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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION III

CITY OF AIRWAY HEIGHTS and BRIGITTA ARCHER

Respondents,
vs.

SPOKANE COUNTY, CITY OF SPOKANE,
SPOKANE AIRPORT BOARD,
CITY OF AIRWAY HEIGHTS, and
EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD,

Appellants.

**JOINT REPLY BRIEF OF APPELLANTS CITY OF SPOKANE,
COUNTY OF SPOKANE & SPOKANE AIRPORT BOARD**

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I. INTRODUCTION

Two years before Airway Heights annexed the area in question (the “Property”), a Joint Land Use Study funded by the Department of Defense (“JLUS”) devoted 93 pages to defining compatibility as it relates to Fairchild Air Force Base (“Fairchild”). AR 461-553. JLUS provides:

One particular development of concern approved prior to the [County’s] moratorium is the Deer Creek Apartment complex (Factor 1A) located south of US Highway 2 to the east of Airway Heights. . . Development within Fairchild’s critical operations area will limit the ability of the installation to adapt to new missions, to support new/different aircraft, and could jeopardize its long-term viability. . . The growth occurring within this area will continue to create compatibility concerns for Fairchild AFB unless a coordinated planning approach is taken. (Emphasis supplied.)

AR 474-75. In its response briefs, Airway Heights¹ argues that JLUS is not a regulatory document (which Spokane² does not dispute), but it does not challenge the validity of JLUS or its methodology and findings.

The Growth Management Act, Chapter 36.70A RCW (“GMA”) , requires local jurisdictions to protect military installations and airports from incompatible development. GMA does not provide an exception for

¹ Respondents Airway Heights and Brigitta Archer will be referred to hereinafter collectively as “Airway Heights”.

² Appellants Spokane County, City of Spokane, and Spokane Airport Board are referred to collectively as “Spokane”.

“infill” development. Nonetheless, essentially conceding that the Ordinances do authorize incompatible development, Airway Heights asks this Court to recognize an exception for infill development and to condone the City’s efforts to establish a process for obtaining approval to build as many as 580 new apartments within Fairchild’s critical operations area, limiting the base’s ability to adapt to new missions and support new aircraft.

Spokane respectfully asks the Court to decline Airway Heights’ request and to instead reverse the Superior Court and reinstate the Growth Management Hearings Board’s reasoned decision invalidating the Ordinances.

II. SUPPLEMENTAL STATEMENT OF THE CASE

Airway Heights was an active participant in the JLUS³ process. AR 1121-24. As outlined in earlier briefing and below, that study, which was funded primarily by the Department of Defense, and which was based on noise modeling which assessed potential noise related to four potential future mission scenarios at Fairchild, AR 519, found that the Property is

³ The 2009 JLUS was not a “draft” as Airway Heights suggests. Respondent City of Airway Heights’ Response Brief, p. 20. *See*, AR 389, indicating 2009 JLUS is “Final”. Later efforts by the parties to implement JLUS, including the work of the JLUS Coordinating Committee, are not relevant to this appeal.

within Fairchild's critical operations area, and that multi-family residential development on the Property is incompatible with Fairchild's mission and will limit the base's ability to undertake new missions. AR 463-75.

As Airway Heights observes in its briefing, JLUS was guided by Department of Defense compatibility standards, referring to Department of Defense Instruction Number 3030.3, dated July 13, 2004, Subject: Joint Land use Study (JLUS) Program. *See*, Respondent City of Airway Heights' Response Brief, p. 2 and AR 1092-98. That instruction defines Incompatible Civilian Development as follows:

Land use activity and civilian development activity that adversely affects the utility or training and readiness missions of a military installation.

AR 1098.

Consistent with this instruction, 93 pages of JLUS are devoted specifically to compatibility, listing 24 compatibility factors that factor into identifying activities that adversely affect the utility or training and readiness of missions of a military installation. AR 641-42.

The compatibility factors were consolidated into groups of similar factors. For example, a number of development project locations were identified under Compatibility Factor 1, Land Use. These items were further grouped into a single factor called "Urban Growth Potential." These grouped items (shown in Table 3-1) were then reviewed and evaluated by the JLUS committees.

AR 463. Some of these factors are also listed in Table 3-2 which identifies “Land Use Factors.” AR 469-70.

The development of land uses incompatible with an installation’s military mission threatens that installation’s continued existence.

.....

Many of the factors related to land use compatibility raised by the public, Joint Land Use Policy Steering Committee, and Technical Advisory Group were associated with existing or proposed development plans located near [Fairchild] (Factors 1A, 1C, 1E, 1F, 1Q, 1R). The following is a list of developments specifically mentioned:

.....

- Deer Creek Apartments – Apartment complex located one half mile south of SR 2 on Flight Drive.

AR 471. JLUS also lists the Deer Creek Apartments (Factor 1A) as a “man-made” compatibility factor, which JLUS defined as “those that are generated by community development that conflicts with military activities.” AR 467-68.

Next, JLUS utilized three criteria to evaluate and score these compatibility factors, using a scale ranging from “1” (most critical) to “3” (least critical). AR 643. The three criteria are (i) current impact, (ii) location, and (iii) potential impact. AR 463.

Applying these criteria, JLUS identified high density residential housing on the Property as a critical threat (Factor 1A) to Fairchild’s mission. AR 464-75 (Fairchild JLUS, Tables 3-1 and 3-2, and Figure 3-1).

III. ARGUMENT

A. THE BOARD PROPERLY DETERMINED THAT THE DEVELOPMENT AUTHORIZED BY AIRWAY HEIGHTS' ORDINANCES IS "INCOMPATIBLE" WITH FAIRCHILD AIR FORCE BASE WITHIN THE MEANING OF RCW 36.70A.530.

1. GMA Protects Military Installations From Development that is Incompatible with an Installation's Current Missions as Well as its Ability to Undertake New Missions.

GMA makes it a state priority to protect military installations from incompatible development, and prohibits local jurisdictions from adopting development regulations that allow development that is incompatible with a military installation's ability to carry out its mission requirements. RCW 36.70A.530. RCW 36.70A.530 is not limited to current mission requirements, but is also concerned with preserving the ability of military installations to undertake new missions. *See, Tesoro Ref. & Mktg. Co. v. Dep't of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28, 32 (2008) (the goal of statutory interpretation is to carry out the legislature's intent).

The United States military is a vital component of the Washington state economy. The protection of military installations from incompatible development of land is essential to the health of Washington's economy and quality of life. Incompatible development of land close to a military installation reduces the ability of the military to complete its mission or to undertake new missions, and increases its cost of operating. The Department of Defense

evaluates continued utilization of military installations based upon their operating costs, their ability to carry out missions, and their ability to undertake new missions. (Emphasis supplied.)

RCW 36.70A.530, Notes.

Consistent with the legislature's intent, in its decision, the Board indicates that GMA requires local jurisdictions to protect military installations from development that is "incompatible with the military's ability to carry out its mission requirements or to undertake new missions." AR 1749. *See, Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 154, 256 P.3d 1193 (2011) ("courts give substantial weight to a board's interpretation of the GMA").

In this appeal, as it did before the Board, Airway Heights argues that its alleged compliance with AICUZ standards satisfies this requirement. But as JLUS indicates, AICUZ does not take future missions into account. AR 519; *see also*, AR 1059 indicating that the AICUZ study provides current noise contours and compatibility guidelines. For this reason, Airway Heights' alleged compliance with AICUZ does not support their arguments that the Ordinances comply with GMA.

2. **The Board Properly Determined that the Development Authorized by Airway Heights' Ordinances is "Incompatible" With Fairchild Air Force Base Within the Meaning of RCW 36.70A.530.**

The Board found that the Property is located within Fairchild's critical operations area and that the additional multi-family residential development the Ordinances authorize will affect current Fairchild operations and limit the base's ability to adapt to new missions, support new/different aircraft, and could jeopardize the base's long-term viability, all in violation of State law. AR 1772.

Contrary to Airway Heights' arguments in this appeal, there is ample evidence in the record to support the Board's finding, principal of which is JLUS. "Substantial evidence is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." *Thurston County v. Cooper Point Assn. supra*, 148 Wn.2d 1, 57 P.3d 1156 (2002).

We view the evidence in the light most favorable to . . . the party who prevailed in the highest forum that exercised fact-finding authority. Doing so necessarily entails accepting the factfinder's views regarding the . . . weight to be given reasonable but competing inferences. (Citations omitted.)

Spokane County v. E. Wash. Growth Mgmt. Hearings Bd., 176 Wn. App. 555, 565, 309 P.3d 673 (2013).

Under these standards, there is no question the Board's decision is supported by substantial evidence (outlined in pages 8-22 and 32-35 of Spokane's joint opening brief) and that the superior court erred in reversing the Board's decision.

"A JLUS is implemented; essentially, to protect the residents' quality of life, the property owners' rights, and the current and future mission of the base." AR 378 & 417 (emphasis supplied). As indicated above, JLUS identified high density residential housing on the Property as a critical threat (Factor 1A) to Fairchild's mission. AR 464-75 (Fairchild JLUS, Tables 3-1 and 3-2, and Figure 3-1).

Development within Fairchild's critical operations area will limit the ability of the installation to adapt to new missions, to support new/different aircraft, and could jeopardize its long-term viability.

AR 474-75.

Airway Heights largely ignores JLUS, disputes the significance that should be assigned to other evidence supporting the Board's decision, and argues that the Board failed to properly define incompatible development. Airway Heights also points to the City's alleged compliance with AICUZ standards, which do not take future missions into account:

AICUZ studies represent current conditions, should conditions change, a new AICUZ would have to be prepared. As a result, specific land use decisions should not

be based solely on AICUZ boundaries. (Emphasis supplied.)

AR 519; *see also* AR 1059 indicating that the AICUZ study provides current noise contours and compatible use guidelines.

Airway Heights also argues that the legislature’s use of the word “should” in RCW 36.70A.530(3) leaves it within Airway Heights’ discretion to ignore the evidence and to elevate the importance of its growth ambitions over the State legislature’s priority of protecting military installations from incompatible development expressed in RCW 36.70A.530(1).

In support of its argument, Airway Heights cites *Spokane County v. City of Spokane*, 148 Wn. App. 120, 197 P.3d 1228 (2009) and *Erection Co., Inc. v. Department of Labor & Indust.*, 160 Wn. App. 194, 248 P.3d 1085 (2011).⁴ Neither case stands for the broad proposition advanced by Airway Heights. Instead, as the *Spokane County* case holds, statutory interpretation is a question of law. 148 Wn. App. at 130.

The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature. To discern legislative intent, the court begins with the statute’s plain language and ordinary meaning but also looks to the applicable legislative enactment as a whole, harmonizing

⁴ Both cases involve the word “should”, whereas RCW 36.70A.530 says development regulations “should not” allow incompatible development in the vicinity of a military installation.

its provisions by reading them in context with related provisions and the statute as a whole. . . In addition to dictionary definitions,⁵ we also give careful consideration to the subject matter involved, the context in which the words are used, and the purpose of the statute. (Emphasis supplied, citations omitted.)

Quadrant Corp. v. Hearings Bd., 154 Wn.2d 224, 238-39, 110 P.3d 1132 (2005).

As indicated above, the legislature's intent regarding the protection of military installations is clear; GMA makes it a priority of the state of Washington to protect the land surrounding military installations from incompatible development that reduces the installation's ability to complete current missions and/or to undertake new missions. RCW 36.70A.530, Notes.

Spokane submits that there is little question that the Ordinances violate both the letter and intent of RCW 36.70A.530. As outlined above, JLUS provides evidence that additional multi-family residential housing on the Property is a critical threat to Fairchild's current and future mission capabilities. AR 464-75. Indeed, Prior to Airway Heights' adoption of the Ordinances, Fairchild's Base Commander warned of serious compatibility

⁵ Black's Law Dictionary 1379 (6th ed. 1990) indicates that "should" is the past tense of shall and its use ordinarily implies a duty or obligation.

concerns and implored the City not to allow additional multi-family housing on the Property:

[W]e renew our concerns originally expressed in 2008 regarding the 25302.xxxx series of parcels identified in the C-2 amendment and recommend they be removed from consideration for multi-family residential development. The highlighted area is within Military Influence Area 3/4⁶ of the JLUS and we are concerned about increasing the residential density in an area so close to where our military jet aircraft fly instrument approaches to our runway. . . . While sound mitigation techniques can be used during construction, we strongly do not recommend increasing residential development in that area. Safety is also a factor worth considering and the close proximity to the approaches of the two runways would increase the risk to the residents in the event of a catastrophic aircraft accident. (Emphasis supplied.)

AR 652-53. Previously, in response to the earlier proposal to expand the Deer Creek Apartment complex, Fairchild raised similar compatibility concerns:

Based on the 1995 Fairchild AFB Air Installation Compatible Use Zone (AICUZ) Study, the subject property is located in the 65-70 Ldn Noise Zone. Based on Fairchild's 2007 AICUZ study, the property is now outside the 65 Ldn contour line. This demonstrates that noise zones expand and contract as the mission changes at Fairchild AFB. Unfortunately, we cannot predict Fairchild's future noise zones; however, we do know that the subject property will be susceptible to aircraft noise for the foreseeable future. Therefore, we do not recommend the construction of additional apartments in this area.

⁶ The parcels are actually located in MIA 4. AR 596, 1723-29; Transcript of Proceedings, pp. 11, 16, and 64-65.

AR 370-71.

And as outlined in the Spokane's opening brief, all of the aviation stakeholders were unanimous in their opposition to Airway Heights' proposal to authorize additional multi-family residential housing on the Property, because it would be incompatible with the current and future mission requirements of both Fairchild and SIA.

3. **In *Deer Creek Developers, LLC v. Spokane County*, 157 Wn. App. 1, 17, 236 P.3d 906 (2010), this Court Affirmed the Hearing Examiner's Decision Which Rejected the Arguments Airway Heights Makes in this Appeal.**

Airway Heights' efforts to downplay the significance of this Court's decision in *Deer Creek Developer, LLC v. Spokane County*, 157 Wn. App. 1, 236 P.3d 906 (2010) are unpersuasive. *See* AR 309-342. As this Court will recall, the *Deer Creek* matter involved an application to build phase II of the Deer Creek Apartments, the housing project that features prominently in JLUS's compatibility section. Compatibility with surrounding uses (including Fairchild and the Airport) was a deciding criteria in the Hearing Examiner's decision whether to deny the application. AR 329, 332.

Ultimately, after considering competing testimony and written evidence, the Hearing Examiner rejected infill arguments similar to those raised by Airway Heights in this appeal,⁷ holding:

[T]he approval of high density residential development on the site would weaken existing protection for the airport and Fairchild AFB, the flying public and future residents, by allowing incompatible development and potential hazards closer to the critical phases of aircraft approach and departure operations; and would jeopardize the future viability of such facilities.

....

The application, even as conditioned,⁸ is generally not compatible with other permitted uses in the area, and will be materially detrimental to the public welfare, and should be denied . . . (Emphasis supplied.)

AR 332. This Court affirmed:

The hearing examiner concluded that the approval of high density residential development on the site would weaken existing protection for the airport and Fairchild AFB, the flying public and future residents, by allowing incompatible development and potential hazards closer to the critical

⁷ See AR 325 (where the Hearing Examiner notes that owners of the site directly west of Deer Creek argued that there was a need for additional housing options and that the existing multi-family development abutting the site rendered in-fill properties unusable for development other than multi-family).

⁸ Contrary to Airway Heights' arguments on appeal, protections similar to those contained in the Ordinances were proposed in connection with the Deer Creek Apartments. AR 317, 318, and 323 (noise attenuation included in project MDNS) AR 323 (aviation easement required); AR 328 (requirement to submit plans to Fairchild's Base Civil Engineer for review and comment). Even with those conditions, however, the Hearing Examiner found that expansion of the apartment complex was incompatible with other permitted uses in the area.

phases of aircraft approach and departure operations; and would jeopardize the future viability of such facilities.

Deer Creek Developers, LLC v. Spokane County, 157 Wn. App. at 17.

Aside from completion of JLUS and Airway Heights' annexation of the Property, nothing has changed since this Court's decision in *Deer Creek Developers, supra*, and Airway Heights offers no compelling reason this Court should reach a different decision now.

4. **Decisions to Combine MIA 3 and 4 Have No Relevance in This Appeal and Spokane's Support for Airway Heights' Implementation of JLUS Does Not Undermine Spokane's Opposition to the Ordinances, Which Authorize Incompatible Development.**

Airway Heights continues to disapprove of decisions by Spokane County and the City of Spokane to combine MIA 3 and MIA 4 into one larger zone of protection in order to offer Fairchild greater protection from incompatible development in their respective jurisdictions. Airway Heights' Response Brief, pp. 7-9 and FN 2; Archer Response Brief, p. 19. Airway Heights' arguments on this point are entirely irrelevant because the Property is located in the smaller of the two military influence areas, MIA 4 (Land Use Overlay), which JLUS defines as "having a high potential for noise and safety impacts to which land use controls are appropriate." AR 593-96, and 1723-29.

Airway Heights also exaggerates the significance of Spokane's support for earlier ordinances adopted by Airway Heights implementing JLUS. Airway Heights' Brief, pp. 9-10; Archer Brief, p. 24-25. Unlike the Ordinances invalidated by the Board, those ordinances did not authorize multi-family development on the Property, which is addressed with unique concern in JLUS.

B. THE BOARD PROPERLY FOUND THAT AIRWAY HEIGHTS VIOLATED RCW 36.70A.510 AND RCW 36.70.547 BY ADOPTING THE ORDINANCES WHICH ENCOURAGE, INSTEAD OF DISCOURAGE, THE SITING OF INCOMPATIBLE LAND USES ADJACENT TO THE AIRPORT.

Pursuant to GMA, “[e]very county, city, and town in which there is located a general aviation airport⁹ . . . shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport.” RCW 36.70.547 (emphasis supplied.) After reviewing all of the evidence in the record (relevant portions of which are outlined in pages 38-40 of Spokane’s joint opening brief), the Board found that there was clear, substantial, and compelling

⁹ To the extent Respondents argue that RCW 36.70A.510 and RCW 36.70.547 do not apply, Petitioners submit that the Airport is within and adjacent to Airway Heights for the same reasons Fairchild is. Evidence in the record demonstrates that Airway Heights is within the Airports’ traffic patterns and area of influence, within the statutory meaning. *E.g.*, AR 372-

evidence that the Ordinances allow the siting of incompatible development adjacent to Spokane International Airport. AR 1764-65.

Airway Heights' principal response to this issue is that the deference GMA affords to local jurisdictions (i) overrides the concerns of an entire region and (ii) allows local jurisdictions to make unilateral and inappropriate planning choices that jeopardize the region's essential public facilities. Essentially, Airway Heights argues that this deference eliminated any meaningful role for the Board (or this Court, for that matter) in this or any other appeal. Spokane respectfully disagrees.

Airway Heights' argument significantly overstates the deference GMA affords to local jurisdictions, and is similar to the arguments raised by the petitioners in *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 157, 256 P.3d (2011). In that case, the petitioners argued that the mere presence of evidence supporting a local decision as comports with the GMA entitles the local jurisdiction to deference. *Id.*, 172 Wn.2d at 156. The Supreme Court disagreed:

In City of Arlington, this court held that . . . where, within the constraints of the GMA, more than one appropriate planning choice exists, boards must defer to a county's discretion. Petitioners, however, take the rule in City of Arlington to the extreme point of eliminating any

75 (FAA comments) and Exhibits AR 683-87; Clerk's Papers 374-79 (maps).

evaluative role for boards. The legislature granted authority to three boards to adjudicate issues of GMA compliance. . . . While county actions are presumed compliant unless and until a petitioner brings forth evidence that persuades a board that the action is clearly erroneous, RCW 36.70A.320(3), deference to counties remains bounded . . . by the goals and requirements of the GMA. The deference boards must give is neither unlimited nor does it approximate a rubber stamp. Moreover, when it comes to interpreting the GMA, the same deference to counties does not adhere, and we give substantial weight to a board's interpretation. (Emphasis supplied, citations omitted.)

Id.; see also *Yakima County v. E. Wash. Growth Mgmt. Hearings Bd.*, 168 Wn. App. 680, 705, 279 P.3d 434 (2012).

Here, Airway Heights points to no evidence in the record (other than its interpretations of federal regulations and the existence of non-conforming development in the area) that authorizing additional residential development on the Property is not incompatible with the Airport within the meaning of Washington law. Even if they could, that would not mean they can demand unbounded deference from the Board, as they do in their briefs. 172 Wn.2d at 157.

Airway Heights argues that the *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.* decision supports their argument, because in that case the court held that the county was not bound by “recommendations” from WSDOT. 172 Wn.2d at 174. Here, however, in addition to recommendations, all of the aviation stakeholders have raised serious

safety and compatibility concerns regarding additional multi-family residential development on the Property. AR 317-21. Following are some excerpts:

Spokane International Airport expressed opposition to . . . multi-family development [because it] will *adversely impact the layout, length and orientation of the proposed runway for the airport . . . and jeopardize current and future airport operations.*

AR 317.

The FAA stated that it considered [additional multi-family housing on the Property] to be an *incompatible land use . . .*

AR 318 and 372-75.

WSDOT Aviation expressed concern that [the Property] was located under the flight paths of the airport and Fairchild AFB, was not suitable for residential development, and may *disrupt operation of the airport* as an “essential public facility” . . .

AR 320.

The [Property] is in close proximity to SIA’s planned parallel runway. WSDOT does not support the encroachment of residential development adjacent to Spokane International Airport (SIA). . . The importance of SIA to the region and state’s transportation system and economy cannot be overstated. It is critical that every effort be made to discourage incompatible land uses that impair the airport’s ability to operate as an essential public facility.

AR 656-57.

Multifamily development would be inconsistent with WSDOT's Airports and Compatible Land Use Guidebook, January 2011. Residential development within zone 6 of airport overlay is generally *incompatible*.

AR 664. *See also* AR 666-73.

Airway Heights also refers to the City's alleged compliance with AICUZ standards and a requirement for sound attenuation as adequately discouraging incompatible land uses adjacent to the Airport. But "sound attenuation . . . is not generally recognized as an enabling mechanism to allow for encroachment of incompatible use . . ." AR 666-68. And as JLUS recognizes, these are inappropriate and short-sighted approaches to land use planning:

AICUZ studies represent current conditions, should conditions change, a new AICUZ would have to be prepared. *As a result, specific land use decisions should not be based solely on AICUZ boundaries.* (Emphasis supplied.)

AR 519.

Finally, RCW 36.70.547 says cities "shall" discourage incompatible land uses adjacent to airports. Prior to Airway Heights' annexation of the Property, and prior to its adoption of the Ordinances, land use regulations prohibited incompatible land use adjacent to the Airport. Now, the Ordinances authorize incompatible land use adjacent to the Airport. Thus, rather than discouraging, the Ordinances actually

encourage incompatible land uses adjacent to the Airport where it was previously prohibited, in violation of RCW 36.70A.510 and RCW 36.70.547.

C. THE BOARD GRANTED PROPER DEFERENCE TO AIRWAY HEIGHTS' PLANNING DECISION.

“The [Growth Management Hearings] Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations.” *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000). Airway Heights argues that, when it invalidated the Ordinances here, the Board failed to afford the city the deference GMA requires.

Pursuant to GMA, the Board is required to “defer to a [local jurisdiction’s] planning action *if* it is consistent with the GMA’s goals and requirements.” *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. at 583 (emphasis supplied).

GMA deference to [local] planning actions supersedes APA deference to administrative adjudications. Thus, we will not defer to a hearings board if it fails to accord a county the required deference by properly applying the GMA’s clearly erroneous standard.

Here, the hearings board initially presumed the County’s comprehensive plan and amendment and concurrent rezone

were valid but ultimately found them clearly erroneous in light of the entire record and the GMA's goals and requirements. Again, the hearings board's decision is supported by substantial evidence in light of the whole record, does not erroneously interpret or apply the law, and is not arbitrary or capricious. Thus, the hearings board properly applied the GMA's clearly erroneous review standard. By doing so, the hearings board accorded the County's planning actions the required deference. (Emphasis supplied, citations omitted.)

Id., 176 Wn. App. at 583; *see also Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d at 154 (to overcome GMA's deference to local planning processes, the board must find that the local actions are clearly erroneous, meaning the board has a firm and definite conviction that a mistake has been committed).

Like the hearings board in the *Spokane County* case, the Board presumed Airway Heights' Ordinances were valid, AR 1744-45, but ultimately found them clearly erroneous in light of the entire record and GMA's goals and requirements relating to the protection of military bases and airports. AR 1760, 1764-65, and 1768-69. In doing so, the Board accorded Airway Heights' planning actions all the deference required by GMA. The superior court erred in reversing the Board's decision.

IV. CONCLUSION

The Ordinances jeopardize the efforts of this community to protect Fairchild and the Airport from mission limiting incompatible

development. For the reasons set forth in Spokane's briefing, Spokane respectfully asks the Court to reverse the Superior Court and to reinstate the Board's decision invalidating the Ordinances.

Respectfully submitted this 10th day of June, 2015.

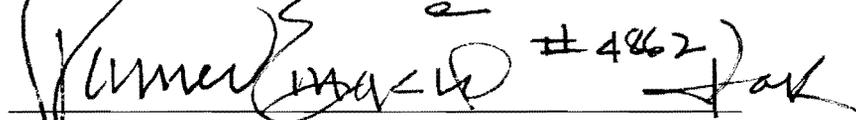
Presented:

OFFICE OF THE CITY ATTORNEY
NANCY L. ISSERLIS, City Attorney



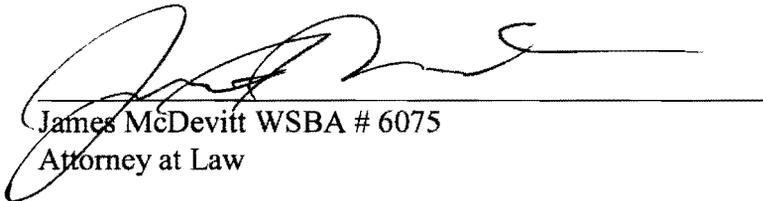
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Assistant City Attorney

SPOKANE COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION



Daniel Catt WSBA # 11606
Deputy Prosecuting Attorney

SPOKANE AIRPORT BOARD



James McDevitt WSBA # 6075
Attorney at Law

CERTIFICATE OF SERVICE

I, Rebecca Riedinger certify that on June 10th, 2015, I caused a true and correct copy of the foregoing to be delivered to the following parties via pdf. electronic transmission and printed copy via either U.S. Mail / Personal Delivery service to the following parties:

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A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long, horizontal stroke that ends in a small dot.

Rebecca Riedinger
Attorney Assistant to
James A. Richman