

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

CAMP NOOKSACK ASSOCIATION; and JOEL  
DOUGLAS,

Petitioners,

v.

CITY OF NOOKSACK,

Respondent.

No. 03-2-0002

**FINAL DECISION  
AND ORDER**

Nestled along the banks of the Nooksack River, the City of Nooksack is home to a historic church camp - Camp Nooksack. Dating back to 1898, Camp Nooksack is one of the last remaining examples of a religious camp community in Washington. In the City's comprehensive plan, the site was made a part of the City's recreational zone. However, in recent years, the camp has fallen out of active use and into disrepair. The owner, the Church of God, wanted to sell the Camp. Petitioners wanted the Camp preserved but could not buy it. The City, who also could not afford to buy the Camp, wanted someone to take responsibility for the site. After offering it for sale for several years, the owner applied for a rezone to "Single-Family Residential" so that a private developer could purchase and develop the property.

Petitioners challenge the City's decision to amend its comprehensive plan to allow development of the Camp site. We share Petitioners' sense of loss of an important historical asset. However, Petitioners have failed to establish that the Growth Management Act (GMA) requires the City to either purchase the property itself or to refuse a rezone request compatible with the neighboring area simply because the property is of historic significance.

**I. PROCEDURAL HISTORY**

The City adopted Ordinance 564, approving amendment of the comprehensive plan to change the zoning of the Camp Nooksack property from recreational to single-family residential on December 2, 2002. Petitioners filed a petition for review with this Board on January 29, 2003,

challenging the compliance of the City's action with the GMA, Ch. 36.70A RCW, and the State Environmental Policy Act (SEPA), Ch. 43.21C RCW.

On March 19, 2003, the City filed a motion to dismiss three of the issues raised in the petition for review. The Board granted the City's motion to dismiss Petitioners' claim of conflict of interest (Issue No.1) based on the Board's lack of jurisdiction to hear such claims. Order On Motion to Dismiss Issues Nos. 1, 4 and 6, April 16, 2003. The Board denied the City's motion to dismiss the SEPA claims (Issues 4 and 6). *Ibid.*

The hearing on the merits was held on June 3, 2003 in the City of Everson. Petitioners were represented by Attorney Nathaniel Olsson. Respondent City of Nooksack was represented by City Attorney Thomas Fryer. All three board members were in attendance.

## II. ISSUES PRESENTED

**Issue No. 2:** Were the challenged actions inconsistent with the City's Comprehensive Plan with respect to recreational considerations?

**Issue No. 3:** Did the challenged actions fail to *comply* with RCW 36.70A.020(9) (open space and recreation)?

**Issue No. 4:** Was the Mitigated Determination of Non-Significance issued in violation of RCW 36.70A.020(10), RCW 43.21C.030(c), and RCW 43.21C.110 implemented in WAC 197-11-444?

**Issue No. 5:** Did the challenged actions fail to *comply* with RCW 36.70A.020(13)(historic preservation)?

**Issue No. 6:** Did the challenged actions violate RCW 43.21C.110 as implemented in WAC 197-11-330(3)(e)(i) as to historical and cultural issues?

## III. BURDEN OF PROOF

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless [it] determine[s] that the action by [the City] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." The City's actions were clearly erroneous if the Board is "left with the firm and definite conviction that a mistake has been made."

*Department of Ecology v. Public Util. Distr. No.1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.320(1), and the 2000 amendments thereto, the City's actions are 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.

#### **IV. DISCUSSION AND ANALYSIS**

*Issue No. 2: Were the challenged actions inconsistent with the City's Comprehensive Plan with respect to recreational considerations?*

*Issue No. 3: Did the challenged actions fail to comply with RCW 36.70A.020(9) (open space and recreation)?*

#### **Applicable Law:**

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objective, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

**RCW 36.70A.070** (in pertinent part)

#### **Positions of the Parties:**

Petitioners argue that the zoning change violates the City's own comprehensive plan provisions for recreational uses. Petitioners claim that removing the Camp Nooksack site from the recreational zone "renders the Comprehensive Plan meaningless because the zone applies to no other parcels than the single existing city park." Petitioners' Brief on the Merits at 3. Petitioners claim that the City has taken action inconsistent with its own comprehensive plan by "foreclosing its own admitted most attractive option for recreational space, ignoring the language of its own Parks Plan asserting the need to preserve the subject property's historic structures, and neglecting to provide alternatives[sic] park sites". *Ibid.*

The City responds that the designation of the Camp Nooksack property as part of the City's recreational zone in its comprehensive plan was not a commitment to "maintain in perpetuity the subject real property as an area of historical significance." Respondent's Response to Petitioners'

Brief on the Merits at 2. The City urges that circumstances have changed, in that a purchaser for the property has been found, and that the City has not been able to obtain funding to purchase the property itself. Parks and church camps are still allowed in the City's recreational zone. The fact that this potential park will not be available does not mean other park land might not be obtained to meet the City's goals for parks and recreation. Respondent's Response to Petitioner's Brief on the Merits at 3-4. There is, therefore, no inconsistency between the comprehensive plan amendment and the pre-amendment comprehensive plan.

**Discussion:**

Internal consistency of a comprehensive plan is required by RCW 36.70A.070. "*The plan shall be an internally consistent document* and all elements shall be consistent with the future land use map." RCW 36.70A.070 (emphasis added).

In this case, Petitioners allege an internal inconsistency has been created in the comprehensive plan by virtue of the challenged comprehensive plan amendment. They allege that changing the zoning of the Camp Nooksack property deprives the City of the recreational areas that the comprehensive plan indicates are important to the City, without finding alternative sites.

We have held that "inconsistency" under the GMA is not a matter of inconsistency at an abstract level: "Consistency does not mean consistency of vision or philosophy." *Ray v. City of Olympia*, WWGMHB 02-2-0012 (Final Decision and Order, June 12, 2003). In making a determination whether there is consistency between various parts of a local jurisdiction's planning policies and regulations, the Board has held that consistency means that no feature of the plan or regulation is incompatible with any other feature of the plan or regulation. *CMV v. Mount Vernon*, WWGMHB 98-2-0006 (July 23, 1998 Final Decision and Order). Said another way, no feature of one plan may preclude achievement of any other feature of that plan or any other plan. *Carlson v. San Juan County*, WWGMHB 00-2-0016 (September 15, 2000, Final Decision and Order). (See also WAC 365-195-210, defining "consistency").

Here, Petitioners point to the language that references the Camp Nooksack facility as a prime location for a city park and a youth activity center. See pages 16-8 of the Nooksack Parks and Recreation Plan, Ex. 5. However, the Camp has never been in public ownership. The references to uses to which the City might put the Camp were therefore objectives the City wished to pursue

but they were conditioned upon the ability to acquire the property. The Camp surely appears as a priority for acquisition in the parks and recreation plan but the City names it conditionally upon funding becoming available:

A great number of projects have been identified in the Demand and Needs section of this plan. It is not feasible, however, to fund them all at the present time. Through the use of public surveys and the valuable input received from the Parks Advisory Committee, we have been able to pare the list down to the highest priority projects ... *The acquisitions and developments will proceed only as funding is available.* (emphasis added)

**Nooksack Parks and Recreation Plan** at 17, Ex. 5.

Petitioners appear to argue that the City cannot, without violating its comprehensive plan, change its strategy with respect to acquisition of park lands in its parks and recreation plan. However, the GMA requirement for internal consistency means that the planning policies and regulations must not make it impossible to carry out one provision of a plan or regulation and also carry out the others. Petitioners have failed to point to any provision of the comprehensive plan that conflicts with the zoning change made in Ordinance 954. The City's list of priorities for acquisition of private property in its parks and recreation strategy does not rise to that level, especially where the City does not have the funds for acquisition of the Camp Nooksack site.

To the extent that Petitioners are also arguing that new lands must be designated for acquisition, we note that the first priority of the City parks and recreation plan remains development of a trail system. *Ibid.* The City plan for expanding recreational opportunities through the trail system is not dependent upon the Camp Nooksack site.

Petitioners argue that, for the same reasons, the City violated the open space and recreation policy goal of the GMA. Petitioners' Brief on the Merits at 3. RCW 36.70A.020 provides that 13 goals "shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations." Among these goals is Goal 9:

Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

This goal does not dictate a particular city action nor does it preclude a change in a city's parks

and recreation strategy. Petitioners have failed to demonstrate how this goal is violated by the challenged ordinance. We find no inconsistency.

*Issue No. 4: Was the Mitigated Determination of Non-Significance issued in violation of RCW 36.70A.020(10), RCW 43.21C.030(c), and RCW 43.21C.110 implemented in WAC 197-11-444?*

*Issue No. 6: Did the challenged actions violate RCW 43.21C.110, as implemented in WAC 197-11-330(3)(e)(i) as to historical and cultural issues?*

### **Applicable Law:**

...

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

**RCW 36.70A.020(10)**

**WAC 197-11-444**

**WAC 197-11-330(3)**

### **Positions of the Parties:**

Petitioners argue that the Mitigated Determination of Non-Significance issued by the City ("MDNS") "obviated the need for an EIS, seemingly without a second thought about the factors on the checklist." Petitioners' Brief on the Merits at 3. Petitioners further urge that the City should have placed additional conditions on development in the MDNS. *Ibid.*

The City responds that under SEPA, the jurisdiction's threshold determination is to be granted substantial weight. Respondent's Response to Petitioner's Brief on the Merits at 6, citing *Moss v. Bellingham*, 109 Wn. App.6, 31 P.3d. 703 (2001) (Margery: What about rest of cite?). The City argues that it did consider all the information available to it, including comments received from the State Office of Archaeology and Historic Preservation and the Washington Trust for Historic Preservation. Respondent's Response to Petitioner's Brief on the Merits at 8. The City required mitigation in the form of compliance with all city codes, and noted the applicant's intention to preserve one of the buildings by donating it to either the City or another charitable institution. *Ibid.*

**Discussion:**

SEPA's procedural requirements are intended to provide full environmental information. *Swift v. Island County*, 87 Wn.2d 345,358, 552 P.2d 175 (1976). However, SEPA review does not guarantee a particular result. *Moss v City of Bellingham*, 109 Wn. App. 6, 14, 31 P.3 703 (2001). Here, Petitioners appear to challenge the City's decision rather than the City's process, but provide almost no authority for either type of challenge.

A city's threshold determination under SEPA is reviewed under the clearly erroneous standard. *Moss v. City of Bellingham, Ibid.* at 13. Petitioners allege that the threshold determination was made "seemingly without a second thought about the factors on the checklist". See Respondent's Response to Petitioner's Brief on the Merits at 6-9. However, the City did review the Applicant's environmental checklist and included mitigation requirements based upon it. The Report of Decision approved by the city council expressly considered the recommendations of the State Office of Archaeology and Historic Preservation (Ex. 8-9) and the public comment opposing the rezone. Ex .9-10. The Petitioners offer no evidence to contradict the City's review of the submitted information other than the fact that the City did not deny or condition the rezone based on the historical significance of the camp site. Their mere declaration that a second thought was not given to the historical significance of the site is insufficient to defeat the City's representations about its consideration of the factors and the comments it received. In their Reply Brief, Petitioners also argue that construction of single-family dwellings on the camp site will necessarily require the death and removal of very old and tall trees. Petitioners' Reply Brief at 3. However, Petitioners cite to nothing in the record supporting their claim.

Petitioners cannot merely assert a challenge to the threshold determination and thereby shift the burden to the City to prove that its SEPA threshold determination was incorrect. The burden is on Petitioners to prove their claims. Petitioners have failed to meet their burden of proving the City's SEPA threshold determination was clearly erroneous.

*Issue No. 5: Did the challenged actions fail to comply with RCW 35.70A.020(13)(historic preservation)?*

**Applicable Law:**

...

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

**RCW 36.70A.020(13)**

**Positions of the Parties:**

The Petitioners argue that the City failed to provide any protection of or encouragement for the preservation of the campground. Petitioners' Brief on the Merits at 4. They claim that this constituted a "shirking" of the important GMA policy goal on historic preservation. *Ibid.*

The City responds that it meets the GMA goal to encourage preservation of land, sites and structures that have historical or archeological significance by identifying such areas in its comprehensive plan, identifying a potential area of historical significance in its community action plan, and establishing a historic preservation goal in its shoreline master program. Respondent's Response to Petitioner's Brief on the Merits at 9. The City asserts that its obligation is not to preserve historical sites in perpetuity. *Ibid.*

**Discussion:**

The Camp Nooksack Bible Camp is a site of historical significance. The Camp Nooksack Tabernacle was accepted for placement on the Washington State Register of Historic Places in 1975. Ex. 30 to Petitioner's Brief. At the time that the City considered the applicant's rezone request, the Washington Trust for Historic Preservation urged the City to deny the proposed comprehensive plan amendment. Ex. 31 to Petitioners' Brief. The Office of Archaeology and Historic Preservation of the State Office of Community Development also submitted a letter urging the City to undertake a different process than accepting the rezone application; that office urged the City to instead pursue a process to identify ways to protect the site. Ex. 68 to Petitioners' Brief. The City was aware of these recommendations and chose not to pursue them.

Petitioners note that the City could have imposed greater conditions on development of the Camp Nooksack site than "the toothless regurgitation of the Applicant's promise that it 'might consider' mitigating the impact on cultural and historical resources." Petitioners' Brief on the Merits at 4. We agree that the City did not take advantage of the applicant's offer in the environmental

checklist and make it a condition of development: “Possible donation of tabernacle to City of Nooksack or another charitable organization”. However, the City expressed its concern at oral argument that it could not enforce such a condition. Instead, the City expects the donation to be forthcoming on a voluntary basis if a suitable recipient, i.e., one who can repair and maintain the tabernacle, can be found.

The City notes that the camp was in disrepair and had not been used for several years. “If no action was taken and the real property was not improved by the applicant, this decline would only continue.” Respondent’s Response to Petitioner’s Brief on the Merits at 11. Thus, the City felt that the Camp could not be preserved in any event.

In this case, the City was in the somewhat unusual position of having been able to designate the church camp as part of its recreational zone in the original comprehensive plan because it was the hope of the owner to maintain the property as a church camp. However, the owner did not have the ability to maintain and run the church camp and could not find a purchaser who would take over that obligation. Ex.1 to Respondent’s Reply to Petitioners’ Opening Brief. After several years of searching for a buyer, the owner found a purchaser who wanted to develop the church property with single-family houses.

Petitioners maintain that the City could not rezone the property because of the historic value of the church camp, or that if the property were rezoned, there should have been steps taken to preserve the structures during the comprehensive plan amendment and rezone process. Petitioners Opening Brief at 4. However, Petitioners have not shown a basis upon which a city could be required to pursue either course of action.

Instead, in their reply brief, Petitioners cite to RCW 27.53.060 regarding destruction of historic archaeological resources. Petitioners argue that, at a minimum, the City should have advised the applicant concerning the application of the statute to the camp structures. Petitioners’ Brief in Reply to Respondent at 3. Whatever the applicability of that statute to the property at issue here, the GMA does not impose an obligation upon the City to advise the applicant of all potential legal questions associated with the development the applicant wishes to pursue.

Cities have the authority to enact regulations to preserve historic landmarks as part of their police

powers. *State v. Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980). However, these police powers do not extend to infringement upon religious freedom (see *First Covenant Church v. City of Seattle*, 114 Wn.2d 392, 787 P.2d 1352 (1990)), nor do they allow the jurisdiction to place an undue financial hardship on property owners. See *Buttnick v. Seattle*, 105 Wn.2d 857, 719 P.2d 93 (1986). Both of these factors may have applied in this case, but no argument or briefing was provided to the Board on either point.

Having the authority to enact regulations to preserve historical sites is different from a requirement to enact such regulations. While the GMA does generally provide that preservation of historic sites and structures should be encouraged, there is no provision of the GMA that requires local jurisdictions to acquire and maintain historic sites. The City of Nooksack is a small city with only about 900 residents. The parks and recreation plan demonstrates that the City did make some efforts to obtain grant funds to acquire the property. Ex. 1 to Petitioners' Brief. These efforts were unsuccessful. The Church of God, owner of the property, could not operate and maintain the camp. Ex. 1 to Respondent's Reply to Petitioners' Brief on the Merits. The applicant for the rezone did not want it for use as a religious camp but for development of single-family homes. *Ibid.*. Under these circumstances, the City chose to approve a rezone request that will admittedly lead to the destruction of certain structures on the camp. Exhibit 16 to Petitioners' Opening Brief. We have been given no authority to persuade us that the GMA imposes a burden on a city with the limited resources of the City of Nooksack to undertake preservation of a specific historic site.

We stress that this Board is not agreeing with the City's choices in this matter. It is not within the Board's authority to determine whether a better course of action could have been pursued. The question before the Board is whether the City's actions comply with the GMA, with the presumption of validity being given to the City's actions. The burden is on the Petitioners to present argument and authority for the propositions that it argues. In this case, Petitioners failed to do more than just flag the issue without providing argument or authority in support of their position. They failed to meet their burden.

## **V. FINDINGS OF FACT**

1) The City of Nooksack is a city within Whatcom County, a county west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.

- 2) On December 2, 2002, the City of Nooksack approved the Report of Decision regarding the comprehensive plan map amendment and site-specific rezone application of Creative Real Estate Solutions LLC, and passed Ordinance No. 564 amending the zoning for the Nooksack Church Camp Property.
- 3) Petitioners made comments orally and in writing to the City of Nooksack concerning the matters raised in their petition for review.
- 4) On January 29, 2003, Petitioners filed their petition for review in this case challenging the Report of Decision and Ordinance No. 564.
- 5) Camp Nooksack is a bible camp founded in 1898. The bible camp includes cabins, grounds and a tabernacle. The camp tabernacle was placed on the State Historical Register in 1975.
- 6) The Church of God owns Camp Nooksack, but has not been able to operate and maintain it as a bible camp for several years.
- 7) The buildings of Camp Nooksack are in a state of disrepair and will require significant work to bring them to a safe standard for occupancy and use.
- 8) The Church of God has attempted to sell the property for three years, but no purchaser has come forward who can afford to operate and maintain the property as a bible camp.
- 9) Creative Real Estate Solutions LLP (the applicant) offered to buy the property if the property could be rezoned for single-family development and submitted a rezone application for that purpose.
- 10) Petitioners oppose the rezone application and wish to see Camp Nooksack preserved for its recreational, spiritual and historical significance. However, Petitioners do not yet have funds to purchase and maintain the property.
- 11) Camp Nooksack is located in the City of Nooksack, a city with a population of approximately 900 people. Camp Nooksack is located in a neighborhood of single-family homes but was zoned "Recreational" in the comprehensive plan.
- 12) The applicant prepared an environmental checklist which indicated possible donation of the camp tabernacle to the City or some charitable institution.
- 13) The City issued a Mitigated Determination of Non-Significance for the proposed rezone on October 29, 2002. The mitigation required addresses physical issues but did not require

donation of the tabernacle or otherwise address the historical significance of Camp Nooksack.

14) Petitioners and others opposed to the rezone of Camp Nooksack submitted letters and historical information to the City.

15) The Washington Trust for Historical Preservation and the Office of Archaeology and Historic Preservation of the State Office of Community Development both opposed the rezone and suggested that the City pursue other avenues of preserving the property as a historical site.

16) The Report of Decision submitted to the city council by the responsible SEPA official noted the public comments and the recommendation of the state Office of Archaeology and Historic Preservation to pursue alternate uses that would allow the historic site to be preserved.

17) The city council voted to approve the comprehensive plan amendment that rezoned the Camp Nooksack property to residential on December 2, 2002.

## **VI. CONCLUSIONS OF LAW**

A. This board has jurisdiction over the issues remaining in the petition for review after the dismissal of Issue No. 1.

B. Petitioners have standing to bring this appeal.

C. The City's issuance of its Mitigated Determination of Non-Significance complies with Ch. 43.21C RCW.

D. The City's adoption of the comprehensive plan amendment rezoning Camp Nooksack from recreational to residential complies with Ch. 36.70A RCW.

## **VII. ORDER**

The City having complied with Ch. 43.21C RCW and Ch.36.70A RCW, the petition for review is hereby DISMISSED.

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 11<sup>th</sup> day of July, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Margery Hite, Board Member

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Nan A. Henriksen, Board Member

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Holly Gadbow, Board Member