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

CITY OF SPOKANE,

Petitioner,

Case No. 06-1-0002

v.

SECOND ORDER FINDING
CONTINUING NONCOMPLIANCE

SPOKANE COUNTY,

Respondent.

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I. SUMMARY OF DECISION

The Respondent, Spokane County, was before the Board for a second compliance hearing to determine if it had taken appropriate actions that would bring the County into compliance with the Growth Management Act (GMA). Spokane County acknowledged that it has not yet designated the North Metro Urban Growth Area as a Joint Planning Area, as directed by the Board in its November 27, 2006, Final Decision and Order. Therefore, Spokane County is in continuing noncompliance.

II. PROCEDURAL HISTORY

On March 31, 2006, the CITY OF SPOKANE, filed a Petition for Review, by and through their representative, Michael Piccolo.

On April 27, 2006, the Board received Spokane County's Response to City of Airway Heights' Motion for Intervention.

On April 28, 2006, the Board received the City of Airway Heights' Motion for Intervention, Memorandum in Support of Intervention, and Declaration of Stanley Schwartz.

1 On May 1, 2006, the Board heard the above motion prior to the Prehearing
2 Conference. The Board granted City of Airway Heights' Motion to Intervene on behalf of
3 Respondent. Intervention was limited to issues involving West Plains not the issues
4 involving North Spokane.

5 On May 1, 2006, the Board held a telephonic Prehearing conference. Present were,
6 Dennis Dellwo, Presiding Officer, and Board Member John Roskelley. Board Member Judy
7 Wall was unavailable. Present for Petitioners was Michael Piccolo. Present for Respondent
8 was Dave Hubert.

9 On May 8, 2006, the Board issued its Prehearing Order.

10 On May 9, 2006, the Board issued an Amended Prehearing Order.

11 On May 16, 2006, the Board received Spokane County's Motion to Dismiss Petition
12 for Review.

13 On May 22, 2006, the Board received City of Airway Heights' Motion and
14 Memorandum to Dismiss Petition to Review.

15 On June 26, 2006, the Board held a telephonic motion hearing. Present were, Dennis
16 Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall. Present for
17 Petitioners was Michael Piccolo. Present for Respondent was Dave Hubert. Present for
18 Intervenors was Stanley Schwartz.

19 On July 17, 2006, the Board received an Amended Petition for Review and Joint
20 Declaration of the Parties. The parties requested a continuance in this matter for settlement
21 negotiations. The Intervenors, City of Airway Heights withdrew from this matter.

22 On October 26, 2006, the Board held the Hearing on the Merits. Present were,
23 Presiding Officer, Dennis Dellwo, and Board Members John Roskelley and Judy Wall. Present
24 for Petitioner was Michael Piccolo. Present for Respondent was Dave Hubert.

25 On November 27, 2006, the Board issued its Final Decision and Order. In the Final
26 Order, the Board set a compliance schedule.

On December 21, 2006, Respondent Spokane County filed an appeal to Spokane
County Superior Court.

1 On April 18, 2007, the Board held a telephonic compliance hearing. Present were,
2 Presiding Officer, Dennis Dellwo, and Board Members John Roskelley and Joyce Mulliken.
3 Present for Petitioner was Michael Piccolo. Present for Respondent was Dave Hubert.

4 On March 7, 2008, the Board received Findings of Fact, Conclusions of Law and
5 Order from Spokane County Superior Court affirming the Board's Final Decision and Order.

6 On April 15, 2008, the Board held a teleconference to discuss a compliance schedule
7 in this matter. Present were, Dennis Dellwo, Presiding Officer, and Board Member John
8 Roskelley. Present for Petitioner was Mike Piccolo. Present for Respondent was Dave
9 Hubert.

10 On April 15, 2008, the Board issued its Order Setting Compliance Hearing and
11 Briefing Schedule.

12 On October 20, 2008, the Board received Respondent's Statement of Action Taken to
13 Comply.

14 On November 3, 2008, the Board received the City of Spokane's Response to
15 Spokane County's Statement of Action.

16 On November 14, 2008, the Board received Respondent's Reply to City's Response to
17 Statement of Action Taken to Comply.

18 On November 24, 2008, the Board received City of Spokane's Reply to Comments
19 and Legal Arguments Filed by Spokane County.

20 On November 26, 2008, the Board received Respondent's Motion to Strike City's
21 Second Response.

22 On December 1, 2008, the Board held a telephonic compliance hearing. Present
23 were, Raymond Paoella, Presiding Officer, and Board Members John Roskelley and Joyce
24 Mulliken. Present for Petitioner was Mike Piccolo. Present for Respondent was Dave Hubert.
25 At the telephonic compliance hearing, Spokane County withdrew its Motion to Strike City's
26 Second Response.

1 **III. DISCUSSION**

2 In the Final Decision and Order entered on November 27, 2006, the Board found
3 *inter alia* that Spokane County was out of compliance with the GMA for failing to take
4 appropriate legislative action to designate portions of the North Metro Area as a "Spokane
5 County/City of Spokane Urban Growth Area/Joint Planning Area." The Board set February
6 26, 2007, as the deadline to take this legislative action.

7 On April 24, 2007, the Board entered an Order on Compliance finding that Spokane
8 County had not achieved GMA compliance as had been ordered in the November 27, 2006,
9 Final Decision and Order. The Board established a revised compliance deadline of June 25,
2007.

10 Spokane County appealed the Board's Final Decision and Order, and on June 6,
11 2007, the Spokane County Superior Court stayed the Board's Orders in this case. On
12 February 28, 2008, the Superior Court affirmed the Board's Final Decision and Order in
13 total.

14 On April 15, 2008, the Board again ordered Spokane County to bring itself into
15 compliance by October 13, 2008.

16 At a compliance hearing on December 1, 2008, Spokane County acknowledged that it
17 has not designated the North Metro Urban Growth Area as a Joint Planning Area. Spokane
18 County requested an additional 180 days to continue with settlement discussions under
19 RCW 36.70A.300(b), alleging that this is a case of unusual scope or complexity. The City of
20 Spokane asserts that this is not a case of complexity. Meanwhile, Spokane County has
21 appealed to the Court of Appeals, but no stay has been entered.

22 The Board finds that Petitioner has satisfied its burden of proof under WAC 242-02-
23 632 and 242-02-891. Spokane County has been out of compliance with the GMA for over
24 two years and has taken no legislative action during that period to designate the North
25 Metro Area as a "Spokane County/City of Spokane Urban Growth Area/Joint Planning Area."
26 The evidence shows that Spokane County's ongoing GMA noncompliance is clear and
egregious. The Board further finds that Spokane County's request for a 180-day extension

1 should be denied because this is not a case of unusual scope or complexity under RCW
2 36.70A.300.

3 Pursuant to RCW 36.70A.300(3)(b), the Board requires Spokane County to submit
4 monthly reports to the Board on the progress made towards achieving compliance by no
5 later than April 1, 2009. Spokane County shall file these monthly reports with the Board by
6 the 10th day of each month until full compliance is achieved, and each monthly report shall
7 contain a specific list of past actions taken, together with a date-specific schedule of future
8 actions that will be taken to achieve compliance by no later than April 1, 2009. Failure to
9 achieve compliance by April 1, 2009, will subject the County to the provisions of RCW
36.70A.330 and -.340, including possible sanctions.

10 IV. ORDER

11 The Eastern Washington Growth Management Hearings Board's Final Decision and
12 Order in this case was affirmed by the Spokane County Superior Court, and the Board finds
13 that Spokane County is in continuing noncompliance with the Growth Management Act. The
14 Board directs the County to promptly bring itself into compliance with the Board's Order and
15 the GMA.

- 16 1. Spokane County must take the appropriate legislative action to bring
17 itself into full compliance with this Order by no later than **April 1,**
18 **2009.**
- 19 2. Spokane County shall file monthly reports with the Board by the **9th**
20 **day of each month** until full compliance is achieved, and each
21 monthly report shall contain a specific list of past actions taken,
22 together with a date-specific schedule of future actions that will be
23 taken to achieve full compliance by no later than **April 1, 2009.** The
24 County is required to file their reports electronically, along with their
25 original and four copies.
- 26 3. On **January 13, 2009, February 13, 2009, and March 13, 2009,**
at 10:00 a.m., the Board will conduct telephonic status conferences

1 with the parties to discuss Spokane County's monthly progress towards
2 achieving full compliance by no later than **April 1, 2009**. The parties
3 will call **360-407-3780 followed by 211651 and the # sign**. Ports
4 are reserved for: **Mr. Piccolo and Mr. Hubert**. If additional ports are
5 needed please contact the Board to make arrangements.

6 4. The following schedule for compliance, briefing and hearing shall apply:

- 7 • The County shall file with the Board by, **April 8, 2009, an original**
8 **and four copies** of a **Statement of Actions Taken to Comply**
9 (SATC) with the GMA, as interpreted and set forth in the Board's Final
10 Decision and Order. The SATC shall attach copies of legislation enacted
11 in order to comply. The County shall simultaneously serve a copy of the
12 SATC, with attachments, on the parties. **By this same date, the**
13 **County shall file a "Remanded Index," listing the procedures**
14 **and materials considered in taking the remand action.**

- 15 • By no later than **April 21, 2009¹**, Petitioners shall file with the Board
16 an **original and four copies** of Comments and legal arguments on
17 the County's SATC. Petitioners shall simultaneously serve a copy of
18 their Comments and legal arguments on the parties.

- 19 • By no later than **May 5, 2009**, the County shall file with the Board an
20 **original and four copies** of their Response to Comments and legal
21 arguments. The County shall simultaneously serve a copy of such on
22 the parties.

- 23 • By no later than **May 12, 2009**, Petitioners shall file with the Board an
24 **original and four copies** of their Reply to Comments and legal
25 arguments. Petitioners shall serve a copy of their brief on the parties.

- 26 • Pursuant to RCW 36.70A.330(1) and WAC 242-02-891² the Board
hereby schedules a telephonic Compliance Hearing for **May 19, 2009**,

23 ¹ April 8, 2009, is also the deadline for a person to file a request to participate as a "participant" in the compliance
24 proceeding. See RCW 36.70A.330(2).

25 ² The Presiding Officer may issue an additional notice after receipt of the SATC to set the format and additional
26 procedures for the compliance hearing.

1 at 10:00 a.m. The compliance hearing shall be limited to
2 consideration of the Legal Issues found noncompliant and
3 remanded in the FDO. The parties will call 360-407-3780
4 followed by 211651 and the # sign. Ports are reserved for: Mr.
5 Piccolo and Mr. Hubert. If additional ports are needed please contact
6 the Board to make arrangements.

7 If the County takes legislative compliance actions prior to the date set forth in
8 this Order, it may file a motion with the Board requesting an adjustment to this
9 compliance schedule.

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

11 **Reconsideration:**

12 Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this
13 Order to file a petition for reconsideration. Petitions for reconsideration shall
14 follow the format set out in WAC 242-02-832. The original and four (4) copies of
15 the petition for reconsideration, together with any argument in support thereof,
16 should be filed by mailing, faxing or delivering the document directly to the
17 Board, with a copy to all other parties of record and their representatives. **Filing**
18 **means actual receipt of the document at the Board office.** RCW 34.05.010(6),
19 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite
20 for filing a petition for judicial review.

21 **Judicial Review:**

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

26 **Enforcement:**

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

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Service:

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

SO ORDERED this 22nd day of December 2008.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Raymond L. Paoella, Board Member

John Roskelley, Board Member

Joyce Mulliken, Board Member