

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

CITIZENS FOR MOUNT VERNON and,	)	
CONCERNED CITIZENS OF MOUNT	)	No. 98-2-0006c
VERNON	)	
Petitioners,	)	
	)	
v.	)	
	)	COMPLIANCE
CITY OF MOUNT VERNON,	)	ORDER
	)	
Respondent,	)	
	)	
and	)	
	)	
BRIAR DEVELOPMENT COMPANY,	)	
	)	
Intervenor.	)	
_____	)	

On July 23, 1998, we issued a final decision and order in this case. The order determined that Mount Vernon had not complied with the GMA with regard to its public participation program, planned unit development (PUD) development regulations (DRs) and commercial/light industrial (CL) zoning.

On December 16, 1998, we received a stipulated order to extend time for compliance. On March 30, 1999, Mount Vernon filed a motion to set a compliance hearing date. A schedule was established, briefs were filed by Citizens of Mount Vernon and Concerned Citizens of Mount Vernon (CMV) and the City. A compliance hearing was held May 6, 1999. At the hearing CMV submitted additional written material as well as argument. Because of an emergency, Mr. Eldridge was unable to attend the hearing but has reviewed the tapes and all written material filed in this matter. We find that the City of Mount Vernon has complied with the GMA by the actions taken during the remand.

In addressing the public participation program in its opening brief, CMV acknowledged that the program, modeled on the Skagit County program approved in a separate case, complied with the GMA. Nonetheless CMV argued that Resolution No. 491 had some flaws and did not implement public participation at a “state of the art” level sought by CMV. Obviously the short answer to CMV’s contentions is that ensuring compliance with the GMA is the job of a Growth Management Hearings Board. Failure to adopt a “state of the art” public participation program is a function of the ballot box.

We are not convinced that CMV has sustained its burden of proving the program failed to comply with the GMA. CMV noted that the Resolution applied only to “comprehensive plans, sub-area plans, development regulations or amendments”. Functional plans such as park plans, transportation plans and drainage plans, according to CMV, should have been included. We observe that such plans are an integral part of the comprehensive plan and are certainly not necessarily excluded by the language contained in the Resolution. If the City chose to adopt those plans without using its public participation program, we would address that issue if a petition were filed.

CMV’s complaint about the Resolution not including a 5-year review as required by RCW 36.70A.130 is likewise an issue that would be subject to a petition for review if the City chose to ignore its duty at the 5-year review timeframe. The Resolution does not necessarily exclude a 5-year review, but does not specifically mention it. The remaining claims about the public participation program do not sustain CMV’s burden.

CMV also contended that the new CL zoning map did not provide the necessary degree of predictability required by the GMA and continued to allow “ad hoc” planning by the City. We have reviewed the map and Ordinance No. 2914 and find that it does comply with the GMA. The map sufficiently identifies the areas of the City in which C/L zoning may take place.

The PUD Ordinance was challenged as to the criteria for residential uses. CMV asked the question of what happened to Ordinance No. 2844? CMV acknowledged that the commercial PUD criteria did comply with the GMA. Finally, CMV contended that the City should not have used its PUD Ordinance as an “overlay” but that the GMA required the city to implement PUD

approvals through rezones.

The new PUD Ordinance (#2493) supercedes and replaces Ordinance No. 2944 insofar as there are any incompatibilities. We have reviewed Ordinance No. 2493 thoroughly. The locational criteria for residential PUDs does comply with the GMA and the ordinance sets definitive standards to implement the CP as required by the GMA. The GMA does not require a local government to structure its PUD approval through the rezone process for every project. That is a matter of local government discretion, assuming the implementing regulations comply with the GMA. In this case we find that those regulations do comply.

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 28th day of May, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member