

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

WILDLIFE HABITAT INJUSTICE) **CPSGMHB Case No. 01-3-0026**
 PREVENTION, BRUCE DELH, ED)
 NICHOLS, BUD SIZEMORE, JOEL and)
 GINAGUDDAT, DEBORAH JACOBSEN,) **(WHIP II)**
 JON OWNES, and PATTI MELTON,)

Petitioners,)

v.)

CITY OF COVINGTON,)

Respondent,)

LEE J. MOYER,)

Intervenor)

Coordinated with

WHIP, et al.,)

Petitioners,)

v.)

CITY OF COVINGTON,)

Respondent.)

CPSGMHB Case No. 03-3-0004

(WHIP III)

Consolidated with

LEE J. MOYER)

Petitioner,)

v.)

CITY OF COVINGTON)

Respondent.)

CPSGMHB Case No. 03-3-0006c

(Moyer)

**ORDER FINDING
COMPLIANCE AND
RESCINDING INVALIDITY in
the Consolidated WHIP III and
Moyer Proceeding**

I. PROCEDURAL BACKGROUND

On July 31, 2003, the Board issued its Final Decision and Order (**FDO**) in the above captioned case. The FDO provided:

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

WHIP II:

- WHIP's PFR 01-3-0026, challenging the adoption of Ordinance No. 24-01 is **dismissed with prejudice**. This case is closed.

WHIP III:

- The "Commercial Regional" designation on the FLUM (Ordinance No. 55/02); the "Regional Commercial" designation on the Zoning Map (Ordinance No. 54/02); the "Downtown Commercial" designation, on Map 4.1 (Ordinance No. 24-01) and the entirety of Map 4.2 are **clearly erroneous**, internally inconsistent and **do not comply** with the internal consistency requirements of RCW 36.70A.070(preamble) and .130. The Board hereby **remands** Ordinance Nos. 55/02, 54/02 and 24-01, with direction to the City of Covington to take the necessary legislative actions to remove the internal inconsistencies between these maps.

Moyer:

- The City's adoptions of Amendment 02-027 (Ordinance No. 51-02), the FLUM (Ordinance No. 55-02) and the Zoning Map (Ordinance No. 54-02) as they relate to the Community Commercial and Neighborhood Commercial amendments and designations were **clearly erroneous** and **do not comply** with the notice and public participation requirements of RCW 36.70A.035, .130, and .140. The Board hereby **remands** Ordinance Nos. 51-02, 54-02 and 55-02, as noted *supra*, with direction to the City of Covington to provide notice reasonably calculated to provide notice to property owners and other affected and interested individuals and provide the opportunity for public review and comment on these or any other proposed changes.
- Additionally, the Board has determined that the continued validity of the City's Ordinances [*i.e.*, Amendment 02-027 (Ordinance No. 51-02), the FLUM (Ordinance No. 55-02) and the Zoning Map (Ordinance No. 54-02)] as they relate to the Community Commercial and Neighborhood Commercial amendments **substantially interferes** with the fulfillment of

Goal 11. Therefore, the Board has entered a **Determination of Invalidity** for these enactments as they relate to the Neighborhood Commercial and Community Commercial designations and provisions.

WHIP III and Moyer:

The Board **remands** Ordinance Nos. 24-01, 51-02, 54-02, and 55-02 to the City of Covington with the following directions:

1. By no later than **January 22, 2004**, the City shall take appropriate legislative action to bring the City's GMA Comprehensive Plan, FLUM, Zoning Map and zoning regulations into compliance with the goals and requirements of the GMA, as interpreted and set forth in this Final Decision and Order (**FDO**).
2. By no later than **January 29, 2004**, the City shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall explain and distinguish the actions taken to comply with the *WHIP* remand and the *Moyer* remand. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioners WHIP and Moyer.
3. By no later than **February 9, 2004**, the Petitioners may file with the Board an original and four copies of Comments on the City's SATC. Petitioners shall simultaneously serve a copy of their Comments on the City's SATC on the City.
4. By no later than **February 12, 2004**, the City may file with the Board an original and four copies of the City's Reply to Comments. The City shall simultaneously serve a copy of such Reply on Petitioners.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. February 15, 2004** at the Board's offices. With the consent of the parties, the compliance hearing may be conducted telephonically.

If the City takes legislative compliance actions prior to the January 22, 2004 deadline set forth in section 1 of this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 44-46.

On January 29, 2004, the Board received the City of Covington's Statement of Actions Taken to Comply (**SATC**). The SATC indicated that on December 16, 2004, the City

adopted Ordinance No. 92-03, 93-03 and 94-03 to address the noncompliance and determination of invalidity set forth in the Board's FDO.

The Board did not receive any comment from Petitioners WHIP or Moyer on the City's SATC by the February 9, 2004 deadline for comment.

On February 10, 2004, the Board issued an Order Rescheduling the Compliance Hearing for February 17, 2004 at 2:00 p.m., to be held telephonically.

On February 11, 2004, the Board received a letter from WHIP's representative, Jean M. Bouffard, indicating that Petitioners would not be attending or participating in the Compliance Hearing.

On February 13, 2004, the Board received a letter from Moyer's representative, Dennis Reynolds, indicating that neither Mr. Reynolds nor Petitioner Lee Moyer, would be attending nor participating in the Compliance Hearing.

On February 17, 2004, Board Member Edward G. McGuire conducted the compliance hearing telephonically. Board Member Bruce C. Laing attended. Duncan C. Wilson, represented the City of Covington via phone. Neither Petitioners participated in the compliance proceeding. The compliance hearing commenced at approximately 2:00 p.m. and concluded at approximately 2:15 p.m.

III. DISCUSSION of REMAND ISSUE

Regarding the *WHIP III* portion of the case, the Board's 7/31/03 FDO found that the "Commercial Regional" designation on the FLUM (Ordinance No. 55/02); the "Regional Commercial" designation on the Zoning Map (Ordinance No. 54/02); the "Downtown Commercial" designation, on Map 4.1 (Ordinance No. 24-01) and the entirety of Map 4.2 were **clearly erroneous**, internally inconsistent and **did not comply** with the internal consistency requirements of RCW 36.70A.070(preamble) and .130. The Board **remanded** the Ordinances with direction to take legislative action to comply with the GMA.

In response to the Board's FDO, on December 16, 2003, the City adopted Ordinance No. 94-03 which adopted its Comprehensive Plan Update which in conjunction with Ordinance Nos. 91-03, 92-03 and 93-03, removed the inconsistencies among the various maps identified in the FDO. The City contends that this action removes the inconsistencies identified by the Board. SATC, at 2-5.

Regarding the *Moyer* portion of the case, the Board's 7/31/03 FDO found that the City's adoptions of Amendment 02-027 (Ordinance No. 51-02), the FLUM (Ordinance No. 55-02) and the Zoning Map (Ordinance No. 54-02) as they relate to the Community Commercial and Neighborhood Commercial amendments and designations were **clearly erroneous** and **did not comply** with the notice and public participation requirements of RCW 36.70A.035, .130, and .140. The Board also entered a **determination of invalidity**

and **remanded** the Ordinances with direction to take legislative action to comply with the GMA.

In response to the Board's FDO, on August 20, 2003, the City enacted Ordinance Nos. 67-03, 68-03 and 69-03 repealing Ordinance Nos. 51-02, 54-02 and 55-02, respectively; and immediately adopted Ordinance Nos. 70-03 and 71-03 adopting and Interim Future Land Use Map and Interim Zoning Map, respectively. The City then provided notice and conducted public hearings on September 13, 23, October 7, 21, and December 2, 2003, regarding proposed changes to the City's Plan, FLUM and zoning. Finally, on December 16, 2003, the City adopted Ordinance Nos. 91-03, 92-03, 93-03 and 94-03 which revised the Comprehensive Plan, FLUM, zoning map and updated the City's Comprehensive Plan. The City contends that these actions comply with the GMA and remove the substantial interference with goal 11.

At the compliance hearing, the City explained its actions and the maintained that a finding of compliance and a rescission of invalidity be entered by the Board. Neither Petitioner offered any comment or objection to the Board, in writing or orally, to the City's action.

V. FINDING OF COMPLIANCE and RECISSION OF INVALIDITY

Based upon review of the Board's July 31, 2003 FDO, the City's SATC, the Board's review of Ordinance Nos. 91-03, 92-03, 93-03 and 94-03, the comments and arguments offered in the SATC and at the compliance hearing, the Board finds:

- By providing notice and the opportunity for public participation and adopting Ordinance Nos. 91-03, 92-03, 93-03 and 94-03, the City of Covington has **complied** with the goals and requirements of the GMA as set forth in the aforementioned Board Order and the GMA. The Board therefore enters a **Finding of Compliance** for the City of Covington.
- Further, having achieved compliance with the goals and requirements of the Act, there is no longer a basis for invalidity, consequently the Board's **Determination of Invalidity**, as found in the July 31, 2003 FDO is **rescinded**.

VI. ORDER

CPSGMHB Consolidated Case No. 03-3-0006c, *WHIP III and Moyer v. City of Covington*, is **closed**. The provisions of the City of Covington's Comprehensive Plan and zoning maps challenged in this action have been determined to **comply** with the goals and requirements of the GMA. Further, the Board **rescinds** the determination of invalidity.

So ORDERED this 17th day of February 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar,¹ AICP
Board Member

¹ Board Member Tovar reviewed the SATC and participated in the Board's deliberations on this matter.