

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

LOON LAKE PROPERTY
OWNERS ASSOCIATION, LOON
LAKE DEFENSE
FUND and WILLIAM & JANICE
SHAWL,
LARSON BEACH NEIGHBORS
and
JEANIE WAGENMAN

Petitioners,
v.

STEVENS COUNTY,

Respondent

Case No. 01-1-0002c

ORDER ON MOTION
FOR RECONSIDERATION

I. Procedural History

On January 26, 2001, Loon Lake Property Owners Association, Loon Lake Defense Fund and William and Janice Shawl, (LLPOA) filed a Petition for Review and on January 29, 2001 Larson Beach Neighbors and Jeanie Wagenman (Larson Beach) filed a Petition for Review.

On February 28, 2001, Larson Beach filed an Amendment of Petition for Review. The petitions were subsequently consolidated in the March 13, 2001 Prehearing Order.

On March 15, 2001, Respondent Stevens County filed a Motion to Dismiss Issues 1-10 of LLPOA and a Motion to Dismiss Issues 1-20 of Larson Beach.

On March 19, 2001, LLPOA filed a Motion for Partial Summary Judgment.

On April 23, 2001, the Board issued an Order on Motions finding that LLPOA Issue No. 5 was not properly before the Board. The Board also denied the County's motion to dismiss the 20 issues raised by Larson Beach.

Petitioner LLPOA's motion for partial summary judgment requested a finding that the Minimum Lot Size Regulations of November 14, 2000, Stevens County Code Title 4 and Interim Code Title 4 Chapter 5.09/Design of the December 26, 2000 Stevens County Code Title 5 and the December 26, 2000 Stevens County Interim Code Title 5 are non-compliant. The Board determined the County had already been found in non-compliance on this issue and a Summary Judgment need not be entered.

On July 27, 2001, Stevens County moved for Reconsideration, Clarification and Modification.

On October 4, 2001 a hearing was held in Stevens County on the County's Motion for Reconsideration, Clarification and Modification.

On November 5, 2001 the Petitioners Loon Lake Property Owners Association et al and Petitioners Larson Beach Neighbors and Jeanie Wagenman filed Motions for Reconsideration.

On November 6, 2001, Stevens County filed its Motion for Reconsideration.

On December 3, 2001, a telephonic hearing was held on the parties' motions for reconsideration.

II. Discussion

A. THE PETITIONERS CONTEND THE COUNTY FAILED TO TIMELY FILE THEIR JULY 27, 2001 MOTION FOR RECONSIDERATION, CLARIFICATION AND MODIFICATION.

Petitioners position: The Petitioners contend the County's filing of their motion for reconsideration, clarification and modification 13 days after the mailing of the Final Decision and Order was beyond the 10 days allowed and the Board did not have jurisdiction to consider their motion. The Petitioners further contend that RCW 36.70A.302(6) allows a motion for clarification of an order of invalidity only if the County has adopted legislation, which is contended sufficient to allow the removal of the finding of invalidity. Here there is no claim by the County that they have moved into compliance.

Respondent position: Stevens County contends that Washington CR 6 allows an additional 3 days to be added to the 10 days where the Order was mailed. The County also points out RCW 36.70A.302(6) where the County is authorized to seek clarification, modification or recession of the final order, which contained a determination of invalidity. No time for filing is stated in that subsection or in the WACs.

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Discussion: The Board is hesitant to make a finding of invalidity except in the most serious cases. The finding of invalidity is a very serious determination. The County can suffer serious burdens and cost resulting from such a finding. It is for these and other reasons that the Board rarely finds all or portions of a County's action invalid. It is also for these reasons that the Washington State Legislature, in 1997 amended the Growth Management Act (GMA) to further restrict the Board's ability to find invalidity and also empower Counties or Cities to seek clarification or removal of such a finding. (Chapter 429, Laws of 1997)

RCW 36.70A.302(6) now allows counties and cities to request a clarifying, modifying or rescinding a determination of invalidity. There is no time limit for the filing of such a request in the statute or in the rules adopted to implement that statute. It is clear from the Statute that the State Legislature intended to give the Cities and Counties this flexibility.

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Conclusion: Stevens County was not required to file their request for clarifying, modifying or rescinding the determination of invalidity within 10 days of the service of the final order. RCW 36.70A.302(6) and WAC 242-02-833 do not set a time for such filing. This Board has jurisdiction to hear the County's motion.

B. THE PETITIONERS ASK THAT THE BOARD EXPLAIN WHY THE ORIGINAL FINAL ORDER AND DECISION WAS MODIFIED FROM A FINDING OF ALL OF TITLES 4 AND 5 INVALID TO THE FINDING OF ONLY SPECIFIC PORTIONS OF SUCH TITLES INVALID.

Petitioner's position: The Petitioners request a clarification and explanation of a number of changes in the Amended Final Decision and Order (AFDO). They contend the GMA requires the Board to explain why it reversed its decision to invalidate all of Title 4 and 5 in its first FDO and why only certain limited sections were found invalid in the Amended FDO.

Discussion: RCW_36.70A.302(b and c) requires the Board to support its findings of invalidity by findings of fact and conclusions of law that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter. That section also requires the Board to specify in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity. Nowhere is the Board required to give reasons why other sections of the plan or regulations are not found invalid. Upon review of the GMA and our original FDO the Board found there were many portions of Titles 4 & 5 that did not substantially interfere with the fulfillment of the goals of the GMA. Because the Board is required to specify the particular part or parts of the plan or regulation that are determined invalid, the Board limited the invalidity to those discrete sections that did substantially interfere and not whole titles.

The sections singled out for invalidity in the AFDO were declared invalid primarily because of their regulation of lot sizes. The small lot sizes provided for in the invalidated sections would substantially impact growth pattern and the ability of the County to adequately designate and protect resource lands. The remaining sections do not have that effect, and therefore were not declared invalid.

Conclusion: The Board is required by the GMA to specify the particular part or parts of the plan determined invalid. Those specific parts are those elements of the plan or regulation that would substantially interfere with the GMA. The Board has done this, with the changes found in this order and its previous Amended FDO.

C. THE PETITIONERS, LOON LAKE, et.al FURTHER CONTENDS THAT TITLES 4 & 5 ARE NEITHER THE COMPREHENSIVE PLAN NOR DEVELOPMENT REGULATIONS AND THEREFORE THEY SHOULD NOT BE VALID.

Petitioners position: The petitioners Loon Lake et al contend that Titles 4 & 5 are neither the Comprehensive Plan nor Development Regulations and therefore they cannot be valid.

Discussion: RCW 36.70A.302 grants authority to the Board to determine that part or all of a comprehensive plan or development regulations is invalid. This is the limit of such authority under the GMA. If the Petitioners were correct, the Board would have no jurisdiction for a finding of invalidity. Clearly these titles are development regulations promulgated by the County in their effort to carry out their duties under the GMA.

Conclusion: The Board finds it has jurisdiction over Titles 4 & 5, as they are development regulations.

D. THE PETITIONERS CONTEND THE BOARD NEGLECTED TO FIND CERTAIN SECTIONS INVALID AND THAT SUCH FAILURE WAS INCONSISTENT WITH ITS ORDER

Petitioner's position: The petitioners contend that, if only portions of Titles 4 & 5 are to be found invalid, there are inconsistencies in such findings. Certain sections should have been declared invalid following the reasoning cited in the Board's Amended Order. These sections include section 5.09.094, Commercial Lot Performance Standards (for Long Plats) and section 4.16.040 Planned Unit Developments (in Short Plats).

Discussion: Upon review of the Amended Final Order and the briefing of the parties, it is clear that the Board was inconsistent in its failure to find that Section 5.09.094; Commercial Lot Performance Standards (for Long Plats) was invalid. The continued validity of this section will in fact substantially interfere with the Goals of the GMA, at least until the Comprehensive Plan is adopted and Resource lands are designated and protected.

On the other hand, the Planned Unit Developments, Section 4.16.040, although out of compliance will not substantially interfere with the Goals of the GMA. The County asserts in their brief that this issue is moot because that section requires the PUD meet the applicable residential density. Since the Hearings Board has invalidated all of the applicable residential densities found in section 4.16.050, it is impossible to comply with the provisions of the PUD section.

Conclusion: Those paragraphs found in Section 5.09.094, Commercial Lot Performance Standards, which apply outside designated Interim Urban Growth Areas is found to be invalid based upon the findings and conclusions contained in the Amended Order.

III. ORDER

1. The Amended Order entered on the 26th day of October 2001 is further amended by the additional declaration of invalidity of the subparagraphs of Section 5.09.094, Commercial Lot Performance Standards that apply to areas outside the Interim Urban Growth Areas.

Pursuant to RCW 36.70A.300(5), this is a final order for purposes of appeal.

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SO ORDERED this 13th day of December 2001.

EASTERN

WASHINGTON

GROWTH MANAGEMENT HEARINGS

BOARD

D. E. "Skip" Chilberg, Board Member

Judy Wall, Board Member

Dennis A. Dellwo, Board Member