

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3
4 IRONDALE COMMUNITY ACTION
NEIGHBORS and NANCY DORGAN,

5
6 Petitioners,

7 v.

8 JEFFERSON COUNTY,

9
10 Respondent.

CASE NO. 04-2-0022

ORDER ON MOTION
REQUESTING A JUDGMENT
OF NON COMPLIANCE AND
INVOKING INVALIDITY

11
12 IRONDALE COMMUNITY ACTION
NEIGHBORS,

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14 Petitioner,

15 v.

16 JEFFERSON COUNTY,

17 Respondent.

CASE NO. 03-2-0010

ORDER ON MOTION
REQUESTING A JUDGMENT
OF NON COMPLIANCE AND
INVOKING INVALIDITY

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20 These matters come before the Board on the Petitioner's filing, on January 31, 2005, of a Motion for
21 Noncompliance and Invalidity on the UGA Urban Development Regulations for Hadlock/Irondale.
22 The motion comes during the adjudication of two cases: Jefferson County's compliance with an
23 Order of the Board, issued June 10, 2004 on case 03-2-0010, and on issues set forth in a new petition
24 filed on October 25, 2004. Both cases deal with challenges and actions involved in the designation of
25 a non-municipal urban growth area to be called the Irondale/Port Hadlock Urban Growth Area, in
26 Jefferson County, Washington. Parties are identical in both board cases. Petitioner is represented by
27 Gerald Steel, attorney. Respondent County is represented by David Alvarez, Civil Deputy
28 Prosecuting Attorney and Mark Johnson, attorney of the Karr Tuttle Campbell law firm.
29 The Board, having read pertinent documents and briefs, and being fully advised, now enters the
30 following decision and order:
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1 **PROCEDURAL HISTORY**

2 At a prehearing conference on November 22, 2004, the presiding officer and attorneys for the parties
3 agreed the two cases would be tracked, for convenience and economy, but not consolidated.
4 Petitioner stressed that his client named some new matters of non-compliance in the UGA
5 designation by Respondent County in case 04-2-0022. An adjudication schedule was set forth
6 allowing for coordinated briefing and hearings schedules, an amended issues statement, index filing,
7 the submission of respondent county's Compliance Report in case 03-2-0010, and allowing for the
8 proposal of any additions and supplements to the index. Any motions to be filed were due in the
9 Board's office by January 5, 2005.
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12 On January 3rd the Board was contacted about the parties' interest in entering into settlement
13 discussions. Such discussions then occurred between the parties. The January 5th motions deadline
14 was extended. On January 25, 2005, the parties and presiding officer met in prehearing conference
15 by telephone conference call for a report on settlement discussions, a discussion of the extension of
16 the FDO deadline to May 31, 2005, and a revised schedule of all adjudication events. Settlement
17 discussions had failed.
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20 **MOTION FILED AND RESPONSE**

21 A new deadline for any motions was set for January 31, 2005. On that date petitioner filed a
22 dispositive motion: Motion for Noncompliance and Invalidity on the UGA Urban Development
23 Regulations for the Hadlock/Irondale UGA. Petitioners challenged Jefferson County Ordinance 10-
24 0823-04 Section Three that adopted and implemented development regulations for the subject UGA,
25 effective August 23, 2004. Petitioners objected to the lack of available, planned, and financed sewer
26 service for the Hadlock/Irondale UGA. Petitioner asked the Board to grant the motion and find the
27 urban development regulations invalid for substantial interference with Goal 12 of the Growth
28 Management Act (GMA). In the motion petitioner contends the county will allow urban
29 development through the subject UGA without actually providing urban sewer service, in
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1 contravention of Jefferson Countywide Planning Policy 2.1 and of the WWGMHB's Final Decision
2 and Order on June 10, 2004. Petitioner claims that without a UGA sewer plan and six-year capital
3 facilities plan and financing in place, urban growth would occur in the Hadlock/Irondale UGA
4 without adequate sanitary sewerage service. Petitioner's concern is that applications are vesting,
5 allowing for urban densities and uses in the subject UGA without adequate urban services being
6 planned, financed, and in place in any part of the UGA.
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9 On February 11, 2005, Jefferson County filed a response to ICAN's Dispositive Motion on a Limited
10 Record. The county argued there is no justification for granting a dispositive motion prior to the
11 Hearing on the Merits. The County asked that the petitioner's motion be denied. The county
12 contended no egregious circumstances existed which would warrant a finding of invalidity at this
13 time. Further, the county pointed to its diligent efforts to achieve designation of an appropriate UGA
14 for the Hadlock/Irondale area for ten years or more, and believes it has endeavored to comply with
15 the Board's June 2004 order on Case No. 03-2-0010. The County argues that it would be
16 inappropriate to have Jefferson County's compliance determined in a summary proceeding and that a
17 full Hearing on the Merits on the Compliance matter is necessary.
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20 **DISCUSSION**

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22 The parties, through their attorneys, have continued filing a number of proposals and defenses of
23 additions and supplements to the record for the adjudication of these two tracked cases. Differences
24 in how the parties view the newly adopted plan elements, the actions of the Board of County
25 Commissioners (BOCC), pertinent facts, assumptions, implications of those assumptions, and events
26 occurring prior to and after the BOCC plan approvals in August 2004 are evident. This further serves
27 to inform the Board that the matters in these cases raised about Growth Management Act compliance
28 are complex and are ripe for full Hearings on the Merits at an available time and place in April 2005.
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1 Guidance in determining if a dispositive motion should be granted is found in:

2 **WAC 242-02-530 Motions – Requirements.** (4) Dispositive motions on
3 a limited record, similar to a motion for summary judgment in superior
4 court or a motion on the merits in the appellate courts, are permitted.
5 Time frames for making and responding to such a motion shall be
6 established by the presiding officer.

7 The motion offered goes to the heart of the issues in these cases: whether actual compliance has been
8 achieved and if continued validity of the County’s compliance actions seriously threatens the
9 County’s ability to properly plan for this UGA. Whether the challenged ordinances allow reasonable
10 and environmentally sound urban growth as required by the GMA is a complex question requiring a
11 thorough review of the entire record in this case. The number of proposed additions and supplements
12 offered to be included as exhibits to be submitted by the parties demonstrates that these are not
13 motions “on a limited record.” WAC 242-02-530(4). These are not the kinds of issues that this
14 Board will resolve on motion rather than at the hearing on the merits.
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17 In prior decisions and orders this Board exercised caution if a significant evidentiary record had
18 developed and well-briefed issues would be of great help to the Board in determining a decision and
19 issuing an order. We note particularly a Western Washington Growth Management Hearings Board
20 2003 decision and order on motions in a Jefferson County case. It concluded:
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22 The Growth Management Act (GMA) already provides parties with a
23 speedy resolution to their claims by requiring that the boards issue their
24 decisions within 180 days of the filing of the petition. RCW
25 36.70A.300(2). The only issues that should be decided on the even
26 shorter timeframe of the motions schedule are those which require little if
27 any evidentiary record. To do otherwise both prejudices the parties’
28 ability to present their claims and hampers the board’s ability to base its
29 decision on well-briefed issues and a thorough review of the record. The
30 board’s task is to make a reasoned conclusion about the local
31 jurisdiction’s compliance with the applicable statute(s), according to the
32 legal standard imposed by law. This cannot be done without adequate
time for counsel to prepare and present their arguments, and for the board
to read and consider the arguments of counsel, to review the record, to
confer, and to research and write the opinion(s). Given the number and

1 complexity of the issues before the boards, it is often challenging to fit the
2 briefing schedule and decision-making process into the 180 days allotted
3 by statute, let alone to compress the time for briefing, argument and
4 resolution into a matter of a few weeks.

5 *Hood Canal Coalition v. Jefferson County*, WWGMHB No. 03-2-0006,
6 Order on Motions at 4 (May 19, 2003).

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8 **ORDER**

9 The Motion requesting a judgment of noncompliance and invoking invalidity on Jefferson County
10 Ordinance 10-0823-04 – Section Three is DENIED. The issues will be carried forward to the
11 Hearings on the Merits in these tracked cases on April 18, 2005.

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13 Done this 2nd day of March 2005.

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16 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Gayle Rothrock, Board Member

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Holly Gadbow, Board Member

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Margery Hite, Board Member