

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

CITY OF WOODLAND, WASHINGTON)	No. 95-2-0068
)	
)	ORDER RE:
)	PETITION FOR
Petitioner)	DECLARATORY
)	RULING
)	
)	
)	

PROCEDURAL HISTORY

On April 13, 1995, the Western Washington Growth Management Hearings Board (Board) received a Petition for Declaratory Ruling from the City of Woodland, Washington (Woodland or the City). The City requested clarification of its responsibilities and obligations under the Growth Management Act (GMA or the Act). The need for clarification arose from the fact that Woodland is in two counties: Cowlitz and Clark. Cowlitz is not now planning under the Act. Clark is.

On April 17, 1995, a Notice of Hearing was entered. Also on that date, the Board identified "interested persons" pursuant to WAC 242-02-920. These included the Attorney General, the Boards of County Commissioners of Clark and Cowlitz counties, and the State Department of Community, Trade and Economic Development. Subsequent to this original group four more "interested persons" were identified, including the City of Coulee Dam, the Washington State Association of Counties, the Association of Washington Cities, and the State Public Works Board.

Briefs, affidavits, pleadings, or letters of comment were received from the City of Woodland, the Department of Community, Trade and Economic Development, Grant County acting for the City of Coulee Dam, Clark County, and the State Public Works Board prior to the Hearing on the Merits. The hearing was held on July 13, 1995, at Woodland City Hall. Present were the members of the Board, representatives from Woodland and the Public Works Board.

DISCUSSION

The petition asks for a clarification of the City's rights and obligations under the following sections of the Growth Management Act: Section 36.70A.040 (who must plan), Section .070 (mandatory elements), Section .106 (development regulations), Section .110 (urban growth areas), Section .330 (non-compliance), Section .340 (non-compliance and sanctions), and Section .345 (sanctions).

The petition, as well as the hearing memorandum and presentation, placed particular emphasis on clarification of the City's rights under RCW 43.155.070 (public works eligibility), RCW 70.146.070 (Centennial Clean Water), and RCW 82.02.050 (impact fees). The latter three are sources of funding and their withholding from local governments is collectively referred to as "non-sanction consequences" of findings of non-compliance with GMA. These findings are determined by the appropriate agency, and are not associated with gubernatorial sanctions recommended by a Growth Management Hearings Board. Further, in the Petitioner's Hearing Memorandum, dated June 29, 1995, the City asks for a clarification of the City's authorization under RCW 82.46.010 (Real-estate Excise (REET) Tax). The withdrawal of authorization to impose REET Tax is a sanction option of the Governor.

Underlying these requests for clarification was the assumption presented in the City's Petition for Declaratory Ruling, that "it is procedurally impossible for the City to adopt a comprehensive plan under RCW 36.70A.070 and provide for an urban growth area as set forth in RCW 36.70A.110 without the assistance of Cowlitz County."

The Petitioner's Hearing Memorandum cited Attorney General's Opinion (AGO) 1992, no. 28, and agreed that the AGO was correct in holding that a city located partially within a mandated GMA county is required to plan under GMA. The City disputed the AGO's second point, i.e., that the city is required to plan for its entirety, even though a substantial portion of it lies within a non-planning county.

Subsequent to the filing of the petition and prior to the hearing, House Bill 1305 was passed May 16, 1995. Its provisions included an increase in the percentage of growth triggering the requirement for counties to plan. The growth percentage, which had been 10 percent, was increased to 17 percent. Woodland found itself in a different quandary than before. Where it had originally argued that the City should wait for Cowlitz County's imminent planning under the

Act so that Woodland might plan according to the Cowlitz schedule; now, with Cowlitz not planning under the Act for the foreseeable future, the City had only Clark County to tie to its schedule. The City could call upon no coordination with Cowlitz County as it developed its final plan. It also, incidentally, reduced the need for a Declaratory Ruling, as the question of which county's timelines took precedence became moot.

Nonetheless, the City continued to plan as best it was able. Assistant Director of Community Trade and Economic Development (DCTED) Steve Wells, asserted in his affidavit of July 5, 1995, that the City had "worked with DCTED to plan under the GMA, a process which, through cooperation and understanding, has yielded results. The City of Woodland on June 16, 1995, filed with DCTED its draft comprehensive plan and its adopted critical areas ordinance."

Clark County entered a pleading supporting the City's request (July 9, 1995). The City submitted its draft comprehensive plan to CTED in June 1995, a plan which covered the entire city, both the parts in Clark County and in Cowlitz County. Woodland has a interlocal agreement with Cowlitz County, dating from 1982, for a 990 acre urban growth area. This figure includes the 174 acres allocated under the Clark County plan. Woodland hired a demographer who projected a 20-year city-wide population figure at 5,224. This figure is inclusive of the 500 persons allocated by Clark County as its portion of the City.

CONCLUSIONS

The City of Woodland has agreed that it is called upon to plan under the GMA because it is partially in a planning county (Clark). The City of Woodland has attempted to plan and meet the goals and requirements of GMA to the extent seemingly possible. The agencies responsible for assessing the degree of compliance with goals and requirements of GMA have, in general, characterized Woodland's effort as one of "good faith." The extent to which Woodland will be found in compliance with the goals and requirements of GMA for the purposes of these several agencies will necessarily be determined by the respective agency.

Thus far, Woodland has attempted to comply with various requirements, including completion and adoption of a critical areas ordinance. The City has also drafted a comprehensive plan which includes transportation and access management, a capital facilities plan, an urban growth

management program, the addressing of the public involvement process, a housing element, a utilities element, and a parks and recreation element. We differ with Woodland's assertion that it is "procedurally impossible" for Woodland to plan as set forth in GMA without the assistance of Cowlitz County. Thus far, the City has advanced toward many of the requirements of GMA.

We conclude that there is no issue for which it is appropriate for us to enter a Declaratory Order. We therefore decline to rule. WAC 242-02-930.

Dated this ____ day of July, 1995.

Les Eldridge
Presiding Officer

Nan A. Henriksen
Board Member

W^m. H. Nielsen
Board Member