

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

JOHN E. DIEHL, KERRY HOLM, GORDON	)	
JACOBSON, and VERN RUTTER, individually,	)	
and as members of the MASON COUNTY	)	No. 95-2-0073
COMMUNITY DEVELOPMENT COUNCIL,	)	
a non-profit association,	)	FINDING OF
	)	COMPLIANCE
Petitioners,	)	(IUGA ADOPTION)
	)	
vs.	)	
	)	
MASON COUNTY,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
PETER OVERTON, DONALD B. PAYNE,	)	
McDONALD LAND COMPANY, ET.AL, SKOOKUM	)	
LUMBER COMPANY, MANKE LUMBER	)	
COMPANY and MASON COUNTY PRIVATE	)	
PROPERTY ALLIANCE (MCPPA),	)	
	)	
Intervenors.	)	
_____	)	

**PROCEDURAL HISTORY AND INTRODUCTION**

On January 5, 1996, we received a request from Petitioners for a compliance hearing. Petitioners noted that the Mason County Commission adopted a new interim urban growth area (IUGA) and amendments to its existing development regulations on January 3, 1996. Petitioners contended that the new IUGA was not in compliance with our Order dated October 10, 1995. The County's non-compliance, according to the Petitioners, included the establishment of minimum lot sizes outside the IUGA at 12,500 square feet, a failure to address problems posed by an existing inventory of more than 20,000 undeveloped lots in rural areas, and a failure to protect a designated critical aquifer recharge area. Petitioners further alleged that the adopted IUGA was

not properly sized to accommodate anticipated growth.

A compliance hearing was set for February 7, 1996, at 1:00 p.m. in the Shelton offices of PUD #3. Material and briefs were received from Petitioners, the County, intervenor Manke Lumber Company and from participant City of Shelton. A motion on order of speaking and admission of evidence was received from the Petitioners on February 6, 1996. The documents cited therein were admitted to the record, and the motion on order of speaking was denied on February 6, 1996. Mason County's supplemental response, received February 2, 1996, included a motion for dismissal with prejudice of the challenges to the Ordinance from Petitioners, intervenor Manke, and participant City of Shelton. Argument on this motion was heard at the compliance hearing. All three members of the Board were present. Mr. John Diehl appeared for the Petitioner and Mr. Eric Valley appeared for the County. Mr. Benjamin H. Settle, City Attorney, appeared for the City of Shelton, as well as Mr. Paul Rogerson, Planner. Mr. William T. Lynn represented Manke Lumber Company.

### ARGUMENT AND DISCUSSION

#### City of Shelton

The City of Shelton contended that the new Ordinance failed to comply with the Growth Management Act because it omitted the Matlock interchange area. RCW 36.70A.110(3). The City also objected to the inclusion of Policies E2 and E3. It asserted that the Policies' provisions for sales tax revenue from annexed portions of the IUGA and the purchase of infrastructure were not required by the Act. The City asserted that the County had failed to provide for rural density development outside the IUGA by allowing minimum lot size in the County rural areas as low as 12,500 square feet (3 du/acre). The City contrasted that with the definition of urban density within the IUGA contained in the Ordinance as no less than 3 du/acre, and pointed out that the County had created "a regulatory situation in which it allows densities informally defined as urban to occur immediately outside the designated IUGA and throughout rural areas of county". The City asked that these substantive issues concerning the IUGA ordinance be considered by the Board in the compliance hearing.

#### Manke Lumber Company

Manke Lumber requested that the Board consider the issue of the County's inclusion of part of Manke's barge loading facility inside the IUGA. They pointed out that the project was an integrated resource-based use and that the County had consistently taken the position that it was a single project. They protested the division of the project into urban and rural areas. They requested that we not dismiss petitioners' and intervenors' charges "with prejudice" as requested by the County, but if our decision was to dismiss, to dismiss without prejudice so that these questions could be addressed in a subsequent petition.

### Petitioners

The Petitioners contended that RCW 36.70A.330 makes no distinction between substantive and procedural compliance. The County had been directed to produce an ordinance which complied with the Act. Therefore, Petitioners argued, questions such as virtually identical densities of 3 du/acre inside and outside the IUGA and the size of the IUGA could be legitimately addressed only in a compliance hearing. Petitioners also asserted that the Board's decisions in previous cases, which called for new petitions to address substantive issues when jurisdictions had come into compliance with orders regarding failure to act, did not apply in this case. This case, they declared, was not a "failure to act" case. For the first time, Petitioners argued that the IUGA Ordinance remained in effect after January, 1995, and that only the Agreement between Shelton and Mason County, included by reference in the ordinance, had expired.

### Mason County

The County cited cases in which we have held that substantive challenges to ordinances adopted in response to orders regarding failure to act must occur through a separate petition process. These cites include *Friends of Skagit County v. Skagit County*, #95-2-0065 and *Watershed Defense Fund v. Whatcom County*, #94-2-0003. The County requested that if we were to grant the other parties' request for determination of substantive compliance with the Act, a continuation of the hearing be granted.

## CONCLUSION

It is clear from a re-examination of the tape of the Dispositive Motion argument that both

Petitioners and the County asserted that IUGA Ordinance 27-94 was sunsetted in January, 1995, and was not in effect at the time of the September 21, 1995, Motions Hearing. Mr. Diehl said that “I went to the Board of County Commissioners last December and said that their IUGA Ordinance...was about to expire”. In response to Ms. Henriksen’s question of the Prosecuting Attorney asking “[I]s it correct that the IUGA Ordinance is no longer in effect?,” he responded, “[T]hat is the way I read the Ordinance.” Section 2 of the Ordinance stated that the IUGA “is adopted as the city limits of the City of Shelton under terms and conditions set out in an agreement entered into with the City of Shelton which is incorporated in this [by] reference” (emphasis added). The referenced Agreement stated, in section 1, that “the interim UGA shall be until January 1, 1995, the city limits of the City unless replaced sooner with a final IUGA.” We granted the Dispositive Motion on the basis that no IUGA was adopted. Petitioners clearly argued that an ordinance was not in effect. Consequently, we held that the County had “failed to act”.

It is important to note that, if we decided to consider substantive elements of the Ordinance within the compliance hearing process, we likely would still have had to set up a *de facto* petition process; including a prehearing conference, a motions hearing, a briefing schedule, establishment of the record, and a full hearing on the merits.

### **ORDER**

We find that Mason County has complied with the Board’s Order of October 10, 1995, requiring it to adopt an IUGA and development regulations. Questions regarding the new ordinance’s compliance with the Act must be addressed in new petitions.

SO ORDERED this 22<sup>nd</sup> day of February, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge  
Presiding Officer

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Nan A. Henriksen  
Board Member

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William H. Nielsen  
Board Member