RESOLUTION 2019 276

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF RESOLVING THE APPEAL OF BENTON COUNTY'S 2017 COMPREHENSIVE PLAN PERIODIC UPDATE

WHEREAS, on February 13, 2018, the Board of Benton County Commissioners adopted Resolution 2018-137 and Ordinance 600 to enact the 2017 Comprehensive Plan Periodic Update; and

WHEREAS, on April 18, 2018, Futurewise, a Washington non-profit corporation, executed and subsequently filed with the Growth Management Hearings Board a Petition for Review with the Growth Management Hearings Board to challenge the compliance of Benton County Resolution 2018-137 and Ordinance 600 with the Growth Management Act; and

WHEREAS, after negotiation, Futurewise and the Board of County Commissioners have developed an agreement pursuant to which Futurewise agrees to dismiss the above referenced Petition for Review if the Board of County Commissioners considers and ultimately adopts certain amendments to its comprehensive plan and additional development regulations to implement certain measures to protect the rural water supply; and

BE IT RESOLVED, that the Chairman is authorized to sign and have delivered to Futurewise the attached Settlement Agreement between Futurewise and Benton County to establish a framework to potentially resolve the matter of Futurewise v. Benton County. Growth Management Hearings Board Eastern Washington Region Case No. 18-1-0004.

Dated this 2nd day of April, 2019.

[Signatures]
Chairman of the Board

[Signatures]
Member

[Signatures]
Member

Constituting the Board of Commissioners of Benton County, Washington

[Signatures]
Attest... Clerk of the Board
Settlement Agreement between Futurewise and Benton County

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into this 2
day of April, 2019, by and between the Appellant, Futurewise, a Washington non-profit corporation, and Respondent, Benton County, a
Washington state municipal government ("County"), for the purpose of resolving and settling all claims associated with Futurewise’s appeal of Benton County Resolution 2018-137 and Benton County Ordinance 600, adopting the 2017 Comprehensive Plan Periodic Update, and Benton County Resolution 2018-167 and Benton County Ordinance 601, adopting Map A-3 as the official zoning map for Benton County.

NOW THEREFORE, FOR GOOD AND FAIR CONSIDERATION, FUTUREWISE AND BENTON COUNTY AGREE AS FOLLOWS:

Section 1. Requirement to Dismiss.

A. Within 15 days of the completion of the tasks and adoption of the development regulations referenced in Sections 2 and 3.B, and the amendments to the comprehensive plan referenced in Sections 3 and 4 of this Settlement Agreement, Futurewise shall cause to be dismissed with prejudice the appeal with the caption Futurewise v. Benton County, Growth Management Hearings Board Eastern Washington Region Case No. 18-1-0004. Growth Management Hearings Board Eastern Washington Region Case No. 18-1-0004 is Futurewise’s appeal of Benton County Resolution 2018-137 and Benton County Ordinance 600, adopting the 2017 Comprehensive Plan Periodic Update, and Benton County Resolution 2018-167 and Benton County Ordinance 601, adopting Map A-3 as the official zoning map for Benton County.

B. This dismissal will be accomplished through a joint stipulation executed by Futurewise and Benton County or any other means authorized by Growth Management Hearings Board rules of practice and procedure.

Section 2. Provisions to Protect Surface and Ground Water.

Benton County will consider adopting and implementing the following measures for the protection of the quality and quantity of ground and surface water.

A. Permanent regulations will be considered that will require new development relying on permit-exempt wells proposed to be located within a certain portion of Water Resource Inventory Area (WRIA) 37 to fully mitigate the impacts of such wells on the main stem of the Yakima River resulting from the consumptive use of water by such wells for housing unit needs by meeting the criteria set forth below:

(i) The geographic area subject to these regulations will only be that portion of WRIA 37 located in Benton County that drains to the Yakima River and not the Columbia River. That geographic area
is depicted on the attached Exhibit A. The area is hereafter referred to as the “mitigated area.”

(ii) Benton County has acquired and may continue to acquire surface water rights with a priority date pre-May 10, 1905, in the Yakima River Basin. Mitigation of the consumptive water use of permit-exempt wells in the mitigated area to be considered will be accomplished by placing such water rights in trust with the State of Washington for instream flows within or upstream of WRIA 37.

(iii) For every building permit issued after February 13, 2018, and prior to the adoption of the regulations set forth below in subsection (iv), that requires potable water from a permit-exempt well located in the mitigated area, Benton County will reserve 200 gallons per day per parcel (annual daily average) if the permit is or was for development on a parcel within an irrigation district and 300 gallons per day per parcel (annual daily average) if the permit is or was for development on a parcel not within an irrigation district from a water right placed in trust by the County.

(iv) The permanent regulations to be considered will require new applicants for subdivisions and residential building permits that seek to use permit-exempt wells located in the mitigated area for potable water supply to provide evidence of mitigation in the following form as a condition to final plat approval and building permit approval: (1) acquisition of a mitigation certificate from the County for up to a certain number of gallons per day per parcel (annual daily average) for indoor only water usage for each residence; or (2) acquisition of a mitigation certificate from the County for up to a certain larger number of gallons per day per parcel (annual daily average) for indoor and outdoor water usage for each residence if the parcel on which the development is proposed is not located within an irrigation district.

(v) The County will consider regulations that will only allow the issuance of a mitigation certificate if the aggregate of water usage allotted by all mitigation certificates issued by the County, in addition to the water reserved under subsection (iii) above, will not exceed the amount of water placed into trust by the County.

B. The County further agrees that prior to the adoption of the permanent regulations set forth in section A above, it will approve long plat applications submitted after the effective date of this Agreement that seek to rely on permit-exempt wells within the mitigated area only if a condition is required that a statement be placed on the face of the plat indicating that no building permits will be issued for any of the lots within the plat without first obtaining mitigation certificates for the lot for which a building permit is sought.

*Note: Code provisions to address the deleted §2.B already have been adopted in Benton County Ordinance 611, section 165(c), and Ordinance 612, section 11(b). Those
sections will be considered for further amendment at the same time as the regulations in 2.A above to make BCC 9.02.100 and BCC 11.42.040 only applicable to unincorporated areas not covered by the regulations referred to above in section 2.

Section 3. Measures to Protect Rural Character.

A. Benton County will consider amendments to the Rural Element/Land Use Element of its Comprehensive Plan to add policies governing rural development. The policies shall be equivalent in substance and effect to the provisions listed below, but Futurewise and Benton County (the parties) recognize that changes in location, order, formatting, numbering, and wording that do not change the substance may occur as part of the comprehensive plan amendment process.

- New Policy: Development in rural areas is typified by large lots and less dense development. Favoring development that is less dense and has larger lots helps maintain the rural character of designated rural areas and supports the protection of ground and surface water.

- New Policy: Designated rural areas will be utilized to reduce the inappropriate conversion of agricultural lands, prevent sprawling low-density development and assure that rural development is compatible with surrounding rural and agricultural areas.

- New Policy: Rural development shall provide adequate water for domestic use. When feasible, rural developments will be encouraged to utilize existing community systems with adequate availability for domestic water and sewage disposal.

- New Policy: New groundwater uses must provide evidence that the proposed water source is physically and legally available. Groundwater uses and withdrawals, including the issuance of building permits and the approval of land divisions, must be consistent with RCW 90.44.050, and with applicable rules adopted pursuant to RCW 90.22 and 90.54.

- New Policy: Provide public services consistent with rural character. Rural developments will not impact existing public facilities/services to the extent that the level of service for that facility is reduced below the adopted threshold and/or acceptable operation capacity. Rural developments should occur where adequate access to transportation systems, and rural levels of utilities and facilities, such as domestic water, power, and fire and police protection are available.

- New Policy: Rural development shall minimize potential adverse impacts to water quality, slope stability, vegetation, wildlife and aquatic life as implemented through the County's critical area regulations, shoreline master program, and hydrology manual.

- New Policy: Support the availability of sufficient water to maintain the agricultural industry and agricultural processing and value-added manufacturing.
- New Policy: Encourage long-term conservation, adequate water supply, and the wise stewardship of natural resources within Benton County for the benefit of current and future residents.

- New Policy: Encourage the continued communication with irrigation districts, legislature, and other responsible entities to ensure that adequate irrigation water is available for agricultural uses.


- New Policy: Support on-site infiltration in rural areas for new lots, subdivisions and developments by promoting storm water best management practices. Promote the retention of existing native vegetative cover in landscaping plans for areas zoned Rural Lands One Acre (RL-1), Rural Lands Five Acre (RL-5), Rural Lands Twenty Acre (RL-20), and Planned Development (PD) zones applied to any of these zones. Where the proposed development will not be precluded, limit impervious surfaces that are not infiltrated on-site for all new development in the zoning districts listed above to no more than ten percent and require the retention of 45 percent vegetative cover, which may include native or non-native species, provided soil infiltration/filtration properties are maintained.

- New Policy: Support and encourage the use of and application of Firewise principles and other fire risk reduction measures consistent with the Benton County Hazard Mitigation Plan and Community Wildfire Protection Plan to reduce fire risk for urban development, urban subdivisions, rural subdivisions and large rural developments susceptible to wildfires. Encourage the implementation of the Firewise principles, or similar best management measures, applicable to individual lots on all lots at risk from wildfires.

- Adopt by reference as an appendix to the Comprehensive Plan, the Benton County Hazard Mitigation Plan and Community Wildfire Protection Plan, as amended.

B. Benton County will consider adopting the Eastern Washington Storm Water Manual by reference as a development regulation.

C. If the regulations set forth in Section 2 and the Comprehensive Plan amendments and the regulation listed above in Section 3 are adopted and implemented, Benton County will commit to the following practices regarding low impact development and Firewise principles for at least ten (10) years from the effective date of the dismissal of the appeal as set forth in Section 1:
- Include informational materials related to the Eastern Washington Low Impact Development Guidance Manual and the NFPA Firewise educational and outreach materials as an attachment/supplemental to the County’s land use, road approach and building permit application materials to be utilized as a resource for landowners.

- Include on the County’s website (Planning, Public Works and Building) links to the Eastern Washington Low Impact Development Guidance Manual and the NFPA Firewise educational and outreach materials to be utilized as a resource for landowners.


A. Benton County will consider amending the applicable parts of Chapter 2 – Goals and Policies, Chapter 9 Capital Facilities Element, and Appendix J – Capital Improvement Plan, 2017 – 2022, and include an inventory or reference to an inventory of existing public facilities owned by public entities, a forecast of future needs, the proposed location and capacities of expanded or new public facilities, and a six-year financing plan for capital facilities that is within the projected funding capacities for publicly owned water systems, fire districts, municipal emergency services providers, and school systems, as applicable.

B. Benton County will consider including in its Capital Facilities Plan Element/Capital Improvement Plan and Transportation Element the Ben-Franklin Transit capital facilities, level of service standards, service areas, and recommendations for additional service.

C. In addition, Benton County will agree to conduct an analysis of the adequacy of the firefighting capabilities and consider amendments to the Capital Facilities Plan Element if it determines such amendments are needed to maintain adequate firefighting capabilities on the borders of the UGAs and the rural areas within the county.

D. Benton County will consider amending Appendix H to more clearly describe the land use assumptions used in the analysis. In addition, Benton County will coordinate with the Washington State Department of Transportation (WSDOT) and Benton-Franklin Council of Governments (BFCOG) in conducting a more detailed evaluation of the estimated traffic impacts of projected growth on state-owned facilities and the facility and service needs stemming from future population demands on state owned facilities, and amend Appendix H, as needed.

Section 5. Attorneys’ Fees and Costs.

Each party hereto shall bear its own attorneys’ fees and costs.
Section 6. Entire Agreement and Successors in Interest.

This Settlement Agreement contains the entire agreement between Futurewise and Benton County, shall supercede any and all prior written and/or oral agreements, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. No other understandings, oral or otherwise, shall be deemed to bind any of the parties hereto.

Section 7. Remedy for Breach.

For any breach of this Settlement Agreement all remedies in law and equity shall be available including the remedy of specific performance.

Section 8. Amendment.

This Settlement Agreement may not be modified or amended except by the written agreement of the parties.

Section 9. Governing Law.

This Settlement Agreement shall be construed and interpreted according to the laws of the State of Washington.

Section 10. Authorization.

Each person signing this Settlement Agreement represents and warrants that he or she has authority to sign this Settlement Agreement on behalf of and to bind the party represented, and that any necessary conditions precedent to the execution of this Settlement Agreement on behalf of the party represented have been satisfied.

Section 11. Counterparts.

A. This Settlement Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument and as if all of the parties to the counterparts had signed the same instrument.

B. Electronic facsimile signatures and/or electronically scanned signatures shall be sufficient to demonstrate a party’s assent to this Settlement Agreement.

Section 12. Effective and Expiration Dates.

A. This Settlement Agreement shall be effective on the later of the dates it is signed by the parties.

B. This Settlement Agreement shall expire on the day after the day the Growth Management Hearings Board dismisses *Futurewise v. Benton County*, Growth
Management Hearings Board Eastern Washington Region Case No. 18-1-0004. No cause of action shall accrue under this Settlement Agreement with respect to actions by Benton County regarding any comprehensive plan amendments or amendment or repeal of development regulations adopted after this Settlement Agreement expires. This provision does not limit in any way the rights of Futurewise to challenge such actions under the provisions of the Growth Management Act.

**BENTON COUNTY**

By: Shon Smale

Its: Chairman

Signed this 2 day of April, 2019.

**FUTUREWISE**

By: Chris Wierzbicki

Its: Executive Director

Signed this 29th day of March 2019.

Approved as to form:

By: Ryan K. Brown

Its: DPA
EXHIBIT A

(2 pages)