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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 271234, consolidated with
271242, 271251, 271269, 271277

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

KITTITAS COUNTY, a political subdivision of the State of Washington,
BUILDING INDUSTRY ASSOCIATION OF WASHINGTON (BIAW), CENTRAL
WASHINGTON HOME BUILDERS (CWHBA),
MITCHELL WILLIAMS, d/b/a/ MF WILLIAMS CONSTRUCTION CO.,
TEANAWAY RIDGE, LLC, KITTITAS COUNTY FARM BUREAU, and SON
VIDA II,

Appellants,

v.

KITTITAS COUNTY CONSERVATION, RIDGE, FUTUREWISE,
and EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD,

Respondents.

PETITIONER SON VIDA II'S REPLY BRIEF

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I. INTRODUCTION

Son Vida II (“Son Vida”)¹ submits this Reply Brief in reply to the arguments advanced by the petitioners, Kittitas County Conservation, Ridge and Futurewise (hereinafter collectively referred to as “Futurewise”). Specifically, as Son Vida indicated in its Amended Opening Brief, Son Vida’s concern is with the Eastern Washington Growth Management Hearings Board (“Board”) findings and conclusions that Chapter 17.58 Kittitas County Code (“KCC”) and, specifically, KCC 17.58.040A and 17.58.050 do not comply with the Growth Management Act (“GMA”).²

Son Vida’s appeal is limited to KCC 17.58.040A and KCC 17.58.050. KCC 17.58.040A relates exclusively to Bowers Field and KCC 17.58.050 provides development regulations based upon the turning zone the property is located in. (AR, p. 216-229). The only changes to KCC 17.58.040A and KCC 17.58.050 in the Development Code Update, which is the subject of this appeal, were non-substantive changes which related to updating terms and names of underlying zones. (AR, p. 216-229). The major change to KCC 17.58 was the addition of KCC 17.58.040B which applied the Airport Overlay Zone (“AOZ”) to airports at Easton, Cle Elum Municipal Airport and Devere Field. (AR, p. 221-228).

Contrary to Futurewise’s mischaracterization of Son Vida’s argument, Son Vida did not argue the Board erred in requiring airport safety precautions

¹ Contrary to Futurewise’s assertion at page 39, Son Vida is a landowner with land in the vicinity of Bowers Field, which is the Ellensburg airport, and is not a “developer who wishes to build residences in the flight path near the Ellensburg airport.”

² Specifically, Son Vida has assigned error to Board finding of fact 9 and Board conclusion of law 11. (AR, page 1251, 1252).

be observed by the County. (Futurewise Brief, page 39). What Son Vida and the County argued was the Board erred when it concluded airport safety precautions which were deemed GMA compliant in 2002 were now, for no reason, deemed non-compliant by the Board.

II. DISCUSSION

A. Standard of Review.

Son Vida adopts and incorporates the Standard of Review arguments advanced by Kittitas County in Section II, A of the County Reply Brief at pages 1 and 2.

B. Stare Decisis Requires the Board to rule that KCC 17.58.040A and KCC 17.58.050 do Comply with the GMA.

Son Vida was the petitioner in *Eastern Washington Growth Management Hearings Board*, Case No. 01-1-01 (hereinafter referred to as the “2001 Decision”). (AR, p. 191-208; AR, p. 123-140). In the 2001 Decision, the Board concluded the Bowers Field AOZ was GMA compliant. Son Vida adopts the arguments and incorporates by reference the arguments made by Kittitas County in its Reply Brief at pages 20-22 in which the County correctly responds to Futurewise’s assertion that the Doctrine of *Stare Decisis* is not applicable. The Doctrine of *Stare Decisis* is applicable to this case and should have prevented the Board from concluding that KCC 17.58.040A and KCC 17.58.050 were now not compliant with the GMA.

C. Factual Record.

Futurewise, in its Brief at pages 46-48, argues the facts which it believes demonstrate the County has inadequate and unsafe AOZ standards. Futurewise does not address or explain their position in view of clear facts and the record which demonstrates that KCC 17.58.040A and KCC 17.58.050, as applied to Bowers Field, are GMA compliant.

A review of the AOZ, at KCC 17.58.040A and KCC 17.58.050, indicates that in Zone 1, the Runway Protection Zone, unoccupied land uses are encouraged. (AR, p. 225). In Zones 3, 4, 5 and 6, there are specific density restrictions on dwellings depending upon whether the property is in the Ellensburg Urban Growth Area (“UGA”) or outside the UGA. (AR, p. 226). These are the very densities the Board, in the 2001 Decision, indicated were adopted based, in part, upon the same Washington State Department of Transportation (“WSDOT”) recommendation and complied with the GMA. (AR, p. 202). Not one thing has changed since the 2001 Decision that would now make KCC 17.58.040A and KCC 17.58.050 not GMA compliant.

Second, Futurewise tries to explain their argument by pointing to a 2006 letter from WSDOT which attached the same WSDOT publication the Board relied so heavily on in the 2001 Decision. (AR, p. 972). What Futurewise fails to acknowledge is that the 1999 report and the WSDOT letter of 2006 are merely recommendations. Neither is a rule, a mandate or a line in the sand, so to speak. Thus, Futurewise’s final sentence in its Brief, “the County’s mandate is to comply with the GMA, not WSDOT’s opinion”, is

difficult to understand given the fact that Futurewise's whole argument centers on the County not following WSDOT's recommendations.

The court should look hard at the final decision and order entered in the 2001 Decision. (AR, p. 123-140). The Board, in the 2001 Decision, entered into an exhaustive discussion of the turning zones and density restrictions in those turning zones. (AR, p. 131-133). In 2001, the Board cited to RCW 36.70A.547 which deals with general aviation airports. (AR, p. 133). In 2001, the Board recognized that the County was required to consult with various individuals and agencies, including WSDOT, to arrive at an AOZ that would be a well-balanced consideration of all of the factors. (AR, p. 134). In 2001, the Board recognized the question of whether an AOZ was GMA compliant should be based upon a number of factors, including the local circumstances. The Board went on to note that the citing of high-density residential development "adjacent to the airport has been recognized by the hearings boards as inappropriate and incompatible". (Emphasis). (AR, p. 134). The Board, in the 2001 Decision, then concluded as follows:

"The densities of uses permitted under the Airport Overlay Zone are appropriate when placed in the context of location of the airport, the county wide planning policies and the small percentage of the UGA that is impacted."

(AR, p. 137).

The Board then correctly recognized that, both the City of Ellensburg and Kittitas County, relying on recommendations from Community, Trade and Economic Development Department ("CTED") that adopting appropriate densities inside and outside a UGA required a review of the planning goals of

the GMA relating to urban growth, reduced sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, environment, citizen participation and coordination, public facilities and services and historic preservation. (AR, p. 137). The Board then recognized the 13 goals of GMA are not listed in order of priority and are often in conflict with each other. (AR, p. 137). The Board noted the County and City have adopted airport zoning regulations they believe “will protect the airport and the residents adjacent to the airport. This zoning was arrived at after the extensive public input and review by the departments and individuals listed in statute RCW 36.70.547.” (AR, p. 138). The Board then recognized “the legislature was very clear that each county was to be given a broad range of discretion when planning for growth and the boards are to grant deference to both the counties and cities in how they plan for growth.” (AR, p. 139). The Board went on to conclude that Kittitas County had demonstrated it received and considered input from the state, the public and airport authorities and concluded that Kittitas County AOZs complied with the GMA. (AR, p. 139-140). Nothing has changed. The airport is in the same location; the UGA boundaries are in the same location; and the ordinance which governs what can occur within the zones created by the AOZ, with respect to Bowers Field, remains the same. The only evidence that is different since the 2001 Decision is that WSDOT sent a letter to Kittitas County suggesting that the county adopt an AOZ at other airports in the

county and Futurewise, in its myopic view that no density is good, submitted a self-serving letter that effectively relied upon the WSDOT recommendations.

III. CONCLUSION

For these reasons, the Board's FDO in this case to the extent it finds KCC 17.58.040A and KCC 17.58.050 do not comply with the GMA should be reversed.

RESPECTFULLY SUBMITTED this 24 day of June, 2009.

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