

serve a copy of the legislative enactment(s) and compliance statement on Petitioner.

3. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. November 28, 2005** at the Board's offices. The only matter at issue at this compliance proceeding will be whether the Town of Eatonville has enacted the required update(s) to its comprehensive plan and implementing development regulations. The substance of those enacted plan and development regulation updates will not be part of the compliance proceeding in this case – CPSGMHB Case No. 05-3-0028 *Cossalman v. Town of Eatonville*.

5/13/05 Order, at 4, (underlining emphasis supplied).

On October 29, 2005, the Board received the Town of Eatonville's "Statement of Actions Taken to Comply" (SATC). The SATC indicated that Eatonville had "adopted its revised comprehensive plan on July 11, 2005, and adopted Critical Areas regulations on July 25, 2005 [*see* Ordinance Nos. 2005-9 and 2005-10, respectively].

While copies of Ordinance Nos. 2005-9 and 2005-10 were attached to the SATC, copies of the updated Plan and development regulations were not attached. Consequently, the Board directed the Town of Eatonville to submit copies of these documents to the Board by November 21, 2005.

On November 21, 2005, the Board received copies of "Comprehensive Plan 2002-2022 – Town of Eatonville" and "Critical Areas Code – Town of Eatonville." Both documents were dated October 12, 2005. On the same date, the Board received Eatonville's affidavit of publication for October 12, 2005 from The Dispatch. The affidavit indicated that both the Plan and Critical Areas regulations had been adopted in July 2005.

On November 28, 2005, Edward G. McGuire, the Presiding Officer for the Board in this matter, convened the compliance hearing. Board members Bruce C. Laing and Margaret A. Pageler were also present. Respondent Town of Eatonville was represented by Ed Hudson and Mart Kask. Petitioners Stephen W. Cossalman, Charles K. McTee and G. Steven Van Cleve, appeared *pro se*. The compliance hearing was recorded.

II. DISCUSSION

It is undisputed that the Town of Eatonville took the required legislative action to review, evaluate and update its Comprehensive Plan. *See* Ordinance No. 2005-9.¹ The City

¹ The Board notes that Eatonville also took legislative action to adopt Critical Areas regulations in a timely manner. However, the Town's Critical Areas regulations were not at issue in the remand action.

contends that since there were no changes needed for updating its development regulations to implement the Plan no action was taken pertaining to the zoning regulations. However, there is no indication in the SATC or documentation from the Town that a legislative action was taken regarding the required review and evaluation of the Town's development regulations – *i.e.* zoning.

RCW 36.70A.130(1) provides, in relevant part, “(a) . . . a city shall take legislative action to review, and if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter. . . (b) *Legislative action means the adoption of a resolution or ordinance following notice and public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.* (Emphasis supplied.)

The Town is reminded that the GMA requires that a jurisdiction's implementing development regulations to be consistent with and implement its Plan. See RCW 36.70A.040(3)(d) and .130(1)(d).

The Board finds and concludes:

1. The Town of Eatonville adopted Ordinance No. 2005-9, repealing its 1993 Comprehensive Plan and adopting a new Comprehensive Plan, on July 11, 2005. See SATC, Attachment 1 – Ordinance No. 2005-9; and the Town of Eatonville Comprehensive Plan – 2002-2022, dated 10/12/05
2. The Town of Eatonville failed to take legislative action regarding its duty to review and evaluate its implementing development regulations to ensure compliance with the GMA. See RCW 36.70A.130(1)(a-b).
3. By enacting Ordinance Nos. 2005-9 the Town of Eatonville has discharged its duty to act in reviewing and updating its Comprehensive Plan, as required by RCW 36.70A.130(1).
4. Therefore, based upon RCW 36.70A.130(1) and the Board's 5/13/05 Order, the Board will enter a **Finding of Partial Compliance** pertaining to the Town's Comprehensive Plan and a **Finding of Continuing Noncompliance** pertaining to the Town's implementing development regulations.
- 5.

III. ORDER

Based upon the Board's review of the GMA, prior decisions of the Boards, the May 13, 2005 Order, Ordinance Nos. 2005-9, the Town's SATC, the presentations of the parties at

the compliance hearing, and having discussed and deliberated on the matter, the Board
ORDERS:

- The Town of Eatonville's adoption of Ordinance Nos. 2005-9 discharges the Town's duty to take action to review, evaluate and update its *Comprehensive Plan* as required by RCW 36.70A.130. Therefore, pertaining to this action, the Board enters a **Finding of Compliance - Plan**.
- However, notwithstanding the requirements of RCW 36.70A.130 or the Board's 5/13/05 Order, the Town of Eatonville failed to review, evaluate and take legislative action to address its development regulations – zoning. Therefore, the Board enters a Finding of Continuing Noncompliance – Development Regulations. Therefore, the Town of Eatonville is directed to take the necessary legislative action to comply with the review, evaluation and legislative action requirements of RCW 36.70A.130(1) according to the following compliance schedule:
 1. By no later than **February 28, 2006**, the Town of Eatonville shall take appropriate legislative action to comply with the review, evaluation and update requirements of RCW 36.70A.130 for its development regulations - zoning.
 2. By no late than **March 7, 2006**, the Town of Eatonville shall file with the Board an original and four copies of the legislative enactment(s) adopted by the Town of Eatonville to comply with RCW 36.70A.130 along with an statement of how the enactments comply with RCW 36.70A.130 (**Statement of Actions Taken to Comply - SATC**). The Town shall simultaneously serve a copy of the legislative enactment(s) and the SATC on Petitioner.
 3. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. March 13, 2006** at the Board's offices. The only matter at issue at this compliance proceeding will be whether the Town of Eatonville has taken legislative action reflecting the results of its review and evaluation, and revisions – if necessary – of its implementing development regulations. The substance of any enacted development regulation update will not be part of the compliance proceeding in this case – CPSGMHB Case No. 05-3-0028 *Cossalman v. Town of Eatonville*.

If the Town of Eatonville completes the required compliance actions prior to February 28, 2006, and desires to alter the compliance hearing date, the Town should notify the Board and Petitioners immediately. The Board will strive to alter the compliance schedule as needed. Additionally, with the consent of the parties, the Board may conduct the remaining portion of this compliance proceeding telephonically.

So ORDERED this 29th day of November, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
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 242-02-832.²

² Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)