

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

FOR EASTERN WASHINGTON

JAMES A. WHITAKER,
Petitioner,
vs.
GRANT COUNTY,
Respondent.

Case No.99-1-0019
ORDER ON RESPONDENT'S
MOTION FOR
RECONSIDERATION

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.

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.

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 clearer.

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 the directive found in CPP 2B1-D and are 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 emphasizes it was clear the Committee drafting the CPPs intended what the words meant at the time drafted.

Discussion:The Petitioner is correct when he 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 re-examine 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).

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.

E.The County asks that the FDO be modified to exclude consideration of RAIDs Schwans, Beverly or Desert Aire because they were not challenged by Petitioner.

Conclusion:The Petitioner Whitaker did not object to RAIDs Schwans, Beverly or Desert Aire and therefore the FDO is modified to not include those RAIDs._

The Board hereby enters the following:_

ORDER

1.The Board reaffirms its finding that directive CPPs 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 Final Decision and Order issued May 19, 2000 is modified to exclude RAIDs in Schwans, Beverly and Desert Aire. _
6. The County shall bring the issues found in non-compliance 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 Dellwo, Presiding Officer

Judy Wall, Board Member

D. E. "Skip" Chilberg, Board Member