

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

WHATCOM ENVIRONMENTAL COUNCIL,)	
)	
Petitioner,)	No. 94-2-0009
)	
vs.)	COMPLIANCE HEARING
)	ORDER
WHATCOM COUNTY,)	
)	
Respondent.)	
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On November 9, 1994, we issued an Order in this case finding that Whatcom County's Interim Urban Growth Area (IUGA) Ordinance #94-033 was not in compliance with the Growth Management Act (GMA, Act). Whatcom County's subsequent motion for reconsideration was denied on December 7, 1994.

We determined that the IUGA Ordinance was not in compliance with the Act primarily on the basis that the record did not disclose that any land capacity planning or analysis had occurred in setting the boundaries. Rather the language of ordinance itself disclosed serious concerns. For instance, over 3,000 acres of agriculture land, gravel resource areas, flood hazard areas and wetlands were to be removed by the proposed city IUGAs without any indication that most of the cities had considered the concept of in-filling, or more intense density requirements. Additional IUGAs that were not even adjacent to city boundaries were adopted without explanation. We noted that compliance with the Act could be achieved by establishing IUGAs at municipal boundaries and adopting appropriate development regulations for areas outside the established IUGAs.

On January 12, 1995, we received a request from Petitioner to schedule a compliance hearing, which was thereafter held on February 8, 1995, at the Whatcom County Courthouse. At that hearing Whatcom County acknowledged that no action had been taken with regard to the IUGA ordinance and none was contemplated. Rather, the hearing consisted of explanations from the planning director and two senior planners, as well as draft documents, regarding the proposed comprehensive plan UGAs. Those UGAs are proposed to be the same or larger than the IUGAs found not to be in compliance in this case. The presentation was made with the intention of showing that the proposed UGAs, along with existing zoning, would alleviate the concerns that were expressed in our November 9, 1994, Order and would achieve a "functional" compliance with the Act.

Petitioner did not object to the process that was used for this hearing. Petitioner argued that the presentation had no relevancy to the compliance issue, but may have had relevancy to a possible recommendation from us of sanctions. We agree with petitioner's characterization.

In *Pt. Townsend, et.al. v. Jefferson County*, WWGMHB #94-2-0006, (*Jefferson*), Compliance Hearing Order dated December 14, 1994, we pointed out that RCW 36.70A.330 directed us to hold a hearing after finding non-compliance "for the purpose of determining whether the ...County... is in compliance with the requirements of this chapter." The term "this chapter" clearly refers to the GMA. We therefore concluded that strict adherence to whatever recommendations we set forth in our final order was not the ultimate test of compliance.

Once a finding of non-compliance has been entered, a local government has an opportunity to take action that would achieve compliance. We see our role not as being directive, but rather advisory in the method chosen. Nonetheless, compliance must be achieved. A local government must comply with the goals and requirements of the Act by the time of the compliance hearing under RCW 36.70A.330 or be subject to the consequences.

In this case, Whatcom County has simply refused to do anything to alleviate the non-compliance found in our November 9, 1994, Order. The information submitted reveals that a great deal of work for the comprehensive plan has been done and is ongoing. The obvious problem with draft proposals is that they are just that. None of these proposals have even gone through a public hearing process. Additionally, they are only a portion of the entire package and often raise as many questions as they purport to answer.

Whatcom County was not in compliance with the Act in the initial IUGA Ordinance #94-033. No further action was taken or will be taken to bring that ordinance into compliance. The County has left us with no alternative but to find, under RCW 36.70A.330, that the original non-compliance continues.

DATED this 23rd day of February, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member