

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

LATAH CREEK NEIGHBORHOOD
COUNCIL EXECUTIVE
COMMITTEE,
Petitioner,
vs.
CITY OF SPOKANE,
Respondent,
BRIAN LAYTON,
Intervenor.

NO. 99-1-0014
FINAL DECISION AND
ORDER

I. Procedural History

On November 29, 1999, Petitioner Latah Creek Neighborhood Council Executive Committee filed its petition with the Eastern Washington Growth Management Hearings Board (the "Board").

On January 14, 2000, the Board issued its Prehearing Order identifying the following issues that were to be considered in the final hearing.

Issue 1: Did legislative action of the City Council regarding amendments to the final reading of the existing zoning code comply with the goals and policies of the Growth Management Act? RCW 36.70A.010, RCW 36.70A.020, and RCW 36.70A.035.

Issue 2: Did this legislative action violate the Growth Management Act in regard to the public participation requirements? RCW 36.70A.035 and RCW 36.70A.070.

In its Prehearing Order, the Board also granted Brian Layton Intervenor status.

On January 18, 2000, Intervenor, Brian Layton, and Respondent, City of Spokane, filed a Motion for Dismissal of the Petition contending that the Hearings Board lacks the authority to rule on the zoning code amendments which were adopted under authority other than the Growth Management Act.

On February 16, 2000, the Board held a hearing on the Motion to Dismiss.

On February 24, 2000, the Board issued its Order on Motion for Dismissal of Petition denying the Motion.

On March 6, 2000, the Intervenor, joined by the City, filed a Motion for Reconsideration of Board Order Denying Motion to Dismiss.

On March 20, 2000, the Board, deciding on the briefing of all parties and without a hearing, issued its Order on Motion to Reconsider. The Board modified its February 24, 2000 Order denying the Motion for Dismissal. The Board held that there remains a question of fact as to whether the City Council's legislative action in question was taken in furtherance of the City's compliance with the GMA. Because there remains a question of fact, the Board did not dismiss the Petition and decided to resolve the factual issue at the time of the final hearing.

The Board, in its conclusion to its Order on Motion to Reconsider, established the following issues for the

final hearing:

Conclusion: The Board finds the Petition was filed within 60 days of the publication of the City's action and there is a factual question whether this amendment was adopted in furtherance of the GMA. This question will be considered an issue at the time of the final hearing. If, after hearing arguments on this issue, the board finds the amendment was adopted in furtherance of or pursuant to the GMA, the remaining issues will be heard. If it does not so find, the hearing will be adjourned and the matter dismissed.

A hearing on the merits was held on April 25, 2000 in the 2nd Floor Conference Room of Spokane City Hall, Spokane, Washington.

II. FINDINGS OF FACT

Spokane County and the cities therein were mandated to plan under the Growth Management Act on July 1, 1997. Spokane County and the cities therein were mandated to adopt their comprehensive plan by July 1, 1997. The City of Spokane has not adopted a new comprehensive plan pursuant to the GMA. The City Plan Commission, pursuant to City Council Resolution No. 99-7, was directed to conduct a limited review of the City's existing comprehensive plan and land use code. (Index of Records No. 22) The suggested amendments to the land use code were presented to the Spokane City Council through the Plan Commission. (Index of Records No. 6) At the time the proposed amendments were reviewed by the City Council during public hearing and testimony, the Intervenor submitted a proposed text amendment regarding mini-storage facilities in AG II Zone. (Index of Records No. 9) The Spokane City Council adopted Ordinance No. C-32484, which included amendments proposed by the Intervenor. The ordinance consisted of text amendments to the City's land use code including amendments to provisions that will permit mini-storage facilities in agricultural zones under certain conditions. (Index of Records No. 8)

I. III. ISSUES, DISCUSSIONS AND ORDER

The initial issue for the Board's consideration is whether the legislative action taken by the City Council to adopt amendments to its land use code was an action in furtherance of the City coming into compliance with the GMA. If the Board determines that the legislative action was not in furtherance of the GMA, this Petition should be dismissed at this juncture and the Board will adjourn. If the Board determines that the legislative action was in furtherance of the GMA, the Board will hear arguments on the remaining issues.

Respondent/Intervenor's Position: The Respondent and Intervenor contend that the Board does not have jurisdiction to hear a challenge to a text amendment to the City's zoning code because the legislative act was not enacted in furtherance of the City's compliance with the GMA. The Respondent and Intervenor contend that the legislative action of the City Council 1) was not adopted pursuant to the City's present planning and development of a GMA comprehensive plan and development regulations and 2) was an exercise of its zoning powers under Article 11, Section 11 of the State Constitution and separate from growth management planning. The Respondent and Intervenor further contend that the Board's jurisdiction is limited to determine whether the City is in compliance with the GMA, RCW 36.70A.280 (1), and that the Board is required to issue final orders based "exclusively on whether or not a state agency, county, or city is in compliance with the requirements of" the GMA. RCW 36.70A.300(1) Because the City Council's legislative

action was not taken pursuant to GMA, the Board would, therefore, not have jurisdiction.

Petitioner's Position:The Petitioner claims the action taken by the City Council amending the zoning code to allow mini-storage facility in the AG II zone is a development regulation that appropriately comes under the review of the Growth Management Hearings Board.The Petitioner contends that the amendment to the land use code is a defacto amendment of the Latah Creek Neighborhood Plan, which they contend is a GMA planning document.

Discussion:The evidence presented during the hearing on the merits, both during oral argument and in the respective briefs, demonstrates that the legislative action by the Spokane City Council to adopt text amendments to its land use code was not done in furtherance of the City's efforts to come into compliance with the GMA.The City has zoning authority pursuant to Article 11 Section 11 of theWashington State Constitution to engage in legislative action amending its zoning code apart from its efforts to plan and develop a comprehensive plan and development regulations pursuant to the GMA.The evidence supports the Respondent and Intervenor's contention that the Latah Creek Neighborhood Specific Plan, which was adopted by the City Council prior to the City being required to plan under GMA, is not a GMA planning document.In the State Supreme Court's decision in Clean v. City of Spokane, 133 Wn. 2d 455, 466, 947 P.2d 1169 (1997), the Court held that because the City has yet to implement a comprehensive plan under GMA, the City cannot be said to have violated the GMA.Based upon the Clean case, the City has not adopted a comprehensive plan to which it could have violated.Furthermore, the legislative action of the City Council questioned in this Petition was not enacted in furtherance of the City's compliance with GMA. Furthermore the text amendment to the City's land use code is not a GMA documents, but instead was a zoning code amendment unrelated to the GMA.

The Board has considered the briefs of the parties, has heard the oral arguments of the parties presented during the final hearing on the merits and has reviewed the entire record herein and enters the following:

ORDER

The Board hereby dismisses the Petition filed by the Latah Creek Neighborhood Council Executive Committee based upon lack of jurisdiction as set forth above.Because the Board has ruled that it lacks jurisdiction to hear the Petition, it will not hear or rule upon the other issues raised in the Petition.

SO ORDERED this 16th day of May, 2000.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

Judy Wall, Presiding Officer

D.E. "Skip" Chilberg, Board Member

Dennis A. Dellwo, Board Member