

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

IRONDALE COMMUNITY ACTION NEIGHBORS,

Petitioner,

v.

JEFFERSON COUNTY,

Respondent.

No. 03-2-0010

**COMPLIANCE  
ORDER**

**I. SUMMARY**

In this order we find that Jefferson County has worked diligently to bring its ordinances applicable to the Haddock/Irondale UGA into compliance. We also find that the County acted within the remand period by filing its statement of actions taken and request for extension before the date specified in the Final Decision and Order. We therefore find the County in continuing non-compliance but grant the County's request for additional time to achieve compliance due to the complexity of the issues before it

**II. STANDARD OF REVIEW, PRESUMPTION OF VALIDITY, BURDEN OF PROOF**

Ordinances and Resolutions adopted in response to a finding of noncompliance are presumed valid. RCW 36.70A.320.

The burden is on petitioners to demonstrate that the action taken by Jefferson County is not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we "shall find compliance unless [we] determine that the action by Jefferson County] is clearly erroneous in view of the entire record

before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 19, 201 (1993).

### III. HISTORY

We issued a Final Decision and Order (FDO) in this case on August 22, 2003. In the FDO, we found Jefferson County (County) out of compliance with the Growth Management Act (GMA, Act) in three respects related to designation of an urban growth area (UGA) in the Irondale and Port Hadlock portions of the unincorporated County (Tri-Area UGA; Hadlock/Irondale UGA):

- (1) Adopting urban level of service standards;
- (2) Analyzing capital facilities needs (especially sewer) and the County’s fiscal ability to provide those needed urban facilities; and,
- (3) Developing and adopting urban development regulations for application within the UGA.

Also in the FDO, we asked the County to submit a written report on compliance by February 27, 2004, and we set a compliance hearing for April 13, 2004.

### IV. COMPLIANCE DISCUSSION

The County admits that it has not yet achieved compliance but offers evidence of the efforts it has undertaken so far and asks for more time to complete the work needed. Petitioner argues that the County’s failure to achieve compliance in the time originally set by the Board has caused the County’s non-compliant ordinance to expire. Petitioner further argues that the expiration of the non-compliant sections of the county ordinance creates such uncertainty with respect **to the remainder of the**

ordinance regarding the Irondale/Hadlock UGA that the Board should enter a determination of invalidity.

### **Positions of Parties**

On February 25, 2004, we received from Jefferson County “Compliance Report/Statement of Actions Taken” (Report). In the Report, the County stated that the required work referenced above had not yet been completed, but the County had been working diligently towards compliance. The County emphasized that rural regulations are continuing to remain in force until capital facilities planning and fiscal analysis are completed and level of service standards and development regulations are adopted.

Jefferson County reported the following progress toward reaching compliance:

- (1) A new joint City-County population forecast was adopted in Resolution 55-03. With the adoption of Resolution 55-03, the County had in place both fixed boundaries and specific allocation of population to use as a basis for planning in the contested UGA. The population allocation for the Tri-Area UGA of 2,353 additional residents over the 20-year planning period (2004-2024) was used for the sewer, storm water, and transportation planning that the County has been doing for the UGA.
- (2) The County has studied a phased program for sewers in the Tri-Area UGA. Through Resolution 65-03, the County has studied a phased program for sewers in the Tri-Area UGA. Through Resolution 65-03, the County Commission created a General Sewer Plan Review Committee which has been working on the sewer plan.
- (3) Work toward adopting Urban Levels of Service for the Tri-Area UGA includes:
  - (a) “Jefferson County General Sewer Plan for Irondale and Port Hadlock Urban Growth Area, Final Draft, December 2003”;

(b) “Irondale and Port Hadlock Urban Growth Area Stormwater management Plan, December 2003.” This includes the technical standards in the 2001 Washington Department of Ecology *Stormwater Management Manual for Western Washington*.

(c) “Irondale and Port Hadlock Urban Growth Area Transportation Plan and Transportation Capital Facilities Plan, December 2003.”

All of the above documents were formally transferred to the Board of County Commissioners and the Planning Commission and will receive further review during the 2004 amendment cycle. We were provided with copies of the comprehensive plan (CP) and Unified Development Code (UDC) amendments relating to the Tri-Area UGA that will be considered during the 2004 CP amendment cycle.

(4) Work has begun on development regulations to apply within the UGA. In January 2004, the Board of County Commissioners (BOCC) created a UGA task force that was charged with reviewing the proposed zoning and making recommendations regarding development regulations for the UGA.

(5) Significant public outreach has occurred, including five mass mailings, presentations to citizen service groups, and an open house event which attracted over 150 interested citizens.

At the end of the report, the County contended that since it had been working and would continue to work diligently toward compliance, that it should be given an additional 180 days to reach compliance with the FDO.

In its March 16, 2004 response, Irondale Community Action Neighbors (ICAN) did not challenge the County’s work to bring itself into compliance. Instead, ICAN states that since the compliance date was February 19, 2004, and the County had admittedly not reached compliance by that date, the noncomplying parts of the Hadlock/Irondale

UGA ordinances expired as a matter of law at the end of the remand period on February 19, 2004.

ICAN bases this contention on RCW 36.70A.300(4), which states:

Unless the board makes a determination of invalidity as provided in RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of the comprehensive plans and development regulations during the period of remand.

ICAN points out that that subsection was interpreted by the Supreme Court in *Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 192, 4 P.3d 115 (2000). In that decision, the Court stated, “Under current law, a noncomplying regulation remains in effect during the period of remand.” *Id.* The Court ruled that if a local jurisdiction does not bring its noncomplying amendment into compliance during the remand period, then the amendment expires. *Id.* The noncomplying ordinance “was no longer in effect because the period of remand had expired”.. *Id.*

ICAN goes on to contend that since the noncompliant portions of the Hadlock/Irondale UGA ordinance have expired, the public does not know which parts of the ordinance remain in effect and which have expired. The expiration of some portions and phrases has left inconsistencies which are violations of RCW 36.70A.130(1)(b). Thus, ICAN contends, until the County corrects the inconsistencies, the challenged Hadlock/Irondale UGA ordinance should be found not in compliance with the GMA. And because of significant uncertainty as to what parts of the UGA ordinances are void and what parts are valid, the Board should find the UGA ordinance invalid because there is substantial interference with Goals 5, 6, 7 and 11 of the Act.

In its April 9, 2004 Reply to ICAN's response brief, the County counters that the UGA ordinance did not expire on February 19, 2004. The County reads the FDO to provide that the County had been given two options: (a) rescind the ordinance within 180 days; or (b) report to the Board prior to the compliance hearing as to the County's efforts to remedy identified deficiencies in the UGA ordinance. The County stated:

According to ICAN, the Hearings Board did not actually grant to the County a reasonable opportunity to seek compliance (and if necessary, a further extension) because by February 27, 2004, when the Board asked for the County's Report, the ordinance was already null and void, and the County's response therefore meaningless. The County believes that the Board did not intend to place the County into a Catch-22 situation. So long as the County submitted its Compliance Report on or before the day set in the FDO (February 27) the Report, including the request for a 180-day extension, would be treated as timely. If the Board concludes that Jefferson County is making appropriate good-faith efforts to bring this UGA into compliance, then the 180-day extension should be granted.

County April 9, 2004 Reply Brief at 4

The County further points out that there is no need to change the UGA ordinance at this time because the pre-UGA rural densities and regulations remain in place. There is no confusion about which regulations apply. It is perfectly clear to citizens and developers that the UGA densities and regulations will not apply until the necessary final levels of service and capital facilities amendments to the CP and DRs are in place.

Lastly, the County stresses that ICAN does not come close to meeting the high standard for a determination of invalidity. There is no showing of the County's future inability to comply with the GMA, especially since the County has clearly shown that rural standards will be in place until the required homework is completed.

In its April 12, 2004 Reply, ICAN reiterated why it believes portions of the UGA ordinance had expired.

At the Compliance Hearing, the County stressed that the decision in *Rural Residents* does not apply to these facts because the County has acted within the remand period. In, *Rural Residents*, the County argues, Kitsap County took no action to comply; in this case, Jefferson County has taken several actions to bring itself into compliance. The County has worked hard and in good faith.

The County further claims that ICAN's arguments and position put one interpretation of the letter of the law over the intent and spirit of the law. The County argues that the Board certainly has the discretion to make an extension for substantial justice. According to the County, we should look to the merits and not to a hypertechnical argument.

### **Board Discussion**

We will first deal with Petitioner's major contention that the noncompliant portions of the Tri-Area UGA ordinance expired on February 19, 2004. The County concurs that the ordinance would have expired if the County had not acted within the "period of remand." However, the County argues that it acted within the remand period, both by undertaking compliance efforts and by seeking an extension of time to achieve compliance.

Unlike the situation in *Vinatieri, et al. v. Lewis County*, WWGMHB Case No. 03-2-0020c, (May 6, 2004 FDO), we are not asked to distinguish this case from the holding in *Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 192, 4 P.3d 115 (2000). Instead, we are asked to find that the County's actions comport with the *Rural Residents* requirements for action "within the period of remand."

In *Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 192, 4 P.3d 115 (2000), the Supreme Court found that Kitsap County had failed to take action to achieve compliance within the remand period established by order of the Central Puget Sound Growth Management Hearings Board. The board had remanded the IUGA to the county for compliance by October 3, 1994, but the county did not take action until December 29, 1994, when it adopted a comprehensive plan. 141 Wn.2d at 192. Therefore, the Court found that the IUGA ordinance had expired so that the prior regulations were in effect at the time that the plat application was submitted. *Ibid.*

The County argues that the present situation is very different from the one in *Rural Residents*. In this case, the County was working to achieve compliance during the remand period and filed a request for an extension of time to achieve compliance during the remand period. The County did not ignore the Board's deadline, as Kitsap County had done, but brought to the Board's attention its need for additional time.

Petitioner points to the language of the Final Decision and Order (FDO) for the proposition that the period of remand ended on February 19, 2004. The language of the FDO is regrettably confusing. However, it was the Board's intention, as the County has assumed, that the initial period of remand would end on February 27, 2004. The period of remand is set by the board and this Board would never intentionally fail to grant to the County a reasonable opportunity to seek compliance

The record is clear that the County has worked diligently to bring itself into compliance and it submitted its report on progress made before the date specifically identified in the FDO. Noting that it would not be able to achieve compliance under the original timeframe set by the Board, the County also submitted a request for an extension of time to achieve compliance. Petitioner argues that this is not sufficient to prevent the ordinance from expiring. However, the County submitted its Compliance Report and request for extension before the date set in the FDO (February 27, 2004)

and was therefore acting within the time frame allowed by the Board. It is true that there was a lack of clarity in the FDO about the due date for County action. However, this was due to Board oversight and due to no fault of the County's. It should certainly not cause such a dire outcome for the County as requested by the Petitioners. We conclude that the County acted within the period of remand within the meaning of the statute, RCW 36.70A.300(4).

Having dealt with ICAN's concerns that parts of the UGA ordinance have expired, we turn to the County's request for a time extension to complete its efforts to comply with the Act. Petitioners presented no arguments regarding the adequacy of the actions taken so far to comply or the reasonableness of the County's request for a 180-day extension. We therefore grant the County's request for the 180-day extension.

#### **V. FINDINGS OF FACT**

- (1) Jefferson County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.
- (2) The ordinance adopting the Hadlock/Irondale UGA (Ord. No. 19-1213-02) was found non-compliant by this Board in its Final Decision and Order dated August 22, 2003.
- (3) The County was ordered to achieve compliance by February 27, 2004.
- (4) The County provided this Board with proof that it has worked diligently since the FDO toward reaching compliance when it filed its Compliance Report/Statement of Actions Taken on February 25, 2004..

(5) The County also filed a request for extension of time to complete its work to achieve compliance on February 25, 2004.

(6) Both the Compliance Report/Statement of Actions Taken and the request for extension were filed with the Board during the period of remand.

(7) Jefferson County admits that it is not in compliance with the GMA as directed by this Board in its Final Decision and Order dated August 22, 2003 and asks for additional time to achieve compliance.

(8) The County represents that its regulations applicable to rural lands will remain in effect as to all lands in the Hadlock/Irondale UGA until the UGA ordinance is found to comply with the Act by this Board.

## **VI. CONCLUSIONS OF LAW**

A. This Board has jurisdiction over the parties in this case.

B. This Board has continuing subject matter jurisdiction over the compliance progress in this case.

C. The County remains in noncompliance as to its Hadlock/Irondale UGA ordinance since it has not completed the work of adopting urban levels of service standards; required capital facilities planning (especially for sewer); fiscal analysis of affordability of those needed facilities; and GMA compliant development regulations applicable within the UGA.

D. It is appropriate to give the County another 180 days to comply.

## VII. ORDER

The County shall achieve compliance by December 6, 2004, 180 days from the date of this order. The County shall submit a compliance report setting forth its actions to achieve compliance with this order, no later than December 21, 2004. The County shall provide a copy of its compliance report to Petitioners on the same date. Petitioners shall file any objections to findings that the County is in compliance with the Board's order no later than January 6, 2005 and serve those objections upon the County on the same date. The County shall file any response to the Petitioners' objections no later than January 27, 2005, with same-day service also upon Petitioners. Petitioners may file a reply brief if served on both the Board and the County by February 3, 2005. If another extension is necessary, the County must file a request for extension along with a Statement of Actions Taken and Schedule for Completion by November 1, 2004.

### *COMPLIANCE SCHEDULE*

<b>Compliance due date:</b>	<b>December 7, 2004</b>
Compliance report due:	December 22, 2004
Objections due:	January 10, 2005
Response to objections due:	January 27, 2005
Reply to response to objections due:	February 4, 2005
<b>Compliance Hearing date:</b>	<b>February 17, 2005</b>

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

SO ORDERED this 10<sup>th</sup> day of June, 2004.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan Henriksen, Board Member

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Holly Gadbow, Board Member

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Margery Hite, Board Member