

**CITIZEN'S GUIDE TO PETITIONING
GROWTH MANAGEMENT HEARINGS BOARDS
FOR REVIEW OF LOCAL LEGISLATIVE ACTIONS**



Futurewise

Updated February 2007

NOTE: Laws change. Check all laws and rules to ensure the information contained herein is up to date before proceeding.

INTRODUCTION

What issues does this guide address?

This guide is a summary of the laws and regulations governing appeals to the Growth Management Hearings Boards under the Growth Management Act (GMA) and the Shoreline Management Act (SMA). The Boards also hear appeals under portions of the State Environmental Policy Act (SEPA), but because of the specific requirements for those appeals, they are outside of the scope of this guide. This guide is general information, not legal advice on your specific issues. If you need legal advice, please consult an attorney.

What is Futurewise?

Futurewise is a statewide public interest group working to promote healthy communities and cities while protecting farmland, forests, and shorelines today and for future generations.

We are the only statewide group in Washington State working to ensure that local governments manage growth responsibly. Founded in 1990, Futurewise has established an impressive track record on growth management issues as the state's primary advocate for smart growth policies. Futurewise's legal program engages in litigation on behalf of Futurewise and local partners in front of Growth Management Hearings Boards and appeals therefrom. We are not a law firm and we do not provide representation or legal advice on specific litigation to individuals or other organizations. We are always willing, however, to generally discuss growth management issues with citizens.

Futurewise's organizing and advocacy work, public education and legal program, and the technical support that we provide local groups have become the foundation of good growth management in Washington State. In 2005, the organization changed its name from 1000 Friends of Washington to Futurewise to better represent the work that we stand for.

Do I need an Attorney?

That is a question only you can answer. The Board is set up to hear petitions from citizens, and you do not have to be an attorney to present a case. However, appeals to the Board involve complex law, and everyone bringing a case is expected to follow the laws and Board rules. Also, you will have to meet the Board's deadlines, or risk having your petition dismissed

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THE PROCESS IN SHORT

The GMA uses a “bottom-up” approach to ensure comprehensive plans and development regulations are compliant with the GMA’s goals and requirements. This “bottom-up” approach is dependent on you -- citizens and public-interest organizations -- to ensure that actions taken by cities and counties are compliant with the Growth Management Act. There is no State agency which oversees Growth Management Act cases. Instead, citizens may participate through public hearings and comments prior to the adoption of a local law, and then may petition the Growth Management Hearings Board when a local legislative action is non-compliant with the GMA, or when the local government has failed to take a required legislative action. While local legislative actions are presumed valid upon adoption,¹ the Board will find an action non-compliant when the action is clearly erroneous in light of the GMA’s goals and requirements.² The furtherance of the GMA’s interests depends on you proving that the legislative action is clearly erroneous. In order for you to get to the substance of your arguments, you must understand and follow a certain procedure.

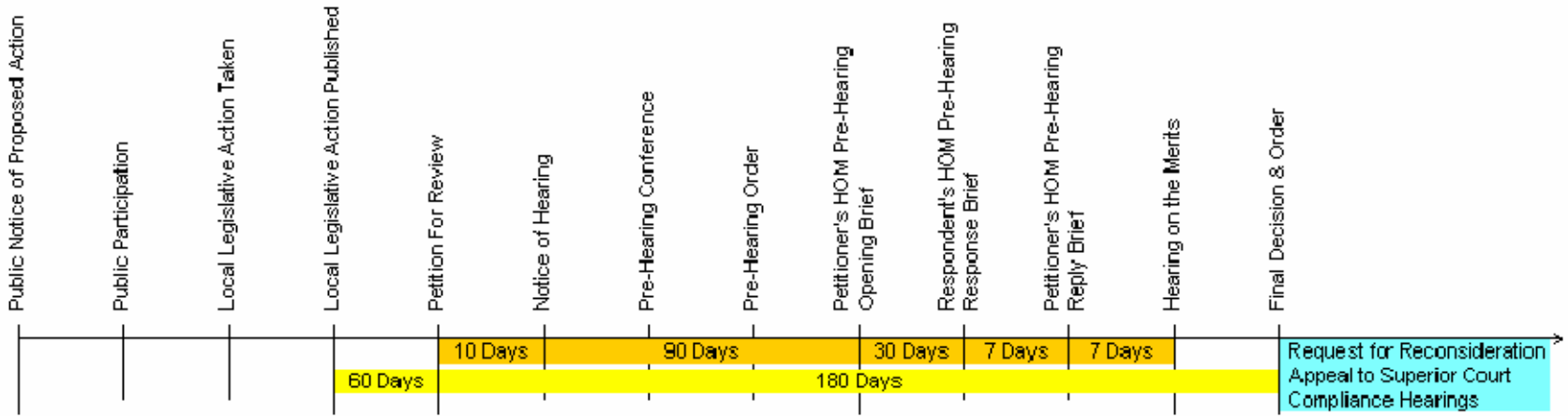
In order for you to petition the Board for review of a comprehensive plan or development regulation, you must have “standing.” Most citizens and public-interest organizations gain “participation” standing. In order to gain standing, you will need to be active in the local legislative process before the local government adopts or amends its comprehensive plan or development regulations. For individuals and organizations, you must have participated orally or in writing in the public participation process for the adoption of the challenged action. If you believe, despite your efforts through participation that your local government failed to comply with the GMA goals or requirements, you have sixty days to file a petition to the Board for review of the local legislative action. You must also send a copy of your petition, and all subsequent motions and briefs, to the local government and other parties. The Board will then hold a Pre-Hearing Conference to discuss the issues, seek negotiation and settlement, and set a timetable for briefing and the Hearing on the Merits (HOM). Based on the Pre-Hearing Conference, the Board will issue a Pre-Hearing Order establishing the dates for filing the briefs and the hearing. If negotiation fails, you will file an Opening Brief, which the local government will respond to with a Response Brief. You may then reply with a Reply Brief.

You will have an opportunity to orally present your case at the Hearing on the Merits. After the hearing on the merits, and within 180 days of your petition for review (or if multiple petitions are combined, within 180 days of the last filed petition), the Board will enter its Final Decision and Order.

¹ RCW 36.70A.320(1).

² RCW 36.70A.320(3).

Petition Timeline



CAN I BRING A CASE BEFORE A GROWTH BOARD?

What issues do the Growth Management Hearings Boards resolve?

The Growth Management Hearings Boards can hear cases relating only to the following issues:

1. Adoption and/or amendments to a comprehensive plan
2. Designation of resource lands and critical areas
3. Regulations to conserve resource lands and protect critical areas
4. Adoption and/or amendments to county-wide planning policies
5. Adoption and/or amendments to urban growth areas
6. Adoption of and/or amendments to development regulations that implement the comprehensive plan (development regulations affecting zoning, subdivision, etc., but not individual permits)
7. Growth management planning population projections prepared by the Washington State Office of Financial Management
8. Adoption of and/or amendments to a shoreline master plan
9. SEPA documents that accompany a GMA or SMA action
10. Failure of the local government to act to meet a GMA or SMA deadline

For more information on the scope of the Board's authority, including more information on what each of these items entails, see Revised Code of Washington (RCW) 36.70A.280.

What issues are never heard by a Growth Management Hearings Board?

Anything that is not covered in the above section. One of the most common misconceptions about the Boards is that they can hear any issue involving land use. They do not hear issues about individual project permits or site-specific actions, such as building permits, variances, preliminary plats, or parcel re-zones. If you have one of these issues, you must first attempt to address it through the city or county that denied or otherwise rejected your permit (or that granted a permit you believe should not have been granted). After you have done everything you could with the city or county, you may file a lawsuit in Superior Court.

Growth boards also do not hear annexation issues, nor can they address the validity of a ballot measure such as a referendum. Those issues must be brought to Superior Court.

What is standing, and do I have it?

Standing is the ability to bring a case. In order to petition the board for review of a matter, you must have one of the following forms of standing:

Participation Standing: For individuals, you must have participated, orally or in writing, in the public participation process for the adoption of the challenged action.³ In other words, you must have told the city or county what you wanted before they reached a decision. This participation must have raised the issue in sufficient detail for the city or county to have the opportunity to consider your concerns. Generally, this means that you have to address a specific problem and provide a requested solution.

Participation Standing for Organizations: The same rules apply for organizations, except that the comments must be made in the name of the organization. The person submitting the

³ RCW 36.70A.280(2)(b).

comments, orally or in writing, must clearly indicate that they are representing the organization, not themselves.

APA Standing: Individuals and organizations may gain standing under Washington’s Administrative Procedure Act.⁴ You must be aggrieved or adversely affected by the local government’s action. This is demonstrated by showing the local government’s action prejudiced or is likely to prejudice you, your asserted interests are among those that the local government was required to consider when it engaged in its action, and a judgment in your favor would redress the prejudice caused by the local government.⁵ This provision is not commonly used to gain standing.

Governor-Certified Standing: Individuals and organizations may gain standing by petitioning and receiving certification from the Governor.⁶ This standing has only been granted once by the Governor, in the exceptional circumstance that the organization could gain no other standing.

Governmental Standing: Any state, county, or city may be granted standing under the GMA.⁷ Cities often gain such standing to contest their counties’ designation of urban growth areas. Counties sometimes gain standing to contest the Office of Financial Management’s twenty-year population projections. State agencies have also participated in petitions for review, most notably the Department of Community, Trade and Economic Development. However, state agencies must gain approval from the Governor for governmental standing. This approval is rarely granted, and petitioners should not rely on State agencies to bring petitions in their behalf.

Who else can participate?

Intervenors. Someone else with an interest in the outcome of the petition can move to intervene. This can be a landowner or developer whose property was affected by the city or county’s decision and wants to protect their property or financial interests, a citizen’s group like Futurewise, or even a government agency. Intervenors need to move the Board to intervene (see the *Motions* section below, for how they do so and how you can respond). If intervenor status is granted, the intervenor then becomes a party either on the city/county’s side, or on yours. As intervenors, they have the same rights as any other party, and must be served with every document you file.

Amicus Curiae. Amicus curiae is Latin for “friend of the court.” An Amicus is a person or organization with an interest in the subject matter, but not necessarily a direct interest in the specific ordinance or properties affected by it. A potential Amicus has to file a motion to the Board for Amicus status. If the Board grants Amicus status, the Amicus can file a brief for the Hearing and participate in any motion that would decide a substantive issue in the case (called a dispositive motion).

⁴ RCW 36.70A.280(2)(d).

⁵ RCW 34.05.530.

⁶ RCW 36.70A.280(2)(c).

⁷ RCW 36.70A.280(2)(a).

PETITION FOR REVIEW

What is a petition for review?

A petition for review is the document that starts the hearing process. The petition for review tells the Board who you are, what local legislative action is of concern, and what the issues are.

How long do I have to bring a case before a Board?

The Board must receive a petition for review no later than 5 p.m. on the sixtieth day after the final action you wish to challenge was published.⁸ The city or county clerk of the jurisdiction which took the action can tell you the date of publication; generally, for counties, publication must occur promptly after the adoption of the action. For cities, individual municipal codes govern the date for publication.

Do not miss the 60-day deadline. The Board will dismiss petitions that are not filed on time. The only exception to this deadline is “failure to act” cases, which may be brought at any time after the deadline for a city or county to take action under the GMA or SMA has passed. For more information, see RCW 36.70A.290 and Washington Administrative Code (WAC) 242-02-220.

What should my petition contain?

There are three hearings boards, and each has particular requirements regarding format. These requirements may change, and you should check the Board’s website (see Attachment A for the website) or call them directly to make sure that you understand the most current requirements for a petition. The following information contains general guidelines only, and does not take the place of each Board’s specific requirements. For a sample petition for review, see the attachments to this guide.

Cover page

The cover page follows a format set by the Board. As displayed in the attachment, put the name of the Board with which you are filing the petition on the top, the parties on the left hand side, the title of the document and case number (you’ll get this from the board later on for future filings; leave it blank on the petition) on the right side, and then start with the substance of the petition below the caption you’ve just filled out. This is also the general form for all motions and other filings you’ll make with the board.

Parties – Who do I list as the opposing party on the cover page?

The opposing party is the city or county that took (or failed to take) the action you wish to challenge. You do not need to include any other party, even if a developer or other organization was involved in the process. However, if other parties intervene or if your case is combined with another case, those parties must be listed after they are granted permission to participate.

Section I: Identity of the petitioner

Who you are and/or the identity and nature of your organization. This should be a short summary; if you are bringing the petition in your own name, explaining where you live is

⁸ RCW 36.70A.290(2).

sufficient. This section helps with standing, and so should show why you are affected by and involved with the challenged action.

Section II: Actions for which review is sought

Provide a short description of the local legislative action which is to be reviewed by the Board. Provide the ordinance or resolution number and the date when it was adopted.

Section III: Issue statement

The issue statement is the most important part of a petition for review. The purpose of the issue statement is to put the Board on notice and the city or county on notice as to why you believe the city or county is not in compliance with the GMA. When writing the issue statements, remember:⁹

- A legal issue should be stated in the form of a question that the Board can answer “yes” or “no.” Typically, the more persuasive question is one that can be answered “yes.”
- A legal issue is an allegation that a local government action either *fails to comply* with specific goals and/or requirements of the GMA, the Shoreline Management Act (SMA) or State Environmental Policy Act (SEPA) (as to GMA and SMA actions), or is *inconsistent* with some GMA-adopted enactment, such as county-wide planning policies, a comprehensive plan, or a development regulation.
- You will only be allowed to argue against comprehensive plans, development regulations, or amendments referenced in the issues.¹⁰ So make sure that you reference all city or county provisions you wish to challenge.

Potential Problems with Issue Statements

If the issues in your petition are too broad or fail to identify what section of the GMA is violated, you can correct this at the pre-hearing conference; however, you may not be able to add a new issue. For example, if your petition only identifies failure to comply with the requirement to protect critical areas, you may not be able to add a claim that there was inadequate public participation or even that there was a failure to designate critical areas, because these are different requirements of the GMA, outside of the requirement to protect critical areas

Level of Detail in Issue Statements

Deciding how much detail to include is a matter of personal style. After you have directed the Board to the correct statutory requirements, you have done all that is required. Some people believe that adding additional detail helps because it educates the Board about your case; others believe it is better not to educate your opponents. The Boards say they do not want argument in the petitions – that belongs in the briefs. If you include details, the Boards will prune back the issues to the specific statutory requirements. Just remember that a very detailed petition may make it difficult for the Boards to understand which parts of the GMA you think are violated. If you think detail is necessary, it is probably best to include it in a section that explains but precedes the issue statements.

Example Issue Statements

1. Did the City/County’s adoption of its comprehensive plan fail to comply with the requirements of RCW 36.70A.140, 36.70A.020(11), 36.70A.035, 36.70A.040, 36.70A.070, 36.70A.110, and 36.70A.130 because it did not provide for early and continuous public participation?
2. Does Transportation Policy T-2 of the City/County Comprehensive Plan fail to comply with the requirements of RCW 36.70A.070(6) because it does not include an analysis of funding capability?
3. Is Land Use Policy LU-101 of the City/County Comprehensive Plan inconsistent with County-wide Planning Policies (CPPs) because it prevents the City from accommodating the population target allocated by CPP FW-22?

⁹ Some of these recommendations come from the Central Board’s *Guidelines for Framing Legal Issues*.

¹⁰ RCW 36.70A.290(1); *Overton Assoc. v. Mason County, W. Wash. Growth Mgmt. Hearings Bd., GMHB 05-2-0009c, Final Dec. & Order on Non-Belfair Issues at 6–7 (Aug. 25, 2005)*.

- A legal issue should cite *which specific provisions* of the local government action are alleged not to comply with *which specific provisions* of which statute; or which specific provisions of a local government action are inconsistent with which specific provisions of which GMA-adopted enactment.
- You are only able to argue that a comprehensive plan, development regulations, or amendments violated the provisions of the Growth Management Act referenced in the legal issue. Therefore, it is best to include in the issue all of the GMA provisions you may wish to use in your arguments. However, simply listing all of the possible GMA provisions the challenged law or ordinance may have violated is insufficient. You must be able to explain why each provision is violated.
- If your argument involves the allegation that a city or county did not properly review and revise their comprehensive plan or development regulations as required by RCW 36.70A.130 be sure to include a reference to RCW 36.70A.130 and the duty to review and revise in the issue statement. Otherwise, you may not be allowed to argue that the county or city was required to revise their comprehensive plan or development regulations.
- A legal issue may include a phrase that briefly identifies the reason for the allegation of non-compliance and/or inconsistency. However, legal issue statements should generally be brief, devoid of argument or evidence, both of which will be presented by the respective parties in the written briefs and during oral argument at the hearing on the merits.

Section IV: Standing

A brief description of why you have standing to bring the case. Usually, this just recites how and when you participated in a public hearing, orally or in writing, on the ordinance or other action you're challenging.

Section V: Estimated length of hearing

Provide a short sentence estimating the length of the Hearing on the Merits. Typically one issue (such as UGA sizing or resource lands designation) takes one hour for each party, so two hours total. A typical hearing lasts four hours, unless the issues are exceptionally complex or multiple parties are involved, when hearings may take up to two days.

Section VI: Relief requested

Provide a detailed statement of the relief you want the board to grant you; in other words, what you want the board to do. Usually, the relief is either that a specific ordinance or other action taken by a city or county be invalidated and remanded in whole or in part, or that it be sent back to the city or county to re-work, called remanding. Sometimes, you may wish to request that the Board issue specific directions to a city or county on how to re-work an ordinance or other item. See the Final Decision & Order section for more information on relief.

Declaration of Service

All filings, including the Petition for Review, require a Declaration of Service. See the attachment to this guide for examples.

Format of Pleadings

All pleadings to the Board, including petitions for review, pre-hearing briefs, and motions, must follow a set format. Each pleading must:

- Begin with a caption, with a three-inch top-margin, specifying the parties, case number, and pleading. See Attachment B on page 25.
- Printed on paper with line-numbering (numbers down the left-margin). Microsoft Word has a legal pleading template to assist with both the caption and line-numbering.
- Include a footer specifying the pleading, page number, who you are, and your address.
- One-inch margins (except top-margin of caption page), and double-spaced.
- Refer to the Board's pre-hearing order for direction. Boards have specific rules for pleading that may change frequently. We recommend calling the applicable Board's office or reviewing the Board's website to find the most current rules for pleading format.

FILING

Where do I file my petition and pleadings?

There are three Growth Management Hearings Boards. You should file with the board that covers the city or county which took the action you wish to challenge.

Central Puget Sound Growth Management Hearings Board (Central Board)

Counties: King, Snohomish, Pierce, Kitsap, and all cities within those counties.
Address: 800 5th Avenue, Ste. 2356
Seattle, WA 98104
Tele: (206) 389-2625
Fax: (206) 389-2588
Email: central@cps.gmhb.wa.gov

Eastern Washington Growth Management Hearings Board (Eastern Board)

Counties: Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Pend Oreille, Spokane, Stevens, Walla Walla, and Yakima counties and the cities within those counties.
Address: 15 West Yakima, Ste. 102
Yakima, WA 98902
Tele: (509) 574-6960
Fax: (509) 574-6964
Email: AAndreas476@ew.gmhb.wa.gov

Western Washington Growth Management Hearings Board (Western Board)

Counties: Clallam, Clark, Island, Jefferson, Lewis, Pacific, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties.
Address: 515 15th Ave S.
PO Box 40953
Olympia, WA 98504-0953
Tele: (360) 725-3870
Fax: (360) 664-8975
Email: western@ww.gmhb.wa.gov

What if my county is not on the list for any of the boards?

Ten counties are not required to plan under the GMA and have not voluntarily chosen to plan. The Boards cannot hear cases from these counties.¹¹ These counties are Adams, Asotin, Cowlitz, Grays Harbor, Klickitat, Lincoln, Okanogan, Skamania, Wahkiakum, and Whitman. Any challenges to an action taken (or not taken) by these counties must be brought to a court.

Do I have to serve a copy of the petition on the city or county?

Yes. You must serve the petition, and any documents you file with the board thereafter, on the County or City, and any other parties that are later added into the case. You serve a copy by mailing it to the Board and other parties, or by personally bringing it to the Board's offices. Counties or cities may accept personal service, but you will need to contact them to find out where and how. The Board will also accept email service, except for Petitions for Review which must be served by fax. Most counties and cities do not accept email service.

Does the City or County have to respond immediately to my petition?

They have to file a Notice of Appearance, which tells you which attorney will be handling their side of the case.

Can I change or add anything to my petition after it is filed?

Yes, but only within 30 days of filing the petition, unless you get special permission from the Board and parties. Within 30 days, you can make any changes you see fit, but you must then file and serve an Amended Petition.

The Board may respond to your petition by asking you to clarify or restate your legal issues. They may propose restatements of the issues. You can accept these proposals and file an amended petition, or you can wait to discuss them at the Pre-Hearing Conference.

Stay in touch with the Board and other parties

Because deadlines are so important, the Board has to be able to reach you. As described herein, you will provide your contact information to the Board and other parties when you file your petition. If that information changes (address, phone number, email), notify the Board and other parties immediately by sending them a written notice, filed officially with the Board using the same pleading format as a motion or petition.

NEGOTIATION & SETTLEMENT

What is settlement and mediation, and should I participate?

A settlement can be reached by opposing parties when the parties to the dispute reach an agreement on the issues of the case before or during the Hearing on the Merits, which is drawn out in a settlement agreement. Mediation is a process by which the Board Member/Presiding Officer acts to assist both sides to reach an agreement in the Pre-Hearing Conference.

Be aware that a settlement agreement will not be reviewed by the Board, and that the Board does not have the authority to enforce a settlement agreement. If the local government agrees to do something in a settlement agreement and then fails to do it, your only remedy would be to file a contract case in Superior Court – an expensive, time-consuming, and possibly futile process,

¹¹ See *Moore v. Whitman County*, 143 Wn.2d 96, 18 P.3d 566 (2001).

depending on what the settlement agreement contained and why the local government breached it. Another option to ensure that a settlement agreement is enforced is to Stay the Board proceeding, and then only dismiss your petition once the local government complies with the agreement.

THE RECORD

What is the Index to the Record?

The Index to the Record, which must be submitted by the respondent local government prior to or at the Pre-Hearing Conference, is a numbered listing of all of the information, written and oral, that the local government relied on to make their decision on the action being challenged. In essence, the Index is a Table of Contents to the information submitted to the city or county. This listing must sufficiently identify information to enable unique documents to be distinguished. All information contained within the record, both written and audio, must be made available to the parties for inspection. The petitioner has the ability to correct or supplement the Index after the city or county has filed it.

What is the Record and how do I create it?

The Record is all of the documents listed in the Index to the Record and generally includes minutes of council meetings, technical and scientific documents, correspondence, laws and regulations, and public comments (oral and written). The local government is responsible for compiling and indexing the Record. However, the Board does not require, nor need, the entire record copied and filed with the Board. It is only necessary for the Board to receive the Index to the Record and all of the relevant documents that any party wants to rely upon as Exhibits to support their arguments and briefing. It is up to each party to identify and present to the Board, as Exhibits, copies of those documents from the Index of the Record that the party believes supports their case and the Board needs to see to decide the case.

Notice of Hearing

Who sets the timeline for the case, and how do I know what to do next?

The Board sets the timeline and sends you and the other parties a Notice of Hearing within 10 days of receiving your petition. This Notice of Hearing will contain the timeline for the case, including information about the Pre-Hearing Conference, settlement and mediation, filing of the Record and exhibits, the issues to be argued, preliminary briefing and hearing schedule, and other details about communicating with the Board.

PRE-HEARING CONFERENCE

What happens at the Pre-Hearing Conference?

The Pre-Hearing Conference is a meeting between the Board's representative (the Presiding Officer – one of the Board members who will hear the case, who is designated to handle all the preliminary matters), and the parties, to discuss practical details of the case. Although settlement may be discussed, this is not an opportunity to argue the merits of your petition; the meeting is focused on what needs to be done to move forward to the hearing. Often, the Conference is telephonically held.

PRE-HEARING ORDER

The Pre-Hearing Order establishes the final briefing and hearing schedule after consultation at the Pre-Hearing Conference. The Pre-Hearing Order will also set forth the issues to be argued.

PRE-HEARING BRIEFING

Petitioner's Opening Brief

Your Opening Brief is your first opportunity to argue your case. This brief can go by several variations of names, so be sure to look at your Pre-Hearing Order to determine what the Board wants you to call it. The Opening Brief has several sections, including the Introduction, Standard of Review, Statement of Facts, Argument, and Conclusion. Attached should be an Index and Appendix, followed by a Declaration of Service. You should also include a Table of Contents.

Table of Contents

While not required, a table of contents provides a neat outline and reference. Be sure to include your argument headings so the Board members know what your brief is about.

Introduction

Provide a short synopsis of what the local government did, why this is non-compliant with the GMA, and the remedy you seek (finding of non-compliance, invalidity, or both).

Statement of Facts

Provide all the relevant facts to the case. While you may present the statement of facts in a favorable hue, you may not include any arguments. Furthermore, it is unethical to exclude facts that are detrimental to your case; besides, your case will be better if you can argue why these facts are irrelevant or mitigated for some reason.

Standard of Review

Provide a short discussion of what standard the board is supposed to apply in reviewing the local government's actions as provided by RCW 36.70A.320(3).

Argument

This is your opportunity to present your arguments for why the local government's actions were non-compliant or invalid. Provide a heading for each subject-area (such as UGA sizing or Ag Lands Designation), then provide sub-headings for each major argument. You should discuss any relevant Court or Growth Board cases in this section, along with citations to them. You should also discuss the language of the sections of the GMA or SMA you believe have been violated, and what those sections mean in the context of the law or ordinance you're challenging.

Legal issues must not be argued in a conclusory fashion. The Boards will deem conclusory statements abandoned. The Board will not accept an argument that simply states "The GMA requires a local government to do a certain action, the government didn't do it, and therefore the government violated the GMA." You must connect the facts to the GMA goals and requirements to support your arguments.

Conclusion

Provide a short paragraph concluding that the local government was non-compliant with regard to the issues and requesting a specific result, generally either a finding of non-compliance alone or a request for non-compliance and invalidity.

Exhibits

You must present Exhibits to show and prove what the facts are. Exhibits primarily encompass specific documents found in the Record and any additional evidence that would be necessary or of substantial assistance to the Board in reaching its decision. Within your briefs, you must cite to the Exhibits using the numbering sequence of the Index to the Record and attach the cited Exhibits to your brief. You must provide a Table of Exhibits and tab each exhibit so that it can be easily located.

The Board may take Official Notice of facts outside the presented Exhibits in the briefing if the Board believes the facts are necessary to resolve the matter. These items include federal and state laws, local ordinances and resolutions, previous decisions by any of the Boards, accepted business customs, technical or scientific facts, and notorious facts.

Respondent's Response Brief

The local government's Response Brief should also include the sections found in your brief: Introduction, Standard of Review, Statement of Facts, Argument, and Conclusion, with an Index, Appendix, and Declaration of Service. In its Argument, the County must respond or present a counter argument to each of your arguments. The County may assign error to some of your facts, or argue for a different standard of review.

Petitioner's Reply Brief

Your Reply Brief is your opportunity to reply to the local government's Response Brief. You will not have much time to write this brief, usually just seven days. The Reply Brief should include Introduction, Argument, and Conclusion sections. You may include another Statement of Facts if you would like to clarify the facts or use more facts than used in the Opening Brief.

You should not include any new arguments, unless it is a subsidiary argument to another one already provided in the Opening Brief or it is in a reply to an argument in the local government's Response Brief. Often, the County will argue for a different standard of review than you set forth. If you wish to respond, you may in your argument section.

MOTIONS

What is a motion?

A motion is a request by one of the parties for the Board to take action on something, prior to the hearing. Motions cover every possible action you or the other parties might want the Board to take, other than deciding all of the issues in the case at the hearing. The city or county may move to dismiss issues you raised in your petition, usually because the petition was filed late, the issues are outside the Board's scope of authority, or you lack standing. Motions can also include matters such as adding new evidence to the record, moving the hearing date, etc. Generally, you should talk to the county or city and other parties first before filing a motion to see if you can agree on all or some of the issues. You could then file an agreed motion, which will generally be granted by the Board.

Do I have to respond to a motion?

No, but if the issue is important, you should. Your response to a motion is called a “response”, and generally must be filed within 10 days of the motion. Your response should be in the same basic form as your petition, except captioned “response to [name of motion]”, and should include only sections setting forth the introduction, relevant facts, legal argument, and conclusion. Your arguments should all be set forth in the legal argument section, and should include citations to the laws and/or cases you believe will help the Board deal with the motion.

The party filing the motion may file a “rebuttal” or “reply” to your response, but they do not have to do so. They generally have seven days from the time you filed your response to file a rebuttal. You generally may not file anything else after they file a rebuttal, although if they bring up new issues in their rebuttal you can move the Board to consider additional briefing and information relevant to the new issues.

Is there a hearing on motions?

Not usually, although the Board can hold telephonic hearings. Generally, the Board simply reads the motion, response, and any rebuttal, and then issues a ruling in written form.

HEARING ON THE MERITS

Generally

The hearings are less formal than a court proceeding. You do not need to address the board with “may it please the court” or “your honors,” but you should introduce yourself with the appropriate time-of-the-day pleasantries. The dress code is “business.”

You may present your argument using PowerPoint. If you do, call the Board’s clerk a week ahead in order to ensure the appropriate equipment is available and in working-order. Also, bring a handout of your presentation for each of the Board members, reporter, clerk, and attorneys.

Do not worry about whether the questions seem pointed and against your position or whether you receive more questions than the opposition. The Board member may be attempting to close the gaps of a weak argument by asking specific questions or may be attempting to emphasize an argument to persuade the other Board members.

How much time do I have to argue?

The Pre-Hearing Order establishes the amount of time you may argue before the Board. At the beginning of your argument, you should request a certain amount of time for rebuttal; rebuttal time will be taken from your overall allotted amount of time.

Will I be able to call witnesses at the hearing?

Although almost never done, you may call witnesses. Usually the Record is more than sufficient considering the Board reviews the local government’s action based on the evidence presented to the local government at the time of the action. Only in exceptional cases would a witness be useful. Furthermore, neither you nor the Board has subpoena power. If you feel a witness would be useful, file a notice to the Board so they can be prepared.

Can I or the City/County continue the hearing to get more time?

Yes, but only if all the parties agree. Agreement is required because RCW 36.70A.300(2)(a) requires Boards to issue a decision within 180 days of the filing of the petition. To abrogate that rule, an agreed continuance is necessary. Although rare, a Board may refuse to grant an agreed continuance.

FINAL DECISION & ORDER

What is a Final Decision and Order?

A Final Decision and Order is the Board's ruling on a case. This will set out the facts found by the Board, their analysis of the factual and legal issues, and the resolution to the case. They can find the local legislative action compliant, not clearly erroneous, or non-compliant, and they may issue a finding of invalidity.

Compliant. A finding of compliance validates the local legislative action. The city or county is not required to take any further action if their action is found to be "compliant."

Not Clearly Erroneous. This finding does not validate the local legislative action, but nor is there sufficient evidence to find the local legislative action non-compliant or invalid. The city or county is not required to take any further action if their action is found to be "not clearly erroneous."

Non-Compliant. A finding of non-compliance remands the local action back to the local government to correct the errors.¹² However, the local action continues to be enforceable until the local government takes new action.

Invalid. A finding of invalidity strikes the local action. The local government may need to take subsequent action to comply with the GMA requirements. If the local government is required to and does take a new action, the local government has the burden of proving that the new action does not substantially interfere with the GMA goals.¹³

REQUEST TO RECONSIDER

Can I ask the Board to reconsider?

Yes. A Request for Reconsideration must be based on an allegation that the Board erred in regard to procedure or misinterpreted facts or the law; or that due to irregularities in the hearing, the aggrieved party was prevented from having a fair hearing; or that the Final Decision and Order contains clerical mistakes. A Request for Reconsideration is not an opportunity to make last-ditch arguments, but only a chance to clarify and correct facts and law. The Request must be served on the Board and all parties within 10 days of the issuance of the Final Decision and Order. The Board may deny the motion, modify its decision, or re-open the hearing. If the Board has not responded within 20 days of filing the Request for Reconsideration, the request is deemed denied.

¹² RCW 36.70A.300(4).

¹³ RCW 36.70A.302(7)(a).

COMPLIANCE HEARINGS

If the Board finds against the local government, the Final Decision and Order will contain a Compliance Schedule. The Compliance Schedule will provide: a deadline for the local government to take appropriate legislative action, a deadline for the local government to file a Statement of Actions Taken to Comply (SATC) and Compliance Index, and the Compliance Hearing, which can be no more than 180 days from the issuance of the Final Decision and Order. You can file a Response to the SATC and the local government may file a Reply to your Response. You must serve your brief on all parties and file four copies with the Board.

If the local government believes that it cannot meet the deadline to take action, it may file a Motion Requesting Adjustment to the Compliance Schedule stating why compliance within the established deadline cannot be met and providing a proposed date for compliance. If an extended compliance schedule is granted, the Board will require the local government to submit periodic Status Reports on its progress.

If the Board finds after a compliance hearing that a local government is not making a good-faith effort towards compliance with the GMA, the Board may recommend that the Governor impose sanctions which affect revenue sources that a local government may receive from the State.

APPEAL

Can I appeal the Board's ruling?

Yes, to Superior Court. How to handle an appeal is outside of the scope of this guide, and Futurewise suggests you consult an attorney if you want to appeal. An individual may represent themselves in a pro se action in both a Board proceeding and in Washington courts. In a Board proceeding a non-lawyer may represent you, but in Washington court, only a Washington Bar-certified lawyer may represent you. The Notice of Appeal must be filed to the Board within 30 days from the date the Final Decision and Order is filed.¹⁴

If the local government seeks review of an adverse Final Decision and Order, the local government will likely seek a Stay of Proceedings from the Superior Court to suspend the Compliance Schedule. If the appealing party does not request a Stay, or the Superior Court does not grant the Stay, the Board is bound to proceed under the Compliance Schedule.

¹⁴ RCW 36.70A.300(5).

ATTACHMENT A:
ADDITIONAL INFORMATION

Futurewise website: <http://www.futurewise.org/>

Washington's laws are compiled into the Revised Code of Washington (RCWs). The rules of Washington State agencies are compiled into the Washington Administrative Code (WACs). The RCWs, WACs, and other materials are available at the website: <http://slc.leg.wa.gov>

The Growth Management Act can be found at the above website at the following specific address: <http://apps.leg.wa.gov/RCW/default.aspx?cite=36.70A>

The CTED guidelines for designating resource lands and critical lands can be found at <http://apps.leg.wa.gov/WAC/default.aspx?cite=365-190>. The CTED procedural criteria for adopting comprehensive plans and development regulations can be found at <http://apps.leg.wa.gov/WAC/default.aspx?cite=365-195>.

The Growth Board's rules of Practice and Procedure are in Chapter 242-02 WAC. They can be downloaded from: <http://apps.leg.wa.gov/WAC/default.aspx?cite=242-02>

The Central Puget Sound, Eastern, and Western Washington Growth Management Hearings Boards maintain websites with helpful digests (summaries) of their decisions and the full text of their decisions. The board's websites are at: <http://www.gmhb.wa.gov/>

Copies of the Washington Supreme Court and Washington Court of Appeals decisions referenced in the report, and all published opinions, are available at the free site: <http://www.legalwa.org/>

ATTACHMENT B:
EXAMPLE OF A PETITION FOR REVIEW

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

FUTUREWISE,
Petitioner,

v.

XYZ COUNTY,
Respondent.

Case No.: (Leave Blank)

PETITION FOR REVIEW

I. PETITIONER

A. Petitioner **Futurewise** is a Washington nonprofit corporation. Petitioner is located at:

814 Second Ave., Ste. 500
Seattle WA 98104
(206) 343-0681 (tele)
(206) 709-8218 (fax)

For purposes of this action all correspondence shall be served on the following representative for

Petitioner Futurewise:

Keith Scully, Legal Director
Futurewise
814 Second Ave., Ste. 500
Seattle WA 98122
keith@futurewise.org

Futurewise consents to receiving all filings and documents via email.

II. ACTIONS FOR WHICH REVIEW IS SOUGHT

RCW 36.70A.130 of the *Growth Management Act* (GMA) requires XYZ County, on or before December 1, 2004, to review and, if necessary, revise its comprehensive plan and development regulations to bring them into compliance with the GMA. On January 25, 2005,

the Board of XYZ County Commissioners enacted Ordinance No. 123 amending the County-Wide Comprehensive Plan. It is not clear whether Ordinance No. 123 was intended to be the update required by RCW 36.70A.130(1)(a). We understand that notice of this ordinance was published on February 6, 2005.

This petition for review alleges that the County is out of compliance with the Growth Management Act because the County failed to adequately review and *revise* several pre-existing land use designations, policies, and zoning provisions that fail to comply with the GMA.

Petitioners seek review of violations that fall into two general categories:

1. The rural area comprehensive plan designations and zones that have maximum densities higher than one dwelling unit per five acres and allow urban growth outside the urban growth area.
2. Urban densities comprehensive plan designations and zones that have very low densities. They include an urban growth area that is inadequately planned and does not include appropriate levels of urban development.

III. ISSUES PRESENTED FOR REVIEW

1. Does the County's failure to review and revise comprehensive plan provisions and development regulations, which allow maximum rural densities of less than one dwelling unit per five outside of Limited Areas of More Intense Rural Development (LAMIRDs), violate RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.070(5), RCW 36.70A.110, and RCW 36.70A.130?
2. Does the County's failure to review and revise comprehensive plan provisions 31.02.280 and 33.50.040, which allow detached accessory dwelling units on lots as small as 1.5 acres and at densities greater than one dwelling units per five acres outside urban growth areas, violate RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.070(5), RCW 36.70A.110, and RCW 36.70A.130?
3. Does the County's failure to review and revise comprehensive plan provision 31.03.230 - Agricultural Land Conservation Policies, which implements zones that allow densities on agricultural lands of long-term commercial significance less than one dwelling unit per ten acres and lower than one dwelling per five acres, violate RCW 36.70A.020(8), RCW 36.70A.060, RCW 36.70A.070(1), RCW 36.70A.110, and RCW 36.70A.130?

IV. STANDING

Petitioner Futurewise is a Washington non-profit corporation and a statewide organization that promotes healthy communities and cities while protecting working farms and forests for this and future generations. Futurewise also works to effectively implement the Growth Management Act. The organization has members that are landowners and residents of XYZ County and who are affected by the matters at issue in this petition. Members and staff of Futurewise participated in a public hearing and wrote letters concerning the 2004-2005 amendments to the comprehensive plan and advocated for an update of the comprehensive plan and development regulations. Futurewise therefore alleges that it has participation standing, and other forms of standing, to challenge the actions at issue pursuant to RCW 36.70A.280.

V. ESTIMATED LENGTH OF HEARING

Petitioners estimates that the Hearing on the Merits for this matter will last approximately three hours.

VI. RELIEF SOUGHT

Petitioners request the board remand these amendments back to XYZ County for action consistent with the Growth Management Act. In addition, petitioners request the board issue a declaration of invalidity for the amendments and pre-existing provisions at issue on the grounds that they substantially interfere with the fulfillment of the goals of the Growth Management Act.

THE PETITIONER HAS READ THIS PETITION FOR REVIEW AND BELIEVES THE CONTENTS TO BE TRUE.

DATED this 6th day of April 2005,

Keith Scully
Legal Director, Futurewise

ATTACHMENT C:
EXAMPLE OF A DECLARATION OF SERVICE

DECLARATION OF SERVICE

I, Keith Scully, declare under penalty of perjury and the laws of the State of Washington that, on April 6, 2005, I caused the following documents to be served on the persons listed below in the manner shown: **Petition for Review** and **Attachments**.

Western Growth Management Hearings Board
By fax and prepaid U.S. Mail
(Original and four copies, with attachments, sent by U.S. mail)
515 15th Ave SE
PO Box 40953
Olympia, WA 98504-0953
western@wgmhb.wa.gov

The Honorable
XYZ County Prosecuting Attorney
By U.S. Mail
123 First St.
ABC City, WA 98999

DATED this 6th of April 2005

Keith Scully
Legal Director, Futurewise