

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

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

On August 23, 1999, the City of Vancouver adopted amendments to its level of service (LOS) standards. Thereafter, several petitions for review were filed and consolidated in the above-entitled case. A prehearing order was issued on December 16, 1999. On January 4, 2000, we received a motion from the City to dismiss specified issues. Responses were filed by various petitioners and a hearing was held in the Vancouver area on January 26, 2000.

At the beginning of the hearing the City withdrew its motion to dismiss Issue 4(p).

The remaining requests by the City to dismiss certain challenges to transportation subelements of the comprehensive plan (CP) (subissues of Issue 4) related largely to the City's concern that the phrasing of the issues appeared to allow petitioners to challenge the original transportation elements adopted in December 1996 and/or those adopted at the time of the CP adoption on November 7, 1994. Petitioners unequivocally stated during the hearing that no such challenge was anticipated. The gravaman of petitioners' challenges to the other subelements of the transportation element related to their claim that the new amendment was inconsistent with and/

or did not properly implement the previously adopted CP. The City acknowledged that this challenge to consistency and implementation was appropriate.

Owing to the parameters of the agreement of the parties, and in recognition of the fact the previous transportation subelement issues were not challenged when originally adopted, it is not necessary for us to dismiss those particular subissues of Issue 4. The City will not have to defend any challenges to portions of the CP that were not challenged when originally adopted, if more than 60 days have passed from the notice of adoption.

We note that the Growth Management Act reference inferred from a cite to WAC 365-195-510(3) (a) in Issue 4(h) as raised by the Home Builders, Progress Clark County, et al. (#55) should be to RCW 36.70A.190(4)(b) instead of .070(6)(a). We amend that issue accordingly.

The City also moved to dismiss Issues 7 and 8 on the basis that the obligations contained in RCW 36.70A.130 and 36.70A.215 were not yet requirements imposed upon the City. A review of the briefs and the arguments presented at the hearing failed to clarify the parties' positions on these issues. We are not entirely sure what duties the petitioners claim have not been carried out and what duties were or were not imposed at the time the City adopted its new LOS standards. We deny the motion to enable us to consider this matter at the hearing on the merits.

Finally, the City moved to dismiss Issues 12 and 14 relating to RCW 36.70B and RCW 47.80. The City claimed that no jurisdiction existed for us to rule on those statutes based on our earlier rulings (including *Armstrong v. Clark County* #95-2-0080 (FDO 12-6-95)). As we noted during the questioning period, two recent cases call into question our earlier jurisdictional rulings. *Des Moines v. Puget Reg'l Council* 97 Wn.App. 920 (1999) and *New Castle Invs. v. LaCenter* 98 Wn.App. 224 (1999) set forth some Court of Appeals rulings that may require us to reevaluate our earlier rulings. Rather than grant the parties' request to provide further briefing on this issue as part of the motions hearing, we deny the motion and allow the parties to address it at the hearing on the merits.

The City's motions are denied subject to the restrictions and clarifications set forth in this order.

Petitioner Clark County Natural Resource Council's motion to supplement the record (January 5, 2000) is denied.

So ORDERED this 2nd day of February, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member