

Petitioners challenge the failure of the City of Sammamish (**City** or **Respondent**) to complete its comprehensive plan and development regulation review and update by December 1, 2004. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or the **Act**).

On February 4, 2005, the Board issued a Notice of Hearing, establishing a prehearing conference and setting a tentative case schedule.

On February 7, 2005, the Board received a Notice of Appearance from Bruce Disend representing City of Sammamish.

On February 28, 2005, the Board received Petitioners' Motion Relating to Prehearing Conference. The Motion requested the Board "to require the City to verify and document at the Prehearing Conference whether the City took the required legislative action. If not, Petitioners request this Board to immediately issue a finding of noncompliance and establish a compliance schedule to which the City should stipulate." Motion, at 3.

On March 9, 2005, the Board issued an Order Amending Schedule for Prehearing Conference.

On March 15, 2005, the Board held a prehearing conference by telephone. Board members Bruce Laing, Ed McGuire and Margaret Pageler participated for the Board. Duana Koslovskova represented Petitioners and Bruce Disend represented Respondent. During discussion of the issues in the case, the parties agreed that the issues could be narrowed or resolved. The prehearing conference was adjourned to noon, March 24, pending further discussion between the parties.

On March 15, 2005, the Board received a letter from Duana Kolouskova regarding a pending agreement between the parties.

On March 23, 2005, the Board received Respondent's "Status Report on Camwest v. City of Sammamish" with attached "Sammamish Critical Areas Regulations Update – Scope of Work."

On March 24, 2005, the Board reconvened the adjourned PHC by teleconference. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board members Ed McGuire and Bruce Laing in attendance. Duana Koslovskova represented Petitioners and Bruce Disend represented Respondent. Mr. Disend acknowledged that the City has not completed updating and adopting its development regulations but argued that the work could not be done within the statutory 180-day compliance period. The Board took the matter under advisement and adjourned the Prehearing Conference.

On April 1, 2005, City Clerk Melonie Anderson, at the request of the Presiding Officer, provided the Board by e-mail, copies of the ordinances adopting the City of Sammamish Comprehensive Plan, development regulations and zoning map.

II. FAILURE TO ACT - DISCUSSION

Absent a request for settlement extension, as provided for in RCW 36.70A.300(2), the Board has no authority to stay its proceedings but must issue a ruling finding compliance or noncompliance within 180 days of filing of a PFR.

At the Prehearing Conference, the Board sought clarification from the City of Sammamish regarding whether it had taken legislative action to update its comprehensive plan and development regulations by December 1, 2004, as required by RCW 36.70A.130(1)(a) and (4)(a). The City indicated that its Comprehensive Plan was adopted in 2003 and development regulations were adopted subsequently.² However, the City conceded in its March 23, 2005, "Status Report on Camwest v. City of Sammamish" that it had not acted by December 1, 2004 to complete adoption of development regulations. "There are two regulations that remain to be adopted: (1) The City's Critical Area Ordinance; and (2) an ordinance that will implement growth phasing." The Status Report indicated that the City intended to act on the growth phasing ordinance by July 1, 2005, and to complete the CAO by December 31, 2005. The City is willing to enter into a compliance schedule reflecting these target dates.

The City having **conceded that the City had not acted to complete the adoption of its implementing development regulations and critical area ordinance by December 1, 2004, the Board will issue an Order Finding Noncompliance** regarding a failure to act to update the City's implementing development regulations. The Board's Order includes a compliance schedule and date for a compliance hearing.

RCW 36.70A.300(3)(b) provides, in relevant part:

The board shall specify a reasonable time *not in excess of one hundred eighty days* or such longer period as determined by the board in cases of *unusual scope or complexity* within which the ... city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

The Board allows the City the full statutory compliance period, 180-days, in order to take the required action, but if the City acts prior to the date set for the compliance hearing,

² At the Presiding Officer's request, the City Clerk by e-mail provided the Board copies of Ordinance No. 02003-130, dated Sept. 16, 2003, "Adopting the City of Sammamish Comprehensive Plan," and Ordinance No. 02003-132, dated Dec. 2, 2003, "Adopt[ing] New Development Regulations to Implement the Sammamish Comprehensive Plan," including the City of Sammamish Zoning Map.

the City could move to accelerate the compliance hearing date. The only issue at the compliance hearing will be whether the City of Sammamish completed adoption of its implementing development regulations and critical areas regulations. The substance of those enacted regulations will not be part of the compliance proceeding³ in this case – CPSGMHB Case No. 05-3-0012 *Camwest, et al., v. City of Sammamish*.

The Board notes that Legal Issues 1, 2, 4, and 6 challenge the City's failure to provide effective public participation in the required update of its development regulations.⁴ In light of the Board's decision to issue a Finding of Noncompliance related to the City of Sammamish's failure to act with respect to its implementing development regulations, the Board anticipates that opportunities for citizen participation will be incorporated in the City's process for adopting the needed regulations (as outlined, for example, in the "Sammamish Critical Areas Regulations Update – Scope of Work"). The City's Statement of Actions Taken to Comply should indicate the measures taken to meet the GMA public participation requirements.

The Board finds and concludes:

1. RCW 36.70A.130(1)(a) required the City of Sammamish to "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 [the GMA]" by December 1, 2004. *See* RCW 36.70A.130(4)(a).
2. The City of Sammamish was incorporated in 1999. The City by Ordinance No. 02003-130, dated September 13, 2003, adopted its Comprehensive Plan and by Ordinance No. 02003-132, dated December 2, 2003, adopted implementing development regulations and a zoning map.
3. The City of Sammamish acknowledges that revisions and amendments are needed to its development regulations – specifically, adoption of the growth phasing ordinance and update of critical areas regulations - to ensure that they comply with the requirements of the GMA. *See* Status Report on *Camwest v. Sammamish*.

³ The substance of any update to the City's implementing development regulations must be substantively challenged through a new petition for review. The Board encourages this approach to clarify and narrow the scope of Petitioners' challenge and also to allow for the possibility of consolidating PFRs if other challenges to this action were filed with the Board.

⁴ Legal Issue 1: "...failing to provide adequate opportunities for citizen participation and review..."

Legal Issue 2: "...failing to provide effective notice and opportunity for citizen participation and review..."

Legal Issue 4: "...failing to establish and broadly disseminate a public participation program..."

Legal Issue 6: "...failing to provide appropriate and adequate opportunities for early and continuous public participation and review, including comment periods, opportunity for testimony, notice and publication..."

4. The City of Sammamish concedes, and the Status Report verifies, that the City of Sammamish **did not** fully adhere to the update requirements of RCW 36.70A.130(1) and (4).
5. In 2003, the City of Sammamish adopted its Comprehensive Plan, discharging the City's duty to act to update its Plan, as set forth in RCW 36.70A.130(1) and (6), and **complying** with this requirement of the GMA as it relates to Sammamish's Plan.
6. The City of Sammamish concedes that it has not acted to complete the update of its implementing development regulations as required by RCW 36.70A.130(1)(a) and (4)(a).
7. Therefore the Board will enter an Order Finding Noncompliance – Failure to Act [regarding the City of Sammamish's implementing development regulations and critical areas regulations].
8. The Board will set forth a compliance schedule within which the City shall take the required action to update and revise its implementing development regulations.

III. ORDER

Based upon the Board's review of the GMA, the Board's Rules of Practice and Procedure, the *Camwest* PFR, the submittals of the parties, the City of Sammamish's Status Report on *Camwest v. City of Sammamish*, having discussed the matter with the parties at the prehearing conference, and having deliberated on the matter the Board ORDERS:

- Petitioners' Motion Related to Prehearing Conference is **granted**;
- The City's 2003 adoption of its Comprehensive Plan **complies** with and discharges the City's *duty to act* to revise and update its *Plan* as required by RCW 36.70A.130(1), (4) and (6);
- The City of Sammamish has **failed to act** to complete the revision and update of its comprehensive plan *implementing development regulations – specifically, the growth phasing ordinance and the critical areas ordinance* - and **has not fully complied** with the requirements of RCW 36.70A.130(1) and (4) regarding development regulations. Therefore, the City of Sammamish is directed to take the necessary legislative action to comply with the revision and update requirements of RCW 36.70A.130(1) according to the following compliance schedule:

1. By no later than **September 29, 2005**, the City of Sammamish shall take appropriate legislative action to fully comply with the *implementing development regulations update* requirements of RCW 36.70A.130.
2. By no late than **October 10, 2005**, the City of Sammamish shall file with the Board an original and four copies of the legislative enactment(s) adopted by the City of Sammamish to comply with RCW 36.70A.130 along with a statement of how the enactments comply with RCW 36.70A.130 and a summary of the public notice and participation process (**compliance statement**). The City shall simultaneously 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. October 17, 2005** at the Board's offices. The only matter at issue at this compliance proceeding will be whether the City of Sammamish enacted the required update(s) to its implementing development regulations. The substance of those enacted updated regulations will not be part of the compliance proceeding in this case – CPSGMHB Case No. 05-3-0012 *Camwest, et al., v. City of Sammamish*.

If the parties [*Camwest* and *City of Sammamish*] so stipulate, the Board will consider conducting the compliance proceeding telephonically. If the City of Sammamish takes the required legislative action prior to the September 29, 2005 deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 1st day of April 2005,

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Margaret A. Pageler, Board Member

Bruce C. Laing, FAICP, Board Member

Edward G. McGuire, Board Member