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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 COMPLIANCE

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 the Board's Amended
17 Final 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: Invalidation, 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 Invalidation; Order on Motion to Find Compliance; Order on Petitioner Wagenman's Motion to
26 Take Official Notice – Material Facts; Order on Motion to Strike.

On March 17, 2008, the Board received Respondent's Motion for Compliance Hearing
asking the Board to set a compliance hearing to address the remaining compliance issues.

1 On May 28, 2008, the Board held a telephonic compliance hearing. Present were
2 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.
3 Present for Petitioners were Jim Davies and Jeanie Wagenman. Present for Respondent
4 were Peter Scott and Clay White.

5 II. DISCUSSION

6 On November 27, 2007, the Eastern Washington Growth Management Hearings
7 Board (Board) issued its Order on Motion for Reconsideration and found Stevens County
8 (County) out of compliance with the Growth Management Act (GMA) in two respects: (1) for
9 allowing unattached accessory dwelling units in the RA-5 zone through internally
10 inconsistent language in Title 3; and (2) for failing to provide specific criteria in its clustering
11 provision to prevent urban densities in the rural area. To comply with the Order, the County
12 approved Ordinance No. 2008-01 on February 14, 2008, which added language to Title 3 to
13 resolve the two remaining issues stated above.

14 The County, in order to resolve the Board's Order concerning accessory dwelling
15 units, added an additional section to Title 3, SCC 3.06.010(B)(10). As amended, Title 3
16 states, "Accessory Dwelling Units shall count towards the maximum allowable density of a
17 parcel."¹ Petitioners Wagenman and Larson Beach Neighbors (Petitioners) agreed with the
18 County and wrote, "[T]he county now restricts Accessory Dwelling Units by counting the
19 unit towards the allowable density of a parcel. Petitioners believe this meets the
20 requirements of the Board's Order."²

21 To resolve the Board's Order concerning the County's clustering provisions in Title 3,
22 the County added two sections to Title 3: (1) SCC 3.06.040(C)(2), which specifies that
23 clustered lots shall be in groups of two, but no more than eight; and (2) SCC
24 3.06.040(D)(3), which requires that clusters be located at least 300 feet apart. According to

25 ¹ Stevens County Code 3.06.010(B)(10).

26 ² Petitioners LBN & Jeanie Wagenman's Response to County's Statement of Action Taken for Compliance 5/1/08.

1 the County, the adoption of Ordinance No. 2008-1 fully addressed the remaining
2 compliance issues identified by the Board in its Order on Motion for Reconsideration.

3 In their Response to the County's Statement of Action to Comply concerning
4 clustering, the Petitioners argued that the County's actions failed to comply with the Board's
5 Order concerning clustering provisions. The Petitioners allege the County: (1) failed to limit
6 the density or units allowed for each multi-family/condominium dwelling or for the number
7 of RV's allowed in clustered lots;³ (2) failed to restrict clustering where the remaining land
8 is held in an agriculture zone or the remaining portion of the land is held in open space;⁴
9 (3) failed to prohibit or restrict non-farm uses as provided by RCW 36.70A.177(3)(b)(ii);⁵
10 (4) failed to follow WAC 365-195-400(2)(d), which requires consistency in determining
11 whether the planned use of the lands adjacent to natural resource lands will interfere with
12 the continued use;⁶ and (5) failed to regulate clustering in the natural resource zones, such
13 as mining and forestry.⁷

14 The County, in response, argued: (1) the clustering provision in Title 3 was amended
15 to limit the concentration of homes so that urban services are not required;⁸ (2) the GMA
16 encourages the use of clustering and it is desirable in forest lands because clustering
17 conserves larger parcels;⁹ and (3) accessory uses in Agricultural Resource Lands are
18 regulated the same, including within a clustered subdivision.¹⁰ The County limited clustering
19 in response to the Board's Order and contends the Petitioners failed to carry their burden of
20 proof.

21 ³ Ibid at 4.

22 ⁴ Ibid at 6.

23 ⁵ Ibid.

24 ⁶ Ibid at 7.

25 ⁷ Ibid at 8.

26 ⁸ County's Compliance Brief in Response at 3.

⁹ Ibid at 4.

¹⁰ Ibid at 5.

1 In their optional reply brief, the Petitioners contend the County is still out-of-
2 compliance for failure to prohibit urban growth outside UGAs by allowing under-regulated
3 clustering in the rural and natural resource areas.¹¹ The Petitioners request the Board to
4 continue to find the County out-of-compliance.

5 **Board Analysis:**

6 In its November 27, 2007 Order on Motion for Reconsideration, the Board found the
7 County out-of-compliance concerning two provisions in Title 3: accessory dwelling units and
8 clustering. The Board determined the following concerning the County's accessory dwelling
9 unit provision:

10 The Board continues to find Stevens County out of compliance for failing to
11 prohibit urban growth outside UGAs by allowing accessory dwelling units in
12 the RA-5 zone. The County's assurances that unattached accessory dwelling
13 units will not be allowed in five-acre zones based on the Board's interpretation
14 of density is inconsistent with Title 3, Sections 3.03.020 and 3.06.010, which
15 are presently in place. The County needs specific language indicating an
16 unattached accessory dwelling unit is included for purposes of density.
17 Without this language, Title 3 is not internally consistent with its written
18 regulation and tables.¹²

19 With the County's addition of SCC 3.06.010(B)(10), the County has fulfilled the
20 Board's Order. The Petitioners also agree the County is in compliance with this issue.

21 The Board determined the following concerning the County's clustering provisions:

22 The Board continues to find Stevens County out of compliance for failing to
23 prohibit urban growth outside UGAs by allowing under-regulated clustering in
24 the rural and natural resource areas. The Board has consistently
25 acknowledged the use of clustering in the GMA, which is considered an
26 innovative zoning technique in agricultural lands and allowed under RCW
36.70A.177(2)(b). Clustering is also allowed outside the urban growth area
and outside agricultural, forest, and mineral resource lands designated
pursuant to RCW 36.70A170. Clustering, however, has to be regulated to
conform within the parameters of the Growth Management Act (GMA), which

¹¹ Petitioners Optional Reply Brief in Response to County's Compliance Brief in Response May 22, 2008 at 4.

¹² Order on Motion For Reconsideration, Nov. 27, 2007, at 5.

1 restricts urban growth to urban areas. The County has restricted the use of
2 clustering to poorer soils and preserved sections of open space, but the
3 regulations under Section 3.06.040 fall short of prohibiting urban-like growth
4 in the rural areas, and the technique is subject to Sections 3.11.030(b) and
5 3.16.030(b), administrative variances, which means anything is possible. The
6 County needs to limit clustering in a manner to prohibit such concentrations of
7 homes which would require urban services, interfere with the rural element
8 and not be compatible with rural character of the area.¹³

9 While the administrative variance sections are still a concern to the Board, with the
10 addition to Title 3 of SCC 3.06.040(C)(2) and SCC 3.06.040(D)(3), the County has complied
11 with the GMA to prevent urban-like growth in the rural and natural resource areas by
12 sufficiently regulating clustering.

13 II. ORDER

14 Based upon the Board's review of the GMA, prior decisions of the Boards, the
15 November 27, 2007, Order on Motion for Reconsideration, the presentations and briefings
16 of the Parties at the compliance hearing, and having discussed and deliberated on the
17 matter, the Board enters a Finding of Compliance for Case No. 01-1-0002c.

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

19 **Reconsideration:**

20 **Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this**
21 **Order to file a petition for reconsideration. Petitions for reconsideration shall**
22 **follow the format set out in WAC 242-02-832. The original and four (4) copies of**
23 **the petition for reconsideration, together with any argument in support thereof,**
24 **should be filed by mailing, faxing or delivering the document directly to the**
25 **Board, with a copy to all other parties of record and their representatives. Filing**
26 **means actual receipt of the document at the Board office. RCW 34.05.010(6),**
WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite
for filing a petition for judicial review.

¹³ Ibid at 6.

1 **Judicial Review:**

2 Any party aggrieved by a final decision of the Board may appeal the decision to
3 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial
4 review may be instituted by filing a petition in superior court according to the
5 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

5 **Enforcement:**

6 The petition for judicial review of this Order shall be filed with the appropriate
7 court and served on the Board, the Office of the Attorney General, and all parties
8 within thirty days after service of the final order, as provided in RCW 34.05.542.
9 Service on the Board may be accomplished in person or by mail. Service on the
10 Board means actual receipt of the document at the Board office within thirty
11 days after service of the final order.

11 **Service:**

12 This Order was served on you the day it was deposited in the United States mail.

13 **RCW 34.05.010(19)**

14 **SO ORDERED** this 30th day of May 2008.

15 EASTERN WASHINGTON GROWTH MANAGEMENT
16 HEARINGS BOARD

17 _____
18 John Roskelley, Board Member

19 _____
20 Dennis Dellwo, Board Member

21 _____
22 _____
23 Joyce Mulliken, Board Member