State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

SADDLE MOUNTAIN MINERALS, L.L.C., a Washington corporation, and GARY MAUGHAN, Petitioners	)	Case No. 97-1-0022
vs.	)	**FINAL DECISION AND ORDER**
CITY OF RICHLAND, Respondent	)	

I. Procedural History

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On December 4, 1997, Saddle Mountain Minerals, a Washington corporation, and Gary Maughan, by and through their attorney Gregory S. McElroy, filed a Petition for Review of the City of Richland Comprehensive Plan adopted by Ordinance No. 26-97 October 6, 1997.

On December 31, 1997, Petitioners filed an Amended and Restated Petition for Review.

On April 17, 1998 the parties entered into an agreement to stay this appeal pending good faith progress and satisfactory completion of tasks outlined in the agreement.

In January, 1999, Petitioners filed Motion to Set Briefing Schedule.

On January 29, 1999, the Board issued an Order Amending Briefing Schedule.

On February 22, 1999, Petitioners filed Motion for Extension of Time and Motion for Leave to Amend.

On February 23, 1999, the Board held a telephonic hearing to address the motions.

On February 24, 1999, the Board issued its order granting motion for extension of time and setting the Motion for Leave to Amend to be heard prior to the March 10 dispositive motion hearing.

On March 10 and 11, 1999, the Board held a motions hearing by teleconference. All parties were present or represented.

The Board found that Issue No. 5 claiming the City of Richland failed to designate mineral resource lands, was not moot. The other issues were dismissed. Petitioner's Motion for Leave to Amend was denied .

On April 22, 1999, the Board held a Hearing on the Merits at the Richland City Hall, Richland, Washington. Present were Judy Wall, Presiding Officer, Skip Chilberg and Dennis Dellwo, Board Members. All the parties were present or represented.

II. Findings of Fact.

1. The City of Richland on October 6, 1997, adopted its City Comprehensive Plan pursuant to the Growth Management Act. (September 1997 City of Richland Comprehensive Plan)

2. The City of Richland's Comprehensive Plan dated September, 1997, did not address mineral resource lands.

3. On April 7, 1998, the petitioners and the City of Richland entered into an agreement which extended the time for hearing the petition filed by the Petitioners and allowed the City to address the issues raised.

4. The City of Richland has adopted its existing interim development regulations as required under RCW 36.70A.390. (Page 6 of Report on Agreed Resolution.)

5. The City notified the Petitioners of all meetings, workshops and public hearings.

6. The City added the definition of "minerals" on page 5, 19 and 48 of the main Comprehensive Plan document, on pages 2-13 and 3-5 OF the FEIS and on page 48 of the glossary of the comprehensive plan.

7. The City published a notification in the local newspaper requesting nominations for mineral resource lands designation.

8. The City developed a map showing general soil types. They also used the "Sand, Gravel and Top Soil Keymap" for locating lands which may have potential mineral resources within the City.

9. The City used a McHargian process of overlaying urban uses, impacted shoreline areas, preserves and areas designated under the Sensitive Area Ordinance. Using this process, nine areas were identified for possible consideration as mineral resource lands.

10. The City reviewed these nine areas using the thirteen mineral resource lands criteria listed in WAC 365-19-070.

11. The City's review of the criteria and standards resulted in the rejection of all 9 regions for designation as mineral resource lands.

12. The City held 6 public hearings and workshops from September 1, 1998 through December 14, 1998.

13. The City amended its comprehensive plan by Ordinance No. 41-98 on December 14, 1998 and designated no mineral resource lands therein.

III. Legal Issues and Discussion.

Legal Issue 5: The City of Richland's Comprehensive Plan did not meet the requirements of RCW 36.70A.170 (1) (c) and WAC 365-190-020, because, among other defects, it failed to designate mineral resource lands.

Petitioner's Position: The Petitioners contend the City of Richland continues to not designate and conserve mineral resource lands. The Petitioners further contend this continued refusal and/ or deferral of designation violates the spirit and intent of the Growth Management Act.

Petitioners argues that the City of Richland has only two choices: (a) to actually locate and designate the mineral lands within its UGA necessary to implement its comprehensive plan and to accommodate its future growth; or (b) to make a legislative finding of fact and adopt an ordinance or plan element stating the City of Richland has no mineral lands of long term commercial significance within the UGA. The Petitioners contend the City took neither course. The Petitioners claim the Respondent has not determined its need for aggregate materials nor

reached a determination one way or the other as to whether mineral resource lands exist. The Petitioners question whether a jurisdiction can engage in a planning process that continually defers critical area designations until after it codifies inconsistent plan elements that operate to preclude or substantially impair the mandatory protections of resource lands. The Petitioners claim the City of Richland's failure to plan for mineral usage and failure to designate mineral lands are not immune from challenge merely because some of the required mineral lands activities are reported in the City of Richland's comprehensive plan. The Petitioners disagree with Richland and contends the mineral lands requirements are not met merely by classifying and inventorying mineral deposits. The believe the purpose of RCW 36.70 A.170 (1)(c) is not met until the designation of mineral lands task is complete. Otherwise, there is no assurance that eligible resource lands will not be lost to inconsistent development.

Petitioners state the City has not made a decision whether alleged encroachments preclude the designation of otherwise eligible mineral lands. They also contend the City Council ran out of time and deferred completion of its designation decision until 1999 because mineral designation was unpopular and might limit future industrial, residential, or "urban reserve" uses. They contend the job was not completed, just deferred.

The Petitioners agree that if a jurisdiction could properly conclude it had absolutely no mineral resource lands to designate, they could adopt an ordinance or finding to that effect. If the City of Richland had taken this step, it would be presumed valid. The Petitioners contend the City has not taken this step. The Petitioners believe the Respondent has not completed the requirements of RCW 36.70A.170(1)(c).

Respondent's Position: The City of Richland claims by reviewing potential properties and by choosing not to designate mineral resource lands, they have acted and the Petitioners have failed in their burden of proof.

The GMA requires the City to designate mineral resource lands that have long-term significance for extraction of minerals. RCW 36.70A.170(c). The Respondent contends they have acted as required by the GMA. The City of Richland incorporated an extensive process to meet that requirement. They identified the location of mineral resources within the City and within the City's urban growth boundary, including several sites which were not presently developed. The City also published a notification in the local newspaper requesting nominations for mineral designations. The City notified the public and the mineral lands owners of four public hearings on the City Comprehensive Plan amendment and of the Council discussion and passage of the Ordinance. The City also evaluated nine possible areas for consideration as mineral resource areas within the city using the thirteen criteria set forth in WAC 365-190-070. The City staff contacted the Department of Natural Resources and the Washington State Bureau of Mines. The staff measured data on the various mineral resources sites within the City against the criteria set

forth in the GMA statute and regulations. The City prepared several maps depicting sites that were considered for designation as possible mineral resources lands. None of the nine potential areas were recommended by staff for mineral resource lands designation. The City staff spent approximately 340 hours in the review and research of information used in formulating the staff recommendation.

The Planning commission concurred with the staff recommendation and recommended to the City Council that the City Comprehensive Plan be amended without designation of mineral resource lands or mineral resource zones. The City Council accepted the Planning Commission's recommendation and, following a public hearing and open deliberation, the City made the decision not to designate any parcels as mineral resource lands. The Council also voted to continue to revisit mineral resource designation in future comprehensive plan reviews.

The City contends the record clearly shows they properly exercised their discretion in determining not to designate any mineral resource lands. The City further contends that a process to revisit the designation of mineral resource lands annually is consistent with the public participation requirements of the Act. The City's comprehensive plan is an ever-changing document that should be annually reviewed and revised.

The Respondent states a jurisdiction may conclude under GMA that it has no eligible resource lands to be designated and such a determination constitutes "action" under GMA. The City made a decision not to designate mineral resource lands following its inventory, study and analysis of potential mineral sites and this decision was not appealed and is not before the Board.

Discussion: The only question before the Board is Issue 5 which states: The City of Richland's Comprehensive Plan did not meet the requirements of RCW 36.70A.170 (1) (c) and WAC 365-190-020, because, among other defects, it failed to designate mineral resource lands.

RCW 36.70A.040 (b) states: "the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; "

RCW 36.709A.170 (1)(c) requires the City of Richland to 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,.."

'The Board must decide whether the City of Richland "failed to act". While the Board believes the spirit of the Act and the intent of the law is to designate where appropriate, all lands that have "long-term significance for the extraction of minerals" and then have in place development

regulations to protect those resource lands, we also believe the Respondent City has acted when it decides not to designate such lands. The Board may not agree with what the City of Richland has done, but the record shows they went through an extensive process and made a decision to not designate any lands as mineral resource lands.

We recognize the concerns of the Petitioners and the dissenting opinion, however, because the legal question before us is a failure to act, we must find in favor of the City. The question of whether that act was correct, is not before us.

Conclusion: The Board finds the Respondent City of Richland has acted and to that extent has complied with the Growth Management Act.
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IV. ORDER

1. The Board finds the City of Richland has acted and is therefore in procedural compliance with the Growth Management Act, RCW 36.70A.170(1) (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 7th day of May, 1999.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Judy Wall, Presiding Officer

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Dennis A. Dellwo, Board Member