FILED
Court of Appeals
Division II
State of Washington
7/31/2018 9:50 AM

CONSOLIDATED NOS. 50847-8-II and 51745-1-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CLARK COUNTY,

Petitioner, Respondent Below,

and

FRIENDS OF CLARK COUNTY and FUTUREWISE,

Cross-Petitioners, Petitioners and Intervenors Below,

and

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,

Petitioners, Intervenors Below,

v.

GROWTH MANAGEMENT HEARINGS BOARD,

Respondent,

and

CLARK COUNTY CITIZENS UNITED, INC.,

Petitioners and Intervenors Below,

and

CITY OF BATTLE GROUND; LAGLER REAL PROPERTY LLC and ACKERLAND LLC,

Intervenors Below.

CITY OF RIDGEFIELD'S OPENING BRIEF

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I. INTRODUCTION

The City of Ridgefield ("Ridgefield") asks this Court to find that Clark County (the "County") permissibly and in full compliance with the Growth Management Act ("GMA") adopted an ordinance expanding the Ridgefield urban growth area ("UGA") to include 111 acres of land. Additionally, the Court should find that any challenges to the County's action are moot because Ridgefield has already annexed the subject land, thereby extinguishing the County's authority to regulate the land and also depriving the Growth Management Hearings Board of jurisdiction over the land.

II. ASSIGNMENTS OF ERROR

The Growth Management Hearings Board's March 23, 2017, Final Decision and Order was an erroneous interpretation of law, constituted an erroneous application of the law to the facts, was not supported by substantial evidence, and was outside the statutory authority or jurisdiction of the agency. Ridgefield specifically assigns error as follows:

1. The Growth Management Hearings Board erred in invalidating sections of the 2016 Clark County Comprehensive Plan which expanded the Ridgefield UGA; and

2. After the Ridgefield City Council exercised its express statutory authority to annex the subject land, Clark County lacked jurisdiction to regulate the land. The Growth Management Hearings Board accordingly lacked subject matter jurisdiction over the land annexed by Ridgefield.

The Growth Management Hearings Board's January 10, 2018, Order on Compliance ("Compliance Order") was an erroneous interpretation of law, constituted an erroneous application of the law to the facts, was not supported by substantial evidence, and was arbitrary or capricious. Ridgefield specifically assigns error as follows:

3. The Growth Management Hearings Board erred in its Compliance Order by concluding, at Conclusion Nos. 3 and 4, that sections of the 2016 Clark County Comprehensive Plan which expanded the Ridgefield UGA remain out of compliance.

III. STATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the Growth Management Hearings Board erred in invalidating sections of the 2016 Clark County Comprehensive Plan, which expanded the Ridgefield UGA?

2. After the Ridgefield City Council annexed the subject land by ordinance, whether the Growth Management Hearings Board lacked subject matter jurisdiction over Clark County's decision to expand the Ridgefield UGA?

3. Whether the Growth Management Hearings Board erred in finding, in its Compliance Order, that sections of the 2016 Clark County Comprehensive Plan which expanded the Ridgefield UGA remain out of compliance?

IV. STATEMENT OF THE CASE

A. Clark County's Comprehensive Plan Update.

As required by the GMA in RCW 36.70A.130(5)(b), the County updated its Comprehensive Land Use Plan ("Comprehensive Plan") in

2016. AR1[1] 992. Prior to the adoption of the Comprehensive Plan, the County spent two years consulting with the cities in its jurisdiction. Ridgefield and other cities in the County provided support for the expansion of their respective UGAs to the degree necessary to support their expanding populations and increasing development. AR1 10134-35.

Beginning in 2014, Ridgefield worked cooperatively with the County throughout the Comprehensive Plan update process to address concerns related to Ridgefield's exploding growth and the associated need to expand its urban growth boundary to provide the necessary capacity to handle the growth. See, e.g., AR1 7051-67. Ridgefield's recent growth more than doubled the growth rate of any other County municipality, and that high rate of growth is expected to continue. AR1 10140, 10146. More than 400 permits have been issued (or are imminently expected) since issuance of Clark County's 2015 Buildable Lands Report ("BLR"), which counted permits only through 2014. AR1 10142.

Ridgefield first requested an expansion of its UGA on October 22, 2014. It proposed just over 100 acres on the north side of Ridgefield's UGA (known as the "Brown Annexation" area). AR1 10134. County staff initially recommended denial. AR1 10134-35.

[1] The Administrative Record for Court of Appeals Case No. 50847-8-II, arising out of the Final Decision and Order, is abbreviated as AR1. The Administrative Record for Court of Appeals Case No. 51745-1-II, arising out of the Compliance Order, is abbreviated as AR2.

The BLR establishes that Ridgefield needs additional land to accommodate the expected population increase. AR1 7471-72 (Resolution adopting BLR population allocation). On March 1, 2016, the 2035 population estimate for the City was increased from 19,662, adopted in the BLR, to 25,494. AR1 7477. Based on the County's assumptions of six dwelling units per acre (AR1 6861) and 2.66 people per household (AR1 7065, 7472), an estimated 1,185 acres of land is needed to accommodate this population increase in Ridgefield.

The BLR calculated the availability of only 1,009 acres of vacant land in Ridgefield. AR1 10477. The County accordingly approved amended population allocations and assumptions after the issuance of the 2015 BLR established that Ridgefield needed additional land to accommodate the expected population increase; on March 1, 2016, the 2035 population estimate for Ridgefield was increased to 25,494 from 19,662. AR1 7471-72 (Resolution adopting BLR population allocation).

Further, a January 6, 2015, memorandum sent to the County by E2 Land Use Planning LLC, based on a Globalwise 2014 report (AR1 7998), confirmed the land in the Brown Annexation area was "not suitable for long-term commercial significance for agricultural production," and was "subject to intense pressure for conversion to non-agricultural use, and could be easily converted to urban use." AR1 10149. A group of property

owners within the Brown Annexation area accordingly vigorously argued before the County in favor of de-designation of the agricultural land in the Brown Annexation area and expansion of the UGA. See, e.g., AR1 8026-31.

On June 28, 2016, after extensive public hearings and consideration, the Clark County Council adopted Amended Ordinance No. 2016-06-12, adopting the 2016 Comprehensive Plan. AR1 992. Among other things, the County's Comprehensive Plan expanded Ridgefield's UGA by 111 acres and eliminated the agricultural designation from that land. AR1 358. The Comprehensive Plan states in part:

> Approximately 90 percent of population growth over the 20-year planning horizon is expected to occur in designated urban growth areas . . . . This type of development pattern is consistent with the goals of the GMA and supports the implementation of the long range vision of the county reflected in the Community Framework Plan. To accommodate the population growth over the 20-year planning horizon the following UGA's new total acreage in Table 1.3 is expected to expand Battle Ground 81.67, La Center 72.47 and Ridgefield 111.26 acres.

AR1 359.

B. Futurewise Files Challenge to the Comprehensive Plan.

On June 30, 2016, Friends of Clark County and Futurewise

(together "Futurewise") filed a petition for review with the Growth Management Hearings Board ("GMHB" or "the Board"), and a second petition for review on July 22, 2016. The cases were later consolidated. AR1 1-45, 227-773, 966-75, and 1221-30. Futurewise challenged the adoption of the County's Comprehensive Plan and claimed multiple violations of the GMA, including a claim that the County violated the GMA by expanding urban growth boundaries and de-designating agricultural lands within the expanded UGAs. Id. Several parties intervened on behalf of the County: the cities of La Center, Battle Ground, and Ridgefield; 3B Northwest, LLC; RDGB Royal Farms, LLC; RDGK Rest View Estates, LLC; RDGM Rawhide Estates, LLC; RDGF River View Estates, LLC; and RDGS Real View, LLC (the last five, collectively referred to as the "LLCs").[2]

C. Ridgefield Annexes 111 Acres.

On September 8, 2016, Ridgefield adopted Ordinance 1216, annexing the subject 111 acres of land (again, the "Brown Annexation"). AR1 2396-402.

D. Growth Board Decision.

After a hearing on February 8, 2017, the GMHB issued its Final Decision and Order ("FDO") on March 23, 2017. AR1 10457-557. The

[2] Orders granting intervention may be found at AR1 798 (La Center), AR1 888 (Battle Ground), AR1 1223 (Ridgefield), AR1 795 (3B), and AR1 807 (LLCs).

GMHB ruled that the County did not err in its public participation process, private property rights procedures, population projections, remainder parcel claims, and transportation or capital facilities or environmental claims. Id. The GMHB properly concluded it lacked jurisdiction regarding city annexation. AR1 10475 ("The Board agrees with Clark County and Intervenor Cities that the Board has no subject matter jurisdiction over city annexation ordinances.") However, the GMHB found that the County did not meet GMA requirements on urban growth expansions and agricultural land de-designations. AR1 10551-52.

The GMHB erroneously determined that (1) the County's decision to expand the cities' UGAs violated RCW 36.70A.110 and 36.70A.115; (2) the County and cities' failure to adopt "reasonable measures" to remedy density inconsistencies violated RCW 36.70A.215; and (3) Clark County Ordinance 12-06-12 was clearly erroneous. AR1 10478 and 10480. The GMHB then found the expansion of the UGA boundary for Ridgefield as shown on the County's 2016 Comprehensive Plan Map to be invalid. AR1 10555 (Determination of Invalidity No. 3).

Appellants each filed an appeal with the superior court, and the appeals were then consolidated. CP[3] 390-400.

[3] References to Clerk's Papers ("CP") are to the Clerk's Papers filed in Court of Appeals, Division II, No. 50847-8-II.

E. Compliance Proceeding.

The GHMB's 2017 FDO gave the County a deadline of September 19, 2017, to come into compliance with the GMA. AR1 10556. In response to the FDO, the County took action, including rescission of the UGA expansion for the City of Battle Ground, over which the County retained land use planning authority. AR2 409. Because the County had no authority to rescind the UGA expansions or re-designate territory already annexed by the City, the County could not rescind the UGA boundary for Ridgefield and did not re-designate the land therein. The County did, however, pass Resolution 2017-09-13, which acknowledged the Board's FDO and incorporated Ridgefield's explanation of the reasonable measures taken in the UGA expansion as a new Exhibit E to its BLR. AR2 517-18; 1480-93.

The Board conducted a compliance hearing on November 7, 2017.[4] AR2 1566. Once again, the City, along with other parties, argued to the Board that all issues relating to the expanded UGA are moot and asked the Board to rescind its previous determinations of GMA noncompliance and invalidity. AR2 1378-83. In its Compliance Order dated January 10, 2018, the Board found that the County continued to be non-compliant by failing to take any corrective legislative action relating

[4] That hearing occurred under GHMB No. 16-2-0005c.

to the Ridgefield UGA expansion and the County's 2016 de-designations of agricultural lands of long-term commercial significance ("ALLTCS") on the lands included therein. AR2 1584. The Board acknowledged it lacked jurisdiction to rule on the validity of the Brown Annexation. AR2 1577. The Board left in effect its 2017 invalidity determination with respect to the Ridgefield UGA expansions and invalidated the County's 2016 ALLTCS de-designations on the lands included therein. AR2 1584.

Appellants each filed an appeal with the superior court, and the appeals were then consolidated. Consolidation Clerks Papers Item 20. Together, the parties moved for discretionary review of the Compliance Order (51745-1-II), which this Court then consolidated with the appeal of the FDO (50847-8-II) on June 13, 2018.

V. ARGUMENT

A. Standard of Review on Appeal.

The standard of review on appeal is set forth in RCW 34.05.570(3), the relevant subsection of the Administrative Procedures Act ("APA"), which provides as follows:

> [T]he court shall grant relief from an agency order in an adjudicative proceeding only if it determines that: . . . (b) the order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law; . . . (d) the agency has erroneously interpreted or applied the law; (e) the order is not

> supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter; . . . .

Here, the GMHB's FDO regarding Ridgefield's UGA should be invalidated because it violates one or more of the APA Standards of Review, as follows: (b) the order is outside the statutory authority or jurisdiction of the agency; (d) the agency has erroneously interpreted or applied the law; and (e) the order is not supported by evidence that is substantial in light of the whole record before the court, which includes the agency record for judicial review. RCW 34.05.570(3)(b), (d), and (e).

The GMHB adjudicates issues of GMA compliance and may invalidate noncompliant comprehensive plans. RCW 36.70A.302(1)(a). A comprehensive plan is presumed valid, and "[t]he board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action clearly erroneous, the GMHB must have a "firm and definite conviction that a mistake has been committed." Thurston County v. Western Wa. Growth Management Hearings Bd., 164 Wn.2d 329, 190 P.3d 38 (2008) (internal citations omitted).

Futurewise has the burden to demonstrate that Ridgefield's actions failed to comply with the GMA. RCW 36.70A.320(2). The GMHB, in making its decision, must defer to local government decisions that are consistent with the GMA. RCW 36.70A.3201.

The appellate court stands in the same position as a superior court when reviewing GMHB decisions, and reviews issues of law *de novo*. Thurston Cnty., 164 Wn.2d at 341–42. On mixed questions of law and fact, courts determine the law independently and then apply it to the facts as found by the agency. Id. Substantial weight is accorded to the GMHB's interpretation of the GMA, but courts are not bound by the GMHB's interpretations. City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

The GMA is not to be liberally construed. Woods v. Kittitas County, 162 Wn.2d 597, 612 n. 8, 174 P.3d 25 (2007).

B. The County's Decision to Expand the Ridgefield Urban Growth Area Was Not Clearly Erroneous.

1. The County's decision to expand urban growth areas was sound.

The GMHB incorrectly found the County's decision to expand Ridgefield's UGA was clearly erroneous. By concluding that Ridgefield has a surplus of land and did not need the expanded UGA to accommodate its growth, the GMHB incorrectly and impermissibly substituted its

judgment for the sound public policy judgment reflected in the County's decision to expand the UGA. AR1 10478-81. The record establishes that the County's expansion of the Ridgefield UGA was supported by substantial evidence in the record and was consistent with the GMA. As such, the County's actions were not clearly erroneous and should be upheld.

This Court should find that the GMHB's FDO is clearly erroneous in view of the entire record and in light of the goals and requirements of the GMA. RCW 36.70A.320. To find an action "clearly erroneous," the court must have a firm and definite conviction that a mistake has been made. Lewis County v. WWGMHB, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006); Dep't of Ecology v. Pub. Util. Dist. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Here, Ridgefield made its case to the County regarding the need for expansion of Ridgefield's UGA specifically in order to accommodate projected growth as shown in the BLR. This was not a "land grab" by Ridgefield.

Due to its recent and projected future rapid growth, Ridgefield had been advocating for an expanded UGA since 2014. AR1 10140 and 10134. Ridgefield identified flaws in the analysis contained in the BLR's conclusions and provided the County with evidence to show that

Ridgefield had only a negligible surplus of buildable residential property, which was much less than the County first calculated. Coupled with the anticipated population growth, expansion of Ridgefield's UGA was reasonable and prudent. Ridgefield also provided evidence that the land proposed was suitable for conversion to urban use. AR1 10142-44.

Additionally, Ridgefield established that the model used by the County to calculate the amount of vacant buildable land in Ridgefield was not accurate. The model over-calculated the amount of land available for residential lots because it failed to account for many vested projects that had been delayed by the economic downturn, but that were since nearing completion and final plat approval prior to actual construction of new residential units.

> In total, Ridgefield knows of 444 single and multifamily lots that will be coming forward in a year for final plat or have been final platted in the last month [l and 290 more estimated)] . . . These lots have already been committed to development and should not be calculated a[s] vacant and buildable in the County's report.

AR1 10142-44. In addition to the pending vested projects in the development pipeline, Ridgefield also noted that the standard infrastructure deduction (27.7%) used to determine buildable area is incorrect as applied to Ridgefield, which requires larger parks and open

space dedications than other Clark County municipalities. While the standard 27.7% deduction may fairly apply to other cities, Ridgefield's park and open space requirements *alone* generally require a 25% deduction, and then further deductions must be calculated for required streets and sidewalks, stormwater facilities, and other infrastructure improvements. Ridgefield accordingly calculated that the deduction properly applicable to its UGA would approximate a total of 37.5%. Id.

These additional facts constitute the substantial evidence necessary to justify the County's decision to expand the Ridgefield UGA in order to permit Ridgefield to accommodate its projected growth. While the GMHB reached a different decision, that is not the GMHB's proper role. The public policy determination to expand the UGA was properly that of the County Council after consideration of the substantial evidence presented by Ridgefield. The GMHB has no jurisdiction to substitute its own judgment for that of the elected County Council members, and the County Council's decision was not clearly erroneous.

2. The Growth Management Hearings Board erred by improperly substituting its judgment for that of Clark County's.

The GMHB does not have the authority to make "public policy." The Board's jurisdiction is limited to determining compliance with the GMA. Viking Properties, Inc. v. Holm, 155 Wn. 2d 112, 129, 118 P.3d

322, 331 (2005). In this instance, the creation of public policy is wholly within the purview of the Clark County Council. As the Viking Properties court succinctly stated:

> The hearings boards are quasi-judicial agencies that serve a limited role under the GMA, with their powers restricted to a review of those matters specifically delegated by statute. *See* RCW 36.70A.210(6), .280(1); Sedlacek v. Hillis, 145 Wn.2d 379, 385–86, 36 P.3d 1014 (2001) (stating that public policy is set forth in constitutional, statutory, and regulatory provisions, as well as prior judicial decisions). *Accord* Roberts v. Dudley, 140 Wn.2d 58, 63, 993 P.2d 901 (2000); Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 232, 685 P.2d 1081 (1984). *See also* Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 565, 958 P.2d 962 (1998) (stating that the GMA is not to be construed to confer upon a hearings board powers not expressly granted in the GMA).

Id. Moreover, while the GMHB and Futurewise disagree with the UGA boundaries, the Council's choice remains fully GMA-compliant. The GMA creates a general "framework" to guide local jurisdictions instead of "bright line" rules. Id. at 129-130; see also RCW 36.70A.3201; Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 Seattle U.L.Rev. 5, 9 ("most GMA requirements are conceptual, not definitive, and often ambiguous").

Indeed, the County Council's determination to expand the Ridgefield UGA is the type of "local circumstance" accommodated by the GMA's grant of a "broad range of discretion" for local planning. See RCW 36.70A.3201; King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn. 2d 543, 561, 14 P.3d 133 (2000).

Here, the expansive record demonstrates that the County Council made a well-informed and considered public policy decision to expand the UGAs of several cities specifically in order to accommodate the need for required additional growth. It is the County Council's sound decision which should prevail. The GMHB's contrary conclusions are clearly erroneous and should be overturned.

C. Clark County's Expansion of Ridgefield's Urban Growth Area Is Moot.

1. The Growth Management Hearings Board improperly invalidated the expansion of the Ridgefield Urban Growth Area because the issue is moot.

Clark County's decision to expand the Ridgefield UGA is a moot issue, given Ridgefield's annexation. This Court should determine the GMHB erred in invalidating the County's decision to expand the Ridgefield UGA because it lacked jurisdiction to do so.

An issue is moot when "a court can no longer provide effective relief." Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793

(1984). As a general matter, Washington courts do not review an issue that is moot. Satomi Owners Ass'n v. Satomi, LLC, 167 Wn.2d 781, 225 P.3d 213 (2009).

The County's Comprehensive Plan is presumed valid upon adoption. RCW 36.70A.300(4)(a). Findings of invalidity are prospective only; the GMHB lacks authority to act retroactively. RCW 36.70A.302(2). The GMHB also lacks the authority to invalidate an annexation.[5] Futurewise v. Benton Cnty., et al., EWGMHB No. 14-1-0003, Order Issuing Determination of Invalidity (January 15, 2015) at 3, n. 2; RCW 36.70A.280(1).

After Ridgefield annexed the Brown Annexation area, Ridgefield, by operation of law, assumed sole regulatory control over development of that land. The County no longer had any jurisdiction in that regard, leaving the County's UGA expansion a moot issue not properly before the GMHB. Panesko, Butler and Futurewise v. Lewis Cnty., WWGHMB No. 08-2-0007c ("Panesko"), Compliance Order (July 27, 2009); Karpinski, Clark Cnty. Natural Resources Council and Futurewise v. Clark Cnty., WWHMHB No. 07-2-0027 ("Karpinski"), Compliance Order (October 29, 2009).

[5] Here, the GMHB properly found it lacked subject matter jurisdiction over the question of annexation. AR1 10475 ("The Board agrees with Clark County and Intervenor Cities that the Board has no subject matter jurisdiction over city annexation ordinances.").

The facts in Panesko are strikingly similar to the case at hand. The GMHB reviewed a challenge to Lewis County's comprehensive plan, which included an expanded UGA for the City of Toledo. However, prior to the Board issuing its final decision and order, the City of Toledo annexed the disputed parcel. There, the Board recognized:

> It is unfortunate that the Cowlitz Indian Tribal Housing (CITH) property was annexed in the midst of a proceeding to consider its designation as agricultural land of long term commercial significance. Nevertheless, the Board finds nothing egregious in the County's conduct . . . . The Board has no jurisdiction in the realm of municipal annexations. Further, now that the CITH property has been annexed by the City of Toledo, the issue of whether this property should be included as part of the UGA is moot.
> **Conclusion**: The City of Toledo having annexed the CITH property, the land is no longer subject to the County's jurisdiction. The County having no ability to consider or alter the designation of this property as agricultural land of long term commercial significance, it need not take any further action in that regard.

Panesko, supra, Compliance Order (July 27, 2009) at 9-10 (emphasis in original).

In Karpinski, the Board similarly concluded that claims relating to annexed lands were moot:

> The Board does not dispute that Camas and Ridgefield have annexed properties that were the subject of this appeal prior to the issuance of the Board's AFDO. Since invalidity can only apply prospectively, the Board's ruling on invalidity had no effect on those annexed lands. . . . As a result of these annexations, the GMA's duty of planning for growth for the annexed areas, including the provision of public facilities and services, is now the sole responsibility of the respective cities.
>
> However, the issue presented to the Board with the PFR was whether the County's adoption of Ordinance 2007-09-13, which de-designated areas of previously designated agricultural lands of long-term commercial significance and adding [sic] that land to Clark County cities' UGAs, violated the GMA. The annexation of land did not modify the underlying issue – it modified Clark County's ability to take legislative action in order to comply with the mandates of the GMA as determined by the Board in the AFDO. **The Superior Court's reversal of the Board's AFDO in regards to the GM Camas LLC property in CA-1, and in regards to CB, is acknowledged and the Board issues a Finding of Compliance.**

Karpinski, supra, Compliance Order (October 29, 2009) at 8–9 (emphasis in original).

The Clark County Superior Court's decision in Karpinski was appealed. This Court addressed the validity of the annexations *sua sponte* and reversed the unchallenged rulings of the Superior Court. Clark

County v. W. Wash. Growth Mgmt. Hearings Bd., 161 Wn. App. 204, 254 P.3d 862 (2001), *vacated in part*, 177 Wn.2d 136, 298 P.3d 704 (2013). The Washington Supreme Court vacated the Court of Appeals' opinion insofar as it related to the annexed lands, because those Superior Court rulings had not been challenged on appeal. Id., 177 Wn.2d 136, 298 P.3d 704 (2013). In her concurrence, Justice Stephens offered a persuasive rationale in support of reinstating the Superior Court decision on the basis of mootness, stating in part:

> [I] would dismiss the claims challenging the annexation as moot in the context of this proceeding. The claims in question originated in a petition to the Growth Management Hearings Board (Board) challenging Clark County's designation of certain lands under the Growth Management Act, chapter 36.70A RCW. The cities of Camas and Ridgefield have annexed the lands in question, and those annexations cannot be challenged in these proceedings. As a result, the question of whether the Board properly reviewed Clark County's prior designation of the annexed lands is moot. Dismissal should follow. See Seguin v. Barei, 163 Wash. 702, 703, 299 P. 655 (1931) (dismissing appeal where underlying interest in disputed property was dissolved in separate proceeding).

Id. at 149.

Following the Supreme Court's decision, the GMHB reiterated its determination that the petitioners' challenges regarding annexed lands

within the expanded UGAs for the cities of Camas and Ridgefield were moot because those lands had been since annexed. Karpinski, supra, Order on Motion to Modify Compliance Order (December 26, 2013) at 1.

The GMHB further recognized that annexation prior to a GMHB finding of invalidity renders compliance actions moot. In Futurewise v. Benton Cnty., et al., the Board stated as follows:

> Although the Board appreciates the City's agreement to inform Futurewise if an annexation application is filed, the Board heard concerns expressed at the hearing that a landowner-initiated annexation petition action might circumvent the GMA compliance process and render compliance actions moot. The Board notes that in the absence of an invalidity order, petitioners have little remedy if an annexation of this property was accomplished.

Futurewise v. Benton Cnty., et al., EWGMHB No. 14-1-0003, Order issuing Determination of Invalidity (January 15, 2015) at 3 (footnote omitted).

Again, here, the County's Comprehensive Plan is presumed valid upon adoption. RCW 36.70A.300(4)(a). Findings of invalidity are prospective only and cannot—and should not—be applied retroactively. RCW 36.70A.302(2). Accordingly, because Ridgefield properly relied upon Clark County's Comprehensive Plan and annexed the Brown Annexation area prior to the finding of invalidity, the County no longer

had jurisdiction over those 111 acres and the issue before the GMHB became moot. Where only moot questions or abstract propositions are involved, an appeal should be dismissed. Harvest House Rest., Inc. v. City of Lynden, 102 Wn.2d 369, 373, 685 P.2d 600 (1984) (citing Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)).

2. The appropriate remedy for this issue is legislative, not judicial.

The GMHB has no jurisdiction over municipal annexations due to the plain language of the GMA. RCW 36.70A.280(1). This limitation on the GMHB's jurisdiction creates the mootness issue discussed above, which has been long recognized by the GMHB itself. The only remedy for this statutorily driven result is amendment of the statute itself. Indeed, there have been past attempts to do just this. Proposed House Bill 1463 (2007 Regular Session) would have altered vesting and allowed the GMHB to impact development retroactively. While that legislation ultimately failed, the very introduction of proposed House Bill 1463 is evidence that any remedy for the mootness issue discussed here is the sole province of the Legislature. Further, the Legislature's failure to act implies agreement with the current interpretation of a statute. State v. Edwards, 84 Wn. App. 5, 12–13, 924 P.2d 397 (1996).

D. The Growth Management Hearings Board Erred in Finding, in its Compliance Order, that Sections of the 2016 Clark County Comprehensive Plan Which Expanded the Ridgefield UGA Remain Out of Compliance.

The City, not the County, is the governmental entity that now has planning and regulatory jurisdiction over the Brown Annexation area. Pursuant to RCW 36.70A.110(1), the City is entitled to have all land within its city limits recognized as being located within its UGA and subject to the City's planning authority. In its Compliance Order, the Board's findings and decisions under Issues 5 and 10 erroneously apply the law and are not supported by the facts in this case. AR2 1576–91. The Board requires "compliance" by asking the County to do the impossible – altering land use designations on land outside its jurisdiction.

As stated above, the County cannot simply retract Ridgefield's UGA and re-designate land therein. The GMA provides that any determination of invalidity is prospective only. RCW 36.70A.302(2). Any rights vested before receipt of the Board's FDO, therefore, remain intact. Id. The Ridgefield Urban Growth Area expansion was valid and in effect at the time the City lawfully annexed the Brown Annexation land into its jurisdiction. The City, not the County, has all planning authority with respect to the annexed land. RCW 35A.11.020. Therefore, the County cannot "comply" with the FDO. Put simply, the County lacks

jurisdiction to act with respect to the Brown Annexation land.

Further, the City cannot "comply" with the FDO by simply de-annexing or re-designating the Brown Annexation land.[6] Under statutory annexation provisions, the City must receive a petition signed by owners of one hundred percent of the land to be excluded in order to initiate such a de-annexation process. RCW 35A.16.080(1). Otherwise, any reduction in city limits must go to the voters of the City. RCW 35A.16.010. The City cannot unilaterally de-annex the Brown Annexation land. Furthermore, the City's designation of this land is not at issue in this matter and is the subject of a separate pending appeal before this Court.[7]

In ignoring that the legal effect of the Brown Annexation is to remove that land from the County's planning jurisdiction, the Board erroneously interpreted the law, entitling the City to relief pursuant to RCW 34.05.570(3)(d). Further, because the Board made a decision unsupported by substantial evidence, the City is also entitled to relief pursuant to RCW 34.05.570(3)(e). For the reasons stated above, the Board's finding of non-compliance is erroneous and should be reversed.

VI. CONCLUSION

The GMHB erred in finding the County's decision to expand the UGA was invalid. Ridgefield established that additional area for urban

[6] Notably, the FDO orders County action; nothing in the FDO compels the City to act.
[7] *See* Court of Appeals No. 50406-5-II.

growth was needed. Further, the GMHB lacked jurisdiction to make such a finding of invalidity, because the issue was moot after Ridgefield annexed the Brown Annexation area. The Compliance Order is, for the same reasons, in error. This Court should overturn the GMHB's determination of invalidity as to the expansion of Ridgefield's UGA.

RESPECTFULLY SUBMITTED this 31st day of July, 2018.

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DECLARATION OF SERVICE

I, Margaret C. Starkey, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 31st day of July, 2018, I sent for service a true copy of the foregoing *City of Ridgefield's Opening Brief* on the following using the method of service indicated below:

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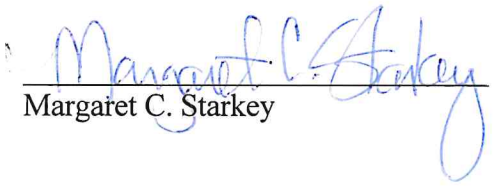
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31st day of July, 2018, at Issaquah, Washington.



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July 31, 2018 - 9:50 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	50847-8
Appellate Court Case Title:	Friends of Clark County and Futurewise, Appellants v Clark County, et al, Respondents
Superior Court Case Number:	17-2-00929-0

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