

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

|                              |   |                |
|------------------------------|---|----------------|
| ALBERT MARSHALL LOOMIS, IV., | ) |                |
|                              | ) |                |
| Petitioner,                  | ) | No. 95-2-0066  |
|                              | ) |                |
| vs.                          | ) |                |
|                              | ) |                |
| JEFFERSON COUNTY,            | ) |                |
|                              | ) |                |
| Respondent,                  | ) | FINAL DECISION |
|                              | ) | AND ORDER      |
| and                          | ) |                |
|                              | ) |                |
| POPE RESOURCES,              | ) |                |
|                              | ) |                |
| Intervenor.                  | ) |                |
| _____                        | ) |                |

Procedural History

On March 22, 1995, the Western Washington Growth Management Hearings Board (Board) received a petition for review from Albert Marshall Loomis IV (Loomis) challenging Jefferson County's amended development regulation Ordinance No. 01-0117-95, designating the Port Ludlow Interim Urban Growth Area (PLIUGA).

On April 18, 1995, Jefferson County (County) filed a motion to dismiss for lack of standing. On April 20, 1995, Pope Resources (Pope) filed a motion to intervene. On May 15, 1995, we held a prehearing conference and hearing on the motions. Our prehearing order was entered May 23, 1995. On May 24, 1995, we issued an order granting Pope intervenor status. On June 1, 1995, we entered an order denying the County's motion to dismiss.

The hearing on the merits was held on July 27, 1995 at the Port Ludlow Beach Club. No live

testimony was presented.

## DISCUSSION

The disputed ordinance is an amendment to Ordinance #15-1028-94 which we found to be out of compliance with the Growth Management Act (GMA, Act) in our December 14, 1995 Compliance Hearing Order. *City of Port Townsend, et. al. v. Jefferson County*, Case #94-2-0006. The one thing we found to be in compliance in that Ordinance was the elimination of IUGA designations outside the city limits of Port Townsend until proper studies and analysis could be conducted.

In our August 10, 1994 Final Order on Case #94-2-0006, we gave Jefferson County considerable guidance on the requirements for proper establishment of IUGAs:

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. (p.568) (References to page numbers are from Code Publishing.)

We hold that the CPPs of Jefferson County apply to the IUGA decision and that they and the GMA require that a proper analysis of land capacity, existing and future capital facilities impacts, and existing and future fiscal analysis must be made *before* an area outside the municipal boundaries of a city or cities can be established as either an interim or a comprehensive plan urban growth area. The designations must be consistent with the goals and requirements of the Act and the CPPs. (p.570)

The CPPs of Jefferson County direct that the County and City will “jointly prepare a regional population forecast for growth management planning purposes.” The forecast was designed to use the Washington State Office of Financial Management (OFM) population projection as the low or base projection and thereafter establish a medium or high range figure. Jefferson County determined that this was one of many CPPs that did not apply to the IUGA. As we held above the full range of the CPPs apply. . . (p.570)

We hold that OFM projections must be exclusively used except when a local government can clearly show that the projections are inaccurate and that a different set of figures needs to be used to accomplish the goals and requirements of the Act. Furthermore, if the county-wide planning policies require a jointly developed forecast then that requirement must also be fulfilled. (p.571)

No actual analysis of the need, expense or ability to provide water services for the designated IUGAs was done. . . . Such an analysis is a necessary component in Jefferson County given the repeated references to the water crisis that currently exists. (p.571)

Likewise, the level of service (LOS) standards required by the Act and the CPPs were not established. The County set forth guidelines (with a substantial number of questionable exemptions) for some public facilities and services applications outside IUGAs. Petitioners contend that those are both unintelligible and do not fix a meaningful level. We point the County to the WAC 365-195-210 (12) procedural criteria definition which states:

“Level of service” means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need.”

Without the analysis of need for, cost of, and ability to provide services that was lacking here it is not surprising that adequate LOS standards could not be developed. On remand, this issue will need to be rectified. (p.571)

We agree with the Central Puget Sound Board’s statement in *Tacoma v. Pierce County* that UGAs and IUGAs are to initially be drawn at municipal boundaries and then expanded only when appropriate information and analysis balanced with the county-wide planning policies and the goals and requirements of the Act are met. The Act definitionally requires an IUGA encompassing Port Townsend’s city limits. Jefferson County has failed to comply with the Act by adopting IUGAs outside a municipal boundary without first conducting an analysis of and having available for elected officials and members of the public information on land capacity, fiscal impacts and capital facilities plans. . . . Jefferson County did not comply with the Act because it failed to include all aspects of the CPPs in its decision. (p.573-574)

It may well be that Port Ludlow could be considered as a Master Planned Resort under RCW 36.70A.360. (p.574)

The County’s reliance on historical growth patterns for population predictions

perpetuates existing problems and is an abdication of GMA responsibilities. (p.574)

In our December 14, 1994 Compliance Hearing Order, we gave Jefferson County further feedback on its Level of Service standards in Ordinance #15-1028-94:

The interim Level of Service Standards adopted as attachment B looks very similar to the Level of Service Standards we found to be inadequate in our August 10, 1994, Final Order. The attachment B matrix simply defines whether certain public services are “allowed”, “not allowed”, “conditional”, or “provisional” and does not establish any definitive level of service standard. (p.641)

Given this background, we proceed to analyze Ordinance No. 01-0117-95 amending Ordinance #15-1028-94.

We have developed an analytical framework to answer the question of compliance. *Clark County Natural Resources Council v. Clark County*, #92-2-0001. In that framework, we ask the following questions, with recognition that the burden of showing non-compliance always rests upon the petitioner.

- (1) Is the ordinance a result of a considered application of appropriate goals and requirements of the Act?
- (2) Did the process comply with the public participation requirement of the Act?
- (3) Was the deliberation and decision-making process reasoned?
  - a. Is the ordinance supported by reasoned choices based upon appropriate factors actually considered as contained in the record?
  - b. Were inappropriate factors avoided?
- (4) Does the ordinance fall within the discretion granted to the decision-maker to choose from a range of reasonable options?

We will analyze Petitioner’s challenge to Jefferson County Ordinance #01-0117-95 (PLIUGA) in

the context of this framework.

**1. Is the Ordinance a result of a considered application of appropriate goals and requirements of the Act?**

RCW 36.70A.110 (1) states: “An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.” (emphasis added.)

When establishing a Port Ludlow Study Area in Ordinance 15-1028-94, Jefferson County acknowledged this requirement by listing the very first prerequisite of the study to be:

1. Study Provisions: The Port Ludlow area will be studied to determine if this area should be established as an unincorporated UGA under the provisions of RCW 36.70A.110. The study will evaluate whether Port Ludlow is “characterized by urban growth” under the provisions of RCW 36.70A.110. . . (Ordinance No. 15- 1028-94 Section 3.20.1).

Soon thereafter, Jefferson County staff launched a detailed “Urban Characterization Study.” The criteria used were not overly demanding. In its November 8, 1994 report entitled “Study Method and Preliminary Results,” staff concluded:

Based upon the present criteria for this study, only one quarter quarter section can be considered urban. This area in Kala Point is urban residential, based upon the high residential density created by duplexes and condominiums. All other developed areas fail to reach the urban category that staff has defined in this study. Therefore, there are not any other areas characterized by urban growth in Jefferson County.

Just one month later, in its December 14, 1994 presentation on the proposed Port Ludlow IUGA, staff stated, “Parts of Port Ludlow are characterized by urban growth.” And in Planning Department testimony on the proposed Port Ludlow IUGA, dated January 10, 1995, staff stated:

While a notable variation exists in densities of currently platted and proposed development areas within the IUGA boundary, examination of available maps makes it clear that existing densities are not rural, the average lot size being approximately

0.41 acres (net of roads and other utilities).

Staff did not state whether at this average residential density the PLIUGA was characterized by urban growth or by suburban sprawl. They merely stated that the existing densities were not rural. Staff seems to have been drawn away from the target of .110 (1) as the process continued. We never did find any evidence that the required preexistence of urban densities had been found.

Subsection (2) of .110 states: “Based upon the population growth management planning population projection made for the county by the office of financial management, the urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas” (emphasis added).

We stated in our August 10th order that OFM projections must be exclusively used except when a local government can clearly show that the projections are inaccurate and that a different set of figures needs to be used to accomplish the goals and requirements of the Act. We also stated that the County’s reliance on historical growth patterns for population predictions in the Watterson study perpetuated existing problems and abdicated GMA responsibilities. Finally, we reminded the County that if the CPPs required a jointly developed forecast, then that requirement also had to be fulfilled. We find no evidence in the record that the County has made any attempt to attain compliance in these matters with the adoption of this amendment.

On January 9, 1995, the City of Port Townsend sent the BOCC a letter voicing concern about the proposed PLIUGA Ordinance. It contained the following statement:

Section 2.20 of the proposed amending ordinance allocates 2,500 of the projected urban population to the Port Ludlow IUGA, with the remainder being allocated to the City of Port Townsend. The City continues to be unaware of how the County arrived at this 2,500 person figure for Port Ludlow. The recommended or “moderate” forecast and distribution of the Watterson Report does not make reference to this figure. We believe that the designation of any IUGA must be clearly tied to the joint population forecast and distribution or the OFM forecast, as required by CWPP 1.1.

We share Port Townsend's concern. We find no evidence in this record as to the reason that 2,500 population was assigned to the PLIUGA, or that showed the Port Townsend IUGA could not accommodate the entire OFM population projection, or that showed the required agreement with Port Townsend had been reached. Therefore, the very cornerstone of the PLIUGA Amendment is fatally flawed and not in compliance with the Act.

**2. Did the process comply with the public participation requirements of the Act?**

During the public hearing on January 9, 1995, those attending were aware of the changes demanded by the Port Ludlow Planning Committee and had the opportunity to voice their opinions on those proposed changes. Although it might have been more prudent to allow additional public input after the changes, we will not decide question 2 because of the much more serious process flaws discussed in question 3.

**3. Was the deliberation and decision-making process reasoned?**

- (a) Is the ordinance supported by reasoned choices based upon appropriate factors actually considered as contained in the record?**
- (b) Were inappropriate factors avoided?**

The main issues alleged in Loomis' petition and stated in the prehearing order relate to questions about the adequacy of Jefferson County's analysis prior to passing the ordinance.

Did Jefferson County fail to comply with the Growth Management Act (GMA) and its own County-Wide Planning Policies (CPPs) in designating the PLIUGA (Ordinance #01-0117-95) in that it allegedly:

- (1) Failed to provide adequate assurance that sewer and water services would be available within the PLIUGA?
- (2) Failed to provide adequate assurance that other "public facilities and services" would be available within the PLIUGA?
- (3) Failed to develop a Capital Facilities Plan before adopting the Ordinance?

(4) Failed to address the County’s anticipated ability to finance the public facilities and services needed in the PLIUGA over the planning period?

(5) Failed to require sufficient evidence that available ground water resources were sufficient to meet the projected population needs without causing environmental degradation?

In Issues (1) and (2), Loomis claimed that the County failed to comply with the requirements of the GMA and its own CPPs by enacting the Ordinance without properly considering and assuring the availability of water, sewer, and other “public facilities and services” to all property owners within the PLIUGA.

In his brief, Loomis pointed out that although the GMA definitions of “public facilities” and “public services” merely list the types of facilities and services to be analyzed by local governments planning under the Act, the term “public” has a well understood meaning beyond that. The term “public” brings with it an understanding that all members of a community be entitled to the services and/or facilities at issue.

RCW 36.70A.110(3) states:

Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources (emphasis added).

The key here is that new urban growth will be served by urban public facilities and services whether they are provided by a public or private source.

Early in the PLIUGA planning process, County staff contended that what made Port Ludlow different from other areas of “non rural,” unincorporated Jefferson County for IUGA designation purposes, was the availability of public sewer and water. In documents justifying the suitability of Port Ludlow as an IUGA, the County relied heavily upon the fact that public water and sewer

already existed in Port Ludlow.

In its November 1994 draft resolution relating to the status of Port Ludlow under the GMA, the County explained the adequacy of public facilities and services within Port Ludlow by declaring: “Whereas, all lots scheduled for creation within the above described boundary are eligible to receive service from the Port Ludlow water and sanitary sewer systems.” (Exhibit 15, p.5) The term “public” was used throughout the designation process to describe water and sewer systems, greenspace, and other existing facilities and services. In its testimony to the December 14th hearing of the Planning Commission on the PLIUGA Ordinance, County staff stated that they believed adequate public facilities and services existed within the PLIUGA, and that the presence of such public facilities and services was a “major determining factor” in their recommendation to designate Port Ludlow as an IUGA. (Exhibit 22, p.5)

The draft ordinance that went to the BOCC for public hearing on January 9, 1995 still contained many references to public facilities and services. At that hearing, the Port Ludlow Planning Committee presented proposed changes to the Ordinance including deletion of all references to the word “public.” They demanded that all of their proposed changes be made or they would not support adoption of the PLIUGA Ordinance. In the comments presented they stated:

All of the “public facilities” mentioned are privately owned by pertinent associations and are not available to the general public. . . .Furthermore there is no evidence that supports the notion that the parks, open spaces, and greenbelts are sufficient to meet the needs of the Port Ludlow IUGA.

At the same hearing and in written testimony to the BOCC, several citizens expressed their concern that the existing facilities were not public and no provision was being made for public facilities. For example, in the minutes of that hearing, Julia Chochrane is quoted as saying:

If the residents of Port Ludlow are uncomfortable with affordable housing requirements and determine that their urban type services should be private and available only to those who can pay association fees, then why are we considering this an urban growth area?

This was an excellent question that appears to have gone unconsidered and unanswered. The

BOCC removed all provisions relating to existing “public facilities and services” from the Ordinance and failed to replace them with any assurance that “public facilities and services” would be made available within the PLIUGA. Given the lack of planning for public provision of public facilities and services, the County had a responsibility to exact an assurance from the private utility and facility providers that services would be equitably available within the IUGA. However, IUGA designation provides no guarantee of public utilities availability at a preferred time or level. Furthermore, many conditions could change over the 20 year planning period that might cause a local government to draw back the line and never serve some of the original area. The point is that everything else being equal—topography, zoning, permitting, proximity to facilities, etc.—all citizens within the IUGA would be equally served. There could be a reasonable surcharge to those who did not pay into the system through original purchase and dues, but they need to be assured of services. Many communities have private golf courses and other types of private facilities. While this is acceptable, without public access, total reliance on such lands for compliance with the greenbelt and open space requirements of .110 makes no sense.

At the January 9, 1995 hearing, David Cunningham, representing Pope Resources, testified:

. . . So I think it’s clear that the sole purpose of the IUGA at Port Ludlow is to continue the water and sewer services as planned and as approved in order to finish the development plan as it’s been envisioned for years.

Cunningham was referring to a private, low impact, master-planned retirement and vacation development with no consideration of the broader implications of a public IUGA designation.

We have no criticism of Port Ludlow development lot owners who bought into a private, low impact, higher income community and now wish the developer to honor their purchase agreement and keep that original vision. There is a provision in the GMA for master planned communities. In fairness to all property owners inside and outside of the private development, perhaps that is what Port Ludlow should continue to be. If Port Ludlow is to be a public UGA, a different, more diverse and “public” vision for Port Ludlow will need to be created.

In Issues (3) and (4), Loomis claimed that Jefferson County violated the GMA and its own CPPs by designating the PLIUGA without doing the required capital facilities and fiscal analyses for

the entire PLIUGA. Loomis quoted several CPPs to back this assertion:

CPP 1.3, providing that the size and delineation of UGA boundaries will be determined by “lands already characterized by urban development which are currently served or are planned to be served by roads, water, sanitary sewer and storm drainage, schools and other urban services within the next twenty years, provided that such urban services which are not yet in place are included in a capital facilities plan.”

CPP 2.1, providing that “[t]he full range of governmental urban services at the adopted level of service standards will be planned for and provided within UGAs as defined in the capital facilities plan, including community water, sanitary sewer, piped fire flow, and storm water systems.

CPP 1.7, providing that “[b]efore adopting boundaries of UGAs, interim level of service standards for public services and facilities located inside and outside of UGAs will be adopted by the County and its UGAs.” (Emphasis in all quoted CPPs provided by Loomis.)

We stressed in *Port Townsend v. Jefferson County* (#94-2-0006) and *Washington Environmental Council v. Whatcom County* (#94-2-0009) that, prior to adoption of any IUGA beyond city limits, a county must perform a proper planning analysis of its growth needs and the present and future availability of adequate public facilities and services to meet those needs, as well as a planning for the cost of providing such public facilities and services.

Loomis claimed that the County erred by relying extensively upon the 1993 EIS for the Pope Resources Development Plan to justify the adequacy of sewer, water and other public facilities and services within the Port Ludlow IUGA. That FEIS, although quite well done, is for a private, low impact retirement and vacation community with planned gross residential density of approximately 0.6 units per acre spreading over 1,200 acres of undeveloped land—certainly not urban in character. As Wendy Wrinkle pointed out in her January 9, 1995 testimony to the BOCC, the water, sewer and other public services usage in that FEIS was extremely low, reflecting the nature of the current community. The inhabitants/household and water and public services usage would need to be much higher for a public, urban IUGA.

Port Townsend, in its January 9, 1995 letter to the BOCC, stated: “The proposed designation of

the Port Ludlow IUGA appears to rely only upon the 1993 Port Ludlow Area Programmatic FEIS for analyses and supporting documentation.” In his January 5, 1995 letter to County Commissioner, Glen Huntingford, Rae Belkin stated: “There appears to be no capital facilities plan for this IUGA. This could set up a conflict of using public monies to support a private development.” In exhibit 44, Wendy Wrinkle stated to the BOCC: “Aren’t the Commissioners directly responsible for any burdensome economic impact to the public resulting from negligence in review and analysis on this decision?”

Since the Commissioners deleted all reference to existing “public” facilities and made no provision to require that necessary urban services be provided to all new development within the PLIUGA, a reasoned process requires that the BOCC take the extra step to ensure that accurate and balanced analysis has been done for the entire PLIUGA from the perspective of the County as a whole, not just a private developer. This would include what the ultimate costs to the County might be. We find no evidence that this necessary scrutiny took place.

The final prong of Jefferson County’s capital facilities and fiscal analyses deficiency is its continuing use of LOS standards that we have already found to set no meaningful levels of service and therefore to be out of compliance with the Act and its own CPPs. Port Townsend stated in its January 9, 1995 letter to the BOCC:

Similar to our Tri-Area UGA comments, we are unsure as to what is proposed for level of service standards within the proposed Port Ludlow IUGA. We reiterate that standards should be adopted along with this amending ordinance which are specific and clearly define both the quantity of water to be supplied per person per day, and adequate fire flows. County-Wide Planning Policy 2.3 states that new development must meet the adopted level of service standards established for UGAs “*as a condition of project approval.*”

Sadly, no attempt has been made in this amendment to the IUGA Ordinance to bring the LOS standards into compliance. These LOS standards are inappropriate factors that continue to be used by Jefferson County.

In his fifth issue, Loomis claimed that the County failed to comply with the GMA by adopting the Port Ludlow IUGA Ordinance without sufficient evidence that available groundwater

resources were adequate to meet projected population needs without causing environmental degradation. The County's Ordinance acknowledges that the Port Ludlow IUGA will be wholly dependent upon groundwater resources for the water capacity needed to service future development within the Port Ludlow IUGA. The record shows that the adequacy and quality of groundwater supplies are extremely contentious issues in Jefferson County. In designating the PLIUGA, the County had the obligation to carefully examine the adequacy of water for the IUGA and the impact upon groundwater resources. One of the many warnings the BOCC received came from the Manager of Water District 1 asking the Commissioners to "slow down and take a harder look at water issues and see how the water system plan pans out before IUGA designation."

The County appears to have inappropriately relied upon Ludlow Water Company's 1994 Water System Plan (Plan), which had been designed for a low impact retirement and vacation community and had not been approved by the Department of Health (DOH). In its November 22, 1994 six-page letter of comments on the Plan, DOH stated many concerns including:

The primary issues of concern are those of water rights and future subdivisions . . . Water rights and necessary facilities must be sufficient prior to any final plat approvals. (p.1)

Please reevaluate table 11-1 which adds supplemental rights to primary rights. Subtracting supplemental rights from the annual water rights LWC only has rights to 465 AF/yr. If these supplemental rights are not additive then LWC has adequate rights for near term projected demands, but does not have adequate water rights for projected build out demands. This should be re-examined and either corrected or explained (p.6; emphasis added).

The BOCC also relied upon a November 15, 1994 report by the Committee of Ludlow Owners Association (CLOA), which found that groundwater supplies were adequate to meet the present Port Ludlow build-out plan. To support this conclusion, the report relied heavily upon the powers of the DOH and Department of Ecology (DOE) to withhold approval of LWC's Plan if those agencies determined that groundwater supplies were inadequate:

The DOH and DOE will NOT approve the Ludlow Water Company's plan and grant

the necessary water rights unless they are convinced there is ample water available now and in the future. Without these State approvals, the County will not approve any future plats submitted by Pope Resources. Such plat approvals are necessary to proceed with development.

The BOCC passed the PLIUGA Ordinance before the DOH approval of the LCW Plan, thereby designating a UGA without assurance of adequacy of water for a low impact vacation and retirement community let alone an urban growth area. Jefferson County failed to avoid inappropriate factors by relying upon a water system plan that does not contemplate urban densities or urban water usage per capita and has not been approved by DOH.

**4. DOES THE ORDINANCE FALL WITHIN THE DISCRETION GRANTED TO THE DECISION-MAKER TO CHOOSE FROM A RANGE OF REASONABLE CHOICES?**

For the reasons stated in answer to Question 3 our answer to Question 4 must also be no.

CONCLUSION

On its face Ordinance #01-0117-95 looks like a thorough, well thought out piece of legislation. However, the cornerstone and premises upon which this amendment to the IUGA Ordinance is based remain fatally flawed for compliance with the GMA. The Port Ludlow IUGA was adopted without proper population allocation; without evidence of pre-existing urban densities; without requisite LOS standards; without adequate analysis of capital facilities needs and the fiscal impacts of growth for the entire IUGA from a county-wide perspective; without assurance that either “public” facilities and services already exist or would be equitably available within the IUGA; and without proper review of the adequacy of water supply for an urban community at Port Ludlow.

ORDER

We find by a preponderance of the evidence that Jefferson County is not in compliance with the Growth Management Act with the adoption of Ordinance #01-0117-95.

In order to achieve compliance Jefferson County must repeal this Ordinance within 30 days and may not extend any IUGA beyond municipal boundaries until requisite analysis has been completed.

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

DATED this \_\_\_\_ day of September, 1995

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

\_\_\_\_\_  
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