

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

MICHAEL W. CARLSON, WILLIAM H. CARLSON,)
JOHN A. BISHOP,) No. 99-2-0008
)
) Petitioners,) ORDER DENYING
) MOTION TO
) DISMISS
v.)
SAN JUAN COUNTY,)
)
) Respondent.)
)
) and,)
)
KAREN J. KEY SPECK, et al., FRIENDS OF THE SAN)
JUANES, ROBERT SCHMOKER and CHARLES)
LUDWIG,)
) Intervenors.)
_____)

On April 5, 1999, intervenors filed a motion to dismiss the petition for review. On April 9, 1999, San Juan County joined in the motion to dismiss. Petitioners filed a responsive brief on April 15, 1999, and intervenors filed a reply April 19, 1999. We held a hearing on the motion on April 21, 1999 in Friday Harbor.

The gravamen of intervenors motion to dismiss relates to our final decision and order (FDO) in *Beckstrom v. San Juan County*, Case #95-2-0081(*Beckstrom*). That case involved a challenge to San Juan County Ordinance #7-1995, entitled “Limited Area District Sub-Area Plan for Waldron Island.” In *Beckstrom*, San Juan County contended that Ordinance #7-1995 was not a Growth Management Act (GMA, Act) ordinance. We decided that the ordinance was adopted pursuant to the GMA and we had jurisdiction to hear the case. We thus went on to decide the issue in that challenge; whether compliance with RCW 36.70A.020(6) and the public participation provisions of the Act were adhered to in adopting Ordinance #7-1995. We found that as to both challenges the County had complied with the GMA.

Additionally, we noted that the County would need to review the as yet to be adopted

comprehensive plan (CP) with the Waldron Sub-Area Plan for consistency and re-adopt the Sub-Area Plan “as part of its GMA comprehensive plan.” At no time did we, as alleged by intervenor, determine that we lacked jurisdiction to review the sub-area plan for consistency with the GMA. We merely observed that consistency review would be untimely prior to adoption of the comprehensive plan.

The San Juan County CP was adopted on June 15, 1998, by Ordinance #2-1998. That ordinance did not re-adopt the Waldron Sub-Area Plan but did set a completion date of 18 months from the effective date of the CP for review of Waldron and other sub-area plans. The CP did not become effective until December 20, 1998, because of the need to have the Shoreline Master Program amendments approved by the Department of Ecology.

In the memoranda submitted by intervenors and the County and at the questioning portion of the motions hearing, the County acknowledged that the Waldron Sub-Area Plan had been, and was still being used and that no consistency review with the new adopted CP had occurred. The County was unable to articulate the relationship between the newly adopted CP and development regulations (DRs) and the Waldron Sub-Area Plan. The County was unable to explain that if there was a conflict between the sub-area plan and the CP and/or DRs which document they would find preeminent. Additionally, the County was unclear whether the sub-area plan was actually a plan or in reality a development regulation.

The GMA is clear that a CP and DRs are to be adopted first, and that the sub-area plan process is supplemental to the original CP. San Juan County and intervenor now claim that because no re-adoption or consistency review occurred and will not occur until approximately June, 2001, petitioners have no present claim, even though they are property owners on Waldron Island, subject to the CP, DRs and sub-area plan. The County and intervenors position is simply incorrect. We do have jurisdiction to decide, as requested by the petition in this case, whether the County has complied with the GMA in its adoption of its new CP and DRs and continued use of the previously adopted Waldron Sub-Area Plan.

The motion to dismiss is denied.

So ORDERED this 3rd day of May, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Nan Henriksen
Board Member