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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

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LOON LAKE PROPERTY OWNERS
ASSOCIATION, LOON LAKE DEFENSE
FUND and WILLIAM & JANICE SHAWL,
LARSON BEACH NEIGHBORS and
JEANIE WAGENMAN

Case No. 01-1-0002c

ORDER ON MOTION FOR
RECONSIDERATION

Petitioner,

v.

STEVENS COUNTY,

Respondent.

I. PROCEDURAL HISTORY

On January 26, 2001, Loon Lake Property Owners Association, Loon Lake Defense Fund and William and Janice Shawl, (LLPOA) filed a Petition for Review and on January 29, 2001 Larson Beach Neighbors and Jeanie Wagenman (Larson Beach) filed a Petition for Review.

On February 28, 2001, Larson Beach filed an Amendment of Petition for Review.

The petitions were subsequently consolidated in the March 13, 2001, Prehearing Order.

In the Amended Final Decision and Order issued October 26, 2001, the Board found Stevens County in non-compliance on the following issues:

1. Stevens County Titles 4 and 5 are out of compliance with the GMA for its failure to prohibit urban growth outside IUGAs and UGAs in rural areas of the County; for encouraging and allowing urban services such as public sewer in rural areas; failure to follow its Public Participation Policies; and failure to follow its Countywide Planning Policy 8.

1 2. Stevens County is out of compliance with the GMA for its failure to
2 adopt a Comprehensive Plan and development regulations as required
3 by law.

4 3. Steven County is out of compliance with the GMA for its failure to
5 designate and conserve Natural Resource Lands as is required by law.

6 On December 13, 2001, the Board issued its Order on Reconsideration, which
7 declared Titles 4 and 5 invalid.

8 The County provided the Board with a schedule for coming into compliance.

9 On October 23, 2002, the Board received a request from attorney Bruce Erickson for
10 a compliance hearing.

11 On November 8, 2002, the Board held a telephonic compliance hearing. Present were
12 D.E. "Skip" Chilberg, Presiding Officer and Board members Judy Wall and Dennis Dellwo.
13 Present for Petitioners were Jeanie Wagenman, Bruce Erickson, William and Janice Shawl.
14 Present for Respondent was Lloyd Nickel, Stevens County Prosecuting Attorney.

15 After reviewing briefs and hearing arguments from the parties, the Board concluded
16 Stevens County remains in non-compliance on the issues found in our Amended Final
17 Decision and Order dated October 26, 2001.

18 February 12, 2003, The Board held a telephonic compliance hearing.

19 Periodic status conferences have been held. The most recent status conference was
20 held on July 18, 2007. Present were John Roskelley, Presiding Officer, and Board Members
21 Dennis Dellwo and Joyce Mulliken. Present for Petitioners were Jim Davies, Jeanie
22 Wagenman, and William and Janice Shawl. Present for Respondent were Peter Scott and
23 Clay White.

24 On July 27, 2007, the Board received Respondent's Motion to Rescind Order of
25 Invalidity and Motion for Compliance Hearing.

26 On August 2, 2007, the Board issued its Order Setting Compliance Hearing and
27 Briefing Schedule.

1 On August 3, 2007, the Board received Petitioners' letter requesting a final hard copy
2 of the development regulations, Title 3. On August 6, 2007, the Board requested Stevens
3 County provide all parties the documents pertaining to Title 3.

4 On August 14 and 15, 2007, the Board received Petitioners' briefs on Order
5 Rescinding Invalidity.

6 On August 22, 2007, the Board received Petitioner Wagenman's request for a copy of
7 Title 3.

8 On August 23, 2007, Presiding Officer, John Roskelley directed counsel for
9 Respondent, Stevens County to provide all parties a complete copy of Title 3.

10 On September 5, 2007, the Board received County's Response to Petitioners' Briefs
11 RE: Compliance, County's Objection and Motion to Strike, County's Reply to Petitioners'
12 Briefs RE: Invalidity, and County's Objection to Order Regarding Production of Evidence.

13 On September 11, 2007, the Board received Petitioner LBN & Wagenman Motion
14 Requesting Extension for Briefing Reply on Compliance and letter.

15 On September 12, 2007, the Board's Administrative Officer, Angie Andreas, received
16 a telephone call from Mr. Scott, Stevens County's attorney of record, indicating he has a
17 scheduling conflict with the current telephonic compliance schedule.

18 On September 13, 2007, the Board issued its Order Amending Compliance Hearing
19 and Briefing Schedule.

20 On October 15, 2007, the Board held a telephonic compliance hearing. Present were
21 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.
22 Present for Petitioners were Jim Davies, Jeanie Wagenman, and William and Janice Shawl.
23 Present for Respondent were Peter Scott and Clay White.

24 On October 25, 2007, the Board issued its Order on Respondent's Motion to Rescind
25 Order on Invalidity; Order on Motion to Find Compliance; Order on Petitioner Wagenman's
26 Motion to Take Official Notice – Material Facts; and Order on Motion to Strike.

On November 5, 2007, the Board received Respondent's Motion for Reconsideration.

1 On November 15, 2007, the Board received Petitioners LBN & Wagenmans' Response
2 to Respondent's Motion for Reconsideration.

3 On November 20, 2007, the Board held a telephonic hearing. Present were John
4 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken. Present
5 for Petitioners were Jim Davies, Jeanie Wagenman, and William and Janice Shawl. Present
6 for Respondent were Peter Scott and Clay White.

7 II. DISCUSSION

8 On October 25, 2007, the Eastern Washington Growth Management Hearings Board
9 (Board) issued an order in Case No. 01-1-0002c finding the following: the Board removed
10 Stevens County's (County) determination of invalidity; found the County to be in continued
11 non-compliance for failing to prohibit urban growth outside urban growth areas (UGA);
12 found the County to be in continued non-compliance for failing to prohibit urban services in
13 the rural areas; found the County in compliance with its Public Participation Plan and
14 Countywide Planning Policy #8; allowed the Petitioners' Motion to Take Official notice of
15 additional information of material fact; and denied the Respondent's Motion to Strike.

16 The Respondent, Stevens County, filed a Motion For Reconsideration in this matter to
17 either have the Board dismiss the issues or consolidate the issues with Case No. 07-1-0013
18 claiming: (A) the Board reviewed new issues in the County's recently adopted Title 3,
19 specifically sections of the document relating to accessory dwelling units, clustering and
20 bonus density; (B) the Board "unnecessarily extended a case that is over 6 years old,
21 resulting in substantial cost to the County and confusion for the parties"; and failed to
22 balance local circumstances; and (C) the Board misinterpreted Title 3; the issue of
23 clustering requires consideration of local circumstances; and Title 3 does not allow
24 extension of urban services into rural or natural resource areas. (Respondents Motion brief
25 at 2).

26 The Petitioners, Jeanie Wagenman and Larson Beach Neighbors, argue that
consolidating the non-compliant issues in this case with Case No. 07-1-00013 is not in the
interest of fairness or in the interest of expediting the compliance requirements of this case.

1 The Petitioners contend the Parties in each case are different, the Hearing on the Merits for
2 Case No. 07-1-0013 has not been held, and compliance would be delayed in a case already
3 seven years old.

4 The Petitioners argue the County's Title 3 is relevant to the issues in this case
5 because Title 3 was submitted as a replacement for Titles 4 & 5 by the County as new
6 legislation that complies with the Board's original Order. According to the Petitioners, Title 3
7 allows accessory dwelling units (ADU) in all rural zones, which could create 2.5 acre lots in
8 the rural area and natural resource lands. The Petitioners contend Title 3, Section 3.03.020,
9 Residential Land Uses, clearly shows ADU's are allowed in every zone, including Rural Area-
5, which is not internally consistent with Section 3.04.010.

10 The Petitioners further contend the clustering and bonus density provisions in Title 3
11 need to be limited in scope and not characterized by urban growth. In addition, the
12 Petitioners claim Section 3.03.040 of Title 3 allows utility facilities in every zone and Section
13 3.03.080 allows sewer and water facilities in every zone.

14 After reading the Respondent's Motion for Reconsideration and the Petitioners'
15 response, and after hearing arguments from the Parties at the telephonic motion hearing,
16 the Board has determined the following:

- 17 1. The Board has determined it is in the best interest of the Parties not to
18 consolidate the issues from this case with Case No. 07-1-0013.
Consolidating these cases would delay compliance on a seven year-old
19 case and is not timely.
- 20 2. The Board continues to find Stevens County out of compliance for
21 failing to prohibit urban growth outside UGAs by allowing accessory
22 dwelling units in the RA-5 zone. The County's assurances that
unattached accessory dwelling units will not be allowed in five-acre
23 zones based on the Board's interpretation of density is inconsistent with
24 Title 3, Sections 3.03.020 and 3.06.010, which are presently in place.
The County needs specific language indicating an unattached accessory
25 dwelling unit is included for purposes of density. Without this language,
26 Title 3 is not internally consistent with its written regulation and tables.

1 3a. The Board continues to find Stevens County out of compliance for
2 failing to prohibit urban growth outside UGAs by allowing under-
3 regulated clustering in the rural and natural resource areas. The Board
4 has consistently acknowledged the use of clustering in the GMA, which
5 is considered an innovative zoning technique in agricultural lands and
6 allowed under RCW 36.70A.177(2)(b). Clustering is also allowed
7 outside the urban growth area and outside agricultural, forest, and
8 mineral resource lands designated pursuant to RCW 36.70A170.
9 Clustering, however, has to be regulated to conform within the
10 parameters of the Growth Management Act (GMA), which restricts
11 urban growth to urban areas. The County has restricted the use of
12 clustering to poorer soils and preserved sections of open space, but the
13 regulations under Section 3.06.040 fall short of prohibiting urban-like
14 growth in the rural areas, and the technique is subject to Sections
15 3.11.030(b) and 3.16.030(b), administrative variances, which means
16 anything is possible. The County needs to limit clustering in a manner
17 to prohibit such concentrations of homes which would require urban
18 services, interfere with the rural element and not be compatible with
19 rural character of the area.

20 3b. The County claims the Board failed to take into consideration local
21 circumstances. RCW 36.70A.3201 intends for the boards to apply a
22 more deferential standard of review to actions of counties and cities,
23 but consistent with the requirements and goals of RCW 36.70A. Local
24 circumstances are an important consideration. However, without
25 regulations in place to limit the density (units) of the cluster or the
26 quantity of clusters adjacent to each other, the County essentially
27 opens the door to urban-like growth in the rural and natural resource
28 lands.

29 4. The Board has reconsidered its decision concerning bonus density and
30 finds the bonus density provisions in Title 3 in compliance with the
31 GMA. As per 3.06.040(C.), bonus density is not allowed in zones having
32 less than ten acres.

33 5. The Board has reconsidered its decision concerning urban services in
34 the rural areas and finds the County has restricted the sewer and water
35 services to urban areas. As testified to by the County's attorney, Mr.
36 Scott, and Director of Planning Services, Mr. Clay White, the Board
37 recognizes that Section 3.03.080 does not allow urban sewer and water
38 services to be provided outside the urban areas. Section 3.03.080, in

1 sub-headings Septage Facilities, and Sewer and Water Facilities, pertain
2 strictly to containment of septage or water and/or wastewater
3 treatment facilities.

4 The Eastern Washington Growth Management Hearings Board enters the following
5 order upon Respondent's Motion for Reconsideration:

6 **III. ORDER**

- 7 1. The Board finds it is not in the best interests of the Parties to
8 consolidate Case No. 01-1-0002c with Case No. 07-1-0013.
- 9 2. The Board continues to find Stevens County out of compliance for
10 failing to prohibit urban growth outside UGAs by allowing unattached
11 accessory dwelling units in the RA-5 zone through internally
12 inconsistent language in Title 3, and for failing to provide specific
13 criteria in its clustering provision to prevent urban densities in the rural
14 area.
- 15 3. The Board finds Stevens County's provision which allows bonus density,
16 to be in compliance with the Growth Management Act.
- 17 4. The Board finds Stevens County's allowance of sewer and water
18 facilities to be sited outside of urban growth areas to be in compliance
19 with the Growth Management Act.
- 20 5. The Board finds the County is no longer out of compliance for failing to
21 conserve Natural Resource lands. The RA-5 zone is not a Natural
22 Resource area and the County's reference to sewer and water facilities
23 does not encourage urban growth in the Natural Resource lands.
- 24 6. Stevens County must take the appropriate legislative action to bring
25 itself into compliance with this Order by **April 21, 2008, 146 days**
26 from the date issued. The following schedule for compliance, briefing
and hearing shall apply:

- 1 • The County shall file with the Board by **April 28, 2008, an original**
2 **and four copies** of a Statement of Actions Taken to Comply (SATC)
3 with the GMA, as interpreted and set forth in this Order. The SATC shall
4 attach copies of legislation enacted in order to comply. The County
5 shall simultaneously serve a copy of the SATC, with attachments, on
6 the parties. **By this same date, the County shall file a**
7 **“Remanded Index,” listing the procedures and materials**
8 **considered in taking the remand action.**
- 9 • By no later than **May 12, 2008**, Petitioners shall file with the Board an
10 **original and four copies** of Comments and legal arguments on the
11 County's SATC. Petitioners shall simultaneously serve a copy of their
12 Comments and legal arguments on the parties.
- 13 • By no later than **May 26, 2008**, the County shall file with the Board an
14 **original and four copies** of their Response to Comments and legal
15 arguments. The County shall simultaneously serve a copy of such on
16 the parties.
- 17 • By no later than **June 2, 2008**, Petitioners shall file with the Board an
18 **original and four copies** of their Reply to Comments and legal
19 arguments. Petitioners shall serve a copy of their brief on the parties.
- 20 • Pursuant to RCW 36.70A.330(1) the Board hereby schedules a
21 telephonic Compliance Hearing for **June 9, 2008, at 10:00 a.m.** The
22 parties will call **360-709-4803 followed by 528792 and the #**
23 **sign**. Ports are reserved for: Mr. Davies, Mr. and Mrs. Shawl, Ms.
24 Wagenman, and Mr. Scott. If additional ports are needed please
25 contact the Board to make arrangements.

26 If the County takes legislative compliance actions prior to the date set forth in this
Order, it may file a motion with the Board requesting an adjustment to this compliance
schedule.

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

**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**

1 according to the procedures specified in chapter 34.05 RCW, Part V, Judicial
2 Review and Civil. The petition for judicial review of this Order shall be filed with
3 the appropriate court and served on the Board, the Office of the Attorney
4 General, and all parties within thirty days after service of the final order, as
5 provided in RCW 34.05.542. Service on the Board may be accomplished in person
6 or by mail. Service of the Board means actual receipt of the document at the
7 Board office within thirty (30) days after service of the final order. A petition for
8 judicial review may not be served on the Board by fax or electronic mail.

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

11 **SO ORDERED** this 27th day of November 2007.

12 EASTERN WASHINGTON GROWTH MANAGEMENT
13 HEARINGS BOARD

14 _____
15 John Roskelley, Board Member

16 _____
17 Dennis Dellwo, Board Member

18 _____
19 Joyce Mulliken, Board Member