

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

CITIES OF MOSES LAKE and EPHRATA	)	
("CITIES")	)	
	)	
Petitioners	)	Case No. 98-1-0003
	)	
vs.	)	<b>FINAL DECISION</b>
	)	<b>AND ORDER</b>
GRANT COUNTY,	)	
	)	
Respondent	)	
_____	)	

**I. Procedural History**

On May 6, 1998, Petitioners City of Moses Lake and Ephrata, by and through their attorney, Katherine L. Kenison, filed a Petition for Review.

On June 1, 1998, Petitioners filed an Amended Petition for Review.

On June 19, 1998 the Board issued its Prehearing Order describing the issues and setting a motions and briefing schedule.

On July 31, 1998 the Board heard arguments on the County's motion for dismissal and denied the motion.

On September 10, 1998, the Board held a Hearing on the Merits in Ephrata City Hall, Ephrata, Washington. All parties were present or represented.

**II. Findings of Fact**

1. On August 6, 1996 Grant County adopted Ordinance 96-108-CC, which outlined a plan to prevent or restrict urban sprawl, including interim zoning with a minimum 2 1/2 acre lot size for suburban, residential and open space recreation (OSR) zones.

2. On September 23, 1996, in Final Decision and Order in Case No. 96-1-0008, the Eastern Washington Growth Management Hearings Board ordered Grant County to "take all steps specified in Resolution #96-108-CC".
3. On January 13, 1997, after completing a State Environmental Policy Act (SEPA) review process, Grant County issued a "Declaration of Non-Significance" regarding its proposed interim zoning ordinance.
4. On March 25, 1997, Grant County adopted Ordinance No. 97-39-CC. This ordinance established a minimum 2 1/2 acre lot size for R1, R2, S1, S2, S3 and OSR zoning districts on an interim basis pending completion of the comprehensive plan for Grant County.
5. On September 23, 1997, with Res. 97-150-CC and, on March 23, 1998, with Res. 98-29-CC, Grant County adopted successive six-month extensions of the interim zoning established by Ordinance #97-39-CC.

### **III. Legal Issues and Discussion**

**Legal Issue 1.** Ordinance No. 98-29-CC fails to comply the GMA and SEPA by permits a pattern of densities outside of the IUGAs which are urban in nature and/or do not constitute "rural" as defined by the GMA.

**Legal Issue 2.** Respondent failed to conduct adequate SEPA review prior to adoption of the ordinance.

**Legal Issue 3.** Respondent failed to conduct cumulative impacts analysis of the 2.5 acre density on the environment and pursuant to SEPA.

**Legal Issue 4.** Respondent failed to conduct any inventory of the lands affected by the Ordinance in terms of location, number of acreage, status of development, or nature of surrounding lands.

**Legal Issue 5.** Respondent has no factual basis or justification for the adoption of the 2.5 acre density as it applies to circumstances in Grant County.

In presenting their case, Petitioners consolidated the issues as follows:

**Does Ordinance 98-29-CC fail to comply with the GMA and SEPA by permitting a pattern of densities outside of the IUGAs which are urban in nature and/or do not constitute "rural" as defined by the GMA.**

**Petitioners' Position:** Petitioners argue Ordinance No. 98-29-CC permits a pattern of urban densities outside the designated Interim Urban Growth Areas (IUGAs), and the ordinance fails to comply with RCW 43.21C (SEPA). Petitioners cite several cases where densities of less than 5 acre lots were deemed not in compliance with the GMA for rural areas. The petitioners contend the 2.5 acre density is an urban density which the GMA mandates must occur only within the designated IUGAs. Further, petitioners argue each extension of the interim zoning ordinance is a separate action, requiring a separate SEPA review process. They contend extension over a period of time results in greater impacts than considered when the original 6 month term of the ordinance was under review.

**Respondent's Position:** Grant County responds the intent of the interim ordinance was a response to the Board's order to take steps to prevent or reduce urban sprawl and the ordinance has achieved its purposes. Respondent stated the ordinance will be in effect only until the comprehensive plan is completed, and the comprehensive plan will not reflect a continuance of the 2 and 1/2 acres minimum lot size in the contested zones. Grant County contends that because the ordinance was extended without change no additional SEPA review is required.

**Discussion:** RCW 36.70A.030(1.5) states "Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element".

Also, RCW 36.70A.070 (5) directs counties to include a rural element in comprehensive plan. The rural element shall provide "for a variety of rural densities...".

It is clear from the facts in this case and the record from Case No. 96-1-0008 that the Board ordered Grant County to take the interim steps now under review to prevent or reduce urban sprawl. While all parties in this matter, and the Board as well, did not expect the "interim" to last as long as it has, no one knew for certain how long that interim period would last when the action was first taken. As reflected in our decision denying the Respondent's Motion for Dismissal, the Board agrees with Petitioner that each extension of the interim ordinance is an action subject to the petition for review by the Board. We accept the arguments of Petitioners that impacts must be viewed in the context of a stated time period. If that time period changes, the impacts of an action may also change, and therefore are subject to subsequent review.

However, that being said, we find no evidence the subject interim ordinance has had any effect other than that intended in its original enactment. Petitioners argue information is not available which would support their claim that urban sprawl is continuing in Grant County. The County, however, does provide information in the record which supports its contention that urban sprawl has been largely curtailed since enactment of the interim ordinance. Petitioners have not provided evidence which supports a decision that the County's action are clearly erroneous.

With the absence of evidence supporting its claims, the Board must also conclude the County has complied with the SEPA requirements. RCW 43.21C requires review of a Declaration of Non-significance (DNS) only if substantive changes (to the Ordinance) are made. No one has contended changes to the ordinance were made, only that subsequent extensions create cumulative impacts which were not considered in the original enactment. If these cumulative impacts exist, evidence would be available. Insufficient evidence of those impacts has been presented to this Board.

The Board notes commitments made at the hearing on the merits by Grant County that a ruling of compliance in this matter would not be considered a ruling permitting 2 1/2 acres lot size throughout the rural areas of Grant County in the comprehensive plan.

**Conclusion:**

1. Ordinance 98-29-CC is in compliance with the orders from this Board to reduce urban sprawl pending completion of the Grant County Comprehensive Plan.
2. Grant County's interim actions to reduce urban sprawl are in compliance with the Growth Management Act.
3. The Board makes no ruling on whether 2 1/2 acre lot sizes are permissible in rural areas in the comprehensive plan.
4. Grant County is in compliance with SEPA regarding its subsequent extensions of interim zoning.

**IV. ORDER**

The Board orders that Grant County Ordinance No. 98-29-CC is in compliance with applicable statutes under review.

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 7<sup>th</sup> day of October, 1998.

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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Dennis A. Dellwo, Board Member