



On October 22, 2007, the Board conducted the hearing on the County's Motion to Clarify in the Board's offices. Board Member Edward G. McGuire conducted the hearing. Board members Margaret Pageler and David Earling attended, as did Board Attorney Julie Ainsworth-Taylor. Shelly E. Kneip and Lisa Nickel represented Kitsap County; David Bricklin represented KCRP, Jerry Harless appeared *pro se*, and Melody Allen, representing the Suquamish Tribe participated telephonically. Angie Silva, Tom Donnelly, Charlie Burrow, and Tom Nevins also attended. The hearing was recorded.

## **II. DISCUSSION**

The County notes that in invalidating the specific UGA expansion areas, the Board did not specifically invalidate the underlying zoning regulations, and the County assumes the underlying regulations govern development. County Request for Clarification, at 2-3. However, as Petitioners correctly note, the Board has previously stated:

Any development regulations that attempt to implement such a fully noncomplying comprehensive plan cannot stand as a matter of law during the period that the plan fails to comply with the Act. Regulations that attempt to implement and be consistent with a fatally flawed comprehensive plan are in turn poisoned by the plan's defects. (*Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995), at 82.

Suquamish Response, at 2. The Board affirms this reasoning. In short, the expansion UGA areas are fatally flawed and have been determined to be noncompliant and invalid. The County's development regulations designed to implement the now noncompliant and invalid provisions cannot stand.

The County asks the Board to rescind the Order on Invalidity because some of the areas within the invalidated UGA expansion areas either have sewer service available or it can easily be acquired by virtue of close proximity to existing lines. County Request for Clarification, at 2-3. The County also contends that due to a new regulation<sup>2</sup> adopted with the ten-year update, development cannot occur in the expansion areas unless the development is served by sanitary sewer. As such, no violation of Goal 12 could occur. *Id.* at 4. Alternatively, the County argues that allowing limited development to occur in the noncompliant expansion areas would not substantially interfere with the GMA. *Id.* at 6. Finally, the County asks that in lieu of lifting invalidity, the Board should modify the invalidity order to allow development to occur within 500' of a sewer line in existence on September 14, 2007. *Id.* at 8.

Petitioners counter that the Board was aware of the regulation adopted in Ordinance No. 367-2006 and that it remains in effect, but does not merit a rescission of invalidity. Suquamish Response, at 3. Petitioners also assert that the County's focus is on new subdivisions, not applications to build homes on single family lots. Thus, Petitioners contend that under the County's regulation: 1) new subdivisions would be allowed even if the land is not currently served by existing sewers; 2) even if served by existing sewer, such development would interfere with the GMA; and 3) development on the fringe of the UGA would be encouraged. *Id.* at 4-8.

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<sup>2</sup> The "new regulation" is Ordinance No. 367-2006 which was before the Board in this proceeding.

Finally, Petitioners claim that allowing development within 500 feet of an existing sewer line would violate the GMA since the County has not amended its Plan or regulations to reflect such a new configuration, nor could the Board issue such an advisory opinion. *Id.* Petitioners do note that, as acknowledged by the County, they are negotiating to identify areas likely to be included within UGA expansion areas and those areas that should be removed. *Id.*

The Board encourages the parties to continue discussions to identify those areas to be served by sewer and to be included in a UGA expansion area, and to identify those areas that should be removed. The Board emphasizes the importance of sanitary sewer planning to ensure that urban areas will be served by urban services – without ignoring existing areas within the UGA that lack such service.

On the whole, the County misses the point. The Board has found the five UGA expansion areas noncompliant with the GMA and entered a determination of invalidity for them. Because of this, these lands are no longer “urban lands.” Rather, they are “rural lands” until such time as the County achieves compliance with the GMA, as interpreted in the Board’s FDO and Order on Reconsideration. The County’s apparent zoning is inconsistent with these fatally flawed expansion UGAs and cannot govern development of these lands. To allow urban development on rural lands is contrary to the GMA.

Additionally, the Board’s concern is not solely with the expansion areas, but with the lack of capital facility planning [sanitary sewers] for the UGAs generally, including existing urban development that is un-served. Assessing the entirety of the scope of the County’s capital facility planning efforts to support urban development within the UGAs is the task the County must face. The linkage of capital facility planning and UGA designation should not be new to the County. The Board noted the importance of this linkage a decade ago. *See Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, coordinated with *Port Gamble, et al v. Kitsap County*, CPSGMHB Case No. 97-3-0024c, Finding of Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sep. 8, 1997), at 41; *cited in Suquamish II*, FDO, at 25.

However, as noted in the *Suquamish II* FDO, the County may consider reconfiguring its UGA expansion areas to include those limited areas it is concerned about or take other steps to achieve compliance by amending its Plan. But absent that type of analysis and planning by the County, the Board will not either rescind invalidity or modify or clarify its Order. The outcome the County seeks may, in fact, be plausible when the County completes its remand work. However, that is not the situation at the present time. Therefore, the Board will decline to clarify, modify, or rescind its determination of invalidity as set forth in the September 23, 2007 Order on Reconsideration. The County’s request is **DENIED**.

### **III. ORDER**

Based upon review of the GMA, the Board’s Rules of Practice and Procedure, review of the August 15, 2007 FDO, September 23, 2007 Order on Motion for Reconsideration, the briefing and exhibits provided by the parties, and having considered and deliberated on the arguments of the parties at the hearing, the Board enters the following ORDER:

- Kitsap County's Motion to Clarify, Modify or Rescind the Determination of Invalidity for the expanded UGAs in Silverdale, Central Kitsap, West Bremerton, Gorst and Port Orchard is **DENIED**.

So ORDERED this 25<sup>th</sup> day of October, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Presiding Officer

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Margaret A. Pageler  
Board Member

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David O. Earling  
Board Member