



CASE REPORT

GROWTH MANAGEMENT ACT - FINALITY OF DECISIONS PENDING REVIEW.
GMA planning decisions pending review are not final such that city governments can rely upon them and take action, such as annexing property. *Clark County v. Western Washington Growth Management Hearings Board*, No. 39546-1-II, 2011 WL 1402769 (April 13, 2011).

I. Facts. In 2004, Clark County designated 19 parcels as agricultural lands of long-term commercial significance (ALLTCS). Less than three years later, the County removed the 19 parcels from ALLTCS status and simultaneously expanded its urban growth area to include the 19 parcels. Several parties petitioned the Growth Management Hearings Board for review of the dedesignation and UGA expansion. While review of the County's actions was pending before the Growth Board, the cities of Camas and Ridgefield passed ordinances to annex some of the parcels. The Growth Board eventually found that the County committed clear error in its decisions regarding 11 of the 19 parcels, which included the annexed parcels. However, the Growth Board issued an order stating that it lacked jurisdiction over the purportedly annexed parcels, believing that it lost jurisdiction when these lands were annexed prior to its final decision. In other words, the Growth Board excused the County from taking legislative action to achieve compliance with the GMA with respect to the annexed parcels because the County then lacked authority over the purportedly annexed lands.

II. Applicable Law and Analysis. In the first part of the Court of Appeals' opinion, the Court addressed two important threshold questions: (1) When is a county's planning decision that is appealed to the Growth Board final such that city governments can rely and take action on it; and (2) What effect does the county's legislative action changing the designation of land have on a court's jurisdiction to resolve issues in a pending appeal involving the land? The Court of Appeals held that, because a County's challenged land designation determination is not final, city governments cannot rely on county planning decisions that are the subject of a pending appeal and that any such actions do not divest the reviewing court of body of jurisdiction.

In reaching this holding, the Court considered the County's argument that issues relating to the annexed parcels were moot because the cities' annexation of lands deprived the Growth Board and reviewing courts of jurisdiction. Specifically, the County cited RCW 36.70A.300(4), .320(1), and former RCW 36.70A.302(2) (1997) for support. RCW 36.70A.320(1) states that "comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption." RCW 36.70A.300(4) states that, "[u]nless the [Growth B]oard makes a determination of invalidity. . . , a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulation during the period of remand." The parties also cited statutory language that a Growth Board "determination of invalidity is *prospective* in effect and does not extinguish rights that vested

under state or local law before receipt of that [Growth B]oard's order by the city or county." The parties contended that these statutes allow cities to take legislative actions, including annexing land, in reliance on a county's decisions until the Growth Board determines that the county's planning decisions are noncompliant or invalid under the GMA.

The Court found the parties' arguments to be unpersuasive, holding that challenged County legislative actions pending review are not final, and no party may act in reliance on them. First, the Court noted that the parties misinterpreted RCW 36.70A.320(1), stating that although the statute creates a presumption of validity, the presumption applies only to the Growth Board during its review of the action and does not create a presumption of validity such that other entities can act in reliance on the challenged decision. Similarly, the Court concluded that RCW 36.70A.300(4) addresses only the effect of Growth Board decisions "during the period of remand." During the Growth Board's initial review of the County's decision, nothing has been remanded to the County for its consideration. Accordingly, the statute does not apply. Finally, the Court found that former RCW 36.70A.302(2), which provides that Growth Board decisions are prospective and do not extinguish rights that vested under state or local law before receipt of the Growth Board's order, did not support the parties' argument because the cities' rights to annex the lands purportedly added to their UGAs had not yet vested. Importantly, the Court stated that under the parties' interpretation of these statutes, the GMA would be unenforceable because the County would be able to incorporate any land into a UGA regardless of whether it satisfied the GMA's requirements, draw out the appeal at the Growth Board level until a city could pass an ordinance annexing the property, and then moot out any challenges by citing the county's lack of authority over the lands or argue that the annexation deprived the Growth Board of jurisdiction to review its decision.

In the second part of the Court of Appeals' opinion, the Court engaged in a detailed analysis of the characteristics of each of the 11 parcels at issue to determine if the land had long-term significance for agricultural production.

III. Conclusion. In conclusion, cities and towns cannot rely on county GMA decisions that are timely challenged until either (1) the Growth Board's final order is not appealed; or (2) the county's decisions are affirmed and a final order or mandated opinion is filed by a court sitting in its appellate capacity. In the context of this case, the Court merely stated that the Growth Board had authority to enter findings regarding the annexed parcels' lack of compliance with the GMA but refused to address how to "undo" the cities' annexation. The case's effects on a party's vested rights when an ordinance is declared void in other contexts remains unclear.