

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

PROPERTIES FOUR, INC.,)	
)	
Petitioner,)	No. 95-2-0069
)	
vs.)	
)	ORDER GRANTING
CITY OF OLYMPIA,)	MOTION
TO)	DISMISS
Respondent.)	
_____)	

On May 25, 1995, the City of Olympia (City) filed a motion to dismiss “based on the failure of Properties Four, Inc. to allege any issue of fact or law that falls within the jurisdiction of the Growth Management Hearings Board under RCW 30.70A.280.” The City contended that Petitioner’s allegation that the impact fee ordinance failed to comply with RCW 36.70A.120 and .160 incorrectly assumed that this impact fee ordinance constituted a “development regulation.”

“Development regulation” is defined in RCW 36.70A.030 (8) as:

(8) “Development regulation” means any controls placed on development of land use activities by a county or city, including, but not limited to, zoning ordinances, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances.

The City contended that Ordinance #5508 (5508) placed no “controls” on development or land use activities and therefore was not a development regulation.

Petitioner claimed that the issue of whether Ordinance No. 5508 “controls” land use and development activities could only be decided after a review of all the evidence. Therefore, Properties Four asked us to postpone consideration of this issue until the hearing on the merits.

We have done that.

After carefully considering all of the evidence from the record below, the extensive briefing, and the oral arguments at the hearing on the merits, we find no evidence that Ordinance No. 5508 is a land use control. 5508 imposes transportation impact fees on new development throughout the City of Olympia. Although it could have some effect on the rate of development, it places no “controls” on development or land use activities as is required to qualify as a development regulation under RCW 36.70A.030 (8).

At the hearing on the merits, the parties agreed that if Ordinance 5508 met the definition of a development regulation we would have jurisdiction, and if not, we would not. We are not saying that an impact fee ordinance could never be a development regulation. We are saying that given the record in this case, Ordinance #5508 is not a development regulation. Therefore, jurisdiction does not exist to review this petition.

Olympia’s Motion to Dismiss is granted.

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

DATED this ____ day of August, 1995

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Presiding Officer

Les Eldridge
Board Member

W^m H. Nielsen
Board Member