BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

PROGRESS CLARK COUNTY, INC., et al.,	)	
	)	
	)	No. 99-2-0038c
Petitioners,	)	
	)	FINAL DECISION
v.	)	AND ORDER
	)	
CITY OF VANCOUVER,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
ROCCO & MARILUE BRIA,	)	
	)	
Intervenors.	)	
	)	

SYNOPSIS OF THE ORDER

In its adoption of Ordinance M-3454, we find the City of Vancouver is only noncompliant in its process which fails to assess the cumulative effect of exempting developments which generate less than ten peak-hour vehicle trips in transportation management zones (TMZs) or transportation corridors. This noncompliance does not substantially interfere with the goals of the Growth Management Act (GMA, Act). We find the City compliant on all other issues.

PROCEDURAL HISTORY

The hearing on the merits was held April 25, 2000, at the Murdock Center, Vancouver, Washington. Present for the Board were Les Eldridge, Nan Henriksen, and Bill Nielsen. Respondent City of Vancouver was represented by James McNamara and Brent Boger. Petitioners Progress Clark County, Inc., Clark County Homebuilders Association, William D.

Huyette, Walter Musa and Larry and Suzanne Makin (Progress) were represented by James Sellers. Petitioner Clark County Natural Resources Council (CCNRC) was represented by John S. Karpinski. Petitioner Greater Vancouver Chamber of Commerce (The Chamber) was represented by Stephen Horenstein and Randall Printz. Intervenors Rocco and Marilue Bria were represented by Richard Howsley.

Progress Clark County, et al.'s motion to strike the October 1999 IRC study and exhibit IR183 was denied. All motions still pending to extend deadlines for submission of briefs were granted.

BURDEN OF PROOF

As in all cases before us, the burden is on petitioners to demonstrate that the actions taken by the City are not in compliance with the requirements of the GMA. RCW 36.70A.320(2). Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action by [the City] is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." For us to find the City's action clearly erroneous, we must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

PETITIONERS' ISSUES

The challenges variously raised in the petitions for review (PFRs) can be summarized as follows:

- The level of service (LOS) ordinance was inconsistent with the comprehensive plan (CP) and capital facilities plan (CFP);
- The LOS standards were not regionally coordinated and were inconsistent with the regional transportation plan;
- The LOS ordinance discouraged urban development and encouraged sprawl;
- The LOS ordinance discouraged multi-modal transportation;
- The LOS ordinance failed to comply with the Act in that it allowed or created *de facto* moratoria;
- The LOS standards were raised to suburban levels which preclude urban development;
- The LOS standards were lowered to a level which precluded failure and allowed unlimited

development;

- The ten peak-hour vehicle trip exemption did not comply with the Act;
- The ordinance created probable significant adverse environmental impacts; and,
- The concurrency analysis model did not take into account various required factors expressed in the CP.

DISCUSSION

Progress argued that the City had carried out no analysis of the effect of LOS change on its ability to meet density goals in the urban growth Area (UGA). They quoted the City's temporary public works director, Mr. Ostrowski, who in 1998 stated that "one recommendation for standards might be 85% of the travel speed of whatever we measured." Progress claimed he said that the newly adopted LOS is a "suburban standard." Progress maintained that the effect of the change in LOS measuring methodology could not be known and that the petitioners might not be able to develop in the area now under a permit moratorium. Progress asserted that it was beyond private monetary means to prove that the Regional Transportation Council (RTC) model of LOS changes is noncompliant because it is so difficult to understand. They charged, as did the Chamber, that LOS standards were too high, set at "B-/C +."

The Chamber maintained that in 1997 the LOS was at a D, a mitigated D or an E level at the intersection of Mill Plain and Chkalov. In 1999, the corridor approach was recommended and characterized as equivalent to the LOS of 1997. The Chamber contended that the LOS level under the corridor approach had been raised to a B-/C+, rather than a D level, and was therefore inconsistent with the CFP because the CFP was designed for an LOS level "D." The Chamber claimed the CFP was not designed to provide resources for increasing the LOS standards to meet a B-/C+ level.

Petitioner CCNRC maintained that the City had not raised the LOS standards as Progress and the Chamber charged, but instead had lowered them significantly. CCNRC observed that the 1997 "A-B-C-D" initial standard LOS baseline, was no longer used. It contended that the new ordinance allowed 87 intersections to fail, and allowed an intersection waiting increase from a 40-second delay to a 300-second delay, characterized as a "F-13" level.

CCNRC asserted that the change in methodology would allow the City more development which would have been denied under the previous higher standards. CCNRC claimed that the new City policy was designed to preclude denial of development. It contended that 90% of the 20-year projection for population growth had already been achieved in only the tenth year of the 20-year period.

CCNRC contended that because increased development would be allowed an environmental impact statement (EIS) was needed. Petitioner CCNRC charged that the following factors indicated probable significant adverse environmental impacts under the State Environmental Policy Act (SEPA): significant increases in road delay, many intersections falling from an LOS A through D to E, deleted LOS standards for 13 roads removed from concurrency review and analysis, and moving traffic from the more congested major arterials to the lesser congested secondary arterials, (called a "substitution effect"). CCNRC further complained that secondary streets had not been reviewed for concurrency.

CCNRC also questioned the effect of allowed exemptions for developments generating less than ten additional peak-hour vehicle trips because these exemptions would "cumulatively lower the LOS." CCNRC alleged that the GMA allows for no exemptions from the certificate of concurrency requirement for any sort of development. It maintained that the City's ordinances must prohibit development of any kind if the development allows the adopted LOS to fall to a sub-standard level. CCNRC charged that these exemptions constituted substantial interference with the fulfillment of the goals of the Act and requested that we find this section invalid.

In response, the City of Vancouver asserted that the change in LOS measuring methodology insured consistency, and that the RTC modeling implemented the CFP policies. The City contended that the RTC information showed that the City analyzed all factors necessary to justify the methodology change. The City maintained that the corridor approach considered surrounding land use and was not a "cookie-cutter" approach.

The LOS, the City declared, is a device to insure that infrastructure dollars are available. The City contended that the new LOS standard provided a check for dollar availability and cited the

$52 million available for improvements regarding LOS deficiencies. The City claimed that there was no evidence of a lack of consistency and that the land use element did not serve as a "meter" but as a 20-year projection.

The City noted that a temporary moratorium was not a violation of the land use element. The City denied that a permanent moratorium was in place. It noted Progress' suggestion that "the LOS standards have created a *de facto* moratorium," and, in contrast, the Chamber's observation that under the City's system, the applicant always has the option of mitigating the traffic impacts to avoid denial of development. WAC 365-195-835(3)(d)(iii). Were a permanent moratorium in place, the City contended, it would not allow development under any circumstances. The City pointed out that projects could employ commute trip reduction techniques, such as off-peak hour work schedules, and so could still be approved. The City claimed that most areas in the city were not under moratorium, did not have failing LOS standards, and that overall development was proceeding in a way to accommodate the 20-year projections and meet the density standards of the GMA. The City contended that there was no evidence to demonstrate that the City had adopted suburban standards aside from a remark from a former public works director referring to an "85% standard," since abandoned (Ostrowski). It pointed out that the claim of petitioners that "maybe we will run out of capacity to develop" does not meet the clearly erroneous standard.

The City maintained that the CFP showed that proposed City projects have adequate funding for six years. The City explained that it took a citywide approach, not a TMZ-by-TMZ approach, and asserted that there had been no showing that the number of trips was insufficient to sustain the 20-year growth. The City pointed out that the GMA does not preclude a citywide approach and declared that "developer frustration" does not constitute noncompliance. The City voiced its intent to monitor the TMZs with an annual review and a report to the Planning Commission and the City Council. The City claimed that LOS standards measure congestion level at a given time, whereas density levels are achieved over many years.

The City noted, that while petitioners made much of the "B -/C + " characterization of Mr. Ostrowski as it equates to a 20-mile per hour maximum corridor travel time, travel time is only one of three types of LOS standards applied in differing ways to three arterial "tiers." The other two standards are intersection performance standards. They are a mobility index and a critical

signalized intersection performance standard. The City maintained that the LOS standards ultimately adopted were in many cases significantly below the 1998 proposal referenced by petitioners. The City noted that Exhibit IR207, a July 1996 executive summary of an I-205 and East/West arterials study, pointed out that in 1996 "traffic operations were at or near failure in several locations including the I-205/Mill Plain interchange, the Mill Plain/Chkalov interchange, the I-205/SR500 interchange and the SR500/112th intersection." The City further pointed out that the Mill Plain/Chkalov Drive intersection area was at failure while it was in the unincorporated part of the County and prior to annexation by the City.

The City noted that the concurrency analysis model process assimilates population, land use, the highway system, and regional travel forecasts to produce an evaluation of the existing capacity of each TMZ, and also a predicted LOS (exhibit IR65 pages 29 & 30). The City declared that this information refuted petitioners' assertion that the City's LOS standards were not consistent with the land use element, population projections, County planning, or the City's CFP. The LOS standards, the City maintained, incorporated these sources of information and were therefore consistent with the CP.

The City noted that the 2003-2017 Transportation Management Plan predicts what the observed travel speed will be on a particular corridor taking into account land uses, population growth projections and known funded capital improvement programs. The City pointed out that the three classes of arterials differ with regard to travel speeds as well as their corresponding LOSs associated with average travel speeds. The City pointed out that the staff member who used the "B -/C + " terminology was not a traffic engineer, but an attorney, and characterized his remark as a "layman's colloquialism." The City touted its "annual report-card approach" to document corridor performance annually which assures that the City's LOS approach is accomplishing its objective. After system performance is evaluated, the City noted, adjustments to the adopted LOS standards by corridor, if applicable, will be recommended.

The City contended that the record did not show adoption of the corridor approach would cause the impact postulated by CCNRC, nor did it show the adoption of the corridor approach was clearly erroneous. The City characterized CCNRC's contentions as "speculative and remote." The City contended that the best analysis by its staff indicated that the LOS standards will not

affect current operating level of the City's transportation system in any significantly adverse manner.

The City pointed out that exemptions to the requirement for certificates of concurrency could not be applied to "an affected TMZ where a moratorium on development has been imposed."

CONCLUSION

LOS Letter Standards for Intersections v. Corridor Approach

Petitioners Progress and the Chamber, and Intervenors argued that LOS standards were set so high as to preclude development and so as to create inconsistency with the CP land use element. Conversely, petitioner CCNRC argued that the LOS standards had been set unreasonably low so as to always allow development and to enable the City to avoid its obligations under RCW 36.70A.070(6)(b). The record shows that the intersection measurements referenced in petitioners' arguments are but one factor in the approach adopted for transportation corridors in the City's concurrency management program administrative manual, May 1999.

It was not clear from the record that CCNRC's visions of 87 failing intersections, increases of hundreds of percent in the average allowable delay time at intersections, or a substitution effect, would occur. This record is devoid of any clear and concrete demonstration of significant change in the operating performance of the transportation system as a result of the change in methodology in LOS standards.

We find that the record substantiates the City's claim that it "did not significantly raise or lower the LOS standards" but "simply changed how" traffic is measured. The record shows that a letter classification such as "B" or "C" cannot be compared to a similar letter classification on a different tier of arterials. A "D" classification is between 9 and 12 miles an hour on a Class III arterial, but on a Class II is 14 to 17 miles an hour. Moreover, the record is clear that LOS standards in the corridor approach used corridor travel times in addition to intersection measurements. The corridor approach includes two intersection measurement standards. The first is the averaged signalized intersection performance standard, which is a quantitative standard

of the performance of all signalized intersections within an identified transportation corridor or TMZ. The second is the mobility index, the maximum number or percentage of signalized intersections which may have an operating level below the average.

In addition, the corridor approach includes a third standard, that of corridor travel times, which are maximum allowable travel times between two designated points along a corridor. These three standards are applied to three differing arterial tiers in the corridor approach. Letter designation standards are then only one factor of several in the measurement of the City's operating transportation system.

Consistency

We find the City's argument persuasive that an LOS failure in a TMZ does not constitute an inconsistency among the LOS standards, the CP, and the CFP.

Requirements of RCW 36.70A.070(6)(b)

We find that the City's temporary "moratorium" on development in the TMZ in question is consistent with section RCW 36.70A.070(6)(b). In short, the City, under GMA, must occasionally say "no."

The record shows the commitment from the City to actively monitor and correct any deficiencies later shown in the cited TMZ.

SEPA

We conclude that the CCNRC has not met its burden of establishing that the proposed LOS standards would create a probable significant adverse environmental impact. The issuance of the declaration of nonsignificance was not clearly erroneous. We conclude from the record that this program establishes new approaches for determining and monitoring transportation system capacity and neither substantially increase LOS standards as contended by petitioners Progress and the Chamber and Intervenors, nor lowers them as contended by CCNRC. We conclude from

the record (Ex. 193) that County staff did not state that the new standards would allow 87 or 40 intersections in the City to fail. Transportation Division Manager Rorabaugh stated that failures in 10 intersections could occur, but would be insignificant under the corridor approach. There is no showing in the record of significant changes in the operation of the transportation system as a result of the methodology change**.**

Sprawl, Coordination, Multi-Modal Transportation

We conclude from the record that the City coordinated with state, regional and county planning agencies in its adoption of the amendments and that the City's adoption is consistent with the CFP and the CP. We conclude that the corridor-approach LOS standards discourage sprawl and encourage multi-modal transportation by avoiding costly intersection improvements that promote single occupancy vehicle use and discourage walking and cycling.

Discretion

We find that the City was within its broad range of discretion in adopting the new LOS corridor approach methodology. RCW 36.70A.3201.

RCW 36.70B

We find that the City's LOS standards are consistent with the CP, and so do not reach the question of project review process and plan consistency. RCW 36.70B.

Exemptions

We find that the "less-than-ten-trip exemption" for requiring a transportation impact study would lead to an incomplete assessment of cumulative impact on LOS and therefore fails to comply with the Act. RCW 36.70A (6)(b).

Clearly Erroneous

Charges that "the effect of the change in methodology cannot be known" that "petitioners might not be able to develop in the area now under a permit moratorium," and charges that the City had both raised and lowered LOS standards, did not satisfy the clearly erroneous burden under this record. Petitioners have failed to meet their burden in the adoption of this ordinance on all issues other than certificate of concurrency exemptions.

ORDER

We find that the City of Vancouver's adoption of Ordinance M-3454 complies with the GMA except in regard to the exemption of developments generating ten peak-hour vehicle trips or less from the certificate of concurrency requirement. **The City must revise the ordinance with regard to exemptions within 180 days of the date of this order so that the results of an exemption for a "transportation impact study," a "traffic impact study," or a "traffic study" (all three terms being used, apparently interchangeably, in M-3454) do not fail to enable assessment of the cumulative effects on the operating level of affected traffic facilities from developments generating less than ten peak-hour vehicle trips in the applicable TMZs or transportation corridors.**

Findings of Fact pursuant to RCW 36.70A.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 22nd day of May, 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

1. The adopted City LOS standards do not equate directly to the old highway capacity manual A-B-C-D standards.

2. The City did not adopt an 85% of LOS standard.

3. The Mill Plain/Chkalov TMZ intersection was failing in 1996 when it was outside the City limits.

4. The City took into account the capital facilities plan, its CP land use element, and

population projections in adopting its new corridor approach for LOS standards.

5. The GMA does not require every TMZ to be non-failing at all times in order to achieve consistency between the land use element and the transportation LOS standards. In fact, the Act does the opposite, and requires the City to declare failure when it occurs.

6. The transportation impact TMZ studies must account for impacts of developments generating fewer than ten peak-hour trips.

7. The record does not show significant change in the operating performance of the City's transportation system as the result of the change in methodology for LOS standards measurement.

8. There was no showing of a probable significant adverse environmental impact from the adoption of Ordinance #M-3454.