

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 30178-8

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SPOKANE COUNTY, ET. AL,

Respondents

v.

Eastern WA Growth Management Hearing Board et al

David Masinger, et al,

Appellants

APPELLANTS' REPLY BRIEF

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I.
INTRODUCTION

Headwaters claims that the Board's decision was based solely on traffic/transportation issues.¹ That characterization is belied by the record.

The Board's ruling was not based solely on the traffic inadequacies of Dakota Street. Instead, the Board found that the proposed land use map amendment would result in internal inconsistencies with numerous Spokane County's goals and policies.

This proposed land use map amendment would result in allowing the development of a 120 unit apartment at the end of a narrow local-access road: this is exactly the type of occurrence that Spokane County's goals and policies were enacted to prevent. If Headwaters had obtained access to Wandermere Drive then a different scenario would exist. It did not. As such, both the Spokane County Planning Commission and then the Growth Management Hearing Board determined that the proposed amendment was improper.

Headwaters had the burden of demonstrating in its brief that the Board's decision was reversible error. It failed to meet its burden. The Board's decision should be affirmed.

¹ Headwaters asserts that the "parties agree that the sole justification for the denial of the Headwaters Amendment by the Growth Board was traffic/transportation and whether the traffic generation that will be created by future development of property must be studied when the County amends its Comprehensive Plan Land Use Map or whether the Country properly deferred full traffic review and analysis until the time of development." (Headwaters' brief at p. 1)

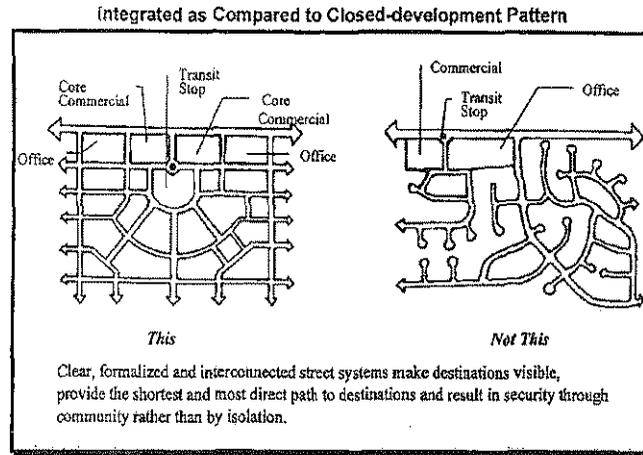
II.
THE BOARD'S CONCLUSION ISN'T BASED SOLELY ON THE INADEQUACY OF
DAKOTA STREET.

While the inadequacy of Dakota Street is certainly a large factor in the Board's decision, the proposed amendment resulted in other inconsistencies with Spokane County's goals and policies. One such inconsistency is illustrated in Appendix "A" of Headwaters' brief.

As noted in Masinter's opening brief, Policy UL.2.20 provides: "Encourage new development, including multifamily projects, to be arranged in a pattern of connecting streets and blocks to allow people to get around easily by foot, bicycle, bus or car." Headwaters provided a copy of the Spokane County Comprehensive Plan that illustrates this policy:

Traffic Patterns and Parking

Street design can have a significant impact on community character. Closed development patterns, which often include dead-end and cul-de-sac roads, tend to isolate communities and make travel difficult. Integrated neighborhoods provide connected streets and paths and often include a central focal point, such as a park or neighborhood business. Integrated development patterns promote a sense of community and allow for ease of pedestrian/bicycle movement. The illustration below contrasts an integrated, as compared to a closed, development pattern. Integration does not necessarily mean development in grids. Rather, roads should connect and provide for ease of circulation regardless of the layout.



- UL.2.20 Encourage new developments, including multifamily projects, to be arranged in a pattern of connecting streets and blocks to allow people to get around easily by foot, bicycle, bus or car. Cul-de-sacs or other closed street systems may be appropriate under certain circumstances including, but not limited to, topography and other physical limitations which make connecting systems impractical.

Appendix A, p. UL-7

The proposed map amendment results in 120 unit development at the end of a local access road. Headwaters admits that the proposed amendment violates policy UL. 2.20 unless access to Wandermere Drive is somehow achieved. ("The intent of this policy [UL 2.20] will be advanced if access to Wandermere Road is allowed." Headwaters' brief, p. 18.) There is no access to Wandermere Drive and that is exactly the problem with the proposed amendment.

The Board found that the proposed map amendment was inconsistent with UL 2.16: "Encourage the location of medium and high density residential categories near commercial areas and public open spaces and on sites with good access to major arterials." The proposed amendment would allow high density multi-family residences that did not have good access, indeed, any access, to a major arterial. Instead, it relies on Dakota Road that is a local access road.

Headwaters itself cited to the Spokane County Road Standards that again demonstrates that allowing a dead end street goes against Spokane County policy:

Permanent dead end streets or cul-de-sacs shall only be allowed when street connectivity can not be achieved due to barriers such as topography, natural features or existing development, e.g., train tracks.

(Headwaters' brief, p. 22.)

These by themselves are sufficient to affirm the Board's decision. The fact that the Board also found that the proposed map amendment was inconsistent with Policy T 2.2, that Headwaters is alleging that the Board erroneously interpreted, doesn't even come into play.

III.

THE BOARD CORRECTLY FOUND THAT DAKOTA STREET WAS NOT SUFFICIENT FOR THE PROPOSED MAP AMENDMENT.

Headwaters asserts that the Board abused its discretion or was arbitrary and capricious when it determined that there was not substantial evidence in the record to support the Commissioners' conclusion that Dakota Street could operate with the increased traffic caused by the proposed development.

Headwaters argues that there was a report prepared by Headwaters' Transportation Engineer that demonstrated that Dakota street is currently operating at an acceptable level of service and will be able to do so with the proposed added development. This is simply not supported by the record.

First, there was no report by an engineer. Instead, there was a one-page letter dated December 8, 2009 from Intermountain Transportation Solutions addressing traffic. Second, it was authored by William White - there is no evidence in the record that Mr. White is an engineer. Third, Mr. White did not state that he was issuing a report or that he conducted a detailed analysis; instead, he admitted that his review of this matter was cursory:

Per your request, I have provided a cursory evaluation of roadway capacity on Dakota Street in Spokane County.

AR 689.

Fourth, Mr. White did not even go to the site but instead looked on a Spokane County webpage. Fifth, he used an average width of 30 feet for the street and did not take into account that the width of the street varies. In contrast, there was evidence in the record that at some points in Dakota Street because the road is so narrow that people drive down the middle and if two cars meet, one usually goes to the shoulder. AR 568. Sixth, Mr. White did not perform a level of service analysis. Instead, he simply made a conclusion that “it appears that Dakota Street has the functional capacity needed to accommodate the apartments.” AR 689.

The Spokane County Planning Commission specifically concluded that the proposed amendment should not be granted because of the adverse impacts on the existing Dakota Street residents. The street is narrow and has no sidewalks. One planning commission member stated that ‘access issues could be disastrous.’

The Board did not abuse its discretion. Moreover, as noted above, there were other bases in addition to the fact that Dakota Street could not handle the increased traffic that supported the Board’s ruling that the proposed amendment was inconsistent with Spokane County’s goals and policies.

IV.
SPOKANE COUNTY'S TRAFFIC REGULATIONS DO NOT ALLOW A MAP
AMENDMENT.

Headwaters spends the bulk of its argument on one of the basis for the Board's decision: that the proposed amendment is inconsistent with Policy T.2. Headwaters focuses on T 2.2 which provides;

Transportation improvements needed to serve new development shall be in place at the time new development impacts occur. If this is not feasible, then a financial commitment, consistent with the capital facilities plan, shall be made to complete the improvement within six years.

The crux of this argument is whether, by having a concurrency ordinance, Spokane is excused from considering the traffic impacts on the plan approval stage. The Board, exercising its expertise, ruled that Spokane County was not excused from having to consider the traffic impacts. Headwaters argues that RCW 36.70A.070(6)(b) somehow gives it authority to not consider traffic impacts if it has a concurrency ordinance. The plain language of the statute, however, has no such language. Headwaters never does explain why a concurrency statute would exempt it from having to consider the traffic impacts when approving a map amendment. Finally, as pointed out in Masinter's opening brief, and not responded to by Headwaters, there is nothing in Ordinance 13.650.104 that has the prohibition required by the GMA. In other words, Ordinance

13.650.104 doesn't provide a cure.

Headwaters is asserting that if the proposed map amendment is allowed, then it would be required to "make street frontage improvements to Dakota Street." (Headwaters' brief at p. 31.) While that may be true regarding the portion of Dakota Street that abuts the proposed development, it is not true that Headwaters would be required to make frontage improvements for the entire length of Dakota Street that runs into the development. That is one of the problems with the proposed map amendment: Dakota Street is narrow and has no existing sidewalks. To allow the map amendment to where traffic would be dramatically increased contradicts Spokane County's own policies that there should be sidewalks available for pedestrian use.

In sum, Headwaters has not met its burden that the Board erred in ruling that traffic and transportation impacts must be considered in the map amendment process.

V.
THE INABILITY TO GAIN ACCESS TO WANDERMERE ROAD IS AT THE ROOT
OF HEADWATERS' PROBLEM.

The fatal flaw in the proposed map amendment is Headwaters' inability to obtain access to Wandermere Drive for the proposed multi-family development. Wandermere Drive is a major arterial. Access to Wandermere Drive would prevent this development from relying solely on

Dakota Street – a local access road that is three quarters of a mile long to the proposed development.

When Headwaters first made its application, it did so based upon access to Wandermere Drive with Dakota Street only supplying secondary access. AR 294. *See also* AR 516: “Access will also be provided to Wandermere Rd. instead of Dakota St.”

Headwaters argues that it may still get access to Wandermere:

As note in the public testimony provided before the Spokane County Board of Commissioners by legal counsel for Headwaters, access to Wandermere Road, at a location not under the control of the Washington State Department of Transportation, will continue to be pursued by Headwaters. Access to Wandermere is expected to be approved shortly, but such information is outside the Record, therefore, Respondent may not expand on that issue.

(Headwaters' brief at p. 41.)

Actually, Headwaters' assertion that access to Wandermere Drive is expected to be approved shortly itself was improper as this is not contained in the record. Headwaters improper reference to such an assertion only highlights the fatal flaw that not having access to Wandermere Drive exists for the current proposed map amendment.

Approving this proposed map amendment allowing low density residential property to be reclassified as high density residential that relies

solely on Dakota Street is inconsistent with Spokane County's own policies and goals.

VI.

THE BOARD PROPERLY HELD THAT THE PETITION SHOULD NOT BE DISMISSED BECAUSE OF SERVICE ISSUES.

Headwaters did not address the issue that RCW 36.70A.290 does not require dismissal of a petition for review for improper service. Headwaters did not address whether the Board improperly found substantial compliance. Headwaters did not address whether, even if there had not been substantial compliance, whether the Board improperly exercised its discretion by considering the petition for review.

As pointed out in Masinter's opening brief, the Board correctly ruled that it had jurisdiction to hear the petition for review.

VII.

CONCLUSION

The Board here, as it was required to do, approached this review by giving the Spokane County Commissioner's decision deference – that is what is required by the GMA. However, deference is not a rubber stamp. The Board was also charged with the GMA to ensure that if the County, in making decisions under its Comprehensive Plan, was acting arbitrarily, to reverse such a decision.

Here, the map amendment simply contradicts Spokane County's

own policies and goals. If this map amendment had included access to the major arterial of Wandermere Drive, then it would have likely complied with the County's policies. That access was denied. By allowing the map amendment to be granted when the sole access to the proposed development is through Dakota Street, which results in a large development relying on a local access road as its sole route of access, resulting in a community cut off from surrounding communities, simply violates the County's own policies.

Headwaters attempts to argue that the Board made its decision because of an emotional argument. Headwaters does not explain what emotions came into play or how they came into play before the Board. An inconsistency is an inconsistency: having a proposed high density development relying solely on a local access road for access simply contradicts Spokane County's own policies.

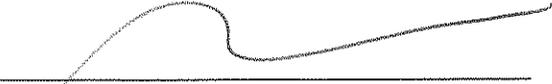
Masinter requests this Court to reverse the trial court and to reinstate the Board's decision disallowing the proposed plan amendment.

Dated this 24 day of February, 2012.

Respectfully submitted,

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By


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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 24th day of February, 2012, I did serve via U.S. Mail, First Class, Postage Prepaid (or other method indicated below), true and correct copies of the foregoing by addressing and directing for delivery to the following:

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