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

JULIA McHUGH, PALISADES
NEIGHBORHOOD, and NEIGHBORHOOD
ALLIANCE OF SPOKANE,

Petitioner,

v.

SPOKANE COUNTY,

Respondent,

GREG and KIM JEFFREYS, GJ L.L.C., and
G.J. GENERAL CONTRATORS,

Intervenors.

Case No. 05-1-0004

ORDER FINDING COMPLIANCE

I. BACKGROUND

On December 16, 2005, the Eastern Washington Growth Management Hearings Board (the Board) issued its Final Decision and Order (FDO) finding that Spokane County's actions were clearly erroneous and violated the requirements of the Growth Management Act (the GMA). The Board found the County's expansion of its UGA was in error due to their failure to review and update its Capital Facilities Plan (CFP) covering the area added, perform a population and land quantity analysis showing that an expansion of the UGA is

1 needed and formally consulting with the airport owners, managers, operators, pilots and
2 Aviation Division of DOT as required by RCW 36.70A.547.

3 The Board received Spokane County's Statement of Action Taken to Comply and
4 Request for a finding of Compliance January 24, 2007, indicating the County's repeal of
5 Resolution No. 2005-0365. The Petitioners objected to this repeal and to the finding of
6 compliance under the Growth Management Act (GMA).

7 On January 30, 2007, the Board held a telephonic compliance hearing. Present were
8 Dennis Dellwo, Presiding Officer, and Board Members John Roskelley and Joyce Mulliken.
9 Present for the Petitioners was Rick Eichstaedt. Present for the Respondent was Dave
10 Hubert. Present for the Intervenors was Stacy Bjordahl. The Board made no decision
11 regarding compliance but asked the parties to provide additional briefing concerning the
12 Board's continuing jurisdiction over this matter or the mootness of the action.

12 II. DISCUSSION

13 POSITIONS OF THE PARTIES:

14 The Respondents and Intervenors (Respondents), in their brief in support of their
15 motion for a finding of compliance or in the alternative motion for dismissal, contend the
16 repeal of the action found to be non-compliant brings the County into compliance with the
17 GMA. The County believes that the repeal of the offending Resolution eliminated the non-
18 compliant action. They believe the Board must therefore issue a finding of compliance. The
19 County contends that the Board has only the authority expressly granted or necessarily
20 implied by statute. "By making a finding of noncompliance, the only authority granted to the
21 Hearings Board is to set a time for review of the compliance with the requirements of RCW
22 36.70A, to hold a hearing to determine compliance with the requirements of RCW 36.70A
23 and the compliance schedule. RCW 36.70A.330." (P. 6, Respondent's brief).

24 The Respondents also contend that the repeal of the non-compliant action renders
25 the petition for review moot. "The petition for review became purely academic when the
26 county action for which review was sought was repealed." (P. 8, Respondent's brief). The
continued review of compliance would be a review of the impact of the services needed for

1 and the concurrency requirements of the lawfully vested plats on the property. They
2 contend this is no different than the review of the approval of the vested plats.

3 The Petitioners however contend the GMA Hearings Boards were granted broad
4 powers to address compliance with the GMA. "In fact, jurisdiction over whether an entity is
5 in compliance with the GMA and these goals is within the *exclusive* jurisdiction of this
6 Board." (P. 3, Petitioner's Brief). (Emphasis in original). The Petitioners further argue that
7 the Board has jurisdiction to consider whether the County's action was both procedurally
8 and substantially compliant. They believe the Board must examine the repeal of the
9 expansion of the UGA to determine if, in light of the record, the legislative action actually
10 meets the requirements of the GMA. Did this action substantively comply with the GMA?
11 The Petitioners believe that the County's actions do not bring it into compliance because it
12 does not address any of the issues addressed in the Board's Final Order and actually
13 undermines planned and coordinated growth as required under the GMA by creating urban
development outside of a UGA. (P.8, Petitioner's Brief).

14 The Petitioners further contend that this matter is not moot and should not be
15 dismissed because the Board has not yet ruled Spokane County is in compliance. The
16 Petitioners also believe that the County is not brought into compliance with this legislative
action.

17 **BOARD ANALYSIS:**

18 On December 16, 2005, the Board issued its Final Decision and Order (FDO) finding
19 Spokane County out of compliance with the GMA. In that decision, the Board found the
20 County's expansion of its Urban Growth Area (UGA) was in error prior to the County's
21 review and updating its Capital Facilities Plan (CFP) covering the area added, the County's
22 performance of a population and land quantity analysis showing that an expansion of the
23 UGA is needed, and prior to the County formally consulting with the airport owners,
24 managers, operators, pilots and Aviation Division of DOT as required by RCW 36.70A.547.
25 The County was directed to "take the appropriate legislative action to bring itself into
26 compliance with this order...." (P. 30, FDO December 16, 2005).

1 The County chose to perform the missing steps at the same time as the mandated
2 update of the County's Comprehensive Plan. With that update, the County would perform a
3 review and amendment of the Capital Facilities Plan and perform a population and land
4 quantity analysis. The contact with the airports and their personnel and the DOT was to
5 occur separately. The County, upon being continually found out of compliance due to the
6 delay in the process, chose to repeal Resolution No. 2005-0365, thus causing the
7 Comprehensive Plan – Land Use Map and the UGA, to revert to its state prior to the
8 adoption of the amendments to which Petitioners objected.

9 The Board must look to the Growth Management Act to determine if it has the
10 subject matter jurisdiction to continue hearing this matter. The Growth Management
11 Hearings Boards have only the authority that is granted to them by statute. The Board's
12 jurisdiction is found in RCW 36.70A.280. RCW 36.70A.280 (1), provides that:

13 A growth management hearings board shall hear and determine only those
14 petitions alleging either:

15 (a) That a state agency, county, or city planning under this chapter is not in
16 compliance with the requirements of this chapter, ... as it relates to plans,
17 development regulations, or amendments, adopted under RCW 36.70A.040....

18 Petitioners caused to be filed with the Board a petition for review of the adoption by
19 Spokane County of an amendment to the Comprehensive Plan – Land Use Map adding
20 properties to the UGA. This action was taken by Resolution No. 2005-0365 by the Spokane
21 County Board of County Commissioners (BOCC.) The petition for review stated:

22 "Petitioners seek review of Spokane County BOCC Resolution No 2005-0365,
23 which are [sic] Findings of Fact and Decision In the Matter of Adopting
24 Amendments to the Spokane County Comprehensive Plan for 2004, in particular
25 Amendment 04-CPA-01, changing the designation of approximately 80 acres of
26 land from Rural Traditional to Low Density Residential, and moving the Urban
Growth Boundary to encompass it."
(underline added).

27 The Petitioners' request for review did not challenge any other aspect of the County's
28 Comprehensive Plan elements, the zoning or development regulations or the UGA designation

1 prior to the adoption of Resolution No. 2005-0365. The Board issued its Final Decision and
2 Order in this matter on December 16, 2005, finding that the adoption of Resolution No. 2005-
3 0365 by the BOCC was not in compliance with several identified goals and/or requirements of
4 the GMA and establishing a compliance schedule by which Spokane County was to take
5 legislative action to bring its Comprehensive Plan into compliance with the GMA. The only
6 action found out of compliance was the adoption of the above Resolution which expanded the
7 County's UGA prior to performing required tasks.

8 The question on compliance is whether the jurisdiction has met the requirements of
9 the Growth Management Act, not whether it complied with the specific directives of the
10 Board's last order. *Butler, et al. v. Lewis County*, 99-2-0027c, (Order Finding Noncompliance
11 and Imposing Invalidity 2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c, (Order
12 Finding Noncompliance and Imposing Invalidity 2-13-04). The Board does not have
13 authority to order the County to take any particular actions to bring itself into compliance.
14 Therefore, when the Board lists actions to be taken in any given case, that list must be
15 viewed only as guidance and not as the standard against which compliance is measured. At
16 a compliance hearing, the question is not whether the Board's direction was followed, but
17 whether compliance was achieved. *Dawes v. Mason County*, 95-2-0073 (Compliance Order,
18 6-5-03). The task of a GMHB is to determine compliance with the GMA, not whether there
19 could be better solutions followed by a local government. *ICCGMC v. Island County* 98-2-
20 0023 (Final Decision and Order, 6-2- 99).

21 It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB's
22 role is to determine compliance. If non-compliance is found, a GMHB remands the issue and
23 is not authorized to direct a specific remedy. Local governments are afforded a "broad
24 range of discretion" in determining a methodology for compliance. A petitioner must sustain
25 the burden of showing that the action of the local government did not comply with GMA
26 under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (Final
Decision and Order, 4-5-99).

1 The County repealed its non-compliant action and the expansion of the UGA in this
2 area was legislatively repealed.

3 The Board entered its order finding non-compliance. To bring them into compliance,
4 the County could have repealed the objected-to resolution or could have gone through the
5 activities they had failed to perform. The simplest solution was to repeal the Resolution. The
6 other remedies were more complicated and once performed the County still could be out of
7 compliance if the population review did not demonstrate a need for the additional UGAs. Or,
8 the public facilities plan might not demonstrate that services could be adequately provided
9 to the enlarged UGA.

10 With the repeal of the portions of the resolution which enlarged the UGA, the
11 objected-to action was removed and the County brought itself into compliance. We can not
12 find otherwise. The Petitioners contend that the Board should review the case substantially
13 as well as procedurally. In doing so, the Board could look only at the County's action and
14 whether it addresses the findings and conclusions in the FDO. To go beyond that and
15 determine whether the vested development has proper facilities or the population analysis
16 supports the enlargement of the UGA allowing this development would be beyond the
17 Board's jurisdiction.

18 The Board recognizes that the now repealed actions of the County have the effect of
19 permitting urban growth in what are now rural areas. That is not an issue the Board has
20 jurisdiction to consider. The County is now in the mandatory update of its Comprehensive
21 Plan process. That is where the Petitioners' concerns need to be addressed. Another
22 petition would be needed to challenge the updated public facilities plan and whether the
23 County adequately provided for the existing development in the County.

24 The Board does review the actions of the County to bring itself into compliance both
25 procedurally and substantively. The repeal of the UGA expansion corrected the objected to
26 action and returned the UGA boundaries in that area to its previous location. The
development in the previous expanded UGA is not the subject of this case and must be

1 addressed in the County's mandatory update of its Comprehensive Plan, which is now
2 taking place.

3 4 **III. ORDER**

5 Based upon the Board's review of the GMA, prior decisions of the Boards, the
6 December 16, 2005, Final Decision and Order, the presentations and briefings of the Parties
7 at the compliance hearing and reviewing the additional briefing and having discussed and
8 deliberated on the matter, the Board enters a Finding of Compliance.

9 Spokane County is found in compliance with the Final Decision and Order entered in
10 this matter.

11 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

12 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
13 **mailing of this Order to file a petition for reconsideration. The original and four**
14 **copies of a motion for reconsideration, together with any argument in support**
15 **thereof, should be filed with the Board by mailing, faxing, or otherwise**
16 **delivering the original and four copies of the motion for reconsideration directly**
17 **to the Board, with a copy served on all other parties of record. Filing means**
actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-
02-240, WAC 242-02-330. The filing of a motion for reconsideration is not a
prerequisite for filing a petition for judicial review.

18 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal**
19 **the decision to superior court as provided by RCW 36.70A.300(5). Proceedings**
20 **for judicial review may be instituted by filing a petition in superior court**
21 **according to the procedures specified in chapter 34.05 RCW, Part V, Judicial**
22 **Review and Civil. The petition for judicial review of this Order shall be filed with**
23 **the appropriate court and served on the Board, the Office of the Attorney**
24 **General, and all parties within thirty days after service of the final order, as**
25 **provided in RCW 34.05.542. Service on the Board may be accomplished in person**
26 **or by mail. Service of the Board means actual receipt of the document at the**
Board office within thirty (30) days after service of the final order. A petition for
judicial review may not be served on the Board by fax or electronic mail.

1 **Service.** This Order was served on you the day it was deposited in the United
2 States mail. RCW 34.05.010(19).

3 **SO ORDERED** this 5th day of March 2007.

4 EASTERN WASHINGTON GROWTH MANAGEMENT
5 HEARINGS BOARD

6 _____
7 Dennis Dellwo, Board Member

8 _____
9 John Roskelley, Board Member

10 _____
11 Joyce Mulliken, Board Member