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

KATHY MIOTKE and NEIGHBORHOOD
ALLIANCE OF SPOKANE,

Petitioners,

v.

SPOKANE COUNTY,

Respondent,

RIDGECREST DEVELOPMENTS, L.L.C., FIVE
MILE CORPORATION, NORTH DIVISION
COMPLEX, L.L.C., CANYON INVESTMENTS,
INC., J. DONALD and VALENA CURRAN,
and STEPHEN W. TREFTS d/b/a
NORTHWEST TRUSTEE & MANAGEMENT
SERVICES,

Intervenors.

Case No. 05-1-0007

ORDER FINDING COMPLIANCE

I. BACKGROUND

On February 14, 2006, 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 enlarged its UGA prior to the preparation of a population and land quantity analysis, as required; prior to engaging in joint planning as

1 required and to plan for capital facilities, utilities, and transportation within the land adopted
2 by Resolution No. 5-0649, and "showing its work" in the expansion of the UGA. The County
3 further failed to insure that these changes were consistent with its Comprehensive Plan and
4 development regulations.

5 The Board received Spokane County's Statement of Action Taken to Comply and
6 Request for a finding of Compliance January 24, 2007, indicating the County's repeal of
7 Resolution No. 5-0649. The Petitioners objected to this repeal and to the finding of
8 compliance under the Growth Management Act, (GMA).

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

14 II. DISCUSSION

15 POSITIONS OF THE PARTIES:

16 The Respondent and Intervenors, (Respondents), in their brief in support of their
17 motion for a finding of compliance or in the alternative motion for dismissal, contend the
18 repeal of the action found to be non-compliant brings the County into compliance with the
19 GMA. The County believes that the repeal of the offending Resolution eliminated the non-
20 compliant action. They believe the Board must therefore issue a finding of compliance. The
21 County contends that the Board has only the authority expressly granted or necessarily
22 implied by statute. "By making a finding of noncompliance, the only authority granted to the
23 Hearings Board is to set a time for review of the compliance with the requirements of RCW
24 36.70A, to hold a hearing to determine compliance with the requirements of RCW 36.70A
25 and the compliance schedule. RCW 36.70A.330." (P. 8, Respondent's brief).

26 The Respondents also contend that the repeal of the non-compliant action renders
the petition for review moot. "Because the action found out of compliance is repealed and

1 of no effect or force, there is no action for further review and the Hearings Board lacks
2 jurisdiction to review County action that is not raised in the Petition for Review. RCW
3 36.70A.280" (P. 11, Respondent's brief). The continued review of compliance would be a
4 review of the impact of the services needed for and the concurrency requirements of the
5 lawfully vested plats on the property. They contend this is no different than the review of
6 the approval of the vested plats.

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

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

23 **BOARD ANALYSIS:**

24 On February 14, 2006, the Board issued its Final Decision and Order (FDO) finding
25 Spokane County out of compliance with the GMA. In that decision, the Board found the
26 County's expansion of its Urban Growth Area (UGA) was in error. The County failed to
prepare a population and land quantity analysis, as required; failed to engage in joint
planning as required and to plan for capital facilities, utilities, and transportation within the

1 land adopted by Resolution No. 5-0649, and failed to “show its work” in the expansion of
2 the UGA. The County further failed to insure that these changes were consistent with its
3 Comprehensive Plan and development regulations. The County was directed to “take the
4 appropriate legislative action to bring itself into compliance with this order....” (P. 30 FDO,
5 February 14, 2006).

6 The County chose to perform the missing steps at the same time as the mandated
7 update of the County’s Comprehensive Plan. With that update, the County would perform a
8 review and amendment of the Capital Facilities Plan and perform a population and land
9 quantity analysis. The County, upon being continually found out of compliance due to the
10 delay in the process, chose to repeal Resolution No. 5-0649, thus causing the
11 Comprehensive Plan – Land Use Map and the UGA, to revert to its state prior to the
12 adoption of the amendments to which Petitioners objected.

13 The Board must look to the Growth Management Act to determine if it has the
14 subject matter jurisdiction to continue hearing this matter. The Board’s jurisdiction is found
15 in RCW 36.70A.280. RCW 36.70A.280 (1), provides that:

16 A growth management hearings board shall hear and determine only those
17 petitions alleging either:

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

21 Petitioners caused to be filed with the Board a petition for review of the adoption by
22 Spokane County of an amendment to the Comprehensive Plan – Land Use Map adding
23 properties to the UGA. This action was taken by Resolution No. 5-0649 of the Spokane County
24 Board of County Commissioners (BOCC). The petition for review stated:

25 “Petitioners seek review of Spokane County BOCC Resolution No. 5-0649,
26 Findings of Fact and Decision in the matter of expanding the UGA by changing
the land use map for five parcels of land on Five Mile Prairie and elsewhere,
previously designed Urban Reserve (UR) to low density residential (LDR) and
medium density residential (MDR);...” (Page 1, Petition for Review).

1
2 The Petitioners request for review did not challenge any other aspect of the County's
3 Comprehensive Plan elements, the zoning or development regulations or the UGA designation
4 prior to the adoption of Resolution No. 5-0649. The Board issued its Final Decision and Order
5 in this matter on February 14, 2006, finding that the adoption of Resolution No. 5-0649 by
6 the BOCC was not in compliance with several identified goals and/or requirements of the GMA
7 and establishing a compliance schedule by which Spokane County was to take legislative
8 action to bring its Comprehensive Plan into compliance with the GMA. The only action found
9 out of compliance was the adoption of the above Resolution which expanded the County's
UGA prior to performing required tasks. A finding of Invalidity was made by the Board.

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

22 It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB's
23 role is to determine compliance. If noncompliance is found, a GMHB remands the issue and
24 is not authorized to direct a specific remedy. Local governments are afforded a "broad
25 range of discretion" in determining a methodology for compliance. A petitioner must sustain
26 the burden of showing that the action of the local government did not comply with GMA

1 under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (Final
2 Decision and Order, 4-5-99).

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

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

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

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

26 The Board does review the actions of the County to bring itself into compliance both
procedurally and substantively. The repeal of the UGA expansion corrected the objected to
action and returned the UGA boundaries in that area to its previous location. The

1 development in the previous expanded UGA is not the subject of this case and must be
2 addressed in the County's mandatory update of its Comprehensive Plan which is now taking
3 place.

4 III. ORDER

5 Based upon the Board's review of the GMA, prior decisions of the Boards, the
6 February 14, 2006, 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**
18 **actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-
19 02-240, WAC 242-02-330. The filing of a motion for reconsideration is not a
20 prerequisite for filing a petition for judicial review.

21 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal
22 the decision to superior court as provided by RCW 36.70A.300(5). Proceedings
23 for judicial review may be instituted by filing a petition in superior court
24 according to the procedures specified in chapter 34.05 RCW, Part V, Judicial
25 Review and Civil. The petition for judicial review of this Order shall be filed with
26 the appropriate court and served on the Board, the Office of the Attorney
General, and all parties within thirty days after service of the final order, as
provided in RCW 34.05.542. Service on the Board may be accomplished in person
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