The End of an Era: Suburban Village Aversion in
Citizens for Mount Vernon v. City of Mount Vernon

Ronda Larson
THE END OF AN ERA: SUBURBAN VILLAGE AVERSION IN
CITIZENS FOR MOUNT VERNON v. CITY OF MOUNT VERNON

Ronda Larson

Abstract: In 1990, the Washington Legislature enacted the Growth Management Act (GMA) to counteract problems related to unmanaged population growth. The GMA fundamentally altered two traditional aspects of land use law: the disregard for planning documents and the aversion to mixing uses within zones. Counties and cities planning under the Act now must have comprehensive plans and zoning ordinances that are consistent with those plans. They are also encouraged to use innovative zoning tools such as mixed-use housing developments. In the 1997 case Citizens for Mount Vernon v. City of Mount Vernon, the Supreme Court of Washington applied pre-GMA common law to decide the effect of comprehensive plans on specific land use decisions. It held that zoning ordinances supersede inconsistent comprehensive plans in such decisions. This Note analyzes Mount Vernon and concludes that the Supreme Court of Washington needlessly clung to pre-GMA notions that avoid planning and mixed-use zoning in residential districts. This Note recommends that the court abandon pre-GMA case law in future land use cases and consider bifurcating the standard of judicial review of land use cases.

In 1990, the Washington Legislature performed major surgery on state land use law. The enactment of the Growth Management Act1 (GMA) brought Washington into the exclusive league of states waging a "quiet revolution"2 in land use regulatory law. The Act subjugated a seventy-

---

2. See James H. Wickersham, The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes, 18 Harv. Envtl. L. Rev. 489, 489, 512–13 (1994) (describing growth management statutes of two early participants in "quiet revolution": Florida and Vermont). Land use regulation traditionally has been the prerogative of local government, with little interference from state or federal government. George E.H. Gay, State Solutions to Growth Management: Vermont, Oregon, and a Synthesis, Nat. Resources & Env't, Winter 1996, at 13, 13. But, since the early 1970s, 10 states have passed state growth management statutes that alter the local home rule and endeavor to coordinate regionally local land development policies. They are Florida, Georgia, Hawaii, Maine, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington. See Symposium, Growth Management and the Environment in the 1990s, 24 Loy. L.A. L. Rev. 905 (1991). Characteristic of all growth management states is the move away from the prevailing pattern of low-density, monofunctional sprawl toward higher-density, more compact development. Wickersham, supra, at 511–12. This is a stark change from Euclidian zoning, or local zoning, which is used in the majority of states. Euclidean zoning is named after the 1926 case, Village of Euclid v. Ambler Realty Co., in which the U.S. Supreme Court upheld the constitutionality of zoning against a takings challenge. 272 U.S. 365 (1926). Wickersham has noted that growth management controls implemented solely at the local level, as in Euclidean zoning, are no longer appropriate for the metropolitan areas that characterize modern America. Wickersham, supra, at 512. Those who oppose state government’s more active role in land use regulation can take comfort in an international comparison. Fearing that a loss of more farmland will leave China unable to feed its 1.2 billion people, the Chinese government has enacted a law that threatens the death penalty for
year history of land use regulation\(^3\) by requiring planning as the foundation for all zoning actions\(^4\) and replacing the Euclidian tendency to strictly segregate uses\(^5\) with the aim of mixing land uses to make communities liveable.\(^6\) The Act was primarily a response to gridlock traffic and losses in natural resource lands that occurred because of population growth and suburban sprawl in the Puget Sound region.\(^7\)

Despite the GMA’s changes, the Supreme Court of Washington has continued to invoke pre-GMA legal doctrine.\(^8\) In *Citizens for Mount Vernon v. City of Mount Vernon*, the court held that the comprehensive plan is only a guide, not a legal imperative; when zoning regulations and

---


\(^5\) Before the GMA, Washington’s planning enabling statutes primarily governed its counties’ and cities’ planning and zoning powers. These statutes have remained largely unchanged since their original enactment in the 1920s. *Land Use Study Commission Final Report*, at ch. 8 (last modified Dec. 1998) <http://www.cted.wa.gov/lgd/landusetreport/chapter8.html#c822> (citing Wash. Rev. Code §§ 35.63, 35A.63, & 36.70 (1998)).

\(^6\) See infra Part II.B.

\(^7\) See *Settle & Gavigan*, supra note 2, at 871. Contrary to popular belief, population growth probably has not been the direct cause of problems such as sprawl and traffic congestion. Christine A. Klein, *A Requiem for the Rollover Rule: Capital Gains, Farmland Loss, and the Law of Unintended Consequences*, 55 Wash. & Lee L. Rev. 403, 454 (1998). For example, in the Puget Sound region, traffic congestion and loss of natural resource lands became the source of widespread concern in the late 1980s, but the area’s population growth rate was actually greater between 1940 and 1979 than during the 1980s and 1990s. Keith Dearborn, an attorney and educator who helped write the GMA and was a member of the legislature’s Land Use Study Commission, attributes the problems to the following factors in conjunction with growth: (1) the number of jobs in city centers is increasing faster than the number of people living in city centers; (2) most cities in Washington are the least dense in the nation, and are far less dense than cities in most other countries; (3) the average household size is shrinking; (4) the number of cars owned and miles driven per person is increasing; and (5) the proportion of local tax dollars being invested in infrastructure has dropped precipitously as a greater proportion goes toward criminal justice and public safety. Keith Dearborn, Lecture on Washington Environmental Regulations at the University of Washington School of Law (Jan. 12, 1999) (PowerPoint presentation on file with author); see also Peter Calthorpe, *The Next American Metropolis: Ecology, Community, and the American Dream* 18 (1993) (discussing current mismatch between suburban settlement patterns and American culture and attributing it to declining household sizes and shifting job locations).

\(^8\) See *Weyerhaeuser v. Pierce County*, 124 Wash. 2d 26, 43, 873 P.2d 498, 507 (1994) (“[A] specific zoning ordinance will prevail, even over an inconsistent comprehensive plan.”).
the plan conflict, the plan must yield. Because it conflicted with the zoning ordinance, the court invalidated the city's grant of a permit to build a planned unit development that would have put a grocery store and other commercial uses on eight acres of a forty-acre housing development. The court held that even if the development were consistent with the city's comprehensive plan, comprehensive plans are not appropriate documents for making specific land use decisions.

This Note argues that Mount Vernon applied anachronistic common law to resolve an inconsistency between planning and zoning, and in doing so, defeated fundamental goals of the GMA. Part I discusses the historic tendencies in American land use law to disregard planning and strictly segregate land uses within zones. Part II describes the GMA's fundamental shift away from these two tendencies and the GMA's other impacts on Washington land use law. Part III discusses the Supreme Court of Washington's decision in Mount Vernon. Part IV criticizes the Mount Vernon opinion, particularly the court's insistence on adhering to vestigial remnants of land use common law that the GMA has superseded. Finally, this Note argues that the Supreme Court of Washington will be less inclined to use pre-GMA case law as it becomes more familiar with the GMA, and that Mount Vernon thus represents the end of an era in state land use law.

I. LAND USE LAW: FOUNDATION AND CONSEQUENCES

Zoning and land use regulation in the United States first gained momentum in the 1920s when state legislatures began to delegate zoning and planning powers to local governments. The development of land use law thereafter reflected two particular emphases that continue into the present day. First, land use ordinances in most states lack overarching planning schemes to guide them. Second, land use law tends to adhere to homogeneous residential zoning, especially by excluding commercial uses and multi-family housing from single-family residential zones.

---

10. Id. at 863, 876–77, 947 P.2d at 1210, 1216; see infra notes 119–29 and accompanying text.
11. Id. at 873, 947 P.2d at 1214 (stating that although GMA suggests comprehensive plan can be used to make specific land use decision, Washington case law holds otherwise).

369
More recently, practitioners and scholars have criticized these hallmarks of traditional land use planning.  

A. Disregard for Comprehensive Planning

The disregard for planning stems from a number of influences. One important factor was that originally, zoning enabling acts lacked planning mandates. Such statutes are used on the state level to delegate zoning and planning powers to local governments. Most state planning and zoning enabling acts are based on two U.S. Department of Commerce model statutes that do not require adoption of a local comprehensive plan as a separate document from zoning ordinances. Absent such a requirement, local governments have lacked mandates for planning from the outset. Consequently, they usually adopt zoning ordinances based on site-specific needs rather than county-wide or regional concerns. This was the case in Washington until the GMA became law.

18. Concerning this tendency in Washington State, see Settle & Gavigan, supra note 2, at 869–70. A Florida appellate court described how rezoning is granted not only on the basis of the land’s suitability to the new zoning classification and compatibility with surrounding zoning, but also, and
Another reason for the lack of planning is that it does not have the sociological impetus that originally spurred zoning. The accelerated adoption of zoning ordinances nationwide was primarily a result of local governments’ desires to accomplish a number of social goals, including ensuring higher property values and more tax revenue, separating hazardous and offensive industries and other nuisances from homes, and protecting white communities from racial integration by means of exclusionary zoning. Because planning was not necessary to achieve

perhaps foremost, on local political considerations including who the owner is, who the objectors are, the particular land improvement and use that is intended, and "whose ox is being fattened or gored" by the granting or denial of the rezoning request. Snyder v. Board of County Comm’rs, 595 So.2d 65, 73 (Fla. Dist. Ct. App. 1991), vacated on other grounds, 627 So. 2d 469 (Fla. 1993).

19. Local government zoning and planning in Washington has been governed by a “formidable legal thicket” of statutes, constitutional provisions, and case law. Jerome L. Hillis & Richard R. Wilson, Land Use Planning in Washington: Overdue for Improvement, 10 Willamette L. Rev. 320, 321 (1974). These sources vary in the degree of planning that they require, but the more recent pre-GMA decisions by the Supreme Court of Washington accord an apparently uniform weak legal status to the comprehensive plan. Settle, supra note 17, §§ 1.5–1.7; see infra note 32. The planning and zoning authority statutes include the Planning Commissions Act, Wash. Rev. Code § 35.63 (1998); the Planning Enabling Act, Wash. Rev. Code § 36.70.340 (1998); and the Optional Municipal Code, Wash. Rev. Code § 35A.63 (1998). Some local governments can also plan and zone pursuant to the broad police power grant of article XI, section 11 of the Washington Constitution. Hillis & Wilson, supra, at 324. The GMA did not replace pre-GMA statutory law and says nothing about how to resolve conflicts between it and the older statutes. This has caused confusion, and the final report of the Land Use Study Commission (LUSC) recommended that the three separate planning enabling statutes be combined into one that applies to all cities and counties. Final Report of the Land Use Study Commission, at ch. 8 (Dec. 1998) <http://www.cted.wa.gov/lgd/landuse/report/chapter8.html#c85>. The legislature has not acted upon its recommendation as of this writing.

LUSC was a commission within the state Department of Community, Trade and Economic Development, established by the GMA to assess Washington’s land use regime and make recommendations to the legislature. The commission’s term has expired. It was established by Wash. Rev. Code §§ 90.61.010–.050, and repealed by Laws 1995, ch. 347, § 806, effective June 30, 1998.


21. Id. Protecting single-family districts through exclusionary zoning results in higher tax revenues for local governments because it excludes lower-income residents who rent. Communities then become mainly middle and upper class and land values increase, resulting in more property taxes for the local government. See Andrew G. Dieterich, An Egalitarian’s Market: The Economics of Inclusionary Zoning Reclaimed, 24 Fordham Urb. L.J. 23, 31–32 (1996); Michael E. Lewyn, The Urban Crisis: Made in Washington, 4 J.L. & Pol’y 513, 515 n.6 (1996).


these goals, local governments across the nation adopted the practice of zoning, divorced from comprehensive planning practices.

Finally, highly deferential judicial review allows local decisionmakers to bypass planning issues in land use regulation. Even in jurisdictions that have adopted comprehensive plans, the substantive effect of these plans is weak due to the standard of judicial review that federal and state courts employ. The U.S. Supreme Court’s landmark zoning case, *Village of Euclid v. Ambler Realty Co.*, established the test for determining whether local zoning actions violated the Due Process and Equal Protection Clauses. The Court held that local land use decisions are constitutional unless the actions are “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.” The Court also established the standard of judicial review for legislative land use actions, reasoning that if the legislative classification for zoning purposes is fairly debatable, the legislative judgment controls. Adopted by federal and most state courts across the country, this standard allows local governments broad discretion in their methods of land use regulation. If a municipality can devise a reason after the fact for its application of the zoning ordinance, a court will uphold the application. The *Euclid* standard involves no inquiry into whether actions are well-planned. Even if a locality has created a comprehensive plan, courts using this standard do not require zoning ordinances to be consistent with the plan. As in Washington

24. This deference is itself a product of the fact that state legislatures have broadly delegated land use regulating power to local governments. Thomas G. Pelham, *Quasi-Judicial Rezonings: A Commentary on the Snyder Decision and the Consistency Requirement*, 9 J. Land Use & Envtl. L. 243, 245-46 (1994). The only limits on this power have traditionally been constitutional limitations such as the Due Process, Equal Protection, and Takings Clauses. *Id.*


28. *Id.* at 388.


31. Mitchell, *supra* note 20, at 82. This may partially be due to the fact that *Euclid* was decided before the creation of the first model act for planning in 1927. See *Standard City Planning Enabling Act*, *supra* note 16.
before enactment of the GMA, courts following the majority approach consider the plan to be nothing more than a "blueprint" or "guide" for future development, and require only general conformity to it.\textsuperscript{32} Because of \textit{Euclid}, most courts apply the substantial relationship test and the fairly debatable standard, and thus disregard planning in analyzing the validity of land use actions.

\textbf{B. Emphasis on Single-Use Zoning}

Along with the disregard for planning, land use regulation in the United States has clung tenaciously to single-use zoning for the past eighty years. As with planning, the Department of Commerce's model statutes had a large impact on this single-use focus.\textsuperscript{33} The Standard State Zoning Enabling Act, adopted by states across the nation, provides that regulations should be uniform for each class of buildings in a district.\textsuperscript{34} Furthermore, the statute effectively mandates single-use zoning by defining zones as parcels wherein all lots conform to the same requirements of minimum lot size, yard size, and building setback distances from neighboring lot boundaries.\textsuperscript{35} The U.S. Supreme Court

\begin{itemize}
\item[34.] See supra note 16 and accompanying text.
\item[35.] George W. Liebmann, \textit{The Modernization of Zoning: Enabling Act Revision as a Means to Reform}, 23 Urb. Law. 1, 9–10 (1991). The statute, although based upon the German experience, deviated from the German practice of permitting commercial uses in residential zones. While German communities allow commercial uses in residential zones unless they cause objectionable odors or otherwise are noxious, the American method has been the almost total prohibition of commercial uses in residential zones. \textit{Id.} at 9.
\end{itemize}
subsequently voiced its approval of single-use zoning schemes in *Euclid* when it said that the intrusion of industry and apartments into single-family zones almost constitutes a public nuisance.\(^{36}\) This decision allowed local governments to continue using zoning to insulate the homogeneous, single-family suburb from the city.\(^{37}\)

C. Rising Frustration with Traditional Models

The absence of comprehensive planning, coupled with an exclusive focus on single-use zones, has recently come under criticism by land use commentators.\(^{38}\) With regard to comprehensive planning, scholars have noted that without close judicial scrutiny or other incentives for planning, the local zoning system became an irrational and politicized process.\(^{39}\) Because of the judicial deference given, land use decisions are rarely reversed. Having a zoning decision made in one’s favor at the local level is therefore imperative. Critics argue that political favoritism and neighborhood parochialism have rendered growth management extremely difficult in states with population influxes,\(^{40}\) leading to losses of natural resources,\(^{41}\) traffic congestion,\(^{42}\) and a poorer quality of life.\(^{43}\)

Some state courts have addressed the problems of political favoritism and parochialism by applying a standard of review stricter than the fairly


\(^{38}\) Dissatisfaction with judicial avoidance of planning began in the planning and legal literature during the 1950s, exemplified by the eloquent spokesman Charles M. Haar. Siemon, *supra* note 30, at 611 (citing Haar, *supra* note 17, at 1174).

\(^{39}\) Pelham, *supra* note 24, at 246.


\(^{41}\) Gay, *supra* note 2, at 13; see also Bradley C. Karkkainen, *Biodiversity and Land*, 83 Cornell L. Rev. 1, 74–76 (1997) (arguing that federal government is in much better position than states or local governments to conserve biodiversity effectively).

\(^{42}\) See Anthony Downs, *Stuck in Traffic: Coping with Peak-Hour Traffic Congestion* 4, 160 (1992) (arguing that most effective solutions to traffic congestion involve not local but regional planning and control of factors that affect travel patterns, and that voluntary cooperation among various local governments in metropolitan area would be ineffective).

\(^{43}\) The GMA’s legislative findings state in part:

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public’s interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state.

Growth Management Act

debatable standard to certain types of land use actions.44 Most courts that apply this stricter standard treat the rezoning of one parcel as a legislative act.45 Accordingly, they apply the presumption of validity that usually is applied to legislative acts, and will only find the rezoning invalid if the decision was arbitrary and capricious.46 But, a shift in the fairly debatable standard took place in the 1970s and 1980s.47 Fasano v. Board of County Commissioners,48 a landmark Oregon case, established the use of a stricter standard of review for zoning actions involving a specific parcel of property. Adopted in several jurisdictions across the country, the Fasano doctrine holds that individual ordinances applied by local governments to specific situations are analogous to judicial decisions that applied statutes to each unique set of facts.49 Site-specific rezones, therefore, are treated as quasi-judicial and not entitled to the deference that courts accord legislative land use actions under the fairly debatable standard.50

44. Hagman & Juergensmeyer, supra note 15, § 6.4, at 170–72; see Board of County Comm’rs v. Snyder, 627 So. 2d 469 (Fla. 1993); Fasano v. Board of County Comm’rs, 507 P.2d 23 (Or. 1973). But see Martin County v. Yusem, 690 So. 2d 1288, 1293, 1295 (Fla. 1997) (holding that amendments to comprehensive land use plans are legislative decisions subject to fairly debatable standard of review, because such amendments are formulations of policy, rather than applications of policy).
46. Id.
47. Mitchell, supra note 20, at 83.
48. 507 P.2d 23.
50. Mitchell, supra note 20, at 83. The difference between legislative and judicial or quasi-judicial actions has been described as follows:
First, judicial action is narrow in scope, focusing on specific individuals or on specific situations, while legislative action is open-ended, affecting a broad class of individuals or situations . . . .
Secondly, legislative action results in the formulation of a general rule or policy, while judicial action results in the application of a general rule or policy . . . .
Thirdly, it is generally stated that judicial action is retrospective, determining “[t]he rights and duties of parties under existing law and with relation to existing facts . . . .” By contrast, legislative action is said to be prospective, determining “[w]hat the law shall be in future cases.”
The land use regulatory tradition of single-use zoning has also received criticism in recent decades. Commentators have blamed it for causing suburban sprawl, traffic congestion, housing unaffordability, social isolation, and racial segregation. Many, including those in a "neo-traditionalist" land use movement, advocate a shift in residential development from single-use zoning to pedestrian-friendly, mixed-use villages. Additionally, researchers Ann Moudon and Paul Hess at the


52. Arnold W. Reitze, Jr., A Century of Air Pollution Control Law: What's Worked; What's Failed; What Might Work, 21 Envtl. L. 1549, 1571-72 (1991) (finding that Euclidian single-use zoning leads to urban sprawl, which creates cycle of automobile dependence that continues until transportation system dominates land); see also Wickersham, supra note 2, at 494-95; Jessica E. Jay, Note, The "Malling" of Vermont: Can the "Growth Center" Designation Save the Traditional Village From Suburban Sprawl?, 21 Vt. L. Rev. 929, 939-40 (1997) (blaming conventional zoning for causing sprawl development that lacks ambiance, character, and vitality of traditional towns). Researchers have defined suburban sprawl, also called urban sprawl, as low density, homogeneous, single-family residential districts sited at urban fringe of metropolitan areas. Klein, supra note 7, at 453. Commentators have described sprawl as being poorly planned, land consumptive development designed without regard to its surroundings. Robert H. Freilich & Bruce G. Peshoff, The Social Costs of Sprawl, 29 Urb. Law. 183, 185 (1997).

53. Robert Cervero, Jobs-Housing Balancing and Regional Mobility, 55 J. Am. Plan. Ass'n 136, 145 (1989); see also Jacobs, supra note 51, at 229-30. Eighty-six percent of all trips taken by Americans are by car, compared with 30-48% of trips taken by Europeans. Calthorpe, supra note 7, at 47.

54. Freilich & Peshoff, supra note 52, at 191 (attributing housing unaffordability to suburban sprawl).

55. See Andres Duany & Elizabeth Plater-Zyberk, The Second Coming of the Small Town, Utne Reader, May/June 1992, at 93, 97; Jay, supra note 52, at 943.

56. Wickersham, supra note 2, at 496; see also Kenneth T. Jackson, Crabgrass Frontier: The Suburbanization of the United States 242 (1985) (describing how, in suburbs everywhere, zoning was used by people who already lived in community to keep everyone else out, rigidly excluding apartments, factories, and “blight,” which were euphemisms for African Americans and poor people); Jerry Frug, The Geography of Community, 48 Stan. L. Rev. 1047, 1047-48 (1996).

57. The neo-traditionalist concept, also called new urbanism, gained popularity in the early 1990s. It proposes a return to neighborhood forms that existed in traditional American towns, including mixed-use town centers, small block sizes, alley access, and a grid of local street connections. See Calthorpe, supra note 7, at 21, 49. However, the traffic reduction benefits of the grid system have been shown to be minimal. New urbanism’s more promising components are the interspersing of multi-family housing into single-family zones and the placement of two to four stories of apartments above ground level shops. Interview with Ronald Kasprisin, Associate Professor, University of Washington School of Urban Design and Planning, Seattle, Wash. (Feb. 11, 1998).

58. Such villages would be the American version of the walkable European village where housing surrounds neighborhood centers comprised of grocery stores, cafes, and places for recreation. See Neal Peirce & Curtis W. Johnson, A Way to Wed Conservation to Development, Seattle Times/Seattle Post-Intelligencer, Oct. 8, 1989, at A4 (advocating building of European-style
University of Washington have discovered that compact suburban neighborhoods with their own commercial centers are becoming a common neighborhood form in the Puget Sound region of Washington.\textsuperscript{59} Called suburban clusters, ten to twenty of these communities may be emerging every decade outside the region's cities, according to the researchers.\textsuperscript{60} These clusters are not usually transit- or pedestrian-friendly when they are constructed, but planners believe that they already shorten vehicle trip distances and that with some investment, they have potential for significantly reducing the region's traffic woes.\textsuperscript{61}

II. THE GMA: WASHINGTON'S DEPARTURE FROM LAND USE LEGAL TRADITIONS

The Growth Management Act (GMA) marks Washington State's repudiation of its longstanding aversion to planning mandates and mixed-use zoning. The Act directs certain local governments to create comprehensive plans and make their zoning ordinances consistent with those plans.\textsuperscript{62} In addition, the Act encourages local governments to mingle commercial and residential uses.\textsuperscript{63} Finally, the GMA departs from previous common law doctrine by defining the grant of a planned unit development (PUD) permit as a project permitting decision rather than a rezone. Pre-GMA common law considered a PUD permit to be a rezone.\textsuperscript{64}

A. Comprehensive Planning

1. The Planning Requirement

The GMA mandates a departure from the traditional anti-planning tendencies of land use law by requiring specified counties to create


\textsuperscript{60} Id.

\textsuperscript{61} Id.


\textsuperscript{63} See infra notes 92, 97, 100 and accompanying text.

\textsuperscript{64} See, e.g., Lutz v. City of Longview, 83 Wash. 2d 566, 568–69, 520 P.2d 1374, 1376 (1974).
comprehensive plans. Broadly defined, the comprehensive plan is a policy guide to a local government’s decisions over its community’s physical development. Local government planners create comprehensive plans after lengthy research into community growth patterns, infrastructure needs, employment and population forecasts, and public opinion. The plan lays out the projected development of the community within a certain timeline, such as six or more years. Commentators have described comprehensive plans as the GMA’s “central nervous system” with a “potency previously unknown in Washington.”

2. The Consistency Requirement

Post-GMA comprehensive plans derive their substantive power from the GMA’s consistency requirement. This requirement obligates local governments to make development regulations consistent with the comprehensive plan. Development regulations, including zoning ordinances, are defined in the Act as controls placed on land use activities. Although not every county in Washington is required to

67. Id. at 27.
69. Settle & Gavigan, supra note 2, at 915; see also City of Snoqualmie v. King County, No. 92-3-0004, 1993 WL 839711, at *11 (Wash. Central Puget Sound Growth Plan. Hrgs. Bd. Mar. 1, 1993) (describing how GMA plans are different from pre-GMA plans in that GMA creates new and critical connection between plans, which are policy decisions, and development regulations, which implement policy decisions).
create a comprehensive plan, consistency is mandated for all municipalities that have such plans.\footnote{Wash. Rev. Code §§ 35.63.125, 35A.63.105, & 36.70.545 (1998). Ten counties in the state currently are not required to plan under the GMA because they do not meet population and growth-rate thresholds. The 29 counties planning under the GMA now contain approximately 94\% of the state's population. Settle & Gavigan, \textit{supra} note 2, at 872. The 29 counties are Benton, Chelan, Clallam, Clark, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Snohomish, Spokane, Stevens, Thurston, Walla Walla, Whatcom, and Yakima. \textit{Id.} at 872 n.24.}

3. \textit{The Foundation for Permitting}

In addition, the GMA states that fundamental land use choices made in comprehensive plans and development regulations shall serve as the foundation for individual permitting decisions;\footnote{Wash. Rev. Code § 36.70B.030(1) (1998).} but, it is not clear whether plans alone may be the basis for permitting decisions. The statute does not explicitly dictate a procedure for making permit decisions beyond requiring the consideration of fundamental land use choices.\footnote{Wash. Rev. Code § 36.70B.030(I).} This ambiguity leaves open the question of whether a local government can base a permitting decision on its comprehensive plan alone, or whether it must base the decision on a development regulation such as a zoning ordinance. The statute's language seems to direct local governments first to their development regulations, stating that a local government shall base permitting decisions upon the project's consistency with applicable development regulations.\footnote{Wash. Rev. Code § 36.70B.030(1).} But, the section goes on to say that "in the absence of applicable regulations," consistency with the comprehensive plan shall be the foundation of project review.\footnote{Wash. Rev. Code § 36.70B.030(1).} The phrase "or, in the absence of applicable regulations the adopted comprehensive plan" appears twice in this section, as does a reference to regulations "or" plans.\footnote{Wash. Rev. Code § 36.70B.030(l) & (2) (1998). RCW 36.70B.030(2) states:}

\begin{quote}
During project review, a local government . . . shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the [following three things] . . . .
\end{quote}

\footnote{Wash. Rev. Code § 36.70B.030(2).}
therefore ambiguous as to when and if local governments can use their comprehensive plan alone as the basis for permit decisions.

The statute's language in other sections and legislative history are also pertinent to the question. The GMA defines "project permits" as including "site-specific rezones authorized by a comprehensive plan." But, it is not clear whether this means site-specific rezones that are authorized solely by a plan. Finally, the legislative history's statement of intent consistently refers to both comprehensive plans and development regulations when discussing what shall be the foundation for permitting decisions.

Another aspect of the GMA that may affect the issue is the statute's bottom-up regulatory approach. The Central Puget Sound Growth Hearings Board and legal commentators maintain that a major goal of the GMA is to preserve local control over local land use decisions, and that the state's role is limited to enforcement and support. In fact, the GMA chapter governing project review explicitly states that nothing in that section

79. The legislative findings state: "If the applicable regulations or plans identify [the following, then] . . . these decisions at a minimum provide the foundation for further project review." 1995 Wash. Laws, ch. 347, § 403, finding 1 (emphasis added). "Consistency should be determined in the project review process by considering four factors found in applicable regulations or plans . . . ." Ch. 347, § 403, finding 3 (emphasis added). "Given the hundreds of jurisdictions and agencies in the state and the numerous communities and applicants affected by development regulations and comprehensive plans adopted under [the GMA], it is essential to establish a uniform framework for considering the consistency of a proposed project with the applicable regulations or plan." Ch. 347, § 403, finding 3 (emphasis added).
80. States with growth management statutes use either a "bottom-up" or "top-down" approach to their state-wide management of growth. See Settle & Gavigan, supra note 2, at 898; Hong N. Huynh, Comment, Administrative Forces in Oregon's Land Use Planning and Washington's Growth Management, 12 J. Envtl. L. & Litig. 115, 115 (1997). Bottom-up statutes endeavor to preserve local governments' autonomy in land-use regulation, whereas top-down statutes impose more state control. Washington is one such "bottom-up" state, placing the central locus of decision-making at the local level. Wash. Admin. Code § 365-195-010 (1998); see Wash. Rev. Code §§ 36.70A.040(3), .040(4), & .120 (1998); see also Settle & Gavigan, supra note 2, at 922 (stating that GMA conferred new local authority on counties and cities).
81. City of Snoqualmie v. King County, No. 92-3-0004, 1993 WL 839711, at *13 (Wash. Central Puget Sound Growth Plan. Hrgs. Bd. Mar. 1, 1993) ("[E]ven with the hierarchy . . . the GMA generally, and the CPPs specifically, are premised on local government control. It is still local governments (cities and counties) not regional or state government, that are invested with the authority and responsibility to . . . prepare, adopt and implement comprehensive plans and development regulations.").
82. See supra note 80.
dictates an agency’s procedures for considering consistency between a project and the comprehensive plan or development regulations.\textsuperscript{83} Despite the GMA’s repeated reference to plans in conjunction with regulations during permit review, as well as its emphasis on local control of the permitting process, decisions of the Central Puget Sound Board indicate that the GMA does not contemplate the use of comprehensive plans alone as the foundation for permitting decisions. The Board has characterized the GMA as creating a cascading hierarchy of substantive and directive policy among the statute’s decisionmaking documents.\textsuperscript{84} In \textit{City of Snoqualmie v. King County},\textsuperscript{85} the Central Puget Sound Board held that power flows first from county-wide planning policies (CPPs)\textsuperscript{86} to comprehensive plans, which provide substantive direction to the content of development regulations.\textsuperscript{87} These in turn govern the exercise of local land use powers “including zoning, permitting, and enforcement.”\textsuperscript{88} The Central Puget Sound Board held that CPPs do not, however, provide substantive direction to a county’s development regulations, which are two levels down on the hierarchy.\textsuperscript{89} Using this reasoning, the Central Puget Sound Board may not allow comprehensive plans to provide the sole substantive direction to permitting decisions, which are also two levels down on the hierarchy.

\textbf{B. The GMA Encourages Mixed-Use Zoning}

Although the emergence of suburban clusters is a recent phenomenon in Washington, when the Washington Legislature passed the Growth Management Act, it recognized that communities require a variety of

\begin{itemize}
  \item \textsuperscript{83} Wash. Rev. Code § 36.70B.040(4) (1998) (“Nothing in this section requires documentation, dictates an agency’s procedures for considering consistency, or limits a city or county from asking more specific or related questions with respect to any of the four main categories listed in . . . this section.”).
  \item \textsuperscript{85} 1993 WL839711.
  \item \textsuperscript{86} CPPs are regional planning agreements made between a county and the cities within it, and between neighboring counties, that coordinate their comprehensive plans. \textit{See} Wash. Rev. Code § 36.70A.210 (1998).
  \item \textsuperscript{87} \textit{Snoqualmie}, 1993 WL 839711, at *13.
  \item \textsuperscript{88} Id.
  \item \textsuperscript{89} Id.
\end{itemize}
uses to be liveable. 90 One of the thirteen planning goals of the GMA is to reduce sprawling, low-density development. 91 To this end, an entire chapter of the GMA is devoted to encouraging municipalities to build more residential units in "urban centers." 92 Also, a key component of the act is the concept of urban growth areas (UGAs). 93 The act requires that all counties designate boundaries of UGAs within their jurisdictions and that they restrict their projected twenty-year population growth to these UGAs, protecting rural land from urban encroachment. 94 Within UGAs, counties and cities must permit mixed-uses and higher building densities. 95 In other sections, the GMA encourages placing commercial uses and higher-density housing types in single-family residential zones. It directs local governments to make provisions for placing accessory apartments in single-family zones, 96 and it states that comprehensive plans should provide for "innovative land use management techniques" including planned unit developments. 97

The term "planned unit development" (PUD) refers to a large, single-tract development of mixed-uses that a developer builds as a single coordinated development. 98 As one commentator remarked, in contrast to traditional zoning, which segregates uses, the PUD mixes uses to provide services, a wider variety of housing choices, and neighborhood recreational amenities. 99 Along with its encouragement for PUDs, the


93. Wash. Rev. Code § 36.70A.110 (1998); see Settle & Gavigan, supra note 2, at 872-83.

94. Wash. Rev. Code § 36.70A.110; see Settle & Gavigan, supra note 2, at 911-12.


99. Id. at 550 (citing Hanke, Planned Unit Development and Land Use Intensity, 114 U. Pa. L. Rev. 15, 19 (1965)). Another commentator has defined PUDs as districts in which a planned mix of residential, commercial, and even industrial uses is allowed for the purpose of using the land.
GMA establishes criteria for counties to authorize "fully contained communities" outside urban growth areas, including the requirement for those communities to be transit-oriented and to have a mix of uses that offer jobs, housing, and services to the residents. Finally, the Central Puget Sound Board has stated that urban villages, which are mixed-use zones like PUDs, are one of the strategies contemplated by the GMA's section on innovative land use management techniques.

C. Clarification of the Planned Unit Development Concept

The GMA instituted another more minor change to previous common law by defining the grant of a PUD permit as a permitting decision rather than an amendment to the zoning ordinance (or a "rezone"). The difference under the GMA is important because courts applying the Act could interpret the statute to impose constraints on permitting decisions that are different from those it imposes on rezones. In the past, Washington courts considered PUDs to be rezones because, like conventional rezoning, PUDs alter the uses permitted on a tract of land. But, two sections of the GMA alter the common law conception. First, the Act defines project permits as including PUDs. Second, it defines "development regulations" as including zoning ordinances but excluding decisions to grant project permit applications. Thus, the


101. West Seattle Defense Fund v. City of Seattle, No. 94-3-0016, 1995 WL 911770, at *13 (Wash. Central Puget Sound Growth Mgmt. Hrgs. Bd. Apr. 4, 1995) (discussing Wash. Rev. Code § 36.70A.090). Seattle's comprehensive plan discusses how some urban villages are types of mixed-use housing developments that allow either direct access to jobs and commercial areas or access via transit. The plan states that urban villages are sometimes intended to transform automobile-oriented environments into more cohesive, mixed-use pedestrian environments. Id. at *4.


103. The GMA's different treatment, if any, between permitting decisions and rezones is an issue that has not been addressed yet in judicial decisions. See supra Part II.A.3.


GMA considers PUDs to be permitting decisions, not development regulations or rezones.

III. CIVIZENS FOR MOUNT VERNON v. CITY OF MOUNT VERNON

In Mount Vernon, the Supreme Court of Washington held that zoning trumps conflicting comprehensive plans. The city granted a PUD permit to a developer to build a residential development with a grocery store and other commercial space on nine of the development's forty acres. The PUD conflicted with the site's residential zoning designation but was possibly consistent with the city's comprehensive plan, which allowed neighborhood community retail in the area. The court invalidated the city’s permit approval, holding that “conflicts between a general comprehensive plan and a specific zoning code [will] be resolved in the zoning code’s favor.”

A. Facts and Procedural History

In 1995, a developer requested a permit from the City of Mount Vernon to build a planned unit development that consisted mainly of housing but included a grocery store and other commercial space. The proposed site was a forty-acre plot of unincorporated land surrounded by city land. The facts of the case are somewhat complicated because two different sets of land use designations were attached to the site before the application process. First, the forty acres were zoned for

108. Id. at 863–64, 947 P.2d at 1210.
109. Id. at 874, 947 P.2d at 1215.
110. The court did not answer the question of whether the permit was consistent with the comprehensive plan. It only said that “e[ven] if the Haggen commercial PUD generally conformed to the comprehensive plan, the proposal directly conflicts with the underlying R-2A zoning regulations.” Id. at 876–77, 947 P.2d at 1216. The lower court had held that the project conflicted even with the comprehensive plan, but the Supreme Court of Washington did not adopt the lower court’s reasoning for this holding. Id. at 865, 947 P.2d at 1211. Also, the opponents of the PUD claimed it was not a “neighborhood grocery store.” Id. at 870, 947 P.2d at 1213.
111. Id. at 865, 947 P.2d at 1210.
112. Id. at 863, 947 P.2d at 1210.
113. Unincorporated land is outside the boundaries of a municipal corporation such as a town or a city, and is therefore not subject to the jurisdiction of the municipal corporation. See Hagman & Juergensmeyer, supra note 15, § 21.1, at 628, and § 21.2, at 632.
114. Mount Vernon, 133 Wash. 2d at 863–64, 947 P.2d at 1210.
commercial use under the *county* zoning ordinance.\(^{115}\) Second, the *city's* comprehensive plan designated the forty acres and the surrounding land as appropriate for residential uses, but also as having a "future potential need for Neighborhood Community Retail."\(^{116}\) The City had adopted a comprehensive plan pursuant to the GMA before the developer applied for the development permits,\(^{117}\) but carried over its existing zoning code rather than updating the code to conform to its new comprehensive plan.\(^{118}\)

When the developer applied for the permits to build the development, he requested three things. He requested first that the forty acres be annexed into the city\(^ {119}\) and second that they be rezoned to residential.\(^ {120}\) The developer further requested approval of a commercial PUD to overlay the entire site, in order to build a grocery store and other commercial uses on nine of the forty acres.\(^ {121}\) It is not clear why the developer sought a rezone to residential because, as the court later discussed, commercial uses were not allowed in residential districts under the city's zoning code.\(^ {122}\) It is also not clear from the opinion whether residential uses would have been allowed in a commercial zone under the city's zoning code. One may speculate, therefore, that because the City had not updated its zoning code to conform to its comprehensive plan,\(^ {123}\) a city zoning designation flexible enough to allow the "neighborhood community retail" contemplated by the comprehensive plan for the area did not exist. The court's opinion does not specifically address whether this was the case or not. However, it is clear that the prior county zoning designation of the site was commercial,\(^ {124}\) and the developer may have requested a rezone to residential because a significant portion of his proposed development was residential.

\(^{115}\) *Id.* at 864, 947 P.2d at 1210.

\(^{116}\) *Id.*

\(^{117}\) *Id.* at 863, 947 P.2d at 1210.

\(^{118}\) *Id.* at 863-64, 873, 947 P.2d at 1210, 1214 (stating that before development request, Mount Vernon City Council adopted new comprehensive plan for city under GMA but at this time council "had not yet adopted specific development regulations as required by RCW 36.70A.040. Mount Vernon did have an existing zoning code.").

\(^{119}\) Annexation is the process by which a municipal corporation, such as a town or a city, brings unincorporated land into its jurisdiction, thus making that land part of the town or city. See Hagman & Juergensmeyer, supra note 15, § 21.13, at 683.

\(^{120}\) *Mount Vernon*, 133 Wash. 2d at 863, 947 P.2d at 1210.

\(^{121}\) *Id.* at 863, 947 P.2d at 1210.

\(^{122}\) *Id.* at 872, 947 P.2d at 1214.

\(^{123}\) See *id.* at 863—64, 873, 947 P.2d at 1210, 1214.

\(^{124}\) *Id.* at 864, 947 P.2d at 1210.
The city council voted first to approve the annexation of the forty acres into the city of Mount Vernon and rezone the site to single-family residential. It subsequently approved the commercial PUD. Some community residents opposed this decision, however, and petitioned the superior court to reverse the city’s approval of the PUD. The superior court did so, holding that a grocery store and other commercial uses were not permitted in the residential zone. The superior court reasoned that the PUD was inconsistent with existing zoning regulations and the comprehensive plan failed to provide specific standards for making permitting decisions. The developer appealed directly to the Supreme Court of Washington, which accepted review.

B. The Supreme Court of Washington’s Analysis

The Supreme Court of Washington upheld the superior court’s decision and invalidated the City’s action based on pre-GMA common law notions. First, the court found that although the comprehensive plan would have allowed the commercial uses, the zoning ordinance trumps the plan when the two conflict. Second, the court concluded that the single-family residential zoning designation of the site did not permit the commercial uses in the PUD, absent a showing of changed circumstances.

The court first addressed the developer’s argument that the comprehensive plan alone was a sufficient basis for the city’s approval of the PUD. The developer cited the GMA’s language stating that decisions to grant project permits can be based on comprehensive plans in the absence of applicable development regulations. In this case, the residential zoning designation of the site did not allow neighborhood community retail, but the comprehensive plan established that the area needed it. The developer argued that the plan was appropriately the basis

125. Id. at 865, 947 P.2d at 1210.
126. Id.
127. Id. The land use petition is the process under the GMA that allows citizens to seek judicial review of local land use decisions. This process replaces the writ system. See Land Use Petition Act, Wash. Rev. Code § 36.70C.030 (1998).
128. Mount Vernon, 133 Wash. 2d at 865, 947 P.2d at 1210–11.
129. Id.
130. Id. at 873, 947 P.2d at 1215.
131. Id. at 877, 947 P.2d at 1216.
132. Id. at 873, 947 P.2d at 1214.
of the permitting decision. The court conceded that the GMA’s language suggested a comprehensive plan alone could be used to make a specific land use decision, but then said that case law holds otherwise.

The court stated that a comprehensive plan is not designed for making specific land use decisions. It then repeated the pre-GMA legal mantra that a comprehensive plan is a guide or blueprint for land use decisions and strict adherence to it is not required. Relying on another pre-GMA case, the court also noted that a zoning ordinance will prevail over an inconsistent comprehensive plan.

The court then addressed the developer’s argument that the grant of the PUD was a rezone, and that the city’s comprehensive plan mandated rezoning as part of the PUD process. The developer claimed that the fact that the PUD was a rezone made the underlying zoning designation immaterial to the city’s decision to grant the PUD permit. The court agreed that under common law doctrine, the legal effect of approving a PUD is an act of rezoning. It applied the common law rules governing rezoning but did not investigate whether those rules still apply after the GMA. The court held that the city’s decision failed the common law requirements for constitutional rezoning actions. It stated that the grant of the commercial PUD permit in a residential zone was not valid because the area had not changed in circumstances since the original zoning. The PUD decision represented spot zoning, according to the

---

133. Id. at 872–73, 947 P.2d at 1214.
134. Id. at 873, 947 P.2d at 1214.
135. Id. at 873, 947 P.2d at 1214–15 (citing Barrie v. Kitsap County, 93 Wash. 2d 843, 613 P.2d 1148 (1980)).
137. Id., 947 P.2d at 1215 (citing Cougar Mountain Assocs. v. King County, 111 Wash. 2d 742, 757, 765 P.2d 264, 272 (1988)).
138. Id. at 874, 947 P.2d at 1215.
139. Id.
140. Id.
141. Id. at 875, 947 P.2d at 1215.
142. Id. at 874–75, 877, 947 P.2d at 1215–16.
143. Id. at 877, 947 P.2d at 1216. A showing of changed circumstances is one of the traditional requirements for valid rezoning. Parkridge v. City of Seattle, 89 Wash. 2d 454, 462, 573 P.2d 359, 364 (1978).
144. Spot zoning is a common law concept that refers to illegal rezoning. It occurs when a rezone is done at the behest of a private interest and bears no rational relationship to the public welfare. A court will find spot zoning if a relatively small area is rezoned for a use totally different from or inconsistent with the surrounding zoning. Lutz v. City of Longview, 83 Wash. 2d 566, 573–74, 520 P.2d 1374, 1379 (1980).
court, because the commercial use the developer proposed was inconsistent with, and distinctly different from, the surrounding neighborhood zoning of residential use.145

IV. MOUNT VERNON INAPPROPRIATELY RELIED ON PRE-GMA LEGAL RULES

The court’s reliance on anachronistic common law in Mount Vernon undermined the GMA’s modern approach. The court’s decision reflects land use law’s traditional disregard for comprehensive planning and its focus on single-use zoning, both of which are antiquated notions under the GMA.146 The facts and issues raised by the parties in Mount Vernon provided a missed opportunity to clarify whether comprehensive plans alone can serve as the basis of permitting decisions when zoning ordinances are deficient. In future cases the court should consider bifurcating the judicial standard of review for land use actions into general and specific land use decisions.

A. The Court Erroneously Displayed the Traditional Aversion to Mixed-Use Zoning

The court’s decision in Mount Vernon failed to acknowledge the GMA’s preference for mixed-use zoning and innovative land-use techniques, such as planned unit developments, to manage growth.147 PUDs reduce automobile trip distances and conserve open space by putting retail services closer to the homeowners who use them.148 The GMA’s statement that local governments “should” rather than “can” provide for such techniques underscores the GMA’s preference for innovative techniques.149 Although regrettable, the court’s insistence on keeping commercial uses out of an area zoned for single-family residential

145. Mount Vernon, 133 Wash. 2d at 876, 947 P.2d at 1216. The court cited an earlier Supreme Court of Washington case, Lutz, in support of its definition of spot zoning. However, the court in Mount Vernon did not mention that the Lutz definition of spot zoning entailed rezones that were inconsistent with a comprehensive plan. The rezone in Mount Vernon was consistent with the plan. See Lutz, 83 Wash. 2d at 573–74, 520 P.2d at 1379 (“Spot zoning has come to mean arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area . . . and [is] not in accordance with the comprehensive plan.”) (citation omitted).

146. See discussion supra Part I.A–B.

147. See supra note 97 and accompanying text.

148. See supra note 99 and accompanying text.

housing is understandable because it reflects land use law's eighty-year-old homogeneous zoning standard. But, this standard is a bane on society under present conditions of traffic gridlock and disappearing natural resource lands. The planned unit development in Mount Vernon was the type of mixed-use development the GMA encourages; it would have created a suburban village where residents would not have had to drive far, if at all, to get groceries and necessary services.

B. The Court Relied on Outdated Case Law and Failed to Reconcile the Comprehensive Plan and Development Regulations

The Mount Vernon decision also inappropriately invoked outdated legal standards to conclude that zoning trumps inconsistent comprehensive plans. The court's reliance on the common law precept that the plan is only advisory ignored the fact that the GMA reversed the relationship between comprehensive plans and development regulations, such that plans now trump zoning ordinances when the two conflict. The court should have devised a solution that honored the comprehensive plan's replacement of the zoning ordinance as the substantive document of local land use regulation.

The erroneous use of pre-GMA case law allowed the court to avoid remedying the fact that the city had not updated its zoning code to be consistent with its comprehensive plan. The court's use of pre-GMA case law channeled its attention to the PUD permit's inconsistency with the zoning code. Under the GMA, however, its focus should have been on the zoning code's inconsistency with the comprehensive plan. If the court had applied the correct focus, it would have addressed the illegal inconsistency between Mount Vernon's comprehensive plan and its zoning ordinance. The city's zoning ordinance did not permit neighborhood community retail at the site of the proposed development, while the comprehensive plan allowed it. Unless courts enforce remedies for inconsistency, the strength of a statutory consistency

---

150. Mount Vernon, 133 Wash. 2d at 876, 947 P.2d at 1216.
151. See supra Part I.B.
152. See supra notes 40—43 and accompanying text.
153. Dearborn, supra note 7.
154. See supra notes 16—19, 32, 69—72 and accompanying text.
155. See supra notes 121—28 and accompanying text.
requirement is severely curtailed. In other states, judicial remedies for inconsistency between the plan and the zoning code include invalidating the zoning ordinance, enjoining the issuance of building permits, reprimanding the local government, and setting aside a subdivision approval until an adequate comprehensive plan has been adopted. An appropriate remedy in Mount Vernon would have been to enjoin this particular PUD permit until the City updated its zoning code. Alternatively, the court could have placed a moratorium on development permits generally until the City updated its zoning code to be consistent with its comprehensive plan.

C. The Court Should Have Clarified Whether Comprehensive Plans Can Serve as the Exclusive Foundation of Permitting Decisions

1. The Court’s Failure to Clarify Represents a Missed Opportunity

The court focused on pre-GMA case law, avoiding whether the GMA, as opposed to Washington case law, allows a local government to grant a project permit based on its comprehensive plan alone. The court stated that the GMA suggests that a comprehensive plan can be used to make a specific land use decision; but, the court used prior case law rather than the statute itself to resolve the issue. The GMA states that the foundation for project permit decisions shall be development regulations, or in the absence of applicable regulations, a locality’s comprehensive plan. The developer argued that this section made the city’s grant of the PUD permit valid because the PUD permit was consistent with the


157. See Manley v. Maysville, 528 S.W.2d 726, 278 (Ky. 1975).

158. DiMento, supra note 156, at 24.

159. Id.

160. Id.

161. The weakness of this remedy would be the significant delay it would cause for all land owners wishing to develop, but it would effectively motivate the City to act quickly in updating its zoning ordinance.


163. See id. at 873, 947 P.2d at 1214–15.

164. See supra notes 75–76 and accompanying text.
comprehensive plan. The court disagreed, finding that prior case law had established that comprehensive plans generally do not serve as a basis for individual permitting decisions.

The court should have based its decision on the governing statute, not prior case law, because the GMA changed the equation significantly. Before the GMA, local governments perhaps should not have based their specific land use decisions on comprehensive plans because those plans were not substantive documents. Modern GMA plans, however, are substantive, sophisticated, and regulated by state law more than any previous comprehensive plans. This reduces the danger that permitting decisions based on plans alone would be arbitrary and capricious because of a lack of specific directives. Furthermore, GMA zoning ordinances are not policy documents. Their purpose, rather, is to effectuate the policies of comprehensive plans. Consistency with a comprehensive plan should be the ultimate test of any local government’s action, whether specific or general in nature, because the GMA requires consistency. The GMA changed the legal landscape, making the old common law rules irrelevant to the question of whether comprehensive plans alone can serve as the basis for permitting decisions.

2. The GMA Indicates that Comprehensive Plans Can Be the Exclusive Basis for Some Permitting Decisions

Several features of the GMA suggest that comprehensive plans can be the exclusive foundation of some permitting decisions. First, the GMA uses a bottom-up approach, whereby the central locus of decisionmaking is at the local level. Drafters of the GMA may have intentionally left out explicit direction in the matter to preserve local governments’ control over their own methods of permit decisionmaking. A major theme of the GMA is local control of land use decisions. Notably, the GMA chapter governing project review explicitly states that nothing in that section dictates an agency’s procedures for considering consistency between a

---

166. Id. at 873, 947 P.2d at 1214.
167. See Settle, supra note 17, § 1.5, at 8.
168. See supra notes 69–72 and accompanying text; see also Settle & Gavigan, supra note 2, at 873.
169. See supra notes 70–72 and accompanying text.
170. See supra notes 80–83 and accompanying text.
171. See supra notes 80–83 and accompanying text.
project and the comprehensive plan or development regulations.\textsuperscript{172} This suggests that the GMA intends local governments to have discretion in creating their own permitting process, as long as their decisions are consistent with their comprehensive plan in the end.

Second, aspects of the GMA's language and its legislative history suggest that plans can serve as the sole foundation of project review in certain circumstances. The Act's chapter on project review consistently refers to comprehensive plans "in the absence of applicable regulations" when it discusses the foundations for project review.\textsuperscript{173} The legislative history's statement of intent also consistently refers to "regulations or plans" in discussing what local governments should consider when reviewing projects.\textsuperscript{174} The fact that the drafters of the GMA linked plans with regulations throughout the chapter suggests that permit decisions can be based on plans or regulations and that the statute leaves the final choice to the local government. In another section, the GMA defines "project permits" as including "site-specific rezones authorized by a comprehensive plan."\textsuperscript{175} Developers frequently apply for a rezone if they want to build a development that current zoning does not allow.\textsuperscript{176} Such requests are therefore site-specific rezones. As with PUDs, the GMA defines project permits as including site-specific rezones but not development regulations.\textsuperscript{177} Both definitions suggest an intent to establish some kind of hierarchy between specific and general decisions at the local level. Finally, the phrase "authorized by a comprehensive plan" leaves open the possibility that within this hierarchy, some types of permit decisions can be based on the comprehensive plan alone.

\begin{footnotes}
\textsuperscript{172} Wash. Rev. Code § 36.70B.040(4) (1998) ("Nothing in this section requires documentation, dictates an agency's procedures for considering consistency, or limits a city or county from asking more specific or related questions with respect to any of the four main categories listed in . . . this section.").

\textsuperscript{173} See supra note 79.

\textsuperscript{174} See supra note 79.


\textsuperscript{176} See The Practice of Local Government Planning 258 (Frank S. So & Judith Getzels eds., 2d ed. 1988) (stating that zoning law is different from all other areas of American administrative law in that requests for amendments to the law are so frequent that there are specific application forms and fee schedules for rezoning requests).

\textsuperscript{177} Wash. Rev. Code § 36.70B.020(4).
\end{footnotes}
D. Local Governments Should Be Able to Issue PUD Permits Based on the Comprehensive Plan

Some site-specific decisions at the local level by nature require using the comprehensive plan as the sole foundation for the decision. Planned unit developments, for example, are by definition inconsistent with prior zoning.\textsuperscript{178} PUDs change the uses allowed on a parcel from what the original zoning permitted.\textsuperscript{179} A decision to grant a PUD permit will therefore never be consistent with applicable development regulations, and must be based on the comprehensive plan’s designation for the area. Any site-specific rezone in which a developer has approached the local government requesting the rezone would fall into this same category. The GMA seems to have contemplated this situation when it defined both PUDs and site-specific rezones to be project permits rather than development regulations.\textsuperscript{180}

E. The Court Should Adopt a Stricter Standard of Judicial Review for Site-Specific Decisions

To address the court’s concerns that the plan is too general to be used for specific land use decisions, the court should bifurcate the judicial standard of review as between general and specific land use actions, as other state courts have done.\textsuperscript{181} To prevent political favoritism, the court should apply a strict scrutiny standard to permitting decisions and rezones initiated by a landowner, while according the looser, fairly debatable standard to all other rezones. This bifurcation would preserve the authority of the comprehensive plan and would also preserve local control over the permitting process. Finally, it would address the court’s concerns that the plan is too general to be used for specific land use decisions.\textsuperscript{182} Local governments subject to a strict scrutiny standard of review would be much more hesitant to issue a permit unless there existed a strong foundation upon which to defend the decision.

\begin{itemize}
\item \textsuperscript{178} See supra note 104 and accompanying text.
\item \textsuperscript{179} See supra note 104 and accompanying text.
\item Wash. Rev. Code § 36.70B.020(4).
\item \textsuperscript{181} See supra notes 44–50 and accompanying text.
\end{itemize}
V. CONCLUSION

The court’s major mistake in *Mount Vernon* was its failure to recognize the new preeminence of the comprehensive plan. The GMA comprehensive plan replaces the old comprehensive zoning ordinance as the principal tool of land use regulation. The court also echoed the eighty-year-old American aversion to mixed-use zoning when it invalidated a permit for what essentially would have been a suburban village. The state enacted the GMA to counteract growth-related problems such as traffic congestion and loss of natural resource lands. Suburban villages are one of the innovative regulatory tools that use land more efficiently and help reduce automobile trips.

The court’s reasoning in *Mount Vernon* probably will not appear again, however. It has been almost ten years since the passage of the GMA. Since its 1997 decision in *Mount Vernon*, the court undoubtedly has become more informed of the GMA’s departure from seventy years of single-use zoning and disregard for planning.\(^{183}\) For Washington State, therefore, *Mount Vernon* may represent the end of an era.

---

183. The outcome in *Mount Vernon* may merely be due to the court’s lack of experience with the GMA, and with time, common law will catch up to the reforms made by the statute. An analogous, although non-judicial, situation occurred with Oregon’s Comprehensive Growth Management System. It took 12 years for the state’s local governments to implement it fully, but it is now working well and is supported by the public. See John M. DeGrove & Nancy E. Stroud, *New Developments and Future Trends in Local Government Comprehensive Planning*, 17 Stetson L. Rev. 573, 574 (1988).