

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 PANZA, a Washington nonprofit corporation,
3 SELENA KILMOYER, ELIZABETH PENNY,
4 RONNA SMITH and DONALD STERN,

5 Petitioners,

6 v.

7 CITY OF LACEY,

8 Respondent.
9
10

Case No. 08-2-0028

ORDER ON COMPLIANCE

11
12 **I. PROCEDURAL HISTORY**

13 By Final Decision and Order (FDO) dated October 27, 2008, the Board found that the
14 Petitioners had sustained their burden of proof by establishing that the City of Lacey (City)
15 was clearly erroneous in the adoption of Ordinance No.1307 (Ordinance) as it had violated
16 the public participation requirements set forth in the Growth Management Act (GMA),
17 including RCW 36.70A.035 and RCW 36.70A.020(11). The Ordinance, as adopted, was
18 significantly different from the draft advertised for public comment and presented to the
19 Planning Commission. The City Council held no public hearing on the Ordinance. The
20 Board remanded to the City of Lacey.
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23 The City filed its Compliance Report on May 5, 2009 in which it stated that in order to
24 achieve compliance, the City 's Planning Commission held a public hearing on January 20,
25 2009 to consider an:

26
27 amendment of the City Zoning Code, Chapter 16, to add a new section
28 providing a review process and standards for review, processing, conditioning
29 and approval of either: 1) temporary homeless shelters located within existing
30 building (s) on church property, or; 2) temporary homeless encampments
31 located in a tent encampment on church property.¹

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¹ Compliance Report at pg. 2
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1 On May 6, 2009 Petitioners' filed a response to the City's Compliance Report stating that
2 they had no objection to a finding of compliance.²

3 4 **II. BURDEN OF PROOF**

5 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
6 of time to adopt legislation to achieve compliance. RCW 36.70A.300(3)(b). After the period
7 for compliance has expired, the board is required to hold a hearing to determine whether the
8 local jurisdiction has achieved compliance. RCW 36.70A.330(1) and (2).
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10 For purposes of board review of the comprehensive plans and development regulations
11 adopted by local governments in response to a non-compliance finding, the presumption of
12 validity applies and the burden is on the challenger to establish that the new adoption is
13 clearly erroneous. RCW 36.70A.320(1),(2) and (3).
14

15 In order to find the City's action clearly erroneous, the Board must be "left with the firm
16 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
17 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
18

19
20 Within the framework of state goals and requirements, the boards must grant deference to
21 local governments in how they plan for growth:

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

² Petitioners' Response To City of Lacey's Compliance Report
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1 RCW 36.70A.3201 (in part).

2 In sum, the burden is on the Petitioners to overcome the presumption of validity and
3 demonstrate that any action taken by the City is clearly erroneous in light of the goals and
4 requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
5 Where not clearly erroneous and thus within the framework of state goals and requirements,
6 the planning choices of the local government must be granted deference.
7

8 9 III. ISSUES TO BE DISCUSSED

10 The following issue statements are those on which the Board found the City noncompliant in
11 the above referenced FDO.
12

13 **1. Whether the City of Lacey adopted Ordinance No. 1307 in contravention of**
14 **the procedural requirements of Chapter 36.70A RCW, specifically RCW**
15 **36.70A.020 (11), RCW 36.70A.035 and RCW 36.70A.140.**

16 **4. Whether the City of Lacey's adoption of Ordinance No.1307 is inconsistent**
17 **with the goals set forth in Chapter 36.70A, specifically the stated goal of**
18 **encouraging the involvement of citizens in the planning process as set forth in**
19 **RCW 36.70A.020 (11).**

20 21 IV. DISCUSSION

22 The Board's decision to remand the Ordinance to the City was based solely on the City's
23 failure to comply with GMA public participation requirements and goals. Specifically, the
24 Board found that Ordinance No.1307 represented a significant change from the draft
25 presented for review and comment at the Planning Commission public hearing. As such, it
26 was incumbent upon the City to provide the public with an opportunity for additional review
27 and comment.
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29 The City has now addressed the public participation violation by conducting a Planning
30 Commission public hearing on January 20, 2009. Furthermore, the Petitioners now have no
31 objection to a finding of compliance.
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1 Although RCW 36.70A.330(1) provides that the board shall set a hearing for the purpose of
2 determining whether or not the jurisdiction is in compliance with the requirements of Chapter
3 36.70A, there is no apparent need for such a hearing. In this particular instance, the Board
4 finds that to hold a hearing would be a useless act: the parties would merely restate the
5 information set forth in the City's Compliance Report and the Petitioners' Response. The
6 City has fully complied with the Board's FDO and the public participation requirements of the
7 GMA. In addition, the Petitioners' response states they have no objection to a finding of
8 compliance.
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11 **V. ORDER**

12 Based on the foregoing, the Board finds that the City of Lacey has fully complied and this
13 case is dismissed.

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15 Entered this 12th day of May, 2009.

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18 _____
19 William Roehl, Board Member

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21 _____
22 James McNamara, Board Member

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24 _____
25 Nina Carter, Board Member
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27 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

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29 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
30 **mailing of this Order to file a petition for reconsideration. Petitions for**
31 **reconsideration shall follow the format set out in WAC 242-02-832. The original and**
32 **three copies of the petition for reconsideration, together with any argument in**
support thereof, should be filed by mailing, faxing or delivering the document directly

1 to the Board, with a copy to all other parties of record and their representatives.
2 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
3 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
4 filing a petition for judicial review.

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

9 Enforcement. The petition for judicial review of this Order shall be filed with the
10 appropriate court and served on the Board, the Office of the Attorney General, and all
11 parties within thirty days after service of the final order, as provided in RCW
12 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
13 but service on the Board means actual receipt of the document at the Board office
14 within thirty days after service of the final order.

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