

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

SAUNDRA WILMA and ALAN D. WILMA

Petitioners,

v.

CITY OF COLVILLE,

Respondent.

Case No. 02-1-0007

FINAL DECISION AND ORDER  
ON AMENDED PETITION FOR  
REVIEW

**I. Procedural History**

On March 29, 2002, SAUNDRA WILMA and ALAN D. WILMA filed a Petition for Review.

On May 17, 2002, Respondent filed Respondent's Motion to Dismiss and/or for Summary Judgment.

On May 20, 2002, Petitioner's filed their Motion and Memorandum to Supplement the Record Obtain Official Notice and Request for Tapes and/or Transcripts.

On June 17, 2002, the Board held a telephonic Motion Hearing. Present were Dennis A. Dellwo, Presiding Officer, and Board Members D.E. "Skip" Chilberg and Judy Wall. Present for Petitioners were Sandra and Alan Wilma. Present for Respondent was Patricia J. St. Clair, Colville City Attorney. The Petitioners' request to amend their petition was denied.

On June 19, 2002, an order was entered denying the City's Motions.

On August 19, 2002, the Hearings On the Merits was held in Colville, Washington. Present were Dennis A. Dellwo, Presiding Officer, and Board Members D.E. "Skip" Chilberg and Judy Wall. Present for Petitioners were Sandra and Alan Wilma. Present for Respondent was Patricia J. St. Clair, Colville City Attorney.

On September 4, 2002, the Board issued its Final Decision and Order.

On September 17, 2002, the Petitioners filed a Motion for Reconsideration.

On November 4, 2002, a telephonic hearing was held with Dennis A. Dellwo present and

acting as presiding officer with fellow board members Dennis (Skip) Chilberg and Judy Wall. The Petitioners Alan & Saundra Wilma and the City's Attorney, Patricia St. Clair were present telephonically.

## **II. Findings of Fact**

1. On April 10, 2001, the City of Colville, the City, annexed the 6.73 acres, which are the subject of this Petition.
2. On October 9, 2001, the City Council adopted the Comprehensive Plan (CP) Amendment Docketing Process Resolution No. 13-01 and the Public Participation Policy Resolution No. 14-01.
3. The Public Participation Policy Resolution No. 14-01 was not published or broadly disseminated to the public.
4. December 12, 2002, the City Planning Commission held a public hearing concerning the Comprehensive Plan amendment, which is the subject of the original petition.
5. On January 22, 2002, the City Council held a closed hearing on the Comprehensive Plan amendment. The Colville City Council passed the amendment to the Comprehensive Plan. (Ordinance 1255 N.S.)
6. On February 20, 2002, notice of the Comprehensive Plan Amendment Ordinance 1255 N. S. was published.
7. March 13, 2002, the Planning Commission held a Zoning Text amendment hearing to discuss the change of zoning to coincide with the Comprehensive Plan amendment above. The Planning Commission voted unanimously to change the zoning text of Ordinance 1160 N.S.
8. On April 23, 2002, Colville City Council passed Ordinance 1256 N. S. amending text and mapping to the Comprehensive Plan development Regulation Zoning Ordinance 1160 N.S. to correspond to the Comprehensive Plan amendment.

## **III. STANDARD OF REVIEW**

The Growth Management Hearings Board has a duty to determine whether the City has complied with the requirements of the Revised Code of Washington, Chapter 36.70A.

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

#### **IV. SUMMARY OF FACTS**

This case involves the Petitioner's motion seeking reconsideration and a finding of invalidity. At the hearing on the merits in the principal case herein, the Eastern Washington Growth Management Hearings Board (the Board) denied the Petitioners' motion to amend its petition involving similar issues found in Colville City Ordinance No. 1256 N.S., An Ordinance Amending Ordinance 1160 N.S., Title 17 of the Colville Municipal Code, Relating to Zoning Decisions. The Board granted the Petitioners' motion to reconsider. The Board finds the motion to amend was timely and the matter appeared to be germane to the issues found in the original petition and should have been allowed. A hearing was held to consider any new arguments not already heard concerning the amended petition and to hear arguments on a finding Invalidity.

#### **V. LEGAL ISSUES AND DISCUSSION**

##### **Issue 11:**

Does the adoption of Resolution No. 13-01 fulfill the mandates of RCW 36.70A.103(2) (a), "Each county an city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby amendments or revisions of the comprehensive plan are considered by the governing body of the county and city no more than once a year"?

##### **Issue 12:**

Does section 3 of Resolution No. 13-01 violate RCW 36.70A.140 and WAC 365-165-600 (v)?

##### **Issue 13:**

Resolution No. 13-01 section 3 mandates evaluation by Chapter 17.96 of the Colville Zoning Ordinance which adopts a fee schedule. The fee for a member of the public to

propose a comp plan amendment is \$200. Does this inhibit members of the public from coming forth with suggestions, violating RCW 36.70A.140 and every reasonable effort to involve the public in the process?

**Parties' Positions:**

The City of Colville adopted Resolution 13-01, an Amendment Docketing Process. This resolution was challenged by the Petitioners as not satisfying the public participation requirements of the GMA. An example given is the existence of a \$200 fee for an application to amend the Comprehensive Plan. It is contended that this is the only method established for the submission of Comprehensive Plan suggestions to the City. Another example was the failure of this Resolution to provide for public hearings at the time the legislative body considers amendments to the Comprehensive Plan.

The City contended the Board did not have jurisdiction to hear arguments concerning this Resolution and believed that all these issues had been decided already in the previous order herein.

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**Discussion:**

The Board has already found there was no compliant public participation plan and inadequate public participation in the amendment of the Comprehensive Plan. (FDO September 4, 2002; 02-2-0007). City of Colville Resolution 13-01 is legislation that further restricts public input, i.e. \$200 fee for suggested amendments. The City needs a process for the receipt of Comprehensive Plan suggestions other than through the submission of an amendment. The City needs to develop a process that gives the public an opportunity to be heard by the legislative body. To the extent that Resolution 13-01 frustrates public participation, it is out of compliance.

A failure in the public participation process undermines the very core of the GMA and the legitimacy of adopted or amended comprehensive plan provisions and development regulations. The City must err on the side of involving the public in its GMA decisions.

**Conclusion:**

The Board finds the action by the City in its adoption of Resolution 13-01 clearly erroneous in view of the entire record before us and in light of Goal 11 and requirements of the GMA and is out of compliance.

## **Issue 14:**

Was Ordinance No. 1256 N.S. adopted with public participation as questioned for Ordinance 1255 N.S. in Legal Issue 1? Does this violate RCW 36.70A.130(1) and WAC 365-195-600(x), and does this interfere with goal 11 of the GMA?

## **Parties Positions:**

The Petitioners asked this Board to consider their amended petition, which includes public participation concerns with the City of Colville's Ordinance 1256 N.S. This Ordinance amended the City's zoning ordinance to implement the changes made to the City's comprehensive plan found in the City of Colville's Ordinance 1255, N.S. These amendments affect one parcel of land owned by one person. The City contends that this Board does not have jurisdiction because the zoning change is site specific and not subject to GMA review.

## **Discussion:**

In the FDO dated September 4, 2002, the Board has found the City of Colville out of compliance due to its failure to provide early and continuous public participation in the Comprehensive Plan amendment process. The Comprehensive Plan Amendment changed one party's 6.5-acre plot from a residential to commercial designation. The amendment to the zoning of that area, challenged in the amended petition, implemented that Comprehensive Plan change. This is site specific. The Supreme Court of the State of Washington, in Wenatchee Sportsmen Association v. Chelan County, 141 Wash. 2<sup>nd</sup> 169, 4 P. 3d 123 (2000), held: "[A] site-specific rezone is not a development regulation under the GMA, and hence pursuant to RCW 36.70A.280 and .290, a GMHB does not have jurisdiction to hear a petition that does not involve a comprehensive plan or development regulation under the GMA."

## **Conclusion:**

The Board does not have jurisdiction to hear this issue.

### **vi. Request for Invalidity**

The Petitioners assert that the City's actions substantially interfere with the goals of the Act and urge the Board to enter a determination of invalidity.

RCW 36.70A.302 provides:

1. A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:

- a. Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
- b. Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
- c. Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

2. A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

The Board has found that the City's adoption of Resolution No. 13-01 and Ordinance No. 1255 was not guided by the direction provided in Goal 11 and did not comply with RCW 36.70A.140. The question now becomes whether the continued validity of Ordinance No. 1255 and Resolution No. 13-01 during the period of remand would substantially interfere with the fulfillment of Goal 11. The Board's review of the facts and circumstances presented in this matter leads the Board to conclude that such a determination is not appropriate. While the City's action is noncompliant, the continued validity of the Ordinance during the period of remand would not substantially interfere with Goal 11. The City is proceeding to correct the problems with their public participation program and the impact upon the particular parcel of property is irreversible. Therefore, the Board declines to enter a determination of invalidity.

## **VII. ORDER**

1. On Issues 11 and 13, the City of Colville is found out of compliance due to its failure to provide the public participation required under the GMA for the amendment of the Comprehensive Plan.
2. On Issue 14, the Board finds that it does not have jurisdiction and will not decide this issue.

3. An order finding Invalidity is not entered herein.

The Board therefore remands Resolution 13-04 to the City of Colville to bring themselves into compliance with the GMA and the Order entered herewith, within 60 days from the date of this Order.

**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 5<sup>th</sup> day of December 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS  
BOARD

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Dennis Dellwo, Board Member

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Judy Wall, Board Member

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D.E. "Skip" Chilberg, Board Member