

BEFORE THE EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON

SPOKANE ROCK PRODUCTS, INC.,  
Petitioner,  
and  
SPOKANE COUNTY,  
Respondent

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) Case No.: No. 02-1-0003  
) FINAL ORDER ON COMPLIANCE  
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**I. PROCEDURAL HISTORY**

On January 9, 2002, Spokane Rock Products, Inc. (SPR), by and through its attorney Brian T. McGinn of Winston & Cashatt, filed a Petition for Review.

On February 7, 2002, SRP, by and through its attorney Brian T. McGinn of Winston & Cashatt, filed its Amended Petition for Review.

On February 12, 2002, the Board held a Prehearing conference. The Board issued the Prehearing Order on February 13, 2002.

On March 5, 2002, Petitioner filed a Motion to Amend and/or Supplement the Record, seeking to include certain documents in the Index of Records as proposed by Spokane County.

On March 25, 2002, a Motion Hearing was held. The Board granted Petitioner's Motion to Amend and/or Supplement the Record to include all exhibits proposed, except proposed exhibits 7, 22, and 24.

On May 23, 2002, the Board held the Hearing on the Merits. On June 21, 2002, the Board issued a Memorandum Decision. On July 19, 2002, Board issued its Final Decision and Order and the County was ordered to come into compliance within 180 days.

On February 25, 2003, the Board held a Compliance Hearing pursuant to a Motion by

the Petitioner. The County acknowledged that the necessary actions had not been completed to bring itself into compliance with the Board's Final Decision and Order issued on July 19, 2002. The Board found that the County continues to be in non-compliance in this matter. The Board scheduled a new Compliance Hearing to be held on March 20, 2003 to allow the County additional time to come into compliance. On March 20, 2003, the Board held a Second Compliance Hearing. Present were D.E. "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for Petitioner were Brian T. McGinn of Winston & Cashatt and Mike McKinney of Spokane Rock Products. Present for Respondent was Martin D. Rollins, Deputy Prosecuting Attorney for Spokane County.

## **II. DISCUSSION**

### **Spokane County's Procedure on Remand**

The Spokane County Planning Commission (PC) held public hearings on this and other remanded items on September 26, 2002 and October 2, 3, and 10, 2002. The Planning Commission conducted deliberations on this and other remanded items on October 24 and 31, 2002, November 7, 14, and 21, 2002, and December 5 and 12, 2002. The PC forwarded its Findings and Recommendations to the Board of County Commissioners (BOCC) on January 16, 2003, finding that the Spokane Rock Products site had been properly designated as Low Density Residential, and further, that all Mineral Resource Lands within the Urban Growth Area should be reexamined to ensure that no lands characterized by urban growth are designated as mineral resource lands. The BOCC completed its public hearings on this and other remanded items on February 24 and 25, 2003. The BOCC completed its deliberations on these items on Monday March 10, 2003. The BOCC signed its Findings and Decision on this remanded item on March 11, 2003. (Resolution 3-0258). The BOCC again designated the SRP site as Low Density Residential, and examined each of the other Mineral Resource Land designated sites within the Urban Growth Area to ensure that no lands characterized by urban growth was designated Mineral Resource Land. The Respondent contends that it is now in compliance with the Final Decision and Order of July 19, 2002.

### **Petitioner's Position**

The Petitioner contends the County is still not in compliance with the GMA and the BOCC's designation of Petitioner's site as Low Density Residential should be

invalidated pursuant to RCW 36.70A.302 and .330. Petitioner contends the County was supposed to apply the mineral lands designation criteria consistently with other mining sites in Spokane County, but the County attempted to circumvent this process by merely removing mineral lands designation from only County-owned properties. The Petitioner argued this process was flawed since the BOCC did not also consider privately owned mineral lands of similar character to SRP site in its analysis, e.g., the "Perry Mine" site.

The Petitioner also contend it was not their burden to prove that the criteria for Mineral Resource designations in the UGA were applied inconsistently between the SRP site and other mining sites, but that the criteria were not properly applied to Petitioner. Petitioner argued the SRP site should have been designated Mineral Resource land in terms of compatibility, mitigation and access. The Petitioner also strongly urged the Board to consider a major goal of GMA is the preservation of mineral lands, and that these mineral lands uses should be allowed to continue on the SRP site.

The Petitioner also argued Spokane County failed to show its work in how it applied the Mineral Lands criteria, and that Respondent incorrectly applied those criteria to the SRP site. Petitioner argued there was no record in the deliberations before the PC and the BOCC that reflected that they discussed what was actually stated in their written findings.

Petitioner also argued that SRP's ability to continue mining operations on the site were not protected by non-conforming rights provisions, and only by designating this site as a Mineral Resource Land could they maintain their ability to continue to engage in mining activities. The Petitioner argued non-conforming rights could be phased out. The Petitioner also argued the County relied on a number of irrelevant matters in its findings, including the 1981 Comprehensive Plan and the 1996 Draft Plan Mineral Lands designation that excluded the SRP site from a protected mineral lands site.

The Petitioner finally urged the Board to make a declaration of invalidity as to the Respondent's designation of the SRP site as Low Density Residential because this designation substantially undermines the policies of GMA in that this designation fails to protect and maintain natural resource industries and to discourage incompatible uses. Furthermore, Petitioner contends the County's failure to designate the SRP site as Mineral Resource Land violates GMA's requirement to protect private property rights from arbitrary and discriminatory actions.

## **Respondent's Position**

Respondent contends Spokane County not only "showed its work" in designating the SRP site as Low Density Residential, but it also treated the SRP site consistently with other mineral resource lands sites in terms of application of the Natural Resource Lands requirements under GMA, as well as the criteria under the WAC regulations and the County's Comprehensive Plan policies.

Respondent argues there was testimony as well as documentation submitted to the PC to indicate that the WAC regulations and Spokane County Comp Plan criteria were considered and properly applied to the SRP site. Additionally, there was testimony and documentation submitted to the BOCC to indicate that Spokane County considered and properly applied the WAC regulations and the Comp Plan criteria to the SRP site. The amount of information provided to the PC and to the BOCC was sufficient to demonstrate that Spokane County "showed its work" in designating the SRP site as Low Density Residential land and not Mineral Resource Land.

Additionally, the Respondent argued, one of the reasons the Hearings Board had remanded this matter to Spokane County was because the Respondent had not treated the SRP site consistently with other mineral lands sites within Spokane County. The Respondent argued it has demonstrated with sufficient testimony and documentation that the WAC regulations and the Comp Plan have been applied consistently between the SRP site and other Mineral Land sites within Spokane County.

## **Decision:**

Counties that are required to plan under the GMA must identify and conserve mineral resource lands. RCW 36.70A.060(1). In its July 19, 2002, Final Decision and Order the Board found Spokane County failed to uniformly apply their mineral resource lands designation criteria. The Board further found the County failed to consider, analyze and properly apply the minimum guidelines and plan criteria to the Petitioner's site.

While the GMA requires the County to designate and conserve mineral resource lands, the Petitioner has the burden of demonstrating that any action taken by the County is not in compliance with the Act. The Board is required to find compliance with the Act, unless it determines that the County's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

The Board might not necessarily agree with the result the County reached when it designated the SRP site as Low Density Residential, yet the Board must presume the validity of the County's actions. The legislature has made it increasingly clear that the County should be given more deference in making GMA decisions. The decision-making in this case is the responsibility of the County, and the Board's function is to ensure that the County follows the law.

The Board now finds the County did in-fact uniformly apply their criteria and shown their work. The Board is satisfied the Respondent has adequately analyzed the other mining sites in Spokane County and has treated them consistently with the Petitioner's site.

The Board finds the Petitioner has not carried its burden of proof and the Respondent is in compliance with the Growth Management Act on these issues, and the Petitioner's renewed Motion for finding on non-compliance and for a declaration of invalidity should be denied.

### **III. ORDER**

IT IS THEREFORE ORDERED:

1. Respondent Spokane County is now in compliance with the Growth Management Act on the issues found herein.
2. The Petitioner's Motion for a Declaration of Invalidity of the Low Density Residential Designation applied to the SRP site is Hereby Denied.

**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 14<sup>th</sup> day of April 2003.

EASTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD

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D.E. "Skip" Chilberg, Presiding Officer

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Judy Wall, Board Member

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Dennis Dellwo, Board Member