

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

ASSOCIATION OF RURAL RESIDENTS,)CASE NO. 93-3-0010

)

Petitioner,)

)ORDER DENYING KITSAP

v.)COUNTY'S PETITION FOR

)RECONSIDERATION

KITSAP COUNTY,)

)

Respondent.)

)

A.PROCEDURAL BACKGROUND

The Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Final Decision and Order in the above referenced case on June 3, 1994. The Final Decision and Order noted that it constituted a final order as specified by RCW 36.70A.300 unless a party filed a Petition for Reconsideration pursuant to WAC 242-02-830.

On June 13, 1994, the Board received from Kitsap County (the **County**) a Petition for Reconsideration (the **Petition**). On June 22, 1994, the Board received the County's Supplement to Petition for Reconsideration (the **Supplement**).

B.DISCUSSION

The County listed two points as its basis for filing the petition.

Basis for Reconsideration No. 1

"The Board wrongly interpreted the Growth Management Act (**GMA**) by determining that the population projection from the Office of Financial Management (**OFM**) constitutes a ceiling on projected population for planning purposes."

The essence of the County's argument is that it relied on the advice of the [then] State Department of Community Development (**DCD**), and that "the Board's holding should be in harmony with the

statewide interpretation given the OFM projection by DCD."Petition, at 2.The Board rejects the County's arguments for two reasons.First, the Board is not obligated by the Act to either rely upon or be bound by advice offered to local governments by DCD or its successor, the Washington State Department of Community Trade and Economic Development (**CTED**).The same is true with respect to the ostensible advice that the Supplement indicates OFM gave regarding how the population forecast is to be used.Second, the Board remains convinced that DCD's advice that OFM forecasts "were a floor only" is wrong.

The Board notes that DCD is directed by RCW 36.70A.190(4)(b) to adopt procedural criteria to assist local governments in adopting comprehensive plans and development regulations.

Further, RCW 36.70A.320 provides in part:

in making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4).(Emphasis added.)

A January 24, 1992, letter from DCD, upon which the County says it relied, stated "[w]e interpret the Growth Management Act (GMA) to mean the OFM population forecasts are minimums, which must be accommodated."The Board observes that this advice was done simply by correspondence rather than as a rule adopted pursuant to RCW 36.70A.190.More importantly, even if such advice were a part of the Procedural Criteria, the Board would then simply be required to consider it.Although not legally obliged to do so by RCW 36.70A.320, the Board has, in fact, considered the letter in question.

The County, in its petition, argues that dictionary definitions of "base" do not support the interpretation that the OFM projections impose an upper limit.The specific GMA provision in question is RCW 36.70A.110(2), which provides that urban growth areas must be:

[b]ased upon the population growth management planning population projection made for the county by the [Washington state] office of financial management...(Emphasis added.)

The County reads into the language of RCW 36.70A.110(2) the word "base" in order to support the argument that the OFM projection is a point of departure for (presumably upward) manipulation by the County.In fact, the emphasized language above shows that the Act does not use the noun "base."If the Act had used the word "base" to describe the OFM population forecast, perhaps the County would have a more compelling, although still losing, argument.

Instead, the Act uses the word "based," which is not a noun, but rather a transitive verb."Based upon" directs the counties to use the quantitative target of population growth developed by OFM as the first step in sizing UGAs sufficient to permit that projected growth.However, even this is not the main rationale for the Board's conclusion that the OFM figure is both a floor and a ceiling. As more completely set forth in pages 32 to 37 of the Final Decision and Order, the Board looked to the clear and unambiguous direction of the Act, including RCW 36.70A.350(2).This provision explicitly requires that counties deduct from OFM's projections the number of persons expected to reside in new fully contained communities "and offset the urban growth area accordingly."If the OFM population projection is not a finite number, then it would make no sense to make such a deduction.The Board must presume that the legislature intends that every provision of the Act have some meaning and that all parts of the Act must be read together and harmonized.The clear

direction that a deduction must occur from a finite OFM population forecast is the most irrefutable factor in the reasoning that the OFM population forecast is both a floor and a ceiling. The Board surmises that this is why the County did not refute this conclusion. Finally, the Board cannot let pass the County's assertion that "... allowing cities and counties to plan for populations above the OFM projections is sound planning." On its face, this statement suggests that local governments have carte blanche to establish for themselves the twenty year population forecast that they will accommodate. In a region with seventy-eight local governments making land use policy, development permitting and capital budget decisions, such a reading of the GMA would most certainly NOT constitute sound planning. In fact, it is a prescription for the sprawl that gave rise to the enactment of the GMA and that violates the clear legislative direction of RCW 36.70A.010 and the explicit requirements of RCW 36.70A.110(2). The Board notes that the County's argument about the validity of the OFM forecast is not before us at this time. It is necessary here only to say that such arguments may potentially be grounds for a petition for review of the forecasts, not grounds for ignoring them.

The Board notes that the County expresses a concern:

... if the population does not materialize, the jurisdictions can react by shrinking the UGAs, much faster than once every ten years. Without allowing for a "safety factor" increase in the size of an UGA, housing costs will increase markedly, destroying the affordable housing goal of the GMA. Petition, at 3.

As to the first point, a proposal for a future downsizing of an overly large UGA is likely to precipitate urban development becoming vested in the too-large UGA. As to the second point, the County has confused the establishment and use of the 20-year population forecast with the determination of the land supply, uses and densities of the UGA that will be needed to accommodate the forecast. Planning Goal 4, to encourage the availability of affordable housing, may well factor into the sizing of a UGA, but it is irrelevant to establishing the size of the population that will need to be housed.

The Board affirms the discussion and conclusion on this matter as set forth in the Final Decision and Order. The County's request for reconsideration as to Basis for Reconsideration No. 1, as set forth in the Petition, is denied.

Basis for Reconsideration No. 2

"The Board's assumption that UGAs outside incorporated areas, except for master planned resorts and new communities, will be rare exceptions is erroneous."

The petition misstates what the Board has said on the matter of where and how urban growth areas (UGAs) are to be designated. The Board has not determined "...that the boundaries of UGAs are limited to existing cities." Petition, at 4. The petition also argues that "the GMA contemplates looking at the existing land use patterns in determining UGAs, not governmental structure." Petition, at 4.

The Board rejects the County's argument that the GMA requires an exclusive choice to be made

to base UGAs either on "existing land use patterns" or "governmental structure." In fact, RCW 36.70A.110 clearly requires both factors to enter into the exercise of establishing UGAs and the Board has said so more fully in pages 41 to 49 of the Final Decision and Order. The Act requires all cities to be included in UGAs. There is no such unequivocal requirement to include unincorporated urbanized areas in UGAs. RCW 36.70A.110(1), provides in part:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth areas or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included in an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory is already characterized by urban growth or is adjacent to territory already characterized by urban growth. (Emphasis added.)

Thus, contrary to the County's assertion, when considering what to include in a UGA, the GMA does explicitly look at governmental structure, even before it looks at existing land use patterns. The Board has not said that UGAs are limited to existing cities. However, as the Board stated in the Final Decision and Order, the fundamental tenet of RCW 36.70A.110(1) is that cities are the focal point of urban growth. Further, counties do not have carte blanche permission to include unincorporated urban areas, or even nonurban areas, in UGAs. Nevertheless, it is possible that a county may choose to and can justify the inclusion of non-city and even non-urban land within a UGA. In reaching such an outcome, the county is obliged to acknowledge the rank order preference articulated at RCW 36.70A.110, meet the other requirements of the Act, and follow the Board's direction to "show its work." The Board's conclusion in the present case is that the County did not follow these requirements, nor even attempt to do so.

The Board affirms the discussion and conclusion on this matter as set forth in the Final Decision and Order. The County's request for reconsideration as to Basis for Reconsideration No. 2 as set forth in the Petition is denied.

C.ORDER

The Petition for Reconsideration is **denied**.
So ORDERED this 24th day of June, 1994.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
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