

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

FRIENDS OF SKAGIT COUNTY, et al.,)	
)	No. 00-2-0050c
Petitioners,)	(City Regulations
)	Issues)
v.)	
)	COMPLIANCE
)	ORDER
SKAGIT COUNTY)	
)	
Respondent,)	
)	
and)	
)	
CITY OF MOUNT VERNON, et al.,)	
)	
Intervenors)	

In our February 6, 2001 final decision and order (FDO) we stated in part:

“As to the timing, phasing and transformance of governance issue, we have previously stated that within urban growth areas (UGAs) (including non-municipal UGAs) urban infrastructure must be efficiently timed and phased. Transformance of governance should occur prior to urban development. We remind the County that even though we have found compliance with the County’s arrangement of administering city DRs in unincorporated municipal UGAs, we see this as a temporary solution. Efficient phasing of infrastructure is the key and annexation should occur before urban infrastructure is extended. **The County remains in noncompliance with our previous orders in *Abenroth*. Its interlocal agreements with the municipalities still do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs.**”

Regarding the interim County implementation of city regulations, in order to achieve compliance the County must, within 30 days, adopt current city DRs and keep them current in the future.”

We therefore have two compliance issues to decide in this case:

1. Adoption of current City regulations for implementation in the unincorporated UGAs.
2. Transformance of governance and efficient phasing of urban infrastructure improvements within UGAs.

Presumption of Validity, Burden of Proof, and Standard of Review

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 (GMA, 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).

Adoption of City Regulations for Implementation In the Unincorporated UGAs

In its August 27, 2001 Statement of Actions taken in response to the February 6, 2001 FDO, the County reported that it:

1. Wrote the cities requesting copies of all city concurrency and development regulations (DRs) they wanted in effect in the unincorporated UGAs that had not been adopted through Ordinance 17938 on July 24, 2000, or which had been updated since then.
2. Adopted the cities concurrency regulations through interim Ordinance 18223 on April 9, 2001 and later adopted them through permanent Ordinance 18293 on July 2, 2001.
3. Adopted other updated DRs as permanent regulations through Ordinance 18375

on August 21, 2001.

No petitioners challenged the County's claim of adoption of City ordinances. FOOSC and Gerald Steel (FOOSC) did complain that the County should have checked the accuracy of municipal regulations they adopted for concurrency, using Concrete's road standards as an example. FOOSC also claimed that the County must be required to adopt a specific policy which ensures that City regulation updates will be timely adopted by the County in the future.

The County replied that it had shown good faith in adopting the cities' updated ordinances and would do so in the future. No written policy was needed. The County also stated at page 9 of its response brief:

“This Board's FDO (p.5) required the County to ‘adopt current city DRs and keep them current.....’ The County has done that. This Board did not require the County to go beyond that and adopt new ordinances on its own to fill in where FOOSC claimed there were ‘holes.’ These issues not only were not part of the FDO, but have never been part of this case..... If FOOSC believes the County is in noncompliance with GMA on these issues, it should file a new petition to raise these issues. A compliance hearing is not the time to raise new issues.”

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Board Discussion and Conclusion

The record shows that the County has adopted current city regulations for implementation in the unincorporated UGAs. We have no reason to doubt the County's word that it will keep those regulations current in the future. We agree with the County that if FOOSC believes the County is in noncompliance because of “holes” in the adopted plans, those issues must be handled in a new petition. **As to this issue, we find the County in compliance.**

Transformance of Governance and Efficient Phasing of Urban Infrastructure Improvements Within UGAs

In its statement of actions taken the County reported that it had adopted all of the cities' concurrency regulations in the unincorporated UGAs. The County contended that this was the County's method of complying with the Boards' order to ensure that annexation would be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs. (The holdover compliance issue from *Abenroth et al., v. Skagit County*, Case #97-2-0060c)

FOSC argued that:

1. The County has done nothing to address the timing, phasing, and transformance of governance issue. Even if the concurrency ordinances of the cities were adequate, they do not directly address the timing, phasing, and transformance of governance issue.
2. Both residential and non-residential development continue to occur in municipal and nonmunicipal UGAs without provision for sewer.
3. There are no standards adopted by the County that would limit development in the unincorporated UGA when full services are not available, so as to encourage urban redevelopment when services become available.
4. The County must address timing and phasing of development that may occur in the unincorporated UGA when property owners do not want to annex.
5. A proper policy/regulation should allow only a low level of residential or non-residential development when full city services are not currently available and require that such development be sited in such a manner that redevelopment would be encouraged when full city services become available.
6. The County has abandoned its ordinance which required interim lower density and positioning to facilitate urban development when full city services become available.
7. The County has taken no action on updating interlocal agreements to ensure efficient timing and phasing of urban development and infrastructure.

Anacortes, also arguing against a finding of compliance, stated:

1. The County ignored the Board's order which clearly stated:
"Transformance of governance should occur prior to urban development. We remind the County that even though we have found compliance with the County's arrangement of administering city DRs in unincorporated municipal UGAs, we see this as a temporary solution. Efficient phasing of infrastructure is the key and

annexation should occur before urban infrastructure is extended.”

2. The County has done no work on interlocal agreements to ensure the above occurs. The City has submitted a specific proposal to improve their agreement but the County has declined to even discuss this proposal.
3. The record in this case shows how the County is complicating annexations by invoking Boundary Review Board (BRB) jurisdiction in the name of expanding annexations, bringing into play BRB considerations on what would otherwise most likely be uncontested annexations, and then not participating in the proceedings. The BRB has rejected language from the Board’s previous decisions and continues to follow criteria which should not be applicable within municipal UGAs, rejecting the phasing of small annexations as “piecemeal.”
4. The County has refused to insert language from our previous orders into its Comprehensive Plan.

The County responded:

1. The adoption of cities’ concurrency ordinances, to be applied within the unincorporated UGAs, and the County’s response to specific annexation proposals within the unincorporated UGAs, demonstrate that the County’s actions are intended to get cities to annex faster.
2. Anacortes will not be satisfied until the County strips all power from the BRB.
3. The County received no favorable comments from agencies or the public to the City’s proposal for the County to adopt a policy imposing limitations on the BRB.
4. The County adopted findings including:
“...guidelines for how development is to occur within the municipal UGAs should be instituted through interlocal agreements with each of the cities.”
5. The County cannot make citizens annex. Property owners have the right to decide when and if they will be annexed, BRB or no BRB.
6. The County sent letters in May to all cities asking to discuss transformance issues and Anacortes refused to talk.

Board Discussion and Conclusion

We agree with petitioners that the adoption of city regulations for implementation within the unincorporated UGAs does not bring the County into compliance on this issue. At a minimum, interlocal agreements must be updated to ensure that annexations will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs. We remind the County that it must also provide for such requirements within nonmunicipal UGAs.

We are saddened that the county has abandoned its ordinance which limited and positioned development in the UGAs until urban services were available so as to enable and encourage urban development when urban services become available. By doing that, the County has taken a backward step in its role to encourage urban growth within UGAs.

We find the County in continued noncompliance on the transformance of governance issue. Within 180 days, the County must negotiate and adopt updates to interlocal agreements to ensure that annexations will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs. Also, the County must adopt provisions for unincorporated UGAs which enable and encourage urban development to occur when full urban infrastructure and services are available.

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 30th day of November, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member