

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

LILA HOWE,	)	
	)	
Petitioner	)	Case No. 97-1-0001
	)	
vs.	)	<b>FINAL DECISION AND ORDER</b>
	)	
SPOKANE COUNTY,	)	
	)	
Respondent	)	
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**I. Procedural History**

On January 17, 1997, Lila Howe, of Spokane, Washington, filed a Petition for Review with the Eastern Washington Growth Management Hearings Board.

Petitioner alleges that Spokane County failed to meet the requirements of RCW 36.70A.140 while establishing the proposed Interim Urban Growth Area (IUGA) boundaries.

On February 20, 1997, the Board held a prehearing conference in Spokane and on March 3, 1997 issued its Prehearing Order defining two issues and setting the briefing and hearing schedule.

On March 12, 1997, Respondent filed a Motion to Dismiss moving for an Order dismissing the petitioner's petition on the grounds the petition was untimely because the County had not adopted Interim Urban Growth Area Development Regulations; the petition fails to state a claim of which relief can be granted, and the petition raised issues which are beyond the jurisdiction of the Growth Management Hearings Board.

On March 25, 1997, the Board held a teleconference motion hearing.

On April 1, 1997, the Board issued its order finding 1) the petition was timely filed but arguments on the substance of the IUGAs would not be heard in this petition; denying Respondent's motion

for dismissal of the Petition for its failure to state a claim and granted Respondent's motion to dismiss issue relative to RCW 43.52.383(1) for which the EWGMHB has no jurisdiction.

## **II. Findings Of Fact**

1. On October 18, 1993, by Resolution #93-1294, the Board of County Commissioners entered into a Consultant Agreement with Langlow/Hall Associates to develop and facilitate a public participation process and recommendations for continuing public participation throughout the planning process under the Growth Management Act. Exhibit 1B and 1C.

2. On December 20, 1994, the Board of County Commissioners executed a GMA Joint Planning Interlocal Agreement with Airway Heights, Cheney, Deer Park, Fairfield, Latah, Medical Lake, Millwood, Rockford, Spangle, Spokane and Waverly.

The GMA Joint Planning Interlocal Agreement established a Steering Committee to provide recommendations to the Board of County Commissioners, a Growth Management Advisory Committee and a technical support committee.

The IUGA Steering Committee 2 Year Work Program convened 39 regularly scheduled meetings, with opportunity for public comment at each meeting.

3. On December 6, 1994 Spokane County adopted County-wide Planning Policies and Environmental Analysis for Spokane County. In this document, beginning at page 5, "The Initial Public Participation Process", Phase 1 of the formal public participation process, conducted during the spring of 1994, included the following activities:

- interviews...to identify key issues..
- 600 person random sample telephone survey...
- 6 large, county-wide public meetings that received approximately 40 to 60 people per open house
- 96 small, individual hosted open house/coffee hours that received ..from 5 to 200 people per open house
- produced "Preparing for Growth", a 14 minute information video on Spokane County trends and GMA
- prepared and distributed 4,500 packets of GMA related information including "Preparing for Growth", a 10-page informational handout on Spokane County trends and GMA and "GMA Fact Sheet", a 1-page informational sheet

- designed a monthly GMA newsletter.. with a circulation of approximately 4,500
- set up a GMA telephone hotline for general information and calendar of events
- conducted speaking engagements on GMA to interested organization and clubs”

A written report on Phase 1 entitled “Citizen Report Spokane County, Growth Management Citizen Participation, Final Report Phase One was presented to the Steering Committee in May, 1994 for their use in developing the County-wide Planning Policies.

“Phase 2 of the public participation process, occurring during September and October of 1994 included the following activities:

- 5 large, county-wide open houses that received approximately 15 to 30 people per open house
- 20 small, individually hosted open house/coffee hours
- produced an update of “Preparing for Growth”, a 10-minute information video on the County-wide Planning Policies and GMA
- prepared and distributed 4,500 summaries of the Draft County-wide Planning Policies document
- prepared and circulated 170,000 tabloids (newspaper inserts of the Draft...)
- continued other procedures from Phase 1.”

A written report, entitled “Draft County-wide Planning Policies Public Opinion Questionnaire for Spokane County”, regarding Phase 2 was presented. To provide opportunity for more public comment, the Steering Committee held a public forum on October 20, 1994. It was broadcast on Government Cable Channel 5 and lasted approximately 3 ½ hours. The Steering committee forwarded its final recommendation to the Board of County Commissioners.

4. The Board of County Commissioners held public hearings on January 22, 1997, January 25, 1997, February 3, 1997 and February 5, 1997 prior to adoption of the IUGAs.

### **III. Issues And Discussion**

#### **ISSUE #1: WHETHER SPOKANE COUNTY FAILED TO ACT TO ESTABLISH PROCEDURES FOR PUBLIC PARTICIPATION?**

##### **Petitioner’s Position:**

The petitioner argues Spokane County must not only comply with the enhanced public participation requirement of RCW 36.70A.140, but must also establish written documentation of

the procedure to satisfy this requirement. The petitioner further maintains the “interim” nature of the IUGA boundary does not justify the failure to adequately address the public participation requirements of the Act.

**Respondent’s Position:**

The respondent renews its objection to issue #1 from the motion to Dismiss as “untimely because the County has not yet adopted Interim Growth Area Development Regulations” and the petition fails to state a claim upon which relief can be granted. This motion was dealt with in our response to the Respondent’s Motion to Dismiss. The County asserts their only duty is to provide for early and continuous public participation in the development of the comprehensive land use plans and the plan’s implementing development regulations. The county also asserts the establishment of the IUGA is not a step in the comprehensive land use plan and they are therefore not required to comply with Chapter 36.70A.140.

**Discussion:** RCW 36.70A.020(11) provides: “Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts”. RCW 36.70A.110(5) in part provides: “Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act (SEPA)....” This is a separate provision of the act and deals only with the establishment of interim urban growth areas.

The County entered into a consultant agreement with Langlow/Hall Associates to develop and facilitate a public participation process and develop recommendations for continuing public participation throughout the planning process under the GMA. Exhibit 1B and 1C.

The Board of Spokane County Commissioners on December 20, 1994 executed a Growth Management Act Joint Planning Interlocal Agreement with Airway Heights, Cheney, Deer Park, Fairfield, Latah, Medical Lake, Millwood, Rockford, Spangle, Spokane and Waverly. Exhibit 1A. This agreement recognized it was in the public interest for local governments to cooperate with each other and coordinate their respective obligation for planning under the GMA. The County established a steering committee to perform certain duties and provide recommendations to the Board of County Commissioners. It also established a Growth Management Advisory Committee and a technical support committee.

After the steering committee held 39 scheduled meetings with time at each for public comments, they submitted recommendations for IUGAs and development regulations to the Board of County Commissioners. The Board then held 4 public hearings, executed Findings and Decision and adopted the Interim Development Regulations designating IUGAs.

Spokane County conducted a 600 person random sample telephone survey, held 6 large county-wide “public meetings, 96 small, individually hosted open house/coffee hours, produced 3 “Preparing for Growth” videos, distributed 4,500 packets of GMA related information, prepared and distributed 4,500 packets of GMA related information including “Preparing for Growth”, circulated a monthly GMA newsletter to approximately 4,500 people, set up a GMA telephone hotline for information and calendar of events, spoke at different organizations and clubs, sent out press releases to print, electronic media, and cable TV and had 2500 folks participate in a program called “Meeting in a Box”.

The petitioner maintains the county has not met the spirit of the law because they failed to hold public meetings after effective notice, provision for open discussion, communication programs, information services and consideration of and response to public comments.

The Board disagrees. Spokane County not only met the requirements of RCW 36.70A.020(11) and RCW 36.70A.110(5) but has gone beyond those requirements. The record is clear.

**Conclusion:** Spokane County has met the requirements of RCW 36.70A.020(11) and RCW 36.70A.110(5). The public participation requirements for the establishment of the IUGAs have been complied with.

**ISSUE #2: WHETHER ESTABLISHING INTERIM URBAN GROWTH AREA BOUNDARIES (IUGA) IS ONE STEP IN THE COMPREHENSIVE LAND USE PLAN FOR SPOKANE COUNTY PLANNING UNDER RCW 36.70A, AND HAS SPOKANE COUNTY, UNDER RCW 36.70A.140, MET THE REQUIREMENT OF ESTABLISHING PROCEDURES FOR EARLY AND CONTINUOUS PUBLIC PARTICIPATION IN THE DEVELOPMENT OF COMPREHENSIVE LAND USE PLANS?**

**Petitioner’s Position:**

The petitioner argues the IUGA is a big part of a comprehensive plan. They are used to designate and protect the lands until the Final Urban Growth Area (FUGA) is established. The area designated as the IUGA can be added to or reduced by the FUGA. The petitioner argues the IUGA is the first step of the FUGA and therefore a part of the “development of the Comprehensive plan” for purposes of the public participation requirements of RCW 36.70A.140.

**Respondent’s Position:**

The respondent contends the IUGAs are “interim”. IUGAs by necessity precede the comprehensive plans. This does not, however, bring IUGAs within the purview of enhanced

public participation which is applicable only “in the development and amendment of comprehensive land use plans and development regulations implementing such plans.” RCW 36.70A.140.

**Discussion:** The Growth Management Act (GMA) requires the County to “establish procedures providing for early and continuous public participation in the development, and amendment of comprehensive land use plans and development regulations implementing such plans.” RCW 36.70A.140 (1990 version). The petitioner contends the County has failed to comply with this section of the Act in the designation of the IUGAs.

The Respondent asserts they do not have to comply with RCW 36.70A.140 in the designation of IUGAs, although they may well have done so. The State Legislature adopted separate public participation requirements when they adopted the direction to establish the IUGAs. RCW 36.70A.110(5). If the Legislature had wanted the County to meet the requirements of RCW 36.70A.140, it would have been easy for them to do so. It did not. The Board finds that Spokane County has more than complied with the requirements of public participation in the establishment of the IUGAs. See decision in Issue 1.

The Board agrees with the respondent that IUGAs are interim, which is to say, they have a limited life. The policy purpose and effect of an IUGA ceases upon the adoption of a Comprehensive Plan which must include FUGAs. Assoc. of Rural Residents v. Kitsap Co. CPSGMHB #93-3-0010 (Final Decision and Order, June 3, 1994) at pg. 414. The fact that IUGAs by necessity precede the comprehensive plans means that they will not be a part of the comprehensive plans.” Assoc. of Rural Residents v. Kitsap Co., supra at 415.

The Board believes the IUGA is an important part of the process prior to the adoption of the comprehensive plan. It is intended to designate and protect lands until such time the FUGAs are adopted.

The Board also believes the process of designating IUGAs does not require the same public participation required for the development and adoption of the comprehensive plan. RCW 36.70A.140.

The County’s “Regional Public Participation” plan was appropriate. They are required by the Act to “insure coordination between communities and jurisdictions to reconcile conflicts.” RCW 36.70A.020(11). The County Plan covers the county and must take the whole area into consideration when the Plan is developed.

**Conclusion:** The Board finds that the County, in its designation of IUGAs, is to provide the public participation required in RCW 36.70A.020(11) and RCW 36.70A.110(5) and they have done so.

#### **IV. Order**

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board :

1. Finds Spokane County has complied with the GMA public participation requirements for the designation of IUGAs.

2. Finds Spokane County is not required to meet the public participation requirements found in RCW 36.70A.140 in the designation of IUGAs, but must meet the requirements of both RCW 36.70A.020(11) and RCW 36.70A.110(5) and finds Spokane County is in compliance with the Growth Management Act.

SO ORDERED this 19<sup>th</sup> day of June, 1997.

EASTERN

WASHINGTON

GROWTH MANAGEMENT HEARINGS

BOARD

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Judy Wall, Presiding Officer

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Dennis A. Dellwo, Board Member