

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

STATE OF WASHINGTON,)	CPSGMHB CASE NO. 05-3-0043c
DEPARTMENT OF CORRECTIONS)	
)	<i>(DOC III/IV)</i>
Petitioner,)	
)	
v.)	ORDER FINDING
)	COMPLIANCE
CITY OF LAKEWOOD,)	
)	
Respondent,)	
)	

I. BACKGROUND

On January 31, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Final Decision and Order” (**FDO**) in CPSGMHB Case No. 05-3-0043c (*DOC III/IV*). The Board found the City of Lakewood (**City** or **Lakewood**) noncompliant with the GMA, issued an Order of Invalidity, and established a compliance schedule.

On February 27, 2006, the City appealed the Board’s FDO to Pierce County Superior Court - Cause No. 06-2-05538-7.

On May 12, 2006, the Board received a “Stipulation in Support of Temporary Stay,” filed by the parties to accommodate the schedule of counsel for the DOC. Attached to the Stipulation was an “Order of Temporary Stay,” signed by Judge Katherine Stolz, allowing for a temporary stay to remain in effect until the parties have argued and the Pierce County Superior Court has decided whether the stay should remain in place during the full pendency of the appeal.

On May 15, 2006, the Board issued an “Order Acknowledging Pendency of Stay and Rescinding Compliance Schedule.”

On November 30, 2006, the Board received a letter from Heidi Ann Wachter, City Attorney for the City of Lakewood. Attached to the letter was Judge Katherine Stolz’s Order for Stay of Final Decision [Cause No. 06-2-05538-7]. The Court decided to allow the temporary stay to remain in place during the full pendency of the appeal.

On December 4, 2006, the Board issued its “Order Acknowledging Extension of Stay.”

On February 6, 2007 the Board received a one page letter, with no attachments, from Ms. Wachter, representing a Statement of Actions Taken to Comply (**SATC**). The SATC recited certain action by the City and requested the Board issue an order of compliance.

On February 8, 2007 the Board received a letter from Douglas D. Shaftel, Assistant Attorney General, on behalf of Petitioner Department of Corrections, dated February 7, 2007. The DOC Response disputed the City's representations concerning compliance.

On February 12, 2007, the Board issued a "Second Order Acknowledging Extension of Stay." In that Order the Board noted that "Judge Katherine Stolz's Order for Stay of Final Decision [Cause No. 06-2-05538-7] ordered that the Board's proceedings in CPSGMHB Case No. 05-3-0043 be "stayed pending disposition of review by this Court, and *the CPSGMHB shall desist from further proceedings in the matter* to be reviewed, pending completion of such review by this Court." 2/12/07 Order, (emphasis supplied). In short, the Board was to take no action on the City's request pending the outcome of the Superior Court's review. The Board ordered that, upon completion of the Court's review, the parties were to provide a copy of any Order issued by the Court.

On July 17, 2007, the Board received a "Stipulated Motion and Order of Voluntary Dismissal" from Pierce County Superior Court. (**Order of Dismissal**). The Order of Dismissal, dated March 6, 2007 was signed by Judge Lee. Neither party in this matter requested that the Board resume the required compliance proceedings to close out the case.

On January 14, 2008, the Board issued a "Notice of Compliance Hearing in CPSGMHB Case No. 05-3-0043c" setting forth a new compliance schedule and date for the compliance hearing.

On January 30, 2008, the Board received "Respondent's Statement of Actions Taken to Comply" (**Lakewood SATC-2**), with four attachments. The Lakewood SATC was timely filed.

On February 6, 2008, the Board received DOC's "Response to the City of Lakewood's Statement of Actions Taken to Comply" (**DOC Response**) with two attachments. The DOC Response was timely filed.

On February 25, 2008, Presiding Officer Edward G. McGuire convened the telephonic compliance hearing at 10:00 a.m. Board members David O. Earling and Margaret A. Pageler were present for the Board, as well as Board Attorney Julie Ainsworth-Taylor. Respondent City of Lakewood was represented by Michael McKenzie and Petitioner Department of Corrections was represented by Douglas D. Shaftel. The hearing was recorded.

II. DISCUSSION

The Board's January 31, 2006 FDO in this matter stated, in relevant part:

1. The City of Lakewood's adoption of Ordinance 390 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.020 and RCW 36.70A.200.
2. Therefore the Board **remands** Ordinance 390 to the City of Lakewood with direction to the City *to repeal the ordinance or allow it to expire without*

reauthorization in order to comply with the requirements of the GMA as set forth in this Order.

3. The Board also found and concluded that the continued validity of Ordinance 390 would **substantially interfere** with the goals of the GMA at RCW 36.70A.020(7) and (11). Therefore the Board enters an order of invalidity. . .

FDO, at 18; (emphasis supplied).

Ordinance 390 established a moratorium prohibiting the City from accepting applications for correctional facilities in areas designated as Public/Institutional zoning districts in the City of Lakewood. This was the only action before the Board at the time it rendered its FDO. The FDO was explicit in its direction to the City, “repeal the ordinance [390] or allow it to expire without reauthorization.” *Id.*

The City explains that in addition to seeking review of the Board’s FDO in Superior Court, it took the following actions to achieve compliance with the GMA as interpreted in the Board’s Order:

- On September 5, 2006, the City adopted Ordinance No. 423, amending Title 18A of the Lakewood Municipal Code relative to the Public/Institutional zoning districts, group home classifications; group home placement standards, and definitions.
- On December 18, 2006, the City adopted Ordinance No. 433 *terminating the moratorium enacted in Ordinance No. 390.*

Lakewood SATC-2, at 2; and Attachments A and B (emphasis supplied). The City argues that these actions are timely per the Board’s compliance schedule, that the moratorium has been terminated, and that Ordinance 423 complies with the GMA. *Id.*, at 3.

DOC concurs that the City of Lakewood’s adoption of Ordinance No. 433 terminated the City’s Ordinance No. 390 – the moratorium – and DOC “does not object to a finding of compliance.” DOC Response, at 1. DOC notes that their challenge and the Board’s FDO addressed Ordinance No. 390 – not Ordinance No. 423, which did not exist at the time. DOC suggests that the Board not to rule on whether Ordinance No. 423 complies with the GMA as the City urges. *Id.* at 2. DOC notes that it did not challenge Ordinance No. 423, nor is it aware of any other petitions for review raising such a challenge. *Id.*

The Board agrees with the parties that the City’s adoption of Ordinance No. 433 terminating the moratorium – Ordinance 390 – complies with the GMA as set forth in the Board’s FDO. Additionally, as a matter of form, the Board rescinds the determination of invalidity that attached to the moratorium. Consequently, the Board enters a **Finding of Compliance** for the City of Lakewood pertaining to CPSGMHB Case No. 05-3-0043c. The matter of *DOC III/IV* is closed.

The Board notes that the termination of the moratorium was sufficient to achieve compliance. The City’s adoption of Ordinance No. 423 is presumed valid and there have been no new petitions challenging its validity, nor has DOC filed any objections to the adoption of Ordinance

No. 423 in this compliance proceeding. Consequently, the presumption of validity is undisturbed by this Order.

III. ORDER

Based upon review of the GMA, case law, the Board' January 31, 2006 FDO, the City of Lakewood's SATC, the DOC Response, the attachments and exhibits submitted by the parties, having considered the arguments offered, and having deliberated on the matter the Board ORDERS;

- The City of Lakewood's adoption of Ordinance 433, terminating the moratorium imposed by Ordinance No. 390, complies with the GMA as interpreted in the Board's FDO. The Board enters a **Finding of Compliance** for the City of Lakewood.
- The matter of *DOC III/IV v. City of Lakewood*, CPSGMHB Case No. 05-3-0043c is **closed**.

So ORDERED this 25th day of February, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

David O. Earling
Board Member

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

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)