

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

CONCERNED CITIZENS AGAINST RUNAWAY)	
EXPANSION (CCARE, INC.), et al.,)	No. 01-2-0019c
)	
Petitioners,)	FINAL DECISION AND
)	ORDER
v.)	
)	
)	
CITY OF ANACORTES,)	
)	
Respondent,)	
)	

The fundamental issue in this case is whether Ordinance #2557, adopted by the City of Anacortes, complies with the GMA requirements for essential public facilities (EPFs) as applied to a 10-acre parcel located on airport property owned and operated by the Port of Anacortes (Port). Pursuant to City direction, the Port applied for a comprehensive plan (CP) amendment and rezone of its 10-acre parcel from a residential zoning (R2) to a light manufacturing (LM) designation and zoning. The City ultimately decided that a 6-acre portion of the property, denominated as P #32356 (hereinafter 6-acre) was appropriate for a CP amendment and rezone to the LM category subject to a conditional use (CU) process for siting of buildings and uses within the 6 acres. The City further determined that the remaining 4-acre parcel, identified as P #106729 (hereinafter 4-acre), would remain in the R2 category.

Subsequent to the decision by the City, the Port timely filed a petition for review (PFR) challenging the failure to rezone the 4-acre parcel, and alleging noncompliance for the 6-acre parcel on the basis of the CU process and the City's failure to specify whether certain airport-related expansions were permitted uses under the LM category. A citizen's group, Concerned Citizens Against Runaway Expansion (CCARE), timely filed a petition challenging the City's rezoning of the 6-acre parcel from R2 to LM.

A hearing on the merits (HOM) was held in Anacortes on November 20, 2001. William H. Nielsen and Les Eldridge represented the Board at the hearing and Nan A. Henriksen subsequently listened

to the audiotape of the hearing.

The current Hatfield/McCoy-like feud between the City and the Port had its genesis in the 1960s when the Port approved a resolution establishing the airport and the City approved a major residential subdivision near the airport within hours of each other. Over the years, various neighbors and owners of residences in the area have contributed to the ongoing feud when expanded use of the airport became an issue. The City continued to approve major residential subdivisions on the surrounding property. As noted by the City, during that same period of time the Port was more than willing to sell surplus land adjoining Port property to developers for increased residential uses. Located in the west Anacortes area, the property is aesthetically desirable for upscale single-family residences, with water on three sides. By the time this matter came on for decision by the City of Anacortes, as noted by CCARE, the airport was surrounded by a “dense residential area.”

During the time this matter was in preparation for the HOM, the parties pursued a Superior Court case which led to an oral opinion by the Court on competing summary judgment motions. That decision issued on October 2, 2001 (Ex. 1901). Part of the decision, p. 27-30, deals with the Court’s finding relating to the CU restrictions imposed in Ordinance #2557. Those findings were based upon the

preemptive nature of the Federal Government’s requirements for use and operation of the airport. At the HOM and in its reply brief, the Port voluntarily withdrew those issues from this case. The Port also withdrew other issues where the Superior Court had issued rulings. Neither the City nor CCARE objected to withdrawal of those issues.

Pursuant to RCW 36.70A.320(1), Ordinance #2557 is presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the action taken by the City is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we shall find compliance unless we determine that the action by Anacortes is clearly erroneous in view of the entire record and in light of the goals and requirements of the GMA. In order to find the City’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).

The basic GMA requirement for EPFs is found in RCW 36.70A.200. Subsection (1) imposes a requirement that a local government include a “process for identifying and siting” EPFs in its CP. EPFs are specifically defined in that subsection to include “airports.” Subsection (5) prohibits local government authority in either a CP or DR to “preclude the siting of” EPFs. In *Des Moines v. GPSGMHB* 98 Wn. App. 23, 33 (1999) (*Des Moines*) the Court held that under this section “siting” included use, or expansion, of airport facilities for airport uses.

The Port cited to RCW 36.70A.510 providing that adoption or amendment of CPs and/or DRs that affect a “general aviation airport” are subject to RCW 36.70.547.

That statute requires that any city in which a “general aviation airport” is operated **shall** discourage siting of incompatible uses **adjacent** to such airport. Since the issue in this case relates to property that is within, rather than adjacent to, the airport those two statutes are not relevant to this case except insofar as they set forth legislative intent.

In its PFR, CCARE challenged the rezoning of the 6-acre parcel as failing to comply with RCW 36.70A.010, .020(6), and/or .020(10) and parts of the City’s CP. Virtually all of CCARE’s argument was premised upon the assertion that the airport had never been classified as an EPF by the City or any other appropriate governmental agency. CCARE also argued, as did the City, that much more planning within the airport property was needed prior to any expansion of airport uses or services.

We can succinctly answer CCARE’s EPF argument by reading RCW 36.70A.200(1). The Legislature has specifically defined an airport as an EPF. It is not up to a local government, us, or the courts, to rule other than an airport equals an EPF.^[1] CCARE has failed to carry its burden of proof that the rezone of the 6-acre parcel failed to comply with the GMA.

We turn to the issues raised by the Port. The Port contended that the failure to redesignate the 4-acre

parcel from R2 to LM zoning failed to comply with the Act. We agree in concept.

RCW 36.70A.200(5), as interpreted in the *Des Moines* case, establishes that a local government may not preclude expansion of airport-related uses. The R2 zoning on the 4-acre parcel prohibits any use of the Port property except as a buffer for surrounding residential homes. It is hard to imagine a more restrictive preclusion to airport uses than residential zoning.

The City, supported by CCARE, defended its action as necessary to protect the neighborhood residential uses, or at the very least to encourage the Port to update its 1994 Airport Master Plan. The City wanted greater specificity as to Port uses within the 4-acre site. CCARE also pointed out that other locations within Port property were zoned for airport uses and thus the Port had not complied with a GMA requirement and a City CP goal of using existing commercial and manufacturing areas before establishing new areas.

The Port responded by pointing out the economic hardship inherent in use of this other area. The Port also cited many of the Central Puget Sound Growth Management Hearings Board (CPSGMHB) cases dealing with EPFs, and specifically the SeaTac third runway issue, in support of all of the Port's contentions.

We have reviewed the CPSGMHB cases cited by the Port and find that they are all analytically supported by the requirements established by the Legislature in the GMA for EPFs. It may well be time for the Port to update its Airport Master Plan, but under the GMA we reject the City's and CCARE's contention that, under this record, the Port is **required** to do that before any further expansion of use occurs on airport property. The GMA is specific that a local government may not preclude siting or expansion of airport-related uses or facilities. Under this record, the City's action in failing to rezone the 4-acres property from an R2 designation effectively precludes airport operations and uses and therefore does not comply with the GMA.

The Port also asks that we remand this case to the City with directions for "expeditious" redesignation to an LM zone. We do not have the authority under the GMA to take such action. Rather, the Legislature clearly established that a GMHB has authority to find noncompliance and to remand that determination to a local government for action to achieve compliance with the GMA. RCW 36.70A.300(3)(b). We do not have authority to direct the City to adopt a specific LM

designation.

In our view, the City cannot comply with the Act by designating the area as a residential and/or buffer zone. Nonetheless, the City has a myriad of options that may or may not include a LM designation. The City is also aware that its authority over the Port property is constrained by the Superior Court ruling noted in Ex. 1901.

Both the Superior Court ruling and our decision above make it unnecessary for us to address the issues of the State Environmental Policy Act (SEPA) compliance and the issue of whether the City is required to include airport hangars as part of a permitted use within the LM zone. We remind the City, however, that at least with regard to this record, hangars are airport-related uses and the City's authority is constrained by RCW 36.70A.200(5).

The SEPA issues presented to us are not properly before us to address under the facts of this case. The Port assumed lead agency status that ultimately lead to a determination of non-significance. At the time of adopting Ordinance #2557, the City imposed some further SEPA mitigating requirements. Some of those additional requirements were struck down by the Superior Court. If there are others yet remaining that the Port finds objectionable, we presume that the City will appropriately address them during the remand period. We do note that the City never attempted to acquire lead agency status for any SEPA determinations as to the Port's request for a CP amendment and rezone.

ORDER

We find that the City has complied with the Act in its rezone of the 6-acre parcel. The City has failed to comply with the Act by failing to adopt a different zone than residential for the 4-acre piece of property and also by imposing requirements that preclude airport or airport-related uses on the 10 acres in question here.

In order to comply with the Act, the City must adopt an appropriate use designation for the 4-acre parcel and an appropriate process that does not preclude airport uses, all within 120 days of the date of this order.

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 12th day of December, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

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

1. Pursuant to RCW 36.70A.200(1), the Anacortes airport is an EPF.

2. CCARE did not carry its burden of showing the 6-acre rezone failed to comply with the GMA under the clearly erroneous standard.
3. A residential zone within airport property does not comply with RCW 36.70A.200(5).
4. Anacortes does not have the authority to require a 4-acre buffer or an update to the Airport Master Plan prior to airport-related expansion because of RCW 36.70A.200(5).
5. A remand may not include GMHB direction to adopt a specific zone.
6. Anacortes has failed to comply with the GMA as to the zoning designation of the 4-acre parcel.
7. Anacortes has failed to comply with the GMA by imposing restrictions on airport-related uses on the 10 acres.

[\[1\]](#) We are aware that some commentators believe the Supreme Court GMA decisions over the last four years have failed to follow **any** legislative direction embodied in the GMA. We do not necessarily agree with that position.