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

BRUCE ROBERTS and MARILYN TAYLOR,

Case No. 05-1-0003

Petitioner,

ORDER ON MOTION TO AMEND
STATEMENT OF LEGAL ISSUES

v.

BENTON COUNTY and BENTON COUNTY
BOARD OF COMMISSIONERS,

Respondent,

NOR AM DEVELOPMENT, LLC,

Intervenors,

CITY OF RICHLAND,

Intervenors.

I. SUMMARY OF DECISION

The Petitioners Motion to Amend Statement of Legal Issues is approved.

II. PROCEDURAL HISTORY

On April 1, 2005, BRUCE ROBERTS and MARILYN TAYLOR, by and through their representative, Bruce Roberts, filed a Petition for Review.

On April 8, 2005, the Board received Motion of Nor Am Development, LLC, Requesting Intervenor Status on the Side of Respondents, Declaration of Loren D. Combs in Support of, and Memorandum of Nor Am Development, LLC, in Support of Motion to Intervene.

On April 26, 2005, the Board received Motion of City of Richland Requesting Intervenor Status on Side of Respondents.

1 On April 26, 2005, the Board heard the Motions to Intervene filed by Nor Am
2 Development, LLC, and the City of Richland before the Prehearing conference. The Board
3 grants Intervenor status to Nor Am Development, LLC, and the City of Richland. The parties
4 are intervening on behalf of the Respondent.

5 On April 26, 2005, the Board held the Prehearing conference. Present were, John
6 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for
7 Petitioners were Bruce Roberts and Marilyn Taylor. Present for Respondent was Ryan
8 Brown. Present for Intervenors Nor Am was Loren Combs. Present for Intervenors City of
Richland was George Fearing.

9 On May 3, 2005, the Board issued its Prehearing Order.

10 On May 4, 2005, the Board received Respondent's Supplemental Index.

11 On May 18, 2005, the Board received Petitioners' Motion to Admit Documents. The
12 Board allowed the admittance of the documents after receiving no objections from the
13 parties.

14 On July 7, 2005, Petitioners filed a Motion to Amend Statement of Legal Issues. By
15 letter dated July 11, 2005, the Board instructed the parties to file their objections with the
16 Board no later than July 12, 2005.

17 On July 12, 2005, the Board received Objection of Nor Am Development, LLC, to
18 Petitioners' Motion to Amend Statement of Legal Issues.

19 **III. ISSUES PRESENTED**

20 The Petitioners have asked the Eastern Washington Growth Management Hearings
21 Board (the Board) to allow their statement of legal issues to be amended. The Petitioners
22 have renumbered the original Legal Issue #5 to Legal Issue #6; added one new legal issue
23 to their Petition for Review, new Issue #5, and added a reference to the new Legal Issue
#5 in Legal Issue #6.

24 The amended legal issues now read:

1 **IV. STATEMENT OF LEGAL ISSUES**

2 1. Does adoption of Resolution No. 05-057, redesignating approximately 3000
3 acres of land from Agriculture Commercial to City of Richland UGA fail to comply with RCW's
4 36.70A.020(2), 36.70A.020(8) (planning goals to reduce sprawl and conserve natural
5 resource lands), 36.70A.040 (local governments must adopt development regulations that
6 preserve agricultural lands) 36.70A.050 (classification of agricultural lands) 36.70A.060
7 (conservation of agricultural lands) and 36.70A.170 (designation of agricultural lands) when
8 the land at issue contains prime and unique soils and continues to meet all criteria under
9 the Growth Management Act for agricultural lands of long-term commercial significance?

10 2. Does the adoption of Resolution No. 05-057, designating approximately 3000
11 acres to City of Richland UGA fail to comply with RCW's 36.70A.020(1) (planning goal to
12 encourage development in urban areas where adequate facilities and services exist),
13 36.70A.020(2) 36.70A.020(8) (planning goals to reduce sprawl and conserve natural
14 resource lands), 36.70A.070(5) (rural element requires policies and regulations that protect
15 and conserve rural character and prevent abnormally irregular boundaries), and
16 36.70A.110(3) (locate Urban Growth Areas in areas characterized by urban growth and
17 development) when the land at issue is located within and adjacent to rural areas and
18 continues to meet all criteria under the Growth Management Act for preserving rural lands?

19 3. Does the adoption of Resolution No. 05-057, designating approximately 3000
20 acres to City of Richland UGA fail to comply with RCW's 36.70A.070(3) (capital facilities
21 assessment and plan), 36.70A.070(4) (utilities element to determine whether utilities exist
22 and can handle anticipated growth), 36.70A.070(6) (transportation element to determine
23 traffic capacity and growth) when the land at issue is located in a rural area with limited
24 utilities, transportation, and access?

25 4. Did the adoption of Resolution No. 05-057, designating approximately 3000
26 acres to City of Richland UGA fail to comply with RCW's 36.70A.035(1) (reasonable notice
provisions) and 36.70A.140 (ensure early and continuous public participation), and

1 36.70A.040(11) (citizen participation and coordination) when changes to the land at issue
2 affected rural property owners and residents located adjacent to the land at issue?

3 5. Does the adoption of Benton County Resolution No. 05-057, updating and
4 revising the Benton County Comprehensive Plan to designate approximately 3000 acres of
5 land to City of Richland UGA, fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2),
6 RCW 36.70A.110, and RCW 36.70A.130 when the record shows that UGA for the City of
7 Richland established by Benton County is substantially larger than necessary to
8 accommodate the adopted OFM forecast?

9 6. Does the continued validity of the violations of RCW Title 36.70A (The Growth
10 Management Act), described in numbers 1, 2, 3, and 4, and 5 above, substantially interfere
11 with the fulfillment of the goals of the Growth Management Act such that the enactments
12 should be held invalid pursuant to RCW 36.70A.302?

12 **V. Argument, Discussion & Analysis**

13 **Petitioner's Position:**

14 The Petitioner's argument is straightforward. Due to their inexperience and oversight,
15 they failed to include an issue they feel is important to their case.

16 **Respondent's Position**

17 The Respondent, Benton County and the Benton County Board of Commissioners did
18 not object.

19 **Intervenor's Position: (City of Richland)**

20 The Intervenor, City of Richland, did not object.

21 **Intervenor's Position: (Nor Am Development, LLC)**

22 The Intervenor, Nor Am Development, LLC, filed a timely objection based on several
23 reasons. In their Reply Brief to the Motion to Amend Statement of Legal Issues, Nor Am
24 Development claims the Petitioners: (1) failed to meet the statutory time limit of 30 days
25 after filing the petition, (2) their motion was not made within seven days after the date the
26 Prehearing Order was entered and (3) they have not shown good cause.

1 **Board's Position:**

2 The Board looks to WAC 242-02-260(1) and (2) to determine whether or not the
3 Petitioners can amend their initial set of legal issues.

4 WAC 242-02-260(1) is not at issue because the request was after the thirty day
5 period after the original filing date of the petition.

6 WAC 242-02-260(2), states:

7 (2) Thereafter any amendments shall be requested in writing by motion, and will be
8 made only after approval by a board or presiding officer. Amendments shall not be freely
9 granted and may be denied upon a showing by the adverse party of unreasonable and
10 unavoidable hardship, or by a board's finding that granting the same would adversely
11 impact a board's ability to meet the time requirements of RCW 36.70A.300 for issuing a
12 final order. The board may, upon motion of a party or upon its own motion, require a more
13 complete statement of the nature of the claim or defense or any other matter stated in a
14 pleading.

15 WAC 242-02-260(2) allows for two reasons to deny a motion to amend: (1) ... upon
16 a showing by the adverse party (Nor Am Development) of unreasonable and unavoidable
17 hardship, or (2) by a board's finding that granting the same would adversely impact the
18 board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order.

19 In considering the first reason, Nor Am has failed in their brief to show any
20 "unreasonable and unavoidable hardship". Nor Am discusses in their Legal Analysis three
21 cases. Two of those, Sky Valley v. Snohomish County, CPSGMHB No. 95-3-0068 and Wildlife
22 Habitat Injustice Prevention v. City of Covington, CPSGMHB 01-3-0026, discuss statutory
23 time limits. The third case, Taxpayers for Responsible Government v. City of Oak Harbor,
24 WWGMHB 96-2-0002, argues what constitutes good cause for an amended petition. The
25 cases referenced do not explain how the amended legal issue(s) will create "unreasonable
26 and unavoidable hardship" for Nor Am.

27 In considering the second reason, the board finds that granting the motion would not
28 adversely impact the board's ability to meet the time requirements for issuing a final order.
29 The schedule is set and will meet RCW 36.70A.300.

1 **Conclusion:**

2 The Board grants the Petitioner’s Motion to Amend Statement of Legal Issues.

3 **VI. FINDINGS OF FACT**

- 4 1. Bruce Roberts and Marilyn Taylor filed a timely petition to the Eastern
- 5 Washington Growth Management Hearings Board.
- 6 2. On July 7, 2005, the Petitioners filed a Motion to Amend Statement of
- 7 Legal Issues.
- 8 3. On July 12, 2005, Intervenors, Nor Am Development, LLC., filed a
- 9 timely Objection to the Petitioners’ Motion to Amend Statement of Legal

10 **VII. CONCLUSIONS OF LAW**

- 11 1. The Board cites WAC 242-02-260(2) as the legal basis for allowing the
- 12 motion to amend the legal issues.

13 **VIII. ORDER**

14 The Board grants the Petitioners’ Motion to Amend Statement of Legal Issues as
15 presented.

16 **SO ORDERED** this 18th day of July 2005.

17 EASTERN WASHINGTON GROWTH MANAGEMENT
18 HEARINGS BOARD

19 _____
20 John Roskelley, Board Member

21 _____
22 Dennis Dellwo, Board Member

23 _____
24 Judy Wall, Board Member