CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

STEPHEN W. COSSALMAN, CHARLES K. McTEE, ARLEN PARANTO and STEVEN VAN CLEVE, Petitioners, v. TOWN OF EATONVILLE, Respondent.	)	**Case No. 05-3-0028** ***(Cossalman)*** **ORDER FINDING NONCOMPLIANCE – FAILURE TO ACT [failure to update comprehensive plan and development regulations]**

I. BACKGROUND

On March 29, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Stephen W. Cossalman, Charles K. McTee, Arlen Paranto and Steven Van Cleve (**Petitioners** or **Cossalman**). The matter was assigned Case No. 05-3-0028. Edward G. McGuire will serve as the presiding officer (**PO**) in this matter. Petitioners challenge the Town of Eatonville's (**Respondent** or **Eatonville**) failure to act in reviewing, evaluating and updating its comprehensive plan and development regulations as required by the Growth Management Act (**GMA** or **Act**), and the adoption of Resolution 2005-O, declaring certain lands surplus and authorizing their sale.

On April 8, 2005, the Board issued a "Notice of Hearing" (**NOH**) in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case. The NOH also provided:

> **One of the assertions in the *Cossalman* PFR is that the Town of Eatonville "failed to act" pursuant to the legislatively established deadline for review and legislative action as established in RCW 36.70A.130(1) and (4). Resolution of this question is a simple matter of fact. Either the Town of Eatonville took the required legislative action by the December 1, 2004 statutory deadline or it did not. The Town of Eatonville should be prepared at the PHC to verify and document that it took the required legislative action, in which case the matter will proceed according to the tentative schedule below. Alternatively, if the Town of Eatonville did not complete its review and take legislative action in adherence to the statutory deadline, the**

> **Town should be prepared to so stipulate and propose a compliance schedule. In the event, the Town stipulates to noncompliance, the Board will issue a finding of noncompliance and establish a compliance schedule[1] within which the Town shall comply.**
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> **Regarding the second assertion, challenging adoption of Resolution 2005-O, Petitioner should be prepared to more clearly specify for the Board which section(s) of the GMA this action fails to comply with. *See* WAC 242-02-210(2)(c).**

NOH, at 4-5.

On May 9, 2005, the Board conducted the PHC at the Board's offices in Seattle. Board member Edward G. McGuire, Presiding Officer (**PO**) in this matter, conducted the conference. Board members Bruce C. Laing and Margaret A. Pageler were also present. Petitioners Cossalman, McTee, Paranto and Van Cleve all appeared pro se. Robert E. Mack represented Respondent Town of Eatonville. Mart Kask also attended.

Petitioners' PFR posed eight issues for the Board. The first three issues pertained to an alleged "failure to act" in updating the Town's comprehensive plan and development regulations; the other five issues challenged the Town's adoption of Resolution R-2004-O, declaring certain property surplus. This Order addresses the first three issues – the failure to act question.

II. FAILURE TO ACT - DISCUSSION

The Board sought clarification from the Town of Eatonville regarding whether it had taken the required 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). Counsel to the Town, Robert Mack, presented a "Stipulation of Noncompliance" (**Stipulation**) to the Board. The Stipulation provided "The Town Council of the Town of Eatonville did not revise its comprehensive plan or its development regulations as of the date of December 1, 2004." Stipulation, at 2. In short, the Town conceded, as evidenced by the Stipulation, that it had not acted by December 1, 2004 to complete its Plan and development regulation review and update as required by RCW 36.70A.130.

Therefore, **the Board** concluded, and orally **ruled, that it would issue an Order Finding Noncompliance** regarding a failure to act to update Eatonville's comprehensive plan and implementing development regulations. The Board's Order would include a

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[1] RCW36.70A.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.

compliance schedule and date for a compliance hearing. The Board indicated that it would allow Eatonville the full statutory compliance period, 180-days, in order to take the required action, but that if the Town acted prior to the date set for the compliance hearing, Eatonville could move to accelerate the compliance hearing date. The only issue at the compliance hearing will be whether the Town of Eatonville enacted the required updates to its comprehensive plan and implementing development regulations, the substance of those enactments will not be part of the compliance proceeding[2] in this case – CPSGMHB Case No. 05-3-0028 *Cossalman v. Town of Eatonville*.

III. SEGREGATION OF REMAINING ISSUES

The Board and the parties then discussed Petitioners challenge as it related to Resolution R-2004-O. The parties indicated their desire to continue to pursue the challenge to this action of the Town. The Board decided to segregate the five issues relating to the Resolution and distinguish that portion of the case from the failure to act issues. The Board then reviewed the schedule and remaining issues. Prior to the close of the prehearing conference, the Board indicated it would issue a separate Prehearing Order for the remaining issues and assign a new case caption and case number.

With no further matters to come before the Board, the Board informed the parties that an Order Finding Noncompliance would be forthcoming, and the PHC was adjourned at 11:30 a.m.

IV. FINDINGS AND CONCLUSIONS

The Board finds and concludes:

1. RCW 36.70A.130(1)(a) required the Town of Eatonville 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 Town of Eatonville concedes, per the Stipulation, that the Town of Eatonville **did not** adhere to the update requirements of RCW 36.70A.130(1) and (4). See Stipulation, at 1-2.

3. Therefore the Board will enter an Order Finding of Noncompliance – Failure to Act [regarding the Town of Eatonville's comprehensive plan and implementing development regulations update].

4. Having failed to act to update and revise its Plan and implementing development regulations pursuant to RCW 36.70A.130(1) and (4) the Board will set forth a

[2] The Board and the parties discussed and acknowledged the possibility of the substance of any update to the City's implementing development regulations being substantively challenged through a new petition for review.

compliance schedule within which the Town shall take the required action to update and revise its comprehensive plan and implementing development regulations.

V. ORDER

Based upon the Board's review of the GMA, the Board's Rules of Practice and Procedure, the Cossalman PFR, the submittals of the parties, the Town of Eatonville's Stipulation of Noncompliance, having discussed the matter with the parties at the prehearing conference, and having deliberated on the matter the Board ORDERS:

- The Town of Eatonville has **failed to act** to revise and update its comprehensive plan and implementing development regulations and **has not complied** with the requirements of RCW 36.70A.130(1) and (4). Therefore, the Town of Eatonville 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 **November 7, 2005**, the Town of Eatonville shall take appropriate legislative action to comply with the comprehensive plan and implementing development regulations update requirements of RCW 36.70A.130.

    2. By no late than **November 17, 2005**, 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 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.

If the Town of Eatonville takes the required legislative action prior to the November 7, 2005, 2005 deadline set forth in this Order, the Town may file a motion with the Board requesting an adjustment to this compliance schedule.

If the parties [Cossalman, et al. and Town of Eatonville] so stipulate, the Board will consider conducting the compliance proceeding telephonically.

So ORDERED this 13th day of May 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.