

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

EVERGREEN ISLANDS, et al.,)	
)	No. 00-2-0046c
Petitioners,)	(General Issues)
)	
v.)	ORDER RE:
)	MOTIONS FOR
SKAGIT COUNTY,)	RECONSIDERATION,
)	REQUEST FOR STAY,
Respondent,)	AND ADDITIONS
)	TO THE RECORD
)	
AFFILIATED HEALTH SERVICES, et al.,)	
)	
Intervenors)	
)	

On January 31, 2002, we issued a compliance order (CO) in this case. On February 11, 2002, we received Skagit County’s Motion for Reconsideration, Request for Stay and to Add to the Record. On the same day, we received a motion for reconsideration from Friends of Skagit County (FOSC).

On February 14, 2002, we issued an order asking any party who briefed and argued those issues for the compliance hearing (CH) to “supply an answer and serve in like manner” by February 28, 2002. (WAC 242-02-831(1) and (2)).

On February 14, 2002, we received a response from FOSC. On February 28, 2002, we received a response from the City of Anacortes (City).

On March 13, 2002, we held a telephonic hearing on our interpretation of *Rural Residents v. Kitsap County (ARR)*, 141 Wn.2d 185 4P.3d.115 (2000). The interpretation was laid out in the Case 00-2-0049c CO, challenged by the County, and also impacted the CO in this case.

In the Reconsideration Order issued today in Case #00-2-0049c we reaffirmed our previous holding as to the effect of the *ARR* decision under those facts for the reasons set forth therein and set forth in the January 31, 2002 CO. We incorporate by reference the reasoning and holdings in those orders regarding the effect of the *ARR* decision on the set of facts in this case.

County Requests in its Motion

1.) Remove Invalidity On Big Lake Rural Village (RV)

The County pointed out that on January 28, 2002, in an attempt to reach a settlement on this issue that is now also on appeal in Skagit County Superior Court, the County adopted a new ordinance which restored the pre-July 24, 2000 Big Lake RV boundaries. The County argued that since this action was taken before the CO was issued on January 31, 2002, the County ordinance did not substantially interfere with the goals of the Growth Management Act (Act) when the CO was issued.

FOSC responded that normally actions by the County after the compliance hearing should not impact the CO. And normally, a motion for reconsideration is not the appropriate vehicle for the County to use to request a lifting of invalidity. However, under the facts in this case, it would not object to the County's request.

Board Action

We are reluctant to allow the County to use a motion for reconsideration to request lifting of invalidity for actions taken after the CH. However, in this case, since parties agree and are working toward settlement, we will make an exception. **Under the specific facts in this case, with the County readopting an ordinance that we have already found to comply with the Act, we will rely on the new ordinance in proposed Ex. 728 to remove the CO finding of invalidity on the Big Lake RV. The County remains in noncompliance on this issue, because it has adopted this as an interim ordinance.**

2.) Urban Reserve Conservation and Reserve Development (CaRD) and other mechanisms that could allow increased density.

The County asked us to reconsider the language we used on p. 18, lines 1-4 of the CO, "...and other mechanisms that could allow increased density within the study area...". The County requested that we make clear that this language does not prohibit the County from issuing CaRD approvals under Skagit County Code (SCC) 14.18.310(5)(a), (b) and (d). The County asked us to further clarify the CO to indicate exactly which mechanisms we were alluding to in this language.

Lastly, the County requested that we reconsider the statement that we will impose automatic future invalidity since the County does not understand what regulations might be declared invalid.

Anacortes responded that it supports the use of CaRD under SCC 14.18.310(5)(a) and (b) since they create permanent open space. The City does object to use of SCC 14.18.310(5)(c) and (d) – urban reserve CaRD provisions.

FOSC supported its objection to use of SCC 14.18.310(5)(c) and (5)(d) by pointing out that (5)(c) allows creation of an urban reserve open space in rural lands countywide and (5)(d) also allows creation of urban reserve open space if all owners agree to the redesignation. Both of these sections fail to comply with the Act because they allow urban reserves to be created countywide at the sole discretion of the property owners. The County’s implementation of its urban reserves in (5)(c) and (5)(d) without coordinated planning, public participation, and consideration of public facilities and service does not comply with the Act and would prejudice future Comprehensive Plan amendment processes.

Board Action

We find petitioners’ arguments listed above to be persuasive. We amend p. 18, lines 1-4 of the CO to read:

“The County remains in noncompliance as to this remand issue. If the County has not acted within 150 days to limit the use of SCC 14.18.310(5)(c) and (5)(d) in rural lands throughout the County and specifically prohibited their use within the Fidalgo Island study area, we will find those subsections invalid.....”

3.) Issues Currently Pending in Skagit County Superior Court – (Lot Aggregation, Open Space Reserve CaRD and Big Lake RV)

The County requested that we do one of the following:

- a.) Stay the CO;
- b.) Reconsider the time deadlines to coincide with those currently applying to the County through the January 18, 2002 Court Order Re: Continuance of Trial Date, entered in that case to give the parties an opportunity for settlement negotiations; or
- c.) Find compliance, since an interim ordinance to maintain “status quo” has been adopted. In response to the January 18, 2002 Court Order the County adopted Ordinance 17523 on January

28, 2002 which:

- § Restored the old Big Lake RV boundaries as discussed in a previous section;
- § Prohibited the County from accepting any Open Space Reserve CaRD applications under SCC 14.18.310(5)(c) anywhere in the County; and
- § Restored the lot aggregation provisions of former SCC 14.04.190 (5) everywhere in the County. The only difference is that the County is required to research lot ownership history back to July 1, 1990, rather than to March 1, 1965.

The County concluded that the purpose of this motion was to establish consistency among these settlement efforts, the trial Court's order, and the ongoing Growth Board proceedings.

Anacortes responded that it supported extending timelines in the CO to coincide with the Court's schedule. The City opposed the County's request for a finding of compliance for two major reasons:

- a.) The ordinance is interim and probably noncompliant as a permanent regulation.
- b.) Post compliance hearing actions taken by the County should be the subject of a new compliance hearing and not addressed through a motion for reconsideration.

FOSC agreed with the City that extension of timelines in the CO was the appropriate action under these circumstances. FOSC suggested that we allow the County until June 28, 2002 to comply on the condition that the County does not modify the interim ordinance.

Board Action

We wish to establish consistency among the settlement efforts, the trial court order, and the CO. We therefore change allowed timelines in the CO as to Lot Aggregation, CaRD and Big Lake RV from 90 days to 150 days, as long as the County does not modify its interim ordinance. Having established the remand compliance date of July 1, 2002, we set a telephonic motions hearing for August 7, 2002. The County must supply a statement of actions taken to comply by July 8, 2002. All motions must be filed by July 19, 2002, and responses are due July 31, 2002.

4.) Addition to Record

The County asked that we reconsider the language on p. 3, line 15 of the CO, where we stated that

we admitted Ex. 629.

Board Action

Ex. 629 should have been admitted in Case 00-2-0049c, not in this case. We delete reference to Ex. 629 on p. 3, line 15.

The County further requested that we add to the record the following documents to be considered in conjunction with its motion:

(Proposed) Exhibit No. 726

Order Re: Continuance of Trial Date dated January 18, 2002, in Skagit County Cause No. 01-2-00423-1.

(Proposed) Exhibit No. 728

Ordinance No. R20020037, dated January 28, 2002, adopted pursuant to the Order Re: Continuance of Trial Date.

Both Anacortes and FOSC supported these additions to the record.

Board Action

We grant the County's motion to add Ex. 726 and 728 to the record.

FOSC Motion Re: Findings of Fact and Conclusions of Law

FOSC requested that we support the CO with Findings of Fact and Conclusions of Law, where appropriate. (RCW 36.70A.302(1)(b)).

Board Action

RCW 36.70A.302(1)(b) states that if we determine that a regulation is invalid we must include findings of fact and conclusions of law supporting the determination that the continued validity of that regulation would substantially interfere with the fulfillment of the goals of the Act.

In the CO we made a new finding of invalidity as to the rural sign ordinance and failed to include findings of fact and conclusions of law. We add Appendix A (Attached) to the CO to support p. 21, lines 22 through 24:

“We find that SCC 14.16.820 and Skagit County’s failure to ensure that its rural lands remain rural through adequate signage controls substantially interfere with the fulfillment of Goals 2 and 10 of the Act.”

Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) are adopted and attached as Appendix A and incorporated herein by reference.

Pursuant to WAC 242-02-832(4), this decision constitutes a final decision and order for purposes of judicial review.

So ORDERED the 27th day of March, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member

Appendix A

**Findings of Fact and Conclusions of Law pursuant to
RCW 36.70A.302(1)(b)**

Findings of Fact

Rural Sign Regulations

1. RCW 36.70A.070(5)(c) requires “Assuring visual compatibility of rural development with the surrounding rural area.” The CP also has policies and objectives to protect rural character.
2. If Skagit County citizens took advantage of what is allowed under the new sign codes, signage would predominate over open space, natural landscape, and vegetation. RCW 36.70A.030(14)(a) prohibits that result.
3. RCW 36.70A.070(5)(c) requires “assuring visual compatibility of rural development with the surrounding rural area.” Although the ordinance allows electrified roof signs, searchlight, and a plethora of other signage, there is no requirement in the County code that other buildings in the area must already have similar signage in order for this new signage to be allowed.

Conclusions of Law

SCC 14.16.820 and Skagit County’s failure to ensure that its rural lands remain rural through adequate signage controls substantially interferes with the fulfillment of Goals 2 and 10 of the Act.