

CENTRAL PUGET SOUND

GROWTH PLANNING HEARINGS BOARD

STATE OF WASHINGTON

ASSOCIATION OF RURAL RESIDENTS,) **Case No. 93-3-0010**

)
Petitioner,) **ORDER GRANTING**
) **DISPOSITIVE MOTIONS**

v.)
)
KITSAP COUNTY,)

)
Respondent.)

)
A prehearing conference in the above-captioned matter was held on January 18, 1994. At that time, the Board's presiding officer established deadlines for filing dispositive motions. On January 26, 1994, the Association of Rural Residents (Rural Residents) filed its Dispositive Motion re: Legal Issue No. 1. On February 2, 1994, Kitsap County (the County) filed its Response to Motion re: Legal Issue No. 1. On February 9, 1994, Rural Residents filed a Reply in Support of Motion Regarding Legal Issue No. 1.

Also on January 26, 1994, the Board received a Motion to Dismiss SEPA Claims from the County. On February 2, 1994, the Board received the Petitioner's Response to Motion to Dismiss SEPA Claims from Rural Residents. Kitsap County's Rebuttal re: SEPA Issues was filed on February 9, 1994.

On Friday, February 11, 1994, a hearing on dispositive motions was held at the Board's conference room in Seattle. The Board's three members, Joseph W. Tovar, presiding, M. Peter Philley, and Chris Smith Towne, were present. Michael W. Gendler appeared in person on behalf of Rural Residents. Douglas B. Fortner represented the County and participated telephonically. Court reporting services were provided by Donna K. Woods of Robert H. Lewis and Associates, Tacoma.

I. Rural Residents' Dispositive Motion re: Legal Issue No. 1

The Board's prehearing order set forth as Legal Issue No. 1:
Must Interim Urban Growth Areas (IUGAs) be guided by the planning goals of RCW 36.70A.020?

Rural Residents seeks an affirmative ruling from the Board on that issue and the County agrees. Therefore, the Board holds that IUGAs must be guided by the planning goals of RCW 36.70A.020.

Discussion

In its Dispositive Motion re: Legal Issue No. 1, Rural Residents directs the Board's attention to two sections of the Growth Management Act (**GMA** or the **Act**), Chapter 36.70A RCW, in support of its position that IUGAs must be guided by the planning goals of the Act.

The introductory portion of RCW 36.70A.020, "Planning goals," provides:

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

Under the provisions of ESHB 1761, enacted by the Legislature in 1993 and codified at RCW 36.70A.110(4), Kitsap County is required to:

... adopt development regulations designating interim urban growth areas ...

In the discussion following those citations, Rural Residents states that because the GMA "... classifies interim urban growth areas as 'development regulations' " and "... the planning goals ... apply to 'development regulations'," IUGAs must be guided by the planning goals of the Act. ^[1]

In its Response to Motion re: Legal Issue No. 1, Respondent Kitsap County agreed that:

... interim urban growth area designations are development regulations which must be guided by the planning goals of RCW 36.70A.020.

The Board agrees with the parties that the GMA's planning goals must be used to guide the development and adoption of IUGAs.

CONCLUSION

The Board concludes that Kitsap County's IUGAs must be guided by the planning goals of RCW 36.70A.020.

II. County's Motion to Dismiss SEPA Claims

The County requested the Board to dismiss with prejudice Legal Issues Nos. 4 and 5 as stated in the prehearing order entered in this case, for failure of Rural Residents to exhaust administrative remedies.

Legal Issue No. 4 asks:

Was there a failure by the Petitioners to exhaust administrative remedies below which precludes the Board from determining SEPA compliance issues?

In turn, Legal Issue No. 5 states:

If the Board has jurisdiction, did the County comply with RCW 42.21C.030(2)(c)?

Exhaustion of Administrative Remedies

In response to Legal Issue No. 4, the Board holds that the Petitioners **did** fail to exhaust their administrative remedies below and thus the Board is precluded from determining the SEPA compliance issue in this case, Legal Issue No. 5.

The State Environmental Policy Act (**SEPA**) is codified at Chapter 43.21C RCW. What are referred to as the SEPA Rules are codified at Chapter 197-11 WAC. Pursuant to WAC 197-11-340, the County issued a determination of nonsignificance (**DNS**) on the adoption of its IUGA designations on July 19, 1993. The County official responsible for making a threshold determination concluded that the IUGA would not have a probable significant adverse environmental impact. The DNS itself was attached as Exhibit 1 to the County's Motion to Dismiss SEPA Claims.

A Notice of the DNS was published on July 20, 1993 in *The Sun*, a daily Bremerton, Washington, legal newspaper. Exhibit 2 to the County's Motion to Dismiss SEPA Claims. On October 4, 1993, the Kitsap County Board of Commissioners adopted Ordinance No. 155-1993, entitled "An Ordinance Adopting Interim Urban Growth Areas as Required by the Growth Management Act." Exhibit A to the Petitioner's Response to Motion to Dismiss SEPA Claims.

Both the DNS and the Notice of DNS indicated as follows:

You may appeal this determination to Ron Perkerewicz, Dept. of Community Development, at 614 Division Street, Port Orchard WA 98366, no later than (date) August 3, 1993 in writing, with a \$125.00 appeal fee.

You should be prepared to make specific factual objections. Contact Rick Kimball to read or ask about the procedures for SEPA appeals. Exhibits 1 and 2 of County's Motion to Dismiss SEPA Claims. (Emphasis in original).

The limited record before the Board does not reveal any attempt by Rural Residents to appeal the County's issuance of the DNS until it filed its petition for review with this Board, nor has Rural Residents claimed to have made any such prior attempt. Referring to the SEPA exhaustion statute, RCW 43.21C.075(4), the County argues that it is too late for such an appeal because Rural Residents failed to follow the County's adopted procedure for appealing the issuance of a DNS.

The County cites a recent Washington State Supreme Court decision, which stated:

It is settled under the SEPA statute [i.e., RCW 43.21C.075(4)] that if an agency accords an aggrieved party an opportunity for administrative review, it must be exhausted *before* judicial review is sought. *State v. Grays Harbor County*, 122 Wn.2d 244, 249, 857 P.2d 1039 (1993) (emphasis in original).

The court referred to this as "... a strict exhaustion requirement in SEPA cases." *State v. Grays Harbor County*, at 249 (emphasis added). RCW 43.21C.075, entitled "Appeals," provides in part:

(1) Because a major purpose of this chapter is to combine environmental considerations

with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:

(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.

(3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall not allow more than one agency appeal proceeding on a procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement), consistent with any state statutory requirements for appeals to local legislative bodies. The appeal proceeding on a determination of significance/nonsignificance may occur before the agency's final decision on a proposed action. Such an appeal shall also be allowed for a determination of significance/nonsignificance which may be issued by the agency after supplemental review;

...

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an appeal procedure, such person shall, prior to seeking any judicial review, use such procedure if any such procedure is available, unless expressly provided otherwise by state statute...(Emphasis added).

The County has adopted a procedure for appeals of its SEPA determinations, including the issuance of a DNS. Kitsap County Code (KCC) 18.04.210 is entitled "Appeals." KCC 18.04.210

(a) provides:

The county establishes the following administrative appeal procedure under RCW 43.21C.075 and WAC 197-11-680... Exhibit 3 to County's Motion to Dismiss SEPA Claims.

KCC 18.04.210(3) involves the issuance of a DNS. It provides:

Administrative appeals relating to a DS or a DNS shall be heard by the hearing examiner. The procedures for perfecting such an appeal shall be those procedures specified for an appeal of a departmental ruling as set forth in Chapter 2.60, as may hereinafter be amended. Exhibit 3 to County's Motion to Dismiss SEPA Claims.

In turn, KCC 2.60.040(c), entitled "Appeal of Departmental Ruling," states:

Any person may appeal a departmental ruling to the hearing examiner by filing a notice of appeal with the department and paying a fee of one hundred twenty-five dollars. Such notice of appeal shall be filed within ten working days of mailing or delivery of the departmental

ruling.^[2] The department shall promptly transmit to the hearing examiner the application for departmental ruling, the departmental ruling, the notice of appeal and any other material contained in its files bearing upon the ruling. The department shall promptly set a time, date and place for a public hearing upon the appeal before the hearing examiner. The department shall mail or deliver notice thereof to the appellant and to the person submitting the application for departmental ruling. Exhibit 4 to County's Motion to Dismiss SEPA Claim (emphasis added).

In response to the County's arguments and citations to the above-quoted provisions, Rural Residents alleges that the exhaustion theory raised by the County applies only to judicial review and not review by this Board. Rural Residents points out that the case law authority cited by the County refers to judicial review only being precluded by a failure to exhaust administrative remedies, and not administrative review by this Board.^[3] In addition, Rural Residents noted that SEPA itself, at RCW 43.21C.075(4), referred to judicial review.

This question is one of first impression for the Board and no existing authority on point exists. The Board holds that the use of the phrase "judicial review" in RCW 43.21C.075(4) refers to both review by courts and by this quasi-judicial growth planning hearings board. The word "judicial" is not defined in SEPA. Instead, RCW 43.21C.075(8) defines "appeal" as referring to "administrative, legislative or judicial appeals." When a statute fails to define a material term, the Board, like a court, frequently turns to a law dictionary or standard dictionary for the definition of a word. "Judicial" means:

Belonging to the office of a judge; as judicial authority. Relating or connected with the administration of justice; as a judicial officer. Having the character of judgment or formal legal procedure; as a judicial act.^[4] Proceeding from a court of justice; as a judicial writ, a judicial determination. Involving the exercise of judgment or discretion; as distinguished from ministerial.... *Black's Law Dictionary* 759 (5th ed. 1981). (Italics in original; emphasis added).

Based on the law dictionary definition of the terms "judicial" and "judicial act", the Board concludes that the reference in RCW 43.21C.075(4) is all inclusive -- it includes a quasi-judicial board.

The Board's determination that the word "judicial" includes quasi-judicial agencies is consistent with this Board's prior views on the subject. In *Twin Falls, Inc. et al v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), the Board pointed out that:

The Washington State Growth Planning Hearings Boards have determined that each board "is a quasi-judicial body created pursuant to Chapter 36.70A RCW." WAC 242-04-020(1). A board's interpretation of its enabling statute is accorded great deference. *See San Juan County, et al. v. Dept. of Natural Resources, et al.*, 28 Wn. App. 796, 626 P.2d 995 (1981); (quoting *Hayes v. Yount*, 87 Wn.2d 280, 293, 552 P.2d 1038 (1976); *Dept. of Ecology v. Ballard Elks Lodge* 827, 84 Wn.2d 551, 556, 527 P.2d 1121 (1974)). A quasi-judicial body is one that determines "the legal rights, duties, or privileges of specific parties in a hearing

or other contested case proceeding.”RCW 42.36.010.

The quasi-judicial designation is important when considering this Board’s role and authority to resolve disputes arising under the GMA. For all intents and purposes, the Board is a specialized body (*see* RCW 36.70A.260(1)) charged with resolving a narrowly defined category of disputes. *See* RCW 36.70A.280(1). As such, the Board carries out its functions utilizing common judicial standards and methods of analyzing the challenges brought before the Board. In addition, the Board’s quasi-judicial label also signals to parties that a basic court room format will likely be followed. For example, the rules of professional conduct are applicable (WAC 242-02-120(1)); *ex parte* communications with Board members are prohibited (WAC 242-02-130); all pleadings must be signed (WAC 242-02-140); intervention and amicus status is possible pursuant to the civil rules of the superior courts and the rules of the appellate courts respectively (WAC 242-02-270 and -280); papers must be served (WAC 242-02-310); a subpoena can be issued (WAC 242-02-430); a motions practice is permitted (WAC 242-02-530); if testimony is permitted, all witnesses must be sworn (WAC 242-02-610(1)); and witnesses, if any, are subject to cross examination. These are some of the “judicial” aspects of the Board’s “quasi-judicial” characterization.

However, the Board does not have to strictly adhere to traditional court room rules. For instance, the Board’s presiding officer “may refer to, but shall not be bound by, the Washington rules of evidence.” WAC 242-02-650(3). As another example, “[d]iscovery shall not be permitted....” WAC 242-02-410(1). For that matter, as opposed to the courts, only one of the three Board members must be an attorney. RCW 36.70A.260(1). These are examples of the “quasi” half of the Board’s “quasi-judicial” designation. Twin Falls, at 49.

Because the Board is a part of the executive branch of state government,^[5] there may be a tendency to label it either an executive or administrative agency. However, the Board’s primary function is to:

... hear and determine only those petitions alleging either: (a) That a state agency, county, or city is not in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040; or (b) that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted. RCW 36.70A.280(1).

Therefore, the Board acts primarily as a quasi-judicial body.^[6] Whether a commentator prefers to refer to the Board as a quasi-judicial board or an executive or administrative agency is immaterial. Despite the label that is attached, the Board’s chief activity is the exercise of judicial functions to resolve disputes involving the GMA and SEPA as it relates to the GMA.

Most importantly, the Board’s holding that Rural Residents is precluded from raising any SEPA challenge because the County’s administrative remedies were not exhausted is consistent with the policy rationale for SEPA’s exhaustion of administrative remedies requirement (i.e., RCW

43.21C.075(4)) enunciated by the Washington State Supreme Court. ^[7] The exhaustion requirement:

(1) prevents premature interruption of the administrative process; (2) allows the agency to develop the factual background on which to base a decision; (3) allows the exercise of agency expertise; (4) provides a more efficient process and allows the agency to correct its own mistake; and (5) insures that individuals are not encouraged to ignore administrative procedures by resort to the courts. *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 30, 785 P.2d 447 (1990) citing *Estate of Friedman v. Pierce County*, 112 Wn.2d 68, 78, 768 P.2d 462 (1989).

The Board holds that the policy rationale for SEPA's exhaustion statute remains crucial whether the reviewing body is a quasi-judicial growth planning hearings board or a superior or appellate court. In this instance, Rural Residents could have appealed the County's issuance of a DNS immediately and obtained review from the County's independent hearing examiner. Had this occurred and the hearing examiner agreed with Rural Residents, the County would have been able to correct its mistake early in the process, prior to adopting the actual IUGA. However, without explicit direction from either the legislature or a reviewing court that this rationale either no longer exists or does not apply to quasi-judicial boards, this Board cannot overturn prior judicial interpretations of the SEPA exhaustion statute.

Application of the Exhaustion Test

The Board agrees with the County's assessment that the exhaustion requirement is applicable in this case. To determine whether the exhaustion requirement bars a SEPA claim, it must be decided:

(1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile. *Citizens for Clean Air*, at 26.

First, as indicated above, Rural Residents made no effort to invoke the County's administrative procedure for appealing the issuance of a DNS. Therefore, the County's procedures for an appeal of a DNS were not exhausted.

Second, the County did provide an adequate remedy for anyone dissatisfied with the issuance of the DNS in question. Anyone could have appealed to the County's hearing examiner pursuant to KCC 18.04.210.

Third, the issue of adequate notice of the appeals procedure must be addressed. Rural Residents claim that the only notice the County provided, the single legal notice in *The Sun* newspaper:

... was not 'adequate' to trigger the exhaustion requirement and thus negate petitioner's appeal rights, in view of SEPA's policies and regulations and the expanded public participation requirements of the GMA. *Petitioner's Response to Motion to Dismiss SEPA Claims*, at 3.

...

We acknowledge that SEPA does not provide a specific, minimum level of required notice. Consequently, we do not allege that using newspaper publication alone violates SEPA. But,

precisely because SEPA does not set forth a standard for minimum notice, it cannot be said that newspaper publication automatically constitutes adequate notice. Petitioner's Response to Motion to Dismiss SEPA Claims, at 4.

The SEPA Rules at WAC 197-11-510, entitled "Public notice," provide in part:

(1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures. Examples of reasonable methods to inform the public are:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas).

(2) Each agency shall specify its method of public notice in its SEPA procedures, WAC 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1).

[8]
(Emphasis added).

The County argues that constructive notice of the County's appeals procedure was made available to each citizen through publication of the County's SEPA ordinance when it was

adopted. [9] More importantly, it alleges that notice of the issuance of the DNS and notice of procedures to appeal the DNS was provided by publishing the Notice of DNS in *The Sun*. County's Rebuttal Re: SEPA Issues, at 6. That notice included the name and address of the person with whom the appeal should be filed, the date by which an aggrieved party had to file such an appeal, the cost of the appeal and the name of a County official to contact in case a potential appellant had questions about the County's SEPA appeals procedure or wanted to read its SEPA appeals ordinance. See Exhibits 1 and 2 attached to the County's Motion to Dismiss SEPA Claims.

As the *Citizens for Clean Air* court indicated regarding the City of Spokane's efforts to notify persons about its appeals procedures:

The record shows constructive notice of the appeals procedure. The procedure was available in a duly enacted ordinance. Moreover, Spokane published notice of the EIS. *Citizens for Clean Air*, at 28.

...

Because Citizens had some notice... Citizens were aware of the EIS. *Citizens for Clean Air*,

at 28-29.

The *Citizens for Clean Air* court specifically rejected contentions that local governments must provide actual notice of the time and place to begin an appeal. The court repeated the general rule that:

local governments need not specifically notify interested parties of the time and place for making an appeal. *Citizens for Clean Air*, at 29.

...

Citizens have no right to actual notice of the time and place for beginning an administrative appeal. They had legally adequate notice of the appeals procedure. If doubts existed about when to file, they could have inquired.... *Citizens for Clean Air*, at 29-30.

Here, the County not only provided Rural Residents of notice of the issuance of the DNS but the County also indicated where and when an appeal had to be filed, the cost of such an appeal, and a contact person for any questions about the SEPA appeals process. Accordingly, the Board holds that the County complied with the third prong of the exhaustion test by providing legally adequate notice of the procedure for appealing the issuance of its DNS as part of its notice of issuance of the DNS.

The Board also rejects Rural Residents' contention that notice in *The Sun* was inadequate since the members of Rural Residents live in the northern portion of Kitsap County, near Kingston, where a weekly newspaper exists. *The Sun*, a daily, is the legal newspaper of general circulation in Kitsap County. See the Affidavit of Publication from the clerk of the printers and publishers of *The Sun*, included in Exhibit 2 to the County's Motion to Dismiss SEPA Claims. Therefore, legal notice in *The Sun* suffices to alert citizens of Kitsap County of official SEPA actions taken by the County and the procedures for appealing such an action. As such, it complies with WAC 197-11-510(1)(b). This would be true even if the underlying action in question affected just the Kingston area. It is especially important when the action was of countywide import, as here with the adoption of the IUGA.

In addition, the Board rejects Rural Residents' contention that what have been referred to as the GMA's "enhanced" public participation requirements, at RCW 36.70A.140, require "enhanced" or additional SEPA public notice requirements. RCW 36.70A.140, entitled "Comprehensive plans--Ensure public participation," provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the procedures is observed.

The legislature did not amend SEPA's notice provisions when it enacted the GMA. If it intended

the public participation requirements of RCW 36.70A.140 to apply to SEPA, it would have done so through such an amendment. ^[10] Instead, RCW 36.70A.140 specifically applies only to the “development and amendment of comprehensive land use plans and development plans implementing such plans;” SEPA is not mentioned. Absent such a legislative direction, the Board will not create an enhanced citizen participation requirement for SEPA.

Having reached this conclusion, the Board need not at this time determine whether the County complied with the GMA’s enhanced public participation requirements at RCW 36.70A.140 when it adopted its IUGA designations. Legal Issue No. 6, set forth in the Board’s prehearing order, addresses that issue. It is not presently before the Board but will be considered at the hearing on the merits.

Finally, the fourth prong of the exhaustion test asks whether exhaustion would have been futile. If exhaustion of remedies would be futile, litigants are not required to do so. However, the policies underlying exhaustion impose a substantial burden on a litigant attempting to show futility. *Citizens for Clean Air*, at 30. The limited record before the Board does not reveal an attempt by Rural Residents to allege futility nor have Rural Residents argued to the Board that exhaustion would have been futile. Therefore, exhaustion of the County’s SEPA appeals procedures was required.

CONCLUSION

The Board concludes that the reference in RCW 43.21C.075(4) to “judicial review” applies both to superior and appellate courts, and to quasi-judicial boards such as the growth planning hearings boards. Accordingly, if a party aggrieved by a local government’s SEPA determination failed to exhaust that local government’s administrative appeals procedures, that party is precluded from seeking SEPA review by the Board.

Having concluded that the SEPA exhaustion statute could preclude SEPA review by this Board, the four-prong exhaustion test was applied. The Board concludes that in this case, Rural Residents did fail to exhaust the County’s administrative appeals procedures for the issuance of the DNS. Second, there was an adequate remedy available to Rural Residents had they utilized the County’s administrative appeals process.

Third, the County provided adequate notice of its administrative procedure for appealing the issuance of a DNS. Furthermore, publication of the Notice of DNS in *The Sun* was legally adequate. In addition, the GMA’s “enhanced” public participation requirements (RCW 36.70A.140) do not impose additional notice and public participation requirements upon SEPA.

Fourth, Rural Residents have not claimed that exhaustion would have been futile. Therefore, the Board concludes that it is precluded from determining Legal Issue No. 5 (i.e., whether the County complied with RCW 43.21C.030(2)(c)), raised by Rural Residents.

III. ORDER

1. Rural Residents' Dispositive Motion re: Legal Issue No. 1 is **granted**. Because IUGAs must be guided by RCW 36.70A.020, the Board will determine Legal Issue No. 2 at the upcoming hearing on the merits of Rural Residents' Petition for Review.

2. The County's Motion to Dismiss SEPA Claims is **granted**. Therefore, Legal Issue Nos. 4 and 5 are dismissed with prejudice.

So ORDERED this 16th day of February, 1994.

CENTRAL PUGET SOUND GROWTH PLANNING HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Presiding Officer

Chris Smith Towne
Board Member

[1]

In its Reply in Support of Motion Regarding Legal Issue No. 1, Rural Residents revises its analysis, directing the Board's attention to its argument in Petitioner's Response to Motion to Dismiss SEPA Claims. There, Rural Residents:

... demonstrated that designating the geographic extent of a UGA would properly occur in the context of the comprehensive plan, while the regulations specifying allowed and precluded uses would be adopted in the context of the development regulations.

It then asks that the Board defer deciding whether designation of the geographic extent of an IUGA takes place in the context of comprehensive plan or development regulations.

The Board finds that RCW 36.70A.110(4) gives the County the duty and authority to designate interim urban growth areas through adoption of a development regulation. It is the action taken by the County to comply with that requirement that is the subject of this petition for review. Further, the requirement of RCW 36.70A.020 that development of development regulations, as well as comprehensive plans, must be guided by the planning goals of the act is applicable to the County's action.

[2]

Rural Residents has not claimed that the County's appeal procedures were unclear. The Washington State Supreme Court has ruled as follows about unclear appeals procedures:

While a process for appeal must exist, we have never held that the ordinance describing the procedure must be clear. To establish that the procedures themselves are so poorly defined that we should excuse exhaustion, the litigant must attempt to appeal. A litigant who makes a sincere effort to clarify ambiguities in the ordinance and to use the appeal process may complain about poorly defined administrative machinery. If we are persuaded that no "clearly defined machinery" exists for resolving specific complaints, we will excuse exhaustion.

Lack of clear procedure can make a remedy inadequate. But the litigants who wish to establish that the procedure is so poor as to be inadequate cannot rely on bad draftsmanship alone. It is not unfair to expect citizens groups to use available administrative procedures. Fairness to the agency requires that would-be litigants try to clarify ambiguity

before going to court. *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 27-28, 785 P.2d 447 (1990)

[3] The County cited *Citizens for Clean Air* and *State v. Grays Harbor County*, 122 Wn.2d 244, 857 P.2d 1039 (1993) to support its contention that Rural Residents failed to exhaust all administrative remedies before filing this case with the Board.

[4] The definition of a “judicial act” includes among its meanings: “... An act of administrative board if it goes to determination of some right, protection of which is peculiar office of courts...” *Black’s Law Dictionary*, 760 (5th ed. 1981). (Emphasis added).

[5] The Washington State Growth Planning Hearings Boards were created by the legislature in 1991. However, the Governor is responsible for appointing the members of the boards. *See* RCW 36.70A.250 and .260.

[6] Admittedly, the Board has some generic administrative duties, such as administering its budget. These administrative duties are no different than any other unit of government. Yet, these administrative matters simply enable the Board to carry out its quasi-judicial functions. Likewise, the joint growth planning hearings boards have a duty to adopt rules of practice and procedure pursuant to the Administrative Procedure Act. *See* RCW 36.70A.270(6). Again, however, even these duties simply enable the boards to carry out their primary task: to adjudicate GMA and SEPA disputes relating to the GMA.

[7] SEPA’s exhaustion requirement at RCW 43.21C.075(4) should not be confused with what the court has referred to as SEPA’s “linkage” requirement of RCW 43.21C.075(1) and (2)(a). The exhaustion requirement forces a dissatisfied party to act relatively quickly by appealing a SEPA determination within the relevant local time frame, using the internal administrative appeals procedures of the agency making the SEPA decision. On the other hand, the linkage requirement forces a party dissatisfied with a SEPA determination, who has exhausted the internal administrative SEPA appeals procedures, to wait until the underlying substantive decision (e.g., to grant or deny a permit) has been made before appealing. *See State v. Grays Harbor County*.

[8] The limited record before the Board does not disclose whether the County specified its method of public notice in its SEPA ordinance pursuant to WAC 197-11-510(2). Although this was not an issue raised by the parties, the Board notes that if the County did not specify its method of public notice, it had only to publish notice in a newspaper, since the DNS covered the entire county and posting notice on every affected site countywide would be impracticable.

[9] KCC 18.04.210 was adopted in 1991. *See* Exhibit 3 to County’s Motion to Dismiss SEPA Claims.

[10] The Board also agrees with the County that, although Rural Residents have standing before the Board because they appeared before the County during the IUGA adoption process, that standing does not eliminate the SEPA exhaustion statute’s requirements.