

NO. 83611-6

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

WHATCOM COUNTY FIRE DISTRICT NO. 21,

Petitioner,

v.

WHATCOM COUNTY, a municipal corporation;
BIRCH POINT VILLAGE, L.L.C., a Washington corporation;
SCHMIDT CONSTRUCTING, INC.,
a Washington corporation; and BRIGHT HAVEN
BUILDERS, LLC, a Washington corporation;
MAYFLOWER EQUITIES, INC.; LISA SCHENK
and MIKE SUMNER,

Respondents.

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SUPREME COURT
STATE OF WASHINGTON
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BY RONALD J. CARPENTER
CLERK

ANSWER OF WHATCOM COUNTY FIRE DISTRICT NO. 21
TO WASHINGTON FIRE COMMISSIONERS
ASSOCIATION'S AMICUS BRIEF

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Fire District No. 21

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

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WCC 20.80.2121, 3

Other Authorities

[http://www.nwfrs.net/images/stories/news/capital%20facilities%20plan
%2001-22-2009.pdf](http://www.nwfrs.net/images/stories/news/capital%20facilities%20plan%2001-22-2009.pdf)2

A. INTRODUCTION

Whatcom Fire District No. 21 ("District") received the amicus brief of the Washington State Fire Commissioners Association. The Association's brief supports the District's arguments on appeal in this case. The District, not Whatcom County, has the responsibility of developing the appropriate level of fire and emergency services to be provided to the residents of the District. The Court of Appeals opinion confused the County's planning responsibilities under the Growth Management Act ("GMA"), RCW 36.70A, with responsibilities of the District and its separately elected board of commissioners to develop the appropriate level of services and to deliver such services. The only way to give meaning to WCC 20.80.212 relating to concurrency is to interpret that ordinance as requiring a site-specific decision by the government responsible for defining and delivering the services. Consequently, the trial court was correct in determining that the District properly withheld a letter of concurrency to the developers of four projects,¹ projects that contributed to growth without concomitant services in the Birch Bay area of Whatcom County.

B. ARGUMENT

¹ Two of the four developers have settled with the District.

The District has the responsibility under Title 52 RCW to provide fire and emergency services to residents living within its boundaries. The developers and the Court of Appeals have both ignored that critical fact. In Title 52 RCW, the Legislature authorized separate units of government to provide fire and emergency services. Those units of government have their own elected officials to develop the level of services necessary for their constituents. Those elected officials are answerable to their constituents for those levels of services and their appropriate delivery. This process is separate and distinct from the planning directed by GMA.

GMA does not do an effective job of addressing the reality of the special purpose units of government. Washington law recognizes that separate units of government, with separately elected officers, deliver a variety of services. Washington has school districts, port districts, fire districts, library districts, sewer and water districts, and even television reception districts, just to name a few.

While GMA requires counties and cities to plan for growth, the statute does not trump the service delivery responsibilities of special purpose units of government. Neither the Court of Appeals nor the respondents here can point to any statutory provision in GMA that confers such preemptive power upon counties and cities. To the contrary, WAC 365-195-705(2) mandates that preemption may not be presumed. There

must be a clear statement of legislative intent under GMA to preempt local authority. *Id.* GMA requires counties and cities to *plan*, but it does not permit those governments to preempt the responsibilities of special purpose units of government like the District. GMA does provide for coordination of efforts in the planning process, however, as a matter of comity. *See* RCW 36.70A.020(11); WAC 365-195-755.²

In fact, in this case, the District has adopted a Capital Facilities Plan (“CFP”) that has been approved by Whatcom County. <http://www.nwfrs.net/images/stories/news/capital%20facilities%20plan%201-22-2009.pdf>. Thus, as a matter of comity, Whatcom County actually enforces the District’s CFP in the unincorporated parts of Whatcom County. To underscore the point that special purpose units of government like the District have statutory responsibilities that may not be preempted by more general purpose units of government, in a recent decision in the Whatcom County Superior Court (Cause No. 10-2-01382-9), the trial court determined that the City of Blaine was obligated to impose SEPA mitigation fees the District had developed as part of its CFP even though

² The undesirable effect of the Court of Appeals decision is that urban levels of services, required by GMA for urban development, can be nonexistent while urban-level development is approved. This outcome is directly contrary to GMA goal Number 12: “Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.” RCW 36.70A.020(12).

the City opposed the imposition of such fees. The City is a GMA planning government. *See Appendix.*

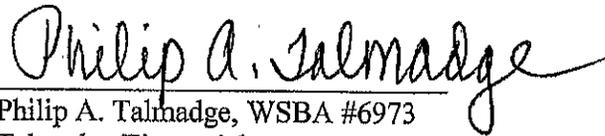
In sum, the Association is correct in arguing that the District had the preeminent responsibility for the development of the appropriate level of emergency and fire services for the residents living within its boundaries under Title 52 RCW. Such authority is not preempted by the County's GMA-mandated planning responsibilities. Consequently, the only appropriate way to read WCC 20.80.212 is that it is a development regulation to be applied on a site-specific basis. Whatcom County had no authority to adopt levels of service within the boundaries of the District. To attempt to do so in a comprehensive plan would not satisfy the District's site-specific responsibilities under WCC 20.80.212. The District properly withheld concurrency letters to the developers in this case, given the undisputed impact of the four developments on growth in the District. Those developers could not demonstrate, nor could the District conclude, that fire and emergency services at an appropriate level would be available concurrently with the development of the projects at issue. The District properly withheld the concurrency letter under WCC 20.80.212.

C. CONCLUSION

This Court should reverse the decision of the Court of Appeals,
and reinstate the trial court's decision. Costs on appeal should be awarded
to the District.

DATED this 6th day of January, 2011.

Respectfully submitted,



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FILED IN OPEN COURT

12-3-2010

WHATCOM COUNTY CLERK

SCANNED

2

By [Signature] Deputy

Honorable Ira Uhrig

Motion Date and Time: December 3, 2010 @ 1:30 p.m.

With Oral Argument

Moving Party's Paperwork

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

WHATCOM COUNTY FIRE
PROTECTION DISTRICT #21,

NO. 10-2-01382-9

Plaintiff,

ORDER GRANTING WHATCOM
COUNTY FIRE PROTECTION
DISTRICT #21'S MOTION FOR
SUMMARY JUDGMENT

v.

CITY OF BLAINE,

[PROPOSED]

Defendant.

THIS MATTER having come on regularly for hearing on the plaintiff's motion for summary judgment and the plaintiffs having been represented by Sidney Tribe of Talmadge/Fitzpatrick, 18010 Southcenter Parkway, Tukwila, WA 98188, (206) 574-6661 and the defendants having been represented by Scott M. Missall of Short Cressman & Burgess PLLC, 999 3rd Avenue, Suite 3000, Seattle, WA 98104, (206) 682-3333 and the Court having considered the following pleadings:

- Statement of Agreed Facts and attachments thereto,
- Plaintiff Whatcom County Fire Protection District's Motion for Summary Judgment;
- Defendant City of Blaine's Response to District's Motion for Summary Judgment

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2 and the Court being fully advised as the premises for this motion, now, therefore, IT IS HEREBY
3 ORDERED:

- 4 1. Whatcom County Fire Protection District # 21's motion for summary judgment is
5 GRANTED.
6 2. The City of Blaine must comply with the District's CFP within the SEPA review
7 process and impose mitigation fees upon development as specified in the CFP.

8 DONE IN OPEN COURT this 3 day of December, 2010.

9
10 _____
11 JUDGE IRA UHRIG

12 Presented by:

13 Sidney Tribe
14 Sidney Tribe, WSBA #33160
15 Talmadge/Fitzpatrick
16 18010 Southcenter Parkway
17 Tukwila, WA 98188
18 (206) 574-6661
19 Attorney for Plaintiff Whatcom County Fire Protection District #21

20 Notice of Presentation Waived; Approved for Entry

21 _____
22 Scott M. Missall, WSBA #14465
23 Short Cressman & Burgess, PLLC
24 999 3rd Avenue, Suite 3000
25 Seattle, WA 98104
26 (206) 682-3333
Attorney for Defendant City of Blaine

DECLARATION OF SERVICE

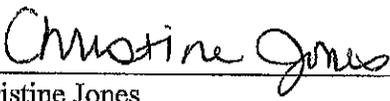
On said day stated below, I deposited with the U.S. Postal Service a true and accurate copy of: Answer of Whatcom County Fire District No. 21 to Amicus Brief in Supreme Court Cause No. 83611-6 to the following parties:

	Phil J. Buri Buri Funston Mumford, PLLC 1601 F Street Bellingham, WA 98225-3011
Karen Frakes Royce Buckingham Whatcom County Prosecutor's Office 311 Grand Avenue Bellingham, WA 98225-4048	Jonathan Sitkin Chmelik Sitkin & Davis PS 1500 Railroad Avenue Bellingham, WA 98225-4542
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Original efiled with:
Washington Supreme Court
Clerk's Office
Olympia, WA 98504

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

DATED: January 6, 2010, at Tukwila, Washington.



Christine Jones
Talmadge/Fitzpatrick