State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF WALLA WALLA, CITIZENS FOR GOOD GOVERNANCE, 1000 FRIENDS OF WASHINGTON, Petitioner, v. WALLA WALLA COUNTY, Respondent.	Case No. 02-1-0012c FINAL DECISION AND ORDER

I. BACKGROUND

On May 31, 2002, CITIZENS FOR GOOD GOVERNANCE and 1000 FRIENDS OF WASHINGTON, by and through their attorneys, Jeffrey Eustis and John Zilavy and CITY OF WALLA WALLA, by and through its attorney, Tim Donaldson, filed Petitions for Review.

On July 29, 2002, the Board issued an Order Consolidating Case Nos. 01-1-0011 and 01-1-0012 under the above number.

On October 15, 2002, the Board received Respondent Walla Walla County's Hearing Brief on the Merits, Walla Walla County's Request to Take Official Notice and their Motion to Enlarge and/or Supplement the Index of Record, Declaration of Connie Krueger in Support of Request to Take Official Notice and/or Supplement the Index of Record, Declaration of Charles E. Maduell, and Respondent Walla Walla County's Exhibits.

On October 16, 2002, the Board held a telephonic hearing with all parties present through their attorneys and present for the Board was the Presiding Officer, D.E. "Skip" Chilberg and fellow Board Member Dennis A. Dellwo. The Board issued its Order to Take Official Notice and to Supplement Record on October 18, 2002.

A Hearing on the Merits was held in Walla Walla on the October 24, 2002. All parties were present through their attorneys. Present for the Board was the Presiding Officer, D. E. "Skip" Chilberg and fellow Board Members Dennis A. Dellwo and Judy Wall.

II. STANDARD OF REVIEW

The Growth Management Hearings Board has a duty to determine whether the County 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 County 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 County's action clearly erroneous, the Board must be left with the firm and definite conviction that a mistake had been made.

III. FINDINGS OF FACT

1. On March 5, 2002, Walla Walla County adopted Ordinance No. 269, development regulations implementing its Comprehensive Plan. Resolution No. 02118, adopted April 1, 2002, contained the final language of these development regulations.
2. May 1, 2002, Walla Walla County's Comprehensive Plan was found out of compliance in cases 01-1-0014cz and 01-1-0015c.
3. Provisions for the Rural Residential–5 Zone of Walla Walla County, require that there be no dwelling unit on a lot smaller than 5 acres. Any existing lot smaller than 5 acres is non-conforming and existing regulations do not change that status.
4. Provisions in the development regulations addressing the County's Rural Floating Zone implement the portions of the Comprehensive Plan found to be non-Compliant pursuant to an earlier Board Order.
5. Provisions in the development regulations addressing the County's Rural Transition Zone implement portions of the Comprehensive Plan found to be non-compliant pursuant to an earlier Board Order.
6. The development regulations allow a variety of recreational uses on Agricultural resource lands with a conditional use permit, in conflict

with a ruling by the Washington State Supreme Court in *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000).

7. Walla Walla County did not conduct an environmental review separate from the review done for their Comprehensive Plan for the development regulations but adopted by reference the review prepared for the Comprehensive plan.

8. On November 18, 2002, Walla Walla County imposed a six-month moratorium on creation of new lots in the Rural Transition Zone.

IV. FACTS OF CASE

On May 15, 2001, Walla Walla County adopted its 2021 Comprehensive Land Use Plan/Final Environmental Impact Statement pursuant to the GMA. On July 5, 2001, Citizens for Good Governance and 1000 Friends of Washington filed a Petition for Review challenging certain provisions of Walla Walla County Ordinance 264, and the Walla Walla County 2021 Comprehensive Plan (Case No. 01-1-0013) *Id.* On July 20, 2001, the City of Walla Walla filed a Petition for Review of the same Ordinance and Comprehensive Plan (Case No. 01-1-0015). *Id.* The Board consolidated Cases No. 01-1-0015 and No. 01-1-0013 under Case No. 01-1-0015c. *Id.*

On July 9, 2001, the City of Walla Walla filed a Petition for Review of Walla Walla County's Interim Zoning Controls Ordinance, Amended Ordinance 259 (Case No. 01-1-0014). *Id.* On November 2, 2001, Citizens and 1000 Friends filed a Petition for Review of the County's Interim Zoning Controls Ordinance, Ordinance No. 266 (Case No. 01-1-0012). *Id.* Those two cases were consolidated under Case No. 01-1-0014cz. *Id.*

Following a hearing on the merits, the Board issued its Final Decision and Order in Consolidated Case Nos. 01-1-0014cz and 01-1-0015c on May 1, 2002. In its Final Decision and Order, the Board held that the Comprehensive Plan complied with the GMA except as follows:

1. The County is out of compliance for failure to develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of the GMA.

2. The County is out of compliance for the failure to maintain the rural character of the Rural Residential area due to the authority to

develop lots at a density of greater than one du/5-acres.

3. The County's Rural Transition zone of Blalock Orchards, as presently configured, is out of compliance.

4. The County's Rural Floating zone is out of compliance as it is presently established and fails to maintain the rural character of the area.

The Board upheld the adequacy of the County's final environmental impact statement ("FEIS") for the GMA Comprehensive Land Use Plan.

Walla Walla County on March 5, 2002, in Ordinance No. 269 adopted its permanent development regulations required to implement the Comprehensive Plan. The final language was approved in Resolution No. 02118, adopted on April 1, 2002.

1000 Friends and Citizens and the City filed petitions, appealing the County's adoption of permanent development regulations implementing the noncompliant portions of the County's Comprehensive Plan.

V. LEGAL ISSUES AND DISCUSSION

The issues raised by Petitioners primarily relate to whether the development regulations in Ordinance No. 269 comply with the GMA insofar as they implement Comprehensive Plan policies that the Board has found to be noncompliant with the GMA. The particular provisions include: the Blalock Rural Transition policies, the Mill Creek Rural Floating policies, and a Rural Residential-5 policy that recognizes existing legally platted lots under one dwelling unit per five acres. 1000 Friends and Citizens also challenge recreational uses allowed in agriculturally zoned areas of the County as well as the adequacy of the environmental review for adoption of Ordinance No. 269. Petitioners have requested a declaration of invalidity with respect to the development regulations implementing non-compliant plan policies.

The Board concurs with Petitioners arguments that development regulations cannot be compliant when they implement non-compliant provisions of a Comprehensive Plan. Development regulations are to implement a Comprehensive Plan (RCW 36.70.040). In this case, the Board finds the objected-to regulations implement the noncompliant portions of the Comprehensive Plan and to that extent, they too are noncompliant. If

the provisions are not compliant in the Comprehensive Plan, they are not compliant when found in corresponding provisions of the development regulations.

RURAL RESIDENTIAL - 5

1000 Friends and Citizens argue that lots under 5 acres in rural areas constitute prohibited "sprawl" and an "impermissible pattern of urban growth." 1000 Friends and Citizens point out that the Board, in cases 01-1-0014cz and 01-1-0015c found the lots under 5 acres, in Rural Residential, non-compliant.

The City does not join the 1000 Friends and Citizens in this objection. The City seeks a blanket ruling from the Board holding that any development regulations that implement policies the Board held non-compliant are themselves non-compliant as a matter of law. The Board finds insufficient evidence in the record to conclude the County recognizes existing platted lots smaller than 5 acres as conforming lots. The County has assured the Board they have no intention of changing the non-conforming status of lots smaller than the required 5-acre lots. They shall remain non-conforming as long as they are under the 5-acre minimum size.

LIMITED AREA OF INTENSIVE DEVELOPMENT

Petitioners further challenge the development regulations that implement the noncompliant Comprehensive Plan designation of a Limited Area of Intensive Development (LAMIRD or RAID) the Rural Transition area (also referred to as Blalock Orchard). Petitioners charge the Blalock RAID was found by this Board to be out of compliance and its implementation should also be found out of compliance. The Petitioners further contend the regulations do not comply with RCW 36.70A.070(5)(d). They argue the Blalock RAID is further improper because it is contiguous to the City of Walla Walla's Urban Growth Boundary, essentially creating an extension of the UGA and its implementation should be found out of compliance.

The Board concurs. We need not repeat our discussion of this issue found in our Final Decision and Order in cases 01-1-0014cz and 01-1-0015c. The provisions in the development regulations addressing the Rural Transition Zone implement the very Comprehensive Plan provisions previously found non-compliant. We find the Development Regulations implementing non-compliant Comprehensive Plan provisions to also be non-compliant.

MILL CREEK RURAL FLOATING

Respondent's arguments concerning Mill Creek Rural Floating area essentially take no notice of our Order in cases 01-1-0014cz and 01-1-0015c. That may be understandable in that the development regulations were adopted before our FDO in the above cases was issued. However, we find essentially the same provisions in the development regulations, which address lot sizes and lack of standards for review, to be non-compliant. They implement non-compliant Comprehensive Plan provisions.

AGRICULTURAL LAND USES

1000 Friends and Citizens argue the County's development regulations violate the GMA's agricultural protection mandate by allowing for incompatible development in land designated as "agricultural lands of long term commercial significance." The Petitioners contend this incompatible development allowed (e.g., golf courses, recreational vehicle parks, all terrain vehicle parks, indoor and outdoor shooting ranges) fail to protect and preserve the agricultural resource lands as required by the GMA and the rulings of the Washington State Supreme Court. In *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000). The Washington Supreme Court explicitly defined the affirmative duty of the County to conserve agricultural lands under the GMA as a "mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry". In the above case, the court held that the County's proposed action to convert agricultural land to active recreation does not appear in any of the [GMA's] suggested zoning techniques. After properly designating agricultural land ...the County may not then undermine the [GMA's] agricultural mandate by adopting "innovative" amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use. *Id.* At 563, 14 P.3d at 143.

Although briefs submitted by the parties argued only against nine specific recreational uses permitted either outright or as a conditional use, at the Hearing on the Merits, the Petitioners argued that no recreational uses should be permitted.

The County argues RCW 36.70A.020(9) requires the County to "develop parks and recreational facilities". With more than 90% of Walla Walla County designated agricultural resource lands, meeting this goal entails placing some recreational uses on agricultural lands. The County contends the recreational uses, with the exception of "meeting halls" cannot be placed on prime lands, and all must meet strict conditional use requirements to ensure they will not interfere with or be incompatible with adjacent

agricultural use.

Respondent argues the Supreme Court ruling in *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000), should be viewed as applicable to the specific site and conditions in King County, and are not applicable in a predominately rural county with over 90% of its land designated agricultural resource lands.

Further, the County argues the purposed recreational uses meet another goal of the GMA, that of economic development. By providing alternative sources of revenue, they argue the farm economy is strengthened, thus supporting the preservation of farmlands.

The Board has carefully reviewed the Supreme Court decision in *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., Supra*. Because of that decision, the Board is compelled to find the County is out of compliance. King County, in that case, greatly limited the uses, prohibited all but a few structures and emphasized the temporary status of such uses. Yet the Supreme Court found that the County's proposed action to convert agricultural land to active recreation uses does not comply with the Act's mandate to preserve agricultural lands. The Court found that the explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that conserve agricultural lands and maintain and enhance the agricultural industry.

In the cited case, the court concludes that "in order to constitute an innovative zoning technique consistent with the overall meaning of he Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry." Id p. 142. The Court further points out that "The statute encourages counties to limit innovative techniques 'to lands with poor soils or otherwise not suitable for agricultural purposes'" id p.142. The Court went on to say, "it should not be read that the County may encourage nonagricultural uses whether or not the soils are poor or unsuitable for agriculture." Id p. 142. Such innovative zoning techniques are limited to lands with poor soils or otherwise not suitable for agricultural purposes. The Court pointed out that some of the land in their case was in fact Prime soils. This finding does not limit the decision to only Prime soils but rather

was a statement that "The evidence does not support a finding that the subject properties have poor soils or are otherwise not suitable for agricultural purposes. Therefore, we are forced to conclude the properties in our case do not qualify for 'innovative zoning techniques.'" While the Walla Walla County development regulations are for Agricultural Resource Lands that are not Prime or Unique, the Courts ruling would still apply to the Walla Walla Ordinance provisions.

The County's claims that other goals of the Act, namely the requirement to provide for recreational opportunities, could override the requirement to protect agricultural resource lands was also addressed by the Supreme Court. The Superior Court, in their review of the case, had ruled that under RCW 36.70A.177, the location of recreational uses on Agricultural Resource Lands was authorized as an innovative zoning technique. The Court of Appeals and Supreme Court reversed this interpretation. "However, the County's proposed action to convert agricultural land to active recreation does not appear in any of the Act's suggested zoning techniques." ..."Nothing in the Act permits recreational facilities to supplant agricultural uses on designated lands with prime soils for agriculture." P.143.

As in the King County case above, we find here " the evidence does not support a finding that the subject properties have poor soils or are otherwise not suitable for agricultural purposes." *Supra,*P.142.

While the Board recognizes the circumstances in Walla Walla County are different from King County, we cannot distinguish the Supreme Court ruling in *King County v. CPSGMHB, supra*, to permit the objected-to recreational uses allowed in the Walla Walla County Ordinance No. 269.

SEPA CLAIMS

Petitioners contend a new EIS to cover issues not addressed in the EIS for the Comprehensive Plan needs to be prepared. The only new issue appears to be the recreational uses allowed on agricultural lands. The County believes that their adoption by reference of the EIS prepared for the Comprehensive Plan is authorized by law and adequate for their purposes. The Board finds the EIS adequate for the development regulations implementing compliant provisions of the Comprehensive Plan. The Board has found incompatible the recreational uses within the Agricultural Resource Lands and those regulations implementing Rural Floating Zone and Rural Transition Zone, out of

compliance.

REQUEST FOR FINDING OF INVALIDITY

The Petitioners have requested a finding of invalidity relating to development regulations for the Blalock Area. The Board notes recent action by the County imposing a moratorium on development in that area. The moratorium accomplishes what an Order of Invalidity would. Therefore, because the County has protected these lands from development under the noncompliant provisions of the Comprehensive Plan or its regulations, a finding of Invalidity is not necessary at this time.

VI. BOARD'S CONCLUSIONS

Based on the briefs and arguments of the parties, the Board concludes the following:

1. The Board finds non-compliant the zoning maps and district designation section of Walla Walla County Code Section 17-12.040(I) and Section 5.5 of Resolution 02118 as they apply to the Blalock area.

2. The Board finds non-compliant Section 5.3 of Ordinance No. 269, relating to the Rural Floating zone.

3. The Board finds the Development Regulations authorizing incompatible and unrelated recreational uses, Code Section 17.16, within Primary Agricultural, Exclusive Agriculture, General Agriculture and Agriculture Residential designations, out of compliance. These uses include, golf facilities, gun ranges (indoor and outdoor), parks, recreational facilities (public and private), RV parks and campgrounds, all-terrain vehicle parks, assembly halls, and accessory uses.

4. The Board finds Petitioners have failed to carry their burden of proof regarding non-conforming lots smaller than 5 acres in the Rural Residential zone.

5. The Board finds no need to further address the SEPA issues raised in this case, having previously addressed the issue in cases 01-1-0014cz and 01-1-0015c.

6. Because of the existence of a moratorium in force on creation of new lots in the Rural Transition Zone, the Board has determined a

finding of Invalidity is not necessary at this time.

VII. ORDER

The Board directs Walla Walla County to bring themselves into compliance with the GMA regarding the above cited conclusions within 120 days of 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 26th day of November 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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D.E. "Skip" Chilberg, Board Member

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Judy Wall, Board Member

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Dennis Dellwo, Board Member