

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

BIRCHWOOD NEIGHBORHOOD	)	
ASSOCIATION,	)	No. 98-2-0025
	)	
Petitioner,	)	ORDER RE:
)	)	DISPOSITIVE
)	)	MOTIONS
v.	)	
	)	
WHATCOM COUNTY,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
PAUL GARRET & HENRY S. HENDLER,	)	
	)	
Intervenors.	)	
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On January 29, 1999, we received from Paul Garret and Henry Hendler, (Intervenors), a motion to dismiss this case based on lack of jurisdiction. On February 16, 1999, we received from Petitioners Birchwood Neighborhood Association (Birchwood) a motion entitled “summary judgment” and a motion to supplement the record. The parties submitted responses to one another’s motions. A motions hearing was held March 4, 1999, at the Whatcom County Courthouse. Les Eldridge and William Nielsen were present for the Board. Board member Nan Henriksen has listened to the tapes of the hearing. Roger Ellingson represented Birchwood. Heather Wolf represented Intervenors and Karen Frakes represented Respondent Whatcom County.

We admitted additions to the index of the record submitted February 1, 1999, by Whatcom County as document group #33, Nos. 1 through 20. We admitted the Whatcom County comprehensive plan (CP) and Whatcom County Ordinance #97-047 as document group #34, Nos. 1 and 2.

We deny the dispositive motions. We find that the complexity of this case and its record does not

lend itself to a decision based on a less-than-full hearing.

Intervenors argued that we have no jurisdiction to hear this case because there is no deadline requirement in the Growth Management Act (Act) for amendments to CPs and development regulations (DRs) to be adopted. Therefore, the County could not be challenged for failure to adopt DR amendments. They also argued that DRs were already in force through Ordinance #97-047 even though the companion Ordinance #97-048 (the urban fringe plan) had been mislabeled a DR and was changed a year later to a part of the CP by adoption of Ordinance #98-042.

Birchwood contended that it was not challenging the urban fringe plan as part of the CP (#98-042) rather, it was challenging the absence of any DRs implementing the amendment to the CP (#98-042). We note that no prior DRs were mentioned in the notices of the 1998 labeling change of the urban fringe plan from DR to CP. For this and further reasons below, we deny the motion.

Birchwood alleged in support of its motion that current zoning did not match the relevant section of the CP and, therefore, DRs are required. Birchwood argued that a failure to adopt (thus far) changes to the Gateway DRs failed to meet the requirement for implementation consistency.

We conclude that RCW 36.70A.040 (3)(d) in conjunction with RCW 36.70A.130 includes a requirement that implementing DRs must be amended as a result of changes to the CP. We note that the County is currently considering such DR amendments. To determine whether this consideration of amendments to DRs in 1999 from a 1998 amendment to the CP complies with the Act requires the opportunity for full briefing and argument afforded in a hearing on the merits. We therefore deny Birchwood's motion. We also deny Birchwood's request for a finding of invalidity.

So ORDERED this 18<sup>th</sup> day of March, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge  
Board Member

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William H. Nielsen

Board Member

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Nan Henriksen  
Board Member