

State of Washington

GROWTH MANAGEMENT HEARINGS BOARD

FOR EASTERN WASHINGTON

SADDLE MOUNTAIN MINERALS,
L.L.C., a Washington corporation, and
99-1-0005

Case No.

GARY MAUGHAN,
Petitioners

FINAL

DECISION

AND

ORDER

vs.

CITY OF RICHLAND, a municipal
corporation,
Respondent

I. PROCEDURAL HISTORY

On June 16, 1999, Respondent City of Richland filed a Motion for Dismissal and on June 22, 1999, Petitioners filed a brief in opposition to the motion as well as a cross motion for dispositive ruling.

On July 7, 1999, a telephonic hearing on the motions was held. All parties were present or represented. Parties agreed to discuss further resolution of the matter.

On July 16, 1999, the parties advised the Board they could not reach agreement on the issues and requested a decision on the motions.

On August 2, 1999, the Eastern Washington Growth Management Hearing Board issued an Order denying Respondent's Motion for Dismissal. The Board requested further briefing by the Respondent on Petitioners' Motion for a Dispositive Ruling. The parties agreed to the entry of a Final Decision and Order without further hearing.

II. FINDING OF FACT

1. The City of Richland is an entity planning under authority of the Growth Management Act.

2. On September 21, 1998, the City of Richland passed Ordinance 19-98, re-enacting existing development regulations without public participation as required by the Growth Management Act.

3. On December 21, 1998, the City of Richland adopted an amended Comprehensive Plan.

III. LEGAL ISSUES AND DISCUSSION

1. Is the City of Richland out of compliance with the planning goals of GMA (Growth Management Act) by failing to adopt permanent development regulations and by adopting vague and inadequate interim development regulations?
2. Is the City of Richland out of compliance with the public notice and public participation requirements of GMA by failing to adopt and broadly disseminate a public participation plan and/or failing to follow that plan when adopting so-called "interim" development regulations?
3. Is the City of Richland out of compliance with GMA by failing to adopt permanent development regulations?
4. Is the City of Richland out of compliance with its responsibility under GMA by adopting interim development regulations that are inconsistent with all former and current Comprehensive Plans?
5. Is the City of Richland out of compliance with its responsibility under GMA by adopting interim development regulations without public notice or public participation?
6. Is the City of Richland out of compliance with its responsibility under GMA by adopting interim development regulations without concurrency review?
7. Is the City of Richland out of compliance with its responsibility under GMA by adopting interim development without notice 60 days before and 10 days after to the Department of Community, Development, and Trade?
8. Is the City of Richland out of compliance with GMA by failing to adopt development regulations that protect resource lands and halt inconsistent land use activities in critical areas?
9. Is the City of Richland out of compliance with its responsibility under GMA by adopting interim development regulations that do not protect resource lands or halt inconsistent land use activities in critical areas?
10. Is the City of Richland out of compliance with its responsibility under RCW 36.70A.172 by failing to use the best available science in adopting interim development regulations?
11. Is the City of Richland out of compliance with GMA because its interim development regulations have lapsed and have not been lawfully extended, replaced by permanent development regulations.
12. Is the City of Richland out of compliance with GMA by failing to review and modify its development regulations as part of its annual update to the comprehensive plan?

OVERVIEW OF THE ISSUES TO BE DECIDED

Although Petitioners list 12 issues, the key question raised is whether or not the City has adopted final development regulations as required by law. The City admits its actions have been a series of re-adoptions of regulations first enacted prior to the Growth Management Act (GMA). The City adopted a comprehensive plan under GMA in 1995, with substantial amendments to the plan in 1997 and 1998.

The City argues the interim regulations, readopted each six months, are compliant with the law.

The question which the Board will address is procedural only. The Board has not been presented with sufficient arguments on the substance of existing development regulations to rule on substantive compliance. The parties have stipulated that the Board may render a final decision on briefs submitted on Respondent's Motion to Dismiss plus the additional briefs submitted on Petitioners Cross Motion for Dispositive Ruling with no additional hearings.

Petitioners Position: Petitioners argue the City has not adopted development regulations as required by the GMA, but rather has delayed that step for several years by re-enacting pre-existing regulations. They contend this process avoids GMA requirements of consistency, public participation and best available science.

Respondent's Position: The City argues that (1) The City's development regulations are in effect, allowing development to proceed, and (2) the City is working on final regulations to ensure consistency with the Comprehensive Plan.

Discussion:

The Growth Management Act makes no mention of "interim" regulations. The concept of interim regulations apparently developed out of a need to have regulations in effect during the development of a comprehensive plan. Once the comprehensive plan is adopted, regulations are required to be adopted to implement the plan. The GMA establishes a process which must be followed in adopting these regulations.

It is clear from the record that the City of Richland has not followed the process established in the GMA for adopting development regulations. The record provides no evidence of a review for consistency, a use of best available science, or a process for citizen involvement in developing those regulations. Further, the City failed to even notify a known interested party (the Petitioners) of the reenactment of "interim" regulations.

The City acknowledges the need to develop final regulations, although they maintain existing regulations meet the requirements of the law.

However, the process, including the requirements mentioned above, must be followed. The City must enact development regulations in compliance with the GMA. This will enable Petitioners to address their other concerns during that process.

The City requests, in the event of a remand, they be given 180 days to complete development regulations. In March of 1998, the City agreed to complete development regulations by November 1998. Now, more than one year after that date, the job is not yet completed. The City should be well on its way toward completion now 18 months after the recognition that action needs to be taken.

Conclusion:

The City of Richland is out of compliance regarding adoption of development regulations, through a failure to utilize best available science, failure to ensure consistency with the comprehensive plan, and failure to follow public participation requirements.

IV. ORDER

This matter is remanded to the City of Richland for compliance within 90 days of the date of this order.

Pursuant to RCW 36.70A.300, 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 1st day of October, 1999.

EASTERN WASHINGTON

GROWTHMANAGEMENT HEARINGS BOARD

D. E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member