

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

JAMES A. WHITAKER,

Petitioner,

vs.

GRANT COUNTY,

Respondent.

Case No. 99-1-0019

**FINAL DECISION AND
ORDER**

I. Procedural History

On December 3, 1999, James A. Whitaker filed a Petition for Review of the Grant County Comprehensive Plan, Technical Appendixes and FEIS (Final Environmental Impact Statement) published on October 6, 1999.

On January 19, 2000, the Board issued a Prehearing Order establishing the issues and setting a motion and briefing schedule.

Upon the Respondent's Motion to Dismiss, the Board issued an order dismissing Petitioner's Issues 1, 2 and 3, on February 16, 2000, leaving only one issue, Issue 4.

On April 27, 2000, a final hearing on the merits was held in Ephrata.

The Respondent County moved this Board to supplement the record and to disallow all or portions of the final brief of the Petitioner. These motions were denied.

II. Findings of Fact

1. On September 30, 1999 Grant County adopted its Comprehensive Plan (Plan), Technical Appendices and FEIS.

2. The County's Comprehensive Plan includes twenty-two designations of Rural Areas of More Intensive Development (RAIDs).
3. The County made the following RAID designations:

Rural community – 1 unit per acre, ten RAIDs.

Rural village – 4 units per acre, one RAID.

Recreational development – 1 unit per acre, three RAIDs.

Agricultural service center – 1 unit per acre, five RAIDs.

4. The designation of RAIDs is contrary to directives found in the Countywide Planning Policies (CPPs).

III. Standard of Review:

The County's action is presumed valid RCW 36.70A.320(1). The burden is on Intervenor to demonstrate that the County's action was not in compliance with the requirements of the GMA. RCW 36.70A.320(2). The Board "shall find compliance unless it determines that the action by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). For the Board to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

IV. Legal Issue and Discussion

Issue No. 4: Are the Rural Areas of More Intensive Development (RAIDs) designated in the Comprehensive Plan consistent with RCW 36.70A.070 as respects all RAIDs identified except Desert Aire and Sunland Estates?

Petitioner's Position: The Petitioner contends the County was clearly erroneous in its designation of Rural Areas of More Intensive Development. He believes the extensive inclusion of agricultural resource lands and vacant lands do not comply with the statutory authority found in the GMA. He asserts the County did not properly justify the expansion and urban density in the rural area of the County. The Petitioner, using pictures shown at the time of the hearing and the maps and statistics found in the Plan, demonstrated that many of the RAIDs constituted minor developments and expanded into large areas of undeveloped lands. The Petitioner asserts the County could not and should not be allowed to use the GMA exception found at RCW 36.70A.070(5) to expand urban areas well beyond the developed area. The Raids are claimed to be improperly sized and ignore the existing adjoining land uses which will continue to exist after the adoption of these RAIDs, making their true size and scope several times larger than that listed

in the Plan. This understatement of the true size of the RAIDs is claimed to permit substantial urban development outside UGAs. With these RAIDs, and without containment, the Petitioner contends the County will not re-focus growth back into the UGAs.

The Petitioner points out the Plan specifically states that it manages growth by directing urban development to designated areas, including UGAs and RAIDs. The County's Plan allocates population growth to RAIDs. The Petitioner contested the expansion of RAIDs beyond the platted areas and in several cases objected to the inclusion of parts of the platted areas not developed. The Petitioner's brief and his arguments detailed numerous problems with the calculations and designations contained in the RAID section of the Plan.

The Petitioner further contends the establishment of RAIDs is directly contrary to the Countywide Planning Policies. CPP Policy 1, 2B, 2A, and 4 prohibit all urban growth and industrial and commercial growth outside of UGAs. The Petitioner states that the amendment to the GMA allowing RAIDs does not require the County to designate RAIDs. The statutory amendments offered a new option the County may have chosen had it fit within the CPP directives or the CPPs were changed.

Respondent's Position: The County contends the amendments to RCW 36.70A.070(5) expressly provided the authority for the Respondent's designation of RAIDs. The amendment by the State Legislature recognized the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. The law authorized more extensive rural development than was previously authorized under the GMA. The County believes the only question is whether the allowed densities and uses reflect the existing density or uses contained within a specific RAID.

The County contends that, while establishing RAIDs may not be considered an option by the CPPs, the GMA was amended at a later date. They believe it would supersede the CPPs. The County contends the CPPs were outdated and were to specifically operate as flexible guidelines to be adaptable to the changing needs and conditions of Grant County and its constituent cities. They quote the preamble, original Policy 14, where it is "understood that these policies are meant as general framework guidelines for the county and each municipality, however flexibility must be maintained in order to adapt to different needs and conditions."

The County asserts that it preformed extensive land use analysis and then evaluated each candidate area according to specific criteria, and limited the number of proposed RAIDs based upon a thorough evaluation of these criteria and the extensive public comment received.

Discussion: RCW 36.70A.110(1) provides in pertinent part:

Each county that is required or chooses to plan under RCW 36.70A.040 shall 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 . . .** (Emphasis added.)

While still recognizing rural areas are to be very different from urban areas, the legislature allowed reasonable and necessary exceptions and flexibility for compact rural development with their legislative action in 1997, amending RCW 36.70A.070(5), adding a new subsection, which provides:

RCW 36.70A.030(14) "Rural character" refers to the patterns of land use and development established by a 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 foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce 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.

The statute now explicitly clarifies the legislature's continuing intent to protect rural areas from low-density sprawl, while providing some accommodation for infill of certain "existing areas" of more intense development in the rural area. That infill is to be "minimized" and "contained" within a "logical outer boundary." With such limitations and conditions, more intense rural development in areas where more intense development already exists could constitute permissible **compact rural development**. Without such limitations and conditions more intense rural development would constitute an impermissible **pattern** of urban growth in the rural area.

RCW 36.70A.070(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

- (a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, **but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.** (emphasis provided).

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural

area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses,

but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall 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 outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter; (Emphasis added.)

The GMA, as amended, still prohibits urban growth in the rural area. See RCW 36.70A.070(5)(d)(ii), (d)(iii), (d)(iv), and .110(1). Areas of more intensive rural development are not “mini-UGAs” or a rural substitute for UGA and they are subject to the limitations of RCW 36.70A.070(5)(d)(iv). The County must minimize and contain existing areas or uses of more intensive rural development. RCW 36.70A.070(5)(d)(iv). The Act states that even the “innovative techniques” for rural development must not allow urban growth. RCW 36.70A.070(5)(b). However, a pattern of more intensive rural development, as limited by the provisions of RCW 36.70A.070(5)(d), does not constitute urban growth in the rural area.[3]RCW 36.70A.030(17). Therefore, unless the RAID designation, as presently configured, satisfies the provisions of RCW 36.70A.070(5)(d), it does not comply with the requirements of the Act.

RCW 36.70A.070(5)(d)(ii) applies to development that does “not include new residential development.” The RAID designation clearly does not preclude new residential development (indeed, it permits it as a matter of right); thus, (5)(d)(ii) cannot be invoked by the County here – it does not apply.

RCW 36.70A.070(5)(d)(iii) contemplates the rural industrial uses permitted (but not required) by the County. However, the application of (5)(d)(iii) is limited by that paragraph’s reiteration of the Act’s prohibition of low-density sprawl and by (5)(d)(iv)’s requirements to minimize and contain any existing areas or uses of more intensive rural development. While the Board recognizes that

(d)(iv) provides that “some accommodation may be made for infill of certain ‘existing areas’ of more intense development in the rural area, that infill is to be ‘minimized’ and ‘contained’ within a ‘logical outer boundary.’” *Bremerton CPSGMHB Case No. 95-3-0039c* (coordinated with Case No. 97-3-0024c), Finding of Noncompliance, at 24.

The County argued that its decision to establish RAIDs is justified by its consideration of local circumstances, as permitted by RCW 36.70A.070(5)(a). This provision allows counties, in developing the rural element of the plan, to consider local circumstances “in establishing patterns of rural densities and uses.” Among the local circumstances identified by the County is the history and future need for industry or workers’ residences in this portion of the County. They do not indicate what percentage of workers in that area have actually utilized the areas for their homes in the past, nor do they indicate the number that are expected to do so in the future. The County has not given us the facts and the record is without support for the proposition that the permitted lots will be utilized for workers’ residences rather than low-density, residential sprawl with no local worker use or economic development purpose. For example, there is no mechanism in the Plan or elsewhere to monitor, let alone limit, the residential sprawl created relative to projected demand.

When considering local circumstances, there must be “a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of [the GMA].” RCW 36.70A.070(5)(a). Although the County has the burden of harmonizing the Act’s planning goals (see also, RCW 36.70A.3201), that is not enough, per se, to overcome its additional duty to assure that the rural element meets the requirements of the GMA. RCW 36.70A.070(5)(a). The Act requires the County to “explain how the rural element harmonizes the planning goals . . . and meets the requirements of [the Act].” RCW 36.70A.070(5)(a). The County made no attempt to harmonize the planning goals. Absent the Act’s mandated written explanation of how the rural element harmonizes the planning goals, the County has not complied with RCW 36.70A.070(5)(a).

The County also contends the countywide planning policies are not mandatory. The cases cited by the County were earlier than a recent Supreme Court Decision. The Supreme Court in King County v. Cent. Puget Sound Board, et al, 138 Wn.2d 162 (1999) at p. 175 gives us specific direction on this issue:

The GMA requires county and city comprehensive plans to be consistent with each other in order to ensure harmonious land use planning. RCW 36.70A.100. RCW 36.70A.210(1) provides that “a ‘county-wide planning policy [CPP]’ is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework *shall ensure that city and county comprehensive plans are consistent* as required in RCW 36.70A.100.” (Emphasis added by the court). Local governments are

required to adopt regionally developed CPPs, from which local comprehensive plans, and then development regulations, are enacted. The CPPs are thus the major tool provided in the GMA to ensure that the comprehensive plans of each city within a county agree with each other. If the CPPs served merely as a nonbinding guide, municipalities would be at liberty to reject CPP provisions and the CPPs could not ensure consistency between visions and the CPPs could not ensure consistency between local comprehensive plans. The Board was therefore correct to conclude that CPPs are binding on the County.

This Supreme Court decision was issued in 1999, long after the Board decisions cited by the County. This decision is controlling.

The fact that the GMA was amended, thus allowing the designation of RAIDs by the County does not change the mandatory nature of the CPPs. The County did not have to create the RAIDs. They were allowed to do so. If they wished to do so, the County had the option of requesting a change in the CPPs. This would give the local jurisdictions input, coordinate the plans as required by the GMA and make the change if desirable. This was not done. The Raids are contrary to directives of the CPP. The Petitioner contended there are many other examples of the failure to follow the directives of the CPPs.

Conclusion: The Board finds that the RAID designation, as presently configured, constituted an impermissible pattern of urban growth in a rural area. The Board determines that the RAID designation does not satisfy the exception from the prohibition of urban growth in rural areas provided by RCW 36.70A.070(5)(d). In addition, the County has failed to explain how the RAID designation harmonizes the planning goals of the GMA as required by RCW 36.70A.070(5)(a).

The County must follow CPPs directives. If the County desired to use the amended authority allowing the establishment of RAIDs, the County had the option to seek the amendment of the CPPs. They did not do this.

The Board concludes that the County's RAID designation, as presently configured, is clearly erroneous and fails to comply with the requirements of the GMA. The Petitioner has carried his burden of proof.

IV. Order

The Board, having reviewed briefs and having considered the arguments of the parties in this proceeding, and based upon the Findings and Conclusions entered above, finds that Grant County has failed to comply with the requirements of the GMA, as set forth in the Board's Orders. Therefore, the Board issues a Finding of Noncompliance and is remanding the RAIDs and the associated text with direction to the County to bring this part of the Plan into compliance with the GMA and this decision.

Determination Of Invalidity: The Petitioner asked the Board to find the RAIDs invalid. The Board has found the County out of compliance and may now hear arguments from the parties concerning the issue of Invalidity. A date for hearing such arguments will be designated and notice of such date provided to the parties.

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