

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

F. WHITMORE READING, HAROLD P. DYGERT,	)	
JOANNE MOORE-DYGERT, JOANN BLACK, J.R.	)	
GONZALEZ, MARY JO ROGERS-GONZALEZ,	)	No. 94-2-0019
CHRISTINE M. MASTERSON, LYNN M. SALERNO,	)	
STEPHEN SCHRODER, STEPHEN LINDBERG and	)	ORDER DENYING
DIANA RYDER, individually, and as members of	)	MOTIONS TO
the SOUTH END NEIGHBORS DEFENSE FUND, a	)	DISMISS
non-profit association, & THEODORE MAHR, et.al.,)	)	
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
THURSTON COUNTY and	)	
CITY OF	)	
OLYMPIA	)	
	)	
Respondents.	)	
	)	
and	)	
GARY E. BRIGGS,	)	
	)	
Intervenor.	)	
	)	

Previous to consolidation of this case, the City of Olympia moved to dismiss both petitions because of a claimed failure to file either within the 60 day period required by RCW 36.70A.290 (2). Thurston County filed a motion to dismiss petitioner *Reading, et.al.* based on the same claimed violation. Because the events leading up to these motions are unique, we set them out individually.

1. The City of Olympia and Thurston County both adopted the same document entitled "COMPREHENSIVE PLAN FOR OLYMPIA AND THE OLYMPIA GROWTH AREA". The plan encompassed both the municipal limits of Olympia and the areas outside the city boundary within the established urban growth area. Olympia adopted the plan on July 12, 1994. Thurston County adopted the plan on July 25, 1994.

2. On July 22, 1994, Olympia published the entire text of Resolution #M-1383, which adopted the joint comprehensive plan and repealed the 1988 plan.
3. On July 31, 1994, Olympia published a "NOTICE OF ADOPTION" which referenced RCW 36.70A.290 and announced that the council had adopted Resolution #M-1383. No reference was made to the July 22, 1994 publication.
4. On July 28, 1994, Thurston County published a "NOTICE OF ADOPTION" which referenced RCW 36.70A.290 and announced that on July 25, 1994, the Board of County Commissioners had adopted the 1994 Olympia Growth Area Plan. The same notice was republished on August 4, 1994. Both notices referenced the dual publication dates.
5. On September 23, 1994, Theodore A. Mahr and others filed a petition challenging the joint comprehensive plan and named both the City of Olympia and Thurston County as respondents.
6. On September 29, 1994, F. Whitmore Reading and others filed a petition challenging the joint comprehensive plan and named both the City of Olympia and Thurston County as respondents.
7. Both petitions concern land areas outside the city limits but within the urban growth area.
8. On October 5, 1994, Olympia filed motions to dismiss against both petitions on the basis that neither was filed within 60 days of the original publication of the Resolution on July 22, 1994.
9. On October 24, 1994, Thurston County filed a motion to dismiss against petitioner *Reading et.al.* on the basis that their petition was not filed within 60 days of the initial July 28, 1994, publication.

We first address the Olympia's motions to dismiss. The relevant portion of RCW 36.70A.290(2) regarding the start of the 60 day period for a city states that:

"The date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published...."

The language of the statute does not address the issue of which commencement date applies

where, as here, a city publishes both a resolution and a summary on different dates without reference to each other. If the operative date is July 22 both petitions are untimely. If the operative date is July 31 both petitions are timely.

Nothing in the Act prohibits the dual publication engaged in here by Olympia. However, when dual publication occurs and there is no reference to the first publication in the second one, we hold that the second publication is the effective date for the commencement of the 60 day filing limitation. This is particularly so when the second publication specifically refers to RCW 36.70A.290.

The City apparently either felt that the second notice was required under the language of the Act or, in an abundance of caution, decided to republish. Without reference to the first, the effect of the second publication was to mislead potential petitioners into believing they had until September 29, 1994, to file an appeal. Under these circumstances we will not allow a city to rely on the first publication as the commencement date.

A county's publication requirement is likewise found in RCW 36.70A.290(2) but is slightly different than that of a city. A county must publish a notice "promptly" after adoption. The statute goes on to say that:

"The date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto."

Thurston County also published a notice of adoption twice. Unlike the City's publications, the County's notice was exactly the same both times and referenced both the July 28, 1994, and August 4, 1994, publication dates. Therefore, we have no difficulty holding that the effective date of commencement of the 60 day period for the County was July 28, 1994. The *Reading* petition was filed past the 60 day period and would ordinarily be dismissed.

We, however, deny the County's motion, not on the basis of the publication date, but on the basis of the document in question. In addition to having unusual publications, Thurston County and Olympia adopted a unified comprehensive plan. We are thus faced with the situation where one plan has two publication dates required of two different local governments. The County's

effective publication date is July 28, 1994, and the City's effective publication date is July 31, 1994. We hold that under these very unusual circumstances, the effective date that completed the joint publication requirements for this plan was July 31, 1994. Therefore both petitions were filed within 60 days of the date of publication under RCW 36.70A.290(2).

An alternative basis for our denial of the County's motion to dismiss exists. The challenges to the joint comprehensive plan by the two petitions are exactly the same as to Olympia and to Thurston County. Since the City's motions are denied, if the petitioners sustain their burden of proof, modifications to the plan will likely occur. Any changes necessary to bring the joint plan into compliance with the Act would require action or at least acquiescence by Thurston County. Thurston County is already a party to this case because of the timely filing of the *Mahr* petition. To dismiss the County from the *Reading* petition would simply add confusion to the case and elevate form over substance.

The motions to dismiss are denied.

DATED this 23<sup>rd</sup> day of November, 1994.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member/Presiding Officer

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Les Eldridge  
Board Member

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\*Nan A. Henriksen  
Board Member

\*Nan Henriksen is unavailable for signature but concurs in the decision.