

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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

5 Petitioners,

6
7 v.

8 JEFFERSON COUNTY,

9
10 Respondent.

CASE NOS. 03-2-0010 and 04-02-
0022

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

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12 THIS Matter came before the Board at a compliance hearing regarding those remaining
13 compliance issues identified in the May 31, 2005 Final Decision and Order and May 30,
14 2006 Compliance Order. In this decision, the Board finds that the County is working in good
15 faith to achieve compliance but has not yet done so. As a result, the Board will enter a
16 finding of continuing noncompliance and a new schedule for compliance. Having found
17 good faith on the part of the County, the Board declines to recommend sanctions, as
18 requested by Petitioners.
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22 **I. RECENT PROCEDURAL HISTORY**

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

1 On July 29, 2005 we issued an Order on Reconsideration which added five conclusions of
2 law to the May 31 Final Decision and Order.² Four of these additional Conclusions of Law
3 on Invalidity found that the County's Comprehensive Plan Policies and development
4 regulations allowing urban levels of development without corresponding urban levels of
5 service substantially interfered with the goals 1, 2, and 12 of the GMA.
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7 On March 8, 2006 we denied the County's motion to rescind invalidity. While the County
8 asserted that a savings clause in its 2003 UGA ordinance served to reinstate rural
9 development standards throughout the Irondale and Port Hadlock UGA following the
10 Board's May 31, 2005 Order, we determined that this was not the case. As a result, our
11 invalidity determinations continue in place to the present time.
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14 In the Board's May 30, 2006 Compliance Order we again found that the County had not
15 enacted legislation in response to the Board's findings of non-compliance. Because the
16 County was still working on its capital facilities plan it had not adopted major legislation in
17 response to the May 31, 2005 Order. The County did not address the non-compliance
18 findings in Conclusions of Law C, E, F, G, H and I.³ Therefore, those matters remained
19 non-compliant.
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22 In addition, we found that County Ordinance 02-0126-06 did not amend or repeal the
23 development regulations adopted for the Irondale/Port Hadlock UGA, and that they
24 remained noncompliant.⁴ We also found that the 2004 update of the County's
25 comprehensive plan corrected most of the internal inconsistencies in the plan, but that the
26 failure to use the same planning period throughout the plan was clearly erroneous. We
27 directed the County take legislative action to achieve compliance in accordance with the
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31 ² Order Granting Reconsideration, July 29, 2005, Conclusions of Law on Invalidity M-Q.

32 ³ Compliance Order, May 30, 2006, at 35.

⁴ Id.

1 decision no later than January 25, 2007 and to submit a Report of Actions Taken by
2 February 9, 2007.

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4 On February 12, 2007 Jefferson County filed that Statement, reporting progress in moving
5 toward compliance, but acknowledging that it had not formally adopted any measures that
6 would justify a finding of compliance or the lifting of invalidity. In response, Petitioners filed
7 their Objections and Motion for Additional Finding of Invalidity and Sanctions. Petitioners
8 subsequently also filed a Motion for Additions and Supplements.
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10 The Board conducted its Compliance hearing on March 20, 2007 at the Board's office in
11 Olympia. All three Board members appeared, with Ms. Hite attending by phone. Petitioners
12 were represented by Gerald Steele, and Jefferson County was represented by Mark
13 Johnsen. Present with Mr. Johnsen was Al Scalf, Jefferson County Director of Community
14 Development.
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16 **II. RULING ON MOTIONS**

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18 On March 9, 2007 Petitioners filed a Motion for Additions and Supplements. Petitioners
19 sought to add proposed Exhibits 1075, 1072, 1073 and 1074. Jefferson County filed an
20 objection on March 16, 2007.
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22 Exhibit 1075 was not attached but referenced Ordinance No. 08-0710-06 adopted on July
23 10, 2006. In its Additions to the Index of the Record, Attachment 1 to the Motion,
24 Petitioners stated that the Exhibit would be provided at the hearing. Petitioners did not
25 provide the exhibit at the March 20, 2007 hearing but provided it by letter filed with the
26 Board on March 27, 2007. Petitioners characterized Ordinance 08-0710-06 as one that
27 "permanently amend the Jefferson County Development Regulations and readopts
28 language that states that urban Commercial zoning is in effect in the Urban Commercial
29 Land Use Designation in the Port Hadlock UGA" and "regulations that do not make rural
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1 development standards applicable inside the UGA.”⁵ A review of Ordinance No. 08-0710-
2 076 calls this characterization into question. The limited sections of the ordinance provided
3 by ICAN merely: a) establish land use classes for the County as a whole (18.15.005); b)
4 defines current UGAs in the County, but provides that the specific land use and zoning
5 provisions of the Irondale and Port Hadlock UGA are contained in Chapter 18.18 JCC
6 (18.15.010); c) defines categories of rural lands (18.15.015); and d) describes allowable
7 residential density (18.15.055). In short, these sections do not have the effect ICAN claims.
8 Supplementation of the record with this exhibit would not “be necessary or of substantial
9 assistance to the board in reaching its decision”.⁶ The motion to supplement the record with
10 Exhibit 1075 is denied.
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13 Exhibit 1072 is a “Building Permit Detail” for a 10,600 square foot commercial building to be
14 located in the Port Hadlock UGA issued on May 31, 2006. Exhibit 1073 provides evidence
15 of the parcel number of the site for the commercial building application, and exhibit 1074 is
16 a map of the Port Hadlock UGA with the location of the permit indicated. Exhibits 1073,
17 1072 and 1074 were offered as “an example of the County vesting and issuing building
18 permits to development regulations that have been invalidated in the Port Hadlock UGA.”⁷
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21 The County has objected to the addition/supplementation of the record with Exhibits 1073,
22 1072 and 1074, arguing that the motion was untimely, having been filed several weeks after
23 Petitioners’ brief was due, and on the basis that the commercial building was allowed in the
24 Rural Village Center area.
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26 The Board denies Petitioners’ motion for addition/supplementation. Exhibits 1073, 1072
27 and 1074 were clearly offered in support of Petitioners’ arguments for sanctions. In fact,
28 Petitioners stated that “Proposed Exhibit 1072 should be of substantial assistance to this
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31 ⁵ ICAN’s Motion for Additions and Supplements at 2.

32 ⁶ WAC 242-02-540.

⁷ ICAN’s Motion for Additions and Supplements, at 3.

1 Board in reaching its decision regarding Petitioners' request for a recommendation for
2 sanctions."⁸ As such, they should have been offered when Petitioners filed their
3 Compliance brief. WAC 242-02-893 (2) provides that: "The evidence in a compliance
4 hearing shall consist of the exhibits cited in the briefs submitted in the compliance
5 proceeding and either attached to the briefs or specifically identified as exhibits submitted at
6 attached to prior briefs filed in the same case number." Consequently, any proffered
7 evidence should have been submitted at the time that Petitioners' objections were due –
8 February 23, 2007. While the Board may make exceptions to this rule where appropriate,
9 Petitioners have failed to demonstrate that the late submission was necessary and
10 unavoidable.
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12 III. DISCUSSION OF THE ISSUES

13 **Position of the Parties**

14 The parties are in agreement that the County has not yet achieved compliance with respect
15 to sewer facility planning for the Irondale/Port Hadlock UGA.
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17 **County's Position**

18 In its Statement of Actions Taken, the County related that it had enacted Ordinance No. 05-
19 041-06, which rescinded the development regulations permitting urban level densities in the
20 UGA in response to Conclusions of Law N and P from the July 29, 2005 Order on
21 Reconsideration.
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23 As Ordinance No. 05-041-06 was an interim ordinance, it was followed by adoption of
24 Ordinance No. 11-1120-06. This too was an interim ordinance and the County has
25 indicated that it was enacting a third interim ordinance on March 12, 2007 reinstating rural
26 development regulations in the UGA.
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32 ⁸ Id.

1 The County further reported that it has entered into an agreement with TetraTech/KCM to
2 prepare a Port Hadlock UGA Sewer Facility Plan.⁹ TetraTech/KCM has produced a draft
3 plan and UGA maps in the draft have been reset to reflect boundaries consistent with its
4 Capital Facilities Plan.

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6 The draft plan was submitted to the Washington State Departments of Ecology and Health
7 in January of 2007. Comments from state agencies are expected in June 2007.

8 Completion and adoption of the plan is anticipated in January 2008.

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10 In addition, the County reported progress in curing several additional items of non-
11 compliance: preventing urban residential land from being transformed into urban
12 commercial land without proof of need (5/31/05 FDO, Conclusion of Law I); amending tables
13 and figures to reflect a consistent 20-year planning horizon ending in 2024, and reflecting a
14 maximum forecasted UGA population of 4,906 (Conclusion of Law H); developing a
15 transportation concurrency regulation to ensure that level of service standards are
16 maintained (Conclusion of Law G); and removing the language from the UGA element which
17 suggests that the amendment to the Comprehensive Water Plan for the PUD automatically
18 becomes part of the County's Comprehensive Plan. Such matters are presently being
19 scheduled for approval by the Jefferson County Commissioners.

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23 **Petitioner's Position**

24 In response, ICAN argues that Jefferson County has made little progress in addressing the
25 issues identified in the May 31, 2005 FDO. It asserts that the interim ordinances intended
26 to suspend the invalidated urban development regulations (Chapter 18.18 JCC) have been
27 ineffective due to the failure to conduct a public hearing within 60 days of passage.

28 Nevertheless, ICAN does recognize the County's due diligence in conducting sewer
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32 ⁹ Jefferson County's Statement of Actions Taken, at 4.
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1 planning for the Port Hadlock/Irondale UGA.¹⁰ ICAN argues that the County is proceeding
2 with plans to sewer only one-half of the areas inside the current Port Hadlock/Irondale UGA
3 in the 2004-2024 planning period. Because it recognizes that a UGA is feasible for a
4 reduced area, ICAN does not oppose a 3-month extension to allow the County to: 1)
5 permanently rescind JCC 18.18; 2) reduce the size of the Port Hadlock/Irondale UGA; and
6 3) come into compliance on remaining items in the July 29, 2005 Order Granting
7 Reconsideration. ICAN also supports a one-year extension for the County to complete its
8 sewer planning and a two-year extension for the County to adopt development regulations
9 for the UGA that are consistent with the Comprehensive Plan.
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12 In reply, the County agrees that it needs an additional year to complete its sewer facility
13 planning for the Hadlock/Irondale UGA, two years to implement development regulations for
14 the area, and three months to implement amendments to the areas of noncompliance
15 relating to traffic, water service, population forecasts, and other areas previously identified
16 by the Board. With regard to the size of the UGA, the County notes that it is in the process
17 of evaluating adjustments to the boundaries, with the UGA to be limited to the area where
18 sewers will be in place by 2024. It contemplates that the reduced boundaries will be
19 established by the end of the summer, 2007.
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22 Board Discussion

23 A. Continuing Noncompliance

24 Because the County has not taken any legislative action to achieve compliance since the
25 Board issued its May 30, 2006 Compliance Order, the Board concludes that the County
26 continues to be noncompliant with regard to all areas of noncompliance addressed in the
27 Board's May 30, 2006 Compliance Order.
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29 B. County's Need for More Time for Compliance

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32 ¹⁰ ICAN's Objections and Motion of Additional Findings of Invalidity and Sanctions, at 2.

1 The County notes that it has been working diligently to bring the Port Hadlock/Irondale UGA
2 into compliance, but requests additional time to complete the process. This includes
3 rescission of invalid development regulations permitting urban level densities in the UGA;
4 taking necessary steps to complete a sewer facility plan; and moving to correct minor
5 inconsistencies in its Comprehensive Plan and development regulations. Because the
6 County has in fact demonstrated that it has been making good faith efforts to cure the areas
7 of non-compliance, and because the Board acknowledges that the County is obligated to
8 seek public and agency comments on its proposals, it is appropriate to grant the additional
9 time requested.
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12 The Board therefore finds that it is reasonable to grant the County an extension of three
13 months to formally adopt amendments to cure non-compliance with regard to minor
14 inconsistencies in the Comprehensive Plan and development regulations as described
15 above (Conclusions of Law G through I).
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17 RCW 36.70A.300(3)(b) authorizes the Board to give the County more than 180 days to
18 achieve compliance in cases of unusual scope and complexity. The Board finds that
19 developing a compliant Sewer Facilities Plan, modifying the UGA boundaries and adopting
20 development regulations for the Irondale/Port Hadlock UGA is a matter of unusual scope
21 and complexity. Further, the County's due diligence and the progress being made toward
22 the adoption of a sewer plan and the resetting of rural development regulations for the
23 Irondale/ Port Hadlock UGA are also important to our granting the requested extension.
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26 Therefore, the Board grants the County's request for a 1-year extension to complete sewer
27 facilities planning and to adopt reduced boundaries for the Irondale/Port Hadlock UGA to
28 reflect areas where sewers will be in place by 2024. This will then be consistent with the
29 County's 20-year planning horizon. We also grant a 2-year extension to adopt appropriate
30 development regulations for the Irondale/Port Hadlock UGA.
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32 C. Request for Recommendation of Sanctions

1 ICAN requests that the Board recommend to the Governor's Office that financial sanctions
2 be imposed on the County for its failure to come into compliance in a timely manner.

3 RCW 36.70A.330 (3) provides:

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5 (3) If the board after a compliance hearing finds that the state agency, county, or city is not in
6 compliance, the board shall transmit its finding to the governor. The board may recommend to the
7 governor that the sanctions authorized by this chapter be imposed. The board shall take into
8 consideration the county's or city's efforts to meet its compliance schedule in making the decision to
9 recommend sanctions to the governor.

10 ICAN notes¹¹, and we agree, that the County is proceeding with due diligence in its sewer
11 planning. Furthermore, the County is moving forward to implement other changes to its
12 Comprehensive Plan and development regulations that will address the areas of non-
13 compliance. As the County points out, we have held that where a county is working
14 reasonably to respond to the Boards' finding of non-compliance, sanctions are not
15 warranted. Panesko v. Lewis County, WWGMHB, 00-2-0031c (Order Finding Continuing
16 Non-Compliance and Setting New Compliance Schedule, 2/3/05). Accordingly, the Board
17 will not make a recommendation for sanctions at this time.

18 IV. ORDER

19 The Board finds that Jefferson County continues to be noncompliant with regard to issues
20 that were found to be noncompliant in the May 30, 2006 Compliance Order. Because the
21 County continues to make progress achieving compliance, the County is granted additional
22 time to achieve compliance as follows:

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24 Within **3 months**, Jefferson County must take legislative action to formally adopt
25 amendments to cure non-compliance with regard to minor inconsistencies in the
26 Comprehensive Plan and development regulations as described above (5/31/05 FDO
27 Conclusions of Law G through I).
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32 ¹¹ ICAN's Objections and Motion for Additional Findings of Invalidity and Sanctions, at 2.

1 Within **1 year** it must complete sewer facility planning for the Irondale/Port Hadlock UGA
2 and adopt reduced boundaries for the Irondale/Port Hadlock UGA to match where sewer
3 service will be in place by 2024.

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5 Within **2 years** it must adopt development regulations for the Irondale/Port Hadlock UGA
6 that are consistent with the Jefferson County Comprehensive Plan.

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8 The following schedule will apply:

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10 **Schedule for Compliance on Conclusions of Law G through I of the 5/31/05 FDO**

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12 July 3, 2007	Compliance due for minor corrections to items identified in Conclusions of Law G through I of the 5/31/05 FDO
13 July 10, 2007	County's Report of Action Taken Due on minor corrections.
14 July 17, 2007	Index Due
15 July 24, 2007	Additions to Index Due
16 July 24, 2007	Written Objections (if any) to a partial finding of compliance
17 August 14, 2007	County's Response (if necessary) to any Objections to Compliance Due
18 September 3, 2007	Compliance Hearing (location to be determined)

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20 April 2, 2008	Compliance due for sewer facility planning and adoption of revised UGA boundaries
21 April 9, 2008	Compliance Report (sewer facility planning; revised UGA boundaries) Due
22 April 16, 2008	Index Due
23 April 23, 2008	Additions to Index Due
24 April 23, 2008	Written Objections (if any) to a partial finding of compliance
25 May 14, 2008	County's Response (if necessary) to any Objections to Compliance Due
26 June 2, 2008	Compliance Hearing on sewer planning and reduced UGA boundaries (location to be determined).

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28 April 2, 2009	Compliance Due for development regulations for the Port Hadlock/Irondale UGA
29 April 9, 2009	County's Statement of Actions for development regulations

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	for the Port Hadlock/Irondale UGA due
April 16, 2009	Index Due
April 23, 2009	Additions to Index Due
April 23, 2009	Written Objections (if any) to a partial finding of compliance
May 14, 2009	County's Response (if necessary) to any Objections to Compliance Due
June 2, 2009	Compliance Hearing (location to be determined)

Dated this 9th day of April, 2007.

James McNamara, Board Member

Holly Gadbaw, Board Member

Margery Hite, Board Member