

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

CEDAR PARK RESIDENTS ASSOCIATION,)	
and CITY OF PORT ANGELES,)	No. 95-2-0083
)	
Petitioners,)	ORDER DENYING
)	MOTION TO
vs.)	DISMISS
)	
CLALLAM COUNTY,)	
)	
Respondent.)	
_____)	

On November 15, 1995, we entered an Order in cause #95-2-0080 denying Clallam County's Motion to Dismiss against petitioner Cedar Park Residence Association. The Order was the conclusion of a hearing held October 31, 1995.

On November 2, 1995, we received a petition from the City of Port Angeles. By Order dated November 9, 1995, that petition was consolidated with the original case, cause number #95-2-0080. On December 22, 1995, we received a motion from Clallam County requesting dismissal of the City of Port Angeles petition. Written materials from both the County and the City were received and a telephonic hearing was held January 3, 1996. All three Board members and the attorneys for the three parties participated.

Clallam County first requested dismissal on the same grounds as denied in the #95-2-0080 case. The County did not submit any new materials for this portion of the argument. We adhere to our original decision and reasoning set forth in the November 15, 1995 Order.

Clallam County also contended that an additional ground, failure to exhaust administrative remedies, existed against Port Angeles. The County's argument focused on a portion of RCW 36.70A.110(2) that states:

“...A city may object formally with the department over the designation of the urban growth area within which it is located....”

The County’s position was that an exhaustion of administrative remedies doctrine existed, or should exist, under the Growth Management Act (GMA, Act). Under the holding in *Smoke v. Seattle*, 79 Wn. App. 412 (1995), even the “optional” remedy available in the statute required the City to exhaust before filing a petition.. The City countered that it had formally objected to the Interim Urban Growth Area (IUGA) designation in 1993 and that mediation provided by DCTED had failed to persuade the County to change the boundaries. The final UGA adopted in 1995 was virtually identical to the 1993 IUGA.

As the County acknowledged during the oral argument portion of this case, there is no statutory exhaustion of administrative remedies requirement in the GMA. That in and of itself distinguishes this case from *Smoke v. Seattle*. We do not now decide whether some judicial common law exhaustion of administrative remedies is or should be applied to the GMA since the County has failed to show that such a doctrine would be applied under the facts of this case. The City had previously invoked the formal objection provision unsuccessfully in 1993. To require the City to once again go through the same optional process for an urban growth boundary which did not change from the 1993 designation would be the height of futility. Consequently, the County cannot, under these facts, show that the doctrine would be a basis upon which dismissal should be granted.

The County’s motion to dismiss is denied.

So ordered this _____ day of January, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Presiding Officer

Les Eldridge
Board Member

Nan A. Henriksen
Board Member