

**Summary of Recent Cases
Before Washington’s Growth
Management Hearings Boards
July 1, 2003 – December 31, 2003**

This is the first in a series of reports summarizing a few significant hearings board decisions released over a six-month period of time that hold some significant implications.

This is not a review of a complete list of the cases, nor does it constitute a legal opinion. For more information, consult the cases directly, or consult your legal counsel.

People for a Livable Community (PLC) et al, v. Jefferson County; WWGMHB Case 03-2-0009c, August 22, 2003.....1

Irondale Community Action Neighbors v. Jefferson County, WWGMHB Case 03-2-0010, August 22, 2003.....2

King County & City of Renton, Intervenor v. Snohomish County & City of Edmonds, Intervenor; CPSGMHB Case 03-3-0011, October 13, 2003.3

People for a Livable Community (PLC) et al, v. Jefferson County; WWGMHB Case 03-2-0009c, August 22, 2003.

Factual and Procedural Background

Petitioners challenged Jefferson County comprehensive plan amendments related to two industrial limited areas of more intense rural development (LAMIRDs) near Port Townsend. The area includes areas characterized by urban development including light and heavy industry, as well as some residential property.

In the 1998 comprehensive plan, this area was designated as an interim LAMIRD with a very conservative logical outer boundary, which the county committed to reviewing at a future date. Following an extensive process, the county adopted final LAMIRD boundaries.

Two parties challenged this action; one (Lindsey) claiming the county erred by not including their property. The other (PLC) contended that the LAMIRD was too large.

Urban Growth Area

PLC challenged the county’s action asserting that Glen Cove should have been included in the Port Townsend urban growth area (UGA). The board relied on several cases and concluded, “the fact that an area is already characterized by urban growth does not require that it be included in a UGA.”

No provisions existed to ensure the orderly transition of governance for the area. The county worked extensively with the city of Port Townsend. The city did not wish the area to be in their UGA. The record did not show a need for additional industrial land. The board therefore ruled that the county acted properly in leaving the area outside of the Port Townsend UGA.

Glen Cove Logical Outer Boundary

Petitioner Lindsay challenged the county’s decision to exclude a 176-acre area, including his property, from the Glen Cove LAMIRD. The record showed that this area contained no above or below ground improvements on July 1, 1990. The county has a duty to minimize and contain LAMIRDs within a logical outer boundary delimited predominantly by the built environment. The board thus concluded that the boundaries established were not clearly erroneous.

Provisions for LAMIRD Expansion

PLC challenged comprehensive plan policy language directing the county to continuously reassess the need for additional land within commercial and industrial LAMIRDs.

The board ruled that the county must revise language to clarify that the adopted boundaries are the final LAMIRD boundaries for Glen Cove and Eastview. The county may revise them if legislation changes and may continue to review interim boundaries for other LAMIRDs in the county.

GMA Implications and Practice Tips

Adoption of a Type 1 LAMIRD logical outer boundary should not include provisions for on-going expansion. LAMIRD designations are one time. Although this case involved a “second look” at these designations, this exercise was

what the county committed to in its initial plan adoption and the board continued to endorse this approach. The county, in essence, adopted an interim logical outer boundary in 1998 and set the final logical outer boundary in 2001. The board found the county out of compliance for allowing on-going review of the boundaries after final boundary was set.

All three boards have held that type I LAMIRDs adjacent to a UGA are not permissible¹. In this instance, the western board supported the creation of a type I LAMIRD in relatively close proximity to (Glen Cove) and abutting (Eastview) a UGA as one mechanism for addressing quasi-urban land near a UGA.

The facts in this case showed that the City of Port Townsend did not wish the area to be inside their UGA. A land capacity analysis did not show a need for additional industrial land and no planning for the provision of urban services had been made. The pattern of existing development did not support a rural, urban reserve designation.

Irondale Community Action Neighbors v. Jefferson County, WWGMHB Case 03-2-0010, August 22, 2003

Factual and Procedural Background

In December of 2002 Jefferson County designated the Tri-Area UGA, a nonmunicipal UGA 3.5 miles from the City of Port Townsend. The Tri-Area is an area of the county partially containing areas already characterized by urban growth. The plan stated that development regulations would permit only rural development within the Tri-Area until such a time as a proper capital facilities plan is in place showing how urban services can be provided.

In February 23 of 2003 the Irondale Citizen Action Network (ICAN) filed a petition for review alleging both procedural and substantive errors in the designation of the final Tri-Area UGA.

¹ *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01); *City of Tacoma v. Pierce County*, 99-3-0023c, (FDO 6-26-99) June 26; *Citizens for Good Governance et al v. Walla Walla County*, 01-1-0014cz and 01-1-0015c, FDO (5-01-02)

Board's Decision

Two primary issues were presented before the board. The first was whether Jefferson County decision was informed by an adequate land capacity analysis. The second was whether adequate capital facilities planning was completed to support the final UGA designation. The board affirmed the county on procedural issues and found partially for the county and partially for the petitioner on substantive issues associated with UGA designation.

The board found that although creation of the Tri-Area UGA was appropriate, adoption of final UGA boundaries prior to completing adequate capital facilities planning violated the GMA. The board remanded the county to remove the Tri-Area UGA designation or complete the necessary capital facilities planning.

Creation of the Tri-Area UGA

Petitioners argued that the county failed to direct growth to existing urban areas and ensure the orderly transition of governance by adopting a nonmunicipal UGA when excess capacity exists within the City of Port Townsend. ICAN also claimed that several assumptions in the county's land capacity analysis were flawed or unrealistic and led to an oversized Tri-Area UGA.

The board did not address the county's land capacity assumptions in great detail. Rather the board accepted the argument that the purpose of designating the Tri-Area UGA was to allow the provision of sewerage to an area with an existing pattern of urban development and not to create new development capacity.

The board stressed that, in principle, a nonmunicipal UGA is appropriate in the Tri-Area and was properly designated. The board then turned to the issue of the proper establishment of UGA boundary and the interrelationship between the boundary and the required capital facilities planning.

Adequacy of the Capital Facilities Plan

ICAN argued that the county failed to adequately plan for capital facilities in the Tri-Area prior to the establishment of the UGA by adopting levels of service, planning for the provision of facilities, and conducting a fiscal analysis to show how the provision of adequate public facilities would be financed. The county relied on tiering provisions as sufficient to ensure that urban development

will not be permitted until capital facilities planning has been completed.

The board defined the heart of the matter as whether capital facilities planning must be completed prior to the establishment of a UGA or whether it is permissible to adopt a UGA prior to completion of capital facilities planning for the UGA.

The board found that **fiscally constrained capital facility planning must occur before the final UGA boundary is set**; even if regulations are adopted or in place that phase development within the UGA.

An important component of the board's reasoning is that, once a UGA is established, if a proper analysis of the costs of capital facilities showed that they were not ultimately supportable, there would remain no mechanism to challenge the UGA designation. The county's action contained no provisions to use the Capital Facilities Element to check the Land Use Element.

GMA Implications and Practice Tips

The process of designating a UGA within the Land Use Element and supporting capital facilities planning is iterative rather than sequential. The process must allow resource constrained capital facilities planning to provide a feasibility check on the strategy for accommodating growth outlined in the Land Use Element. The planning process must allow for feedback between the Land Use Element and the supporting elements showing that the adopted land use strategy is financially supportable with adequate facilities.

This requires identification of levels of service in order to gauge adequacy, a general sense of the location and sizing of needed facilities, estimates of the total costs to construct and maintain such facilities, and an identification of revenue sources to fund the required facilities for at least the first six years of the plan.

Although service area boundaries must be assumed in order to do capital facilities planning, these should not be adopted as final UGA boundaries until appropriate capital facilities planning to support them is complete.

King County & City of Renton, Intervenor v. Snohomish County & City of Edmonds, Intervenor; CPSGMHB Case 03-3-0011, October 13, 2003.

Factual and Procedural Background

This decision relates to an ordinance passed by Snohomish County, which amended the permit review provisions of the Snohomish County Code regarding Essential Public Facilities (EPF). King County argued that the EPF ordinance renders EPF siting impracticable by requiring a conditional use permit (CUP). The petitioner also argued that the CUP criteria are preclusive, because they "allow Snohomish County to second-guess whether an EPF should be sited at all." Finally, King County argued that the ordinance precludes EPF siting by imposing "onerous, time-consuming, and uncertain procedural requirements." Renton joined King and believed that the ordinance violates RCW 36.70A.200, because it contemplates denial of an EPF.

Board's Decision

The board's ruling on the first issue found in favor of the petitioner, stating that Ordinance 03-006 would give Snohomish County virtually unlimited discretion to deny the proposed siting of an EPF. RCW 36.70A.200 provides that no local comprehensive plan or development regulation may preclude the siting of EPFs. The board stated that Ordinance 03-006 might be appropriate when applied to a local EPF that's within the county's authority to site. However, it is inappropriate for a local government to create criteria that will revisit or put into doubt a siting decision that has already been made by a regional or state entity.

For the second issue, the board initially agrees with respondent that an EPF CUP would not be unfair and untimely. However, the board stated that it was problematic that there was no provision within Ordinance 03-006 to bring a definitive end to the different types of hearings, such as EPF hearings, appeal hearings, remands, etc. The result is that there is no provision within the ordinance that ensures that a decision would ever have to be made, and that the issue could linger for an unlimited period of time at the local jurisdiction's discretion. The board ruled that an open-ended decision-making timeframe is inappropriate for public facilities that are deemed essential, because they are unfair, untimely, and unpredictable as to substantively violate RCW

36.70A.020(7). The board also stated that local governments lack authority to deny a development permit for an EPF that are sponsored by state or regional entities.

In the third issue, the board found that Ordinance 03-006 is noncompliant with RCW 36.70.A.200. The board enters an order of invalidity for Ordinance 03-006.

GMA Implications and Practice Tips

In many instances, a county, city, or township will not want an EPF within their jurisdiction, unless it has been locally sponsored. This is because the locality assumes it will be a detriment to the area. The board's decision prohibits a local jurisdiction from denying a state or regionally proposed EPF. The board states that when formulating development regulations, a jurisdiction must distinguish between those EPFs that a local jurisdiction has the authority to site, and those EPFs that the jurisdiction has a statutory duty to accommodate. It is not appropriate for a local government to create criteria that purports to revisit or "second-guess" a siting decision that has been made by a regional or state entity.

The GMA allows local jurisdictions to use a CUP for an EPF. However, an EPF permit process that lacks provisions to ensure that a jurisdiction must ultimately reach a decision, may be found to be unfair, untimely, and unpredictable as to substantively violate RCW 36.70A.020(7). The CUP must have a definite timeline and certainty of a decision.