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

9TH STREET MOBILE HOME PARK
RESIDENTS ASSOCIATION,

Petitioners,

Case No. 07-1-0008

v.

FINAL DECISION AND ORDER

CITY OF WENATCHEE,

Respondent.

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I. SYNOPSIS

Petitioner 9th Street Mobile Home Park Residents Association challenged City of Wenatchee Ordinance No. 2007-07 claiming that the Wenatchee Comprehensive Plan Housing Element failed to make adequate provision for the existing and projected Affordable Housing needs of all economic segments of the community. The Eastern Washington Growth Management Hearings Board concludes that the City of Wenatchee's comprehensive plan does make adequate provisions for Affordable Housing needs and complies with the Chelan County Countywide Planning Policies and is therefore in compliance with the Growth Management Act.

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II. INVALIDITY

There is no finding of invalidity.

1 **III. PROCEDURAL HISTORY**

2 On June 29, 2007, 9TH STREET MOBILE HOME PARK RESIDENTS ASSOCIATION, by
3 and through their representative, Hans Slette, filed a Petition for Review (PFR).

4 On July 27, 2007, Petitioners filed an Amended Petition for Review.

5 On July 31, 2007, the Board held a telephonic Prehearing conference. Present were
6 Dennis Dellwo, Presiding Officer, and Board Members, John Roskelley and Joyce Mulliken.
7 Present for the Petitioners were Hans Slette. Present for the Respondent was Steve Smith.

8 On July 31, 2007, the Board issued its Prehearing Order.

9 On August 9, 2007, the Board received a Request for Settlement Extension
10 requesting a 90-day extension signed by the parties in this matter.

11 On August 10, 2007, the Board issued its Order Granting Request for Settlement
12 Extension

13 On November 13, 2007, the Board received Petitioner's Motion to Supplement the
14 Record.

15 On December 11, 2007, the Board held a telephonic motion hearing. Present were
16 Dennis Dellwo and Board Member Joyce Mulliken. Board Member John Roskelley was
17 unavailable. Present for Petitioners was Hans Slette. Present for the Respondent was Steve
18 Smith.

19 On December 18, 2007, the Board issued its Order on Motion to Supplement the
20 Record.

21 On December 28, 2007, the Board received a Request for Settlement Extension
22 requesting a 90-day extension signed by the parties in this matter.

23 On January 2, 2008, the Board issued its Order Granting Request for Settlement
24 Extension.

25 On March 20, 2008, the Board received a Request for Settlement Extension
26 requesting a 90-day extension signed by the parties in this matter.

On March 31, 2008, the Board issued its Order Granting Request for Settlement
Extension.

1 On July 10, 2008, the Board received a Request for Settlement Extension requesting
2 a 60-day extension signed by the parties in this matter.

3 On July 17, 2008, the Board issued its Order Granting Request for Settlement
4 Extension.

5 On September 2, 2008, the Board received a Request for Settlement Extension
6 requesting a 90-day extension signed by the parties in this matter.

7 On September 5, 2008, the Board issued its Order Granting Request for Settlement
8 Extension.

9 On December 1, 2008, the Board received a Request for Settlement Extension
10 requesting a 30-day extension signed by the parties in this matter.

11 On December 3, 2008, the Board issued its Order Granting Request for Settlement
12 Extension.

13 On February 10, 2009, the Board held its hearing on the merits. Present were
14 Presiding Officer, Raymond Paoella, and Board Members John Roskelley and Joyce
15 Mulliken. Present for Petitioners was Hans Slette. Present for the Respondent was Steve
16 Smith.

17 **IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 18 **REVIEW**

19 Comprehensive plans and development regulations (and amendments thereto)
20 adopted pursuant to the Growth Management Act ("GMA" or "Act") are presumed valid
21 upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners
22 to demonstrate that any action taken by the respondent jurisdiction is not in compliance
23 with the Act. The Board ". . . shall find compliance unless it determines that the action by
24 the . . . County. . . is clearly erroneous in view of the entire record before the Board and in
25 light of the goals and requirements of the [Growth Management Act]." RCW 36.70A.320.
26 To find an action clearly erroneous, the Board must be ". . . left with the firm and definite
conviction that a mistake has been committed." *Department of Ecology v. Central Puget
Sound Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

1 The Hearings Board will grant deference to counties and cities in how they plan
2 under the Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,
3 "local discretion is bounded, however, by the goals and requirements of the GMA." *King*
4 *County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,
5 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County*, and
6 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
7 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
8 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
P.3d 28 (2001).

9 The Hearings Board has jurisdiction over the subject matter of the Petition for
10 Review. RCW 36.70A.280(1)(a).

11 **V. PRELIMINARY MATTERS**

12 In the PFR, Petitioner presented five Issues for review by this Board. At the Hearing
13 on the Merits (HOM), Petitioner narrowed the number and scope of its legal issues.
14 Petitioner withdrew Issues 2, 3, and 4. Petitioner also narrowed the scope of Issues 1 and
15 5. The two remaining Issues presented at the HOM for review and decision were as follows:

16 1. Does the Comp Plan's Housing Element violate RCW 36.70A.020(4) and
17 36.70A.070 because it does not provide for existing and projected housing needs for all
18 economic segments of the community, and therefore has failed to ensure compliance with
the goals and requirements of the Growth Management or Act?

19 5. Is the Housing Element of the Comp Plan inconsistent with the Policy 5 of Chelan
20 County Countywide Planning Policies that addresses the need for housing for all economic
21 segments of the population and the adoption of parameters for the distribution of
22 affordable housing, thereby failing to meet the consistency requirements set forth in RCW
23 36.70A.100 and 36.70A.210?

1 **VI. ISSUES AND DISCUSSION**

2 **Issue No. 1:**

3 Does the Comp Plan’s Housing Element violate RCW 36.70A.020(4) and 36.70A.070
4 because it does not provide for existing and projected housing needs for all economic
5 segments of the community, and therefore has failed to ensure compliance with the goals
6 and requirements of the Growth Management or Act?

7 **The Parties’ Position:**

8 **Petitioners:**

9 Petitioner argues that in violation of RCW 36.70A.020(4) and -070(2), the
10 Comprehensive Plan Housing Element fails to identify sufficient land for housing and fails to
11 make adequate provisions for existing and projected needs of all economic segments of the
12 community consistent with the Affordable Housing goals of the GMA. Petitioner asserts that
13 the Housing Element lacks adequate information, analysis, and action on how to provide for
existing and future demands for Affordable Housing in the City of Wenatchee.

14 **Respondent:**

15 Respondent argues that the City’s Comprehensive Plan is presumed valid, and
16 Petitioner has not met its burden of establishing that the City’s actions were clearly
17 erroneous. Respondent further argues that the City’s Comprehensive Plan is in compliance
18 with RCW 36.70A.020(4) and RCW 36.70A.070 because the City has, through its
19 Comprehensive Plan and incorporated planning/environmental analyses, made adequate
20 provisions for existing and projected needs for Affordable Housing for all economic
segments of the community.

21 **Board Analysis:**

22 RCW 36.70A.020(4) provides the following planning goal which shall be used for the
23 purpose of guiding development of the Comprehensive Plan:

24 Housing. Encourage the availability of affordable housing to all economic
25 segments of the population of this state, promote a variety of residential
26 densities and housing types, and encourage preservation of existing housing
stock.

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2 This planning goal uses the verbs "encourage" and "promote" which are permissive
3 verbs, and thus this goal does not constitute an independent substantive requirement in
4 isolation from a specific GMA requirement.¹ The GMA allows counties to decide how to
5 achieve the planning goal² but the Board must address whether and how the Wenatchee CP
6 Housing Element furthers Planning Goal 4 by encouraging the availability of Affordable
7 Housing to all economic segments of the population.³

8 Goal 4 must be considered together with the affirmative requirements for the
9 Comp Plan Housing Element set forth in RCW 36.70A.070 (2), which provides that
10 the Comprehensive Plan shall include:

11 A housing element ensuring the vitality and character of established
12 residential neighborhoods that: (a) Includes an inventory and analysis of
13 existing and projected housing needs that identifies the number of housing
14 units necessary to manage projected growth; (b) includes a statement of
15 goals, policies, objectives, and mandatory provisions for the preservation,
16 improvement, and development of housing, including single-family residences;
17 (c) identifies sufficient land for housing, including, but not limited to,
18 government-assisted housing, housing for low-income families, manufactured
19 housing, multifamily housing, and group homes and foster care facilities; and
20 (d) makes adequate provisions for existing and projected needs of all
21 economic segments of the community.

22 Petitioner's Issue 1 is focused on alleged noncompliance with the requirement in
23 RCW 36.70A.070(2)(d) to include in the Housing Element "adequate provisions for existing
24 and projected needs of all economic segments of the community."

25 The CP Housing Element is found in Comp Plan pages 37 through 44.⁴ Wenatchee's
26 Housing Element contains background information on Housing Units, Housing Tenure,
Housing Types, Housing Affordability, Housing Equity, Housing Mix and Density, and

24 ¹ See *Quadrant Corp. v. CPSGMHB*, 154 Wn. 2d 224, 246 (2005).

25 ² *Swinomish Indian Tribe v. WWGMHB*, 161 Wn. 2d 415, 429 (2007).

26 ³ *Low Income Housing Institute v. City of Lakewood*, 119 Wn. App. 110, 116 (2003).

⁴ Petitioner's Prehearing Brief, Exhibit 2.

1 Housing Maintenance and Preservation. The Housing Element presents a number of goals
2 and policies on pages 43 and 44. For example, Housing Affordability is described in the
3 Housing Element as follows:

4 HOUSING AFFORDABILITY – Encourage the availability of affordable housing
5 to all economic segments of the population.

6 Policy 1: Develop and implement regulations that encourage diversity of new
7 housing types and expand housing choices throughout Wenatchee.

8 Policy 2: Provide incentives including density bonuses, parking restrictions,
9 and flexible design standards to developments that include a percentage of
10 affordable units to households at 30%, 50%, and 80% of median income.

11 Policy 3: Promote residential development of infill sites throughout the urban
12 area by increasing densities where appropriate.

13 Policy 4: Work in concert with private and nonprofit developers to facilitate the
14 provision of new affordable rental and owner-occupied housing.

15 Housing Equity is described in the CP Housing Element as follows:

16 HOUSING EQUITY -- Promote next-income and next-generation all
17 neighborhoods. Afford low-income and special needs relation equal access to
18 civic, educational, economic, and social opportunities.

19 Policy 1: Strive to increase class, race, and age integration by equitably
20 dispersing affordable housing opportunities. Discourage neighborhood
21 segregation and the isolation of special needs relation.

22 Policy 2: Facilitate lifecycle or "cradle to grave" neighborhoods and community
23 stability by promoting alternative living arrangements such as accessory
24 dwelling units (ADUs), shared housing, and co-housing, and smaller housing
25 types.

26 Policy 3: Support variable lot size is a new subdivision and housing type
diversity with and development.

Policy 4: The installation of an accessory dwelling unit in new and existing
single-family dwellings shall be allowed in residential zones to specific
development, design and owner-occupancy standards.

These broader policies should be implemented through more specific development
regulations in order to make adequate provisions for existing and projected needs of
all economic segments of the community.

1 Moreover, the Housing Element adopts by reference⁵ the City of Wenatchee 2005-09
2 Consolidated Plan for Housing and Community Development⁶, together with the Ten-Year
3 Plan to Reduce Homelessness in Chelan & Douglas Counties⁷. The Consolidated Plan
4 analyzed factors impacting quality of life for the community's low and moderate income
5 residents, including poverty, poor housing quality, overcrowding, scarcity of living wage
6 jobs, poor educational achievement, and problems, and the Consolidated Plan proposed
7 some policies to address housing needs for different economic segments of the community.
8 The Ten-Year Plan contains objectives, strategies, and actions to reduce homelessness by
9 50%.

10 The City prepared a Supplemental Environmental Impact Statement (SEIS) on its
11 Comprehensive Plan update. In that SEIS, the City considered ideas to address Affordable
12 Housing such as increasing densities in residential land use designations, implementing
13 mandatory densities, and mandating paid percentage of affordable housing units in
14 development of a certain size.⁸ Ultimately, the City decided not to mandate densities or
15 mandate housing unit percentages⁹ but did change its land use designation criteria to allow
16 for greater densities in residential areas as one strategy to encourage more affordable
17 housing.¹⁰ The City did adopt Housing Affordability Policies to encourage and incentivize
18 private landowners and private organizations to develop new Affordable Housing
19 opportunities.¹¹

20 Upon a careful review of the record in this case, the Board concludes that there is
21 substantial evidence in the record to support a finding that the City of Wenatchee

22 ⁵ Land use regulations that have been adopted by reference have been held to effective. See *Olympic View-Mukilteo*
Action v. Mukilteo, 97 Wn. 2d 708 (1982).

23 ⁶ Petitioner's Prehearing Brief, Exhibit 3.

24 ⁷ Petitioner's Prehearing Brief, Exhibit 4.

25 ⁸ Respondent's Hearing on the Merits Brief, Exhibit B.

26 ⁹ Respondent's Hearing on the Merits Brief, Exhibit C, Final SEIS pp. 7-12. The extent to which a city might mandate
densities or housing type percentages would involve a balancing of planning goals 4 (Housing) and 6 (Property Rights) by
the city and is not at issue in this case.

¹⁰ Petitioner's Prehearing Brief, Exhibit 2, Comprehensive Plan, p. 20 (increased residential densities allowed).

¹¹ Petitioner's Prehearing Brief, Exhibit 2, pp. 43-44.

1 considered Planning Goal 4 [RCW 36.70A.020(4)] and that Planning Goal 4 guided the City's
2 development of its CP Housing Element. There is also substantial evidence in the record to
3 support a finding that the City identified sufficient land for housing in its Comprehensive
4 Plan.¹²

5 The Board further concludes that there is substantial evidence in the record to
6 support a finding that the City of Wenatchee developed extensive data and information on
7 Affordable Housing issues, analyzed that information and considered alternative approaches
8 to addressing Affordable Housing, took action and made choices through adoption of its
9 Comp Plan Amendments to encourage the availability of Affordable Housing to all economic
10 segments of the population and promote a variety of residential housing opportunities,
11 identified sufficient land for housing, and has otherwise made adequate provisions for
12 existing and projected needs of all economic segments of the community in the Housing
13 Element. These Comprehensive Plan Amendments satisfy and comply with the requirements
14 of RCW 36.70A.020 and 36.70A.070.

14 **Issue No. 5:**

15 Is the Housing Element of the Comp Plan inconsistent with the Policy 5 of Chelan
16 County Countywide Planning Policies that addresses the need for housing for all economic
17 segments of the population and the adoption of parameters for the distribution of
18 affordable housing, thereby failing to meet the consistency requirements set forth in RCW
19 36.70A.100 and 36.70A.210?

19 **The Parties' Position:**

20 **Petitioners:**

21 Petitioner argues that the Comprehensive Plan Housing Element is inconsistent with
22 Chelan County Countywide Planning Policy 5(I)(C), --(D), and --(E) regarding assessing and
23 addressing Affordable Housing needs for all economic segments of the population.
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26 ¹² Petitioner's Prehearing Brief, Exhibit 2, pp. 5-20, 37-44.

1 **Respondent:**

2 Respondent argues that the City's Comprehensive Plan is consistent with Chelan
3 County Countywide Planning Policies, that the City has assessed and addressed the
4 Affordable Housing issues in Policy 5(I), and that the City of Wenatchee has otherwise
5 provided for and encouraged the development of Affordable Housing opportunities for all
6 economic segments of the community.

7 **Board Analysis:**

8 The GMA requires County and City comprehensive plans to be consistent with each
9 other in order to ensure harmonious land use planning. RCW 36.70A.100. RCW
10 36.70A.210(1) provides that "a 'county-wide planning policy [CPP]' is a written policy
11 statement or statements used solely for establishing a county-wide framework from which
12 county and city comprehensive plans are developed and adopted . . . This framework shall
13 ensure that city and county comprehensive plans are consistent as required in RCW
14 36.70A.100." Local governments are required to adopt regionally developed CPPs, from
15 which local comprehensive plans, and then development regulations, are enacted. The CPPs
16 are thus the major tool provided in the GMA to ensure that the comprehensive plans of
17 each City within a County agree with each other. In order to ensure consistency, CPPs are
18 binding on the County and Cities.¹³

19 Petitioner alleges noncompliance with RCW 36.70A.100 and RCW 36.70A.210 based
20 upon an inconsistency between the Housing Element of the Comp Plan and Policy 5(I) of
21 Chelan County Countywide Planning Policies addressing the need for Affordable Housing.
22 Although CPPs are binding, the stated purpose of the cited statutes is to ensure consistency
23 between County/City Comprehensive Plans. CPP Policy 5(I) provides:

24 The housing element of each comprehensive plan shall:

- 25 A. Assess current price structure and availability of housing options.
26 B. Address income statistics of the population to assess financial accessibility
to existing housing inventory including owner and renter occupied.

¹³ *King Co. v. CPSGMHB*, 138 Wn. 2d 161, 175-176 (1999).

- 1 C. Assess the need for additional units based upon population projections
2 including owned, rented and shelter units and including an assessment of
3 second home ownership.
4 D. Address the manner and the extent that demand from all segments of the
5 housing market will be met.
6 E. Assess the ability to provide sufficient land, infrastructure and services to
7 each housing segment including, that not limited to, government- assisted
8 housing for low income families, manufactured housing, multi-family
9 housing, migrant agricultural worker housing, and group homes. All
10 segments of the housing market must be accommodated in appropriate
11 numbers on a countywide basis.

12 Petitioner's briefing and argument focused on subsections C, D, and E of Policy 5(I). As
13 determined in Issue 1 above, the City of Wenatchee developed extensive data and analysis
14 on Affordable Housing issues, and the City adequately provided for existing and projected
15 needs of all economic segments of the community in accordance with RCW 36.70A.020(4)
16 and RCW 36.70A.070 .This Issue 1 analysis also supports a conclusion that the City
17 complied with CPP Policy 5(I).

18 In addition, there is substantial evidence in the record to support a finding that the
19 City assessed the need for additional housing units based upon population projections¹⁴,
20 addressed how the demand will be met from all segments of the housing market¹⁵, and
21 assessed the ability to provide land, infrastructure, and services to each housing segment¹⁶.
22 Therefore, the Board concludes that Wenatchee's CP Housing Element is consistent and
23 complies with CPP Policy 5 and also satisfies the requirements set forth in RCW 36.70A.100
24 and 36.70A.210.

25 VI. FINDINGS OF FACT

- 26 1. Wenatchee is a City located east of the crest of the Cascade Mountains
and is required to plan pursuant to RCW 36.70A.040.

¹⁴ Petitioner's Prehearing Brief, Exhibit 2, Consolidated Plan p. 120; Respondent's Hearing on the Merits Brief, Exhibit A.

¹⁵ Respondent's Hearing on the Merits Brief, Exhibit B, SEIS p. 14.

¹⁶ Id. at pp. 43-51.

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2 7. In adopting its Comprehensive Plan Housing Element, Wenatchee
3 complied with Chelan County Countywide Planning Policy 5 by
4 assessing and addressing the need for Affordable Housing for all
5 economic segments of the population and thereby complied with RCW
6 36.70A.100 and RCW 36.70A.210.

7 8. The City of Wenatchee is in compliance with the Growth Management
8 Act.

9 VIII. ORDER

10 Based upon review of the Petition for Review, the briefs and exhibits submitted by
11 the parties, the GMA, prior Board Orders and case law, having considered the arguments of
12 the parties, and having deliberated on the matter the Board ORDERS:

13 1. In adopting its Comprehensive Plan Housing Element, Wenatchee
14 complied with RCW 36.70A.020(4) and RCW 36.70A.070.

15 2. In adopting its Comprehensive Plan Housing Element, Wenatchee
16 complied with RCW 36.70A.100 and RCW 36.70A.210.

17 3. The City of Wenatchee is in compliance with the Growth Management
18 Act.

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

20 Reconsideration:

21 Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this
22 Order to file a petition for reconsideration. Petitions for reconsideration shall
23 follow the format set out in WAC 242-02-832. The original and four (4) copies of
24 the petition for reconsideration, together with any argument in support thereof,
25 should be filed by mailing, faxing or delivering the document directly to the
26 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.

1 **Judicial Review:**

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

5 **Enforcement:**

6 The petition for judicial review of this Order shall be filed with the appropriate
7 court and served on the Board, the Office of the Attorney General, and all parties
8 within thirty days after service of the final order, as provided in RCW 34.05.542.
9 Service on the Board may be accomplished in person or by mail. Service on the
10 Board means actual receipt of the document at the Board office within thirty
11 days after service of the final order.

11 **Service:**

12 This Order was served on you the day it was deposited in the United States mail.

13 RCW 34.05.010(19)

14 SO ORDERED this 16th day of March 2009.

15 EASTERN WASHINGTON GROWTH MANAGEMENT
16 HEARINGS BOARD

17 _____
Raymond L. Paolella, Board Member

18 _____
19 Joyce Mulliken, Board Member

20 _____
21 John Roskelley, Board Member