

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

ROSEWOOD ASSOCIATES, a Washington) Limited Partnership,))	No. 96-2-0020
Petitioner,))	ORDER RE: DISPOSITIVE
v.))	MOTION AND FINDING
TOWN OF FRIDAY HARBOR, a municipal))	OF NON-COMPLIANCE
corporation,))	
Respondent.))	
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On September 16, 1996, we received a dispositive motion from the Town of Friday Harbor (Town) regarding Ordinance #1002 and Issues #1-5 of the Prehearing Order. We also received a Stipulation that the Town had not yet adopted its Growth Management Act Comprehensive Plan and implementing development regulations as required by RCW 36.70A.040 (Issue #6). On September 26, 1996, we received Rosewood Associates' memorandum in opposition to the Town's motion to dismiss. A motions hearing was held September 30, 1996, at the Town Council Chambers in Friday Harbor. Board Members Les Eldridge and William Nielsen were present, as well as Samuel W. Plauche' of Buck and Gordon representing the Town of Friday Harbor and Joseph P. McCarthy representing Rosewood Associates. Town Administrator C. King Fitch was also present.

DISCUSSION

The Town argued that the Board had no jurisdiction over Ordinance #1002 as it was a municipal water system ordinance and not a GMA implementing development regulation (DR) or a land use planning legislative action. The Town contended that, as a water conservation measure, the Ordinance did not place controls on development or land use and, therefore, was not a DR. The Town further asserted that, because the Ordinance was not enacted under the GMA, Issues #1, 2 and 3 should each be rejected because each was facially inapplicable to the Ordinance. It argued

that RCW 36.70A.040 (Issue #1) did not apply to the Ordinance because it had no relationship to county-wide planning policies. Issue #2 (notification to the State of adoption of the ordinance) likewise should be dismissed, the Town argued, because the Ordinance was not adopted under GMA. The Town contended that the same applied to Issue #3 (public participation requirements of Section .140).

The Town maintained that Issue #4 should also be dismissed because Section .370 expressly provides that it does not create a basis for challenging local governmental action. The Town also argued that Issue #5 regarding the State Environmental Policy Act (SEPA), should be dismissed because the Board's SEPA jurisdiction only extends to ordinances enacted under GMA.

Rosewood Associates argued that the Ordinance was enacted as an interim development control pending adoption of the Town's comprehensive plan and implementing regulations. They maintained that the stated purpose of the Ordinance is to accomplish down-zoning which would otherwise be required by implementing regulations under the nearly completed comprehensive plan. Rosewood pointed out that the Ordinance referred a number of times to land use regulations and cited the 17th Whereas which stated that "immediate changes in land use... could be lessened by taking action now to reduce large single user demands on the present uncommitted capacity of the water system." Petitioner noted that the Draft Water Comprehensive Plan was the water system component of the capital facilities element of the comprehensive plan (Ex. 19). They cited numerous remarks in Town Council deliberations which they asserted set forth the purpose of the Ordinance as enacting interim DR's to control development. Rosewood argued that the Board had jurisdiction because there was a clear nexus between the Ordinance and the GMA and cited *Camano Island Community Council v. Island County*, WWGMHB #95-2-0072.

Rosewood further argued that RCW 36.70A.040 required the Town to comply with all the requirements of the GMA including that of Section .390, requiring public hearings for interim zoning ordinances. Rosewood asserted that the other issues similarly were within the Board's jurisdiction and should be heard because the nexus of the Ordinance with the GMA gives the Board jurisdiction.

CONCLUSION

The case involves complex issues and a record more extensive than is appropriate under the dispositive process to determine jurisdiction. We therefore reserve judgment on that question until the Hearing on the Merits. We conclude that because grounds for facial dismissal of Issues #1, 2, 3 and 5 were not demonstrated, the test for a dispositive motion has not been met.

We hold that the clear language of Section .370 prohibiting a cause of action to a private party regarding compliance with this Section, does not create a basis for challenging local government action before a Board and therefore should be dismissed.

In view of the Stipulation regarding Issue #6, it is apparent that the Town has failed to act and is therefore not in compliance with the GMA regarding adoption of its comprehensive plan and implementing regulations.

ORDER

The Motion to Dismiss regarding Issues #1, 2, 3 and 5 is denied. We reserve ruling on the issue of jurisdiction pending the Hearing on the Merits. Additional briefing regarding the question of jurisdiction will be allowed but not required. The Motion to Dismiss regarding Issue #4 is granted. We find the Town in non-compliance regarding Issue #6; failure to timely adopt a comprehensive plan and development regulations. We will hear full argument on the remaining issues at the Hearing on the Merits on November 18, 1996.

Dated this 2nd day of October, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Presiding Officer

William H. Nielsen
Board Member