

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

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

On August 21, 2000, we received a petition for review (PFR) from Friends of Skagit County (FOSC) (Case #00-2-0038). On September 25, 2000, we received a PFR from FOSC and Gerald Steel (Case #00-2-0050). Both petitions challenged Ordinance #17938, specifically, city regulations implemented by the County. On October 4, 2000, a consolidation order of the above cases was entered.

On September 29, 2000, a prehearing conference was held at the Skagit County Administration Building, 700 South 2nd Street, Mount Vernon, Washington. A motions hearing was held on October 23, 2000, at 10:00 a.m. at the Skagit County Administration Building, Hearing Room C.

On October 26, 2000, intervention was granted to the City of Mount Vernon, the City of Anacortes and the City of Sedro-Woolley and Towns of Concrete and Hamilton. On November 16, 2000, intervention was granted to the Port of Skagit County and Affiliated Health Services.

The hearing on the merits was held on December 18, 2000, at the Skagit County Administration

Building, Hearing Room C.

Pursuant to RCW 36.70A.320(1) Ordinance #17938 is presumed valid upon adoption. 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), a 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].” 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).

FOSC and Gerald Steel failed to brief many of the issues raised in their PFRs. Further, since Petitioners briefed these issues by topic without reference to issue numbers, it is extremely difficult to tell which of the issues were actually briefed. **We find that, except as to the categories of issues set forth in the remainder of this order, Petitioners have failed to sustain their burden of showing that Skagit County has failed to comply with the Act.**

FOSC challenges included:

- (1) SCC 14.02 Appendix A contains a list of city regulations for Anacortes, Burlington, Mount Vernon, and Sedro-Woolley. SCC 14.02.040 states that within unincorporated UGAs the provisions of the applicable city code, when adopted by Skagit County ordinance, shall be applied, and that the corresponding Skagit County Code shall not apply. Skagit County has not specified which of its code sections do not apply.
- (2) Therefore, without research into the history of the County ordinances, it would be impossible for applicants to know which provisions actually apply and which do not. This will lead to multiple interpretations by County staff and applicants. This is a violation of the clear regulation requirement of CPP 7.4 and of the predictability Goal (7) of the Act.
- (3) SCC 14.02.040 also states that the city ordinance will be “administered” by the County Planning and Permit Center. In order for SCC 14.02.040 to be a clear regulation,

it must have a translation table that gives clear direction on how the references in the city ordinances to city offices, bodies, and locations in the city ordinances will be interpreted.

(4) SCC 14.02.040 will also lead to multiple interpretations of city ordinances because the city will interpret the meaning of its ordinance for projects inside the city limits and the County will interpret the same code when administering projects outside the city limits. This will lead to multiple inconsistent interpretations and a lack of predictability in violation of RCW 36.70A.020(7) and CPP 7.4.

(5) In *Abenroth v. Skagit County*, 97-2-0060c (CO 6-10-99), we stated that the County must have interlocal agreements “with cities ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services.” While the interlocal agreements require commercial and industrial development to be provided with service in order for development to occur in the unincorporated UGAs, the agreements still do not adequately address timing and phasing of commercial and industrial development. Further, the County has done nothing since the *Abenroth* (FDO 1-23-99) on transformance of governance. The County should be found in continuing noncompliance on these issues until the County and Cities modify their interlocal agreements to respond to the previous Board orders.

The County responded:

(1) The majority of FOSC’s concerns are over proper implementation that are not a concern of a Growth Management Hearings Board.

(2) The purpose of the Board’s orders in *Abenroth* and the purpose for the GMA transformance of governance requirement is to assure that growth in the unincorporated UGAs will be at urban levels consistent and coordinated with the levels of the cities, since the UGAs will eventually become annexed into these cities. The County has chosen to assure this consistency and coordination through the adoption of the development regulations (DRs) of the cities, and the application of those DRs by the County in the unincorporated UGAs.

(3) These regulations are clear. FOSC’s challenges are pure speculation. FOSC has failed to show one concrete example of any confusion or conflict or gaps between city and county ordinances which would lead to any conclusion that the County’s adoption of city ordinances violates GMA.

(4) The record shows that coordination between the county and city staffs on applications of city development regulations in the UGAs is working well.

(5) City concurrency regulations apply to development in the unincorporated UGAs just as the city development regulations apply to the substantive aspects of development in the UGA. FOSC has failed to show that the cities do not have concurrency ordinances which will accomplish timing and phasing of urban development in UGAs.

Intervenors Cities of Sedro-Woolley, Mount Vernon, and Anacortes, all reconfirmed that this process was working well. Anacortes reminded us that adoption of city DRs is a temporary solution. Energies should be placed on facilitating annexation of lands within UGAs into the cities, not on “fixing” an interim solution that is working.

FOSC replied that it is challenging unclear and internally inconsistent DRs, not implementation. Simply stating that staff knows is not good enough – it must be specified in the code. Additionally, some of the city DRs have not been adopted by the County and are therefore unenforceable. Concurrency does not adequately address the need for timing and phasing.

Board Discussion and Conclusion

The record clearly supports the arguments of the County and cities that this interim solution is working well. With one exception, FOSC has failed to meet its burden of showing that the County’s actions regarding the implementation of city regulations in unincorporated UGAs was clearly erroneous.

SCC 14.02.040 states:

“...for all land in unincorporated GMA designated urban growth areas, the provisions of the applicable city code, when adopted by Skagit County ordinance, shall be applied.”
(emphasis added)

The County admitted that it had not adopted three of the cities’ concurrency ordinances. This failure to adopt current city DRs and keep them current makes this provision illusory and therefore fails to comply with the Act.

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.

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 6th day of February, 2001

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

Les Eldridge
Board Member

William H. Nielsen
Board Member

Appendix I
Findings of Fact pursuant to RCW 36.70A.270(6)

1. SCC 14.02.040 states that within unincorporated municipal UGAs the provision of the applicable city code, when adopted by Skagit County ordinance, shall be applied, and that the corresponding Skagit County Code shall not apply.
2. SCC 14.02.040 also stated that the city ordinance will be “administered” by the County Planning and Permit Center.
3. FOSC failed to show one concrete example of any confusion or conflict that had occurred in the County’s implementation of city ordinances.
4. The record showed that coordination between county and city staff on applications of city development regulations in the UGAs was working well.
5. The County acknowledged that it had not adopted all of the city regulations. SCC 14.02.040 clearly states that the city codes must be adopted by Skagit County ordinance in order to be enforceable by the County.
6. The record shows that the County has not amended its interlocal agreements with the municipalities to ensure that transformation of governance timely occurs to facilitate efficient timing and phasing of urban infrastructure extensions and urban development within municipal UGAs, as we required in the *Abenroth* FDO (1-23-98) and CO (6-10-99).