

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

MILO AND DONNA BAUDER,

Case No. 01-1-0005

Petitioner,

FINAL DECISION AND ORDER

v.

CITY OF RICHLAND, a municipal
corporation

I. PROCEDURAL HISTORY

On February 16, 2001, Milo and Donna Bauder, by and through their counsel, Dennis Reynolds, filed a Petition for Review.

On March 13, 2001, the Board held a prehearing conference at which there was agreement by the parties to stay the proceedings in this matter pending the adoption of a Development Agreement.

On May 17, 2001, the Board entered an order on Stipulated Agreement to Stay Proceedings for 180 days.

On September 6, 2001, the Board entered a second order on Stipulated Agreement to Stay Proceedings for an additional 180 days.

On December 10, 2001, the Board entered a third order on Stipulated Agreement to Stay Proceedings for a period ending February 11, 2002.

On March 26, 2002, the Board held a telephonic hearing in this matter to decide preliminary matters.

On March 27, 2002, a Prehearing Order was entered providing for a new schedule to proceed to a Hearing on the Merits and the submittal of the Index of Record by the Respondent City of Richland.

On April 4, 2002, the Board provided a new schedule for the presentation of Motions and Briefs.

On April 30, 2002, the Parties were notified by the Board of a teleconference hearing set for May 6, 2002 on Petitioner's Motion to Enlarge and/or Supplement the Administrative Record.

The Hearing on the Merits was continued until June 12, 2002 in Richland.

On June 3, 2002, the Board ordered a telephonic status conference to be held on June 5, 2002.

On June 6, 2002, the Board issued an Order on Motion to Supplement Record and Order extending Briefing and Hearing Dates, which provided the Hearing on the Merits to be held on July 10, 2002.

On July 10, 2002, the Board held the Hearing on the Merits. Present were D.E. "Skip" Chilberg, Presiding Officer, and Board members Judy Wall and Dennis Dellwo. Present for the Petitioner was Dennis D. Reynolds, of Davis Wright Tremaine, Seattle. Present for the Respondent were Thomas O. Lampson, Richland City Attorney and George Fearing, of Leavy, Schultz, Davis and Fearing, Kennewick.

II. FINDINGS OF FACT

1. The City of Richland is located in Benton County, Washington.
2. Milo and Donna Bauder are the owners of a 232-acre parcel within the southern portion of the City of Richland, Benton County, Washington.
3. The Bauder's property has been preliminarily platted into a subdivision of 415 lots known as Westcliffe.
4. The City of Richland adopted Ordinance 46-00 on December 19, 2000.
5. Ordinance 46-00 amends the Richland Comprehensive Plan to include the South Richland Collector Road System Plan, including the alignment of the north-south collector road through Applewood Estates.

III. STANDARD OF REVIEW

The Growth Management Hearings Board has a duty to determine whether the City has complied with the requirements of the Revised Code of Washington, Chapter 36.70A. Under the Growth Management Act, comprehensive plans, development regulations, and amendments thereto are presumed valid upon adoption. The petitioner challenging the GMA actions bears the burden of demonstrating non-compliance with the Act. (RCW 36.70A.320(2)). The Growth Management Hearings Board must find compliance with the Act, unless it determines that the action by the City is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Act. For the Board to find the City's action clearly erroneous, the Board must be left with the firm and definite conviction that a mistake had been made.

IV. LEGAL ISSUES AND DISCUSSION

Issue 1: Is Ordinance No. 46-00 noncompliant with the Growth Management Act because it is not consistent with and does not implement the City's Comprehensive Land Use Plan as

required by RCW 36.70A.120?

Petitioner's position:

Petitioners contend that the Collector Street Plan (CSP) was originally adopted in June 1994, and has been part of the City Transportation and Improvement Plan (TIP) since 1995. The Petitioners contended TIP has been part of the City's GMA Comprehensive Land Use Plan since its adoption on October 6, 1997. The Petitioners believe Ordinance NO. 46-00, amending the TIP, creates a significant internal inconsistency because the amendment conflicts with Comprehensive Plan policies relating to transportation corridors.

The Petitioners further contend that development under the CSP plan is already committed to and the City has consistently required that land use decision-making, including plat approvals, follow the CSP. The Petitioners also argued that the challenged Ordinance was inconsistent with other City laws, in particular, the City's development regulations, RCW Chapter 24.16.

Petitioners contend that by altering an important component of an existing transportation network which had been planned for and coordinated with new and existing development, and which had been obtained and financed through public/private partnership, the City's actions further none of the goals found in the City's Plan and is not consistent with and does not implement the City's Comprehensive Plan as required by RCW 36.70A.120.

Respondent's position:

The Respondent contends that the passage of Ordinance 46-00 actually resolved a conflict, which had existed until this Ordinance. They further contend that the collector road plan had not been included in the original Comprehensive Plan. By passage of the Ordinance, Richland promoted internal consistency between two of its land use documents.

Discussion:

Prior to Ordinance 46-00, the City's Comprehensive Plan did not contain the South Richland Collector Road System. The City amended the Comprehensive Plan by including the South Richland Collector Road System Plan. This action incorporates a revised Road System Plan different than what had been in effect before. The City's contention that Ordinance 46-00 "resolved a conflict" is true to the extent that the then-existing Road System Plan for the subject area had not been previously incorporated into the Comprehensive Plan.

Having said that, the fact that this amendment changes certain roadway plans, does not in itself cause the City's Plan to be inconsistent. Many options for a road system plan could be very different, and still meet the goals of the GMA and policies of the Comprehensive Plan.

Petitioners have failed to show how the option chosen is inconsistent with the Comprehensive Plan. The Petitioners have not carried their burden of proof.

Conclusion:

The Board finds that Ordinance 46-00 is consistent with the City's Comprehensive Plan and the goals included therein.

Issue 2: Does Ordinance No. 46-00 violate the goals of the Growth Management Act regarding encouragement of urban development with adequate public facilities, including transportation facilities, thereby rendering the ordinance invalid? (Goals 1, 3, and 13).

Petitioner's position:

The Petitioners contend Ordinance No. 46-00 is contrary to the crux of the GMA which is to ensure coordinated and planned growth, and the GMA central dictate to adopt and follow long-range plans that provide for necessary transportation infrastructure. The Petitioners believe the City was obligated to follow its long-range transportation plan unless there was some overriding reason for it not to do so, for example, changing growth patterns or revenue sources. They believe such factors are not present in this case.

The Petitioners contend that property owners and developers have relied upon the adopted CSP and TIP. The Petitioners point out that the transportation corridors, roads and streets were already planned, and many were constructed and in place. Others roads and streets were committed in terms of conditioning land use approvals.

The Petitioners further observe that Goals 1, 3, and 13 of the Growth Management Act deal with encouraging development in urban areas where adequate public facilities exist or can be provided in an efficient manner, encouraging efficient multimodal transportation systems based on regional priorities and coordinated with county and city comprehensive plans, and historic preservation. The Petitioners contend the Passage of Ordinance 46-00 by the Respondent did not encourage development in these areas.

Respondent's position:

The Respondent City contends Ordinance No. 46-00 is consistent with the purpose, goals, and procedure of the Growth Management Act. The City believes the Growth Management Act did work, the public participation process was engaged, and the public was heard on this issue. The Respondent contends that people who live and own property in this area, many of whom participated in this very public process, have as much of a right to help plan the location of transportation corridors, roads and streets as does the private developer. The Westcliffe subdivision is situated just beyond the most recent extensions of municipal facilities.

The City believes that at the current time, the Petitioner's property could be considered landlocked in that the property for the construction of the road designed to provide primary access has not been obtained from its current owner, although a condemnation procedure is in process. The City points out that the road scheduled to provide the north-south access,

eventually to the Westcliffe subdivision, is designed to be included in the Applewood Estates subdivision, which is presently under construction. Placing the north-south collector within a subdivision currently under construction meets goal #1 in that facilities there either exist or will exist with the continued construction. The City contends it is efficient in that the road will be a road on which homes can front, rather than one which sandwiches an existing row of homes between the new road and an existing road, as proposed by the Petitioner. The City believes this action also meets goal #3 as it promotes efficiency of constructing a road in a linear fashion, rather than developing a connecting emergency access road, which will initially and primarily serve a single subdivision. The goal of coordinating with the City's Comprehensive Plan is met by the ordinance adopting the South Richland Collector Road System Plan into the City's Comprehensive Plan.

Discussion:

Ordinance 46-00 does not conflict with the goals and policies of the GMA. To the contrary, the ordinance effectuates the goals and policies. The ordinance was adopted in response to a need to place a transportation element in the Comprehensive Plan. The ordinance was passed after citizens in the affected area, including Petitioners, were granted the opportunity for input as to the location of roads. The road plan, adopted by the ordinance, effectuates the goal of placing collector roads away from areas already developed with residences. The ordinance does not encourage urban development without adequate facilities.

Goal 13 addresses the concerns of identification and preservation of historically significant sites. The Board cannot find where this has been briefed and is deemed abandoned.

Conclusion:

The actions of the City of Richland are presumed valid and the Petitioners have not shown this Board that the actions of the City are clearly erroneous.

Issue 3: Does Ordinance No. 46-00 violate the goals of the Growth Management Act requiring that the property rights of landowners be protected from arbitrary actions, because it alters the terms and conditions of plat approvals previously issued by the City mandating compliance with the original (unamended) South Richland Collector Road System Plan? (Goal 6).

Issue 4: Does Ordinance No. 46-00 take Petitioners private property rights in violation of the goals of the Growth Management Act because it eliminates as a city street a public way purchased by Petitioners as required to serve their plat development? (Goal 6).

Petitioner's position:

The Petitioners contend the City violated Goal 6 of the GMA, prohibiting the acquiring property

without just compensation. The Bauders contend the City failed to consider relevant legal authorities, including state laws recognizing vested rights. The Petitioners point out that the City failed to even consider the impact of its decision on property rights. The Petitioner believes the actions taken by the City violate the goals of GMA, which requires property rights of landowners be protected from arbitrary actions, because those actions may alter the terms and conditions of plat approvals previously issued by the City.

Respondent's position:

The City contends the Petitioners had no property rights to the location of the road, which was never listed as an access road to Westcliffe development, let alone the primary access road. The City believes it had sound reason to relocate the road. RCW 36.70A.110(2) grants a city discretion to determining how to accommodate growth. The City believes the term "arbitrary" connotes actions that are "ill conceived, unreasonable, or ill considered." The City contends that without revision, the north-south collector road would have passed immediately adjacent to an existing subdivision. The safety of children may have been jeopardized. Without revision, the City contends the location would have been inconsistent with keeping collector roads away from existing subdivisions.

Discussion:

The location of a road or primary access road, which is not upon the subject property, does not place the City in non-compliance. The location or relocation of a road in a city or county can affect landowners near and far. An action under the GMA is not prohibited by Goal 6 simply because the action has an effect upon people's property. While the subject change appears to have a substantial impact upon access to and the timing of the access to the Petitioners' development, that alone does not make the action of the City non-GMA compliant. The actions of the City are presumed to be in compliance with the GMA. The Petitioners have not shown this Board that the actions of the City are in clearly erroneous and a violation of the GMA.

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Conclusion:

The Petitioner has not overcome the presumption of validity of the City's actions and has not carried its burden of proof on this issue.

Issue 5: Has the City of Richland complied with the requirements of RCW 36.70A.106(3) as to notifying the Department of Commerce, Trade and Economic Development (CTED) of its intent to amend its Comprehensive Plan and, having failed to notify CTED, whether this failure renders Ordinance No. 46-00 noncompliant and invalid under the GMA?

Petitioner's position:

The Petitioner contends the City failed to comply with the mandatory notification requirements

of RCW 36.70A.106. The Petitioners believe there is no evidence in the record that the City ever notified the Office of Community Development of its intent to adopt Ordinance Non. 46-00 and amend its Comprehensive Plan within 60 days, or at any time prior to its adoption.

The Petitioner further contends that the City's proffered letter was not sent to CTED within the required 60-day period and did not state or inform the agency of the fact that the City was amending its Transportation Improvement Plan.

Respondent's position:

The City contends that it sent a letter on December 15, 2000 to the director of the Department of Community Trade and Economic Development and to eight other persons and agencies within the state of Washington government.

Discussion:

With the consent of the parties, the Board has received documentation of a letter sent to CTED and others. The City provided that documentation to a long list of agencies including CTED. This notice was sent on December 15, 2000, almost at the same time the amendment was adopted. The letter was not sent 60 days prior to the passage of Ordinance 46-00, and it did not clearly state what changes were to be made. Such notice would be helpful to both the City and to the parties affected and should be given. This failure is not merely procedural. We do not have the authority to overlook a failure to comply with this notice. It is clear that if a Board finds a failure to comply, it must remand the matter to the City to cure the noncompliance. (See Cameron Woodard Homeowners Ass. V. Island County, 02-2-0004, Order on Dispositive Motion, p. 2, 2002.)

In order to comply with the GMA, the City must submit Ordinance 46-00 to CTED anew. It is not sufficient that the ordinance was submitted subsequent to its adoption in order to comply with this portion of the statute. This submission must be accompanied by a notice indicating that 60 days are available for review and that comments by "state agencies," including the department, will be considered as if final adoption had not yet occurred.

Conclusion:

The City is found out of compliance for its failure to notify CTED of its intent to amend its Comprehensive Plan.

The City will have 100 days from the date of this Order to comply with this Order and bring itself into compliance with RCW 36.70A.106.

Pursuant to RCW 36.70A.300(5), 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 16th day of August 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

D.E. "Skip" Chilberg, Board Member

Dennis Dellwo, Board Member

Judy Wall, Presiding Officer