

**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

SON VIDA II, a Washington limited
partnership

Petitioner,

v.

KITTITAS COUNTY,

Respondent.

Case No. 01-1-0017

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

On September 11, SON VIDA II, a Washington limited partnership, by and through its counsel,

Jeff Slothower of Lathrop, Winbauer, Harrel, Slothower & Denison LLP, filed a Petition for Review regarding Kittitas County Ordinance No. 2001-10, which amended Kittitas County Code Chapter 17.58--Airport Zone.

On October 17, 2001, the Board held a Prehearing conference.

The legal issues, proposed schedule and other procedural matters were reviewed. The Board requested the Petitioner to reframe the legal issues into a question format.

On February 13, 2002, the board held the Hearing on the Merits. Present were Presiding Officer, Judy Wall and board member Dennis A. Dellwo. Board member D.E. "Skip Chilberg was unavailable.

Present for Petitioner was Steve Willard and counsel Jeff Slothower. Present for Respondent was James Hurson, Deputy Prosecuting Attorney.

II. FINDINGS OF FACT

1.

The Bowers Field Airport is located immediately north of and is adjacent to the City of Ellensburg.

2.

The Airport Operations Zone of the airport includes Overflight Areas within portions of the current city limits of Ellensburg, portions of unincorporated areas of the Ellensburg UGA, and

portions of unincorporated Kittitas County outside of the Ellensburg UGA.

3.

Kittitas County adopted Kittitas County Ordinance No. 2001-10 on July 17, 2001. This Ordinance amended the Kittitas County Code Chapter 17.58 – Airport Zone creating an Airport Overlay Zoning District, which included Inner Turning Zone 3 and Airport Operations Zone 6 where the Petitioner owns approximately 59 acres. These Zones are listed as Safety Zones. 17.58.40 (B).

4. Inner Turning Zone 3 limits the number of dwelling units to one per acre inside the existing Ellensburg Urban Growth Area. For lands zoned Agricultural – 3, the average density will be one dwelling unit per three acres.

5. Airport Operations Zone 6 limits the number of dwelling units to one per acre or two dwelling units per acre with a duplex configuration inside the existing Ellensburg Urban Growth Area.

6. The Airport Overlay Zones were adjacent to the Airport and were within areas the County believed it was necessary to discourage the siting of incompatible uses.

III. LEGAL ISSUES

1. Whether the Kittitas County Airport Overlay Zone Ordinance No. 2001-10 (the "Ordinance") violates the requirements of RCW 36.70A.020(1) through (5), (11), (12), RCW 36.70A.040, RCW 36.70A.120, WAC 365-195-800, and WAC 365-195-520 because the Ordinance is inconsistent with the Kittitas County Comprehensive Plan, the City of Ellensburg Comprehensive Plan, and countywide planning policies for urban growth areas, housing, population, utilities, and transportation because it:

a) Reduces densities in that portion of the City of Ellensburg UGA (turning Zones 3 and 6) which is subject to the County Ordinance to a density level below urban density and, thereby, violates RCW 36.70A.020(1), (2), and (4); and/or

b) Impairs efficient distribution of utilities and public transportation improvements; and therefore is not in compliance with RCW 36.70 A.020 (3), (4), (5), (10) and RCW 36.70A.040; and/or;

c) Impairs public and private ability to finance urban improvements necessary for public health, safety, and welfare and therefore is not in compliance with

RCW 36.70A.020(3), (4), (8), RCW 36.70A.030, and RCW 36.70A.120; and/or;

d) Restrains annexation of real property within the City of Ellensburg UGA and frustrates the purpose and intent of the UGA designation and therefore is not in compliance with RCW 36.70A.020(3), (4) (8), RCW 36.70A.030, and WAC 365-195-170.

2. Whether the enactment of an Airport Overlay Zone for portions of the City of Ellensburg UGA by Kittitas County, which is different from the Airport Overlay Zone enacted by the City of Ellensburg is consistent with and violates the cooperative planning process required under WAC 365-195-800, WAC 365-195-815, WAC 365-195-520, and WAC 365-195-170.

3. Whether the Ordinance takes private property for public use without compensation in violation of RCW 36.70A.020(6), RCW 36.70A.370, and WAC 365-195-855.

4. Whether the Ordinance is arbitrary and capricious and, as such, violates RCW 36.70A.020(6);

5. Whether the adoption of the Ordinance by Kittitas County violates the Appearance of Fairness Doctrine in that Kittitas County owns the airport property, manages the airport property, and will financially benefit from the inclusion of portions of the airport property in the urban growth area at the expense of surrounding private property rights also in the urban growth area adjacent to the airport and, as such, the adoption of the Airport Overlay Zone violates RCW 36.70A.020(1), (5) and (11).

IV. LEGAL ISSUES 1-4 AND DISCUSSION

Issues numbered 1-4 all relate to the Airport Overlay Zone and will be answered as one issue.

Petitioner position

The Petitioner contends The Airport Overlay Zone is not consistent with the Kittitas County Comprehensive Plan because the plan provides that all urban growth area land be developed at an urban density in the next 20 years. The Petitioner further contends urban land and urban development should be more than four dwelling units per acre. The Petitioner contends one housing unit per acre is not an urban density.

The Petitioner states the Airport Overlay Zone goal of protecting the airport from incompatible land uses is a supplemental goal. The Petitioner contends density restrictions in Zone 3 and Zone 6 are an attempt to implement the secondary goal of protecting the airport from incompatible land uses and this conflicts with the primary goals of the GMA. The Petitioner contends the Airport Overlay Zone conflicts with RCW 36.70A.020(1) and inhibits urban growth in Zone 3 and to a lesser degree Zone 6. The Petitioner believes instead of reducing sprawl, it encourages sprawl.

The Petitioner

contends the Airport Overlay Zone conflicts with RCW 36.70A.020(4) because it discourages the availability of affordable housing to all economic segments of the population.

Petitioner believes the Airport Overlay Zone conflicts with General Planning Goals, Objectives & Policies because the density level established will not encourage or promote the construction of transportation infrastructure because it is not financially feasible. Petitioner further believes the ordinance frustrates the implementation and construction of capital facilities in the overlay portion of the City of Ellensburg UGA. The Petitioner contends density reductions increase infrastructure costs to a prohibitive level and results in inefficient expenditure of limited funds for capital improvements. Petitioner states the direct result of this conflict is no consistent or coordinated plan for utilities and transportation facilities between the City and County along arterials in the UGA affected by the overlay zone.

The Petitioner states this density restriction frustrates the annexation of these lands into the City of Ellensburg because 1) land must be adjacent to the City of Ellensburg to be annexed and 2) a property owner whose property is being annexed into the City must extend utilities to the property being annexed. Petitioner states in order to be annexed, the developer must develop the property to urban standards including the utility standards. The Petitioner contends this is economically unfeasible. Petitioner states the County adopted an ordinance different from the City of Ellensburg's in that it sets different densities in Zone 3.

The Petitioner states the County ignored appropriate and already established density levels in and around airports. They believe the County could have established a density of 3 to 4 dwelling units per acre. The County chose to establish a one dwelling per acre density. The Petitioner believes this is an unconstitutional taking of Son Vida's property.

Petitioner cites RCW 36.70A.020(6) as having two separate and distinct goals. One is protecting against taking

of property without just compensation. The other is protection of property from arbitrary and discriminatory actions. The Petitioners say the term "arbitrary" connotes actions that are ill conceived, or ill considered. The term "discriminatory" involves actions singling out a particular person or class of persons for different treatment without a rational basis upon which to make the segregation.

The Petitioner further believes the County creates three different classes of property owners in the City of Ellensburg UGA portion of the Airport Overlay Zone.

1. Incorporated property owners outside the Airport Overlay Zone who can develop to higher densities;
2. Incorporated property owners within the current city limits and within the Airport Overlay Zone who can develop to six dwelling units per acre maximums;
3. Unincorporated property owners who may later annex into the city but who will be limited to the one dwelling unit per acre density.

Petitioner contends there is no rational basis to treat these three classes of landowners in the Airport Overlay zone differently. The Petitioner further contends the County adopted a density level that is not supported by any authority.

-
-
-

RESPONDENT'S POSITION:

The Respondent cites the thirteen planning goals of the GMA as listed in RCW 36.70A.020 as goals

relating to urban growth, reduced sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, citizen participation and coordination, public facilities and services, and historic preservation. The Respondent states these goals are not listed in any order of priority. These goals are also often in conflict with each other and cannot be looked at in isolation. The Respondent gives the following example: Environmental protection (goal 10) and natural resource conservation (goal 8) can add cost to development, but housing (goal 4) strives to promote affordable housing. The County believes the planning and implementation of the GMA requires a balancing of all these goals and not just a few taken in isolation as have been argued by the

Petitioner.

The Respondent

points out Bowers Field Airport is located immediately north of and is adjacent to the City of Ellensburg. The operations zone of the airport include over-flight areas within portions of the current city limits of Ellensburg, portions of the Ellensburg UGA, and portions of unincorporated Kittitas County outside of the Ellensburg UGA. The airport effectively acts as a barrier to further urban expansion to the north of Ellensburg.

The Respondent

contends the Airport Overlay Zone adopted in conjunction with the City of Ellensburg is a well-balanced consideration of all factors..

The Respondent argues that Cities and Counties are required to discourage the siting of incompatible land uses adjacent to airports. The Respondent also cite s 3 goals in RCW 36.70A.020 that are directly related to airports: Goal 3 relates to efficient intermodal transportation, Goal 5 encourages economic development within the capacities of public facilities, and Goal 12 encourages the preservation and establishment of public facilities and services. The County argues that an airport is by definition an essential public facility RCW 36.70A.200.

The County further contends in addition to those 13 general goals , the GMA explicitly recognized the importance of avoiding incompatible uses adjacent to an airport.

The Respondent contends their obligation to protect the airport from incompatible uses is reconfirmed in the Kittitas County Comprehensive Plan. Section 4.2 (E) (Exh. B) provides: Kittitas County Airport (Bowers Field) is the largest airport in the County and is a valuable transportation commodity. The airport is the access point to the major mode of transportation for the nation.

The City of Ellensburg

, utilizing their UGA Land Needs Analysis, recognized the need for larger one-acre lots within their UGA. With this rationale they added approximately 127 acres to the UGA. (Petitioners Brief Exhibit 4 at page 10:). The City's UGA study also recognized the existence of human-created development constraints in the unincorporated UGA including the constraints related to airport noise and over- flight zones. The UGA size was adjusted to accommodate those

constraints. (Petitioners Brief Exhibit 4 at page 11).

The Respondent believes the need to avoid incompatible land use adjacent to the airport is especially vital in the Airport Overlay Zone 3 area located within the higher traffic Inner Turning Zone.

The County

believes the Petitioner recognizes higher density residential use is not appropriate in the inner turning zone area. The Petitioner submitted the Skagit Regional Airport Land Use Compatibility study to both the city and the county to support his position regarding proper density levels adjacent to the airport. That study placed the appropriate level for the Zone 3 inner turn zone at a range of two to ten acres per residential dwelling unit. That density is entirely consistent with density allowed by Kittitas County in Zone 3. The density the Petitioner successfully negotiated with the City for his property once it is annexed was one unit per acre for a limited portion of Zone 3. In approving that exception for the Petitioner, the City of Ellensburg agreed to that exception because:

“The future density of the remainder of the Safety Zone 3 areas extending north along Look Road toward the airport and east of Sanders Road will continue to be limited to the lower density that current County zoning allows, which is a mixture of one (1) dwelling unit per three (3) acres, and will therefore provide the necessary low density safety conditions that are essential to the airport operations that occur with that Inner Turning Zone 3.”

The County further contends that once the Petitioner annexes that property into the City, Son Vida II will be able to achieve the density he sought. The City, in adopting its Airport Overlay Zone, continued to recognize the importance of maintaining the low-density mix of three-acre lots for Zone 3 that were adopted by the county. The City will have the same densities upon annexation as the County for land in Zone 3, except for the caveat negotiated by the Petitioner.

The Respondent contends the large lot areas are appropriate in the Airport Overlay Zones. The Respondent also contends the only other “remedy” would be to redraw the UGA to exclude these areas rather than allow incompatible development adjacent to the airport. Such a redrawing of the UGA is, however not the direction the City or the County would like to pursue. The inclusion within the UGA of this area allows the City to make urban services like sewer and water available rather than leaving wells and septic systems the only option for residential development.

The Respondent states the process used in developing the Airport Zone regulations was a joint and cooperative land use process between the City of Ellensburg and Kittitas County.

The City and County jointly developed an Airport Overlay Zone that will help to ensure the continued operation of Bowers Field while also meeting the needs of the airport community, and the general city and county public.

The Respondent argues there are no inconsistencies between the City and County ordinances. In Zone 6 the County ordinance provides land located inside the UGA will have a one-acre minimum lot size. This is consistent with the County Comprehensive Plan, Countywide planning policies and suburban zoning and is the typical density allowed before land is annexed into the City limits. When land in Zone 6, located within the UGA, is annexed into the City, zoning provides for up to 3 units per acre. The County has agreed that a 3 to 4 unit per acre density is acceptable once the City annexes the land.

The Respondent believes there is no inconsistency between the property owned by the Petitioner in Zone 3 and others in that Zone. The difference that exists is due to a change the City agreed to with the Petitioner after the County already adopted its ordinance and after the Petitioner filed a SEPA appeal. The Petitioner agreed to dismiss his SEPA appeals if the City inserted the change. (This change allows some property fronting on Sanders Road to maintain a maximum density of one dwelling unit per acre once annexed, rather than one dwelling unit per three acres that it was allowed when located in the unincorporated portion of the UGA).

The Respondent contends the Airport Overlay Zone does not take any private property rights, nor has any property been "down zoned". The Respondent also contends the adoption of the Overlay Zone allows all property to continue the same lot size densities for development as allowed prior to the enactment of the Overlay Zone.

The Respondent contends the Petitioner's argument that a property owner has the right to develop to the extent the owner "intended" and to the "potential it would have been able to prior to" the adoption of a land use regulation is wrong. The Respondent also contends there is no "property right" to an intended or potential use. The Respondent believes the right to divide or develop land vests only at the time of the submission of a development application such as a subdivision. Noble

Manor v. Pierce Co., 133 Wn. 2d 269, 943 P.2d 1378 (1997).

The Respondent contends neither Zone 3 nor Zone 6 is arbitrary or capricious. They contend the zones were developed through a lengthy and cooperative process involving the public, Kittitas County, the City of Ellensburg, and the State of Washington. The Respondent cites from a letter from the Manager for Transportation Planning with the Washington State Department of Transportation, which in part states that this was "an exemplary land use model" and commended the collaboration between the City, County, State, and the public.

DISCUSSION

This case pertains to the Petitioner's property located near the Kittitas County Airport within Inner Turning Zone 3, and Airport Operations Zone 6 of the Safety Zones. Chapter 17.58.40 of the Kittitas County Codes is the County's Airport Overlay Zoning District. Paragraph B therein reads as follows:

B. SAFETY ZONES. In order to carry out the provisions of this chapter and to promote land use compatibility on lands within and adjacent to and in the vicinity of the Kittitas County Airport (Bowers Field), there are created and established certain safety zones. Such safety zones are shown on Kittitas County Airport (Bowers Field) Overlay Zoning District Map "B", as amended. Within each of the safety zones, certain land use limitations are established and certain development standards are imposed in addition to the land uses and development standards of the underlying zoning. Where the requirements imposed by these safety zones, conflict with the requirements of the underlying zoning, the more restrictive requirement shall be enforced. The safety zones are established and defined as follows:

....

Safety Zone #3 (Inner Turning Zone 3) is a fan shaped area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted in Map "B" (shaded area #3). This zone begins at the end of the Runway Protection Zone land extends out two thousand eight hundred (2,800) feet. The zone measures one thousand and ten (1,010) feet across, five hundred and five (505) feet on either side of the runway centerline.

....

Safety Zone #6 (Airport Operations Zone 6) is depicted on Map "B" (shaded

area #6) and begins from the outer boundaries of the Sideline Zone and extends out five thousand (5,000) feet perpendicular to the primary surface and connects to the sixty (60) – degree sector of the Inner Turning Zone.

....

Kittitas County Code Chapter 17.58.40, Safety Zone 3 (Inner Turning Zone) in pertinent part states:

#4. Outside of the existing Ellensburg Urban Growth Area (UGA) the average density will be one (1) dwelling unit per three (3) acres on the property at the date of adoption of this ordinance.

#5. Inside the existing Ellensburg Urban Growth Area (UGA) for lands zoned Agricultural – 3 the average density will be one (1) dwelling unit per three (3) acres on the property at the date of adoption of this ordinance.

#6. Inside the existing Ellensburg Urban Growth Area (UGA) for lands zoned Suburban, the average density will be one (1) dwelling unit per one (1) acre on the property at the date of adoption of this ordinance.

Kittitas County code, Chapter 17.58.40, Safety Zone 6 (Airport Operations Zone) in pertinent part states:

#2. Outside of the existing Ellensburg Urban Growth Area (UGA) the average density will be one (1) dwelling unit per three (3) acres on the property at the date of adoption of this ordinance.

#3. Inside the existing Ellensburg Urban Growth Area (UGA) the average density will be one (1) dwelling unit per one (1) acre on the property at the date of adoption of this ordinance. Kittitas County Ordinance #2001-10.

The Growth Management Act (GMA) provides for the siting and protection of airports in the following statutes:

RCW 36.70A.510 General aviation airports

:

Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 3.70.547. [1996 c 239 sec. 5.]

RCW 36.70.547 General aviation airport – Siting of incompatible uses states as follows:

Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport. Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation. All proposed and adopted plans and regulations shall be filed with the aviation division of the department of transportation within a reasonable time after release for public consideration and comment. Each county, city, and town may obtain technical assistance from the aviation division of the department of transportation to develop plans and regulations consistent with this section.

Any additions or amendments to comprehensive plans or development regulations required by this section may be adopted during the normal course of land-use proceedings.

This section applies to every county, city, and town, whether operating under chapter 35.63, 35A.63, 36.70, [or] 36.70A RCW, or under a charter. [1996 c 239 sec. 2.]

The County, in adopting the Airport Overlay Zone, worked with the City of Ellensburg to form what both jurisdictions felt was a well-balanced consideration of all factors

The County is required to consult with airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation.

This was done.

The manager for Transportation Planning with the Washington State Department of Transportation stated in a letter to the City of Ellensburg dated June 2001,:

“The role of the WSDOT Aviation Division through the Airport Land Use Compatibility Program is to provide the best available information and research to land use decision makers, and to advocate for the preservation of Washington

State's public use airports as airports are defined as essential public facilities. The goal of the Airport Land Use Compatibility Program is to encourage a balance between infrastructure preservation and quality of life."

"We find the Airport Overlay Zoning District achieves that critical balance. Furthermore, we find the plan to be an exemplary land use model and we hope to share your successful work with other jurisdictions. We commend your leadership in collaboration with Kittitas County through the development of the Airport Overlay Zoning District as well as the aviation community, state and federal agencies and the general public."

The siting of high-density residential development adjacent to the airport has been recognized by the hearings boards as inappropriate and incompatible. In *Abenroth v. Skagit Co*, #97-2-0060c (Final Decision and Order, January 23, 1998) the Western Board ruled that the large size of the Bayview UGA was unjustified because there was not a showing for such a large unincorporated residential UGA. The Hearings Board went on to state:

Even if the County were able to show a justification for the need for additional urban residential land in the County, we are concerned about the siting of incompatible uses adjacent to the Skagit Regional Airport. RCW 36.70A.510 requires the County to adopt land use policies and development regulations (DRs) that preclude incompatible land uses adjacent to airports. The land use map for the Bayview UGA places a residential designation under the overlay for the main runway. Further, the map includes no overlay for the second runway, which is currently in use.

As we stated in our September 20, 1995, Final Order in *Achen et al. v. Clark County*, #95-2-0067, the county has the responsibility to preclude development that conflicts with airport operations. Designation of a large residential component within an airport UGA does not comply with RCW 36.70A.510.

The case of *Achen et al. v. Clark County et al.*, WWGMHB #95-2-0067 (Final Decision and Order, September 20, 1995) referenced above further highlights the importance of maintaining essential public facilities like airports, and protecting them from incompatible uses. In *Achen*, the owner had closed a privately owned airport within the Vancouver UGA and the FAA had acknowledged the closure. The Hearings Board in *Achen* stated at sections 190 through 193:

RCW 36.70A.200(2) provides that neither a comprehensive plan nor a development regulation “may preclude the siting of essential public facilities.” Clark County is not in compliance with the GMA because, as to airports, it has violated this subsection.

The CP allows an airport as an outright use within urban areas. Regardless of the questionable reality of such a provision, we note that the plan goes no further in restricting incompatible uses surrounding current or future airport sites. As can readily be seen in the quote from intervenor’s brief referenced above, the Clark Aerodrome closed largely because of the County’s failure to properly regulate the surrounding area. During the hearings on the merits we were provided with an illustration of the Evergreen Airport flight path showing surrounding urbanization which will likely lead to the same death knell as befell the Aerodrome.

The concept of “siting” involves future applications but also, particularly in the case of airports, requires efforts towards maintenance of current facilities. Development regulations are an appropriate vehicle to prevent the encroachments that make siting and maintenance of existing public facilities so difficult. On remand Clark County must reexamine its approach to the areas surrounding existing airports.

This inattention to surrounding areas was dramatically illustrated by a portion of case #95-2-0057 (Sadri/Mill Plain property). The property under challenge in that case was designated residential in the CP. As noted by that petitioner, the property is “directly in the flight path of Clark County’s busiest private airport” with the main air strip approximately 100 yards west of petitioner’s land. Property north of this airport was being developed as multi and single-family residential, and high-density apartment units were being built to the south and east. On remand the BOCC must reconsider this residential designation in light of RCW 36.70A.200(2).

This need and obligation to protect the airport from incompatible uses is also reconfirmed in the Kittitas County Comprehensive Plan. Section 4.2(E) (See Exhibit B attached) provides:

Kittitas County Airport (Bowers Field) provides a vital transportation link, servicing all of Kittitas County with access to modern transportation options for emergency services, commercial operations, commuter transportation, and recreational flying. The airport advisory committee is dedicated to preserving this valuable asset by recommending the enactment of appropriate ordinances and

policies to accomplish the following:

* Enhance the airport as a transportation hub and asset for economic development.

* Encourage compatible development at the airport to generate revenue streams to decrease subsidy of airport operations and facilities from tax revenue.

* Protect the airport and surrounding land uses and owners from conflicting uses through careful and compatible land use planning. Such planning should include, but not be limited to, density reductions and land use and building restrictions designed to protect the take-off and landing and approach corridors, and areas adjacent to and under existing traffic patterns.

The densities of uses permitted under the Airport Overlay Zone are appropriate when placed in the context of location of the airport, the Countywide Planning Policies and the small percentage of the UGA that is impacted.

The Kittitas County Countywide Planning Policies and Comprehensive Plan both define “suburban lands” as “lands within urban growth areas or urban growth nodes, which provide for all public and private services available inside an urban area but exhibit lower density. Suburban lands are also planned to accommodate future urban development.” In Kittitas County, suburban zoning provides for density of one unit per acre. The City of Ellensburg Comprehensive Plan also recognizes the desire and need for some larger sized parcels in the city and the UGA. The City noted (in part):

“In addition the 1995, Comprehensive Plan recognizes that some people desire to live on large lots up to one acre in size and that while that range of lot sizes is currently available in the unincorporated UGA it is not available in the city.”

The Petitioners site a letter from CTED to the City of Ellensburg stating their recommendations of density near the airport to be four units per acre. However the letter goes on to say that this doesn’t preclude staff from looking at this Airport Overlay District and designing the development to include a number of densities. CTED stated it may make sense to have a lower density for this overlay zone at its closest point to the airport and airport activities.

The City of Ellensburg and Kittitas County took this recommendation into

consideration when making density designations in the Airport Overlay Zone. Both the City of Ellensburg and Kittitas County looked to the planning goals of the GMA. These goals relate to urban growth, reduced sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, citizen participation and coordination, public facilities and services, and historic preservation. The 13 goals of the GMA are not listed in order of priority. These goals are often in conflict with each other. The Respondent gives as an example, environmental protection (goal 10) and natural resource conservation (goal 8) can add cost to development, while housing (goal 4) strives to promote affordable housing.

The Petitioner insists Kittitas County, in adopting the Airport Overlay Zone, has created different classes of property owners in the City of Ellensburg UGA. However all property owners in each of the Safety Zones are treated in the same manner. The County and the City have adopted zoning they believe will protect the Airport and the residents adjacent to it. This zoning was arrived at after extensive public input and review by the departments and individuals listed in statute RCW 36.70.547.

Exhibit J shows concern by the City for Airport Operations Zone 6 lands already within the City limits that are current landowner's future density expectations. The City made these determinations after lengthy public input and discussion and strikes a balance between the landowner's legitimate private property rights expectations based on current zoning versus the need to provide safe off-airport open space areas for emergency landing purposes in the Airport Overlay Zone. The Board does not find these to be arbitrary or capricious acts.

RCW 36.70A.320(1)(2)(3) Presumption of validity – Burden of proof – Plans and regulations.

(1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

(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 any petition under this chapter, the board, after full consideration of the petition shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the

department under RCW36.70A.190(4). 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.

RCW36.70A.320 Intent – Finding – 1997 c 429 sec. 20(3).

In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends the boards to apply more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. 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. [1997 c 429 sec. 2.]

The legislature was very clear that each county was to be given a broad range of discretion when planning for growth and the boards are to grant deference to both the counties and cities in how they plan for that growth. The Respondent has shown that they had input from the state, public, and airport authorities. Kittitas County and the City of Ellensburg in designating urban growth areas and develop regulations may not have satisfied all citizens in their jurisdiction, but the legislature in its finding was clear when they said the Boards must give cities and counties great deference.

RCW36.70A.320 in part states: The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous.

Petitioner abandoned issue number 5.

Conclusion:

Petitioner, SON VIDA II, a Washington limited partnership, has not presented evidence that leaves the Board with a firm and definite conviction that the County's action in adopting the Airport Overlay Zone is clearly erroneous. Therefore, the Petitioner has not met its burden of proof on these issues.

V. ORDER

The Board finds Kittitas County is in compliance with issues 1-4 relating to the Airport Overlay Zone.

This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5).

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 14th day of March 2002.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Judy Wall, Board Member

Dennis Dellwo, Board Member

D. E. "Skip" Chilberg, Board Member