The State of Washington
GROWTH MANAGEMENT HEARINGS BOARD

FOR EASTERN WASHINGTON

SAUNDRA WILMA and ALAN C. WILMA,
and JAMES L. SULLIVAN,

Petitioners,

Case No. 99-1-0001c

ORDER ON SECOND
COMPLIANCE HEARING

LOON LAKE PROPERTY OWNERS
ASSOCIATION and LOON LAKE
DEFENSE FUND

Intervenors

v.

STEVENS COUNTY,

Respondent

Procedural History

On December 1, 1998, Saundra Wilma and Alan D. Wilma filed a Petition for Review with the Eastern Washington Growth Management Hearings Board (Board).
On December 30, 1998, Petitioners submitted an Amended Petition including James L. Sullivan as a petitioner with the same issues.
On April 23, 1999, the Board held a Hearing on the Merits in Colville, Washington.
On May 1, 1999, a Final Decision and Order was entered by the Board finding Stevens County out of compliance with the Growth Management Act.The Board did not make a Determination of Invalidity pursuant to RCW 36.70A.302.
The Board's Final Decision and Order was appealed to Stevens County Superior Court on a Joint Petition for Review filed by Alan D. Wilma, Saundra Wilma and James S. Sullivan.The Court entered a Decision on Appeal April 7, 2000 and the matter was remanded to the Board.
On April 24, 2000, the Eastern Washington Growth Management Hearings Board issued an

Order on Remand finding Stevens County Resolutions 16-1997 and 149-1997 invalid pursuant to Stevens County Superior Court Case 99-1-00269 3.The Board also directed Stevens County to designate its IUGAs by means of development regulations as defined in RCW 36.70A.030(7), pursuant to RCW 36.70A.110(5).Stevens County was directed to take action consistent with the Court's Decision on Appeal and come into compliance on or before July 10, 2000.

On September 6, 2000, Motion to Intervene was filed by Bruce Erickson, counsel,on behalf of Loon Lake Property Owners Association and Loon Lake Defense Fund.On September 27, 2000, after considering the motion and arguments of the intervenors and the other parties having no objections, the Board permitted the intervention with their participation restricted to issues raised by the original petitions.

In response to the Thurston County Superior Court Order in 99-1-00269 3 and this Board's Order on Remand, Stevens County adopted a growth management public participation program, Resolution 91-1999, and adopted Resolutions No. 114-2000 and No. 115-200 consisting of Title 4, Platting of Short Subdivisions and Title 5, Platting of Long Subdivisions, and Resolution 116-2000, adopting the Interim Urban Growth Areas for Stevens County.

On November 21, 2000, the Board held a Compliance Hearing at the Stevens County Courthouse in Colville, Washington.That hearing was continued to allow additional time for the County to respond to the Petitioners' and Intervenors' concerns and prepare for the issues covered. TheBoard said it would resolve the following issues at the Compliance Hearing:

1)Whether the County's IUGAs were properly designated by means of adoption of a development regulation as defined in RCW 36.70A.030(7), pursuant to RCW 36.70A.110(5), as ordered by the Stevens County Superior Court (April 7, 2000).

2)Whether the County has developed and disseminated a public participation program and adequately included the public in the planning process as required under the Growth Management Act (the GMA);

3)Whether the County has amended its land use regulations and permitting procedures to prohibit urban growth beyond the IUGA boundaries as required under the Growth Management Act;

4)Whether the County has set densities throughout the County;

5)Whether the County has included greenbelts and open spaces within the IUGA boundaries; and

6)Whether the County justified the size of the City of Marcus IUGA and demonstrated that it does not encourage sprawl.

On February 27, 2001, the Board reconvened the compliance hearing in Colville, Washington. Present for the Board was Judy Wall, the presiding officer, Dennis Dellwo and Skip Chilberg. Present for Petitioners were Saundra and Alan Wilma and James Sullivan.Present on behalf of Intervenors was Bruce Erickson.Present on behalf of the County was Lloyd Nickel, Deputy Prosecuting Attorney.

Findings of Fact

1. A public participation program was adopted by Stevens County by Resolution 91-1999.That program did not provide for early public involvement nor did it provide for a broad dissemination of proposals and alternatives.
2. The County adopted new Short and Long Subdivision Platting Resolutions, Resolutions No. 114-2000 and No. 115-2000.These Resolutions authorized minimum lot sizes of 2.5 acres under certain conditions within the Rural areas of Stevens County.Residential Cluster Developments, Planned Unit Developments and other density variations were also allowed pursuant to these Resolutions.
3.The IUGAs as previously adopted were readopted with minor changes.Greenbelts and open spaces within the IUGA boundaries were added.
4.The City of Marcus IUGA was readopted but extensive information was provided demonstrating how and why the additional lands outside the incorporated area were included.

Discussion

Issue 1:Whether the County's IUGAs were properly designated by means of adoption of a development regulation as defined in RCW 36.70A.030(7), pursuant to RCW 36.70A.110(5), as ordered by the Stevens County Superior Court (April 7, 2000).
This issue need not be addressed at this time.Certain aspects of this issue are considered in the following issues, the balance must be addressed at the time the County brings itself into compliance on issue 2.
Issue 2:Whether the County has developed and disseminated a public participation program and adequately included the public in the planning process as required under the Growth Management Act (the GMA):
Petitioners' position: The Petitioners contend that the Public Participation Program does not encourage public participation nor does it ensure early and continuous public participation. Citizens Advisory Committees (CACs) are provided for in the County's Program yet they are optional in most cases and have yet to be formed.The only mention of public involvement in the program is in the Citizens Advisory Committees and the final hearings before the Planning Commission and County Commissioners.The Petitioners contend this does not ensure early and continuous public participation as required by the GMA (RCW 36.70A.140.)The Petitioners point out that nowhere does the Program provide for a broad dissemination of proposals and alternatives.The public is not informed of the proposals until there is final draft of a proposal on the table.The Petitioners do not consider these provisions adequate involvement in the planning process.
Respondent's position: The County contends they have adopted a Public Participation Program that complies with the GMA.The County further believes that a lesser degree of public participation is required because they are responding to a finding of non-compliance and have less time for such participation.
Discussion: Public participation is a core of the Growth Management Act.RCW 36.70A.140

requires the development and wide dissemination of a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of the comprehensive land use plans and development regulations implementing such plans.The importance of the program cannot be minimized.This program must be not only developed but also widely disseminated to the public.A plan that is unknown to the public is not an adequate plan.The plan must also provide for early and continuous public participation.This means that the public must be involved at the beginning as well as throughout the process.The Comprehensive Plan and its development regulations are to be the result of the early and continual public input.The County's Program, while a good beginning, does not go far enough for the early and continual inclusion of the public in the process.

The County's program does provide an option for appointment of a citizen advisory committee, and mandates such a committee for development of the comprehensive plan elements, sub-area plans, and "functional plan", a term which is undefined.While this is an admirable beginning, even this step has not been taken to address the issues at hand, or to assist the county as it proceeds with the development of the comprehensive plan, designation of resource lands, development regulations, and critical areas protections.

Many cities and counties have used a variety of low-cost ways to include the public in the planning process.Examples include presentations of proposals in "town hall"style meetings throughout the County or at service club meetings, establishing a mailing list and mailing newsletters to interested parties, placing copies of proposals in public libraries or other public places, display advertisements or inserts in newspapers in the County, and encouraging media coverage of proposals.

Stevens County has included few of these possible means to inform and include the public in its public participation program, or any means other than formal public hearings and comment periods after the plan has been developed.

Conclusion: Stevens County continues to be out of compliance with the GMA and the Orders of the Board by their failure to develop and disseminate an adequate public participation program and adequately include the public in the planning process.The actions of the County are clearly erroneous and do not comply with the GMA.

Issue 3:Whether the County has amended it land use regulations and permitting procedures to prohibit urban growth beyond the IUGA boundaries as required under the Growth Management Act.

Intervenors'position: The Intervenor contends the permitting of 2.5 acre lot sizes throughout unincorporated Stevens County, fails to prevent urban development outside IUGAs and fails to protect rural and natural resource, particularly on an interim basis.The minimum lot size and the exceptions contained within the Short and Long Plat Resolutions do not protect the rural nature of Steven County but does encourage sprawl and urban growth outside IUGAs.

Petitioners' position: The primary objection the Petitioners voice regarding this issue is the passage of these Resolutions before the adoption of the Comprehensive Plan, this being out of sequence.The Petitioners also believe the County failed to adopt regulations that designate and

protect Resource lands and critical areas.The Petitioners believe these lands must be protected prior to allowing densities such as those allowed under the Short and Long Plat Resolutions.
Respondent's position: The County argued in their brief that this issue was a failure to act issue, not a substantive compliance issue.They believe that the Board should find that they have acted and not address the specifics of the manner of compliance.
The County did argue that the nature of Stevens County was such that a minimum lot size of 2.5 acres was appropriate.The Respondent argues that the fact the 2.5-acre size lot was limited to lots with access to paved roads, power and water, makes such size lots appropriate.
Discussion: The Growth Management Act, RCW 36.70A.110(1) requires urban growth to be prohibited outside IUGAs or UGAs.Urban growth refers to the intensive use of land "to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, of the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A170…." (RCW 36.70A.030(7)).

RCW 36.70A.030(14) provides as follows:

> (14) "Rural Character" refers to the patterns of land use and developmentestablished by the County in the rural element of its Comprehensive Plan:
>
> > (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
> > (b) That fosters traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
> > (c) That provides visual landscapes that are traditionally found in rural areas and communities;
> > (d) That is compatible with the use of the land by wildlife and for fish and wildlife habitat;
> > (e) That reduces the inappropriate conversion of undeveloped land into sprawling, low-density development;
> > (f) That generally do not require the extension of urban governmental services; and
> > (g)That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

Permitting minimum lot sizes of 2.5 acres throughout the County would encourage sprawl and not protect resource lands, critical areas and the rural nature of the non-urban areas in Stevens County.The fact that certain restrictions apply to the siting of such small lots is not enough. During the interim period where there is no comprehensive plan, critical area protections, or resource lands designation, the protection offered by these Short and Long Plat Resolutions is insufficient.
Conclusion: Stevens County continues to be out of compliance with the GMA and with the

Orders of this Board in their failure to prohibit urban development beyond the IUGAs boundaries. The actions of the County are clearly erroneous and fail to comply with the GMA.

Issue 4: Whether the County has Set densities throughout the County:

Intervenors'position: The Intervenor believes that densities have not been set throughout the County.They contend that there is no limit to the number of buildings or residences that can be on each lot.The size of the lot is one type of density, the number of units on that lot is another and the County has failed in the second category.

Respondent's position: The County points out that the lots are for one domestic unit and there is no authority for more.

Discussion: The Board's review of the Short and Long Plat Resolutions and associated documents support the County contention that there is a limit upon the number of units per lot. The County does have a variety of densities and should be found in procedural compliance.It is to be noted that the issue of whether these densities prohibit urban growth in rural areas is resolved in the previous issue.

Conclusion: The County is found to be in procedural compliance with the setting of densities throughout the County.

Issue 5: Whether the County has included greenbelts and open spaces within the IUGA boundaries:

Petitioners' position: The Petitioners believe the County has complied with the GMA in the designation of greenbelts and open spaces within the IUGAs.

Conclusion: The County has come into compliance with the GMA and the Boards order on this issue.

Issue 6: Whether the County justified the size of the City of Marcus IUGA and demonstrates that it does not encourage sprawl.

Petitioners' position: The Petitioners believes the County and City have shown their work and the Marcus IUGA should be found in compliance.

Intervenors'position: The Intervenor believes that the County remains in non-compliance because of their inclusion of large unneeded areas with critical areas and wildlife located therein.

Discussion: The County and City of Marcus has provided this Board with an adequate record of the process of sizing the Marcus IUGA.While the IUGA is large, it includes extensive areas unavailable for building or areas designated as open spaces and greenbelts.The County is entitled by law to a strong presumption of validity and we believe the Intervenor has not overcome this presumption.

Conclusion: The Marcus IUGA is found to be in compliance with the GMA and the orders of this Board.

ORDER

1.Stevens County continues to be out of compliance with the GMA and the Orders of the Board by its failure to develop and disseminate an adequate public participation program and adequately

include the public in the planning process.The actions of the County are clearly erroneous and do not comply with the GMA.

2.Stevens County continues to be out of compliance with the GMA and with the Orders of this Board in their failure to prohibit urban development beyond the IUGAs boundaries.The actions of the County are clearly erroneous and fail to comply with the GMA.

3.The County is found to be in procedural compliance with the setting of densities throughout the County.

4.The County has come into compliance with the GMA and the Board's order on issue of whether the County has included greenbelts and open spaces within the IUGA boundaries.

5.The Marcus IUGA is found to be in compliance with the GMA and the orders of this Board.

6.The County shall bring these matters into compliance within 90 days of the date of this Order.

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 14th day of March, 2001.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

_____
Judy Wall, Presiding Officer

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D. E. "Skip" Chilberg, Board Member

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Dennis A. Dellwo, Board Member