



legislative action to comply with the Act. The Board also established a compliance schedule and compliance hearing date for the City of Lakewood.

On November 1, 2004, one week prior to the scheduled compliance hearing, the Board contacted the City to remind them of the compliance hearing and inform them that the Board had not received a statement of actions taken to comply with the GMA, nor any comment or reply briefing. The City informed the Board that the Superior Court in Thurston County had entered a stay on the Board's proceedings. The Board had not been advised of the Court's stay.

On November 1, 2004, via fax from the City, the Board received an "Order for Stay of Filed Decision."

On November 2, 2004, the Board entered an "Order Acknowledging Stay and Rescinding the Compliance Schedule."

On May 9, 2005, the Board received a "Cover Sheet – Thurston County Superior Court Decision" with an attached "Letter Opinion" (**Letter Opinion**) issued May 2, 2005 and signed by the Honorable Judge Paula Casey of Thurston County Superior Court. The Letter Opinion provided:

I am remanding to the Growth Management Hearings Board for a decision regarding whether the public participation requirements of the Growth Management Act have been met in this instance – absent any direction in the City's ordinances.

Letter Opinion, at 3.

## **II. BOARD DISCUSSION**

The basis for the Board's decision on public participation rested upon an assertion of Petitioners, not disputed by the City,<sup>1</sup> that the City's own provisions for public participation required a public hearing before the Council on all ordinances.<sup>2</sup> However, in the Superior Court Order, Judge Casey concluded, "I have earlier determined that the

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<sup>1</sup> See FDO, at 13.

<sup>2</sup> The 7/14/04 FDO states,

Petitioners quote this provision of the Lakewood City Code (LMC 35.18.170) as providing:

All meetings of the Council and of Committees shall be open to the public and the rules of the Council *shall provide that the citizens of the city or town shall have a reasonable opportunity to be heard at any meetings in regard to any matter being considered there at.*

FDO, at 10, (emphasis in original).

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Board was in error about what the City's ordinances required. No City ordinance prescribes or proscribes further public input before the City Council." Letter Opinion, at 2. Since the Board's reliance upon a provision of the City Code was in error, the Board is to determine on remand whether the City's action – of not providing a public hearing before the City Council on Ordinance No. 323 – complies with the public participation requirements of the Act.

The Board's review of the Letter Opinion, the July 14, 2004 FDO in this matter, and review of the Board's prior Orders leads the Board to conclude that no further briefing, argument or hearings are necessary to respond to the Superior Court's remand.

As stated in the July 14, 2004 FDO,

The Board has acknowledged that the GMA does not explicitly prohibit a GMA planning jurisdiction from empowering its planning advisory body from conducting the bulk of, or even all, of its public hearings. See *Weyerhaeuser Real Estate Company, Land Management Division v. City of Dupont (WRECO)*, CPSGMHB Case No. 98-3-0035, Final Decision and Order, (May 19, 1998), at 13.

...

Deciding where the "cut-off" point for public testimony is one logically left to the local government. This decision is one in which the Board will typically defer to the local government's choice.

FDO, at 12-13. However, as noted by the Court, the Board erred in relying upon the City's ordinances since they do not require additional hearings before the City Council (*i.e.* LMC 35.18.170). Absent this direction from the City's own code, the Board would have **affirmed** its decision in *WRECO* and not have found the City's public participation procedures noncompliant with the provisions of the GMA, specifically RCW 36.70A.140 or .020(11).

As the Board stated in *WRECO*,

[T]he Act [does] not require a City Council to hold a public hearing prior to adopting its GMA Plan. Although [the GMA has been] amended every year since [1995], the Legislature has not included a requirement that the local legislative body itself must conduct a public hearing prior to undertaking a GMA action.

*WRECO*, FDO, at 13. The Board further notes that in 2005 this statement is still the case; the Legislature has not amended the Act to require a City Council to hold a public hearing prior to undertaking a GMA action. Therefore, the Board: 1) **affirms** its *WRECO* decision; 2) **defers** to the City of Lakewood; 3) finds and concludes that the City of Lakewood's public participation process in the adoption of Ordinance No. 323 was **not**

**clearly erroneous;** 4) finds and concludes that Ordinance No. 323 **complies** with the requirements of RCW 36.70A.140 and .020(11); and 5) **rescinds** the determination of invalidity.

### **III. ORDER**

Having reviewed and considered the Honorable Judge Casey's Letter Opinion, the July 14, 2004 FDO, prior Board cases, and having deliberated on the matter, the Board ORDERS:

- The City of Lakewood's adoption of Ordinance No. 323 was **not clearly erroneous.**
- The City of Lakewood's adoption of Ordinance No. 323 **complies** with the requirements of RCW 36.70A.140 and .020(11).
- The determination of invalidity set forth in the Board's July 14, 2004 FDO is **rescinded.**

So ORDERED this 7<sup>th</sup> day of June, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300.