

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

JUDY LARSON and HARRY GASNICK)	
Petitioners,)	No. 01-2-0021
)	
v.)	FINAL DECISION
)	AND ORDER
)	
CITY OF SEQUIM)	
)	
Respondent,)	
)	

On a windless winter day in the Strait of Juan de Fuca, a solitary pair of footprints embed themselves into the wet sand of the Dungeness Spit. The frothy tentacles of the incoming tide reach ever closer to covering the intruding prints. To the west lies the north terminus of the Olympic Mountains. Periodically, the sun breaks through the clouds that shroud the sentinel mountain peaks. Patches of the Spit are bathed in the warming sunlight.

Alone in this wondrous expression of sea and sand, the everyday cares of life evaporate. It is a blessed area where humans embrace nature, rather than desecrate it.

Inland a scant five miles or so, the City of Sequim struggles with growth and its responsibilities under the Growth Management Act (GMA, Act). On July 9, 2001, the City Council adopted Ordinance 2001-0006. A portion of that ordinance amended the City's comprehensive plan (CP) and official map, re-designating approximately 53 acres from single-family (R-I)(s) to multi-family (R-II). After many public hearings before the Planning Commission (PC) and City Council in which petitioners and others expressed their reasons for opposing the CP amendment, the change was made. This appeal followed.

On October 15, 2001, a telephonic hearing was held concerning the City's motions to dismiss all or parts of the petitioners' claims. A written order was issued December 3, 2001, denying the

motions. The hearing on the merits was held at the Sequim Community Center on January 11, 2002.

Pursuant to RCW 36.70A.320(1), Ordinance 2001-0006 is presumed valid upon adoption. The burden is on petitioners to demonstrate that the action taken by the City was 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 it determines that the action by [City of Sequim] 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 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).

Petitioners challenged the compliance of the City with the State Environmental Policy Act (SEPA) as it related to adoption of this GMA ordinance. Petitioners claimed that the City issued a declaration of nonsignificance (DNS) (Ex. 29) while adopting a previous mitigated DNS (MDNS) that had subsequently been changed and also had been rejected. A close reading of Ex. 29 (p. 905) does not support those claims.

On February 15, 2001, the responsible official issued a MDNS as well as an “adoption of existing environmental document.” On the face of Ex. 29 the document that was adopted is the final EIS for the City of Sequim CP prepared in July 1996. Petitioners perhaps reviewed the threshold determination which noted on p. 54, question 8, that there was additional “environmental information” that had been prepared for this specific acreage. The threshold determination listed the previous MDNS on a prior attempt by the property owner for approval of a subdivision project. However, those documents were not adopted in the February 15, 2001, MDNS.

Petitioners also cited the April 17, 2001, planning department report to the PC (Ex. pp. 233-246). Specifically, petitioners claimed that the reference on p. 236 to the previous MDNS demonstrated that information was improperly incorporated into the City’s decision. Rather, the planning department report noted that the information was “available for review.” It was, however, the current (2-15-01) MDNS that was used for this CP amendment. Petitioners have failed to show a

lack of compliance with the SEPA provisions of the GMA. *Moss v. City of Bellingham*, 109 Wn. App. 6 (2001).

Petitioners complained that the public participation goals and requirements of the Act were violated when the ordinance was adopted. Petitioners conceded that “early and continuous” public participation occurred and that more than an adequate opportunity to participate through the numerous public hearings, was afforded. Petitioners’ complaint centered around the lack of individual discussion and/or response by any council member at the time the vote was taken on July 9, 2001. A voice vote was taken at that Council meeting but was not preceded by any comments by any Council member. Petitioners pointed out that almost every other CP amendment proposal, as well as most Council votes, were preceded by discussion of individual Council members thoughts on the issue at hand. Petitioners also noted that we had previously held the public participation goals and requirements of the Act required “interactive” dialogue.

We said in *North Cascades Audubon Society v. Whatcom County*, 94-2-0001 (FDO 6-30-94) that the GMA contemplated:

“...an interactive process [that] involved people participating in a dialogue, expressing their opinions and responding to those opinions expressed by others.”

We did not say that the GMA requires local government decision-makers to respond to the various claims made by both proponents and opponents. While it may be prudent to do so, the City Council members did not fail to comply with the GMA by failing to have any discussion or expression of opinion prior to the July 9, 2001, vote to adopt the CP amendment.

Petitioners also contended that the findings and conclusions adopted as “Exhibits to this Ordinance” did not substantiate the City’s claims because the findings and conclusions did not address some of the challenged matters. The City claimed that the findings were entitled to the presumption of validity and thus the Petitioners had failed in their burden of proof.

Under RCW 36.70A.320(1) “comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.” It is the legislative action adopting the CP amendments which is entitled to the presumption of validity, not the attached findings which are “Exhibits” to the ordinance. RCW 36.70A.290(4) directs that

a Board “shall base its decision on the record.” The City’s findings and conclusions are simply one portion of the record. There is no GMA requirement that the findings and conclusions contain sufficient evidence to stand alone in determining whether compliance has been achieved. Rather, it is the entire record submitted to a Board that is used to make the compliance determination.

Petitioners complained that the CP amendment criteria found in Sequim Municipal Code (SMC) 18.88.070 were not satisfied in adopting this CP amendment. This amendment generated much controversy and led to numerous expressions of opinions from diverse groups as well as much documentation concerning the SMC criteria. After reviewing the record, reviewing the briefs, and hearing the arguments we find that petitioners have not sustained their burden of proof to show that the City’s action was clearly erroneous.

The same can be said for petitioners’ claims concerning the lack of appropriate attention to the critical areas (CA) found in the affected property. This record demonstrates that the City was well aware of the various CA issues that arose. The City is totally within a designated critical aquifer recharge area. As part of its decision-making process, the City noted that it had much greater ability to require water and sewer hookups under the R-II classification than that which could be required under the R-I(s) existing classification. A greater emphasis on storm water management is also more certain with the increased densities. Ex. pp. 233-46.

Petitioners also claimed that water and sewer concurrency issues had not properly been addressed in the CP amendment. The record reveals (agreed supplemental Exs. 2 and 3 from City dated January 23, 2002) that water and sewer lines are established within 500 feet of the subject property and hookups will be required at the time of any proposed subdivision approval. The GMA concurrency requirements at this stage concerning a CP amendment have been fulfilled by the City’s action.

Petitioners final claim was the multi-family higher density designation under R-II (4-5 per acre) was inconsistent with the Clallam County CP policies. County housing policy number 2 states that:

“The City (in this case, Sequim) should preserve opportunities for larger lot (½ –

1 acre) development, and ensure that larger lot development remains a choice. Areas which have been identified as being appropriate for larger lot development include areas with an existing ½ acre development pattern and areas adjacent to critical areas.”

Passing the question as to whether the County CP has any directive affect for areas within city limits, we note two longstanding cases and a recent one. In *Achen v. Clark County*, 95-2-0067 (FDO 9/2/95) we noted that within a properly established UGA, a local government has “a wide range of discretion in determining specific designations.” In *Berschauer v. Tumwater*, 94-2-0002 (FDO 7/27/94) we noted that 1-acre and .5-acre lots within a properly established UGA do not constitute urban growth, nor do they satisfy the anti-sprawl goals and requirements of the GMA. In *Downey v. Ferndale*, 01-2-0011 (FDO 8/17/01) we found no lack of compliance when the city re-designated 85 acres of vacant single-family residence area to commercial, under the facts established in that record.

ORDER

We find the City has complied with the GMA in adoption of Ordinance 2001-0006.

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 7th day of February, 2002.

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. On July 9, 2001, the City of Sequim adopted Ordinance 2001-0006 amending a portion of its CP.
2. The City properly complied with SEPA in adoption of the ordinance.
3. The GMA does not require elected officials to respond specifically to claims presented by the public.
4. Findings and conclusions of the City adopted as exhibits are not entitled to the presumption of validity under RCW 36.70A.320(1).
5. The GMA does not require that adopted findings and conclusions of a local government contain sufficient evidence to stand alone in a GMA challenge.
6. Petitioners have failed in their burden of proof as to the claims presented.