

State of Washington

**GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

CITY OF ELLENSBURG and)

MIKE WILLIAMS,)

)

Petitioners) **Case No. 94-1-0019**

)

)

v.)

) **ORDER OF COMPLIANCE**

)

KITTITAS COUNTY,)

)

Respondent)

)

Procedural History

On May 18, 1994, the City of Ellensburg filed a Petition for Review with the Growth Management Hearings Board for Eastern Washington (the **Board**) alleging that Kittitas County was required under the Growth Management Act to designate agricultural lands of long-term commercial significance and adopt development regulations to assure the conservation of those lands and had failed to do so.

On May 19, 1994, Mike Williams filed a Petition for Review alleging that Kittitas County had failed to designate agricultural lands of long term commercial significance, had failed to adopt development regulations to assure the conservation of agricultural resource lands; and appealed a decision by Kittitas County Board of County Commissioners affirming a Mitigated Determination of Nonsignificance issued for the County's proposed Interim Agricultural Lands Policy.

On June 21, 1994, the Presiding Officer held a live/teleconference to discuss the possible resolution of scheduling problems as well as Respondent's Motion to Adjust Calendar and the parties orally stipulated that Respondent County failed to adopt interim designations of agricultural lands of long-term

commercial significance and associated development regulations in a timely manner as required by the Growth Management Act. It was also agreed that with regard to Petitioner Williams' SEPA complaint; there will be no action by any party on the SEPA claims until the time of the compliance hearing.

On October 6, 1994, Philip Lamb, on behalf of Kittitas County, filed a Notice of Compliance and Motion for Dismissal.

On October 7, 1994, Mr. James Maloney III, on behalf of Mr. Williams, filed Petitioner Williams' Response to Notice of Compliance and Motion for Dismissal.

On October 14, 1994, Mr. Lamb filed Kittitas County's Memorandum Supporting Dismissal.

On October 18, 1994, Mr. Maloney filed Petitioner Williams' Memorandum in Opposition to Motion to Dismiss.

On October 19, 1994 at 10:00 a.m., the Board held a Compliance hearing in the Board's office. Present were Presiding Officer Judy Wall, Board members Graham Tollefson and Tom Williams, Administrative Assistant Barbara Hill as well as Paul Sullivan, attorney for City of Ellensburg,; James Maloney for Mike Williams; David Pitts and Phil Lamb for Kittitas County.

DISCUSSION

As a preliminary matter, it is important to note that these consolidated petitions did not develop in the normal manner. Because the primary issue concerned Kittitas County's failure to designate agricultural resource lands in a timely manner pursuant to RCW 36.70A.170, which the County admitted it had not done, a stipulation setting an agreed upon deadline for the performance of this action was entered into by the parties and memorialized in the Board's "Stipulated Agreement and Final Decision and Order" dated June 22, 1994. Since this stipulation resolved the matter at hand, the development of a record for this case was deemed unnecessary and none was produced.

On October 4, 1994, the Kittitas County Board of County Commissioners adopted Resolution 94-123-*In the Matter of Declaration Regarding Growth Management Act Interim Classification and Designation for Natural Resource Lands of Long-term Commercial Significance-Agricultural Lands*. "Designation means, at least, formal adoption of a policy statement, and may include further legislative action." (WAC 365-190-040(1)) Resolution 94-123 qualifies as a formal policy statement. The Board finds that the County has performed the act required by the stipulation and order and as such is in compliance with the requirements of the Growth Management Act.

In making this finding, the Board makes no determination as to the merits of the question regarding the adequacy of the designation. In this case, without a record, it is inappropriate for the Board to make such a determination.

It was argued that the presumption of validity section of the Growth Management Act, RCW 36.70A.320, applies to this situation and thus requires a finding in favor of the County. This "presumption" only applies, however, to comprehensive plans and development regulations and amendments thereto. Since the resolution in question clearly is not a comprehensive plan and the County asserts that it is not a development regulation, it is not applicable in this case. Nevertheless, Petitioners bear the burden of proof, which in the absence of a record is not sustained.

Kittitas County's Board of County Commissioners has determined in Resolution 94-123 that there are no lands in the county "appropriate" to designate as agricultural resource lands. Since no lands were designated, no development regulations are required under RCW 36.70A.060.

The Board's previous order in this case imposed a stay on Petitioner Williams' SEPA complaint until the October 19, 1994 compliance hearing. This stay is hereby lifted and Petitioner is free to pursue this complaint.

At the compliance hearing, Respondent County's Motion to Dismiss was amended to request a finding of Compliance.

Having reviewed the file, the Board makes the following:

FINDINGS AND CONCLUSIONS

0. Kittitas County has completed the procedural act required by the Board's Stipulation Agreement and Final Decision and Order and, therefore, is in compliance with the requirements of the Growth Management Act.
1. The stay imposed upon Petitioner Williams' SEPA complaint by the Board's Stipulation a agreement and Final Decision and Order is hereby lifted.

SO ORDERED this 21st day of October, 1994.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Graham Tollefson, Board Member

Tom A. Williams, Board Member

DISSENTING OPINION

I do not concur with the majority opinion.

The Eastern Washington Growth Management Hearings Board Stipulated Agreement and Final Decision and Order of June 22, 1994 directed the Board of Kittitas County Commissioners to adopt an ordinance designating agricultural lands of long-term commercial significance and develop regulations as required by RCW 36.70A.060(2), RCW 36.70A.170 (1)(d) and WAC 365-190-050(1).

Kittitas County Resolution No. 94-123 adopted on October 6, 1994 recognized the existence of commercial agriculture land but neither designated nor found the absence of such lands.

Therefore, this Board member finds that Kittitas County is not in compliance with the Growth Management Act.

Judy Wall, Presiding Officer

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