BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

CITY OF PORT TOWNSEND, OLYMPIC ENVIRONMENTAL COUNCIL, 1000 FRIENDS OF WASHINGTON,	)	No. 94-2-0006
	)	FINAL ORDER
Petitioners,	)	
vs.	)	
	)	
JEFFERSON COUNTY,	)	
	)	
Respondent.	)	
	)	

The relentless waves of the Pacific Ocean crash endlessly onto the western shores of Jefferson County. A newly designated National Marine Sanctuary highlights the beauty and serenity of Jefferson County's coastline which includes places like Ruby beach and Kalaloch. A portion of the Olympic mountain range bisects the county. The westerly 3/4 of the county consists of state and federal forest land and a portion of the Olympic National Park. At the confluence of the Strait of Juan de Fuca and Puget Sound lies the county's only incorporated city, Port Townsend. In the northeast corner of Jefferson County, this municipality has a population of 7,740, less now than a century ago. Discovery Bay, the Strait of Juan de Fuca, Admiralty Inlet, Port Townsend Bay, Oak Bay, Puget Sound and Dabob Bay provide an aquatic panorama for the northeast and southern boundaries of the county. It is within this backdrop that the twenty thousand or so people in Jefferson County struggle to attain compliance with the Growth Management Act.

On January 10, 1994 the Board of County Commissioners (BOCC) adopted an Interim Urban Growth Areas (IUGA) Ordinance and later amended the same on February 7, 1994. On March 10, 1994 a petition for review of that Ordinance was filed with the Western Washington Growth Management Hearings Board (Board) by the City of Port Townsend (City). Similar petitions were filed March 11, 1994 by 1000 Friends of Washington (1000 Friends) and the Olympic Environmental Council (OEC). The petitions were consolidated by an order dated April 13, 1994. A prehearing conference was held at the Jefferson County Courthouse on May 4, 1994.

Prior to the prehearing conference the OEC challenge to Jefferson County's failure to designate and adopt natural resource lands and critical area development regulations by September 1, 1991 as required by RCW 36.70A.060, .170 was settled by agreement of the parties and a schedule for adoption of the ordinances was specified. A Prehearing Order was entered May 16, 1994 listing four issues common to all parties, one issue unique to OEC and one issue unique to Port Townsend.

The hearing on the merits was held July 7, 1994 at Fort Worden State Park. The afternoon prior to the hearing the Board and a representative of each party toured the areas in dispute.

The Ordinance adopted 68 "findings" which recite the historical background of Jefferson County (County), the Growth Management Act (GMA, Act) goals and requirements, the procedural criteria requirements, WAC 365-195, and the County-Wide Planning Policies (CPPs), some of which the BOCC found did apply to the IUGA and some of which they found did not. The findings reviewed the public participation process and State Environmental Policy Act (SEPA) process that had taken place and also included finding 65:

> "Nothing in this ordinance shall be construed as prohibitive of commercial and industrial development within areas designated as appropriate for such development by the Jefferson County comprehensive plan or relevant community development plans."

The body of the ordinance provided for three IUGAs; the municipal boundaries of Port Townsend, an area around Port Ludlow and an area designated as the "Tri-Area" located approximately six miles south of Port Townsend which included the unincorporated communities of Hadlock, Irondale and Chimacum. The Port Ludlow IUGA is located approximately six miles south of the Tri-Area IUGA.

Some preliminary challenges raised by the County need to be addressed prior to discussion of the GMA aspects of this case. In the County's memorandum submitted for the hearing on the merits, a footnote contends that the petition of 1000 Friends was filed a day past the sixty day deadline contained in RCW 36.70A.290(2). Our general nonuse of and disdain for footnotes prevents us from footnoting our response. If the County truly intended to challenge the timing of the 1000

Friends petition, it's argument loses credibility when mentioned only as a footnote. A proper motion brought before the hearing on the merits is the preferable method. Nevertheless, our records reflect that the petition of 1000 Friends was "filed" in our office the same day as the petition of Olympic Environmental Council, i.e. March 11, 1994.
The petitions from all three parties alleged that no publication of the challenged ordinance had been made. The County has not denied lack of publication, nor does the record show that publication took place the same day the ordinance was adopted. RCW 36.70A.290(2) is clear that a petition "must be filed within sixty days after *publication*". A county may not prevent filing of a challenge to an ordinance by a failure to publish the required notice. Nonetheless, until the publication takes place the sixty day period does not begin to run.

Next, the County challenges the arguments of the three petitioners' memoranda as including arguments not raised by the individual petitions and arguments briefed by one petitioner that were raised in a different petitioner's pleading. The County misperceives the basis and reasons for consolidation. RCW 36.70A.290(5) states that:

> The Board shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

When reviewing the Act it is clear that the Legislature intended appeals to be expeditious and efficient. While neither the Act nor our rules
(WAC 242-02) deal directly with this issue it would be counterproductive to allow consolidation and then require each petitioner to insert a meaningless statement about adopting the arguments of the other petitioners or, even worse, fully argue issues adequately covered by a different petitioner. We hold that the consolidation envisioned under the Act is one where the original petitions lose their independent and separate existence and thus become merged for purposes of dealing with and resolving all issues raised by all of the petitioners or any one thereof. *Jeffery v. Weintraub* 32 Wn. App. 536, 546 (1982).

Additionally the prehearing order entered in this case established issues common to all parties as well as an individual issue for Olympic Environmental Council and the City of Port Townsend respectively. This was done after the prehearing conference in which the County participated

extensively. Under WAC 242-02-558(10) the prehearing order issues govern the subsequent handling of the appeal. The County did not file a written objection within seven days of issuance of the prehearing order as required. The challenge is denied.

Lastly, the County contends the City lacks standing to challenge the IUGA designations outside the City's agreed upon urban growth boundary. The answer is found in RCW 36.70A.280(2) which states that a petition may be filed by a city that plans under the Act. Nothing in that section limits the scope of a city's challenge.

Additionally under subsection (3) a "person" is defined as a "governmental subdivision or unit thereof, or public or private organization or entity of any character". It is hard to envision how a city would not fit under the
type of expansive definition provided in that subsection. It is undeniable that the City participated at all stages both through its staff and elected officials as well as by participation in the City/County Joint Growth Management Steering Committee. The County's reliance on RCW 36.70A.110(2) as restricting the City's ability to petition under these facts is misplaced.
Two other clarifying matters need to be addressed. With the agreement and cooperation of the representatives of the parties in this matter we spent the afternoon prior to the date of the hearing on the merits on a "guided tour" of the areas of eastern Jefferson County that were the subject matter of this appeal. The purpose of that tour was to help us more clearly understand the issues as presented by the petitions and the record. We found the tour to be exceptionally helpful to aid us in understanding the case and commend the representatives of the parties who arranged for and participated in the tour for their very high degree of professionalism. We did not take any evidence during the tour and did not consider the view of the areas as evidence.

At the parties' request, we modified the preparation of the record by allowing exhibits to be determined by use in the respective party's
memorandum for the hearing on the merits. Some 150 different exhibits, including maps and tapes, were submitted. We recognize that the parties spent considerable time organizing and submitting these exhibits. There was a limited objection to a few of the last submitted exhibits. Because of the modified procedure we felt constrained to admit all exhibits. After post-hearing review we decided not to use or refer to the following exhibits;

78,79,81,134,136,137,138,139,140 and 141. Exhibits 25, 26, 28 and 85 were not submitted. Our decision is based solely on the record developed prior to the conclusion of the BOCC hearing of February 7, 1994.

The GMA challenges brought by petitioners involve alleged violations of the GMA and CPPs because of the failure of the County to adopt designations and development regulations for resource land and critical areas (RL/CA) prior to the IUGA designation; the County's failure to prepare necessary information concerning land capacity, fiscal impacts and public facilities and services; the inappropriate designation of Port Ludlow and the Tri-Area; the continued availability of new urban residential, commercial and industrial development outside the IUGAs; and the rural density requirement of 1 dwelling unit per acre (1:1). The City also alleged that the IUGA designation should have included a study area of southerly and westerly areas adjacent to the city that were already characterized by urban growth. Finally, OEC alleged that the failure to provide adequate analysis and information violated the public participation requirements of the Act. We review the record in this case in accordance with our 4 question analysis.

(1) IS THE ORDINANCE A RESULT OF A CONSIDERED APPLICATION OF APPROPRIATE GOALS AND REQUIREMENTS OF THE ACT?

In *Clark County Natural Resources Council et.al. v. Clark County*, WWGPHB #92-2-0001 while discussing this question we said:

> "In reviewing this question we determine whether the County took into account the proper sections of the Act and whether reasoned interpretations of those sections were made."

From the very beginning of the process leading up to the adoption of the Ordinance senior members of the county planning staff adopted three fundamental tenets concerning the requirement to adopt an interim urban growth area by October 1, 1993:

1. Under the provisions of ESHB 1761 (now codified as RCW 36.70A.110 (4)) a new, very short time frame existed for denominating the areas, and therefore;

2. Because of the short time frame and the denomination of the areas as

"interim" (a term that has caused more problems in the GMA than any other) a prior analysis necessary to determine where population ought to be directed and how public facilities and services could be and would be paid for *was not necessary*, and therefore;

3. The fixing of the area boundaries was essentially a political decision that could be based on ten-year old data and wishes, and involved fixing the largest imaginable boundaries in unincorporated Jefferson County and then reducing those as more data became available.

The position adopted by the planners was ultimately adopted by the County Commissioners over the vociferous opposition of at least one now former member of the planning staff (Ex.20), planning commission members, (Ex. 32,36) city staff and elected officials (Ex. 62) and a large segment of the public who came to the meetings and testified. We find this foundation position of the County to be sophistry.

In 1990 the Legislature began building GMA by the passage of ESHB 2929 which required that by July 1, 1991 a county was to begin the process of locating urban growth areas. RCW 36.70A.110(2). That same bill required that the entire comprehensive plan, including urban growth areas, be completed by July 1, 1993. RCW 36.70A.040(3). To repeatedly state in public meetings and public hearings that the Legislature had imposed this brand new deadline with only four months to complete it is simply unforgivable. Even a cursory reading of the Act would allow any reasonable person to understand that the effect of ESHB 1761 was to grant a three month extension for a portion of the work that should have been done by July 1, 1993 and, for Jefferson County, an 18 month extension for the remainder.

The staff's position that the short time frame prohibited any development of information and analysis is likewise a puff of smoke. The analysis necessary to make a reasoned decision should have been in process from 1990. The plain language of ESHB 1761 states:

> ...adoption of the interim urban growth areas *may only occur after*...compliance with...RCW 36.70A.110. (Italics supplied)

A reasonable analysis of current data prior to fixing an interim urban growth area is clearly required by the Act.

Finally, the unabashed position of county planners that their goal was to "start big" and then reduce the size of the interim urban growth area at a later time is incredulous. We are sympathetic to the difficulty that staff and elected officials often have in trying to comply with what are occasionally ambiguous and conflicting statements of the Act. ESHB 1761 is not an ambiguous statement in this context. The primary purpose of the Act is that growth is to be directed, in so far as possible, to places that have existing "public facilities and services" and then, only after an analysis of the need of, the cost of, and the ability to pay for greater public facilities and services is growth to be directed or even allowed elsewhere. We are appalled by statements found in the record from senior planners, that there exists in the Tri-Area some 10,000 platted lots, enough to handle any conceivable population increase for the next 20 years, who then develop a plan passed by the BOCC that incorporates a boundary which includes 500 additional unplatted, undeveloped acres (Ex. 30).

What is just as disconcerting is that the IUGA boundaries were adopted during a time when the designations and development regulations for resource land and critical areas was ongoing. As noted above OEC challenged the failure of the County to complete the RL/CA designation and ordinance adoption. All the petitioners contended that the GMA *requires* the RL/CA process to be completed as a mandatory prerequisite to the IUGA process. The County takes the position that the Act does not mandate the RL/CA process be completed first. We look to the Act to determine legislative direction.

RCW 36.70A.040(3), (4), and (5) deal both with counties that have been and those that will be planning under the Act. The subsections provide that a new planning county "shall" take the following actions within designated time frames.

1. Adopt designations and development regulations for critical areas and resource lands within one year of qualification under .040.

2. Adopt county-wide planning policies within fourteen months of the time the criteria of .040 is met. RCW 36.70A.210(2)(3).

3. Adopt interim urban growth areas within three years and three months of the time of qualification under .040. RCW 36.70A.110(4).

4. Adopt a comprehensive plan within four years of the time of qualification under .040.

5. Adopt development regulations at that same time or within six months after adoption of the comprehensive plan.

The Act requires that all these steps be completed and the clear legislative direction is they be completed sequentially. We do not go as far as petitioners request in holding that the sequence is absolutely mandatory but agree that it would be very difficult to find compliance outside that sequence. Any city or county using a different progression would have a difficult hurdle to leap to show that good planning allowed such a deviation. The record here does not support Jefferson County's adoption of an IUGA without first completing the RL/CA process.

The faulty premises adopted by the County led to further erroneous conclusions. The legislative scheme of ESHB 1761, the tapes of the floor debates (which we reviewed) and the discussions occurring at the committee meetings (which were attended by Board member Henriksen) show a clear legislative intent. The then Department of Community Development issued a memorandum dated August 16, 1993 (ex. 29) which contains the department's interpretation of ESHB 1761 with which we agree. The issue of fixing an urban growth area had been before the County for some three years. It is likely the Legislature believed most of the foundational planning documents were already in place or very close to completion. The extension of the deadline for adopting comprehensive plans with urban growth areas caused concern in the legislature about the type of growth that could occur during the extension period. The solution arrived at was to have counties fix urban growth area boundaries within the three month extension provided, and thus prohibit new urban growth outside the IUGA. The term "interim" was added after lobbying groups for cities and counties asked that it be included so that further refinements could take place at the time the comprehensive plan was adopted. There appears to be no other reasonable reading of the statute.

Jefferson County's unwillingness to understand or accept ESHB 1761 led the BOCC to also conclude that none or only a portion of the previously adopted CPPs applied to the IUGA Ordinance. Many of the 68 "findings" adopted by the Commissioners in the Ordinance took portions of the CPPs that appeared to side with their predestined determination and rejected other portions which were inconsistent with the decision reached. We find this to be an extremely questionable practice and urge that it not be repeated.

During this appeal the County has adopted the position that the CPPs do not apply to an IUGA ordinance because of the language in RCW 36.70A.210(1) which states that the CPPs are to be "used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter". The County points out that the provisions of ESHB 1761 require adoption of "development regulations". Petitioners contend that we should follow the decision of the Central Puget Sound Board in *City of Black Diamond et.al. v. King County et.al.* CPSGMHB #94-3-0004 Dispositive Order dated June 9, 1994 at page 8. The difficulty with using that decision is that King County acknowledged the CPPs applied to interim growth areas.

The language of ESHB 1761 shows that the requirement of RCW 36.70A.110 applying CPPs to urban growth areas did not change. The statute states that the IUGA must comply with RCW 36.70A.110, the requirements for comprehensive plan urban growth area designations. RCW 36.70A.210(3) requires that the county-wide planning policies address urban growth areas. We see much indication that the legislature intended CPPs to apply to the interim urban growth areas to be designated October 1, 1993 and no indication that the policies were not to apply. We observe that a staff memo to the BOCC on 8/13/93 (Ex. 30) stated the CPPs did apply.

We hold that the CPPs of Jefferson County apply to the IUGA decision and that they and the GMA require that a proper analysis of land capacity, existing and future capital facilities impacts, and existing and future fiscal analysis must be made *before* an area outside the municipal boundaries of a city or cities can be established as either an interim or a comprehensive plan urban growth area. The designations must be consistent with the goals and requirements of the Act and the CPPs.

The CPPs of Jefferson County direct that the County and City will "jointly prepare a regional population forecast for growth management planning purposes". The forecast was designed to use the Washington State Office of Financial Management (OFM) population projection as the low or base projection and thereafter establish a medium and high range figure. Jefferson County determined that this was one of many CPPs that did not apply to the IUGA. As we held above the full range of the CPPs apply and normally that would end our discussion of this issue. However, because of the recent decisions from the two other Boards (*Save our Butte v. Chelan County* EWGMHB #94-1-0001, *Rural Residents v. Kitsap County* CPSGMHB #93-3-0010 and *Tacoma v. Pierce County* CPSGMHB #94-3-0001) which hold that the OFM Washington State County Population Projections 1990-2010, 2012 is the only appropriate population projection, we feel that it is necessary for us to address this issue for those counties and cities in our jurisdiction that have relied on the earlier then Department of Community Development interpretation to the contrary in their comprehensive planning process.

We tread reluctantly into the minefield of the projections and begin our analysis with what we believe to be truisms.

1. The Legislature, in adopting the GMA, directed a new era of planning decisions requiring parameters set by the Act, and a more thorough analysis by local governments of the environmental, physical and cost impacts of planning decisions resulting in a better, more comprehensive and consistent use of resources, diminishing land availability and taxpayer burdens.

2. We recognize that the term "based upon" found in RCW 36.70A.110(2) may have been intended by the Legislature to have meant "one and only" as interpreted by the other two Boards or "a foundation upon which to build" as interpreted by the then Department of Community Development.

3. Population projection is not an accurate science. We take official notice of the fact that the OFM projections have proven to be quite accurate in the central Puget Sound counties but have been totally inaccurate in some, if not many, of the counties within our jurisdiction. There are counties in this state outside the central Puget Sound area that

have already exceeded the population projected for the Year 2012 by the OFM document. The reason for this inaccuracy is apparent. In reviewing the OFM document, page 3 explains that population forecasts are developed by examining "trends in natural increase (birth minus deaths) and net migration." The document points out at page 9 that migration is "the most variable component of population change." It is likely that unusual migration patterns to some counties in our jurisdiction have the effect of skewing the population projections.

4. The concept of regionality is fundamental in the Act. Early on the Legislature recognized the diversity of planning decisions necessary in one region could be dramatically different from other areas of the state. Obviously, that is a reason why three Boards were created. The cases decided by the three Boards to this point have reached remarkably similar conclusions. While the path each Board forages and follows is often vastly different, the result is not. Those that do not believe this observation are probably not paying enough attention to *what* is being said and too much attention to *how* it is being said.

5. Our ultimate reason for existence is to make decisions that further the "planning" concepts, directions, goals and requirements of the GMA and, to a lesser extent, make determinations as to legal interpretations of the Act. We should not allow the flash of legal interpretation to blind us to the impact and realities of good planning decisions.

6. We do not believe that the Legislature ever intended OFM projections which are known to be incorrect, to nonetheless be used to develop comprehensive plans that would then either be incorrect or gerrymandered to the point of being meaningless at or shortly after adoption.

We hold that OFM projections must be exclusively used except when a local government can clearly show that the projections are inaccurate and that a different set of figures needs to be used to accomplish the goals and requirements of the Act. Furthermore, if the county-wide planning policies require a jointly developed forecast then that requirement must also be fulfilled.

Two further matters in this case concerning the analysis necessary prior to designating an

urban growth area outside a municipal boundary need to be addressed. Much of this record reflects a growing crisis and concern with regard to the City's ability to provide water services beyond its existing obligations. The County contended that the growth areas corresponded roughly to the City's existing water obligations and that other alternatives such as PUD's were available. Again, this misses the point. No actual analysis of the need, expense or ability to provide water services for the designated IUGAs was done. No designation of the critical aquifer recharge area contained in the "Tri-Area" IUGA was completed (Ex. 20). Such an analysis is a necessary component in Jefferson County given the repeated references to the water crisis that currently exists.

Likewise, the level of service (LOS) standards required by the Act and by the CPPs were not established. The County set forth guidelines (with a substantial number of questionable exemptions) for some public facilities and services applications outside IUGAs. Petitioners contend that those are both unintelligible and do not fix a meaningful level. We point the County to the WAC 365-195-210(12) procedural criteria definition which states:

> "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need."

Without the analysis of need for, cost of, and ability to provide services that was lacking here it is not surprising that adequate LOS standards could not be developed. On remand, this issue will need to be rectified.

(2) DID THE PROCESS COMPLY WITH THE PUBLIC PARTICIPATION REQUIREMENTS OF THE ACT?

Olympic Environmental Council contends that the information provided by the County in its work sessions, public meetings and public hearings was inadequate and therefore, the public participation goals and requirements of the Act were not met. Obviously the improper interpretation of the requirements of an interim urban growth area ordinance led to many deficiencies of information available both to the public and to the decision-makers. The GMA direction for early and continuous public participation certainly implies a minimum standard of objective and sufficient information that needs to be provided. The

Act signals the end of treating the public like "mushrooms". It means more than simply holding public meetings and/or hearings. The void of reliable information available to the public in this case leads us to answer this question in the negative.

(3) WAS THE DELIBERATION AND DECISION-MAKING PROCESS REASONED?

a) Is the ordinance supported by reasoned choices based upon appropriate factors actually considered as contained in the record?

b) Were inappropriate factors avoided?

We answer this question in the negative. The fundamental fault of interpretation found in question 1 leads to no other conclusion.

(4) DOES THE ORDINANCE FALL WITHIN THE DISCRETION GRANTED TO THE DECISION-MAKER TO CHOOSE FROM A RANGE OF REASONABLE OPTIONS?

The IUGA Ordinance appears to allow the creation of new urban residential areas, commercial zones and/or industrial zones outside the boundaries of an IUGA.. Petitioners make that contention and the County does not deny it. Nor does the County deny that instances of rezones and approvals of new growth outside the IUGAs have occurred. We hold that in so far as the Ordinance purports to allow *new* urban residential development, *new* rezones or other approvals for commercial and industrial uses outside an IUGA, the same are prohibited by the Act and as such are not within the discretion of the County Commissioners to allow.

As noted in question 1 the trade-off for allowing an 18 month extension to complete the comprehensive plan was that the use of areas outside a designated urban growth area for new urban development and urban public facilities and services ended. This requirement from the Act does not mean that a moratorium on any further development must be adopted or that pre-existing and vested development cannot proceed. What it means is that the

County has a responsibility to its residents to stop sprawl, commercial and industrial strip developments and the corresponding tax bill that will become unnecessarily large because of poor planning. As the CPS Board noted at p. 11 of *Tacoma v. Pierce County*, the consequence of existing urbanized areas outside cities not being included in an IUGA is simply that *new* urban development will not be permitted.

Having gone through this series of criticisms of Jefferson County's actions we temper the same with an understanding of the problems that Jefferson and other county governments face under the Act. Certainly a problem exists or will soon exist in the Tri-Area with regard to urbanization currently in place and the need for water and sewer. The tax base for areas outside of urban growth areas will likely be diminishing. However, the Growth Management Act signals the end of land use planning solely for revenue purposes and the tax revenue issue must be addressed in a different forum. Within the parameters of the Act it is our intention to allow the greatest latitude possible for a local government to solve existing and potential public health hazards, but we require that a proper analysis (homework) must be available and must be used. Under the Act the perpetuation of "business as usual" must come to an end.

As part of the adoption of the IUGA Ordinance the BOCC established that all areas outside the boundary lines were to have a minimum density requirement of 1 DU/Acre (1:1). In many instances this revised the existing density requirement of 5 DU/1 AC. Petitioners contend that:

1. 1:1 density requirements do not constitute a rural designation because the same are in fact urban and consequently promote sprawl in violation of RCW 36.70A.020(2).

2. The cumulative effect of 1:1 new development will inevitably increase demand for "urban services".

Rural lands are the leftover meatloaf in the GMA refrigerator. The term "rural" is not even defined in the Act. A definition which follows the scheme of the Act is set forth in the procedural criteria WAC 365-195-210(19) as follows:

> "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

Urban government services are defined as storm and sanitary sewer systems, domestic water systems, fire and police protection services and public transit services, (RCW 36.70A.030(17)) and RCW 36.70A.110(3) says that they "should not be provided in rural areas." The use of the term "should not" by the Legislature falls short of an absolute prohibition but does clearly direct that such services be provided in non-urban growth areas on a lower level of service basis and only for compelling reasons. We recognize that the limiting of services in .110(3) is different from the prohibition of new urban growth in rural areas under .110(1). *Rural Residents v. Kitsap County*.

While the Act provides many negatives for the rural areas of a county, it provides very little in the way of positive direction. The only reference to "rural" is found in the comprehensive plan section RCW 36.70A.070(5) which requires that counties include a rural element that permits uses compatible with the rural character of the lands and provides for a variety of rural densities. We recognize the scheme of rural areas provides very little guidance, however we do not accept the contention by the County that placing an area outside an UGA designation means that it will simply be abandoned for planning purposes. We suspect that counties in our jurisdiction will and do have the most difficult questions dealing with rural designations since they have neither the population growth of central Puget Sound nor the expansive agricultural lands of eastern Washington. Candidly we are not disposed to adopt a "bright-line" rule that prohibits the use of a 1:1 density in each and every case. We agree that 1:1 density can easily lead to a violation of the anti-sprawl goals and requirements of the Act as well as cumulatively place new demands for urban government services in violation of the Act. We would expect that very rarely, if ever, would a 1:1 density requirement in rural, or even most urban, designations comply with the Act. It is possible that a situation involving a proper background analysis for an area demonstrates that a 1:1 density within a "variety of densities" could be within the discretion of local government officials authorized by the GMA.

In this case Jefferson County does not have any analysis to support the use of a 1:1 density in rural areas. Standing alone as the sole "rural" density requirement a 1:1 rural density determination does not and cannot comply with the Act.

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The City finally contends that areas adjacent to its boundaries should have been included as an IUGA or at least been designated as a study area since the areas are adjacent to the municipal boundaries, characterized by urban growth, and are presently provided with urban facilities and services. The County points out that City officials and staff vacillated between requesting municipal boundaries to be the IUGA and requesting areas outside the boundaries. The County points out that the City needed to "do its homework" by providing the information recommended under WAC 365-195-335(3)(c)(d)(e)(f), i.e. a land capacity inventory and analysis, and a fiscal and capital facilities analysis. The County is correct that the City has not provided the information nor done the analysis necessary to suggest reasons why areas beyond the municipal boundaries should be included in an IUGA. Unfortunately, by the time all of the issues in this case were being debated prior to the adoption of the Ordinance there was plenty of petulance to go around.

What the County fails to acknowledge, is that county staff would tell the public at meetings and hearings the purpose of the expansive Pt. Ludlow and Tri-Area IUGAs was to be a sort of study area, but later tell City staff that the IUGA process did not authorize any kind of study area analysis (Ex. 71). More fundamentally what the County fails to recognize is that its own IUGAs must also be based on information and analysis that appear similar to, if not exactly, those proposed by the recommendations of WAC 365-195-310. Nonetheless, the BOCC did not fail to comply with the Act by omitting areas outside the IUGA adjacent to the City.

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CONCLUSION

We agree with the Central Puget Sound Board's statement in *Tacoma v. Pierce County* that UGAs and IUGAs are to initially be drawn at municipal boundaries and then expanded only when appropriate information and analysis balanced with the county-wide planning policies and the goals and requirements of the Act are met. The Act definitionally requires an IUGA encompassing Port Townsend's city limits. Jefferson County has failed to comply with the Act

by adopting IUGAs outside a municipal boundary without first conducting an analysis of and having available for elected officials and members of the public information on land capacity, fiscal impacts and capital facilities plans. Failure of Jefferson County to complete the requirements of designating and regulating resource lands and critical areas invalidates the adoption of any IUGAs outside the city limits. Jefferson County did not comply with the Act because it failed to include all aspects of the CPPs in its decision.

In so far as the IUGA Ordinance allows *new* urban residential, commercial and industrial development, without the necessary information and analysis noted above and proper adoption of an IUGA, such authorizations violate the requirements of the Act and must be stopped. Likewise, under the record in this case indicating past and potential problem of sprawling development, a 1:1 rural designation without information or analysis and standing alone does not comply with the goals and requirements of the Act and cannot be used as a standard for rural densities.

It is important to be clear about what is not being said here. We do not hold that it is ultimately inappropriate or impossible to designate portions or all of the Port Ludlow area or portions of the Tri-Area as either IUGAs or UGAs in the comprehensive plan. It may well be that Port Ludlow could be considered as a Master Planned Resort under RCW 36.70A.360. We are not requiring that a moratorium on development be imposed until the completion of the studies and analysis necessary to adopt IUGAs or UGAs are in place and completed. We do require that Jefferson County not exacerbate its existing problems by allowing new zones, plats, etc. that ultimately will need or at least demand public facilities and services that the tax payers of Jefferson County including residents of Port Townsend will need to pay for. We do require that Jefferson County follow the Act and direct growth to appropriate areas involving minimal taxpayer outlay for facilities and services. The County's reliance on historical growth patterns for population predictions perpetuates existing problems and is an abdication of GMA responsibilities. To paraphrase Bonnie Rait, we cannot change the past but we can leave it behind.

ORDER

We find that Jefferson County is not in compliance with the Growth Management Act with the adoption of this Interim Urban Growth Areas Ordinance #02-0110-94 with amending Ordinance

#03-0270-94.

In order to achieve compliance the following steps must be taken within the time frame specified.

1. Eliminate any interim urban growth area designations outside the city limits of Port Townsend within thirty days of the date of this Order. No other interim growth areas can be designated until the information and analysis required by the GMA and the Jefferson County CPPs is completed.

2. Clarify the language of the ordinance to not allow new urban residential, commercial or industrial development outside a properly designated IUGA within thirty days of the date of this Order.

3. Adopt an appropriate rural density designation within sixty days of the date of this Order.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

DATED this _____ day of August, 1994

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
William. H. Nielsen
Board Member

_____
Nan A. Henriksen
Board Member