

SUPREME COURT OF WASHINGTON

Thurston County v. Western Washington Growth Management  
Hearings Board

190 P.3d 38 (Wash. 2008) · No. No. 80115-1 · Decided August 14, 2008

SUMMARY

The Washington Supreme Court reviewed challenges to Thurston County's 2004 comprehensive-plan updates under the Growth Management Act. It held that challenges to a county's failure to revise a comprehensive plan after a seven-year update are limited to provisions directly affected by new or substantively amended GMA requirements, and that challenges to urban-growth-area designations during a ten-year review require a changed population projection. The court remanded for further determinations concerning the use of a market-supply factor, the validity of the urban-growth-area designations, and rural-density requirements.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| COURT                 | Supreme Court of Washington                                                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Fairhurst, J.; Gerry L. Alexander, C.J.; Charles W. Johnson, J.; Barbara A. Madsen, J.; Richard B. Sanders, J.; Tom Chambers, J.; Susan Owens, J.; James M. Johnson, J.; Debra L. Stephens, J.                                                                                                                                                                                                                         |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | August 14, 2008                                                                                                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | No. 80115-1                                                                                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Petitioners sought review of a Court of Appeals decision affirming in part a Growth Management Hearings Board decision concerning Thurston County's 2004 comprehensive-plan and urban-growth-area updates under Washington's Growth Management Act.                                                                                                                                                                    |
| STANDARD OF REVIEW    | The Supreme Court stood in the same position as a superior court reviewing a Board decision. Legal issues were reviewed de novo; substantial weight was given to the Board's interpretation of the GMA, but the court was not bound by it. The Board's factual determinations had to be supported by substantial evidence, and compliance issues were governed by the clearly erroneous standard under RCW 36.70A.320. |

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|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | published precedential opinion                                                                                                                                                                                          |
| <b>PARTIES</b>            | Thurston County, Building Industry Association of Washington, Olympia Master Builders, People for Responsible Environmental Policies v. Western Washington Growth Management Hearings Board, 1000 Friends of Washington |

## TOPICS

judicial review of agency action

administrative law

statutory interpretation

standard of review

environmental law

## PRACTICE AREAS

administrative law

land use

environmental law

municipal law

## QUESTIONS PRESENTED

1. Whether a growth management hearings board may review a county's failure to revise portions of a comprehensive plan during a seven-year update when those portions are not directly affected by new or recently amended GMA provisions.
2. Whether a party may challenge a county's failure to revise urban-growth-area designations during a ten-year review only when the Office of Financial Management population projection has changed.
3. Whether a county's urban-growth-area designation may exceed land necessary to accommodate projected growth by a reasonable land-market-supply factor, and whether the county must identify and justify that factor in the comprehensive plan.
4. Whether a growth management hearings board may apply a bright-line rule that densities greater than one dwelling unit per five acres are not rural densities.
5. Whether resource lands and innovative zoning techniques may be considered in determining whether a comprehensive plan provides a variety of rural densities.

## HOLDINGS

1. A party may challenge a county's failure to revise a comprehensive plan only as to provisions directly affected by new or recently amended GMA provisions, provided the petition is filed within 60 days after publication of the update.
2. A party may challenge a county's failure to revise its urban-growth-area designations during a ten-year update only if the Office of Financial Management population projection for the county has changed.
3. A county's urban-growth-area designation may not exceed the land necessary to accommodate the urban growth projected by OFM plus a reasonable land-market-supply factor.
4. The GMA does not require a county to identify expressly or justify expressly a land-market-supply factor in its comprehensive plan. Once the UGA size is challenged, however, the county may explain

whether a factor or other local circumstances account for the excess supply, and the Board must determine whether the designation was clearly erroneous without applying a bright-line percentage rule.

5. A growth management hearings board may not use a bright-line rule that densities greater than one dwelling unit per five acres are necessarily urban or subject to heightened scrutiny. Whether a density is rural is a fact-specific determination based on local circumstances, whether it is characterized by urban growth, and whether it is consistent with rural character.
6. Resource lands designated for agriculture, forestry, or mineral resources are not part of the rural element and cannot contribute to the variety of rural densities within that element. Innovative zoning techniques may independently establish a variety of rural densities, regardless of the underlying zoning classifications.

#### KEY QUOTATIONS

*“We hold a party may challenge a county's failure to revise aspects of a comprehensive plan that are directly affected by new or recently amended GMA provisions if a petition is filed within 60 days after publication of the county's seven year update.” (190 P.3d 40)*

*“we hold a county's UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor.” (190 P.3d 48-49)*

*“No bright-line rule regarding the reasonableness of a land market supply factor may be used by the GMHBs.” (190 P.3d 49)*

*“We hold a GMHB may not use a bright-line rule to delineate between urban and rural densities, nor may it subject certain densities to increased scrutiny.” (190 P.3d 52)*

#### FACTUAL BACKGROUND

Thurston County adopted its first GMA-compliant comprehensive plan in 1995 and conducted its required seven-year plan update and ten-year urban-growth-area review simultaneously in 2004. The County slightly expanded the Tenino UGA, created a Bucoda UGA, and retained rural-density designations that included substantial acreage at one dwelling unit per five acres and smaller areas at higher densities. Futurewise challenged the updates, arguing that the UGAs exceeded projected demand and that the rural element failed to provide a variety of rural densities.

#### PROCEDURAL HISTORY

Futurewise challenged Thurston County's 2004 comprehensive-plan updates before the Western Washington Growth Management Hearings Board. The Board found deficiencies concerning urban-growth-area boundaries and rural densities. The County sought direct review in the Washington Supreme Court, which transferred the matter to the Court of Appeals; the Court of Appeals affirmed in part. The Supreme Court granted review, affirmed in part, reversed in part, and remanded to the Board.

#### DISPOSITION

## REMAND INSTRUCTIONS

The Board must determine whether Thurston County used a land-market-supply factor and, if so, whether it was clearly erroneous based on the entire record and local circumstances; if no factor was used, the Board must determine whether the UGA designations were clearly erroneous while deferring to the County's discretion. The Board must also determine whether it was clearly erroneous for the County to include densities greater than one dwelling unit per five acres in the rural element and whether the County's innovative zoning techniques provide a variety of rural densities. The Board may not apply bright-line percentage or density rules.

## CASES CITED

- Lewis County v. Western Washington Growth Management Hearings Board, 157 Wash. 2d 488, 139 P.3d 1096 (2006)
- Department of Ecology v. Public Utility District No. 1 of Jefferson County, 121 Wash. 2d 179, 849 P.2d 646 (1993)
- Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board, 154 Wash. 2d 224, 110 P.3d 1132 (2005)
- City of Redmond v. Central Puget Sound Growth Management Hearings Board, 136 Wash. 2d 38, 959 P.2d 1091 (1998)
- Callecod v. Washington State Patrol, 84 Wash. App. 663, 929 P.2d 510 (1997)
- Thurston County v. Cooper Point Association, 148 Wash. 2d 1, 57 P.3d 1156 (2002)
- Woods v. Kittitas County, 162 Wash. 2d 597, 174 P.3d 25 (2007)
- Gold Star Resorts, Inc. v. Futurewise, 140 Wash. App. 378, 166 P.3d 748 (2007)
- Skagit Surveyors & Engineers, LLC v. Friends of Skagit County, 135 Wash. 2d 542, 958 P.2d 962 (1998)
- Deschenes v. King County, 83 Wash. 2d 714, 521 P.2d 1181 (1974)
- Clark County Public Utility District No. 1 v. Wilkinson, 139 Wash. 2d 840, 991 P.2d 1161 (2000)
- Diehl v. Mason County, 94 Wash. App. 645, 972 P.2d 543 (1999)
- Viking Properties, Inc. v. Holm, 155 Wash. 2d 112, 118 P.3d 322 (2005)
- Whidbey Environmental Action Network v. Island County, 122 Wash. App. 156, 93 P.3d 885 (2004)
- State v. Knighten, 109 Wash. 2d 896, 748 P.2d 1118 (1988)
- Thurston County v. Western Washington Growth Management Hearings Board, 137 Wash. App. 781, 154 P.3d 959 (2007)
- Thurston County v. Western Washington Growth Management Hearings Board, 162 Wash. 2d 1014, 178 P.3d 1033 (2008)