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

VINCE PANESKO,

Petitioners,

v.

BENTON COUNTY,

Respondent,

NOR AM DEVELOPMENT, LLC,

Intervenor,

CITY OF RICHLAND,

Intervenor.

Case No. 07-1-0002

ORDER ON MOTIONS

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I. PROCEDURAL HISTORY

On January 29, 2007, VINCE PANESKO, by and through himself, filed a Petition for Review.

On February 1, 2007, the Board received Nor Am Development, LLC's, Motion, Memorandum, and Declaration of Gregory Amann, Request for Intervenor Status of the side of Respondent.

On February 16, 2007, the Board received City of Richland's Motion to Intervene.

On February 26, 2007, the Board heard the Motions to Intervene filed by Nor Am Development, LLC, and the City of Richland before the Prehearing conference. The Board

1 grants Intervenor status to Nor Am Development, LLC, and the City of Richland. The parties
2 are intervening on behalf of the Respondent.

3 On February 26, 2007, the Board held a telephonic Prehearing conference. Present
4 were, Dennis Dellwo, Presiding Officer, and Board Members John Roskelley and Joyce
5 Mulliken. Present for Petitioner was Vince Panesko. Present for Respondent was Ryan
6 Brown. Present for Intervenor Nor Am Development was Gregory Amann. Present for
7 Intervenor City of Richland was George Fearing.

8 On March 15, 2007, the Board received Petitioner's Dispositive Motion for Board's
9 Determination of Noncompliance.

10 On April 2, 2007, the Board received Respondent Benton County's Response to
11 Dispositive Motion RE: Prehearing Order Issue #1 and Cross Motion to Dismiss Issue #1
12 and Intervenor's Response of Nor Am Development, LLC to Petitioner's Dispositive Motion.

13 Petitioner's Reply to Benton County's Response.

14 On April 18, 2007, the Board held a telephonic motion hearing. Present were, Dennis
15 Dellwo, Presiding Officer, and Board Member Joyce Mulliken. Present for Petitioner was
16 Vince Panesko. Present for Respondent was Ryan Brown. Present for Intervenor Nor Am
17 Development was Gregory Amann. Present for Intervenor City of Richland was George
18 Fearing.

19 **II. FACTS**

20 The Petitioner has moved for an order finding Benton County out of compliance on
21 Issue 1. This issue states: "Where Resolution 06-659 is non-compliant with RCW
22 36.70A.110(2) for failing to use the Office of Financial Management (OFM) figures for
23 Benton County growth from 2005 to 2025 to analyze the need for expansion of the Richard
24 UGA?" The Petitioner contends that the County used a 23-year population projection in
25 their process rather than a 20-year projection.

26 The County filed a cross motion requesting that the Board dismiss Petitioner's Issue
one.

1 **III. DISCUSSION**

2 **POSITION OF THE PARTIES**

3 The Petitioner contends that Benton County used a 23-year population projection in
4 Resolution 06-659 and that it is non compliant with RCW 36.70A.110(2). Petitioner
5 requests that the Hearings Board order the County to comply with that section which
6 requires a 20-year population growth to justify the expansion of the Richland UGA.

7 The Petitioner draws the Hearings Board’s attention to the County’s population
8 growth number of 22,880 which is the basis of the expansion of the City of Richland’s UGA.
9 He contends that that number was obtained by using Richland’s OFM High Population
10 number for 2025 and subtracting the High OFM Population number in 2002. Petitioner
11 contends that this is a violation of the above section that requires the County to base the
12 sizing of a UGA upon “the growth management population projection made for the county
13 by the office of financial management, the county and each city within the county shall
14 include areas and densities sufficient to permit the urban growth that is projected to occur
15 in the county or city for the succeeding twenty-year period.” RCW 36.70A.110(2).

16 The Respondent and Intervenors argue the City of Richland determined its
17 population estimates, as of 2002, which was the time the County began the review process
18 for setting the new UGA boundaries. The County contends that the Petitioner incorrectly
19 interprets the GMA to require the use of two population projections instead of one. The
20 County is arguing that the County need not use the projection for 2005 in order to
21 determine the 20-year population growth. The County contends it used the more accurate
22 beginning point, the present day, to begin the process of determining the 20-year growth
23 for the years 2005-2025.

24 The Intervenors contend that in calculating the UGA needs for 2025, it was logical
25 and reasonable for the City and County to subtract the current population from the
26 projected 2025 population to determine the number of additional people the County would
need to plan for. The Intervenor argues that the Petitioner provides no authority to support
his assertion that the GMA required the County to instead use the 2005 population

1 projections as the starting point rather than the actual current population. If the 2005
2 population projection was used as a starting point in 2002, population growth between
3 2002 and 2005 would not have been planned for or considered in the UGA expansion
4 analysis. The UGA would not be sufficiently sized to accommodate the growth to 2025.

5 **PETITIONER'S REPLY**

6 The Petitioner contends that the County must use the most recent OFM data for 20-
7 year planning periods, which is 2005-2025, for UGAs expanded in 2006. The only
8 succeeding twenty-year period available to Benton County on December 4, 2006, was the
9 2005-2025 period because that was the maximum range of the tables produced by the
10 OFM.

11 **BENTON COUNTY CROSS MOTION**

12 Benton County contends that, if the Hearings Board finds that the Petitioner has not
13 met his burden of proof, this first issue should be dismissed. All the facts are before the
14 Hearings Board and such a decision would be appropriate for the same reasons given in
15 opposition to the Petitioner's motion.

16 **BOARD DISCUSSION**

17 On September 20, 2005, the Eastern Washington Growth Management Hearings
18 Board, the Hearings Board, issued an order in the matter of Roberts vs. Benton County et al
19 EWGMHB No. 05-1-0003. In that order the Hearings Board found Benton County out of
20 compliance for their failure to adequately plan for capital facilities, utilities and
21 transportation in the expanded UGA area. The Hearings Board also found Benton County
22 out of compliance for their failure to adopt an expanded UGA that is sized appropriately to
23 OFM population projections and Benton County's CWPP #4.

24 Benton County, after numerous hearings and staff work, adopted Resolution 06-659
25 on December 4, 2006 and Resolution 06-663 on December 11, 2006, rescinding Resolution
26 05-057 and making changes in the size of the UGA. These Resolutions also made other
changes not relevant to this motion. At the compliance hearing, the County was found in
compliance in the Roberts case April 4, 2007. The Hearings Board found that the sizing of

1 the UGA was appropriate based upon the 20-year OFM population projections.

2 The Petitioner contends that the County used a 23-year population projection. The
3 Hearings Board finds that the GMA requires the sizing of UGAs based upon the OFM
4 population projections and that such sizing should not extend beyond the 20-year window.
5 The reason for this is obvious. To allow a county to size a UGA beyond 20 years would
6 interfere with the goals of the GMA. In an extreme example, a county could size the UGA
7 to a 50-year forecast, way beyond the growth within the near future. That is not what
8 happened here. While the computations began in 2002, the final Resolution was approved
9 at the end of 2006. The UGA was sized in the 2006 Resolution for a period that would end
10 in 18 or 19 years. Resolution 06-659 rescinded Resolution 05-057 and became effective
11 December 4, 2006. In that Resolution, the County found: "Whereas, that analyses and the
12 formula in Countywide Policy #4 indicated a need for 2116 acres of additional lands within
13 the City's UGA to meet its 20 year growth projection; ..." and "Whereas, at its continued
14 public hearing on October 23, 2006, the Board of County Commissioners determined that
15 the City's proposed UGA expansion of approximately 2100 acres is an appropriate sized
16 expansion of the UGA to meet the City's official 20 year population growth projection ..."
17 There is no indication in the date or in the record that this UGA is based upon projections
18 for a greater period than 20 years from the effective date of the Resolution making these
19 changes. The County has enlarged the City of Richland's UGA based upon the 20-year
20 projection.

21 While the County started the UGA expansion review process in 2002, their Resolution
22 enlarging the City of Richland UGA was adopted first in 2005 and replaced by another
23 Resolution in December 2006, each based upon the OFM projections for 2025, a 20 year
24 period. The County must first determine its present population in the best manner possible.
25 Benton County used the projections for the years they began the review. The County then
26 must use OFM 20-year projection determine the UGA sizing.

The Petitioner cited Tacoma et al. v. Pierce County, CPSGMHB 94-3-0001 as supporting his position. In that case, Tacoma did not use the OFM projections. The Central

1 Board held that Tacoma must use OFM 20-year projections. Benton County used OFM's
2 2025 20-year projection.

3 The second case raised by the Petitioner, *Kitsap County v. OFM*, CPSGMHB 94-3-
4 0014 addressed the County's challenge to OFM projections. The Central Board, in that case,
5 also stated that the land supply and density decisions that must be made in designating
6 UGAs must accommodate only the demands of twenty years of growth. Benton County has
7 planned for 20-years of growth and does not go beyond the 20-year projections prepared
8 by OFM, 2025.

9 The third case, *Association of Rural Residents v. Kitsap County*, CPSGMHB 93-3-
10 0010, involved a claim that the County failed to base its IUGA on the OFM projections. The
11 Board held that "counties must use only OFM's twenty-year population projection in
12 adopting UGAs. OFM's forecast is the exclusive source for the relevant countywide figures –
13 both the floor and the ceiling for population projections. Counties must base their UGAs on
14 only these projections. Counties cannot add their own calculations to or deduct from OFM's
15 projections." Kitsap County developed its own figures and used OFM projections as only an
16 alternative. Here, Benton County used only OFM projections and did not develop any figures
17 of their own.

18 The County has used OFM projections to determine the population growth in Benton
19 County by 2025. The UGA was then sized to fit that 20-year population forecast. The
20 County did not extend the UGA for a projection greater than 20 years and is not in violation
21 of the GMA.

22 **DISCUSSION ON CROSS MOTION**

23 The Hearings Board has found that the Petitioner has not carried his burden of proof
24 on his motion. There are no disputed facts and the arguments have been briefed and
25 argued. The Board finds that Issue #1 should be dismissed. The Petitioner has not met his
26 burden of proof and did not show by clear cogent and convincing evidence that the action
of the County was non-compliant with the Growth Management Act. The County has shown
the Hearings Board that they are compliant on this issue and it is appropriate that it be

1 dismissed.

2 **IV. FINDINGS OF FACT**

- 3 1. Benton County is a county located East of the crest of the Cascade
4 Mountains and opted to plan under the GMA and is therefore required
5 to plan pursuant to RCW 36.70A.040.
- 6 2. The County adopted Resolution 05-057 on January 31, 2005. That
7 Resolution expanded the City of Richland UGA based upon 2025 OFM
8 Population Projections.
- 9 3. According to the OFM high projection and the City of Richland's
10 calculations from the formula in CWPP #4, the City's projected needs in
11 acreage to 2025 is 2116 acres.
- 12 4. Resolution 05-057 amended the Benton County Comprehensive Plan to
13 include 1206 acres more than necessary to accommodate the OFM
14 projection, a 56% increase above the calculated figure.
- 15 5. On December 04, 2006, Resolution 05-057 was rescinded and the UGA
16 for the City of Richland was reduced in size and this Hearings Board
17 found the County in compliance. (Resolution 06-659)
- 18 6. Benton County began their calculation in 2002 for purposes of
19 expanding Richland's UGA to receive the population forecast for the 20-
20 year period 2005-2025.
- 21 7. The City of Richland UGA was sized for the 20-year population forecast
22 period, 2005-2025.

23 **V. CONCLUSIONS OF LAW**

- 24 1. This Board has jurisdiction over the parties to this action.
- 25 2. This Board has jurisdiction over the subject matter of this action.
- 26 3. Resolution No. 06-659 expands Richland's UGA by approximately 2,110
acres, which is an appropriately sized expansion to accommodate the
City's of Richland's expected 20-growth through the year 2025, as
reflected in the 2025 OFM population projection and CWPP #4, and
complies with RCW 36.70A.020(1), RCW 36.70A.020(2), and RCW
36.70A.110(2) and (3).

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- 4. The Petitioner has failed to meet his burden of proof and failed in his motion on Issue 1.
- 5. The Respondent has met its burden of proof and its motion to dismiss Issue 1 should be granted.

VI. ORDER

- 1. The Hearings Board finds that the Petitioner has not met his burden of proof and his motion is denied.
- 2. The Hearings Board finds that the County has met its burden of proof and their cross motion seeking the dismissal of Issue 1 in this matter should be granted. Issue # 1 is dismissed in the Petition of Vince Panesko.

SO ORDERED this 25th day of April 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Board Member

John Roskelley, Board Member

Joyce Mulliken, Board Member