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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

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Case No. 265471
Consolidated with No. 265480

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

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

Petitioners,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, et al.

Respondents.

TEANAWAY RIDGE LLC'S REPLY BRIEF

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I. INTRODUCTION

Teanaway Ridge, LLC (Teanaway), when it filed its Opening Brief in this case, joined in the Opening Brief filed by Kittitas County and the Opening Brief filed by the Building Industry Association of Washington (BIAW). Teanaway did so in an effort to avoid duplicative briefing.

Teanaway joins in the Reply filed by Kittitas County and joins in the Reply filed by BIAW.

II. DISCUSSION

In addition to joining in the Reply filed by Kittitas County and the Reply filed by BIAW, Teanaway takes this opportunity to respond to assertions by the petitioners in the Brief of Respondents Kittitas County Conservation, Ridge and Futurewise (hereinafter collectively referred to as "Futurewise"), which deals specifically with Kittitas County's Planned Unit Development Code.[1] These arguments are set forth at pages 30-32 of Respondents Kittitas County Conservation, Ridge and Futurewise's Brief.

The Growth Board ruled that Planned Unit Developments (PUDs) allowed under Kittitas County Ordinance (KCC 17.36) were non-compliant with the Growth Management Act (GMA) because the ordinance allowed urban growth in areas designated as rural under the Comprehensive Plan. (AR, p. 2337-23340). Futurewise argues that the Kittitas County's PUD ordinance does not meet the GMA mandates "since it allows virtually unrestricted development at 1 DU/1.5 acres and 1 DU/2.5 acres in the rural areas." (Respondents' Brief, p. 30). Futurewise further argues the "PUD ordinance has no minimum lot sizes, no restrictions in place on preserving rural character, protecting water and wildlife and other elements that make Kittitas County's rural area rural." (Respondents' Brief, p. 31).

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[1] In Kittitas County, the Planned Unit Development (PUD) is a specific zone, Chapter 17.36 KCC. Thus the validity of Kittitas County's PUD ordinance is at issue in the companion case, Court of Appeals No. Case No. 265471 (consolidated with Case No. 265480).

Respondents, in their argument that Kittitas County's PUD ordinance violates GMA, completely ignore, as did the Board, the actual language of Kittitas County's PUD Zone. The ordinance contains a detailed statement of its purpose and then, under KCC 17.36.030, sets forth a process which calls for a detailed preliminary plan to be prepared, mandates State Environmental Policy Act (SEPA) compliance, requires plans outlining water supply, water storage, distribution and sewage disposal, along with criteria designed to give the County an opportunity to review all aspects of the development to ensure that the development meets the purpose of the PUD ordinance. In addition, the PUD must meet all of the criteria for a rezone under Kittitas County Rezone Ordinance Law (KCC 17.98.020) and state law.

Futurewise broadly argues, "this ordinance completely dissolves all of the County's comprehensive protections on rural land, and allows virtually unbridled discretion to reign over individual development proposals." Furturewise ignores the specifics of the PUD ordinance. Under the PUD ordinance, the proposal must conform to the maximum acreage percentages identified in appropriate zones and it allows the County planning jurisdiction to condition a project to ensure that the purposes of the PUD ordinance are adhered to. The purpose of the PUD ordinance is set forth at KCC 17.36.010 and is in accord with the GMA's mandate that the County allow innovative land use planning techniques, including Planned Unit Developments. (RCW 36.70A.090). The Growth Board's invalidation of Kittitas County's PUD ordinance ignored the County's discretion to comply with the GMA by developing innovative land use planning techniques. Instead of ignoring the deference due the County's ordinance, the Board should have granted deference to the County and its PUD ordinance.[2]

[2] For a detailed discussion of the reference due Kittitas County's Comprehensive Plan and development code, see Opening Brief of Kittitas County and Opening Brief of Building Industry Association of Washington at page 20.

I. CONCLUSION

For the reasons discussed herein, the Growth Board's final decision and order with respect to the County's PUD ordinance should be reversed.

RESPECTFULLY SUBMITTED this 12 day of June, 2009.

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