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**SUPREME COURT
OF THE STATE OF WASHINGTON**

SPOKANE COUNTY, a political subdivision of the State of Washington,
HARLEY C. DOUGLASS, INC.

Respondents,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD, a statutory entity, FIVE MILE PRAIRIE NEIGHBORHOOD
ASSOCIATION, AND FUTUREWISE, a Washington Non-Profit
Organization,

Appellants,

REPLY TO ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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I. NEW ISSUES RAISED IN ANSWER TO PETITION

In the Answer to the Petition for Review filed with this Court, Appellants Five Mile Prairie Neighborhood Association and Futurewise raise three (3) issues not raised in the Petition for Review.

1. Whether subject matter jurisdiction of the Growth Management Hearings Board may be challenged for the first time before the Court of Appeals or the Supreme Court¹?
2. Whether the Growth Management Act requires that an action implementing a GMA consistent Comprehensive Plan strictly comply with the goals and policies of the Comprehensive Plan²?
3. Whether the GMA requires a specific and detailed explanation from the local jurisdiction, regarding action taken to implement a GMA compliant Comprehensive Plan, beyond a statement that the action taken is consistent with the jurisdiction's own Comprehensive Plan³?

¹ Five Mile Prairie Neighborhood Association's & Futurewise's Answer to Petitions for Review, p. 7.

² Five Mile Prairie Neighborhood Association's & Futurewise's Answer to Petitions for Review, p. 9.

³ *Id.*

II. REPLY TO NEWLY RAISED ISSUES

1. Subject Matter Jurisdiction May be Raised at Any Time During the Review of the Growth Management Hearings Board's Decision.

Appellants allege that Spokane County failed to raise the issue of subject matter jurisdiction before the Growth Management Hearings Board or the Court of Appeals and thus may not raise that issue in its Petition for Review⁴. Appellants' argument ignores Spokane County's Response Brief⁵ in this matter to the Court of Appeals, subsection 1 at pages 22 – 24, "Growth Management Hearings Board's Focus on Development Regulations is Inapposite and Misplaced". Spokane County specifically argued that "[c]reation and amendment of the comprehensive plan is governed by the goals and policies of the GMA and not adopted development regulations"⁶. Spokane County goes on to argue that "[t]he Growth Management Hearings Board's conclusion that 11-CPA-05 is inconsistent with the policies of the Comprehensive Plan and/or non-compliant with the GMA based upon the alleged lack of compliance with

⁴ Five Mile Prairie Neighborhood Association's & Futurewise's Answer to Petitions for Review, p. 7.

⁵ Appendix D, Spokane County's Response Brief, to Court of Appeals Division III.

⁶ *Id.* at p. 22.

the Spokane County concurrency regulations is unfounded and not supported by law”⁷.

Spokane County did in fact raise the issue of subject matter jurisdiction before the Court of Appeals. Not only was the issue raised and argued by Spokane County, Spokane County’s ability to do so is clearly established in the law. RAP 2.5(a); *Buecking v. Buecking*, 179 Wn.2d 438, 441, 318 P.3d 999 (2013). The Court of Appeals speculated that the Growth Management Hearings Board did not have jurisdiction over the question of compliance of 11-CPA-05 with Spokane County Zoning Code 14.402.040⁸. The most likely reason for the Court of Appeals’ speculation is Spokane County’s reference to the subject matter jurisdiction granted to the Growth Management Hearings Board.

Not only was the question of subject matter jurisdiction raised and argued at the Court of Appeals, it is properly raised in Spokane County’s Petition for Review to this Court as well.

2. The Growth Management Act Does Not Require Strict Compliance with the Goals and Policies of the Comprehensive Plan.

Arguing that Spokane County’s adoption of 11-CPA-05 is non-compliant with the GMA, Appellants sole allegation of non-compliance is

⁷ Appendix D, to Spokane County Petition for Review, Spokane County’s Response Brief, to Court of Appeals Division III, at p. 24.

⁸ Appendix A, Spokane County Petition for Review, Court of Appeals Unpublished Opinion, p. 58.

that the amendment as adopted causes the Comprehensive Plan to be internally inconsistent and thus in violation of the GMA. Appellants' and the Court of Appeals' conclusion that the Comprehensive Plan is internally inconsistent is based solely upon Appellants' argument that 11-CPA-05 does not strictly comply with the goals and policies of the Comprehensive Plan. Such strict compliance with the comprehensive plan is clearly not a violation of any requirement of the GMA. *Citizens for Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997); *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980).

Rather than view the Comprehensive Plan as a guide and policy statement as required, the Court of Appeals spent a great deal of its decision interpreting and then enforcing the Comprehensive Plan as though it were a strict requirement rather than the guide that it is intended to be⁹. Appellants' reliance upon strict compliance with the Comprehensive Plan is unsupported in the law. Spokane County respectfully requests that this issue, as raised by Appellants, be addressed and clarified by the Supreme Court.

⁹ Appendix A, Spokane County Petition for Review, Court of Appeals Unpublished Opinion, pp. 34 – 51.

3. The Court of Appeals Decision Fails to Recognize Spokane County's Finding of Consistency with the Comprehensive Plan.

The sole basis of the challenge by Appellants to Spokane County's adoption of 11-CPA-05 is that the amendment is allegedly inconsistent with the goals and policies of the Spokane County Comprehensive Plan. The Court of Appeals finding of inconsistency as alleged is based upon the Court of Appeals' interpretation of the policies of the Spokane County Comprehensive Plan¹⁰.

Without any reference to any such requirement in the GMA, or other statutes or case law, Appellants argue and the Court of Appeals appears to agree that in the face of a challenge to an action implementing a GMA compliant comprehensive plan, the local jurisdiction must not only review and then opine whether the amendment is consistent with the comprehensive plan, the local jurisdiction must also explicitly and specifically state each and every definition of terms and/or statement of policy relating to the amendment and how it is consistent with the comprehensive plan. Such an assertion is a matter of first impression in Washington. There is no case or law that requires such a specific explanation. In contrast RCW 36.70A.3201 requires that the Growth Management Hearings Board grant deference to counties and cities in how

¹⁰ *Id.*

they plan for growth, consistent with the requirements and goals of the GMA. The statute continues: "Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community." RCW 36.70A.3201.

Appellants' demand and the Court of Appeals' decision that requires a local jurisdiction to provide a detailed explanation and definition of the specific policies of the comprehensive plan, rather than a finding of consistency with such upon review by the jurisdiction, is not found anywhere in the GMA and is not supported in the law.

As a matter of first impression this issue is ripe for consideration and clarification by the Supreme Court.

III. CONCLUSION

The Appellants' Answer to Petitions for Review raises three (3) new issues not raised in the Petitions for Review by Spokane County and/or Harley C. Douglas, Inc. Although two (2) of the issues raised by Appellants are already addressed by substantial case law and statute Appellants and

other litigants continue to raise these issues before the Growth Management Hearings Boards and frequently prevail on these issues. Spokane County respectfully requests that the Court hear and respond to these issues in an effort to clarify the law and provide guidance to the Growth Management Hearings Boards as well as local jurisdictions.

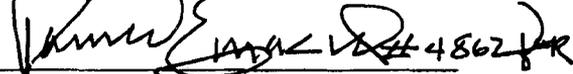
Respectfully submitted this 17th day of June, 2015.

LAWRENCE H. HASKELL
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PROOF OF SERVICE

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

On the 17th day of June, 2015, I caused to be served a true and correct copy of the **Reply to Answer to Petition for Review** by the method indicated below, and addressed to the following:

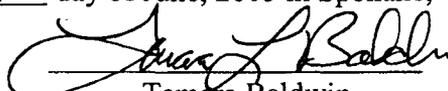
Dionne Padilla-Huddleston	<input type="checkbox"/>	Personal Service
Assistant Attorney General	<input type="checkbox"/>	U.S. Mail
Office of the Attorney General	<input type="checkbox"/>	Hand-Delivered
800 Fifth Avenue, Suite 2000	<input type="checkbox"/>	Overnight Mail
Mailstop TB14	<input checked="" type="checkbox"/>	Electronic Mail
Seattle, WA 98104		

Growth Management Hearings Board	<input type="checkbox"/>	Personal Service
P.O. Box 40953	<input checked="" type="checkbox"/>	U.S. Mail
Olympia, WA 98504-0953	<input type="checkbox"/>	Hand-Delivered
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Tim Trohimovich, Esq.	<input type="checkbox"/>	Personal Service
Futurewise	<input checked="" type="checkbox"/>	U.S. Mail
816 Second Avenue, Suite 200	<input type="checkbox"/>	Hand-Delivered
Seattle, WA 98104	<input type="checkbox"/>	Overnight Mail
	<input checked="" type="checkbox"/>	Electronic Mail

William John Crittenden, Esq.	<input type="checkbox"/>	Personal Service
Michael Murphy, Esq.	<input checked="" type="checkbox"/>	U.S. Mail
Goff Murphy, PLLC	<input type="checkbox"/>	Hand-Delivered
300 East Pine Street	<input type="checkbox"/>	Overnight Mail
Seattle, WA 98122	<input checked="" type="checkbox"/>	Electronic Mail

DATED this 17th day of June, 2015 in Spokane, Washington.



Tamara Baldwin

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Subject: RE: Spokane County, et al. v. EWGMHB, Five Mile Prairie Neighborhood Association, et al.

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From: Baldwin, Tamara [mailto:TBALDWIN@spokanecounty.org]
Sent: Wednesday, June 17, 2015 12:10 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'dionnep@atg.wa.gov'; 'eastern@elaho.wa.gov'; 'tim@futurewise.org'; 'Mike Murphy'; 'wjcrittenden@comcast.net'; 'zdeatley@groffmurphy.com'; Catt, Dan; 'David Hubert (dhubert@dwhlawaz.com)'
Subject: RE: Spokane County, et al. v. EWGMHB, Five Mile Prairie Neighborhood Association, et al.

Dear Sir/Madam:

Please find attached Spokane County's Reply to Answer to Petition for Review.

Should you have any questions regarding the attached, please do not hesitate to contact Dan Catt at (509) 477-5764.

Thank you for your assistances with this matter.

Tamara L. Baldwin, Secretary
Spokane County Prosecuting Attorney's Office
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