

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

ROBERT W. and JANE A. SALNICK, : Case No.: No. 97-1-0020
and DENNIS DUERR, :
 Petitioners, : **FINAL DECISION AND ORDER**
v. :
 :
SPOKANE COUNTY, :
 Respondent. :

I. Procedural History

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On September 15, 1997, Robert W. and Jane A. Salnick and Dennis Duerr filed a Petition for Review with the Eastern Washington Growth Management Hearings Board.

On September 23, 1997, the Board issued a Notice to the parties setting the time, date and place for the prehearing conference and tentatively scheduling a Hearing on the Merits.

On October 21, 1997, the Board held its Prehearing Conference in Spokane, Washington. The issues were determined and a briefing and hearing schedule set. All parties were present or represented.

On February 2, 1998, Petitioners filed their prehearing brief and on February 23, 1998, Respondent filed its prehearing brief.

Petitioners chose not to file a reply brief and waived appearance at a hearing on merits. Respondent rested on their written briefing.

II. Findings of Fact.

1. On April 8, 1997, Spokane County Commissioners adopted Findings and Decision #97-0321 in the matter of the Allocation of the 20 year Growth Management Population Projection and Adoption of the Spokane County Interim Development Regulations Designating Interim Urban

Growth Areas. (R-1).

2. On September 16, 1997, the Board of County Commissioners by Resolution #97-0874 (R-9) adopted certain amendments to Section 7 of the Spokane County Interim Development Regulations allowing applications seeking mining rezones outside of the urban growth areas and outside designated natural resource lands of long-term commercial significance.

III. Legal Issues and Discussion.

Issue 1: Whether or not Resolution #97-0874 is in violation of WAC 365-195-330 in that it allows commercial excavation and processing of minerals in rural areas outside designated mineral resource lands.

Petitioner's Position: The Petitioners contend the processing of minerals is incompatible with rural zoning and Spokane County has sidestepped WAC 365-195-330 by allowing commercial mining activities in designated rural areas.

Respondent's Position: Spokane County maintains WAC 365-195-330 only applies to the Comprehensive Plan, and has no applicability to the Interim Development Regulations or the amendments thereto. The County also states the amendments are consistent with the WAC recommendation that the county adopt policies including "(ii) continuation of agricultural uses, the cultivation of timber, and excavation of mineral resources on lands not designated as possessing long-term commercial significance for such uses."

Discussion: WAC 365-195-330 provides in part: "RURAL ELEMENT. (1) Requirements. This element is required only of counties. This element shall include lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities. (2) Recommendations for meeting requirements. ... (c) Adoption of policies for the development of such lands, including:(i)Identification of the general type of uses to be permitted; ii) Provision for a variety of densities for residential, commercial, and industrial development consistent with the maintenance of the rural character of the area. ... (iv) Determination of appropriate buffers between agricultural, forest and mineral resource lands of long-term commercial significance and rural lands. ...(d) Adoption of policies for preservation of the rural

character of such lands, including: (i) Preservation of critical areas, consistent with private property rights; (ii) Continuation of agricultural uses, the cultivation of timber, and excavation of mineral resources on lands not designated as possessing long-term commercial significance for such uses; ..." —

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The Act requires the County to designate natural resource areas to protect agricultural uses, the cultivation of timber and excavation of mineral resources on lands possessing long-term commercial significance for such uses. This requirements does not prohibit these same activities from occurring in Rural Areas. When the Act requires the designation of natural resources areas its intent is to protect those areas but not to exclude those activities from other areas. For example, a county could designate and protect large areas of agricultural land for the production of apples. That does not mean you cannot raise apples other than in those designated areas.

Activities in Rural Areas, however, must be compatible with the rural character of such lands. RCW 36.70A.070(5) states: "(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element: ... (b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, ... other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character. (c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: (i) Containing or otherwise controlling rural development; (ii) Assuring visual compatibility of rural development with the surrounding rural area;..."

Conclusion: The Growth Management Act does not prohibit excavation of mineral resources from Rural Areas. The Board finds Resolution #97-0874 does not violate the Act.

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Issue 2: Whether or not Resolution # 97-0874 permitting commercial mining activity of long-term significance to exist outside designated mineral resource lands is in violation of RCW 36.70A.170 (c).

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Petitioner's Position: The Petitioner contends WAC 365-195-330 (2)(d)

(ii) restricts mining activities in non-mineral resource lands to lands "not possessing long-term commercial significance."

Respondent's Position: Spokane County acknowledges that Resolution No. 97-0874 permits a rezone application to be made for excavation and processing of mineral resources outside of designated mineral resource lands, but maintains Section (c) of RCW 36.70A.170 requires designation of mineral resource lands where appropriate and does not prohibit application for rezones for excavating and processing of mineral resources outside of designated mineral lands.

Discussion: RCW 36.70A.170 (c) provides that each county shall designate where appropriate: "...mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals, and ..." The Growth Management Act does not prohibit a county from permitting rezone applications which could allow the extraction of mineral resources in rural areas. The rezone application would be subject to the county hearing process to determine compliance with all applicable zoning regulations and state law. Spokane County has a process in place to review those applications for rezone.

In the County's review of an application for rezone, the County must determine whether such changes would be in compliance with the Growth Management Act. Such rezones must be compatible with the rural character of such lands. The Board would encourage interested parties to provide the county with comments regarding an application for rezone at the time the county is considering such application. It is important at that time for the county to hear how such a change would impact the rural character of the area.

Conclusion: The provision that allows a landowner to submit an application for rezone, allowing mining to occur in rural areas, is not itself contrary to the Growth Management Act. However, the county, in the review of these applications, must be guided by the Act and ensure consistency with rural character of such lands. The Board finds Resolution #97-0874 does not violate the Act.

IV. ORDER.

1. The Board finds Resolution #97-0874 is not in violation of the Growth Management Act.

2. The Board finds Resolution #97-0874 is not in violation of RCW

36.70A.170(c).

This is a final order for purposes of appeal.

Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.

SO ORDERED this 25th day of March, 1998.

**EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS**

BOARD

Judy Wall, Presiding Officer

D. E. "Skip" Chilberg, Board Member

Dennis A. Dellwo, Board Member