

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

1000 FRIENDS OF WASHINGTON,)	Case No. 04-3-0018
)	
Petitioners,)	
)	(1000 Friends IV)
v.)	
)	
SNOHOMISH COUNTY,)	FINAL DECISION and ORDER
)	
Respondent.)	
)	
)	
)	

SYNOPSIS

On March 31, 2004, Snohomish County adopted Ordinance 04-021 amending its regulation concerning accessory dwelling units (ADUs).¹ The Snohomish County Uniform Development Code (UDC), adopted in December of 2002, allowed attached and detached “accessory apartments” in rural areas under certain conditions but excluded the use of mobile or manufactured homes as ADUs anywhere in the County. Ordinance 04-021 amended the regulations concerning ADUs on lots of 200,000 square feet (4.7 acres) or larger to allow the use of mobile or manufactured housing as detached new structures and to modify size and compatibility restrictions. Petitioner challenges the Ordinance as increasing rural density in violation of the GMA.

The Board finds that the amendments to the ADU standards as applied to lots smaller than 10 acres promote “dwelling unit density that fails to protect rural lands and rural character” (Legal Issue #1). The Board therefore grants the petition in part and remands to the Respondent for action consistent with this decision.

I. BACKGROUND²

A. GENERAL

On March 31, 2004, the Snohomish County Council adopted Ordinance 04-021 amending Snohomish County’s development regulations concerning accessory dwelling apartments. On June 14, 2004, 1000 Friends of Washington (**1000 Friends** or

¹ Snohomish County’s Code does not use the common term Accessory Dwelling Unit but rather uses the term “Accessory Apartments.” County Response, at 3 (fn.3).

² See Appendix A for more detail regarding the procedural history of this matter.

Petitioner) filed a Petition for Review (**PFR**) challenging Snohomish County's (**County** or **Respondent**) action.

During June and July of 2004, the Board issued the Notice of Hearing, conducted the Prehearing Conference and issued the Prehearing Order (**PHO**). The PHO set the schedule and established the legal issues to be decided by the Board.

On August 3, 2004, the Board received Petitioner's Motion for Summary Judgment (**1000 Friends Motion**) and Snohomish County's Motion to Dismiss (**County Motion**). Following a hearing by telephone conference call, the Board dismissed both motions without prejudice subject to further briefing and argument at the Hearing on the Merits.

The prehearing briefing received is referenced in this Final Decision and Order (**FDO**) as: Prehearing Brief of 1000 Friends of Washington (**1000 Friends PHB**), Snohomish County's Motion to Dismiss and Prehearing Brief (**County Response**), and Reply Brief of 1000 Friends of Washington (**1000 Friends Reply**). In these briefs and in oral argument, 1000 Friends renewed its motion for summary judgment and the County renewed its motion to dismiss.

On November 1, 2004, the Board held a Hearing on the Merits (**HOM**) at the Board's offices in Suite 2470, 900 Fourth Avenue, Seattle, Washington. Board Members Margaret A. Pageler, Presiding Officer, Edward G. McGuire, and Bruce C. Laing were present for the Board. Petitioner was represented by Ken Lederman of Riddell Williams P.S. Respondent was represented by Snohomish County Deputy Prosecuting Attorney Jason Cummings. Board externs Julie Taylor and Jessica Clawson also attended. Court reporting services were provided by J. Gayle Hays, of Byers & Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 11:00 a.m. The Board did not order a transcript of the HOM.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioner challenges Snohomish County's amendment of development regulations for accessory dwelling apartments, as adopted by Ordinance No. 04-021. Pursuant to RCW 36.70A.320(1), Ordinance No. 04-021 is presumed valid upon adoption.

The burden is on Petitioner, 1000 Friends of Washington, to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Snohomish County's actions 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 (1993).

Pursuant to RCW 36.70A.320(1) the Board will grant deference to the County in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court has stated, “Local discretion is bounded, however, by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 142 (2000). Division II of the Court of Appeals further clarified, “Consistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county’s plan that is not ‘consistent with the requirements and goals of the GMA.’” *Cooper Point Association v. Thurston County*, 108 Wn.App. 429, 444, 31 P.3d 28 (2001).

In affirming the *Cooper Point* court, the Supreme Court recently stated:

Although we review questions of law *de novo*, we give substantial weight to the Board’s interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed “[I]t is well settled that deference [to the Board] is appropriate where an agency’s construction of statutes is within the agency’s field of expertise...”

Thurston County v. Western Washington Growth Management Hearings Board, 148 Wn.2d 1, 15, 57 P.3d 1156 (2002).

III. THE CHALLENGED ACTION AND PREFATORY NOTE

On March 31, 2004, Snohomish County adopted Ordinance 04-021 amending its regulation concerning accessory dwelling units. The Snohomish County Uniform Development Code (**UDC**), adopted in December, 2002, had allowed attached and detached “accessory apartments” in rural areas with certain floor area restrictions and compatibility requirements but had excluded the use of mobile or manufactured homes as ADUs anywhere in the County.³ For lots of 200,000 square feet (4.7 acres) or larger, Ordinance 04-021 created an exception allowing the use of mobile or manufactured housing as detached ADUs and modifying floor area restrictions and compatibility requirements.⁴

³ The 2004 amendments were in response to a citizen complaint about the prohibition against use of a mobile or manufactured home as a detached “mother-in-law” apartment on his 15-acre lot in the rural area. County Response, Ex.18.

⁴ A mobile home is defined in the County Code as “a manufactured home that is a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width and forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.” SCC 30.91M.150, 1000 Friends Motion, Ex 1.

Petitioner challenges the Ordinance as increasing the rural density in violation of the GMA. Petitioner relies largely on Board precedents which set standards for rural density to prevent sprawl and which establish that allowing freestanding ADUs in the rural area effectively doubles the allowable density.

Respondent contends that the petition is an untimely challenge over which the Board has no jurisdiction. Alternatively, respondent argues that the Board should dismiss because Petitioner's case is not properly articulated in its statement of legal issues. If the Board reaches the merits of the issue, Respondent urges the Board to deny the petition because the Ordinance complies with the GMA.

In this Final Decision and Order, the Board addresses first the Respondent's motion to dismiss for lack of jurisdiction. The Board concludes that the Petitioner's challenge is timely and that the Board has jurisdiction to decide the case on the merits.

The Board then addresses the substantive development regulation amendment at issue. The Board finds that the amendment to the ADU regulations that allows manufactured homes⁵ as detached new structures on lots of less than 10 acres in the rural area promotes "dwelling unit density that fails to protect rural lands and rural character" (Legal Issue #1). However, the Board finds that Petitioner fails to meet its burden of proof with respect to invalidity (Legal Issue #2). The Board therefore grants the petition in part, denies it in part, and remands to the Respondent for action consistent with this decision.

IV. BOARD JURISDICTION

Position of the Parties

Snohomish County challenges the Board's jurisdiction on the grounds that the petition was not timely filed pursuant to RCW 36.70A.290. The County's core argument is that allowance of detached ADUs in the rural area was established in the codification of the County's UDC in 2002 and thus the time to challenge the provision has long passed. County Response, at 10. The County's theory is that because Ordinance 04-021 did not amend *where* detached ADUs are allowed but only *when* such units are permitted, the amendment cannot be challenged. *Id.*, at 8.

1000 Friends responds that Ordinance 04-021 substantively amended the County's development regulations. Inasmuch as the petition challenges specific amendments, it is timely. 1000 Friends PHB, at 2.

⁵ The Board notes that SB 6593 (Chapter 256, Laws of 2004) effective July 1, 2005, creates new requirements for city and county regulation of manufactured housing. Neither Petitioner nor Respondent cited this statute to the Board. We decline to speculate on its application when it becomes effective.

Applicable Law

RCW 36.70A.290(1) and (2) provide as follows:

(1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board....

(2) All petitions related to whether or not an adopted comprehensive plan, development regulation, *or permanent amendment thereto*, is in compliance with the goals and requirements of this chapter...must be filed within sixty days after publication by the legislative bodies of the county or city. (*Emphasis supplied*)

Board Discussion

The Board's jurisdiction is limited; the Board has "no jurisdiction to review substantive issues of an ordinance previously adopted and not challenged within the timeframe of the Act, *when those issues remain unchanged and unamended.*" *Guy Parsons et al., v. Mason County*, WWGMHB Case No. 00-2-0030 (Order Granting Dispositive Motion, November 27, 2000) at 3, *emphasis supplied*.⁶

Here the County's development regulations allowing detached ADUs have been substantively amended to allow mobile or manufactured housing, previously prohibited everywhere, to be constructed on lots of 200,000 square feet or more. RCW 36.70A.290(2) is clear that "permanent amendments" to previously adopted development regulations are subject to Board review. In other words, when an ordinance amends or expands portions of an existing development code, the *amendment* is subject to appeal within sixty days of publication. 1000 Friends PHB, at 8.⁷

Petitioner here makes timely challenge to an ordinance "amending the development standards" for ADUs. At the Prehearing Conference, the Legal Issue was restated as follows:

Legal Issue #1: Does adoption of Ordinance 04-021, amending the development standards for Accessory Dwelling units (allowing for the construction of detached dwelling units on lots 200,000 square feet or larger), fail to comply with RCW 36.70A.020(2), RCW 36.70A.020(1), RCW 36.70A.020(9), RCW 36.70A.070(5), RCW 36.70A.110(1) when the

⁶ See also *Montlake Community Club v. Hearings Board*, 110 Wn. App. 731, 738-39, 43 P. 3d 57 (2002); *Torrance v. King County*, CPSGMHB Case No. 96-3-0038 (Order Granting Dispositive Motion, March 31, 1997) at 4.

⁷Citing *Tupper v. City of Edmonds*, CPSGMHB 03-3-0018 (Order on Dispositive Motions, December 3, 2003) at 8; *1000 Friends v. Chelan County*, EWGMHB 04-1-0002 (Order on Dispositive Motions, June 10, 2004).

ordinance allows for dwelling unit density that fails to protect rural lands and rural character?

The Board reads this legal issue as a challenge to the County's substantive amendment of its development regulations for ADUs. The substance of the amendment applicable to detached dwelling units on lots of 200,000 square feet or more is the exception for mobile or manufactured homes, which are allowed nowhere else in the ADU regulations.

The County's attempt to frame the petition as an untimely challenge to the preexisting regulation is not well founded. While the time for challenge of the original ADU rules is long past, that doesn't deprive the Board of jurisdiction to review new legislation to the extent that it may expand and increase a previously-unchallenged inconsistency with the GMA. The County's reliance on *Montlake Community Club v. Hearings Board*, 100 Wn.App. 731, 738-39, 43 P.3d 57 (2002) is misplaced. County Response, at 11. In *Montlake* the Board ruled, and the Court of Appeals agreed, that previously adopted and unchallenged development standards could not be challenged when those standards were applied to a new sub-area plan. Here, by contrast, the scope of the development standards are themselves substantively amended.

The Board finds that it has jurisdiction of a timely challenge to Snohomish County's development regulation amendments which change standards for ADU development on lots 200,000 square feet (4.7 acres) or larger.

Conclusion

The Board finds that the Petitioner's PFR was timely filed, pursuant to RCW 36.70A.290; Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2)⁸; and the Board has subject matter jurisdiction over the challenged ordinance, which amends the County's development regulations, pursuant to RCW 36.70A.280(1)(a). Respondent's motion to dismiss is **denied**.

V. LEGAL ISSUES AND DISCUSSION

LEGAL ISSUE NO. 1

The Board's PHO set forth Legal Issue No. 1:

Legal Issue #1: Does adoption of Ordinance 04-021, amending the development standards for Accessory Dwelling units (allowing for the construction of detached dwelling units on lots 200,000 square feet or larger), fail to comply with RCW 36.70A.020(2), RCW 36.70A.020(1), RCW 36.70A.020(9), RCW 36.70A.070(5), RCW 36.70A.110(1) when the

⁸ See 1000 Friends Motion, Ex. 6.

ordinance allows for dwelling unit density that fails to protect rural lands and rural character?

Applicable Law and Discussion

Position of the parties

Petitioner argues that allowing mobile or manufactured homes as detached ADUs on rural lots increases density and alters the rural character. Petitioner relies on Growth Management Board precedents establishing that preservation of rural character requires a density of no more than one dwelling unit per five acres in the rural area, citing *Friends of the San Juans, et al. v. San Juan County (San Juan)*, WWGMHB Case No. 03-2-003c (Final Decision and Order, April 17, 2003); *Peninsula Neighborhood Association v. Pierce County (PNA II)*, CPSGMHB Case No. 95-3-0771 (Final Decision and Order, March 20, 1996); *Yanisch v. Lewis County (Yanisch)*, WWGMHB Case No. 02-2-0007c (Final Decision and Order, December 4, 2002). Petitioner notes that this Board and the Western Board have applied this standard to preclude detached ADUs on lots of less than 10 acres in the rural area, citing *PNA II* and *San Juan*. Petitioner invites this Board to rule as a matter of law that Snohomish County's amendments to its ADU regulations "double the allowable density" in the rural area. 1000 Friends PHB, at 21.

Snohomish County responds that its preexisting regulations allowed detached ADUs on large lots in rural zones and that therefore the amendments allowing manufactured homes do not increase allowable rural density. County Response, at 22-23. Alternatively, the County contends that the restrictions and conditions written into Ordinance 04-021 will ensure that rural character is protected as manufactured-home ADUs are developed. *Id.*, at 20-22.

Applicable law

RCW 36.70A.020(2) and (4)

Planning Goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development...

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.110(1)

Each county that is required or chooses to plan under RCW shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature....

RCW 36 70A.400

Accessory apartments. Any local government, as defined in RCW 43.63A.215,⁹ that is planning under this chapter shall comply with RCW 43.63A.215(3).

RCW 43.63A.215 (1) and (3)

(1) The department [CTED] shall, in consultation with the affordable housing advisory board created in RCW 43.185B.020, report to the legislature on the development and placement of accessory apartments. The department shall produce a written report by December 15, 1993¹⁰ which... (b) Makes recommendations to the legislature designed to encourage accessory apartments in areas zoned for single-family use...

(3) Unless provided otherwise by the Legislature, by December 31, 1994, local governments shall incorporate into their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulations, zoning regulation, and official control. To allow for local flexibility, the recommendation shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

Board Discussion

1. Harmonizing the ADU requirement with the goal of preventing sprawl. RCW 43.63A.215(4)(b) requires that counties planning under the GMA make provision for ADUs. The apparent purpose of this legislation is to support the housing goals of the GMA – housing affordability, variety, and preservation. RCW 36.70A.020(4). The legislation offers no guidance on how to harmonize the ADU requirement with other goals and requirements of the GMA, particularly the goals of preventing sprawling, low-density development and protecting rural character. RCW 36.70A.020(2); RCW 36.70A.030(14).

The Petitioner correctly recognizes that the GMA emphasizes the importance of rural lands and rural character, demanding protection of rural lands through a comprehensive

⁹ “Local governments” include counties required to plan under GMA. RCW 43.63A.215(4)(b).

¹⁰ The Department produced a Model Ordinance, Accessory Dwelling Unit Ordinance and Study (Washington State Department of Community Development, January 1994). Neither party to the present appeal has referenced the Department's standards or guidance.

plan’s “Rural Element.” RCW 36.70A.011. To protect the rural element of a comprehensive plan, a county must control rural development, assure visual compatibility with the surrounding rural area, reduce inappropriate conversion of rural land into sprawl, protect critical areas, and prevent conflicts with the use of separately designated lands. RCW 36.70A.070(5)(c); *John Diehl v. Mason County*, 94 Wn.App. 645,655, 972 P.2d 543 (1999); *Butler v. Lewis County*, WWGMHB 99-2-0027c (Final Decision and Order, June 30, 2000).

Precedents from both this Board and the Western Washington Growth Management Hearings Board,¹¹ focusing on rural parcels of less than 10 acres, have used the distinction between *attached* ADUs and *detached* (freestanding new structures) to harmonize the ADU requirement with the goals of preventing low-density sprawl and protecting rural character.¹²

This Board examined Pierce County’s ADU regulations in *Pierce County Neighborhood Association v. Pierce County* (**PNA II**), Case No. 95-3-0071 (Final Decision and Order, March 11, 1996) and concluded:

Construction of a detached new ADU on a parcel smaller than 10 acres is generally prohibited because it would effectively allow two freestanding dwelling units. The effect would necessarily be one freestanding dwelling on a lot smaller than 5 acres, which the Board has previously held to constitute urban growth. Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (e.g., a garage) in close association with the primary residence would not constitute new urban growth.

Id., at 22.

A similar issue was addressed more recently by the Western Board in Lewis County. In *Yanisch v. Lewis County* (**Yanisch**), WWGMHB Case No. 02-2-0007c, (Final Decision and Order, December 11, 2002), the Western Board said: “We have consistently found that densities greater than 1 unit per five acres are not rural densities.” The Western Board found that ADUs could be allowed in Lewis County as internal or attached units on single family lots of five acres or less. However, the Board ordered Lewis County to remove from the Lewis County Code the provisions that permitted detached ADUs on lots that did not contain the basic underlying rural density.

¹¹ To our knowledge, the Eastern Washington Growth Management Hearings Board has not considered this issue.

¹² *Alpine Evergreen et al. v. Kitsap County (Bremerton/Alpine)*, CPSGMHB Case No. 95-3-0039c (Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, February 8, 1999), at 40, cited in County Response, at 19, is not on point. The issue in *Bremerton/Alpine* was not rural density but whether allowance for ADUs must be factored into a County’s land capacity allowance.

The most thorough and recent review of this issue is in *Friends of the San Juans, et al. v. San Juan County (San Juan)*, WWGMHB Case No. 03-2-0003c (Final Decision and Order, April 17, 2003). While the *San Juan* decision involves some facts unique to the guesthouse industry in the San Juan Islands, this Board finds the underlying analysis of the impact of ADUs as detached new structures in the rural area is persuasive.

At argument, we asked the County to explain how a freestanding ADU differs from a single-family residence. The County responded that an ADU is limited in size to no more than 1,000 square feet. So, we asked, how is a freestanding ADU different from a single family residence of 1,000 square feet? The County responded that there are certain site limitations that would apply to an ADU, although the County also conceded that the site limitations may be waived. Other than size and potential site restrictions, the County acknowledged that a freestanding ADU is not *structurally* distinguishable from a single-family residence, since single ownership of the ADU and the main residence is not a structural characteristic.

We conclude that a freestanding ADU is a separate dwelling unit and has all the structural characteristics of a dwelling unit, whether it is owned by the owner of a principal residence or not. Also in areas where residential use is allowed in rural lands, allowing a freestanding ADU with a principal residence on lots of less than ten acres creates a density of greater than one dwelling unit to five acres. Densities of greater than one dwelling unit to five acres are not rural densities. Both this [Western] Board and the Central Board have consistently said that densities of more than one unit per five acres constitute urban growth¹³....Therefore, allowing freestanding ADUs together with a principal residence on lots of less than ten acres in rural areas constitutes inappropriate urban growth in a rural area.

Consistent with our previous decisions, we find that [San Juan County] Ordinance 21-2002 as it pertains to internal and attached ADUs in Rural Residential designations is consistent with the GMA and fulfills the County's obligations to provide for ADUs in rural single-family neighborhoods pursuant to RCW 43.63A.215. However, we continue to find that a freestanding ADU should be considered as one dwelling unit. The effect of not counting a freestanding ADU as a dwelling unit would

¹³ The Eastern Washington Growth Management Hearings Board has reached the same conclusion. "With one narrow exception, this Board has consistently found that anything under 5-acre lots is urban." *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 (Order on Remand, April 17, 2002), at 3. See also *John Diehl v. Mason County*, *supra*, at 656 (residential density of one dwelling unit per 2.5 acres is consistent with urban, not rural, development and allows for urban growth outside of the UGA in violation of GMA).

be the equivalent of permitting one dwelling unit on a lot of less than 5 acres in a rural area.

Id., at 25-26.

2. Snohomish County's 2004 ADU amendments. The County's stated purpose in adopting the 2004 amendments to its ADU standards was to increase ease, flexibility and affordability of developing detached ADUs in the rural area by allowing mobile homes and exempting them from compatibility and floor area requirements. *See* 1000 Friends Motion, Ex. 2 [Index 5].¹⁴ However, by crafting its manufactured housing exception for lots of 4.7 acres (200,000 square feet) or larger, rather than for lots of 10 acres (430,000 square feet) and more, the County in effect allows more than one dwelling unit per five acres, thus increasing and expanding an inconsistency with the GMA.¹⁵

Snohomish County acknowledged the risk of increased rural density and negative impact on rural character in a November 12, 2003, letter from Chief Planning Officer Linda Kruller to the Snohomish County Planning Commission. 1000 Friends Motion, Ex. 3 [Index 4]. Single-wide manufactured homes are typically larger than the 850 square foot floor area maximum allowed for detached ADUs, according to County staff. *Id.*, at 2. With manufactured homes there is less flexibility to meet the requirements for exterior compatibility with existing structures on the property. *Id.*, at 3. Affordability and faster construction timeframes will increase take-up of this housing type. *Id.*, at 2.

According to the Planning Officer:

- There is concern that the proposed amendments relaxing the size and compatibility standards for accessory apartments on 200,000 square foot or larger lots *may increase the potential for further development of rural lands*. The proposed amendments allow the use of a more affordable housing type that has a faster construction timeframe. These factors may make it easier and more appealing to develop accessory apartments on large lots. There is concern that without review for compatibility to the surrounding house type, *rural character would be modified*.
- Another concern was raised regarding the potential of the amendments to *increase rural density*. One housing unit per five acres was considered a maximum rural density by the Eastern Washington Growth Hearings

¹⁴ The County Council made the following findings:

1. The development standards for detached accessory apartments in SCC 30.28.010 and SCC 30.91A.050 are overly restrictive as applied to residential parcels 200,000 square feet or larger

2. Allowing increased flexibility for the establishment of accessory apartments will further the Growth Management Act's affordable housing goal set forth in RCW 36.70A.020(4). . .

1000 Friends Motion, Ex. 7 [Index 28], at 4.

¹⁵ The concerned citizen whose letter apparently launched the County's action lives on a 15-acre lot. Ex. 18.

Board Case, *City of Moses Lake v. Grant County*. Other Hearings Board orders have indicated that freestanding accessory apartments must comply with the maximum allowed density projections of comprehensive plans.... [W]ithout size restrictions, the proposed amendments may promote greater interest in developing accessory apartments as large as some existing homes in the rural area. As noted earlier, the *affordability and fast construction timeframe associated with mobile homes may increase interest in this type of development beyond the use intended* by accessory apartments. Staff has suggested that this allowance *might counteract the Countywide Planning Policies* and General Policy Plan policies related to the reasonable measures that guide the majority of residential development to urban areas....

- It has also been suggested that the elimination of the compatibility provision in SCC 30.28.010(5) on 200,000 square foot or larger lots allowed by the proposed amendment in SCC 30.28.010(11) *might hinder the protection of rural character*. Protection of the visual landscapes and compatibility is important in rural areas and is required under the Growth Management Act and the comprehensive plan General Policy Plan Goals.

Id., at 2-3 (*emphasis supplied*).

In these three paragraphs the County planning staff succinctly posed the GMA concerns created by adding manufactured housing as an allowable new freestanding ADU on rural lots of less than 10 acres: the amendment increases development of rural lands, thereby modifying rural character through increased density, increased size of rural dwellings, faster and cheaper development, lack of visual and compatibility standards, and incompatibility with County Comprehensive plan policies directing growth to urban areas.

How did the County planners propose to solve these GMA concerns?

Staff proposed revisions to the draft ordinance (1) requiring that a manufactured-home ADU be “subordinate” to and smaller than the primary existing home and (2) requiring screening (i.e., landscaping) to address compatibility issues. Ex 3 [Index 4], at 3. Under the 2002 ADU provisions, detached ADUs were strictly controlled for size and compatibility. An “Accessory Apartment – Detached” could not exceed “40 percent of the floor area of the single family dwelling unit to which it is accessory, or 850 square feet, whichever is less.” Ex. 1, Table, SCC 30.28.010(1). In the amended version of SCC 30.28.010, a “mobile home” constructed as an “Accessory Department – Detached” can exceed that size so long as its floor plan is less than the primary existing home. As the Petitioners note, under this ordinance two essentially equivalent freestanding structures could be built on a rural lot of less than five acres. 1000 Friends PHB, at 22.

County staff proposed that screening requirements and neighborhood compatibility would be addressed through administrative conditional review as set forth in SCC 30.43A.100. County Response, at 20-22, Ex. D. In the conditional review process a permit may only be issued if the application complies with the comprehensive plan and is compatible with the subject property and the immediate vicinity. *Id.* However, the conditional review provisions are broadly general, with no criteria specific to protection of rural character.

The final adopted Ordinance 04-021 incorporated the revisions proposed by the planning staff. 1000 Friends Motion, Ex. 7 [Index 28].

The Board finds that the staff proposals and the Ordinance as adopted fail to “reduce the inappropriate conversion of rural land into low density development.”¹⁶ RCW 36.70A.020(2). Manufactured-home ADUs as freestanding new structures on lots of less than 10 acres create a density of more than one unit in five acres. The Board finds nothing in the subordination requirement or the conditional use process to persuade it to abandon its established precedents. As the Board stated in *PNA II*, “Regardless of the size of the rural lot, ADUs attached to the main residence or a conversion of a detached existing structure (e.g., a garage) in close association with the primary residence would not constitute new urban growth.” *Id.*, at 22. However, by adding manufactured homes on lots of less than 10 acres, the County permits a growth level in rural areas that the Growth Management Hearings Boards have consistently found to constitute sprawl.

Conclusion

The Board finds that Ordinance 04-21, amending the County’s development standards for ADUs, **fails to comply** with the Growth Management Act’s requirement to protect rural lands and rural character [RCW 36.70A.070(5)], so far as the amendments add manufactured homes as allowable freestanding ADUs on lots smaller than 10 acres. The Board therefore **remands** this matter to Snohomish County.

B. LEGAL ISSUE NO. 2

The Board’s PHO set forth Legal Issue No. 2:

Legal Issue #2: Does adoption of Ordinance 04-021 substantially interfere with the goals of the Growth Management Act?

Applicable Law and Discussion

RCW 36.70A.302(1)(b) does not authorize the Board to make a determination of invalidity unless it is convinced that the continued validity of a comprehensive plan or

¹⁶ The record does not indicate whether the County considered solving GMA concerns by revising the draft ordinance to apply the manufactured home exception to lots of 10 acres or more.

development regulation would substantially interfere with the fulfillment of the Act's goals.

The County's record contains no information concerning the number or extent of rural lots subject to the amended development standard; the number or estimate of existing ADUs in the rural area, attached or detached; or the anticipated increase in rural ADU development likely to result from the allowance for manufactured homes. The County points to a one-page checklist that characterizes the likely impact on overall housing capacity in the entire county as "insignificant," County Response, at 19¹⁷, in contrast to the staff report that discussed the possibility of increased rural development. 1000 Friends Motion, Ex. 3 [Index 4].

1000 Friends, for its part, argues that the case must be decided as a matter of law, based on controlling Board precedents. Petitioner therefore has supplied no numbers, either to this Board or in its submission to the County Council,¹⁸ that demonstrate penetration rates of ADUs in rural areas, whether attached or detached, stick-built or manufactured. Petitioners have placed no facts in the record indicating that new manufactured-home ADUs are likely to be constructed on lots of less than 10 acres in significant numbers in the interim, degrading rural character, before the County can bring its regulations into compliance.

On this point, the present case is in sharp contrast to *San Juan, supra*, where the record included a detailed analysis of ADU utilization. On those facts, the Western Board found substantial interference with Goal 2 of the GMA and entered an order of invalidity.

Conclusion

Given the recode before the Board, the Board **declines** to enter a determination of invalidity.

¹⁷ Index 13, "Analysis of Building and Land Use Regulation Effects on Housing and Jobs," which concludes, "since accessory apartments account for a very insignificant portion of the county's housing starts, the proposal will not contribute significantly to overall housing capacity."

¹⁸ 1000 Friends Motion, Ex. 6.

VI. ORDER

Based upon review of Ordinance 04-021, the County's code provisions, the GMA, case law, prior Orders of this Board and the other Boards, the PFR, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1. Snohomish County's adoption of Ordinance 04-021 was **clearly erroneous** in amending the County's development regulations to expand provisions for new freestanding ADUs on rural lots of less than 10 acres.
2. The Board **remands** Ordinance 04-021 to the County with direction to take appropriate legislative action to bring the challenged portion of the legislation into compliance with the goals and requirements of the Act. The remand period extends until the Board finds compliance.
3. The Board sets the following Compliance Schedule:
 - By no later than **March 14, 2005**, the County shall take appropriate legislative action to bring the challenged portion of its ADU regulations into compliance with the goals and requirements of the GMA as interpreted and set forth in this Final Decision and Order (**FDO**).
 - By no later than **March 21, 2005**, the County shall file with the Board an original and four copies of a Statement of Actions Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply and may indicate what portions of the legislation respond to the issues laid out in the FDO. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioner. By this same date, the County shall file a **Remand Index**, listing the procedures and materials considered in taking the remand action.
 - By no later than **March 28, 2005**, the Petitioner may file with the Board an original and four copies of Comments on the County's SATC. Petitioner shall simultaneously serve a copy of its Comments on the County.
 - By no later than **April 4, 2005**, the County may file with the Board an original and four copies of the County's Reply to Comments. The County shall simultaneously serve a copy of such Reply on Petitioner.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **2:00 p.m. April 18, 2005** at the Board's offices. If the parties so stipulate, the Board will consider conducting the compliance hearing telephonically. If the County takes legislative compliance actions prior to the March 14, 2005 deadline set

forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 13th day of December 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Bruce C. Laing, FAICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

APPENDIX A

PROCEDURAL BACKGROUND

A. GENERAL

On June 14, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from 1000 Friends of Washington (**1000 Friends** or **Petitioners**). The matter was assigned Case No. 04-3-0018 and is hereafter referred to as *1000 Friends IV*. Board Member Margaret Pageler was the Presiding Officer (**PO**) for this matter. Petitioner challenges Snohomish County's (**Respondent** or **County**) adoption of Ordinance 04-021 amending Snohomish County's development regulations concerning accessory dwelling apartments (**ADUs**). The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or the **Act**) in amendments concerning ADUs in the rural area.

On July 16, 2004, the Board received a Notice of Association of Counsel associating Kenneth L. Lederman and the law firm of Riddell Williams P.S. as co-counsel for Petitioner in this action.

On June 17, 2004, the Board issued a Notice of Hearing; on July 19, 2004, the Board held the Prehearing Conference; and on July 21, 2004, the Board issued a Prehearing Order (**PHO**) setting the schedule and legal issues for this case.

On July 19, 2004, the Board received Snohomish County's Index to the Record.

B. DISPOSITIVE MOTIONS

On August 3, 2004, the Board received Snohomish County's Motion to Dismiss (**County Motion**) with five attachments and Petitioner's Motion for Summary Judgment (**1000 Friends Motion**) with seven attachments. Later on August 3, 2004, the Board received Snohomish County's Expedited Motion to Strike Petitioner's Motion for Summary Judgment. On August 4, 2004, the Board received the Response Memorandum of 1000 Friends of Washington in Opposition to Expedited Motion to Strike.

On August 4, 2004, the Board held a telephone conference with the parties to hear argument on the motion to strike. On August 6, 2004, the Board issued its Order on Motions, suspending the motions calendar in this case and dismissing the dispositive motions of both parties without prejudice.

C. BRIEFING AND HEARING ON THE MERITS

On September 13, 2004, the Board received the Prehearing Brief of 1000 Friends of Washington (**1000 Friends PHB**). On October 5, 2004, the Board received Snohomish County's Motion to Dismiss and Prehearing Brief (**County Response**).

On October 7, 2004, the Board received a Stipulation to Continue Briefing Schedule, submitted jointly by Petitioner and Respondent, requesting the Board to excuse the tardy filing of the County Response as a legal messenger's error and to extend the briefing schedule by one day.

On October 11, 2004, the Board issued its Order Continuing Briefing Schedule.

On October 12, 2004, the Board received the Reply Brief of 1000 Friends of Washington (**1000 Friends Reply**).

On November 1, 2004, the Board held a Hearing on the Merits (**HOM**) at the Board's offices in Suite 2470, 900 Fourth Avenue, Seattle, Washington. Board Members Margaret A. Pageler, Presiding Officer, Edward G. McGuire, and Bruce C. Laing were present for the Board. Petitioner was represented by Ken Lederman of Riddell Williams, P.S. Respondent was represented by Snohomish County Deputy Prosecuting Attorney Jason Cummings. Board externs Julie Taylor and Jessica Clawson also attended. Court reporting services were provided by J. Gayle Hays, of Byers and Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 11:00 a.m. The Board did not order a transcript of the HOM.