

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

DONNA L. and THOMAS E. ARMSTRONG,)	
)	No. 95-2-0082
Petitioners,)	
)	
vs.)	FINAL DECISION
)	AND ORDER
CLARK COUNTY,)	
)	
Respondent.)	
_____)	

As part of the avalanche of cases resulting from Clark County’s comprehensive plan and development regulations adoption, petitioners challenged Ordinance 1994-12-53 in cause #95-2-0004. That ordinance, enacted as part of the Clark County GMA process, generally provided that connection to public water was required as a condition of preliminary plat approval or, in cases involving a building permit, if the property was located within 1,500 feet of a water main. At the time of the hearing on the merits in that case, Clark County stipulated that substantial questions existed as to whether the ordinance complied with the GMA and that remand was an appropriate remedy.

Subsequent to that remand, the Board of County Commissioners adopted Ordinance 1995-08-14. In accordance with our direction relating to remands in *Achen v. Clark County*, #95-2-0067, petitioner filed a new action challenging the ordinance.

The provisions of ordinance 1995-08-14 differed substantially from its predecessor. The scope of the new ordinance was limited to urban uses and land divisions that required site plan approval, as well as new residential uses under four units, if public water was available within 750 feet and the extension could be made “with reasonable economy and efficiency.” The County acknowledged that the new ordinance met the definitional requirements of RCW 36.70A.030(8) as a development regulation and was adopted as part of the GMA process. That acknowledgment

by the County distinguishes this case from the order of dismissal entered in *Properties Four, Inc. v. City of Olympia*, #95-2-0069.

The issues for this case thus became:

1. Did the ordinance violate the goals and requirements of the GMA?;
2. Does the Board have jurisdiction over alleged violations of RCW 19.27.097, and if so, did the new ordinance violate that statute?

We have consistently held that the GMA does not invest us with jurisdiction to decide violations of other statutes. *Mahr v. Thurston County*, #94-2-0007 (Order dated 9/7/94). Recently we addressed a jurisdictional issue in *Camano Community Council v. Island County*, #95-2-0072 (Order dated 9/6/95). On page two of that Order, we said:

“We do not have jurisdiction to determine compliance with RCW 36.105.070. However, we do have jurisdiction to determine if a land use planning legislative action is in violation of the goals and requirements of RCW 36.70A. This is true whether or not the local government has chosen to adopt the legislation pursuant to RCW 36.70A, as long as there is a sufficient nexus between the action and the GMA.”

During the hearing on the merits, petitioners acknowledged that the ordinance did not violate the goals and requirements of GMA. Our independent review of the record leads us to the same conclusion. Petitioners contended, however, that jurisdiction existed for us to review whether the ordinance violated RCW 19.27.097 because that statute was enacted by the legislature as part of the two foundational legislative enactments of the GMA, SHB 2929(2929) and ReESHB 1025 (1025). Petitioners contended that as a matter of legislative intent, logic and/or policy, the inclusion of the potable water requirements of 2929 and its amendment in 1025 led to the conclusion that a Board has, and should have, jurisdiction to review alleged violations of RCW 19.27.097. Petitioners concluded their argument by contending that the authority of RCW 19.27.097 to require connection to “existing” public water did not grant authority to the County to require “extension” connections.

The jurisdictional limits of a Board’s authority were established by 1025 § 10 and § 11 (RCW 36.70A.280, .290). Those sections provide authorization to determine compliance with the goals

and requirements “of this chapter.” Recent amendments have not changed that language. Standing alone, the phrase “this chapter” is ambiguous and could lead to the construction advocated by petitioners. However, § 41 of 1025 directed that § 10 and § 11 were to be “each added to chapter 36.70A RCW.” That language leads to the inescapable conclusion that the legislature intended a Board’s jurisdiction to be limited to violations of the goals and requirements of RCW 36.70A. *Accord, Robison v. Bainbridge Island*, #94-3-0025 (Order dated 2/24/95).

This conclusion is buttressed by the legislative history of what is now RCW 19.27.097. Originally found in § 63 of 2929, the Legislature directed addition of that new section to “chapter 19.27 RCW.” The language leading to the challenge in this case is found in § 28 of 1025, which the Legislature said was to be an amendment of RCW 19.27.097. Section 28 was not included in the codification direction provided by § 41 of 1025.

We understand, and to certain degree sympathize with, petitioners’ frustration expressed in response to the County’s contentions which are embodied in our decision here. As a matter of logic and policy, petitioners may well be correct that this result frustrates the overall scheme of resolving GMA issues through administrative boards rather than superior courts. No matter how much we may agree with petitioners’ stance, the clear language found in 1025 leads to no other conclusion. Any change necessarily must be one made through the legislative process. The ordinance was not claimed to have violated the GMA. We have no jurisdiction over claimed violations of RCW 19.27.097.

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

So ordered this 6th day of December, 1995.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Presiding Officer

Les Eldridge
Board Member

Nan A. Henriksen
Board Member