Case No. 91665-9

SUPREME COURT
OF THE STATE OF WASHINGTON

SPOKANE COUNTY,

Appellant,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, FIVE MILE PRAIRIE NEIGHBORHOOD ASSOCIATION, and FUTUREWISE,

Respondents,

and

HARLEY C. DOUGLASS, INC.,

Appellant.

FIVE MILE PRAIRIE NEIGHBORHOOD ASSOCIATION'S & FUTUREWISE'S ANSWER TO PETITIONS FOR REVIEW

Tim Trohimovich, WSBA No. 22367
Futurewise
816 Second Ave., Suite 200
Seattle, Washington, 98104
Telephone: 206-343-0681 Ext. 118
tim@futurewise.org
Attorney for the Five Mile Prairie Neighborhood Association & Futurewise

TABLE OF CONTENTS

Topic — Page Number

TABLE OF AUTHORITIES

Authority — Page Number

Cases

Statutes

I. INTRODUCTION

The Washington State Supreme Court exists to vindicate justice and enunciate principles of law. The Washington State Court of Appeals did justice in its unpublished decision.[1] The issues that Spokane County (County) and Harley C. Douglass, Inc. (Douglass) raise have either been decided by earlier decisions of this Court or cannot be reached by this Court because the County did not raise them before the Board. Therefore, no new meaningful rules of law are likely to result from an opinion in this case. Consequently, this case is a poor candidate for review by this Court and the Court should deny the County's and Douglass' Petitions for Review.

Respondent Five Mile Prairie Neighborhood Association is a non-partisan organization that actively promotes quality of life issues for all Prairie residents. Open to all residents of the Prairie, the organization's representatives continually work with the City of Spokane and Spokane County on all issues related to growth, safety, and the character of our neighborhood. The organization has members that are landowners and residents of Spokane County.[2]

---

[1] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op., 2015 WL 1609138 (Apr. 9, 2015).

[2] Certified Administrative Record Page Number (CR) 000003, *Five Mile Prairie Neighborhood Association & Futurewise v. Spokane County*, Growth Management Hearings Board Eastern Washington Region (GMHB) Case No. 12-1-0002, Petition for

Respondent Futurewise is a Washington non-profit corporation and a statewide organization devoted to ensuring compliance with the Growth Management Act. The organization has members that are landowners and residents of Spokane County.[3]

II. STATEMENT OF THE CASE

As part of Spokane County's 2011 annual update, or amendments, to the *Spokane County Comprehensive Plan* and zoning regulations, the county adopted Amendment No. 11-CPA-05.[4] Amendment No. 11-CPA-05 re-designated 22.3 acres from "Low Density Residential" to "Medium Density Residential" and rezoned the 22.3 acres from "Low Density Residential" to "Medium Density Residential."[5] This land is vacant except for some utility structures.[6] A preliminary plat for the Redstone subdivision was approved for this site in 2007. "The preliminary plat includes 38 lots, 26 for single family dwellings and 12 for duplexes for a

---

Review p. 3 (Feb. 7, 2012). The Certified Record Page Number refers to the six digit consecutive page numbers the Growth Management Hearings Board (Board) affixed to the bottom of the documents in the Certified Record, other than the transcript.

[3] CR 000004, *Id.* at p. 4.

[4] CR 000010 – 14, Spokane County Resolution 11-1191 In The Matter of the 2011 Annual Comprehensive Plan Map and Text Amendments, Zoning Amendments and Urban Growth Area Amendment, Files 11-CPA-01, 11-CPA-02, 11-CPA-03, 11-CPA-04, 11-CPA-05, 11-CPA-06, 11-CPA-07 and 10-CPA-05 Findings of Fact and Decision pp. 4 – 8 (December 23, 2011). Hereinafter Spokane County Resolution 11-1191.

[5] CR 000046, Spokane County Resolution 11-1191 "Proposed Comprehensive Plan Amendment and Zoning Map Change: 11-CPA-05."

[6] CR 000218, *Spokane County Staff Report Comprehensive Plan Annual Amendment Review File No.: 11-CPA-05* p. 1 of 9.

total of 50 dwelling units."[7] According to the *Spokane County Staff Report Comprehensive Plan Annual Amendment Review File No.: 11-CPA-05*:

> The Comprehensive Plan and zoning designations in this area [around the comprehensive plan amendment and rezone] are as follows:
> To the north is Low Density Residential
> To the south is Low Density Residential
> To the east is Low Density Residential
> To the west is Low Density Residential[.][8]

The 22.3 acres the County designated Medium Density Residential and zoned Medium Density Residential is entirely surrounded by land with a comprehensive plan designation of Low Density Residential and Low Density Residential zoning.[9]

The Spokane County Hearings Examiner summarized the established residential neighborhood character as part of the findings of fact in the decision to approve the preliminary plat for the Redstone subdivision on the 22.3 acres re-designated by 11-CPA-05:

> 44. The land located near the site to the north and west is vacant and undeveloped; except for an electrical power substation, overhead transmission lines and a high-pressure underground gas pipeline; and except for some single-family homes on acreage parcels located west of the site along the north side of North Five Mile Road.
>
> 45. The land lying further to the north, and the land located northeast of the site, generally consists of single-family

[7] CR 000220, *Id.* at p. 3 of 9.
[8] CR 000220 – 21, *Id.* at pp. 3 – 4 of 9.
[9] CR 000220 – 21, *Id.* at pp. 3 – 4 of 9; CR 000046, Spokane County Resolution 11-1191 "Proposed Comprehensive Plan Amendment and Zoning Map Change: 11-CPA-05" map.

homes on more urban-sized lots; along with some duplexes located along the east side of Waikiki Road.

46. The land located near the site to the east consists of single-family homes on acreage parcels, and vacant land containing utility easements. Some single-family homes on urban-sized lots are located further to the east, along the west side of Waikiki Road. The land lying south of the site across North Five Mile Road generally consists of single-family homes on mostly urban-sized lots.[10]

There are no multi-family dwellings near this site.[11] Amendment No. 11-CPA-05 will authorize a 200 unit multi-family development at densities of 8 to 10 dwelling units per acre.[12]

III. ARGUMENT

A. The *Spokane County* decision does not conflict with the other decisions of the Supreme Court or Court of Appeals

Spokane County argues that the court of appeals decision in this case conflicts with the *Quadrant Corp.* decision because the Court of Appeals "decision does not refer to any requirement or goal of the [Growth Management Act] GMA with which the adoption of 11-CPA-05 by Spokane County is inconsistent."[13] But the Court of Appeals found

---

[10] CR 000192, Michael C. Dempsey, *Spokane County Hearing Examiner, RE: Application for the Preliminary Plat of Redstone, in the Low Density Residential (LDR) Zone, Applicant: Whipple Consulting Engineers File No. PN-1974-06 Findings of Fact, Conclusions of Law and Decision* p. 7 (March 30, 2007).

[11] CR 000222, *Spokane County Staff Report Comprehensive Plan Annual Amendment Review File No.: 11-CPA-05* p. 5 of 9.

[12] CR 000239, Ex G Whipple Consulting Engineers, Inc. letter to the Spokane County Planning Commission p. 1 (Sept. 14, 2011).

[13] Spokane County Petition for Review p. 5; *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn. 2d 224, 238, 110 P.3d 1132, 1139 (2005).

amendment 11-CPA-05 violated RCW 36.70A.070, RCW 36.70A.040(3)(d), RCW 36.70A.040(4)(d), and RCW 36.70A.040(5)(d).[14] The court also correctly noted that "[t]here need not be strict adherence, but any proposed land use decision must generally conform to the comprehensive plan. *Citizens for Mount Vernon*, 133 Wn.2d at 873; *Barrie v. Kitsap County*, 93 Wn.2d 843, 849, 613 P.2d 1148 (1980). Ultimately, the comprehensive plan and any amendment to it must obey the GMA's clear mandates. *Spokane County II*, 176 Wn. App. at 575 [2013]."[15] The County also claims the Board did not find any GMA violations again showing a lack of deference to the County.[16] However, the Board's Final Decision and Order found violations of RCW 36.70A.070, RCW 36.70A.120, and RCW 36.70A.130.[17] So this argument fails.

The County, on pages 6 and 7 of its Petition for Review, argues this decision is inconsistent with another court of appeals decision involving Spokane County.[18] In 2013 *Spokane County* decision the court

---

[14] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. pp. 35 – 36, 2015 WL 1609138, at *17 – 18 (Apr. 9, 2015).
[15] *Id.* at 36, 2015 WL 1609138, at *18
[16] Spokane County Petition for Review p. 6.
[17] CR 001019, CR 001022 – 24, CR 001029 – 30, *Five Mile Prairie Neighborhood Association & Futurewise v. Spokane County*, GMHB Case No. 12-1-0002, Final Decision and Order (Aug. 23, 2012), at 10, 13 – 15, and 20 – 21 of 26. Hereinafter FDO.
[18] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 173 Wn. App. 310, 332 – 33, 293 P.3d 1248, 1259 – 60 (2013).

of appeals addressed one of the policies at issue in this case, comprehensive plan policy UL.2.16, and concluded in part that

> if a map amendment meaningfully advances other comprehensive plan goals and policies, a finding by the growth board that it fails to advance another—if it fails to advance, for example, a goal of encouraging high density residential development on sites having good access to a major arterial—that alone cannot be an invalidating inconsistency. The weighing of competing goals and policies is a fundamental planning responsibility of the local government.[19]

In this case, the court of appeals quoted the 2013 *Spokane County* decision and explained the different outcome in this case:

> Based on this passage in *Spokane County I* [the 2013 decision], we would defer to any reasonable weighing of the goals and policies conducted by the Spokane County Board of Commissioners. While the Board of Commissioners declared amendment 11-CPA-05 consistent with the goals of the GMA, the Board of Commissioners never provided any reasoning behind this declaration. More importantly, the Board of Commissioners never recognized the rezone's inconsistency with comprehensive plan amendment UL.2.16 or the violation of SCZC section 14.402.040. Thus, the Board of Commissioners never weighed whether countervailing goals and policies of the GMA trump the clash with GMA goals and polices resulting from inconsistencies with comprehensive plan policy UL.2.16 or the violation of SCZC section 14.402.040.[20]

---

[19] *Spokane County (2013)*, 173 Wn. App. at 333, 293 P.3d at 1259 – 60.
[20] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. p. 62, 2015 WL 1609138, at *30 (Apr. 9, 2015).

So there is no conflict between 2013 *Spokane County* decision and the decision in this case. Again, Spokane County's argument fails.

B. The court of appeals did not err in finding noncompliance with Spokane County Zoning Code 14.402.040

Spokane County did not argue that Spokane County Zoning Code (SCZC) 14.402.040 did not apply to amendment 11-CPA-05 before the Board or the Court of Appeals.[21] RCW 34.05.554(1) provides in part that issues not raised before the Board may not be raised on appeal with certain exceptions that do not apply here. So the County cannot raise this issue for the first time on appeal before the Supreme Court.

Instead, Spokane County argued that the amendment complied with SCZC 14.402.040.[22] Both the Board and the Court of Appeals carefully analyzed these arguments and concluded that amendment, including it zoning amendment, did not comply with SCZC 14.402.040.[23]

C. Spokane County was granted the deference it was due

Two of the key innovations of the GMA were the requirement for internal consistency and consistency between comprehensive plans and

---

[21] CR 000324, Spokane County Prehearing Brief in Response to Petitioner's Prehearing Brief p. 27 of 34; CR 001027 – 30, FDO at 18 – 21; *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. p. 58, 2015 WL 1609138, at *28 (Apr. 9, 2015).

[22] CR 000324, Spokane County Prehearing Brief in Response to Petitioner's Prehearing Brief p. 27 of 34.

[23] CR 001027 – 30, FDO at 18 – 21; *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. pp. 52 – 58, 2015 WL 1609138, at *25 – 28 (Apr. 9, 2015).

development regulations.[24] In this case, Spokane County violated both of these provisions.[25]

Pages 11 and 12 of Spokane County's Petition for Review strikes at the heart of these requirements. Spokane County writes the "question remains, as is the case in this matter and the *Headwaters* case [the 2013 decision the Court of Appels referred to as *Spokane County I* in the decision in this case], if there are no allegations of non-compliance with a specific requirement of the GMA and the local jurisdiction is applying its own comprehensive plan policies to a specific and unique property, does the Growth Management Hearings Board have the authority to substitute its own judgment for that of the local jurisdiction in evaluating the challenged planning action?

There are two problems with this question. The first is that the requirements for a consistent comprehensive plan and consistency between the comprehensive plan and the development regulations are specific GMA requirements.[26] To underline the point that the legislature and the governor intended local governments to comply with their

---

[24] RCW 36.70A.040; RCW 36.70A.070.
[25] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. pp. 35 – 36, 2015 WL 1609138, at *17 – 18 (Apr. 9, 2015).
[26] RCW 36.70A.040; *Town of Woodway v. Snohomish Cnty.*, 180 Wn. 2d 165, 173, 322 P.3d 1219, 1223 (2014); RCW 36.70A.070; *Brinnon Grp. v. Jefferson Cnty.*, 159 Wn. App. 446, 476 – 77, 245 P.3d 789, 804 (2011).

comprehensive plans they also adopted RCW 36.70A.120 which provides in full that "[e]ach county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan." In short, Spokane County's activities must conform to its comprehensive plan.

The second problem, as the Court of Appeals properly concluded, in this case Spokane County "never weighed whether countervailing goals and policies of the GMA trump the clash with GMA goals and polices resulting from inconsistencies with comprehensive plan policy UL.2.16 or the violation of SCZC section 14.402.040."[27] As to the decision on amendment 11-CPA-05 there is just no there there. Spokane County is not asking for deference to reasoned planning decisions, it is asking for a free pass. This the GMA in RCW 36.70A.040, RCW 36.70A.070, RCW 36.70A.120, and RCW 36.70A.130 does not allow.

D. The Board and Court correctly concluded that the Growth Management Hearings Board had jurisdiction to review the rezone in this case and this decision is consistent with this Court's *Wenatchee Sportsman* and *Woods* decisions

The Board correctly determined that the Medium Density Residential rezone that was part of amendment 11-CPA-05 was not "a site-specific rezone authorized by a comprehensive plan" and therefore the

[27] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. p. 62, 2015 WL 1609138, at *30 (Apr. 9, 2015).

Board had jurisdiction to review the rezone.[28] The court of appeals correctly upheld this decision.[29] The Washington State Supreme Court has held that:

> The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004); *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). This is done by considering the statute as a whole, giving effect to all that the legislature has said, and by using related statutes to help identify the legislative intent embodied in the provision in question. *Campbell & Gwinn*, 146 Wn.2d at 11, 43 P.3d 4.[30]

RCW 36.70A.280(1) provides in relevant part that the Board "shall hear and determine only those petitions alleging ... 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

---

[28] CR 001017, FDO at 8 of 26.
[29] *Spokane Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, No. 31941-5-III Slip Op. pp. 30 – 34, 2015 WL 1609138, at *15-17 (Wash. Ct. App. Apr. 9, 2015).
[30] *Department of Labor and Industries v. Gongyin*, 154 Wn.2d 38, 44 – 45, 109 P.3d 816, 819 (2005).

RCW 36.70A.040 or chapter 90.58 RCW." Spokane County plans under RCW 36.70A.040.[31]

RCW 36.70A.030(7) defines development regulations as:

> (7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

RCW 36.70B.020(4) defines a project permit, emphasis added, as:

> (4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

Reading these three sections together, we see that the Board has jurisdiction over amendments to development regulations, including

---

[31] *Henderson v. Spokane County (McGlades)*, EWGMHB Case No. 08-1-0002, First Order Finding Non-Compliance (May 7, 2009), at 13, 2009 WL 1716739, at *7.

zoning ordinances. However, if the site-specific rezone is "authorized by a comprehensive plan or subarea plan," then the Board does not have jurisdiction over the rezone. The last phrase of RCW 36.70B.020(4) excludes from the definition of "project permits" "the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection." Only one type of amendment to a comprehensive plan or a development regulation is specifically included in RCW 36.70B.020(4), "site-specific rezones authorized by a comprehensive plan or subarea plan ...." If the site-specific rezone is not authorized by a comprehensive plan or subarea plan, it is not defined as a project permit by RCW 36.70B.020(4).

The legislature limited the definition of project permits to site-specific rezones authorized by a comprehensive plan or subarea plan for a very important policy reason. The GMA, in RCW 36.70A.130(1)(d), provides in relevant part that "[a]ny amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." Neither the Local Government Permitting Act, chapter 36.70B RCW, or the Land Use Petition Act (LUPA, chapter 36.70C RCW) include this requirement. To ensure that rezones comply with the comprehensive plan, the legislature only defined rezones authorized by the comprehensive plan as project permits in RCW

36.70B.020(4). This can be seen in the Supreme Court's *Woods v. Kittitas County* decision.

> ¶ 27 A site-specific rezone authorized by a comprehensive plan is treated as a project permit subject to the provisions of chapter 36.70B RCW. RCW 36.70B.020(4). In reviewing a proposed land use project, a local government must determine whether the proposed project is consistent "with applicable development regulation, or in the absence of applicable regulations the adopted comprehensive plan." RCW 36.70B.030(1). While standards are explicitly provided for making the determination of whether a proposed project is consistent with the development regulations, or, in their absence, the comprehensive plan, there is no explicit requirement that the project permit be consistent with the GMA. *See* RCW 36.70B.030, .040. Instead, the land use planning choices reflected in the comprehensive plan and regulations "serve as the foundation for project review." RCW 36.70B.030(1).[32]

The Board and Court of Appeals' interpretation is consistent with Supreme Court case law. In *Woods v. Kittitas County* the Washington State Supreme Court wrote that "[a] site-specific rezone authorized by a comprehensive plan is treated as a project permit subject to the provisions of chapter 36.70B RCW. RCW 36.70B.020(4)."[33] On page 13, the Spokane County Petition for Review claims that *Woods* stands for the proposition that site-specific rezones are reviewed under LUPA, but the County omits mention of the Supreme Court's language that the rezone

---

[32] *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25, 33 (2007).
[33] *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25, 33 (2007) emphasis added. In fact, the Supreme Court wrote it twice; see also *Woods*, 162 Wn.2d at 612 fn.7, 174 P.3d at 32 fn.7.

must be authorized by a comprehensive plan to be a project permit. The *Wenatchee Sportsmen Association v. Chelan County* decision is also consistent with this interpretation. As the Washington State Supreme Court wrote:

> Stemilt argues that the rezone was a development regulation and not a project permit because Chelan County does not have a comprehensive plan. Br. of Appellants at 16-17 n. 10. Hence, the rezone was appealable to a GMHB. *Id.* In order for this view to prevail, the Local Project Review statute would have to imply the added phrase in brackets: " 'Project permit' or 'project permit application' means any land use or environmental permit or license required from a local government for a project action, including but not limited to ... site-specific rezones authorized by a comprehensive plan or subarea plan [under RCW 36.70A (GMA)]." RCW 36.70B.020(4). Unless this court gives effect to the implied phrase, the rezone in this case is a "project permit application" because it was authorized by a comprehensive plan. But Chelan County has a pre-GMA comprehensive plan enacted in 1958. Chelan County Code § 10.12.010. The Chelan County Planning Department's Staff Report recommending that the rezone be approved concludes that approval would be consistent with that comprehensive plan. Administrative Record (AR) 226, at 6. Thus, the rezone of Stemilt's property is a site-specific rezone authorized by a comprehensive plan, but not a comprehensive plan under the GMA.[34]

The Douglass Petition for Review argues this case's decision that the Board had jurisdiction over the rezone is based on "the erroneous assumption that only a rezone authorized by an '**existing**' comprehensive

---

[34] *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 179 – 80, 4 P.3d 123, 127 – 28 (2000).

plan" is a project permit because "existing" is not included in the definition of project permit in RCW 36.70B.020(4).[35] However, RCW 36.70B.020(4) includes in the definition of project permit "site specific rezones authorized by a comprehensive plan or subarea plan, ..." Authorized is the past tense of authorize.[36] A site specific-rezone is not authorized by a comprehensive plan if that comprehensive plan provision is not adopted and in effect when the rezone is approved. So the Court's use of "existing" in the 2011 *Spokane County* decision and subsequent cases is grounded in the plain language of RCW 36.70B.020(4).[37] Douglass's argument that rezones must always be appealed to superior court under the Land Use Petition Act (LUPA) even if they are not authorized by a comprehensive plan writes that language out of RCW 36.70B.020(4) and violates the requirement that a "court must not 'simply ignore' express terms when interpreting a statute ..."[38] Further, the 2011 *Spokane County* holding that rezones are only project permits when authorized by an existing comprehensive plan was not *dicta*, as Douglas erroneously characterizes the language. The language was part of the

---

[35] Douglass Petition for Review p. 8.
[36] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY p. 146 (2002).
[37] *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 160 Wn. App. 274, 281, 250 P.3d 1050, 1053 (2011) *review denied Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 171 Wn.2d 1034, 257 P.3d 662 (2011).
[38] *Spokane County (2013)*, 176 Wn. App. at 570 – 71, 309 P.3d at 680.

Court's analysis addressing the argument of one of the parties that the rezone in that case "was a site-specific rezone over which the Hearings Board had no jurisdiction."[39]

On page 10 the Douglass Petition for Review argues that the decision in this case is inconsistent with the court of appeal's *Davidson Serles & Associates v. City of Kirkland* decision. It is not. *Davidson Serles & Associates* brought their claims pursuant to article IV, section 6 of the Washington State Constitution and other provisions.[40] Article IV, section 6 provides in relevant part that "[t]he superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.... Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties."[41] The court of appeals concluded that the "GMA establishes the exclusive means to review the City's amendments

---

[39] *Spokane County (2011)*, 160 Wn. App. at 280, 250 P.3d at 1053 citations omitted.. Strangely, the Douglass Petition for Review on page 7 cites the *Coffey* decision for the proposition that concurrent comprehensive plan amendments and rezones must be appealed separately even through *Coffey* only addressed a comprehensive plan amendment and its statements related to rezones are *dicta*. *Spokane County v. Eastern Washington Growth Management Hearings Bd.*, 176 Wn. App. 555, 572, 309 P.3d 673, 681 (2013).

[40] *Davidson Serles & Associates v. City of Kirkland*, 159 Wn. App. 616, 626, 246 P.3d 822, 828 (2011).

[41] *Id.*

to its comprehensive plan and zoning code. This provided Davidson with an adequate mechanism for review, and constituted an adequate, alternative remedy to review by constitutional writ."[42] However, the court of appeals concluded that the "issue of spot zoning could not have been raised before the Board because the Board has jurisdiction to review only those claims that the comprehensive plan and development regulations do not comply with particular statutory provisions. See RCW 36.70A.280. Thus, the Board cannot review challenges to the comprehensive plan and development regulations based on constitutional challenges."[43] In this case, no constitutional challenges were brought, so *Davidson Serles & Associates* does not bar the Board's jurisdiction in this case. And *Davidson Serles & Associates* does support the Board's and Court's conclusion that it has subject matter jurisdiction over the comprehensive plan amendment and rezone in this case because *Davidson Serles & Associates* held that the Hearings Board had jurisdiction over the comprehensive plan amendments and development regulations in that case except for the constitutional challenges.[44]

---

[42] *Davidson Serles & Associates*, 159 Wn. App. at 627, 246 P.3d at 828.
[43] *Davidson Serles & Associates*, 159 Wn. App. at 639, 246 P.3d at 834 – 35.
[44] *Davidson Serles & Associates*, 159 Wn. App. at 627, 246 P.3d at 828.

E. Douglass's argument that reviewing courts must apply the clearly erroneous test the Board's decision is wrong and contrary to the opinions of this Court

The decision that Douglass's Petition for Review, on pages 16 and 17, primarily relies on, *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, does not stand for the proposition that the courts use "substantial evidence" as the standard of review for Board decisions. Instead, the *Arlington* Court used the standard of review in the APA, chapter RCW 34.05, to determine whether the Board properly applied the Board's substantial evidence standard of review. The *Arlington* court did identify the Board's substantial evidence standard of review writing that "[t]he 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)."[45] However, the courts do not use the substantial evidence standard when reviewing the Board's decisions. As the *Arlington* court wrote right after setting out the Board's standard of review:

> On appeal, we review the Board's decision, not the superior court decision affirming it. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000) (hereinafter referred to as Soccer Fields). "'We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court.'" *Id.* (quoting *City of Redmond v. Cent.*

[45] *City of Arlington v. Central Puget Sound Growth Management Hearings Bd.*, 164 Wn.2d 768, 778, 193 P.3d 1077, 1082 (2008).

Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 45, 959 P.2d 1091 (1998) ...).[46]

The *Arlington* court then wrote that while the board owed deference to local government planning decisions, the courts owe substantial weight to the Board's interpretations of the GMA.[47] The Washington State Supreme Court went on to detail the APA standards the courts apply to the Board's order including whether the Board's order is "supported by evidence that is substantial when viewed in light of the whole record before the court (RCW 34.05.570(3)(e)) ...."[48]

While the *Arlington* majority did not apply labels to the Board's errors, because it involved a misinterpretation of the *City of Redmond* decision[49] the Board made an error of law. Further, when this error of law was corrected the decision can be fairly read as then concluding the Board's order was "not supported by evidence that is substantial when viewed in light of the whole record before the court" as the APA in RCW 34.05.570(3)(e) requires.[50] This decision was not an example of the Court applying the substantial evidence test to the county's decision. This was

---

[46] *Id.* at 164 Wn.2d at 779, 193 P.3d at 1082.
[47] *Id.* at 164 Wn.2d at 779, 193 P.3d at 1082.
[48] *Id.* at 164 Wn.2d at 779 – 80, 193 P.3d at 1082 – 83. The court included this statement of RCW 34.05.570(3)(e) under the allegations by the city, county, and landowner but set it out under the "standard of review" subheading under the "Analysis" heading.
[49] *Id.* at 164 Wn.2d at 788, 193 P.3d at 1087.
[50] Quoting the statement of the standard of review from *City of Arlington*, 164 Wn.2d at 779, 193 P.3d at 1083.

underlined by Justice Chambers' concurring opinion who wrote that "[t]he majority has passed by the fact that we review the hearing board's decision for substantial evidence. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000). Nothing in our opinion today should be read to change that."[51] So *Arlington* does not support Douglas's argument.

IV. CONCLUSION

The Board had jurisdiction over the comprehensive plan amendment and rezone in Amendment 11-CPA-because the rezone was not authorized by the *Spokane County Comprehensive Plan.* Substantial evidence supports the Board's Final Decision and Order finding the comprehensive plan amendment and rezone violated the GMA and the *Spokane County Comprehensive Plan.* This issues raised by Spokane County and Douglass do not warrant review by this Court.

Respectfully submitted this 5th day of June 2015.

Tim Trohimovich, WSBA No. 22367

[51] *City of Arlington*, 164 Wn.2d at 796, 193 P.3d at 1092.

CERTIFICATE OF SERVICE

I, Tim Trohimovich, declare under penalty of perjury and the laws of the State of Washington that, on June 5, 2015, I caused the electronic original and true and correct copies of the following document to be served on the persons listed below in the manner shown: the Five Mile Prairie Neighborhood Association's and Futurewise's Answer to Petitions for Review in Case No. 91665-9.

The Supreme Court of the State of Washington 415 12th Ave SW Olympia, WA 98501-2314 Mailing: PO Box 40929 Olympia, WA 98504-0929	Mr. Dan L. Catt Sr. Deputy Prosecuting Attorney Spokane County Prosecuting Attorney 1115 West Broadway, 2nd Floor Spokane, Washington 99260 (509) 477-4509 Deputy Attorneys for Spokane County
[ ] By United States Mail, postage prepaid and properly addressed	[X] By United States Mail, postage prepaid and properly addressed
[ ] By Legal Messenger or Hand Delivery	[ ] By Legal Messenger or Hand Delivery
[ ] By Facsimile	[ ] By Facsimile
[ ] By Federal Express or Overnight Mail prepaid	[ ] By Federal Express or Overnight Mail prepaid
[X] By email: Supreme@courts.wa.gov	[X] By E-Mail: dcatt@spokanecounty.org

Mr. Michael J. Murphy
Mr. William J. Crittenden
Groff Murphy, PLLC
300 E. Pine St.
Seattle, WA 98122
(206) 628-9500
Attorneys for Harley C. Douglass, Inc.

X	By United States Mail, postage prepaid and properly addressed
	By Legal Messenger or Hand Delivery
	By Facsimile
	By Federal Express or Overnight Mail prepaid
X	By E-Mail: mmurphy@groffmurphy.com; wjcrittenden@comcast.net

Mr. David W. Hubert
DWH LAW PLLC
20953 N 79th Dr
Peoria, AZ 85382-4455
(602) 565-7141
Attorneys for Spokane County

X	By United States Mail, postage prepaid and properly addressed
	By Legal Messenger or Hand Delivery
	By Facsimile
	By Federal Express or Overnight Mail prepaid
X	By E-Mail: dhubert@dwhlawaz.com

Ms. Dionne Padilla-Huddleston
Office of the Attorney General
TB-14
800 Fifth Ave Ste 2000
Seattle, WA 98104-3188
(206) 389-2127
Attorneys for the Growth Management Hearings Board

	By United States Mail, postage prepaid and properly addressed
	By Legal Messenger or Hand Delivery
	By Facsimile
	By Federal Express or Overnight Mail prepaid
X	By E-Mail (by agreement): DionneP@atg.wa.gov; amyp4@atg.wa.gov

	By United States Mail, postage prepaid and properly addressed
	By Legal Messenger or Hand Delivery
	By Facsimile
	By Federal Express or Overnight Mail prepaid
	By E-Mail:

Certified and dated this 5th day of June 2015.

Tim Trohimovich, WSBA No. 22367

OFFICE RECEPTIONIST, CLERK

To: Tim Trohimovich
Cc: DCatt@spokanecounty.org; mmurphy@groffmurphy.com; wjcrittenden@comcast.net; dhubert@dwhlawaz.com; DionneP@atg.wa.gov; amyp4@atg.wa.gov
Subject: RE: Answer to Petitions for Review in Case No 91665-9

Received 6-5-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Tim Trohimovich [mailto:Tim@futurewise.org]
Sent: Friday, June 05, 2015 11:05 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: DCatt@spokanecounty.org; mmurphy@groffmurphy.com; wjcrittenden@comcast.net; dhubert@dwhlawaz.com; DionneP@atg.wa.gov; amyp4@atg.wa.gov
Subject: Answer to Petitions for Review in Case No 91665-9

Dear Madams and Sirs:

Enclosure please find the Five Mile Prairie Neighborhood Association's and Futurewise's Answer to Petitions for Review in Washington State Supreme Court Case No. 91665-9, *Spokane County v. Eastern Washington Growth Management Hearings Board et al.* We are serving the answer as provided in the certificate of service attached to the answer. Please contact me if you require anything else.

Tim Trohimovich, AICP
Futurewise | Director of Planning & Law
816 Second Avenue, Suite 200 | Seattle, Washington 98104
p. 206.343.0681 Ext. 118
Email: tim@futurewise.org

25 YEARS futurewise

Building Communities & Protecting the Land