BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

COTTON CORPORATION, INC.,	)	
	)	No. 98-2-0017
Petitioner,	)	
	)	**AMENDED**
v.	)	FINAL
	)	DECISION &
JEFFERSON COUNTY,	)	ORDER
	)	
Respondent.	)	
	)	

After a difficult start (*See Port Townsend v. Jefferson County*, Case #94-2-0006) (*Port Townsend)* Jefferson County began its Growth Management Act (GMA, Act) planning process in earnest. As noted at page 1 of its opening brief:

> "In its early GMA planning efforts, Jefferson County was faced with many of the difficulties which were encountered by other rural counties in Washington State. Financial resources were stretched, the GMA planning process was new and different, and far more comprehensive than any previous planning endeavor that County government had undertaken. In addition, GMA case law was in its infancy, and county governments were unsure as to how much flexibility and local discretion they were afforded. Moreover, contentious policy debates were being played out in the GMA planning process."

Having reached a level of "familiarity and comfort with the GMA process" and a "maturation" the County adopted its comprehensive plan (CP) on September 2, 1998. The petition for review in this case was filed on October 29, 1998. The hearing on the merits was held in Port Townsend on March 2, 1999.

Petitioner challenged the CP on a variety of grounds which are discussed below. Although we find some failure of compliance, we observe that overall Jefferson County's CP is an excellent

document that generally complies with the goals and requirements of the Act and provides a solid basis for management of future growth over the 20-year planning horizon and beyond. The Jefferson County CP is now one of GMA's success stories.

Petitioner first challenged the population allocation adopted by the CP. In the land use and rural element of the CP at page 3-3 the following statement was made:

> "…the population must be distributed consistent with the Growth Management Act, which states that the *majority* of the growth should be directed toward the designated urban growth area of Port Townsend…" (*italics supplied)*.

Countywide planning policy (CPP) #1 stated that "…the capacity of urban growth areas (UGAs) will be *sized* to accommodate at least 100% of the low base for OFM projected population growth…" (*italics supplied*). Under table 3-1 (CP 3-4) the population projection is distributed approximately 40% to Port Townsend (the only UGA in the County) while 60% is allocated to the unincorporated areas of the County. Thus concluded petitioner, both RCW 36.70A.020(2) and .110 were violated and the County could not be in compliance.

The County countered that under the GMA cities have responsibility for urban growth, while a county's "corollary duty" is to guarantee that growth outside urban areas remains rural in nature, particularly under the 1997 amendments to RCW 36.70A.~~050~~ **.070(5)** found in ESB 6094. The County also argued that petitioner had failed to point out any GMA provision requiring that the "majority" of new growth was required to be directed to an UGA.

The County's argument is correct as far as it goes. Cities are the appropriate municipality for urban growth while counties must focus on rural growth. Urban growth is still prohibited outside of UGAs, RCW 36.70A.110 which was not amended by ESB 6094. The legislature has most certainly clarified the scope of rural growth under ESB 6094. Nonetheless, a county has many more duties under the GMA, including regional coordination and the sole responsibility for allocation of population projections. The question presented in this case is whether the 40%-60% distribution failed to comply with the anti-sprawl provisions of Goal 2 and/or the provisions of RCW 36.70A.110.

In addressing the issues in this case the parties and we agree that the clearly erroneous standard of review applies and that the burden of showing that standard is on petitioner. Under RCW 36.70A.3201, local governments have discretion to find ways to comply with the GMA and may use local conditions as a cornerstone of such compliance.

Initially we find that petitioner has failed to meet its burden with regard to the claim concerning lack of compliance with CPP #1. By its own terms, the CPP requires that UGAs (in this case the municipal limits of Port Townsend) be sized to accommodate 100% of the low end of the OFM projection. It is undisputed that Port Townsend has sufficient size to absorb all of the 20-year population projection (See table 3-2). The more difficult question involves a review of the record to determine whether the County encouraged urban growth in UGAs, restricted sprawl, and prohibited urban growth in the rural areas.

Review of the CP shows that the County started its planning process by adopting key policy guidelines for its land use and rural strategy (CP 3-1). In order to develop its strategy within those policy guidelines the County went through the following process (CP 3-2):

- identify rural population projections;
- allocate growth proportionately throughout the unincorporated areas of the County;
- develop an inventory of existing residential and commercial development and platting patterns;
- consider the effects of increased population in the rural areas on commercial, industrial, and residential land use designations;
- consider local circumstances as they affect land use decisions; and
- recognize the deference given to local legislative bodies through ESB 6094 and identify local circumstances to be addressed.

The County proceeded through the inventory and analysis as directed in chapter 3 of its CP. It inventoried all existing lots of record and vested parcels, subjected each parcel to critical area overlay maps, and recognized that many of the small lots in existence were platted during an economic “boom” of a century ago. It applied appropriate analysis to the impact of septic systems and water supply regulations on the various legal or vested lots. The calculations found in table 3-2 and the analysis from that data indicated a surplus of existing lots for the population

projection of between 2,000 and 3,300. In order to constrain continued non-rural lot divisions, the County adopted a moratorium on division of land on April 17, 1997, which was lifted with the adoption of the CP. The CP adopted a variety of rural densities involving 1 dwelling unit per 5 acres (1:5), 1:10 and 1:20 that allowed the creation of fewer than 1,000 new lots over the 20-year planning period (CP 3-8). The CP fulfilled the requirement of RCW 36.70A.070(5)(b) for a "variety of rural densities."

Urban growth represents more than just residential densities. Commercial and industrial growth is a component that must be addressed. Jefferson County did that in its CP particularly beginning at page 3-8 and concluding at page 3-32. We will discuss those sections more specifically below with regard to the issues raised by petitioner. Additionally, the companion case of *Vines v. Jefferson County*, #98-2-0018, must be read in tandem with regard to rural commercial development issues. We specifically incorporate the reasoning of that case into this one as to that issue.

We find that *under the record* in this case Jefferson County has encouraged urban growth in its UGA, has taken steps to restrict sprawl, and has prohibited urban growth outside of UGAs. Petitioner has failed to sustain its burden of proving a failure to comply.

There is a question relating to the statement in the CP that a "majority of the growth" should be allocated to the Port Townsend UGA. There is certainly a question as to whether this statement is internally consistent with the balance of the CP that allocates 60% of the projected population increase outside of the UGA. That issue, however, was not raised by petitioner and we are prohibited from addressing it. RCW 36.70A.290(1).

Petitioner next contended that the County failed to comply with the stormwater provisions of RCW 36.70A.070(1). Specifically, petitioner cited the following sentence from that section:

> "Where applicable, the land use element shall review drainage, flooding, and stormwater run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound."

Petitioner contended that the CP was “devoid of the required review” of drainage, flooding, and stormwater run-off and specifically that the land use element contained no discussion of the above quoted statute. Finally, petitioner contended that with the alleged noncompliance of the population allocations discussed above, the distribution and extent of land uses in the land use element did not comply with the GMA.

The County countered that various elements of the CP, including the land use element, contained discussions of flooding, drainage, and stormwater run-off. The County pointed out that its stormwater ordinance incorporated the Puget Sound Region’s Stormwater Management Manual and the County’s critical areas ordinance addressed frequent flooding areas. The CP also set forth goals, policies and a strategy for continuing an ongoing effort to develop a comprehensive surface water management plan based upon watershed analyses.

The record did not support petitioner’s assertion that no discussion of flooding, drainage, and stormwater run-off was found in the CP. The environment element (chapter 8) contained a review and discussion of flooding at page 8-5 and a review of groundwater and surface water uses at table 8-2. The watershed management strategy began at page 8-2. Additionally, stormwater run-off discussions were found in the utilities element at page 11-48 and 49. In the land use element, LNP 14.6 directed that land use ordinances be based on “comprehensive watershed and salmon recovery plans for the conservation, protection, and management of surface and groundwaters,….” However, the balance of the land use element did not contain the review and guidance for corrective actions to mitigate or cleanse polluting discharges. The County contended that the discussion about these issues must only take place “where applicable.” We recognize that petitioner did not show that a severe problem exists in Jefferson County with regard to drainage, flooding, and stormwater run-off. Nonetheless, chapter 8 of the CP acknowledged that watershed management studies need to be made and plans and strategies adopted for those issues. The CP also recognized that amendments to the stormwater ordinance were currently being studied. Under RCW 36.70A.070(1) a review of current “drainage, flooding, and stormwater run-off” and “guidance for corrective actions” needs to be included in the land use element. Under the clearly erroneous standard we are left with a definite and firm conviction that Jefferson County has failed to comply with the GMA regarding this issue.

Next petitioners attacked the capital facilities element (CFE) required under RCW 36.70A.070 (3). Specifically, petitioner's argument focused on subsection (b) requiring a forecast of future needs for capital facilities and subsection (d) the financing plan for such capital facilities. Petitioner observed that approximate $13 million contained in the 6-year financing plan depended on voter approval and was not "probable" but rather was "speculative at best." Petitioner further noted that the future needs forecast only covered a 6-year period rather than the 20-year planning horizon.

While we agree with petitioner that the financing strategy can not be speculative, we do not agree that reliance on voter approval falls within that prohibition. Under the record in this case the County pointed out that almost $11 million of the $13 million voter-approval financing strategy related to one project, a new justice facilities center. The primary financing strategy is found in the CFE at table 12-5-A, but just as significantly, a secondary financing strategy is found at table 12-5-B. Additionally, table 12-8 provides a projected level of service standard reduction if funding falls short of predictions. At page 12-58 of the CFE the County has adopted a strategy if such voter approval is unsuccessful that includes use of any combination of reducing the level of service, increasing the use of other sources of revenue, and increasing demand for and use of capital facilities. This is what the Act requires and Jefferson County is in compliance with the financing plan aspect of its CFE. *See TRG v. Oak Harbor, #96-2-0002.*

Petitioner is correct with regard to the deficiency in the CFE of its forecast for future needs and proposed locations and capacities of new capital facilities. The CFE only addresses those issues on a 6-year projection. The GMA clearly requires that such a forecast be done on a 20-year cycle. Jefferson County has not complied with the Act in this regard.

The next issue raised by petitioner dealt with CPP 8-6 which states in part that:

> "The rural element of the comprehensive plan will *recognize* existing industry located outside UGAs,.." (*italics supplied*).

Petitioner contended that the existing industrial use of its tenant, Evergreen Fiber Wood Processing plant and log storage, was designated in a rural residential zone and thus became

nonconforming under the CP. "Recognize," according to petitioner, does not equate with nonconforming. The County asserted that the CP was consistent with the CPP in that "recognition" did not mean an automatic up-zone to be included in a zone entitled resource-based industrial (CP 3-29).

The widely divergent views of the parties emphasizes the nature of much of GMA planning, the balancing of competing interests. The ultimate decision of such balancing, as long as it complies with the goals and requirements of the Act, is left to the discretion of the local government decision-makers. In the Jefferson County CP the criteria for designation as resource-based industrial land included a requirement that the area was zoned industrial in the 1994 zoning code (CP 3-27). Petitioner failed to meet this criterion and thus failed to sustain its burden of proof that the rural residential designation did not comply with the GMA.

Additionally, goal LNG 8.0 and the policies following, beginning at page 3-79 of the CP demonstrate that the County did recognize existing industrial uses outside the UGA which became nonconforming as a result of the CP adoption. The stated goal of LNG 8.0 was to support continued existence and economic viability of these uses. Policies included the ability to continue and to expand within limits set forth in the CP. Those limits included prohibitions against requirement of additional levels of government services or additional costs to taxpayers for infrastructure, compatibility with the surrounding rural uses, and a lack of conflict with resource-based uses and environmental or neighborhood impacts (LNP 8.3). Table 3-7 demonstrated an overall reduction of industrial acreage from the 1994 zoning designations of almost 50%. The application of the criteria found in RCW 36.70A.~~050~~ **.070(5)** by the County relating to industrial uses recognized and protected their economic viability while restricting their location to appropriate areas contained within logical boundaries. Jefferson County has complied with the GMA and the CP is not inconsistent with the CPP.

Petitioner also alleged that CPP 6-3 regarding siting of special needs housing was inconsistent with the CP. We specifically find that petitioner has failed in its burden of proof on this issue. The special needs housing issue is addressed in the CP in chapter 5. The County has prepared an inventory (Ex. 12-1) of locations which may be appropriate for special needs housing. Jefferson County has received a grant from the Department of Community Trade and Economic

Development to address a variety of housing issues including special needs and is joining with Clallam County to establish an interjurisdictional housing advisory committee. While the work has yet to be completed, the CP is not inconsistent with CPP 6-3 as alleged by petitioner.

Nor has petitioner sustained its burden of showing that the CP did not comply with RCW 36.70A.070(5)(a) dealing with local circumstances and the need for a county to develop a written record explaining how the rural element harmonizes with the goals and requirements of the Act. Local circumstances dealing with residential use in rural areas was described in the first issue in this case. Industrial local circumstances were described under the issue immediately above. Commercial lands in rural areas is also described in the land use element and the local circumstances are particularly described at page 3-9. The entire land use and rural element found in chapter 3 of the CP adequately addresses the issues raised by petitioner and is in compliance with the GMA. *(See Vines v. Jefferson County*, #98-2-0018).

ORDER

We find that, for the most part, Jefferson County has complied with the GMA. Jefferson County did not comply with RCW 36.70A.070(1) in reviewing and providing guidance for drainage, flooding, and stormwater run-off in its land use element. Additionally, Jefferson County did not comply with the GMA because of its failure to include a 20-year projection of new or expanded capital facilities as required by RCW 36.70A.070(3).

Petitioner has failed to show that the two instances of noncompliance substantially interfere with the goals of the Act and we thus deny the request for a finding of invalidity.

We will allow Jefferson County full 180 days to achieve compliance with these two items and require an interim report 90 days from the date of this Order.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted and appended as Appendix I.

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

Pursuant to WAC 242-02-830(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 5th day of April, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen
Board Member

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Les Eldridge
Board Member