

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION NEIGHBORS
4 (ICAN) and NANCY DORGAN,

5 Petitioners,

6 v.
7

8 JEFFERSON COUNTY,

9
10 Respondent.

CASE NOS. 03-2-0010,
04-02-0022 and 07-2-0012

**ORDER FINDING CONTINUING
NONCOMPLIANCE AND
GRANTING ADDITIONAL TIME
FOR COMPLIANCE**

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12 THIS Matter came before the Board on Jefferson County's Statement of Actions Taken and
13 Motion for Extension to Achieve Compliance. No objection to the motion was filed by
14 Petitioner.
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17 In this decision, the Board finds that the County is working in good faith to achieve
18 compliance but has not yet done so. As a result, the Board will enter a finding of continuing
19 noncompliance and a new schedule for compliance.
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21 **I. RECENT PROCEDURAL HISTORY**

22 In our May 31, 2005 Final Decision and Order, the Board found Jefferson County out of
23 compliance in a number of areas associated with the Irondale/Port Hadlock non-municipal
24 Urban Growth Area (UGA) and its implementing development regulations.¹ In addition, we
25 found that the continued validity of the comprehensive plan provisions that designate
26 "optional sewer areas" and "unsewered areas" in the UGA and the development regulations
27 that permit urban development without sewer substantially interfere with the fulfillment of
28 Goals 1 and 12 of the GMA.
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32 ¹ May 31, 2005 Final Decision and Order, Conclusions of Law C – I.

1 On July 29, 2005 the Board issued an Order on Reconsideration which added five
2 conclusions of law to the May 31 Final Decision and Order.² Four of these additional
3 Conclusions of Law on Invalidity found that the County's Comprehensive Plan Policies and
4 development regulations allowing urban levels of development without corresponding urban
5 levels of service substantially interfered with goals 1, 2, and 12 of the GMA.
6

7 In the Board's May 30, 2006 Compliance Order we again found that the County had not
8 enacted legislation in response to the Board's findings of non-compliance. Because the
9 County was still working on its capital facilities plan it had not adopted major legislation in
10 response to the May 31, 2005 Order.
11

12 On April 9, 2007 this Board issued an Order Finding Continuing Noncompliance and
13 Granting Additional time for Compliance. In that order the Board found that the County was
14 working in good faith to achieve compliance but had not yet done so. As a result, the Board
15 entered a finding of continuing noncompliance and set a new schedule for compliance.
16 Under that schedule, compliance for sewer facility planning and adoption of revised UGA
17 boundaries was due on April 2, 2008. The Board did not at that time rescind invalidity and it
18 remains in place.
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21 II. DISCUSSION

22 County's Request

23 In its Statement of Actions Taken, the County related that it had been working diligently on a
24 complete and realistic sewer plan and financing scheme. The County retained
25 Tetra/Tech/KCM to draft a sewer facilities plan, and has submitted a draft of that plan to
26 various state agencies for review.³ It has also rescinded its Urban Development
27 Regulations via ordinance No. 05-041-06 and subsequent interim ordinances.
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31 ² Order Granting Reconsideration, July 29, 2005, Conclusions of Law on Invalidity M-Q.

32 ³ Jefferson County's Statement of Actions Taken, at 3.

1 As the County has worked on its sewer planning it has concluded that that sewerage can be
2 made available throughout the UGA by the year 2024, i.e. within the 20 year planning
3 period.⁴ The County believes that it is possible to provide urban services to the entire UGA
4 and, by not reducing the size of the UGA, avoid removing from the UGA areas characterized
5 by existing small lots which are inconsistent with a Rural designation. The County estimates
6 that it will have its revised UGA ordinance in place by March 2009.⁵
7

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9 In its motion, the County attached two chronologies documenting major County activities
10 relating to creation and refinement of sewer planning, and activities of the Department of
11 Community Development regarding the Hadlock/Irondale UGA during the past two months.
12 The chronologies demonstrate that the County has been making good faith efforts to adopt
13 a GMA compliant UGA for the Irondale/Port Hadlock area.
14

15 No objection was filed by Petitioner.
16

17 Board Discussion

18 The County requests an additional year to complete its remand work. RCW 36.70A.300
19 (3)(b) says (in pertinent part):
20

21 The board shall specify a reasonable time not in excess of one hundred eighty days,
22 or such longer period as determined by the board in cases of unusual scope or
23 complexity, within which the state agency, county, or city shall comply with the
24 requirements of this chapter.

RCW 36.70A.300 (3)b)

25 The Board has already found that the issues under this order of compliance are of unusual
26 scope and complexity.⁶
27

28 RCW 36.70A.330 (1) states (in pertinent part) states:
29

30 _____
31 ⁴ Id. at 4.

⁵ Id. at 5.

⁶ Compliance Order/Final Decision and Order (May 31, 2005)

1 After the time set for complying with the requirements of this chapter under RCW
2 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city
3 subject to a determination of invalidity under RCW 36.70A.300, the board shall set a
4 hearing for the purpose of determining whether the state agency, county, or city is in
5 compliance with the requirements of this chapter.
6 RCW 36.70A.330 (1).

7 The compliance deadline in this compliance case was April 2, 2008. The County filed its
8 motion requesting an extension of the compliance deadline on April 1, 2008. Because the
9 request was filed within the compliance period, albeit very late in the compliance period, the
10 compliance period has not expired. Therefore, because this is a case of unusual scope and
11 complexity and because the County submitted its motion before the compliance period's
12 expiration, the Board can entertain a motion for an extension of the compliance period that
13 will last more than 180 days without holding a compliance hearing. The Board finds that it is
14 reasonable to grant the County an extension of time to complete its sewer planning.
15

16 Further, the County's due diligence and the progress being made toward the adoption of a
17 sewer plan for the Irondale/Port Hadlock UGA are also important to our granting the
18 requested extension.
19

20 Therefore, the Board grants the County's request for a one year extension to complete
21 sewer facilities planning, to draw final UGA boundaries for the Irondale/Port Hadlock UGA to
22 reflect areas where sewers will be in place by 2024 and to provide population projections
23 and commercial and industrial needs assessment to support the proposed UGA.
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26 **III. ORDER**

27 Because the County continues to make progress achieving compliance, the County is
28 granted additional time to achieve compliance as follows:
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1 Within **one year** it must complete sewer facility planning for the Irondale/Port Hadlock UGA
2 and adopt revised boundaries for the Irondale/Port Hadlock UGA to match where sewer
3 service will be in place by 2024.
4

5 March 31, 2009	Compliance due for sewer facility planning and adoption of revised UGA boundaries
6 April 10, 2009	County's Report of Action Taken Due
7 April 17, 2009	Index Due
8 April 24, 2009	Additions to Index Due
9 April 24, 2009	Written Objections (if any) to a partial finding of compliance
10 May 14, 2009	County's Response (if necessary) to any Objections to Compliance Due
11 May 28, 2009	Compliance Hearing (location to be determined)

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14 Dated this 16th day of April, 2008.

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James McNamara, Board Member

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Holly Gadbow, Board Member