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

6 VINCE PANESKO,

Case No. 07-1-0002

7
8 Petitioners,

FINAL DECISION AND ORDER

9 v.

10 BENTON COUNTY,

11 Respondent,

12 NOR AM DEVELOPMENT, LLC,

13
14 Intervenor,

15 CITY OF RICHLAND,

16 Intervenor.
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20 **I. SYNOPSIS**

21 On January 31, 2005, the Benton County Board of Commissioners (BOCC) adopted
22 Resolution No. 05-057, increasing City of Richland's Urban Growth Area (UGA) by adding
23 3,322 acres southwest of the existing Urban Growth Area (UGA) boundaries. The need to
24 expand was precipitated by a needs analysis revealing a need for additional acreage to
25 accommodate expected growth to the year 2025. Ex. 37. Resolution No. 05-057 was
26 appealed to the Eastern Washington Growth Management Hearings Board (Board) in

1 *Roberts v. Benton County*, EWGMHB Case No. 05-1-0003. In its September 20, 2005, Final
2 Decision and Order (FDO), the Board found Resolution No. 05-057 out of compliance
3 because the expanded UGA was not sized appropriately according to the Office of Financial
4 Management (OFM) population projections and County Wide Planning Policy (CWPP) #4,
5 and because Benton County (County) failed to adequately plan for capital facilities, utilities
6 and transportation in the expanded UGA area.

7 In response to the Board's FDO, the County adopted Resolution No. 06-659, which
8 reduced the expanded UGA from 3,322 acres to approximately 2,100 acres and updated the
9 capital facilities, utilities and transportation elements of the Comprehensive Plan by
10 adopting an approved capital facilities plan for the expanded UGA. Ex. 825. On April 4,
11 2007, the Board issued an Order Finding Compliance, holding that Resolution No. 06-659
12 complied with the GMA. *Roberts v. Benton County*, EWGMHB Case No. 05-1-0003, Order
13 Finding Compliance, April 4, 2007. The Petitioner in the present case filed a stand-alone
14 petition for review on January 29, 2007, also challenging Resolution No. 06-659 and
15 alleging thirty-three errors. In its Order on Motions dated April 25, 2007, the Board
16 dismissed Issue No. 1.

17 The Petitioner contends that Resolution 06-659 fails to comply with numerous
18 statutes under the GMA, including RCW 36.70A.020(1), (2), RCW 36.70A.070(3),(4), (6),
19 RCW 36.70A.035, RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A. 110, RCW 36.70A.120,
20 RCW 36.70A.130, and RCW 36.70A.140.

21 The Respondent, Benton County, and the Intervenors, Nor Am Development, LLC,
22 and City of Richland (City), contend that Benton County followed all the requirements and
23 statutes of the GMA, including those cited by the Petitioner, in the adoption of Resolution
24 No. 06-659. They argue that 2,110 acres is an appropriately sized expansion to
25 accommodate the City of Richland's expected growth through the year 2025, as reflected in
26 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); and that Resolution No. 06-659
includes an adequate capital facilities plan and plans for utilities and transportation facilities

1 in the expanded UGA area in compliance with RCW 36.70A.070(3), RCW 36.70A.070(4),
2 and RCW 36.70A.070(6).

3 The Board finds that the Petitioner has failed to carry his burden of proof on any of
4 the issues presented. The Board finds that the expanded UGA is sized appropriately
5 according to the 2025 OFM population projection and County Wide Planning Policy
6 ("CWPP") #4 and that the County has adequately planned for capital facilities, utilities and
7 transportation in the expanded UGA area.

8 **II. INVALIDITY**

9 The Board determined there was not a basis for a finding of Invalidity.

10 **III. PROCEDURAL HISTORY**

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

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

16 On February 16, 2007, the Board received City of Richland's Motion to Intervene and
17 the County filed the Index of the administrative record.

18 On February 26, 2007, the Board heard the Motions to Intervene filed by Nor Am
19 Development, LLC, and the City of Richland before the Prehearing conference. The Board
20 granted Intervenor status to Nor Am Development, LLC, and the City of Richland. The
21 parties are intervening on behalf of the Respondent.

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

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

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

4 Petitioner's Reply to Benton County's Response was dated April 2, 2007 and filed
5 with the Board.

6 On April 18, 2007, the Board held a telephonic motion hearing. Present were Dennis
7 Dellwo, Presiding Officer, and Board Member Joyce Mulliken. Present for Petitioner was
8 Vince Panesko. Present for Respondent was Ryan Brown. Present for Intervenor Nor Am
9 Development was Loren D. Combs. Present for Intervenor City of Richland was George
Fearing.

10 On April 25, 2007, the Board issued its Order on Motions granting Benton County's
11 motion dismissing Issue No. 1.

12 On June 19, 2007, the Board held the Hearing on the Merits. Present were, Dennis
13 Dellwo, Presiding Officer, Board Member John Roskelley, and Board Member Joyce Mulliken.
14 Present for Petitioner was Vince Panesko. Present for Respondent was Ryan Brown. Present
15 for Intervenor Nor Am Development was Loren D. Combs. Present for Intervenor City of
16 Richland was George Fearing.

17 **IV. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND**
18 **STANDARD OF REVIEW**

19 Comprehensive plans and development regulations (and amendments thereto)
20 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
21 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to
22 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
23 the Act. The Board ". . . shall find compliance unless it determines that the action by the .
24 . . County. . . is clearly erroneous in view of the entire record before the Board and in light
25 of the goals and requirements of [Growth Management Act]." RCW 36.70A.320. To find an
26 action clearly erroneous, the Board must be ". . . left with the firm and definite conviction

1 that a mistake has been committed." *Department of Ecology v. Central Puget Sound*
2 *Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

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

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

14 **V. ISSUES AND DISCUSSION**

15 **Issue No. 2:**

16 Whether Benton County County-Wide-Planning-Policy #4 (CWPP #4) is non-
17 compliant with RCW 36.70A.110(2) for failing to rely on OFM figures and for failing to use a
18 reasonable land market supply factor?

19 **The Parties' Position:**

20 **Petitioner:**

21 In Issue No. 2, the Petitioner contends that the Board's conclusions in the *Roberts*
22 case regarding CWPP#4 were an advisory opinion only. The Petitioner contends that
23 CWPP#4 inflates the number of acres needed for the UGA. According to the Petitioner, if
24 the Board begins with the proposition that 3,003 additional dwelling units are needed to
25 accommodate growth to 2025, then at a density of 4-6 dwelling units per acres, only 500 to
26 751 acres are needed. Applying the 25% market factor increases the range to 625 to 939
acres.

The 20-year growth of Richland from 2005 to 2025 of 16,995, after subtraction of

1 the adjusted UGA capacity of 13,031, yields an undersupply of land for 4,964, not 7,479 as
2 claimed by Benton County.

3 The courts require the County to explain why a market factor is required and how it
4 was reached and the County did not explain why it needed a market factor of 200% or
5 more than the basic 25%.

6 **Respondent:**

7 The Respondent argues the Petitioner lacks standing to challenge the validity of
8 CWPP#4, and even if he had standing, the time for appealing CWPP#4 in his petition for
9 review was untimely. The Respondent also argues that CWPP#4 variable J sets forth the
10 market supply factor of 25%, not a 200% factor as the Petitioner suggests.

11 **Intervenors:**

12 The Intervenor, Nor Am Development, LLC, argues that RCW 36.70A.210(6) allows
13 cities and the governor to challenge CWPPs, but not citizens. The Intervenor argues that
14 the issues raised by the Petitioner in Issue No. 2 were decided in the *Roberts* case, and that
15 the Petitioner is prohibited from rearguing the County's projection of 22,880 new residents,
16 which was deemed valid in the Board's April 25, 2007, Order on Motions.

17 **Petitioner's HOM Reply:**

18 The Petitioner replies that a UGA designation that blatantly violates the GMA will not
19 be upheld simply because a CWPP mandates its adoption. In *Thurston County v.*
20 *WWGMHB*, 137 Wn. App. 781 (2007), the court found Thurston County's UGA expansion
21 non-compliant because the area exceeded projected population growth by 38 percent
22 without any explanation as to the rationale. *Id.* at 803. Attachment B of Resolution 06-659
23 contained Table 7. According to Table 7, the new population (under-supply) is 7,479
24 people, which calculates to a need of 3,003 DUs on 1,067 acres with a 55% build-out to
25 1,574 acres. If a 38% excess of acres is non-compliant, a 55% excess is also
26 noncompliant.

1 **Board Analysis:**

2 The Petitioner in Issue No. 2 directly challenges CWPP #4 itself. The GMA does not
3 allow such an appeal. RCW 36.70A.210(6) allows cities and the governor to appeal county-
4 wide planning policies to the Board within sixty days of adoption, but citizens have no such
5 right. See e.g. *Weaver v. Yakima Co.*, EWGMHB Case No. 97-1-0016, Order on Motions and
6 FDO (Sept. 18, 1997). Moreover, CWPP #4 was not amended by Resolution No. 06-659
7 and the time for appeal has long since passed.

8 The Petitioners claim that the County failed to use a reasonable market supply factor
9 is not supported in the record. As determined conclusively in the Order on Motions, the
10 population growth Richland needs to plan for by 2025 is 22,880. According to Table 1 of
11 Ex. 37, there are 2,196 acres of vacant/developable residential land within the Richland
12 UGA. Ordinance 06-659 adds an additional 1,574 acres. This brings the total gross
13 residential acreage to 3,770. Because the County is allowed the discretion to increase the
14 area 25% above the amount it needs as a "land market supply factor," that 25% must be
15 backed out in order to determine how much land is needed to meet the expected growth.
16 As the Central Board has stated: this "safety factor allows for unanticipated choices of
17 individuals and firms who may acquire land in excess of anticipated needs, and it allows for
18 land which may be held out of use because of personal preference or whims of a few
19 property owners or because of legal complications which make the land unavailable for
20 immediate development." *City of Bremerton v. Kitsap County*, CPSGMHB No. 95-3-0039,
21 FDO (October 6, 1995).

22 The reduction of the gross residential acreage of 3,770 by 25%, leaves 2,827.5 gross
23 acres of residential land needed to accommodate the 22,880 people. However, the Board
24 has held that in determining density, it is net acreage (gross acreage minus area necessary
25 for roads, storm drainage, etc.), rather than gross acreage that is used. See *Fuhriman II*,
26 CWGMHB No. 05-2-0025 FDO (August 29, 2005). In Exhibit 107 and Exhibit 37, Table 1,
the County added 15% for right of way. Subtracting 15% for roads and such, leaves a net
residential acreage of 2,403.37. Using the County standard of 2.49 persons per dwelling

1 unit, 9,188.75 dwelling units will be needed to house the 22,880 additional persons.
2 Dividing the 9,188.75 dwelling units by the net acreage of 2,403.37 results in a net density
3 of 3.83 du/acre for the future growth of the City of Richland.

4 Moreover, the Board determined during the *Roberts* case that the County showed its
5 work as to the need for 2,116 additional acres. The Board again finds that the County
6 showed its work as to the need for 2,116 additional acres and the County's calculations
7 were correctly based on Richland's actual estimated population at the time of the
8 application to expand its UGA and the OFM population projection for 2025 as required by
9 RCW 36.70A.110(2).

9 **Conclusion:**

10 The Petitioner has failed to meet his burden as to Issue No. 2. The Board finds that
11 the County followed the OFM population guidelines as required by RCW 36.70A.110(2)
12 when determining the need for residential acreage in the UGA expansion, and that the
13 County used a reasonable market supply factor.

14 **Issue No. 3:**

15 Whether Benton County CWPP #4 substantially interferes with the goals 1 and 2 of
16 the GMA during the remand period?

17 **The Parties' Position:**

18 **Petitioner:**

19 The Petitioner argues that CWPP#4 should be declared invalid based on the
20 argument under Issue No. 3 that CWPP#4 is inconsistent with RCW 36.70A.110(2).

21 **Respondent:**

22 The Respondent argues that there is no basis for a determination of invalidity
23 because the Petitioner has failed to meet his burden of proof on Issue No. 2 or 3.

24 **Intervenors:**

25 Nor Am Development, LLC argues that the Board in its Order on Motions already
26 concluded that Resolution No. 06-659 complies with RCW 36.70A.020(1) (goal 1) and RCW
36.70A.020(2) (goal 2). Order on Motions, Conclusion of Law 3. Nor Am further argues

1 that there is no basis for a determination of invalidity.

2 **Board Analysis:**

3 Because the Board concluded in Issue No. 2 that the Petitioner failed to meet his
4 burden of proof, there is no basis for a determination of invalidity regarding this issue.

5 **Conclusion:**

6 The Petitioner has failed to meet his burden of proof as to Issue No. 3.

7 **Issue No. 4:**

8 Whether Resolution 06-659, Attachment B, Section IV. LAND USE PROJECTIONS, is
9 non-compliant with RCW 36.70A.110(2) for failing to rely on OFM figures and for failing to
10 use a reasonable land market supply factor?

11 **The Parties' Position:**

12 **Petitioner:**

13 The Petitioner argues that the Capability Analysis, Section IV, Table 7 used an under-
14 supply of 7,479 when the actual under-supply is 4,964 based on 2005-2025 figures. He
15 further argues Benton County then used a density of 2.81 du/acre to calculate the needed
16 acres but was required to use a density of 4 to 6 du/acre. The Petitioner argues that Benton
17 County applied a 55% buildout requirement, when only 25% is typically accepted by the
18 Growth Management Hearings Board.

18 **Respondent:**

19 The Respondent argues that Attachment B, Section IV Table 7 is based on the
20 County's CWPP#4 calculations on page 7 of Exhibit 37. Page 8 of Exhibit 37 demonstrates
21 that 1,574 acres are needed for residential purposes to meet Richland's expected population
22 growth.

23 The Respondent asserts that the Petitioner lacks standing to challenge CWPP#4 and
24 a challenge to CWPP#4 is also untimely.

25 The Board in *Roberts* already held that the County showed its work as to the need
26 for 2,116 additional acres and that the County's calculations were based on Richland's

1 actual estimated population at the time of the application to expand its UGA and the OFM
2 population projection for 2005.

3 **Intervenors:**

4 The Intervenor, Nor Am, asserts the population and dwelling unit projections
5 included in Table 7 of the Capability Analysis are merely a reproduction of the numbers
6 from the County's CWPP #4 calculations. Ex. 825, Attachment B Table 7; Ex. 37, Table 1.
7 Issue No. 4 is essentially the same argument as Issue No. 2. As stated in its response to
8 Issue No. 2, the Intervenor argues the Board has already held that expanding Richland's
9 UGA by approximately 2,110 acres is in compliance with RCW 36.70A.110(2). *Roberts*, OFC
at 31; Order on Motions at 7.

10 **Petitioners HOM Reply:**

11 The Petitioner's response is identical to their response under Issue No. 2.

12 **Board Analysis:**

13 In Issue No. 4, the Petitioner challenges the population and dwelling unit projections
14 included in Table 7 of the Capability Analysis. However these projections are merely a
15 reproduction of the numbers from the County's CWPP #4 calculations. Ex. 825, Attachment
16 B Table 7; Ex. 37, Table 1. Issue No. 4 is essentially the same argument as Issue No. 2.
17 As stated in the discussion of Issue No. 2, the Board has already held that expanding
18 Richland's UGA by approximately 2,110 acres is in compliance with RCW 36.70A.110(2).
Roberts, OFC at 31; Order on Motions at 7.

19 **Conclusion:**

20 The Petitioner has failed to meet his burden of proof as to Issue No. 4.

21 **Issue No. 5:**

22 Whether Resolution 06-659, Attachment B, Section IV. LAND USE PROJECTIONS, is
23 non-compliant with RCW 36.70A.020(1) and RCW 36.70A.020(2) for using a density of 2.81
24 DU/Acre and for failing to use urban densities for the proposed UGA extension?
25
26

1 **The Parties' Position:**

2 **Petitioner:**

3 The Petitioner argues that Table 7 of Section IV of the Capacity Analysis is non-
4 compliant with goals 1 and 2 because it uses a density that constitutes sprawl and should
5 be declared invalid.

6 **Respondent:**

7 The Respondent argues that there are at least three reasons for dismissing Issue
8 No. 5.

9 First, the Board has already found in the *Roberts* case that the County complied with
10 the GMA when it adopted Resolution 06-659. The same density argument that the
11 Petitioner makes here was made and rejected in *Roberts*.

12 Second, the actual density in the expanded UGA will be higher than 2.81 du/acre
13 because 2.81 is a gross density figure which includes area for roads and right of way, and
14 because it did not account for population currently residing in the unincorporated areas of
15 Richland's UGA.

16 Third, the Petitioner cites no legal authority for the proposition that sizing a UGA
17 based on 2.81 du/acre violates RCW 36.70A.020.

18 **Intervenors:**

19 Nor Am argues the densities included in Table 7 of the Capability Analysis are merely
20 a reproduction of the densities from the County's CWPP #4 calculations. Ex. 37 Table 1. As
21 stated above, the Board has already concluded that expanding Richland's UGA by
22 approximately 2,110 acres is compliant under the GMA and that Resolution No. 06-659
23 complies with RCW 36.70A.020(1) and RCW 36.70A.020(2). *Roberts*, Order Finding
24 Compliance at 31; Order on Motions at 7. As such there is no basis for a determination of
25 substantial interference.

26 **Petitioners HOM Reply:**

The Petitioner replies that RCW 36.70A.110(2) requires Richland to expand its UGA
with urban densities and that urban densities are defined by Benton County as 4 to 6

1 du/acre. Benton County has no discretion to allow residential densities at less than 4 to 6
2 du/acre.

3 **Board Analysis:**

4 The Petitioner argues that the density figures in Table 7 of the Capability Analysis
5 substantially interfere with goals 1 and 2 of the GMA. Petitioner's Brief at 8. However, the
6 densities included in Table 7 of the Capability Analysis are merely a reproduction of the
7 densities from the County's CWPP #4 calculations. Ex. 37 Table 1. As explained in Issue
8 No. 2, the Board has already concluded that expanding Richland's UGA by approximately
9 2,110 acres is compliant under the GMA and that Resolution No. 06-659 complies with RCW
10 36.70A.020(1) and RCW 36.70A.020(2). *Roberts*, OFC at 31; Order on Motions at 7. As
11 such there is no basis for a determination of substantial interference. The Petitioner has
12 cited no legal authority that requires the County to size Richland's UGA based on a density
13 of 4 to 6 du/acre, and the Petitioner fails to prove the expansion will result in a density of
14 2.81 du/acre.

14 **Conclusion:**

15 The Petitioner has failed to meet his burden of proof as to Issue No. 5.

16 **Issue No. 6:**

17 Whether Benton County Resolution 06-659, Attachment B, is non-compliant with
18 RCW 36.70A.020(1) and RCW 36.70A.020(2) for allowing the Planned Development to
19 proceed in the next 6 years with non-urban densities which can never be converted to
20 urban densities inside the proposed UGA extension?

20 **The Parties' Position:**

21 **Petitioner:**

22 The Petitioner claims that within the expanded UGA, 103 units will not be on urban
23 services provided by City of Richland and will be at densities that allow septic systems. If
24 these houses are allowed to develop it will be impossible to develop with urban densities at
25 a later date. The Petitioner quotes *Irondale v. Jefferson County*, in which the Western
26 Board found a new UGA non-compliant because the capital facilities plan for the area did

1 not provide sanitary sewer throughout the new UGA over the twenty-year planning period.

2 **Respondent:**

3 The Respondent argues the Petitioner fails to cite any authority to support his
4 argument that having 103 lots on septic within the UGA violates the GMA. The County has
5 no authority to withdraw prior approvals of the creation of the lots at issue and cannot
6 terminate the development rights already granted to the owners of those 103 lots.

7 The Petitioner also incorrectly argues that the UGA cannot be expanded to include
8 residences simply because they will not immediately be served by municipal sewer services.

9 GMA goals to encourage urban development and reduce sprawl would be furthered
10 by the inclusion of the Badger Mountain Planned Development in Richland's UGA because it
11 would allow higher density development to occur. To exclude the area from the UGA and
12 require it to develop with lots large enough to contain septic systems is precisely what the
13 GMA was enacted to prevent.

14 **Intervenors:**

15 The Board has already concluded that expanding Richland's UGA by approximately
16 2,110 acres is compliant under the GMA and that Resolution No. 06-659 complies with RCW
17 36.70A.020(1) and RCW 36.70A.020(2). *Roberts*, OFC at 31; Order on Motions at 7.
18 Moreover, the Petitioner fails to appreciate that the Badger Mountain Planned Development
19 is vested under the density requirements in effect on January 4, 1994, the date its complete
20 application was submitted. Ex. 381, Resolution No. 01-037. The County cannot prohibit the
21 development from developing at the vested densities and cannot require the development
22 to be developed at greater densities. Resolution 06-659, Attachment E, Amended ILA.

23 **Petitioners HOM Reply:**

24 The Petitioner replies that *Irondale v Jefferson County* applies to the Richland UGA
25 expansion because it intends to have over 100 houses on septic systems with no plan to
26 remove them over the twenty-year period.

1 **Board Analysis:**

2 The Petitioner argues that Resolution 06-659 is noncompliant with goals 1 and 2 of
3 the GMA because it allows the Badger Mountain Planned Development to be developed at
4 less than urban densities. Petitioner's Brief at 9. As stated in Issue No. 2, the Board has
5 already concluded that expanding Richland's UGA by approximately 2,110 acres is
6 compliant under the GMA and that Resolution No. 06-659 complies with RCW 36.70A.020(1)
7 and RCW 36.70A.020(2). *Roberts*, OFC at 31; Order on Motions at 7. Moreover, the
8 Petitioner fails to appreciate that the Badger Mountain Planned Development is vested
9 under the density requirements in effect on January 4, 1994, the date its complete
10 application was submitted. Ex. 381, Resolution No. 01-037. The County cannot prohibit the
11 development from developing at the vested densities and cannot require the development
12 to be developed at greater densities. Resolution 06-659, Attachment E, Amended ILA.
13 Current County regulations would not allow such a development outside of a UGA, thus it is
14 appropriate for the Badger Mountain Planned Development to be within a UGA. By
15 including the planned development within the UGA, the developer will have the opportunity
16 to amend the project to increase densities.

16 The Petitioner also argues that allowing septic on a portion of a UGA violates the
17 GMA. Petitioner's Brief at 10. This is incorrect. Allowing septic within the UGA until sewer
18 is available does not violate the GMA as long as there is sufficient planning to provide sewer
19 during the planning period. The present case is easily distinguishable from *Irondale v.*
20 *Jefferson County*, WWGMHB 04-2-0022, FDO May 31, 2005, cited by the Petitioner. In
21 *Irondale*, the Western Board found Jefferson County non-compliant because the County
22 would not have the ability to provide sewer service throughout the entire UGA within the
23 twenty-year planning period. FDO at 17-19. In contrast, the Capability Analysis adopted by
24 Benton County and Richland gives a detailed analysis of the sewer system's present
25 capacity and the facility requirements needed to serve the UGA within both the six and
26 twenty-year planning periods. Capability Analysis at 21, 45-47. The Capability Analysis also
references the City of Richland 2004 General Sewer Plan, which includes the expanded

1 UGA. Cost of the sewer improvements necessary within the six-year period are estimated
2 and funding sources are identified. Capability Analysis at 64, 67.

3 **Conclusion:**

4 The Petitioner has failed to meet his burden of proof as to Issue No. 6.

5 **Issue No. 7:**

6 Whether Benton County Resolution 06-659, Attachment B, substantially interferes
7 with goals 1 and 2 of the GMA during the remand period for allowing the Planned
8 Development to proceed inside of the proposed UGA in the next 6 years with non-urban
9 densities which can never be converted to urban densities inside the proposed UGA
extension?

10 **The Parties' Position:**

11 **Petitioner:**

12 The Petitioner claims that page 46 of Attachment B provides that there will be 103
13 houses on septic. The Petitioner contends this type of development where one house is
14 allowed on one acre within a UGA creates sprawl and is non-compliant with goals 1 and 2.
15 If these houses are allowed to be constructed during remand, it will be impossible to
16 develop the land with urban densities at a later date.

17 **Respondent:**

18 Respondent refers to its response to Issue No. 6.

19 **Intervenors:**

20 Nor Am argues the Board has already concluded that expanding Richland's UGA by
21 approximately 2,110 acres is compliant under the GMA and that Resolution No. 06-659
22 complies with RCW 36.70A.020(1) and RCW 36.70A.020(2). *Roberts*, OFC at 31; Order on
23 Motions at 7. As such there is no basis for a determination of invalidity.

24 **Petitioners HOM Reply:**

25 The Petitioner does not reply to Issue No. 7.

26 **Board Analysis:**

Because the Petitioner failed to meet his burden of proving that the allowance of

1 approximately one hundred dwelling units on septic until sewer is available violates the
2 GMA, there is no basis for a determination of invalidity.

3 **Conclusion:**

4 Petitioner has failed to meet his burden of proof as to Issue No. 7.

5 **Issue No. 8:**

6 Whether Benton County Resolution 06-659, Attachment B, is not compliant with RCW
7 36.70A.120 for failing to conform with the Benton County policy which requires
8 homeowners agreement to be obtained before being included in an UGA, i.e. homeowners
9 in the Wilson Addition turned in a petition to Benton County which indicated their desire to
be omitted from the UGA?

10 **The Parties' Position:**

11 **Petitioner:**

12 The Petitioner did not brief Issue No. 8. Therefore, Issue No. 8 is deemed
13 abandoned.

14 **Conclusion:**

15 The Petitioner failed to meet his burden of proof as to Issue No. 8.

16 **Issue No. 9:**

17 Whether Benton County Resolution 06-659 is not compliant with RCW 36.70A.120 for
18 failing to conform with the Benton County Comprehensive Plan (BCCP), Chapter 4, Land Use
19 Element which states that Richland has excess vacant land designated for residential use
and that no changes in the UGA is predicted in the foreseeable future?

20 **The Parties' Position:**

21 **Petitioner:**

22 The Petitioner argues the UGA expansion is inconsistent with the Benton County
23 Comprehensive Plan and is thus not in compliance with RCW 36.70A.120, because the
24 County's Comprehensive Plan, Chapter 4, Land Use Element, states: "Richland has 21,719
25 acres of vacant incorporated and unincorporated land designated for residential use. . . .
26 For the foreseeable future, the expansion of the UGA in the Metropolitan Planning Area for

1 the purpose of accommodating residential development cannot be justified in terms of
2 population growth projections.”

3 **Respondent:**

4 The Respondent argues the Board correctly rejected this same argument in *Roberts*
5 *v. Benton County*, EWGMHB No. 05-1-003, OFC at 18-19, based on the Board's prudent
6 observation that the stated number of vacant acres set forth when the County adopted its
7 Plan in 1998, was an obvious error. The Petitioner cites no legal authority to support his
8 argument and has not met his burden of proof. All evidence indicates a UGA expansion is
warranted.

9 **Intervenors:**

10 Nor Am argues this issue was previously decided in *Roberts v. Benton County*, 05-1-
11 0003, and that the stated number of vacant acres set forth when the County adopted its
12 Plan in 1998 was an obvious error.

13 **Petitioners HOM Reply:**

14 The Petitioner argues that Benton County must revise its Comprehensive Plan to be
15 consistent throughout to support the need for the expansion of the Richland UGA and that
16 the Board in *Roberts v. Benton County* did not decide this issue on the merits.

17 **Board Analysis:**

18 This legal issue is identical to Issue No. 5 in *Roberts*. The Board in *Roberts* rejected
the Petitioners argument, stating as follows:

19 Considering that the entire area of the City of Richland is approximately
20 25,000 acres, the reference in the Comprehensive Plan to 21,719 acres of
21 buildable residential land in Richland's UGA is obviously an error. Also the
22 passage was adopted in 1998. The County cannot be required to adjust its
UGA expansion analysis to information that is obviously in error.

23 *Roberts v. Benton County*, OFC at 19. The Petitioner argues that the reference to
24 21,719 acres in Chapter 4 of the County Comprehensive Plan was intended to mean total
25 acres, not vacant or undeveloped acres. Petitioner's Brief at 13. This interpretation is
26 contrary to the section's plan language:

1 The legacy of these cities' historic pattern of annexations is that within their
2 contiguous boundaries there are today large and numerous islands of
3 unincorporated residents, and thousands of acres of vacant incorporated land
4 designated for residential use. Kennewick alone has 6,000 vacant or
5 undeveloped acres designated for relatively low density residential use
(4Du/acre); West Richland has 13,641 acres, some actually designated for
rural densities (1-2 Du/acre) and lower; Richland has 21,719 acres.

6 Ex. 91, Benton County Comp Plan, Chapter 4 page 16. The paragraph is describing vacant
7 land and provides that "Kennewick has 6,000 vacant or undeveloped acres . . . West
8 Richland has 13,641 acres . . . Richland has 21,719 acres." *Id.* The sentence was clearly
9 intended to convey that Richland had 21,719 vacant or undeveloped acres, which is
10 incorrect. In fact, 21,719 was nearly the approximate total acreage of all land in Richland
11 at the time. The County, in its brief, noted that the error was corrected on March 12, 2007,
12 by the adoption of Resolution 07-160, and that the correct number of vacant acres as of
1998, was actually 1,356.

13 The UGA expansion calculation that resulted in the need for 2,116 acres was based
14 on 2,196.16 acres of vacant or undeveloped residential land, of which 1,996.99 was
15 designated low density residential. Ex. 3, Attachment A. Although expansion of the UGA
16 may not have been foreseeable in 1997, it is warranted now based on the OFM projections
17 and the formula set forth in CWPP #4.

18 **Conclusion:**

19 The Petitioner has failed to meet his burden of proof as to Issue No. 9.

20 **Issue No. 10:**

21 Whether Benton County Resolution 06-659 is not compliant with RCW 36.70A.100 for
22 failing to be coordinated with and consistent with the Richland Comprehensive Plan which
23 states in Chapter 4, Table LU-4, that Richland has capacity for additional population of
24 27,608 and has no need to expand its UGA?
25
26

1 **The Parties' Position:**

2 **Petitioner:**

3 The Petitioner argues Richland's Comprehensive Plan Table LU-4 states Richland has
4 capacity for an additional population of 27,608 in the next twenty years, which is not
5 consistent with the County's needs analysis for the UGA expansion. According to the
6 Petitioner, this discrepancy indicates a lack of coordination between the City and County in
7 violation of RCW 36.70A.100.

8 **Respondent:**

9 The Respondent argues the Board rejected this same argument in *Roberts v. Benton*
10 *County*, OFC at 19-21, Richland's plan is not under review in this matter, and that the
11 County's expansion of Richland's UGA was based on information provided by Richland.

12 **Intervenors:**

13 This again is an issue identical to an issue raised and decided in *Roberts v. Benton*
14 *County*, 05-1-0003. In addition, the City and County jointly prepared and adopted the
15 Capacity Analysis for the expansion area as part of their respective comprehensive plans.
16 County Resolution No. 06-659, City Ordinance No. 24-06.

17 **Petitioners HOM Reply:**

18 The Petitioner argues that RCW 36.70A.100 requires coordination of the County and
19 City's comprehensive plans. Benton County is asking for an expansion of the Richland UGA
20 when the Richland Comprehensive Plan states there is no need for expansion.

21 **Board Analysis:**

22 RCW 36.70A.100 provides that "The comprehensive plan of each county or city that
23 is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the
24 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with
25 which the county or city has, in part, common borders or related regional issues." The
26 provisions of the Richland Comprehensive Plan are not before the Board in this case. What
is before the Board is Benton County Resolution No. 06-659, which reduced the expanded
UGA from 3,322 acres to approximately 2,100 acres and updated the capital facilities,

1 utilities and transportation elements of the County's Comprehensive Plan by adopting an
2 approved capital facilities plan for the expanded UGA. The expanded UGA originally came
3 about because the City requested it. (Ex 3). Resolution No. 06-659 complies with RCW
4 36.70A.100 as to the City of Richland because the number of acres needed was based on
5 information provided by the City (Ex. 3), the City and County jointly prepared and adopted
6 the Capacity Analysis for the expansion area as part of their respective Comprehensive
7 Plans, and approved the revised Urban Growth Area boundary. (County Resolution No. 06-
8 659, City Ordinance No. 24-06).

8 **Conclusion:**

9 The Petitioner has failed to meet his burden of proof as to Issue No. 10.

10 **Issue No. 11:**

11 Whether Benton County Resolution 06-659 is not compliant with RCW 36.70A.100 by
12 failing to be coordinated with and consistent with the Richland Comprehensive Plan. The
13 Resolution adds hundreds of acres of commercial and industrial uses to the expanded UGA
14 when the Richland Comprehensive Plan, Table LU-3, indicates that the existing supply of
15 vacant commercial and industrial land exceeds the amount of land developed by Richland in
16 the past 50 years?

16 **The Parties' Position:**

17 **Petitioner:**

18 The Petitioner argues that 227 acres for industrial uses are not substantiated by the
19 Richland land use analysis. Richland's land use analysis in table LU-3 shows 3,749 acres of
20 vacant industrial land.

21 **Respondent:**

22 The Respondent argues that Petitioner's argument has no factual basis in the record
23 or any legal basis.

24 **Intervenors:**

25 Nor Am argues that this issue was previously decided in *Roberts v. Benton County*,
26 and that the County has discretion to determine the amount of industrial land based on

1 local circumstances.

2 **Petitioner's HOM Reply:**

3 The Petitioner argues that the size of industrial land must be supported by a needs
4 analysis.

5 **Board Analysis:**

6 The Petitioner has not demonstrated that the industrial land allowed for the UGA
7 expansion area is excessive. The County has the discretion to determine the necessary
8 industrial area within the expanded UGA based on local circumstances. The area needed
9 for industrial was calculated based on Richland's acre per capita goal for each land use
10 classification set forth in Richland's original GMA Comprehensive Plan. (Ex. 3, Attachment 3
11 to July 10, 2003, staff report). The acre per capita ratios were then plugged into the
12 uniform methodology for determining UGA acreage provided in CWPP #4. Id. The analysis
13 and calculations were fully documented in the City's application for the UGA expansion. (Ex.
14 3). The County recognized that, in terms of acreage, Richland did not need any more
15 industrial area. Ex. 3, Issue #8. However, most of the existing industrial areas are located
16 in the Hanford area north of the City, far removed and isolated from the Badger Mountain
17 UGA area. Therefore the inclusion of industrial acreage was "primarily a locational
18 consideration rather than one derived from a need for additional acreage." Ex. 3, Issue #8.
19 Such inclusion was within the County's discretion.

18 **Conclusion:**

19 The Petitioner has failed to meet his burden of proof as to Issue No. 11.

20 **Issue No. 12:**

21 Whether Benton County Resolution 06-659, Attachment B, Section IV. LAND USE
22 PROJECTIONS is not compliant with RCW 36.70A.070(3) for advocating plan-as-
23 needed/pay-as-needed in contrast to the 6-year plan required by the GMA?

24 **The Parties' Position:**

25 **Petitioners:**

26 The Petitioner argues the Capability Analysis does not comply with the six-year

1 planning horizon and favors a plan-as-you-go approach in violation of the GMA because
2 page 31 of the Capability Analysis states: "Because of the uncertainty of the location and
3 timing of future development, a review of historic projected growth should be made yearly,
4 prior to the adoption of the City's annual Capital improvement budget. Periodic review
5 should also be made as permits for development are submitted to the City for approval."

6 The Petitioner also argues that the housing projections for 2006 and 2007 will not be
7 realized, therefore the capital facilities plan is non-compliant.

8 **Respondent:**

9 The Respondent argues that RCW 36.70A.070(3) requires only a reasonable forecast,
10 and does not require the County to precisely predict the future as Petitioner argues. Thus,
11 the Petitioner's argument has no legal basis.

12 **Intervenors:**

13 Nor Am argues this issue is identical to Issue No. 4 in *Roberts*. *Roberts v. Benton*
14 *County*, 05-1-0003, OFC at 15. In both cases the Petitioners rely on a passage on page 31
15 of the Capability Analysis advising that the plan be reviewed yearly because of the
16 uncertainty of the location and timing of future development. The Board in *Roberts*
17 rejected the Petitioners argument, and should do so again.

18 **Petitioners HOM Reply:**

19 The Petitioner did not provide a reply on this issue.

20 **Board Analysis:**

21 The passage quoted on page 31 of the Capability Analysis simply reiterates the
22 Board's acknowledgement that the "six-year CFE is a living document," that should be
23 reviewed and updated regularly. *Roberts*, FDO at 15. The capital facilities plan for the
24 expanded UGA, which incorporates the Capability Analysis, does comply with the six-year
25 planning horizon required by RCW 36.70A.070(3) because it contains a forecast of capital
26 facilities needed within the six-year period and a plan that estimates the cost of such
facilities and clearly identifies potential funding sources.

1 **Conclusion:**

2 The Petitioner has failed to meet his burden of proof as to Issue No. 12.

3 **Issue No. 13:**

4 Whether Benton County Resolution 06-659 is compliant with RCW 36.70A.070(3), (4)
5 and (6) when the current owner of 1700 acres paid for the capital facility plan but is selling
6 off the property to various developers who each have to figure out where to locate roads,
7 utilities, storm drains and public facilities on their own?

8 **The Parties' Position:**

9 **Petitioner:**

10 The Petitioner argues that without a master plan for development within the
11 proposed UGA, the capital facilities, utilities and transportation elements are empty shells.
12 The plan should identify locations of roads, utilities, storm drains and public facilities.

13 **Respondent:**

14 The Respondent argues that the Board in *Roberts v. Benton County*, 05-1-0003,
15 already determined the Capital Facilities Plan at issue meets the requirements of RCW
16 36.70A.070. Contrary to the Petitioner's assertion, the Capital Facilities Plan does identify
17 necessary arterial and collector roads and major sewer and water infrastructure expected to
18 serve the area. The Petitioner makes no citation to the record to support his factual
19 assertions, and fails to cite any legal authority requiring the detailed level of planning
20 advocated by Petitioner.

21 **Intervenors:**

22 Nor Am argues that the Board in *Roberts v. Benton County*, 05-1-0003 already
23 determined that the Capital Facilities Plan at issue meets the requirements of RCW
24 36.70A.070. Nor Am also argues that it is not practical or possible to provide a master plan
25 for all infrastructure when the vast majority of the land is in private ownership under a
26 planned development.

Petitioners HOM Reply:

The Petitioner did not provide a reply on this issue.

1 **Board Analysis:**

2 It is not practical or possible for the County's Capital Facilities Plan to provide a
3 master plan for all infrastructure within the expanded UGA when the vast majority of the
4 land is in private ownership under a planned development. The Capability Analysis provides
5 an inventory of existing streets and roads in and around the UGA, including Dallas and
6 Reata roads (p. 15-16), determines what the street requirements in and around the UGA
7 will be in the six and twenty year planning horizons (p. 33-45), estimates the cost of such
8 improvements (p. 64), and determines how the expense will be paid (p. 65-68). As such, it
9 complies with the letter and purpose of RCW 36.70A.070(3). The UGA expansion area is
10 unusual because approximately 1,600 of the 2,100 acres are included in a vested planned
11 unit development. The Capital Facilities Plan does identify necessary arterial and collector
12 roads and major sewer and water infrastructure expected to serve the area. However, the
13 location of the "feeder" roads and water and sewer feeder lines within the PUD necessarily
14 depends on the final design of the development. As conditions of the County's approval of
15 the PUD, the developer is required to construct local access streets to County standards,
16 pay for or construct transportation improvements necessary to mitigate the traffic impacts
17 of the development and address any stormwater management concerns. Thus, the
18 development cannot go forward unless and until the developer provides adequate streets,
19 roads and other capital infrastructure necessary to support the development.

20 The Petitioner's citation to *Diehl v. Mason County*, 94 Wn. App. 645, 657 (1999) does
21 not support his position. In *Diehl*, the court held that Mason County's Comprehensive Plan
22 did not meet the capital facilities requirements of the GMA because the Plan provided level
23 of service analysis only for transportation, and did not provide the proposed location and
24 capacities of expanded or new capital facilities, or a six-year plan for financing such capital
25 facilities. *Id. Diehl* does not address what level of detail is necessary to satisfy these
26 requirements.

27 In the present case, unlike *Diehl*, the Capability Analysis for the expanded area
28 includes (1) an inventory of existing capital facilities, (2) level of service analysis for all

1 capital facilities, (3) a forecast of future needs, (4) the proposed location and capacities of
2 expanded or new facilities, and (5) a six-year plan that estimates the cost of such facilities
3 and clearly identifies funding sources. Ex. 825, Resolution 06-659, Attachment B.

4 **Conclusion:**

5 The Petitioner has failed to meet his burden of proof as to Issue No. 13.

6 **Issue No. 14:**

7 Whether Benton County Resolution 06-659, Attachment B, Section IV. LAND USE
8 PROJECTIONS, substantially interferes with goals 1(encourage Urban growth), 2 (Reduce
9 sprawl), 3 (Transportation), 9 (Open space and recreation), 10 (Environment), and 12
10 (Public Facilities and Services) for advocating the plan-as-needed/pay-as-needed approach
11 to developing the proposed UGA expansion for the next 6 years, including during remand?

12 **The Parties' Position:**

13 **Petitioner:**

14 The Petitioner argues the failure to show major infrastructure corridors for roads
15 substantially interferes with goal 3, failure to show open space and recreation areas
16 substantially interferes with goal 9, failure to show utility and public facilities corridors
17 substantially interferes with goal 12, failure to enforce urban densities substantially
18 interferes with goals 1 and 2, and failure to consider overall impacts on the environment by
19 establishing one stormwater management plan violates goal 10.

20 **Respondent:**

21 The Respondent argues the Petitioner raises no new arguments under Issue No. 14
22 and he fails to cite any evidence in support of the factual assertions or any legal authority
23 to support his conclusions. The Petitioner therefore failed to meet his burden of proof.

24 **Intervenors:**

25 Nor Am argues the Petitioner offers no evidence or legal authority to support this
26 issue, and thus cannot meet his burden of proof.

Petitioners HOM Reply:

The Petitioner did not provide a reply on this issue.

1 **Board Analysis:**

2 The Petitioner offers no evidence or legal authority to support this issue, and thus
3 cannot meet his burden of proof. Nevertheless, the Board in its Order on Motions in this
4 case has already determined that Resolution No. 06-659 complies with RCW 36.70A.020(1)
5 and RCW 36.70A.020(2). Order on Motions at 7. The Petitioner's assertion that the failure
6 to include master infrastructure corridors for the UGA also violates goals 3, 10, and 12 is
7 also without merit. As set forth in the analysis of Issue No. 13 above, a master
8 infrastructure plan is not required because the location of feeder roads, water and sewer
9 feeder lines, and neighborhood stormwater facilities necessarily depends on the final design
10 of the development. As to goal 9 (open space and greenbelts) planning for adequate open
11 space and greenbelts within the Badger Mountain UGA addition is provided in the
12 Annexation Interlocal Agreement. Resolution 06-659 Attachment E, Section 4. The ILA
13 provides that no area within the Badger Mountain UGA shall be annexed into the City of
14 Richland until such time as adequate greenbelts and open spaces have been provided.

14 **Conclusion:**

15 The Petitioner has failed to meet his burden of proof as to Issue No. 14.

16 **Issue No. 15:**

17 Whether Benton County Resolution 06-659, Attachment B is not compliant with the
18 requirements of RCW 36.70A.070(3), for failing to describe County scope and costs
19 associated with the expanded UGA?

19 **The Parties' Position:**

20 **Petitioner:**

21 The Petitioner argues that the Capability Analysis is non-compliant because it does
22 not contain plans for the County to implement, or acknowledge that the County has
23 responsibility to fund roads.

24 **Respondent:**

25 The Respondent argues that RCW 36.70A.070(3) does not obligate the County to
26 expend County funds to complete any needed capital facilities. The law does not require

1 the County to fund capital facilities within the UGA, because cities are the appropriate
2 providers of the necessary urban services.

3 **Intervenors:**

4 Nor Am argues the GMA does not require that the County fund capital facilities within
5 the UGA and that cities are the appropriate providers of urban services.

6 **Petitioners HOM Reply:**

7 The Petitioner did not provide a reply on this issue.

8 **Board Analysis:**

9 In support of Issue No. 15, the Petitioner argues that the Capability Analysis does
10 not commit Benton County to provide any capital facilities during the six-year planning
11 period. (Petitioner's Brief at 23). Although this may be accurate, it does not violate the
12 GMA. As a matter of policy, the County does not provide sewer, water, or utility service or
13 other urban levels of service. (Ex. 91, Capital Facilities Element). The GMA provides that
14 cities are the units of local government most appropriate to provide urban governmental
15 services. RCW 36.70A.110(4). Thus, it is appropriate that the Capacity Analysis be drafted
16 from the City of Richland's perspective. Also, contrary to the Petitioner's assertions, the
17 Capability Analysis does provide a funding analysis if development occurs without
18 annexation. See Resolution 06-659, Attachment C, attachment 1 to City of Richland letter
19 of August 7, 2006.

20 **Conclusion:**

21 The Petitioner has failed to meet his burden of proof as to Issue No. 15.

22 **Issue No. 16:**

23 Whether Benton County Resolution 06-659, Attachment B, is not compliant with the
24 requirements of RCW 36.70A.070(4), Utilities Element. For example, the plan does not
25 make it clear who will provide the water. Badger Mountain Irrigation District (BMID)
26 already provides both irrigation and drinking water to adjoining areas (and testimony by
BMID indicates they intend to serve the area) while the City of Richland has no water lines
in the region?

1 **The Parties' Position:**

2 **Petitioner:**

3 The Petitioner argues that RCW 36.70A.070(4) is violated because the CFP does not
4 establish water, electricity, telecommunications and natural gas corridors, and there is no
5 plan for who will provide water.

6 **Respondent:**

7 The Respondent argues the Petitioner fails to cite to any evidence or legal authority
8 to support his assertions, and that the CFP does outline in detail how water will be
9 provided.

10 **Intervenors:**

11 Nor Am argues the Petitioner fails to cite to any evidence or legal authority to
12 support his assertions, and that the CFP does outline in detail how water will be provided.

13 **Petitioners HOM Reply:**

14 The Petitioner did not provide a reply on this issue.

15 **Board Analysis:**

16 Contrary to the Petitioner's assertion, pages 23-26 of the Capability Analysis contain
17 a detailed analysis of the existing capacity of the BMID and City of Richland water systems
18 and their respective service areas within the expanded UGA. Pages 49-55 of the Capability
19 Analysis contain a detailed analysis of the facilities requirements for the respective systems
20 within the six and twenty-year planning periods. Ex. 825, Attachment B.

21 As the Board recognized in *Roberts*, it is not practical or possible to provide the
22 location of corridors for water, electricity, telecommunications and natural gas when the
23 vast majority of the land is undeveloped and in private ownership. The location of utility
24 corridors necessarily depends on the final design of the development. Moreover, the
25 County is not required to include locational information for capital facilities that are outside
26 its control. *See Bremerton v. Kitsap County*, CWGMHB Case No. 95-3-0039c, Finding of
Noncompliance (September 8, 1997) at 24.

1 **Conclusion:**

2 The Petitioner has failed to meet his burden of proof as to Issue No. 16.

3 **Issue No. 17:**

4 Whether Benton County Resolution 06-659, Attachment F, Section I, is not compliant
5 with the requirements of RCW 36.70A.070(6), Transportation Element, for deferring
6 discussion of roads (scope and costs) until the County's future annual update of its Six Year
7 Road Plan?

7 **The Parties' Position:**

8 **Petitioner:**

9 The Petitioner argues that the CFP suffers from lack of any description of
10 transportation elements within the UGA, but defers to a future update of the six-year plan.
11 Deferral to other future plans is the same as having no plan at all.

12 **Respondent:**

13 The Respondent argues that the Petitioner has failed to cite any evidence or legal
14 authority to support his argument. The Respondent also argues that the CFP outlines in
15 detail the major transportation projects needed over the planning period, and has not
16 postponed discussion of the necessary road projects.

16 **Intervenors:**

17 Nor Am argues that contrary to the Petitioner's assertion, the CFP does not defer
18 discussion of roads until the annual six-year plan update.

19 **Petitioners HOM Reply:**

20 The Petitioner did not provide a reply on this issue.

21 **Board Analysis:**

22 Attachment F, Section I of Resolution 06-659 contains the amendments to the
23 Comprehensive Plan that incorporate the Capability Analysis by reference. Section I merely
24 provides that the six-year transportation and road facility requirements that are identified in
25 the Capability Analysis will be added to the six-year TIP in the annual TIP update. Ex. 825.

1 Contrary to the Petitioner's assertion, the Capability Analysis does not defer planning
2 for roads. It provides an inventory of existing streets and roads in and around the UGA,
3 including Dallas and Reata roads (p. 15-16), determines what the street requirements in
4 and around the UGA will be in the six and twenty-year planning horizons (p. 33-45),
5 estimates the cost of such improvements (p. 64), and determines how the expense will be
6 paid (p. 65-68). As such, it complies with the letter and purpose of RCW 36.70A.070(6).

7 **Conclusion:**

8 The Petitioner has failed to meet his burden of proof as to Issue No. 17.

9 **Issue No. 18:**

10 Whether Benton County Resolution 06-659, Attachment B is noncompliant with the
11 requirements of RCW 36.70A.070(3) and (6) for failing to describe the scope and costs of a
12 road system within the 2100 acres of proposed UGA expansion?

13 **The Parties' Position:**

14 **Petitioner:**

15 The Petitioner argues the Capability Analysis is non-compliant because it does not
16 identify the six-year road requirements or costs thereof *within* the expanded UGA.

17 **Respondent:**

18 Contrary to the Petitioner's assertions, the CFP identifies a collector roadway
19 connecting Reata Road to Dallas Road and a widening of Dallas Road, all within the
20 expanded UGA area. Petitioner fails to cite to any evidence to support his factual
21 assertions.

22 **Intervenors:**

23 Nor Am argues the Board in *Roberts v. Benton County*, 05-1-0003, already
24 determined that the CFP was in compliance with RCW 36.70A.070(3) and (6). Nor Am
25 further argues that major roadway improvements with the UGA are identified in the CFP,
26 but the County is not required to include local feeder roads.

1 **Petitioners HOM Reply:**

2 The Petitioner did not provide a reply on this issue.

3 **Board Analysis:**

4 The Petitioner argues that the Capability Analysis is non-compliant because it does
5 not identify the six-year road requirements or costs thereof *within* the expanded UGA.
6 Petitioner's Brief at 25. The record does not support this argument. The majority of the
7 expanded UGA is currently undeveloped and the only roads of significance within the
8 expand UGA are Dallas Road on the west end and Reata Road on the south border.
9 (Resolution No. 06-659, Attachment A). The UGA expansion area is unusual because
10 approximately 1600 of the 2100 acres are included in a vested planned unit development.
11 The location of the "feeder" roads within the PUD necessarily depends on the final design of
12 the development. As conditions of approval, the developer is required to construct local
13 access streets to county standards and pay for or construct transportation improvements
14 necessary to mitigate the traffic impacts of the development, including the improvement
15 and extension of Reata Road, a left turn lane on north bound Leslie Road, a collector road
16 connecting Reata Road to Dallas Road, and improvements to the Dallas Road/I-82
17 interchange. Ex. 381, Conditions of Approval 11, 29, 30, 31. Thus, the development
18 cannot go forward unless and until the developer provides adequate streets and roads to
19 support it. The Capability Analysis identifies the collector road connecting Reata Road to
20 Dallas Road and improvements to the Dallas Road/I-82 interchange as necessary within the
21 six-year planning period. Capacity Analysis at 42-43.

22 Contrary to the Petitioner's assertions, the Board's statement in *Roberts* that "all road
23 improvements within the UGA are already required of the developer" (OFC at 23), is not
24 inconsistent with Table 28 of the Capability Analysis or with Page 33 of the Capability
25 Analysis which states that "a substantial portion of the capital facilities required for growth
26 within the expanded UGA will be provided by the developer." Table 28 shows the total cost
of streets and roads as \$4,601,000, consisting of improvements to Leslie Road and the
Leslie Road/Clearwater Avenue intersection, and Reata, Rachel, and Dallas Road shoulder

1 improvements. All of these improvements are *outside* of the UGA but necessary to serve
2 the UGA. Table 28 does not include the roads inside of the UGA which the developer is
3 required to construct. Also, although the developer may be required to construct 100% of
4 the roads within the expended UGA, the developer is not required to construct 100% of all
5 necessary capital facilities.

6 **Conclusion:**

7 The Petitioner has failed to meet his burden of proof as to Issue No. 18.

8 **Issue No. 19:**

9 Whether Benton County Resolution 06-659, Attachment B, Section III, Capital Facility
10 Inventory, Subsection B. Sewers, and Section V, Facility Requirements, Subsection B,
11 (Sewers) are noncompliant with the requirements of RCW 36.70A.070(3) for failing to
12 describe the scope and costs of sewer systems throughout the 2100 acre UGA?

13 **The Parties' Position:**

14 **Petitioner:**

15 The Petitioner argues that the CFP is noncompliant with RCW 36.70A.070(3) because
16 it does not indicate how many more units will be served by septic and because the Western
17 Board has held that failure to provide sewer service for portions of the UGA during the
18 twenty-year planning period is non-compliant.

19 **Respondent:**

20 The Respondent argues that bringing the Badger Mountain Planned Development
21 within the UGA will allow it to be served by sewer. However, the GMA does not require
22 cities to immediately provide urban services to all areas of the UGA. *Irondale* is inapposite
23 because in that case the plan did not indicate that sewer service would ever be made
24 available. Benton County's plan contemplates that the City will provide sewer service to the
25 entire area within the planning horizon, but acknowledges that some development will occur
26 while the City works to extend sewer service.

Intervenors:

Nor Am argues that allowing septic within the UGA until sewer is available does not

1 violate the GMA as long as there is sufficient planning to provide sewer throughout the UGA
2 during the planning period.

3 **Petitioners HOM Reply:**

4 The Petitioner did not provide a reply on this issue.

5 **Board Analysis:**

6 As previously argued in Issue No. 6, the Petitioner asserts that allowing septic on a
7 portion of a UGA violates the GMA. (Petitioner's Brief at 26). This is incorrect. Allowing
8 septic within the UGA until sewer is available does not violate the GMA as long as there is
9 sufficient planning to provide sewer during the planning period. The Capability Analysis on
10 page 46 assumes that twenty-five units in Wilson's addition and seventy-eight units of
11 housing in the Badger Mountain PUD on the east edge of the UGA will be on septic. The
12 Capability Analysis plans for all other development within the 2,100 acre UGA to be sewered
13 within twenty years. Capability Analysis at 21, 45-47.

14 The present case is distinguishable from *Irondale v. Jefferson County*, WWGMHB 04-
15 2-0022, FDO May 31, 2005, cited by the Petitioner. In *Irondale*, the Western Board found
16 Jefferson County non-compliant because the County would not have the ability to provide
17 sewer service throughout the entire UGA within the twenty-year planning period. FDO at
18 17-19. In contrast, the Capability Analysis adopted by Benton County and Richland gives a
19 detailed analysis of the sewer system's present capacity and the facility requirements
20 needed to serve the UGA within both the six and twenty-year planning periods. Capability
21 Analysis at 21, 45-47. The Capability Analysis also references the City of Richland 2004
22 General Sewer Plan, which includes the expanded UGA. Cost of the sewer improvements
23 necessary within the six -year period are estimated and funding sources are identified.
24 Capability Analysis at 64, 67. As such, the County has complied with the capital facilities
25 planning requirements for sewer under RCW 36.70A.070(3).

26 **Conclusion:**

The Petitioner has failed to meet his burden of proof as to Issue No. 19.

1 **Issue No. 20:**

2 Whether Benton County Resolution 06-659, Attachment B, Section VI. Funding
3 Sources, Table 28 for Sewers is noncompliant with the requirements of RCW 36.70A.070(3)
4 for providing only the cost of the west trunk line but failing to provide the cost of the east
5 trunk line and associated major connecting systems?

6 **The Parties' Position:**

7 **Petitioner:**

8 The Petitioner argues that the CFP is non-compliant because the sewer facility cost
9 figure does not include the major laterals the feed the lower transfer station.

10 **Respondent:**

11 The Respondent argues the Petitioner makes factual assertions regarding the need
12 for gravity fed laterals with no citation to the record to substantiate his assertions. Second,
13 the Petitioner cites no legal authority to support his position. Third, the precise argument
14 was made and rejected in *Roberts v. Benton County*, EWGMHB Case No. 05-1-0003. The
15 Petitioner fails to acknowledge that the cost of sewer improvements necessary within six
16 years are included.

17 **Intervenors:**

18 Nor Am argues that the Petitioner makes factual assertions regarding the need for
19 gravity fed laterals with no citation to the record to substantiate his assertions, and he cites
20 no legal authority to support his position. The Board in the *Roberts* case reviewed the
21 sewer plan provisions of the Capability Analysis and concluded that they complied with the
22 capital facilities planning requirements for sewer under RCW 36.70A.070(3). *Roberts*, OFC
23 at 26. Cost and funding analysis is only required for capital facilities that are needed within
24 the six-year period. WAC 365-195-315(1)(d).

25 **Petitioners HOM Reply:**

26 The Petitioner did not provide a reply on this issue.

1 **Board Analysis:**

2 The Petitioner makes factual assertions regarding the need for gravity fed laterals
3 with no citation to the record to substantiate his assertions, and he cites no legal authority
4 to support his position.

5 The Board in the *Roberts* case reviewed the sewer plan provisions of the Capability
6 Analysis and concluded that they complied with the capital facilities planning requirements
7 for sewer under RCW 36.70A.070(3). *Roberts*, OFC at 26.

8 Cost and funding analysis is only required for capital facilities that are needed within
9 the six-year period. WAC 365-195-315(1)(d). During the six-year period, development in
10 the Badger West drainage basin is projected to only be forty units along Dallas Road.
11 Capability Analysis at 31. The force main serving the forty units will be located in Dallas
12 Road. Capability Analysis at 46, Figure 6. No other trunk lines will be required within the
13 expanded UGA within the six-year planning period, so costs and funding sources for
14 additional lines are not required.

14 **Conclusion:**

15 The Petitioner has failed to meet his burden of proof as to Issue No. 20.

16 **Issue No. 21:**

17 Whether Benton County Resolution 06-659, Attachment B, Section V, Facility
18 Requirements, Subsection B. Sewers are noncompliant with the requirements of RCW
19 36.70A.070(3) for failing to describe how the septic systems which that will be allowed in
20 the early phases of the UGA expansion will be incorporated into the Richland sewer system?

21 **The Parties' Position:**

22 **Petitioner:**

23 The Petitioner argues that the CFP needs to address the plan where new septic
24 systems are replaced by urban level sewer service. According to the Petitioner, failure to
25 plan for septic conversions should be ruled non-compliant with RCW 36.70A.070(3).

26 **Respondent:**

The Respondent argues that the developer is required to pay the City \$2,000 per lot

1 for extending sewer service, and that the GMA only requires planning so the sewer will be
2 reasonably available to meet the projected six-year growth. There is no requirement that
3 the GMA requires that Richland immediately convert residences served by septic to
4 municipal sewer.

5 **Intervenors:**

6 Nor Am argues that septic systems will be allowed in the first six years because the
7 developments are already vested and sewer service is not yet available. Contrary to the
8 Petitioner's assertion, the Capability Analysis plans for sewer service within the entire
9 Badger East Basin within the twenty-year planning period. Capability Analysis at 21, 45-47;
10 *see also* City of Richland 2004 General Sewer Plan. Thus, sewer will be available to serve
11 the properties on septic within the twenty-year planning period. Richland Municipal Code
12 Section 17.12.030 provides for the mandatory conversion from septic when the septic
13 system is defective and sewer becomes available within 300 feet.

14 **Petitioners HOM Reply:**

15 The Petitioner did not provide a reply on this issue.

16 **Board Analysis:**

17 Septic systems will be allowed in the first six years because the twenty-five units in
18 Wilson's addition and seventy-eight units of housing in the Badger Mountain PUD on the
19 east edge of the UGA are already vested and sewer service is not yet available. The
20 Petitioner makes the bare assertion, without any citation to legal authority, that the
21 Capability Analysis needs to plan for replacing these septic systems with sewer, and that
22 such failure violates RCW 36.70A.070(3). Petitioner's Brief at 28-29. However, contrary to
23 the Petitioner's assertion, the Capability Analysis plans for sewer service within the entire
24 Badger East Basin within the twenty-year planning period. Capability Analysis at 21, 45-47;
25 *see also* City of Richland 2004 General Sewer Plan. Thus, sewer will be available to serve
26 the properties on septic within the twenty-year planning period. Richland Municipal Code

1 Section 17.12.030 provides for the mandatory conversion from septic when the septic
2 system is defective and sewer becomes available within 300 feet.

3 **Conclusion:**

4 The Petitioner has failed to meet his burden of proof as to Issue No. 21.

5 **Issue No. 22:**

6 Whether Benton County Resolution 06-659, Attachment B, Section V, Facility
7 Requirements, Subsection C. Surface and Storm Water Management is noncompliant with
8 the requirements of RCW 36.70A.070(3) for failing to describe how storm water will be
9 managed. The capital facilities plan leaves it up to each developer to figure out storm water
10 drainage on their own?

11 **The Parties' Position:**

12 **Petitioner:**

13 The Petitioner asserts that potential drainage hazards must be factored into the
14 overall design of the UGA. By breaking the responsibility for stormwater planning down to
15 the individual developer, Benton County avoids dealing with the problem in the CFP. This
16 failure should be ruled as non-compliant with RCW 36.70A.070(3).

17 **Respondent:**

18 The Respondent argues that the Petitioner makes numerous factual assertions with
19 no basis on the record and cites no legal authority to support his conclusions. Most of the
20 area within the expanded UGA is within an approved planned development. Under
21 conditions of approval of the development, a coordinated storm water management plan is
22 required. Ex. 381, p. 23. There is no GMA provision that requires one storm water
23 management plan or facility for an entire UGA area.

24 **Intervenors:**

25 Nor Am argues that there is sufficient storm water management planning within the
26 UGA to comply with the GMA. The Capability Analysis addresses surface and storm water
management on page 48. The Capability Analysis assumes that the Department of Ecology
Eastern Washington Storm Water Manual will be in place for the twenty-year planning

1 period because both the City and County are expected to adopt it very soon. Capability
2 Analysis at 48. Under City policy, all capital facility improvements for storm water
3 management are paid for and maintained by owners of the development for which they
4 serve. *Id.* Most of the expanded UGA is in the Badger Mountain PUD, which is required to
5 implement a coordinated storm management system as a condition of approval. Ex. 381,
6 Condition No. 7. After annexation, funding for any storm water facilities not paid for by the
7 developers may be provided through Richland's storm water management utility, RMC Title
8 16.

8 **Petitioners HOM Reply:**

9 The Petitioner did not provide a reply on this issue.

10 **Board Analysis:**

11 Contrary to the Petitioner's assertions in Issue No. 22, there is sufficient storm water
12 management planning within the UGA to comply with the GMA. The Capability Analysis
13 addresses surface and storm water management on page 48. Most of the expanded UGA is
14 in the Badger Mountain PUD, which is required to implement a coordinated storm
15 management system as a condition of approval. Condition of Approval No. 7 provides:

16 That a permanent drainage control system be installed to control runoff and
17 reduce the long term potential for erosion and sediment transport from the
18 site. The system shall be designed to meet at least the minimum
19 requirements for the Benton County Hydrology Manual. The system shall
20 include features such as detention ponds, biofiltration swales, and oil/water
21 separators. The drainage control system and site plan layout shall be
22 designed to avoid localized ponding or other potential surface drainage
23 impacts. Assuming that the draws are to be used for overflow, they must be
24 inspected and a determination made by the developer's engineer as to the
25 adequacy of the existing crossing to handle the proposed overflow. If existing
26 culverts are determined to be undersized, the developer will be required to
replace the pipes with properly sized culverts.

23 Ex. 381, Condition No. 7. After annexation, funding for any storm water facilities not paid
24 for by the developers may be provided through Richland's storm water management utility,
25 RMC Title 16.

1 **Conclusion:**

2 The Petitioner has failed to meet his burden of proof as to Issue No. 22.

3 **Issue No. 23:**

4 Whether the excise tax on sales in Table 28 of Resolution 06-659, Attachment B is
5 noncompliant with RCW 36.70A.070(3)(d) for failing to clearly identify a source of public
6 money for the UGA expansion when excise taxes are not earmarked for infrastructure within
7 the UGA expansion?

8 **The Parties' Position:**

9 **Petitioner:**

10 The Petitioner argues that the inclusion of excise taxes violates RCW
11 36.70A.070(3)(d) because such revenue cannot be earmarked for the UGA expansion.

12 **Respondent:**

13 The Respondent argues the same argument in Issue No. 23 was rejected in *Roberts*
14 *v. Benton County*, 05-1-0003. RCW 36.70A.070(3) simply requires identification of sources
15 of public funds. It is irrelevant from the legal perspective of compliance with the GMA
16 whether such funds are deposited in the general fund or dedicated to a specific capital
17 project.

18 **Intervenors:**

19 Nor Am argues that this issue was previously decided in *Roberts v. Benton County*.
20 Also, as stated in Attachment C, sales and excise tax revenues account for only 2.4% of the
21 total revenues necessary. Resolution No. 06-659, Attachment C, Attachment 2 to August 7,
22 2006, letter. Revenue forecasting by nature is imprecise. Any errors in calculation of sales
23 and excise tax revenues in the Capability Analysis are de minimus and do not warrant a
24 finding of noncompliance.

25 **Petitioners HOM Reply:**

26 The Petitioner did not provide a reply on this issue.

1 **Board Analysis:**

2 RCW 36.70A.070(3) requires that sources of public funds with a reasonable
3 assurance of availability within the six-year period be clearly identified. WAC 364-195-315.
4 Table 28, as amended and explained by the City in Attachment C, does this by showing that
5 there will be revenue available, generated by sales taxes and real estate excise taxes, as a
6 result of development within the expanded UGA. (County Resolution No. 06-659,
7 Attachment C). It does not matter that such revenue may go into the general fund,
8 because the City can take into consideration the source of the funds when budgeting
9 expenditures from the general fund for capital facilities. The purpose of RCW
10 36.70A.070(3)(d) is to make sure that there are sufficient sources of funding available to
11 the City or County. Using this planning information, the City and County have the discretion
12 to determine which funding sources to use and how much of each source to use.

12 **Conclusion:**

13 The Petitioner has failed to meet his burden of proof as to Issue No. 23.

14 **Issue No. 24:**

15 Whether the inclusion of sales tax on construction materials in Table 28 of Resolution
16 06-659, Attachment B is noncompliant with RCW 36.70A.070(3)(d) for failing to identify
17 public money for the UGA expansion when there is no certainty that contractors will
18 purchase materials of construction in Richland, especially when Kennewick and Pasco have
19 dozens of construction supply businesses when Richland has a only a few; AND when sales
20 tax money flows from the state into Richland's general fund where there are no earmarks
21 for infrastructure within this UGA expansion?

21 **The Parties' Position:**

22 **Petitioners:**

23 The Petitioner argues the Capability Analysis included as Attachment B to Resolution
24 06-659 fails to explain how sales tax on materials not purchased in Richland will flow into
25 Richland coffers, or how monies that flow from the state (i.e. sale tax) into the Richland
26 general fund will be earmarked for this particular UGA expansion project, and that such

1 omissions are not compliant with RCW 36.70A.070(3)(d).

2 **Respondent:**

3 The Respondent argues even if the sales tax revenue projections were not accurate,
4 the amount is immaterial because it only amounts to 1.3% of the expected total cost. Also,
5 the amendments to the Plan reflect that the expected costs can be met without sales tax
6 revenue. Finally, the Petitioner fails to acknowledge that the projected sales tax revenue
7 of \$125,000 is only 50% of the additional sales tax revenue expected from construction
8 within the area.

8 **Intervenors:**

9 Nor Am argues the Board in the *Roberts* case reviewed Resolution 06-659 for
10 compliance with RCW 36.70A.070(3) and concluded that it was in compliance. *Roberts*, OFC
11 at 31. Regardless of the Board's conclusion in *Roberts*, Issue No. 24 should be dismissed
12 for several reasons. First, the Petitioner asserts facts regarding construction supply
13 businesses that are not in the record and should not be considered. Second, the
14 Petitioner's assertion regarding sales tax flowing into the general fund lacks merit as
15 addressed in Nor Am's response to Issue No. 23. Finally, the Petitioner misconstrues the
16 sales tax on construction provided in Table 28 of the Capability Analysis. The sales tax on
17 construction refers to the sales tax contractors are required to collect from consumers on
18 the contract price of the construction. WAC 458-20-170. Such tax is paid in the jurisdiction
19 where the work is preformed. Supplies that a contractor purchases, such as lumber, for
20 incorporation into the construction, are not subject to sales tax. WAC 458-20-170 (4)(c).

20 **Petitioners HOM Reply:**

21 The Petitioner did not provide a reply on this issue.

22 **Board Analysis:**

23 The Petitioner misconstrues the sales tax on construction provided in Table 28 of the
24 Capability Analysis. The sales tax on construction refers to the sales tax contractors are
25 required to collect from consumers on the contract price of the construction. WAC 458-20-
26 170. Such tax is paid in the jurisdiction where the work is preformed. Supplies that a

1 contractor purchases, such as lumber, for incorporation into the construction, are not
2 subject to sales tax. WAC 458-20-170 (4)(c).

3 As explained in the Board's analysis of Issue No. 23, RCW 36.70A.070(3)(d) does not
4 prohibit inclusion of sales tax or other components of the general fund from being included
5 as potential revenue sources even though such revenues cannot be specifically "earmarked"
6 for particular uses in advance. Further, any error regarding the projected sales tax revenue
7 is immaterial with respect to the financing of the identified projects.

8 **Conclusion:**

9 The Petitioner has failed to meet his burden of proof as to Issue No. 24.

10 **Issue No. 25:**

11 Whether the correction of Table 28 (added a new claim that utility taxes will provide
12 income) which occurs in Resolution 06-659, Attachment C, August 7, 2007, Letter (to
13 Benton County Planning Commission from City of Richland) Attachment 2, is noncompliant
14 with RCW 36.70A.070(3)(d) for failing to clearly identify a source of public money for the
15 UGA expansion when (1) utility taxes are assumed on sewer service when the first 77
16 houses have septic systems and pay no sewer service, (2) when the first 77 houses will
17 receive water from the BMID and pay no utility tax, and (3) when the area will not be
18 served by the Richland Electrical Dept (i.e. no utility tax to Richland)?

19 **The Parties' Position:**

20 **Petitioner:**

21 The Petitioner argues that it is an error to project utility tax revenue for the City of
22 Richland, when the existing houses in the Wilson Addition and the first 103 houses in the
23 expanded UGA will pay no utility tax to Richland.

24 **Respondent:**

25 The Respondent agrees the Petitioner has failed to meet his burden of proof because
26 he cites no evidence in the record to support his assertions. Moreover, the Board rejected
the same argument in *Roberts*. *Roberts*, OFC at 27-29.

1 **Intervenor:**

2 Nor Am argues the Board in the *Roberts* case reviewed Resolution 06-659 for
3 compliance with RCW 36.70A.070(3) and concluded that it was in compliance. *Roberts*, OFC
4 at 31. Nevertheless, the Petitioner fails to consider that although the first seventy-seven
5 houses in the East Badger Basin may be on septic, the houses in the West Badger Basin will
6 all be sewerred. The Capability Analysis projected forty residential units and three acres of
7 commercial development within the six-year period. Capability Analysis at 31-32. Also,
8 although BMID is projected to provide water service to a portion of the UGA area, a
9 majority of the UGA will be served by City of Richland. Capability Analysis Figure 4.
10 Regarding electricity service, under agreement with BPUD, the City of Richland will provide
11 electricity service within the UGA upon annexation. Capability Analysis at 26. All of these
12 services will be subject to City connection fees, capital facilities charges, etc. Also, the
13 Petitioner fails to consider that the City of Richland imposes an occupation tax on all utilities
14 operating within the City. RMC 5.20. Thus upon annexation of the expanded UGA area, the
City shall have increased utility tax revenue generated from other utility providers.

15 **Petitioners HOM Reply:**

16 The Petitioner did not provide a reply on this issue.

17 **Board Analysis:**

18 In Issue No. 25, the Petitioner fails to consider that the houses in the West Badger
19 Basin will be sewerred and will thus be a source of sewer utility connection fees and capital
20 facilities charges. Also, although BMID is projected to provide water service to a portion of
21 the UGA area, a majority of the UGA will be served by City of Richland. Capability Analysis
22 Figure 4. Regarding electricity service, under agreement with BPUD, the City of Richland
23 will provide electricity service within the UGA upon annexation. Capability Analysis at 26.
All of these services will be subject to City connection fees, capital facilities charges, etc.

24 The Petitioner has failed to meet his burden of providing citation to the record to
25 prove that the utility tax revenue projections are clearly erroneous in view of the entire
26 record before the Board.

1 **Conclusion:**

2 The Petitioner has failed to meet his burden of proof as to Issue No. 25.

3 **Issue No. 26:**

4 Whether the inclusion of Developer Contributions of \$4,326,912 in Table 28 of
5 Resolution 06-659, Attachment B is noncompliant with RCW 36.70A.070(3)(d) for failing to
6 obtain any evidence (agreements or contracts) in the record that the existing owner, or
7 future multiple developers agree to, or have the ability to provide such funding, leaving the
8 City of Richland and/or Benton County exposed to provide those funds?

8 **The Parties' Position:**

9 **Petitioner:**

10 The Petitioner argues that the inclusion of Developer Contributions of \$4,326,912 in
11 Table 28 of Resolution 06-659, Attachment B is non-compliant with RCW 36.70A.070(3)(d)
12 because there is no explanation as to where that number came from, and no evidence that
13 the developers have the ability to provide such funding.

14 **Respondent:**

15 The Respondent argues that there is no GMA requirement that the capital facilities
16 plan include documentation or commitment from developers for private funding for capital
17 projects. See Roberts, OFC at 29. "Private funding is a reasonable alternative when a
18 public entity does not have the funds to provide all the capital improvements necessary for
19 development." *Cedardale v. Mount Vernon*, FDO at 5. If the developer cannot or will not
20 pay for the needed costs, development will simply not occur.

21 The Petitioner cites no legal authority for the proposition that a binding commitment
22 for private funding is required.

22 **Intervenor:**

23 Nor Am argues that this issue was decided in *Roberts* and that there is no GMA
24 requirement that the capital facilities plan include documentation or commitment from
25 developers for developer contributions.

1 **Petitioners HOM Reply:**

2 The Petitioner did not provide a reply on this issue.

3 **Board Analysis:**

4 This legal issue is similar to Legal Issue No. 13 in *Roberts*. *Roberts*, OFC at 27. In
5 the *Roberts* case, the Board reviewed Resolution 06-659 for compliance with RCW
6 36.70A.070(3), including the projected developer contribution of \$4,326,912, and concluded
7 that it was in compliance with RC 36.70A.070(3). *Roberts*, OFC at 27, 31.

8 The Petitioner, like the petitioners in *Roberts*, argues that it was error to allocate
9 \$4,326,912 to developer contributions because there is no evidence of how the figure was
10 calculated or that the developers have the ability or willingness to pay that amount.

(Petitioner's Brief at 32-33). As the Board stated in *Roberts*:

11 Contrary to the Petitioners' assertion, there is no GMA requirement that the
12 capital facilities plan include documentation or commitment from developers
13 for developer contributions. "Private funding is a reasonable alternative when
14 a public entity does not have the funds to provide all the capital improvements
15 necessary for development." *Cedardale v. City of Mount Vernon*, WWGMHB
16 No. 02-200010 FDO at 5 (March 28, 2003). If the developers are unwilling or
17 unable to pay their portion, through SEPA mitigation, impact fees, utility fees,
18 etc. within the six-year planning period, the City will not have to "pony up
19 more" as the Petitioners argue. Rather, the projected development simply will
20 not occur.

21 *Roberts*, OFC at 29.

22 **Conclusion:**

23 The Petitioner has failed to meet his burden of proof as to Issue No. 26.

24 **Issue No. 27:**

25 Whether the inclusion of Utility Fees and Charges of \$3,787,219 in Table 28 of
26 Resolution 06-659, Attachment B is noncompliant with RCW 36.70A.070(3)(d) for failing to
clearly identify a source of public money for the UGA expansion when (1) there is no
explanation in the capital facilities plan where this money is collected, (2) when monthly
utility fees are strictly earmarked for operation and maintenance, not capital expenditure

1 and (3) when hook-up fees in south Richland are typically \$6,000 per house (\$6,000 x 143
2 houses in 6 years = \$858,000) leaving Richland about \$3,000,000 short of the stated
3 funds?

4 **The Parties' Position:**

5 **Petitioner:**

6 The Petitioner argues that there is no explanation of how \$3,787,219 in utility
7 charges is collected, and questions the validity of the number considering the number of
8 houses to be built on sewer the first six years.

9 **Respondent:**

10 The Respondent argues that the Petitioner's calculations and arguments are not
11 based on citation to the record nor any legal authority.

12 **Intervenors:**

13 Nor Am argues that the Petitioners failed to consider RMC 17.56.040 which charges a
14 sewer facilities assessment at time of connection for "sewer treatment, lift station,
15 interceptor facilities and frontage charges," and RMC 18.24.110, which charges a water
16 facilities assessment at time of connection for "water treatment, storage, source of supply
17 and frontage facilities." In addition, RMC 17.70.020 provides that "Sewerage system
18 extensions, including but not limited to mains, laterals, sewer lift stations and side sewers
19 shall be made at the expense of the benefiting property owner(s) to be served by the
20 extension." Likewise, RMC 18.34.020 provides that "water system extensions, including
21 but not limited to mains, hydrants, service lines, meter settings, meter boxes, pumps and
22 reservoirs shall be made at the expense of the benefiting property owner(s) to be served by
23 the extension." Considering the above referenced provisions, the estimate for utility fees
24 and charges in Table 28 of the Capability Analysis is not clearly erroneous.

25 **Petitioners HOM Reply:**

26 The Petitioner did not provide a reply on this issue.

1 **Board Analysis:**

2 The Petitioner has not shown that the forecast of utilities fees and charges in Table
3 28 is clearly erroneous. The figure consisted of an estimate of sewer and water capital
4 facilities fees and assessments, which the City of Richland is authorized to charge at the
5 time of connection, as well as revenue the could potentially be generated from a local
6 improvement district, both common funding mechanisms.

7 **Conclusion:**

8 The Petitioner has failed to meet his burden of proof as to Issue No. 27.

9 **Issue No. 28:**

10 Whether Resolution 06-659, Attachment B, is noncompliant with RCW
11 36.70A.070(3)(d) for failing to describe bonding mechanisms discussed by city staff in e-
12 mails to provide up-front monies to pay for the capital facilities, i.e. the actual mechanism
13 for providing upfront funding will be the issuance of bonds to be paid for by all County or
14 Richland residents?

15 **The Parties' Position:**

16 **Petitioner:**

17 The Petitioner failed to brief Issue No. 28. Therefore, Issue No. 28 is deemed
18 abandoned.

19 **Conclusion:**

20 The Petitioner has failed to meet his burden of proof as to Issue No. 28.

21 **Issue No. 29:**

22 Whether Resolution 06-659, Attachment B, is noncompliant with RCW 36.70A.070(3)
23 for failing to consistently distinguish the agency responsible for implementing the capital
24 facility plan. Page 5 states the capability analysis is a CFP to be incorporated into both city
25 and county comp plans, but Attachment F says it is an interim CFP for Richland only?

26 **The Parties' Position:**

Petitioner:

The Petitioner argues that Nor Am created the Capability Analysis and that the City

1 and County agreed with this approach without fully understanding how the analysis fit into
2 their comprehensive plans.

3 **Respondent:**

4 The Respondent argues the Petitioner's argument consists solely of two factual
5 assertions that are not supported in the record and/or are untrue. The Petitioner therefore
6 has not met his burden of proof.

7 **Intervenor:**

8 Nor Am argues the Petitioner effectively failed to brief this issue as his argument
9 consists only of the bare allegation that Nor Am created the Capability Analysis and the City
10 and County agreed with this approach without understanding how the analysis fit into their
11 comp plan. Petitioner's Brief at 36. The Petitioner fails to explain how this violates the
12 GMA. Thus Issue No. 29 should be considered abandoned pursuant to WAC 242-02-570.

13 **Petitioners HOM Reply:**

14 The Petitioner did not provide a reply on this issue.

15 **Board Analysis:**

16 The Petitioner offered no legal argument or citation to the record to support Issue
17 No. 29, and has thus failed to meet his burden of proof.

18 **Conclusion:**

19 The Petitioner has failed to meet his burden of proof as to Issue No. 29.

20 **Issue No. 30:**

21 Whether Resolution 06-659, Attachment C, August 7, 2006 Letter from City of
22 Richland to Benton County Planning Commission is noncompliant with RCW 36.70A.035,
23 RCW 36.70A.130, and RCW 36.70A.140 for making significant funding changes to Table 28
24 AFTER public review was over and AFTER the capital facility plan had been approved by the
25 Richland City Council. One of the changes was to move \$2,500,000 of obligation from this
26 project (where it would be shared by the developers) to the residents of Richland?

1 **The Parties' Position:**

2 **Petitioner:**

3 The Petitioner argues the amendments to the Capability Analysis set forth in
4 Attachment C to Resolution 06-659 violated the public participation requirements of the
5 GMA because they were adopted after Richland had approved the Capability Analysis.

6 **Respondent:**

7 The Respondent argues the Petitioner claims that the public participation process by
8 the City of Richland was noncompliant, but that process is not before the Board and is
9 irrelevant for the purposes of this appeal. The County's public participation process was not
10 objectionable and the Petitioner and the public had ample opportunity to comment on the
11 exact plan that was ultimately adopted. The Petitioner did comment on Attachment C as
12 evidence of the opportunity for input.

13 **Intervenors:**

14 Nor Am argues the public participation process by the City of Richland is not before
15 the Board and is irrelevant for the purposes of this appeal. The County's public participation
16 process was complaint with the public participation requirements of the GMA.

17 **Petitioners HOM Reply:**

18 The Petitioner did not provide a reply on this issue.

19 **Board Analysis:**

20 The Petitioner argues that the public participation requirements of the GMA were
21 violated because Benton County accepted corrections and amendments to the Capability
22 Analysis as referenced in the August 7, 2006, letter from City of Richland (Attachment C to
23 Ordinance 24-06), after the *City of Richland* had adopted the Capability Analysis in
24 Ordinance 24-06. City of Richland Ordinance 24-06 is not before the board in this appeal.
25 The Benton County Planning Commission held public hearings in August and September
26 2006, in which Attachment C was considered and ultimately recommended for inclusion in
the Capability Analysis by the Planning Commission. Ex. 764 at 6; Ex. 765; Resolution 06-
659 at 4. The Benton County Board of County Commissioners had a public hearing on the

1 Capability Analysis, including Attachment C, over five sequential dates ending October 23,
2 2006, and public testimony was taken at three of those dates. Ex. 825. As such, the
3 County's inclusion of Attachment C in Resolution is in compliance with the public notice and
4 participation requirements of RCW 36.70A.035, RCW 36.70A.130, and RCW 36.70A.140.

5 **Conclusion:**

6 The Petitioner has failed to meet his burden of proof as to Issue No. 30.

7 **Issue No. 31:**

8 Whether Resolution 06-659, Attachment F, is noncompliant with RCW 36.70A.035,
9 RCW 36.70A.130, and RCW 36.70A.140 for constituting a change to the Benton County
10 Comprehensive Plan without public review, i.e. Attachment F was apparently not part of
11 the handouts during the public review meetings held by Benton County. It was discovered
12 behind Attachment E for the first time when Resolution 06-659 was distributed to the public
after the December 4, 2006 approval by County Commissioners?

13 **The Parties' Position:**

14 **Petitioner:**

15 The Petitioner argues that Attachment F to Resolution 06-659 was distributed after
16 the December 4, 2006, approval by the County Commissioners, and that the public was not
17 given the opportunity to review these amendments prior to their adoption.

18 **Respondent:**

19 The Respondent argues the textual amendments reflected in Attachment F simply
20 embody the approval of the Capital Facilities Plan on which the hearings were held.
21 Attachment F is not a separate, substantive document on which a separate notice or
22 hearing is required to be held. See Ex. 822 at 2. The Respondent's conduct is consistent
with RCW 36.70A.035(2)(b)(ii).

23 **Intervenors:**

24 Nor Am argues that Attachment F merely adds references to the Capability Analysis
25 to the Transportation, Utilities, and Capital Facilities elements of the Benton County
26 Comprehensive Plan. It does not change or modify the Capability Analysis in any way.

1 Adding cross-references after public review and comment has passed is specifically
2 authorized by RCW 36.70A.035(2)(b)(iii).

3 **Petitioners HOM Reply:**

4 The Petitioner did not provide a reply on this issue.

5 **Board Analysis:**

6 Attachment F merely adds references to the Capability Analysis to the various
7 elements of the Benton County Comprehensive Plan. It is not a separate, substantive
8 document on which a separate notice or hearing is required to be held.

8 **Conclusion:**

9 The Petitioner has failed to meet his burden of proof as to Issue No. 31.

10 **Issue No. 32:**

11 Whether Benton County is non-compliant with RCW 36.70A.035, RCW 36.70A.130
12 and RCW 36.70A.140 for failing to notify the 15 citizens who live in the Wilson addition that
13 their property might be placed inside the Richland UGA. Note that all 15 homeowners have
14 signed a petition stating their objection to being inside the Richland UGA. There was no
15 early and continuous participation afforded these citizens living in the County who received
16 no notification that they would be affected by the County's actions?

17 **The Parties' Position:**

17 **Petitioner:**

18 The Petitioner failed to brief Issue No. 32. Therefore, Issue No. 32 is deemed
19 abandoned.

20 **Conclusion:**

21 The Petitioner has failed to meet his burden of proof as to Issue No. 32.

22 **Issue No. 33:**

23 Whether Benton County is non-compliant with RCW 36.70A.035, RCW 36.70A.130
24 and RCW 36.70A.140 for failing to notify the public and to identify in Resolution 06-659,
25 Attachment B, Section VII, Capital Facility Funding, that (1) the funding mechanisms such
26 as LIDs or bonds will be used to pay for the upfront infrastructure for this development, (2)

1 all residents within Richland and/or Benton County will pay for these bonds, and (3) there is
2 a risk to residents providing upfront funding if the developer(s) decide not to proceed or
3 declare bankruptcy, i.e. the residents will have the burden to pay the bonds?

4 **The Parties' Position:**

5 **Petitioner:**

6 The Petitioner argues that the funding section of the Capability Analysis is non-
7 compliant with the public participation requirements of the GMA because LIDs or bonds will
8 be used and the public was not notified of the risks involved in such funding.

8 **Respondent:**

9 The Respondent argues there is no GMA requirement that the financial risks of public
10 funding be explained. Disclosure of the economic risks of issuing bonds would be made if
11 and when the City decides to issue bonds.

12 **Intervenor:**

13 Nor Am argues the issuance of bonds was identified as a revenue source, with
14 interest included as an expense. There is no GMA requirement for a CFP to explain the
15 financial risks of bond or LID financing. If the County or City does decide to form an LID to
16 fund infrastructure, then they would have to go through an extensive public process in
17 which the risks and benefits of LID formation may be discussed and debated. *See* RCW
18 35.43; RCW 36.88.

18 **Petitioners HOM Reply:**

19 The Petitioner did not provide a reply on this issue.

20 **Board Analysis:**

21 The Petitioner makes no citation to the record or legal authority to support his
22 position. There is no provision in RCW 36.70A.035, RCW 36.70A.130 or RCW 36.70A.140
23 that requires that the risks of public funding be explained in a CFP. Such disclosure would
24 occur when and if bonds are issue or an LID is formed.

25 **Conclusion:**

26 The Petitioner has failed to meet his burden of proof as to Issue No. 33.

V. FINDINGS OF FACT

1. Benton County is a county located East of the crest of the Cascade Mountains and opted to plan under the GMA and is therefore required to plan pursuant to RCW 36.70A.040.
2. On January 31, 2005, the Benton County Board of Commissioner's adopted Resolution No. 05-057, increasing City of Richland's Urban Growth Area ("UGA") by adding 3322 acres southwest of the existing UGA boundaries.
3. In its September 20, 2005 Final Decision and Order ("FDO"), the Board found Resolution No. 05-057 out of compliance because the expanded UGA was not sized appropriately according to the applicable OFM population projection and County Wide Planning Policy ("CWPP") #4, and because the County failed to adequately plan for capital facilities, utilities and transportation in the expanded UGA area.
4. In response to the Board's FDO, the County adopted Resolution No. 06-659, which reduced the expanded UGA from 3322 acres to approximately 2100 acres, and updated the capital facilities, utilities and transportation elements of the comprehensive plan by adopting an approved capital facilities plan for the expanded UGA.
5. According to the OFM high projection and the formula set forth in CWPP #4, the City of Richland's UGA should be expanded by up to 2116 acres to meet its projected growth through the year 2025.
6. Benton County's Capability Analysis for the expanded UGA complies with RCW 36.70A.070(3).
7. Benton County's Capital Facilities Plan for the expanded UGA is sufficiently detailed to comply with RCW 36.70A.070(3).
8. Benton County is in compliance with RCW 36.70A.070(3)(d) by sufficiently identifying sources of funding for public improvements.
9. Resolution No. 06-659 satisfied the public participation requirements of the GMA and is in compliance with RCW 36.70A.035, RCW 36.70A.130, and RCW 36.70A.140.

1 **VI. CONCLUSIONS OF LAW**

- 2 1. This Board has jurisdiction over the parties to this action.
- 3 2. This Board has jurisdiction over the subject matter of this action.
- 4 3. Resolution No. 06-659 expands Richland's UGA by approximately 2,110
- 5 acres, and complies with RCW 36.70A.020(1), RCW 36.70A.020(2),
- 6 RCW 36.70A.020 (9), RCW 36.70A.020(10), RCW 36.70A.020(12), RCW
- 7 36.70A.100, RCW 36.70A.110(2) and (3), and RCW 36.70A.120.
- 8 4. Resolution No. 06-659 includes an adequate capital facilities plan and
- 9 plans for utilities and transportation facilities in the expanded UGA area
- 10 in compliance with RCW 36.70A.070(3), RCW 36.70A.070(4), and RCW
- 11 36.70A.070(6).
- 12 5. Resolution No. 06-659 satisfied the public participation requirements of
- 13 the GMA and is in compliance with RCW 36.70A.035, RCW 36.70A.130,
- 14 and RCW 36.70A.140.

15 **VII. ORDER**

- 16 1. The Petitioner has failed to meet his burden of proof as to all thirty-
- 17 three legal issues raised.
- 18 2. Resolution No. 06-659 is in compliance with the GMA.

19 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

20 **Reconsideration:**

21 **Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this**

22 **Order to file a petition for reconsideration. Petitions for reconsideration shall**

23 **follow the format set out in WAC 242-02-832. The original and four (4) copies of**

24 **the petition for reconsideration, together with any argument in support thereof,**

25 **should be filed by mailing, faxing or delivering the document directly to the**

26 **Board, with a copy to all other parties of record and their representatives. Filing**

means actual receipt of the document at the Board office. RCW 34.05.010(6),

1 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite
2 for filing a petition for judicial review.

3 Judicial Review:

4 Any party aggrieved by a final decision of the Board may appeal the decision to
5 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial
6 review may be instituted by filing a petition in superior court according to the
7 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

7 Enforcement:

8 The petition for judicial review of this Order shall be filed with the appropriate
9 court and served on the Board, the Office of the Attorney General, and all parties
10 within thirty days after service of the final order, as provided in RCW 34.05.542.
11 Service on the Board may be accomplished in person or by mail. Service on the
12 Board means actual receipt of the document at the Board office within thirty
13 days after service of the final order.

13 Service:

14 This Order was served on you the day it was deposited in the United States mail.
15 RCW 34.05.010(19)

16 SO ORDERED this 27th day of July 2007.

17 EASTERN WASHINGTON GROWTH MANAGEMENT
18 HEARINGS BOARD

19 _____
20 Dennis Dellwo, Board Member

21 _____
22 John Roskelley, Board Member

23 _____
24 Joyce Mulliken, Board Member