

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

WILLIAMS, TEITGE & MCCOLLUM and)	
LEE & BARBARA DENKE)	
Petitioners,)	
vs.)	No. 94-2-0013
)	
WHATCOM COUNTY,)	FINAL ORDER
)	
Respondent.)	
_____)	

On July 27, 1994 the Western Washington Growth Management Hearings Board (Board) received a petition for review from Williams, Teitge & McCollum and on August 8, 1994 a petition for review from Lee and Barbara Denke both challenging Whatcom County's adoption of its Interim Urban Growth Area Ordinance #94-033. On August 23, 1994 we consolidated these cases.

A Prehearing Order was entered September 7, 1994 listing the issues to be presented; 5 common to both, 4 unique to Denke and 4 unique to Williams, Tietge & McCollum. The Order also determined that other issues were outside the scope of the Board's jurisdiction. A schedule was established requiring that all motions were to be filed by September 14, 1994.

On September 14, 1994 Kurt Denke filed 3 motions on behalf of Lee & Barbara Denke:

- (1) Motion for Summary Judgment (Dispositive Motion).
- (2) Motion to Vacate Dismissal of Issues.
- (3) Motion for Leave to Present Testimony at the Hearing on the

Merits.

Whatcom County filed no response of any of these motions.

On September 28, 1994 at 11:00 a.m. a motions hearing was held telephonically. Those participating in the hearing were Nan Henriksen, Presiding Officer; William H. Nielsen and Les Eldridge, Board Members; Kurt Denke representing Petitioners Lee and Barbara Denke and Dan Gibson representing Respondent Whatcom County.

We have no provision in our rules for motions for summary judgment. We therefore treat petitioners' first motion as a dispositive motion. The motion asks for an order remanding the IUGA Ordinance to the County to remedy the County's noncompliance with GMA and to reconsider inclusion of the petitioners' property in the IUGAs.

One of Denke's grounds for requesting a dispositive motion is "The County failed to consider any relevant factors in adopting the IUGA for the City of Bellingham." Petitioners contend that on the face of the Ordinance, Bellingham's IUGA does not meet the requirements of the Act.

Finding 2 of the Ordinance states:

2. The City of Bellingham is using its current urban service area established in 1985 as sufficient until planning work can be completed leading to final boundaries.

Finding 3 states:

3. The other six cities have submitted Interim Urban Growth Areas which reflect their best planning to date.

-

Petitioners claim that (1) the City of Bellingham's urban service area has no significance for GMA purposes and (2) the urban service area was enacted five years prior to GMA and there is no finding in the Ordinance that the area has any actual relevance to GMA decision-making. The County submitted no arguments in writing or orally at the hearing to refute these claims.

We held in *City of Port Townsend, et. al. v. Jefferson County, #94-2-0006*, the adoption of IUGAs must be based upon a reasonable analysis of current data:

“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.”

As we concluded in *City of Port Townsend et.al. vs. Jefferson County*, IUGAs are to be drawn at municipal boundaries and then expanded only when appropriate information and analysis balanced with county-wide planning policies and the goals and requirements of the Act are met. The Act definitionally requires an IUGA encompassing Bellingham's city limits. Whatcom County has failed to comply with the Act by adopting an IUGA for Bellingham outside its municipal boundary without first requiring an analysis of current data on such issues as land capacity, fiscal impacts and capital facilities plans.

We will defer any evaluation of the other Whatcom County IUGAs and failure to regulate development outside IUGAs to the *Whatcom Environmental Council vs. Whatcom County* case (#94-2-0009).

-

In light of our decision on this issue, other issues raised, as agreed by petitioners, are moot.

We have contemporaneously signed a stipulated order of dismissal on the companion case of *Williams, Teitge and McCollum vs. Whatcom County*.

ORDER

-

We find that Whatcom County is not in compliance with the Growth Management Act with the adoption of Bellingham's IUGA in Ordinance

#94-033. In order to achieve compliance the following steps must be taken within the time frame specified.

1. Eliminate inclusion of those areas of Bellingham's IUGA that are outside its city limits within 30 days of this order.

2. Ensure that proper analysis of current data is done including the reconsideration of Denke's property and pass an ordinance delineating a new IUGA or UGA for Bellingham by March 15, 1995.

-

DATED this _____ day of October, 1994.

Nan A. Henriksen
Presiding Officer

Les Eldridge
Board Member

William H. Nielsen
Board Member