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

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| WENATCHEE VALLEY MALL PARTNER-SHIP; ROKAN IDAHO, LLC; WL PARTNERS, Petitioners | ) | |
| CITY OF EAST WENATCHEE, Petitioner | ) | Case No. 96-1-0009 |
| CITIZENS FOR QUALITY OF LIFE IN DOUGLAS COUNTY, Petitioner | ) | ORDER ON PETITION FOR RECONSIDERATION AND INVALIDITY |
| v. | ) | |
| DOUGLAS COUNTY, Respondent | ) | |
| DOUGLAS COUNTY CITIZENS FOR RESPONSIBLE GROWTH, Intervenors | ) | |

## I. PROCEDURAL HISTORY

On December 10, 1996, the Eastern Washington Growth Management Hearings Board (the Board) entered a Final Decision and Order in the above-captioned case. This document constituted the Board's final decision unless, pursuant to WAC 242-02-830, a party filed a petition for reconsideration.

On December 20, 1996, the Petitioners, Wenatchee Valley Mall Partnership, Rokan Idaho, WL Partners, and the Citizens for Quality of Life in Douglas County filed a "Petition for Reconsideration" with the Board.

On January 2, 1997, the Board issued a schedule for briefing and hearing the petition.

On January 15, 1997, the Petitioner, City of East Wenatchee, joined in the petition for reconsideration.

On January 16, 1997, the Respondent filed its brief responding to petition for reconsideration and emergency order of invalidity.

On January 16, 1997, Intervenors filed their brief responding to petition for reconsideration and invalidity. Intervenor also filed motion to strike Petitioner's exhibits attached to petition for reconsideration.

On January 22, 1997, Petitioners filed their reply brief to Respondents/Intervenors response brief to motion for reconsideration/invalidity.

On January 24, 997, the Board held its reconsideration hearing in East Wenatchee, Washington. The hearing was recessed to January 30, 1997.

On January 28, 1997, Petitioners filed a Motion for submission of supplemental evidence and motion for presentation of post hearing matters.

On January 29, 1997, Respondent filed its Response to Petitioners' evidentiary motions on petition for reconsideration.

On January 30, 1997, the Board completed its hearing on Petition for Reconsideration.

## II. PETITIONERS' MOTION TO SUPPLEMENT

The Petitioners, Partners and Citizens for Quality of Life in Douglas County (Citizens), requested this Board grant the following relief:

A. Petitioners request that they be allowed to "correct" a reference in their Prehearing brief at 5.13.

B. The Petitioners ask that index record No. 1029 be appended to the Petitioners' prehearing exhibits as Exhibit 40.

C. Petitioners ask that record index No. 543 be appended to the Petitioners' Reconsideration Brief as Exhibit 5.

D. The Petitioners ask the Board to take official notice of certain facts relating to an application

for a shopping mall master site plan in the Odabashian Bridge area, pursuant to WAC 242-02-670(2).

**CONCLUSION**: The Board denies the motion to correct a reference in the prehearing brief of the Petitioners and supplement the record. The Record is developed when the matter is prepared for final hearing. The Board's rules on admission of additional documentary evidence at the hearings on the merits is specific. Pertinent portions of WAC 242-02-554 provide:

> (2) Where applicable, the presiding officer may order:
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> * *
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> (b) That documentary evidence not submitted as required in (a) of this subsection not be received in evidence in absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner….
>
> (3) The presiding officer may limit the documentary evidence to that identified on a final list of exhibits. A party may submit additional documentary evidence at the time of the hearing only upon a showing of good cause.

The Petitioners have not made the showing of good cause for the failure to produce the evidence sooner. The argument upon a motion for reconsideration must be based upon the record before the Hearings Board at the hearing on the merits.

The Board has reviewed the Final Hearing Record and finds that the portion of the brief requested to be corrected should remain unchanged. This portion of the brief was referred to as it is and does not vary from the oral argument made. To change it now would allow an exhibit not previously before this Board, to be admitted. We will not do this, good cause has not been shown.

The Petitioner's request that the Board take official notice of certain facts occurring subsequent to the adoption of the Douglas County Comprehensive Plan, is denied. Even if official notice were given, these facts would not help this Board to decide the issues before us. We must decide whether the GMA has been complied with. We will not judge the motivation of the parties.

## III. INTERVENOR'S MOTION TO STRIKE PETITIONERS' EXHIBITS ATTACHED TO PETITION FOR RECONSIDERATION

The Intervenor has asked the Board to strike the exhibits attached to the Petition for Reconsideration. There are five exhibits attached to the Petition. The Petitioners have filed no motion to include these exhibits. The exhibits are not properly before the Board. Having reviewed the exhibits, the Board further determines that such exhibits would not be necessary or of substantial assistance in reaching the decision before us.

The Board therefore strikes the exhibits attached to the Petition for Reconsideration and will not consider the portions of the Reconsideration Brief that make reference to these documents.

## IV. DISCUSSION OF PETITIONER'S BASIS FOR RECONSIDERATION

The Petitioners have presented their basis for reconsideration issue by issue. We will review their Petition in the same matter. The issue as it exists in our final order will be stated first, followed by a statement of the Petitioners' basis for reconsideration.

**ISSUE 1** - WHETHER DOUGLAS COUNTY HAS PROPERLY ADOPTED ITS GMA COMPREHENSIVE PLAN AS REQUIRED BY RCW 36.70A.140?

1. **The Petitioners claim the Board has not responded to their claims and evidence that the adoption process of the comprehensive plan was facially misrepresented to the participating public, thus depriving participants of effective participation since the adoption of the county wide plan was treated as a verity in the adoption of the Greater East Wenatchee (GEW) plan. The Petitioners further contend the Board has not responded to their claim that the Plan did not meet the enhanced public participation requirements nor did it contain the required elements of a GMA plan.**

**DISCUSSION:** The claims listed above are a restatement of the original Petition. It appears the claimed "flaw" missed by the Board is the Petitioners' contention the adoption of the GEWAP subsequent to the adoption of the DCCP precluded public participation. It also appears the Petitioners claim the rural element was adopted by default. This has been addressed. See page 6 of our Final Order. The record shows there was public participation in the development and adoption of rural lands goals and policies, as well as designation of rural lands, during Douglas County's GMA planning process. (Ex R-034 through Ex R-43) The County adopted some but not all of the DCCP's rural lands goals and policies in the GEWAP. The record demonstrates years of public review and comment in the development of the GEWAP. Because of the requirement of integration and consistency between plans, we would expect the plans to be similar. It is clear that each of the elements of the plan had extensive public participation.

The Petitioners' claim that the Board failed to address the allegation of lack of enhanced public participation is misplaced. The Board addressed this in the final order and found there has been extensive public participation throughout the GMA process. The County has complied with the GMA and has met the public participation requirements of the Act.

The discussion of missing elements is beyond the scope of Issue 1. This will not be dealt with in this section. The Petitioners have not adequately demonstrated to the Board that the Douglas County Comprehensive Plan is missing certain requirements of a GMA plan.

**CONCLUSION**: The Board holds the County has complied with the requirements of the Act to establish a process for extensive public participation. The Board further finds this process was followed and the public had enhanced opportunities to participate in the adoption of the County-wide plan and the GEW portion of the Plan.

The Board finds the Petitioners' claim there are missing elements is beyond the scope of Issue 1 as briefed for the original hearing. However, a review of the record and briefing satisfies the Board that the Plan adopted by Douglas County contains the required GMA Plan elements alluded to by the Petitioners.

**ISSUE 2** - HAS DOUGLAS COUNTY FAILED TO ADOPT DEVELOPMENT REGULATIONS TO PROTECT CRITICAL AREAS, OR IF ADOPTED, DOES DOUGLAS COUNTY COMPREHENSIVE PLAN AND CRITICAL AREA REGULATIONS FAIL TO PROTECT CRITICAL AREAS AND THUS FAIL TO COMPLY WITH RCW 36.70A.060(2), RCW 36.70A.020(8),(9),(10), AND APPLICABLE PROVISIONS OF THE WASHINGTON ADMINISTRATIVE CODE (WAC 365-190-080(5) AND 365-195-410)?

**2. Petitioners are claiming the Board erred because it failed to properly interpret their second issue. The Petitioners are saying the County's development regulations protecting critical areas were required to be reviewed at the time of the Comprehensive Plan's adoption.**

The issues raised in the Petition for Reconsideration here exceed the scope of Issue 2 as adopted by the Board. In Issue 2 the Petitioners claimed the County has failed to adopt development regulations to protect critical areas. The Petitioner further claimed the Plan and Critical Area Regulations are inadequate. Nowhere did that issue speak to a requirement that the regulations be reviewed at the time of the Plan's adoption. This issue is beyond the scope of the original issue before us. Had this issue been properly before us, the County has shown the development regulations were correctly reviewed prior to final approval of the Comprehensive Plan and the Petitioners have failed to produce the evidence necessary to meet their burden of proof.

**CONCLUSION:** This issue is beyond the scope of the issue raised in the original action. However, the Board finds the County did review critical areas when the final Comprehensive Plan was passed and they did so in a manner consistent with RCW 36.70A.060(3) and .140. The record supports this finding. The Petitioners have failed to carry their burden of proof.

**ISSUE 3 -** WHETHER DOUGLAS COUNTY HAS FAILED TO ADOPT DEVELOPMENT REGULATIONS THAT CONSERVE DESIGNATED NATURAL RESOURCE LANDS, OR IF ADOPTED, WHETHER THESE AND THE DOUGLAS COMPREHENSIVE PLAN PROVISIONS FAIL TO COMPLY WITH RCW 36.70A.020 (5),(8),(10), RCW 36.70A060(1) AND (3), RCW 36.70A.070(1) AND RCW 36.70A.170 FAILING TO CONSERVE FOREST AND AGRICULTURAL LANDS AND BY ALLOWING INCOMPATIBLE DENSITIES AND USES IN AND ADJACENT TO SUCH LANDS?

**3A -The petitioners assert Issue 3 includes the claim the County failed to review interim natural resource lands development regulations at the time the plan was adopted and such review is subject to enhanced public participation requirements and a higher standard of clarity.**

The issue raised here was never part of Issue 3 and will not be considered now. Issue 3, as certified by the Board, asked whether the County failed to conserve such lands and allowed incompatible densities and uses in and adjacent to such lands. No mention of the review of such regulations is contained therein.

**3B - Additionally, the Petitioners contend the Board failed to consider and respond to their argument regarding the temporal and substantive interrelationship between the designation of resource lands and establishment of IUGAs.**

Issue 3 as adopted by this Board did not concern the improper designation of IUGAs and the Respondent had moved to strike this argument by Petitioners in their prehearing brief. The Board did not address this issue in the FDO and will not do so now. This issue is beyond the scope of the adopted Issue 3 and will not be decided here. It also appears the time for challenge of IUGAs, adopted June, 1992, is time barred.

**3C**: **The Petitioners are now stating they have new evidence that virtually no owner of land affected by the County's interim designations was in attendance at the interim and final proceedings on the regulations and "it can only be assumed" these owners were not properly notified of the proceedings or relied upon the proposed plan contents.**

This evidence referred to by the Petitioners is not before the Board at this time. The Board must presume the plan is valid and the Petitioners have not shown that the owners of land affected by such designations were not properly notified or why they did not attend the proceedings mentioned. From the facts before us we cannot assume the owners were not properly notified or why they did not attend.

**DISCUSSION**: The issue before the Board was whether or not the County failed to adopt development regulations that conserve designated natural resource lands or if adopted, whether they adequately conserve forest and agricultural lands. The County has done this. Nowhere did the issue include those raised in the Petitioners' Petition for Reconsideration.

The Petitioners contend existing agricultural resource lands are excluded from the protection that the GMA mandates. The GMA sets outer boundaries and leaves a lot of room for local discretion. In the area between East Wenatchee and Pangborn UGA and the "Bridge" area we see a mix of existing uses. If someone else had to do it, they might have done it differently. But, the County has broad latitude. Here the County is within the bounds of the Act.

**CONCLUSION**: The Partnership has raised issues in their Petition for Reconsideration which were not included in the original petition. The issues properly before the Board do not include the review of the interim natural resource lands development regulations at the time of plan's adoption, the requirement of enhanced public participation in such review and the arguments regarding the temporal and substantive interrelationship between the designation of resource lands and establishment of IUGAs, and will not be reviewed here.

The Petitioners' claim that no owner of land effected by the County's interim designations was in attendance at the interim and final proceedings on the regulations is not relevant to the issues before the Board. The Petitioners have provided no proof that proper notice was not provided. The Petitioners have failed to meet their burden of proof. The issue properly before the Board was decided correctly in the FDO and will not be changed.

**ISSUE 5.** WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.110 AND RCW 36.70A.020(1) AND (2) WHEN IT : (a) FAILED TO SHOW THAT ITS UGAs ARE SIZED APPROPRIATE TO ACCOMMODATE ONLY 20 YEARS OF GROWTH AT PROPOSED URBAN DENSITIES; AND, (b) FAILED TO EITHER ACCEPT THE CITY OF EAST WENATCHEE'S UGA OR JUSTIFY IN WRITING THE REASONS FOR NOT ACCEPTING THOSE RECOMMENDATIONS? (CITY 3.3) (c FAILED TO ESTABLISH AND APPROPRIATELY DOCUMENT PROPER JUSTIFICATION FOR THE MANNER IN WHICH POPULANTION HAS BEEN ALLOCATED BETWEEN AND AMONG THE UGAs?

**5A. The Petitioners claim the Board did not address the defects in the GEWA Plan and UGA as presented by them. No specific defect was cited in the Petition for Reconsideration.**

**DISCUSSION**: The Board did address the defects claimed by the Petitioners in the GEW Plan and the UGA. FDO at 10-11. The Board continues to find the evidence provided by the Petitioners is insufficient to overcome the presumption of the plan's validity. The County has demonstrated its work and no evidence of an incorrect designation has been presented.

**CONCLUSION**: The Board determines the County adequately showed its work in the development of the UGAs and without evidence such determination was incorrect, the petitioners have not carried their burden of proof and the County is found be in compliance with the GMA.

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**5B. The Petitioners contend the Board has failed to consider the policy wherein the County voluntarily agreed to a "cooperative and joint" designation of the UGA. Upon the alleged withdrawal of approval by the city of the UGA boundaries, the Petitioners claim the County failed to put in writing the reasons for not accepting the recommendations of the city.**

**DISCUSSION**: The evidence before the Board at the time of the Final Order showed the City concurred in the location of the Growth boundaries and therefore there was no need to justify in writing the reasons for the location. Had the City disagreed with the designations of uses within the UGA, nothing in the GMA requires the County to justify those in writing. Only disagreements in the boundary of the UGA, between the County and the City, must be justified in writing.

The Policy of the County to work with the Cities cooperatively and jointly to designate Urban Growth Areas, says nothing which would require a showing of their work or justification in writing. If such cooperation is not successful, the County must decide upon the boundaries and the uses of the lands within such boundaries.

**CONCLUSION**: The record supports the County's contention that the City did not object to the location of the growth Boundaries and therefore no explanation or justification is required. The Board further finds the County does not have to justify in writing their reasons for designations of uses within the UGA. The Petitioners have not shown that the acts of the County were in violation of the GMA.

**5C. The Petitioners additionally contend the Board has totally failed to recognize and analyze this issue in light of the "unique" nature of a regional goods center as opposed to merely "generic" commercial development.**

The contention the Board failed to recognize and analyze this in light of the "unique" nature of a regional goods center was not before the Board at the final hearing. We do not find a claim the County was not considering the broad range of commercial uses when the Bridge site was designated for commercial development. It was clear to the Board a Regional Shopping Center was being considered. This issue is clearly beyond the scope of the Issue approved by the Board. It will not be considered now.

**CONCLUSION:** The Board finds this Issue was addressed fully in the FDO and is not

persuaded by the Petitioners the result should be different. The Petitioners have not carried their burden of proof. The County has followed the law in its designation of UGAs and have properly shown their work. The impact of a regional retail center on the City of East Wenatchee is not properly before the Board.

**ISSUE 6** - WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN ESTABLISHES RESIDENTIAL DENSITIES AND USES OUTSIDE ESTABLISHED IUGAs AND UGAs THAT VIOLATE RCW 36.70A.020(1),(2),(5),(7),(8),(9),(10),(11), (12) AND (13) AND RCW 36.70A.110?

**6. The Petitioners assert the Board was mistaken by not declaring the Douglas County Comprehensive Plan invalid.**

**DISCUSSION**: The Petitioners did request an order of invalidity of the DCCP. This Issue was addressed in the FDO and not granted. We see no reason to reconsider this decision.

**CONCLUSION**: The Board does not believe that the Petitioners have proved by a preponderance of evidence that the DCCP is invalid or that an order of invalidity be entered.

**ISSUE 7** - WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN FAILS TO COMPLY WITH RCW 36.70A.020(1) AND (2), RCW 36.70A.110, AND RCW 36.70A.070 BY:

a. FAILING TO PRECLUDE URBAN GROWTH OUTSIDE DESIGNATED IUGAs AND UGAs; AND

b. FAILING TO CONTAIN THE REQUIRED CONTENT OF .070(1) THROUGH (6)?

**7A. In their Petition for Reconsideration, the Petitioners here are contending the Pangborn Field area was never considered a UGA until designated by the Intervenor in their brief. To have it considered as a UGA would violate the public participation requirements.**

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An examination of the record indicates the Appendix, where the UGAs are legally described, contains the detailed legal description of the Pangborn Field UGA. This has been part of the public record and gave notice to the public of the County's intention to use those lands in this manner. The Plan details how the "island" will be used. This use will exist no matter what that piece of property is called. All were informed of the purposes of this "Island".

If this was in fact an "Industrial Service Area" as the Petitioners contend, the Petitioners still have not shown this Board where the GMA has been violated. The City and the other Petitioners all state they do not disagree with the designation of this Field for the purposes called for in the

Plan. If anything went wrong, it might be the misnomer. However, as in most cases, we must look to the legal description for the location of real property. There is no contention by the parties that the County did not inform the public of the uses and size of the Pangborn GMA/ Industrial Area. We presume the parties were aware of the contents of Appendix C of the GEWACP at 158-9 and cannot now complain.

The question appears to be the legitimacy of the process in the designation of the Pangborn Field UGA. The County analyzed the need for Industrial lands in the County. They looked at Pangborn Airfield. Getting past labels, the County did go through the mental and public exercise to draw lines around the airport. The public knew what was to be at that site. What it was called on paper should not make a difference when we determine whether there was adequate public participation.

**DISCUSSION**: The Pangborn Field Area is listed in the Appendix where UGAs are listed and is recognized by this Board as such. Only the uses set out in the Plan will occur there unless the Plan is amended. No evidence was presented to this Board in the original final hearing showing the public has been misled or this was in fact something else. The Petitioners claim that Pangborn Field was presented as something else and therefore the public was misled. This is a new issue and not one before the Board at the time of the hearing. The response brief of the Petitioners did not raise this issue at the time of the initial final hearing after the Intervenor prehearing brief was filed. Even if we were to consider this, the Board believes the Public had notice of the uses and nature of the Area and the Plan contains those uses and the designation of the area as an UGA would not require more public participation.

**CONCLUSION**: The issues dealing with the industrial areas are resolved in favor of the Respondent. The Petitioners have failed to carry its burden of proving the public was in any way misled or there was inadequate public participation. The issue raised by the Petitioners in their Petition for Reconsideration was not raised in the original hearing and is not properly before us now.

**7A. The Petitioners contend the Board has failed to address the content defects of the GEW Plan and DCCP illustrated in Petitioner's Brief.**

**DISCUSSION:** The Petitioners, in their Prehearing Brief at 7.11, contend the Plan does not contain a Rural Element consistent with the statutorily requirements. The Petitioner's Prehearing Brief at 7.14 notes RCW 36.70A.070 requires a "Plan, scheme, or design" for each of the required elements but makes no specific claim the Plan is deficient in this regard.

The Petitioners claim the Rural Element was "missing" from the GEAP at the time the DEIS was issued for the GEWAP. They further claim there are no rural lands in the area covered by the

DCCP. PPB at 3.14 No evidence is given to the Board supporting this claim.

The GMA requires the Counties to have a rural element that includes lands not designated for urban growth, agriculture, forest or mineral resources. RCW 36.70A.070(5). The completed Comprehensive Plan of Douglas County includes a Rural Element. While these lands are designated by actual name places, the Plan does have "lands that are not designated for urban growth, agriculture, forest or mineral resources."

**CONCLUSION:** The Petitioners have not provided this Board with any new argument which would lead us to change our decision on this issue. The County has properly designated the Rural Element in all aspects of the Plan. The Rural Element of the DCCP is consistent with RCW 36.70A.070(5) except for the items to be corrected on remand. The Board's Final Decision and Order is amended to include this finding. Other challenges raised by the language of Issue 7(b), but not addressed by petitioners, are abandoned.

**7C. The Petitioners claim the board failed to address the claim that the Plan failed to address the Housing Element.**

**DISCUSSION:** The Petitioners cite 7.12 in their PPB to support their argument. They claim there is "no inventory and analysis of existing and projected housing needs" and "No statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single family residences". The Prehearing Briefs of the Respondent and the Intervenor and a review of the record clearly show the Comprehensive Plan contains such requirements. The Plan at 31-39 includes the required Housing Element goals, policies and objectives(implementation criteria). Additional implementation criteria are included in the DCCP through the urban and subarea plans. For example, GEWACP at 129-132 covers Implementing Affordable Housing in the sub-area where the vast majority of affordable housing will be located and GEWACP at 44-48 give additional goals and policies. The Plan's policies at 33 provide the mandatory provisions concerning the preservation and improvement of housing and unnumbered policies 4 and 6 in DCCP at 33 and 1 in DCCP at 343 provide the mandatory provisions concerning the development of housing. The County's brief on reconsideration provides additional evidence of such compliance.

**CONCLUSION:** The Comprehensive Plan clearly has the "inventory and analysis" required by RCW 36.70A.070(2)(a) and the "statement" required by RCW 36.70A.070(2)(b). The Plan therefore has addressed the requirements of RCW 36.70A.070(2)(a) & (b). The County has fully complied with the requirements of the Act with regards to the Housing element. The Boards Final Decision and Order is amended to include this finding.

**ISSUE 8**: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.110

AND RCW 36.70A.020(1),(2) AND (12) BY FAILING TO PROVIDE THAT NEW URBAN GROWTH SHALL BE LOCATED FIRST IN AREAS ALREADY CHARACTERIZED BY URBAN GROWTH THAT HAVE EXISTING PUBLIC FACILITIES AND SERVICE CAPACITIES TO SERVE SUCH DEVELOPMENT?

**8. The Petitioners claim the industrial service boundary surrounding the Pangborn Airport area should not be given effect as a UGA, as to do so violates the objectives of GMA planning.**

**DISCUSSION:** The Petitioners have not cited legal authority nor additional evidence such a designation violates the GMA. They argue the Board should not have allowed the Legal descriptions of the UGAs in the Plan to demonstrate where the Pangborn Airport UGA is. The UGAs are legally described in the Plan's Appendix and the Petitioners have not shown the Board anywhere else we should look to identify UGAs. The maps and the legal descriptions all show the Pangborn Airport as a UGA.

**CONCLUSION**: The petitioners have failed to carry their burden of proof. The presumption of validity remains. The Board finds no reason to modify this section of the Final Order.

**ISSUE 10:** WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN (THE PLAN) IS INVALID AS IT PERTAINS TO UGAs BECAUSE IT IS , BY A PREPONDERANACE OF THE EVIDENCE, CONTRARY TO .070,.100,.110, .140, .150, .160, .200, AND THE COUNTY CPPS?

**10A. The Petitioners claim the Board has totally avoided their arguments and proofs the Board of County Commissioners were motivated by impermissible factors.**

**CONCLUSION**: The evidence presented does not support the claim the Commissioners were motivated by impermissible factors. We are directed to determine if the County is in compliance with the GMA, not what its motivation is. It is clear the Petitioners disagreed with the decision made. The question of motivation was not an issue before the Board. The Board will not modify its decision on this Issue.

**10B. The Petitioners claim the Board has totally avoided the Petitioners' arguments and proofs the Board of County Commissioners relied upon erroneous information provided by staff.**

**CONCLUSION**: No evidence has been provided of erroneous information presented to the Commissioners. This issue was not an issue before the Board. It will not be explored now.

**10C. The Petitioners further claim the Board has totally avoided their arguments and proofs the Board of County Commissioners made fundamental and significant changes to the proposed plan without notice of the opportunity to comment**.

Again, we have been provided with no evidence supporting this allegation. The County has given this Board substantial evidence supporting their claim the Public had considerable opportunity to comment. There is nothing rebutting this evidence or the presumption of validity. Even with considerable public input, the County must make the decision. Many times the public or a portion of the public disagrees with a decision under the GMA. The County Commissioners make the final decision.

**DISCUSSION**: The Board's role is not to determine whether the County Commissioners made the correct decision among the legitimate choices before them Our role is to determine whether the choice they made fell within the ambit of the GMA. This is an inherently different question from what the voters might have at an election. The County made a valid decision.

The Petitioners are asking the Board to reconsider the refusal to invalidate the Plan. RCW 36.70A.300(2)(a) authorizes a declaration of invalidity if the "plan or regulations would substantially interfere with the fulfillment of the goals of this chapter." The violation or violations of the Act by the County must be such that allowing them to continue with only a remand would be interfering with the fulfillment of the goals of the Growth Management Act . The only violations found by this Board were minor and do not rise to the level required by the statute. The other questions raised by the Petitioners here are answered in favor of the County.

**CONCLUSION:** The public has had a meaningful opportunity to participate in the planning process through citizen committees and boards, as well as testimony at public hearings and oral and written comments.

The request by the petitioner to reconsider our Order and to declare portions of the Plan invalid is denied. The Petitioners have not carried their burden of proof and the presumption of validity is not rebutted.

**ISSUE 12**: WHETHER THE PLAN'S PROVISIONS FOR NATURAL RESOURCE LANDS ARE CONSISTENT WITH THE REQUIREMENTS OF RCW 36.70A.170, .070 (1), .030 (2), AND RCW 36,70A.020 (8), (9) AND (10)?

**12. The Petitioners claim the Board has failed to accurately apply the definition of agricultural resource lands of long term commercial significance and should have concluded that the lands surrounding East Wenatchee are already characterized by urban growth. They cite 12.2-12.4 of their prehearing brief.**

**DISCUSSION:** The only evidence the Board has been shown that supports this contention is an aerial photograph. That photograph shows farm land in the subject area and single family homes and the availability of domestic water. The fact that there are some subdivisions in the area does not eliminate the area as agricultural lands of long term commercial significance. The Board was not given any information concerning the production in the area or soil makeup or anything to challenge the designation as agricultural lands. The County does not carry the burden of proof of coming forward with evidence the land is in fact lands of long term commercial significance. The GMA sets outer boundaries and considerable room for local discretion.

**CONCLUSION:** The Petitioners have not come forward with evidence which, when standing alone, overcomes the presumption of validity.

**ISSUE 14**: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.020 (10), RCW 36.70A.040(3), AND WAC 365-190-020 BECAUSE ITS COMPREHENSIVE PLAN WAS BASED UPON AND DEVELOPED BY USE OF AN INAPPROPRIATE PLANNING SCHEMA WHICH IMPROPERLY EXCLUDED LANDS FROM CONSIDERATION AND CONSERVATION DUE TO THE PRIOR AND\OR CONTEMPORANEOUS ESTABLISHMENT OF AN IUGA?

**14. The Petitioners cite no error in the Board's finding on this issue. They list issues 2, 3 and 12 as incorporated, and nothing more.**

**DISCUSSION**: The Board will not guess what the Petitioner wishes it to reconsider. The Board has reviewed the arguments of the Petitioners and see no reason to change our Final Order on Issue 14.

**CONCLUSION**: The Petitioners have failed to carry their burden of proof and come forward with sufficient evidence to show the Respondent has failed to designate and conserve resource lands.

**ISSUE 16:** WHETHER THE PLAN'S CAPITAL FACILITIES ELEMENT VIOLATES RCW 36.70A.110(1), (3), AND (4) BY PLANNING FOR THE EXTENSION OF URBAN SERVICES IN RURAL AREAS?

**16. Petitioners cite no error here but refer to previous argument in Issues 2, 3, and 12 and incorporates them by reference.**

**DISCUSSION**: The Petitioners cite no error in the Board's Order in Issue 16. The Board continues to find there is nothing in the record to support the contention resource lands are

included in the GEWUGA.

**CONCLUSION**: The Board sees no reason to modify its Order regarding Issue 16. No new argument is made and the Petitioners have not carried their burden of proof.

**ISSUE 18**: WHETHER THE GEWAC PLAN FAILS TO COMPLY WITH RCW 36.70A.210, .100, .110, AND WAC 365-195-300, -305, 510, -520, -530 BECAUSE IT IS NOT CONSISTENT WITH THE DOUGLAS COUNTY ADOPTED CPPs, INCLUDING BUT NOT LIMITED TO POLICIES 1, 2, 3, 6, 7, 9 AT PAGE 4 AND 5; POLICIES 1, 2, 3 AND 4 AT PAGE 6; POLICY 1, 3, 4 AND 7 AT PAGE 7; POLICY 1 AT PAGE 9; AND POLICY 3, 4, AND 5 AT PAGE 10?

**18. The Petitioners claim the Board has evaluated these issues within the context of the erroneous decisions addressed in previous issues discussed herein. They ask this Issue be reevaluated in light of the Board's reconsideration of the totality of this Petition for Reconsideration.**

**DISCUSSION**: This Issue in the original petition is long and complex. The Petitioners fail to say what are the errors to be found in the detailed and lengthy opinion on this Issue. We will not guess. The limited changes made in the Final Order will not require changes to the decision given on this Issue.

**CONCLUSION:** The Board will not modify the FDO on this issue.

**ISSUE 19**: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 326.70A.140, RCW 36.70A.020(11), AND WAC PROVISIONS IMPLEMENTING THOSE SECTIONS BY FAILING TO PROVIDE FOR HEARINGS ON A TRULY COMPREHENSIVE PLAN, FAILING TO PROVIDE FOR BROAD DISSEMINATION OF PROPOSALS, FAILING TO PROVIDE FOR OPEN DISCUSSION OF THOSE PROPOSALS, FAILING TO RESPOND TO PUBLIC COMMENTS, AND FAILING TO SHOW THEIR WORK RELATING TO PROPOSALS ACTUALLY ADOPTED?

**19. Petitioners request reconsideration of 19.3-19.8, but has failed to tell the Board what they wish it to reconsider**.

**DISCUSSION**: The Board has reviewed the arguments previously made by the Petitioners and find no reason to reconsider its decision on this issue. The County has shown extensive public participation, response to public comments and its work when required by the Act. The County has detailed the months of public hearings, time for written comments and other input prior to adoption of the final plan. The size and location of the commercial site at the bridge was never a

"totally new concept" during the GEW planning process. The County Commissioners received input from the public and made their decision.

**CONCLUSION**: The Board denies the Petitioners' request for reconsideration on this issue.

## V. MISCELLANEOUS ISSUES

**A**. The Petitioners now argue the Board has been misled by Douglas county and the GMA process was used to accomplish a predetermined result, a shopping mall near the Odabashian Bridge.

The Petitioners claim the Respondents assured us the development would occur sometime in the 20 year future and it was not known when. They now seek to have evidence admitted to show otherwise. This evidence is not pertinent, the Board was not relying upon some contention the site would remain undeveloped for years. The Board looked at the manner of the designation and if correct, we would not consider the timing of a development as relevant. **The Board finds in favor of the Respondent on this issue.**

**B**. The Petitioners claim the land at the Bridge was agricultural resource land of long term commercial significance. No evidence is before the Board which would support the contention that this land was agricultural resource lands and the presumption of validity remains. The Petitioners have not carried their burden of proof. **The Board finds for the Respondent**.

**C**. The Petitioners claim the County Commissioners engaged in active contact with a proposed developer of an Odabashian Bridge area shopping mall prior to the issuance of the Board's final decision and order. The Board does not have any evidence of any improper contact with the County before it. Contact such as described by the Petitioners, with nothing more, does not violate the GMA. **The Board finds in favor of the Respondent**.

**D**. The attorney for the Petitioners, Citizens for Quality of Life in Douglas County, contends the Board has not mentioned or considered these Petitioners in the FDO. This Petitioner did not file an independent prehearing brief. The Board referred to "Petitioners" throughout the Decision and Order. Upon review of their own attorney's pre hearing brief, little, if any, mention was made by him of these petitioners. **However, the FDO is hereby revised in order that the "Procedural History" section specifically includes this Petitioner as being a party.**

**E.** The Petitioners attorney contends this Board should reconsider our FDO as a result of the defeat of two of the three County Commissioners that adopted the DCCP. I am sure Mr. Tracy informed his clients that there is a well settled distinction between public participation and

"letting the public decide." The Board does not decide if the choice of the County was politically correct, we decide only if it complies with the law. Extensive local discretion is allowed under the GMA. The County Commissioners make their choice. The Board is not persuaded by the Petitioner's argument. **The Board finds in favor of the Respondent**.

**F.** The Petitioners go on to state it is their belief the GEWA UGA is the City of East Wenatchee's UGA, rather than the County's, and the City should control its designation. RCW 36.70A.110 declares that the Counties have the final authority to adopt UGAs, not the cities. The GEWA UGA is the City's UGA, but the County makes the designation under the GMA. **The Board finds in favor of the Respondent**.

## VI. ORDER

Having reviewed the above-referenced documents, the file and record in this case and the arguments of the parties, and having deliberated on the matter, the Board enters the following Order:

1. The Motion for Admission of Supplemental Evidence, request to take official notice and correction of a reference in prehearing brief, is **DENIED.**

2. Intervenor's Motion To Strike Petitioners' Exhibits Attached to Petition for Reconsideration/invalidity is **GRANTED.**

3. The request for an Emergency Order of Invalidity is **DENIED.**

4. The Boards Final Decision and Order is modified by the addition of the following language:

A. The Procedural History found in the Final Decision and Order herein is amended as follows adding a new paragraph:

"**On June 17, 1996, Citizens For Quality of Life in Douglas County, by and through their attorney, James C. Tracy, filed a Petition for Review and Request For Consolidation."**

B. The final paragraph found in Issue 3, Conclusion, Final Decision and Order, is amended as follows:

"The density of cluster developments allowed by Douglas County outside UGAs and within agricultural resource lands designation areas is incompatible with agricultural use and would be urban in nature and should be prohibited outside the UGA. RCW

36.70A.110(1) and RCW 36.70A.020(8). This section of the Plan is remanded to prohibit clustering, an urban or rural use, from occurring on agriculture or other resource lands. **The County may, if it finds it appropriate, delete cluster development, to address these or other concerns.** The DCCP further needs to include a maximum residential density for rural non-resource lands. The DCCP ….”

C. The FDO is amended by adding the following paragraph to the Conclusion in Issue No. 7:

**“The Rural Element of the DCCP is consistent with RCW 36.70A.070(5) except for the items to be corrected on remand. The County has fully complied with the requirements of the Act with regards to the Housing element and has addressed the requirements of RCW 36.70A.070(2)(a) & (b).”**

D. Except for the changes addressed above, the remainder of the Petitioners’ Petition for Reconsideration is denied.

SO ORDERED this 20th day of March, 1997.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

_____
Dennis A. Dellwo, Presiding Officer

_____
Judy Wall, Board Member

_____
D. E. “Skip” Chilberg, Board Member