

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

SAUNDRA WILMA and ALAN D. WILMA,
JAMES L. SULLIVAN, and DAWUD AHMAD,

Case No. 99-1-0001c

Petitioners

**FINAL DECISION AND
ORDER**

vs.

STEVENS COUNTY,
Respondent

I. Procedural History

On December 1, 1998, Sandra Wilma and Alan D. Wilma filed a Petition for Review with the Eastern Washington Growth Management Hearings Board (the Board).

On December 30, 1998, Petitioners submitted an Amended Petition including James L. Sullivan as a petitioner with the same issues.

On December 28, 1998, Dawud Ahmad filed a Motion to Intervene.

On January 4, 1999, the Board held a prehearing conference. Motion to Intervene was denied. Mr. Ahmad filed a separate Petition for Review. The petitions were consolidated at 99-1-0001 to expedite disposition, avoid duplication of effort in reviewing the record, minimize the risk of redundant testimony and evidence, and not prejudice the rights of the parties. WAC 242-02-520.

On March 23, 1999 Petitioner Dawud Ahmad telephoned the Board's office noting he would be withdrawing his petition and would not be briefing his issues. Petitioner Ahmad's issues are as Issues 19 through 27.

On April 21, 1999, John M. Riley, II of Witherspoon, Kelley, Davenport & Toole, filed a Notice of Appearance on behalf of Alan D. Wilma.

On April 23, 1999, the Board held a Hearing on the Merits in Colville, Washington. Present were Judy Wall, Presiding Officer, and Board Members Dennis Dellwo and Skip Chilberg. All parties were present or represented.

II Prehearing Summary

Petitioner Dawud Ahmad appeared before the Board to formally withdraw his petition. The Board granted his motion to withdraw and after hearing discussion from all parties, it was stipulated that

Petitioner Ahmad's issues 19 through 27 were withdrawn from this case.

III. Findings of Fact.

1. On January 25, 1996 and February 1, 1996, Stevens County published a notice for a public hearing on the proposed resolution establishing IUGAs.
2. On February 5, 1996, Stevens County held a public hearing on the proposed resolution establishing IUGAs.
3. On February 4, 1997, Stevens County adopted its IUGA designation by Resolution 16-1997.
 4. On December 16, 1997, Stevens County adopted Resolution 149-1997 amending its IUGA designation to change the Springdale IUGA boundary.
 5. Stevens County has not established and broadly disseminated to the public a public participation process identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans (RCW 36.70A.140).
6. Stevens County did not give notice to CTED 60 days prior to adopting Resolution 16-1997.
7. Stevens County did not give notice to CTED 10 days after adoption of Resolution 16-1997.
 8. Stevens County published notice of adoption of Resolutions 16-1997 and 149-1997 over two years after their adoption, after the commencement of this action.

IV. Legal Issues and Discussion.

Issue 1: Did the County fail to publish Resolution 16-1997, RCW 36.70A.110, and is there an Interim Growth Boundary if the resolution is not published? RCW 36.70A.290(2)(b).

Petitioners' Position: Petitioners quote RCW 36.70A.290(2) as mandating that all petitions "must be filed within sixty days after publication by the legislative bodies of the county or the city." Petitioners also state "petitioning cannot start until date of publication and then ensue for 60 days." Petitioner brief, page 4. They contend the IUGAs are not effective unless the publication occurs. At the minimum, they believe these ordinances are out of compliance due to this failure.

Respondent's Position:

The Respondent contends the effect of a failure to publish notice of adoption is an unlimited time for appeals to the Hearings Board, not invalidity of the regulation.

Discussion: RCW 36.70A.290(2) requires all petitions filed hereunder be filed within sixty days after publication by the legislative bodies of the county or city. At the time of the pre hearing in this matter, the County admitted that it had not published a notice of adoption of the Resolutions. At the final hearing the County stated that publication had by then occurred. Over two years had passed between the Resolutions passage and its publication.

RCW 36.70A.290(2)(b) requires counties to promptly publish notice of adoption of a comprehensive plan or development regulations or amendment to either, after passage. The Central Growth Hearings Board, in South Bellevue Partners Limited Partnership et al. v. City of

Bellevue et al., No. 95-3-0055(1995), held: "cities, like counties, must publish notice of adoption of a comprehensive plan or development regulation, or amendment to either, promptly after passage." P.1161

A key purpose of the GMA is to provide certainty in the land use planning process. Promptness of publication promotes certainty. The publication of notice of adoption triggers the sixty-day period for filing petitions for review. Publication occurring over two years after passage of the Resolutions is not prompt and does not comply with the Act's intent.

Conclusion: While the Board finds the county did not promptly publish its notice, we are remanding these Resolutions for other reasons and therefore need not determine if the failure to publish, by itself, would require remand. Any future action by the county under the GMA should be promptly published.

Issues 2, 3, 4, 5, 6, 8 and 18 are similar or identical and will be all addressed together.

Issue 2: Did the public meeting on February 5, 1996 concerning the possible adoption of the new, revised IUGAs satisfy the requirements and goals of RCW 36.70A.110 (5), RCW 36.70A.020 (11), and WAC 365-195-600(iv)(v)?

Issue 3: If the only public notice that the County was considering the IUGA adoption was the one in the official county newspaper on January 25, 1996 and again on February 1, 1996, was this reasonable notice to meet the goals and opportunities for public participation and comment according to RCW 36.70A.035? RCW 36.70A.140; RCW 36.70A.020(11) and County Wide Planning Policies #8.

Issue 4: Was the wording: "The adoption of the Interim Urban Growth Area will not have an immediate regulatory effect, but will serve as a guide..." in the advertisement of the impending adoption of the IUGA's requirements of adopting development regulations after "effective notice"? RCW 36.70A.035. RCW 36.70A.110(5), RCW 36.70A.020(11). Did the County fail to advise the public of the importance of this impending adoption and, in fact, limit participation by this disclaimer in the County Advertisement? CPP #8.

Issue 5: Did this defect in the official notice of the impending adoption, cause the City of Chewelah and the Town of Springdale to commit possible illegal annexation acts, while believing the IUGA had no regulatory effect as the County advertised? Is this enough to invalidate the Resolution under RCW 36.70A.302(a)(b), and does this notice and the possible consequences of this notice substantially interfere with the fulfillment and goals of the GMA? RCW 36.70A.302. RCW 36.70A.110(5).

Issue 6: Did the County error when they adopted the IUGA 365 days after the only public meeting to be held on the contents of this IUGA? And if so, was this error compounded considering the Commissioners were asked for a new public hearing by their own planner? RCW 36.70A.110(5), RCW 36.70A.035. RCW 36.70A.020(11).

Issue 8: Whether the County deceived the public in advertising the map of Chewelah's IUGA, and adopting that advertised map in Resolution 16-1997, while announcing in the public meeting of February 5, 1996 that Chewelah's IUGA was

changed from that map?RCW 36.70A.110(2).RCW 36.70A.110(5).RCW 36.70A.035.

Issue 18: Did the County conform with all the requirements of the GMA as RCW 36.70A.040(2) mandates after opting into the GMA including, but not limited to, early and continuous public participation, broad dissemination of proposals and alternatives, opportunity for written comment, public meetings after effective notice, provision for open discussion, communication programs, information services and consideration and response to public comments?

Petitioners' Position: The Petitioners contend the GMA requires early and continuous public participation. The meetings of the SCC were unadvertised, cancelled and rescheduled haphazardly. These meetings were posted only at Colville City Hall, the Library or Courthouse and were not advertised in the official county newspaper.

The Petitioners also contend the only published public notice for consideration of adoption of the IUGAs was on January 25, 1996 and February 5, 1996. The Petitioners also contend the language used in the notice, "The adoption of the IUGA will not have immediate regulatory effect, but will serve as a guide..." is not proper notice. The GMA requires the county to establish and broadly disseminate to the public a public participation program identifying procedures for early and continuous public participation procedures for broad dissemination of proposals and alternative, opportunity for written comment, public meetings after effective notice.... The Petitioners also contend that by no notice to the public, the citizens of the county had no knowledge a Resolution had even been passed. The Petitioners claim that only when Mr. Sullivan petitioned this Board and subsequently sued the Wilmas for annexing outside an IUGA, did they realize that a resolution by the County had been passed.

Petitioners further contend the county erred when adopting an IUGA 365 days after the only public meeting had been held on the contents of this IUGA. Petitioners also contend the November 1995 meeting of the Small Cities Consortium (SCC) held during the regular commission meeting was never advertised. At the public hearing on February 5, 1996, it was announced there had been three minor changes since the November 1995 meeting. Petitioners state the Board of County Commissioners were asked to set a public hearing at their January 14, 1997 regular commissioner meeting but that no notice was put out and the resolution was adopted on February 4, 1997. The Petitioners also contend the public was deceived when the advertised map of Chewelah's IUGA showed the sewer lagoon in the IUGA but one of the changes to the IUGA was the sewer lagoon would be outside the IUGA.

The Petitioners contend the County had no regard for letting the public know they were in the process of adopting an IUGA. In fact, the Petitioners notice a large difference when the County gave notice about the IUGA meetings on March 17, 1998 and March 24, 1998.

Respondent's Position: The Respondent claims the purpose of the February 5, 1996 hearing was to consider adoption of IUGAs for the members of the Small Cities Consortium. The Respondent also claims Resolution 149-1997 replaced 16-1997 and the Petitioners contend that the meetings for Resolution 149-1997 were well advertised. The Respondent also claims to the extent of the

issue as framed by Petitioners, include questions not related to compliance issues, and these questions are beyond the jurisdiction of the Growth Management Board to determine. Finally, the Respondent claims the Petitioners have failed to provide adequate reference to the record to substantiate these allegations and therefore have failed to meet their burden of proof.

Discussion: A key objective of the Growth Management Act is to dramatically increase public participation in land use planning. The following includes examples of statutes requiring extensive public participation:

RCW 36.70A.020(11) Planning goals states "encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdiction to reconcile conflicts."

RCW 36.70A.035 Public participation-Notice provisions require jurisdictions to include procedures that are reasonable calculated to provide notice to property owners and others affected.

RCW 36.70A.110(5) in part states "Adoption of the IUGA areas may only occur after public notice; public hearing...."

RCW 36.70A.140 requires each county and city that is required or chooses to plan under RCW 36.70A.040 to establish and broadly disseminate to the public, a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans.

WAC 365-195-600 (iv) states "Once the plan is completed in draft form, or as parts of it are drafted, a series of public meetings or workshops should be held at various locations throughout the jurisdiction to obtain public reaction and suggestions."

The Growth Management Act requires those jurisdictions planning under the Act to encourage citizen participation and involvement in the process. Planning Goal 11 encourages citizen participation throughout the growth management planning process. RCW 36.70A.140 requires each planning jurisdiction to "establish procedures providing for the early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans."

The Act does not prescribe how public participation shall occur, it provides only that there be extensive public participation. The process must be examined to determine whether there is adequate public participation.

This Board has always held that public participation was the very core of the Growth Management Act. Without it the legislative body can not possibly know what its jurisdiction's needs are. The Board finds that neither the spirit nor the law under GMA was met.

Conclusion: The Board finds Stevens County is in noncompliance. They have not met the requirements of the GMA regarding public participation under RCW 36.70A.020(11); RCW 36.70A.035; RCW 36.70A.110(1), (2), and (5). RCW 36.70A.140. They have failed to develop a public participation program and failed to involve the public in the planning process.

Issue 7: Whether the Commissioners violated the spirit of the Act in adopting a different IUGA

than the Springdale Town Council and Mayor requested, RCW 36.70A.110(2), RCW 36.70A.3201 (last sentence) without justifying in writing why the County did, so adopt the original IUGA, which the Town (Springdale) had never officially adopted and had found insufficient?RCW 36.70a.110(2)

Discussion:This matter has been remanded to the County due to its lack of public participation and its failure to establish and broadly disseminate a public participation process. Therefore, we do not find it necessary at this time to address this issue.

Issue 8a:Whether Resolution 16-1997 is factually incorrect, as it refers to the planning boundaries as presented to the public in the unadvertised meeting of November 14, 1995 (held during regular Commissioner meeting) with the Small Cities Consortium, and these boundaries were not what was adopted?RCW 36.70A.110(2), RCW 36.70A.110(5), RCW 36.70A.020(11), RCW 36.70A.140 and RCW 36.70A.035.

Discussion:This matter has been remanded to the County due to its failure to establish and broadly disseminate a public participation process and adequately include the public in the process. Therefore we do not find it necessary to address this issue.

Issue 9:Whether the County failed to amend its land use regulations and permitting procedures so as to prohibit urban development beyond the IUGA boundaries? RCW 36.70A.110(1)(2).

Discussion:The County has conceded it has failed to amend its land use regulations and permitting procedures to prohibit urban development beyond the IUGA boundaries. Respondent's brief, P 4.

Conclusion:The County has conceded this issue.

Issue 10:Whether the County failed to set densities according to Ordinance I-1995 County-Wide Planning Policies, Policy 5 at (7) and RCW 36.70A.110(2)?

Discussion:The County conceded it failed to set densities according to Ordinance I-1995 County-Wide Planning Policies, Policy 5 at (7) and RCW 36.70A.110(2). Respondent's brief, P 4.

Conclusion:The County has conceded this issue.

Issue 11:Whether the County failed to notify the Department of Trade and Economic Development (CTED) sixty days prior to the adoption of the IUGAs?

Petitioners' Position:Petitioners points out the law requires the county to notify CTED 60 days prior to adoption of an Order or Resolution. Petitioners also state as of March 23, 1998 CTED had on file a copy of Resolution 16-1997.

Respondent's Position:Respondent contends the Petitioners have failed to provide reference to the record to substantiate the allegation and therefore fail to meet their burden of proof.

Discussion:RCW 36.70A.106(1) states:"Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption." CTED has stated they have on file a copy of Resolution 16-1997 and at this time have no comment on the interim UGAs. Exhibit M, Page 1.

Conclusion:While the County is required to notify CTED and provide them copies of the Resolutions, there is no remedy provided under RCW 36.70A for failure to notify CTED 60 days

prior to final adoption, except for a finding of noncompliance. Because we have found the county out of compliance for other reasons, we need not address this issue.

Issue 12: Whether the County failed to notify CTED ten days after final adoption of the IUGA regulation? RCW 36.70A.106(2)?

Petitioners' Position: The Petitioners contend, as in Issue 11, the County has not sent notice to CTED 10 days after adoption but a copy of Resolution 16-1997 is on file with CTED.

Respondent's Position: The Respondent states the Petitioners have failed to provide adequate reference to the record to substantiate this allegation and therefore fail to meet their burden of proof.

Discussion: RCW 36.70A.106(2) states: "Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulation to the department within ten days after final adoption. Our comments found in the above issue apply here.

Conclusion: As stated in Issue 11, the Board has no remedy provided under RCW 36.70A for failure to notify CTED 10 days after adopting an Ordinance or Resolution, except for a finding of noncompliance. Because we have found the county out of compliance for other reasons, we need not address this issue.

Issue 13: Whether the County failed to address or include, in the IUGA regulation, greenbelts and open spaces? RCW 36.70A.110(2)?

Conclusion: The County has conceded this issue.

Issue 14: Did the Board of County Commissioners choose to disregard their legal council's advice given at the November 19, 1996 meeting of the Small Cities Consortium, which advice concerned that "urban and rural" needed to be defined, and development standards needed to be adopted to clarify which uses and what intensity of uses are permitted inside and outside the line; and some factual basis for the decision? And does this constitute a failure to follow the mandates and the spirit of Growth management? RCW 36.70A.110(1)(2).

Petitioners' Position: The Petitioners state the Board of County Commissioners did not follow the advise of their legal counsel which was given at the November 19, 1996 meeting of the SCC and failed to follow the mandates and spirit of the GMA at RCW 36.70-A110(1)&(2).

Respondent's Position: The Respondent claims this issue as framed by the Petitioners includes questions not related to compliance issues and are beyond the jurisdiction of the Hearings Board. The Respondent also claims to any extent it raises any compliance issues, they have been addressed in Issues 9 and 10. The Respondent has conceded Issues 9 and 10.

Discussion: The Board will not consider what the County's legal counsel advised. Nor is there any requirement in RCW 36.70A. that County Commissioners must accept the advice of their legal counsel.

Conclusion: The Board does not have jurisdiction concerning whether county counsel's advice is followed.

Issue 15: In the urban growth area of the Town of Springdale, did the Board of County Commissioners' (BOCC) resolution 16-1997 improperly exclude an area characterized by

or adjacent to urban growth, an area within two blocks of the K-12 school? RCW 36.70A.110(3).

Petitioners' Position:The Petitioners concede Resolution 149-1997 amending Resolution 16-1997 changed the IUGA of the Town of Springdale to include this contested area.

Conclusion:The Petitioners concede this issue. Petitioners' brief, P 5.

Issue 15a: Did the BOCC improperly include 378.5 acres of unincorporated land to the Town of Marcus' IUGA? Does this, in fact, violate RCW 36.70A.010 and 36.70A.040(1)(2) creating Urban sprawl when the Town of Marcus has a projected growth rate of only 71 people over the next 20 years? Is Resolution 16-1997 internally consistent? RCW 36.70A.070". (Also known as Issue No. 28)

Petitioners' Position:The Petitioners contend by including 378.5 acres of unincorporated land to the Town of Marcus' IUGA, it would be an increase of 5.3 acres per single person in the new growth population. The Petitioners also contend the County has allowed denser populations in its unincorporated areas, by short plat ordinance. The Petitioners further contend this violates the Act with regards to keeping rural areas rural and concentrating growth in the urban areas.

Respondent's Position:The Respondent again cites their arguments in Issues 5 and 12 saying the question is beyond the jurisdiction of the Hearings Board, and the Petitioners have failed to provide adequate reference to the record to substantiate their allegation and therefore fail to meet their burden of proof.

Discussion:The question before us deals with the requirements found in RCW 36.70A.110(2) as argued and briefed by the Petitioners. The Petitioners cited the wrong RCW but the Board finds that does not override their argument:

RCW 36.70A.110(2) "Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area 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 county have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located

within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth areas within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the uses of mediation services."

Resolution 16-1997 designates an Interim Urban Growth Area for the City of Marcus that includes the present city plus an additional 378.5 acres. The County has determined that the City of Marcus is expected to grow by 71 people over the next 20 years.

This Board in Case No. 94-1-0023, Benton County Fire Protection District No. 1 v. Benton County, et al., Final decision and Order, stated the size of an urban growth area should equal the area required to absorb the expected population allocated by the OFM growth projection plus the area required to realize a jurisdiction's "vision of urban development" that can be realized over the next 20 years. This definition allows a community to achieve its legitimate needs while prohibiting sprawl. This Board continues to hold that this is the meaning of RCW 36.70A.110(2). The record before us clearly demonstrates an expansion of the City of Marcus well beyond the area needed to absorb the estimated population allocated. Except for what is found in the Resolution itself, the County has not been able to demonstrate why such a size is needed. We are surprised this IUGA would include the "presence of threatened and endangered species." (Resolution 16-1997). The Petitioners have shown the action by the County was clearly erroneous and the IUGA for the City of Marcus is too large.

Conclusion: The Petitioners have carried their burden of proof and the County is not in compliance with the GMA in that the IUGA for the City of Marcus is too large and encourages sprawl.

Issue 16: Did Resolution 16-1997 expire six months after its passage, being an Interim Official Control as the county planner, Loren Wiltse, told the Commissioners just before they voted to adopt this resolution?

Petitioners' Position: Petitioners contend Resolution 16-1997 expired six months after its adoption as it was an Interim Official Control. RCW 36.70A.390. The Petitioners further contend no hearings were held within the proscribed 60 days, no work plan presented to the public to extend this Interim Official Control to one year, therefore this Resolution has sunset.

Respondent's Position: The Respondent states Petitioners have failed to provide adequate reference to the record to substantiate this allegation and therefore fail to meet their burden of proof.

Discussion: RCW 36.70A.390 as cited and argued by Petitioners deals with Moratoria, Interim Zoning Controls, Public Hearings-Limitation of Length-exceptions. There is nothing in the record to indicate that Resolution 16-1997 is an interim official control as indicated by Petitioners. The County adopted Resolution No. 16-1997, the Interim Urban Growth Area Designation as required by RCW 36.70A.110. Therefore, this Resolution will remain in effect until the County adopts its final UGA.

Conclusion: The Petitioners cite and argue RCW 36.70A.390 which does not relate to the

adoption of the IUGA designation. The Petitioners have not met their burden of proof.

Issue 17: Did Stevens County violate the Growth Management Act by passing this IUGA by Resolution instead of Ordinance? RCW 36.70A.030(7).

Petitioners' Position: The Petitioners contend an Ordinance requires more structured work and public notice than a Resolution. The Petitioners further cite RCW 36.70.570 and contend it requires the County "to adopt Official controls by Ordinance and shall further the purpose and objective of a comprehensive plan and parts thereof."

Respondent's Position: The Respondent cites RCW 36.32.120(7) authorizing counties to use either resolutions or ordinances to exercise its plenary powers.

Discussion: This Board has found counties to be in compliance with the GMA even if adoption occurs by Resolution if that jurisdiction can show the resolution has the effect of law for that County.

The County has stated at the hearing on the merits that the County adopts all its laws by resolution and that's the way it has always been done. When we have a compliance hearing after the County proceeds to correct the defects found, they are directed to show that resolutions have the effect of law for them. The Board will then be able to recognize this method of adopting a comprehensive plan, amendments or development regulations required by the GMA.

Conclusion: The County is not found to be out of compliance because they adopted these GMA provisions by Resolution rather than Ordinance. Because this matter has been remanded for other defects, the County is directed, at the first compliance hearing to present evidence which will show the appropriateness of adopting these provisions by resolution rather than by ordinance.

Issues 19 through 27 are issues raised by Dawud Ahmad and were dismissed upon his withdrawal.

Issue 28. Petitioners Wilma and Sullivan move to supplement Legal Issue #15 with Legal Issue 15a. "In a correlating issue, did the BOCC improperly include 378.5 acres of unincorporated land to the Town of Marcus' IUGA? Does this, in fact, violate RCW 36.70A.010 and 36.70A.040(1)(2) creating Urban sprawl when the Town of Marcus has a projected growth rate of only 71 people over the next 20 years? Is Resolution 16-1997 internally consistent? RCW 36.70A.070".

Conclusion: This issue is addressed at Issue 15a.

Because of their similarity, we will address the invalidity question in issues 29 through 34 together.

Issue 29. The Petitioners request the Hearings Board invalidate Resolution 16-1997 for failure to publish after the resolution was passed; therefore failure to make this development regulation public knowledge and therefore this resolution should have no effect.

Issue 30. Petitioners request that the Hearings Board invalidate Resolution 16-1997 because the Board of County Commissioners were not given the information that this resolution did not include the land that the legislative authority of the Town of Springdale had legislated.

Issue 31. Petitioners request that the Hearings Board invalidate Resolution 16-1997 due to the January 25, 1996 and February 1, 1996 public notices' illegal and misleading language.

Issue 32. Petitioners request that the Hearings Board invalidate Resolution 16-1997 because the Board of County Commissioners (BOCC) did not concurrently pass development regulations for both sides of the IUGA boundaries.

Issue 33. Petitioners request the Hearings Board invalidate Resolution 16-1997 because the County failed to notify the Department of Commerce, Trade and Economic development (DCTED) sixty days before and ten days after adoption of Resolution 16-1997.

Issue 34. Petitioners request the Hearings Board invalidate Resolution 16-1997 because the resolution failed to include or address greenbelts and open spaces.

Discussion:

The Petitioners have requested a finding of invalidity be granted on Resolution 149-1997.

Rebuttal brief, page 8.

Standard of Review:

RCW 36.70A.320 Presumption of Validity--Burden of Proof--Plans and regulations:

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county or city under this chapter is not in compliance with the requirements of this chapter.

(3) in part states: "The Board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of this chapter." RCW 36.70A.3201.Intent-- Finding--1997." In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law.... The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community."

RCW 36.70A.302.Determination of invalidity--Vesting of development permits--Interim

Controls (1)(a)(b). "A Board may determine that part or all of a comprehensive plan or development regulations are invalid if the Board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Include in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity or part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter."

This Board takes the issue of invalidity very seriously and finds invalidity only if a county has substantially interfered with the fulfillment of the goals of the Growth Management Act.

While the Board holds that public participation is the heart of the Growth Management Act, the

Petitioners have not shown that failure to comply with the public participation requirement substantially interfered with the goals of the Act.

Conclusion:A finding of invalidity is not warranted.

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V.ORDER.

Having reviewed and considered the exhibits offered and the briefs and arguments of the parties and having deliberated on this matter, the Board finds Stevens County is not in compliance with the Growth Management Act with their adoption of Resolutions 16-1997 and 149-1997. These matters are remanded with direction to correct the deficiencies listed below:

1. The Board finds the County has failed to comply with the GMA by their failure to encourage the involvement of citizens in the planning process and to develop a public participation program identifying procedures for early and continuous public participation in the development and amendment of comprehensive lands use plan and development regulations implementing such plans. (Issues 2,3,4,5,6,8,&18).
2. The County has conceded Issues 9, 10 and 13 and they are directed to make the changes necessary to come into compliance. See RCW 36.70A.110(1)&(2).
3. The Board does not have jurisdiction to hear the matters raised in Issue 14.
4. The Petitioners concede the matters raised in Issue 15 were resolved by the passage of County Resolution 149-1997 and are withdrawn.
5. The Board finds the County out of compliance in the matters raised in Issue 15a. The IUGA for the City of Marcus includes a much larger quantity of land for the estimated growth and would encourage sprawl. (RCW 36.70A.110(2) and .040(1)&(2)).
6. The Petitioners failed in their burden of proof on Issue 16.
7. Issue 17: The County is not, at this time, found in noncompliance for the use of resolutions instead of ordinances to adopt their comprehensive plan or development regulations. However, the County is asked to provide evidence showing the appropriateness of their use of resolution when they appear before the Board at our first compliance hearing on this matter.
8. Issues 19-27 were dismissed upon the request of Petitioner Ahmad.
9. Issue 28 is addressed as Issue 15a. See 5 above.
10. The Board denies the Petitioners' request for a finding of invalidity requested in Issues 29-34.
11. Stevens County shall propose a timeline to come into compliance for the Board within fourteen (14) days of the date of this order.

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 21st day of May, 1999.

**EASTERN WASHINGTON
GROWTHMANAGEMENT HEARINGS BOARD**

Judy Wall, Presiding Officer

D. E. "Skip" Chilberg, Board Member

Dennis A. Dellwo, Board Member

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