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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

Case No. 265471  
Consolidated with No. 265480

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

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KITTITAS COUNTY and CENTRAL WASHINGTON  
HOME BUILDERS ASSOCIATION, et al,

Petitioners,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD, et al.

Respondents.

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**KITTITAS COUNTY FARM BUREAU'S REPLY BRIEF**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	DISCUSSION.....	1
III.	CONCLUSION.....	3

TABLE OF AUTHORITIES

Cases

*Henderson vs. Kittitas County*, 142 Wn.2d 747, 100 P3d. 842 (2004) 2

## I. INTRODUCTION

Futurewise, Kittitas County Conservation and Ridge (collectively "Futurewise") and the Washington State Department of Community Trade and Economic Development (CTED) argue the Eastern Washington Growth Management Hearings Board (Board) did not adopt a bright line rule when it ruled densities of 3 acres or less are urban and not rural. Futurewise and CTED further argue the Kittitas County record and reasons do not support Kittitas County's decision to allow densities of 3 acres or less in lands designated as rural under the Kittitas County Comprehensive Plan. Kittitas County Farm Bureau (KCFB) adopts the arguments of Kittitas County. KCFB would like to direct the court to specific facts in the record which support Kittitas County's choice to allow densities of less than three (3) acres in size and to allow large land owners to split off smaller portions of their property.

## II. DISCUSSION

Kittitas County, in its Opening Brief, cited to AR, p. 1746-1779 which was testimony and evidence supporting Kittitas County's 3-acre zoning on lands designated as rural under the Comprehensive Plan.<sup>1</sup> One of the individuals testifying, and whose written testimony is included at AR, p. 1746-1779, is Urban Eberhart who testified on behalf of KCFB. Another individual who testified was Lila Hansen.

Ms. Hansen and Mr. Eberhart's testimony provide specific facts which are un-controverted in the record. (AR, p. 1768-1769). The attributes of the local agricultural economy is a fact and circumstance which GMA requires the County Commissioners to consider when they adopt a Comprehensive Plan. Mr. Eberhart testified Kittitas County's agricultural community is basically dependent upon one crop, timothy hay, for its agricultural survival.

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<sup>1</sup> Kittitas County attached this portion of the record as Exhibit A to its Opening Brief.

(AR, p. 1768). Part of the reason for one crop being the basis of Kittitas County's agricultural economy is due to the particular climate conditions in Kittitas County which preclude the growing of many other crops which other agricultural counties in Eastern Washington rely on. (AR, p. 1768). Mr. Eberhart further testified timothy hay could not be grown in Kittitas County without significant quantities of irrigation water. (AR, p. 1769). The primary supplier of irrigation water in Kittitas County is the Kittitas Reclamation District. (AR, p. 1769). Kittitas Reclamation District is as pro-ratable irrigation district and, as a result, in times of drought, is subject to having its water supply curtailed. (AR, p. 1769). When water supply is curtailed, there is damage to the timothy hay fields, which reduces the value of the crop and causes economic harm to the hay grower. (AR, p. 1769-1770). Mr. Eberhart points to two years, 2001 and 2005, in which Kittitas County water supply was reduced to below 50% of normal. (AR, p. 1769). The result was significant damage to the local hay crops which created an economic hardship that continued for several years. (AR, p. 1769). In addition, Mr. Eberhart provided statistical data from the United States Department of Agriculture which shows that Kittitas County's agricultural economy is in decline. (AR, p. 1777, 1778). These facts support the need for flexibility in densities in the rural areas of the county to allow farmers to sell land to weather droughts and the declining agricultural economy. With out this flexibility of severing small parcels from a larger parcel the only way for a farmer who has to sell land is to sell the land in larger parcels. (AR, p. 1773). The sale of larger parcels in Kittitas County has over time resulted in what Kittitas County's then existing Comprehensive Plan and Mr. Eberhart referred to as "Rural Sprawl". (AR, p. 1773).

Mr. Eberhart also indicated, in addition to the agricultural community's desire to have an active agricultural advisory council, the local Farm Bureau was concerned about "rural sprawl" which Kittitas County's then existing Comprehensive Plan specifically indicated was a basis for allowing smaller densities, including three (3) acre densities. (AR, p. 1773).

Rural sprawl in Kittitas County was recognized by this court in *Henderson vs. Kittitas County*, 142 Wn.2d 747, 100 P3d. 842 (2004) as something which the Kittitas County Comprehensive Plan specifically indicated should be avoided. One of the mechanisms to avoid or decrease rural sprawl was allowing smaller densities, including densities of three (3) acres or less. Lila Hansen referred to mandatory large parcels in the rural areas as “horse keeps, weed patches and hobby farms- all dependent on non-farm incomes”. (AR, p. 1746). Mr. Eberhart testified the Farm Bureau and the agricultural community were “vigorously” opposed to the then proposed GPO 8.12 which set the rural density at five (5) acres. (AR, p. 1774). KCFB’s position is the smaller the parcel size, the more rural land that can be conserved. (AR, p. 1774). A farmer or rural land owner who has to liquidate land due to economic conditions and still retain enough land to have a viable farming operation should sell the smallest quantity of land available.<sup>2</sup> (AR, p. 1774). This fact is completely discounted and ignored by Futurewise and CTED. This evidence is the very type of local circumstance the Growth Management requires and mandates that Kittitas County consider.<sup>3</sup> There are specific facts in the record which support Kittitas County’s decision to allow densities of less than five (5) acres. When the Board ruled densities of less than five (5) acres are urban and not rural, they improperly ignored and/or discounted the deference they owe Kittitas County and the deference they owe Kittitas County’s local circumstances under the Growth Management Act. There should be no bright line rule on the appropriate rural density in Kittitas County.<sup>4</sup>

The Board, Futurewise and CTED’s treatment of these local facts is very similar to the testimony of an unnamed individual Mr. Eberhart referenced who testified, “if a farm was bought or inherited as a farm, it must remain a farm forever”. (AR, p. 1725). Such blatant disregard of, not only

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<sup>2</sup> Pat Deneen, testified and provided a graphic depiction which showed that five (5) acre zoning consumes 65% more land three (3) acre zoning. (AR, p. 1754).

<sup>3</sup> The Kittitas County Farm Bureau directs the court to Kittitas County’s Opening Brief for a detailed discussion of the GMA requirement to consider and give deference to local circumstances.

<sup>4</sup> For a detailed discussion of the “Bright Line Rule” issue, see the Opening Brief of Kittitas County and the Opening Brief of Building Industry Association of Washington.

local circumstances, but private property rights, are contrary to the Growth Management Act.

### III. CONCLUSION

For these reasons, the Growth Board's decision that densities of less than three (3) acres do not comply with the Growth Management Act must be and should be reversed.

RESPECTFULLY SUBMITTED this 12 day of June, 2009.

  
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