

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

STEPHEN W. COSSALMAN, CHARLES K. McTEE, ARLEN PARANTO and STEVEN VAN CLEVE,	)	
	)	<b>Case No. 05-3-0028</b>
	)	<i>(Cossalman)</i>
Petitioners,	)	
	)	
v.	)	
	)	<b>ORDER FINDING</b>
TOWN OF EATONVILLE,	)	<b>COMPLIANCE</b> [Re: Development
	)	Regulations]
Respondent.	)	
	)	

**I. BACKGROUND**

This proceeding commenced on March 29, 2005, when the above named Petitioners filed a petition for review (**PFR**) challenging the Town of Eatonville’s compliance with the Growth Management Act (**GMA**). The PFR asserted two basic challenges: first, that Eatonville had “failed to act” by not reviewing and updating its comprehensive plan and development regulations by the statutory deadline of December 1, 2004; second, that the adoption of a resolution [R 2005-O] declaring certain property surplus and authorizing its sale did not comply with the GMA.

At the May 9, 2005 prehearing conference, Eatonville presented the Board with a “Stipulation of Noncompliance” indicating that the Town had not, in fact, acted to review and update its plan or development regulations. Consequently, on May 13, 2005, the Board issued an “Order Finding Noncompliance – Failure to Act [failure to update comprehensive plan and development regulations]” (**5/13/05 Order**)<sup>1</sup>. The 5/13/05 Order set out a schedule for the Town to complete the required legislative actions – the compliance schedule. The compliance hearing was set for November 28, 2005. This Order also segregated the challenge to Resolution R 2005-O into a separate case, setting it on a separate hearing and briefing schedule.<sup>2</sup> See 5/13/06 Order, at 3.

On the only remaining issue in this matter – the “failure to act” issue – the Board held the compliance hearing. The written materials presented and oral assertions made at the

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<sup>1</sup> See *Cossalman, McTee, Parento and Van Cleve v. Town of Eatonville*, CPSGMHB Case No. 05-3-0028, Order Finding Noncompliance – Failure to Act [failure to update comprehensive plan and development regulations], (May 13, 2005).

<sup>2</sup> The segregated matter challenging R 2005-O was assigned CPSGMHB Case No. 05-3-0032 in a Prehearing Order issued the same day – May 13, 2005. See PHO, at 3. Petitioners challenge to Resolution R 2005-O was eventually dismissed with prejudice. See *Cossalman, McTee, Parento and Van Cleve v. Town of Eatonville*, CPSGMHB Case No. 05-3-0032, Order on Motions, (Jun. 20, 2005).

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compliance hearing indicated that the Town of Eatonville had adopted Ordinance No. 2005-09,<sup>3</sup> which revised and updated its comprehensive plan; and adopted Ordinance No. 2005-10, which adopted the Town's critical areas code. However, Eatonville conceded that it had not acted to review and update its development regulations to implement the revised plan. Consequently, on November 29, 2005, the Board issued its "Order Finding Partial Compliance [Re: Plan] and Order Finding Continuing Noncompliance [Re: Development Regulations]" (**11/29/05 Order**). This Order established a new compliance schedule and date for the compliance hearing – March 13, 2006.

The Order stated:

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*

11/29/05 Order, at 4.

On March 7, 2006, the Board received a timely "Statement of Actions Taken to Comply" (SATC) from the Town of Eatonville. The SATC indicated that in order to comply with the GMA and Board's Order, the Town of Eatonville had adopted: 1) Ordinance No. 2006-4, adopting revising its development regulations to make them consistent with its plan; and 2) Ordinance No. 2006-6, adopting development regulations near the Eatonville Airport – "Airport Regulations."

On March 9, 2006, the Board received "Petitioners' Response to Town of Eatonville Statement of Actions Taken to Comply" (**Petitioners Response**) with 7 attached exhibits labeled A – F. The crux of Petitioners' concern is that the adoption of Ordinance No. 2006-6 fails to discourage incompatible uses in areas closest to the runway at Eatonville airport and the adopted regulations are inconsistent with the Plan. Petitioners Response, at 1-2.<sup>4</sup>

On March 10, 2006, the Board received, via e-mail, "Declaration of Mart Kask, "Town Planner, Responding to Petitioners' Criticism of Airport Regulations," and "Declaration of Tom Smallwood." Mr. Kask's declaration included rebuttals to Petitioners' Response; Mayor Smallwood's declaration indicated that although Mr. Van Cleve had participated in meetings on the Airport Regulations, he had not put his concerns in a written form that the Town could address.

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<sup>3</sup> The same Petitioners have subsequently challenged the Town's adoption of their Plan update as reflected in Ordinance No. 2005-9. The challenge to the substance of the Plan is pending in CPSGMHB Case No. 05-3-0046c.

<sup>4</sup> The Board notes that four of the seven issues presented in CPSGMHB Consolidated Case No. 05-3-0046c involves the *Plan's* treatment of Swanson Field.

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On March 13, 2006 Board member Edward G. McGuire convened the Compliance Hearing by telephonic conference. Board Members Margaret Pageler and Bruce Laing were present for the Board. Ed Hudson represented the Town of Eatonville and Petitioners Cossalman, McTee, Parento and Van Cleve represented themselves.

The Board noted that Petitioners Response and exhibits, as well as the e-mail declarations by Mr. Kask and Mayor Smallwood, seemed to go to the question of whether the Airport Regulations complied with the GMA and were consistent with the Town's Plan. These concerns are substantive and beyond the scope of the compliance hearing. The Board then emphasized that, as stated in the Board's 11/29/05 Order,

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.

11/29/05 Order, at 4.

The Board then asked if Petitions disputed that the Town had in fact taken legislative action to adopt development regulations to implement its plan as evidenced by the adoption of Ordinance Nos. 2006-4 and 2006-6. The Petitioners did not dispute that the Town of Eatonville had taken legislative action to adopt Ordinance Nos. 2006-4 and 2006-06. Petitioners added that they did not dispute that Ordinance No. 2006-4 complied with the Act, but questioned 2006-6. Petitioners also acknowledged that a challenge to the substance of that Ordinance would perhaps come in a new petition for review.

## **II. DISCUSSION**

The Board finds and concludes:

1. The Town of Eatonville adopted Ordinance No. 2006-4 on February 13, 2006. *See* Ordinance No. 2006-4, at 4.
2. Ordinance No. 2006-4 amends the Town of Eatonville's development regulations so as to conform them to the revised Comprehensive Plan. *Id.* at 1.
3. The Town of Eatonville adopted Ordinance No. 2006-6 – Airport Regulations – on February 27, 2006. *See* Ordinance No. 2006-6, at 15.
4. Ordinance No. 2006-6 adopts development regulations to implement its Plan and govern land use and development to the Eatonville Airport – Swanson Field. *Id.*
5. By enacting Ordinance Nos. 2006-4 and 2006-6, the Town of Eatonville has discharged its duty to act in updating its implementing development regulations,

as required by RCW 36.70A.130(1) and (4). Therefore the Board will issue a Finding of Compliance.

6. The Board's Finding of Compliance acknowledges that the Town of Eatonville has complied with the "update action" requirements of RCW 36.70A.130 as interpreted in the Board's November 29, 2005 Order Finding Partial Compliance [Re: Plan] and Order Finding Noncompliance [Re: Development Regulations]. The substance of the updated and amended implementing development regulations was not before the Board in the compliance review and is presumed valid.<sup>5</sup>

### **III. ORDER**

Based upon the Board's review of the GMA, prior decisions of the Boards, the November 29, 2005 Order Finding Partial Compliance [Re: Plan] and Order Finding Continuing Noncompliance [Re: Development Regulations], the Statement of Actions Taken to Comply, Ordinance Nos. 2006-4 and 2006-6, the written submittals and 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. 2006-4 and 2006-6, discharges the Town's duty to take action to update its implementing development regulations, as required by RCW 36.70A.130. Therefore, pertaining to this action, the Board enters a **Finding of Compliance**.
- CPSGMHB Case No. 05-3-0028, *Cossalman, McTee, Parento and Van Cleve v. Town of Eatonville*, is **closed**.

So ORDERED this 13<sup>th</sup> day of March, 2006.

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.*

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<sup>5</sup> Any challenge to the substance of the updated development regulation must be brought by a separate petition for review within the statutory time frame.