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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 ON RECONSIDERATION

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 failed to prepare a population and land quantity analysis, as required; failed to engage in joint planning, as required; failed to plan for capital facilities, utilities, and transportation within the land adopted by Resolution No. 5-

1 0649, and failed to "show its work" in the expansion of the UGA. The County further failed
2 to insure that these changes were consistent with its Comprehensive Plan and development
3 regulations: (1) the County's expansion of its UGA was in error prior to the County's review
4 and updating of its Capital Facilities Plan (CFP) covering the area added; (2) the County's
5 performance of a population and land quantity analysis showing that an expansion of the
6 UGA is needed; and (3) for failure to formally consult with the airport owners, managers,
7 operators, pilots and Aviation Division of DOT as required by RCW 36.70A.547.

8 The Board received Spokane County's Statement of Action Taken to Comply and
9 Request for a finding of Compliance January 24, 2007, indicting the County's repeal of
10 resolution 2005-0365. The Petitioners objected to this repeal and to the finding of
11 compliance under the GMA.

12 On January 30, 2007, the Board held a telephonic compliance hearing. Present were,
13 Dennis Dellwo, Presiding Officer, and Board Members John Roskelley and Joyce Mulliken.
14 Present for Petitioners was Rick Eichstaedt. Present for Respondent was Dave Hubert.
15 Present for Intervenors was Stacy Bjordahl. The Board found the County in compliance in its
16 Order Finding Compliance issued on March 5, 2007.

17 On March 14, 2007, the Board received Petitioners' Motion for Reconsideration.
18 Briefing was received by all parties.

19 **II. DISCUSSION**

20 The Petitioners sought a reconsideration of the Board's March 14, 2007, Order
21 finding Spokane County in compliance primarily because they contend the Board used the
22 wrong burden of proof. The Petitioners cited RCW 36.70A.320(4), which requires the
23 County to demonstrate that its compliance action "will no longer substantially interfere with
24 the fulfillment of the goals" of the GMA. They go on to say that nothing in the Compliance
25 Order indicates that Spokane County met the heightened burden.

26 The Petitioners then proceed to discuss the adverse impact the interim growth has
had in the area previously included in the expanded UGA.

1 The County has responded, arguing that even if a wrong burden of proof was used,
2 the County has taken action in response to the Final Decision and Order, causing the
3 County to no longer interfere with the goals of the GMA, pursuant to RCW 36.70A.302(7).

4 On February 14, 2006, the Board issued its Final Decision and Order (FDO) finding
5 Spokane County Resolution expanding its UGA, out of compliance with the GMA. In that
6 decision, the Board found the County's expansion of its Urban Growth Area (UGA) was in
7 error. The County had failed to prepare a population and land quantity analysis, as
8 required; failed to engage in joint planning as required and to plan for capital facilities,
9 utilities, and transportation within the land adopted by Resolution No. 5-0649, and failed to
10 "show its work" in the expansion of the UGA. The County further failed to insure that these
11 changes were consistent with its Comprehensive Plan and development regulations. The
12 County was directed to "take the appropriate legislative action to bring itself into
13 compliance with this order...." (P. 30 FDO, February 14, 2006).

14 The County, upon being continually found out of compliance due to the delay in the
15 process, chose to repeal Resolution No. 5-0649, thus causing the Comprehensive Plan –
16 Land Use Map and the UGA to revert to its state prior to the adoption of the amendments to
17 which Petitioners objected.

18 The Growth Management Act in RCW 36.70A.320(4) changes the burden of proof in
19 cases where the governmental agency's actions are found invalid. The burden of proof
20 shifts from the Petitioner to the Respondent. The above statute requires the County, in this
21 case, to demonstrate that the enactment in response to the determination of invalidity will
22 no longer substantially interfere with the fulfillment of the goals of the GMA. The County did
23 this in its arguments that the repeal of the expansion of the UGA returns the boundaries to the
24 original and compliant UGA boundaries. The County argues that by repealing Resolution No. 5-
25 0649 the Comprehensive Plan is returned to its compliant status, and no longer substantially
26 interferes with the goals of the GMA.

The repeal of the Resolution, which had expanded the UGA, removed the very
legislative action which gave rise to the petition in this matter. No further urban development

1 can occur in this area and urban services are prohibited from being provided outside UGAs.
2 While development has occurred pursuant to the temporary expansion of the UGA, additional
3 new urban development cannot occur. The subject area reverts to the designation that
4 existed prior to the action which expanded the UGA for Spokane County. The County has
5 carried its burden of proof and shown that its action no longer substantially interferes with the
6 goals of the GMA. The burden of proof now returns to the Petitioners. The actions of the
7 County are presumed valid and the Petitioners must prove by clear cogent and convincing
8 evidence that an error has been committed. They have not done so.

9 The Order finding Compliance entered March 14, 2007 is amended to include the above.
10 The balance of the Order, which finds that the County has brought itself into compliance, will
11 not be changed. The Board continues to find that the County is in compliance and has carried
12 its burden of proof. The Petitioners have failed to carry their burden of proof.

12 III. ORDER

13 Based upon the Board's review of the GMA, prior decisions of the Boards, the
14 February 14, 2006, Final Decision and Order, the March 14, 2007 Order Finding Compliance,
15 the presentations and briefings of the Parties at the compliance hearing and reviewing the
16 additional briefing and having discussed and deliberated on the matter, the Board enters a
17 Finding of Compliance.

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

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

21 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
22 mailing of this Order to file a petition for reconsideration. The original and four
23 copies of a motion for reconsideration, together with any argument in support
24 thereof, should be filed with the Board by mailing, faxing, or otherwise
25 delivering the original and four copies of the motion for reconsideration directly
26 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.

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal
2 the decision to superior court as provided by RCW 36.70A.300(5). Proceedings
3 for judicial review may be instituted by filing a petition in superior court
4 according to the procedures specified in chapter 34.05 RCW, Part V, Judicial
5 Review and Civil. The petition for judicial review of this Order shall be filed with
6 the appropriate court and served on the Board, the Office of the Attorney
7 General, and all parties within thirty days after service of the final order, as
8 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.

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

11 **SO ORDERED** this 9th day of April 2007.

12 EASTERN WASHINGTON GROWTH MANAGEMENT
13 HEARINGS BOARD

14 _____
15 Dennis Dellwo, Board Member

16 _____
17 Joyce Mulliken, Board Member

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19 **DISSENTING OPINION:**

20 The Petitioners are correct. The County has not met its burden of proof simply by
21 revoking Resolution 5-0649. The County failed to show or demonstrate how this action
22 corrected the Board's Order of February 14, 2006, and how this action will "no longer
23 substantially interfere with the fulfillment of the goals of this chapter under the standard in
24 RCW 36.70A.302(1)." The County substantially interfered with the GMA goals, specifically
25 Goals 1, 2, 3, and 12, by revoking the offending resolution and not demonstrating how this
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