

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

BERT and GAYLE BARGMANN

Petitioners,

vs.

GRANT COUNTY,
Respondent,

CITY OF EPHRATA,

Intervenor,

GREENFIELD ESTATES
HOMEOWNERS' ASSOCIATION,

Intervenor,

JOHN BAIRD and NICK TOMMER,

Intervenors.

Case No.: 99-1-0013

FINAL DECISION
AND ORDER

I. Procedural History

On November 24, 1999, Bert and Gayle Bargmann, by and through their counsel Robert C. Rowley of Rowley & Klauser, filed a Petition for Review challenging Grant County's action adopting a final Urban Growth Area for the City of Ephrata, Ordinance 99-158-CC and adoption of Comprehensive Land Use Plan (CLUP) both on September 30, 1999.

Subsequently, the City of Ephrata (the City) and Greenfield Estates Homeowners Association sought Intervenor status and such status was granted to both.

On April 13, 2000, the Eastern Washington Growth Management Hearings Board held a hearing

on the merits in Ephrata, Washington. Present were Dennis Dellwo, Presiding Officer, Judy Wall and Skip Chilberg, Board Members; Robert C. Rowley, counsel for Petitioners; Dennis D. Reynolds, Special Counsel, for Grant County; Katherine Kenison for City of Ephrata and Vicki Johnson for Greenfield Estates Homeowners' Association.

II. Motions to Strike and Supplement the Record

1. County's Motions to strike portions of Petitioner's brief and deny the Petitioner's use of certain letters are denied.
2. Petitioner's Motion to strike City Brief is denied.
3. The Petitioner's Motion asking the Board to take Judicial Notice and Supplement the Record is granted.

III. Findings of Fact

1. In 1999, the County reduced the City's IUGA to its then existing corporate limits. (Appendix H). Five months later, the County added 512 acres to the final UGA, (Areas 4 and 5).
2. The County has adopted the highest possible population projections allowable by the GMA.
3. The County has increased the population by adopting a 25% market factor for residential growth within the UGAs.
4. The City of Ephrata used a density measure of 4-du per acre to compute available acres within the city limits.
5. The County has reduced the amount of available lands within the city limits, using a 60% reduction factor. The reduction factors used for the Grant County Land Capacity Analysis were the following: 1. Unavailable Land: 15% of the land was estimated to be unavailable due to the lack of interest in its development or sale. 2. Unsuitable Land: 5% of the land was estimated to be undesirable or unfit for development due to its location in an unpopular or unsuitable neighborhood. 3. Roads and Rights-of-Ways: 18% estimated reduction for existing or future roads and rights-of-ways. 4. Critical/Physically Limited Areas: 10% reduction for critical areas. 5. Public Facilities, 12%.
6. The City, the County and the Petitioners agree there is sufficient available land within the city limits to accommodate the population estimates adopted for Ephrata, together with a 25% market factor.

IV. Legal Issues

1. Do the Grant County Commissioners decisions violate requirements that UGAs be supported by studies and work product shown on the record?
2. Do available studies and work product shown on the record support an UGA for the City of Ephrata that is limited to the existing corporate limits of the City of Ephrata and do the decisions contradict the support shown in the record?
 - a. Does the City of Ephrata have sufficient undeveloped residential and commercial land within the city boundary to accommodate all projected growth at urban densities and no urban growth outside the city limits is necessary?
 - b. Do the decisions promote sprawl?
 - c. Do the decisions subvert in-fill requirements?
 - d. Do the decisions promote urban growth in areas not currently served by urban services and promote leapfrogging development away from existing urban areas that are served by urban services?
 - e. Do the decisions fail to assure urban development at urban densities?
3. Did the County fail to provide a basis in the record for reversing its own earlier decision (copy of Ordinance 99-4-CC not attached here) limited Ephrata's UGA to the incorporated city limits and its supporting recommendations from the Grant County Planning Commission, planning staff, and retained consultant?
4. Do the decisions violate the requirements of RCW 90.58.110 and the guidelines and recommendations of the Department of Ecology regarding sizing and definition of an UGA for the City of Ephrata?
5. Do the decisions violate the requirements of the Grant County Countywide Planning Policies (CWPPs), and the County's CLUP in the following particulars?
 - a. Violates the Urban Growth Area Analysis and conclusions contained in the CLUP's Part IV-Technical Appendices, Part B.
 - b. Violates CWPP 1A4; 1B; 1C2; 1D1; 2AII; 2AIII; 2AIV; 2BIA-E;6I and II; 6VIB.

- c. Should the County, knowing of Ephrata's removal of density data when adopting an "emergency Ephrata CLUP amendment, have adopted an Ephrata UGA without first requiring to provide the required density information?
 - d. Violates CLUP goals UR-1; UR-2; UR-3; UR-4; Ur-5; UR-6.
 - e. Violates the housing needs study attached in Technical Appendix, at part C.
6. Has Grant County failed to implement the GMA by failing to adopt either a valid CLUP or implementing development regulations as required by RCW 36.70A.040 and RCW 36.70A.110?
7. Does the Grant County CLUP violate GMA requirements for Clup internal consistency and concurrency?

IV. Discussion Of Legal Issues

Although the Petitioners raised the above 7 issues in their petition, the parties argued and briefed these matters as a single issue: Whether the County properly included the 512 acres of unincorporated lands, Areas 4 and 5, within the Final UGA for Ephrata.

Petitioners' position: The Petitioners contend the City has overly sufficient buildable lands within the existing city limits to accommodate the population growth expected by 2018. They argue this is true, even after the available land within the city limits is reduced by a 60% factor and the population estimate is increased by a choice of the "high end estimates"(the high OFM population estimates) and that figure increased by a 25% "market supply" factor. The Petitioners contend that the analysis of the City/County shows 1,108 gross vacant residential acres, which equals 444 net Residential acres after the reductions, 20% more residential land than required to meet the projected growth over the planning period.

The Petitioners point out that the added land outside the City, Areas 4 and 5, are designated "urban reserve" in the County's Plan. Further, they contend the critical areas, habitat, steep slope and inherent limitations listed by the City would preclude this land from being developed at urban densities.

Respondent's position: The County draws the Board's attention to the statutory requirement for the County "to attempt to reach agreement with each city on the location of an urban growth area...." The UGA for Ephrata is a reflection of the cooperative planning process envisioned by the GMA. The County reviews in detail the mathematics of the computations used by the city and County in the development of the UGA. It is clear from the statements of the Attorneys for the County and City there are adequate amounts of buildable lands within the corporate limits to

accommodate the population growth chosen by the County/City. However, the County points out that, when sizing the UGA, Grant County took into account “local circumstances” as authorized by RCW 36.70A.110(2). Those “local circumstances” accounted for the inclusion of the additional lands outside the incorporated areas.

Grant County also considered other factors such as a city’s need for commercial and industrial lands to meet economic goals identified in its comprehensive plan, and inclusion of appropriate areas adjacent to a city or town. The County also considered the need for future public facilities and open spaces, as well as protection of critical areas and other physically limiting features of land.

The City listed the special circumstances that led to the additional acres added outside the incorporated area. The factors given are the following: 1. The availability and ability to serve areas 4 and 5. Reservoirs and other water and sewer facilities can be utilized to serve the added area. 2. The area added is believed to be the only real area where the City could expand in the future. 3. The area chosen consists of a part of the only distinctive land feature that defines the City, a hill. 4. Some of the existing lots in the City are not desirable for development. 5. The City is in a critical water area and the city is better able to protect their water if areas 4 and 5 were part of the City. 6. Some of the recreation trails where community events occur exist in these areas. The area also has view lots that are desired by the city for more top end homes to be built in the Ephrata area.

The City also draws the Board attention to an earlier decision, Benton Co. Fire Protection District No. 1 v. Benton County, et al, April 25, 1995, No. 94-1-0023. In that case the Board found “that the size of an urban growth area should equal the area required under the OFM growth projection plus the area required to realize a jurisdiction’s “vision of urban development” that can be realized over the next twenty years.” The City believes that the UGA for Ephrata reflects what the citizens envision for the future of Ephrata, which emphasizes a priority on projects and services enhancing recreational opportunities and open space, safety, aesthetics, housing and cultural qualities, as well as economic growth and stability in the community.

Discussion: RCW 36.70A.110 requires planning cities and counties to designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. The city itself must be included within an UGA. Sub-paragraph (2) of that section directs the County to include areas and densities sufficient to permit the urban growth that is projected to occur in the city for the succeeding twenty-year period. This projection is prepared by OFM. OFM establishes a range of population projections rather than a single figure. The projections include a more likely population scenario (medium) and a high and a low. The county would not be out of compliance with the GMA if it used any number within the range. AN UGA determination may include a reasonable land market supply factor and shall

permit a range of urban densities and uses. “In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.” RCW 36.70A.110(2).

The proper sizing and location of an UGA involves more than a simple mathematical analysis. A county, in sizing UGAs, appropriately considers many other factors. RCW 36.70A.110(2) directs a county to establish an UGA boundary “sufficient to permit” urban growth projections. The County must use GMA’s planning goals to guide the development and adoption of the UGA. One of the primary purposes of the Act is to avoid sprawl and direct new growth into UGAs.

The requirement that each existing city must be within an UGA is key to the UGA concept. Cities are the focal points for growth. The Act intends growth to be centered on cities. Thus, the boundaries of an UGA and the city limits of existing municipalities will be identical; assuming the cities can accommodate all the projected growth. If not, areas must be included, sufficient to permit the projected urban growth for the succeeding twenty years.

Local jurisdictions have a great deal of discretion in deciding how to accommodate these projections in light of local circumstances and traditions. The Cities have the discretion in deciding specifically how they will accommodate the growth allocated to them by the county consistent with the goals and requirements of the Act.

This Board, in Benton County Fire Protection District No. 1 v. Benton County, et al, supra, recognized the discretion allowed under the GMA. In that case the size of an IUGA was determined by considering not only the population forecast but other legitimate factors including industrial land, open spaces, parks and recreation areas, undevelopable land and green belts as well as legitimate safety factors that provide protection against inflationary land prices caused by an overly restrictive designation. The Board, in Benton County “...reaffirmed that the size of an urban growth area should equal the area required under the OFM projections plus the area required to realize a jurisdiction’s vision of urban development that can be realized over the next twenty years. This definition allows a community to achieve its legitimate needs, while prohibiting sprawl.”

Local circumstance, traditions and identity will result in unique choices and solutions for each county and the cities within it. While such policy choices may be included in the sizing or configuration of the UGA, they must be made in a measurable way and with sufficient documentation as to the rationale. The County here and Ephrata made those choices when they selected the densities of their residential lands, the 60% reduction factor, market factor, extensive industrial and commercial areas, larger population allocation and varieties of densities throughout the city.

Expansive UGAs violate the goals and requirements of the GMA because they allow development in areas that would be prohibited within correctly sized UGAs. The existing city limits of Ephrata contain more available lands than needed to accommodate the expected growth in the next 20-year period. This is true even though the City and the County used the highest estimate of population growth, reduced the available lands by 60% reduction factor and increased the population by a 25% market factor.

The City of Ephrata has 2,081 total gross residential acres within the incorporated city limits. Of these acres, more than half are vacant, 1,108 acres. In addition, the City has 2,583 vacant acres of industrial lands and 45 vacant acres of commercial lands. There are also 608 acres for public facilities and open space lands. (City of Ephrata Comprehensive Plan.). The available land area within the city limits was reduced by the reduction factor of 60%, or 664 acres, leaving a net of 444 acres. This is 146 more acres than required, within the incorporated city limits. The County then increased the population estimate by a market safety factor of 25%, justifying the needed acres at 373 acres. This increased estimate of growth still resulted in a surplus of approximately 70 acres within the city limits.

The County has added two areas, areas 4 and 5, to the UGA for Ephrata. These two areas are outside the incorporated city limits. Area 4 contains approximately 277 acres. Area 5 is comprised of 2 subareas, one is approximately 210 acres and the other is 27 acres. The stated reason for their addition to the UGA is to provide for reservation of land anticipated to be required for urban purposes during the planning period but for which urban services are not yet available. (4/2/99 Ephrata UGA Staff Report, p.3.)

The Growth Management Boards have ranked order of inclusion of lands within the UGA. In **Bremerton**, the Board ranked the inclusion of non-urbanized unincorporated lands near the bottom of the list. “Because including such lands would be more inconsistent with the Act’s first two planning goals regarding where to permit urban growth, the Board will apply a much higher level of scrutiny to a county’s actions in extending UGAs to such lands.” Bremerton, at 39-40.

The GMA allows great discretion to each jurisdiction in their designation of an UGA. This discretion allows the County/City to adopt the urban density and commercial and industrial location desired by that jurisdiction. However this vision of urban development must be exercised within the sideboards of the GMA and its goals.

The key goals of the GMA are the reduction of sprawl and the centering of development within the cities of each county. The discretion allowed the County under the GMA does not allow a city or county to ignore the directives of the GMA and add hundreds of unneeded acres to an UGA. The City of Ephrata contends this land is needed for recreation areas, primarily trails. These exist now and there was an admission by the City that these uses can continue as

they do now or be expanded without their annexation or inclusion within the UGA. The critical areas identified by the City in these areas are required to be protected by the County. The preservation of the landmark hill can be through the County's efforts. If the City has need to urbanize this hill in the future the County's designation of this land as Urban Reserve preserves that option.

The City's motivations to include these properties within their UGA are understandable and in some ways laudable, but they fly in the face of the Goals of the GMA. These needs can be and are better resolved by other means such as an inter-local agreement with the County. The view lots, water, trails and landmarks can be preserved and the acreage reserved for potential growth in this manner without the violation of the goals of the GMA.

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Conclusion: The Board finds the Petitioners have carried their burden. The Board is left with a firm and definite conviction that a mistake has been made; therefore, the County's action was clearly erroneous. County is out of compliance in the sizing of the UGA for the City of Ephrata. Land outside the incorporated limits of the City is not needed and its inclusion would violate the Goals of the GMA and RCW 36.70A.110.

The Board remands the Ephrata UGA and the associated text with direction to the County to bring it into compliance with the GMA and this decision.

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V. ORDER

Grant County is out of Compliance, the sizing of the UGA for the City of Ephrata is clearly erroneous and in violation of the GMA.

Determination Of Invalidity: The Petitioners asked the Board to find the Ephrata UGA invalid. The basis for such a request is the Petitioners' belief and fear that the City will annex areas 4 and 5 if the Board finds the City out of compliance with out a finding of invalidity. The City, to a question by the Board, responded that it had no intention of annexing the property in the foreseeable future.

Having considered the above-referenced arguments and reviewed the briefs and record, the Board concludes that it is inappropriate to make a determination of invalidity. The Petitioners have not met their heavy burden of showing how the continued of the Ephrata UGA would substantially interfere with the fulfillment of the goals of the GMA. The fear of annexation does not reach this level. If, however, the City were considering an annexation petition, the Board would look with favor upon a request for a finding of invalidity. The finding of Invalidity will not at this time be issued.

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 19th day of May, 2000.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Dennis A. Dellwo, Presiding Officer

Judy Wall, Board Member

D. E. "Skip" Chilberg, Board Member