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3 **State of Washington**  
4 **GROWTH MANAGEMENT HEARINGS BOARD**  
5 **FOR EASTERN WASHINGTON**

6 GREENFIELD ESTATES HOMEOWNERS  
7 ASSOCIATION,

8 Petitioner,

9 v.

10 GRANT COUNTY,

11 Respondent,

12 CITY OF EPHRATA,

13 Intervenor.  
14

Case No. 04-1-0005

ORDER DENYING MOTION  
SEEKING A FINDING OF  
INVALIDATION AND CONTINUING  
COMPLIANCE HEARING

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16 **I. PROCEDURAL HISTORY**

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

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

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

24 On May 24, 2004, the Board received the Motion and Order Granting Intervenor  
25 Status to the City of Ephrata signed by the parties.  
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1 On May 26, 2004, the Board received Petitioner Greenfield Estate's Response to  
2 Index of Record requesting addition to the County's Index of Record.

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

5 On June 29, 2004, the Board held a telephonic motion hearing. Present for the Board  
6 was Presiding Officer D.E. "Skip" Chilberg, and Judy Wall. Board Member Dennis Dellwo was  
7 not available for this hearing. Present for Petitioner was Vicki Johnson. Present for  
8 Respondent was Stephen Hallstrom. Present for Interveners was James Whitaker,  
9 substituting for Katherine Kennison.

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

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

16 On October 8, 2004, the Board issued its Final Decision and Order.

17 On March 1, 2005, the Board received Petitioner Greenfield Estate's Request for  
18 Finding of Invalidity and/or Compliance Hearing.

19 On March 4, 2005, the Board held a teleconference in this matter to consider manner  
20 of addressing Petitioners' request.

21 On March 15, 2005, a Compliance Hearing was held in Ephrata, Washington. Present  
22 were Presiding Officer, Dennis Dellwo, and Board Members John Roskelley and Judy Wall.  
23 Present for Petitioner was Vicki Johnson. Present for Respondent was Stephen Hallstrom  
24 Present for Interveners was Katherine Kennison.

## 25 **II. INTERVENTION**

26 On March 9, 2005, the Board received a Motion to Intervene filed by C. Todd Lolkus,  
Mark Lolkus, and H. Colt Smith seeking intervention status pursuant to RCW 36.70A.330(2).

1 The County has not adopted legislation at this time to address the non-compliance  
2 found by this Board. RCW 36.70A.330(2) does not here apply. The Board hereby denies the  
3 parties Motion to Intervene.

### 4 **III. INVALIDITY**

5 The Petitioners have requested that the Board now enter a finding of invalidity for  
6 Ordinance No. 04-036 CC as it deals with the changes to the Ephrata UGA. The question of  
7 whether or not the Board should enter a finding of invalidity for Ordinance No. 04-036 is  
8 framed as:

9 ***Does the continued validity of the violations of RCW Title 36.70A (the Growth***  
10 ***Management Act) described in the Final Decision and Order, entered on the 7<sup>th</sup>***  
11 ***day of September, 2004 herein, substantially interfere with the fulfillment of the***  
12 ***goals of the Growth Management Act such that the enactments at issue should***  
***be held invalid pursuant to RCW 36.70A.302?***

### 13 **IV. APPLICABLE LAW**

14 **RCW 36.70A.302** provides:

- 15 (1) A board may determine that part or all of a comprehensive plan or  
16 development regulation are invalid if the board:
- 17 (a) Makes a finding of noncompliance and issues an order of  
18 remand under RCW 36.70A.300;
  - 19 (b) Includes in the final order a determination, supported by  
20 findings of fact and conclusions of law, that the continued validity  
21 of part or parts of the plan or regulation would substantially  
22 interfere with the fulfillment of the goals of this chapter; and
  - 23 (c) Specifies in the final order the particular part or parts of the  
24 plan or regulation that are determined to be invalid, and the  
25 reasons for their invalidity.

1 (2) A determination of invalidity is prospective in effect and does not  
2 extinguish rights that vested under state or local law before receipt of  
3 the board's order by the city or county. The determination of invalidity  
4 does not apply to a completed development permit application for a  
5 project that vested under state or local law before receipt of the  
6 board's order by the county or city or to related construction permits  
7 for that project.

8 **RCW 36.70A.330** provides in part:

9 (4) In a compliance hearing upon petition of a party, the board shall also  
10 reconsider its final order and decide, if no determination of invalidity  
11 has been made, whether one now should be made under RCW  
12 36.70A.302.

### 13 **V. DISCUSSION**

14 On October 8, 2004, the Board issued its Final Decision and Order finding Ordinance  
15 04-036 CC, as it dealt with the changes to the Ephrata UGA, out of compliance, The County  
16 was given until December 13, 2004, to bring itself into compliance. The Petitioners had  
17 requested a finding of invalidity, but it was not addressed at that time.

18 The Petitioners now ask the Board to find that the County remains out of compliance  
19 and make a finding of invalidity due to the failure of the County to act and the fact that the  
20 City of Ephrata intends to ignore the finding of non-compliance and proceed with the  
21 annexation of said property.

22 In the Board's discussion of the UGA issues, the Board found that the Ephrata UGA  
23 expansion, as effectuated by Ordinance No. 04-036, did not comply with the requirements  
24 of RCW 36.70A.110, .210(1) and .215, and was not guided by UGA Goals RCW  
25 36.70A.020(1), (2) and (10). The question now becomes whether the continued validity of  
26 Ordinance No. 04-036 during the period of remand, would substantially interfere with the  
fulfillment of the Goals of the Act.

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**VI. ORDER**

Having reviewed and considered the above-referenced documents, and having considered the arguments and briefing of the parties, the Board finds that the Petitioners have not carried their burden of proof and the Board will not find Invalid that portion of Ordinance No. 04.036CC that expands the Ephrata Urban Growth Area an additional 14 acres.

**VII. COMPLIANCE HEARING**

The County has asked that the compliance hearing be continued until a later date so that they can, following the supplied schedule, bring themselves into compliance as ordered. This matter is continued until a later date to be set, at which time it will be determined if the County continues to be in non-compliance. Grant County shall provide the Board and parties with their schedule for bringing themselves into compliance by **April 4, 2005**.

**Pursuant to RCW 36.70A.300(5) and RCW 34.05.542(2), this is a Final Order for purposes of appeal. Any appeal of this Order shall be served in person on the Board by the 30<sup>th</sup> day. Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Order.**

**SO ORDERED** this 23<sup>rd</sup> day of March 2005.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

\_\_\_\_\_  
Dennis Dellwo, Board Member

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Judy Wall, Board Member

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John Roskelley, Board Member