

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

KITSAP CITIZENS FOR RESPONSIBLE PLANNING and JERRY HARLESS,	)	
	)	<b>Case No. 06-3-0007</b>
	)	
Petitioners,	)	<b>(KCRP VI)</b>
	)	
v.	)	
	)	<b>ORDER FINDING</b>
KITSAP COUNTY,	)	<b>COMPLIANCE [Re: Ordinance</b>
	)	<b>No. 395-2007 - Kingston</b>
Respondent, and	)	<b>Wastewater Facilities Plan]</b>
	)	
OPG PROPERTIES, LLC,	)	
	)	
Intervenor, and	)	
	)	
HOME BUILDERS ASSOCIATION OF KITSAP COUNTY, et al.,	)	
	)	
Amici Curiae	)	
	)	

---

**I. BACKGROUND**

On July 26, 2006, the Board issued its Final Decision and Order (**FDO**) in *KCRP VI, et al., v. Kitsap County*, CPSGMHB Case No. 06-3-0007. At issue was Kitsap County’s adoption of the Kingston Sub-Area Plan. This is the second compliance proceeding in that matter.

The Board’s FDO concluded that Kitsap County’s expansion of an individual UGA prior to the ten-year review of the County’s UGAs and in advance of adoption of reasonable measures failed to comply with the GMA. The FDO ruled that the County’s Land Capacity Analysis (**LCA**) improperly discounted un-sewered areas of the existing UGA and that the Capital Facilities Element (**CFE**) lacked plans to provide urban services within the twenty-year planning period. The Board’s FDO stated:

1. ...

2. Kitsap County's adoption of Ordinance No. 352-2005, the Kingston Sub-Area Plan, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.215, .130(3), .115, .070 and .110, and **is not guided** by GMA goals RCW 36.70A.020(1), (2), and (12).
3. Therefore the Board **remands** Ordinance No. 352-2005 to Kitsap County with direction to the County to take legislative action to comply with the requirements of the GMA as set forth in this Order.

*KCRP IV FDO*, at 31-32.

Kitsap County timely submitted its Statement of Actions Taken to Comply [SATC] and Compliance Index; Petitioners responded, and the County replied. At the February 1, 2007, Compliance Hearing, coordinated with the Compliance Hearing in *1000 Friends, et al v. Kitsap County*, CPSGMHB Case No. 04-3-0031c, the Board indicated it would need more specific briefing and in-person argument in order to decide the issues of compliance with respect to Case No. 06-3-0007. Kitsap County timely submitted its Supplemental Statement of Actions Taken to Comply – **SSATC**; Petitioners responded, and the County replied.

The Rescheduled Compliance Hearing was convened on February 26, 2007. On March 16, 2007, the Board issued its Order Finding Partial Compliance [Re: Kingston Sub-Area Plan], Order of Continuing Noncompliance and Invalidity [Re: Kingston Wastewater Facilities Plan] (**Invalidity Order**). The Board found Kitsap County's amended Kingston Sub-area Plan compliant with respect to the ten-year plan update, reasonable measures, and land capacity analysis, but non-compliant with the GMA requirement for Capital Facilities, in particular, sewer services.

The Invalidity Order stated:

1. With respect to Legal Issue 4B, Kitsap County's adoption of Ordinance 370-2006, re-adopting the Kingston Sub-Area Plan and adopting the 2007-2012 CFP, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.070(3) and .110, and **is not guided** by and **substantially interferes** with GMA goals RCW 36.70A.020(1), (2), and (12) and with the requirements of the Act.
2. The Board enters an **Order of Continuing Noncompliance** with respect to the lack of a plan to provide urban services in the entire Kingston Sub-Area UGA in the twenty-year planning period, as set forth in the FDO.
3. Having found noncompliance, the Board also enters an **Order of Invalidity [re: Kingston Wastewater Facilities Plan]** with respect to Goal 10 of the Kingston Sub-Area Plan and to the Kingston Wastewater Facilities provisions of the 2007-2012 CFP, as set forth in this Order.

4. The Board **remands** the Kingston Sub-Area Plan and 2007-2012 CFP to Kitsap County with direction to the County to take legislative action to comply with the requirements of the GMA as set forth in this Order.

Invalidity Order, at 18. The Board explained:

A Capital Facilities Element which lacks a coherent plan for providing urban sanitary services in existing urban areas, whether sewer mains or alternative technologies, is clearly erroneous. The statutory deadline for this work has long passed. Particularly in light of the public health, safety and environmental risks, the lack of a compliant CFE for urban sanitation in the Kingston Sub-Area – including collection and transmission, as well as treatment – is a serious deficiency.

In sum, upon review of Ordinance 370-2006 and the submissions of the parties, the Board finds and concludes that Kitsap County’s continued reliance on a non-compliant CFE in its re-adoption of the Kingston Sub-Area Plan **substantially interferes** with the fulfillment of the goals of the GMA, in particular RCW 36.70A.020(1), (2), and (12), because the enactment thwarts the GMA mandate to accommodate urban growth where urban services can be provided, to reduce sprawl, and to ensure provision of urban services in urban areas. Accordingly, the Board enters an **order of invalidity**.

RCW 36.70A.302(1)(c) requires the Board, in entering such an order, to “specif[y] ... the particular part or parts of the plan ...” to be invalidated. The Board’s order of invalidity applies to Goal 10 of the Kingston Sub-Area Plan, Comprehensive Plan, at 12-5, and to the Kingston Wastewater Facilities provisions of the CFP, Comprehensive Plan, App. A, at 61-62, 64-65. *These Plan sections are incomplete, in that they lack provisions to make urban sanitary services available [whether sewer or alternative technologies] throughout the Kingston UGA within the twenty-year planning period.*

*Id.* at 17.

The Invalidity Order set September 17, 2007, as the date by which Kitsap County should take legislative action to bring its plan into compliance with the GMA and the FDO.

On September 25, 2007, the Board received Respondent Kitsap County’s Statement of Actions Taken to Comply (**2<sup>nd</sup> SATC**), with four attachments:

- Ordinance No. 395-2007 “Amendments to the Kitsap County Comprehensive Plan, Kingston Sub-Area Plan, 6-Year Capital Facility Plan & Kingston Wastewater Facility Plan as it relates to an order of continuing noncompliance for capital facility planning and future wastewater conveyance for the Kingston Urban Growth Area”

- Partial transcript of Kitsap County Board of Commissioner Public Hearing Adopting Ordinance 395-2007 and Kingston Wastewater Facilities Plan Addendum – testimony of Jerry Harless
- Kitsap Remand Adoption Schedule
- Compliance Index

On October 9, 2007, the Board received Petitioner Harless’ Response to County Statement of Actions Taken to Comply with Continuing Non-Compliance Order (**Harless Response**). Harless’ Response contained a request for a one-day extension of the deadline to file the pleading. The County had no objection to the delay, and the Board notes that October 8 was a postal holiday; the request for extension is **granted**.

On October 16, 2007, the Board received a letter from KCRP indicating its concurrence in the submittal of Petitioner Harless and intention to attend the hearing in support of the Harless issues.

On October 19, 2007, the Board received Respondent Kitsap County’s Reply re Statement of Actions Taken to Comply (**County Reply**).

The Second Compliance Hearing was convened on October 21, 2007, at 10:30 a.m. in the Board’s offices. Board members Margaret Pageler, Ed McGuire and Dave Earling, and Board Attorney Julie Ainsworth-Taylor attended. Kitsap County was represented by its attorneys Lisa Nickel and Shelley Kneip, accompanied by planner Angie Silva. Petitioner Jerry Harless appeared *pro se*. Petitioner KCRP was represented by David Bricklin, accompanied by KCRP members Tom Donnelly and Charlie Burrow. Tom Nevins also attended. The hearing was recorded. The hearing adjourned at approximately 11:00 a.m.

## **II. DISCUSSION**

There is one issue remaining in the Board’s review of the KCRP/Harless challenge to Kitsap County’s Kingston Sub-Area Plan: the provision of urban services – specifically sewer service – throughout the UGA.

The PHO stated the relevant portion of Legal Issue No. 4 as follows:

*Legal Issue 4: Does adoption of Ordinance 352-2005, approving the “2005 Kingston Sub-Area Plan Update” and expanding the Kingston Urban Growth Area, fail to be guided by RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.020(12) and fail to comply with RCW 36.70A.070 and RCW 36.70A.110 by ... failure to provide urban services adequate to support planned growth as required by the GMA?*

In the July 2006 FDO, the Board ruled that the County erred in expanding the Kingston UGA based on a capital facilities element that lacked plans to provide urban services – specifically, wastewater collection - to the existing UGA within the twenty-year planning

period.<sup>1</sup> *KCRP VI FDO*, at 27. The Board concluded that UGA expansion along a developer-proposed sewer line extension, in lieu of providing infrastructure *within the existing UGA* over a twenty-year time frame to accommodate projected population growth, did not meet the GMA requirements for the capital facilities element of the Kitsap County comprehensive plan. *Id.* The Board stated:

The GMA does require that the County's twenty-year comprehensive plan ... indicate how adequate public facilities will be provided to serve allocated urban-area population. The County is required to demonstrate that public services, including sewer, will be available for the allocated population within the twenty-year planning period.

*KCRP VI, FDO*, at 26. The Invalidity Order reiterated:

The GMA mandate includes not just extending service to new developments but also bringing already-developed areas within the UGA up to an urban level of service within the planning period.

Invalidity Order, at 7.

#### *Positions of the Parties*

Kitsap County submits Ordinance No. 395-2007 as its compliance action. 2<sup>nd</sup> SATC, Tab 11. The Ordinance includes an enhanced capital facilities inventory, a needs analysis, and a more detailed funding strategy for the Kingston Wastewater System through 2025, according to the County. To provide sewer service for the entire UGA, several additional pump stations and trunk lines are proposed and tentatively mapped and costs are estimated. 2<sup>nd</sup> SATC at 6-7. Several Comprehensive Plan goals and policies have been amended to encourage better coordination of wastewater services. *Id.* at 9-10, referencing LU-12, LU-16, and CF-22.

The County states:

This plan will bring the already-developed areas within the UGA up to an urban level of service. This, along with the requirement that new developments provide urban levels of service, will ensure that the entire population of the Kingston UGA – new and old – will have urban services.

2<sup>nd</sup> SATC, at 9.

At the Compliance Hearing, the County explained that the County has established a financing task force to review needs and help set priorities for sewer service improvements county-wide.

---

<sup>1</sup> The extent to which the existing UGA lacks sewer connections was depicted in Figure 7.1 of the Capital Facilities chapter. Kingston Sub-Area Plan, at Ch. 7-10.

06307 *KCRP VI v. Kitsap County* (Nov. 5, 2007)

**#06-3-0007 Order Finding Compliance [Re: Ordinance No. 395-2007 – Kingston Wastewater Facilities Plan]**

Petitioner Harless agrees that the amended Kingston Wastewater Plan now includes sufficient description of the proposed locations and capacities of expanded or new capital facilities. Harless Response, at 3. However, Harless objects that the County has not amended its six-year Capital Facilities Plan to include any near-term improvements for Kingston's existing UGA and continues to rely on a "let the developer build it" funding strategy. *Id.*

At the Compliance Hearing, Harless pointed out that the County's original Capital Facilities Plan for the Kingston Sub-area projected that by 2012 half of the unsewered residences would be served by sewer; 2012 is within the present CFP, but as yet no public funds have been allocated to make this a reality.

Petitioner KCRP at the Compliance Hearing concurred with Harless and indicated KCRP's support for the financing task force that has been convened by the County.

In reply, the County asserts that no additional projects are needed for Kingston in the six-year period, so that an amendment to the 6-year CFP is not required. County Reply, at 2. Further, the County argued at the Compliance Hearing that the choice of projects for the CFP is within the County's discretion. In particular, the County pointed out that it needs to re-allocate funds in the CFP for projects in the five UGA expansion areas invalidated by the Board's decision in *Suquamish II v. Kitsap County*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order (Aug 15, 2007). In that case the Board invalidated five UGA expansion areas because of the County's failure to plan for the provision of urban services, particularly sewer service, in the existing urban area, not just the expansion area. At the Compliance Hearing the County argued that the allocation of funds for specific projects among the sub-areas, each of which lacks provision for sewer in existing areas, is within its discretion.

The County denies that its funding strategy relies wholly on developers, pointing to the range of funding sources in Table 4.2 of the plan – wastewater funds, ULIDs and state grants as well as developer extensions. *Id.* at 3.

The County also asserts – and stressed at the Compliance Hearing – that the development regulation referred to as Footnote 48 requires new development, including in-fill development, to hook up to sewers, and thus ensures the provision of sewer service throughout the existing UGA within the 20-year period.

### Board Discussion

The concern that prompted the Invalidity Order in this case was that Kitsap County's plan for sewer service in the existing urban area of Kingston was simply a plan for failure: "The population unserved by sewers will decrease over time ... as density increases and existing septic systems fail and the residents will hook up to sewer." SSATC, at 13, fn. 41, citing Ordinance 367-2006, at 156. There was no plan to ensure that sewer lines would be appropriately located and available for connection in the existing UGA as

septic systems fail. There was no requirement that existing homes and business hook up to sewer as lines are extended. In short, the plan relied wholly on lines built by developers to support *new* subdivisions in UGA expansion areas and disregarded existing unsewered urban areas.

The Invalidity Order stated:

- The Board finds that the County has no strategy to ensure that the population of the *existing* UGA is brought up to an urban level of sanitary service. [The County acknowledges that in 20 years over 40% of the population of the unexpanded UGA would not be served.] The County's "plan" for 1,100 existing urban dwellers in the Kingston Sub-area UGA is not an assurance of availability of urban sanitary sewer systems but rather is the inevitability of septic system failure. Eventually septic systems will fail and then impacted residents will either hook up to sewer lines, if any are within range, or adopt alternative technologies. But waiting for failure is not a plan. And surely septic system failure is not an acceptable GMA plan for the required provision of urban sanitation. Planning involves anticipation of future events, developing strategies and taking action to address them.
- Urban growth requires urban services, including sanitary sewer systems. The GMA mandate includes not just extending service to new developments but also bringing already developed areas within the UGA up to an urban level of service within the planning period. (Citing to *MBA/Brink, 02310*, FDO, at 11-12; and *Fallgatter V, 06303*, FDO, at 14-16.) . . . The County must demonstrate that urban sanitary services, whether sewer or alternative technologies, will be available for the allocated Kingston Sub-Area urban population [new and existing] within the twenty-year planning period.

Invalidity Order, at 12-13.

The Invalidity Order was in accord with a recent ruling of the Western Washington Growth Management Hearings Board - *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 04-2-0022 and 03-2-0010, Final Decision and Order (May 31, 2005). In *Irondale*, the Western Board invalidated Jefferson County's designation of a non-municipal UGA for which there was no reasonably-certain sanitary sewer plan. The Western Board reasoned:

Public sanitary sewer is a key urban governmental service. See RCW 36.70A.030(19). Creating a non-municipal UGA to acknowledge pre-existing growth is only responsible if urban levels of service are provided within that non-municipal UGA. ...[T]he creation of the UGA boundaries to include large areas for which no public sewer can reasonably be provided in the 20-year planning horizon does not comply with RCW 36.70A,110.

*Irondale*, FDO, at 17. The Western Board reasoned:

*06307 KCRP VI v. Kitsap County* (Nov. 5, 2007)

**#06-3-0007 Order Finding Compliance [Re: Ordinance No. 395-2007 – Kingston Wastewater Facilities Plan]**

Urban growth areas are designated lands which will contain “areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period.” RCW 36.70A.110(2). “Urban growth” makes intensive use of land for buildings, structures and impermeable surfaces. RCW 36.70A.030(17). .... A primary goal of the GMA is the encouragement of development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. RCW 36.70A.020(1). Non-municipal UGAs, that is, UGAs that do not contain cities, are closely scrutinized to ensure that they ... are planned to provide urban levels of service to populations and uses at urban densities. Because non-municipal UGAs may allow an extension for growth to areas that do not already have a governmental structure for the provision of urban levels of service, *it is important to have a plan for the provision of urban services to the entire non-municipal UGA. If this cannot be done, the boundaries of the non-municipal UGA are likely too large.*

*Id.* at 15-16 (emphasis supplied).

With regard to the Kingston Sub-area, this Board finds that by adopting Ordinance No. 395-2007, Kitsap County has revised its capital facilities plan to extend urban sewer services throughout the sub-area UGA. The amended plan in Ordinance 395-2007 reassesses the 20-year needs for the entire sub-area, identifying and mapping proposed trunk lines and additional pump stations necessary to provide coverage. The County states that some environmentally-sensitive areas (designated as urban restricted) may need to be served by alternative technologies.

The County’s plan would be stronger if its regulations required all existing homes and businesses to hook up to sewer as it becomes available<sup>2</sup> (see, e.g., *Irondale*, FDO, at 20), but this Board has held that mandatory hook-up is not required by the GMA. *Suquamish II*, at 26.

The Board reads the County’s financing plan as including a range of funding sources – developer extensions, ULIDs, state grants, and wastewater system revenues – and not relying exclusively on developers. The financing plan is not very specific, but Petitioners have not demonstrated that it is inadequate.

The Board notes that the GMA requires a capital facilities element with a financing plan that ensures the provision of necessary urban services within the 20-year planning horizon. However, a specific funding plan is only required for capital facilities needed in the coming six years. The 6-year CFP must be consistent with the comprehensive plan.

---

<sup>2</sup> The Board notes that the County requires “all *new* residential subdivisions, single-family or multi-family developments ... to provide an urban level of sanitary sewer service for all proposed dwelling units.” KCC 17.381.050(48), referred to as Footnote 48. At the Compliance Hearing, the County indicated that it applies this rule to applications to develop two or more dwelling units.

*06307 KCRP VI v. Kitsap County (Nov. 5, 2007)*

The County states that there was no need to amend its current 6-year capital facilities plan in connection with the present compliance, outside the normal annual cycle, but that the updated plan for Kingston wastewater system improvements will be considered in the context of the total county-wide CFP during the regular annual review. See, *Suquamish II, supra*.

The Board agrees with the County that Petitioners' failure-to-act claim under RCW 36.70A.070(3)(e), which would require the County to reassess its Kingston land use plan, is premature. See discussion, *infra*. The Board must assume the County in good faith is revising its current CFP to begin to address its GMA responsibility to provide service throughout the existing urban areas, in the Kingston UGA and in the five UGAs identified in *Suquamish II*.

**The Board finds and concludes that the County's adoption of Ordinance 395-2007 brings the County into compliance with RCW 36.70A.070 and .110 as set forth in the July 26, 2006 FDO and in the March 16, 2007, Invalidation Order.**

However, while the Board finds the County in compliance here, and assumes the County will act in good faith to provide urban services, particularly sanitary sewer, to its existing un-sewered urban population, the Board reminds the County that the 20-year planning period is not a "rolling period" for purposes of providing urban services in urban areas.

In the present case, the Board focuses on the portions of the Kingston subarea that were developed prior to enactment of the GMA and that have remained un-sewered. While these areas were probably included in the County's first UGA designation for the Kingston subarea in 1994, the Board recognizes that the "start date" for Kingston's 20-year planning period is 1998 – the year the County's plan was found to comply with the GMA.<sup>3</sup> Consequently, the 20-year period for those areas within Kingston, and the other County UGAs, begins in 1998 and ends in 2018. What this means for the County is that urban services must be adequate and available to serve these urban densities by 2018. In addition, the Board notes that areas included in UGA *expansion areas* must have adequate urban services available within 20 years of the area's date of inclusion in the UGA.

As discussed *supra*, only a 6-year financing plan is required by the GMA, and the Board recognizes that the timing of some projects does slip and "rolls forward" as time passes. But there is an end date to the 20-year period, with Kitsap's original 20-year planning period already half spent. The time has come for the County to look seriously at how, and when, it will address the existing un-sewered areas within its UGAs.

The Board takes note that Petitioner Harless argued that the original Capital Facilities Plan for the Kingston Subarea indicated half of the un-sewered residences would be served by 2012 – but necessary conveyance improvements have only just now been identified and are not yet funded. The County estimates the cost at \$29 million. In order

---

<sup>3</sup> *Kitsap County v. CPSGMHB*, 138 Wn.App. 863, 879-880, 158 P.3d 638 (2007).  
06307 KCRP VI v. *Kitsap County* (Nov. 5, 2007)  
**#06-3-0007 Order Finding Compliance [Re: Ordinance No. 395-2007 –  
Kingston Wastewater Facilities Plan]**  
Page 9 of 12

to meet the GMA 20-year requirement, all of those necessary projects must be included by no later than the 2012-2018 CFP. Until that time, the County has discretion in *when* it commits to address this problem and *which projects* it chooses to prioritize. *McVittie IV v. Snohomish County*, CPSGMHB Case No. 00-3-0006c, Final Decision and Order (Sept. 11, 2000), at 14-15. However, making sewer available to un-sewered developed areas will take time, and time is of the essence.

If the 2012-2018 funding plan were to be insufficient to fund the necessary system build-out, the County would need to reassess its land use plan and presumably re-designate portions of the Kingston UGA as rural; otherwise a PFR challenging the 2012-2018 CFP for failure-to-act pursuant to RCW 36.70A.070(3)(e) would be timely.

As the Board noted in the FDO in this matter:

“[W]aiting for failure is not a plan. And surely septic system failure is not an acceptable GMA plan for the required provision of urban sanitation. Planning involves *anticipation* of future events, *developing strategies* and *taking action* to address them.”

FDO, at 12.

The Board acknowledges the enormity of the challenge the County faces in planning and funding its essential urban infrastructure. The Board expects a good faith effort from the County on this GMA duty and obligation.

### **III. FINDING OF COMPLIANCE**

Based upon review of the July 26, 2006 Final Decision and Order, the March 16, 2007 Invalidation Order, the Kitsap County 2nd SATC, Petitioner Harless' Response, the Board's review of Ordinance No. 395-2007 and other documents in the record, the arguments and comments offered in the briefing and at the second compliance hearing, the Board finds:

- By adopting Ordinance No. 395-2007 [Kingston Wastewater Facilities Plan] Kitsap County has complied with the goals and requirements of the GMA as set forth in the Board FDO and Invalidation Order and the GMA. The Board therefore enters a **Finding of Compliance** for Kitsap County Re: Ordinance No. 395-2007 [Kingston Wastewater Facilities Plan].

### **IV. ORDER**

Based upon review of the July 26, 2006 Final Decision and Order, the March 16, 2007 Invalidation Order, the Kitsap County 2nd SATC, Petitioner Harless' Response, the Board's review of Ordinance No. 395-2007 and other documents in the record, the arguments and comments offered in the briefing and at the second compliance hearing, and having deliberated on the matter, the Board ORDERS:

CPSGMHB Case No. 06-3-0007, *KCRP VI v. Kitsap County*, is **closed**. Kitsap County's adoption of Ordinance No. 395-2007 corrects the deficiencies found in Ordinance No. 352-2005 and **complies** with the goals and requirements of the GMA as set forth in the Board's July 26, 2006 FDO and March 16, 2007 Invalidity Order. The Board therefore enters a **Finding of Compliance** for Kitsap County Re: Ordinance No. 395-2007 [Kingston Wastewater Facilities Plan].

So ORDERED this 5<sup>nd</sup> day of November, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

David O. Earling  
Board Member [Board member Earling also files a  
concurring opinion]

---

Edward G. McGuire, AICP  
Board Member

---

Margaret A. Pageler  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.<sup>4</sup>

---

<sup>4</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion 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 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. A petition for judicial review may not be served on the Board by fax or by electronic mail.

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

06307 *KCRP VI v. Kitsap County* (Nov. 5, 2007)

**#06-3-0007 Order Finding Compliance [Re: Ordinance No. 395-2007 –  
Kingston Wastewater Facilities Plan]**

## Concurring Opinion of Board Member Earling

I agree with the findings and order in *Kitsap Citizens for Responsible Planning and Jerry Harless v. Kitsap County (KCRP VI)*. However, I am concerned that some entities throughout the Central Puget Sound Region fail to anticipate and plan for the infrastructure development that is needed over the long term in their jurisdiction.

While in this case Kitsap County is found to be compliant by virtue of the additional work it has done in the adoption of Ordinance No. 395-2007, which includes projected sewer trunk lines and additional pump stations, in addition to a financing plan, I am not completely convinced Kitsap County has the ability or commitment to provide the needed infrastructure for the Kingston sub-area.

I could not agree more with the concluding sentence under Board Discussion in this case:

“ The Board expects a good-faith effort from the County on this GMA duty and obligation.”

---

David O. Earling  
Board Member