



Building Industry Association of Washington

Post Office Box 1909 • Olympia, WA 98507 • 1-800-228-4229 • (360) 352-7800

OPINION EDITORIAL

September 3, 2008

**Andy Cook
Legal Counsel
Building Industry Association of Washington**

For more information, call Erin Shannon at 800-228-4229.

State's Highest Court Puts Unelected Growth Boards in Their Place

The Washington Supreme Court recently did something it doesn't normally do: it ruled, unanimously, to protect private property rights.

In a 9-0 decision that sets precedent for every jurisdiction in the state, the Supreme Court ruled elected officials—not the unelected bureaucrats appointed to Growth Management Hearings Boards—should determine how to plan for growth.

The case, *Thurston County v. 1000 Friends of Washington*, began in 2004 when a Seattle-based environmental group (1000 Friends of Washington, now known as Futurewise) sued Thurston County over the size of its urban growth areas. Futurewise alleged Thurston County violated the Growth Management Act (GMA) by allowing too much land within its urban growth areas.

The group also argued Thurston County violated the GMA because a fraction of the rural areas were zoned to allow densities greater than one house per five acres. According to Futurewise, any rural zoning with a density greater than one home per every five acres is an automatic violation of the GMA, even though the GMA does not expressly say what constitutes a proper rural density.

The purpose of the lawsuit was clear on its face: to shut down development.

Not surprisingly, the Western Washington Growth Management Hearings Board agreed with Futurewise and ruled Thurston County's urban growth areas were oversized and its rural zoning essentially allowed "sprawl." Division II of the Court of Appeals largely upheld the Growth Board's decision.

Consequently, the anti-growth group got what it wanted—it stopped development in its tracks. Thurston County imposed a building moratorium in a significant portion of rural

areas. The moratorium has lasted three years and wreaked havoc on many small landowners who counted on their property to provide the funding for their retirement nest egg.

The Olympia Master Builders and the Building Industry Association of Washington intervened in the case on behalf of Thurston County and property owners. Along with Thurston County, the building associations argued the Growth Boards made up new law and failed to follow the GMA's mandate of granting local jurisdictions' deference when planning for future growth.

In a unanimous decision, the Supreme Court agreed, reversing the Court of Appeals and ruling the Growth Boards are required to grant deference to local jurisdictions when planning under the GMA. In addition, the Supreme Court explicitly stated the Growth Boards lack the authority to enforce such mandates: "[Growth Boards] do not have authority to make 'public policy' ...let alone statewide policy."

Translation: the Growth Board overstepped its authority by making up new law.

The Supreme Court's decision means Thurston County can continue to allow the type of development the County's local elected officials had established prior to the Growth Board's decision.

But the Supreme Court's reversal is important on an even bigger level—reining in the out of control Growth Boards.

In 1991, the Legislature set up three regional Growth Boards, each comprised of three individuals appointed by the governor with no legislative oversight. The Growth Boards are responsible for hearing challenges to local government comprehensive plans and development regulations under the GMA. Over the years, liberal Democrat Governors have stacked the Growth Boards with extreme environmentalists who oppose growth. And over the years the Growth Boards have increasingly taken it upon themselves to create new land use restrictions that don't exist under the GMA.

While the case was based in Thurston County, the Supreme Court's decision has precedential value for the entire state. The Court in essence told all three Growth Boards to quit legislating and dictating local planning. Those decisions are best made by the local officials elected to represent the people who live there.

For too long the Growth Boards have ignored the GMA's plain language and run roughshod over local jurisdictions by setting land use policy in a top-down manner. The Supreme Court's decision is a signal to the Growth Boards that their days of legislating from the bench are over.

Andy Cook is Legal Counsel for the Building Industry Association of Washington, the voice of the homebuilding industry in Washington State. BIAW is the state's largest trade association, representing over 350,000 families and over 13,500 member companies involved in the homebuilding business.