

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

MASTER BUILDERS OF KING AND	)	
SNOHOMISH COUNTIES,	)	<b>Case No. 05-3-0011</b>
	)	
Petitioner,	)	<b>(MBA-Bothell)</b>
	)	
v.	)	
	)	
CITY OF BOTHELL,	)	<b>ORDER OF DISMISSAL and</b>
	)	<b>JOINING MBA to the</b>
Respondent.	)	<b>FUHRIMAN COMPLIANCE</b>
	)	<b>PROCEEDING</b>

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**I. BACKGROUND**

On January 28, 2005 the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**), with two (2) attachments, from Master Builders Association of King and Snohomish Counties (**Petitioner** or **MBA**). The matter was assigned CPSGMHB Case No. 05-3-0011. Board member Edward G. McGuire is the presiding officer in this matter. Petitioner asserts that the City of Bothell failed to comply with the requirements of the Growth Management Act (**GMA** or **Act**) by not reviewing, revising, or updating its implementing development regulations by the December 1, 2004 deadline. [Established by RCW 36.70A.130(1) and (4).]

To support their allegation Petitioners attached a copy of this Board’s decision in *FEARN, et al., v. City of Bothell (FEARN)*, CPSGMHB Consolidated Case No. 04-3-0006c, Order on Motions, (May 20, 2004) and a copy of City of Bothell Resolution No. 1166 (2004).

In *FEARN*<sup>1</sup> the Board found that the challenge to the City of Bothell’s inaction in reviewing and revising its GMA implementing development regulations was premature, since the GMA deadline for action was December 1, 2004. Therefore the challenge was dismissed. *See FEARN*, at 9-10.

Resolution No. 1166, passed December 1, 2004 by the City of Bothell, verifies that the City of Bothell had not acted to update its GMA implementing development regulations. However, the Resolution expressed the City’s intent to endeavor to complete this task in early 2005. *See* Resolution 1166 (2004), at 2.

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<sup>1</sup> The Board notes that MBA was a party to that proceeding.

## II. DISCUSSION

The Board notes that MBA has asserted an identical challenge to one already ruled upon by the Board where the City of Bothell was found not to comply with the GMA, specifically RCW 36.70A.130(1) and (4). In that case, Resolution 1166 was also relied upon by Petitioner. The Board stated in *Fuhriman v. City of Bothell (Fuhriman)*, CPSGMHB Case No. 04-3-0027, Order Finding Noncompliance – Failure to Act [failure to update implementing development regulations], (January 12, 2005):

The City of Bothell has **failed to act** to revise and update its comprehensive plan *implementing development regulations* and **has not complied** with the requirements of RCW 36.70A.130(1) and (4), regarding these development regulations. Therefore the City of Bothell is directed to take the necessary legislative action to comply with the review, evaluation and update requirements of RCW 36.70A.130(1) for its implementing development regulations according to the following schedule: [take legislative action by July 11, 2005]<sup>2</sup>

*Fuhriman*, 1/12/05 Order, at 6.

It would be duplicative for the Board to conduct additional proceedings for a matter on which the Board has already ruled. As *Fuhriman* established, the City of Bothell has not complied with the review, revision and update requirements of RCW 36.70A.130(1) and (4), as it applies to their implementing development regulations. Additionally, the Board has established a compliance schedule for the City and set July 11, 2005 as the deadline for legislative action in the City's review and update of its implementing development regulations. Therefore, the Board will **dismiss** the present MBA PFR, but join MBA as a party to the *Fuhriman* compliance proceedings. A copy of the 1/12/05 Order in *Fuhriman* is attached to this Order.

As a party to the *Fuhriman* compliance proceeding, the City of Bothell shall provide a copy of its compliance statement, with attached legislative enactments, to MBA by **July 18, 2005**. MBA may file with the Board a Response to the City's compliance statement and enactments by **July 21, 2005** (copy to be served on the City simultaneously). MBA may also attend and participate in the **July 25, 2005** compliance hearing. The Board also

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<sup>2</sup> The Board also set a compliance hearing for July 25, 2005 and noted,

The only matter at issue at this compliance proceeding will be whether the City of Bothell enacted the required update(s) to its implementing development regulations. The substance of those enacted updated development regulations will **not** be part of the compliance proceeding in this case – CPSGMHB Case No. 04-3-0027 *Fuhriman v. City of Bothell*. Any challenges to the substance of those enactments must be brought through a timely filed petition for review.

FEARN, 1/12/05 Order, at 6.

advises Petitioner MBA that, as indicated in *Fuhriman*, the only matter at issue at the July 5, 2005 hearing will be whether the City of Bothell enacted revisions and update(s) to its implementing development regulations; any challenge to the substance of those enactments must be brought in a new petition for review.

### III. ORDER

Based upon review of Petitioner MBA's PFR, Resolution 1166 (2004), the GMA, the Board's Rules of Practice and Procedure, prior orders of this Board (particularly *Fuhriman*), the orders of the other GMHBs, and having deliberated on the matter the Board ORDERS:

- The City of Bothell's **noncompliance** with the review and update requirements of RCW 36.70A.130(1) and (4), pertaining to the City's implementing development regulations **was established** in *Fuhriman v. City of Bothell*, CPSGMHB Case No. 04-3-0027, Order Finding Noncompliance – Failure to Act [failure to update implementing development regulations], (Jan. 12, 2005). *Fuhriman* provided the City with a compliance schedule within which to take legislative action to comply. A copy of the *Fuhriman* Order is attached.
- The Petition for Review filed by the Master Builders of King and Snohomish Counties is **dismissed**.
- The Master Builders of King and Snohomish Counties are **joined** as parties in the compliance proceeding in *Fuhriman, supra*.

So ORDERED this 1st day of February, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, AICP  
Board Member

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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.