

FILED

APR 25 2022

Kim Morrison
Chelan County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF CHELAN

COMMUNITY LODGING OPERATORS OF
CHELAN COUNTY, a Washington limited
liability company, et al.,

Petitioners,

v.

CHELAN COUNTY, WASHINGTON, a
Washington municipal corporation,

Respondent.

22-2-00338-04

NO. 21-1-0007

PETITION FOR JUDICIAL REVIEW OF EWGMHB
FINAL DECISION AND ORDER

(Underlying EWGMHB Case No. 21-1-0007)

Petitioner, COMMUNITY LODGING OPERATORS OF CHELAN COUNTY ("CLOCC"), by and through its attorneys of record, Julie Norton of Ogden Murphy Wallace, P.L.L.C, hereby submits this Petition for Judicial Review under the Administrative Procedures Act, RCW Chapter 34.05, of a decision by the Washington State Growth Management Hearings Board, Eastern Washington Region ("Board" or "EWGMHB") in an appeal under the Growth Management Act, RCW Chapter 36.70A (the "GMA"). The Board's Final Decision and Order was entered on March 24, 2022, in *Community Lodging Operators of Chelan County v. Chelan County*, GMHB Case No. 21-1-0007.

I. PARTIES AND AGENCY ACTION

1.1 Name and Mailing Address of Petitioner ((RCW 34.05.546(1))).

Community Lodging Operators of Chelan County, LLC

PETITION FOR JUDICIAL REVIEW OF
EWGMHB FINAL DECISION AND ORDER - 1

OGDEN MURPHY WALLACE, P.L.L.C.
1 Fifth Street, Suite 200
Wenatchee, Washington 98807-1606
Tel: 509-662-1954/Fax: 509-663-1553

Attn: Managing Member
2606 W Blaine St.
Seattle, WA 98199

1.2 Name and Mailing Address of Petitioner's Attorneys (RCW 34.05.546(2)).

Julie K. Norton
Ogden Murphy Wallace P.L.L.C.
One Fifth Street, Suite 200,
Wenatchee, WA 98801

Donald Marcy & Nicole De Leon
Cairncross & Hempelmann PS
524 Second Avenue, Suite 500
Seattle, WA 98104

1.3 Name and Mailing Address of Agency Whose Action is at Issue (RCW 34.05.546(3)).

Growth Management Hearings Board
Eastern Washington Region
P.O. Box 40953
Olympia, WA 98504-0953

1.4 Service on Attorney General (RCW 34.05.542). This Petition for Judicial Review will be served on the Office of the Attorney General for the State of Washington, at the following address:

Washington State Attorney General
P.O. Box 40100
Olympia, WA 98501-0100

1.5 Agency Action at Issue (RCW 34.05.546(4)). The agency action at issue is the Final Decision and Order ("Final Order") in *Community Lodging Operators of Chelan County v. Chelan County*, GMHB Case No. 21-1-0007, entered on March 24, 2022. A true and correct copy of the Final Order, bearing the complete caption, is attached to this Petition as Exhibit "A" and incorporated herein by this reference.

1 1.6 **Parties to the Adjudicative Proceeding Before the Agency (RCW 34.05.546(5)).**

2 The parties to the adjudicative proceedings in GMHB Case No. 21-1-0007 are listed below.

3 Petitioner Below: Community Lodging Operators of Chelan County ("CLOCC")

4 Respondent Below: Chelan County ("County")

6 **II. FACTS ENTITLING PETITIONER TO JUDICIAL REVIEW (RCW 34.05.546(6))**

7 2.1 **Jurisdiction.** The County has jurisdiction over this Petition pursuant to
8 Administrative Procedures Act, RCW Chapter 34.05, RCW 34.05.510 and .514(1), and the GMA,
9 RCW 36.70A.300(5).

10 2.2 **Administrative Remedies.** CLOCC has exhausted its administrative remedies,
11 including participating in an adjudicative proceeding before Board which resulted in the Final
12 Order, which is the agency action at issue in this Petition for Judicial Review.

13 2.3 **Venue.** Venue is proper in Chelan County pursuant to RCW 36.70A.300(5) and
14 RCW 34.05.514.

15 2.4 **Standing.** CLOCC has standing to seek review of the Final Order pursuant to RCW
16 36.70A.300(5). CLOCC is a party aggrieved by the Final Order. CLOCC consists of individuals and
17 entities who own property in Chelan County and have experienced significant harm as a result of
18 the County's adoption of Resolution No. 2021-95, as amended by Resolution No. 2021-114 and
19 Resolution No. 2021-120 (collectively, the "STR Resolution"), which is the subject matter of the
20 Final Order and this appeal. A judgment by the Court in favor of CLOCC would substantially
21 eliminate or redress the prejudice resulting from the Final Order.

23 **III. REASONS THAT RELIEF SHOULD BE GRANTED (RCW 34.05.546(7))**

24 3.1 The record before the Board demonstrates the County made material revisions to
25 the STR Resolution on July 13, 2021, after the public comment period closed, and without
26 providing a subsequent meaningful opportunity for the public to comment on the revisions to

1 the STR Resolution. These revisions materially changed the effect of the STR Resolution and were
2 not mere clarifications. The Board therefore erred in determining the County met the public
3 participation requirements of the GMA under RCW 36.70A.035(2)(a).

4 3.2 The record before the Board demonstrates the County failed to protect the
5 property rights of landowners from arbitrary and discriminatory actions. Numerous property
6 owners in Chelan County had the right to operate their short-term rentals as legal nonconforming
7 uses, however, the County's adoption of the STR Resolution required these property owners to
8 immediately cease operations of their existing short rentals. The County arbitrarily adopted or
9 implemented provisions to allow some owners the ability to cure deficiencies to maintain
10 nonconforming STR status. Such actions were arbitrary and discriminatory. The Board therefore
11 erred in determining the County's adoption of STR Resolution complied with RCW
12 36.70A.020(6).

13 3.3 The record before the Board demonstrates the County improperly elevated the
14 alleged goal of addressing affordable housing over numerous other goals (including but not
15 limited to numerous goals and policies related to fostering tourism, recreation, and economic
16 development) that do not support adoption of the STR Resolution. The County and the Board
17 erred in disregarding the role of the Comprehensive Plan in favor of conflicting development
18 standards. The Board therefore erred in determining the County's adoption of the STR
19 Resolution complied with RCW 36.70A.040(3).

20 3.4 The record before the Board demonstrates the County improperly failed to
21 consider the impact adoption of the STR Regulations would have on existing STRs, which
22 operated as legitimate businesses and paid taxes to the County. The STR Regulations have or will
23 result in closure of numerous businesses affecting both the STR business owners, and other
24 businesses in the local jurisdictions that rely on the tourism business promoted, supported, or
25 perpetuated by the availability of STRs. The County and the Board erred in disregarding the
26 role of the Comprehensive Plan in favor of retention and expansion of existing businesses. The

1 Board therefore errored in determining the County's adoption of the STR Resolution complied
2 with RCW 36.70A.020(5).

3 3.5 The record before the Board demonstrates the County improperly eliminated
4 existing STRs, thereby reducing or eliminating transient lodging facilities, which are intended
5 facilitate and enhance recreational opportunities through adoption of the STR Resolution. The
6 County and the Board errored in disregarding the role of the Comprehensive Plan in favor of
7 enhancing recreational opportunities. The Board therefore errored in determining the County's
8 adoption of the STR Resolution complied with RCW 36.70A.020(9).

9
10 **IV. PRAYER FOR RELIEF (RCW 34.05.546(8))**

11 CLOCC respectfully requests the following relief:

12 1. That the Court find that the record reasonably supports a determination that the
13 County did not meet the public participation requirements of the GMA under RCW
14 36.70A.035(2)(a) with respect to revisions made on July 13, 2021 to the STR Resolution.

15 2. That the Court find the record reasonably supports a determination that the
16 adoption of STR Resolution did not comply with RCW 36.70A.020(5).

17 3. That the Court find the record reasonably supports a determination that the
18 County's adoption of the STR Resolution did not comply with RCW 36.70A.020(6).

19 4. That the Court find the record reasonably supports a determination that the
20 County's adoption of the STR Resolution did not comply with RCW 36.70A.020(9).

21 5. That the Court find the record reasonably supports a determination that the
22 County's adoption of the STR Resolution did not comply with RCW 36.70A.040(3).

23 6. That the Court enter an order reversing the Board's decision that the STR
24 Resolution is not invalid.

25 //

26 //

1
2 7. For such other relief as the Court deems just and appropriate.
3

4 DATED this 25th day of April, 2022.

5 OGDEN MURPHY WALLACE, P.L.L.C.

6 By: Julie Norton
7 Julie K. Norton, WSBA #37874
8 Lead Counsel for Petitioners

9 CAIRNCROSS & HEMPELMANN, P.S.

10 By: Julie Norton
11 Donald E. Marcy, WSBA #9662
12 for Nicole De Leon, WSBA #48139 via electronic authorization
13 Associated Counsel for Petitioners 4-25-22

CERTIFICATE OF SERVICE

I, Deniese C. Aultman hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. That I am an employee of the law firm of Ogden Murphy Wallace, P.L.L.C., over the age of eighteen (18), and competent to be a witness herein.

That on the 25th day of April, 2022, the foregoing ***Petition for Judicial Review of EWGMHB Final Decision and Order*** was served on the following in the matter indicated:

☐ First Class U.S. Mail	Growth Management Hearings Board
☒ E-Mail/through service	1111 Israel Rd. SW, Suite 301
☐ Facsimile	Tumwater, WA 98501

☒ Messenger

☐ Overnight UPS Delivery

☒ First Class U.S. Mail	Chelan County
☐ E-Mail	350 Orondo Ave
☐ Facsimile	Wenatchee, WA 98801

☒ Messenger

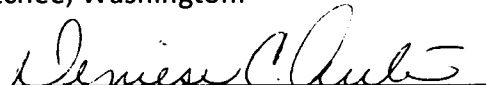
☐ Overnight UPS Delivery

☒ First Class U.S. Mail	Washington State Attorney General
☐ E-Mail	P.O. Box 40100
☐ Facsimile	Olympia, WA 98501-0100

☐ Messenger

☐ Overnight UPS Delivery

Dated this 25th day of April, 2022, at Wenatchee, Washington.


Deniese C. Aultman, Declarant

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

COMMUNITY LODGING OPERATORS OF
CHELAN COUNTY, a Washington
limited liability company, *et al.*

Petitioners,

v.

CHELAN COUNTY, a Washington
municipal corporation,

Respondent.

Case No. 21-1-0007

FINAL DECISION AND ORDER

SYNOPSIS

Community Lodging Operators of Chelan County, et al (Petitioners) challenged adoption of a series of ordinances (collectively, the STR Resolution), adopting regulations governing short term rentals (STRs). Petitioners allege that Chelan County (County) failed the public participation requirements in RCW 36.70A.035(2)(a) and that the County violated the several Growth Management Act (GMA) Goals concerning property rights, economic development, recreation and intergovernmental coordination. Petitioners also claimed that the County violated RCW 36.70A.040(3) when the County adopted development regulations inconsistent with its comprehensive plan.

The Growth Management Hearings Board (Board) concluded that the County failed to comply with the GMA's public participation requirements when it erroneously labeled a material revision as a scrivener's error and adopted the final ordinance in the series STR Resolution without appropriate public participation. The Board concluded that the Petitioners failed to carry their burden of proof on all other issues. The matter was remanded to the County.

I. INTRODUCTION

On August 25, 2020, the Chelan County Board of County Commissioners (BOCC) enacted a series of moratoria on the designation, permitting, construction, development, expansion, remodeling, creation, locating, and siting of short-term rental uses, structures, residences, businesses, lots, zones, buildings. During the term of the Moratoria, the County developed short-term rental (STR) resolutions to regulate STRs in Chelan County (County). The County subsequently assembled a Task Force to recommend and reach a consensus regarding the STR regulations.¹ The Task Force included three members to represent STR owners, including two from a group known as Short Term Rental Alliance of Chelan County (STRACC), three members from a group to represent residential interests, including two from a group known as Residents United for Neighbors (RUN), and three past and present members of the Planning Commission.² One of the questions presented to the Task force was addressing the issue of "grandfathering" in existing rentals, and whether the County should allow transferability of permits.³

The Task Force produced a Report and Recommendations to the BOCC on May 7, 2021.⁴ The County released a version of the STR Resolution on June 24, 2021.⁵ The BOCC held hearings and opened a public comment period.⁶ The last public hearing prior to adoption of the STR Resolution was held on June 27, 2021 and the public comment period closed on July 2, 2021.⁷ On July 13, after the public hearing and after the public comment period closed the County released a revised version of the STR Resolution. The County did not hold another public hearing nor open another public comment period following the release of the revised STR resolution. The BOCC adopted the revised STR Resolution on

¹ Index of Record (IR) at 137-139 (Task Force Report and Recommendation, including Resolution No. 2021-17 forming Task Force)

² IR at 130

³ Respondent's Prehearing Brief (RPHB) at 1.

⁴ IR at 129-150.

⁵ IR at 461-500.

⁶ IR at 4632.001-4632-007 (Staff Report at 2).

⁷ *Id.*; IR at 51437-51443 (County Website re STRs).

1 July 27, 2021. Subsequently, the BOCC noticed a public hearing on September 7, 2021, to
2 correct "scrivener's errors" in the STR Resolution.⁸ That day, the County adopted
3 Resolution 2021-144 correcting the alleged scrivener's error.⁹

4 Community Lodging Operators of Chelan County and a group of individuals
5 (Petitioners)¹⁰ filed a Petition for Review¹¹ on September 29, 2021, challenging the adoption
6 of Resolution No. 2021-95, as amended by Resolution No. 2021-114 and Resolution No.
7 2021-120 (collectively, the STR Resolution), which amended the Chelan County Code by
8 adopting regulations governing STRs.
9

10 Procedural matters relevant to the case are detailed in Appendix B. Legal issues
11 relevant to the case are detailed in Appendix C.
12

13 II. BOARD JURISDICTION

14 No issues of Board jurisdiction was raised by the County in this matter. The Board
15 finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board
16 finds the Petitioners have standing to appear before the Board pursuant to RCW
17 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject matter of the
18 petition pursuant to RCW 36.70A.280(1).
19

20 III. STANDARD OF REVIEW

21 Comprehensive plans and development regulations, and amendments to them, are
22 presumed valid upon adoption.¹² This presumption creates a high threshold for challengers
23 as the burden is on the Petitioners to demonstrate that any action taken by the County is not
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29 ⁸ IR at 5652.001 (Public Hearing Notice, September 7, 2021); IR at 1193-1200 (Resolution 2021-114); IR at
30 662-692 (Final Adopted Short Term Rental Code, as amended).

31 ⁹ Petitioner's Pre-Hearing Brief (PPHB) at 10.

32 ¹⁰ A complete list of the Petitioners is attached as Appendix A.

¹¹ See *generally* Petition for Review (PFR).

¹² RCW 36.70A.320(1).

1 in compliance with the GMA.¹³ The Board is charged with adjudicating GMA compliance
2 and, when necessary, invalidating noncompliant plans and development regulations.¹⁴

3 The scope of the Board's review is limited to determining whether a County has
4 achieved compliance with the GMA only with respect to those issues presented in a timely
5 petition for review.¹⁵ The Board is directed to find compliance unless it determines that the
6 challenged action is clearly erroneous in view of the entire record before the Board and in
7 light of the goals and requirements of the GMA.¹⁶
8

9 10 **IV. ANALYSIS AND DISCUSSION**

11 **Issue 1**

- 12 **1. Issue No. 1. Did the County violate the requirements of RCW**
13 **36.70A.035(2)(a) to provide an opportunity for review and comment on**
14 **changes when the County proposed and adopted material and significant**
15 **changes to the STR Resolution regarding the timing for compliance of**
16 **existing STRs after the final public hearing and close of the written**
17 **comment period?**
18 **a. After the public hearing and the opportunity to comment closed, the**
19 **County made material revisions to the STR Resolution regarding existing**
20 **STRs in unincorporated urban growth areas.**
21 **b. The County made material revisions to the STR Resolution after it was**
22 **adopted, without providing an opportunity to comment, and without**
23 **holding a properly noticed public hearing.**

24 **Applicable Laws:**

25 **RCW 36.70A.035 Public participation—Notice provisions.**

26 (2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a
27 county or city chooses to consider a change to an amendment to a comprehensive plan or
28 development regulation, and the change is proposed after the opportunity for review and
29 comment has passed under the county's or city's procedures, an opportunity for review and

30 ¹³ RCW 36.70A.320(2).

31 ¹⁴ RCW 36.70A.280, RCW 36.70A.302.

32 ¹⁵ RCW 36.70A.290(1).

¹⁶ RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

...

(ii) The proposed change is within the scope of the alternatives available for public comment;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

Board Discussion

The full text of the Chelan County Code section at issue, CCC 11.88.290(2)(C)(iv) reads, provides in pertinent part:

(iv) The board of Chelan County commissioners adopts the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee land use regulations, development standards and land use designations, as they apply to short-term or vacation rentals of fewer than thirty consecutive nights or days, within the county adopted unincorporated urban growth area respecting each city as it is now or is hereafter amended for the cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee; ...

(a) Upon the date of the adoption of this code on September 27, 2021, any existing short-term rentals within the exterior boundaries of any city's designated urban growth area (UGA) are required to have been in full legal compliance with any existing city codes adopted through prior resolution by the county as they applied to short-term rental uses within that UGA.

(1) If a short-term rental use is operating in violation of the existing county-adopted city codes for that UGA the rental must immediately cease all operation of that use on the date of adoption of this chapter. A property operating in violation of existing city UGA land use regulations has no legal existing nonconforming status as a short-term rental.

(b) All existing nonconformance claims within a UGA will be subject to joint review by the county and the affected city.

(c) New short-term rental applicants will be required to comply with the most current city regulations for short-term rental use for each city UGA, which are herein adopted and incorporated under subsection (2)(C)(iv)

1 of this section upon adoption of this code chapter, including if any UGA
2 code prohibits new or continued existing short-term rentals in those
3 zones.

4 **Notice**

5 **A. (Issue 1a) The July 13th Amendments**

6 Petitioners allege that the County failed the public participation requirements of the
7 GMA under RCW 36.70A.035(2)(a), which requires that the public be given a fair and
8 meaningful opportunity to comment.¹⁷ Petitioners argue that on July 13, after the period for
9 public comment had closed, the County made material revisions to the STR Resolution.
10 Petitioners contend that the County attempted to camouflage these revisions in a way in
11 which one cannot make out the revisions that are new since the prior June 24 STR
12 Resolution. Additionally, they claim the County added four entirely new subsections.¹⁸

13
14 Petitioners argue that this amended version of the STR Resolution contained material
15 revisions and warranted a new period for review and public comment under RCW
16 36.70A.035(2)(a). Specifically, Petitioners claim that these new provisions build on the
17 adoption of the STR regulations of Cashmere, Chelan, Entiat, Leavenworth, and
18 Wenatchee, and require that as of the adoption of the STR Resolution, an existing STR
19 within the unincorporated UGAs surrounding these cities must "have been in full legal
20 compliance with any existing city codes adopted through prior Resolution by the county as
21 they applied to a short-term rental uses [sic] within that UGA."¹⁹ Otherwise, the existing-STR
22 "must immediately cease all operation of that use on the date of adoption of this chapter."²⁰
23

24
25 Petitioners further point to the fact that under the July 13th revisions existing STRs
26 within UGAs no longer have the courtesy of a one-year grace period to comply with County
27 Code-mandated standards to attain status as a legal nonconforming STR. Instead, existing
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29
30 ¹⁷ RCW 36.70A.035(2)(a).

31 ¹⁸ PPHB at 7-8.

32 ¹⁹ PPHB at 8, citing IR 511 (July 13-STR Version, CCC 11.88.290(2)(C)(iv)(a)).

²⁰ PPHB at 8, citing IR at 511 (July 13-STR Version, CCC 11.88.290(2)(C)(iv)(a)); IR at 511 (July 13-STR Version, CCC 11.88.290(2)(C)(iv)(a)(1)).

1 STRs within UGAs are denied the time and opportunity to comply and may instead be
2 rendered wholly illegal under application of city codes and be forced to “immediately cease”
3 operations.²¹ Petitioners explain that under the prior June 24th version, an existing STR in a
4 UGA may continue to operate if it complied with the same provisions that applied to other
5 STRs in the County, and that these generally applicable provisions allowed three months to
6 one year for compliance within the various requirements.²²
7

8 The County responds that not only was the June 24th version publicly available, that
9 CCC 11.88.290(2)(E)(i)-(vi) in no way bans grandfathering in UGAs, and, in fact,
10 applications for nonconforming or grandfathered STRs in UGAs have already been
11 approved. The County further argues that the additional language in the July 13th version
12 in no way materially changes the effect of the STR code. CCC 11.88.290(2)(C)(iv) was
13 merely clarified by subsections (a) through (c).²³
14

15 The County highlights the provision CCC 11.88.290(2)(C)(iv) states that “The board
16 of Chelan County commissioners adopts the cities of Cashmere, Chelan, Entiat,
17 Leavenworth, and Wenatchee land use regulations, development standards and land use
18 designations, as they apply to short-term or vacation rentals,” and argues that this provision
19 means that in order to be grandfathered, a use such as an STR would have to be in full
20 legal compliance with the UGA codes of its respective city. To grandfather in a use, the
21 County explains, that use must already be a fully legally established use. CCC 11.97.025
22 provides that “no use of any structure or premises shall hereafter be commenced unless in
23 conformity with current Chelan County regulations.”²⁴
24

25 Next the County points to CCC 14.98.1300, which defines the term “nonconforming”.
26 “‘Nonconforming’ means a lot, use, building or structure which was lawful prior to the
27 adoption, revision or amendment of a zoning ordinance, but which fails by reason of such
28

29
30 ²¹ PPHB at 8.

²² Petitioners’ Reply Brief (PRB) at 2-3, citing IR at 471 (June 24-STR Version, CCC 11.88.290(2)(C)(v)); IR at
31 472-473 (June 24-STR Version, CCC 11.88.290(2)(E)(i)(c));

²³ RPHB at 16.

²⁴ RPHB at 16.
32

1 adoption, revision or amendment to conform to the current requirements of the zoning
2 district.”²⁵

3 The County contends that under CCC 11.88.290(2)(C)(iv) that an already established
4 STR in the UGAs had to be in full legal compliance with the code of the city UGA in which it
5 was located in order to be grandfathered in, and that subsections (a)-(c) which were
6 included in the July 13th version of the STR code merely clarified this point. They argue
7 that this was allowable under RCW 36.70A.035(2)(b)(iii).²⁶

8
9 RCW 36.70A.035(2)(b)(iii) reads in part:

10 (b) An additional opportunity for public review and comment is not required
11 under (a) of this subsection if:

12 (iii) The proposed change only corrects typographical errors, corrects
13 cross-references, makes address or name changes, or clarifies
14 language of a proposed ordinance or resolution without changing its
15 effect;

16 The County claims that the STR Resolution would have had the same effect if
17 subsections (a)-(c) of the STR Resolution were not added.²⁷

18 Petitioners argue that this is a material revision because the Petitioners never were
19 bound by the regulations in the city codes. Specifically, they point to the fact that in 2021,
20 Leavenworth adopted Ordinance No. 1627 to incorporate a new land use chart into its code
21 and to implement several clean-up provisions. Pursuant to Ordinance No. 1627,
22 Leavenworth made “Vacation (short-term) Rental” a unique defined term, expressly
23 prohibited STRs in all zones except the GC, CC and TC zones, and confirmed Bed and
24 Breakfasts are permitted only as conditional uses in residential zones. No version of these
25 STR regulatory frameworks was ever adopted by the County.²⁸ Finally, they argue that the
26 Leavenworth UGA was never previously subject to Leavenworth STR regulations, therefore,
27 a requirement to immediately comply with these regulations or immediately cease operating
28
29

30 ²⁵ RPHB at 16-17.

31 ²⁶ RPHB at 17.

32 ²⁷ RPHB at 16.

²⁸ PRB at 5-6.

1 is a significant change in policy, that warrants an additional review and comment period.²⁹

2 We disagree.

3 Counties and cities have been engaging in joint planning for UGAs outside of city
4 boundaries for many years. Although there is no requirement for UGAs to be annexed into
5 a city, most, if not all, UGAs in unincorporated areas governed by the county have been the
6 subject of coordination with the adjacent city. The purpose of this coordination is to promote
7 alignment of land use codes affecting UGAs slated for annexation. Aligning development
8 regulations within a city can be tedious; aligning regulations between a county and city
9 requires even more attention to detail.
10

11 Petitioner's reply brief, in its lengthy discussion of the interaction of the Chelan
12 County and Leavenworth codes, illustrates the difficulty that cities and counties have in
13 coordinating their land use codes. It concludes that "the County does not know its own
14 policy nor does RUN [intervenor]."³⁰ This argument does not address Petitioner's need to
15 meet its burden of proof that the GMA was violated through adoption of the challenged
16 ordinance. Petitioners have not shown that the changes in the July 13 version from the
17 June 24 version were sufficient to require new public process under the GMA.
18

19 The Board agrees with the County that the July 13 revisions merely clarified the
20 language of the STR Resolution, consistent with RCW 36.70A.035(2)(b)(iii). The Board finds
21 that Petitioners failed to carry their burden of proof in showing that the County failed its
22 public participation requirements of the GMA under RCW 36.70A.035(2)(a).
23

24 **B. (Issue 1b) Scrivener's Error**

25 Petitioners allege that the County failed the public participation requirements of RCW
26 36.70A.035(2)(a), which requires that the public be given a fair and meaningful opportunity
27 to comment,³¹ when the County noticed a public hearing on September 7th, which it
28 described as "scrivener error code corrections to the Short-term rental code adopted under
29
30

31 ²⁹ PRB at 6.

³⁰ *Id.* at 7.

32 ³¹ RCW 36.70A.035(2)(a).

1 Resolution 2021-95 adopted on July 27, 2021.”³² Petitioners claim that this was instead
2 used a guise to materially amend the STR Resolution without providing an opportunity for
3 the public to review and comment on a proposed change before they were adopted by the
4 County.³³

5 Petitioners argue that the amendments were far from a scrivener’s error and that
6 “Resolution 2021-114 materially amended, in part, CCC 11.88.290(2)(E)(i)(c) to require
7 existing STRs ‘immediately’ satisfy the requirements of CCC 11.88.290(3) regarding STR
8 use in a primary or accessory residence, occupancy limits, noise, trespass, provision of a
9 qualified person to respond to issues, display of an STR annual permit number, provision of
10 ‘Good Neighbor Guidelines’, maintenance of liability insurance, and payment of applicable
11 taxes.”³⁴

12
13 The prior STR Resolution adopted on July 27, 2021, mandated that existing STRs
14 must comply with the listed health and safety requirements within 90 days of the effective
15 date of the ordinance, including provisions related to garbage, consumer safety, fire safety
16 and outdoor burning, and the property management plan, and all other listed provisions
17 within one-year of the effective date of the ordinance.³⁵ In the new amendments adopted
18 on September 7, only two items, parking and signs, maintained a one-year grace period for
19 compliance.³⁶

20
21 Petitioners contend that such a shift from one year to comply with numerous
22 impactful requirements to immediate compliance is a significant change for which the
23 County was required to provide the public an opportunity to comment. They further argue
24 that this misleading notice of a scrivener’s error failed to satisfy this notice requirement.³⁷
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29 ³² IR at 5652.001 (Notice of Public Hearing, September 7, 2021).

30 ³³ PRB at 9.

31 ³⁴ PPHB at 10-11.

32 ³⁵ PPHB at 9-10.

³⁶ PPHB at 10.

³⁷ PPHB at 11.

1 The County argues that after the passage of Resolution 2021-95 adopting the STR
2 code, the Department of Community Development realized that a transcription error had
3 caused the effect of the new code to differ from what was always intended. The County
4 specifically argues that CCC 11.88.290(2)(E)(i)(c) unintentionally allowed STR owners a
5 year's time to comply with certain requirements like occupancy limits, noise, trespass,
6 provision of a qualified person to respond to problems, and others. They contend that
7 because of the record of intent to adopt these provisions requiring immediate compliance,
8 the Petitioners' argument fails, and thus these amendments were properly labeled as a
9 scrivener's error and did not require a public opportunity to review and comment on the
10 proposed amendments.³⁸ The County misunderstands the meaning of a scrivener's error.

12 A scrivener's error is a clerical or transcription error due to a minor mistake in
13 drafting.³⁹ The provision RCW 36.70A.035(2)(b)(iii) addresses these clerical errors as
14 exceptions for public review and comment:
15

16 (b) An additional opportunity for public review and comment is not required
17 under (a) of this subsection if:

18 (iii) The proposed change only corrects typographical errors, corrects
19 cross-references, makes address or name changes, or clarifies
20 language of a proposed ordinance or resolution without changing its
21 effect.

22 This Board has held that Scrivener's errors must be used for minor technical errors
23 and the clarifying language of the statute also recognizes that such change is appropriate,
24 without further opportunity for review and comment, only where the clarification of the
25 proposal is made without changing its effect.⁴⁰ A county cannot adopt language that
26 changes the effect of a Resolution under the name of a scrivener's error. Doing so
27 contravenes the entire point of correcting minor typographical mistakes. Here, the County
28 even admits that the reason for the amendment was because the error caused the
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30 ³⁸ RPHB at 25.

31 ³⁹ Black's Law Dictionary 582, 1375 (8th Edition, rev. ed 2004)

32 ⁴⁰ *Neighbors for Responsible Development v. City of Yakima, Congdon Orchards Inc.*, EWGMHB No. 02-1-0009, Final Decision and Order (December 5, 2002) at 11.

1 Resolution's effect to differ than what was intended.⁴¹ By changing the language in the
2 provision from one-year compliance to immediate compliance, the effect of the STR
3 Resolution has materially changed.

4 The County further claims that amending the Resolution through a scrivener's error
5 correction was valid under RCW 36.70A.035(2)(b)(ii). RCW 36.70A.035(2)(b)(ii) reads in
6 part:
7

8 (b) An additional opportunity for public review and comment is not required
9 under (a) of this subsection if:

10 (ii) The proposed change is within the scope of the alternatives available
11 for public comment;

12 The County argues that their consultant BERK submitted a "Chelan County Short-
13 Term Rental Task Force Report and Recommendations" on May 7, 2021, well before public
14 comment on the STR code drafting process was closed.⁴² The County contends that
15 pursuant to that Staff Report, it was the understanding of the Task Force that they were
16 recommending within three months health and safety code requirements would need to be
17 met (immediate safety issues, require immediate compliance), within a year all the
18 remaining operational standards would have to be met (signing, parking, etc.), and that
19 there was opportunity to comment after the May 7th recommendation. The County
20 maintains that because of this, the amendments adopted on September 7th, 2021, fell within
21 the scope of alternatives and not requiring STR owners to immediately comply with health
22 and safety measures was clearly a mistake that was properly remedied through the
23 scrivener's error process.⁴³
24

25 However, even if the amendments fall within the scope of alternatives available for
26 public comment, the County cannot label the notice as a scrivener's error when the
27 amendment changes the effect of the Resolution. Further, a misleading notice of public
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31 ⁴¹ RPHB at 25.

32 ⁴² RPHB at 26.

⁴³ RPHB at 26.

1 hearing is insufficient to satisfy this public participation requirement. The Board finds that
2 the County failed to satisfy the public participation requirements for RCW 36.70A.035(2)(a).

3 The **Board finds and concludes** that the Petitioners failed to satisfy their burden of
4 proof in showing that the July 13, 2021 revisions to the STR Resolution was a material
5 change that warranted a new comment and review period.

6 The **Board finds and concludes** that Petitioners met their burden of proof in
7 demonstrating that the County failed to meet public participation requirements of the GMA
8 when on September 7, it erroneously labeled a material revision to the STR Code as a
9 scrivener's error.

10
11
12 **Issues 2, 3, 4, 6**

- 13
14 2. Did the County violate the requirements of RCW 36.70A.020(6) stating “[t]he
15 property rights of landowners shall be protected from arbitrary and
16 capricious discriminatory actions” when the County adopted a regulatory
17 framework that illegally divested existing STRs of the property right to
18 continue use as a legal nonconforming STR?
- 19 3. Did the County violate the requirements of RCW 36.70A.020(5) to “promote
20 the retention and expansion of existing business” when the County
21 implemented a regulatory framework that promotes the elimination of
22 existing STR operations and when it failed to meaningfully account for the
23 adverse economic impacts of the STR Resolution on existing STRs?
- 24 4. Did the County violate the requirements of RCW 36.70A.020(9) to “enhance
25 recreational opportunities” when the County implemented a regulatory
26 framework that eliminates a significant number of existing STRs and
27 thereby reduces the number of lodging options for recreators and their
28 opportunity to enjoy recreation activities?
- 29 6. Did the County violate the requirements of RCW 36.70A.020(11) to
30 “[e]ncourage the involvement of citizens in the planning process and
31 ensure coordination between communities and jurisdictions to reconcile
32 conflicts” when the County repeatedly favored the special interests of
certain constituents while wholly disregarding and dismissing the concerns
of others?

1 **Applicable Laws:**

2 **RCW 36.70A.020 Planning goals.**

3
4 The following goals are adopted to guide the development and adoption of comprehensive
5 plans and development regulations of those counties and cities that are required or choose
6 to plan under RCW **36.70A.040**. The following goals are not listed in order of priority and
7 shall be used exclusively for the purpose of guiding the development of comprehensive
8 plans and development regulations:

9 **(5) Economic development.** Encourage economic development throughout the state that is
10 consistent with adopted comprehensive plans, promote economic opportunity for all citizens
11 of this state, especially for unemployed and for disadvantaged persons, promote the
12 retention and expansion of existing businesses and recruitment of new businesses,
13 recognize regional differences impacting economic development opportunities, and
14 encourage growth in areas experiencing insufficient economic growth, all within the
15 capacities of the state's natural resources, public services, and public facilities.

16 **(6) Property rights.** Private property shall not be taken for public use without just
17 compensation having been made. The property rights of landowners shall be protected from
18 arbitrary and discriminatory actions.

19 **(9) Open space and recreation.** Retain open space, enhance recreational opportunities,
20 conserve fish and wildlife habitat, increase access to natural resource lands and water, and
21 develop parks and recreation facilities.

22 **(11) Citizen participation and coordination.** Encourage the involvement of citizens in the
23 planning process and ensure coordination between communities and jurisdictions to
24 reconcile conflicts.

25 **Board Discussion**

26 **Issue 2: Property Rights**

27 Petitioners argue that when the County adopted its final STR Resolution, the County
28 arbitrarily and discriminatorily violated the property rights of landowners when it adopted a
29 regulatory framework that divested existing STRs of the right to continue use as a non-
30 conforming STR, in violation of the GMA. RCW 36.70A.020(6) states that "the property
31 rights of landowners shall be protected from arbitrary and discriminatory actions."⁴⁴ With
32

⁴⁴ RCW 36.70A.020(6).

1 regard to this goal, a government entity will be found noncompliant if it “considers property
2 rights in an arbitrary and discriminatory manner.”⁴⁵

3 In *Skagit D06, LLC v. City of Mount Vernon*, the Board stated:

4 [I]n order for Petitioner to prevail in a challenge based on Goal 6, they must
5 prove the action taken by a local jurisdiction is both arbitrary and discriminatory;
6 showing only one is insufficient to overcome the presumption of validity
7 accorded to local jurisdictions by the GMA. Additionally, the Petitioner must
8 show the action has impacted a legally recognized right.⁴⁶

9 Petitioners bears the burden of proving all three prongs in their argument and must
10 show was that the County action was baseless, and in disregard of the facts, discriminatory
11 without a rational basis, and it impacted a legally recognized right.⁴⁷

12 The final STR Resolution, as amended, adopts the STR regulations of Cashmere,
13 Chelan, Entiat, Leavenworth, and Wenatchee, and requires that as of July 27, 2021, an
14 existing STR within these unincorporated UGAs must have been in full legal compliance
15 with any existing city codes adopted through prior Resolution by the county as they applied
16 to a short-term rental uses within that UGA. Otherwise, the existing-STR must immediately
17 cease all operation of that use on the date of adoption of this chapter.⁴⁸

18 Petitioners argue that protected property rights include the right to not have a legal
19 nonconforming use immediately terminated as a result of a zoning ordinance.⁴⁹

20 The County argues that these STRs were never legal in the first place, and thus
21 Petitioners cannot argue that they have a protected property right. Petitioners argue that
22 the County’s adoption of the STR Resolution was adopted on an incorrect understanding of
23 the existing code. They contend that the County incorrectly believes that the existing STRs
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28 ⁴⁵ RPHB at 4, citing *Gutschmidt v. City of Mercer Island*, CPSGPHB No. 92-3-0006, Final Decision and Order
(Mar. 16, 1993) at 11.

29 ⁴⁶ *Skagit D0G, LLC v. City of Mt Vernon*, WWGMHB No. 10-2-0011, Final Decision and Order (Aug. 4, 2010)
at 15.

30 ⁴⁷ PRB at 11, citing *Hagwell, et al. v. City of Poulsbo*, EWGMHB No. 12-3-006, Final Decision and Order (Mar.
31 11, 2013) at 7-8.

32 ⁴⁸ PPHB at 12.

⁴⁹ *Rhod-A-Zalea & 35th Inc. v. Snohomish County*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998).

1 within the Leavenworth UGA were already subject to Leavenworth STR regulations and
2 termination if the STRs did not comply with these regulations.⁵⁰ They further contend that
3 the County never adopted the Leavenworth STR Regulations, and therefore, prior to the
4 adoption of the STR Resolution, existing STRs operating in the Leavenworth UGA were
5 subject to the same regulatory system as other existing STRs in the County, and thus were
6 a legal nonconforming use.⁵¹

7
8 Petitioners argue that this flawed understanding amounts to a baseless rationale, is
9 an arbitrary action, and is a disregard of the facts or circumstances.⁵² However, even if we
10 are to find that the Petitioners had a legally recognized right, their argument overall fails.

11 The Board has held in the past that a county's action is "is not arbitrary unless it is
12 completely baseless."⁵³

13 The County, in formulating these regulations argues that hundreds of comments were
14 received, every side of the issue was studied exhaustively,⁵⁴ and that every decision was
15 based on policy preferences of the BOCC supported by the wishes of various interested
16 parties.⁵⁵ The record shows that Chelan County was concerned with the effect of STRs on
17 residential neighborhoods and its desire to promote public health and safety.⁵⁶ This alone
18 creates the possibility of two opinions and shows that the County's action was exercised
19 honestly upon due consideration. The Board agrees with the County's actions were not
20 unreasoned nor in disregard of the facts or circumstances.

21
22 Petitioners finally assert that the action was discriminatory due to the County's
23 singling out of existing STRs in UGAs is further lacking in a rational basis given that the
24 basis was in fact completely flawed. The Board has held that a discriminatory action is
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28 ⁵⁰ PRB at 11.

29 ⁵¹ PRB at 12.

30 ⁵² *Id.*

31 ⁵³ *Keesling v. King County*, CPSGMHB No. 05-3-0001, Final Decision and Order (Jul. 5, 2005) at 62, (citing
32 *State v. Ford*, 100 Wn.2d 827, 830-31, 755 P.2d 806 (1988)).

⁵⁴ IR at 204-205.

⁵⁵ RPHB at 5.

⁵⁶ Residents United for Neighbors Amicus Brief (RUN Amicus Brief), at 5.

1 defined as "to single out a particular person or class of persons for different treatment
2 without a rational basis upon which to make the segregation."⁵⁷ Petitioners' claim that there
3 is no rational basis for the STR Resolution is flawed in that this generalized statement does
4 not show how the County discriminatorily singled out Petitioners.

5 The record shows that the County considered private property rights of the existing
6 STR owners in UGAs and had a rational basis for regulating them. Petitioners have failed to
7 show that the County's actions were arbitrary and discriminatory in violation of GMA Goal 6.
8

9 **Issue 3: GMA Goal 5**

10 Petitioners argue that the STR Resolution violates GMA Goal 5 because the
11 Resolution did not "promote the retention and expansion of existing business."⁵⁸
12 Specifically, they contend that these existing businesses will not only decline, but the
13 economic benefits of these businesses will similarly decline. The economic benefits they
14 claim will be harmed include revenue to the STR operator, tax revenue to the County,
15 income to local support businesses and employees, and income to local retail businesses.⁵⁹
16

17 Petitioners point to two economic reports, the September Economic Report⁶⁰ and the
18 December Economic Report⁶¹, to claim that the County disregarded economic impacts to
19 STR owners.⁶² Petitioners point to numerous examples in the two reports, such as the
20 annual sales tax Revenue of STRs⁶³, to support a claim that there will be an overall net loss
21 of 387 STRs and their corresponding economic benefits such as fostering tourism by the
22 community and reducing the number of jobs within Chelan County.⁶⁴ They further claim
23 these economic impacts were before the BOCC, but were never properly considered.
24
25

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27 ⁵⁷ *Bayfield Resources/Futurewise v. Thurston County*, WWGMHB No. 07-2-0017c, Final Decision and Order
(April 17, 2008) at 28.

28 ⁵⁸ PPHB at 14, citing RCW 36.70A.020(5).

29 ⁵⁹ PPHB at 14.

30 ⁶⁰ IR at 45547-45562 (Economic Impact Report, September 2020).

31 ⁶¹ IR at 9342.001-9342.028 (Economic Impact Report, December 2020).

32 ⁶² PPHB at 15.

⁶³ PPHB at 15, citing IR at 45547-45562 (Economic Impact Report, September 2020).

⁶⁴ PPHB at 17-18

1 Petitioners cite no evidence that these impacts were not considered by the County. In
2 response, the County contends that the showing of these two economic reports
3 demonstrates that these issues were before the BOCC.⁶⁵ We agree.

4 The GMA's economic development goal is designed to promote the overall economic
5 health of the state rather than the specific interests of an individual business.⁶⁶ Further, the
6 County correctly notes that contrary to the implied assertion of Petitioners, the goal "does
7 not preclude a county or city from regulating the location of a specific business or business
8 activity, even if that regulation results in economic hardship."⁶⁷

9
10 In *Ostrom*, the Board noted that the economic development goal does not supersede
11 any other goal but is instead part of "the overall planning objectives" of a county's
12 comprehensive plan and development regulations, and that the goals of the GMA must be
13 read as a whole.⁶⁸

14
15 Here, the County in reviewing the economic impacts of the resolution had to consider
16 the other impacts of STRs such as the rising cost of living in the County, and the strain on
17 public services and facilities within the County.⁶⁹

18 The County acknowledges the economic benefits of STRs within Chelan County, but
19 notes that the BOCC was balancing the goals of the GMA.⁷⁰ The record supports this
20 argument.

21 The Board finds that the Petitioners have failed to carry their burden of proof that the
22 County did not consider the goal of economic development in adopting regulations affecting
23 STRs.
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28 ⁶⁵ RPHB at 11.

29 ⁶⁶ RPHB at 6, citing *Ostrom Co. v. Whatcom County*, WWGMHB No. 05-2-0017, Final Decision and Order
(Feb. 14, 2006) at 28.

30 ⁶⁷ RPHB at 6, citing *id.*

31 ⁶⁸ RPHB at 6, citing *id.*

32 ⁶⁹ RPHB at 11, citing RCW 36.70A.020(5).

⁷⁰ RPHB at 12.

1 **Issue 4: GMA Goal 9**

2 Petitioners argue that the elimination of 387 existing STRs and restricting new STRs
3 will result in a significant decline in the availability of STRs and therefore reduce
4 accommodation options that facilitate and enhance recreation opportunities.⁷¹ They argue
5 that as the inventory of STRs declines, inevitable market forces will kick in and generate an
6 increase in rental prices for the remaining STRs, leading to more expensive STRs, and will
7 reduce access by lower income individuals,⁷² impacting the ability of recreators to enjoy the
8 outdoors.⁷³
9

10 Aside from these general and conclusory claims, Petitioners cite no evidence in
11 support of their argument that the County did not consider enhancement of recreational
12 opportunities. Petitioners have not met their burden of proof in showing that the County did
13 not consider this GMA Goal 9 in adopting regulations for STRs.
14

15 **Issue 6: GMA Goal 11**

16 Petitioners argue that the County failed to comply with GMA Goal 11, which directs
17 the County to encourage involvement and coordination between the various stakeholders
18 and citizens to reconcile conflicts.⁷⁴ They specifically claim that the Task Force assembled
19 by the County to represent various STR stakeholders, did not adequately represent the
20 interests of STR stakeholders or the interests of Chelan County as a whole. The Task
21 Force included three members to represent STR owners, including two from the group
22 known as STRACC, three members from a group to represent residential interests,
23 including two from a group known as RUN, and three past and present members of the
24 Planning Commission.⁷⁵
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30 ⁷¹ PPHB at 18.

31 ⁷² RPHB at 18-19.

32 ⁷³ RPHB at 19.

⁷⁴ RRPB at 23, citing RCW 36.70A.020(11).

⁷⁵ PPHB at 23.

1 Petitioners argue that the Task Force membership did not account for the unique
2 circumstance of many property owners who were unable to secure rental reservations and
3 formally generate rental revenue because of the COVID pandemic.⁷⁶ They claim that the
4 record is devoid of any evidence that the County thoughtfully considered these concerns.⁷⁷

5 As the County argues and Petitioners admit⁷⁸, there were many public meetings
6 regarding the STR Resolution, with multiple participants.⁷⁹ The Task Force had formed due
7 to the divergent interests of residents and short-term rental operators⁸⁰ and the Planning
8 Commission conducted multiple hearings with detailed comments both in support of and
9 against regulations.⁸¹ The County contends that it balanced all interests. The record
10 supports that argument⁸² and we agree.

11 In *City of Shoreline, Town of Woodway, and Save Richmond Beach, et al. v*
12 *Snohomish County and BSRE Point Wells, LLC*, the Board held that GMA Goal 11 is
13 primarily concerned with the planning process, calling for citizen participation and
14 interjurisdictional coordination.⁸³ The Board further noted that it reads the second half of
15 Goal 11 as requiring a planning city or county to make active outreach to affected
16 communities and jurisdictions in the interest of coordination and conflict-resolution.⁸⁴
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22 ⁷⁶ PPHB at 23, citing IR at 50127-50129, IR at 50219-50226 (Public Comment).

23 ⁷⁷ PPHB at 23.

24 ⁷⁸ PPHB at 23.

25 ⁷⁹ RPHB at 14.

26 ⁸⁰ IR at 593.

27 ⁸¹ RPHB at 14, citing IR at 43393 (comment mentioning the "degradation of the neighborhood" the community
28 remember resides in, and urging the phasing out or "sunsetting" of grandfathered STRs); IR at 43276
29 (comment against regulating STRs, citing the potential impact on tourism); IR at 37939-40 (comment from the
30 City of Leavenworth urging regulations of STRs in the Urban Growth Areas); IR at 43307 (comment from the
31 Manson Community Council urging regulations that protect residential neighborhoods pursuant to the Chelan
32 County Comprehensive Plan).

⁸² RPHB at 15.

⁸³ *City of Shoreline, Town of Woodway, and Save Richmond Beach, et al. v Snohomish County and BSRE*
Point Wells, LLC, CWGMHB No. 09-3-0013c and 10-3-0011c, Corrected Final Decision and Order (May 16,
2011) at 50.

⁸⁴ *Id.*

1 Here, the Board agrees that the County's process allowed community members in
2 Chelan County to provide input and seek solutions; the BOCC is under no obligation to
3 satisfy every member of the community.

4 Finally, Petitioners argue that the BOCC did not even follow the Task Force Report
5 and Recommendation⁸⁵ regarding existing STRs located in UGAs and the required timing
6 for compliance to be treated as an existing legal nonconforming STR,⁸⁶ and that in
7 disregarding this consensus, the BOCC did not in good faith involve the public and various
8 stakeholders in developing the STR Resolution.⁸⁷ Petitioners are referencing a statement
9 by three Task Members, where they stated, "There was zero discussion about making STRs
10 inside city-associated UGAs ineligible for grandfathering. This is quite simply not something
11 we would have agreed to."⁸⁸ However, a disagreement among three members of the task
12 force is not enough to show that the County violated the GMA goal of public participation.
13

14 Petitioners have not met their burden of proof in showing that the County was not
15 guided by GMA Goal 11 when it developed the STR Resolution. The **Board finds and**
16 **concludes** that the County satisfied its requirements for GMA Goals 5, 6, 9, and 11.
17

18 19 Issue 5

- 20 **5. Did the County violate the requirements of RCW 36.70A.040(3) to "adopt**
21 **development regulations that are consistent with and implement the**
22 **comprehensive plan" when the County adopted development regulations**
23 **that are inconsistent with numerous goals and policies of the Chelan**
24 **County Comprehensive Plan, including, but not limited to, goals and**
25 **policies that instruct the County to promote and encourage uses related to**
26 **tourism and recreation, and to consider the economic development impact**
27 **in land use planning (e.g., Goals LU 12 and PR 1, and Policies LU 6.4, RE**
28 **4.1, ED 2, ED 6.2, ED 6.4, as well as others)?**

30 ⁸⁵ IR at 130 (Task Force Report and Recommendation).

31 ⁸⁶ PBHB at 23.

32 ⁸⁷ PPHB at 24.

⁸⁸ PPHB at 9.

1 **Applicable Laws:**

2 **RCW 36.70A.040 Who must plan—Summary of requirements—Resolution for partial**
3 **planning—Development regulations must implement comprehensive plans.**

4 (3) Any county or city that is initially required to conform with all of the requirements of this
5 chapter under subsection (1) of this section shall take actions under this chapter as follows:

6 ...
7 (d) if the county has a population of fifty thousand or more, **the county and each city**
8 **located within the county shall adopt a comprehensive plan under this chapter**
9 **and development regulations that are consistent with and implement the**
10 **comprehensive plan ...**

10 **Chelan County Comprehensive Plan**

11 **GOAL LU 12:** Encourage development and maintenance of recreational facilities and
12 opportunities to meet the needs of residents and visitors.

13 **Policy LU 6.4:** Take advantage of Chelan County's rural character and natural setting by
14 promoting small scale, non-residential, recreation and tourist uses, including associated
15 commercial facilities in rural areas.

16 **Policy RE 4.1:** Permit rural development of small scale recreational, tourist, and resort uses
17 that rely on a rural location and setting, including commercial facilities to serve such uses,
18 provided they do not include new residential development and are otherwise consistent with
19 other goals and policies of this plan.

20 **Goal ED 2:** Encourage the retention and growth of recreational and tourist based industries
21 consistent with the comprehensive plan.

22 **Policy ED 6.2:** Support development of tourism and recreational uses on both public and
23 private lands.

24 **Policy ED 6.4:** Evaluate economic development implications as part of land use planning,
25 transportation planning, infrastructure planning, and environmental planning projects and in
26 the determination of urban growth boundaries.

27 **Goal PR 1 –** Encourage open space and public land use for the enjoyment of County
28 residents and visitors.

29 **Policy PR 1.3 –** Promote access to public lands with significant recreation potential,
30 including coordination with adjacent private landowners, while respecting the rights of
31 private property owners.

32 **Board Discussion**

Petitioners argue that the County failed to meet the requirements of RCW
3670A.040(3), which instructs a county to "adopt development regulations that

1 are consistent with and implement the comprehensive plan.”⁸⁹ Specifically, it alleges that
2 the County erroneously favored goals and policies encouraging the preservation of
3 residential character and asserted support for affordable housing, while disregarding
4 numerous goals and policies related to fostering recreation and economic development.⁹⁰

5 Petitioners first argue that the STR Resolution has significant economic impacts and
6 decrease access to recreational opportunities, which they incorporate by reference to their
7 previous arguments in Issues 3 and 4.⁹¹ However, as discussed above, the Board
8 concludes that the STR Resolution is consistent with GMA Goals 5 and 9 that the County
9 properly analyzed recreation and economic development when formulating the STR
10 Resolution.
11

12 Next, Petitioners claim that the STR Resolution was adopted primarily to “address
13 complaints by the County in regards to the impact of short term rentals on
14 neighborhoods.”⁹² Petitioners point to the Task Force Report and Recommendations,
15 arguing that it confirms the goal of “how to best address short-term rentals to allow for
16 property owner income while protecting the character of residential communities across the
17 county.”⁹³ Petitioners contend that this description illustrates the very limited scope of
18 issues the County considered and confirms the County did not give adequate attention to
19 broad economic impacts and recreational issues, as required by the Comprehensive Plan.⁹⁴
20

21 Finally, Petitioners claim that this is erroneous given the amount of public comments
22 provided to the BOCC, and that there is no evidence of substantive BOCC analysis on
23 these issues and summary statements justifying the STR Resolution after it was largely
24 drafted are insufficient.⁹⁵
25
26
27

28 ⁸⁹ PPHB at 19, citing RCW 3670A.040(3).

29 ⁹⁰ PPHB at 19.

30 ⁹¹ PPHB at 21.

31 ⁹² PPHB at 21, citing IR at 4632.001-4632-007 (Staff Report at 2).

32 ⁹³ PPHB at 21, citing IR at 129 (Task Force Report and Recommendations).

⁹⁴ PPHB at 21.

⁹⁵ PPHB at 21.

1 The County argues that a regulation is not allowed or disallowed solely on the basis
2 that a strict interpretation of one provision of the Comprehensive Plan may not be met by
3 the regulation. The County cites *Citizens for Mount Vernon v. City of Mount Vernon* is
4 support of its claims, where the Court held:

5 [C]omprehensive plans generally are not used to make specific land use
6 decisions. Instead, we stated a comprehensive plan is a “guide” or “blueprint”
7 to be used when making land use decisions. Although the court confirmed there
8 need not be “strict adherence” to a comprehensive plan, any proposed land
9 use decision must generally conform with the comprehensive plan. Since a
10 comprehensive plan is a guide and not a document designed for making
11 specific land use decisions, conflicts surrounding the appropriate use are
12 resolved in favor of the more specific regulations, usually zoning regulations. A
13 specific zoning ordinance will prevail over an inconsistent comprehensive
14 plan. If a comprehensive plan prohibits a particular use but the zoning code
15 permits it, the use would be permitted. These rules require that conflicts
between a general comprehensive plan and a specific zoning code be resolved
in the zoning code’s favor.⁹⁶

16 The County alleges that the Petitioners’ argument fails to include how these goals
17 were considered in light of the other goals in the Comprehensive Plan. The County gives
18 Policy 2.4 of the Comprehensive plan as an example, which states a County is to
19 “encourage appropriate placement and use of vacation rentals.” They argue that the
20 affordability of housing is a major issue addressed by the STR code, and that many
21 neighborhood residents commented on the detrimental effects of STRs on their
22 neighborhoods.⁹⁷

24 The County similarly points to the first goal under the housing element of the
25 Comprehensive Plane which is to “encourage the availability of affordable housing to all
26 economic segments of the population of the County.”⁹⁸ The County claims that many
27

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29 ⁹⁶ RPHB at 18, citing *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn. 2d 861, 873-74, 947 P.2d
1208 (1997).

30 ⁹⁷ RPHB at 20, citing IR at 43395 (comment referencing “destruction” of commenter’s neighborhood); IR at
31 43419-20 (comment by community group Friends of Leavenworth on STRs that “obliterate” neighborhoods
and the problem of absentee owners).

32 ⁹⁸ RPHB at 20.

commenters also talked about the inability to find affordable housing, partially due to the conversion of houses to STRs, and that sensible regulations on the number and location of STRs directly benefits the housing goals of the Comprehensive Plan.⁹⁹

Petitioners argue that in contrast to the County's claims, the Comprehensive Plan reads that there is enough housing and land to meet future housing needs, and that the Comprehensive Plan expressly states:

The County identified current housing and land necessary for future housing and determined that there is adequate land and housing diversity with[in] Chelan County for the next 20 years.¹⁰⁰

Petitioners follow this by arguing that the County's "Considerations for Affordable Housing Options" encourages affordable housing in more urban and dense settings and not a single one of these options raises a remote concern or action plan related to STRs.¹⁰¹ They claim this shows that that STRs are typically larger homes located in more rural areas and construction of housing in rural areas generally leads to additional costs of living that renders these areas less desirable for affordable housing.¹⁰²

The County responds that Petitioners failed to address that the section of the Comprehensive Plan referenced discusses diversity in the types of housing not the number of houses in the County. The section referenced points out the County's efforts to house the homeless, those with special needs, and other segments of the community.¹⁰³ Petitioners further claim that the Comprehensive Plan concludes "that the current increases in the housing prices are resulting in few affordable housing options for residents."¹⁰⁴

⁹⁹ RPHB at 20.

¹⁰⁰ PPHB at 21-22, citing Chelan County Comprehensive Plan, Housing Element, Sec. IX, Future Housing Needs at 22.

¹⁰¹ PPHB at 22, citing Chelan County Comprehensive Plan, Housing Element, Sec. IX, Future Housing Needs at 22-23.

¹⁰² PPHB at 22.

¹⁰³ RPHB at 21, citing Comp. Plan, Housing Element at 22.

¹⁰⁴ RPHB at 21, citing Comp. Plan, Housing Element at 13.

1 Finally, the County argues that Comprehensive Plan often conflict when they are
2 balanced with one another and that the BOCC in emphasizing certain goals above others
3 does not justify overturning the STR code.¹⁰⁵ We agree.

4 As discussed above, courts have held that counties need not strictly adhere to their
5 comprehensive plans and that conflicts between a general comprehensive plan and a
6 specific zoning code be resolved in the zoning code's favor.¹⁰⁶ The argument by the
7 Petitioners rests on the fact that the BOCC was misguided and selectively considered
8 housing issues, while failing to highlight others.
9

10 However, the record shows that housing is a significant concern of many residents in
11 the County and the regulations were made, in part, to address this issue. As stated by the
12 County, the Comprehensive Plan does address the issue of housing affordability.

13 Petitioners cite no authority in their argument showing that these goals must be all
14 given an equal amount of weight. Further, we have concluded above that the STR
15 Resolutions do not violate GMA Goals and Petitioners have not shown that the County's
16 STR Resolution violates of RCW 36.70A.040(3).
17

18 The Board **finds and concludes** that Petitioners have not met their burden of proof
19 in showing that the County was in violation of RCW 36.70A.040(3) when it developed its
20 STR Resolution.
21

22 **Invalidity**

23 Petitioners argue that STR Resolution substantially interferes with the fulfillment of
24 the goals of the GMA and requests that the Board issue a determination of invalidity.¹⁰⁷
25

26 The Board may determine challenged amendments invalid if the Board concludes
27 that their continued validity would substantially interfere with the fulfillment of the goals of
28 the Act.¹⁰⁸ However, Petitioners have not demonstrated that the County substantially
29

30 ¹⁰⁵ RPHB at 19.

31 ¹⁰⁶ *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn. 2d 861, 873-74, 947 P.2d 1208 (1997).

32 ¹⁰⁷ PPHB at 24.

¹⁰⁸ RCW 36.70A.302(1)(b).

1 interfered with any requirement of the GMA. The record supports the proposition that the
2 County properly balanced GMA Goals when formulating the STR Resolution and in its
3 implementation did not violate RCW 36.70A.040(3). Although the County improperly
4 labeled an amendment as a scrivener's error, this is not enough to find invalidity on the
5 entire STR Resolution.

6 The **Board finds and concludes** that the County did not substantially interfere with
7 the fulfillment of the goals of the GMA and, thus, declines to enter a determination of
8 invalidity.
9

10 V. ORDER

11 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
12 parties, the GMA, prior Board orders and case law, having considered the arguments of the
13 parties, and having deliberated on the matter, the Board finds:
14

- 15 • Petitioners failed to satisfy its burden of proof that the County's STR Resolution
16 violates any goal of the GMA.
- 17 • Petitioners failed to satisfy its burden of proof that the STR Resolution violated
18 RCW 36.70A.040(3).
- 19 • Petitioners have not met its burden of proof in showing that the County made
20 material revisions to the STR Resolution from June 24 to July 13 in violation of
21 RCW 36.70A035(2)(a).
- 22 • Petitioners have satisfied its burden of proof in showing that the County violated
23 public participation requirements of RCW 36.70A.035(2)(a) when the County
24 erroneously labeled a material revision of the STR Resolution as a scrivener's
25 error.
- 26 • The STR Resolution is remanded to the County to take action to come into
27 compliance with the requirements of the GMA as set forth above.
- 28 • The Board declines to enter a determination of invalidity.
29
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32

Item	Date Due
Compliance Due	September 26, 2022
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	October 10, 2022
Objections to a Finding of Compliance	October 24, 2022
Response to Objections	November 3, 2022
Telephonic Compliance Hearing Zoom information to be provided at later date	November 14, 2022 10:00am

Length of Briefs: A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: "Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions." **Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.**

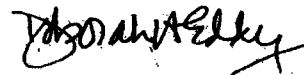
SO ORDERED this 24th day of March, 2022.



Rick Eichstaedt, Board Member



Bill Hinkle, Board Member



Deb Eddy, Board Member

1 **Note: This is a final decision and order of the Growth Management Hearings Board**
2 **issued pursuant to RCW 36.70A.300.¹⁰⁹**
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29 ¹⁰⁹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
30 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved
31 by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in
32 RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the
parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not
authorized to provide legal advice.

Appendix A: List of Petitioners

Community Lodging Operators of Chelan County (f/k/a Fairness in Grandfathering)

Karen and Brian Barton

Kelsey Brown

Jeff Bundy

Colin Campbell

Kathy and Duncan Chalfant

Nova Chamberlain

Tanya And Troy Charboneau

David Cherepy

Norman Cook

Anthony Criddle

Daniel and Susan Eby

Don Eikenberry

David and Elizabeth Epley

Troy Fenlason

Joni Fisher

Tracy Franks

Mitchell and Paula Gaughant

Kurt and Francis Galley

Anastasia & Rob Gray

David Greenheck

Keri Greenheck

Symonty Gresham

Susan and Hans Hagbrandt

Raminta Hanzelka

Ryan Harmaning

Vicki and Ernie Hobbs

Jeffrey & Laurel Holbeck

Scott Huson

Dayle Kamerman

Grace Kim

Tom Latta

Julie Marker

William Marvin

Ania Mazewska

Nikki McCall

Jennie Mellor

Timothy Miller

Elena Milosavljevic

- 1 John Montgomery
- 2 Larry Morris
- 3 Nik Moushon
- 4 Uma Naik
- 5 Randall & Denise Olsen
- 6 Chris Perry
- 7 Lorri Powers
- 8 Tim Sale
- 9 Hernan Savastano
- 10 Gillian Shaw
- 11 Kristin and Mark Simpson
- 12 Jim Stone
- 13 Arnold Thomas
- 14 Chapman Thomas
- 15 Nicole & Greg Underwood
- 16 Alkinoos Vayanos
- 17 Lei Warren
- 18 Kelly Woznicki
- 19 Bobby Wright
- 20 Charles Zimmerman
- 21 316 LLC
- 22 Arrowhead Lodge, LLC
- 23 Riverside Properties
- 24 The Boulder House LLC
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Appendix B: Procedural matters

On September 29, 2021 Community Lodging Operators of Chelan County, *et al.* (Petitioners) filed a Petition for Review. The petition was assigned case no. 21-1-0007.

A prehearing conference was held telephonically on October 22, 2021. Petitioners appeared through their counsel Donald E. Marcy. Respondent Chelan County appeared through its attorney Marcus S. Foster.

On December 8, 2021, Residents United for Neighbors of Chelan County filed a motion requesting amicus status in the proceeding. The Board issued an Order Granting Amicus Status on December 20, 2021.

On January 20, 2022, Chelan County filed a Motion to Continue Date for Respondent Chelan County's Prehearing Brief. Motion To Continue Date for Respondent Chelan County's Prehearing Brief was granted on January 20, 2022.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioners' Prehearing Brief, January 3, 2022 (PPHB);
- Residents United for Neighbors Amicus Brief, January 24, 2022 (RUN Amicus Brief);
- County Response Brief, January 26, 2022 (RPHB); and
- Petitioners' Reply Brief, February 9, 2022 (PRB).

Hearing on the Merits

The Hearing on the Merits convened February 17, 2022. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Appendix C: Legal Issues

Per the Prehearing Order, legal issues in this case were as follows:

1. Did the County violate the requirements of RCW 36.70A.035(2)(a) to provide an opportunity for review and comment on changes when the County proposed and adopted material and significant changes to the STR Resolution regarding the timing for compliance of existing STRs after the final public hearing and close of the written comment period?
 - a. After the public hearing and the opportunity to comment closed, the County made material revisions to the STR Resolution regarding existing STRs in unincorporated urban growth areas.
 - b. The County made material revisions to the STR Resolution after it was adopted, without providing an opportunity to comment, and without holding a properly noticed public hearing.
2. Did the County violate the requirements of RCW 36.70A.020(6) stating “[t]he property rights of landowners shall be protected from arbitrary and capricious discriminatory actions” when the County adopted a regulatory framework that illegally divested existing STRs of the property right to continue use as a legal nonconforming STR?
3. Did the County violate the requirements of RCW 36.70A.020(5) to “promote the retention and expansion of existing business” when the County implemented a regulatory framework that promotes the elimination of existing STR operations and when it failed to meaningfully account for the adverse economic impacts of the STR Resolution on existing STRs?
4. Did the County violate the requirements of RCW 36.70A.020(9) to “enhance recreational opportunities” when the County implemented a regulatory framework that eliminates a significant number of existing STRs and thereby reduces the number of lodging options for recreators and their opportunity to enjoy recreation activities?

- 1 5. Did the County violate the requirements of RCW 36.70A.040(3) to “adopt
2 development regulations that are consistent with and implement the
3 comprehensive plan” when the County adopted development regulations that are
4 inconsistent with numerous goals and policies of the Chelan County
5 Comprehensive Plan, including, but not limited to, goals and policies that instruct
6 the County to promote and encourage uses related to tourism and recreation, and
7 to consider the economic development impact in land use planning (e.g., Goals
8 LU 12 and PR 1, and Policies LU 6.4, RE 4.1, ED 2, ED 6.2, ED 6.4, as well as
9 others)?
10
11 6. Did the County violate the requirements of RCW 36.70A.020(11) to “[e]ncourage
12 the involvement of citizens in the planning process and ensure coordination
13 between communities and jurisdictions to reconcile conflicts” when the County
14 repeatedly favored the special interests of certain constituents while wholly
15 disregarding and dismissing the concerns of others?
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