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STATE OF WASHINGTON  
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NO. 33653-1

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

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EDWARD COYNE AND WEST RICHLAND CITIZENS FOR SMART  
GROWTH,

Appellants,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS  
BOARD,

and

CITY OF WEST RICHLAND,

Respondent,

and

CHARLES GRIGG,

Respondent.

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**BRIEF OF APPELLANTS**

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TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR	
<b>Assignments of Error</b>	1
<b>Issues Pertaining to Assignments of Error</b>	2
II. STATEMENT OF THE CASE	3
III. ARGUMENT	
<b>Summary of Argument</b>	12
<b>Standard of Review</b>	13
1. <u>Adding two lots for proposed changes after the close of the 2012 docket violated the notice requirements of RCW 36.70A.035 and RCW 36.70A.130</u>	16
2. <u>The City did not provide enough public notice and participation as required by RCW 36.70A.035</u>	
a. <b>Lack of notice</b>	26
b. <b>Lack of continuance public participation</b>	31
3. <u>The re-zone and amendment of the Comprehensive Plan were an illegal “spot zone.”</u>	33

<u>4. The changes are inconsistent with the original Comprehensive Plan and the Growth Management Act</u>	42
<u>5. The Board's Findings of Fact and Conclusions of Law are inadequate to permit meaningful appellate review</u>	48
IV. CONCLUSION	50
Appendix- Exhibit B Proposed Map, Applicant: Grigg	A1

## TABLE OF AUTHORITIES

### Case Law

<i>Anderson v. Island County</i> , 81 Wn.2d 312, 501 P.2d 594 (1972)	39
<i>City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 164 Wn.2d 768, 193 P.3d 1077 (2008)	15
<i>Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County</i> , 96 Wn.2d 201, 634 P.2d 853 (1981)	40
<i>Chrobuck v. Snohomish County</i> , 78 Wn.2d 858, 480 P.2d 489 (1971)	39
<i>Citizens for Responsible and Organized Planning v. Chelan County</i> , 105 Wn.App. 753, 21 P.3d 304, (2001)	49, 50
<i>Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County</i> , 121 Wn.2d 179, 849 P.2d 646 (1993)	15
<i>King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 142 Wn.2d 543, 14 P.3d 133 (2000)	14, 15
<i>Lutz v. Longview</i> , 83 Wn.2d 566, 520 P.2d 1374 (1974)	39, 40
<i>Martel v. City of Vancouver (Wash.) Bd. of Adjustment</i> , 35 Wn. App. 250, 666 P.2d 916 (1983)	48
<i>Montlake Community Club v. Central Puget Sound Growth Management Hearings Bd.</i> , 110 Wn.App. 731, 43 P.3d 57 (2002)	47
<i>Narrowsview Preservation Ass'n v. City of Tacoma</i> , 84 Wn.2d 416, 526 P.2d 897, (1974)	40, 41
<i>1000 Friends of Washington v. McFarland</i> , 159 Wn.2d 165, 149 P.3d 616 (2006)	32
<i>Org. to Pres. Agric. Lands v. Adams County</i> , 128 Wn.2d 869, 913 P.2d 793 (1996)	49
<i>Parkridge v. City of Seattle</i> , 89 Wn.2d 454, 573 P.2d 359 (1978).	39
<i>PT Air Watchers v. Dep't of Ecology</i> , 179 Wn.2d 919, 319 P.3d 23 (2014).	14
<i>Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 154 Wn.2d 224, 110 P.3d 1132 (2005);	13, 14
<i>City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 136 Wn.2d 38, 959 P.2d 1091 (1998).	14, 15

<i>Smith v. Skagit County</i> , 75 Wn.2d 715, 453 P.2d 832 (1969);	39, 40
<i>Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd.</i> , 176 Wn. App. 555, 309 P.3d 673 (2013)	15, 40
<i>Spokane County v. Eastern Washington Growth Management Hr'gs Board</i> , 188 Wn. App. 467, 353 P.3d 680 (2015).	14, 24, 25, 26
<i>Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.</i> , 164 Wn.2d 329, 190 P.3d 38 (2008).	15
<i>Willapa Grays Harbor Oyster Growers Ass'n v. Moby Dick Corp.</i> , 115 Wn.App. 417, 62 P.3d 912 (2003)	40
<i>Woods v. Kittitas County</i> , 162 Wn.2d 597, 174 P.3d 25 (2007)	40

### **Statutes**

RCW 4.84.350	50
RCW Chap. 34.05 RCW	13
RCW 34.05.570(3)	15, 16
RCW Chap. 36.70A	13, 26
RCW 36.70A.020	26, 43, 44
RCW 36.70A.035	19, 25, 27, 30, 32, 33
RCW 36.70A.070	47
RCW 36.70A.130	16, 17, 18, 22, 23, 32, 44
RCW 36.70A.172	32
RCW 36.70A.280	15
RCW 36.70A.302	15
RCW 36.70A.320(3)	15

### **Washington Administrative Code**

WAC 365-190-040	32
WAC 365-195-900-925	32

**Municipal Code**

WRMC 14.03.010	31
WRMC 14.03.030	30, 31
WRMC 14.09.030	17, 23, 24
WRMC 14.09.060	18
WRMC 14.09.070	18, 24
WRMC 14.09.110	18, 19, 20
WRMC 17.24.010	44
WRMC 17.24.020	44
WRMC 17.60.020	39
WRMC 17.78.010B.1	23
WRMC 17.78.030	27

## I. ASSIGNMENT OF ERROR

### **Assignments of Error**

1. The Growth Management Hearings Board erred in holding that the changes for Lots 1 and 29 were properly on the 2012 docket for Growth Management Plan amendments.
2. The Growth Management Hearings Board erred in holding that City provided adequate advance notice to the public of the actions taken.
3. The Growth Management Hearings Board erred in holding continuous public participation was provided in the amendment process.
4. The Growth Management Hearings Board erred in not holding the change from low density residential to commercial to be an illegal "spot zone".
5. The Growth Management Hearings Board erred in upholding the amendments to the Comprehensive Plan.
6. The Growth Management Hearings Board erred in upholding the zoning changes.

7. The Growth Management Hearings Board erred in failing to enter adequate findings of fact. All “findings,” A, B, C, and D are challenged by Appellants as unsupported by evidence.

8. The Growth Management Hearings Board erred in failing to enter adequate conclusions of law.

### **Issues Pertaining to Assignments of Error**

1. Were the changes for Lots 1 and 28 lawfully on the 2012 docket for Comprehensive Plan amendments, when they were not proposed until after the deadline established under RCW 36.70A.130(2)(a), and WRMC 14.09.030 ?

2. Did the City provide adequate advance notice to the public of, and continuous public participation in, the amendment process, as required by RCW 36.70A.035 and RCW 36.70A.130?

3. Was the change from low density residential to commercial for three lots an illegal “spot zone”?

4. Are the amendments inconsistent with the existing Comprehensive Plan, contrary to RCW 36.70A.130(1)(d)?

5. Do the amendments violate the goals of the Growth Management Act, RCW Chap. 36.70A ?
6. Are the Board's findings of fact, A, B, C and D sufficient to permit meaningful appellate review? Or, are they supported by substantial evidence?
7. Are the Board's conclusions of law sufficient to permit meaningful appellate review?

## II. STATEMENT OF THE CASE

Appellants, Edward Coyne and West Richland Citizens for Smart Growth (Citizens) filed a Petition for Review to the Growth Management Hearings Board (Board) of actions by the West Richland City Council, which were the enactment of two ordinances, one of which approved an Amendment to the Comprehensive Plan, and the other which imposed, in conjunction with the Plan Amendment, an "Area-Wide Rezone" from Low Density Residential to Commercial for Lots 1, 28 and 29, Canal Heights. CP 61-66.

The lots in question lie along Austin Drive in West Richland, near the intersection of Bombing Range Road and Van Giesen. The Citizens are constituted of long-time residents of Austin Drive. The Canal Heights/Austin Drive neighborhood was platted in 1948 and

contains a mixture of older homes dating back to the 1950's ranging to homes built in the last decade, situated on large lots. CP 456.

The Comprehensive Plan for the Austin Drive area, enacted pursuant to the Growth Management Act, prior to the amendment, did not provide for commercial development, it was residential. TR 59-60. It did so, however, for areas just to the north, and northeast, across the canal that runs along the back of the Austin Drive lots, along Van Giesen Street. CP 456.

On the west side of Bombing Range Road is Flat Top Park, on land designated "public use." CP 456.

The lots in question have been subject to private "protective covenants" since 1948, which designate the lots as "residential." Mr. Grigg's attorney in the Growth Management Hearings Board proceeding conceded the existence of the covenants, and indicated they may mean that commercial development will not take place regardless of the changes made by the City. CP 140.

Charles Grigg, owner of hardware stores known as Grigg's, purchased Lot 29 on Austin Drive. Mr. Grigg sought the assistance of City officials in guiding him through the process of utilizing the lot for commercial purposes. Well before his application to the City in

January of 2012 to amend the Comprehensive Plan as to Lot 29, certain city officials were looking into the logistics of how things could be changed. On January 19th, 2010 an email with the subject line: "RE: PROJECT BLACK JACK – Shhhhhhh" was circulated. CP 346. Community and Economic Development Director Ruth Swain asked the Senior Planner and others in Planning: "What do you think of the title Project Black Jack???" She wanted information on a lot just south of the corner pulled up, and wanted to know if "he" should not be able to purchase a second or third lot, how large a building could be put on the property, noting "[h]e would like a 10,000 s.f. building if possible." Swain cautioned: "We also need to check some other things without alerting 'other departments' at this juncture." CP 346.

Mr. Grigg then submitted an application, in January of 2012, to amend the Comprehensive Plan to allow Lot 29 to be made "commercial." The deadline for placing an application on the docket for 2012 is January 31st, 2012. Only Grigg's application concerning Lot 29 was filed by then. (Another timely application was also filed with the City, the Ullah application, for land a distance away, and did not involve a change to commercial, and it is the position of Appellants that this had no bearing on the issues in this appeal.)

On November 6th, 2012, a public hearing was held on the subject of "2012 Comprehensive Plan Amendments" to "Establish Planning Commission Docket." CP 480. The staff recommendation document states,

"[p]er state law, once the council establishes the annual docket, staff must examine the 2012 proposed updates, amendments and applications as a whole. ... By establishing the Docket for 2012, the Council formally initiates a process where proposed amendments may be considered by the Planning Commission and through staff research and study. Furthermore, this begins a process where the public is engaged to participate in the process through involvement, comment and testimony." CP 481.

On November 6th, 2012, the City Council passed a motion approving the docket. CP 501.

Over a year after his application concerning Lot 29, Mr. Grigg and the City acquired additional lots that are central to this appeal. On February 25th, 2013, the purchase of Canal Heights Lot 28 by the City was recorded, ostensibly to use for storm runoff. CP 502. On February 26th, 2013, Charles Grigg informed Ruth Swain that he had a purchase offer on Canal Heights Lot 1. (The sale was recorded March 22nd, 2013.) CP 502. City staff, in March of 2013, began to include all three parcels in the proposed amendment. AR 476.

Although the Grigg application to change the Comprehensive Plan was only for Lot 29, the City staff eventually stated in staff report for an April 11<sup>th</sup>, 2013 Planning Commission Meeting: "Per Council and Planning Commission direction, two adjacent parcels are included ... ." CP 328. On March 14<sup>th</sup>, 2013, the Planning Commission allegedly told the city staff to include three parcels. CP 292.

Eventually, the City placed Lots 1, 28 and 29 under a request to the Planning Commission to approve an amendment to the Comprehensive Plan and zone change to result in an "area-wide" rezone of the three lots to "commercial" from "low density residential."

As part of the process, the City sent out certain notices, some of which were only to residents within 600 feet of the affected lots, inviting them to workshops and to the Planning Commission meeting on the subject. Notice of a Planning Commission meeting on the subject was mailed to owners of properties located within 600 feet. CP 293.

The Preliminary Agenda for the Planning Commission for April 11<sup>th</sup>, 2013 stated there would be a Public Hearing on "2012 Comprehensive Plan Update and Area-Wide Rezone." CP 442. A

staff report described the item as an “Open Record Public Hearing” with item 8 a. having the subject of “2012 Docketed Comprehensive Plan Amendments (File CPA 2012-06; CPA 2012-07 and 2012-52); and Area-wide rezone (RZ 2013-07).” CP 444.

Up to that point, according to the staff report, the following actions had occurred: a) legal notice published on 12/12/11 of the deadline for applications for changes to the Comprehensive Plan 2012 docket, b) by the 1/31/12 deadline, two private party applications were received and deemed complete. AR 419, c) 11/6/12, the 2012 Comprehensive Plan Amendment docket was established at a City Council Public Hearing, d) 1/17/13, the Mayor issued a letter inviting property owners in a study area around Bombing Range/Van Giesen Roads intersection to discuss potential Comprehensive Plan Changes, e) 1/23/13, a roundtable meeting was held with Mayor and Community and Economic Development staff and invited property owners on possibility of a Comprehensive Plan change, f) 2/5/13, a City Council Workshop was held in which Community and Economic Development Director Swain updated the City Council “on the 2012 Docket” and showed staff-proposed alternatives for the Bombing Range/Van Giesen Intersection Study area, and reported on public input received, g) 2/13, meetings with

applicants Grigg and Ullah, h) 2/14/13, a summary sheet was provided to the Planning Commission on “the proposed changes,” i) 3/14/13, the Planning Commission held a workshop at which the Commission “finalized the study area for the Bombing Range/Van Giesen intersection for the docket,” j) 3/25/13, determination of SEPA non-significance issued, and notice of the Planning Commission 4/11/13 hearing was mailed to “affected parcels,” to properties within 600 feet of the parcels under consideration, published in the paper, posted at City Hall, the Library and Fire Station, and signs were posted “at the property.” CP 445.

Apparently nine letters to property owners were sent for the roundtable meeting on January 23rd, 2013. The Schroeders did not attend and were the owners of Lot 28, as they had an agreement to sell it to the City for the swale project, Edward and Patty Coyne attended, “[v]ery concerned,” Charles Hatfield, did not respond, Mrs. Gest did not attend, Mr. Gest passed away a few days before the meeting, Jeanette Hunt is not interested in a change to commercial, “[w]ants to continue to raise goats,” the Steeles did not respond, Lynne Paasch with a home with grapes growing on it, called and was strongly opposed, said she has talked to many neighbors and all are strongly opposed, Sue Fearing executor of estate owning vacant

lots, attended and wants to sell in the near future for maximum value.

CP 476-77

The staff report gave an overview to the Planning Commission of the "2012 Comprehensive Plan Docket" in the staff report, in table form. Under Applicant: Grigg, it states the action would be to designate a .593 acre parcel as Commercial, from Residential Low Density. In a box to the right, it is claimed: "Per Council and Planning Commission direction, two adjacent parcels are included in the proposed comprehensive plan designation change: Canal Heights Lot 28 (.904 acres) and Canal Heights Lot 1(.847 Acres) in order to create a commercial node." CP 446.

And under a sub-heading of "Area-Wide Rezoning" it is stated that "the Planning Commission may also consider the zoning designation of the three parcels at the Bombing Range Road/West Van Giesen intersection ... ." "... it is an area-wide zoning map amendment which is reviewed as a Type IV project permit process ... ." CP 447.

The staff report refers to a "recent city-wide survey" without further detail. CP 447.

Attachment B to the report states that the "city alteration of request" was recommended in order to create a commercial node and

maintain a "best practices" approach. "Lot 1 and 28 were recently acquired by the respective owners." CP 455.

Notices by the City incorrectly stated the proposed action was of Type IV, CP 284, when in fact it was a Type VII action, CP 486.

The Planning Commission unanimously recommended against the changes for Lots 1, 28 and 29 which are the subject of this appeal. CP 503. Concerns expressed during the Planning Commission meeting were inadequate notification, that commercial should not be next to residential, and traffic access. CP 486.

On June 4th, 2013 a traffic study was presented at a workshop with the Council. The study found that by 2018 the intersection will not be acceptable to handle the anticipated traffic. CP 294.

On June 7th, 2013, certain notices were provided of a City Council meeting to be held June 17th, 2013 and one newspaper notice was published June 10<sup>th</sup>. CP 294. The City Council then held the public meeting and approved the changes, enacting ordinances to carry out the Amendment to the Comprehensive Plan, as well as the rezone to "Commercial." CP 33-38.

The Citizens then filed a Petition for Review of the action by the Growth Management Hearings Board. Their Amended Petition for review listed 14 issues. CP 61-66. The issues covered objection to the public notice and participation process, whether the changes were in the public interest, that the action was in reality a site-specific action, not appropriate for an area-wide rezone process, and that changes to Lots 1 and 28 were not properly part of the 2012 docket, whether the City had made proper findings. The Citizens requested that the amendment and rezoning be declared void. Id.

The Growth Management Board, following hearing, rejected all of the Citizens' arguments and upheld the Amendment to the Comprehensive Plan and the rezone. CP 7-22. A Petition for Judicial Review to Superior Court followed. CP 1-6.

The Superior Court ruled against the Petitioners, and dismissed the action. CP 952-53. This appeal timely followed. CP 954-57.

### III. ARGUMENT

#### **Summary of Argument**

When the docket for the 2012 proposed amendments to the City of West Richland closed and was approved by the City Council,

changes from residential to commercial for only one lot were at issue, in the Austin Drive area. The City then, in 2013, belatedly allowed two more lots to be added to the process, and ultimately made changes to the Comprehensive Plan and its zoning to allow three lots to become Commercial instead of Low Density Residential. The addition of two lots to the proposed changes after the docket closed, and after public workshops and meetings had already been held, deprived the public the notice and participation rights it is guaranteed by the Growth Management Act.

In upholding the changes, the Growth Management Hearings Board of Eastern Washington failed to make adequate findings of fact and conclusions of law. Proper findings and conclusions would have found and held that the City did not comply with notice and public participation requirements, that the changes are illegal spot zoning, inconsistent with the City's Comprehensive Plan and in violation of the Growth Management Act, RCW Chap. 36.70A.

#### **Standard of review**

The Administrative Procedure Act (APA), chapter 34.05 RCW, governs review by the Court of Appeals of the Board's order.

*Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,*

154 Wn.2d 224, 233, 110 P.3d 1132 (2005); *PT Air Watchers v. Dep't of Ecology*, 179 Wn.2d 919, 925, 319 P.3d 23 (2014). The appellate court sits in the same position as the Superior Court and applies the APA standards directly to the record before the agency. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998). The appellate court reviews the Board's order, not the Superior Court's decision. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). The party asserting the invalidity of an administrative order bears the burden of showing that the order is invalid. RCW 34.05.570(l)(a); *King County*, 142 Wn.2d at 552.

Our Supreme Court has set forth the standard of review as follows:

The Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations. RCW 36.70A.280, .302. The Board "shall find compliance" unless it determines that a county action "is clearly erroneous in view of the entire record before the board and in light of the goals and requirements" of the GMA. RCW 36.70A.320(3). To find an action "clearly erroneous," the Board must have a "firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). ...

*Spokane County v. Eastern Washington Growth Management Hr'gs Board*, 188 Wn. App. 467, 481, 353 P.3d 680 (2015).

RCW 34.05.570(3) sets out nine grounds for invalidating an administrative order. *King County*, 142 Wn.2d at 553. Appellants assert two. The Board erroneously interpreted or applied the law. RCW 34.05.570(3)(d). The Court on appeal reviews the Board's legal conclusions de novo. *King County*, 142 Wn. 2d at 553; *Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 176 Wn. App. 555, 565, 309 P.3d 673 (2013). The Board's interpretation of the GMA deserves substantial weight, but it is not binding on the courts. *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008).

Second, Appellants assert that substantial evidence does not support the Board's order. RCW 34.05.570(3)(e). Such a challenge present a mixed question of law and fact. *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 779-80, 193 P.3d 1077 (2008). In reviewing that question, the appellate court will determine the law independently and apply it to the facts found by the Board. *City of Arlington*, 164 Wn.2d at 779-80. The Court will review challenged findings of fact for substantial evidence: evidence sufficient to persuade a fair-minded person of the finding's truth or correctness. *City of Redmond*, 136 Wn.2d at 46.

1. Adding two lots for proposed changes after the close of the 2012 docket violated the notice requirements of RCW 36.70A.035 and RCW 36.70A.130

RCW 36.70A.130 provides in part:

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city **no more frequently than once every year**, ...

(Emphasis added.)

This was violated because while the City has procedural ordinances to purportedly comply, in this case, two lots were added for changes after the close of the docket, meaning amendments were considered “more frequently than once every year” which is forbidden. “[C]onsidered by” would include placing changes on the docket. First a change for only one lot was considered, then for all three, within 2013, in the year following the close of the docket. The impact was that Respondents were allowed to apply for a change more than “once every year.”

In its facial compliance with RCW 36.70A.130(2)(a), the City has adopted code provisions to carry out a docket cycle of not more

frequently than annual proposed amendments. And there is a specific deadline to make that request for that annual cycle.

WRMC 14.09.030 Submission deadlines.

Proposed amendments to the comprehensive plan or land use plan map may be submitted at any time. Applications received by January 31, 2008, will be considered during the current annual review period. Applications received thereafter will be considered during the subsequent annual review period with **the last working day in January being the deadline for submittal for each annual review period thereafter.**

(Emphasis added.)

WRMC 14.09.060 Initiation of amendments.

Amendments may be initiated by any interested person, including applicants, citizens, and staff of other agencies.

Thus, the same procedure apply whether the changes are put in motion by citizen or by City agency.

WRMC 14.09.070 Docket.

Proposed amendments will be assigned an application number and placed on a docket. A current copy of the docket shall be maintained by the planning department and shall be available for public inspection during regular city business hours.

A member of the public, who chose to inspect the docket, should be able to rely upon the municipal code procedure enacted pursuant to RCW 36.70A.130(2)(a), and conclude the docket will not be

broadened in scope after the application deadline, let alone after approval of the docket by the City Council.

WRMC 14.09.110 Public hearing on docket.

The city council shall review and consider all of the amendments included in the docket that were **submitted in time for review during the current calendar year** during a regular council hearing before making a final decision on which amendments will proceed through the annual amendment process.

(Emphasis added.)

Clearly, the amendments for Lots 1 and 28 were not submitted by the January 31<sup>st</sup>, 2012 deadline. Only those submitted by the deadline were approved for proceeding through the "annual amendment process." There is no purpose to WRMC 14.09.110 if other amendments, or materially changed amendments, will also "proceed through the annual amendment process."

The City's procedures as enacted in its code are false front, which it did not follow in this case, instead considering changes to lots which were not on the 2012 when it was closed and adopted by the City Council. In its violation of the docket procedure, RCW 36.70A.035(2)(a), discussed below, is also implicated because to allow amendments to be considered that were not on the docket

results in changes being considered after the public has already had opportunity for review and comment on only a lesser spectrum of change, in this case, for only one lot, not three. No new period of review and comment was provided.

Pursuant to the municipal code procedure, the docket was determined at a City Council meeting in November of 2012 and only Mr. Grigg's application was part of that docket for any changes to Austin drive and a rezone to commercial. The "final decision on which amendments will proceed," per WRMC 14.09.110, was unequivocally made at the November 6th, 2012 City Council meeting! What didn't the City understand? And that impacts the related issues of notice and public participation, the public could not have ever been on proper notice of, and participated in, anything beyond what was approved for 2012 docket on November 6th, 2012.

There is no distinction provided between application for amendments proposed by an individual, or by the City. The City, inexplicably, took the position that it was somehow not bound by the same deadline applicable to other applicants, even though the code section above stating who can initiate amendments lumps them all into one. Given that the City became the owner of one of the subject

lots, it should have been treated as a private party, if there was a distinction, and Grigg is a private party.

Mr. Grigg submitted an application, on January 27th, 2012, four days before the deadline, that would result in Lot 28 becoming commercial. The deadline passed. Then Mr. Grigg and the City acquired more lots, not only after that deadline, well over a year later, in February of 2013, after the next annual deadline had passed, and several months after the docket had officially been determined in November of 2012. A change for one lot was in danger of rejection as clearly benefitting only one individual, and as not meriting a re-zone, let alone an amendment to the Comprehensive Plan. The acquisition of two more lots later that were then belatedly considered as part of this docket appears to have been for two reasons a) to support a weak argument that this was not a "site-specific" change, since it now encompassed three lots, and b) perhaps to allow Mr. Grigg, in potentially needing to change the borders of Lot 29 to have a change-friendly neighbor owning Lot 28, i.e., the City that was pushing for his request. In looking at the intent of the City, it must not be overlooked that the purchase of the additional lot by Mr. Grigg occurred one day after the City recorded the purchase of Lot 28.

Given the code sections indicating that a proposed amendment is given an application number and placed on a docket, it is unknown how the City believed it was appropriate to not follow the rules and simply expand the application to include more lots. The City blatantly failed to follow the limitations of the docket and the Municipal Code.

A concerned citizen could have checked the docket as of January 31st, 2014, and been content not to contest a change for a single lot, legal or not, and never bothered to pay attention to whether something was illegally added after the close of the docket, being entitled to assume that notice procedures would not be violated. A citizen may have thought, if this over one lot, I will not worry about it. If it is over an "area" then perhaps I should be concerned and get involved. That is the idea of having a deadline.

Apart from the link between having a deadline enforced and the concept of notice, adding lots later simply means the procedure is falling apart, and is not an orderly process, instead it is ad hoc, potentially confusing the average person who is supposed to be part of the process, if they choose. That is not the intent of the Growth Management Act. RCW 36.70A.130(2)(a) requires an orderly process.

Appellants submit that, on November 6th, 2012, per vote of the Council, the 2012 Comprehensive Amendment Docket was set in stone, and could not be lawfully tampered with.

On this crucial issue, the Final Decision by the Board does not even address the contention that the docket was closed on November 16th, 2012, rather just notes that the City states "it was initiated by the City" and "dealt with a significant class of property." CP 15. This is an apparent reference to WRMC 17.78.010B.1, which does not assist the City in arguing that it is immune from the docket process, instead it only gives a definition of an area-wide rezone, and does not exempt any Comprehensive Plan changes from the docketing requirement. The specific issue was clearly raised by the Citizens, CP 14, as Issue 11, the statement of which indicated that "contrary to RCW 36.70.A.130 and WRMC 14.09.030," that Lots 1 and 28 had been "improperly" added to the docket.

The Board seemed to adopt the argument of the City that it was not bound by the lawful docket procedure when the City is the instigator of after-the deadline changes. Without citation of legal authority, as to why the City can avoid the docketing process set by the municipal code, the Board erroneously says the Petitioners

presented no argument as to why this was unlawful and did not allege there was a failure of public participation, suggesting that unless there is an allegation of no public participation program at all, any level will suffice. CP 15. The Board fails to discuss the language of RCW 36.70A.130(2)(a) requiring “procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year” and how the City’s failure to comply with WRMC 14.09.030 and .070 met that requirement. Clearly Petitioners provided the law on the docket requirement, and challenged the City’s compliance with that process, and clearly alleged lack of sufficient public participation. The Board made no real findings, and its conclusions in this regard are erroneous, or arbitrary and capricious.

A similar situation occurred in *Spokane County v. Eastern Washington Growth Management Hr’gs Board*, 188 Wn. App. 467, 472, 353 P.3d 680 (2015). Spokane County adopted Resolution 13-0689, without notice to the public, increasing the population growth projection from 113,541 to 121,112 to fit an expanded Urban Growth Area boundary. Upon review by the Board, the Board made a finding that: “There is no evidence in the record the County considered a

change in the population projection or allocations until after the comment and review period.” 188 Wn. App. at 478.

The Board also found that the change in projected population was made only after “several years of consideration of the UGA update had been based on the population projection of 113,541.” 188 Wn. App. at 479. Compare that with the situation here. A process continued on for over a year with one lot on the table for change, only after the Planning Commission meeting, and the public participation process leading up to that meeting, was it expanded to three lots.

In *Spokane County*, The Board invalidated the resolution in its entirety. In addition to finding that the increased population projection had not been subjected to adequate public participation processes, the Board also found that the resolution violated other goals of the acts, including the reduction of urban sprawl. 188 Wn.App. at 479.

The issue before the Court of Appeals in *Spokane County* was:

a question of law: whether the County's adoption of Resolution 13-0689, which unilaterally increased the OFM's population growth prediction from 113,541 to 121,112, without notice to the public, constitutes a change to an amendment of a comprehensive plan under RCW 36.70A.035(2)(a), thus requiring public participation.

188 Wn. App. at 483

The Court of Appeals held: "We conclude that the County's failure to notify the public of its increased population projection violates the GMA's public participation requirement." *Spokane County*, 188 Wn. App. at 473.

The Washington State Growth Management Act (GMA), chapter 36.70A RCW, requires counties to provide for early and continuous public participation before a county or city votes on any change to a comprehensive plan or development regulation.

188 Wn. App. at 473.

Here, participation could not be "early" for Lots 1 and 28 because the process never commenced.

At the heart of its reasoning in *Spokane County* is that: "Citizen participation is a core goal of the GMA. RCW 36.70A.020(11)." 188 Wn.App. at 490. One of the goals of the GMA is to "[e]ncourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts." RCW 36.70A.020(11). 188 Wn. App. at 480.

Given the foundational role of the OFM's population projection in determining the size of a UGA, the County's unilateral adoption of an increased population projection, which was used to justify a significant expansion of the UGA, constituted a significant change, mandating public review and comment as provided in RCW 36.70A.035(2)(a).

*Spokane County*, 188 Wn. App. at 487

Here, there was a “foundational role” of the docket procedure, as the additions, without proper procedure, were to transform the original site-specific request into a so-called “area-wide” rezone, to more easily pass muster.

The Court in the case now before it should similarly hold that the addition of two lots, tripling the changes in their impact, after the original period of comment and review was over, without new notification to the public, violated the Growth Management Act.

2. The City did not provide enough public notice and participation as required by RCW 36.70A.035

a. **Lack of notice**

This issue is linked with that of the failure of the City to confine itself to the properly constituted 2012 docket of proposed amendments. The failure set into motion a general lack of notice and public participation, because one cannot be expected to know of, and participate in, actions that were not on the approved 2012 docket.

RCW 36.70A.035 states in part:

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies,

businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Posting the property for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and

(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

...

Any notices pertaining to the original application, for Lot 29, simply did not put the public on notice that a so-called "area wide" re-zone was possibly coming.

To the knowledge of the Citizens, the first public "notice" that more than the Grigg application for one lot was pending for the 2012 Docket in the Bombing Range/ Van Giesen area was, at best, the staff report for the April 11th, 2013, Planning Commission meeting. CP 446-47.

The notice for the April 11<sup>th</sup>, 2013 Planning Commission meeting was published **once** in the newspaper, on March 29<sup>th</sup>, 2013. CP 436. It said the meeting would concern “two (2) changes to specific areas of the land use map.” But that could have only described the properly docketed changes, the unrelated Ullah parcel, and Lot 29.

The only mailed notices were to property owners whose land would be affected by the changes. That would have meant only Mr. Grigg and the City for the changes to commercial. That is not the public.

The notice of the agenda for the April 11<sup>th</sup>, 2013 Planning Commission meeting indicated it concerned the 2012 docket. In fact, action far beyond that ultimately was taken.

The Planning Commission recommended against the changes. At a later workshop, Wayne Carlson, a consultant, stated concerns expressed at the Commission meeting included “inadequate notification ... .” CP 486. Therefore, as of April 11<sup>th</sup>, 2013, there was not reasonable notice of changes for Lots 1 and 28, or an “area-wide” rezone, and the public was entitled to a distinct, defined, identifiable new period for review and comment.

Apparently the City tried to cure this defect by simply holding more workshops, etc. But without a formal process to notify the public the

2012 docket was expanded, this cannot be sufficient. Members of the public would have “dropped out” by now, with their concerns about a change to only one lot having been perhaps satisfied. The “add-ons” were probably known only by those who were taking part in the process from the beginning, not the general public that needs to know of the fundamental changes proposed so they can decide if they will object. As far as what notice is required for the City Council to vote on amendments:

WRMC 17.78.030 Open records hearings – Notification requirements.

Notification for amendments to boundaries of zones, for reclassification of property or for amendment to this title shall be given as follows:

A. Area-Wide Rezone. An area-wide rezone is a legislative action, requiring notice of the public hearing in accordance with the requirements of Chapter 14.03 WRMC and RCW 36.70A.035.

...

WRMC 14.03.030 provides in part:

A. Content of Notice of Public Hearing for All Applications. The notice of a public hearing required by this chapter shall contain:

...

B. Mailed Notice. Mailed notice of the public hearing shall be provided as follows:

...

4. Type VII Actions. For Type VII legislative actions, the city shall post notice as described in subsection A of this section on the official city website and notify the news media.

...

D. Time and Cost of Notice of Public Hearing.

1. Notice of the public hearing shall be mailed and posted not less than 10 days, nor more than 30 days prior to the hearing date; provided the notice requirements of WRMC 14.03.010 shall also be met when applicable. Posted notices shall be removed by the applicant within 15 days following the public hearing.

...

The City published notice of the June 17th, 2013 Council hearing in the Tri-City Herald, one time, on June 10th, 2013, seven days before the hearing. CP 488. Staff also on June 7th, 2013, mailed notice to all owners with a 600' distance of the parcels for which changes were pending, and to any person who provided testimony or attended a meeting on the 2012 docket, and new notices were posted at the property, and the Library. CP 504. It does not appear that the City did anything to "notify the news media."

Of course, this was once claimed to be a "Type IV" process by the City, when later it was said to be a "Type VII" legislative action. CP 447, 486. Type IV is a site specific action, which in reality, this was and is still. Changing the type of procedure in mid-stream, to fit square facts in a round hole, is not an excuse for lack of proper notice

**b. Lack of continuance public participation**

“The legislature has specifically required counties to develop their comprehensive plans according to procedures that require an enormous degree of public participation. RCW 36.70A.172; WAC 365-190-040, 365-195-900 through -925.” *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 169, 149 P.3d 616 (2006).

RCW 36.70A.130 requires a program of public participation:

...

(2)(a) Each county and city shall establish **and broadly disseminate to the public a public participation program** consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year, ...

...

(Emphasis added.)

The docket procedure discussed above is no doubt an integral part of the “public participation program” so it is already established the requirement was violated.

RCW 36.70A.035 states in part:

(2)(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.

...

(Emphasis added.)

When was any new official period for review and comment provided? Any such period must have a beginning, and the original period must have had an end. That is fuzzy in this case, at best. The beginning of the original review and comment period would presumably be the end of the application deadline, which would then gel at the adoption of the docket. The process includes taking the amendments before the Planning Commission. One reason the Planning Commission rejected these amendments was due to lack of notice. So the new amendments were not included through the Planning Commission process. Without a new process of taking the broadened amendments through the Planning Commission stage, with proper notice, then there has been no new "opportunity" for review and comment.

The City was not anxious to include too many people in the process of the Grigg application from its infancy. Years in the making, "Project

Blackjack” was nevertheless the subject of emails among City Staff that warned “Shhhhhh” in their subject line.

The public later in the process was led to believe that 67 percent of registered voters were in approval of the request. That was not accurate, rather 67 percent of the small number of people responding to a survey may not have objected. The City had not notified all registered voters, so 67 percent of them could not have approved.

In a January 29<sup>th</sup>, 2013 “staff memo,” Nicole Stickney reported to the City on the process up to that point. Stickney touted a January 23, 2013 meeting with certain property members that was invitation only. Property owners in certain areas near Bombing Range Road were sent letters that referred to a project along the Van Giesen corridor and said the meeting would be about “improvements along this major corridor [Van Giesen] and at the Bombing Range intersection.” CP 419-26. There is no mention of specifics in the letter to the property owners. There may have been orally at the meeting, from the notations of the various objections voiced.

The January 23, 2013 roundtable meeting could not have included discussion of potential Comprehensive Plan changes for which no application existed. In any event, mention of “improvements” is not

specific enough to let the public know that a change from Low Density residential to Commercial is in the works.

A February 5<sup>th</sup>, 2013 “work session” was held by the Council. CP 28. Item Three on the Agenda is Community and Economic Development Update, and part a. of that is “Comprehensive Plan.” There is no indication of how this was advertised to the public. The minutes do no indicate that any public comment was allowed. At this session, Ruth Swain pointed to areas on the map where “the changes” were being proposed. CP 429.

The Preliminary Agenda for the Planning Commission for April 11th, 2013 stated there would be a Public Hearing on “2012 Comprehensive Plan Update and Area-Wide Rezone.” CP 442. A staff report described the item as an “Open Record Public Hearing” with item 8 a. having the subject of “2012 Docketed Comprehensive Plan Amendments (File CPA 2012-06; CPA 2012-07 and 2012-52); and Area-wide rezone (RZ 2013-07). CP 444. Anything considered that was not “docketed” after that point offends the requirements of having a procedure whereby the citizens know what is added, and receive an additional comment period. Most of the notice and

participation that took place, cited by the City in defense of its actions, took place *prior to* addition of two more lots.

The staff report states that the public has been involved – “early and often” – in the planning exercise. CP 447. It was “early” – too early -- before the anyone knew the changes would be tripled in area! The staff report does not explain how the public was involved in the *entire* process when the initial application was for one lot, which was all that was on the November 12th, 2012 completed docket, and two more lots were not involved until much of the participation process had run its course. Involvement with the other two lots was “late.”

One reason the Planning Commission recommended against the changes in April of 2013 had to be inadequate notice to the public, as after being handed that defeat by the Planning Commission, staff in April/May 2013 “consulted with the Mayor and determined steps to take to improve the public notification process.” CP 503. So, over 15 months from the filing of the Grigg application to the Planning Commission meeting in April of 2013, with notice to the public being a problem, that was somehow fixed in the next month or two leading up to the City Council vote?

The Board accepted the City's position that "several meetings regarding the 2012 Comprehensive Plan Amendment and Area Wide Rezone were conducted over several months ... ." Final Decision and Order, CP 13. This finding is not supported by substantial evidence, as the evidence shows no real notice of it being "area wide" involving more than one lot was given to the public until the notice of April 11th, 2013 Planning Commission meeting, so several months could not have passed between then and the City Council vote on June 17th, 2013. This discounts the fact that the Planning Commission had concerns about notice to the public at that point, how could it all be cured in the following two months?

At the hearing before the Board, the attorney for the City, in outlining "several meetings" that notified and involved the public, said one of the first ones was in November of 2012. CP 858-59. That was the setting of the 2012 docket, for one application for one lot to commercial. He is right, that did notify the public, but only of that application, and not more. The City Attorney then went on to discuss a roundtable meeting in January of 2013. Asked by a board member if that was about one lot, or all three, Mr. Brown replied " - - I believe it was just the one lot." CP 859. Nicole Stickney, the planning and economic development manager for the City, spoke and said that:

“So following setting the docket, there was discussion about looking at a broader area ... .” CP 860. “[T]here was a city council objective to look at the Van Giesen corridor and some other neighboring areas, as they had done in the past, to look a bigger area, broader area. So we broadened the scope from what we were going to consider potentially.” CP 861. This was simply an admission that the City rendered the 2012 docket, and the process it emanated from, null and void, having no understanding of its purpose in terms of notice to the public.

Mr. Brown acknowledged that in November of 2013 and January of 2013:

... staff hadn't made the determination whether it was going to be an area-wide or site specific. One of the reasons for that is the city hadn't yet purchased one of the parcels of property. So what happened is the Comprehensive Plan amendment was being processed, the city purchased this parcel of property right here, and then Mr. Grigg purchased that parcel of property. And when that happened, there was discussion with staff to process site specific or an area-wide.  
CP 874.

The public was not continuously involved in something it could not have known about until two months before the City Council meeting. The lot owners, the City and Grigg, had too big of a head start.

3. The re-zone and amendment of the Comprehensive Plan were an illegal "spot zone."

West Richland Municipal Code 17.60.020 Rezoning request – Criteria, provides in pertinent part:

In determining whether an area shall be rezoned, the planning commission and city council shall consider and be guided by the following criteria:

...

H. Whether the proposed rezone represents spot zoning and whether a larger area should be considered;

...

Spot zoning is "zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land and is not in accordance with the comprehensive plan." *Smith v. Skagit County*, 75 Wn.2d 715, 743, 453 P.2d 832 (1969); accord *Lutz v. Longview*, 83 Wn.2d 566, 573-74, 520 P.2d 1374 (1974); *Chrobuck v. Snohomish County*, 78 Wn.2d 858, 872, 480 P.2d 489 (1971). The main inquiry is whether the zoning action bears a substantial relationship to the general welfare of the affected community. See *Parkridge v. City of Seattle*, 89 Wn.2d 454, 460, 573 P.2d 359 (1978). Only where the spot zone grants a discriminatory benefit to one or a group of owners to the detriment of their neighbors or the community at large without adequate public advantage or justification will the county's rezone be overturned. See *Anderson v. Island County*, 81 Wn.2d 312, 325, 501 P.2d 594 (1972).

*Willapa Grays Harbor Oyster Growers Ass'n v. Moby Dick Corp.*, 115 Wn.App. 417, 432, 62 P.3d 912 (2003).

The rezone was certainly site specific. See *Woods [v. Kittitas County]*, 162 Wn.2d [597] at 611 n. 7, 174 P.3d 25 [2007] (stating a site-specific rezone is a change in the zone designation of a " 'specific tract' " at the request of " 'specific parties' " (quoting *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish County*, 96 Wn.2d 201, 212, 634 P.2d 853 (1981))).

*Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 176 Wn.App. 555, 570, 309 P.3d 673, (2013).

Appellants urge the change in zone from R--1, single-family residence, to R--3, planned residential development, constituted spot zoning and was, therefore, illegal. We have recently stated that illegal spot zoning is arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area of district and specially zoned for use classification totally different from and inconsistent with the classification of the surrounding land, not in accordance with the comprehensive plan. *Smith v. Skagit County*, 75 Wn.2d 715, 743, 453 P.2d 832 (1969); *Lutz v. Longview*, 83 Wn.2d 566, 573, 520 P.2d 1374 (1974).

*Narrowsview Preservation Ass'n v. City of Tacoma*, 84 Wn.2d 416, 421, 526 P.2d 897, (1974).

In *Narrowsview*, the recommendation of the planning commission noted that the rezone would allow more open space and recreation areas, that the zoning would not have a substantially greater impact on the surrounding area than development of the property under the present R--1 single-family classification, that the

population density of the area would remain about the same and that a single-family residence subdivision was bordered on three sides by the site in question and had numerous lots remaining vacant and some homes unoccupied. Under those facts, the Court held the contention that there was 'spot zoning' to be without merit. 84 Wn.2d 422. That is not the situation here, where the Planning Commission recommended against the change on Austin Drive to commercial, and the impacts are clearly harsher than more building of single family residences.

A smaller area is carved out, three lots out of 30 on Austin Drive alone. And that is indulging in the fiction that all three lots in question are actually intended for commercial use. The City bought one, and has to use it as a swale for stormwater. Two out of the three lots were purchased for the purpose of being able to say the proposed changes affected more than just a single lot.

Neither applicant or the City seemed to have a burning desire to see commercial development on other than Lot 29. The change afforded is a discriminatory benefit to Mr. Grigg, to the detriment of the neighboring owners, who purchased property that comes with a protective covenant designating them as "residential," which went

hand in hand with the existing Comprehensive Plan and zoning. Even if Grigg develops Lot 1, he is still one owner, and it is questionable whether the City can ever use Lot 28 commercially, in a sense they are the small “group” that could still be receiving a discriminatory benefit at the expense of the community at large, having banded together only to help Mr. Grigg gets his commercial designation for Lot 29.

In discussing the issue of “spot zone,” listing that issue at p. 10 of its decision, CP 16, the Board simply claims, that the City made adequate findings, and that the Petitioners failed to show noncompliance with the GMA. Final Decision, CP 17-18. There is no analysis, and Petitioners clearly did raise a legal argument that a “spot zone” is not consistent with the Comprehensive Plan or the goals of the GMA in that with a commercial district along Van Giesen, now three lots across natural barriers from there, the canal and Van Giesen are suddenly attached to a clearly residential area. There is no discussion of how three lots are an “area-wide” rezone.

And, of course, all three lots are subject to private restrictive covenants that deem them to be “residential.” The Board failed to make any real findings on this issue, and committed error of law, or

acted arbitrarily and capriciously in not seeing this process for what is what – an illegal spot zone.

4. The changes are inconsistent with the original Comprehensive Plan and the Growth Management Act

RCW 36.70A.020. Planning goals

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040 . The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

...

(4) Housing. Encourage the availability of affordable to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

...

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

...

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

...

RCW 36.70A.130 (d) requires any amendment to a plan “shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.” The Appellants, in their petition to the Board and hearing brief, alleged that the changes violated the Plan, Chapter III, Goal 3, Policy 4, on passing over unused lots, due to 100 acres of unused commercial land already existing, and Goal 5, Policy 1, maintaining the unique character of the City, by maintaining integrity and livability of established neighborhood, Goal 4, Policy 1, separating activities based upon land use characteristics. CP 247-49.

Under WRMC 17.24.010, “Low-density residential districts provide for a low-density residential environment which may serve to protect steep slopes from over-development or otherwise address environmental constraints. ... The RL-40 district may include agricultural uses and activities.”

“The essential use of the low-density residential use districts is a single-family detached dwelling.” WRMC 17.24.020.

The staff report to the Planning Commission in attempting to justify what is in reality a site-specific zone change to benefit a single owner, indulged in questionable logic. Noting that in the past greater areas had been considered for change in the area (and apparently rejected), this time, “a new approach was used: we reached out to neighboring land owners and asked would you like to have your property included in this change? No property is proposed for any changes against the stated opinion and desire of the owner.” CP 456.

This “logic” cannot constitute substantial evidence to support any of the Board’s findings, and goes against the Growth Management Act’s goals. If the neighboring owners would not want their property to be changed from residential to commercial, how does that answer the question of why then there is a public benefit to change it to commercial. If anything, since it is neighboring owners that object, leaving only three parcels to be changed, it shows an inconsistency with the surrounding use and desire of the rest of the public. No property was proposed for changes against the opinion of the owner, because the owner of two out of three parcels is Mr. Griggs, and

one out of three owners is the City, having acquired its parcel in February of 2013. To pretend that owners heard about the change and decided not to object is ludicrous, Griggs is the applicant, and the City then, belatedly decided to add his new parcel and its own, all as part of the effort to get approval for one parcel. To say “the applicants don’t object” makes no sense, and proves this is a site-specific change hiding under the sheep’s clothing of an area-wide amendment for the public good.

The idea of creating a “commercial node” may make sense if there is a vast area of residential area, and placing a small shopping area in the middle of it reduces traffic to far-off commercial zones, but here, there is unused commercially zoned land blocks away. This is creating commercial “sprawl” with the only reason for it to migrate from Van Giesen is because Mr. Grigg bought a lot, and then another at residential prices.

There is no substantial evidence to support that City residents in general support the move. The staff report to the Planning Commission claimed a “recent city-wide survey asked respondents if they were supportive of possible economic development projects for the Corner of Bombing Range and Van Giesen.” AR 432. There

is nothing to show that the respondents knew they were talking about beyond that immediate intersection, which already allowed commercial use. Nothing states the total number of respondents from which the 67 percent supportive (30 percent somewhat supportive, 37 percent very supportive) is derived. Those present at the local meeting in January of 2013 were largely opposed, meaning those that had the specifics of Lot 29 going commercial went the opposite direction.

Bizarrely, paragraph 5 of the staff report states the “change is compatible with existing or planned surrounding land uses ....” CP 458. The surrounding uses are low density residential and a park.

The staff blithely states that adequate services will be provided. In fact, by the year 2018 the intersection of Bombing Range Road with Austin Drive will not perform at an acceptable level. CP 504.

The Growth Management Act also requires that the City prohibit development that causes a decline in level of service standards. An action-forcing ordinance of this type is known as a concurrency ordinance because its purpose is to assure that development permits are denied unless there is concurrent provision for transportation impacts:

local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the

comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development.

RCW 36.70A.070(6)(b).

*Montlake Community Club v. Central Puget Sound Growth Management Hearings Bd.*, 110 Wn.App. 731, 735, 43 P.3d 57 (2002).

The council, and city staff, decided to ignore the Planning Commission. They ignored the wishes of the owners of the other 26 lots along Austin Drive, who have restrictive covenants, applicable to the three lots at issue that make these residential lots regardless of zoning changes. Although a private covenant may provide grounds for a separate action to enjoin a proposed usage of land, the general rule is that such a covenant is not grounds for denial of a zoning variance. *Martel v. City of Vancouver (Wash.) Bd. of Adjustment*, 35 Wn.App. 250, 666 P.2d 916 (1983). Regardless of whether the covenants invalidate a zoning ordinance, it cannot be argued that “commercial” is consistent with the surrounding use, when if anything, it is affirmatively injurious to vested private rights.

The City Council did not act in the public interest, but merely to gain one hardware store, at the expense of the general public. There is no substantial evidence to support the findings of the Board that the City complied with the intent of the Growth Management Act.

The whole process was arbitrary and capricious in light of the restrictive covenants applicable to the lots and the neighboring properties, the City's personal attention to Mr. Grigg's individual needs, their dispensing with the Planning Commission's expertise, and the ample availability of commercial lots along Van Giesen.

The Board simply said: "Petitioners have not come forward with any specific evidence of a Comprehensive Plan inconsistency." Final Decision, CP 20. There are no findings addressing the problem of how putting commercial lots at the instance of two owners into an area that was residential, by zoning and by Plan and by restrictive covenants, would comply with the Comprehensive Plan.

5. The Board's Findings of Fact and Conclusions of Law are inadequate to permit meaningful appellate review

Meaningful appellate review requires entry of adequate and detailed findings of fact and conclusions of law. See *Org. to Pres. Agric. Lands v. Adams County*, 128 Wn.2d 869, 882, 913 P.2d 793 (1996) ("review is limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law").

*Citizens for Responsible and Organized Planning v. Chelan County*, 105 Wn. App. 753, 755, 21 P.3d 304, (2001).

Here, the Chelan County Board of Commissioners (Board) adopted findings and conclusions prepared by the planning staff which do not address the central question

presented by the parties-whether the proposed residential subdivision here is urban in character and, therefore, prohibited outside the Interim Urban Growth Area.

*Citizens for Responsible and Organized Planning v.* , 105 Wn. App. at 755..

The Court of Appeals reversed, and remanded to the Board for entry of findings of fact and conclusions of law on whether the subdivision is urban under the GMA. 105 Wn. App. at 762.

Here the Board made no specific findings of fact, instead lumping its reasoning under “analysis and findings” for each set of lumped-together issues. It is not fair for Appellants to sort those out.

#### 6. Request for award of attorney fees

Appellants request award of attorney fees upon determination that they are the prevailing parties in this action, pursuant to RCW 4.84.350 (1), which provides a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees. Appellants request award of fees for time spent in this Court, as well as in the Superior Court.

#### IV. CONCLUSION

This Court should reverse the decision of the Eastern Washington Growth Management Hearings Board, and invalidate the amendment to the Comprehensive Plan and the ordinances. And this Court should award attorney fees to Appellants, for time spent in Superior Court and in appeal to this Court.

Respectfully submitted,

Dated October 22<sup>nd</sup>, 2015

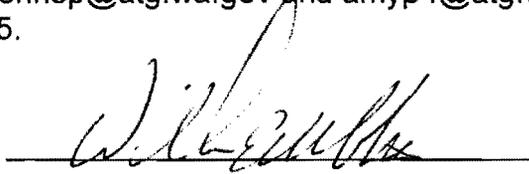
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William Edelblute

Attorney for Appellants WSBA 13808

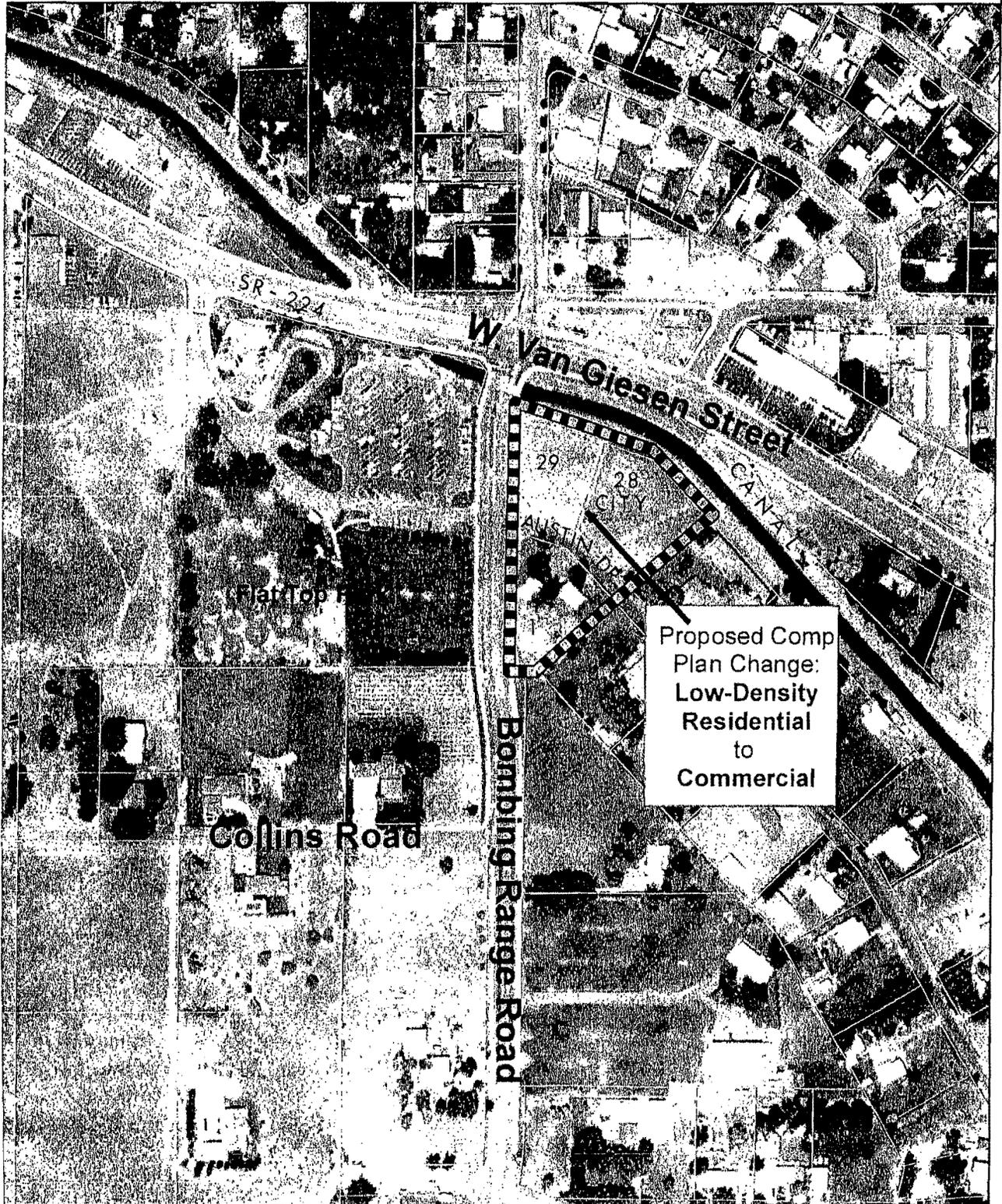
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I served a copy of the foregoing document, mailing via US Mail First Class, postage prepaid, to Bronson Brown, Attorney for Respondent City of West Richland, at 410 N. Neel St., Ste. A, Kennewick WA 99336, and Brian Davis, Attorney for Respondent Charles Grigg, at 2415 W. Falls Ave., Kennewick WA 99336, and emailed a copy to Dionne Padilla-Huddleston, Assistant Attorney General, at [dionnep@atg.wa.gov](mailto:dionnep@atg.wa.gov) and [amyp4@atg.wa.gov](mailto:amyp4@atg.wa.gov) on October 22nd, 2015.

A handwritten signature in black ink, appearing to read "William Edelblute", is written over a solid horizontal line.

William Edelblute

EXHIBIT B: Proposed Map, Applicant: Grigg



Proposed Comp  
Plan Change:  
Low-Density  
Residential  
to  
Commercial

CITY OF WEST RICHLAND  
COMMUNITY DEVELOPMENT

000236

AERIAL PHOTO FROM 2008  
THIS MAP IS FOR REPRESENTATION PURPOSES ONLY  
PLEASE CONTACT THE COMMUNITY DEVELOPMENT  
DEPARTMENT AT (509) 967-5902 WITH QUESTIONS

A-1