

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

BECKSTROM, et. al.,)	
)	No. 95-2-0081
Petitioners,)	
)	
vs.)	FINAL DECISION
)	AND ORDER
SAN JUAN COUNTY,)	
)	
Respondent.)	
_____)	

PROCEDURAL HISTORY

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On August 28, 1995, the Western Washington Growth Management Hearings Board (Board) received the above-referenced petition for review challenging San Juan County's Ordinance No. 7-1995, the Limited Development District Subarea Plan for Waldron Island. On October 2, 1995, we received the County's motion to dismiss for failure to timely serve San Juan County. A prehearing conference was held at the San Juan County Courthouse on October 4, 1995.

In our October 11th Prehearing Order, a motions hearing was set for October 25, 1995, with a requirement that all motions be filed by 4:00 p.m. on October 16, 1995. On October 18, 1995, we received from the County a motion to dismiss for lack of subject matter jurisdiction and a motion to extend time for filing motions. Only motions filed by October 16th were allowed to be argued at the motions hearing on October 25th. Our October 30th Order denied the County's motion to dismiss for failure to timely serve. The hearing on the merits was held on December 15, 1995, at the County Courthouse in Friday Harbor. Arguments on the County's motion to dismiss for lack of subject matter jurisdiction were heard at that time.

ISSUE 1. Does the Growth Management Hearings Board have subject matter jurisdiction to review the Waldron Subarea Plan for consistency with the Growth Management Act

(GMA) when that plan was adopted prior to the San Juan County GMA Comprehensive Plan and Implementing Regulations and adopted pursuant to independent authority arising from state statute and county ordinance?

This is the same issue that was raised in the County's motion to dismiss for lack of subject matter jurisdiction. The County contended that this Board lacks subject matter jurisdiction over the review of the Waldron Subarea Plan because that plan was adopted pursuant to the independent authority in the Planning Enabling Act (RCW 36.70) and was not adopted to comply with the Growth Management Act.

Petitioner countered that San Juan County opted in and is a planning County under GMA. They also pointed out numerous places in the record which showed the connection of the Waldron Plan to GMA. One very convincing linkage was found in Section 2 of Ordinance No. 7-1995 at page 3:

The authority invoked by the San Juan County Board of Commissioners in adopting this LDD Subarea Plan is Article 11, Section 11 of the Washington State Constitution, Chapter 43.21C (State Environmental Policy Act), 90.58 (including without limitation Section 90.58.340) (Shoreline Management Act), 36.70 (Planning Enabling Act), and 36.70A (Growth Management Act) . . . without intending to rely on any one such authority separately. (emphasis added)

There is clear evidence in the record that Ordinance No. 7-1995 was adopted pursuant to Chapter 36.70A and that the County made an effort to comply with the GMA during their adoption process.

We agree with the County that it is untimely for us to determine consistency of this subarea plan with the not-yet-adopted comprehensive plan. The County will need to review this subarea plan for consistency with its overall comprehensive plan and readopt it as part of its GMA comprehensive plan. At that time a consistency challenge would be timely. However, we do have jurisdiction at this time to determine if the process used in adopting this subarea plan was consistent with the requirements of GMA. That is the subject of this petition.

Conclusion - Issue 1

We find that we have jurisdiction to review the process used in adoption of Ordinance No. 7-1995 and deny San Juan County's motion to dismiss for lack of jurisdiction.

ISSUE 2. Did San Juan County fail to comply with RCW 36.70A.020(6) in adopting Ordinance No. 7-1995?

RCW 36.70A.020(6) states:

Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

Petitioners claimed that San Juan County failed to consider the effect of this plan on private property rights and therefore failed to meet this goal. The County countered that the Petitioners had produced nothing from the record to substantiate their claim that private property rights were not properly considered or that they were considered in an arbitrary or discriminatory manner. The County further asserted that the record showed that property rights were considered throughout the process and that the Board of County Commissioners (BOCC) had available memoranda from their counsel and the procedure for analysis as provided by the Washington State Attorney General, pursuant to RCW 36.70A.370.

We have previously held that our role is to ensure that private property rights as to takings have been adequately considered by local governments. (*Achen, et.al., v. Clark County*, #95-2-0067). Takings claims are to be determined by the Courts. Petitioners have filed such a case in the Superior Court for San Juan County.

The record showed that both the Planning Commission and BOCC debated the proper balance between individual property rights and community rights of public safety, water availability, etc. before adopting this Ordinance. Private property rights were considered. Whether a proper decision was made is not an issue we can rule upon.

Conclusion - Issue 2

San Juan County did not fail to comply with RCW 36.70A.020(6) in adopting Ordinance No. 7-1995.

ISSUE 3. Did San Juan County fail to comply with RCW 36.70A.140 and .020(11) in adopting Ordinance No. 7-1995?

Section .140 requires local governments planning under the Act to provide for:

[E]arly and continuous public participation in the development and amendment of comprehensive land use plans . . . broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice . . . public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

Goal 11 reads:

Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

Petitioner claimed that San Juan County provided Waldron Island property owners with insufficient information, ineffective notice, and inadequate public hearings. The County responded:

“an extraordinary effort was made to involve every landowner and resident in the process. An accurate record of the involvement was maintained, and all citizens were informed of significant action through direct mailings, public meetings, and legal advertisements. Public testimony was received by the Planning Commission and the Board of County Commissioners.”

At a joint hearing of the Planning Commission and the BOCC on Waldron Island, Dwight Henderson reported:

The process that brought the Waldron Limited Development District Subarea Plan to the point of final vote involved two and one-half years, 98 meetings, 124 people and 2,600 hours of their time in meetings plus uncounted hours working on the Plan at

home.

Under the aegis of the Waldron Community Meeting on September 19, 1992, a “brainstorm” meeting was held to start a committee separate from the WCM to begin the Plan. Monthly meetings soon became weekly as the scope of the effort became clear. People were encouraged to attend by persuasion and by advance notices on the Post Office bulletin board. They included date, time a (sic) public location, an agenda and these words: “We need your input. Please come. Everybody welcome.”

Anyone who showed up at the meeting was considered a committee member. From a community of about 80 year round residents, a number that may double in the summer, an astounding 124 people came to at least one meeting. 58 people came to 3 or more meetings. Attendance varied from 4 -- smallest to 40 -- largest, the average meeting size was 12. Six different people voluntarily assumed duty as chairperson.

Content of the meeting included vigorous defense of differing opinions, questions answered about previous meetings, clarification of definitions and grammar, laborious writing and rewriting of all plan elements. Ever present was striving for consensus.

Eligibility to vote on the plan was based on all persons named on the Assessor’s Waldron Real Property Master List and the Waldron Precinct Voter Registration List. Three plan mailouts with ballots went to all 296 people so listed. First a draft of description and character; second a draft of the plan with optional vote for workshops, seminars, retreats, B & Bs and house size; third, and after review by County planning and legal departments, the final draft. Postcard progress reports went to all off-islanders three times. Input from all interested persons was welcomed and carefully considered.

The County also published the entire Waldron Subarea Plan in the County’s official newspaper prior to its enactment.

Conclusion - Issue 3

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The GMA mandates early and continuous public participation in the planning process, but grants local governments wide latitude in designing their public participation process based on local conditions. We find that San Juan County complied with both the spirit and the requirements of

the GMA in its public participation process and therefore did not fail to comply with RCW 36.70A.140 and .020(11) in adopting Ordinance No. 7-1995.

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ORDER

We find that San Juan County has complied with the Growth Management Act in the process it used to adopt Ordinance No. 7-1995.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

SO ORDERED this 3rd day of January, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Presiding Officer

Les Eldridge
Board Member

William H. Nielsen
Board Member