State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

KENNETH and SANDRA KNAPP;)
)
BERNARD DAINES and OUTLOOK)
DEVELOPMENT LLC;)
)
CLARA A. HEPTON;)
)
EDWARD A. and PATRICIA E. PAYNE;)
)
DALE L. and DEANNA L. BRIGHT;)
)
CARL B. and ANN T. BERNSON; and)
GLENROSE ASSOCIATES-91;)
)
DAHM DEVELOPMENT INC. and) **CASE NO. 97-1-0015c**
MERIDIAN LAND, LLC;)
)
HARLEY C. DOUGLASS, INC.;) **FINAL DECISION**
) **AND ORDER**
REX HARDER and MACKENZIE BAY)
PROPERTIES;)
)
THEODORE GUNNING and NORTH-)
WOOD PROPERTIES;)
Petitioners)
v.)
)
SPOKANE COUNTY,)
Respondent)
)
GLENROSE COMMUNITY ASSOC.)
Intervenor)
)
CITY OF SPOKANE,)
Intervenor)
_____)

I. Procedural History

On June 16, 1997, Kenneth and Sandra Knapp; Bernard Daines/Outlook Development; Clara Hepton; Edward A. and Patricia E. Payne, Dale L. and Deanna L. Bright, Carl B. and Ann T. Bernson and Glenrose Associates-91; Dahm Development and Meridian Land; Harley C. Douglass, Inc. filed petitions for review with the Eastern Washington Growth Management Hearings Board.

On June 17, 1997, Rex Harder and Mackenzie Bay Properties; Theodore Gunning and North Wood Properties filed petitions for review.

On June 25, 1997, the Board issued an Order of Consolidation combining the petitions as 97-1-0015c and granting the City of Spokane Intervenor status.

On August 15, 1997, the Board issued a prehearing Order Identifying the following issues that will be considered in the final hearing:

Issue 1: Whether the Interim Urban Growth Area ("IUGA") adopted by the County complies, and the process used by the County and cities to consider and adopt the IUGA, conforms to the planning goals set forth in RCW 36.70A.020?

Issue 2. Whether the IUGA, and the process used by the County and cities to consider and adopt the IUGA, violates RCW 36.70A.110(1), (2) or (3)?

Issue 3. Whether the IUGA, and the process used by the County and cities to consider and adopt the IUGA, violates RCW 36.70A.210 and the County-Wide Planning Policies ("CPP"), including but not limited to CPPs 1.2, 1.3, 1.7, 1.9, 1.11, 3.10, and 3.20?

Issue 4. Whether the County Commissioners' adoption of the Findings of Fact and Decisions contained in 97-0320 and 97-0321 nearly two months after the adoption of Motion 97-0134 violates RCW 36.70A.020(11), RCW 36.70A.110(5), and RCW 36.70A.140 and other procedural requirements of the Growth Management Act that require early and continuous public participation in the planning process, and that require GMA cities and counties to show their work in arriving at GMA planning decisions?

Issue 5. Whether in considering and adopting the IUGA the County failed to comply with RCW 36.70A.020 (11), RCW 36.70A.110(5), RCW 36.70A.150, and other procedural requirements of the Growth Management Act, which require early and continuous public participation in the planning process?

Issue 6. Whether in analyzing and adopting the IUGA the County violated the State Environmental Policy Act ("SEPA"), RCW 43.21C010 et seq., and its implementing regulations, WAC 197-11-010 et seq.?

On August 26, 1997, Petitioner Clara Hepton filed motion to dismiss her petition.

On September 25, 1997 Glenrose Community Association was granted Intervenor status.

On November 24, 1997, the Board held its Hearing on the Merits in Spokane Washington. All parties were present or represented. All members of the Board were present. At this hearing the parties all agreed a 14 day extension for issuing this decision to enable the parties to settle issues before the Board.

On December 2, 1997, Petitioner Dahm Development filed its Motion for Voluntary Dismissal.

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II. Finding of Fact

1. Spokane County was required to plan under the Growth Management Act (GMA) after the County's population grew 10% or more over a ten year period.
2. On December 22, 1994, the Board of County Commissioners (BOCC) adopted the County-wide Planning Policies and Environmental Analysis for Spokane County (CWPP).
3. On December, 1994, the 12 local jurisdictions entered into an Interlocal Agreement for the purpose of cooperatively accomplishing regional tasks specified in the CWPPs. That agreement re-established the Steering Committee of Elected Officials.
4. On November 3, 1995, Steering Committee adopted a Land Quantity Analysis Methodology for Spokane County.
5. The Steering Committee's initial work program lasted approximately 15 months from March, 1995 through May, 1996 and consisted of two major components: tasks related to designating IUGAs and making recommendations to individual jurisdictions on comprehensive plan issues.
6. On June 21, 1996, the Steering Committee submitted IUGA proposals prepared by each of the 12 local jurisdictions.
7. On August 23, 1996, the Steering Committee SEPA – EIS Scoping Workshop was held.
8. On October 4, 1996, the County established an informal City of Spokane \ Spokane County Subcommittee to discuss IUGA issues of concern to both jurisdictions.
9. On October 18, 1996, a Draft EIS was issued which contained a description and evaluation of four alternative countywide IUGAs and identified a range of implementation approaches.
10. Written comments on the DEIS were received from 31 groups and individuals. The County held four public workshops, a public comment meeting and a public hearing to hear citizen comments on the DEIS and the IUGA alternatives.
11. On October 23 and November 13, 1996, public workshops and Draft EIS public comment sessions were held.
12. On November 15, 1996, the Steering Committee discussed IUGA boundary designations relevant to small towns, north metro area, Liberty Lake area, Spokane Valley, Spokane County \ City of Spokane Joint Planning Areas, and the West Plains area.
13. On November 22, 1996, a discussion of a Preliminary Steering Committees' recommendation based upon various documents developed for IUGA designations was held.
14. On November 25, 1996-Comment period on Draft EIS ends (following 7 day extension).
15. On December 10, 1996, The Spokane County Interim Urban Growth Areas Final Environmental Impact Statement was issued. It responded to comments received and contained additional environmental information concerning the Steering Committee's recommended alternative, and provided supplemental analysis of several issues.
16. During the Steering Committee's 2 year work program, between January, 1995 and December, 1996, it

convened 39 regularly scheduled meetings.

17. On December 11, 1996, the Steering Committee, after review of the FEIS, approved and forwarded to the BOCC their recommendation for a.) Allocation of population growth to jurisdictions, b.) Designation of interim urban growth areas (IUGAs), and c.) Interim development regulations designating IUGAs.

18. On December, 13, 1996, five copies of the EIS for County's IUGAs were sent to CTED for review and comment by CTED and other state agencies. CTED responded with no comment in a letter dated February 24, 1997.

19. On January 22, 1997, the BOCC held a public hearing on the IUGA. The hearing was continued with three other evening public hearings.

20. After the hearings, the BOCC found that the Steering Committee's recommended IUGA boundary required modification in four general areas:

a) Fine-tuning modifications to the boundary.

b) The addition of approximately 112 acres of extra-territorial IUGA to the Town of Rockford's JPAs.

c) Minor modifications to the City of Spokane's Alcott and Moran/Glenrose JPAs.

d) The addition of areas to both the unincorporated North Metro IUGA and the unincorporated Spokane Valley IUGA to accommodate the recommended allocation of 20 years population growth.

21. On April 8, 1997, the BOCC approved and adopted a resolution no. 97-0321 allocating the 20 year population growth and approved the Interim Development Regulations Designating IUGAs.

III. Issues, Discussion and Conclusion

Issue 1: Whether the Interim Urban Growth Area (IUGA) adopted by the County complies, and the process used by the County and cities to consider and adopt the IUGA, conforms to the planning goals set forth in RCW 36.70A.020?

Petitioners' position: The Knapps contend the County has violated planning goals enumerated in RCW 36.70A.020, including subsections (1), (4), (6), (9), (10), (11), and (12). They believed the City of Spokane overestimated the amount of future growth they could accommodate within its boundaries by inclusion of all critical areas and areas that should have been included as critical areas, such as Glenrose/Moran Prairie/Central Park area. By doing so, there will be increased use of the public facilities and services, taxing them beyond their capability violating subsections (1) and (12 of the planning goals enumerated in RCW 36.70A.020. It is further claimed subsection (4) of this section, which encourages the availability of affordable housing, was violated. By including lands that are incapable of development, the County is projecting unrealistic growth potential, to a degree which will substantially increase the cost of existing and new housing –i.e., the less available land there is, the higher the cost of land will be.

The Petitioners assert the County violated RCW 36.70A.020(6) by failing to consider the IUGA's impact on the Petitioners and the bondholders of the Liberty Lake Sewer District. Gunning claims, as a result of the County's exclusion of section 36 of Northwood from the IUGA, Northwood will be unable to develop that section and therefore will not be reimbursed for a portion of its sewer costs, contrary to the terms of a Sewer Connection Agreement with Petitioner Gunning. The Petitioners detailed the Agreement and the County's failure to consider the damage caused

and the potential for an unconstitutional taking of private property and interference with a contractual right.

Subsection (6) of the Goals is claimed to have been violated by the allocation of nearly 4% of the future growth for the next 20 years to the Glenrose/Morgan Prairie/Central Park area. This allocation of growth is claimed to be entirely unrealistic, or even impossible, given the extensive flooding, soil and topography problems. The County is said to have known, during the planning phase of the IUGA, that severe storm water flooding problems existed in these areas and restrictions would or may be placed upon building in those areas. Despite this knowledge, they claim the County failed to take these problems into account when conducting its population analysis and allocation.

Respondent's Position: The County contends they have complied with RCW 36.70A.020 Planning Goals. They have acknowledged these goals in writing and reviewed them in their brief. The County claims several of the Goals are not necessarily applicable to designation of IUGAs. Most of the acknowledgment of Goals are found in County Resolution 97-0321, the Findings and Decision in the adoption of the Spokane County Interim Development Regulations Designation Interim Urban Growth Areas signed April 8, 1997 and all documents, records, material , and appendixes referenced therein. (R-53 at 7864). (These will not be listed here but can be found as part of the record.)

The Respondent points out the Interim Development Regulations (R-54) reflect the guidance of Planning Goal #1, encouraging development in urban areas where adequate public facilities or services exist or can be provided. Goal 4, the encouragement of affordable housing, was satisfied by the review of the Technical Committee of each jurisdiction's ability to satisfy affordable housing policies as set forth in CWPP Policy #7. However, the County believes that compliance with this Goal is best reviewed during the comprehensive plan development stage.

Goal #6, Property rights, was acknowledged by the County and they evaluated the proposed regulatory or administrative actions to avoid unconstitutional taking of property. Petitioner Gunning's claim that the County's adoption of the IUGA impairs their constitutional right to be free from impairment of a contract obligation is unfounded according to the Respondent and contend this is not the proper forum to address the issue. The Boards have continually refused to adjudicate constitutional disputes. This is claimed to be the same with contract disputes.

Goal #9, open space and recreation, the BOCC adopted Policy Topic #4 entitled "Parks and Open Space." (R-2 at 111, 112). These are claimed to have been considered while adopting the IUGA, and will have the primary applicability at the comprehensive plan and implementing development regulation phases. The Respondent contends this Goal has minimal affect on designating the IUGA.

Goal #10, Environment, is claimed to have been observed as evidenced by the Technical Committees' development of a variety of reports relative to air quality, water supply, quality and quantity and open space. Other reports that formed the basis of the DEIS and FEIS were considered by the Steering Committee as they formulated their IUGA recommendations and by the BOCC in their designation of the IUGA are also claimed to comply with Goal #10.

Goal #11, citizen participation and coordination, is claimed to have been considered by this Board and resolved in Howe v. Spokane County, EWGMHB No. 97-1-0001 (Final Decision and Order 1997).

All the other Goals were not discussed by the Respondent, claiming the Petitioners had conceded their compliance with such Goals.

Discussion : The County must use the GMA's planning goals to guide the development and adoption of IUGAs.

RCW 36.70A.020 and Board decisions do not preclude all development in critical areas. The GMA and Board decisions do, however, require that critical areas be protected. As long as critical areas are protected, "other, non-critical portions of land can be developed as appropriate under the applicable land use designation and zoning requirements." *Assoc. To Protect Anderson Creek, et al. v. Bremerton et al*. CPSGMHB Case No. 95-3-0053 (Dec. 26, 1995) p.19.

Conclusion: This Board is unable to determine whether the County may have complied with and followed the planning Goals of the GMA as set forth in RCW 36.70A.020. The Board does not have the facts necessary to determine the adequacy of the IUGA in the City of Spokane Area. This issue cannot be resolved until a sufficient record is before us. (See Issue 4 Conclusion.)

Issue 2: Whether the IUGA, and the process used by the County and cities to consider and adopt the IUGA, violates RCW 36.70A.110(1). (2) or (3)?

Petitioners' position: Douglas, Knapp and Daines and Outlook (Petitioners) contend the City failed to establish growth boundaries sufficient to accommodate all projected growth. Petitioners contend the City was required to distinguish between gross acres and net (or buildable) acres. The Petitioners contend WAC 365-195-335 (3)(c) requires the City to "perform a check on the realism of the area proposed by evaluating," among other things, "whether the level of population and economic growth contemplated can be achieved within the capacity of available land and water resources without environmental degradation." They claim the City/County did not do this.

Meridian Land, L.L.C. contends the City has not designated sufficient land to permit the growth that is projected to occur in the next 20 years in the city of Spokane. The final EIS's discussion of Commercial and Industrial Land Capacity acknowledges the "insufficient land capacity data…available at this time to evaluate the ability of IUGA alternatives to accommodate future employment growth." Final EIS at III-28. Another example given is the County's flawed residential land capacity analysis, which fails to assess adequately the impacts of the alternatives on housing. This Petitioner asserts if the planning requirements of the GMA are to have any substantive meaning, an IUGA based upon admittedly insufficient information about factors as significant as industrial, commercial and residential growth capacity must be invalidated.

One of the claimed major defects listed by the Petitioners is the wholesale inclusion of critical areas as fully developable in its calculation of available land for the IUGA. The Petitioners contend the inclusion of critical areas as fully developable, flies in the face of the GMA requirement that critical areas be protected. This, they claim, is also not only physically impossible, given the types of land involved (wetlands, steep slopes, etc.), but is contrary to the law. The Petitioners further contend the areas already platted are for less density than relied upon by the City for its computations. The City made unreasonable assumptions regarding the densities that can be achieved by infilling small areas within existing neighborhoods. The City assumes every vacant parcel is developable at six or more units per acre.

The Petitioners contend the City's decision not to make any deduction for critical areas, as well as its decision to lower

the reduction percentages with no supporting data or analysis, demonstrated a true land quantity analysis as required by GMA was never conducted. They believe the City/County simply has not included the land to meet its OFM projections and the IUGA is on its face, inadequate.

The record of the Land Quantity Committee supports the criticisms raised above. The Petitioners contend it is clear from the record the Committee raised serious objections to the City's land quantity methodology prior to the issuance of the final land quantity analysis. The Committee raised the following concerns:

1. The calculation of partially-used residential land included large parcels with expensive homes which are unlikely to be available for further development;
2. The amount of land typically needed for future roads may not have been adequately identified and subtracted from the available land supply;
3. The report needs to recognize that all vacant land identified as available for development will not necessarily be used for residential development; and
4. The reports do not eliminate from the inventory land that is not developable due to physical limitations such as the presence of critical areas.

The Petitioners then list examples where the city's land quantity database shows serious errors in their analysis. Examples are (1) double counting of land areas; (2) overstatement of land capacity; and (3) identification of undevelopable areas as developable. (Inclusion of critical areas has already been discussed above).

Examples of non-buildable parcels include the following examples:

1. Parcels underneath Bonneville Power transmission lines;
2. Property described as "common areas";
3. A Public library, listed as 35 single family dwelling units;
4. The Prince of Peace Lutheran Church, 9 residential dwelling units;
5. An undeveloped City Park;
6. The Excel Youth Center shown as 69 single family dwelling units; and
7. Commercial Super Market as 112 single-family dwelling units.

The Petitioners add the County violated the GMA by excluding areas characterized by urban growth. They contend the County did not follow the statute's direction to use identifiable physical boundaries and/or special purpose boundaries where feasible for IUGA boundaries. The Liberty Lake Sewer District was just such a boundary, but it was not followed. The area left out, the property of the Petitioners, was characterized by urban growth, and had the public and governmental services normally required.

The Petitioners contend the decision to exclude the subject property was based on erroneous information. The reports, maps and documents used misstated the boundaries of the Sewer District, times for completion of the development and the density allowed.

The Petitioners believe the County violated RCW 36.70A.110 when it failed to include within the IUGA boundary property subject to an annexation resolution by the City of Spokane. This property, the Muirfield Annexation, was proposed to be annexed on July 10, 1995. There were appeals, where the court found the City erred in resolving to annex the property. The appeal continues. The Petitioners believe there is substantial evidence in the record to

support the inclusion of the Muirfield Annexation property and nothing to support exclusion. Because the property was subject to an annexation resolution, it is claimed the County was required to include the property within the IUGA.

The Petitioners detail major problems with possible development in the Glenrose/Moran Prairie areas. They contend development restrictions should be placed on these lands and should not have been included at the density the IUGA presumes. Many of the acres should have been designated as a critical area and allocated substantially less population growth, if any.

Intervenor City's Position: The City contends the Petitioners' perception of the treatment of critical areas is based upon an incorrect interpretation of the GMA, the planning guidelines from CTED (State Department of Commerce, Trade and Economic Development), and the Land Quantity Analysis Methodology for Spokane County. The City does not believe it must exclude portions of the critical areas the Petitioners believe are undevelopable from the City's tabulation for available land quantity. The City has regulations allowing the density of the property to be achieved while still protecting critical areas. They contend there are no provisions of the GMA cited by the Petitioners prohibiting such an approach.

The City believes the Petitioners are ignoring the provisions of the Act declaring that cities and counties shall have discretion in their comprehensive plans to make many choices about accommodating growth and the CTED guidelines for designation and protecting critical areas allow for regional differences. RCW 36.70A.110(2) and RCW 36.70A.050(3). Additionally, CTED Guidelines provide "…the GMA requirement to 'protect critical areas' does not mean an across the board prohibition of development in critical areas." Page 7 CTED Guidelines.

The City believes the inclusion of the Critical areas within the available land is appropriate because the land would be developed only if mitigating measures were used. They are required to subtract land if development is completely prohibited. They claim they can protect critical areas while still developing the land at the urban densities and the County and City has only included critical areas that can be developed with mitigating measures. Later in their brief the City admits they did not deduct any land for physical limitation reasons or presence of critical areas because current City regulations do not deny the full development right of any parcel of land with these characteristics.

In their brief, the City reviews the protections available for the critical areas. They contend they have broad legislative discretion when determining how they comply with the requirements of the Act in their protection of critical areas. The City anticipates a regulatory philosophy that will allow the 6 units per acre density while still protecting parcels in critical areas.

The City points out the use of planned unit development and transfer of development rights as significant and effective uses in protecting critical areas and providing for efficient urban density. Any loss of population density can be corrected through the transfer of development rights, granting of bonus density and clustering of density within a planned unit development. City Brief, p.13.

The City then addresses the specific challenges raised by the Petitioners:

1. Development of small vacant lots. The City contends the Petitioners made a critical mistake by assuming the 6-unit-per-acre is based only upon single-family residential density. They failed to factor in very high residential density housing and only assumed every parcel would be developed at 2 to 3 unity per acre as a single-family residence.

2. Partially used residential land. The City followed CTED's guidance and was more conservative.
3. Double-counting error for preliminary and final plat. The City agrees with the Petitioners and the correction will be made as the City develops its Comprehensive Plan.
4. Newly Platted or Built-on properties. The City again agrees with the Petitioners and will make the corrections as they develop its final Plan.
5. Overstatement of capacity. The City again admits the error and will make changes as they develop its Comprehensive Plan.
6. Partially used parcels. The City contends this is not a problem. The partially used parcels would be measured at 3 units per acre rather than 6 units.
7. Small, undevelopable parcels. These parcels will be removed when the final Plan is developed.
8. Non-buildable parcels. Two of these parcels will be removed from the land quantity analysis. The third can be fully developed. Common areas can be developed. Any parcels that have been built upon after the analysis was performed will be reflected in the Comprehensive Plan and proposal for the Final UGA.

Intervenor Glenrose Position: The Intervenor Glenrose believes there is no reference to the term "Land Quantity Analysis" in GMA Hearing Board Cases. Glenrose contends this analysis was a part of the Final Environmental Impact Statement. It might be asserted the information was not available to the petitioners, however, public records requests could have solved the information problem.

The Intervenor Glenrose contends the Land Quantity Analysis is not the basis for the IUGA. They say, if the Petitioners were truly concerned about the City's land quantity analysis they could have made their concerns known during the public participation process.

The Intervenor Glenrose contends the Petitioners are claiming the Muirfield property annexation has already occurred as Glenrose points out, it has not. The appeal must be completed and then, if the court overrules the Superior Court, the Boundary Review Board must review the annexation. Glenrose believes the Petitioners are asking the Board to usurp the power of the Courts and the Boundary Review Board. If the court and Boundary Review Board supports the City's annexation, the property would automatically be included in the IUGA.

Respondent's Position: On April 8, 1997, the BOCC adopted Interim Development Regulations designating IUGAs. (R-53 and 54). The County states the Findings of R-53 to show the County complied with RCW 36.70A.110 (1), (2) and (3). (These will not be reprinted here.)

The Respondent specifically addressed the contentions of the Petitioners regarding the County's failure to include the Muirfield property within the IUGA. The fact this property was the subject of an annexation resolution by the City of Spokane, does not require such property to be included within the IUGA. At the present time, the Muirfield property is not within the City of Spokane's corporate boundaries and therefore RCW 36.70A.110(1) does not require its inclusion within the City of Spokane's IUGA boundaries, the county is aware annexed property must be included in the City's UGA.

Discussion: Counties planning under the GMA are required to designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if is not urban in nature. RCW 36.70A.110. This is one of the fundamental requirements of the Act.

RCW 36.70A.110 imposes several mandatory requirements upon counties in adopting UGAs. UGAs shall:

- include each city that is located in a county. RCW 36.70A.110(1);
- be based upon the growth management planning population projection made for the county by the office of financial management. RCW 36.70A.110(2);
- include areas and densities sufficient to permit the projected urban growth for the succeeding twenty-year period. RCW 36.70A.110(2);
- permit urban densities. RCW 36.70A.110(2); and
- include greenbelt and open space areas. RCW 36.70A.110(2).

The first requirement listed above is integral to the UGA concept. Cities are the focal points for growth. The Act intends growth will be centered on cities. Thus, the boundaries of a UGA and the city limits of existing municipalities will be identical, assuming the cities can accommodate all the projected growth. If not, areas must be included, sufficient to permit the projected urban growth for the succeeding twenty years.

The requirement to adopt IUGAs involves both mandatory and discretionary elements. Therefore, local legislative bodies must comply with the mandatory requirements of the Act but also have a great deal of flexibility to make choices in complying. As an example of a mandate, the Act establishes population planning projections upon which IUGAs must be based. These exclusive projections are made for each county by the Office of Financial Management (OFM); no discretion is permitted for local jurisdictions to use their own numbers.

On the other hand, local jurisdictions have great discretion in deciding how to accommodate these projections in light of local circumstances and traditions. Thus, counties, as regional governments, must choose how to configure IUGAs to accommodate the forecasted growth consistent with the goals and requirements of the Act. Cities also have discretion in deciding specifically how they will accommodate the growth allocated to them by the county, consistent with the goals and requirements of the Act.

It must be pointed out the exercise of discretion is crucial. For example, just because an area adjacent to a city is characterized by urban growth does not impose a requirement this territory be included within a IUGA, unless existing cities cannot accommodate the additional projected growth and it is otherwise an appropriate location for such growth. The consequence of existing urbanized areas outside cities not being included within a IUGA is simply that new urban development will not be permitted in those areas. Existing uses and improvements may continue subject to applicable laws. An area falling within one of the rank order exceptions listed above may be included within IUGAs; it is not mandatory that it be included.

In order for counties to make an informed choice as to the location of IUGAs, cities must first provide counties with detailed information about their size, population, population densities and zoning. Both cities and counties must have designated critical areas and natural resource lands (RCW 36.70A.170) and identified greenbelts and open space areas. Then, if a county's preliminary analysis documents existing cities cannot accommodate the projected growth, the county must consider the real extent and densities necessary to provide for the additional population. This determination would include projected net capacity of a proposed IUGA and could include the application of a "safety factor" to the land supply in order to assure adequate availability and choice at all times.

Conclusion: Because the County has failed to show its work in the designation of the City of Spokane's IUGA,

we find we are unable to resolve this issue. We do not have the facts before us to determine if the Respondent has complied with the Act. (See Issue 4.)

Issue 3: Whether the IUGA, and the process used by the County and cities to consider and adopt the IUGA, violates RCW 36.70A.210 and the County-Wide Planning Policies (CPP), including but not limited to CPPs 1.2, 1.3,1.7, 1.9, 1.11, 3.10 and 3.20?

Petitioners' position: The Petitioners in this case contend the IUGA violates RCW 36.70A.210 and numerous county–wide planning policies. RCW 36.70A.210 requires the County to adopt countywide planning policies (CWPP) to guide their planning efforts under the GMA. They believe the IUGA must be consistent with its CWPPs. Port Townsend v. Jefferson County, (cite omitted). Spokane County is claimed to have not done this. They list examples where they believe the County failed to follow the planning policies.

The Knapps specifically discuss their property and contend the County violated CWPP 1.7 by not using the identifiable physical boundaries such as those that bound the Knapp property in the designation of the IUGA boundaries.

Intervenor Glenrose Position: Glenrose contends there is no way to conclude from a reading of RCW 36.70A110(1) that all areas with urban growth were automatically to be included. The only automatic inclusion is an area within the boundaries of a city. If the Legislature had determined to include more, it would have said so.

Respondent's Position: The challenged County-Wide Planning Policies (CWPP) are listed by the County and their argument demonstrating compliance followed. (The Polices will not be restated herein.)

The County contends the CWPP does not require inclusion of the Liberty Lake Sewer District in the IUGA. The BOCC's Finding No. 44 (R-53) concurs with the Steering Committee's exclusion of portions of the Liberty Lake area from the IUGA. While CWPP 1.1 sets a priority order for including areas in the IUGA, the Respondent contends there are other controlling factors, i.e. water quality, that were considered by the Steering Committee and the BOCC in its decision to exclude portions of the Liberty Lake area from the IUGA.

The County asserts the Steering Committee adopted the Regional Land Quantity Report for Spokane County (R-6b). This report established a methodology relative to critical areas. The pertinent part of the report provides "[I]f development would be allowed with mitigating measures, then the land area or a portion of it should be counted as available." (R-6b at 255).

The Respondent believes they complied with CWPP 1.2 with the following provision found in the Report (R-6b at 459):

> Designated critical areas are not subtracted from the total land quantity since development is not prohibited in those areas by the City of Spokane Critical Area Policies.

The County contends both the County and the City of Spokane's approach to critical areas is within the scope of CWPP 1.2.

The direction by CWPP 1.7 to have "identifiable physical boundaries and/or jurisdictional or special-purpose district boundaries" is claimed to be simply an aid to mapping. The County believes this CWPP cannot be construed to

mandate the inclusion of additional land in the IUGA as Petitioners contend. The designation of IUGAs must consider a variety of other environmental service and urban factors. Portions of the Liberty Lake Sewer District were excluded from the IUGA by the Steering Committee. The BOCC concurred with the Steering Committee's exclusion of portions of the Liberty Lake Sewer District, pursuant to the quoted Findings and established the line consistent with the recommendation as well as CWPP 1.7 regarding establishment of the IUGA line on Physically identifiable features.

The CWPPs define "municipality" as an incorporated city or town (R-2 at 136). The Liberty Lake Sewer District does not meet this definition and is not within the purview of CWPP 1.8.

The Respondent contends CWPP 1.9 has limited applicability to IUGAs. The BOCC findings in R-53 recognize the inapplicability of such policies and their compliance to the extent required.(Findings #57 and #54).

Discussion: The County must be guided by the County-Wide Planning Policies. The evidence before the Board does not lead us to believe Spokane has not been guided by such policies.

Conclusion: The Petitioners have not carried their burden of proof and this issue is resolved in favor of the Respondent.

Issue 4: Whether the County Commissioners' adoption of the Findings of Fact and Decisions contained in 97-0320 and 97-0321 nearly two months after the adoption of Motion 97-0134 violates RCW 36.70A.020(11), RCW 36.70A.110(5), and RCW 36.70A.140 and other procedural requirements of the Growth Management Act that require early and continuous public participation in the planning process, and that require GMA cities and counties to show their work in arriving at GMA planning decisions?

Petitioners' Position: Petitioners contend the City's and County's failure to include in the record all the materials forming the basis of their decision to adopt the IUGA, is a violation of the decisions of the Growth Management Hearings Board (GMHB") requiring them to "show their work. Petitioners believe the County should not be permitted to satisfy this requirement by referring to City decisions for which there is no basis in the record. They claim Spokane County simply adopted the City's land quantity analysis conclusions without requiring supporting data from the City to determine how those conclusions were reached.

The Petitioners also contend the record should support the conclusion and the "show your work" requirement exists to prevent precisely what has occurred here. They point out the Hearings Boards have held on "if a jurisdiction fails to show its work, its UGA will be remanded." e.g., *Vashon-Maury v. King County*," CPSGMHB No. 95-3-0008 (1995).

They also believe this failure to show their work has violated the Act's provisions mandating "early and continuous public participation" by preventing public access to the materials and assumptions supporting the County's decision. They state the Report provided is nothing more than conclusory document purportedly based on data absent from the administrative record before the County Commissioners. "By omitting this information, the City promulgated a land supply study that does little to assist this Board's review of the IUGA." Meridian Land, LLC's brief at page 5.

The Petitioners further contend the County violated the GMA's requirement of "early and continuous public participation" by supplementing the record after the public comment period was closed and the County Commissioners voted to adopt the IUGA, Feb. 11, 1997. Subsequently, the County adopted two additional sets of material containing pages of substantive findings and conclusions regarding the adequacy of the IUGA and EISs. These two documents were the Finding of Fact, Conclusions and Decision 97-0320 and 97-0321 adopted April 8,1997. The Petitioners contend, " to allow the County Commissioners first to make a decision and then, only later, to make public the basis of that decision violates both the spirit and the letter of the GMA." Id. P.6

Petitioners complain the County exceeded its discretion when it made changes to the Draft Plan during deliberations conducted after the record had closed. Petitioners allege several changes were substantial and thus required additional public participation before they could be implemented.

The Petitioners allege the County has both acted impermissibly by closing the record while it deliberated on the IUGA boundary, and exceeded the scope of legislative discretion when it made changes to the Draft boundary during these deliberations without the opportunity for additional public comment. Petitioners argue the changes made by the County to the boundary were substantial and thus, the County is required to provide for additional public review and solicit additional public comment before it may adopt the IUGA.

Intervenor City's Position: The city has never disputed it must show its work. The City contends it has done so. How the work must be shown is within the City's discretion so long as the work shows how the City derived its proposed IUGA. The City points to Record No. 6(b) and Record No. 80. The City lists the information included in these documents. These items discuss the methodology used and the totals reached by the use of that method.

Respondent's Position: The County responds the Resolutions cited by the Petitioners contain information that either was available during the public hearings or are merely compilations of previous information.

On February 11, 1997, the BOCC approved Motion No. 97-0134 – In the Matter Concerning Interim Urban Growth Areas, Interim Development Regulations Designating IUGAs and Allocation of the 20 Year Growth Management Population Projection. (R-43). This motion directed staff to prepare modifications to the development regulations to provide certain clarifications and additionally directed staff to prepare Finding And Conclusions consistent with the motions. All documents and memorandums prepared by staff in conjunction with Findings and Decision are contended by the Respondent to have been set forth in the record considered by the BOCC. This record consisted of a consolidation and summary of testimony and documents which were in the record prior to February 11, 1997.

The Respondent contends Washington courts have recognized written findings and conclusions are often entered after an oral decision is made. Written findings and conclusions entered by a public body adjudicating land use issues may serve to elucidate the scope of the body's immediate oral decision. The decision will not be invalidated unless prejudice is shown to have resulted from the delay. Martell v. Vancouver, 35 Wn. App. 250, 258, 666 P.2d 916 (1983).

Again, the Respondent points to Howe , *supra,* as having resolved issues herein. That case held RCW 36.70A.140 is not applicable to the designation of IUGAs. Howe at p. 6. The Respondent contends the Petitioners have not cited any authority, nor is there any, that the applicable public participation requirement of the GMA apply during the deliberative time frame between the BOCC's oral decision and execution of written findings.

Intervenor Glenrose Position: While the County must "show its work", the Intervenor contends they have a great deal of discretion in how they achieve this requirement. The County has shown extensive public participation, responses to public comments and its work when required by the Act.

Discussion: It is imperative the County base its IUGAs on OFM's twenty-year population projection, collect data and conduct analysis of that data to include sufficient areas and densities for that twenty-year period (including deductions for applicable lands designated as critical areas or natural resource lands, and open spaces and greenbelts), define urban and rural uses and development intensity in clear and unambiguous numeric terms, and specify the methods and assumptions used to support the IUGA designation. In essence, the County must "show its work" so that anyone reviewing a UGAs ordinance, can ascertain precisely how the County developed the regulations it adopted.

The Central Board has ruled counties must "show their work so that both the general public and the Board…know how the county derived its UGAs and established the appropriate densities." *Assoc. of Rural Residents v. Kitsap County*, CPSGMHB 93-3-0010 at 35 (1994). The phrase "show your work" was used to describe the explicit documentation of factors and data used in the accounting exercise that RCW 36.70A.110 requires counties to undertake in sizing UGAs. *Association of Rural Residents*, at page 35. In order to achieve sufficient urban densities, a county must determine the geographic size of an IUGA. Accordingly, counties must specify how many acres (or some other common measurement of land) are within a IUGA so that, in the event of an appeal, the Board can determine whether the selected IUGA is indeed "sufficient." In undertaking this requirement, counties must distinguish between gross acres and net (or buildable) acres. For instance, undevelopable critical areas, open spaces, rights of way, etc. should be deducted from the gross acreage. See also WAC 365-195-335(3). Counties have great deal of discretion in how they achieve this requirement.

Local circumstances, traditions and identity will result in unique choices and solutions by each county and each city within it. Jurisdictions have broad discretion to make IUGA policy decisions. While such policy choices may be included in the sizing or configuration of the IUGA, they must be made in a measurable way and with sufficient documentation as to the rationale.

Spokane County and the City of Spokane, have not provided us with the information needed to determine the adequacy of the size of the IUGA . The Petitioners have given numerous examples of deficiencies found in the City's and County's computations. These are not minor examples. Taken together, the flaws in the computations raise serious questions about the validity of the sizing of the IUGA for the City of Spokane. The County relied upon the City for its information. The Board of County Commissioners must have sufficient information before it to make a correct decision. They did not have it, or, at least, it has not been provided to us.

The Board needs to see the City/County work in order to resolve the issues raised herein.

Conclusion: The Board holds the County has not shown its work in their land capacity analysis and we are not able to determine if the IUGA is properly sized. Therefore, the IUGA is found out of compliance with the GMA and the IUGA is remanded.

The Board is pleased with the County's desire to limit the size of the IUGA. So often IUGAs are oversized and require downsizing. We are not finding the IUGA is too small. We are finding only that we do not have the record before us

to determine the accuracy of the County's claims now being challenged by the Petitioners.

Issue 5: Whether in considering and adopting the IUGA the County failed to comply with RCW 36.70A.020(11), RCW 36.70A.110(5), RCW 36.70A.150, and other procedural requirements of the Growth Management Act, which require early and continuous public participation in the planning process?

Conclusion: The public participation issue was addressed in our decision found in Howe v. Spokane County, EWGMHB No. 97-1-0001(June 19, 1997). We held Spokane complied with the GMA public participation requirements for the designation of the IUGAs. It was further decided the County is not required to meet the public participation requirements found in RCW 36.70A.140 in the designation of IUGAs, but must meet the requirements of RCW 36.70A.020(11) and RCW 36.70A.110(5) and found Spokane County in compliance with the Act.

The Board does not find it necessary to again address this issue. The County will be redesignating the IUGA or completing their Final Urban Growth Area and the requirements of the Act must be complied with at that time.

Issue 6: Whether in analyzing and adopting the IUGA the County violated the State Environmental Policy Act (SEPA), RCW 43.21C.010 *et seq.*, and its implementing regulations, WAC 197-11-010 *et seq*.?

Conclusion: While the evidence before the Board raises possible SEPA violations, it is not necessary at this time to consider this issue inasmuch as the IUGA is being remanded on another issues. The County is expected to follow the SEPA procedures upon their redesignation of the IUGA or completion of the Final Urban Growth Area and this issue will not be before us in the future.

General Discussion

The Board finds the County out of compliance with the GMA. The County has not adequately shown its work in their land capacity analysis. In the absence of that information, we are unable to determine if the IUGA is properly sized.

The IUGA is a first step in the process of developing the final UGA. Legislative history suggests the requirement to designate an IUGA was added to the GMA to prevent urban sprawl during the time the FUGA is developed. Clearly the IUGA is temporary and is a "space holder". We have no desire to force the County to spend more money, time and energy redoing the IUGA if they can finalize the UGA in the same period of time.

The Board recognizes the deficiencies raised by the Petitioners. We further understand the process to designate the final UGA is well under way. The GMA does not specifically limit the County in the correction of these defects solely to the adoption of a new IUGA. The Board has the discretion to allow the County to bring themselves into compliance with the passage of a valid Final UGA, thus avoiding duplication while still correcting the flaws.

Prior to the 1997 Legislative Session, the County would have 180 days to come into compliance. The Washington State Legislature amended the Act and now allows 180 days "or such longer period as determined by the board in

cases of unusual scope or complexity." ESB 6094 p. 23. This Board feels the amendment was for cases such as this. It would be foolish to require the duplicated effort the designation of a new IUGA would cause, if the FUGA can be expeditiously completed.

Thus we are providing the County two options to correct the errors and deficiencies existing in the present IUGA process and designation. The County must choose either to redesignate the IUGA borders and make appropriate changes to comply with the Act or correct those errors and deficiencies with the passage of a Final Urban Growth Area.

If the County chooses to make the necessary changes during their designation of the FUGA, they must provide this Board with a time schedule for such compliance. This choice and time table must be received within two weeks from the date of this Order. The Board can then consider whether additional time is required for such compliance. It is important to the Board and to the Petitioners that these changes occur as quickly as possible.

IV. ORDER

It is ordered that Dahm Development Inc. is dismissed as a party in this proceeding.

It is further ordered:

1. **Issue 1:** This Board is unable to determine whether the County has complied with and followed the planning Goals of the GMA as set forth in RCW 36.70A.020. The Board does not have the facts necessary to determine the adequacy of the IUGA in the City of Spokane Area. This issue cannot be resolved until a sufficient record is before us. (See Issue 4 Conclusion.)

2. **Issue 2:** Because the County has failed to show its work in the designation of the City of Spokane's IUGA, we find we are unable to resolve this issue. We do not have the facts before us to determine if the Respondent has complied with the Act. (See Issue 4.)

3. **Issue 3**: The Petitioners have not carried their burden of proof and this issue is resolved in favor of the Respondent.

4. **Issue 4:** The Board holds the County has not shown its work in their land capacity analysis and we are not able to determine if the IUGA is properly sized. Therefore, the IUGA is found out of compliance with the GMA and is remanded.

5. **Issue 5:** The Board does not find it necessary to resolve this issue at this time. The County will be redesignating the IUGA or completing their Final Urban Growth Area and the requirements of the Act must be

complied with at that time.

6. **Issue 6:** Wile the evidence before the Board raises possible SEPA violations, it is not necessary at this time to consider this issue. The County will follow the SEPA procedures upon their redesignation of the IUGA or completion of the Final Urban Growth Area and this issue will not be before us in the future.

7. Spokane County is ordered to notify this board no later than 2 weeks from the date of this order of its intended action to come into compliance. Such notification must include a proposed time schedule for completion.

This is a final order for purposes of appeal.

Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.

SO ORDERED this 24th day of December, 1997.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

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Dennis A. Dellwo, Presiding Officer

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Judy Wall, Board Member

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D. E. “Skip” Chilberg, Board Member

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