

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 JOHN CAMPBELL,

4 Petitioner,

5
6 v.

7 SAN JUAN COUNTY,

8 Respondent.
9

Case No. 08-2-0006

COMPLIANCE ORDER

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12 THIS Matter came before the Board following the submittal of a compliance report by San
13 Juan County (County).¹ John Campbell (Petitioner) filed objections² to which the County
14 responded.³ A compliance hearing was held on August 24, 2009 to consider the areas of
15 noncompliance previously found by the Board.⁴ Board members James McNamara, Nina
16 Carter, and William Roehl participated with Mr. Roehl presiding. John Campbell
17 represented himself and the County was represented by Jonathan M. Cain.
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20 **I. SYNOPSIS OF DECISION**

21 The Board finds that the Petitioner has failed to meet his burden of proof to establish that
22 the actions taken by San Juan County to review and revise, if necessary, the land-use and
23 housing elements of its Comprehensive Plan failed to comply with the Growth Management
24 Act (GMA) and this Board's March 10, 2008 order.⁵
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26 **II. BURDEN OF PROOF**
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28 ¹ San Juan County's Compliance Report, filed July 9, 2009.

29 ² Objections To A Finding Of Compliance, filed July 24, 2009.

30 ³ San Juan County's Response to Objections To A Finding Of Compliance, filed August 10, 2009.

31 ⁴ The Petitioner raised three issues in his objections to a finding of compliance, but dismissed two of
32 those at the hearing. The dismissed objections included: (1) A lack of review under RCW 36.70A.130(3)
of the extent to which urban growth occurring within the County had located within each city and the
unincorporated UGAs; (2) A lack of consistency between the growth projections for San Juan County and
the Town of Friday Harbor.

⁵ Order Dismissing Issues, Finding Noncompliance, and Setting a Compliance Schedule.

1 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
2 of time to enact legislation to achieve compliance. RCW 36.70A.300(3)(b). After the period
3 for compliance has expired, the board is required to hold a hearing to determine whether the
4 local jurisdiction has achieved compliance. RCW 36.70A.330(1) and (2).

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6 For purposes of board review of the comprehensive plans and development regulations
7 adopted by local governments in response to a non-compliance finding, the presumption of
8 validity applies and the burden is on the challenger to establish that the new adoption is
9 clearly erroneous. RCW 36.70A.320(1),(2) and (3).

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11 In order to find the County's action was clearly erroneous, the Board must be "left with the
12 firm and definite conviction that a mistake has been made." Department of Ecology v. PUD1,
13 121 Wn.2d 179, 201, 849 P.2d 646 (1993). Within the framework of state goals and
14 requirements, the boards must grant deference to local governments in how they plan for
15 growth:
16

17 In recognition of the broad range of discretion that may be exercised by
18 counties and cities consistent with the requirements of this chapter, the
19 legislature intends for the boards to grant deference to the counties and
20 cities in how they plan for growth, consistent with the requirements and
21 goals of this chapter. Local comprehensive plans and development
22 regulations require counties and cities to balance priorities and options for
23 action in full consideration of local circumstances. The legislature finds
24 that while this chapter requires local planning to take place within a
25 framework of state goals and requirements, the ultimate burden and
26 responsibility for planning, harmonizing the planning goals of this chapter,
and implementing a county's or city's future rests with that community.
RCW 36.70A.3201 (in part).

27 In sum, the burden is on the Petitioner to overcome the presumption of validity and
28 demonstrate that any action taken by the County is clearly erroneous in light of the goals
29 and requirements of the GMA. Where not clearly erroneous and thus within the framework
30 of state goals and requirements, the planning choices of the local government must be
31 granted deference.
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1 **III. ISSUE TO BE DISCUSSED**

2 Whether San Juan County has reviewed and revised, if necessary, its Comprehensive
3 Plan's Land Use and Housing Elements in accordance with RCW 36.70A.130(1) and (4)?
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5 **IV. DISCUSSION**

6 The County conceded in 2008 that it had not timely reviewed its Comprehensive Plan's
7 Land Use and Housing Elements. On that basis the Board found that the County's failure to
8 review and revise those elements of its Comprehensive Plan failed to comply with RCW
9 36.70A.130(1) and (4).⁶ Subsequently, the County filed a declaration that it had in fact
10 completed review and revision of its Land Use Element in 2005.⁷ The Petitioner
11 acknowledges that the County did conduct a review of its Comprehensive Plan in 2005, but
12 argues that the revisions were limited to minor housekeeping matters, critical areas, storm
13 water and a correlation of its Comprehensive Plan and development regulations.⁸ The
14 Petitioner states, in relationship to the sole issue remaining before the Board, that the
15 County failed to consider the Eastsound Subarea Plan, its purpose, goals and policies in
16 Eastsound's new role as an Urban Growth Area (UGA).⁹ The Petitioner asserts that the
17 Comprehensive Plan was first adopted in 1992, prior to consideration of GMA requirements
18 for the role of Eastsound as an UGA.¹⁰ He states that the Eastsound Subarea Plan fails to
19 include any goal or policy for affordable housing. He requests that the Board find the 2005
20 Comprehensive Plan review failed to include a review of the Eastsound Subarea Plan and
21 its role in providing affordable housing and such a failure is either open to petition or must
22 be updated.¹¹
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30 ⁶ Order Dismissing Issues, Finding Noncompliance and Setting Schedule, March 10, 2008, at 5.

31 ⁷ Declaration of Ron Henrickson dated December 16, 2008.

32 ⁸ Objections to a Finding of Compliance, pg 1, 2.

⁹ Id., at 1,2.

¹⁰ Id. at 2.

¹¹ Id.

1 The County responds that it conducted the required review of its Land Use Element in 2005.
2 It refers to San Juan County Resolution 98-2005¹² (Resolution) and Ordinance 15-2005¹³
3 (2005 Ordinance). The Resolution included attached checklists which were prepared to
4 identify actions necessary to update the Comprehensive Plan and development regulations
5 for GMA compliance.¹⁴ It states that the 2005 Ordinance included reference to the
6 Eastsound Subarea Plan.¹⁵ The County also states that the 2005 Ordinance included those
7 revisions referenced as necessary in the Resolution.
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10 Furthermore, the County points to Ordinance 16-2009¹⁶ (2009 Ordinance) which they state
11 amended the Comprehensive Plan Housing Element. The County asserts that the 2009
12 Ordinance updated the population projections in its Appendix 1 and replaced the 1999
13 housing needs assessment in Appendix 5 with a current version.¹⁷
14

15 V. DISCUSSION

16 The issue with which the Board is presented is whether the County conducted the
17 procedural review required by RCW 36.70A.130(1) as opposed to an analysis of the
18 substance of that review and subsequent revision.
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20 Each comprehensive land use plan and development regulations shall be subject
21 to continuing review and evaluation by the county or city that adopted them.
22 Except as otherwise provided, a county or city shall take legislative action to
23 review and, if needed, revise its comprehensive land use plan and development
24 regulations to ensure the plan and regulations comply with the requirements of
25 this chapter according to the time periods specified in subsection (4) of this
26 section. RCW 36.70A.130 (1).

27 It is clear from the Resolution and 2005 Ordinance that the County did conduct the required
28 review of its Land Use Element. The Resolution lists various Comprehensive Plan and
29 development regulation provisions which were believed to require updating, including, but
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31 ¹² Record at 8.

¹³ Record at 1-2.

¹⁴ Exhibits A and A-1 attached to Resolution 98-2005, Record at 8.

¹⁵ San Juan County's Response To Objections at 6.

¹⁶ Record at 1097.

¹⁷ San Juan County's Response to Objections at 4.

1 not limited to: (1) population projections; (2) water quality protection; (3) low impact
2 development standards; (4) critical areas protection; and (5) revisions to agricultural
3 resource lands policies. The 2005 Ordinance was adopted on November 29, 2005. Any
4 challenge to the substance of the changes included in that ordinance would have been
5 subject to a Petition for Review filed within 60 days after publication by the County of the
6 adoption of the 2005 Ordinance pursuant to RCW 36.70A.290 (2).
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8 It is also clear that the County conducted the required review of its Housing Element, as
9 reflected in the 2009 Ordinance. The Petitioner does not question that a review of that
10 element occurred. Rather, he questions the substance in regards to affordable housing.
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12 As stated above, the sole remaining issue before the Board is whether or not the County
13 conducted the required RCW 36.70A.130(1) and (4) review. The Petitioner has failed to
14 meet his burden of proof to establish that such a review did not occur.
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16 **VI. ORDER**

17 The Board finds that San Juan County has achieved compliance by reviewing and revising
18 its Comprehensive Plan's Land Use and Housing Elements as required by RCW 36.70A.130
19 (1) and (4) and the prior order of this Board. Therefore, the Board enters a finding of
20 compliance and this case is closed.
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23 Dated this 2nd day of September, 2009.
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25 _____
William Roehl, Board Member

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James McNamara, Board Member

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Nina Carter, Board Member
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1 Pursuant to RCW 36.70A.300 this is a final order of the Board.

2 Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the
3 mailing of this Order to file a petition for reconsideration. Petitions for
4 reconsideration shall follow the format set out in WAC 242-02-832. The original and
5 three copies of the petition for reconsideration, together with any argument in
6 support thereof, should be filed by mailing, faxing or delivering the document directly
7 to the Board, with a copy to all other parties of record and their representatives. Filing
8 means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC
9 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a
petition for judicial review.

10 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the
11 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
12 judicial review may be instituted by filing a petition in superior court according to the
13 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
14 Enforcement. The petition for judicial review of this Order shall be filed with the
15 appropriate court and served on the Board, the Office of the Attorney General, and all
16 parties within thirty days after service of the final order, as provided in RCW
17 34.05.542. Service on the Board may be accomplished in person, by fax 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.

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

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