

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 FRIENDS OF SAN JUANS, LYNN BAHRYCH and
3 JOE SYMONS,

4 Petitioners,

5 v.

6 SAN JUAN COUNTY,

7 Respondent.

Case No. 03-2-0003c

**ORDER FINDING
COMPLIANCE**

10 JAMES NELSON, ET AL

11 Petitioners,

12 v.

13 SAN JUAN COUNTY,

14 Respondent.

Case No. 06-2-0024c

**ORDER FINDING
COMPLIANCE**

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18 **I. SYNOPSIS**

19 This matter came before the Board at a telephonic Compliance Hearing on August 27,
20 2007. In its February 12, 2007 Compliance Order/Final Decision and Order in these cases,
21 the Board found that San Juan County's regulations for accessory dwelling units (ADUs)
22 complied with the Growth Management Act (GMA) except for one part. That part was a
23 provision that allowed an ADU to be constructed or converted on a nonconforming lot of
24 less than five acres. The County passed Ordinance 12-2007 that eliminated the allowance
25 of detached ADUs on lots smaller than five acres in rural areas. The Board finds that with
26 this amendment, San Juan County's regulations for ADUs now comply with the GMA. The
27 Board recognizes how controversial this issue has been and the years of effort that the
28 County and its citizens have expended to achieve compliance. The Board commends the
29 County's success in achieving compliance.
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1 **II. RECENT PROCEDURAL HISTORY**

2 These cases have had a long, complicated and controversial history that has spanned more
3 than eight years.¹ In the February 12, 2007 Compliance Order/Final Decision and Order,
4 the Board found that San Juan County's ADU regulations complied with the GMA except for
5 one aspect: a provision that allowed an ADU to be constructed or converted on a
6 nonconforming lot of less than five acres in rural and resource lands.
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9 The County adopted Ordinance 12-2007 on June 19, 2007 and published it on June 27,
10 2007.² San Juan County submitted its Compliance Report on June 23, 2007 and requested
11 that the County's ADU regulations be found in compliance.³ No party objected to this
12 request.
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14 The Board held a telephonic compliance hearing on August 27, 2007. Deputy Prosecutor
15 Jonathan Cain represented San Juan County. Stephanie Buffum attended for Friends of
16 the San Juans. All three Board members attended; Holly Gadbow presided.
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18 **III. BURDEN OF PROOF**

19 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
20 of time to adopt a legislative enactment to achieve compliance. RCW 36.70A.300(3)(b).
21 After the period for compliance has expired, the board is required to hold a hearing to
22 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and
23 (2). For purposes of board review of the comprehensive plans and development regulations
24 adopted by local governments in response to a non-compliance finding, the presumption of
25 validity applies and the burden is on the challenger to establish that the new adoption is
26 clearly erroneous. RCW 36.70A.320(1),(2) and (3). Only if a finding of invalidity has been
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31 ¹ For a more complete procedural history, see Appendix A of the February 12, 2007 Compliance Order/Final
32 Decision and Order.

² Exhibit A attached to Compliance Report and answer to Board Question by John Cain, Deputy Prosecuting at
August 27, 2007 hearing.

³ Compliance Report at 1.

1 entered is the burden on the local jurisdiction to demonstrate that the ordinance or
2 resolution it has enacted in response to the finding of invalidity no longer substantially
3 interferes with the goals of the GMA. RCW 36.70A.320(4). The Board did not find make a
4 finding of invalidity in its February 12, 2007 Compliance Order/ Final Decision Order,
5 therefore the burden of proof remains with Petitioners.
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8 In order to find the County's action clearly erroneous, the Board must be "left with the firm
9 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
10 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

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12 Within the framework of state goals and requirements, the boards must grant deference to
13 local governments in how they plan for growth:

14 In recognition of the broad range of discretion that may be exercised by counties and
15 cities in how they plan for growth, consistent with the requirements and goals of this
16 chapter, the legislature intends for the boards to grant deference to the counties and
17 cities in how they plan for growth, consistent with the requirements and goals of this
18 chapter. Local comprehensive plans and development regulations require counties
19 and cities to balance priorities and options for action in full consideration of local
20 circumstances. The legislature finds that while this chapter requires local planning to
21 take place within a framework of state goals and requirements, the ultimate burden
22 and responsibility for planning, harmonizing the planning goals of this chapter, and
23 implementing a county's or city's future rests with that community.

24 RCW 36.70A.3201 (in part).

25 In sum, the burden is on the Petitioners to overcome the presumption of validity and
26 demonstrate that any action taken by the County is clearly erroneous in light of the goals
27 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
28 Where not clearly erroneous and thus within the framework of state goals and requirements,
29 the planning choices of the local government must be granted deference.

30 **IV. ISSUE TO BE DISCUSSED**

31 Has San Juan County brought San Juan County Code (SJCC) 18.40.240 (G)(4) into
32 compliance with the Growth Management Act?

1 **V. DISCUSSION OF THE ISSUE**

2 **Positions of the Parties**

3 The County requests that the Board find that San Juan County SJCC 18.40.240(G)(4) now
4 complies with the GMA.⁴ The County declares that it has eliminated the allowance for
5 detached ADUs on parcel of less than five acres in size. The County reports that no party
6 opposed the elimination of this provision.
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8 Friends of the San Juans supports a finding of compliance. No party filed any objections to
9 a finding of compliance.
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12 **Board Discussion**

13 The Board's February 12, 2007 Compliance Order/Final Decision and Order found that
14 SJCC 18.40.240 (G)(4), to the extent it permitted a detached ADU to be constructed or
15 converted on a nonconforming lot of less than five acres, failed to comply with RCW
16 36.70A.070 (5) by expanding the structural intensity in rural zones beyond that which is set
17 out in the County comprehensive plan and/or consistent with the GMA.⁵ The Board also
18 found that SJCC 18.40.240 (G)(4) promoted urban growth in rural zones and therefore did
19 not comply with RCW 36.70A.110(1) and RCW 36.70A.020 (2).⁶ By the adoption of
20 Ordinance 12-2007, the County has amended SJCC 18.40. 240(G)(4)(b) to eliminate the
21 allowance for detached ADUs on parcel of less than five acres in size.⁷ No party objects to
22 the County's request to find compliance.
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25 **Conclusion:** Based on the County's adoption of SJCC 18.40. 240 (G)(4)(b) by Ordinance
26 12-2007 and the lack of objections by any party to a finding of compliance, the Board finds
27 that SJCC 18.40.240 (G)(4) adopted by Ordinance 12-2007 cures the County's
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31 ⁴ Compliance Report at 1.

32 ⁵ Compliance Order/ Final Decision and Order, Findings of Fact F and G, at 68.

⁶ Ibid, Finding of Fact G, at 68

⁷ Exhibit A, Ordinance 12-2007, at 3.

1 noncompliance with RCW 36.70A.070 (5), RCW 36.70A. 110(1), and RCW 36.70A.020(2).
2 The County's code for regulating ADUs now complies with the GMA.

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4 **VI. FINDINGS OF FACT**

- 5 1. San Juan County is a county located west of the Cascade Mountains and is required
6 to plan according to RCW 36.70A.040.
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8 2. The Board's February 12, 2007 Compliance Order/Final Decision and Order found
9 that SJCC 18.40.240 (G)(4), to the extent it permitted a detached ADU to be
10 constructed or converted on a nonconforming lot of less than five acres, failed to
11 comply with RCW 36.70A.070 (5) by expanding the structural intensity in rural zones
12 beyond that which is set out in the County comprehensive plan and/or consistent with
13 the GMA.
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15 3. The Board's February 12, 2007 Compliance Order/Final Decision and Order also
16 found that SJCC 18.40.240 (G)(4) promoted urban growth in rural zones and
17 therefore did not comply with RCW 36.70A.110(1) and RCW 36.70A.020(2).
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19 4. On June 19, 2007, San Juan County amended SJCC 18.40. 240 (G)(4)(b) to
20 eliminate the allowance for detached ADUs on parcels of less than five acres in size
21 by the adoption of Ordinance 12-2007.
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23 5. The County published notice of adoption of Ordinance 12-2007 on June 27, 2007.
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25 6. No party contends that SJCC 18.40.240(G)(4)(b) does not comply with the GMA.

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27 **VII. CONCLUSIONS OF LAW**

- 28 A. The Board has jurisdiction over the subject matter of this case and the parties.
29 B. SJCC 18.40.240 (G)(4) complies with RCW 36.70A.070 (5), RCW 36.70A.110(1),
30 and RCW 36.70A.020(2)

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32 **VIII. ORDER**

The adoption of SJCC 18.40240(G)(4)(b) by Ordinance 12-2007 cures the noncompliance of San Juan County's ADU regulations with the GMA. The County's

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ADU regulations now comply with the GMA. Therefore, WWGMHB Case Nos. 03-2-0003c and 06-2-0024c are hereby **CLOSED**.

Dated this 30th day of August, 2007.

Holly Gadbaw, Board Member

Margery Hite, Board Member

James McNamara, Board Member

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 petition 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 to 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, and WAC 242-02-330. 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

1 34.05.542. Service on the Board may be accomplished in person or by mail,
2 but service on the Board means actual receipt of the document at the Board office
3 within thirty days after service of the final order. A petition for judicial review may not
4 be served on the Board by fax or by electronic mail.

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

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