

**STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

CITY OF MOSES LAKE,

Case No. 01-1-0010

Petitioner,
v.

FINAL DECISION AND ORDER

GRANT COUNTY,

Respondent.

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I. PROCEDURAL HISTORY

On May 25, 2001, the City of Moses Lake filed a Petition for Review, requesting review of Grant County's Ordinance 2001-49-CC, Interim Official Controls. The petition raised seven issues with regard to the ordinance, including permissive development of rural lots that constitute urban growth, prevention of orderly and contiguous urban development, inconsistency with Grant County's Comprehensive Plan (CP), and substantial interference with the goals of the Growth Management Act. (Petition No. 01-1-0010).

Petitioner City of Moses Lake was represented by Katherine L. Kenison of LeMargie and Whitaker. Respondent Grant County was represented by Chief Deputy Prosecuting Attorney, Stephen J. Hallstrom, and by Williams, Kastner & Gibbs PLLC, Dennis D. Reynolds, Special Counsel. The Board held a prehearing conference on June 28, 2001, and entered a Prehearing Order on July 10, 2001. The Prehearing Order identified the following seven issues for consideration at the hearing on the merits:

1. Does Ordinance No. 2001-49-CC permit the development of rural lots in such a pattern so as to constitute urban growth?
2. Does Ordinance No. 2001-49-CC permit development, which presents an undue threat to large-scale natural resource lands and large-scale critical areas?
3. Does Ordinance No. 2001-49-CC permit development, which will significantly impair the long-term flexibility of Grant County's cities and towns to expand their UGAs?
4. Does Ordinance No. 2001-49-CC prevent orderly and contiguous urban development?
5. Does Ordinance No. 2001-49-CC comply with the provisions of Grant

County's adopted County-Wide Planning Policies?

6. Is Ordinance No. 2001-49-CC consistent with Grant County's adopted and approved Comprehensive Plan?

7. Will the continued validity of Ordinance No. 2001-49-CC substantially interfere with the fulfillment of the goals of the Growth Management Act?

The Board scheduled the matter for a hearing on the merits on October 17, 2001. Grant County filed an Answer and Petition for Cross Review Re Growth Management Act Compliance raising as a defense the City's failure to yet adopt a comprehensive land use plan. Before the Board heard arguments on the merits, the County complied with the Board's directive that the County separately file and serve its Petition for Cross Review as a separate, new Petition for Review. Thus, in this decision, the Board does not consider the County's Petition for Cross Review, and the Board decides only those issues raised by Petitioner City of Moses Lake.

After hearing arguments on the merits from both parties, and after thoroughly reviewing the briefs, declarations and exhibits submitted by both parties, the Board concludes that the City of Moses Lake failed to prove (1) that Ordinance No. 2001-49-CC is noncompliant with the provisions of the GMA and the County's County-Wide Planning Policies, (2) that Ordinance No. 2001-49-CC is inconsistent with the County's adopted Comprehensive Plan, or (3) that continued validity of Ordinance No. 2001-49-CC will substantially interfere with the fulfillment of the goals of the GMA and County-Wide Planning Policies. The Board, therefore, sustains the validity of Ordinance No. 2001-49-CC.

II. FINDINGS OF FACT

1. Grant County adopted interim zoning Ordinance No. 2001-49-CC on March 27, 2001, ("the ordinance") under the Growth Management Act and in response to this Board's Final Decision and Order in EWGMHB Case Nos. 99-1-0016 and 99-1-0019. The Ordinance replaced prior interim zoning controls established by promulgation on October 2, 2000 of Ordinance No. 2000-121-CC.

2. Ordinance No. 2001-49-CC makes the following interim amendments to the County's land use zoning designations:

- (a) Amended the RR2 and RR3 zones to permit development at densities of 1 du per five acres;
- (b) Amended the RC, ASC, RD, SD1, SD2, SD3, and SD4 zones to permit development at densities of 1 du per 2.5 acres within obvious historically developed boundaries, and to permit development at densities of 1 du per five outside of obvious historically developed boundaries;

(c) Amended the RGC, RNC, RFC, RRC, RLI, and RHI zones, and the zones referenced in paragraphs (a) and (b) above, to limit new commercial development and new non-agricultural industrial development to within obvious historically developed boundaries.

3. Ordinance No. 2001-49-CC, by its terms, contemplates its "re-adoption and extension" for successive additional six month periods, pending amendment of the GMA Comprehensive Plan in the effort to bring Grant County into full compliance with the orders and directives of the Eastern Washington Growth Management hearings Board. On September 27, 2001, the Board of County Commissioners extended Grant County's existing interim zoning controls.

4. The County's interim zoning controls found in Ordinance No. 2001-49-CC are temporary and will be replaced with permanent regulations and CP changes which will be reviewed by the Board for its compliance with the orders and directives of this Board.

5. Grant County is has committed itself to maintaining interim zoning until it adopts revisions to its Comprehensive Land Use Plan, which will bring it into full compliance with the GMA in the year 2002.

6. There is capacity within the City of Moses Lake's existing urban growth area to accommodate urban development during the next approximate year required to complete amendments to the Comprehensive Plan required to bring Grant County into compliance with the orders and directives of this Board in Case No. 99-1-0016.

7. The Ordinance does not address natural resource lands or critical areas. The rural residential designations for critical areas and natural resource lands were upheld in Case No. 99-1-0016 and the County's protection of critical areas was found GMA compliant. The City of Moses Lake, the petitioner in Case No. 99-1-0016, did not appeal the Board's rulings on these matters.

III. LEGAL ISSUES AND DISCUSSION

ISSUE NO. 1: DOES ORDINANCE NO. 2001-49-CC PERMIT THE DEVELOPMENT OF RURAL LOTS IN SUCH A PATTERN SO AS TO CONSTITUTE URBAN GROWTH?

Petitioner's position:

Petitioner City of Moses Lake contends that the number, location, and configuration of the areas affected by the subject interim ordinance constitute urban growth. In support of this contention, the City notes that the Boards have previously held that 1 and 2.5 acre lots constitute urban growth and are prohibited in rural areas, whereas 10 acre residential lots are rural and, therefore, do not constitute urban growth. However, as to five acre lots, the City concedes that the Boards have held they are not a per se violation of the Growth Management

Act. Rather, five acres lots require increased scrutiny to ensure that their number, location, and configuration do not constitute urban growth, do not present an undue threat to large scale natural resource lands and critical areas, will not thwart the long term flexibility to expand Urban Growth Areas, and will not otherwise be inconsistent with the goals and requirements of the GMA. Vashion-Maury et al. v. King County et al., No. 95-3-0008 (October 3, 1995); Daniel Smith et al. v. Lewis County et al., No. 98-2-0011c (April 5, 1999); In the matter of the Petition of Peter E. Overton for a Declaratory Ruling, No. 96-3-0001 (February 26, 1996).

The City notes that the County has designated 72,348 acres for rural residential growth at 1 du/5 acres, and contends that most of this acreage is adjacent to UGAs. The City further asserts that this is almost four times the number of acres in all the cities and towns of Grant County. The City contends that this and various other results of the interim ordinance are inconsistent with the goal of directing growth towards the UGAs.

The City contends that the County is not legally bound to continue the interim ordinance in effect pending full compliance with this Board's orders. The City expresses concern that under the language of this interim ordinance, if the ordinance is repealed or permitted to lapse, the underlying, noncompliant zoning, will automatically be reinstituted.

Respondent's position:

Respondent Grant County notes that the County adopted the interim ordinance at issue as a temporary step in its strategy to bring its Comprehensive Land Use Plan into full compliance with the GMA. The County contends that the interim ordinance does not permit development of rural lots in such a pattern so as to constitute urban growth, and that it otherwise complies with the GMA. The County further contends that the interim ordinance will remain in effect, or will be readopted, until the Comprehensive Plan is finally amended. The County alleges that the City has failed to carry its burden of proof with respect to its allegation that the ordinance permits development of rural lots that constitutes urban growth.

The County notes that the interim ordinance permits five acre lots in rural areas totaling less than 1 percent of the County's total land base, and allows lots zoned 20 acres or larger in areas totaling 88 percent the County's rural area. The County points out that the Board in Overton has determined that five-acre lots are not urban growth per se. In the Matter of the Petition of Peter E. Overton for a Declaratory Ruling, CPSGMHB Case No. PDR 96-3-0001, February 26, 1996 (Notice of Decision Not to Issue Declaratory Ruling). The County also contends that the legislature amended the Growth Management Act to give the counties more discretion in establishing rural densities based upon local circumstances. Finally, the County notes that the

GMA itself does not categorize specific densities as urban or rural, instead leaving this determination up to the discretion of the counties while requiring counties to “provide for a wide variety of rural densities.” RCW 36.70A.070(5)(b).

Discussion:

The County adopted interim Ordinance 2001-49-CC in their process to insure compliance with the orders and directives of this Board. A local jurisdiction’s legislative action to achieve compliance with a remand is presumed valid upon adoption and the burden is on the petitioner to prove that such action is not in compliance with the requirements of the GMA. RCW 36.70A.320; Hapsmith v. City of Auburn, CPSGMHB Case No. 95-3-007c, February 13, 1997 (FNC and Notice of Second Compliance Hearing). In challenging any GMA-related actions by a county, where the county is not subject to a determination of invalidity, the petitioner bears the burden to demonstrate noncompliance. RCW 36.70A.320(2). Here, Grant County is not subject to a determination of invalidity. The County adopted the subject interim zoning ordinance pursuant to the Board’s finding of noncompliance with the GMA. Therefore, unless Moses Lake can demonstrate that the action taken by Grant County is “clearly erroneous,” the Board must find compliance. RCW 36.70A.320(3).

In applying the “clearly erroneous” standard of review, this Board has recognized that it is much more deferential and creates a “greater burden of proof” than would a mere “preponderance of the evidence” standard. See Knapp v. Spokane County, EWGMHB Case No. 97-1-0015c, August 23, 1999 (Order on 4th Compliance Hearing), 1999 WL 700974, at * 2. Given this substantial deference, the Board can only rule against a county when it is “left with the firm and definite conviction that a mistake has been made.” See Dept. of Ecology v. PUD 1, 121 Wn. 2d 179, 201, 849 P.2d 646 (1993), as cited in Screen v. Kitsap County, WWGMHB Case No. 99-3-00012, October 11, 1999 (Order on Compliance), 1999 WL 824555, at * 5. Additionally, the Eastern Board views its responsibility under the GMA to recognize local circumstances, reflecting conditions unique to a county. Woodmansee, et al. v. Ferry County, EWGMHB 95-1-0010, August 22, 1997 (Second Order on Compliance).

To carry its greater burden of proof in this case, the City of Moses Lake must specifically demonstrate how Grant County’s interim zoning ordinance failed to comply with the GMA. Mere conclusory statements in a petition or prehearing brief are insufficient to overcome the statutory presumption of validity. See Island County Citizens’ Growth Management Coalition, et al. v. Island County, WWGMHB Case No. 98-2-0023c, June 2, 1999 (Final Decision and Order), 1999 WL 396745, at * 38 (“The Coalition’s conclusory statement that the County’s DRs do not implement the County’s affordable housing policies is insufficient to meet the burden of showing that the County’s actions fail to comply with the Act.”).

In a previous case, this Board considered a petition by Moses Lake that alleged an interim zoning ordinance adopted by Grant County permitted "urban densities" outside of UGAs. City of Moses Lake v. Grant County, EWGMHB Case No. 98-1-0003, October 7, 1998 (Final Decision and Order) 1998 WL 1665881. In that case, the Board noted that it could "find no evidence the subject interim ordinance has any effect other than that intended in its original enactment," which was to slow rural residential growth, and the Board concluded that "petitioners have not provided evidence which supports a decision that the County's action are clearly erroneous." Id. at *2. Similarly in this case, the City has not presented and this Board is unable to find evidence that the subject interim ordinance results in development that constitutes urban growth. Mere speculation that the ordinance might permit such development is not sufficient to carry the City's burden of proof.

We conclude that the City has not carried its burden of proof with respect to its allegation that the subject interim ordinance permits development of rural lots in such a pattern so as to constitute urban growth. Rather, the City has merely offered a definition of "urban growth" and discussed the amount of acreage designated for 1 per du/5 acres under the subject interim ordinance compared to other acreage in the County. The City's allegation that the interim ordinance permits development that meets the definition of urban growth is otherwise conclusory. The presumption of validity afforded to the County simply cannot be rebutted by the City's conclusory submission on this issue. Conclusory statements are insufficient to demonstrate "clearly erroneous" action under the GMA.

Furthermore, contrary to the City's conclusory allegation, we hold that under the facts and circumstances Ordinance No. 2001-49-CC is permissible as an interim measure pending final action. The Boards have held that five-acre lots in rural areas of a county will be subject to "increased scrutiny" by the Board to assure, among other things, that the number, location, and configuration do not constitute urban growth. In the Matter of the Petition of Peter E. Overton for a Declaratory Ruling, CPSGMHB Case No. PDR 96-3-0001, February 36, 1996 (Notice of Decision Not to Issue Declaratory Ruling) 1996 WL 650335, at *3-*5. But five-acre lots are not per se violative of the GMA. The subject interim ordinance limits both the number and the location of five-acre lots in rural areas and is interim in nature. The interim ordinance allows fully 88 percent of the rural area within the County to be zoned for lot sizes of twenty acres or larger. Further a moratorium on development is placed upon industrial and commercial development presently totaling 11,360 acres.

Because this Ordinance is interim and will be replaced soon by permanent comprehensive plan language and development regulations, it acts more as a placeholder.

Conclusion:

The City of Moses Lake has not presented evidence that leaves the Board with a firm and definite conviction that interim Ordinance No. 2001-49-CC permits the development of rural lots in such a pattern so as to constitute impermissible urban growth. Therefore, the City has not met its burden under the applicable “clearly erroneous” standard of review. Furthermore, based upon all evidence presented, the Board finds that this interim ordinance will not compromise the goals of the GMA during its interim status.

ISSUE NO. 2: DOES ORDINANCE NO. 2001-49-CC PERMIT DEVELOPMENT WHICH PRESENTS AN UNDUE THREAT TO LARGE SCALE NATURAL RESOURCE LANDS AND LARGE SCALE CRITICAL AREAS?

Petitioner’s position:

Petitioner City of Moses Lake alleges that the continued permission of urban, commercial, and industrial growth in the unincorporated, rural areas threatens GMA-mandated protection of natural resource lands and critical areas within the County. The City points to no specific facts and offers no further reasoning to support this allegation.

Respondent’s position:

Respondent Grant County first contends that the City has not met its burden of proof on this issue. Specifically, the County contends that the City has offered no proof as to this issue beyond what the County characterizes as a “bare allegation” that the subject ordinance presents an undue threat to large scale natural resource lands and large scale critical areas. The County asserts that the City’s argument is conclusory and, therefore, cannot meet the City’s burden of proof under the “clearly erroneous” standard.

The County further asserts that the subject interim ordinance does not permit urban, commercial, and industrial growth that presents an undue threat to large scale natural resource lands and large scale critical areas. As to the issue of urban growth, the County’s argument that the ordinance does not permit such growth in rural areas is presented under Issue No. 1 above. The County also contends that, by prohibiting new commercial and non-agricultural industrial development outside of obvious historically developed areas, the subject interim ordinance protects natural resource lands and large scale critical areas. The County urges that, because Grant County is an agricultural-based economy, it must continue to rely on historical areas of development throughout its unique landscape to support agricultural activity.

Discussion:

We conclude that the City has not carried its burden of proof with respect to its assertion that interim Ordinance No. 2001-45-CC permits development which presents an undue threat to large scale natural resource lands and large scale critical areas. We again note that a local

jurisdiction's legislative action to achieve compliance with a remand is presumed valid upon adoption, and the burden is on the petitioner to prove that such action is not in compliance with the requirements of the GMA. RCW 36.70A.320; Hapsmith v. City of Auburn, CPSGMHB Case No. 95-3-007c, February 13, 1997 (FNC and Notice of Second Compliance Hearing). This presumption of validity applies to the subject interim ordinance because the County adopted the ordinance to comply with orders and directives of this Board. The City alleges that the "[t]he continued permission of urban, commercial and industrial growth in the unincorporated, rural areas threatens the GMA-mandated protection of natural resource lands and critical areas within the County." This quoted language is the City's entire "brief" on this allegation. Such a statement, without further argument, cannot overcome the presumption of validity that the Board must afford to the subject interim ordinance. Such a statement, without more, cannot demonstrate "clearly erroneous" action by the County.

Conclusion:

Petitioner City of Moses Lake has not overcome the presumption of validity that the Board must afford to the subject interim ordinance.

ISSUE NO. 3: DOES ORDINANCE NO. 2001-49-CC PERMIT DEVELOPMENT WHICH WILL SIGNIFICANTLY IMPAIR THE LONG-TERM FLEXIBILITY OF GRANT COUNTY'S CITIES AND TOWNS TO EXPAND THEIR UGAs?

Petitioner's position:

Petitioner City of Moses Lake contends that interim Ordinance No. 2001-49-CC permits development that impairs the ability of cities and towns to expand their UGAs because the UGAs will be surrounded by 1 du/5 acre development, allowed under the Grant County Comprehensive Plan's RR2 or RR3 zones. The City cites the experiences of Oregon and California, and an Oregon "Urban Growth Management Study," as proof that surrounding UGAs with lot sizes of five acres and smaller prevents the addition of land to UGAs or promotes "leap-frogging" of urban development. The City alleges that this results in inefficient expansion of public services and utilities, and also results in non-conforming and inconsistent uses within the urban areas. The City contends that the subject interim ordinance will increase the number of five-acre lots adjacent to UGAs. The City asserts that 72,348 acres allow five-acre lots outside UGAs, but only 4,280 acres allow residential lots to be developed inside UGAs. The City also cites higher residential building permit activity in the rural areas of Grant County than in the UGAs as proof of a trend of new residential development outside of the UGAs.

Respondent's position:

Respondent Grant County contends that, under its Comprehensive Plan, the County's cities and

towns are provided large UGAs to meet 20-year projected growth. The County notes that it is expected to complete its Comprehensive Plan revisions to bring itself into compliance with the orders and directives of this Board prior to the end of the year 2002. The County asserts that at that time the subject interim ordinance will be rescinded. The County contends there is no showing that a maximum permitted density of one dwelling per five acre zoning in lands adjacent to portions of established UGAs will have any impact upon the cities and towns prior to the end of 2002, when the Comprehensive Plan revisions are due to be completed. Further, no city but Moses Lake has complained.

Discussion:

Petitioner City of Moses Lake has not met its burden of proof that interim Ordinance No. 2001-49-CC permits development which will significantly impair the long-term flexibility of Grant County's cities and towns to expand their UGAs. Implicit in the City's argument, is that the Board should virtually prohibit the creation of 1 du/5 acre lots on lands near or adjacent to UGAs. We are not prepared to do so on an interim basis. Nor has the City left us with a firm and definite conviction that this interim ordinance could have the purported adverse effect of thwarting long term flexibility of cities and towns to expand their UGAs during its short-term effect.

The City cites other cases and studies dealing with long term Comprehensive Plans to support its allegation that development of 1 du/5 acre lots will thwart long-term expansion of UGAs. Here, however, we are dealing with an interim ordinance, not with a completed comprehensive plan. We simply are not convinced that this interim ordinance can have the dire long-term effects alleged by the City.

Conclusion:

Petitioner City of Moses Lake has not carried its burden of proof that interim Ordinance No. 2001-49-CC permits development that impairs the ability of cities and towns to expand their UGAs during its short-term effect.

ISSUE NO. 4: DOES ORDINANCE NO. 2001-49-CC PREVENT ORDERLY AND CONTIGUOUS URBAN DEVELOPMENT?

Petitioner's position:

Petitioner City of Moses Lake contends that, as areas adjacent to the UGAs are permitted to develop at 1 du/5 acres, the cities and towns will lose their ability to expand their UGAs so as to provide for orderly and contiguous urban development. The City asserts that the cost of extending infrastructure through areas of five acre lots may be cost prohibitive both for the cities and for the residents. The City also contends that the subject interim ordinance would

result in development that would force cities to “leap-frog” over five acre residential lots as a UGA expands, resulting in undesirable islands of non-conforming uses. The City asserts that such five acre lots are likely to be purchased by residents with livestock, or acres of “weeds and dust,” or collections of “junk.”

Respondent’s position:

Respondent Grant County repeats the position that it takes as to Issue NO. 3 above. In summary, the County contends that the City’s allegation is based on speculation rather than evidence as to the actual effect of the permitted 1 du/5 acre lots, and the County also contents that the subject ordinance cannot have the effects alleged on urban development because it is an interim ordinance, pending completion of Comprehensive Plan revisions by the end of the year 2001.

Discussion:

Our reasoning in our discussion of ISSUE 3 applies as well to this issue. Again, Petitioner City of Moses Lake has not met its burden of proof. We do not see how the interim ordinance could have the dire adverse consequences on urban development that the City alleges.

Conclusion:

The Board finds that the City has not met its burden of proof.

ISSUE NO. 5: DOES ORDINANCE NO. 2001-49-CC COMPLY WITH THE PROVISIONS OF GRANT COUNTY’S ADOPTED COUNTY-WIDE PLANNING POLICIES?

Petitioner’s position:

Petitioner City of Moses Lake notes that Grant County’s County-Wide Planning Policies (1) prohibit the conversion of undeveloped land into unplanned low density sprawl, (2) require very low intensive land uses to prevail outside the UGAs, (3) prohibit urban densities outside UGAs, and (4) require the County and the City CPs be coordinated and consistent with one another. The City alleges that the subject interim ordinance impermissibly permits the development of land into sprawling, low density development, and alleges that the ordinance impermissibly permits urban densities in rural areas outside the UGAs.

Respondent’s position:

Respondent Grant County contends that the subject interim ordinance is a development

regulation, and, therefore, the GMA does not require that provisions of the ordinance be consistent with Grant County's County-Wide Planning Policies.

Discussion:

Comprehensive plans must be consistent with county-wide planning policies. E.g., King County v. Central Puget Sound Growth Management Hearings Board, 138 Wn.2d 161, 979 P.2d 1374 (1999). However, county-wide planning policies are not mandatory or binding on development regulations. E.g., City of Snoqualmie v. King County, CPSGMHB Case No. 92-3-0004c, Final Decision and Order, pp. 16-17 (1992). Thus, development regulations are not required to be consistent with county-wide planning policies. E.g., The Children's Alliance and Low Income Housing Institute v. City of Bellevue, CPSGMHB Case No. 95-3-0011, Order, p. 7, 12 (May 17, 1995). The subject interim zoning ordinance is a development regulation. As such, it need only be consistent with the Comprehensive Plan, not the county-wide planning policies.

Conclusion:

Petitioner City of Moses Lake has not shown the subject interim ordinance is legally required to comply with the provisions of the County's County-Wide Planning Policies. The Petitioner has not met its burden of proof.

ISSUE NO. 6: IS ORDINANCE NO. 2001-49-CC CONSISTENT WITH GRANT COUNTY'S ADOPTED AND APPROVED COMPREHENSIVE PLAN?

Petitioner's position:

Petitioner City of Moses Lake contends that interim Ordinance No. 2001-49-CC is inconsistent with several provisions of the County's Comprehensive Plan. The City asserts that the ordinance includes an RR3 zone designation, which is not referenced in the CP. The City also asserts that the ordinance will not assist in achieving the CP's goal of directing future urban growth into UGAs and providing for the orderly and efficient transition from rural to urban. In this regard the City cites numerous provisions in the County's CP that the City alleges are inconsistent with growth permitted by the ordinance. Finally, the City repeats its allegation from ISSUE NO. 3 that the ordinance permits development that will impair the efficient expansion of UGAs and will promote inefficient expansion of public services and utilities.

Respondent's position:

Respondent Grant County acknowledges that there is no reference to the RR3 zone designation in its Comprehensive Plan. The County contends, however, that the County reserved discretion to include subdesignations of the principal land use designations specified in its CP. The County asserts, therefore, that RR3 is a subdesignation consistent with the CP.

The County points to Case No. 98-1-0003, Moses Lake et al. v. Grant County, in which the Board sustained the validity of an interim 2.5 acre designation in all rural residential districts of Grant County. The County also asserts that its rural designations now allow residential use at a maximum permitted density of only 1 du/ 40 acre on 78% of the County's land base.

Discussion:

The City contends that the subject interim ordinance is not consistent with the County's adopted and approved CP. In this regard, the City essentially repeats the allegations that it made in ISSUES 1, 3, and 4. We will not repeat our discussion of the questions raised in those issues that we dealt with above. However, in light of the fact we have already answered ISSUES 1, 3, and 4 in the negative, we find again the Petitioners have not carried their burden of proof.

Conclusion:

We find that Ordinance No. 2001-49-CC, because of its interim nature, is not inconsistent with Grant County's adopted and approved Comprehensive Plan.

ISSUE NO. 7: WILL THE CONTINUED VALIDITY OF ORDINANCE NO. 2001-49-CC SUBSTANTIALLY INTERFERE WITH THE FULFILLMENT OF THE GOALS OF THE GROWTH MANAGEMENT ACT?

Petitioner's position:

Petitioner City of Moses Lake contends that the subject interim ordinance permits urban, commercial, and industrial development within obvious historically developed boundaries of areas outside UGAs, thereby substantially interfering with fulfillment of GMA Goals. In this regard the City cites the following GMA goals: (1) encourage development in urban areas, (2) reduce sprawl, (3) ensure the adequacy of public facilities and services necessary to support the development, (4) encourage economic development consistent with CPs and within capacities of the state's natural resources, public services, and public facilities, (5) maintain and enhance natural resource-based industries, and encourage the conservation of productive agricultural lands and discourage incompatible uses, (6) encourage the retention of open space and development of recreational opportunities, (7) protect the environment and enhance the state's high quality of life, and (8) ensure coordination between communities and jurisdictions to reconcile conflicts.

The City also asserts that, if the County fails to re-adopt the subject interim ordinance, the noncompliant 2.5 acre ordinance will automatically be in effect, frustrating the Board's prior order. The City contends that it could not appeal such a result because it would have no "action" to appeal.

Respondent's position:

Respondent Grant County contends that these allegation of interference with GMA goals, as well allegations of inconsistency with the CP (ISSUE 5), are no different than the allegations that this Board rejected in Case No. 98-1-0003, Moses Lake et al. v. Grant County.

Discussion:

In a 1998 interim zoning case, Moses Lake et al. v. Grant County, Case No. 98-1-0003, the Board reviewed growth statistics in Grant County and concluded that the petitioner did not show there had been undue rural growth as a result of the interim ordinance. In that case, we allowed an interim 2.5 acre designation without ruling on its permissibility in rural residential districts of the County. Those districts comprised at the time 234,684 acres. The City does not attempt to reconcile this 1998 interim zoning decision with the City's allegation as to the interference of the subject interim ordinance with GMA goals.

The City offers a list of GMA goals with which the City asserts the subject interim ordinance interferes. However, the City presents no facts or evidence to support its conclusory assertions. Specifically, the City objects to permissive development in obvious historically developed boundaries, but offers no explanation as to how it believes this interferes with individual GMA goals.

Conclusion:

Petitioner City of Moses Lake has not presented evidence that leaves the Board with a firm and definite conviction that the interim Ordinance No. 2001-49-CC substantially interferes with the fulfillment of the goals of the GMA. Therefore, the City has not met its burden of proof on this issue.

IV. ORDER

1. The Board finds the Petitioner has not carried its burden of proof **on Issues 1-7** and the County is not found out of compliance in this matter.
2. The Board's decision herein is not to be construed as establishing a precedent for what should be appropriate final land use designations for Grant County as required to bring the County into full compliance with the orders and directives of this Board in Case Nos. 99-1-0016 and 99-1-0019 per RCW 36.70A.300(3)(b).

This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5).

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 20th day of November 2001.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Dennis A. Dellwo, Presiding Officer

Judy Wall, Board Member

D. E. “Skip” Chilberg, Board Member