

**STATE OF WASHINGTON  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

SPOKANE COUNTY FIRE  
DISTRICT NO. 10, a municipal  
corporation,

Petitioners,

v.

CITY OF AIRWAY HEIGHTS,

Respondent,

CITY OF SPOKANE,

Intervenor.

Case No. 02-1-0019

FINAL DECISION AND  
ORDER

**I. Procedural History**

On November 18, 2002, SPOKANE COUNTY FIRE DISTRICT NO. 10, by and through their attorney, Margaret L. Arpin, filed a Petition for Review.

On December 12, 2002, the Board held a Prehearing conference at 13120 W. 13<sup>th</sup> Avenue, Airway Heights, Washington. Present were D.E. "Skip" Chilberg, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present for Petitioner was Margaret Arpin. Present for Respondent was Stanley Schwartz. The Board issued its Prehearing Order on December 12, 2002.

On December 12, 2002, the Board received City of Spokane's Motion to Intervene and Brief in Support of its Motion. No objections were received. On January 8, 2003, the Board issued an Order Allowing Intervention.

On Jan 6, 2003, the board received a Motion and Memorandum for an Order on Standing and to Dismiss SEPA Claims.

On February 18, 2003, the Board received a Stipulated Motion Continuing Decision on Respondent's Motion for Order Re Standing and to Dismiss SEPA Claims. On March 12, 2003, the Board issued its Order on Stipulation for Continuance and Stay.

On May 15, 2003, the Board issued its Order on Motion to Dismiss SEPA Issues, dismissing petitioner's SEPA issues for lack of standing.

On July 1, 2003, the Board received a Motion for Supplemental Evidence from the City of Airway Heights.

On July 15, 2003, the Board held the Hearing on the Merits in Airway Heights. Present were D.E. "Skip" Chilberg as Presiding Officer, and Board Members Judy Wall and Dennis A. Dellwo. Present for Petitioner was Margaret Aprin. Present for Respondent was Stanley Schwartz. Present for Intervenors was Michael Piccolo. The Board orally granted City of Airway Heights' Motion for Supplemental Evidence.

## **II. FINDINGS OF FACT**

1. Spokane County has established urban growth area boundaries for each city in Spokane County pursuant to the Growth Management Act. The City of Airway Heights was granted a UGA boundary allowing growth to the west and north of the existing city boundary.
2. The City of Airway Heights adopted Ordinance C-517 on August 19, 2002. Ordinance C- 517, an amendment to Airway Heights Comprehensive plan, among other matters, established a "planning area" to the east of the present city boundary, encompassing approximately one square mile, within a designated urban growth area (UGA). The subject area had been designated by Spokane County as a "joint planning area." Ordinance C-517 was passed as a precursor to a petition to the Boundary Review Board for annexation of the area.
3. Spokane County and all Cities in Spokane County, including Airway Heights, are signatories to Countywide Planning Policies (CPP's) adopted pursuant to the Growth Management Act (GMA), RCW 36.70A.210. These CPP's specify: "joint planning shall be accomplished pursuant to an interlocal agreement entered into between and/or among jurisdictions". Topic 2:1
4. The City of Airway Heights has not adopted a public participation

program pursuant to the GMA, RCW 36.70A.130(2) and .140.

### **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.

#### **Synopsis of the case:**

The City of Airway Heights amended its Comprehensive Plan August 19, 2002. Among other matters, the amendment established a "planning area" to the east of the present city limits, consisting of approximately one square mile. The subject area is designated a "joint planning area" by Spokane County, and is served with water and sewer by the City of Spokane. Airway Heights acknowledges the action was taken in conjunction with their petition to the Boundary Review Board to annex the area.

Spokane County Fire District # 10 (Fire District) argues the action violated the Spokane County Countywide Planning Policies (CPP) and violated the GMA requirements for public participation. The City of Spokane, intervener in this matter, concurs in these arguments. Together their arguments are summarized as follows:

1. The City of Airway Heights failed to coordinate its actions with other affected jurisdictions as required by the Countywide Planning Policies and the GMA. The only notification given other entities was through the SEPA checklist process.
2. The City of Airway Heights failed to provide adequate notice to the public to the extent required by RCW 36.70A.140. The notices published contained no substantive indication of the action planned.

The City of Airway Heights argues that the Ordinance merely implements the City's

participation in the joint planning area, and is not significant beyond that. While acknowledging the action was a precursor to a petition for annexation, the city cites RCW 35.14.005 as authorization to annex territory within a UGA. They also cite RCW 35.02.205 as governing authority for the annexation of fire district assets. They argue the Fire District would not be significantly harmed by the proposed annexation.

**Discussion:**

The Board concurs with Petitioner and Intervenor that the action is significant and is subject to the Growth Management Act, and therefore, the Countywide Planning Policies. Ordinance C-517 is an amendment to the City's Comprehensive plan and clearly must comply with the GMA. The City's attempt to explain the action under statutes authorizing annexations does not justify circumventing the GMA mandated process.

The Washington State Supreme Court ruled in King County v. CPSGMHB, 138 Wn.2d, 161, 175 (1999), that Countywide planning policies are mandatory, stating in part, "If the CPP's served merely as a non-binding guide, municipalities would be at liberty to reject CPP provisions and the CPP's could not ensure consistency between local comprehensive plans."

In this case, Airway Heights argues the action taken was not an expansion of its UGA, and therefore, not subject to the CPP's. The record suggests otherwise. The staff report to the City of Airway Heights Planning Commission, exhibit 2h, contains the following descriptive statements relating to the subject action:

"1. Enlarge the Airway Heights planning area into the urban growth area designated by Spokane County."

and:

"(The) Proposed amendment will increase the City's jurisdictional boundary."

These two statements together describe an action to expand the City's UGA. There is no legislative authority for such action outside the GMA.

The CPP's identify a process for establishing an interim and final UGA. Policy Topic 1, Section 5 provides:

Each jurisdiction shall submit proposed interim and final Urban Growth Areas (UGA) boundaries to the Steering Committee,

The Steering Committee shall analyze each jurisdiction's proposed interim and final Urban Growth Areas (UGA) through the use of multijurisdictional planning team and make recommendations to the Board of County Commissioners for interim and final Urban Growth Areas (UGA) adoption.

The Board notes Spokane County Division of Planning objects to the amendment, specifically in a letter dated August 2, 2002 from Gerry Gemmill to Stephen Roberge. In this letter, the County expresses its concerns about Airway Heights actions to expand its UGA without regard to the Countywide Planning Policies. The County also noted the absence of an interlocal agreement between affected jurisdictions for planning in the subject area, and specified such an agreement as the first step in planning for the area.

The Board finds City of Airway Heights acted unilaterally to pre-empt a joint planning process required by the Countywide Planning Policies. The GMA requires coordination among affected jurisdictions. Airway Heights has clearly erred by circumventing the CPP.

Petitioners further challenge the adequacy of the notice given to the public regarding the proposed amendment. The published notice provided only a reference to a proposed comprehensive plan amendment, with no reference to expansion of a "planning area, or definition of a specific area of land involved.

In *City of Burien v.*

*CPSGMHB*, 53 P.3d 1028 (2002), the Court affirmed the local governments responsibility to notify the public:

"In its order, the Board explained that while the requirement to consider public comment does not require elected official to agreed with or obey such comment, local government does have a duty to be clear and consistent in informing the public about the authority, scope and proposed planning enactments."

The notice provided in this instance clearly does not meet that standard.

Further, in response to a question during the hearing on the merits, Airway Heights acknowledged it has not adopted a GMA public participation plan. RCW 36.70A.130(2) requires local governments to establish a public participation process and procedure for plan amendments and broadly disseminate it to the public. The GMA further requires early and continuous public participation on proposed amendments of

GMA plans and development regulations, RCW 36.70A.140. The failure to establish and follow a public participation plan is clearly erroneous.

While only certain provisions of Ordinance C-517 have been objected to, because of the City's lack of adequate public participation, the entire Ordinance must be remanded and subjected to proper public participation. The City must first adopt a public participation plan as required by RCW 36.70A.130(2) and RCW 36.70A.140.

Petitioners raised a number of other issues related to Ordinance C-517. Because of the errors already noted, the Board need not address those related issues.

**Conclusion:** The Board finds the Airway Heights Ordinance, C-517, to be in non-compliance for failure to meet the requirements of Spokane Countywide Planning Policies, RCW 36.70.A. 130(2) and RCW 36.70A.140, requiring public participation.

#### **IV. ORDER**

The City of Airway Heights is directed to correct the deficiencies noted in this order within 180 days.

**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 31<sup>st</sup> day of July 2003.

#### **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 A. Dellwo, Board Member