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

GREENFIELD ESTATES HOMEOWNERS
ASSOCIATION,

Petitioner,

v.

GRANT COUNTY,

Respondent,

CITY OF EPHRATA,

Intervenor.

Case No. 04-1-0005

FINAL DECISION AND ORDER

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I. SYNOPSIS

After an approximate eighteen-month process, Grant County passed Resolution No. 04-036-CC amending the Grant County Comprehensive Land Use Plan. A part of that resolution amended the Urban Growth Area (UGA) for the City of Ephrata, adding thirteen acres of property outside the City limits of Ephrata, and across a state highway.

Petitioners challenge that action, alleging several procedural errors, as well as challenging a failure to adequately document justification for the UGA expansion. Grant County argues its procedure was according to law, and defers to the City of Ephrata, Intervenor in this case, for justification for the need for UGA expansion.

The Board finds it is unnecessary to consider the alleged procedural errors. The Board expects the County to follow the appropriate procedures while reviewing their actions upon remand.

The Board does find a lack of documentation in the record to justify this expansion of Ephrata's UGA. Of particular note in the record is testimony before the Grant County

1 Commissioners on February 10, 2004, by a planning official of the City of Ephrata. The
2 official stated: "with 210 acres of commercial land, the City is right at the guideline
3 projected 206 acres required for future growth." The official argued justification for the
4 expansion based on other factors, such as one available parcel being too large, or not
5 fronting on a state highway. The City also argued the proposed UGA expansion would be
6 cheaper to provide city services to, than other existing commercial properties within the
7 City.

8 The Board finds the proposed expansion of the UGA to be classic urban sprawl, and
9 contrary to Goals 1, 2 and 10 of the GMA, and RCW 36.70A.020(1) and (2). The expansion
10 of Ephrata's UGA is noncompliant.

11 **II. PROCEDURAL HISTORY**

12 On April 14, 2004, GREENFIELD ESTATES HOMEOWNERS ASSOCIATION, by and
13 through its representative, Vicki Johnson, filed a Petition for Review.

14 On May 14, 2004, the Board held a Prehearing conference. Present for the Board
15 was Judy Wall. Presiding Officer D.E. "Skip" Chilberg and Board Member Dennis Dellwo
16 were not available for this hearing. Present for Petitioner was Vicki Johnson. Present for
17 Respondent was Stephen Hallstrom.

18 On May 14, 2004, the Board issued the Prehearing Order.

19 On May 24, 2004, the Board received the Motion and Order Granting Intervenor
20 Status to the City of Ephrata signed by the parties.

21 On May 26, 2004, the Board received Petitioner Greenfield Estate's Response to
22 Index of Record requesting addition to the County's Index of Record.

23 On June 9, 2004, the Board received City of Ephrata's Response to Index of Record
24 requesting additions to the County's Index of Record.

25 On June 29, 2004, the Board held a telephonic motion hearing. Present for the Board
26 was Presiding Officer D.E. "Skip" Chilberg, and Judy Wall. Board Member Dennis Dellwo was
not available for this hearing. Present for Petitioner was Vicki Johnson. Present for

1 Respondent was Stephen Hallstrom. Present for Interveners was James Whitaker,
2 substituting for Katherine Kennison.

3 On June 30, 2004, the Board issued its Order on Motions for intervention and
4 supplementation of the record.

5 On August 31, 2004, the Board held the Hearing on the Merits. Present were
6 Presiding Officer, D.E. "Skip" Chilberg, and Board Members Dennis Dellwo and Judy Wall.
7 Present for Petitioner was Vicki Johnson. Present for Respondent was Stephen Hallstrom.
8 Present for Interveners was Katherine Kennison.

9 III. ISSUES PRESENTED

10 **Issue 1:** Does the Resolution violate the Eastern Washington Growth Management
11 Hearings Board's Final Decision and Order in Case No. 99-1-0013, which states that "Land
outside the incorporated limits of the City is not needed and its inclusion would violate the
Goals of the GMA and RCW 36.70A.110?"

12 **Issue 2:** Did the County fail to provide a basis in the record for reversing its own earlier
13 decision, Ordinance 2000-132-CC, which limited Ephrata's UGA to the incorporated city
14 limits, and which was based upon supporting recommendations from the Grant County
Planning Commission, planning staff, and retained consultant?

15 **Issue 3:** Is the Resolution consistent with Grant County's Comprehensive Land Use
16 Plan Goal UR-9.3, which says that Expansion of a UGA boundary should meet one of the
17 following two criteria: 1) There is insufficient land within the existing urban growth area to
18 permit the urban growth that is forecast to occur in the succeeding 20 years; or 2) An
19 overriding public interest is shown for moving the UGA boundary in order to gain a public
benefit related to protecting public health, safety and welfare; or enabling more effective,
efficient provision of sewer or water service?

20 **Issue 4:** Did Grant County violate RCW 36.70A.130 as well as its own Unified
21 Development Code, chapter 25.12 Comprehensive Plan Amendment section (e) Amendment
22 Schedule, by failing to follow the time line set forth therein for petitions for amendments to
the comprehensive plan?

23 **Issue 5:** Did Grant County violate 36.70A.130 as well as its own Unified Development
24 Code, chapter 25.12 Comprehensive Plan Amendment section (g) Contents of Petition (2)
25 (A) by failing to provide a detailed statement describing how the UGA boundary or map
26 amendment complies with comprehensive plan land use designation criteria?

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Issue 6: Did Grant County violate 36.70A.130 as well as its own Unified Development Code, chapter 25.12 Comprehensive Plan Amendment section (g) Contents of Petition (2) (B) by failing to support the proposed UGA boundary change with criteria set forth in the GMA such as population forecasts and allocated urban population distributions?

Issue 7: Did Grant County violate 36.70A.130 as well as its own Unified Development Code, chapter 25.12 Comprehensive Plan Amendment section (g) Contents of Petition (2) (D) by failing to provide population forecasts and allocated non-urban population distribution, existing rural area and natural resource land densities and infill opportunities?

Issue 8: Did Grant County violate 36.70A.130 as well as its own Unified Development Code, chapter 25.12 Comprehensive Plan Amendment section (g) Contents of Petitioner (2)(E) by failing to demonstrate any of the required reasons to change its long term land use designations: (i) A change in circumstances pertaining to the comprehensive plan or public policy. (ii) A change in circumstances beyond the control of the landowner pertaining to the subject property. (iii) An error in initial designation. (iv) New information on resource land or critical area status?

Issue 9: Did Grant County, when adopting this Resolution, violate RCW 36.70A.140 by failing to provide to the public early and continuous public participation in the amendment of its Comprehensive Land Use Plan?

Issue 10: Did Grant County, when adopting this Resolution, violate RCW 36.70A.140 and its own Comprehensive Plan (Chapter 2 Public Notification and Hearing Process) by failing to provide public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments?

Issue 11: Did Grant County violate RCW 36.70A.130 as well as its own Unified Development Code, chapter 25.12 Comprehensive Plan Amendment section (f) Environmental Review, by failing to require a completed environmental checklist of the proposed amendment?

Issue 12: Did Grant County violate RCW 36.70A.130 as well as its own Unified Development Code, chapter 25.12 Comprehensive Plan Amendment section (g) Contents of Petition (3) by failing to provide the requirements for a site-specific land use redesignation including the following elements?

1. Historic use of the property and adjoining land;
2. Population density of the surrounding area;

3. Existing soil and sewage disposal conditions;
4. Description of existing water availability;
5. Description of the land's suitability for agricultural purpose;
6. Known archaeological or cultural resources located on the property;
7. Known critical areas located on the property;
8. Availability of existing public services and utilities; and
9. Names of abutting property owners.

Issue 13: Did Grant County violate RCW 36.70A.130 as well as its own Unified Development Code, chapter 25.12 Comprehensive Plan Amendment section (h) Criteria for Approval of Site-Specific Land Use Redesignation by failing to meet the following criteria:

- 1) The change would benefit the public health, safety, and/or welfare;
- 2) The change is warranted because of changed circumstances or because of a need for additional property in the proposed land-use designation;
- 3) The change is consistent with the criteria for land use designations specified in the Comprehensive Plan;
- 4) The change will not be detrimental to uses or property in the immediate vicinity of the subject property;
- 5) The change has merit and value for the community as a whole;
- 6) The change, if granted, will not result in an enclave of property owners enjoying greater privileges and opportunities than those enjoyed by other property owners in the vicinity where there is not substantive difference in the properties themselves with justifies different designations;
- 7) The benefits of the change will outweigh any significant adverse impacts of the change;
- 8) The change is consistent with the purpose and intent of the Comprehensive Plan and the requirements of GCC Titles 22, 23, 24, and 25; and
- 9) The change complies with all other applicable criteria and standards of this Chapter.

Issue 14: Did the Resolution violate the County's Comprehensive Plan, Chapter 2 (Comprehensive Plan Amendment Appeals) by failing to follow the appeals process set forth therein for cases recommended for denial by its Planning Commission?

IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon

1 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to
2 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
3 the Act.

4 The Board will grant deference to counties and cities in how they plan under Growth
5 Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is
6 bounded, however, by the goals and requirements of the GMA." *King County v. Central*
7 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
8 (2000). It has been further recognized that "[c]onsistent with *King County*, and
9 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
10 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
11 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
12 P.3d 28 (2001).

13 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine
14 that the action by [Jefferson County] is clearly erroneous in view of the entire record before
15 the Board and in light of the goals and requirements of [the GMA]." In order to find the
16 County's action clearly erroneous, we must be "left with the firm and definite conviction that
17 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,
18 201, 849 P.2d 646 (1993).

19 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
20 36.70A.280(1)(a).

21 **IV. FINDINGS OF FACT**

- 22 1. In 1999 Grant County adopted the UGA for Ephrata choosing the high
23 population estimate, increasing the population estimate by a 25%
24 market factor, using a density factor of 4 units per acre and reducing
25 the amount of available lands by a 60% reduction factor.
- 26 2. With the reductions of acreage, expansion of population estimates and
reduced densities, the City had 2,583 vacant acres of industrial lands
and 45 vacant acres of commercial lands. There were also 608 acres
for public facilities and open space lands. (City of Ephrata
Comprehensive Plan.). The available land area within the City, with

1 market safety factor of 25%, justifying the needed acres at 373 acres,
2 resulted in a surplus of approximately 70 acres within the city limits
3 beyond that needed for the population projections.

- 4 3. This Board, in 1999, found the County out of compliance when they
5 exceeded the Ephrata City limits as their UGA and found them in
6 compliance when the City limits were made the UGA boundaries. (Final
7 Decision and Order in Case No. 99-1-0013).
- 8 4. Grant County passed Resolution No. 04-036-CC on April 14, 2004,
9 expanding the UGA for the City of Ephrata by approximately 14 acres,
10 (among other changes).
- 11 5. The City of Ephrata's analysis of future commercial land development
12 needs shows adequate land within the existing UGA to accommodate
13 growth for 20 years.
- 14 6. The area proposed for expansion of the Ephrata UGA is outside the
15 corporate City boundary, and not served by City utilities.
- 16 7. The Findings of Fact attached to Resolution No. 04-036-CC are not
17 conclusive, and are not supported in the record as it relates to
18 expansion of Ephrata's UGA.

19 V. DISCUSSION AND ANALYSIS

20 When analyzing the above issues, the Board combined portions of several issues into
21 categories or topics. We will follow the same format in this decision, since that seems to be
22 the more efficient way of dealing with Petitioner's concerns. Major topics to be discussed
23 are: A: The need for 14 acres of commercial lands within the City's UGA; B: The procedural
24 objections of the Petitioners; C: Public participation.

25 **Topic A: Did the County improperly expand the UGA of the City of Ephrata where
26 such additional lands were not needed and adequate commercial lands existed
within the existing City UGA, its city limits, thereby not in compliance with the
GMA?**

The Petitioners have raised 14 issues. Most are objecting to the expansion of the
Ephrata UGA by 14 acres and the County's/City's failure to show that there is a need for

1 such expansion. The balance of the issues deals with aspects of the process. Because of the
2 Board's conclusion that this expansion is not in compliance with the GMA, a detailed
3 discussion of each issue is unnecessary. The Board will instead address the key and critical
4 issue of whether the County's actions to expand the City of Ephrata's UGA by this 14 acres
5 is out of compliance with the GMA.

6 **The Facts and the Parties' Positions:**

7 Grant County passed Resolution No. 04-036-CC on April 14, 2004. A part of that
8 Resolution expanded the UGA for the City of Ephrata (the City) by approximately 14 acres.
9 The County deferred to the City during the Hearing on the Merits to respond to the
10 challenges of the Petitioners. The City contended there were insufficient Commercial lands
11 within the present UGA and additional lands were needed to satisfy the demand that exists
12 now and that did not exist when the original UGA was designated. The City contends that
13 the owner of a big block of Commercial lands that presently exist within the City limits will
14 not divide that parcel and is asking too much money for its purchase.

15 The Petitioners dispute the contention that there are insufficient Commercial lands
16 within the present UGA. They point out the adequate existing commercial lands and their
17 availability in the vicinity of the added 14 acres. They further point out the fact that at the
18 hearing before the County, the City's own planning director testified that there were
19 adequate Commercial lands within the existing UGA for the City.

20 **Discussion:**

21 Several provisions of the GMA are intertwined as they relate to the location, sizing,
22 review and evaluation and expansion of UGAs. RCW 36.70A.110 deals directly with UGAs
23 and their expansion. Several GMA Goals from RCW 36.70A.020 also address where urban
24 growth should be, or should not be, encouraged. These provisions of the Act are set forth
25 below. RCW 36.70A.110 generally addresses the creation of UGAs. RCW 36.70A.110(1)
26 deals with location criteria for delineating boundaries of UGAs, and .110(3) pertains to
locating or sequencing urban growth within UGAs. RCW 36.70A.110(2) regards sizing of
UGAs. It provides in relevant part:

1 Based upon the growth management population projection made for the
2 county by the office of financial management, the county and each city within
3 the county shall include areas and densities sufficient to permit the urban
4 growth that is projected to occur in the county or city for the succeeding
5 twenty-year period. Each urban growth area shall permit urban densities and
6 shall include greenbelt and open space areas. An urban growth area
7 determination may include a reasonable land market supply factor and shall
8 permit a range of urban densities and uses. In determining this market factor,
9 cities and counties may consider local circumstances. Cities and counties have
10 discretion in their comprehensive plans to make many choices about
11 accommodating growth. (RCW 36.70A.110(2)).

8 (3) Urban growth should be located first in areas already
9 characterized by urban growth that have adequate existing public
10 facility and service capacities to serve such development, second in
11 areas already characterized by urban growth that will be served
12 adequately by a combination of both existing public facilities and
13 services and any additional needed public facilities and services
14 that are provided by either public or private sources, and third in
15 the remaining portions of the urban growth areas ... RCW
16 36.70A.110(3)

15 The GMA's Goals are to "guide the development of comprehensive plans and development
16 regulations." With regard to the legal issues in this case, the relevant Goals of RCW
17 36.70A.020 are:

18 (1) **Urban growth.** Encourage development in urban areas where adequate
19 public facilities and services exist or can be provided in an efficient manner.

20 (2) **Reduce sprawl.** Reduce the inappropriate conversion of undeveloped
21 land into sprawling, low -density development.

22

23 (10) **Environment.** Protect the environment and enhance the state's high
24 quality of life, including air and water quality, and the availability of water.

1 The Board now turns to whether the inclusion of the subject area into the Ephrata
2 UGA complies with the GMA. RCW 36.70A.110 requires planning cities and counties to
3 designate an urban growth area or areas within which urban growth shall be encouraged
4 and outside of which growth can occur only if it is not urban in nature. Subsection (2) of
5 that section directs the County to include areas and densities sufficient to permit the urban
6 growth that is projected to occur in the city for the succeeding twenty-year period. This
7 projection is prepared by OFM. OFM establishes a range of population projections rather
8 than a single figure. The projections include a more likely population scenario (medium) and
9 a high and a low. The county would not be out of compliance with the GMA if it used any
10 number within the range. A UGA determination may include a reasonable land market
11 supply factor and shall permit a range of urban densities and uses. "In determining this
12 market factor, cities and counties may consider local circumstances. Cities and counties
13 have discretion in their comprehensive plans to make many choices about accommodating
14 growth." RCW 36.70A.110(2).

14 The County contends that the City of Ephrata's growth is greater than that estimated
15 by the OFM. The County cannot increase the population estimates unilaterally. The Act
16 requires the use of OFM's twenty-year population projection for designating UGAs. See RCW
17 36.70A.110(2), RCW 36.70A.130(3), RCW 36.70A.280(1)(b), and RCW 36.70A.350(2).
18 These exclusive projections are made for each county by OFM; no discretion is permitted
19 for local jurisdictions to use their own numbers. If a local government deems the OFM
20 projections to be unsatisfactory, its only choice is to file a petition for review pursuant to
21 RCW 36.70A.280. If a County population allocation to an individual city is deemed to be
22 unsatisfactory, the city's only choice is to file a petition for review alleging noncompliance
23 with some provision of the Act, or the CPPs, or other GMA enactment. The County must size
24 the UGA based upon the estimates provided by OFM and this has already been done.

24 The proper sizing and location of an UGA involves more than a simple mathematical
25 analysis. The county, in their original sizing or Ephrata's UGA, appropriately considered
26 many other factors. RCW 36.70A110(2) directs a county to establish an UGA boundary

1 "sufficient to permit" urban growth projections. The County must use GMA's planning goals
2 to guide the development and adoption of the UGA. One of the primary purposes of the Act
3 is to avoid sprawl and direct new growth into UGAs.

4 The boundaries of an UGA and the city limits of existing municipalities will be
5 identical; assuming the cities can accommodate all the projected growth. If not, areas must
6 be included sufficient to permit the projected urban growth for the succeeding twenty
7 years.

8 Local jurisdictions have a great deal of discretion in deciding how to accommodate
9 these projections in light of local circumstances and traditions. The Cities have the
10 discretion in deciding specifically how they will accommodate the growth allocated to them
11 by the county consistent with the goals and requirements of the Act.

12 Local circumstance, traditions and identity will result in unique choices and solutions
13 for each county and the cities within it. While such policy choices may be included in the
14 sizing or configuration of the UGA, they must be made in a measurable way and with
15 sufficient documentation as to the rational. The County and the city of Ephrata made those
16 choices when they selected the densities of their residential lands. The County/City used the
17 60% reduction factor, a 25% increase using their market factor, extensive industrial and
18 commercial areas, the larger population allocation and varieties of densities throughout the
19 city. The existing city limits of Ephrata contain more available lands than needed to
20 accommodate the OFM estimated expected growth in the 20-year period.

21 The City of Ephrata has 2,081 total gross residential acres within the incorporated
22 city limits. Of these 2,081 acres, more than half were vacant when the UGA was
23 designated, (1,108 acres). In addition, the City had 2,583 vacant acres of industrial lands
24 and 45 vacant acres of commercial lands. There were also 608 acres for public facilities and
25 open space lands. (City of Ephrata Comprehensive Plan). The available land area within the
26 city limits was reduced by the reduction factor of 60%, or 664 acres, leaving a net of 444
acres. This is 146 more acres than required, within the incorporated city limits. The County
then increased the population estimate by a market safety factor of 25%, justifying the

1 needed acres at 373 acres. This increased estimate of growth still resulted in a surplus of
2 approximately 70 acres within the city limits.

3 The County now has added fourteen acres to the UGA for Ephrata. This area is
4 outside the incorporated city limits. The stated reason for their addition to the UGA is to
5 provide additional commercial lands for needed expansion. There, however, is nothing in
6 the record showing that this is needed. The reasons given by the County/City are not
7 legitimate reasons for such an expansion. Other options exist. Lands can be redesignated
8 from one type to another similar to what was done for Wal-Mart.

9 The key goals of the GMA are the reduction of sprawl and the centering of
10 development within the cities of each county. The GMA allows great discretion to each
11 jurisdiction in their designation of an UGA. However this vision of urban development must
12 be exercised within the sideboards of the GMA and its goals.

13 Since the County has not complied with the UGA requirements of RCW 36.70A.110,
14 the Board further concludes that the County's action was not guided by Goals 1, 2, and 10
15 [RCW 36.70A.020(1), (2), and (10)].

16 **Conclusions:**

17 The Board concludes that the Petitioners have carried their burden of proof and the
18 Board is left with a firm and definite conviction that a mistake has been made. The
19 County's action was clearly erroneous and Grant County Resolution No. 04-036-CC as it
20 dealt with the changes to the Ephrata UGA, failed to be guided by and did not substantively
21 comply with RCW 36.70A.020(1), (2), and (10) and that it failed to comply with RCW
22 36.70A.110. Grant County Resolution No. 04-036-CC is remanded for the County to take
23 legislative action to bring it into compliance with the goals and requirements of the Act as
24 interpreted and set forth in this Order.

25 **Topics B and C:** Because Grant County Resolution No. 04-036-22 is remanded to Grant
26 County and the County is directed to take the required legislative action to bring itself into
compliance, the Board does not find it necessary to rule upon the other issues contained in
topics B and C.

1 **Invalidity:** The Petitioner's request for a finding of Invalidity is not addressed at this time.
2 The Petitioners have not carried their burden of proof sufficient for such a finding.

3 **VI. ORDER**

4 Grant County must take the appropriate legislative action to bring themselves into
5 compliance with this Order by December 13, 2004, 60 days from the date issued.

6 **Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of**
7 **appeal. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed**
8 **within ten days of service of this Final Decision and Order.**

9 **SO ORDERED** this 8th day of October 2004.

10 EASTERN WASHINGTON GROWTH MANAGEMENT
11 HEARINGS BOARD

12 _____
13 Judy Wall, Board Member

14 _____
15 Dennis Dellwo, Board Member