State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

MILO AND DONNA BAUDER, Petitioner, v. CITY OF RICHLAND, a municipal corporation Respondent.	Case No. 01-1-0005 MEMORANDUM OPINION

The Eastern Washington Growth Management Hearings Board, upon review of the record, the briefing and arguments of the parties, has reached its decision. The Board is asking the City of Richland to prepare a proposed Final Order and Decision. The following Memorandum decision is written to provide direction. A copy of the proposed order shall be provided the Respondent for comment.

I. PROCEDURAL HISTORY

On February 16, 2001, MILO AND DONNA BAUDER, by and through its counsel, Dennis D. Reynolds, filed a Petition for Review.

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 Petitioner was Dennis D. Reynolds. Present for Respondent was Tom Lampson, Richland City Attorney, and George Fearing, of Leavy, Schultz, Davis and Fearing.

II. MEMORANDUM DECISION

After reviewing briefs submitted and hearing oral arguments from the parties, the Board concludes that the actions of the City of Richland have not been shown by the Petitioners to be clearly erroneous and the Board is not left with a firm and definite conviction that a mistake has been made. The Petitioners have not carried the required burden of proof.

Petitioners argue that passage of Ordinance 46-00 violates various sections of the Growth Management Act. They contend Ordinance 46-00 violates the GMA because it is contrary to previous planning decisions of the City and affected development of Petitioner's property. The Board's responsibility is limited to determining whether Ordinance 46-00, itself, violates the GMA. We cannot compare this new ordinance with any previous planning document; those are not before us. Nor can we review whether Petitioner has been injured by the City's actions; that is beyond our jurisdiction.

While the GMA is intended to bring certainty to planning decisions, the fact that the City has altered its course does not violate any provisions of the GMA. We live in a political environment. Elected officials have the authority to change course. Changing directions is not a violation of the GMA. In fact, changing course is sometimes necessary to comply with the GMA.

The Board finds Ordinance 46-00 violates none of the provisions of the GMA challenged by Petitioner.

Issue 1:

Petitioners contend the City's amendment, Ordinance 46-00, is not internally consistent with the City's Comprehensive Plan. They contend that by altering an important component of an existing transportation network, which was planned for and coordinated with new and existing development, and which has been obtained and financed through public/private partnership, the City's actions further none of the goals found in the City's Plan.

The Board does not find that Ordinance 46-00 is inconsistent with the City's Comprehensive Plan. Prior to Ordinance 46-00, there was no South Richland Collector Road System portion of the Plan. The Ordinance is consistent with the Plan's goals. While the location and timing might not be what the Petitioners wish, this does not cause the County to be out of compliance.

Issue 2:

The Petitioners contend Ordinance No. 46-00 violates the goals of the GMA regarding encouragement of urban development with adequate public facilities, including transportation facilities, thereby rendering the ordinance invalid.

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 and 4:

Here, the Petitioners contend the Ordinance violate the goals of GMA which requires 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 (un-amended) South Richland Collector Road System Plan.

While the Petitioner may have a claim against the City for actions taken regarding the Westcliffe development, the location of a road or primary access road apart from 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. The GMA, Goal 6, does not prohibit an action should that action have an affect upon people's property. It is difficult to think of a change brought about by the GMA that does not have some affect upon a persons land. While this change appears to have a substantial impact upon the access to and timing of access to this development, that alone does not make the action of the City non-GMA compliant.

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

Issue 5:

The Petitioner here contends that the City has not 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.

The City provided notice of the proposed amendment to a long list of agencies including CTED. This notice was sent on December 15, 2000. The City has complied with the requirements of the GMA.

A proposed order is asked to be presented to the Board by July 31, 2002.

SO ORDERED this 22nd day of July 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

_____

D.E. "Skip" Chilberg, Board Member

_____

Dennis Dellwo, Board Member

_____

Judy Wall, Board Member