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

THOMAS H. SOLBERG, et al.,)		
)	No. 99-2-0039c	
Petitioners,)		
)		FINAL DECISION
v.)		AND ORDER
)		
SKAGIT COUNTY)		
)		
Respondent.)		
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INTRODUCTION

Petitioners Thomas H. Solberg (Solberg) and the Association of Skagit County Landowners (ASCL) filed separate petitions challenging Interim Ordinances #17523 and #17570, which rescinded the Big Lake Urban Growth Area (UGA) and established a Big Lake Rural Village (RV). On November 9, 1999, we consolidated those two petitions into this case. The hearing on the merits (HOM) was held February 8, 2000, at the Skagit County Administration Building, Mount Vernon, Washington. Marianne Manville-Ailles represented ASCL, Thomas H. Solberg represented himself, and John Moffat represented Skagit County. Nan Henriksen, Les Eldridge, and William H. Nielsen were present from the Board.

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BURDEN OF PROOF

As in all cases before us, the burden is on the petitioners to demonstrate that the actions taken by Skagit County (County) are not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action by [Skagit County] 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 Skagit County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t Ecology v. PUD 1*, 121 Wn.2nd 179, 201 (1993).

BACKGROUND INFORMATION

The County originally designated the Big Lake area (Big Lake) as an UGA when it adopted its 1997 comprehensive plan (CP). Friends of Skagit County (FOSC) challenged that designation in *Abenroth, et al., v. Skagit County (Abenroth)*, Case #97-2-0060c. In the January 12, 1998, final decision and order (FDO) we found that the Big Lake UGA was noncompliant with the GMA.

Following the initial remand period we gave the County until July 22, 1999, to take action to bring the Big Lake designation into compliance. On July 21, 1999, the Skagit County Board of Commissioners (BOCC) voted to establish Big Lake as a RV.

On August 2, 1999, Skagit County adopted interim Ordinance No. 17523, rescinding the Big Lake UGA designation in Ordinance No. 16550, replacing it with a RV designation and adopting a map of the Big Lake RV. On September 13, 1999, the BOCC held a public hearing on Ordinance No. 17523. On September 20, 1999, it adopted Ordinance No. 17570 reaffirming Ordinance No. 17523 and adopting additional findings in support of the Big Lake RV designation.

Petitioners in this case challenged the adequacy of the public participation provided for in this process and whether the County’s designation of the Big Lake area as a RV was consistent with the GMA, the countywide planning policies (CPPs), and the County’s CP.

MOTIONS TO SUPPLEMENT RECORD

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On January 28, 2000, the County filed a motion to add to the record settlement agreement No. 004468 between Skagit County and FOOSC, dated June 23, 1999. The motion is granted and the document is numbered Exhibit 54.

DISCUSSION

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Public Participation

Petitioners raised many concerns about the adequacy of the public participation afforded before the changing of the designation from UGA to RV. Some of their charges included:

1. There was no public participation between January 23, 1998, and July 21, 1999, when the BOCC voted to establish Big Lake as a RV.
2. The County had no good excuse for using an interim emergency process when that action came 18 months after the FDO.
3. The County abandoned its previous practice of using Citizen Advisory Committees in dealing with this change of designation.
4. The County's actions clearly thwart the intent of the Act to encourage early and continuous public participation.
5. At the one after-the-fact public hearing on September 13, 1999, no one spoke for the Big Lake RV designation except FOOSC.
6. The County failed to comply with its own public participation program (PPP).
7. The County failed to conduct appropriate, or any, public participation. This action is not only clearly erroneous but also substantially interferes with the fulfillment of the GMA, which requires public participation as one of its central tenets.

The County responded in part by reminding us that:

1. The public participation process for determining the appropriate designation for Big Lake began years ago, not with the FDO.
2. The County was faced with a mountain of tasks as a result of our FDO and other GMA requirements.

3. The County followed proper procedure for the adoption of interim ordinances.
4. None of the County's actions or accused omissions involve a violation of GMA's public participation requirements.
5. The GMA does not require that the County do what the majority of people who provide input into public participation request. GMA only requires that the County consider and respond to public comment. The County did that.
6. The County's PPP does not apply to the adoption of interim ordinances.
7. Based on this record, petitioners have wholly failed to carry their burden of showing that the County's actions are clearly erroneous, let alone substantially interfere with the fulfillment of the GMA goals.

We can certainly understand the petitioners' frustration with the County's public participation process in bringing itself into compliance with the FDO and the Act regarding Big Lake. However, petitioners have failed to carry their burden of showing that the County's process failed to comply with the Act. Although minimal, we find the County's public participation process was in compliance with the Act.

Designation of Big Lake as a RV

The petitioners expressed many frustrations about the RV designation including:

1. Big Lake has sewer and small lots so it cannot be found to be rural under GMA.
2. The County did not try hard enough to justify Big Lake as an UGA.
3. If the County cannot justify Big Lake as urban, it should be designated "unique," not rural.
4. The County could not designate Big Lake as a RV now, because when the County adopted Ordinance No. 16550 it adopted findings naming all the RVs and Big Lake was not one of them.
5. The County, by designating Big Lake as a RV, has created hundreds of nonconforming lots and used up much of the 20% allotment allowed for rural residential development. This is not fair to other rural land owners throughout the County who now will not be able to create as many new lots.

6. Due to its close proximity, Mount Vernon should be required to accept Big Lake in its UGA. The rural landowners have already sacrificed more than their share.

The County responded that:

1. It is not the County's burden to prove that Big Lake is rural. It is petitioner's burden to show that the County's action in designating Big Lake as a RV is clearly erroneous.
2. There is nothing in GMA that says that just because an area has sewer or small lots it must be designated as an UGA.
3. ASCL has pointed to nothing new in this record which warrants Big Lake's designation as an UGA which was not presented to the Board in *Abenroth* when the Board rejected the UGA designation. The County was not required by GMA to go through a futile exercise to try to justify Big Lake as an UGA just to please petitioners.
4. RCW 36.70A.110 has specific criteria for UGAs. In *Abenroth*, the Board determined that Big Lake did not meet those UGA criteria. The only option left, under GMA, is rural. Rural is the "default category" under GMA.
5. The record in *Abenroth* demonstrated unequivocally that Big Lake is a historical community meeting the requirements of a RV. The record also shows the County originally intended to designate it as such.
6. The County is currently undergoing the process of adopting permanent amendments to its CP text to correct internal inconsistencies with the language in the 1997 CP regarding the designation of Big Lake.
7. The designation of Big Lake as a Rural Village: (a) recognizes existing rural development patterns in the surrounding rural areas, (b) reduces converting undeveloped land into sprawling, low-density development, and (c) is harmonious with GMA planning goal RCW 36.70A.020(2).
8. The County cannot force Mount Vernon to include the Big Lake area in its UGA.

We sympathize with the rural land owners' frustration. However, we find the County's arguments to be persuasive. Petitioners have failed to meet their burden under RCW 36.70A.320. Although they are not pleased with the County's actions, petitioners have not shown how the County's actions fail to comply with the Act.

CONCLUSION

We find Ordinance Nos. #17523 and #17570 to be in compliance with the GMA.

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 3rd day of March, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member

APPENDIX I
Findings of Fact
Case #99-2-0039c

1. Skagit County designated the Big Lake urban growth area (UGA) when it adopted its 1997 comprehensive plan (CP).
2. Friends of Skagit County (FOSC) challenged that designation in *Abenroth, et al. v. Skagit*

County (Abenroth) Case #97-2-0060c.

3. In the January 12, 1998, final decision and order (FDO) we found that the Big Lake UGA was noncompliant with the GMA.
4. On July 21, 1999, the Skagit County Board of County Commissioners (BOCC) voted to establish the Big Lake area (Big Lake) as a rural village (RV).
5. On August 2, 1999, Skagit County adopted interim Ordinance #17523, rescinding the Big Lake UGA designation in Ordinance #16550, replacing it with a RV designation and adopting a map of the Big Lake RV.
6. On September 13, 1999, the BOCC held a public hearing on Ordinance #17523.
7. On September 20, 1999, the BOCC adopted Ordinance #17570 reaffirming Ordinance #17523 and adopting additional findings in support of the Big Lake RV designation.
8. The County's public participation program does not apply to the adoption of interim ordinances.
9. The County followed proper procedure for the adoption of interim ordinances.
10. RCW 36.70A.110 has specific criteria for UGAs. In *Abenroth*, we found that Big Lake did not meet those criteria.
11. The record in *Abenroth* demonstrated that Big Lake is a historical community meeting the requirements of a RV.