

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

FRIENDS OF SKAGIT COUNTY,)	
)	No. 98-2-0007
Petitioner,)	
)	FINDING OF
v.)	NONCOMPLIANCE
)	AND ORDER OF
SKAGIT COUNTY,)	REMAND
)	
Respondent,)	
)	
SKAGIT AUDUBON SOCIETY and SWINOMISH)	
INDIAN TRIBAL COMMUNITY,)	
)	
Intervenors.)	
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On May 4, 1998, Friends of Skagit County (FOSC) petitioned for review of recently adopted Skagit County ordinance 16960. In the issues statement, FOSC challenged the public participation process leading to adoption of the ordinance. Additionally, the issues of whether the ordinance complied with Growth Management Act (GMA, Act) goals 6, 7, 8, 9, and 10, and/or RCW 36.70A.060(2) and .172(1) were raised.

There was no claim of invalidity asserted by the petition or set forth in the prehearing order. A prehearing order setting forth the three issues was entered June 24, 1998. On that same day an order was entered that granted intervention to Skagit Audubon Society and the Swinomish Indian Tribal Community. A hearing date of August 26, 1998, was fixed along with a schedule which included a deadline of July 27, 1998, for briefs of petitioner and intervenors. The briefs were filed in accordance with that schedule.

On August 6, 1998, we received a letter from Skagit County, with a copy to the parties, indicating that the County “concurred with the arguments” about its failure to follow GMA public participation requirements in adoption of ordinance 16960. The County asked that the matter be remanded in lieu of the August 26, 1998, hearing. Petitioner and intervenors objected to the

remand based solely on the public participation issue. Petitioner and intervenors requested that we issue a decision based on the compliance of the ordinance with GMA goals and requirements as set forth in issues #2 and #3 of the prehearing order. Written material was submitted in support of petitioner's and intervenors' claims and an informal telephonic discussion between us and the parties occurred on August 10, 1998.

We hold that the County's acknowledgement of an improper public participation process leading up to the adoption of ordinance 16960 is sufficient for a finding of noncompliance with regard to the ordinance. We decline to address the remaining issues. A public participation failure directs a finding of noncompliance and remand without addressing the substance of the ordinance where, as here, the total ordinance is intertwined with the public participation process. If we were to address issues #2 and #3, since the public participation issue disposes of the case, we would violate the provision of RCW 36.70A.290(1) that we not issue "advisory" opinions.

The County has agreed that it will seriously consider the claims made under issues #2 and #3 in its remand process. Petitioner and intervenors questioned whether that reconsideration would actually take place. We will not presume, at this point, that the County is attempting to avoid its responsibilities under the GMA. We would, however, be disappointed if the County did not address the concerns raised by petitioner and intervenors during the remand process.

We do not find that the County was dilatory in failing to reach its conclusion about the flawed public participation process until after reviewing the briefs submitted by petitioner and intervenors. The County has agreed that the remand will not restrict petitioner's and/or intervenors' ability to present issues #2 and #3 at the compliance hearing.

ORDER

We find that ordinance 16960 does not comply with the GMA. The matter is remanded to Skagit County to bring the ordinance into compliance with the Act within 120 days of this order.

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 13th day of August, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member