BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Irondale Community Action Neighbors and Nancy Dorgan, (collectively ICAN), Petitioner, v. JEFFERSON COUNTY, Respondent.	Case Nos. 03-2-0010 and 04-2-0022 **ORDER GRANTING RECONSIDERATION**

This Matter comes before the Board upon Petitioner's Motion for Reconsideration, filed on June 9, 2005. ICAN'S Motion for Reconsideration. Respondent County filed Jefferson County's Response to Motion for Reconsideration on June 20, 2005. Petitioner requests clarifications, corrections, and reconsideration of some features of the Final Decision and Order issued on May 31, 2005. Petitioner also offers Index No. 11-123, a letter to the Jefferson County Board of Commissioners dated August 2, 2004, as an exhibit on the issue of whether the Petitioner raised the issue of the adequacy of the Trottier analysis in the proceedings below. ICAN's Motion for Reconsideration at 4.

Respondent Jefferson County joins in the request for clarification of the Board's invalidity order but disagrees with Petitioner on the substance of the issues to be clarified. Jefferson County's Response to Motion for Reconsideration at 2.

The Board took action on the motion for reconsideration under the terms of WAC 242-02-823(3) by issuing a letter to counsel on June 28, 2005. This letter notified the parties that the Board would issue an order on reconsideration in July.

I. MOTION OF THE PETITIONER ICAN

The Petitioner raises three general topics in the motion for reconsideration:

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1. Correction of caption such that the order applicable to Case No. 03-2-0010 is titled "Compliance Order."

2. Issuance of Conclusions of Law on Invalidity in accordance with the Board's decision and order of May 31, 2005. Petitioner requests that the order reflect the Board's determinations of: a) invalidity of the urban development regulations adopted for the subject UGA; b) invalidity of the adopted UGA zoning map; c) invalidity of UGA designations on the Future Land Use Map for all areas outside the county's Sewer Planning Area; and d) invalidity of any comprehensive plan policies that permit optional sewered areas and unsewered areas in the UGA.

3. Reversal of the Board determination that Respondent County satisfactorily relied on existing GMA-approved land use capacity analysis and commercial needs assessments to support the County's proposed densities and intensities in commercial development in the UGA, as evidenced in urban development regulations that allow for increased building heights and lot coverages.

II. RESPONSE OF THE COUNTY

The County responded to the Motion for Reconsideration with these points:

1. Jefferson County requests further clarification of the scope of the determinations of invalidity. However, Respondent disagrees with clarification reasoning argued by Petitioner in the reconsideration motion.

2. The County comprehends from the May 31, 2005, Order that the urban development regulations within the boundaries of the subject UGA were declared invalid and that areas on the Future Land Use Map listed for optional sewer service and non-sewered areas have no current force of law.

3. Jefferson County requests verification by the Board that the current boundaries of the subject UGA remain in place to support planning, particularly capital facilities planning; asserts the UGA boundaries are not final; and states that rural development regulations in effect prior to the passage of the subject Ordinance are, once again, the operating regulations.

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4. The County offers that it understands from the Order it may utilize the Commercial designations in the Core Area and those along Rhody Drive for future use designation on the Future Land Use Map. Respondent states this is desirable for planning and support-building purposes for the implementation of sewerage service to that core area. Further, Respondent urges that the Sewer Planning Area be retained on Jefferson County maps to assist with planning for sewer service and treatment facilities.

5. Jefferson County urges the Board not to alter its findings and conclusions on commercial/industrial area intensities. Respondent states that ICAN did not brief and develop its disagreement with some features of the Trottier Report on economic development capacity and needs analysis during the course of the adjudication.

III. DECISION ON RECORD

The Board will admit Index No. 11-123, a letter to the Jefferson County Board of Commissioners dated August 2, 2004, for the purpose of reconsideration in this motion.

IV. DISCUSSION

In its final decision and order dated May 31, 2005, in WWGMHB Case No. 04-2-0022 and its compliance order dated May 31, 2005, in WWGMHB Case No. 03-2-0010, the Board inadvertently failed to enter conclusions of law related to the invalidity determinations noted in the body of the decision and in the findings of fact. The Board appreciates the opportunity to correct that error on reconsideration.

1) Development Regulations. The Board intended to enter a determination of invalidity as to the development regulations adopted for the proposed UGA. Those development regulations are entitled "Jefferson County, Irondale & Port Hadlock UGA Implementing Development Regulations, Unified Development Code Appendix D" and were adopted by Ordinance No. 10—823-04. Index No. 13-32. Those development regulations allow urban levels of development without corresponding urban levels of service. Without an invalidity determination, applications for permits to develop at urban densities and uses

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could vest during the compliance remand period and thus substantially interfere with the County's ability to fulfill goals 1, 2, and 12 of the Growth Management Act, RCW 36.70A.020(1), (2), and (12).

2) Comprehensive Plan Provisions. It was the Board's intention to enter a determination of invalidity as to those provisions of the comprehensive plan that allow designation of unsewered areas and "optional" sewered areas within the proposed UGA. As is apparent from the County's response, this language is sufficient to apprise the County of the portions of the comprehensive plan narrative that are deemed invalid.

3) The Future Land Use Map and the Sewer Service Areas Map. The extent to which the maps show the invalid designations is less clear. The Future Land Use Map, Figure 2-1 of Index 13-37, does not map the Sewer Planning Area, which is instead shown on Figure 2-3 of the same exhibit. The Future Land Use Map shows the Urban Commercial, Urban Industrial, and Urban Residential designations within the Irondale and Port Hadlock UGA. We agree with the County that it is not necessary to make an invalidity determination as to the Urban Commercial designation because the development regulations governing urban commercial development are invalid. While this designation is *non-compliant* pending a compliant UGA designation, the designation is not *invalid* because it is within the County's sewer planning area, for which sewer is planned to be made available. Therefore, the determination of invalidity on the Future Land Use Map (Figure 2-1) extends only to the Urban Residential designation. The designations of the areas outside the Sewer Planning Area in the UGA shown in Figure 2-3, the Irondale and Port Hadlock UGA – Sewer Service Areas, May 19, 2004 are invalid.

4) The Zoning Map. In Ordinance 10-0823-04, the County adopted the Zoning map for the UGA. It is labeled Figure D-1 in "Jefferson County, Irondale & Port Hadlock UGA

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Implementing Development Regulations, Unified Development Code Appendix D." Section Three, Ordinance 10-0823-04, August 23, 2004. Index No. 13-31. Because this map established zoning areas for the proposed UGA, the continuing validity of this map would allow urban densities and intensities to occur without an urban level of sewer service while the County continues its sewer planning and therefore substantially interferes with Goals 1, 2, and 12 of the GMA.

5) Densities and Intensities of Proposed Commercial Development. While we enter a determination of invalidity as to all the development regulations adopted to set urban levels of development within the UGA, we do not find that the County's continued reliance upon the analysis in the Trottier report fails to comply with the GMA. Our review of Index No. 11-123 does not persuade us that the Petitioner sufficiently raised this issue to the commissioners, nor do we find that the assumptions adopted in the report were re-opened in the course of the adoption of Ordinance 10-0823-04.

6) UGA Boundaries. The County states that it is "logical and fair" for the UGA boundaries to remain in place as further planning for sanitary sewers takes place." Jefferson County's Response to Motion for Reconsideration at 3. The UGA boundaries are not compliant with the requirements for a non-municipal UGA under the GMA; however the Board does not find the boundaries themselves invalid. As noted above, certain designations within those boundaries are invalid. (See #2 and #3 in this Discussion.)

7) As to the error in the caption, the Board appreciates the efforts of the Petitioner and the County to ensure that the decisions in these cases are clear and accurate. The caption as WWGMHB Case No. 03-2-0010 should be properly labeled "Compliance Order."

8) The Board further notes a typographical error in the compliance schedule set forth in the Final Decision and Order of May 31, 2005. Two dates were switched. The County

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Response Brief should be listed as due on January 12, 2005. The Compliance Hearing date should be listed as January 25, 2005.

V. ORDER

The Final Decision and Order dated May 31, 2005, is hereby AMENDED as follows:

1. The caption on the cases' Final Decision and Order is changed to reflect that 03-2-0010 is properly labeled "Compliance Order."

2. The typographical error in the compliance schedule set forth in the Final Decision and Order of May 31, 2005, is changed to read the County Response Brief is due on January 12, 2005, and the Compliance Hearing is January 25, 2005.

3. Five Conclusions of Law are added to the Final Decision and Order.

VI. CONCLUSIONS OF LAW ON INVALIDITY

M. Those policies in Jefferson County's comprehensive plan that allow designation of optional sewered and non-sewered areas in the Irondale and Port Hadlock UGA substantially interfere with the fulfillment of goals 1 and 12 of the Act (RCW 36.70A.020(1) and (12)) and are therefore invalid.

N. The development regulations entitled "Jefferson County, Irondale & Port Hadlock UGA Implementing Development Regulations, Unified Development Code Appendix D" adopted by Ordinance No. 10—823-04 (Index No. 13-32) allow urban levels of development without corresponding urban levels of service. The continued validity of

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these development regulations substantially interferes with the County's ability to fulfill goals 1, 2, and 12 of the Growth Management Act (RCW 36.70A.020(1), (2) and (12)). Jefferson County, Irondale & Port Hadlock UGA Implementing Development Regulations, Unified Development Code Appendix D are therefore invalid.

O. The Urban Residential designation on the Future Land Use Map (Figure 2-1) and the designations allowing urban development outside of the Sewer Planning Area in Figure 2-3 (the Irondale and Port Hadlock UGA – Sewer Service Areas Map May 19, 2004) substantially interfere with Goals 1 and 12 of the GMA (RCW 36.70A.020(1) and (12)) and are therefore invalid.

P. The Zoning map for the UGA (Figure D-1 in "Jefferson County, Irondale & Port Hadlock UGA Implementing Development Regulations, Unified Development Code Appendix D" - Index No. 13-31) establishes urban zoning areas for the proposed UGA which substantially interfere with RCW 36.70A.020(1), (2) and (12). The zoning map (Index No. 13-31) is therefore invalid.

Q. Pursuant to RCW 36.70A.302(4), and to the extent the Ordinance 10-0832-04 has a savings clause in effect, the prior development regulations, allowing only rural levels of development in the area of the proposed UGA, are valid during the period of remand.

The remaining terms and conditions of the May 31, 2005, Final Decision and Order (WWGMHB Case No. 04-2-0022) and Compliance Order (WWGMHB Case No. 03-2-0010) shall remain in full force and effect.

Pursuant to RCW 36.70A.300 this is a final order of the Board.

<u>Reconsideration</u>. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for

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reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

So ORDERED this 29th day of July 2005.

_____
Gayle Rothrock, Board Member

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Holly Gadbaw, Board Member

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Margery Hite, Board Member

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