

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

JOCELYNNE FALLGATTER and JEFF	)	CPSGMHB Case No. 06-3-0003
KIRKMAN,)	
	)	<i>(Fallgatter V)</i>
Petitioners,)	
	)	ORDER FINDING PARTIAL
v.	)	COMPLIANCE [Re: Water Plan,
	)	Sewer Plan, and Critical Areas
CITY OF SULTAN,	)	Regulations], FINDING
	)	CONTINUING
Respondent.	)	NONCOMPLIANCE [Re: TIP
	)	and Failure to Act] and
	)	AMENDING COMPLIANCE
	)	SCHEDULE
)	

I. BACKGROUND

On June 29, 2006, the Board issued its Final Decision and Order (**FDO**) in this case, as follows:

1. Petitioners failed to carry their burden of proving Legal Issue Nos. 5 and 6 [RE: capital facilities element and parks element]. Legal Issues 5 and 6 are **dismissed**.
2. The City of Sultan’s motion to dismiss Legal Issue No. 1(a) as untimely is **denied**.
3. Regarding Legal Issue Nos. 1, 2 and 3, the City of Sultan’s adoption of Resolution 05-18 [TIP], Ordinance No. 897-05 [Sewer Plan] and Ordinance No. 898-05 [Water Plan] was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120, .035, .140, and .130 and **was not guided** by GMA planning goals RCW 36.70A.020(1) and (12).
4. The Board remands Resolution 05-18, Ordinance No. 897-05 and 898-05 to the City to take legislative action to comply with the GMA as set forth in this Order.
5. Regarding Legal Issue No. 7, the City of Sultan has **failed to act** to complete the revision and update of its comprehensive plan *implementing development regulations and 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 Sultan is directed to take the necessary legislative action to comply with the revision and update requirements of RCW 36.70A.130(1).

6. RCW 36.70A.300(3)(b) allows the Board to extend the 180-day compliance schedule for a noncompliant jurisdiction if the Board determines that the case is one of unusual scope or complexity. **The Board finds that the City of Sultan's current circumstances make its task unusually complex**; therefore, the City of Sultan shall adhere to the following "extended" compliance schedule:
 - By no later than **April 30, 2007**, the City of Sultan shall take appropriate legislative action to comply with the review and revision requirements of RCW 36.70A.130(1) for its implementing development regulations and critical areas regulations.
 - By no later than **April 30, 2007**, the City of Sultan shall take appropriate action to ensure consistency of its Transportation Improvement Program, Water System Plan and General Sewer Plan with its Comprehensive Plan.
 - [Setting requirements and schedule for progress reports and compliance documentation and hearing].

FDO, at 23-24.

The Board received three Compliance Status Reports from the City which were filed on September 20, 2006, December 21, 2006, and March 21, 2007. In connection with the first status report, Petitioners submitted a Response and the Board issued an Order Acknowledging Status Report.

On May 21, 2007, the Board received the City's Status Report RE: Compliance, the City's Compliance Index, and Legislative Enactment Appendix, attaching copies of 12 ordinances.

On May 29, 2007, the Board received Petitioners' Response to City's Status Report, with 9 exhibits.

On June 4, 2007, the Compliance Hearing was convened in the Board's offices at 10:15 a.m. Present for the Board were Margaret Pageler, Presiding Officer, Board members Ed McGuire and Dave Earling, law clerk Julie Taylor, and extern Linda Jenkins. Thom Graafstra represented the City of Sultan, with City Administrator Deborah Knight also in attendance. Petitioners Jocelyne Fallgatter and Jeff Kirkman appeared *pro se*. The hearing was adjourned at 10:45 a.m.

06303 Fallgatter V v. City of Sultan (June 18, 2007)

Order Finding Partial Compliance [Re: Water Plan, Sewer Plan, and Critical Areas Regulations], Finding Continuing Noncompliance [Re: TIP and Failure to Act] and Amending Compliance Schedule

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II. DISCUSSION

The Board set an exceptionally-long compliance schedule in this case in recognition of Sultan's circumstances in reorganizing its municipal planning functions. The City of Sultan is far behind in achieving compliance with routine GMA planning requirements. In *Fallgatter V*, Petitioners met their burden of proving that the City was non-compliant in the following matters:

- TIP inconsistent with Comprehensive Plan
- General Sewer Plan and Water System Plan inconsistent with Comprehensive Plan, particularly with respect to 20-year population targets
- Failure to act by the statutory deadline to review and update development regulations
- Failure to act by the statutory deadline to review and update critical areas regulations

The Board addresses these issues sequentially.

TIP Inconsistent with Comprehensive Plan

The City's Compliance Report states that the City's TIP work is not yet complete. The City refers to its more detailed report for *Fallgatter VIII v. City of Sultan*, CPSGMHB Case No. 07-3-0034, which challenged the 2006-2012 TIP. The City indicates a scheduled completion date of August 1, 2007, when a 2007-2013 TIP will be adopted. The City acknowledges continuing noncompliance and requests an extended compliance schedule. Compliance Report, at 3-4.

Petitioners concur with the finding of continuing noncompliance. Fallgatter Response, at 7.

The Board will enter an **order finding continuing noncompliance**.

The Board notes that this case challenged the City's enactment of its 2005 TIP, and *Fallgatter VIII* challenged the 2006 TIP, which the Board found noncompliant and invalid. The Board has set the extended compliance deadline in *Fallgatter VIII* for August 15, 2007.¹ When the City of Sultan comes before the Board for the compliance hearing in *Fallgatter VIII*, it may also request a ruling on compliance regarding the 2005 TIP challenged here.

Water and Sewer Plan Inconsistent with Comprehensive Plan

The City submits Ordinance No. 925-06, Approving and Adopting for Submittal to the Department of Ecology an Amendment to the General Sewer Plan, and Ordinance No. 926-06,

¹ *Fallgatter VIII*, Order Finding Continuing Noncompliance and Invalidity and Amending Compliance Schedule (June 18, 2007).

Approving and Adopting for Submittal to the Department of Ecology an Amendment to the Water System Plan. Legislative Enactment Index. The City explains that these ordinances amend the water and sewer plans to incorporate target service populations and service areas consistent with the 20-year projection in the comprehensive plan. Compliance Report, at 3.

Petitioners contend that additional changes are needed to bring the Water and Sewer Plans into consistency with the Comprehensive Plan. Fallgatter Response, at 7. Petitioners state that the amendments “fail to address the financial component of the plans,” provide “no information regarding the extension of trunk lines, their timing and financing,” and fail to incorporate the City’s adopted plan for updating its wastewater treatment plant. *Id.*

The Board finds and concludes that Ordinance No. 925-06 and 926-06 cure the inconsistencies that were the basis for the Board’s ruling of noncompliance with respect to the City’s Water and Sewer Plans. The Board enters an **order finding compliance** re Ordinance 925-06, amending Ordinance 897-05 [Sewer Plan], and Ordinance 926-06, amending Ordinance 898-05 [Water Plan].

Failure to Act – Update Development Regulations

The FDO stated:

Regarding Legal Issue No. 7, the City of Sultan has **failed to act** to complete the revision and update of its comprehensive plan *implementing development regulations and critical areas ordinance* - and **has not fully complied** with the requirements of RCW 36.70A.130(1) and (4) regarding development regulations.

FDO, at 24.

The City of Sultan acknowledges that its review and update of the development regulations is not yet complete. Compliance Report, at 2. The review currently being conducted by the City is the ten-year review required by RCW 36.70A.130(1) and (4), with a statutory deadline of December 1, 2004. The City provides a schedule of procedures for completion of development regulation revisions with an anticipated deadline of October 20, 2007. *Id.*

At the Compliance Hearing, City Administrator Deborah Knight stated that the City Council expects to adopt its updated Capital Facilities Plan at the end of December, 2007. She stated that the updated CFP is a necessary component of consistent GMA planning, and she expressed a preference for a compliance date at the end of the year – namely, December 31st.

Petitioners concur that the City has not yet complied with the GMA or the Board's Order. Fallgatter Response, at 11-12. At the Compliance Hearing, they orally agreed with the City that a compliance date at the end of the year was more realistic than an October date. Petitioners request a finding of invalidity and gubernatorial sanctions. *Id.*

The Board will enter a finding of **continuing noncompliance** and will set a December 31, 2007 compliance date. The Board does not, at this time, make a determination of invalidity, but will notify the Governor of the status of this case. If compliance is not achieved in accordance with the extended schedule in this order, the Board will enter an order of invalidity and may request sanctions.

Failure to Act – Critical Areas Regulations

The City submits Ordinance No. 918-06, Adopting New Chapter 16.18 City of Sultan's Critical Areas Regulations (**CARs**), and Ordinance No. 947-07, making a technical amendment to the CARs.² Legislative Enactments Index.

Petitioners agree that the City has taken action to update its CARs as required by the GMA and the FDO. Fallgatter Response, at 8.

The Board finds and concludes that the City of Sultan has **complied** with the requirement of RCW 36.70A.130 in reviewing and updating its critical areas regulations. By enacting Ordinance No. 918-06 and Ordinance No. 947-07, the City's noncompliance – "failure-to-act" – in regard to the CARs has been cured.

III. ORDER

Based upon review of the Compliance Status Reports, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The City of Sultan's adoption of Resolution 05-18 [2005 TIP] was clearly erroneous. The Board enters an order of **continuing noncompliance**.
2. The City of Sultan's adoption of Ordinance No. 925-06, amending Ordinance No. 897-05 [Sewer Plan], and Ordinance No. 926-06, amending Ordinance No. 898-05 [Water Plan],

² Ordinance 918-06 was challenged in *Heydrick et al v. City of Sultan*, CPSGMHB Case No. 06-3-0037, Final Decision and Order (June 8, 2007).

complies with the requirements of RCW 36.70A.120, .035, .140, and .130 and GMA planning goals RCW 36.70A.020(1) and (12) as set forth in the FDO

3. The City of Sultan's adoption of Ordinance No. 918-06 and Ordinance No. 947-07 **complies** with the duty to act to update critical areas regulations set forth in RCW 36.70A.130.
4. The Board enters an **order of partial compliance** re: Ordinance No. 925-06 [Sewer Plan], Ordinance No. 926-06 [Water Plan], and Ordinance No. 918-07 [CARs – failure-to-act].
5. The Board finds and concludes that the City of Sultan has **failed to act** to complete the revision and update of its comprehensive plan implementing development regulations as required by RCW 36.70A.130(1) and (4). Therefore the Board enters an **order of continuing noncompliance**.
6. *In light of the City of Sultan's long delay in achieving compliance with routine GMA planning requirements, the Board notifies the Governor of this matter.* The Board will make a determination of invalidity and request sanctions if compliance is not achieved as set forth in the extended schedule set forth below:
 - The Board establishes **December 31, 2007**, as the deadline for the City of Sultan to take appropriate legislative action.³
 - By no later than **January 14, 2008**, the City of Sultan shall file with the Board an original and four copies of the legislative enactments described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings, etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
 - By no later than **January 28, 2008**,⁴ the Petitioners may file with the Board an original and four copies of Response to the City's SATC.

³ The Board anticipates that compliance re: TIP will be achieved in connection with the *Fallgatter VIII* deadline of August 15, 2007.

- By no later than **February 4, 2008**, the City may file with the Board a Reply to Petitioner's Response.
- Each of the pleadings listed above shall be simultaneously served on the other party to this proceeding.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **February 7, 2008, at 10:00 a.m.** at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Sultan takes the required legislative action prior to the December 31, 2007, 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 18th day of June, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

⁴ January 28, 2008, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in the FDO.