CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

1000 FRIENDS OF WASHINGTON, Petitioner, v. SNOHOMISH COUNTY, Respondent, MOHAMMED S. YOUSSEFI, Intervenor.	)	**CPSGMHB Case No. 03-3-0026** **(*1000 Friends II*)** **CORRECTED** **ORDER FINDING COMPLIANCE** **[As to Telephonic Compliance Hearing Attendees ONLY]**

I. BACKGROUND

On June 21, 2004, the Board issued its "Final Decision and Order" (**FDO**) in CPSGMHB Case No. 03-3-0026 (***1000 Friends II***). The FDO found the County's expansion of the northern Clearview LAMIRD noncompliant with the GMA and invalidated the designation. The FDO also established a compliance schedule.

In July of 2004 both Respondent and Intervenor filed petitions for judicial review in Snohomish County Superior Court [Cause Nos. 04-2-11429-1 (Youssefi) and 04-2-11408-8 (SnoCo) consolidated]

On September 7, 2004, the Board received a "Stipulation and Order Staying Compliance Schedule of Central Puget Sound Growth Management Hearings Board Order Pending Outcome of Current Appeal" (**Stay**) from Snohomish County Superior Court.

On September 8, 2004, the Board issued an "Order Acknowledging Stay and Rescinding Compliance Schedule." This Order directed the parties to inform the Board upon the Court's completion of its review.

The Board understood that Snohomish County stipulated to, and received, an Order of Dismissal of its petition from Snohomish County Superior Court on June 21, 2006. Intervenor Youssefi's action was still before the Court and the stay remains in effect.

However, since this case is over three years old, and the County – the noncompliant party – has had its challenge to the Board's decision dismissed by the Court, the Board sought

clarification from the parties on the status of the matter and issued an "Order Requesting a Status Report on Superior Court Proceeding and Stay" on January 14, 2008 (**1/14/08 Order**). This Order asked that the parties respond to the Board by January 31, 2008.

On January 29, 2008, the Board received "Snohomish County's Response to the Board's Order Requesting Status Report on Superior Court Proceedings and Stay" (**1/29/08 Response**) The County indicated that its appeal had been dismissed from Superior Court, but the Youssefi appeal was apparently still pending. 1/29/08 Response, at 1.

On January 31, 2008, the Board received a letter (**1/31/08 Letter**) from Molly Lawrence, Intervenor Youssefi's counsel, indicating that "Mr. Youssefi has decided to withdraw his Petition for Review in Snohomish County Superior Court, consolidated Cause No. 04-2-11429-1. We will file corresponding pleadings in Superior Court within the next few days. Mr. Youssefi has no objection to the Board entering a revised compliance schedule at this time." 1/31/08 Letter, at 1.

Consequently, the Board issued an "Order Setting Compliance Hearing" on February 4, 2008. This Order set forth a briefing schedule and compliance hearing date.

On February 29, 2008, the Board received "Snohomish County's Statement of Actions Taken to Comply with Final Decision and Order" (**SATC**), with two attachments. The SATC was timely filed.

On March 6, 2008, the Board received "Response to Statement of Actions Taken to Comply" (**Petitioner's Response to SATC**) from Petitioner 1000 Friends of Washington (now Futurewise).

On March 24, 2008, the Board received a copy of Intervenor's "Withdrawal of Petition for Review" filed with the Snohomish County Superior Court, dated February 1, 2008 (**Intervenor Response to SATC**).

The Board conducted a telephonic Compliance Hearing on March 27, 2008, at 10:00 a.m. at the Board's offices, Suite 2356, 800 Fifth Avenue, Seattle, Washington. Board Member Edward G. McGuire presided. Board Members David O. Earling, Margaret A. Pageler, attended. Keith Scully participated on behalf of Petitioners, and Justin Kastings participated for Respondent Snohomish County. Molly Lawrence, counsel for Intervenor Mohammed Youssefi, did not participate. The proceeding was recorded. The Compliance Hearing was adjourned at 10: 15 a.m.

II. DISCUSSION

The Board's June 21, 2004 FDO stated:

> Snohomish County's enactment of Ordinance No. 03-106, expanding the northern Clearview LAMIRD, was **clearly erroneous.** Ordinance No.

> 03-106 does **not comply** with the requirements of RCW 36.70A.070(5)(d)(i), (iv), (v); and was **not guided by, and in compliance with**, Goal 2 – RCW 36.70A.020(2). Furthermore, because the continued validity of Ordinance No. 03-106 would substantially interfere with the fulfillment of Goal 2, by allowing sprawl in the form of strip commercial development, the Board enters a **determination of invalidity**

FDO, at 17.

In response to the FDO, the County adopted Resolution No. 08-006 on February 20, 2008 (hereafter, **Ex. 1**). Ex. 1 recognizes the Board's FDO and acknowledges the legal effect of the severability and savings clause contained in Ordinance No. 03-106 – the challenged Ordinance in *1000 Friends II*. Ex. 1, at 2. Ex. 1 also clarifies that the boundaries of the northern Clearview LAMIRD are as set forth in Amended Ordinance No. 01-131 (Ex. 2), and the 6.5 acre expansion area is not included. *Id*. Ex. 1 also establishes that the zoning for the 6.5 acre parcel as R-5, not CRC as previously found noncompliant and invalid. *Id*.

1000 Friends, now Futurewise, concurs that the adoption of Resolution 08-006 cures the County's error pertaining to the expansion of the northern Clearview LAMIRD. Petitioners urge the Board to enter a finding of compliance and rescind the determination of invalidity. Petitioner's Response to SATC, at 1-2.

The fact that Intervenor Youssefi has withdrawn his Superior Court appeal and not objected to the County's adoption of Resolution No. 08-006 suggests to the Board that Intervenor accepts the County's action as compliant.

The Board agrees. Snohomish County's adoption of Resolution 08-006 reinstates the original designation and zoning for the 6.5 acre parcel that was the expansion area to the northern Clearview LAMIRD. The Board will enter a finding of compliance and rescind the determination of invalidity.

III. <u>ORDER</u>

Based upon review of the GMA, the June 21, 2004 FDO, the Statement of Actions Taken to Comply, briefs and exhibits, and presentations at the Compliance Hearing, the Board ORDERS:

- Snohomish County's adoption of Resolution No. 08-006 has removed substantial interference with the GMA's Goal 2 [RCW 36.70A.020(2)]. Therefore, the Board **rescinds** the **determination of invalidity**.

- Snohomish County's adoption of Resolution No. 08-006 corrected the compliance deficiencies found by the Board in the June 21, 2004 FDO and the County now **complies** with the goals and requirements of the GMA [RCW

36.70A.070(5)(d)(i), (iv) and (v)]. The Board therefore enters a **Finding of Compliance** for Snohomsih County with respect to the Petitioners' challenge.

- CPSGMHB Case No. 03-3-0026, *1000 Friends II v. Snohomish County*, is **closed.**

So ORDERED this 9th day of April, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
David O. Earling
Board Member

_____
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.[1]

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[1] Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)