State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

WILMA et al., Petitioners, v. STEVENS COUNTY, Respondent.	Case No. 06-1-0009c ORDER ON MOTIONS and ORDER RESCINDING INVALIDITY

I. PROCEDURAL HISTORY

On September 8, 2006, SAUNDRA WILMA and ROBERT BERGER, filed a Petition for Review.

On September 11, 2006, JAMES DAVIES and LARSON BEACH NEIGHBORS and JEANIE WAGENMAN, filed Petitions for Review.

The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-0009. The new Case Name and Number is as follows and shall be captioned accordingly: WILMA et al. v. STEVENS COUNTY, 06-1-0009c.

On February 7, 2007, the Board held the hearing on the merits. Present were, John Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member Joyce Mulliken was unavailable. Present for Petitioners were, Saundra Wilma, Robert Berger, Larson Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott. Present for Stevens County P.U.D., amicus party, was Brian Werst.

On February 15, 2007, the Board issued its Order on Respondent's Motion for Reconsideration.

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On March 12, 2007, the Board issued its Final Decision and Order. The Board indicated it would issue an Order regarding invalidity at a later date.

On April 10, 2007, the Board issued its Order on Motion for Reconsideration and Clarification.

On April 30, 2007, the Board issued its Order on Motion for Clarification of the Record.

On June 12, 2007, the Board issued it Order on Clarification, Reconsideration, and Order on Invalidity.

On January 16, 2008, the Board issued its Order on Motion to Amend Compliance Schedule.

On February 19, 2008, the Board received Respondents Statement of Action Taken to Comply and Motion to Adjust Compliance Schedule, Remanded Index, and Motion to Rescind Invalidity.

On March 19, 2008, the Board held the hearing to consider compliance and the rescission of the finding of invalidity. Present were, John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present for Petitioners were, Larson Beach Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott.

II. DISCUSSION

Motion to Admit Attachments:

<u>Both Parties Positions:</u>

On February 29, 2008, the Petitioners, Wagenman, et al., submitted 15 supplemental documents in a Motion to Admit Attachments for the Board's consideration. On March 11, 2008, the Respondent, Stevens County, by and through its attorney, Mr. Peter Scott, filed an Objection and Motion to Strike, asking the Board to deny the Petitioners' motion and strike all evidence and related arguments from the record.

On March 17, 2008, the Petitioners filed a Response to Respondent's Objection and Motion to Strike and a Request for Permission to Add Attachments. The Petitioners explained in their response why the 15 previously submitted attachments and five new

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attachments were relevant to the case, and also explained there was reason to believe the County submitted additional exhibits into the record after the official record was closed by the Stevens County Board of County Commissioners (BOCC).

Conclusion:

At the motion hearing on March 19, 2008, the Board, after reading the motions and responses, testimony of the parties, and taking into consideration the relevant GMA provisions and statutes, determined the following submitted attachments will be allowed and the Board will determine their appropriate relevance:

Submitted in the Motion to Admit Attachments – Feb. 29, 2008.

1. Attachment #2 Post Card Notice
2. Attachment #4 Notice to Agencies (DOE) 2/5/08 adopting existing environmental documents
3. Attachment #16 11/15/06 letter from DOE to Jenni Anderson, Water Quality

Submitted in the Petitioners' Response – March 17, 2008.

1. Attachment #1 CP Exhibit #773, letter from Wagenman to SC Planning 2/9/06.
2. Attachment #4 St. Godard page 15, of the Technical Manual of 12/14/07, Remanded Index #47, Petitioners Attachment #4.
3. Attachment #5 County's Background Inventory Appendix A of Utilities Element page A-49 showing the water system connections for Loon and Deer Lake.

All other attachments submitted by the Petitioners are stricken from the record. The Board notes there was an objection from the Respondent to the admission of the above admitted documents.

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Motion to Rescind Invalidity:

Parties' Position:

Respondent:

The Respondent, Stevens County (County), after summarizing the Eastern Washington Growth Management Hearings Board's (Board) Order on Clarification, Reconsideration, and Order on Invalidity in Case No. 06-1-0009c, explained the County's actions taken to comply with the Order on Invalidity.

The Respondent contends that what the County lacked, according to the Board's Order, was an adequate justification for the size of its urban growth areas (UGAs) using a land capacity analysis (LCA). The Respondent claims the County has addressed this concern by completing an LCA. According to the Respondent, the County used the Office of Financial Management's (OFM) county-wide growth projection; determined how much property is needed to accommodate its projected urban growth; determined how much property is available in each of the UGAs using the methodology already approved by the Board; and confirmed its work on properly sized UGAs to reach established density goals. Therefore, the Respondent contends the County has addressed a primary finding cited in support of invalidity and the County's action no longer substantially interferes with the GMA.

The Respondent contends the County's preparation of an LCA, an updated capital facilities plan (CFP) and the adoption of a zoning map meet the GMA goal of discouraging sprawl. The Respondent claims the Board's Finding of Fact No. 5 includes the lack of an LCA, the requirement to provide for a variety of rural densities, and the adequacy of the County's CFP.

In light of this Finding, the Respondent contends the County updated its CFP and its six-year financial plan, and made provision to include by reference all updates to the CFP and financial plan completed as part of subsequent annual budgets. The Respondent argues that the CFP and financial plan now address all public facilities and services whether owned by the County or some other service provider and is now in position to assess the level of service (LOS) and projected capital facility needs over the six-year planning period for all

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areas. According to the Respondent, by updating its CFP and financial plan, the County has addressed the Board's Finding of Fact No. 5 and no longer substantially interferes with the GMA.

The Respondent contends that comprehensive planning policies designed to protect water quality and quantity have been amended and moved to the Land Use Element as required by the GMA. Under Finding of Fact No. 6, the Board found the County failed to protect quality and quantity of groundwater in the Land Use Element of the Comprehensive Plan (CP) as required by the GMA. The Respondent claims the County moved its water protection policies from the Natural Resource Element to the Land Use Element as ordered by the Board and made changes to three policies, including LU-10. These changes addressed the Board's Finding of Fact No. 6 and the County's actions no longer substantially interfere with the GMA.

The Respondent argues the County's zoning map and development regulations establish a variety of rural densities in conformity with adopted planning policies and the GMA. The Respondent contends the Board's determination of invalidity is based heavily on its finding that policy RU-11 of the CP failed to implement the GMA requirement to provide for a variety of rural densities. According to the Respondent, the Board "appeared to believe that the County was required to make zoning designations as part of the adopted land use map."[1] The County disagreed with that assertion and contacted the Community, Trade, and Economic Development Department (CTED) for a second opinion. According to the Respondent, CTED confirmed that the GMA does not require such designations to be made in a county's land use map and suggested changes to policy RU-11, which the County adopted.

The Respondent contends that with these actions, the County's CP now requires consideration of the various factors used to provide for a variety of lot sizes and the zoning maps designate a variety of zones. The Respondent contends the County's actions no

[1] Respondent's Motion to Rescind Invalidity p. 8.

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longer substantially interfere with the Goals of the GMA.

Petitioners Wilma et al.:

The Petitioner, Saundra Wilma, et al., contends the County failed to confer with the incorporated areas concerning the amended UGAs and cites RCW 36.70A.110(2) to emphasize the County must consult with other jurisdictions during this process. The Petitioners argue the County and cities went through the process in 1999 and the four cities justified their boundaries in their CPs using the steps described by the Board. The Board found the IUGAs in compliance in Case No. 99-1-0001.

The Petitioner's main concern is with the City of Colville UGA. According to the Petitioners, neither the County nor the City conducted a public meeting to advise the citizens the County was revising the UGA by removing over 500 acres, and there is nothing in the record from the City giving the County permission to reduce the population projections and the UGA. The Petitioners argue that consulting with the City of Colville does not conform to the public participation process or the City's legislative process. The Petitioners claim the area removed from the UGA was its economic development area and land to permit the relocation and expansion of the Colville Airport.

The Petitioners contend the County's notice was inadequate and proper public participation was limited with the change in the UGA boundary and cites the County's new public participation plan (PPP) as evidence the County should have done more to notify the citizens. According to the Petitioners, the County had ample time to do additional notice and public meetings on the changes and claims the County's one hearing was not GMA compliant.

Respondent's Reply:

The Respondent contends the Petitioners do not challenge the sufficiency of the County's LCA as justification for designating UGAs, but rather she challenges the County's decision to reduce the unincorporated UGA next to the City of Colville, specifically the public participation process used to reduce the size of the UGA. The Respondent argues the Board did not make a finding related to public participation and is therefore this action is not an

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issue here.

The Respondent claims the issue is whether the LCA establishes sufficient justification for the UGAs designed in the County. According to the Respondent, and based on the Board's order, the County completed its LCA and amended the UGAs by reducing the acreage by nearly 2,600 acres. The Respondent argues that instead of addressing the sufficiency of the LCA, the Petitioners simply do not like the County's decision to reduce the City of Colville's UGA and the Petitioners further contend the County's action subverted the City's legislative and public participation process.

Again, the Respondent claims the purpose of this motion is to determine if the County has met the requirement to justify the designation of land for urban growth by showing its work in the now completed LCA.

Petitioners Wagenman, et al.:

The Petitioners argue under Issue #19 that the Board's decision was very explicit. The County needed to justify the acreage assigned to its incorporated cities, new UGAs and LAMIRDs using OFM projections. According to the Petitioners, the County's Land Quantity Analysis (LQA) was only used for the UGAs, not the County's LAMIRDs.[2]

The Petitioners provide detailed information concerning the four incorporated UGAs and five unincorporated UGAs pointing out the discrepancies and inconsistencies in the different maps and information available to the public. The Petitioners contend the LQA had areas removed or deducted from each UGA without explanation, especially critical areas, which seem to get developed anyway. The Petitioners also argue the open space acreage in the Lake Spokane UGA did not seem to add up and were deducted inappropriately. The Petitioners also contend the Department of Natural Resource (DNR) lands were subtracted, yet marked as residential.

The Petitioners argue there was no estimate of lands which should be allocated to greenbelts and open space lands, as required by WAC 365-195-335(e)(iii). According to the

[2] The Petitioners land quantity analysis (LQA) is the same as the County's land capacity analysis (LCA).

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Petitioners, it's not clear whether open space was deducted as critical areas or whether these areas can be developed.

The Petitioners argue under Issue #21 that a written record explaining how the rural element harmonizes with the planning goals was not provided by the County and was not in the record. According to the Petitioners, the changes made to the County's Rural Element, specifically RU-11, are minor, the policy essential allows the same rural density, and there is still no requirement as to how a variety of densities would be achieved. The Petitioners claim over time the rural character and resource lands could be divided into five-acre sections. The Petitioners contend RU-11 is improved, but still fails to require method, criteria, standards or guidance as to how and where the densities would recognize and adapt to the geographical, hydrological and other factors and limitations of rural lands. The Petitioners claim all rural lands on the map are colored white and resource lands green and brown, essentially allowing five-acre zoning everywhere in the rural lands.

The Petitioners contend the language in RU-11 emphasizes development regulations for direction, criteria and policy, rather than the CP. According to the Petitioners, the CP fails to establish locations for different rural populations based upon criteria and even 1 du/20 acres is open for development in the rural area at 1 du/5 acres without review. The Petitioners argue there may be legitimate reasons not to rezone an area from 1 du/20 acres to 1 du/5 acres, but this legitimate reason is not spelled out in the CP. The Petitioners claim they presented to the County the limiting factors concerning development inside Loon Lake's watershed and they were ignored.

The Petitioners argue the County failed to follow RCW 36.70A.070(5)(b), which requires counties to have a variety of rural densities consistent with the rural character, by not showing the rural densities on the future land use map. According to the Petitioners, the same arguments can be applied to the rezoning or amendments for resource lands and gives the example of Agricultural Resource-10 (Ag-10), which can't be found on the maps.

The Petitioners argue the County fails to have criteria which would direct any resource zone changes from larger acreages, such as Forestry or Agriculture-20, to Ag-10.

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The Petitioners claim it appears any change in zone is easily completed and would be consistent with the CP and gives the Sheep Creek CARA as an example. The Petitioners point to a selection of exhibits that speak to the issues of hydrology, critical areas and fish and wildlife, which are not addressed in the CP or Title 3.

In conclusion, the Petitioners contend the County failed to comply with the Board's Order on Invalidity and provide a variety of rural densities, and reiterates the Board's decision, specifically under Issues No. 7, No. 6, and No. 9.

Respondent's Response:

The Respondent argues that neither the guidelines nor the Board's order require the County to perform a land capacity analysis when designating LAMIRDs, which are based on logical outer boundaries around the built environment at the time the County opted in to the GMA. The Respondent contends because the status of the West Kettle Falls LAMIRD is unclear, its amendment is addressed as a compliance issue.

The Respondent contends the County completed a land capacity analysis (LCA) on remand, which resulted in an overall reduction of lands designated for urban growth of almost 2,600 acres. According to the Respondent, the Petitioners are confused by the numbers. For instance, the Respondent uses Colville as an example and claims the LCA deals with the unincorporated area adjacent to the City of Colville that is designated for urban growth, then continues to detail buildable acres and population projections. The Respondent agrees there are some inconsistencies, such as in the mapping errors, but not the number of acres that the Petitioners are claiming to be in error. The Respondent contends these errors reflect minor differences in all the UGAs and can be explained by the correction of mapping errors.

The Respondent contends the only aspect of Issue No. 21 addressed in the Board's discussion on invalidity is the GMA requirement to provide for a variety of rural densities in the rural element of a comprehensive plan. The Respondent argues the GMA does not

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require the County to "include"[3] a variety of densities, as the Board stated, but only "provide"[4] for a variety of rural densities and claims the County's interpretation is supported by CTED.

The Respondent argues that CP policy RU-11 requires the County to adopt a variety of rural densities by development regulation, specifies that rural densities may not exceed 1 du/5 acres, and listed criteria must be considered when designating rural zones. The Respondent points out the County does not believe the established zones have to be made part of the Future Land Use maps and that certain zoning decisions are not reviewable by the Board. The Respondent contends zoning is the County's jurisdiction and the Petitioners are wrong to suggest the County should cede zoning actions to the Board.

The Respondent contends the Petitioners' arguments about the manner in which the criteria established in RU-11 are to be applied and allowable land uses are not properly before the Board. The Respondent also argues that the Petitioners argument concerning Ag-10 is a zoning argument presented in context of resource lands, which has nothing to do with the Board's Order on Invalidity. The Respondent contends the County's CP provides for a variety of rural densities that have been implemented through the zoning process and asks the Board to rescind their Order on Invalidity.

Board Analysis:

A hearings board has the authority to impose a finding of invalidity upon those parts of a comprehensive plan or development regulations which it has found noncompliant, if it finds that the "continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter." RCW 36.70A.302(1)(a) and (b).

A hearings board must then specify in the final order "the particular part or parts of the plan or regulation that are determined to be invalid and the reasons for their invalidity."

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[3] Wilma et al., v. Stevens County, Case No. 06-1-0009c, Order on Reconsideration p. 23 (June 12, 2007).

[4] Respondent's Reply in Support of Motion to Rescind Invalidity at 6 referencing RCW 36.70A.070(5)(b).

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RCW 36.70A.302(1)(c). A determination of invalidity has the effect of preventing the future vesting of most types of permit applications to the invalid comprehensive plan provisions and/or development regulations until the County adopts provisions which the board finds no longer substantially interfere with the goals of the GMA:

> Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter. RCW 36.70A.302(3)(a).

A finding of invalidity may be entered only when a board makes a finding of noncompliance and further includes a "determination, supported by findings of fact and conclusions of law that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter." RCW 36.70A.302(1). The Board has also held that invalidity should be imposed if continued validity of the non-compliant Comprehensive Plan provisions or development regulations would substantially interfere with the local jurisdiction's ability to engage in GMA-compliant planning.

The Board found the County out of compliance in a number of issues, including Issue Nos. 19 and 21, in its Order on Clarification, Reconsideration and Order on Invalidity. In addition, the Board found a determination of invalidity was warranted for actions of the County found out of compliance under Issue No. 19 and Issue No. 21. The County's failure to justify the acreage assigned to its incorporated cities, new UGAs, and LAMIRDs, specifically the West Kettle Falls LAMIRD, using OFM's projections, and the County's failure to include a variety of rural densities in its Final Comprehensive Plan, and to reflect those densities or zones on its future land use map, substantially interfered with the goals of the GMA.

As a result of the Board's Order on Clarification, Reconsideration, and Order on Invalidity, the BOCC enacted Ordinance 2008-1 on February 14, 2008. This action,

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according to the County, removed the Urban Reserve zone from the County's zoning code; adopted zoning map changes around the UGA and LAMIRD areas consistent with the Lands Capacity Analysis performed by the County; and adopted a variety of changes to the County's development regulations. The County also amended the Stevens County Capital Facilities Plan and Six Year Financing Plan by Resolution #16-2008; changed its CP to require consideration of the various factors used to provide for a variety of lot sizes; changed the zoning maps to designate a variety of zones; moved its water protection policies from the Natural Resource Element to the Land Use Element, and made changes to three Land Use policies, including LU-10. The County also made minor changes to policy RU-11.

The Board also found RU-4(A.)(1.) West Kettle Falls LAMIRD, invalid in the Order on Clarification, Reconsideration and Order on Invalidity, under Order, No. 4[5]:

> The Board finds that the failure of Stevens County to comply with RCW 36.70A.070(5)(b) substantially interferes with Goals (8) Natural resource industries, (9) Open space and recreation and (10) Environment, of the GMA and a determination of invalidity is warranted. The following sections of the Stevens County Comprehensive Plan are found to be invalid: (Under 5.0 Rural Element, 5.2 Rural Policies) RU-3 LAMIRDs, RU-4(A.)(1.) West Kettle Falls, and RU-11 under Managing Rural Development.

The Board determined the County's action of reducing the acreage from 1,906 acres to 948 acres was significant enough to find policy RU-4(A.)(1.) West Kettle Falls LAMIRD, no longer substantially interfered with the goals of the GMA. Compliance with the Board's Order is a different matter and will be determined after the Hearing on Compliance.

Conclusion:

The Board has determined that the portions of the County's plans and regulations referenced above, as amended through legislation, no longer substantially interfere with the goals of the GMA. The Board's Order on Invalidity is rescinded.

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[5] Wilma et al., v. Stevens County, Case No. 06-1-0009c Order on Clarification, Reconsideration and Order on Invalidity, p. 32 (June 12, 2007).

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III. ORDER

On March 19, 2008, the Board held a hearing on the Motions to Amend Attachments to determine if the Petitioners' supplemental exhibits would be allowed, and Motion to Rescind Invalidity to determine whether the County took the appropriate legislative action to comply with the Board's Order. The Board, based upon the briefing of the parties, the Board's prior cases, case law, the GMA, and having considered the arguments of the parties and deliberated on the matter, the Board ORDERS:

1. The Petitioners' Motions to Admit Attachments is granted in part. Those attachments allowed into the record are listed on page 3 of this Order.

2. The Respondent's Motion to Rescind Invalidity is granted.

3. The Board continued the Compliance Hearing to **April 9, 2008, at 10:00 a.m., 170 S. Oak Street, Colville City Hall, Colville, WA.**

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

Reconsideration:

Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and four (4) copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review:

Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

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Enforcement:

The petition for judicial review of this Order shall be filed with 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 on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service:

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

SO ORDERED this 31st day of March 2008.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
John Roskelley, Board Member

_____
Dennis Dellwo, Board Member

_____
Joyce Mulliken, Board Member

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