

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF ELLENSBURG, MIKE WILLIAMS)	
AND PAULINE DIEFENBACH,)	Case No. 95-1-0009
)	
Petitioners)	ORDER OF CONTINUED
)	INVALIDITY
vs.)	
)	
KITTITAS COUNTY,)	Respondent
_____)	

The Eastern Washington Growth Management Hearings Board (the Board) issued its Final Decision and Order in the above referenced matter on May 7, 1996. On May 17 Petitioners Williams and Diefenbach filed a motion for reconsideration including a determination of invalidity. The Board thereafter issued an order amending its final decision, partially denying motion for reconsideration and set a hearing on determination of invalidity. On June 18, 1996 the Board heard the motion and denied petitioners motion for invalidity regarding Kittitas County Ordinance 95-13 except for Section 17A.55.030 regarding “opt-out” which was found invalid.

The Board’s Final Decision and Order remanded Issues 5, 8 and 9 to Kittitas County for further consideration and revision for compliance with the Growth Management Act on or before September 6, 1996. Thereafter additional time was granted for compliance. During this period of time, petitioners determined that issues of concern remaining were 1) amount of land designated for commercial agriculture and 2) the designation criteria.

On October 15, 1996 petitioners filed a Motion, Stipulation and Order for Continuance whereby the parties stipulated to the continuance of the compliance hearings based upon the agreement of the parties that this case will be heard in conjunction with and consolidated with the timely appeal which will be filed by petitioners Williams and Diefenbach in relation to the adoption of Ordinance N. 96-15. They further stipulated that these matters be consolidated with the Case No 96-1-0015 regard the Kittitas County Comprehensive Plan.

The Board issued a letter noting that “(t)he Board has found, upon its review of RCW 36.70A.

330(4)(a), that a compliance hearing will be necessary to resolve the issue (of invalidity). The Board would at that hearing determine whether it should continue, rescind or modify the invalidity determination using the standards in RCW 36.70A. 300(2). We will determine whether the new “opt-out” provisions, adopted to replace the invalid regulations, continue to ‘substantially interfere with the fulfillment of the goals of this chapter.’ The Board will not by this action make a finding that the County is or is not in compliance with the Growth Management Act. We will deal only with the issue of invalidity.” The Board also scheduled a compliance hearing for November 7, 1996.

On November 7, 1996 the Board held a compliance hearing. All parties were represented.

After hearing oral argument by representatives of petitioners and respondent and reviewing the record, the Board continues the invalidity of Ordinance 95-13, Section 17A.55.030 until the hearing on the merits of Case No. 96-1-0017.

By statute the board can make a determination of invalidity. The threshold standard established by the legislature in making such a determination is much higher than for a finding of noncompliance. That standard included the determination that the continued validity of the plan to regulate would substantially interfere with the fulfillment of the goals of the Growth Management Act.

Because a determination of invalidity has been made, we intend to substantively review the ordinance or resolution enacted in response to a determination of invalidity. Since the board can not do a substantive review without going through the whole comprehensive plan, we continue the invalidity of the opt-out provisions in Ordinance 95-13, Section 17A.55.030. The Board will make a substantive review on all components of Case No. 95-1-0009 after the hearing on the merits in Consolidated Case No. 96-1-0017-City of Ellensburg, Cascade Columbia Alliance, RIDGE, Mike Williams and Pauline Diefenbach, Petitioners, v. Kittitas County, Respondent, and JELD-WEN and Trendwest Resorts, Intervenors and Plum Creek Timber Company, Intervenor.

SO ORDERED this 22nd day of November, 1996.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Judy Wall, Presiding Officer

D. E. "Skip" Chilberg, Board Member

Dennis A. Dellwo, Board Member
