

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF MOSES LAKE

Case No.: 99-1-0016

Petitioner,

ORDER ON REMAND

vs.

GRANT COUNTY,

Respondent.

I. Procedural History

On November 30, 1999, the City of Moses Lake, by and through its counsel, Katherine Kenison, of LeMargie and Whitaker, filed a Petition for Review of Grant County's action adopting its Comprehensive Land Use Plan (Ordinance 99-158-CC).

A hearing on the merits was held on April 27, 2000. After hearing arguments on the merits from the parties, a Final Decision and Order was entered on the 23rd day of May 2000, finding the County out of compliance.

On June 5, 2000, the Respondent Grant County moved this Board for reconsideration and/or clarification of the Final Decision and Order.

On June 7, 2000, the Petitioner City of Moses Lake moved this Board for reconsideration/clarification of Final Decision and Order. This motion will be dealt with in a separate order.

A hearing was held on July 11, 2000 in Ephrata, Washington to hear the arguments of the

parties and an Order on Petitioner's Motion for Reconsideration was entered on the 16th day of August 2000.

On November 15, 2001 the Superior Court of Washington for Thurston County entered its Findings of Fact, Conclusions of Law, and Order on Administrative Procedure Act Appeal, remanding this matter for the admission of supplemental evidence, to wit, the 1997-1999 building permit information before this Board.

On April 11, 2002, a Hearing on Remand was held in Ephrata with the Petitioner represented by Katherine Kenison and Nancy Thorn, of LeMargie and Whitaker; the Respondent County represented by Stephen J. Hallstrom, Chief Deputy Prosecuting Attorney of Grant County.

II. Introduction

This matter was remanded to the Eastern Washington Growth Management Hearings Board from the Thurston County Superior Court with directions to allow the Record to be supplemented by the 1997-1999 building permits for Grant County. This supplemental evidence is admitted for purposes of this Board's determination of whether the establishment of 2.5-acre parcels in the unincorporated area of the County is an impermissible pattern of urban growth in the rural area. This issue was reheard with the supplemented evidence together with the record as developed in the original hearing.

III. Legal Issue and Discussion

THE SOLE ISSUE BEFORE THE BOARD IS WHETHER GRANT COUNTRY'S RR2 (2.5-acre lot) LAND DESIGNATION COMPLIES WITH THE GOALS AND REQUIREMENTS OF THE GROWTH MANAGEMENT ACT (GMA)

Petitioner's Position:

The Petitioner contends that the addition of the new evidence, the evidence of the building permits, 1997-1999, should do nothing to change the Board's original finding of noncompliance. The Petitioner points out that urban growth is still prohibited outside the UGAs except under limited circumstances. The Countywide Planning Policies continue to prohibit such growth in rural areas and encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner, and to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development. RCW 36.70A.020(1)(2); CPP (I)(A)&C).

The Petitioner further contends that a 1du/2.5-acre density is urban in character and constitutes classic urban sprawl. They believe the GMA clearly prohibits such a density in rural areas. The Petitioner cites hearing board's decisions holding that such a density is urban.

The Petitioner further contends that the County has not shown the Board how such a density satisfies the goals and requirements of the GMA in order that local circumstances could be used to justify such a designation.

Respondent's Position:

The County contends the GMA permits Grant County to designate a very small percentage of its rural lands for residential use, based on local circumstances, priorities and options. They believe the Legislature recognized the unique problems of rural counties and allowed them the discretion to provide for that uniqueness.

The County points out the cases where Boards have allowed 2.5-acre lots in rural areas. They point out the GMA requires counties to provide for a variety of rural densities." RCW 36.70A.070 (5)(b). The County further points out this designation covers only a small portion of the County's land base of 1.5 million acres of rural lands. The range of densities is from 2.5-acres to 40-acres.

The County contends the GMA permits the County to designate at least some portion of its vast rural areas for residential growth in concert with the demands of an agricultural economy and obligation to harmonize not just one, but all goals of the Act. A Clark County case was cited wherein the court instructed the Western Board to give deference to the preferences of the County, especially in the area of rural minimum lot size. *Achen v. Clark County*, Case No. 95-2-0007, Order on Compliance (April 30, 1998).

Decision:

This Board has reviewed the record, as it existed when this matter was originally heard, together with the newly admitted evidence and the briefing of the parties. Our decision has not changed. The new evidence shows that growth is taking place in both the UGA and in the unincorporated area. We are encouraged the trend is for growth within the UGAs.

The GMA speaks of "a variety of rural densities". RCW 36.70A.070(5)(b). However, the density must still be rural, not urban. With one narrow exception, this Board has consistently found that anything under 5-acre lots is urban. Clearly 2.5-acre lots are the clearest vehicle of sprawl. Scattering these small lots around cities would continue what the GMA is trying to stop. Services cannot be easily provided; each will have their own well, septic tank and other limited infrastructure. This size lot is one of the most difficult to bring into a city if annexed.

Achen v. Clark County, supra, cited by the County, does not require the Board to approve the 2.5-acre lot in rural areas. In that case the Superior court did direct the Board to give deference to the County, especially with rural density. However, the Board decision was not reversed as to a similar size lot or did it give direction to accept a 2.5-acre lot size. What it did was tell the Board to give deference as the new legislation asked, and do so in that case. This Board does give great deference to the County decisions so long as they are in compliance with the GMA. The discretion given to the County is very broad, but must fall within the sideboards of the GMA. This density is outside those sideboards.

We disagree with the statement made by the County that "the GMA gives the County, ... the authority to determine appropriate lot sizes and uses in rural areas," if that statement means that the County believes there is no role for the GMA in that decision. The GMA does limit the amount of previously unbridled discretion of local governments to "determine appropriate lot sizes and uses in rural areas." This is because of RCW 36.70A.060, .070, .170, and .020(8).

Conclusion: The Petitioner has carried their burden of proof and has shown by clear and convincing evidence that the action of the County in designation of the RR2 is clearly erroneous and is found out of compliance.

IV. ORDER

Grant County's 1du/2.5-acre RR2 zoning designation is not in compliance with the Growth Management Act and Grant County is out of compliance and must bring itself into compliance within 90 days of this Order.

Pursuant to WAC 242-02-832(4), this is a final order for purposes of judicial review.

SO ORDERED this 17th day of April 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis A. Dellwo, Board Member

D.E. "Skip" Chilberg, Board Member

Judy Wall, Board Member