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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 32240-8-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

SPOKANE COUNTY, a political subdivision of the State of
Washington,

Appellant,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD, NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, *ET AL.*,

Respondents.

**SPOKANE COUNTY'S
REPLY BRIEF**

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REPLY ARGUMENT

I. RESPONDENTS' ARGUMENTS REST UPON THEIR MISCHARACTERIZATION OF THE LAW AND UNSUPPORTED ALLEGATIONS OF FACT.

All of Respondents' arguments regarding public participation are based solely upon the erroneous assertion that the GMA requires a separate and independent notice of the adoption of a population projection that coincides with the designation of a UGA boundary, and upon the unsupported assertion that the public was given no notice that the adoption of any of the five (5) alternatives proposed for the UGA boundary would also include the adoption of a population projection that coincides with the UGA boundary designation. The GMA contains no such requirement and the allegation of a lack of notice regarding the future population growth projection is in direct conflict with clear and substantial evidence in the record before the Growth Management Hearings Board.

A. The Growth Management Act Does Not Require a Separate Notice Regarding the Population Growth Projection In Conjunction with the Designation of a UGA Boundary.

Notwithstanding the requirement of public participation in the process of creating, amending and implementing a comprehensive plan and development regulations, there is no requirement in the Growth

Management Act (GMA) that a county give separate and/or independent notice of the population growth projection during the process of designating an Urban Growth Area (UGA) boundary. Respondents mischaracterize the reference in RCW 36.70A.070(1) regarding an estimate of future population growth. RCW 36.70A.070(1) states in pertinent part:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. *The land use element shall include population densities, building intensities, and estimates of future population growth. ...* (Emphasis added)

RCW 36.70A.070(1) speaks of designating the proposed general distribution and general location and extent of uses of land, including housing and other land uses. Considered in the context of the designation of a UGA boundary pursuant to RCW 36.70A.110, as must be done in this case, RCW 36.70A.070(1) requires that the UGA boundary designation be based upon estimates of future population growth provided to the counties by the State of Washington Office of Financial Management (OFM) pursuant to RCW 36.70A.110(2). Nowhere does the GMA require any specific process by which a county adopt an estimate of further growth. Nothing in RCW 36.70A.070(1) or RCW

36.70A.110 requires a county to provide separate or independent notice of the possibility of adopting any specific future population growth estimate in conjunction with the establishment of or revision of a UGA boundary.

Respondents' reliance on *Thurston County v. WWGMHB*, 164 Wn.2d 329, 190 P.3d 38 (2008) is misplaced. Relative to this case the *Thurston County* case stands for the proposition that the UGA designated by a county must accommodate the population growth within the limits projected by the OFM. The case states no requirement that a county adopt a specific population growth projection at any specific point in the process of designating a UGA boundary. The only requirement of the GMA relative to the UGA and population projections, as explained in *Thurston County*, *supra*, is that the size of the UGA be no larger than required to accommodate the maximum population projected by the OFM for the county and that the UGA be at least large enough to accommodate the minimum OFM population projection.

Consistent with the ruling in *Thurston County*, *supra*, Spokane County undertook a review and revision of its UGA boundary pursuant to RCW 36.70A.110 and 130. Respondents do not argue that any of the five (5) alternatives under consideration in 2013 for the UGA boundary

revision or that the UGA boundary and population projection adopted by Spokane County were outside of the limitations found in RCW 36.70A.110 or as explained in *Thurston County, supra*. Respondents' assertion that an expansion of the UGA boundary is not necessary to accommodate the projected population growth for Spokane County is not based upon the rule in the *Thurston County* case. Respondents' assertion is a misrepresentation of the facts in the record. For Respondents to claim that the population capacity of any of the five (5) UGA boundary proposals, for which notice was given and public participation was generously employed, is not indicative of the population growth projection being considered by Spokane County is absurd in light of their repeated admission that the five (5) alternatives and the population with the alternatives would accommodate were clearly stated in the SEIS documents. (BRIEF OF RESPONDENTS, pp. 4 – 5, and 18 – 19.)

Respondents' sole contention regarding public participation is that the notice for the hearing before the Board of County Commissioners, published on February 3, 2013, did not separately and/or independently state that upon the adoption of any of the five (5) alternate UGA boundary proposals, or upon the adoption of any combination thereof, the projection of future population growth in Spokane County may be

adjusted from the projection adopted in 2008, in accordance with the adoption of the UGA boundary. Because there is no requirement for such a separate and/or independent notice in the GMA, the alleged failure is not a violation of the GMA. The GMA contains no provision for liberal construction; the Growth Board has no authority to infer requirements not specifically stated in the GMA. *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 245 n.12, 110 P.3d 1132, 1143 (2005), *citing, Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962 (1998).

The case of *Brinnon Group v. Jefferson County*, 159 Wn. App. 446, 245 P.3d 789 (2011) is also instructive in this matter. The Court of Appeals, Division II, states in the *Brinnon* decision that at 471:

[B]y adopting RCW 36.70A.035(2)(b)(i) the legislature signaled its intent to provide county legislative authorities like the BOCC with greater flexibility in adopting proposed changes to their comprehensive plans. As long as these proposed changes appeared in the draft EIS, which the public may review and comment on, no additional opportunity for public comment is required.

The Growth Management Hearings Board's finding of such a violation is reversible error in interpretation of the law.

The disputed notice in *Brinnon* informed the public that the Board of County Commissioners (BOCC) would hold a public hearing on

December 3, to consider the MPR comprehensive plan amendment. The notice informed the public to contact the Community Development Department “[f]or further information”. *Brinnon Group v. Jefferson County*, 159 Wn. App. 446, 458, 245 P.3d 789 (2011).

There simply is no requirement in the GMA for the notice that Respondents assert. For the Growth Management Hearings Board to find such a requirement is to liberally construe the GMA if not adding nonexistent requirements, either of which is prohibited. *Quadrant Corp.*, *supra* at 245 n.12.

B. The Notice of Hearing Provided by Spokane County Falls Under the Exceptions Found in RCW 36.70A.035(2).

RCW 36.70A.035 specifies the requirements of the public participation program to be adopted by counties relative to the GMA. RCW 36.70A.035(1) states that the required notice is to be of proposed amendment to the comprehensive plan and/or development regulation.

RCW 36.70A.035(2) reads:

(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

(i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the scope of the alternatives available for public comment;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.

Whether and to what RCW 36.70A.035 applies to in this matter is determined by what “comprehensive plan” and “development regulation” is proposed to be amended by the action taken by Spokane County in enacting Resolution 13-0689. Respondents and the Growth Management Hearings Board refer to the UGA population projection asserting that, that is the comprehensive plan amendment that was changed without notice to the public of the possibility of the change. (AR – 001319, Order Granting Dispositive Motion Re: Public Participation, pg. 13, Finding 8 and 9.) The amendment to the Comprehensive Plan for which notice was given and upon which action was taken was the proposed revision of the

UGA (including five (5) identified alternatives). The impact that any of the proposals would have on the population projection was clearly expressed for each of the five (5) alternatives. This fundamental error in the characterization of the UGA population projection leads to the error in the Growth Management Hearings Board's decision.

The comprehensive plan amendment under consideration by Spokane County, for which public notice was given and significant public participation was enjoyed, is the five (5) alternate proposals for the designation of the UGA boundary or as the notice indicates "any combination thereof". (AR – 001041, AR - 000564.) As is clearly stated in the notice and the EIS documents, Spokane County considered and provided an opportunity for the public, agencies and municipalities to comment on all of the five (5) alternate UGA designation proposals. (AR – 001041, AR - 000564.) In light of the correct understanding of what the comprehensive plan amendment that was under consideration by Spokane County was an application of RCW 36.70A.035(2) can be properly made.

Pursuant to RCW 36.70A.035(2)(b) the notice requirement in RCW 36.70A.035(2)(a) does not apply if one of the specified exceptions applies. Respondents agree that an environmental impact statement was

prepared under chapter 43.21C RCW for each of the five (5) alternate proposed UGA boundary designations and that all five (5) of the alternatives were considered in the environmental impact statement. (BRIEF OF RESPONDENTS, pp. 18-19.) Respondents also agree that, the population that can be accommodated within the UGA boundary adopted by Spokane County is within the scope of the alternatives considered in the environmental impact statement and was available for public comment. (BRIEF OF RESPONDENTS, pp. 18-19.) The Growth Management Hearings Board recognized that the notice of hearing dated February 3, 2013, indicated that the UGA boundary adopted by Spokane County, and the population growth projection therefore, was within the alternatives available for public comment. (AR - 001316.)

Again the case of *Brinnon Group v. Jefferson County*, 159 Wn. App. 446, 245 P.3d 789 (2011) gives clear guidance in this matter. The court in *Brinon* states:

We agree that the public had effective notice of the MPR proposal at the time of the BOCC's public hearing. Brinnon Group's argument rests on its challenge to the [Growth Management Hearings] Board's conclusion that the Commission's recommended map was inconsistent with the draft EIS maps that the County provided to the public for comment. Although Brinnon Group exhaustively details the minor differences between these maps, these differences do not support Brinnon Group's contention that the public lacked effective notice of the

overall MPR proposal. *As we detailed above, the BOCC's adopted boundary map is consistent with the maps that the public viewed in the draft EIS. Thus the public had effective notice of the proposal that the BOCC adopted. Moreover even assuming that the ordinance "changed" the proposed amendment, the County was not required to provide an additional comment period under RCW 36.70A,035(2)(b)(i) since the information in the draft EIS clearly reflected the BOCC's changes. (Emphasis added)*

Brinnon Group v. Jefferson County, 159 Wn. App. 446 at 476.

The *Brinnon* case is identical to this matter because, in *Brinnon* Jefferson County considered three (3) alternative boundaries to a master planned resort area. Prior to adoption of the adoption of the final ordinance the BOCC made some changes to the map and to the text of the proposed ordinance. The Court of Appeals rejected Brinnon Group's assertion that the exact text of the proposed ordinance was required to be stated in the notice of hearing. *Brinnon Group, supra* at 467. In this case, as Respondents have candidly admitted several times in their brief, that all five (5) of the alternatives from which the UGA boundary adopted by Spokane County was taken are clearly found within the SEIS along with a clear indication of the projected population growth that would be accommodated within the boundary area. (BRIEF OF RESPONDENTS, pp. 4-5, and 18-19.)

On that basis alone the exception in RCW 36.70A.035(2)(b)(i) applies. Additionally because the UGA boundary and the accompanying population projection that was adopted were within the scope of the five (5) alternatives proposed and for which notice was properly given, the exception of RCW 36.70A.035(2)(b)(ii) also applies.

The exceptions of RCW 36.70A.035(2)(b) clearly apply, thus the Growth Management Hearings Board's conclusion that the exceptions did not apply and that the notice was not compliant with the requirements of the GMA is without basis in fact or in law. For the same reasons stated above regarding RCW 36.70A.035 the notice of hearing objected to by Respondents is also in compliance with the Spokane County Public Participation Guidelines. The Board's conclusion and thus the Final Decision and Order of the Board must be reversed.

II. A DETERMINATION OF INVALIDITY MUST BE BASED UPON A FINDING THAT THE NON-COMPLIANCE FOUND CAUSES THE COMPREHENSIVE PLAN TO SUBSTANTIALLY INTERFERE WITH THE GOALS OF THE GMA.

A. The Determination of Invalidity Is Erroneously Based Upon an Improper Finding of Non-Compliance and Upon Independent Bases Beyond the Finding of Non-Compliance.

The Growth Management Hearings Board's error in its determination of invalidity is two fold. First, the Board erroneously

found that the notice of hearing of February 3, 2013, was not compliant with the GMA. In the absence of a correct finding of non-compliance there can be no determination of invalidity. RCW 36.70A.302. A determination of invalidity based upon an incorrect finding of non-compliance is error because a determination of invalidity must be based upon a valid finding of non-compliance. As demonstrated in the Petitioner's Opening Brief and above in this brief, the finding of non-compliance in this matter is improper and without basis in fact or the law.

Secondly, the Growth Management Hearings Board found, independently of the public participation issue, that Spokane County's adoption of the UGA boundary update violated several goals of the GMA without any briefing or hearing on the merits of the allegations of violation of those other goals. This is error on the part of the Growth Management Hearings Board.

B. The Determination of Invalidity Was Erroneously Based Upon Allegations of Error Other Than the Finding of Non-Compliance with the Public Participation Requirements.

RCW 36.70A.280 states in pertinent part:

- (1) The growth management hearings board shall hear and determine only those petitions alleging either:
 - (a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as

it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

When considering the Dispositive Motion on Public Participation the Growth Management Hearings Board was to review the notice of hearing dated February 3, 2013, for compliance with the public participation requirements of the GMA. (AR – 000563 - 0000566; RCW 36.70A.280; WAC 242-03-560.) The Growth Management Hearings Board may find that part or all of a comprehensive plan or development regulation is invalid only, in pertinent part, if the Board: 1) makes a finding of non-compliance, and 2) the final order of the Board includes a determination, supported by findings of fact and conclusions of law, that the continued validity of part or all of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter. RCW 36.70A.302. In other words, the determination of invalidity is based upon the finding of non-compliance of part or all of the comprehensive plan and/or development regulation, and that the continued validity of the non-compliant plan or regulation, or the non-compliant part thereof, would substantially interfere with the fulfillment of the goals of the GMA.

In this matter before the Court the only finding of non-compliance with the GMA was a finding of a violation of the public notice requirements of the GMA. Thus, the determination of invalidity must be based upon the finding of non-compliance with the public notice requirements of the GMA. The error of the Growth Management Hearings Board in this matter is that the Board relied not only upon its erroneous finding of non-compliance, but the Board also found that the updated UGA boundary adopted by Spokane County was non-compliant with the GMA and thus invalid based upon alleged non-compliance with goals of the GMA independent of the public participation goals and requirements. (AR – 001320.) To do so was reversible error.

The Growth Management Board's decision on the Dispositive Motion states:

Beyond the alleged interference with Goal 11 regarding citizen participation, both the State Agency Petitioners and the Neighborhood Alliance Petitioners contend the UGA designation process undertaken by the County also interferes with Goals 1, 2, 3, and 12. It interferes with Goals 1 and 12 regarding public facilities and services because the County has not properly planned for these essential public services. For example, the County's Capital Facilities Plan was based on a UGA population projection for 2031 or 113,541, not 121,112. It interferes with Goal 3 because the County's transportation capital facilities plan expired in 2012, well before the latest County population estimate. The currently approved Resolution 13-0689 can also affect Goal 1, which

encourages growth in urban areas, and Goal 2, reducing sprawl and inappropriate development of undeveloped land, because it allows for vesting in the currently expanded urban growth areas before the Resolution can be reviewed and decided upon by the Growth Board.
(AR – 001320.)

Without any hearing on the merits of the petition before it and independent of the issue of whether the notice of hearing was sufficient, the Growth Management Hearings Board relied upon Respondents' assertion that "... the continued validity of the new population projection of 121,112, which has not been subjected to adequate public participation processes would substantially interfere with the fulfillment of GMA Planning Goals 1, 2, 3, 11, and 12 of the Act (RCW 36.70A.020)."

Although the capital facilities plan and public services provided in the future relate to the projected population growth, whether or not the capital facilities plan has been updated, whether public services will be available at some point in the future are not inseparably impacted by whether the notice of hearing dated February 3, 2013, was proper. Those are issues yet to be determined by the Growth Management Hearings Board when it considers the substantive issues of the Petition for Review before it in this matter.

Additionally, the Growth Management Hearings Board relied upon its assumption that vesting of development and/or building permits

might occur pending the Board's review of the challenged resolution. (AR- 001320.) Whether development permit applications vest is outside of Spokane County's control. The question of vesting of development permits has been considered extensively by the legislature and is specifically allowed by statute, RCW 36.70A.302, as discussed in Spokane County's opening brief in this matter.

Respondents' reliance upon the case of *Miotke v. Spokane County*, ___ Wn. App. ___, 325 P.3d 434 (2014) is unfounded. In that case the Court considered whether the Growth Management Hearings Board correctly found that by repealing a change to the UGA boundary *after development permit applications had vested to the "new" UGA boundary* Spokane County had cured the error of adding the land into the UGA, while Spokane County allegedly had not addressed the fact that the land was now urban in nature and thus should be included in the UGA. The Court decided that Spokane County erred by changing the UGA boundary back to exclude the land from the UGA because at the time of the decision to repeal the allegedly errant UGA expansion vesting of permit applications had already occurred. *Miotke v. Spokane County*, ___ Wn. App. ___, 325 P.3d 434 (2014). Respondents' erroneously assert that the *Miotke* decision stands for the proposition that any time vesting of

development permit applications occurs that alone is grounds for invalidation of a city or county's action. (BRIEF OF RESPONDENTS, p. 39.)

The Growth Management Hearings Board erroneously found Resolution 13-0689 to be invalid based upon its erroneous finding of non-compliance with the public participation requirements of the GMA, but also independently on allegations of fact that were not yet litigated or briefed before the Growth Management Hearings Board, and finally upon the fear that lawful vesting of development permit applications might take place. The errors by the Growth Management Hearings Board are grounds for reversal of the Board's determination of invalidity.

III. RESPONDENTS' REMAINING ARGUMENTS ARE INAPPOSITE TO THE ISSUES BEFORE THE COURT.

A. The Errors by the Growth Management Hearings Board Are Substantive and Not Merely Procedural.

In stating the standard of review to be applied by this Court, Respondents assert that "... a claim of procedural error must demonstrate that the party seeking relief has been harmed by the error" (citing *K.P. McNamara Northwest, Inc. v. Dept. of Ecology*, 173 Wn. App. 104, 121, 292 P.3d 812 (2013)). Although the statement is an accurate reference to the *McNamara* case, it must be kept in mind that the errors of the Growth

Management Hearings Board in this matter are substantive and not merely procedural. Thus the *K.P. McNamara* case and the standard regarding procedural error are inapposite to this matter before the Court. It is not necessary for Spokane County to assert or prove harm to Spokane County as a result of the error of the Growth Management Hearings Board.

Even though it is unnecessary for Spokane County to prove harm as a result of the Growth Management Hearings Board's erroneous decision and order, Spokane County is irreparably harmed by the decision and order in that Spokane County is now unable to plan in any meaningful way regarding the growth that is projected to occur as reflected in the OFM population growth projections. This is a significant handicap to Spokane County and to all property owners within Spokane County who are looking for certainty in the UGA boundary and zoning classifications to plan for the future use of the lands they own.

B. Spokane County Has Appropriately Designated the Assignments of Error and Issues Related to Assignments If Error.

The matter before this Court is a review of the Order Granting Dispositive Motion Re: Public Participation issued by the Growth Management Hearings Board on November 26, 2013, pursuant to the Growth Management Act, RCW 36.70A.280, 290, 300, 320, & 3201.

The review and decision of the Growth Management Hearings Board is in the form of an appellate review for the purpose of determining, based upon the administrative record of the proceedings before the county legislative body, whether the comprehensive plan is in compliance with the requirements of the GMA. RCW 36.70A.280. The standard of review for this Court's review of the Growth Management Hearings Board's decision is clearly stated in RCW 34.05.570. One of the assignments of error raised by Spokane County in this matter is that the Growth Management Hearings Board's order is not supported by evidence that is substantial when viewed in light of the whole record before the court. RCW 34.05.570 (3)(e).

Spokane County clearly states the assignment of error regarding the Growth Management Hearings Board's order relative to the sufficiency of the record in its opening brief at page 3, assignment of error number 2. The specific error that Spokane County asserts was committed by the Growth Management Hearings Board relative to that assignment of error is stated in Issues Related to Assignments of Error, in Spokane County's Opening Brief, page 4, letter b. Although Respondents assert that Spokane County has failed to challenge findings of fact by the Growth Management hearings Board, that is not

the case nor is it required to perfect an appeal of the Growth Management Hearings Board's order. RCW34.05.570(3).

Respondents' assertion may be in reference to RAP 10.3(g). However the case of *Brinnon Group v. Jefferson County*, 159 Wn. App. 446, 245 P.3d 789 (2011) is instructive on this issue. *Brinnon*, at 159 Wn. App. 464, states that:

[i]n reviewing the Board's actions, "we sit in the same position as the trial court and apply the APA standards directly to the administrative record".

The *Brinnon* court goes on to say that "... like the Board we defer to the county's planning action unless the action is "clearly erroneous". *Id.* at 465 Finally, if there is a violation of RAP 10.3(g) regarding the citation to specific findings of fact, a technical violation of RAP can be overlooked under appropriate circumstances. *In Re Disciplinary Proceedings Against Hall*, 180 Wn.2d 821, 828 - 829, 329 P.3d 870 (2014).

The Growth Management Hearings Board does not hold evidentiary hearings and then make findings of fact based upon the presentation of primary evidence before the Board. They sit as a quasi-judicial appellate body, who reviews the administrative record placed before them, for the purpose of entering an order determining whether

the action taken and the comprehensive plan adopted by a local jurisdiction is compliant with the GMA. RCW 36.70A.280 *et. seq.* Even under RAP 10.3(g), the nature of the proceeding before the Growth Management Hearings Board and the clarity by which Spokane County has stated the assignments of error and the issues related to the assignments of error, if the Court should determine that a violation of RAP 10.3(g) has occurred, the Court may waive that technical violation. *In Re Disciplinary Proceedings Against Hall* 180 Wn.2d 821, 828 - 829 (2014). Spokane County has not violated either the APA or RAP 10.3(g), thus Respondents' assertion that Spokane County has done so is unfounded and inapposite.

CONCLUSION

Respondents' entire argument rests on their assertion that Spokane County gave no notice of the possibility that the UGA boundary, if expanded from its location prior to the adoption of Resolution 13-0689, would also entail the adoption of a population growth projection that would coincide with the capacity for growth within the newly adopted UGA boundary. If their assertion of that single fact is error then their entire argument fails. In fact, Respondents themselves admit and point out several times in their briefing that

Spokane County prepared a Supplemental Environmental Impact Statement (SEIS) for five (5) different and separate alternative UGA boundary proposals. They further admit that the SEIS, regarding each of the five (5) alternative proposals, clearly indicates the capacity for growth resulting from each alternative.

In contradiction of the clear language of the GMA, Respondents also assert that the clear and complete descriptions of the proposals for revision of the UGA boundary that are contained in the SEIS are insufficient to meet the requirements of the notice regarding the five proposals.

The Growth Management Hearings Board's decision and order is error in regard to the clear and substantial evidence that is contained in the record before the Board indicating that the public was given sufficient notice that any of the five (5) alternative proposals for the revision of the UGA boundary would entail a population projection that coincides with the capacity for growth within the adopted UGA boundary. On that basis alone the Board's decision and order is error and should be reversed.

The second basis for the reversal of the Board's order is that the Board erroneously applied the law regarding whether notice of the

potential population projection attendant to the UGA boundary revision, in addition to the description of the five (5) alternative proposed UGA boundary locations, was required by the GMA. RCW 36.70A.035 is controlling on that issue and was erroneously interpreted and/or applied by the Growth Management Hearings Board.

Finally, the Board's determination of invalidity of Resolution 13-0689 is error. The Growth Management Hearings Board erred in finding Resolution 13-0689 to be non-compliant with the GMA, thus a determination of invalidity based upon that finding is error and can not stand. Additionally, however, in its determination of invalidity the Growth Management Hearings Board relied upon Respondents' assertion that beside merely a finding of the violation of public participation requirements, the Board could independently consider and base its determination of invalidity on other alleged though not yet litigated violations of the GMA and, in the face of clear language of the GMA otherwise the Board should rely upon the possibility of vesting of development permit applications to determine invalidity. The first error in determining invalidity is compounded by the independent consideration of allegations not yet litigated and the fear of vesting of

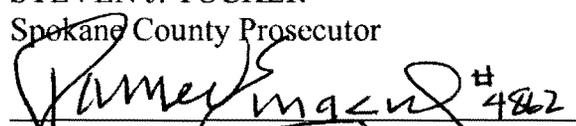
development permit applications which is specifically addressed and approved of in the GMA.

Spokane County respectfully suggests that the errors of the Growth Management Hearings Board are so clear as to support reversal of the order of the Board in this matter. Spokane County requests that the Court remand the matter to the Growth Management Hearings Board with instructions to follow the law as adopted by the legislature and as interpreted by this Court.

Respectfully submitted this 25th day of September, 2014.

STEVEN J. TUCKER
Spokane County Prosecutor



 #4862
DAVID W. HERBERT, WSBA #16488
Deputy Prosecuting Attorney
Attorneys for Spokane County

PROOF OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 25th day of September, 2014, I caused to be served a true and correct copy of the Appellant Spokane County's Reply Brief by the method indicated below, and addressed to the following:

Tim Trohimovich, Esq.	<input type="checkbox"/>	Personal Service
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DATED this 25th day of September, 2014 in Spokane, Washington.


TAMARA BALDWIN