

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

EVERGREEN ISLANDS, et al.,

Petitioners,

v.

SKAGIT COUNTY,

Respondent,

and

AFFILIATED HEALTH SERVICES, et al.,

Intervenors.

No. 00-2-0046c
(General Issues)

**COMPLIANCE
ORDER**

On May 9, 2003, Skagit County (County) filed an update of actions taken to comply with the Growth Management Act (the “Act”); March 27, 2002 Order Re: Motions for Reconsideration, Request for Stay and Additions to the Record; January 30, 2002 Compliance Order (CO); and February 6, 2001 Final Decision and Order (FDO).

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. The burden is on Petitioners to demonstrate that the action taken by Skagit County is not in compliance with the requirements of the Growth Management Act. RCW 36.70A.320(2). Pursuant to RCW 36.70A.320(3), we “shall find compliance unless [we] determine 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].” In order to find the County’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).

In its update, the County stated that it had appealed both the FDO and the CO in this case to Skagit County Superior Court. However, the County has not pursued these appeals, but instead, has sought a resolution to these issues through settlement negotiations and adoption of new regulations. The County provided a summary of the current status of issues of noncompliance in this case:

(1) **Big Lake Rural Village (RV).**

Settlement of this issue has been achieved. Following a Planning Commission recommendation, on May 6, 2003, the Board of County Commissioners voted to amend the Comprehensive Plan (CP) Map for the Big Lake RV, pulling back the boundaries to the 1999 dimension, pending completion of a Big Lake Subarea Plan. Further, Neil Hansen, owner of the Overlook Golf Course, entered into a settlement agreement with Friends of Skagit County (FOSC) and Gerald Steel, regarding development of the Golf Course. The Ordinance implements the provisions of that agreement by amending the RV development regulations and CP.

(2) **Open Space Conservation and Reserve Development (CaRD).**

The County negotiated with Anacortes, FOSC and Steel for much of the last year on this issue. Although no formal settlement agreement was signed, the County reached agreement with the parties and the Planning Commission unanimously recommended approval of new regulations addressing this Board’s concerns in its FDO. The Board of County Commissioners is expected to act on these on May 13, 2003. Assuming the Board of County Commissioners adopts these proposed regulations at that time, the County will address the specifics of the Ordinance to the extent necessary in its briefing, in response to any arguments raised by the Petitioners/Intervenors.

(3) Rural Sign Regulations.

In its CO, the Board found the County's sign ordinance invalid. The County has not adopted a new Rural sign ordinance. The County expects to address this issue in the next few months.

(4) Lot Aggregation.

The County had extensive negotiations with Anacortes, FOSC, Steel, Evergreen Islands and Randy Previs/Seavestco on this issue over the past year. The parties settled issues relating to the Previs/Seavestco property by separate agreement, and Previs/Seavestco is no longer a party to this case.

Unfortunately, despite providing assurances that it agreed with regulatory language that had been negotiated over many months and up to late March 2003. In April, both Evergreen Islands and FOSC repudiated the settlement language their attorney (Mr. Steel) had agreed to and FOSC discharged Mr. Steel and obtained new counsel. As a result, the County went to a public hearing on April 10, 2003, with two versions of a new regulation on this topic, one of which had been previously approved by Mr. Steel, FOSC and Evergreen Islands, and a second which had been approved by Mr. Steel, but which both Evergreen Islands and FOSC (as well as members of the public) criticized. As a result, the Planning Commission directed the County staff to come back with a new proposal.

Like the sign ordinance, the County expects to address this issue in the coming months through a new regulation.

On May 12, 2003, the County filed a supplement to the update regarding the adoption of a timetable for the Fidalgo Island Subarea Plan.

On May 27, 2003, the City of Anacortes (City) filed a brief supporting a finding of compliance on the revised CARD ordinance and the South Fidalgo Sub-Area Plan Work Program and Timeframe. The City requested that we continue to hold the County out of compliance as to rural signage and lot aggregation issues.

On May 30, 2003, Friends of Skagit County (FOSC) filed a response to the County's Action Statement. In the response regarding the above issues, FOSC presented the following points:

- (1) Big Lake Rural Village – FOSC agrees to a finding of compliance.
- (2) Open Space Conservation and Reserve Development (CARD) – FOSC agrees to a finding of compliance since the Board of County Commissioners had taken action on May 13, 2003.
- (3) Rural Sign Regulations – FOSC agrees with the County that we should continue the Order of Non-Compliance and Order of Invalidity in effect. FOSC also asks that we give the County only 90 days to take curative action.
- (4) Lot Aggregation – FOSC points out that :
 - (a) We set a July 1, 2002 deadline for the County to reach compliance or we would consider Petitioners' request for invalidity. The County still has not adopted an ordinance and therefore the provisions finding non-compliance should remain in effect.
 - (b) The two versions of the lot aggregation ordinance presented to the planning commission were in response to concerns raised by the real estate industry, not by FOSC.
 - (c) In the April 10, 2003 letter to the planning commission, FOSC identified specific defects in the proposed ordinances, including an exception for nonconforming lots ten acres or larger located in resource lands.
 - (d) The lot aggregation ordinance should be addressing how to aggregate the approximately 6,000 substandard lots in agricultural zones and not how to legalize them.
 - (e) FOSC acknowledges that it raised new issues with the proposals at the last minute and are therefore not requesting an

order of invalidity at this time. However, it asks us to set a short time for the County to comply so as to limit the potential for additional interference with the Act's goals.

On June 13, 2003, Skagit County filed a response brief. The County asked us to enter a finding of compliance on the following issues:

- (1) Setting a timetable for the Fidalgo Island Subarea Plan;
- (2) Conservation and Reserve Development (CARD); and
- (3) Big Lake Rural Village.

Neither of the two Petitioners who provided briefing opposes a finding of compliance on the above issues.

After independent review of the County's actions on the above compliance issues, we find the County in compliance with the Act as to:

- 1) Setting a work program and timetable for the Fidalgo Island Subarea Plan;**
- 2) Conservation and Reserve Development; and**
- 3) Big Lake Rural Village.**

With respect to Lot Aggregation and Rural Sign Regulations, the County asks that we issue an order continuing noncompliance, giving the County at least 180 days to achieve compliance. All parties agree that the County remains out of compliance on these last two issues. The only disagreement appears to be how much time the County should be given to come into compliance.

The County points out that after many months of good-faith negotiation with FOOSC, Gerald Steel, Evergreen Islands (EI) and the City of Anacortes on the lot aggregation

issue, FOSC and EI reneged on approval of amendatory regulatory language that all parties had agreed to and also contributed to the failure of the negotiation process by the unauthorized release of the draft language prior to settlement documents being signed.

Board Discussion

We are saddened by the last-minute unraveling of an agreement among the parties on this difficult issue. We note that the County has readopted its old aggregation regulation while a new ordinance is being developed and adopted. We sincerely hope the County spends no more time and money on studies on this issue, but uses the next 180 days to develop and adopt new regulations to deal with substandard lot development within long-term commercial agricultural zones.

As to Petitioners' request for a shorter time-frame for compliance, the record shows that the County has acted in good faith in working with Petitioners to solve this issue. It seems inappropriate to give the County less time to comply when it was the Petitioners who contributed greatly to the last-minute unraveling of the previous settlement process.

The County remains in noncompliance on this issue and has 180 days from the date of this Order to reach compliance. The County also remains in noncompliance and invalidity as to the Rural Sign Compliance issue. The County must bring itself into compliance within 180 days of the date of this Order.

A compliance hearing is scheduled for May 4, 2004, at a location to be determined later. The County's update on actions taken to comply is due

March 26, 2004. Briefs from those opposing the County's compliance are due April 8, 2004. The County's response is due April 22, 2004.

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 11th day of September 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan Henriksen, Board Member

Holly Gadbow, Board Member

Margery Hite, Board Member