

**BEFORE THE WESTERN WASHINGTON GROWTH
PLANNING HEARINGS BOARD**

| | | |
|---------------------------------------|---|----------------|
| WATERSHED DEFENSE FUND, FRIENDS OF |) | No. 94-2-0003 |
| CHUCKANUT, WHATCOM FALLS NEIGHBORHOOD |) | |
| ASSOCIATION, PT. ROBERTS HERON |) | FINAL ORDER OF |
| PRESERVATION COMMITTEE, and NORTH |) | DISMISSAL |
| CASCADES AUDUBON SOCIETY, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| WHATCOM COUNTY, |) | |
| |) | |
| Respondent |) | |

FINDINGS OF FACT

I.

A petition was filed with the Western Washington Growth Management Hearings Board on March 9, 1994 alleging that Whatcom County had failed to adopt an Interim Urban Growth Area by October 1, 1993 as required by RCW 36.70A.110. A prehearing conference call April 12, 1994 and a hearing on the merits for June 9, 1994 was scheduled.

II.

On April 29, 1994 a telephonic conference was held regarding petitioners' motion to shorten the time for the hearing and a local property owner's motion for intervention. Both motions were denied.

III.

During the prehearing telephone conference on April 12, 1994 Whatcom County acknowledged that no ordinance had been adopted and on April 13, 1994 pursuant to the agreement of parties a prehearing order was entered which set forth the only issue to be decided in this case:

"What is the appropriate remedy, if any, for the Board to adopt because of Whatcom County's failure to adopt an urban growth area by October 1, 1993 as required by RCW 36.70A.110(4)?"

IV.

On June 7, 1994 pursuant to notification that the County Council had adopted an Interim Urban Growth Area Ordinance, the hearing of June 9, 1994 was rescheduled to July 14, 1994.

V.

On June 9, 1994 we received a copy of Ordinance 94-033 purporting to adopt interim growth areas for Whatcom County. The ordinance was adopted by the County Council May 24, 1994 and approved by Shirley VanZanten, County Executive, on June 8, 1994.

VI.

On June 20, 1994 we received a letter from counsel for petitioners requesting further time for review of the ordinance prior to our dismissing the case pursuant to the county's request. Counsel for petitioners advised that by July 1, 1994 written notification would be received indicating whether petitioners wanted to "pursue" the action or initiate a new appeal or take other action. Nothing was received from petitioners thereafter.

VII.

On June 22, 1994 the Board notified the parties that a motion to dismiss the case for mootness was scheduled for hearing on July 8, 1994. At that hearing petitioners contended that the failure of the ordinance to adopt development regulations in addition to "only" drawing a line on the map meant that a proper ordinance had not yet been adopted and the petition should go forward. Whatcom County objected.

VIII.

Later that morning the parties were advised by telephone that the case would be dismissed and a formal Order entered at a later time.

CONCLUSION AND DECISION

We conclude that a failure to comply challenge is moot and subject to dismissal once an ordinance purporting to meet the requirement of a particular section of the Growth Management Act in question is adopted by a local government. This is particularly so where, as here the only issue presented in the prehearing order is the appropriate remedy for failure to adopt. Petitioners cannot, at this late date, attempt to convert the petition into a lack of compliance petition. If an allegation of failure to comply is made it must be done by means of a new petition under the circumstances of this case.

DATED at Olympia, Washington, this _____ day of July, 1994.

William H. Nielsen
Board Member/Presiding Officer

Nan A. Henriksen
Board Member

This is a Final Order for purposes of appeal.