

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

BIRCHWOOD NEIGHBORHOOD)
ASSOCIATION, et. al,) No. 99-2-0033c
Petitioners,)
)
) FINAL DECISION
v.) AND ORDER
)
)
) WHATCOM COUNTY,)
)
Respondent,)
)
and)
)
PAUL GARRETT and HENRY S. HENDLER,)
)
Intervenors.)
_____)

SYNOPSIS OF THE ORDER

We find that the County has not met the Growth Management Act (GMA, Act) requirement for collaboration with cities as plans are developed for the future of the unincorporated part of an urban growth area (UGA) and that this failure to comply substantially interferes with RCW 36.70A.020(11). Additionally, the development regulations (DRs) do not implement the urban fringe subarea land use plan (UFSP). They neither provide adequate controls nor specificity. *Citizens for Mount Vernon v. City of Mount Vernon*, #98-2-0006, (CMV). The scale of the Gateway area delineated by Map 6 coupled with the rapidly expanding nature of commercial development are factors which cause this plan and ordinance to substantially interfere with Goal 5 of the Act.

-
INTRODUCTION

The hearing on the merits was held January 13, 2000, at the Whatcom County Courthouse. Karen Frakes represented Whatcom County; Roger Ellingson represented Birchwood Neighborhood Association; Dawn Sturwold represented the City of Bellingham; and Heather Wolfe represented Intervenors Garret and Hendler. Les Eldridge and William H. Nielsen were present for the Board. Board Member Nan Henriksen listened to the tapes of the hearing.

The UFSP was jointly prepared by the City of Bellingham (City) and the Whatcom County planning departments with extensive public input over a 7-year period beginning in 1990. It has been the subject of several cases before us including Cases #97-2-0062, #98-2-0025, #99-2-0026, #99-2-0028c, and the current consolidated case. Birchwood Neighborhood Association (Birchwood) and the City have been steadily involved in these cases, as have Intervenors Garrett and Hendler. The County Council adopted the plan and zoning map amendments on September 9, 1997, and readopted them as an element of the County Comprehensive Plan (CP) on June 2, 1998. The most recent amendments to the UFSP and County Code Chapter 20.65, the subjects of this proceeding, were adopted August 10, 1999, by Whatcom County Council as Ordinance #99-040.

-

DISCUSSION

-

Petitioners challenged the consistency of the DRs and the UFSP as amended, and whether the process of adoption complied with the GMA requirements for interjurisdictional cooperation.

Gateway Industrial Zoning Ordinance #99-040, amendments to the UFSP, adopted August 10, 1999, includes the following statements of intent:

1. Allow the expansion of existing industrial uses in the area and development of commercial uses.
2. Commercial uses are designed to serve the airport industrial users, adjacent residential areas and the traveling public.
3. This is an appropriate area for a mix of industrial and commercial uses.
4. It is desirable to provide a reasonable supply of land for a variety of light industrial-uses, attractive to travelers.
5. Uses in this zone are limited to those appropriate for a light-industrial park setting.

6. Design standards and buffering requirements are intended to limit commercial uses except where they are clearly more appropriate than light industrial-park uses.
7. Tourist commercial uses are appropriate uses in a light-industrial park setting and in areas within ¼ mile of freeway interchanges.

The Question of the “Mix” of Light Industry and Commercial

Petitioners maintained that the provisions in Ordinance #99-040 amending the UFSP and County Code Chapter 20.65, were inadequate to assure that commercial activity would not eliminate light-industrial activity in the Gateway Industrial Zone. Petitioners contended the intent of the zone was that light-industrial activity would predominate.

The City argued that the County could not implement the intent expressed in the UFSP without more specific language clearly safeguarding a significant portion of the area for light-industrial use. The City maintained that the plan needed something to limit commercial development. The City postulated that the question was not “what uses” but “how to control the mix of uses.” It contended that the DRs must define the mix. It pointed out that the plan language indicated a clear preference for industry which was not borne out in the DRs, Ordinance #99-040, pgs. 2, 6, 7.

Petitioners wondered how the zoning discouraged or limited commercial uses and required light-industrial emphasis. The County’s designation of a ¼-mile circle around the freeway interchange appropriate for commercial uses comprised almost the entire Map-6 area. Ex. #2.

Birchwood charged there was nothing to assure protection of industrial uses under the “specific controls” called for in WAC 365-195-800. The City predicted that without limitations the amendment would ensure the transformation of the area into exclusively commercial uses.

The County responded that its requirements for buffers, setbacks, and other design limitations were sufficient to meet the purposes expressed in the UFSP; that is, providing a reasonable supply of land for a variety of light-industrial uses, and limiting uses to those appropriate for light-industrial park setting. The County concluded that it had provided safeguards to implement the intent and the language of the UFSP. The County also contended that the changes in

Ordinance #99-040 were *de minimis* typographical corrections.

Intervenors noted that the language of the ordinance allowed a mix of industrial and commercial uses. They accused the City of believing that only industry should be allowed. Intervenors observed that lots in the Map 6 Gateway zone were too small for industrial uses. The County pointed out that the uses surrounding the Map 6-area were all commercial.

During questioning we asked the County how this DR was specific enough to implement when it used the language “allow for” light industry. The County responded that the language “allows industrial as well as commercial uses in that order.” Birchwood countered that the language calls for “supply” of industrial, not “allowance” of light industrial.

-

The Question of the City as “Co-planning Partner”

Petitioners charged that the County had been largely unresponsive to City requests for changes reflecting City concerns. Birchwood argued that the amendments were precipitously adopted. It maintained that RCW 36.70A.035(b)(iii) calls for a hearing under these circumstances because the changes altered the effect of the plan language.

The City complained that it was notified a month prior to the hearing, after the draft was done. It contended there was no coordination or discussion. The City noted that, in contrast to the process followed when the original Urban Fringe Plan was developed, the County did not obtain a recommendation from the City for the proposed changes incorporated in Ordinance #99-040.

The County and Intervenors responded that this part of the UGA remained in the County and it was the County’s prerogative to set the zoning regulations. The County and Intervenors maintained that the County had been responsive to City concerns and that the adoption of the plan and its zoning had been in accordance with consideration of City concerns.

The County and Intervenors, in response to questions, declared that the County was under no obligation to treat the City differently from other critics of the County proposal, just because the land was in transition and eventually would be part of the City. The County characterized the dispute as merely a disagreement with the zoning decision.

During questions, the County acknowledged that the record did not reflect that additional meetings were held where the City actually had the opportunity to enter into discussions.

-

CONCLUSION

-

It is clear from the Ordinance intent language that uses are to be limited to those appropriate to a light-industrial park setting, to also include some specified commercial uses. Nothing in Ordinance #99-040 addresses controls to preclude commercial uses being approved to the extent that light-industrial use becomes *de minimis*. Birchwood and the City have demonstrated that the County clearly erred in failing to adopt controls in its DRs that implement the intent of the UFSP.

We said, in *CMV*, that if under the State Supreme Court's concept, the "blueprint" CP is to be considered general, a DR must be specific. The controls now in place in the County code regulate the size of new or expanding commercial establishment, but not the acreage to be devoted to commercial and light-industrial uses. Without appropriate controls, a mix "appropriate to a light-industrial setting" cannot be assured.

We also have a firm and definite conviction that the County failed to comply with the GMA requirements to use a joint and collaborative planning process with the City. Under the GMA, a city's concerns regarding UGA development are entitled to more consideration than "just another critic." RCW 36.70A.210 and .020(11).

The failures noted above are egregious in light of the small size of the area delineated by Map 6 and the rapidly expanding nature of commercial development when left without effective controls. They substantially interfere with RCW 36.70A.020(5) and (11).

ORDER

The UFSP and County Code 20.65.50 through .550 are remanded to the County to be brought into compliance with the GMA within 180 days of the date of this order.

In order to comply with the Act the County must:

1. Engage in a joint and collaborative planning process with the City in response to this remand;
2. Adopt specific controls in the DRs to ensure a mix of light industrial and commercial use appropriate to a light-industrial park setting.

Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) and .270(6) are adopted and attached as Appendix I and incorporated herein by reference.

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 ____ day of February, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

William H. Nielsen

Board Member

Appendix I
FINDINGS OF FACT
CASE #99-2-0033c

1. The UFSP adopted by the County Council August 10, 1999, contained a definition of the intent of the Gateway Industrial District which stated: “It is desirable to provide a reasonable supply of land for a variety of light industrial uses.”
2. The plan further stated: “Uses in this zone are limited to those appropriate for a light industrial park setting.”
3. The UFSP provides that: Commercial uses are also allowed within ¼ mile of a full freeway interchange, however, design and buffering requirements are intended to limit commercial uses, to uses designed to serve the airport, industrial users, adjacent residential areas and the traveling public, and are compatible with a “light industrial park setting.”
4. The Growth Management Act requires that CPs and implementing DRs be consistent and requires DRs to implement the CP. Ordinance #99-040 does neither.
5. The small lot sizes and rapidly expanding nature of commercial development make the West Bakerview/I-5 Interchange Area (Map 6) subject to rapid commercial development.
6. Planning Goal 11, RCW 36.70A.020(11), calls for ensuring “coordination between communities and jurisdictions to reconcile conflicts.”
7. RCW 36.70A.210(2)(a) refers to establishing a “collaborative process” between cities and counties.
8. RCW 36.70A.210(3)(f) states that county-wide planning policies shall address: “policies for joint county and city planning within urban growth areas.”

9. The definition of county-wide goals and development of policies through joint planning efforts are referred in UFSP update 1.E. (Ex. A).
10. WAC 365-195-530 states that “all jurisdictions should attempt to resolve conflicts or interjurisdictional consistency through consultation and negotiation.”
11. The Legislature intended for cities and counties to jointly, cooperatively, and collaboratively establish policies, CPs, and DRs within UGAs.

-

CONCLUSIONS OF LAW

1. The DRs are not specific enough to ensure a reasonable supply of land for light-industrial use: They are therefore inconsistent with the UFSP and do not implement it.
2. The County is obligated to treat the City as a co-planning partner. RCW 36.70A.020 (11), .210(2)(a), .210(3)(f) and WAC 365-195-530. The County has failed to do so.
3. The failures to comply with the GMA noted in 1. and 2. above substantially interfere with Goals 5 and 11 of the GMA.

-
-