

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

NEIGHBORS FOR RESPONSIBLE DEVELOPMENT

Case No. 02-1-0009

Petitioner,

MEMORANDUM OPINION

v.

CITY OF YAKIMA,

Respondent.

CONGDON ORCHARDS INC.

Interenors

I. BACKGROUND

On May 9, 2002, NEIGHBORS FOR RESPONSIBLE DEVELOPMENT, by and through their attorney, James Carmody, filed a Petition for Review.

On August 23, 2002, Congdon Orchards Inc. filed a Motion to Intervene by and through their attorney, Michael Shinn. The Motion was granted.

On October 14, 2002, the Board held a telephonic hearing on Motions to Supplement the Record. On October 25, 2002, the Board issued their Order Regarding Supplementation of Record.

On November 6, 2002, the Board held the Hearing on the Merits in Yakima with the parties present and/or represented by counsel.

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II. FACTS OF CASE

This case evolves from actions taken by the City of Yakima to amend their Comprehensive Plan (CP) that affected a 725-acre block of land owned by Congdon

Orchards, Inc.

The Comprehensive Plan change and rezone request was approved by the City of Yakima, as was a binding Development Agreement. The purpose of the Comprehensive Plan amendment was to allow expanded commercial and industrial designations of the property.

The Petitioners challenged Yakima City's actions and contended they: (1) do not comply with the GMA requirements to involve the public in the planning process, (2) have not been coordinated with affected public entities, particularly the Yakima airport, and (3) are inconsistent with Yakima City's Comprehensive Plan.

III. SUMMARY OF DECISION

The Board concurs with Petitioner's arguments that the City has failed to comply with applicable GMA statutes to involve the public in the process. While the City argues it followed its own code requirements for a rezone request, it admitted errors were made, and that it had not enacted a public participation plan pursuant to RCW 36.70A.140. The City argues that the errors were "de minimus." The Board disagrees.

The Board finds a lack of adequate public participation, particularly in the early stages of the Comprehensive Plan amendment process. Attempts that were made to inform the public of the contemplated action were feeble and contained inaccuracies. Assurances made to concerned neighbors that this proposal contemplated only minor adjustments were misleading. No prior notice of the proposed amendment was made to other public bodies, including CTED. The City has failed to provide early and continuous public participation in the amendment process. The City's process is fatally flawed.

The City argues, "the process complied with existing city code requirements". Because of the failure to follow its own code requirements, this claim is false. However, even if this argument were true, it does not relieve the City from responsibility to comply with the GMA, specifically RCW 36.70A.140. The GMA requires broad dissemination of proposals and alternatives and an opportunity for written comments and public meetings after effective notice providing for open discussion, consideration of, and response to, public comments.

While the Board recognizes that a "Memorandum of Understanding" is important for a developer, it must be subject to a public participation process. While arguably not a contractual obligation, the Memorandum of Understanding commits the City to a course of action and an implied outcome. If it did not do that, the developer would not

commit the substantial sums of money necessary to proceed with the development. Because of this implied commitment to an outcome, the Memorandum of Understanding must meet the requirements of the GMA public participation statutes. The public needs to participate in such an important part of the move toward the amendment of the Comprehensive Plan. The City's failure to do that is clearly erroneous.

The GMA requires notification to other affected bodies prior to any development of this scope. The Board finds the failure to notify and involve local airport officials prior to making commitments to be clearly erroneous. It is not this Board's job to determine if actual conflicts with airport safety will occur, but the City must ensure avoidance of any such conflict before making commitments.

Petitioners have failed to convince the Board of any internal inconsistencies in the City's Comprehensive Plan. Petitioner's arguments would effectively bar any amendments to a Comprehensive Plan, including amendments to correct an existing inconsistency.

The Board rarely invokes invalidity. Invalidity can only be invoked when the Board finds the actions taken by a City or County seriously impair the goals of the GMA. In this case, we find such impairment exists. For the GMA planning process to work, citizens must have confidence in the planning process. The public must be heard, before commitments are made. Here, they were not. The development and signing of the Memorandum of Understanding is a part of the development and enactment process of the amendment of the Comprehensive Plan in this case. The Board declares the actions taken by the City, beginning with the Memorandum of Understanding, to be invalid.

The Board remands the matter to the City of Yakima to take action to come into compliance in accordance with this Order within 180 days.

The Board requests counsel for Petitioners prepare a draft Final Decision and Order with Findings of Fact both for non-compliance and invalidity. The Board requests counsel for Petitioners circulate the draft to the Respondent and Intervenor for comment. The draft should be submitted to the parties and Board by November 22, 2002. Respondent and Intervenor's comments are to be provided to the Board by November 27, 2002. The Board has attached sample orders to assist Petitioner's counsel in drafting the Final Decision and Order.

SO ORDERED this 15th day of November 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

D.E. "Skip" Chliberg, Board Member

Judy Wall, Board Member

Dennis Dellwo, Board Member