



CASE REPORT

CITY OF BELLEVUE V. EAST BELLEVUE COMMUNITY MUNICIPAL CORPORATION. No. 49852-5-I. GMA mandated concurrency ordinances may not contain exemptions.

I. Facts. The City of Bellevue, pursuant to GMA, has established a level of service (LOS) standard for local streets and roads. Bellevue's LOS contain different maximum levels throughout the City. The level of service standard was based on the ration of the peak traffic volumes at the intersections to the capacity of the intersection to handle traffic. This methodology measures whether or not the physical geometry of the roadway provides sufficient capacity for the number of vehicles. A volume to ratio capacity of 1.0 or higher means that the intersection is handling traffic that exceeds capacity at peak hours. Bellevue's concurrency ordinance exempted certain types of projects from its concurrency requirements. These included exemptions for public transportation facilities, public parks, private not-for-profit social services, public libraries, hospitals, publicly funded educational facilities, affordable housing and non-profit child care facilities. In 2001, the City enacted Ordinance 5308 adding a ninth exemption for neighborhood shopping center redevelopment projects. This exemption was apparently directed at a specific development proposal involving the Lake Hills Shopping Center. The City justified this exemption on the grounds that these type of neighborhood shopping center redevelopment projects would decrease traffic and provide a broad array of necessary goods and services.

II. Applicable Law and Analysis.

The East Bellevue Community Council¹ and certain individuals appealed the City's decision to the Growth Management Hearings Board. The Board ruled that the ordinance was invalid since GMA did not provide that the City could create exemptions for its traffic concurrency ordinance. Bellevue appealed directly to the Court of Appeals which issued its opinion.

Bellevue argued that the concurrency requirement cannot trump all other goals of the GMA. Bellevue argued that imposing a concurrency requirement for neighborhood shopping centers may conflict with the goal found in RCW 36.70A.070(2) which mandates a housing element that ensures the "vitality and character of established residential neighborhoods." The Court, without much analysis, rejected this claim holding that "Concurrency is not a goal, it is a requirement...Under the clear and plain language of RCW 36.70A.070(6)(b), the City cannot create exemptions to its concurrency ordinance."

¹ The court of appeals held that the East Bellevue Community Council lacked the authority to appeal this ordinance as it was outside their strict statutory duties. However, since individuals with standing also challenged the ordinance, the court proceeded to review the ordinance.

The City further argued that the neighborhood redevelopment project would reduce traffic, not increase it and that only limitations in the City's models caused it to appear to increase traffic congestion. The Court of Appeals rejected this argument holding that

“A City cannot create exemptions to its LOS because it claims that its traffic model is inadequate.” If a City is unable to properly measure traffic impacts from a development proposal for compliance with the GMA, the City can alter its methodology it uses to calculate traffic volume.”

III. Conclusion. This decision is currently unpublished, meaning that it cannot be cited as precedent in any Washington court case. It is highly likely that the plaintiffs will ask the Court of Appeals to publish this opinion as it contains an important statement of law. Regardless of whether or not this decision is published, it is important in that it is the first court case to hold that exemptions contained within a City's concurrency ordinance are invalid.