

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

CITY OF SPOKANE

Petitioner,

v.

SPOKANE COUNTY,

Respondent,

CITY OF AIRWAY HEIGHTS

Intervenor.

Case No. 02-1-0001

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

On January 4, 2002, CITY OF SPOKANE, by and through its counsel, Michael J. Piccolo, filed a Petition for Review.

On January 17, 2002, City of Airway Heights filed a Motion and Memorandum in Support of Consolidation and/or Intervention.

The Growth Management Hearings Board heard the Motion to Intervene on February 8, 2002. At that time the parties consented to entry of a stipulated order agreeing to the City of Airway Heights' intervention on specific issues relating to City of Airway Heights. More specifically, issues 4, 5, and 7, and other issues and arguments that relate to multi-jurisdictional planning for the West Plains (that area between the City of Spokane and the City of Airway Heights.) The City of Airway Heights then asked that this Board dismiss their petition, case number 01-1-0016.

On February 21, 2002, the Board issued a Prehearing Order.

On March 8, 2002, Stanley M. Schwartz, representing Intervenor, City of Airway Heights, filed a Motion to Dismiss City's Claims Regarding Joint Planning. On March 18, 2002, Michael J. Piccolo, representing City of Spokane, filed its Response Memorandum

of City of Spokane to Motion to Dismiss by City of Airway Heights. March 22, 2002, City of Airway Heights filed their Reply Memorandum in Support of Motion to Dismiss City's Claims Regarding Joint Planning. On March 25, 2002, the Board heard the Airway Heights' Motion. Judy Wall, Presiding Officer, and Board Members, D.E. "Skip" Chilberg and Dennis Dellwo were present. Present for Petitioner was Michael J. Piccolo. Present for Intervenors was Stanley M. Schwartz. Present for Respondent was Robert Binger, Deputy Prosecuting Attorney. The Board denied this Motion.

On May 24, 2002, the Board held the Hearing on the Merits in Spokane County. Judy Wall, Presiding Officer and fellow Board Members D.E. "Skip" Chilberg and Dennis Dellwo were present. Present for Petitioner was Michael Connelly, City Attorney and Michael J. Piccolo, Assistant City Attorney. Present for Intervenors was Stanley M. Schwartz. Present for Respondent was Robert Binger, Deputy Prosecuting Attorney.

II. FINDINGS OF FACT

1. The City of Spokane is the second most populous city in Washington State.
2. The City of Spokane has standing to raise the issues found herein.
3. In December 1994, Spokane County adopted the Countywide Planning Policies for Spokane County.
4. In April 1997, Spokane County adopted Interim Urban Growth Areas, which included a City of Spokane Urban Growth Area (UGA) boundary outside the City limits.
5. In February 1998, Spokane County adopted its Public Participation Program Guidelines.
6. On March 8, 2001, Spokane County Planning Commission issued the Spokane County Recommended Comprehensive Plan and Spokane County Recommended Capital Facilities Plan.
7. On May 21, 2001, the City of Spokane adopted its Comprehensive Plan and Capital Facilities Plan.
6. On July 19, 2001, when unable to achieve the required 9 out of 12 votes, the Spokane County Growth Management Steering Committee forwarded the City's proposed UGA boundary to the Board of County Commissioners (BOCC) without recommendation. This proposal contained a

UGA for the City of Spokane, which extended outside the City limits.

7. On August 22, 2001, the City of Spokane requested the assistance of the State Office of Community Development to mediate a resolution of the City's UGA boundary with Spokane County.

8. On August 23, 2001, Spokane County closed the record to written comments after holding two public hearings on the City of Spokane's UGA.

9. On August 24, 2001, when Spokane County adopted its revised Comprehensive Plan and Capital Facilities Plan, the BOCC adopted changes developed subsequent to the last opportunity the public had to comment. Among the changes was the inclusion of additional lands within the unincorporated UGA, the limiting of the City of Spokane's UGA boundary to the City's corporate limits, and a re-allocation of population from the City to the County.

10. On November 5, 2001, the County adopted the Findings and Decisions found in Resolutions-1059 and 1-1060 implementing the August 24, 2001 oral adoption.

11. Spokane County did not include the unincorporated North Metro UGA as part of a Joint Planning Area.

III. Standard of Review

The Spokane County Comprehensive Plan is presumed valid. The burden of proof is on the Petitioner, the City of Spokane, to demonstrate that the plan is not in compliance with the Growth Management Act (GMA). RCW 36.70A.320 and *Grant County Association of Realtors v. Grant County Case Eastern Washington Growth Management Hearings Board (EWGMHB) Case No.: 99-1-0018 Final Decision and Order p. 6 of 10 (May 23, 2000)*.

The Washington Supreme Court has set out the standards the Growth Board is to apply to the Spokane County Comprehensive Plan:

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. [RCW 36.70A.280](#), .302. 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 [the GMA]." [RCW 36.70A.320\(3\)](#). To find an action "clearly erroneous," the Board must

be “left with the firm and definite conviction that a mistake has been committed.”
Dep’t of Ecology v. Pub. Util. Dist. No. 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

IV. Legal Issues and Discussion

Issue 1: Did the County comply with RCW 36.70A.020(11), RCW 36.70A.035(2), and RCW 36.70A.140 when the Board of County Commissioners made changes to proposed amendments of the County’s comprehensive plan and to the City’s proposed UGA boundaries without providing additional opportunities for public comment and public hearing?

Petitioner’s position:

The City of Spokane (the City) states the County adopted its GMA Public Participation Program Guidelines as required by RCW 36.70A.140 and in doing so must now adhere to its requirements when it amends its comprehensive plan. RCW 36.70A.070. The City claims the County ignored their own guidelines when they adopted the amended comprehensive plan on August 24, 2001, with 17 pages of last-minute changes.

The City claims the last minute changes did not comply with the GMA public participation goal, the specific notice requirements of RCW 36.70A.035(2), or the express language or spirit of the public participation requirements of RCW 36.70A.020 (11) and RCW 36.70A.140.

The City states that, while there are some exceptions to the notice requirements when changes to proposed amendments are considered, those exceptions do not apply to all the substantive changes made by the County. The City gave the following examples as some of the many changes that do not fall within the limited exceptions to public participation. (Except as noted otherwise, all examples are from Index #18.A – County’s August 24, 2001 strike-through revisions document.)

- The proposed UGA boundaries for the City of Spokane were utterly rejected by the BOCC, which instead limited the UGA for the State’s second most populous city to its corporate boundaries. (Index #24 – Findings and Decision 1-1060, Attachment A.)
- Policy UL.7.12: The proposed amendment to require the “immediate connection” of new development within the UGA to public sewer was changed by

the BOCC to require only sewer connections "consistent with requirements for concurrency."

- "Concurrency," as used in the County's comprehensive plan, no longer requires that "facilities serving the development must be in place at the time of development," as proposed. (page 100)
- Policy CR.7.8: Virtually all requirements for identifying and prioritizing sewage treatment and conveyance systems were eliminated from the proposed amendments; this policy now requires only a determination of whether a proposed development can be accommodated by planned sewage capacity. Among the provisions deleted by the BOCC is a requirement to deny new projections if no capacity is available.
- Policies UL.8.2 and H.3.6: Manufactured and mobile homes are now limited to areas "where they are consistent with the majority of the neighborhood character" instead of "in all residential zones" within UGAs, as proposed.
- Policy CF.15.1: The proposed requirement to "follow" the essential public facilities siting process adopted by the GMA Steering Committee of Elected Officials has been changed to a mere suggestion to "consider" this agreed upon process.
- Policy NE.17.21: As proposed, this policy prohibited new, unlined waste lagoons or nonstormwater injection wells within highly susceptible critical aquifer recharge areas. This policy was deleted at the last minute.

The City also claims that some of the last minute changes were a result of the BOCC's efforts to solicit additional and specific comments on the adequacy of the City of Spokane's adopted and valid comprehensive plan.

The City contends that one week before the BOCC adopted the comprehensive plan amendments, the BOCC directed its planning department to specifically solicit special purpose districts located within the unincorporated portion of the City's proposed UGA and encourage them to provide critical analysis and comments on the City's capital facilities plan and the City's proposed UGA. (Ex. 24, p. 3-4).

The City claims over a dozen comment letters, some of which were very detailed, were sent to the County between August 16th and 20th. On Friday, August 17, 2001, the County requested the City provide its response to these letters no later than Monday,

August 20. No public notice and no meaningful opportunity for public review and comment on these changes were provided.

The City claims another last minute change that impacts the City is the BOCC's addition of lands to the County's UGA, over and above the Planning Commission's recommendation. The City has agreed to provide future urban governmental services to areas within the UGA. The County unilaterally expanded the County UGA (and consequently the City's service area) without providing the City or the public with an opportunity for review and comment.

The City contends the failure to involve the public in the changes made by the BOCC violates RCW 36.70A.140 requirements for continuous public involvement. Neither testimony nor input was sought from the public.

The City believes they have shown the Board substantial evidence in the record that Spokane County violated RCW 36.70A.140's requirement for continuous public involvement in the adoption of the comprehensive plan.

The City claims this failure to provide a meaningful opportunity for public review and comment before adopting changes to proposed amendments to the comprehensive plan by the BOCC violated the requirements of RCW 36.70A.020(11), RCW 36.70A.035 (2), and RCW 36.70A.140 and was clearly erroneous.

Respondent's position:

The County contends RCW 36.70A.035(2) does not apply in this case. That statute requires additional public participation where an amendment is considered to the Comprehensive Plan after closing of public comment and does not fit within the listed exceptions. The County contends this statute does not apply where the County had no Comprehensive Plan at that time.

If the Board was to hold that this statute is applicable, the County contends the changes were predominately based upon testimony and/or documents submitted during the review and comment period, before the record was closed. Therefore, no additional time frame for review was required.

The County states they adopted its Public Participation guidelines on February 24, 1998, (Doc 2). The Guidelines provide at 000062-000063:

If the Board of County Commissioners (BOCC) choose to consider a change to an amendment to the comprehensive plan or development regulations, and the change is proposed after the opportunity for review and comment has passed

under the county's procedures, an opportunity for public review and comment on the proposed change shall be provided before the BOCC votes on the proposed change. An additional opportunity for public review and comment is not required if:

- an environmental impact statement has been prepared under Chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
- the proposed change is within the scope of the alternatives available for public comment;
- the proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
- the proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
- the proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

The County also states the changes to the comprehensive plan challenged by the City are within the range of alternatives considered in the Environmental Impact Statement (EIS) and, as such, an additional opportunity for comment was not required. The County states the City's corporate boundary as its UGA was likewise within the range of alternatives considered by the City's EIS. The alternative cited by the County was the "do nothing" option.

The County also states the changes were within the scope of alternatives available for public comment as evidenced by the testimony and/or documents upon which the changes were based. The County states that on this basis, pursuant to the Public Participation Guideline an additional opportunity for comment was not required. The County's brief lists more than a full page of the letters submitted.

The County contends the opportunity for review and comment is triggered only if "... the change is proposed after the opportunity for review has passed..." The County has set forth in detail the testimony and/or documents that gave rise to the revisions. The testimony and documents were submitted as part of the public hearing, review and comment process. As such, the statute's requirement of additional review and comment is not applicable.

The County states the exemptions of RCW 36.70A.035(2)(b)(i) and (ii) are

applicable and as such an additional opportunity for public review and comment was not required. The County believes the changes to the comprehensive plan challenged by the City are within the range of alternatives considered in the EIS and as such an additional opportunity for comment was not required.

Discussion:

RCW 36.70A.020(11) is one of the listed Goals of the Growth Management Act:

Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.035(2) also provides for public participation, but in the specific area of comment upon amendments to a comprehensive plan or development regulations:

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provide before the local legislative body votes on the proposed change.

RCW 36.70A.140 is another, but more universal provision for public participation under the GMA. In that statute, the County is required 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.

Taken together, these three statutes clearly demonstrate

the legislature intended that public participation be a high priority under the Growth Management Act. "This Board has always held that public participation was the very core of the Growth Management Act." *Wilma et al. v. Stevens County*, EWGMHB Case No.: 99-1-0001c Final Decision and Order p. 6 of 16 (May 21, 1999). This means, at a minimum, that the public must have an opportunity to comment on amendments to the Planning Commission recommendation prior to adoption by the local legislative body unless the amendments fall under one of the exceptions in RCW 36.70A.035(2)(b).

Until recently, Spokane County has done a good job fulfilling its obligations under the public participation statutes. Spokane County has complied with the GMA in adopting comprehensive Public Participation Policies and Guidelines. The Planning Commission

followed the guidelines by holding public hearings for receiving comments and testimony on recommended Comprehensive Plan amendments before considering changes and another public hearing on the changes they were considering before making their recommendation.

However, the Board of County Commissioners failed to adhere to its Public Participation Guidelines after it received the recommended Comprehensive Plan from the Planning Commission. The Spokane BOCC adopted the Comprehensive Plan with numerous amendments objected to here, while providing no additional opportunity for public participation or comment. We are convinced that failure to hold a public hearing before adopting the amendments was clearly erroneous and not compliant with the GMA. (See 1000 Friends and Neighborhood Alliance of Spokane, v. Spokane County Case No: 01-1-0018 Final Decision and Order, June 4, 2002.)

The County's argument that the challenged Comprehensive Plan is an initial plan, not an amendment and therefore exempt from the public hearing requirement of 36.70A.035 is without merit. The adopting Resolution itself states in two places that this is an "update" of the Comprehensive Plan originally adopted in 1980.

Further, as we held in 1000 Friends and Neighborhood Alliance of Spokane, v. Spokane County *supra*, "amendment," as it's used in RCW 36.70A.035(2)(a) refers to amendments or changes made to a planning document during the legislative body's consideration of the plan or development regulations. Each amendment or change made during this process, which is not exempted under RCW 36.70A.035(2)(b), therefore requires at least one additional opportunity for public comment with appropriate notice and time to review the amendments prior to adoption. No other interpretation makes sense given the importance the GMA places on public participation as evidenced by the three statutes at issue in this case. Nor is any other interpretation reconcilable with the clause contained in RCW 36.70A.140 that requires "early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations..."

We therefore find that the changes at issue in this case were "amendments" to the Comprehensive Plan within the meaning of RCW 36.70A.035(2)(a). These amendments were "considered" after the opportunity for public review and comment had passed and therefore an additional opportunity for review and comment on the proposed changes was required before adoption by the BOCC. RCW 36.70A.035(2)(a).

The City did have three days to comment upon the letters received by the County from service providers, but two of the days included the weekend. While it is not clear if the City of Spokane was at that time aware that the County was considering the elimination of the City's unincorporated UGA, this amount of time is inadequate. Further, the general public had no opportunity to comment on the proposed amendments.

The County contended that the amendments adopted were available for prior comment. This is not the case. The County seems confused on this point as well. The County first says this alternative was within the range of alternatives considered in the EIS. That alternative was "no action." Then the County contends the City got the majority of what it wanted when the UGA boundary was the city limits. This was not a concession to the City, as the GMA requires each city to be included within a UGA.

Conclusion:

The Board finds that the County's actions as challenged by Petitioners were clearly erroneous under RCW 36.70A.035 of the Growth Management Act. The County failed to provide an opportunity for the public to comment on the amendments to the adopted Comprehensive Plan at issue here. The County has failed to comply with the Growth Management Act.

Issue 2: Did the County comply with RCW 36.70A.020(11) and RCW 36.70A.140 in adopting Findings and Decisions 1-1059 and 1-1060 when it treated the City differently than other cities and towns?

Discussion:

The statutes listed in this Issue are the same as in Issue 1. While the parties raise numerous other arguments regarding the differing treatment of the Cities within Spokane County, this issue may be decided with reference to Issue 1. The GMA requires a fair opportunity for public comment before a final legislative decision is made. The County did not allow for the proper public participation required by the GMA and is found out of compliance. Refer to Discussion found in Issue 1.

The deficiencies in the County's own abbreviated analysis and the lack of support for the refusal to provide for a UGA outside the City's present limits need not be addressed at this time. The County's action designating the UGA for Spokane is found out of compliance and clearly erroneous. The public as well as the City of Spokane must

have a reasonable opportunity to comment on the amendments to be considered by the County.

Conclusion:

The County actions are clearly erroneous and they are found out of compliance. The County has failed to provide for the public participation required. See Issue No. 1.

Issue 3: Did the County comply with the County's GMA Public Participation Program Guidelines (Resolution 98-0144) adopted pursuant to RCW 36.70A.140 in adopting Findings and Decisions 01-1059 and 01-1060?

Petitioner's position:

This Issue addresses the same issue resolved in Issue 1. See Issue 1 for the comments and decision.

Conclusion:

See Issue 1. The County is found out of compliance for its failure to comply with the GMA public participation requirements.

Issue 4: Did the County comply with RCW 36.70A.110(2) when it designated UGAs adjacent to cities and towns as the UGAs and JPAs for those cities and towns, except for the City of Spokane, whose UGA the County limited to its City limits?

Petitioner's position:

The City claims the County must consult with each city located within the County. Each city proposes an UGA, the County responds to each city's proposal and attempts to reach an agreement with the cities. If agreement cannot be reached, the County must provide written justification for designating a UGA that differs from that proposed by the city. A city may object to the State over the designation, and the State may attempt to resolve the conflict.

The City claims the County did not follow this statutory process when it designated the City of Spokane's UGA boundary. The Steering Committee reviewed the City's proposal and forwarded it to the County without recommendation. The County's "consultation" with the City consisted of (1) the City submitting analysis and data supporting its proposal to the County and (2) the BOCC, after soliciting comments from public service districts, giving the City three days to respond to these solicited

comments.

Respondent's position:

The Respondent states the County fully complied with RCW 36.70A.110(2) and in particular the obligation to consult with each city within its boundaries and particularly the City of Spokane, as demonstrated by the following:

- The County was the lead agency in forming the Steering Committee by Interlocal Agreement to meet its obligation to coordinate and consult with each jurisdiction in the County and with service providers (Doc. 42)
- The County was the lead agency in developing the Countywide Planning Policies (CWPP)(Doc. 1).
- Policy Topic No. 1 entitled "Urban Growth Areas" (Doc. 1 #000010), Policy Topic No. 2 entitled "Joint Planning Within Urban Growth Areas" (Doc. 1 #000018), and Policy Topic No. 3 entitled "Promotion and Contiguous Development and Provision of Urban Services" (Doc. No. 1 #000020) provide for the basic frame work and process for meeting Spokane County's obligation to coordinate Urban Growth Area proposals from the other jurisdictions.
- Pursuant to the CWPPs the Steering Committee held public hearings and made a recommendation to the Board of County Commissioners on Interim Urban Growth Areas, Joint Planning Areas and Population Allocations relative to all of the cities and towns in Spokane County consistent with RCW 36.70A.110(2).
- Following a public hearing on this recommendation the Board adopted Resolution NO. 97-0321 (Doc. 41) designating Interim Urban Growth Areas, Joint Planning Areas, Population Allocation and adopting Interim Development Regulations.
- Eight (8) joint County/City Planning Commission meetings (Doc. 47), joint City/Council/Board of County Commissioner meetings, 18 planning director meetings (Doc. 46), weekly joint planning staff coordination, including sharing by the County of GIS data (Doc. 69) all coordinated by County Planning Staff.
- Each jurisdictions Comprehensive Plan and Capital Facilities Plan proposals presented to the Steering Committee at a public meeting and public hearing and a recommendation made to the County Planning Commission and Board of County Commissioners (Doc. 50).
- Development of Interlocal Agreements between the County, each city and service provider, coordinated by Spokane County (Doc. 46 & Doc. 47).
- The Board held a public hearings on May, 2, 3 and 8th (Doc. 12) and following deliberations (Doc. 15), the Board adopted Finding and Decision No. 1-1059 In the Matter of Adopting a Comprehensive Plan and Capital Facilities Plan for the Unincorporated Areas of Spokane County; Urban Growth Areas, and Population Allocations for Spokane County, the Cities of Airway Heights, Cheney, Deer Park

and Medical Lake, and the Towns of Fairfield, Spangle, Latah, Rockford and Waverly, and Identifying Joint Planning Areas (Doc. 23).

- The Board held a hearing on the City of Spokane's Urban Growth boundary proposal (Doc. 17) on August 14 and 16, 2001, and following deliberations (Doc. 15p-t) the Board adopted Findings and Decisions No. 1-1060 In the Matter of Adopting a Population Allocation and Urban Growth Area for the City of Spokane and Identifying Joint Planning Areas (doc. 24).
- The Board adopted Resolution No. 00-0054, dated January 11, 2000, In the Matter of Notification of Cities and Towns in Spokane County Regarding Spokane County's Intent to Adopt Urban Growth Areas and that Spokane County Desires to Collaborate with Cities and Towns in Spokane County in Establishing Urban Growth Areas and Requests that the Cities Submit Proposals for Urban Growth Areas that may be Considered for Adoption Along with the Spokane County Comprehensive Plan. (Doc. 54e #016603)
- Letter dated January 11, 2000, to Mayor Talbot and the City Council from the Board (Doc. 54e #016605) providing in part:

Since the Interim Urban Growth Area (IUGA) was adopted in 1997, Spokane County has been in the process of updating its Comprehensive Land Use Plan to comply with the Growth Management Act (GMA). We desire to continue to work cooperatively with cities and towns to meet our collective GMA responsibilities.

...

The GMA gives counties the responsibility for designating Urban Growth Areas (RCW 36.70A.100). This designation is intended to be the result of a collaborative process between the County, cities and towns and includes reaching agreement on any unincorporated lands a city or town may wish to include within the city or town's urban growth areas (UGA).
- Letter dated February 18, 2002, from Mayor Talbot to the Board (Doc. 54e #016605).

Intervenor's position:

The Intervenor claims the City of Spokane's Brief (pages 18-20) offer no argument with respect to the establishment of the West Plains joint planning area.

The Intervenor believes this issue has been waived by the City of Spokane and the related finding by the BOCC must be sustained. See Doc. 24.

The Intervenor claims the Spokane County UGA for the West Plains was adopted as proposed by the City of Spokane and therefore, any argument concerning the County

reaching agreement or consulting with the City of Spokane regarding "its" UGA on the West Plains is without merit and the related finding by the BOCC must be sustained.

Petitioner's comments regarding Intervenor position:

The Petitioner states the appropriateness of JPA designation for the West Plains UGA was not included within Issue 4. Issue 4 raised and argued by the City, relates to the deficiencies in the County's process for consulting with the City regarding its proposed UGA. The City contends their arguments clearly go to all of the unincorporated UGA included within the City's proposed UGA boundary, including the West Plains UGA.

The Petitioner states Airway Heights does not rebut the City's argument that the County failed to consult with the City regarding its proposed UGA and that the County failed to provide written justification for its UGA designation.

Discussion:

RCW 36.70A.110(2) states in part:

...

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 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 area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

The City claims the County never consulted with the City of Spokane on the elimination of the UGA outside the city limits. The record reflects this fact. The Steering Committee reviewed the City's proposal and forwarded it to the County without recommendation. Index #24. The surprise removal of the unincorporated UGA from the City's proposal and total lack of discussion of this change flies in the face of the requirements of the above statute. The clear intent of this statute is to provide for discussion, disagreement and mediation services as sought by the City. The appearance

of the subject amendments at the last minute without opportunity to explore agreement or mediation is a disappointment. The County clearly failed to comply with RCW 36.70A.110(2). The Board believes that the time needed for the additional public participation will allow for appropriate opportunity to explore agreement between the City and the County.

Issue No. 4 does not raise the appropriateness of a Joint Planning Area designation and the arguments of the Intervenor are not pertinent here. The City of Spokane has indicated that it accepts joint planning as a key element of GMA planning. Clearly, the largest city in Eastern Washington should be an active participant in the planning for services in urban areas that abut its city limits. In fact, it is the County's failure to coordinate their planning with the City of Spokane that contributed to the findings of noncompliance.

Conclusion:

The County has failed to comply with the requirements of RCW 36.70A.110(2) and their actions are clearly erroneous.

Issue 5: Did the County comply with RCW 36.70A.110(2) when it designated the City's UGA, specifically the requirement to attempt to reach agreement with the City on the location of the City's UGA?

Petitioner's position:

The City claims one fundamental purpose of the GMA is to achieve cooperation and coordination among local governments in comprehensive land use planning. RCW 36.70A.010. To achieve this, the Legislature directed that Counties must "attempt to reach agreement with each city on the location of an urban growth area within which the City is located." The GMA includes a process to resolve conflicts between cities and counties in designating UGAs: On August 22, 2001, the City requested mediation assistance from Washington State Department of Community Trade and Economic Development (CTED). The City promptly informed the County of this mediation request. The County did not respond. Instead, the County adopted UGA boundaries without making any effort to mediate or otherwise resolve this conflict.

The City claims absence of any effort by the County to attempt to reach agreement with the City regarding UGA boundaries violated the requirements of RCW 36.70A.110(2).

Respondent's position:

The County states this issue was argued in Issue No. 4, but did provide additional argument. The County contends that following a hearing on the City's UGA and Population Allocation, the BOCC did not concur with the City's recommendations and set forth its basis in writing in Findings and Decision No. 1-1060 (Doc. 24).

The County states the legislature acknowledged that agreement will not always be reached and provided that in such event, the County must justify its reasoning in writing. The County points out the legislature did not make mediation a mandatory element of consultation required by RCW 36.70A.110(2).

The County contends the City cannot provide, nor is there any authority that discretionary mediation offered by CTED can somehow be imposed on the County following public hearings and pending execution of written findings.

Intervenor's position:

The Intervenor claims the City contends the County should have engaged in the dispute resolution process when it became clear that the "City's proposed UGA boundaries" were not consistent with those adopted by the County. The Intervenor claims the proposed "City of Spokane UGA" is contiguous with the adopted Spokane County UGA for the West Plains and thus this issue has no relevance for the West Plains.

Petitioner's response to Intervenor:

The City states the County made no effort to reach agreement with the City on its proposed UGA boundaries. The City argued at least some effort on the part of the County to resolve the UGA boundary conflict was required by the GMA.

The City states that, without explanation, Airway Heights concludes that the City's arguments have no relevance for the West Plains UGA. The City believes this conclusion has nothing to do with the City's arguments that the County was required to make some attempt to resolve the UGA boundary dispute with the City of Spokane and that the County failed to do so.

Discussion:

RCW 36.70A.110(2) in part provides that Counties must "attempt to reach agreement with each city on the location of an urban growth area within which the city is located." The GMA includes a process to resolve conflicts between cities and counties in designating UGAs: A city may object formally with the CTED over the designation of

the urban growth area within which it is located. Where appropriate, CTED shall attempt to resolve the conflicts, including the use of mediation services.”

The City requested mediation assistance from CTED on August 22, 2001, and promptly informed the County of this mediation request. The County did not respond. The City asked the County a number of times, between August 24, 2001 and November 5, 2001, to discuss the City’s UGA. RCW 36.70A.110(2) clearly states the Legislature’s intent is that the City and County attempt to reach agreement. More effort was required than the County provided. While agreement is not mandatory, an attempt to agree is necessary. The Board finds the County’s failure to enter into discussions with the City on the elimination of the City’s UGA outside the City is clearly erroneous. See Issue No. 5 for further discussion.

Conclusion:

The County failed to comply with RCW 36.70A. 110(2) and is out of compliance.

Issue 6: Did the County “show its work” in adopting UGA boundaries and land use designations, pursuant to RCW 36.70A.110(2)?

Petitioner’s position:

The City cites Association of Rural Residents v. Kitsap County, CPSGMHB Case No. 93-3-0010, Final Decision and Order (June 3, 1994) where that Board stated, when designating UGAs, counties must “show their work.” “Show your work,” means more than simply reciting unsupported, conclusory allegations. “While subjective factors may be excluded in the UGA decision, such policy choices must be made in a measurable way and with sufficient documentation as to the rational.” Bremerton v. Kitsap County, CPSGMHB Case No. 95-3-0039.

The City claims the County failed to show its work when it seized the City’s UGA and added additional lands to the County UGA at the last minute. The City states that since the County made no attempt to reach agreement with the City on UGA boundaries, the County must present written justification explaining its rationale.

The Petitioners cite Tacoma v. Pierce County, CPSGMHB Case No. 94-3-0001, Final Decision and Order where Pierce County issued the following findings:

“proposed municipal urban growth boundaries have not been substantiated to be commensurate with the ability of the municipalities to provide service to areas within the county beyond their municipal boundaries.” Tacoma at 36.

“there is no ability nor plan for the City of Tacoma to extend all urban services to the Peninsula area currently mentioned as being within their proposed urban growth areas.” *Id.*

Spokane County found only that:

“the City of Spokane did not demonstrate the ability to provide full urban services either inside or outside their city limits and, therefore, has not complied with Countywide Planning Policies, Policy Topic 1, Policy No.’s 2, 8, or 11.” (Index #24 – Findings and Decisions 1-1060, Findings of Fact 6, at 6.)

Pierce County, like Spokane County here, also removed the land from the City’s proposed UGA but retained the area “within the generalized Joint Planning Area” of Pierce County. The CPSGMHB held that Pierce County did not comply with the GMA requirements to justify in writing why it deleted this area from the City’s UGA. The CPSGMHB stated that RCW 36.70A.110(2) “implicitly requires the written justification before a legislative action establishing UGAs is taken so that the dissatisfied city can decide whether to formally object to CTED. The Petitioners believe the County’s actions violated the show-your-work requirements of RCW 36.70A.110(2).” Tacoma v. Pierce County, Supra.

Respondent’s position:

The County cites the following Finding, challenged by the City under this issue:

#12

The Board recognizes that the City of Spokane has extended water and/or sewer service to areas outside their incorporated boundary. Because the City of Spokane provides water and/or sewer service outside their incorporated boundary, future land use planning should be conducted jointly in these areas and the Board hereby adopts Joint Planning Areas within the Urban Growth Areas located within Spokane County as shown on the map titled Attachment “A”. The Joint Planning Areas located within the Urban Growth Area for Spokane County, contiguous with the City of Spokane, are described in detail below. Joint Planning Areas shall be joint, or multi-jurisdictional, where two or more jurisdictions providing one or more urban governmental services may participate in the joint planning process.

The County also cites the following documents from the record to support the above Finding:

- Spokane County's Comprehensive Plan (Doc. 21) and all underlying public hearings and testimony on the record.
- Spokane County's Capital Facilities Plan (Doc. 22) and all underlying public hearings and testimony on the record.

The Respondent states the County recognized and adopted all incorporated areas as UGAs and unincorporated areas where the County provides urban services as UGAs. The County also recognizes and adopts JPAs where urban services are jointly provided by cities, the County and special district urban service providers.

The City's reliance on City of Tacoma, Milton and Sumner v. Pierce County, CPSGMHB Case No. 94-3-0001, Final Decision and Order (July 5, 1994) is contended to be of no import in this case. Spokane County's record and documented work far exceeds Pierce County's "brief description" of its actions, which the CPSGMHB found insufficient. (City of Tacoma at page 55.)

The County further believes the CPSGMHB is incorrect in its interpretation that RCW 36.70A.110(2) "implicitly" requires written justification before a legislative action is taken. The County states interpretation would negate any action the BOCC could take following a hearing except what the City proposed, and make a mockery of public participation. The County also states the City has a remedy which they are exercising through the Eastern Washington Growth Management Hearings Board (EWGMHB).

Discussion:

This Board has consistently required the Counties to show their work, especially in cases such as this. Here the parties did not agree upon the boundaries of the City of Spokane UGA. This, together with its last minute changes, emphasizes the need for "showing the work". The Board has a difficult time resolving such issues where there is little or no record or a record insufficient to determine what happened. However, because the County has been found out of compliance in previous issues, it is not necessary to reach this issue. The Board expects the County to show its work at the future compliance hearing held to determine if they have brought themselves into compliance.

Conclusion:

This Issue need not be addressed at this time.

Issue 7: Did the County comply with RCW 36.70A.020(1), RCW 36.70A.020(2),

or RCW 36.70A.110(4) in limiting the City's UGA to its corporate boundaries, identifying some unincorporated UGAs adjacent to the City as non-City JPAs, and designating the North Metro UGA as a County UGA and precluding joint planning for this area?

Petitioner's position:

The City cites RCW 36.70A.110(4) "In general, cities are the units of local government most appropriate to provide urban governmental services..." The GMHBs recognize this legislative directive as requiring a "transformation of local governance," whereby urban services, permitted only in UGAs, are primarily provided by cities.

The City claims annexation and incorporation of urban areas within UGAs are the means to achieve this transformation of local governance. The City believes the County's comprehensive plan frustrates this GMA requirement.

The City claims it is not enough for the County to respond that it makes no difference whether its comprehensive plan policies support the City's annexation plans because the County has no authority under state law to prohibit annexations. The CPSGMHB has already rejected such an argument. The Board there found the County's plan out of compliance with the GMA, holding that "once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a City's annexation land use power." *Id.*

The City claims Spokane County's comprehensive plan limits the City's ability to annex those areas it proposed to be included within its UGA. By limiting the City's UGA to its corporate limits, the County hinders the City's ability to enter into cooperative joint planning with the County, joint planning which is necessary for the City to plan for its provisions of urban governmental services for these areas.

The City claims the County has even explicitly made one part of the County's UGA, the North Metro area, off limits to joint planning, virtually eliminating the City's ability to annex this area.

The City claims vague, multi-jurisdictional JPA designation creates uncertainty regarding future annexation and makes planning for urban services for those areas unnecessarily tentative, thus frustrating the GMA directive that cities are the primary providers of urban governmental services and thus violates RCW 36.70A.110(4).

The City contends a number of statutory requirements are put into question by the County's actions. The Petitioners show by example, where the Boundary Review

Board (BRB) reviews annexation proposals, "The decisions of a boundary review board located in a county that is required or chooses to plan under RCW 36.70A.040 must be consistent with RCW 36.70A.020, 36.70A.110, and 36.70A.210." RCW 36.93.157. If the City proposes to annex an area that is not identified as within the City's UGA or within any joint planning area (as in the case of the North Metro UGA), there is great uncertainty whether annexation is consistent with the UGA provisions of RCW 36.70A.110, as implemented by the County's comprehensive plan.

The City claims the County designated the North Metro UGA, portions of which are surrounded by the City on three sides, as a County UGA without JPA designation, to prevent annexation of this area. They contend this is contrary to the intent of the GMA and is in violation of the requirements of RCW 36.70A.020(1), RCW 36.70A.020(2), and RCW 36.70A.110(4).

Respondent's position:

The County argues as follows:

A. The County complied with RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.110(4) in limiting the City's UGA to its corporate boundaries.

The County states the BOCC established the City's UGA to coincide with its corporate boundaries. They state the basis for this decision is set forth fully in the record and particularly summarized in the County's argument in response to Issue No. 2.

Support for this finding (Doc. 24) are found in the following:

- Letter dated May 8, 2001, from Richard Miller, Airway Heights Planning Commission member concerned that the County and Spokane City's joint planning area is encroaching on the City of Airway Heights. Includes a resolution by Airway Heights to request the City of Spokane to reduce its UGA. (DOC. 12c #007020)
- Letter Dated May 8, 2001, from Charles Freeman, Public Works Director City of Airway Heights (Doc. 12c #007090)

The Respondent states the record demonstrates substantive compliance with the goals of RCW 36.70A.020. The County states the only limitation on the City's ability to annex is established by the legislature through RCW 35.13.005, which provides:

No city or town located in a county in which urban growth areas have been

designated under RCW 36.70A.110 may annex territory beyond a UGA.

B. The County complied with RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.110(4) in identifying some unincorporated UGAs adjacent to the City as non-city JPAs.

The Respondent states the County designated the UGAs in unincorporated Spokane County, which are also JPAs, and are located contiguous with the incorporated boundary of the City of Spokane. The Respondent states the County did not identify these areas as non-city JPAs as alleged by the City as stated in this issue.

C. The County complied with RCW 36.70A.020(1), RCW 36.70A.020(2) and RCW 36.70A.110(4) in designating the North Metro UGA as a County UGA and precluding joint planning for this area.

The Respondent states the BOCC adopted the following decision relative to the North Metro UGA.

#14

The Board finds that the North Metro area, shown on Attachment "A", is located north of the City of Spokane, contiguous with the north boundary of the City of Spokane. Urban services in this area are currently being provided either by Spokane County or special purpose districts and are included in Spokane County's Capital Facilities Plan. The North Metro area is not a Joint Planning Area because the City does not currently provide services to this area and the County has shown through its Capital Facilities Plan that services will be provided by the County and special purpose districts. The north Metro Area was not designated previously as a Joint Planning Area and is not considered as such by the Board.

Intervenor's position:

The Intervenor claims, while general statements are made concerning the JPA creating uncertainty with respect to future annexation and Urban Planning, the City of Spokane only alleges "frustration" and "uncertainty" with the County's Findings.

The Intervenor states the claim concerning frustration and uncertainty with respect to annexation is answered by RCW 35.13.005, which grants the City authority to annex into a UGA designated under RCW 36.70A.110. The Intervenor states when the City is presented with an annexation request and the City can provide all the urban

services, then the Boundary Review Board may recommend approval of the annexation request.

Petitioner's response to Intervenor:

The City argues in its Prehearing Brief that the County's decision to limit the City's UGA to its corporate limits, identifying non-City JPAs adjacent to the City and designating a County UGA excluded from any joint planning, frustrates the GMA's requirement for the transformation of local governance.

The Petitioner states Airway Heights contention that the City's "frustration or uncertainty [claim] with respect to annexation is answered by RCW 35.13.005 which grants the City authority to annex into a UGA designated under RCW 36.70A.110," does not address the problems. The City contends if that were the only limitation to annexation, then it would have been unnecessary for the Legislature to direct the Boundary Review Board to consider comprehensive plans and development regulations in reaching its decisions instead of simply requiring confirmation that the territory is within the UGA.

Discussion:

RCW 36.70A.020(1)(2) states as follows:

- (1) Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

...

Consistent with these Planning goals, the Legislature explained, "In General, Cities are the units of local government most appropriate to provide urban governmental services. ..." RCW 36.70A.110(4).

Both the City of Spokane and Spokane County have stated they supply the North Metro UGA with urban governmental services, along with special purpose districts. While the County does not have a sewer-processing plant, they have contracted with the City for sewer capacity for the North Metro UGA. The Board recognizes that the County in fact is supplying the billing services for the sewer area, but ultimately, the sewage is treated in a city-operated facility. Similarly, even though the County services the streets and arterials in the North Metro Area, they all feed into City streets and arterials.

The CPSGMHB in Case No. 94-3-0001, City of Tacoma, et al. v. Pierce County, Final Decision and Order, (July 5, 1994), held that this legislative directive as requiring a “transformation of local governance” whereby urban services (which are permitted only in UGAs) are primarily provided by cities.”

The Western Washington Growth Management Hearings Board (WWGMHB), Case No. 97-2-0060, Abenroth, et al. v. Skagit Co., held it is inappropriate to establish a non-municipal UGA in close proximity to a municipality with no plan for the transformance of governance. Annexation and incorporation of urban areas within UGAs are the means to achieve this transformation of local governance.

The City of Spokane is the largest city in Eastern Washington and has shown they can and do provide urban services to areas outside their UGA. It makes sense that the City should have room to grow. They have shown that they can handle, along with special purpose districts, the services needed. Both the GMA and Board decisions reflect that urban governmental services should be provided by the cities. The City of Spokane has shown it can provide those services. The Board finds the County has acted erroneously in excluding the City from joint planning in the North Metro Area.

Conclusion:

The County has failed to comply with RCW 36.70A. 20(1), RCW 36.70A.20(2), and RCW 36.70A.110(4) and is out of compliance.

Issues 8/9: Did the County comply with RCW 36.70A.100 when it adopted UGA boundaries and land use designations adjacent to the City limits?

Petitioner’s position:

The City states this Board has found “The GMA requires county and city comprehensive plans to be consistent with each other in order to ensure harmonious land use planning.” City of Moses Lake v. Grant County, EWGMHB Case No. 99-1-0016, Final Decision and Order. Even if comprehensive plans are not inconsistent, they fail to comply with the GMA if the Board finds that they are not coordinated. Ridge v. Kittitas County, EWGMHB Case No. 00-1-0017, Final Decision and Order.

The City asserts that RCW 36.70A.100 means that the County must make an effort to coordinate its UGA and JPA boundaries with the City’s comprehensive plan. The City states the County did not object to the City’s comprehensive plan during the statutory appeal period, but rejected the valid City plan without justification when the

County adopted its comprehensive plan amendments. The County, instead of coordinating with the City, limited the City's boundaries to its city limits.

The City claims the County's comprehensive plan allows 1 acre lots in the unincorporated UGA adjacent to the City limits, while across the street inside the City limits the minimum density in this area is 4 dwelling units per acre. Virtually all of the unincorporated UGA lands adjacent to the City limits are designated Low-density Residential, which "includes a density range of 1 to and including 6 dwelling units per acre.

The City contends one-acre lots in the unincorporated UGA, besides being inappropriate low-density sprawl, make providing urban governmental services difficult, and future annexation uncertain. It is more costly to provide urban-level public facilities and services to areas of sprawling low-density development permitted by the County's comprehensive plan than to more appropriate urban densities as contemplated by the City's comprehensive plan and the GMA. The Petitioners claim the County's comprehensive plan is in violation of RCW 36.70A.100.

Respondent's position:

The Respondent cites four (4) pages of lists of deliberation sessions held, public hearings, miscellaneous documents, reports, Steering Committee of Elected Officials meetings, agendas etc. of 8 Joint City/County Planning Commission meetings, Documents, letters, etc.

The Respondent states the coordination between the City of Spokane and the County is beyond challenge. The Respondent states while the City objects to the fact that the County allows 1 acre lots adjacent to City limits, the fact is the County allows a range of density of 6 units per acre to 1 unit per acre, (Doc. 21 #011999).

Discussion:

RCW 36.70A.100 provides:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

This issue addresses "coordination" between the parties, and leaves the issue of

“consistency” to Issue No. 10. The City cites as an example of the lack of coordination, the existence of zoning which allows 1 unit per acre density on the City’s perimeter. The Board recognizes it may be more expensive to provide urban services to 1-acre densities but it is not a hindrance for annexation. While it may be more expensive for the homeowner, it should not be more expensive for the City or County. One-acre lots in cities and Urban Growth Areas are not prohibited by the GMA. The County has discretion when establishing densities, as long as the Goals of the GMA are not frustrated.

In response, the County provides an extensive list of meetings and coordination activities involving the City and County. The City has failed to carry its burden of proof regarding consistency and coordination of comprehensive plans.

Conclusion:

The City has failed to carry its burden of proof on these issues 8 and 9.

Issue 10: Does the County’s UGA boundaries, land use designations, JPAs, and criteria for siting essential public facilities comply with the CWPPs, pursuant to RCW 36.70A.210?

Petitioner’s position:

The City claims one major purpose of countywide planning policies (CWPPs) is to ensure that city and county comprehensive plans are consistent. The City also claims this means that comprehensive plans must be consistent with CWPPs.

The Introduction to the CWPPs for Joint Planning within UGAs provides:

The Growth Management Act (GMA) requires the establishment of Urban Growth Areas (UGAs) and policies for joint county and city planning within Urban Growth Areas (UGAs). A goal of the Growth Management Act (GMA) is to encourage citizen involvement in the planning process and to ensure coordination between communities and jurisdictions to reconcile conflicts. Spokane County and each jurisdiction must plan jointly in the establishment of Urban Growth Areas (UGAs) and for future activity within those areas.

The Petitioners claim the County’s comprehensive plan is not consistent with several CWPPs. For example, CWPP Urban Policy 2 provides:

The determination and proposal of an Urban Growth Area (UGA) outside existing incorporated limits shall be based on a jurisdiction’s ability to provide urban governmental services at the minimum level of service specified by the

Steering Committee. Jurisdictions may establish higher level of service standards in their respective comprehensive plan.

CWPP Urban Policy 8 provides:

Each municipality must document its ability to provide urban governmental services within its existing city limits prior to the designation of an Urban Growth Area (UGA) outside of existing city limits. To propose an Urban Growth Area (UGA) outside of their existing city limits, municipalities must provide a full range of urban governmental services based on each municipality's capital facilities element of their Comprehensive Plan.

The Petitioner points out the City's proposed UGA included unincorporated areas. The City demonstrated it could provide urban services to these areas and is already providing urban services to much of these areas. Still, the City contends the County found, without justification, that the City cannot adequately provide urban services to these areas.

The City claims that the County failed to designate unincorporated UGAs adjacent to the City limits as part of the City's UGA based on the alleged inability to provide services for these areas, while at the same time relying in part on the City's ability to provide urban services to these areas to qualify and designate these same areas as County UGAs.

The City claims the County has thwarted the City's attempts to establish joint planning for the UGAs adjacent to the City limits. The City also claims the County has expressly excluded a significant portion of the unincorporated UGA, the North Metro UGA, from any joint planning.

The City contends the County's CWPPs require that "each jurisdiction shall plan for growth within [UGAs] which uses land efficiently, adds certainty to capital facilities planning and allows timely and coordinated extension of urban governmental services, public facilities and utilities for new development." The Petitioners claim that contrary to this CWPP, the County has eliminated certainty to capital facilities planning in the unincorporated areas within the City's proposed UGA.

The City claims where the County refuses to identify adjacent, unincorporated UGAs as part of the City of Spokane's UGA, the City is left with absolutely no certainty to support capital facilities planning for these areas.

The City claims another CWPP inconsistent with the County's comprehensive plan is the Siting of Capital Facilities of a Countywide or Statewide Nature CWPP Policy 3 provides:

The Steering Committee shall implement a process for the equitable distribution of essential public facilities among jurisdictions. Each jurisdiction shall make physical and/or financial provisions in its comprehensive plan for essential public facilities consistent with the Steering Committee's distribution.

Locate essential public facilities based on respective siting and service delivery criteria regardless of Urban Growth Area (UGA) boundaries. The criteria shall be identified or established by the Steering Committee, subsequently incorporated into each jurisdiction's comprehensive plan, and should include but not be limited to:

- a. a definition of these facilities;
- b. an inventory of existing and future facilities;
- c. a public involvement strategy;
- d. community wide distribution or fair share of sites; and
- e. other considerations such as:

The City claims the County, instead of complying with this CWPP, merely requires the County "consider" the Steering Committee's adopted process. The Petitioners further claim the County deleted language from Policy CF.15.1 where the BOCC changed the requirement to "follow" the Steering Committee's process to "consider" their process.

The City also claims the County allowed septic systems within UGAs, instead of requiring sanitary sewers for all urban development.

Each jurisdiction's comprehensive plan shall, at a minimum, demonstrate the ability to provide necessary domestic waster, sanitary sewer and transportation improvements concurrent with development. Small municipalities (those with a population or 1,000 or less) may utilize approved interim ground disposal methods inside of Urban Growth Areas (UGAs) until such time as full sanitary sewer services can be made available. Each jurisdiction should consider long-term service and maintenance requirements when delineating Urban Growth Areas (UGAs) and making future land use decisions. (CWPP 11).

The City states the County's comprehensive plan includes the County itself in this exception by requiring sanitary sewers only "where densities exceed 2 equivalent

residential units per acre.” The Petitioners believe that once these low-density lots are developed with septic systems, it will be expensive to provide sanitary sewer improvements to serve these non-urban-density developments within the UGA. The City contends County’s comprehensive plan therefore is not consistent with the CWPPs and is in violation of RCW 36.70A.210(1).

Respondent’s position:

The Respondent states the County recognized the inability of either the City or County to provide a full range of urban services in certain areas and therefore designated those areas as joint planning areas to accommodate joint urban service delivery. The County directed the Board’s attention to Issue No. 7 for arguments they have made there.

The County states relative to citing essential public facilities the BOCC determined to “consider” the Steering Committee’s adopted process rather than “follow” it (Doc. 18a #011689, Doc. 28). The Respondent states this allows the BOCC to retain its legislative discretion and to respond to public input and new legislation.

The County states the criteria established by the CWPPs are set forth in the Growth Management Essential Public Facilities Technical Committee Report (Doc. 28). The Comprehensive Plan references this report at CF 15.1 at Doc. 21 #012089.

The County states the issue of septic systems within a UGA is addressed by UL 7.12 of the Comprehensive Plan (Doc. 21 #01198), which provides:

UL.7.12

New development within the UGA shall be connected to public sewer, consistent with requirements for concurrency. Developer-financed extensions of public sewer may be allowed within any area of the UGA provided capacity and infrastructure needs are adequately addressed.

The Respondent states in all cases where septic systems are allowed in the UGA, they are allowed only on an interim basis.

Discussion:

RCW 36.70A.210(1) states:

The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a “county-wide planning policy” is a written policy statement or statements

used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

The City raises a range of claimed inconsistencies between the County Comprehensive Plan and the County Wide Planning Policies (CWPPs). These inconsistencies fall into two categories: (1) those affecting UGAs and joint planning areas, and (2) those addressing siting of essential public facilities.

The City's arguments regarding the claimed inconsistencies affecting UGAs and joint planning areas are largely a restatement of arguments aired in issues previously addressed in this order. As we have already ruled that the County erred in not providing for adequate public input, including adequate opportunity for the City to comment on the restricted UGA for the City, as well as the failure to include the City in the North Metro Joint Planning Area, we need not address them here again. The City will be allowed to present its arguments to the County when the County brings itself into compliance with the GMA and our order herein.

With regards to the siting of essential public facilities, the Board finds no provision in the law that would require the County to follow the Steering Committee's recommendation, regardless of what the CWPPs state. The CWPPs are to be followed by the County, but only to the extent allowable under existing law. The County cannot delegate its statutory responsibility to the Steering Committee. Therefore, its actions, retaining final authority for decision-making could not be found by this Board to be out of Compliance.

Conclusion:

The Board finds that the issues raised here by the City regarding UGAs and joint planning areas are addressed in previous issues herein and need not be again resolved here. The issue regarding the siting of essential public facilities is decided in favor of the County.

Issue 11: Did the County comply with RCW 36.70A.070 when it modified certain population allocations without making corresponding changes in the adopted County comprehensive plan?

Petitioner's position:

The City claims one way the GMA seeks to enhance the quality of comprehensive planning is to require comprehensive plans to be internally consistent. "Consistency" means that comprehensive plan provisions are compatible with each other.

The City claims the BOCC revised the population allocation between the City and County when they changed the proposed amendments to the County's comprehensive plan on the date it adopted the plan. By revising the allocation between the City and the County, the BOCC re-allocated the responsibility for planning for this population.

The City claims the Recommended Capital Facilities Plan (March 2001) and the adopted Capital Facilities Plan (November 2001) both assume a 20-year population growth within the County UGA of 53,370. When the BOCC changed the City's population allocation from 68,800 to 54,000 at the last minute, the County re-allocated 14,800 to itself.

The City contends the troubling aspect of the BOCC population re-allocation is the reliance on historic population trends. The Petitioners claim reliance on such historic patterns of pre-GMA land use planning is contrary to GMA – "past practices cannot be the pattern for the future." City of Moses Lake v. Grant County, EWGMHB Case No. 99-1-0016 Final Decision and Order. To the extent past practices and trends are inconsistent with the GMA, they cannot form the basis for future planning.

Respondent's position:

The Respondent states the BOCC set forth population allocations at DOC. 23 #012405. This population allocation included an updated revision, which resulted in 14,800 people being allocated to the rural area of Spokane County. The rural area of the County has excess capacity, exceeding even this additional 14,800 people. (Doc. 45 #013701). Because of this, no revision to the Comprehensive Plan is required or necessary.

Discussion:

RCW 36.70A.070 states in part:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. **The plan shall be an internally consistent document and all elements shall be consistent with the future land**

use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Consistency means comprehensive plan provisions are compatible with each other. One provision may not thwart another. West Seattle Defense Fund v. City of Seattle, CPSGMHB Case No. 94-3-0016, Final Decision and Order.

Before the County changed the population allocation between the City and County, the City's comprehensive plan and the County's draft comprehensive plan allocated population to the City for unincorporated areas within the City's proposed UGA. This allocation change gave the responsibility for planning for this population to the County.

Conclusion:

The City has failed to prove that the change in population allocation required a change in the County's Comprehensive Plan to achieve internal consistency. The County is not found out of compliance on this issue.

Issue 12: Did the County comply with RCW 36.70A.070(3)(b) when it modified certain population allocations without revising its Capital Facilities Plan?

Petitioner's position:

The City claims the BOCC, when revising the allocation between the City and the County, re-allocated the responsibility for planning for this population. The County's Capital Facilities Plan is based on the original population allocation for the County UGA of 53,370. The Petitioners claim when the BOCC shifted this planning responsibility by its last-minute population re-allocation, the BOCC did not make any necessary corresponding revisions to the County's Capital Facilities Plan.

The City claims the County also relies on the plans of special purpose districts and private service providers to forecast future capital facilities needs. The Petitioners also claim many of these plans are deficient for GMA planning purposes or demonstrate future deficiencies, with no plan for satisfying future needs.

The City claims that not only is the County's analysis of its own facilities not based on the adopted population assumptions, but many of the special purpose districts plans are not based on the adopted population assumptions.

The City shows as another example the County's reliance on fire protection districts. The Petitioners say at least two major fire districts, Fire Districts 9 and 10, are

not even included in the Capital Facilities Plan. The Petitioners believe if the County's GMA planning relies on the planning of special purpose districts and private service providers, the plans of these providers must be adequate and they are not.

Respondent's position:

The County contends, as stated in Issue No. 11, the County has excess capacity exceeding even the additional 14,800 people and as a result, no revision to the Capital Facilities Plan, which generally addresses service delivery, is required or necessary.

The Respondent states the County showed in its Capital Facilities Plan an inventory and analysis of future needs for fire and water districts, which is all that is required for special districts or facilities not owned or operated by the County (Doc. 72 #019367 at seq.). Wenatchee Valley Mall Partnership, et al, v. Douglas County, EWGMHB Case No. 96-1-0009 Final Decision and Order (December 10, 1996).

The County states Fire Districts Nos. 9 and 10 were requested to and did provide the information as follows to be used in preparing the Capital Facilities Plan:

- Letter dated May 30, 2000, from Scott Kuhta to Bob Anderson, Fire District #9 Chief (Doc. 59b #017769)
- Letter dated May 30, 2000, from Scott Kuhta to Dick Gormley, Fire District #10 Chief (Doc. 59b #017772)
- Letter dated July 17, 2000, from Scott Kuhta to Bob Anderson, Fire District #9 Chief (Doc. 59b #017776)
- Letter dated July 17, 2000, from Scott Kuhta to Dick Gormley, Fire District #10 Chief (Doc. 59b #017777)
- Letter dated May 22, 2000, from Scott Kuhta to Bob Anderson, Fire District #9 Chief (Doc. 59b #017796)
- Letter dated May 22, 2000, from Scott Kuhta to Dick Gormley, Fire District #10 Chief (Doc. 59b #017795)
- Responses from Fire District #9 and #10 see Doc. 59b #017849 – 017854 and 017862 – 017863)

The Respondent states these districts are also included in the Fire Protection Map, and the inventory analysis (Doc. 22 #012239, Doc. 22 #012237 – 012238). The Respondent states while these districts did not provide a capital improvement program (Doc. 22 #012241), apparently none are planned at this time.

Discussion:

As discussed in Issue No. 11, the BOCC revised the population allocation between

the City and the County's comprehensive plan on the date it adopted the plan. While the analysis in the County's Capital Facilities Plan is based on the original population allocation for the County UGA of 53,370, the County has shown it has adequate service capacity for the additional population. Unless the City can demonstrate the County action is clearly erroneous, the action of the County is presumed valid.

The City has not carried its burden in this Issue.

Conclusion:

The City has not carried its burden in this Issue. The County is found in compliance on this issue.

Issue 13: Did the County comply with RCW 36.70A.070(3)(d) in adopting its Capital Facilities Plan?

Petitioner's position:

The Petitioners claim one of the "truth in planning" features of the GMA is the requirement that counties and cities provide "at least a six-year plan that will finance [planned for] capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes." RCW 36.70A.070(3)(d). The requirement for a six-year financing plan "is not an option or a priority to be balanced." Bremerton v. Kitsap County, CPSGMHB Case No. 95-3-0039. The CPSGMHB held the "six-year plan period begins with the date of the adopted Plan." *Id.*

The Petitioners claim the County's Capital Facilities Plan was adopted in November 2001, the capital-financing plan is for 2000 to 2006. The Petitioners state that two years of this financing plan were of only historical interest when it was adopted and the comprehensive plan was amended. The CPSGMHB rejected Kitsap County's argument that the GMA does not designate a specific six-year period to be used, stating that "it is illogical, contrary to one of the bedrock purposes of the GMA – planning to manage future growth – to suggest that the [capital facilities plan's] six-year financing plan can be, in whole or in part, an historical report capital facilities financing for prior years."

Respondent's position:

The Respondent states the Capital Facilities Plan represents the seven-year period of 2000 – 2006, which includes the base year 2000 and the 6-year forecast

(2001 – 2006) need for public facilities (Doc. 22 #012193). The Respondent states this plan covers the requisite time frame.

The Respondent believes the time frame is consistent with the statute as it covers the time frame from November 5, 2001, through 2006, or 4 years and 1 month.

This nine month discrepancy is of no import particularly since:

[T]he Growth Management Act allows the County to update the CFP twice each year. At minimum, the CFP should be updated annually prior to budget adoption. This will allow the County to incorporate the Capital improvements from the updated CFP into the County's annual budget. (Doc. 22 #012202).

The Respondent also states pursuant to RCW 36.70A.103(2)(A)(iii), the Capital Facilities Plan may also be amended with the adoption or amendment of the County's budget.

Discussion:

RCW 36.70A.070(3)(d) states in part:

"that counties and cities provide "at least a six-year plan that will finance [planned for] capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes."

Bremerton v. Kitsap County, CPSGMHB Case No. 95-3-0039, Order Rescinding Invalidity in Bremerton and Final Decision and Order in Alpine found the requirements for a six-year financing plan "is not an option or a priority to be balanced." The CPSGMHB, to emphasize the unequivocal intent of the GMA held, that the "six-year plan period begins with the date of the adopted Plan."

In Bremerton v. Kitsap County, *Supra* the County adopted a capital facilities plan in 1998. Kitsap County's six-year financing plan covered 1994 through 2000. The CPSGMHB rejected the County's argument that the GMA does not designate a specific six-year period to be used, stating that "it is illogical, and contrary to one of the bedrock purposes of the GMA – planning to manage future growth – to suggest that the [capital facilities plan's] six-year financing plan can be, in whole or in part, a historical report of capital facilities financing for prior years."

The County's Capital Facilities Plan was adopted in November 2001, the included financing plan is for 2000 – 2006. Nearly two years of this financing plan had already passed upon the adoption of the Plan. There is a requirement of a 6-year Facilities Plan. The fact that an amendment can correct an error or omission does not bring the

County into compliance now. The County's Capital Facilities Plan does not cover the requisite time period and is not in compliance with the GMA.

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Conclusion:

The County has failed to adopt a six-year Capital Facilities Plan which covers the requisite time period and is out of compliance.

Issue 14: Did the County comply with RCW 36.70A.020(12) or RCW 36.70A.070 (3)(b) in adopting its Capital Facilities Plan and specifically levels of service standards?

Petitioner's position:

The City claims when planning for future growth and forecasting capital facilities needs pursuant to RCW 36.70A.070(3)(b), the adequacy and availability of public facilities and services must be realistically evaluated. RCW 36.70A.020(12) directs cities and counties to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards."

The City claims the County is free to establish service levels where it chooses, as long as the service levels meet the minimum level of service standards established by the Steering Committee (CWPP 3.1 at 15), the County's forecast of future capital facilities needs must accurately reflect those levels of service.

The Petitioners claim the County cannot satisfy the minimum level of service standards established for the County. The County will not meet the level of service standards for domestic water, because most water providers will have deficiencies in 2006. The County will not meet the level of service standards for sanitary sewer, because the capacity will be exceeded by the beginning of 2007. The Petitioners claim that since the capital facilities analysis do not contemplate the BOCC's last minute population re-allocation, these deficiencies may actually be greater than revealed in the County's original analysis.

The Petitioners claim the map showing the County's sewer projects for the 20-year planning period demonstrates significant deficiencies in the County's capital facilities planning. Many acres of property within the UGA boundary, which are not

included in the County's 6-year, 15-year, or 20-year sewer plans. The Petitioners state a large portion of this unplanned-for area falls within the North Metro UGA, a UGA for which no joint planning is provided.

The Petitioners claim the County's comprehensive plan shows that it will not have adequate or available public facilities and services to serve the anticipated population and is in violation of RCW 36.70A.020(12) and RCW 36.70A.070(3)(b).

Respondent's position:

The Respondent directs us to Issue No. 12 for the County's argument about domestic water service.

The Respondent states the County has demonstrated in the Capital Facilities Plan the capacity to provide wastewater treatment through the 2001 to 2006 planning period (Doc. 22). The County projects it will reach its 10,000,000 per day contracted capacity at the Spokane Advanced Wastewater Treatment Facility in 2007. The Capital Facilities Plan indicates the County is taking the following actions to address the need for additional wastewater treatment after 2007:

- Spokane County Capital Facilities Plan (Doc. 22 #012319) Showing Spokane County is planning to spend approximately \$35 million for cost of construction of new wastewater treatment facilities. This planning effort by Spokane County will result in an increase wastewater treatment capacity of 5 million gallons per day.

The Respondent states while a number of acres in the UGA are not included in the County's 6-year sewer plan, those areas are on the outer edge of the UGA where the County, at the current time would require the developer to extend sewer service. The calculations for wastewater treatment do include the population projected in those areas (Doc 22).

The Respondent also directs the Board to CWPP Topic 1, Policy 12 at Doc. 1 #000014, which provides:

#12

Within Urban Growth Areas (UGAs), new development should be responsible for infrastructure improvements attributable to those developments.

The comprehensive plan UL7.12 also provides:

New development within the UGA shall be connected to public sewer, consistent with requirements for concurrency. Developer-financed extensions of public sewer may be allowed within any area of the UGA provided capacity and infrastructure needs are adequately addressed.

Discussion:

RCW 36.70A.070(3)(d) provides, when planning for future growth and forecasting future capital facilities needs pursuant to RCW 36.70A.070(3)(b), the adequacy and availability of public facilities and services must be realistically evaluated.

RCW 36.70A.020(12) directs cities and counties to "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards."

Because the County has designated large County UGAs, they have an even larger responsibility to insure that services will be there when developments are occupied. In Issue No. 13, the Board remanded the Capital Facilities Plan to be redrafted to include the time period as required by the GMA. During that process, the County will be required to again address the adequacy of the Plan to service needs. The City's position is persuasive, yet fails to show that the County's plan is clearly erroneous.

Conclusion:

The City has failed to carry their burden of proof on this issue.

Issue 15: Did the County comply with the requirements of the State Environmental Policy Act ("SEPA"), RCW 43.21C.010 et seq., and its implementing regulations, WAC 197-11-010 et seq., when the County adopted Findings and Decisions 1-1059 and 1-1060?

Petitioner's position:

The City voluntarily abandons Issue 15.

Respondent's position:

The City has abandoned this argument.

Conclusion:

Issue No. 15 is abandoned.

ORDER

Issue No. 1

Spokane County is not in compliance with the GMA due to its failure to provide an adequate opportunity for public comment on the amendments to the adopted comprehensive plan as required by RCW 36.70A.035.

Issue No. 2

Spokane County is not in compliance with the GMA due to its failure to provide the public participation required. See Issue No. 1.

Issue No. 3

Spokane County is not in compliance with the GMA due to its failure to comply with the County's GMA Public Participation Program Guidelines. See Issue No. 1.

Issue No. 4

Spokane County is not in compliance with the GMA due to its failure to comply with RCW 36.70A.110(2).

Issue No. 5

Spokane County is not in compliance with the GMA due to its failure to reasonably attempt to reach an agreement with the City of Spokane when designating the City's UGA as required by RCW 36.70A.110(2).

Issue No. 6

Spokane County, being found out of compliance in the previous issues, has the opportunity to "show their work" in adopting UGA boundaries and land use designations pursuant to RCW 36.70A.110(2) when bringing themselves into compliance. Therefore this issue need not be addressed at this time.

Issue No. 7

Spokane County is not in compliance with RCW 36.70A.020(1) and (2), and RCW 36.70A.110(4) of the GMA where it precluded the City from joint planning in the North-Metro UGA.

Issues Nos. 8 and 9

The City of Spokane failed to carry its burden of proof on Issues Nos. 8 and 9.

Issue No. 10

The Board finds that the UGAs and joint planning areas issues herein have been addressed previously and need not be again resolved. The issue regarding the siting of essential public facilities is decided in favor of the County.

Issue No. 11

The City of Spokane has not carried its burden of proof on Issue No. 11.

Issue No. 12

Spokane County is found in compliance with RCW 36.70A.070(3)(b) of the GMA when it modified certain population allocations without revising its Capital Facilities Plan.

Issue No. 13

Spokane County is not in compliance with the GMA when it failed to adopt a six-year Capital Facilities Plan covering the requisite time period as required by RCW 36.70A.070 (3)(d).

Issue No. 14

The City of Spokane has failed to carry its burden of proof on Issue No. 14.

Issue No. 15

This issue was abandoned.

Spokane County has two weeks from the date of this order to submit a schedule to the Board for coming into compliance.

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 3rd day of July 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Judy Wall, Board Member

Dennis Dellwo, Board Member

D.E. "Skip" Chilberg, Board Member