State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

BRODEUR/FUTUREWISE et al., Petitioners, v. BENTON COUNTY, Respondent, CITY OF WEST RICHLAND, THE ESTATE OF THAYNE WISER, CLAYNE WISER, KURT WISER, and TALON WISER, Intervenors.	Case No. 09-1-0010c ORDER DENYING MOTION FOR RECONSIDERATION

THIS Matter comes to the Board on Intervenor Wiser's Motion for Reconsideration of the Board's November 24, 2009 **FINAL DECISION AND ORDER [Resolution 09-162: Rural Lands]**. Intervenor requests reconsideration pursuant to WAC 242-020-832 as to whether Respondent Benton County considered local circumstances in determining the appropriate density of the property subject to Resolution 09-162. The Motion for Reconsideration focuses on a sentence on page 18 of the FDO stating that "there is no evidence in the record showing that Benton County considered local circumstances in determining an appropriate density on the subject property, as per RCW 36.70A.070(5)(a)." Intervenor also asserts that it was error for the Board to rely on representations by Benton County's attorney that local circumstances were not the basis for the designation.

Petitioners Panesko and Commerce moved to deny Intervenor's Motion for Reconsideration based on failure to serve the motion upon these petitioners. Alternatively, Petitioners request that reconsideration be denied and assert that the Board correctly determined that Benton County's action was inconsistent with the GMA and the definition of "rural

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character." On December 22, 2009, the Board took action to review the Motion for Reconsideration and the responses to that motion from the parties.

I. DISCUSSION

In light of Respondent's and Intervenor's oral arguments, the FDO made a brief reference to the lack of evidence showing consideration of local circumstances, as per RCW 36.70A.070(5)(a) relating to required provisions of the Rural Element. However, this was neither a central issue nor a central part of the Board's analysis. Petitioners did not appeal any amendments to the text of the **Rural Element** and so the legal sufficiency of the **Rural Element** was not before the Board at the Hearing on the Merits.

Rather, Petitioners appealed amendments to the **Land Use Element**. The Board's Analysis and Findings focused on the County amendments to the text and map in the **Land Use Element**. Based upon a careful review of the record in its entirety, the Board concluded, *inter alia*, that there is no substantial evidence in the record to support the County's finding that this Land Use Element map amendment is consistent with "rural character."[1] Resolution 09-162 fails to comply with the GMA, the Benton County Comprehensive Plan, and the County-Wide Planning Policies. It created internal plan inconsistencies. Benton County's adoption of Resolution 09-162 was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Growth Management Act.

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[1] *Whether the County considered RCW 36.70A.070(5)(a) in its adoption of Resolution 09-162 is immaterial since that Resolution did not amend the CP Rural Element, and no party challenged the Rural Element provisions.*

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II. ORDER

Intervenor has not shown any grounds for reconsideration under WAC 242-020-832. Accordingly, Intervenor's Motion for Reconsideration is **DENIED**, and the November 24, 2009 Final Decision and Order continues in full force and effect.

Entered this 4th day of January, 2010.

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Raymond L. Paolella, Board Member

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Joyce Mulliken, Board Member

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John Roskelley, Board Member

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