

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

WHIDBEY ENVIRONMENTAL ACTION NETWORK,	)	
	)	
Petitioner,	)	No. 95-2-0063
	)	
vs.	)	ORDER ON
	)	DISPOSITIVE
ISLAND COUNTY,	)	MOTIONS
	)	
Respondent.	)	
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On March 1, 1995, we received a petition for review from Whidbey Environmental Action Network (WEAN) alleging that Island County (1) failed to timely adopt a final comprehensive plan and implementing development regulations, (2) had an on-going faulty public participation process, and (3) misused grant moneys. An amended petition was filed by WEAN on March 29, 1995.

On April 3, 1995, WEAN filed a "Dispositive Motion for Prompt Ruling and Order." An addendum to WEAN's Dispositive Motion was filed on May 4, 1995. On May 4, 1995, Island County filed a cross dispositive "Motion to Dismiss" all of WEAN's claims. A motions hearing was held on May 16, 1995.

We see no reason to hold a Hearing on the Merits in this case as all issues can be decided by the briefs, materials, and oral arguments already presented. We, therefore, grant WEAN's Motion for a prompt ruling and order and proceed to the issues raised by this appeal.

ISSUE 1

- (a) Does the Western Washington Growth Management Hearings Board have jurisdiction over alleged failure to comply with the Growth Management Act (GMA, Act) time deadlines for adoption of comprehensive plan element and

development regulations?

- (b) If so, has Island County violated the GMA by failing to adopt a final comprehensive plan by July 1, 1994?
- (c) If so, has Island County violated the GMA by failing to adopt development regulations for the implementation of a final comprehensive plan by January 1, 1995?

RCW 36.70A.280 gives us jurisdiction over failure to comply with GMA deadlines.

**RCW 36.70A.280 Matters subject to Board Review.** A growth planning hearings board shall hear and determine only those petitions alleging either: (a) That a state agency, county, or city is not in compliance with the requirements of this chapter, or chapter 43.21 RCW as it relates to plans, regulations, and amendments there to, adopted under RCW 36.70A.040; (Emphasis added)

All three Hearings Boards have issued rulings accepting jurisdiction over a failure to comply with GMA's time deadlines. We do not feel a need to further discuss the County's creative interpretation of the punctuation and meaning of the above quoted section. We deny Island County's motion to dismiss for lack of jurisdiction.

The facts are clear in this case:

- 1) Island County is required to plan under the Act.
- 2) Island County was required to adopt a comprehensive plan by July 1, 1994 and implementing development regulations by January 1, 1995.
- 3) The County has not adopted a comprehensive plan or development regulations.

Therefore, Island County is not in compliance with the Act, and petitioner's Dispositive Motion on this issue is granted.

## ISSUE 2

(a) Prior to an ordinance being passed and notification published, does the Western Washington Growth Management Hearings Board have jurisdiction over failure to provide adequate public participation?

(b) If so, has Island County failed to allow meaningful public participation since July 26, 1994?

Except for Island County's contention that we have jurisdiction only to review comprehensive plans, development regulations or amendments adopted under RCW 36.70A.040, Island County presented no legal arguments denying jurisdiction involving challenges to a GMA process prior to adoption of an ordinance. We discourage mid-process appeals, except for failure to act. Piecemeal appeals would be counterproductive to local governments completing their GMA planning.

The key problem in this case is the failure to act. If the Planning Commission had reworked the draft comprehensive plan and forwarded it to the Island County Commissioners by summer 1994 as originally scheduled, this entire appeal would not have been necessary. By now, however, the petition contends:

The current vague timelines under which the Planning Commission is operating now threaten to stretch the "brief" final review of the draft plan by the Commission to over one year. In the meantime, the Commission continues to rewrite the draft plan. These changes are virtually inaccessible to the public. The only method to determine what changes have been considered, or made, is to attend Planning Commission meetings where no public "input" is allowed, or to examine the minutes of the meetings. There is no easily accessible means by which citizens can obtain the changes to the plan. The failure to make these changes easily available to the public and to allow public "input" regarding them frustrates the Act's requirements for continuous public participation in two ways:

- i) Because it is extremely difficult to find out what changes are being made to the draft plan, it is impossible to comment in any meaningful way on those changes.

ii) Even if it were possible to make meaningful comments, the Commission's refusal to consider any "new" public input frustrates the Act's requirements for continuous public participation by eliminating any incentive or reason for involvement - why attend meetings where participation is not allowed or send comments which will not be considered?

Island County responds:

After taking all this public input, the planning commission closed public comment on the draft plan and commenced the process of evaluating and responding to the public input at Open Public Meetings. It is important to note that the planning commission continued to open the record for public comment on any proposed new material, such as the addition of reserves for fully contained new communities, and reconsideration of the Ground Water Management Plan. The planning commission has completed its consideration of and response to the public comments, and has made a second redraft available to the public. Prior to completing a draft for transmittal to the Board of County Commissioners, the planning commission will submit its revised draft comprehensive plan for additional public hearings for additional public comment. This meets the requirements of RCW 36.70A.140. This Board should not consider the WEAN's allegations that no public input has been allowed since July 26, 1994, in a vacuum. Instead, public participation must be considered as part of a continuum of county development of its comprehensive plan. As is stated in the final sentence of RCW 36.70A.140: "Errors in exact compliance with the established procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the procedures is observed." Island County is certainly observing the spirit of the procedures of allowing public participation in the development of the comprehensive plan.

RCW 36.70A.140 requires continuous, meaningful public participation:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. Errors in exact compliance with the established procedures shall not render the comprehensive land

use plan or development regulations invalid if the spirit of the procedures is observed.  
(Emphasis added)

We have made it clear in past decisions that the public participation requirement is intended to ensure an open, clear, active, and ongoing dialogue between citizens and their local governments. We understand that there may be brief recesses when new input cannot be accepted. However, eight months of meetings with virtually no opportunity for meaningful citizen participation does not comply with the spirit of .140. While completing its comprehensive planning process Island County must ensure that an opportunity for meaningful dialogue with the public is provided.

### ISSUE 3

(a) Does the Western Washington Growth Management Hearings Board have jurisdiction over how counties use the grant moneys provided by the State for purposes specified in RCW 36.70A.190(3)?

(b) If so, has Island County failed to use grant moneys provided by the State for the purposes specified in and limited by RCW 36.70A.190(3)?

The provisions of RCW 36.70A190(3) are directed toward the Washington State Department of Community Trade and Economic Development (CTED), not toward local governments. A violation of section .190 would have to involve a lack of compliance by CTED, not local government. CTED has not been made a party to this appeal. Therefore, we grant Island County's motion to dismiss as regards to issue 3.

We must note that Island County claims it has spent at least \$406,229 directly on the Growth Management planning process in the past four fiscal years and estimates it will spend an additional \$100,000 in the current fiscal year. We are hard pressed to understand why the record shows such an obvious lack of staffing to the Planning Commission and such a paucity of progress on the comprehensive plan after the expenditure of all this money.

### ORDER

Having reviewed the documents that were filed in support of and in opposition to the dispositive motions, having considered the oral arguments of the parties, and having deliberated on the matter, we enter the following order:

1. WEAN's motion for prompt ruling and order is granted. We have decided all issues of the appeal from materials and briefs already submitted and oral arguments at the motions hearing. The June 14, 1995, hearing on the merits is canceled.
2. Island County is not in compliance with the GMA because of its failure to adopt a comprehensive plan and implementing regulations by the deadlines established in RCW 36.70A.040(3)(d). In order to achieve compliance Island County must adopt a comprehensive plan and implementing regulations by October 31, 1995. A compliance hearing is scheduled for November 7, 1995.
3. While completing its comprehensive plan process Island County must ensure that provision is made for meaningful public participation.
4. Island County's motion to dismiss issue 3 is granted.
5. Island County's other motions to dismiss are denied.

This order constitutes the Board's final order in this case as specified by RCW 36.70A.300, unless a party files a petition for reconsideration pursuant to WAC 242-02-830.

DATED this 1st day of June, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen  
Presiding Officer

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Les Eldridge  
Board Member

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W<sup>m</sup> H. Nielsen  
Board Member