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

CITY OF LIBERTY LAKE, WASHINGTON, a
municipal corporation,

Case No. 03-1-0009

Petitioner,

ORDER ON MOTIONS

v.

CITY OF SPOKANE VALLEY, WASHINGTON,
a municipal corporation,

Respondent.

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I. BACKGROUND

On December 23, 2003, CITY OF LIBERTY LAKE, by and through their attorney, BRIAN MCGINN, filed a Petition for Review.

On January 21, 2004, the Board held a Prehearing conference. Present were D.E. "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for Petitioner was Brian McGinn. Present for Respondent was Cary Driskell.

On January 23, 2004, the Board issued its Prehearing Order and Order on Respondent's Motion to Supplement the Record.

On February 11, 2004, Petitioner filed its Motion to Supplement the Record and to Strike, Petitioner's Dispositive Motion and Memorandum of Law in Support of Dispositive Motion.

On February 25, 2004, Respondent filed its Response to Petitioner's Motion to Supplement the Record and Strike Portion of Record, and Memorandum in Opposition to Liberty Lake's Dispositive Motion.

On March 3, 2004, Petitioners filed their Reply in Support of Dispositive Motion and Petitioner's Reply Memorandum Regarding Motion to Supplement the Record and Strike.

1 On March 10, 2004, the Board held a telephonic Motion Hearing. Present were D.E.
2 "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo.
3 Present for Petitioner was Brian McGinn. Present for Respondent was Cary Driskell.

4 On March 12, 2004, the Board issued its Memorandum Decision on Petitioner's
5 Dispositive Motion. During oral arguments on the pending motions, Spokane Valley made an
6 oral motion to trike portions of Liberty Lake's Reply Brief.

7 On March 19, 2004, the Board received Petitioner's Proposed Order on Motions.

8 II. FINDINGS AND CONCLUSIONS

9 The Board finds and concludes as follows:

10 1. On March 27, 2003, Spokane Valley passed Ordinance No. 52, which adopted
11 the Spokane County Comprehensive Plan, Capital Facilities Plan and Maps as the Interim
12 Comprehensive Plan of the Spokane Valley (hereinafter "Comprehensive Plan"). Ordinance
13 No. 52 became effective on March 31, 2003, the date of the incorporation of Spokane
14 Valley.

15 2. On October 28, 2003, the Spokane Valley passed Ordinance No. 03-0888
16 through 03-094, which amended the Comprehensive Plan. The publication date was
17 October 31, 2003. To summarize, Spokane Valley made the following amendments to its
18 Comprehensive Plan:

19 Ordinance No.	20 Location	21 Comprehensive Plan Change	22 Zoning Map Change
23 03-088	24 8915 East Montgomery	25 Low Density Residential to Community Center	26 UR-7 to B-2
03-089	South Side of Appleway, east of Park Road	Neighborhood Commercial to Community Commercial	B-1 to B-2
03-090	West side of Pines Road, b/t Union Pacific ROW and Mansfield Ave.	High Density Residential to Light Industrial	UR-22 to I-2
03-091	Cataldo Avenue, west of Bradley and north of I-90 (Golf	Low Density Residential to Light Industrial	UR-7 to I-2

	Dome property)		
03-092	West of Pines between Broadway and Cataldo	Low Density Residential to Medium Density Residential	UR-3.5 to UR-12
03-093	North side of Broadway Ave, between Blake and Mamer Roads	Low Density Residential to High Density Residential	UR-3.5 to UR-22
03-094	Northwest corner of Barker Road and Boone Avenue	Low Density Residential to Medium Density Residential	UR-7 to UR-12 and B-2

3. Spokane Valley did not notify the Department of Community Trade and Economic Development ("CTED") of the amendments proposed through Ordinance Nos. 03-0888 through 03-094 sixty (60) days prior to the amendment of its Comprehensive Plan.

4. There are no genuine issues as to any material facts in this matter. Therefore, the issue of whether Spokane Valley did not comply with the GMA by failing to provide sixty (60) notice to CTED prior to amending its Comprehensive Plan is properly resolved by Dispositive Motion.

5. The GMA, under RCW 36.70A.106, requires that each city planning under GMA proposing amendments to its Comprehensive Plan shall notify CTED of its intent to amend at least sixty days prior to final adoption.

6. Spokane Valley became a "city planning under the Growth Management Act" ("GMA") when it amended its Comprehensive Plan. The Board adopts the reasoning of Wildlife Habitat Injustice Prevention, et. al. v. City of Covington, CPSGMHB, 00-3-0012 (Order on Motions 11-16-00) and finds that Spokane Valley is a GMA planning jurisdiction and is subject to the goals and requirements of the GMA.

7. Spokane Valley is out of compliance with GMA because it failed to notify CTED of its intent to amend the Comprehensive Plan at least sixty days prior to its adoption of Ordinance Nos. 03-0888 through 03-094. Such actions by Spokane Valley were clearly erroneous.

1 8. Sufficient cause exists to supplement the record with the following documents,
2 as requested by Liberty Lake:

- 3 a. Spokane Valley Public Participation Handbook;
- 4 b. Minutes from Spokane Valley Planning Commission Meeting, May 1,
5 2003;
- 6 c. Minutes from Spokane Valley City Council, June 3, 2003;
- 7 d. Minutes from Spokane Valley City Council, August 5, 2003;
- 8 e. Minutes from Spokane Valley City Council, August 19, 2003;
- 9 f. Minutes from Spokane Valley City Council, September 2, 2003; and
- g. Minutes from Spokane Valley City Council, September 16, 2003.

10 These exhibits will assist the Board in considering the arguments of the parties and
11 the merits of the case, and therefore may be included as part of the record.

12 9. Sufficient cause exists to strike the following documents from the record:

- 13 a. Document No. 38, an excerpt from the New City Guide, an MRSC
14 publication, and
- 15 b. Document No. 40, a newspaper article dated December 31, 2003.

16 These documents will not assist the Board in considering the arguments of the
17 parties or the merits of the case, and therefore will be stricken from the record.

18 10. Sufficient cause does not exist to strike portions of Petitioner's Reply
19 Brief. The contested portions of the Reply Brief contain argument and will be given
20 whatever weight deemed appropriate by the Board.

21 **III. ORDER**

22 Based upon review of the Petition for Review, the briefs and materials
23 submitted by the parties, having considered the oral arguments of the parties, and
24 having deliberated on the matter, the Board enters the following Order:

- 25 1. The City of Liberty Lake's Dispositive Motion is **GRANTED**.
- 26 2. The City of Spokane Valley is not in compliance with the GMA due to its
failure to notify CTED of its intent to amend its Comprehensive Plan sixty days prior

1 to final adoption of the amendments made pursuant to Ordinance Nos. 03-0888
2 through 094.

3 3. This matter is remanded to the City of Spokane Valley to bring
4 themselves into compliance.

5 4. The parties will notify the Board by April 12, 2004, of the outcome of
6 their discussions regarding a compliance schedule.

7 **SO ORDERED** this 23rd day of March 2004.

8 EASTERN WASHINGTON GROWTH MANAGEMENT
9 HEARINGS BOARD

10 _____
11 D.E. "Skip" Chilberg, Board Member

12 _____
13 Dennis Dellwo, Board Member

14 _____
15 Judy Wall, Board Member