

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

CLARK COUNTY NATURAL RESOURCES COUNCIL and DAVID T. MCDONALD,)	
)	No. 98-2-0001
)	
Petitioners,)	FINAL DECISION
)	AND ORDER
v.)	
)	
CLARK COUNTY,)	
)	
Respondent,)	
))	
and)	
)	
SCD LIMITED PARTNERSHIP and LARRY and NINA LINDSTROM, and PAUL D. LACY,)	
)	
)	
Intervenors.)	
)

On January 6, 1998, the Clark County Board of County Commissioners (BOCC) adopted Ordinance 1998-01-03. The ordinance dealt with traffic and concurrency issues under the Growth Management Act (GMA, Act). A petition challenging that action was filed January 27, 1998. Motions for intervention followed and a prehearing conference was held March 4, 1998. A prehearing order and order granting intervention to SCD Limited Partnership and Larry and Nina Lindstrom was entered March 11, 1998. A subsequent motion to intervene was filed and an order dated April 20, 1998, granted intervention to Paul D. Lacey. The hearing on the merits was held May 21, 1998.

Clark County's 1994 comprehensive plan (CP) contained predetermined contingencies for urban zoning in three separate locations in the vicinity of the I-5/179th St. interchange. This "contingency zoning" prohibited urban development in those areas without a determination that

road improvements or committed funding for them was in place. A fourth area was established as a “holding zone” that required improvements or committed funding for sewer service prior to urban development. All of the areas in question were located within the Vancouver urban growth area. For unknown reasons the City of Vancouver did not participate in this proceeding.

The “holding zone” area issue was not argued by petitioner and our review of the record shows that the County’s action for this area was compliant with GMA. The traffic issues related to the contingency zone, however, were strenuously argued.

The I-5/179th interchange is located in the vicinity generally known as the Salmon Creek/Fairgrounds subarea of the County. It is an 8 square mile area bounded on the west by NW 11th Ave., on the east by NE 50th Ave., on the south by NW/NE 119th St., and on the north by NW/NE 185th St. In early 1997, the County directed that this subarea, and a larger “planning area”, be included in the establishment of the Salmon Creek/Fairgrounds Regional Road Plan (SCFRRP). The larger “planning area” was included to reflect the impact of external areas on the traffic and population expansion of the Salmon Creek/Fairgrounds subarea. The Salmon Creek/Fairgrounds subarea was defined in the CP as one which would essentially double both its population and employment figures by the year 2017. The SCFRRP established a road improvement plan for the next 20 years; a methodology for prioritizing roadway projects; outlined requirements and facility needs for pedestrian, bicycle, and transit systems; included a finance plan for funding; and reviewed environmental impacts and issues to be addressed when the plan was implemented. The analysis provided a forecast of traffic volumes on existing roads for the year 2017 using the land use assumptions of the CP and the level of service standards (LOS) contained within the CP. A 30-member citizens advisory panel was included in the development of the plan. Ultimately, Ordinance 1997-09-15 was adopted by the SCFRRP as a supplement element of the County’s capital facilities plan.

The County thereafter made permanent revisions to its Arterial Atlas, revised traffic fees for the subarea, and approximately doubled impact fees in the areas originally designated in the CP as “contingency zoned.” The SCFRRP estimated a cost of \$93.7 million for necessary road improvements over the next 20 years. It estimated that \$56.21 million of that amount would be raised from impact fees. Interim improvements to the I-5/179th interchange had been funded and

were scheduled for construction in 1998.

In a report dated November 3, 1997, (Ex. 1) staff concluded that the interim (short-term) improvements, the concurrency ordinance (to avoid overtaxing of the short-term improvements) and local matching funds from the increased traffic impact fees for long-term improvements were sufficient to delete the CP “contingency zoning” limitations. The Planning Commission held a series of hearings and recommended deletion. The BOCC held public hearings on December 16, 1997, and January 6, 1998, which cumulated in the adoption of the ordinance.

The gravamen of petitioners’ claim, although stated in various ways, was that amending the CP to remove the “contingency zone” limitations did not comply with the GMA because the County had failed to “reasonably fund” (1) short and long-term improvements to the I-5/179th St. interchange, (2) safety and road improvements on 179th Street, including the vertical curve (trafficspeak for hills and valleys) problems, and (3) improvements to upgrade 179th street as a principal arterial. Thus, petitioners reasoned, the ordinance exacerbated the existing, acknowledged discrepancy between funding needed to implement the CP and funding that was reasonably available. The record does not support petitioners’ contentions and we specifically find that they have failed to meet their burden of proof under the clearly erroneous standard. Our review of the record, except as to the long-range funding issue for the I-5/179th St. interchange, leads us to conclude that the County has done an excellent job of implementing its CP and providing funding through its long-range planning efforts and its concurrency ordinance and impact fee changes. The issue of whether these changes were in compliance with the annual review provisions of RCW 36.70A.130 was not raised either in the petition or in the prehearing order and we therefore do not address it.

The record demonstrated that funding was in place for the short-term improvements to the I-5/179th St. interchange. The recent adoption of an ordinance doubling the impact fees was designed to provide funds for improvements to upgrade 179th St. as a principal arterial and make the proposed vertical curve safety improvements when necessary. The County acknowledged that future development approvals would likely be conditioned upon access limitations to 179th St. Finally, as a safety net, the County’s concurrency ordinance, based upon the CP LOS provided that if funding fell short of needed amounts, no further development could proceed once

“available capacity” was reached. Contrary to petitioners’ contention, the SCFRRP did take into account the potential impact of surrounding areas using up the available capacity. Denial of development permits would likely give great impetus to private funding of the various necessary improvements. Under the GMA, private funding is a reasonable alternative. Its use by Clark County, both now and in the future, complies with the GMA.

The decision of Clark County that the unmet criteria established by the contingency zone in the CP was rendered obsolete by the SCFRRP, the concurrency ordinance, and the increased impact fees was appropriately made under the record provided here, with the exception of the long-term I-5/179th St. funding issue. The County acknowledged this problem both in its brief and at the hearing on the merits.

In *Achen, et al., v. Clark County*, #95-2-0067 (*Achen*) (Second Compliance Order dated December 17, 1997), we discussed the County’s recognition of its long-term severe funding shortfall causing an inconsistency between the capital facilities plan for transportation and the land use plan, and thus noncompliance. Estimates as of the May 8, 1997, Planning Commission meeting demonstrated a deficiency of \$83 million over the planning period. We recognized the County’s frustration about this deficiency because much of it involved funding responsibilities of the Washington State Department of Transportation. The long-term funding shortfall at the I-5/179th Street interchange was part of that noncompliance.

We agree with the County that the appropriate place for solution of this problem is in the more general remand of *Achen* case. There is no particular need to add this case number to that list. While we do find compliance here, it is with the understanding that the long-term funding issue will be addressed by Clark County through the *Achen* remand. We are also mindful of the 1998 amendments of HB1487, which may assist the County in resolving the inconsistency.

Ordinance 1998-01-03 is in compliance with the GMA.

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 30th day of July, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

AMENDED PAGE 6

Ordinance 1998-01-03 is in compliance with the GMA.

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 30th day of **June**, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member