

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

MARIANNE MANVILLE-AILLES,

)

) No. 99-2-0015c

Petitioner,

)

) ORDER GRANTING

v.

) DISPOSITIVE MOTION

)

SKAGIT COUNTY,

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Respondent,

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)

and

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FRIENDS OF SKAGIT COUNTY,

)

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Intervenors.

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A hearing on Skagit County's dispositive motion was held telephonically on December 20, 1999, at 9:00 a.m. Present from the Board were William H. Nielsen, Nan Henriksen, and Les Eldridge. Skagit County was represented by John Moffat. Petitioner Marianne Manville-Ailles appeared for herself. Friends of Skagit County (FOSC) filed a joinder to the County's motion, but did not participate in the hearing.

SYNOPSIS OF THE ORDER

We hold that the record in this case clearly demonstrates compliance with RCW 36.70A.035. Noncompliance with this section was the sole issue in this case. The motion is granted and the case is dismissed.

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DISCUSSION

In *Abenroth, et al., v. Skagit County*, WWGMHB #97-2-0060c, Petitioner FOOSC contended that the County's definition of "legal lot of record" as adopted in its comprehensive plan (CP) was incorrect and not consistent with the definition in the zoning code. The County agreed. We ordered the County to fix the drafting error and the inconsistency.

The County then held a public hearing on this issue and presented to the public a staff proposal dated December 1998 which changed the definition of "legal lot of record" in the CP and made it consistent with that in the zoning code.

After the hearing, the planning and permit center issued a staff report responding to the public comments and adhering to its prior (December, 1998) recommendation. The Planning Commission (PC) adopted a motion January 21, 1999, recommending that the Board of County Commissioners (BOCC) reject the staff proposal.

The BOCC on February 1, 1999, adopted the PC's recommendation. Subsequently, in a special meeting on February 3, the BOCC reconsidered their decision and voted to adopt the proposal as outlined in the public hearing notice and staff report. The BOCC adopted Ordinance #17305 on February 3, 1999, making the changes to the definition of "legal lot of record" in the CP and adding the definition of "lot of record" as set forth in the staff report.

The County, joined by FOOSC, contended that its actions in adopting Ordinance #17305 were in compliance with Growth Management Act (GMA, Act) and that Petitioner had failed to meet her clearly erroneous burden under RCW 36.70A.320. The County maintained that RCW 36.70A.035(2)(b)(ii) did not require an additional opportunity for public review if the proposed change was within the scope of alternatives previously available for public comment.

Petitioner Manville-Ailles contended that, while the public did not need another opportunity to comment, it deserved adequate advance notice of actions the Commissioners intended to take. She asserted that County Resolution #16852 (Public Participation Program) did not authorize the staff to use its access to the Commissioners' agenda to influence Board decisions during informal work sessions. Petitioner stressed that her issues focused on County staff using access not

available to the public to influence the BOCC to reconsider an issue after they have voted.

In response to questions from the Board Ms. Manville-Ailles agreed that Ordinance #16852, section (2)(c), allowed staff to present additional information in the course of deliberations. She acknowledged that the ordinance did not specifically preclude staff from presenting information outside of deliberations. Petitioner noted that informal work sessions, although open meetings, are often poorly attended by the public.

CONCLUSION

The record shows that the public was afforded ample opportunity to comment on the precise ordinance adopted by the BOCC. Neither the Act nor County Resolution #16582 preclude staff from accessing the BOCC and providing information after a vote has been taken. Petitioner has failed to meet her burden of demonstrating that the County was clearly erroneous in the manner in which it adopted Ordinance #17305.

ORDER

The dispositive motion is granted. This case is dismissed.

The briefing and hearing schedule set in the December 16, 1999, prehearing order is cancelled.

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.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted and appended as Appendix I.

So ORDERED this 29th day of December, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member

APPENDIX I
CASE #99-2-0015c

Findings of Fact

1. Skagit County adopted Ordinance #17305 on February 3, 1999.
2. This adoption was a reconsideration of a vote on February 1, 1999, to adopt the Planning Commission recommendation regarding “legal lot of record.”
3. The February 3, 1999 vote adopted the precise staff recommendation regarding “legal lot of record” that was previously available for public comment under the provisions of Resolution #16852, the County’s public participation program.

Conclusion of Law

The County acted properly under RCW 36.70A.035(2)(b)(ii) in adopting the Ordinance.