

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 SKAGIT HILL RECYCLING, INC and  
3 SCOTT WALDAL,

Case No. 09-2-0011

4 Petitioners,

**ORDER ON PETITIONERS' MOTION FOR  
RECONSIDERATION**

5 v.  
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8 SKAGIT COUNTY and SKAGIT COUNTY  
9 COMMISSIONERS,

10 Respondents.  
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13 THIS Matter comes before the Board on Petitioners' Motion for Reconsideration of the  
14 Board's September 22, 2009 Order on Motions.<sup>1</sup> Skagit County opposes the Motion.<sup>2</sup>  
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16 **I. DISCUSSION**

17 Petitioners challenged Skagit County's adoption of Ordinance O20090002 which imposed a  
18 temporary moratorium on the acceptance of applications for Special Use permits for minor  
19 or major utility developments that transport, process, or store solid wastes. The issues  
20 presented by Petitioners alleged that the moratorium violated the Growth Management Act  
21 (GMA) because it precluded the siting of an Essential Public Facility (EPF). The Board's  
22 September 22 Order dismissed all of the issues, finding that Skagit County's process to site  
23 Essential Public Facilities (EPFs) was the Unclassified Use Permit process and, therefore,  
24 the moratorium did not have a preclusive effect.<sup>3</sup> Petitioners seek reconsideration of this  
25 holding and consolidation of this matter with Petitioners' newly filed Petition for Review.<sup>4</sup>  
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29 <sup>1</sup>Petitioners' Motion for Reconsideration, filed October 5, 2009.

30 <sup>2</sup> Skagit County's response to Motion for Reconsideration, filed October 8, 2009.

31 <sup>3</sup> Issues presented specifically questioned the moratorium's preclusive effect as to EPFs and its impacts on  
various Goals of the GMA.

32 <sup>4</sup> Petitioners' Motion for Reconsideration, at 2. On October 5, 2009, Petitioners filed a new Petition for Review  
with the Board, Case No. 09-2-0016. That case challenges Skagit County's Ordinance No. O20090010 which

1 A motion for reconsideration of a decision by the Board is governed by WAC 242-02-  
2 832.

3 WAC 242-02-832(2) provides that a motion for reconsideration must be based  
4 on at least one of the following grounds:

- 5 (a) Errors of procedure or misinterpretation of fact or law, material to the party  
6 seeking reconsideration;  
7 (b) Irregularity in the hearing before the board by which such party was  
8 prevented from having a fair hearing; or  
9 (c) Clerical mistakes in the final decision and order.

10 The Board notes that the Petitioners' Motion is based on the criteria in WAC 242-02-832  
11 (a).<sup>5</sup>

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13 **Issue 1 in Petitioners' Grounds for Relief**

14 Petitioners state that their facility falls within the category of a "less intensive" use but is still  
15 considered to be an EPF and, thus, the County's Unclassified Use permit process is not  
16 available for EPF operations such as theirs since it addresses only "major regional  
17 facilities."<sup>6</sup> According to Petitioners, the prohibition on Special Use Permits had a  
18 preclusive effect on a "less intensive" EPF, such as Petitioners' solid waste facility.<sup>7</sup>

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21 The County reiterates that there is only one process for siting solid waste handling facilities  
22 and it is under SCC 14.16.600 Unclassified Use Permits.<sup>8</sup> The County asserts that it does  
23 not distinguish between more or less intensive uses.<sup>9</sup>

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27 enacted various changes to the County's Unified Development Code, Skagit County Code Title 14, but did not  
28 renew and/or continue the moratorium under challenge in this matter. Thus, at the time of issuance of this  
29 Order on Reconsideration the challenged moratorium has expired and Petitioners' claim could be seen as  
moot.

30 <sup>5</sup> Petitioners' Motion for Reconsideration, at 2.

31 <sup>6</sup> Petitioners' Motion for Reconsideration, at 2-3.

32 <sup>7</sup> Petitioners' Motion for Reconsideration, at 2-3.

<sup>8</sup> County Response, at 2-3.

<sup>9</sup> County Response, at 2-3.

1 The Record does not clearly state that the Petitioners' facility is of less or more intensive  
2 use. However, the intensity level of Petitioners' facility was not the issue before the Board;  
3 the issue was whether a moratorium which prohibited the submittal of applications for  
4 Special Use Permits resulted in the preclusion of EPFs. If the Petitioners want their use as  
5 an EPF, with the provided protection under RCW 36.70A.200, then they must seek to site it  
6 through the proper permit process. The process by which EPFs are sited in Skagit County,  
7 according to the County's interpretation of its code, is the Unclassified Use Permit process,  
8 thus the Board's holding was not a misinterpretation of law.  
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11 **Issue 2 in Petitioners' Grounds for Relief**

12 The County's temporary moratorium did not amend the County's Comprehensive Plan.  
13 Petitioners' Issue 2 specifically challenged the Rural Element of the Comprehensive Plan.  
14 The Rural Element was not amended by enactment of the moratorium. Rather, the  
15 moratorium related to development regulations and, therefore, the Board lacks jurisdiction to  
16 review such a challenge.  
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18 **Issue 3 in Petitioners' Grounds for Relief**

19 Petitioners contend the Board accorded the County too much deference.<sup>10</sup> The Board  
20 disagrees.  
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22 The GMA mandates not only that legislative enactments are presumed valid<sup>11</sup> but that the  
23 Board, in recognition of the broad range of discretion that may be exercised by jurisdictions,  
24 is to grant deference to Skagit County's planning decisions.<sup>12</sup> Although discretion is  
25 bounded by the goals and requirements of the GMA, the Board does not find that it erred in  
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31 <sup>10</sup> Petitioners' Motion for Reconsideration, at 5.

32 <sup>11</sup> RCW 36.70A.320(1).

<sup>12</sup> RCW 36.70A.3201.

1 deferring to Skagit County's interpretation of its own development regulations nor did it err  
2 when it concluded the moratorium did not preclude the siting of EPFs.<sup>13</sup>

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4 **Conclusion**

5 A Motion for Reconsideration is not simply an opportunity to reargue a case. The fact that  
6 the Board disagreed with a Petitioners' interpretation or analysis, giving deference to the  
7 County's interpretation of its own code, does not provide a basis for reconsideration.

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9 **II. ORDER**

10 Based on the foregoing, the Board finds that Petitioners have failed to provide a basis that  
11 compels reconsideration of the September 22, 2009 Order on Motions. Therefore,  
12 Petitioners' Motion for Reconsideration is hereby DENIED.

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14 SO ORDERED this 27<sup>th</sup> day of October, 2009.

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18 Nina Carter, Board Member

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21 James McNamara, Board Member

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24 William P. Roehl, Board Member

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26 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

27 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal the**

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30 <sup>13</sup> It should be further noted that not only does the GMA require deference to Skagit County's planning  
31 decisions but case law also states that substantial weight and deference should be accorded to an agency's  
32 interpretation of its own regulations so long as it is plausible and not contrary to legislative intent. See e.g.,  
*Silverstreak v. Dept. of Labor & Industries*, 159 Wn.2d 868 (2007); *Tapper v. Dept. of Employment Security*,  
122 Wn.2d 397(1993); *Seatoma Convalescent Ctr. v. Dep't of Soc. & Health Servs.*, 82 Wn. App. 495, (1996).

1 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
2 judicial review may be instituted by filing a petition in superior court according to the  
3 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
4 Enforcement. The petition for judicial review of this Order shall be filed with the  
5 appropriate court and served on the Board, the Office of the Attorney General, and all  
6 parties within thirty days after service of the final order, as provided in RCW  
7 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,  
8 but service on the Board means actual receipt of the document at the Board office  
9 within thirty days after service of the final order.

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Service. This Order was served on you the day it was deposited in the United States  
mail. RCW 34.05.010(19).