

Chairman McClain

I am David Whitwill, 211 West Mt. Hood Court, Ellensburg representing the Central Washington Home Builders Association. Thank you for the opportunity to address the Board this evening.

BIAW, CWHBA and others requested a judicial review and stay in case 07-1-0014c that was granted in November 2007. We asked for and received a second judicial review and stay for case 07-1-0015 which was granted in March 2008. In order to provide relief by way of a stay of the EWGM Hearing Board Final Decision and Order in both cases it was necessary for the Superior Court to make four determinations: 1. That BIAW and CWHBA et al. are likely to prevail on the merits. 2. Failure to grant a stay would result in irreparable harm to CWHBA. 3. Granting the stay would not result in substantial harm to other parties. And 4, Granting the stay would not threaten public health, safety or welfare.

What was covered by the stay? The specific areas are those covered in items 1, 10 and 11 of the staff recommendations submitted by Community Development Services to address compliance with the FDO for case 07-1-0014c. While the staff recommendations recognize that issue 1 is under stay, they fail to acknowledge that issues 10 and 11 are equally under stay. The Superior Court's detailed rationale in granting the stay for case 07-1-0015 explicitly recognizes that the county is relieved of the requirement to amend the Comprehensive Plan for the issues under judicial review. Equally the county is relieved of the requirement to revise the respective chapters of the Development Code under judicial review. These include Chapters, 16.04, 16.09, 17.08, and 17.30 along with others. In making its determination with respect to the harm suffered by the Home Builders the Court recognized that revising the Comprehensive Plan and Development Code with respect to those issues under judicial review and stay may make the issues moot (page 8, footnote 15, Memorandum Decision case no. 08 2 00195 7).

We believe there are important and valid reasons not to undermine the appeal process: First, it is a specific recourse provided to the County by RCW 36.70A.300(5); Second, the Growth Management Act allows counties to integrate local conditions and characteristics in their Comprehensive Plan, but this has no meaning if the Regional Growth Management Hearing Boards dictate that all counties be similar; Third, it is important to establish that land use planning is, in fact, the responsibility of County Commissioners and they are permitted to exercise their judgement; and Fourth, in our opinion, the rationale of the EWGM Hearing Board applied in its decision with respect to the subdivision process laid out in Chapter 16.04 undermines the Memorandum of Agreement with Department of Ecology with *respect to permit-exempt acts.* We are requesting this evening that the Board utilize the latitude provided by the Stays granted for the Final Decision and Order for both case 07-1-0014c and 07-1-0015 and defer any action on issues 1, 10 and 11 until the judicial review process runs its course.

Thank you.

Exhibit 3
David Whitwill
5/6/08