire paragraph of the June 10, 1998, order. The County's interpretation of that sentence is incorrect.

The County further contended that our observation on p. 7 that Ex. 1497 contained no discussion of existing commercial and retail uses was because "there are no commercial or retail uses in the non-Port property in the proposed UGA." Citing to Ex. 1480 the County contended that the existing uses were all industrial, none were commercial or retail. The exhibit states that EDCO, Inc., provides "[S]ervices includ[ing] consulting, design and development." Skagit Soils' "product is sold in bulk to landscape companies." Perhaps Skagit County needs to make a clearer distinction between definitions of industrial and commercial uses in this record.

The thrust of Ex. 1497 was that the designation of the non-Port property was based upon "existing" uses. The designation adopted by the County included an unlimited array of commercial/retail allowable uses under the zoning code. Our comment was to the effect that if such an array of commercial/retail uses were allowed, that a report must include some discussion and analysis about them. Whether or not there are existing commercial uses, which was at least implied in Ex. 1497, an analysis of future allowable commercial/retail uses must be contained in this record prior to the designation.

Intervenor Wallace's motion reviewed the provisions of the industrial district under Skagit County Code 14.04.060 and claimed that retail uses were severely restricted. Section 14.04.060 (2)(d) allows retail activities such as "new motor vehicles, …boats…eating and drinking establishments…" which are not sufficiently restrictive to sustain the County's burden of showing that substantial interference no longer applies. Additionally, Wallace failed to observe, as noted in the June 10, 1998, order at p. 6, that the designation adopted by Skagit County included some industrial zone property but also allowed C/LI zoning under Section 14.04.070 which permits unlimited commercial uses.

Wallace contended that the invalidity order should be rescinded as to "the private industrial ground within the Bayview UGA." While we suggested in the June 10, 1998, order that significant analysis concerning industrial classification had been done for the area in question, the County had also designated most, if not all, the area as also being available for commercial uses. Since the County has decided to use an expansive approach rather than some more restrictive industrial designations, we are unable to make the determination requested by Wallace.

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

So ORDERED this 23rd day of July, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen
Board Member

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Les Eldridge
Board Member