

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

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| WHIDBEY ENVIRONMENTAL ACTION NETWORK, |) | |
| |) | No. 95-2-0063 |
| Petitioner, |) | |
| |) | ORDER |
| v. |) | CONDITIONALLY |
| |) | RESCINDING |
| ISLAND COUNTY, |) | INVALIDITY |
| |) | |
| Respondent. |) | |
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We previously declined to rescind invalidity in this case by order dated January 26, 1998. The County had passed Ordinance C-78-97 providing for interim application procedures for its rural, residential, agriculture, and forest management zones on the basis of established criteria listed within the ordinance. The ordinance also adopted interim application procedures for the nonresidential floating zone, nonresidential zone, and institutional uses without defined criteria. We declined to rescind or modify the invalidity for the reasons set forth in that order.

Island County appealed our January 26, 1998, order to Superior Court. After a hearing and a memorandum decision, the Court entered an order on May 15, 1998. The Court ruled that our interpretation of the Growth Management Act as to the interim ordinance relating to the first four zones, for which criteria had been established, was incorrect. The Court directed that the motion for rescision of invalidity be granted.

With regard to the nonresidential floating zone, nonresidential zone, and institutional zone the Court ruled that our decision was correct because the County had not established definitive criteria by which to apply its application procedures. The Court went on to direct that if criteria were adopted by the County that restricted acceptance of applications to those instances where urban growth was prohibited, where there was an inherent dependency of the use on a rural setting, and where the functional and visual compatibility with rural areas was maintained, that rescision of the invalidity would occur. The Court further restricted the rescision of invalidity by

the imposition of conditions relating to the continuation of the interim procedures and the filing of appeals of the proposed comprehensive plan after adoption. On June 1, 1998, Island County adopted Ordinance C-50-98 which amended the Ordinance C-78-97 by inclusion of the language set forth in the Superior Court order. We accepted written comments from the parties concerning the County's action through June 9, 1998.

WEAN contended that a formal motion by the County was necessary and a hearing under RCW 36.70A.330 was required prior to the entry of an order by us. The County responded that its amendment used precisely the language set forth in the Superior Court order and that no necessity for a formal motion or a hearing existed.

We decline to require a new hearing in this matter. This is not a compliance hearing mandated by RCW 36.70A.330. This matter originated from a motion for rescission of invalidity, which we denied, and which the Superior Court overruled. There is no need for the County to file a new motion. The Superior Court has determined that the County sustained its burden of proof in demonstrating that its actions removed the substantial interference with the goals of the Act. Additionally, the Superior Court imposed conditions to its ruling that had not been presented to us.

We have reviewed the provisions of Ordinance C-50-98 and the parties' written comments. We find no reason to further delay entry of this order.

Therefore, it is ordered that the invalidity determinations of April 10, 1996, and October 6, 1997, are rescinded conditioned upon the requirements set forth in the Superior Court order dated May 15, 1998.

So ORDERED this 25th day of June, 1998

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member

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Les Eldridge
Board Member