

**State of Washington**

**GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

**CITY OF ELLENSBURG,**

)

)

Petitioners ) **Case No. 96-1-0003**

)

vs. ) **FINAL DECISION**

)

**AND PRELIMINARY  
ORDER**

**KITTITAS COUNTY, )**

)

Respondent )

)

**Procedural History.**

On March 6, 1996, the City of Ellensburg, by and through its attorney, Paul E. Sullivan, Jr., filed a Petition for Review with the Eastern Washington Growth Management Hearings Board.

On April 11, 1996, the Board held a prehearing conference at its office. An accelerated hearing and briefing schedule was adopted and the legal issues determined.

On June 5, 1996 the Board held its Hearing on the Merits at the Hal Holmes Center in Ellensburg, Washington. All parties were present

**I. Legal Issues**

**Issue 1. Which agreement between Kittitas County and the cities within Kittitas County is applicable to the County's adoption of County-wide planning policies, specifically County Resolution 96-10?**

Petitioner argues that the agreement signed by the City of Ellensburg on November 4, 1991 and by Kittitas County on February 4, 1992, referred to as Agreement 1, is still in effect for purposes of development and approval of the county-wide planning polices (CWPP). Further, Petitioner argues that the Kittitas County Conference of Government's Articles of Incorporation dated August 24, 1995, herein referred to as Agreement 3, is in addition to Agreement 1 for purposes of development and passage of the CWPP.

Kittitas County responds with their view of the unworkable provisions of Agreement 1, and therefore, Agreement 3 must supersede Agreement 1 to achieve a workable, acceptable procedure.

This Board, in Case No. 95-1-0003, concluded Agreement 1 was the operative agreement for consideration of the CWPP at that time. However, we recognize that we cannot compel involuntary compliance with any agreement entered into by the parties. Even though Agreement 1 was determined to be a valid agreement, nothing within our jurisdiction allows us to prevent Kittitas County to abrogate or rescind that agreement. Even though no such action was taken, Kittitas County did approve a subsequent agreement, Agreement 3, which includes the same subject matter, and a valid process for adoption of CWPP. We find nothing in the record to refute Kittitas County's assertion that Agreement 3 supersedes Agreement 1.

**Issue 2. Did Kittitas County follow the procedures as specified in the applicable agreement pertaining to the adoption of County Resolution 96-10?**

Agreement 3, now the operative agreement for adoption of CWPP, specifies the Conference of Government (COG) must "... create the document known as the CWPP and to assist in establishing long-range planning goals for Kittitas County. The COG will forward, by super-majority vote, all planning documents it has created to the Kittitas County Board of County Commissioners for possible adoption. The Board of Commissioners shall conduct public hearings and all other processes required by law and then adopt the CWPP as presented by COG, or, by their vote, return the document to the COG, along with recommended changes, for further deliberation by the COG."

Petitioner argues that this process has not been followed. Respondent argues that Kittitas County presented the document which had previously been found in non-compliance, with modifications to reflect changes in population projections, to COG, on November 30, 1995. COG members declined to discuss the document.

Kittitas County presented no record that 1) the document under consideration was created by COG as required by the agreement or, 2) that differences of opinion on the substance of the document had been returned to COG, with recommended changes, for further deliberation by the COG, as required by Agreement 3.

**Findings of Fact.**

0. On August 22, 1995, the Eastern Washington Growth Management Hearings Board, under Case No. 95-1-0003, ruled that Agreement #1, was the operative agreement for consideration of Kittitas CWPP (CWPP).
1. On August 24, 1995, the Kittitas County Conference of Governments entered into a new agreement, now called "Agreement 3", which included a provision for development of CWPP. This new agreement was signed by Kittitas County on September 15, 1995.
2. On November 30, 1995, Kittitas County verbally asked the COG members if they wished to discuss the "policies". " It was concluded there was no need to re-open the policies except for future (new) revisions. Seubert said the Commissioners would discuss the issues." From minutes of COG, November 30, 1995.
3. On January 17, 1995, the Board of Kittitas County Commissioners passed Resolution 96-10, Kittitas County - Countywide Planning Policies, without further discussion or comment from the COG.

### DECISION

Issue # 1. After review of the record and oral and written arguments presented to this Board, we find that "Agreement 3", supersedes Agreement 1, and thus is the operative agreement for consideration of Kittitas County's County-Wide Planning Policies.

Issue #2. After review of the record and oral and written argument presented to this Board, we find that Kittitas County has not followed the procedures as specified in "Agreement 3" in consideration and passage of Resolution 96-10, Kittitas County County-Wide Planning Policies. We find thus, that for purposes of subsequent actions implementing the county-wide planning policies, Resolution 96-10 is not in compliance with the Growth Management Act.

### PRELIMINARY ORDER.

The Board remands Resolution 96-10 to Kittitas County for the adoption in accordance with Agreement No. 3. To this end, the parties are ordered to work together to jointly develop a timeline and procedure for adoption of the county-wide planning policies in compliance with the requirements of the Growth Management Act in the form of a proposed order. This proposed order should address a process for resolving substantive disputes in the county-wide planning policies, as well as a timetable for consideration and final passage. The timetable should reflect the necessity to resolve the county-wide planning policies prior to adoption of the County Comprehensive Plan. Parties have until 5:00 p.m., June 19, 1996 to present a recommended order on this matter.

**SO ORDERED** this 11th day of June, 1996.

**EASTERN WASHINGTON  
GROWTH MANAGEMENT HEARINGS BOARD**

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D. E. "Skip" Chilberg, Presiding Officer

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Judy Wall, Board Member

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Tom Williams, Board Member

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