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No. 97719-4

Court of Appeals Nos. 50847-8-II (Consolidated) and 51745-1-II  
**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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CLARK COUNTY,

Respondent,

FRIENDS OF CLARK COUNTY and FUTUREWISE,

Respondent,

CITY OF RIDGEFIELD; CITY OF LA CENTER; RDGB ROYAL  
ESTATE FARMS LLC, RDGK REST VIEW ESTATES LLC, RDGM  
RAWHIDE ESTATES LLC, RDGF RIVER VIEW ESTATES LLC,  
RDGS REAL VIEW LLC; and 3B NORTHWEST LLC,

Respondents,

and

CLARK COUNTY CITIZENS UNITED, INC.,

Petitioner,

v.

GROWTH MANAGEMENT HEARINGS BOARD,

Respondent.

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**REPLY OF CITY OF LA CENTER  
IN OPPOSITION TO REVIEW OF ISSUE 1  
RAISED IN FUTUREWISE'S AND FRIENDS OF CLARK  
COUNTY'S ANSWER TO PETITION FOR REVIEW**

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## I. INTRODUCTION

This case arose from multiple consolidated appeals before the Growth Management Hearings Board (“GMHB” or “Board”) involving Clark County’s 2016 update of its Comprehensive Plan. Clark County Citizens United, Inc. (“CCCU”) challenged numerous aspects of the County’s new Comprehensive Plan. The Board ruled against CCCU, and Division II of the Court of Appeals affirmed those rulings. *Clark County v. Growth Mgmt. Hr’gs Bd.*, 10 Wn. App. 2d 84, 448 P.3d 81, 2019 Wash. App. LEXIS 2217 (August 20, 2019). CCCU filed the Petition for Review pending before this Court.

In the proceedings below, Friends of Clark County and Futurewise (collectively “FOCC”) challenged other parts of Clark County’s Comprehensive Plan. Of relevance here, FOCC challenged the County’s de-designation of agricultural lands and expansion of Urban Growth Areas (“UGAs”) adjacent to the cities of La Center and Ridgefield. La Center and Ridgefield annexed the land in those expanded UGAs after Clark County adopted its updated Plan and long before the Board held its hearing and issued its decision in this case. Notwithstanding the annexations, the Board ruled in favor of FOCC, holding that Clark County violated the Growth Management Act (“GMA”) and purporting to invalidate the expanded UGAs already annexed by La Center and Ridgefield.

In August 2019, the Court of Appeals reversed the Board, holding that because the lands at issue had already been annexed by La Center and

Ridgefield, the Board cannot provide effective relief and the issues raised by FOCC regarding La Center's and Ridgefield's expanded UGAs are therefore moot. *Clark County*, 2019 Wash. App. LEXIS 2217 at ¶¶ 9, 40-65.

In response to CCCU's petition for review, FOCC filed an Answer, Raising New Issues, to the Clark County Citizens United, Inc. Petition for Review ("FOCC Answer"). FOCC raises two new issues. This reply focuses on FOCC's Issue 1, which FOCC phrases as: "Whether annexations immunize comprehensive plan amendments from Board appeals or moot out ongoing Board appeals?" FOCC Answer at 2. The sole basis upon which FOCC seeks discretionary review of Issue 1 is RAP 13.4(b)(4). FOCC Answer at 9.

The City of La Center opposes discretionary review of FOCC's Issue 1 because it is not an issue of substantial public interest warranting Supreme Court review.

## II. ISSUE PRESENTED

Whether the Court of Appeals correctly held that issues regarding lands annexed by the cities of La Center and Ridgefield are moot because the Board cannot provide effective relief where Clark County has no GMA jurisdiction over land inside city limits.

### III. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

#### A. FOCC'S Issue 1 is not an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b) provides four potential grounds for the Supreme Court's acceptance of a petition for discretionary review. FOCC bases its request for review of Issue 1 solely on the fourth ground: an issue of "substantial public interest that should be determined by the Supreme Court." FOCC Answer at 9 (citing only RAP 13.4(b)(4)). FOCC's Issue 1 does not meet that standard.

The "substantial public interest" standard may be met if a decision has the potential to affect a number of other proceedings in the lower courts and Supreme Court review will avoid unnecessary litigation or confusion on a common issue. *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413 (2016) (granting review where "there are numerous now-pending personal restraint petitions" raising similar claims). FOCC has not shown that there are any other current disputes involving challenges to UGA expansions that might be declared moot.

FOCC cites two other instances in Clark County, involving annexations by the cities of Camas and Ridgefield – which occurred shortly after Clark County's 2007 Comprehensive Plan update. FOCC Answer at 15; see *Clark County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 161 Wn. App. 204, 214, 254 P.3d 862 (2011), *vacated in part*, 177 Wn.2d 136, 142-43, 148, 298 P.3d 704 (2013). Those twelve-year-old disputes

are no longer pending. Furthermore, during those proceedings Futurewise represented to the courts that all claims relating to the lands annexed by Camas and Ridgefield were moot due to the annexations. *Clark County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 177 Wn.2d 136, 141, 298 P.3d 704 (2013).

Here, FOCC claims that “[o]ther cities in other counties have also annexed land to avoid review of whether the UGAs complied with the GMA.” FOCC Answer at 15. To support this assertion, FOCC cites pages 19-20 of the Court of Appeals’ Slip Opinion. *Id.* at 15 n.58. In that portion of the opinion, the Court of Appeals explained: “All three regions of the growth management hearings board have examined this question and have held that after a city annexes land, that land is no longer within the county’s jurisdiction.” The Court of Appeals then discussed three examples of GMHB decisions recognizing that municipal annexations remove land from county jurisdiction. *Clark County*, 2019 Wash. App. LEXIS 2217 at ¶¶ 53-56.

In two of the examples cited by the Court of Appeals, the GMHB dismissed UGA challenges as moot following city annexations. Both of those disputes occurred over ten years ago. *Clark County*, 2019 Wash. App. LEXIS 2217 at ¶54 (discussing *Panesko v. Lewis County*, 2009 WL 2981888, 2009 GMHB LEXIS 64 (W. Wash. Growth Mgmt. Hr’gs Bd. July 27, 2009)); *id.* at ¶55 (discussing *1000 Friends of Wash. v. Snohomish County*, 2009 WL 795934, 2009 GMHB LEXIS 15 (Cent. Puget Sound Growth Mgmt. Hr’gs Bd. Feb. 19, 2009)).

In the third GMHB decision cited by the Court of Appeals, no annexation had occurred. Instead, Futurewise sought and received a determination of invalidity from the GMHB, arguing the exact opposite of its position in this case:

Futurewise argued that without a determination of invalidity, the UGA “could be quickly annexed to the City of Kennewick mooting the Board’s Final Decision and Order.” . . . The Board stated that annexing the land would indeed “effectively moot the Board’s Final Decision and Order.”

*Clark County*, 2019 Wash. App. LEXIS 2217 at ¶56 (discussing *Futurewise v. Benton County*, 2015 WL 999266, 2015 GMHB LEXIS 12 (E. Wash. Growth Mgmt. Hr’gs Bd. Jan. 15, 2015)).

The examples FOCC cites from the Court of Appeals’ decision do not demonstrate any current risk of unnecessary litigation or confusion on a common issue. FOCC has not offered evidence of any other pending cases before the GMHB or the lower courts involving disposition of UGA challenges following city annexations.

The Court of Appeals’ examples demonstrate that the Board’s decision in this case departed from longstanding GMHB precedent. Beginning in the 1990’s, the GMHB had consistently recognized that after a city annexes land within its UGA, the issue of whether the county erred in expanding the UGA is moot because the county can no longer exercise jurisdiction over the annexed land. *E.g., Sky Valley, et al. v. Snohomish County*, 1996 WL 734917 at \*44-45, CPSGMHB No. 95-3-0068c, Final Decision and Order (March 12, 1996); *1000 Friends, supra; Panesko,*



*supra*; *Karpinski, et al. v. Clark County*, 2013 WL 6981509, WWGMHB No. 07-2-0027, Order on Motion to Modify Compliance Order (December 26, 2013); *Futurewise v. Benton County, supra*.

The Board's decision in this case was an anomaly. The Court of Appeals has corrected that anomaly, by straightforwardly applying the legal principle that an issue becomes moot when the GMHB can no longer provide effective relief. *See Clark County v. W. Wash. Growth Mgmt. Hr'gs Bd., supra*, 177 Wn.2d at 148-49, (Stephens, J., concurring).

**B. FOCC cannot meet the RAP 13.4(b)(4) standard by mischaracterizing the Court of Appeals' decision as "immunizing" UGA expansions from appeal.**

FOCC mischaracterizes the Court of Appeals' decision as "immunizing" "egregious affronts to state law" from review by the GMHB. FOCC Answer at 15. The Court of Appeals did not "immunize" anything. The Court of Appeals simply held:

Here, because of the prospective nature of the Board's determination of invalidity, the County cannot exercise authority over annexed land no longer within its control. As a result, issues regarding the annexed lands are moot.

*Clark County*, 2019 Wash. App. LEXIS 2217 at ¶64. Noting the Board's concern over "the County's repeated evasion of GMA compliance review" where "cities had rapidly annexed UGAs" in previous instances, the Court of Appeals observed that "this is an issue for the Legislature." *Id.* at ¶64 n.11.

The Court of Appeals' decision in this case is unremarkable. It applies existing GMA statutes and follows longstanding principles regarding mootness – principles that were recognized and applied by the GMHB in every similar case prior to this one. FOCC's attempt to mischaracterize the Court of Appeals' decision as "immunizing" comprehensive plan amendments from appeal fails to meet the "substantial public interest" standard of RAP 13.4(b)(4). FOCC's Issue 1 does not warrant Supreme Court review.

#### IV. CONCLUSION

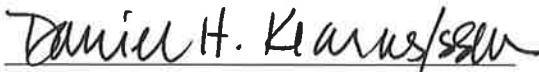
For the foregoing reasons, Respondent City of La Center respectfully requests that this Court deny review of FOCC's Issue 1.

Respectfully submitted this 18<sup>th</sup> day of November, 2019.

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## Transmittal Information

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### Comments:

Reply of City of La Center in Opposition to Review of Issue 1 Raised in Futurewise's and Friends of Clark County's Answer to Petition for Review

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