

Matz, Nicholas

From: Oskar Rey <orey@mrsc.org>
Sent: Friday, January 26, 2018 11:44
To: Matz, Nicholas
Subject: MRSC Inquiry--Comp Plan Amendments

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Hello Nicholas:

This email is in response to your MRSC inquiry, which is set forth at the bottom of this email.

As we discussed, I am not aware of any cases challenging a “significantly changed conditions” (SCC) criteria in the comprehensive plan amendment context. Analysis of SCC arises more often in the context of rezones, where SCC is a required element. Part of the problem is that site-specific rezones and development proposals are more commonly challenged in the courts than comprehensive plan amendments.

What follows is an excerpt from a 2016 MRSC research memo on SCCs in the context of rezones:

Regarding rezones in general, in Woods v. Kittitas County, 162 Wn.2d 597, 617 (2007), our state supreme court set out general rules related to rezone applications, as follows:

Three basic rules apply to rezone applications: (1) they are not presumed valid; (2) the proponent of a rezone must demonstrate that there has been a change of circumstances since the original zoning; and (3) the rezone must have a substantial relationship to the public health, safety, morals, or general welfare. *Citizens for Mount Vernon*, 133 Wn.2d at 875.

In qualifying these rules, however, our courts have also held that the proponent of a rezone needn’t show a substantial change in circumstances since the last zoning or amendment if the proposed rezone implements policies of the comprehensive plan. In Henderson v. Kittitas County, 124 Wn. App. 747, 754 (2004), review denied, 154 Wn.2d 1028 (2005), the court explains:

Generally the proponent of a rezone must show a substantial change in circumstances since the last zoning or amendment unless the proposed rezone implements policies of the comprehensive plan. *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995). A variety of factors may indicate a substantial change in circumstances, including changes in public opinion, in local land use patterns, and on the property itself. *Id.* at 846-47.

There is one case that addressed SCC in connection with both a comprehensive plan amendment and a rezone--Save Our Rural Environment v. Snohomish County (SORE), 99 Wn.2d 363, 370, 662 P.2d 816, 820 (1983). That case involved a decision to locate a business park in an area that had previously been designated residential. The County Council approved a comprehensive plan amendment on the following basis:

The Snohomish/Lake Stevens Area Comprehensive Plan anticipated that conditions would change and that the Plan would be amended. Overlooked or not considered in the original plan was the need for land to provide a more diversified industrial base through business park development and assuring a balancing of industrial development and adjacent land uses through the use of business park and master plan procedures. Under the facts presented adoption of the proposed amendment is appropriate. Disturbance of the integrity of a

comprehensive plan is not taken lightly by the council, but under the circumstances here the amendment is appropriate.

The county hearing examiner upheld the rezone request based on the comprehensive plan amendment, explaining as follows:

The suggestion that the instant rezone may not be approved without substantial findings of changed circumstances does not seem applicable to the instant case. The action requested herein is a rezone which would implement an adopted comprehensive plan of Snohomish County. If such implementation were not allowed to occur until physical or developmental circumstances in the area had changed, the new comprehensive plan might never be fulfilled: if an area is presently undeveloped and a newly amended comprehensive plan calls for industrial development, no industrial development may occur until at least one industrial rezone has been granted. If that rezone cannot itself occur because land development patterns have not changed in the area, then the industrial development will most likely never have an opportunity to occur. The Examiner does not believe that such a set of circumstances was desired or envisioned by the supreme court...

SORE, 99 Wn.2d at 370–71. The court approved both these statements in the course of upholding the comprehensive plan amendment and rezone.

As we discussed, it is not unusual for jurisdictions to have SCC criteria in their comprehensive plan amendment requirements. I do not think that SCC criteria are problematic under the GMA and there do not appear to be any cases in which a SCC requirement was challenged directly.

I hope this is helpful. Please call or email if you have any follow-up questions.

Oskar Rey

Legal Consultant

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Inquiry: Have there been any court cases (local up to the WA state level) or legal actions regarding the use or legitimacy of various decision criteria contained in local jurisdictions' comprehensive plan amendment procedures? I am looking for in particular whether any local jurisdictions' use of "significantly changed conditions" (or similar phrasing) as a CP amendment decision criterion has been challenged. Thanks.