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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

CITY OF SPOKANE VALLEY, WASHINGTON,
a municipal corporation,

Petitioner,

v.

CITY OF LIBERTY LAKE, WASHINGTON, a
municipal corporation,

Respondent,

LIBERTY LAKE SEWER & WATER DISTRICT,

Intervenor.

Case No. 03-1-0007

FINAL DECISION AND ORDER

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I. BACKGROUND

On November 19, 2003, CITY OF SPOKANE VALLEY, by and through its attorney, Cary Driskell, filed a Petition for Review.

On December 12, 2003, the Board received Liberty Lake Sewer & Water District's (the "District" or "Intervenor") Motion to Intervene.

On December 15, 2003, the Board held a telephonic Prehearing conference. The Board issued the Prehearing Order on December 16, 2003.

After considering the parties' briefing on Intervention the Board granted Liberty Lake Sewer & Water District's Motion to Intervene on December 23, 2003.

On January 20, 2004, the Board received Petitioner's Dispositive Motion for Order of Non-compliance and Invalidity and Motion to Supplement the Record, requesting the addition of a newspaper article to the record. The Board also received Intervenor's Dispositive Motion and Motion to Supplement the Record, requesting the addition of twelve

1 exhibits to the record in this matter. The Intervenor also requested that Planning
2 Commission minutes be added to the record, and that those documents be supplied by
3 Liberty Lake.

4 On January 20, the Board received the City of Liberty Lake's Motion and
5 Memorandum to Amend Prehearing Order.

6 On January 21, 2004, the Board held a telephonic hearing on the Motion to Amend
7 Prehearing Order (following the prehearing conference in case no. 03-1-0009), and granted
8 the City of Liberty Lake's request to adjust the schedule with respect to the motion
9 calendar. The Board issued its written order on the matter on January 26, 2004.

10 On February 10, 2004, the Board held a telephonic motions hearing for Case No. 03-
11 1-0007. Present were Judy Wall, Presiding Officer, and Board Members D.E. "Skip" Chilberg
12 and Dennis Dellwo. Present for Petitioner was Cary Driskell. Present for Respondent was
13 Brian T. McGinn. Present for Intervenor was Dawn Findlay. The Board issued its Order on
14 Motions on February 19, 2004.

15 At the Prehearing conference in Case No. 04-1-0001, held on February 19, 2004, the
16 Board discussed the issue of consolidating Cases No. 03-1-0007 and No. 04-1-0001. The
17 Board asked the parties to discuss consolidation with Mr. Driskell, for he was not present at
18 this hearing.

19 On February 19, 2004, the Board directed Mr. Driskell, attorney for Petitioners in
20 Case No. 03-1-0007, to present his written concerns about consolidation. On February 20,
21 2004, the Board received Mr. Driskell's response, opposing consolidation.

22 On February 24, 2004, the Board issued its Order on Consolidation.

23 On April 5, 2004, the Board held the Hearing on the Merits. Present were Judy Wall,
24 Presiding Officer, and Board Members Dennis Dellwo and D.E. "Skip" Chilberg. Present for
25 Petitioners was Cary Driskell. Present for Respondent was Brian T. McGinn. Present for
26 Intervenor was Dawn Findlay.

II. FINDINGS OF FACT

- 1
- 2 1. On April 11, 2201, The Steering Committee of Elected Officials
- 3 (Steering Committee) made its recommendation to the Board of County
- 4 Commissioners for the adoption of Urban Growth Areas for
- 5 unincorporated Spokane County. This area included the territory that
- 6 later incorporated as the City of Liberty Lake.
- 7
- 8 2. On August 31, 2001, the City of Liberty Lake incorporated.
- 9
- 10 3. On November 5, 2001, Spokane County adopted its Comprehensive
- 11 Plan establishing the UGAs and adopting population allocations for
- 12 Spokane County. This adopted Spokane County Comprehensive Plan
- 13 (CP) designated the City of Liberty Lake as an incorporated UGA.
- 14
- 15 4. On September 16, 2003, Liberty Lake enacted Ordinance No. 118,
- 16 which officially adopted the Comprehensive Plan of the City of Liberty
- 17 Lake.
- 18
- 19 5. The City of Liberty Lake requested but did not receive a recommended
- 20 population allocation from the Steering Committee nor did Spokane
- 21 County provide a population allocation to the City of Liberty Lake prior
- 22 to enactment of Ordinance No. 118.

23 **III. STANDARD OF REVIEW/JURISDICTION**

24 Comprehensive plans and development regulations (and amendments thereto)

25 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon

26 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to

demonstrate that any action taken by the respondent jurisdiction is not in compliance with

the Act.

The Washington Supreme Court has summarized the standards for Board review of

local government actions under Growth Management Act. It was stated:

The Board is charged with adjudicating GMA compliance, and, when

necessary, with invalidating noncompliant comprehensive plans and

development regulations. RCW 36.70A.280, .302. The Board "shall find

compliance unless it determines that the action by the state agency, county or

city is clearly erroneous in view of the entire record before the county, or city

1 is clearly erroneous in view of the entire record before the Board and in light
2 of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an
3 action "clearly erroneous" the Board must be "left with the firm and definite
4 conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util.*
Dist. No. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

5 *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543,
6 552, 14 P.3d 133, 138 (2000).

7 The Board will grant deference to counties and cities in how they plan under Growth
8 Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is
9 bounded, however, by the goals and requirements of the GMA." *King County v. Central*
10 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
11 (2000). It has been further recognized that "[c]onsistent with *King County*, and
12 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
13 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
14 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
15 P.3d 28 (2001).

16 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
17 36.70A.280(1)(a).

18 IV. DISCUSSION

19 Petitioner alleged Liberty Lake, in adopting Ordinance No. 118, failed to fulfill the
20 goals of the Growth Management Act regarding five major areas:

- 21 a. Proceeding without having been provided an official population
22 allocation by Spokane County;
- 23 b. Public Participation;
- 24 c. Capital Facilities Plan (CFP);
- 25 d. County Wide Planning Policies (CWPP); and
- 26 e. State Environmental Policy Act (SEPA).

1 The Board finds that Liberty Lake has not complied with Spokane County's CWPPs by
2 their failure to receive a recommended population allocation from the Steering Committee
3 and failure to received the population allocation from the Board of County Commissioners
4 prior to Liberty Lake's adoption of its Comprehensive Plan through Ordinance No. 118.
5 Liberty Lake cannot properly complete the reviews necessary and develop its
6 Comprehensive Plan until the County allocated future population figures for the City. The
7 Hearings Board cannot properly review the City's Comprehensive Plan until it knows the
8 projected population of the City. Growth plans for a city depend upon the projected
9 population. A final UGA can only be designated after a future population allocation has been
made.

10 While the Board need not address each of the issues raised by Petitioner, it is
11 important to express our concern on some. The City's public participation was extensive and
12 we are pleased with their efforts to include all in the process. While the Board does not find
13 the City of Liberty Lake out of compliance on this issue, it is important to include as much
14 as possible, all interested parties, including Spokane County, the City of Spokane Valley,
15 and all special purpose districts within their boundaries.

16 The Board acknowledges the City of Liberty Lake did conduct a land use analysis
17 pursuant to CTED guidelines, but only determined how many houses could go on "x"
18 number of acres. Spokane Valley asserted Liberty Lake failed to base its land capacity on
urban governmental services and facilities. CWPP Urban Policy #3 provides as follows:

19 "Each jurisdiction will initially determine land capacity by that particular
20 jurisdiction's ability to accommodate growth within current city limits or within
21 unincorporated areas of the county using the Department of Community
22 Trade and Economic Development's guidelines for designating Urban Growth
Areas..." "Jurisdictions shall use primary criteria the availability and capacity of
urban governmental services and public facilities."

23 In determining how much additional population can be accommodated within
24 an UGA, jurisdictions should first encourage new development in areas where
25 all urban governmental services and public facilities currently exist and
26

1 secondly encourage new development in areas where all urban governmental
2 services and public facilities can be provided economically.

3 Each jurisdiction shall accommodate its fair share of population growth based
4 on its ability to provide urban governmental services and public facilities. New
5 fully contained communities and master-plan resorts will be addressed
6 through Spokane County's comprehensive plan and population allocation
7 process.

8 The Board finds that important information is missing as to whether governmental
9 services and public facilities are available to serve the projected numbers. These projected
10 numbers were not available and Liberty Lake did not execute a detailed 6-year Capital
11 Facilities Plan.

12 Spokane Valley cites CWPP Urban Policy #5(a):

13 Each jurisdiction shall submit proposed interim and final Urban Growth Areas
14 (UGA) boundaries to the Steering Committee, including: a) justification in the
15 form of its land capacity analysis and the ability to provide urban
16 governmental services and public facilities;

17 Liberty Lake did present its proposal to the Steering Committee on January
18 13, 2003. The Steering Committee put Liberty Lake's proposal on hold and the Mayor
19 of Liberty Lake stated they would proceed with its self-established timeframe for
20 finishing its comprehensive plan. (Respondent's Hearing on the Merits Brief, page 29,
21 D.6 at 000192.)

22 The minutes from the January 13, 2003, Steering Committee reflect
23 Commissioner McCaslin moved to postpone this item for further discussion and
24 possible action at a later date. The motion was seconded by Councilwoman Rodgers.

25 Liberty Lake protested the postponement of the population allocation on
26 January 13, 2003, and informed the Steering Committee that Liberty Lake was going
to "move forward with planning efforts despite the Steering Committee's lack of
action on their request." (Respondent's Ex. 000192.) The Steering Committee did not
set a time frame to consider the matter.

1 The minutes from the October 9, 2003, Steering Committee reflect the
2 concerns of Spokane County Commissioner McCaslin over the legality of Liberty
3 Lake's Comprehensive Plan and stated that Liberty Lake had not gone through the
4 Steering Committee for a population allocation, that the Steering Committee did not
5 recommend suggested Urban Growth Areas to the full Board of County
6 Commissioners, and the plan had not been brought before the lead agency.
7 Respondent's Ex. 000194.

8 By choosing to ignore the adopted Countywide Planning Policy process and
9 making up its own rules in completing its Comprehensive Plan, Liberty Lake has
10 failed to comply with the GMA.

11 It is vital to follow the CWPP and document the data from the analysis
12 performed. Liberty Lake must do this before proceeding to finalize the
13 Comprehensive Plan. This clearly was not done. The Board finds nothing in the
14 record supporting the City of Liberty Lake's contention that it followed the CWPP and
15 the process outlined therein.

16 It is clear that the City of Liberty Lake failed to prepare an adequate 6-year
17 Capital Facilities Plan. Once the boundaries are set and the population allocation
18 received, this must be done.

19 The Board declines to rule on whether there were any SEPA violations. The
20 new Comprehensive Plan may look materially different. As such, any review of SEPA
21 at this time is unnecessary.

22 The Board finds the Petitioner did not carry its burden of proof on its request
23 for invalidity.

24 **V. CONCLUSION**

25 The Board finds Liberty Lake Ordinance No. 118 to be non-compliant for
26 failure to meet the requirements of the Spokane County Wide Planning Policies and
RCW 36.70A.070(3).

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VI. ORDER

1. The City of Liberty Lake must take the appropriate legislative action to bring themselves into compliance with this Order by **September 21, 2004**, 120 days from the date issued.

Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of appeal. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Final Decision and Order.

SO ORDERED this 24th day of May 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Judy Wall, Board Member

Dennis Dellwo, Board Member

D.E. "Skip" Chilberg, Board Member