

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF
FERRY COUNTY

Petitioner,

v.

FERRY COUNTY,

Respondent

Case No.: 00-1-0013

FINAL DECISION AND ORDER

I. Procedural History

On May 8, 2000, David L. Robinson, pro se for Concerned Friends of Ferry County filed a Petition for Review.

On October 18, 2000, the Board held its Hearing on the Merits in Republic, Washington. All parties were present and represented.

On October 27, 2000 Respondent filed Respondent's Supplemental Index to Exhibits pursuant to a Board request.

On October 30, 2000, Petitioner filed Petitioner's Sur-Reply Brief in Response to Ferry County's October 27, 2000 Supplemental Index to Exhibits.

II. Findings of Fact

1. Ferry County adopted an Interim Critical Area Ordinance (ICAO) March 8, 1993.
2. The Interim Critical Area Ordinance has not been repealed, nor was a petition filed raising objections within the time allowed.
3. The County assured the Eastern Washington Growth Management Hearings Board it would adopt a Final Critical Area Ordinance addressing certain concerns raised in other petitions before the Board.

4. Several hearings were held by the Ferry County Planning Commission to review the ICAO. No changes were made, nor is there a record of the review process.

III. Legal Issues and Discussion

ISSUE: Petitioners contend Ferry County has not complied with RCW 36.70A.040(4)(d) and RCW 36.70A.060 because it failed to adopt critical areas implementing regulation by December 27, 1994 or when it adopted its Comprehensive Plan on September 18, 1995, and because it failed to insure consistency between its Comprehensive Plan adopted in 1995 and required critical areas implementing regulations that includes best available science. RCW 36.70A.172.

Petitioners' position: Petitioners argue that Ferry County has failed to adopt final Critical Areas Ordinances (CAO) as required by RCW 36.70A.040 (d) and RCW 36.70A.060(2) and 36.70A.060 (3). For clarity, these statutes are presented here:

RCW 36.70A.040(4)(d): Any county or city that is required to conform with all the requirements of this chapter as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: ... (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four year from the date the county legislative authority adopts is resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted it development regulations by submitting a letter notifying the department of community, trade and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

RCW.36.70A.060 (2): Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

RCW 36.70A.060(3): Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

While recognizing the existence of an “interim” critical areas ordinance, (ICAO), petitioners contend that final regulations need to be adopted. Petitioners further argue that RCW 36.70A.060 (3) requires Ferry County to review these regulations when adopting their comprehensive plans to insure consistency.

Respondent’s position: Ferry County contends that:

1) Petitioners petition should fail in that the Ferry County interim critical areas ordinance is still in effect and can be considered final, and

2) Petitioners’ petition is barred by the 180 days requirement of WAC 242.02.830 and the general two-year statute of limitations. RCW 4.16.005.

Ferry County contends the interim Critical Areas Ordinance continues to be in effect and could be considered the County’s final CAO. They believe the GMA does not require more than the review of these regulations upon the adoption of the Final Comprehensive Plan. Ferry County argues that a review of the Interim Critical Areas Ordinance has been done and was found to be consistent with the CP with no changes required. Ferry County contends that petitioners have failed to show any inconsistencies between the comprehensive plan and the interim critical areas ordinance.

The County believes the petition challenging their failure to adopt a Final CAO should be dismissed because it was not filed within 180 days as provided in WAC 242.02.830. If WAC 242.02.830 does not apply, the County contends that the petition in this matter was filed long after the two-year general statute of limitations had run. They believe, if the GMA does not specifically provide a time for filing, the time for filing is governed by Washington State’s general statute of limitation. RCW 4.16.005.

Discussion: Over the past four years, the Board has been told many times in the course of previous cases that the Final Critical Areas Ordinance was “being drafted” and forthcoming. At one point, Ferry County argued that the comprehensive plan was still undergoing revisions to comply with the Board Orders, therefore development regulations could not be completed until that work was done. Ferry County now argues that final development regulations need not be adopted. They contend the interim CAO is adequate. They further contend the petition should be time-barred by the statute of limitations.

Ferry County next claimed that they reviewed the Interim Critical Areas Ordinance for consistency and found it consistent. The petition herein was filed before this “review” took place. Ferry County provided, at the request of the Board, minutes of the Ferry County Planning

commission meetings of June 14, 2000 and July 5, 2000, which discussion items included a review of the “interim critical areas ordinance”. The Respondent also supplied minutes of the Ferry County Board of Commissioners of June 19 where the issue of review of the interim critical areas ordinance was discussed. No action was taken by the County which reflected the results of the claimed review.

Ferry County argues that these discussions meet the requirement of “review” in RCW 36.70A.060(3).

The Board finds no merit in the argument that this petition is time-barred. RCW 36.70A.060(3) requires a review of critical areas protections upon passage of the comprehensive plan. The claimed review did not occur until after the petition was filed. There is no claim by the County that they reviewed the CAO prior to such filing. The only question the Board will address here is whether the review performed by the County meets the requirements of the Growth Management Act.

The Board requested that Ferry County supply for the record any documentation of the review done. The documentation provided is insufficient to convince the Board that a review of the CAO has been performed which meets the requirements of the Growth Management Act. There is no record provided of any discussion comparing the requirements of the comprehensive plan with the regulations of the Critical Areas Ordinance. There is no record of a public participation process in the review, as required by RCW 36.70A.140. The County needs to review the CAO with public participation. This is especially true where the County has declared to this Board that a final CAO was to be developed and adopted to address the complaints raised in other petitions before this Board.

Ferry County’s argument that Petitioner has failed to show any inconsistencies between the comprehensive plan and the interim critical areas ordinance fails. The Board considers this petition, as a “failure to act” petition, not a petition for review of action taken. We find the County has failed to act and the petitioners carried their burden of proof.

Conclusion: The County has failed to review the Critical Area Ordinance to insure consistency between it and the Comprehensive Plan.

ORDER

1. Ferry County is not in compliance with the Growth Management Act due to its failure to review the Critical Areas Ordinance designations and development regulations to insure they are consistent with the Comprehensive Plan the County has adopted.

2. Ferry County shall comply with this order within 90 days.
3. Ferry County shall prepare a schedule for the review of the CAO and submit that schedule to the Board within 30 days.

Pursuant to RCW 36.70A.300, this is a final order for purposes of appeal.

Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.

SO ORDERED this 2nd day of November, 2000.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS

BOARD

D. E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member