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GROWTH MANAGEMENT HEARINGS BOARD FOR EASTERN WASHINGTON

COALITION OF RESPONSIBLE)

DISABLED,)

)

Petitioners) **Case No. 95-1-0001**

)

vs.) **DISPOSITIVE MOTION ORDER**

) **AND FINAL ORDER**

CITY OF SPOKANE,)

)

Respondent)

)

Procedural History

On February 9, 1995, the Coalition of Responsible Disabled, "CORD", filed a Petition for Review with the Board alleging that the City of Spokane was required to enact an Accessory Dwelling Unit ordinance by December 31, 1994 and had failed to do so.

On April 20, 1995, the Board issued its Prehearing Conference Order establishing a motions and briefing schedule and including a statement of facts stipulated to by the parties.

On May 10, 1995, the Board held a motion hearing by teleconference. Participants included Board Members Tom Williams, Presiding Officer, and Judy Wall; Barbara Hill, Board Administrative Assistant; Michelle R. Whetsel and John F. Kennedy for Petitioner; and Michael Piccolo for Respondent.

Discussion

Legal Issue: Whether the City of Spokane's failure to enact an accessory dwelling unit ordinance by December 31, 1994, violated the Growth Management Act, RCW 36.70A.400, and the Housing Policy

Act, RCW 43.63A.215, requiring local governments to incorporate accessory dwelling unit provisions in their development regulations, zoning regulations or official controls?

The facts in this case are not in dispute. The City of Spokane, "the City", through an open public process developed an Accessory Dwelling Unit Ordinance, Spokane Ordinance C31257, which the City Plan Commission and the City Department of Planning Services recommended to the City Council for adoption on December 12, 1994. The City Council deferred enactment of the ordinance until the issue of accessory dwelling units, "ADU"s, would be addressed in the development of the City's comprehensive plan under the Growth Management Act, "GMA", at some future date. Substantive review of Ordinance C31257 is not the subject of this petition, rather the sole issue is whether the City was required to adopt an ADU regulation or control by December 31, 1994.

Petitioner argues that RCW 43.63A.215 imposed an obligation on the City to adopt an ADU development regulation, zoning regulation, or official control by December 31, 1994, which it failed to do. The City, therefore, is not in compliance with either RCW 43.63A.215 or RCW 36.70A.400.

Respondent does not dispute that it is required to comply with RCW 43.63A.215 (3) as required by RCW 36.70A.400. It argues, however, that neither section imposes an obligation to adopt an ADU ordinance by a certain date. The City was only required to adopt the "recommendations" developed by the department by December 31, 1994, not to enact an ADU ordinance. Further it argues that the Housing Policy Act, section seven of which is codified at RCW 43.63A.215, is an unconstitutional delegation of power and is thus not binding on the City.

In order to resolve this case the Board must, first, determine whether RCW 43.63A.215 imposed upon the City an obligation to adopt an ADU regulation or control by December 31, 1994. Second, if the answer to the first question is affirmative, whether the Housing Policy Act constitutes an unconstitutional delegation of power relieving the City from its compliance requirement.

Requirement of a Regulation or Control under RCW 43.63A.215.

The Board notes that the City does not currently allow accessory dwelling units in single-family residential zones and has not enacted ADU provisions in its development regulations, zoning regulations or official controls.[\[FN1\]](#)

RCW 36.70A.400 states that any local government that is planning under the Housing Policy Act shall comply with RCW 43.63A.215(3), which provides:

Unless provided otherwise by the legislature, by December 31, 1994, local governments shall incorporate in their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, or official control. To allow local flexibility, the recommendations shall be subject to such regulations, conditions, procedures, and

limitations as determined by the local legislative authority.

Subsection (1) required the Department of Community Development^[FN2], "the Department", to report to the legislature on the development and placement of accessory apartments. The report was to make recommendations to the legislature designed to encourage the development and placement of accessory apartments in areas zoned for single-family residential use. RCW 43.63A.215(1).

The statute read as a whole requires local governments to adopt development regulations, zoning regulations or official controls that provide for accessory dwelling units in areas zoned for single-family residential use by December 31, 1994. The Board makes this finding for the reasons set forth below.

First, the concepts and rules of statutory construction support this finding. "The legislature is presumed not to pass meaningless legislation, and in enacting and amending a statute, a presumption exists that a change was intended." *Spokane County Health District v. Brockett*, 120 Wn. 2d. 140, 154 839 P. 2d 324 (1992). As a rule of interpretation, statutes should be construed to avoid "absurd or strained consequences." *Wright v. Engum*, 124 Wn. 2d 343, 351 (1994). Statutes should be read as a whole, considering all provisions in relation to each other and giving effect to each provision. *Wright*, 124 Wn. 2d at 353. Statutes should not be interpreted so as to render any language superfluous. *Yakima County (West Valley) Fire Protection District v. Yakima*, 122 Wn. 2d. 371, 858 P. 2d 245 (1993).

The statute says that "accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, or official control." RCW 43.63A.215(3). It also says that "by December 31, 1994, local governments shall incorporate in their development regulations, zoning regulations, or official controls" provisions designed to encourage the development and placement of accessory apartments in areas zoned for single-family residential use. RCW 43.63A.215(1), (3).

If the City, as it contends, was only required to adopt the "recommendations" developed by the department, which it has not done, rather than adopt an ADU regulation or control, there would be little purpose for this section. The legislature clearly stated its intent in the Housing Policy Act. It found that housing was of "vital state-wide importance to the health, safety, and welfare of the residents of the state." RCW 43.185B.005(1)(a). It determined that state and local governments should work together to develop "creative ways to reduce the shortage of housing." RCW 43.185B.005(1)(h). It stated that it is a state goal, under the Housing Policy Act, to coordinate, encourage, "and direct, when necessary," the state's public sectors in "the attainment of a decent home in a healthy, safe environment for every resident of the state." RCW 43.185B.007. A statutory interpretation that does not require the local governmental entity to adopt an ADU regulation or control runs against the legislature's stated intent.

Second, Respondent relies on the phrase in RCW 43.63A.215(3), "unless provided otherwise by the legislature." and suggests that the legislature has done exactly that in RCW 36.70A.070 (2) by requiring local governments planning under the GMA to develop a comprehensive plan which includes a housing element that reflects some of the same goals expressed in the department's recommendations. The problem with this position is that the Housing Policy Act and the GMA are separate and independent

statutes, each with its own set of requirements. If the City were not planning under GMA, it would be required to comply with the provisions of RCW 43.63A.215(3), including the adoption of ADU provisions. Any city in the state with a population of 20,000 or more must comply with this provision, whether or not it is planning under the GMA. The legislature has given no indication that it intended two separate compliance time-frames, one for non-planning cities and another for those planning under the GMA.

Third, the fact that the City fell under the requirements of the Housing Policy Act shortly after it started planning under the GMA does not grant the City additional compliance time. The Housing Policy Act places a separate and additional mandate on the City and required it and every other city with a population of twenty thousand or more to pass an ADU regulation or control by the end of 1994. The City argues its time-frame for adoption was short; the City, however, is not held to a stricter standard than any other city required to comply with this statute.

Constitutional Delegation of Authority under RCW 43.63A.215.

Having found that RCW 43.63A.215 imposed an affirmative duty to adopt an ADU regulation or control by December 31, 1994, the Board addresses the City's second defense argument. Does the Housing Policy Act, including RCW 43.63A.215, constitute an unconstitutional delegation of power and is thus not binding on the City?

The Board finds that RCW 43.63A.215 is constitutional. The City argues that the legislature in delegating responsibility to the Department for developing recommendations for ADU provisions failed to provide either standards and guidelines which dictate what the agency is to do, or adequate procedural safeguards to control arbitrary administrative action and control abuse of discretionary power. It asserts the legislature's failure to provide standards and guidelines is fatal to application of the statute. The Board is not persuaded.

The burden of establishing the invalidity of an ordinance rests upon the party challenging its constitutionality. *Markham Advertising Co., Inc. v. State of Washington*, 73 Wn. 2d 405 at 420, 439 P.2d 248 (1968). The Court stated that:

It is not unconstitutional for the legislature to delegate administrative power. In doing so, the legislature must define (a) what is to be done, (b) the instrumentality which is to accomplish it, and (c) the scope of the instrumentality's authority in so doing, by prescribing reasonable administrative standards. *Markham Advertising*, 73 Wn. 2d at 430.

When the Housing Policy Act is read in its entirety, it is a proper delegation of administrative power to the Department and the Affordable Housing Policy Board. The legislature has defined the purposes, goals and objectives of the Housing Policy Act and has placed reasonable administrative guidelines on the Department and the Affordable Housing Advisory Board. The Housing Policy Act clearly sets forth the purposes, goals and objectives of the Housing Policy Act in Section 1, Section 2 and Section 3. It

identifies what is to be done in Section 5, Section 6 and Section 7, and what agencies are to accomplish the purposes, goals and objectives of the Housing Policy Act as well as the scope of each agencies authority in Section 4, Section 5 and Section 7.

Additionally, local governments are given broad authority to exercise local discretion. The third sentence of Subsection (3) provides, "To allow local flexibility, the recommendations shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority." RCW 43.63A.215 (3). The City must adopt ADU provisions in its development regulations, zoning regulations, or official controls, but it is given broad discretion to accommodate its needs in designing these provisions.

The legislature has prescribed reasonable administrative standards. Respondent has not sustained its burden in this contention.

Motion Order.

The Board does not grant dispositive motions lightly. This case is fitting, however, for such a motion. No genuine issue of material fact exists and administrative efficiency is advanced. The Board grants Petitioner's Motion and remands this case to the City of Spokane for compliance with RCW 36.70A.400 and RCW 43.63A.215 by September 6, 1995.

SO ORDERED this 6th day of June, 1995.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

Tom Williams, Presiding Officer

Judy Wall, Board Member

[FN1](#)

Stipulated fact no. 11, Prehearing Order at 4.

[FN2](#)

The Department of Community Development is now known as the Department of Community, Trade and Economic Development.

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