

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

TAXPAYERS FOR RESPONSIBLE GOVERNMENT,	)	
	)	No. 97-2-0061
Petitioner,	)	
	)	FINAL DECISION
vs.	)	AND ORDER
	)	
CITY OF OAK HARBOR,	)	
	)	
Respondent.	)	
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Oak Harbor is a city of approximately 20,000 people located on Whidbey Island in Island County. As noted in the CP, the Whidbey Island Naval Air Station (NAS Whidbey) has a significant role in the North Whidbey/Oak Harbor area. Ault Field is an employment base and a market for services from the City. Approximately 78% of the total population of the North Whidbey/Oak Harbor area in 1993 were people directly connected with NAS Whidbey. Approximately 50% of all employment in the North Whidbey/Oak Harbor area was directly connected to active military personnel. Because of the Navy presence and the available facilities and services on the naval base, Oak Harbor has less than the average amount of commercial and industrial uses for a City of its size. Because of the Commissary and Exchange stores on the navy base, the City has less commercial support land.

On August 5, 1997, the City of Oak Harbor adopted Ordinance 1100, which constituted amendments to its comprehensive plan (CP). Many of the amendments contained the City's response to the noncompliance found in case #96-2-0002.

On October 8, 1997, Petitioners Taxpayers for Responsible Government (TRG) filed a petition which challenged portions of Ordinance 1100. Pursuant to our settlement procedures, Board member Eldridge was appointed Settlement Conference Officer for this case. Meetings were held between petitioners and city officials and staff on November 11, 1997, and November 20,

1997. Both parties approached the settlement procedures in good faith and were able to resolve 5 of the 7 issues presented in the petition. That agreement was set forth in a memorandum from Board member Eldridge dated November 26, 1997. The parties agreed that Board member Eldridge could be a participant in deciding the remaining two issues that were not resolved.

On November 5, 1997, the City filed a motion to dismiss the petition for failure to serve City officials. We entered an order dated December 4, 1997, denying the motion on the grounds that the Growth Management Act (GMA, Act) does not require service except as to filing with a Growth Management Hearing Board. A telephonic prehearing conference was held on December 2, 1997, and a prehearing order (jointly with #96-2-0002) was entered December 4, 1997.

A hearing on the merits was held contemporaneously with the compliance hearing on February 10, 1997. 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.

Two issues remained after the settlement agreement. The first was characterized by TRG as being the question that asks who is responsible for regulatory concurrence for transportation on SR-20 within the urban growth area (UGA) outside the City limits. SR-20 is the main thoroughfare throughout Whidbey Island and the Island's only non-ferry automobile connection to the outside world. TRG contended that the City was not fulfilling its GMA obligations for the portion of SR-20 within the UGA but outside the City limits. This record showed that the City took every appropriate action with regard to the area. It earmarked transportation funds for SR-20 that actually involved more money outside the City limits than inside. Interlocal agreements have been executed between the City, County, and Washington State Department of Transportation (WSDOT). The interlocal agreement with WSDOT provided that the State would maintain level of service (LOS) D on SR-20, although the City has adopted a LOS level E for the area. Regardless of whether the State adheres to its GMA obligation with regard to the Oak Harbor CP, regulatory concurrency is in place to restrict development that would lower transportation below a LOS level E. As we recently stated in *Achen, et al., v. Clark County*, #95-2-0067 (Order dated December 17, 1997) the County has the responsibility of being the regional coordinator for multi-jurisdiction GMA issues. Insofar as TRG's complaints related to the lack of overall planning, that is a complaint that should be directed to the County and not to the City.

Under the record provided here, the City has taken all actions required by the GMA for the SR-20 area outside the City limits but within the UGA.

The second issue presented by this petition involved the requirement of RCW 36.70A.120 that the City make “capital budget decisions in conformity with its comprehensive plan.” TRG’s complaint related to the underlined portion of the following quote from page 35 of the CFP:

“This CFP will be implemented in the budgeting process of the City through the biannual capital budget and yearly updates. To the extent reasonably possible, the budgets will be consistent and coordinated with the CFP. Emergencies and unanticipated circumstances may result in allocating resources to projects not listed. Further, the receipt of grant funds may change the timing for certain projects. If in the budgeting process there are identified new needs which are now not currently provided for in the CFP or it is determined that there is insufficient funds to complete an identified capital facilities project, the City will reassess the issues in *(sic)* CFP update. A review for coordination and consistency between CFP and the Land Use Element will also be part of the City’s biannual budget review and Comprehensive Plan amendment process. If probable funding falls short of meeting existing needs or if new needs are identified for which no funding is determined to be probable, the City will reassess the land use element of this Plan to ensure that it is coordinated with and consistent with the CFP. The City may also reassess LOS standards....” (emphasis supplied)

The complaint that TRG emphasized was the use of the term “to the extent reasonably possible” that the budget would be consistent with the CP. A local government may not adopt language in its CP that is different than a specific requirement of the GMA. The City observed that the language objected to by TRG must be read in context, and related to the provisions of RCW 36.70A.130(2)(a)(iii) and (2)(b) dealing with emergencies. While the wording could have been substantially better phrased, with the understanding that the “reasonably possible” language relates only to changes under emergency situations, and in the context of the entire paragraph quoted above, we do not find a failure to comply. As noted by the City, there is no evidence in this record at this point that the City had not adopted its budgets in conformity to the CP. In the unlikely event of such occurrence, TRG or any other person with standing would have the opportunity to file a petition contending a violation of RCW 36.70A.120.

We find that the amendments to the CP set forth in Ordinance 1100 comply with the Act. We

observe that through this and the prior hearing, an excellent GMA process and product has been enacted by Oak Harbor, particularly for a city of its size.

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 5<sup>th</sup> day of March, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member