

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 Adams Cove Group, and Futurewise,
4
5 Petitioners,

Case No. 07-2-0005

ORDER ON MOTION TO DISMISS

6 v.

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8 Thurston County,

9 Respondent.
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12 **This Matter** comes before the Board on Thurston County's (the "County") Motion to Dismiss
13 the Petition for Review filed by Petitioners Adams Cove Group and Futurewise (collectively
14 "Futurewise")¹. The County filed its Motion to Dismiss the Petition for Review on April 19,
15 2007. Futurewise filed a response to the motion on April 18, 2007. The parties agreed to
16 conduct the hearing telephonically on May 24, 2007. At that hearing Adams Cove Group
17 and Futurewise were represented by Keith Skully. Thurston County was represented by
18 Jeffrey Fancher. All three board members attended, James McNamara presiding.
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21 Having heard the arguments of the parties, reviewed the pleadings filed by the parties,
22 Petition for Review, and this case's files and records, the Board denies the Motion to
23 Dismiss for the reasons set forth below.
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25 **I. ISSUE PRESENTED**

26 In their Petition for Review (PFR) Petitioners challenged the failure of the County to amend
27 the Yelm UGA when, on December 20, 2006, it adopted amendments to the Yelm Joint
28 Plan. The issue presented to the Board for resolution is whether the PFR should be
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32 ¹ While the Petition for Review was filed by Adams Cove Group and Futurewise, Futurewise has taken the lead
in all briefing on behalf of the Petitioners.

1 dismissed as untimely because the Yelm UGA was established in 1994 and has not been
2 altered by Resolution 13734 .

4 II. DISCUSSION

5 **Positions of the Parties**

6 The County brings this Motion to Dismiss on the basis that Petitioners had no right to appeal
7 the size of City of Yelm's Urban Growth Area (UGA) as (1) Resolution No. 13734 did not
8 amend the Yelm UGA; (2) the action taken by Thurston County was not part of the seven
9 year comprehensive plan review nor the ten year UGA review; and (3) the issue of the size
10 of the County's UGAs is currently before the Board pursuant to an earlier appeal.
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13 In response, Futurewise argues that by finding that "Yelm and its UGA have sufficient area
14 to accommodate projected growth consistent with RCW 36.70A.110(2)" the County
15 readopted the Yelm UGA and reaffirmed its size, and thereby made it subject to Board
16 review. Futurewise also argues that by allocating new population to the Yelm UGA the
17 County was required to evaluate the size of the UGA. This thereby made the size of the
18 Yelm UGA ripe for review.
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21 **Board Discussion**

22 The County urges that the Board does not have jurisdiction over this petition for review
23 because it was not brought within 60 days of the establishment of the Yelm UGA in 1994.²
24 The County further points out that Resolution No. 13734 is not an update or review required
25 under RCW 36.70A.130 and is not timely on that basis either.³
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28 Since this motion is based upon timeliness of the petition for review, the applicable provision
29 of the Growth Management Act is RCW 36.70A.290:
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32 ² Memorandum in Support of Respondent's Dispositive Motion to Dismiss at 8.

³ *Ibid* at 7.

1 All petitions relating to whether or not an adopted comprehensive plan, development
2 regulation, or permanent amendment thereto, is in compliance with the goals and
3 requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within
4 sixty days after publication by the legislative bodies of the county or city.
RCW 36.70A.290(2).

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6 The County alleges that Resolution No. 13734 did not amend the Yelm UGA and therefore
7 challenges to the size of the Yelm UGA cannot be based upon its adoption. Petitioners, on
8 the other hand, claim that the adoption of Resolution No. 13734 “affects” the Yelm UGA⁴
9 and that “[t]he adoption of new population numbers necessitates a revision of the Urban
10 Growth Area to assure that it provides sufficient land for development”.⁵

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13 The question before the Board, therefore, is whether the adoption of Resolution No. 13734
14 provides a basis for Board review of the Yelm UGA boundaries. While Petitioners argue
15 that the Resolution readopted the Yelm UGA, the Board does not agree. By the very
16 language of the Resolution, the County adopted various amendments to the Yelm
17 Comprehensive Plan addressing, including population and housing stock elements in
18 recognition of the most recent population numbers and forecasts. Section 1 of the
19 Resolution provides that “The Yelm Joint Plan is hereby amended as shown in Attachment
20 A to this Resolution.” However, nothing in the amended Yelm Joint Plan purports to amend
21 or readopt the Yelm UGA.
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25 However, Futurewise also argues⁶ that the adoption of a new population allocation for the
26 Yelm UGA necessitated a revision of the UGA to assure that it was properly sized.⁷ Table
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29 ⁴ Petition for Review, II.

⁵ Response to Motion to Dismiss at 5.

30 ⁶ The County objected to this change in the focus of the argument, arguing that this issue had not been
31 squarely raised by Petitioners. However, the Petition for Review did assert a failure to comply with RCW
32 36.70A.110 in the adoption of Resolution 13734⁶ and this issue was addressed in Futurewise’s response to
the Motion to Dismiss. In addition, this issue had been raised in Futurewise’s comment letter.

⁷ *Ibid.* at 5.

1 1 of the adopted amendments to the City of Yelm Comprehensive Plan clearly does allocate
2 new population figures to the Yelm UGA.⁸

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4 Futurewise cites RCW 36.70A.110(2) which provides:

5 (2) Based upon the growth management population projection made for the county
6 by the office of financial management, the county and each city within the county
7 shall include areas and densities sufficient to permit the urban growth that is
8 projected to occur in the county or city for the succeeding twenty-year period, except
9 for those urban growth areas contained totally within a national historical reserve.

10 This provision has been interpreted to both limit the size of UGAs as well as to ensure that
11 the UGA boundaries are sufficient to accommodate projected growth, in light of the anti-
12 sprawl goal of the GMA. *Diehl v. Mason County*, 94 Wn.App. 645, 982 P.2d 543 (Div. II,
13 1999).⁹ When the County chose to amend the population allocations within the Yelm UGA
14 it necessarily raised the issue of whether the UGA was properly sized for that new
15 population allocation.¹⁰ We hold that based on the County's actions in amending the Yelm
16 UGA population allocations, Petitioners may challenge the size of the Yelm UGA at the
17 hearing on the merits.
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20 The County argues that allowing Petitioners to challenge unaltered provisions of the
21 Comprehensive Plan would discourage local jurisdictions from updating their plans with the
22 most current population figures for risk of drawing appeals in advance of the normal ten year
23 required updates of the UGAs. We agree with the County that the mere act of amending a
24 comprehensive plan during the annual comprehensive plan amendment process does not
25 open the entire plan for challenge. But that is not the case here – the challenge here is to a
26 change in the population allocation to the Yelm UGA and the impacts of that change. In
27 Resolution No. 13734, the County changed the population allocation to the Yelm UGA, and
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31 ⁸ B-4, a section of the plan adopted by Thurston County since it is a section marked with an *. (Yelm CP at I-1)

32 ⁹ See also, *1000 Friends v. Thurston County*, WWGMHB case No. 05-02-0002 (FDO) 7-20-05).

¹⁰ See, Index to the Record, No. 21, Exhibit B.

1 that change may affect any of the planning determinations based upon population
2 allocation. Most importantly, it affects the determination of whether the Yelm UGA is sized
3 appropriately (neither too large nor too small) for the population which has been allocated to
4 it.

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6 While denial of this motion will permit this matter to proceed to hearing on the merits, the
7 Board is not passing upon the merits of the Petitioners' claims. The burden is, as always,
8 on the Petitioners to show that the County's choices are clearly erroneous and specifically to
9 show that the population allocation to the Yelm UGA does not comport with the
10 requirements and goals of the GMA. Further, because the County is still working on
11 compliance in response to the Board's decision in the case of *1000 Friends of Washington*
12 *v. Thurston County*, WWGMHB Case No. 05-2-0002, the parties are encouraged to
13 consider whether it would be in their best interests to request a continuance of this case
14 pursuant to RCW 36.70A.300(2)(b) and WAC 242-02-560 for settlement purposes because
15 successful compliance efforts in the earlier case may well obviate the claims in this case.
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18 IV. ORDER

19 Based on the foregoing discussion, the Board DENIES the Motion to Dismiss.
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22 ENTERED this 4th day of June, 2007.

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26 James McNamara, Board Member

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29 Holly Gadbaw, Board Member

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32 Margery Hite, Board Member