

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF MOSES LAKE Petitioner, vs. GRANT COUNTY, Respondent.	Case No.: 99-1-0016 ORDER ON RESPONDENT’S MOTION FOR RECONSIDERATION
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I. Procedural History

On November 30, 1999, the City of Moses Lake, by and through its counsel, Katherine Kenison, of LeMargie and Whitaker, filed a Petition for Review of Grant County’s action adopting its Comprehensive Land Use Plan (Ordinance 99-158-CC).

A hearing on the merits was held on April 27, 2000. After hearing arguments on the merits from the parties, a Final Decision and Order was entered on the 23rd day of May 2000, finding the County out of compliance.

On June 5, 2000, the Respondent Grant County moved this Board for reconsideration and/or clarification of the Final Decision and Order.

On June 7, 2000, the Petitioner City of Moses Lake moved this Board for reconsideration/ clarification of Final Decision and Order. This motion will be dealt with in a separate order.

A hearing was held on July 11, 2000 in Ephrata, Washington to hear the arguments of the parties.

II. Legal Issues and Discussion

A. The County contends this Board's FDO appears to hold that all Countywide Planning Policies (CPPs) are mandatory.

Respondent's Position: The Respondent insists that the Washington State Supreme Court case, *King County v. Central Puget Sound Board, et al.*, 138 Wn.2d 162 (1999) did not adopt the expansive proposition that all CPPs constitute binding directives. Further the County contends the Grant County CPPs were specifically to be used only as a guide in the formation of city and county comprehensive plans and therefore are never binding.

The County further contends the State Legislature's adoption of new options in the GMA, which allow Rural Areas of more Intensive Development, (RAIDs) has the effect of invalidating CPPs appearing to disallow RAIDs, if those CPPs were written prior to the legislative amendment.

Petitioner's Position: The Petitioner contends directive CPPs are mandatory. They assert the parties preparing the CPPs carefully drew the language and recognized its mandatory nature. The amendment of the GMA to allow other options does not "trump" the CPPs. The statutory amendments did not require the designation of RAIDs; rather, the new language allowed RAIDs to be established if desired.

Discussion: Only those CPPs that are directive are mandatory. There is no question that the language found in CPP 2B 1-D is directive. That CPP states as follows: "Urban densities are prohibited outside of established urban growth areas except for the establishment of master planned resorts and new fully contained communities consistent with the requirements for reserving a portion of the twenty (20) year county population projection." It could not be said any more clearly.

The fact that Policy 14 of the CPPs, adopted as the preamble to the CPPs, states that it is understood the policies are meant as "general framework guidelines" for the county and each municipality and that flexibility must be maintained in order to adapt to different needs and conditions, does not change the mandatory nature of a directive CPP. The *King County* Court, *supra*, made it clear the CPPs do not serve as nonbinding guides. "If the CPPs served merely as a nonbinding guide, municipalities would be at liberty to reject CPP provisions and the CPPs would not ensure consistency between local comprehensive plans. The Board was therefore correct to conclude that the CPPs are binding on the County." P.175.

Conclusion: The Board reaffirms its finding that directive CPPs are mandatory for Grant County and Cities within the County.

B. The County contends that if all CPPs in this case are construed to be binding, Grant

County will be forced to Modify its Comprehensive Plan to allocate less population to urban growth areas.

- Conclusion: There has been no challenge to the population assigned to urban growth areas and this issue is not before us. The County should work with the Cities to develop workable CPPs and follow those that are directive.

C. The CPPs do not even contemplate the use of RAID techniques and, therefore, cannot be construed to prohibit them.

- Respondent's Position: The County contends that the Committee preparing the CPPs did not even know that Raids were an option; therefore they could not be seen as prohibiting them.

Discussion: This matter has been discussed in the first portion of this opinion. We also need to point out that the CPP under discussion intended to prohibit urban densities outside Urban Growth Areas, with specific exceptions. The CPPs need not list every possible way to locate urban densities outside UGAs in order to prohibit it.

Conclusion: The Board continues to find the County has violated directives found in CPP 2B1-D and are out of compliance with the CPPs and therefore out of compliance with the GMA.

D. The County asks the Board to clarify the Basis for its finding of non-compliance as to the RAIDs

Respondent's position: The County continues to contend its designation of RAIDs does not, in and of itself, violate the CPPs or the GMA. The County pointed out that CPP 1 states that "growth can occur outside a UGA only if it is not urban in nature," and that the later amendment authorizing RAIDs provides that growth within RAIDs is not urban growth but "limited areas of more intensive rural development." RCW 36.70A070(5)(d). But if the Board still is saying the RAIDs are out of compliance due to their failure to be confined to their logical outer boundaries, the County is asking the Board to list the problems RAID by RAID.

Petitioner's position: The petitioner points out that the language quoted by the County exempting RAID populations from the designation of urban growth, was added after the CPPs were drafted. The City emphasized it was clear the Committee drafting the CPPs intended what the

words meant at the time drafted.

Discussion: The Petitioner is correct when it points out the language was chosen before the statute was changed and we must look at what the parties meant at the time the language was drafted. However, the language found in 2B is different and speaks of “urban densities”. The Committee adopting the CPPs has stated this prohibition two different ways. One way might be technically challenged and said to not prohibit RAIDs, but not so with 2B. It is clear the Countywide Planning Policies intended to prohibit urban densities outside urban growth areas and the later amendment of the GMA does not change this conclusion.

The Board believes the County should reconvene the Grant County Planned Growth Committee and reexamine the CPPs and discuss the options available in rural areas. At those meetings the County should review RAIDs and how or if they should be established. In our May 23 2000 FDO we found that the County RAIDs are out of compliance with the GMA because they violate the CPPs. This remains true. The County also was found to not have developed “a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.” RCW 36.70A.070(5)(a). This still needs to be done. The written “Policy Plan” pointed to by the County does define the planning concepts and principles embodied in the Plan, but it is not what the GMA is seeking in this case. The requirement for a written record was added at the same time the option for RAIDs were given to the County. The Board finds the Legislature was seeking a written statement of how the Raids harmonize with the goals of the GMA. The County has not done this.

While the Board does not wish to enumerate the problems it sees with the size of each RAID, those problems exist. The County has not given the Board any clear statement of the existing area or existing uses as of July 1, 1990 for each RAID. July 1, 1990 is the point in time to be used to determine the existing areas or uses, which shall not be extended beyond when the County designates the use or area. See R_36.70A070(5)(d)(iv) and (v)(A).

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Conclusion: The County’s request for a RAID by RAID listing of the problems of the Board is denied. The statutes and the discussion above give direction, but until the County has provided the July 1, 1990 basis for the sizing of the RAIDs it is not appropriate for the Board to comment further on their size.

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E. The County has asked the Board to amend or reconsider its statements relating to the industrial and commercial designations.

Respondent's position: The Respondent asks that the FD & O be amended or the Board reconsider its statements relating to the industrial and commercial RAID designations. They point out that commercial or industrial areas will not be subject to subsections c (ii) and (iii) requiring visual compatibility of rural development with the surrounding rural area and reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area. RCW 36.70A.070(5)(d)(i). The County contends it has complied with the GMA and the 1997 amendments, RCW 36.70A.070(5). _

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The County also asks the Board to reconsider that portion of its order, which affects industrial development established under RCW 36.70A.367. They state that no person has challenged the Ordinance establishing the County procedure for the potential locations for master planned locations for major industrial development. _

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Discussion: The County attempted to use the authority found in RCW 36.70A.070(5) to establish commercial and industrial RAIDS. Even though exempt from some requirements found in the GMA, these RAIDS must still comply with the CPPs especially 2B as referenced above in Section A. But, even if these RAIDS are not “urban densities” as they contend, the County still has failed to comply with its sizing. RCW 36.70A.070(5)(d)(iv) requires the County to “adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical boundary or the existing area or use, thereby allowing a new pattern of low-density sprawl. (Emphasis added). Subparagraph (v) defines an existing area or existing use as one in existence on July 1, 1990. _

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The County has not provided the Board with any history of the area or uses existing on July 1, 1990. The County is required to determine what existed on July 1, 1990 and design RAIDS so that they will not extend beyond the logical outer boundary of those uses and area. _

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The County is also required to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of RCW 36.70A.070. It has not yet done this. If these RAIDS violate the CPPs, changes would be necessary to comply or to change the CPP in conflict. _

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On December 28, 2000, the County adopted Ordinance No. 99-221-CC, which established a process for designation of two master planned locations for major industrial development as authorized by RCW 36.70A.367. This has not been challenged by anyone before the Board. The FDO should be modified to remove any language finding this section of the County's Plan out of compliance. _

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The County has listed at least 11,360 acres as commercial or industrial in the unincorporated area. There is no location of these acres except for a general discussion of the existing zoning. Portions of the Plan permit freeway commercial areas and other development outside UGAs without a limit to resource base or serving the rural communities. Some of these sites are clearly urban growth and a violation of the CPPs and the GMA. The remaining industrial and commercial designations outside the UGAs have not complied with the GMA and are out of compliance at this time.

Conclusion: The Board continues to find the Commercial and Industrial RAIDs out of compliance. However, the Board's FDO dated May 23 2000 should be modified. The Board does not find the Ordinance establishing a process for designation of two master planned locations for major industrial development as authorized by RCW 36.70A.367 out of compliance. This process was adopted subsequent to the adoption of the Comprehensive Plan and there has been no challenge to that Ordinance.

The Board continues to find the Comprehensive Plan out of compliance with the GMA regarding the designation of commercial and industrial lands in the unincorporated areas of the County.

F. The County has also asked the Board to dismiss claims of internal inconsistency based on scrivener's errors.

Respondent's position: The County contends the claims of internal inconsistency based on scrivener's errors are moot because the County adopted Ordinance No. 00-57-CC approving the errata sheets that had been prepared at the time of the Board's final hearing and directed County staff to distribute them as part of the published Comprehensive Plan and incorporate the revisions into future printings of the Plan.

Petitioner's position: The Petitioner contends the Board should find the County out of compliance due to the inconsistencies found in the final printed Comprehensive Plan. They point out that there were no hearings or opportunities to review the corrections to the printed draft resulting from the newly adopted Ordinance No. 00-57-CC. They state it is difficult to locate the changes, determine what they are and whether they should have objected to them in the original petitioning process.

Discussion: There were clearly inconsistencies in the final plan that was the result of the claimed scrivener's errors. It was claimed that the Ordinance adopting the Comprehensive Plan was correct, but the final draft of the document did not adopt all the changes found in the Ordinance. Thus inconsistencies. There was a disagreement whether such errors required a finding of non-

compliance. However, the County has by Ordinance directed that the changes be made correcting the errors. The issue is now moot. If there is a basis for complaints about public participation, substantial compliance or other issues, a new Petition should be filed and these issues can be raised.

Conclusion: The claims of internal inconsistency based on scrivener's errors are dismissed.

The Board hereby enters the following

ORDER

1. The Board reaffirms its finding that directive Countywide Planning Policies are mandatory for Grant County and cities within the County

2. There has been no challenge to the population assigned to urban growth areas and this issue is not before us.

3. The Board continues to find the County has violated directives found in CPP 2B1-D and are out of compliance with the CPPs and therefore out of compliance with the GMA.

4. The County's request for a RAID by RAID listing of the problems of the Board is denied. The statutes and the discussion above give direction, but until the County has provided the July 1, 1990 basis for the sizing of the RAIDs it is not appropriate for the Board to comment further on their size.

5. The Board continues to find the Commercial and Industrial RAIDs out of compliance. However, the Board's FDO dated May 23 2000 should be modified. The Board does not find the Ordinance establishing a process for designation of two master planned locations for major industrial development as authorized by RCW 36.70A.367 out of compliance. This process was adopted subsequent to the adoption of the Comprehensive Plan and there has been no challenge to that Ordinance.

The Board continues to find the Comprehensive Plan out of compliance with the Growth Management Act regarding the designation of commercial and industrial lands in the unincorporated areas of the County.

6. The claims of internal inconsistency based on scrivener's errors are dismissed.

7. The County shall bring the issues found in noncompliance into compliance with the Growth Management Act within 90 days of the date of this Order.

This is a final Order for purposes of appeal.

SO ORDERED this 7th day of August 2000.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Dennis A. Dellwo, Board Member

Judy Wall, Board Member, Board Member

D. E. "Skip" Chilberg, Board Member