

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

CITY OF GIG HARBOR, et al.,)	
)	Consolidated
Petitioners,)	Case No. 95-3-0016
)	
v.)	FINDING OF
COMPLIANCE)	
PIERCE COUNTY,)	
)	
Respondent.)	
_____)	

I. PROCEDURAL HISTORY

On January 27, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received the first of seven petitions for review, challenging the adoption by Pierce County (the **County**) of Ordinance No. 94-82S, the Pierce County Comprehensive Plan (the **Plan**) and related interim regulations.

Subsequently, five of the seven petitions were dismissed with prejudice after the County and the individual petitioners reached settlement agreements. Consequently, only the petitions for review from Nell Batker (**Batker**) (Case No. 95-3-0012) and the Peninsula Neighborhood Association (**PNA**) (Case No. 95-3-0015) remain before the Board.

On October 31, 1995, the Board entered a Final Decision and Order in this case finding all but specified portions of the Plan in compliance with the Growth Management Act (**GMA** or the **Act**). The Board established April 3, 1996, as the deadline for the County to take action to bring the Plan fully into compliance.

On April 11, 1996, "Pierce County Statement of Compliance Actions" was filed with the Board along with one attachment and four exhibits.

On April 16, 1996, the Board entered a "Notice of Compliance Hearing" in this matter.

On April 24, 1996, the Board received "Peninsula Neighborhood Association's Stipulation of Compliance" (**PNA's Stipulation**) and "PNA Response to Pierce County Statement of Compliance" (**PNA's Response**). The former stipulated that the County had complied with the Board's Final Decision and Order with the exception of item 3 in that order. PNA's Response

dealt with that item.

On April 26, 1996, “Nell Batker’s Stipulation of Compliance” was filed with the Board.

On May 1, 1996, “Pierce County’s Reply to PNA’s Response on Compliance Hearing” (**County’s Reply**) was filed with the Board with two exhibits.

The Board held a compliance hearing on Friday, May 3, 1995, at the Metropolitan Park District Headquarters at 4702 South 19th Street in Tacoma. M. Peter Philley, presiding officer in this case, was present from the Board. Nell Batker did not appear; Thomas D. Morfee, *pro se*, represented PNA; and T. Ryan Durkan represented the County. Court reporting services were provided by Robert H. Lewis of Robert H. Lewis & Associates, Tacoma. No witnesses testified.

II. FINDINGS OF FACT

On November 29, 1994, the Pierce County Council (**County Council**) passed Ordinance No. 94-82S, adopting the Pierce County Comprehensive Plan (the **Plan**).

On October 31, 1995, the Board entered its Final Decision and Order in this case.

On November 21, 1995, the County Council adopted Ordinance No. 95-132S which amended the Plan. *See* Ordinance No. 96-17S2, at 6.

On January 18, and February 1 and 15, 1996, the Planning and Environment Committee of the County Council held meetings to discuss the Board’s Final Decision and Order. *See* Ordinance No. 96-17S2, at 8.

On February 7, 1996, the County’s Planning and Land Services Department (**PALS**) issued a “Staff Report and Draft Supplemental Environmental Impact Statement - Amendments to Pierce County Comprehensive Plan and Development Regulations - Zoning - Hearings Board Compliance” (the **Integrated Report**). *See* Ordinance No. 96-17S2, at 8; *see also* Exhibit (**Ex.**) A to Ordinance No. 96-17S2.

On March 18, 1996, the Pierce County Planning Commission forwarded its recommendation to the County Council regarding Proposal No. 96-17S2, after holding open public meetings to review the Integrated Report. *See* Ordinance No. 96-17S2, at 9.

On February 29, and March 7, 14, and 21, 1996, the County Council’s Planning and Environment Committee held public hearings on Proposal No. 96-17S2.

In March 1996, PALS issued a “Final Supplemental Environmental Impact Statement - Amendments to Pierce County Comprehensive Plan and Development Regulations - Zoning - Hearings Board Compliance.” *See* Ex. B to Ordinance No. 96-17S2.

On March 26, 1996, the County Council passed Ordinance No. 96-17S2 which became effective on May 1, 1996.

III. DISCUSSION

The order portion of the Final Decision and Order (at 62-63, emphasis in original) is quoted below:

IV. ORDER

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board finds that the Pierce County Comprehensive Plan is **in compliance** with the requirements of the GMA except for those provisions discussed below.

- 1) The Plan is **remanded** and the County is ordered to adopt a narrative defining its open space corridors and amend its open space/greenbelts map to depict such corridors within and between UGAs, and connecting critical areas.
- 2) Since Batker has withdrawn Legal Issues Nos. 5, 7 and 8, they are **dismissed with prejudice**.
- 3) The Plan is **remanded** with instructions for the County to specify (either in the Plan itself or a document incorporated by reference in the Plan) the “land supply market factor” relied upon to size the County’s UGAs. This factor must be expressed as a percentage.
- 4) The Plan’s Rural Activity Center provisions are **remanded** with instructions for the County to establish specific criteria that prohibit urban uses in the rural areas unless the uses, by their very nature, are dependent upon being in a rural area and are compatible with the functional and visual character of the immediate rural area. The South Gig Harbor and Tacoma Narrows Airport RACs are remanded to the County with instructions to either entirely remove their RAC designation or otherwise bring that designation into compliance with the Act and this decision.
- 5) The Plan’s Rural 5 designation is **remanded** with instructions for the County to amend

its provisions so that Rural 5 would not enable urban growth in a rural area. The County is also directed to amend the Plan so that it provides a variety of rural densities, and to remove the five-acre designations adjacent to the Gig Harbor UGA and the CUGA or adopt an explanation within the Plan of how such five-acre parcels will function, in effect, as a growth reserve and will not thwart the County's future flexibility to increase the size of its UGAs.

6) Pursuant to RCW 36.70A.300(1)(b), the County is given until **5:00 p.m. on Wednesday, April 3, 1996** to bring its comprehensive plan into compliance with the Board's Final Decision and Order and the requirements of the Act.

7) The County shall file by **5:00 p.m. on Friday, April 12, 1996** one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the County has procedurally complied with this Order. If the Plan is amended, substantive compliance will not be determined until and unless new petitions for review are filed within 60 days of publication of notice of adoption of a new comprehensive plan and/or implementing development regulations.

Batker stipulated that the County complied with each of the seven items contained in the Order. PNA stipulated that the County complied with all but item number three, requiring the County to specify, either in the Plan or a document incorporated by reference into the Plan, a land supply market factor (expressed as a percentage) for sizing urban growth areas (UGAs).

The Board holds that the County has complied with item number three. Exhibit D to Ordinance No. 96-17S2 amended the Plan's Land Use Element (at II-11, text preceding "Joint Planning") with the following new language:

The land supply market factor for urban areas within the unincorporated Pierce County CUGA is documented in **Urban Growth Area Capacity Report**, December 1, 1995 which be revised as new plan amendments are enacted. At that time the land supply market factor was determined to be 24% excess supply of urban land for residential purposes. The Council made a policy decision not to exceed a land supply market factor of 25% when designating the Comprehensive Urban Growth Area.... Emphasis in original.

In addition, the Plan was amended to incorporate by reference the Urban Growth Area Capacity Report of December 1, 1995 referenced in the quote above. *See* Ex. D to Ordinance No. 96-17S2. The Urban Growth Area Capacity Report itself indicates that the County used a 24% market supply factor. Ex. 2 to County's Reply, at 14, Table 10. As an aside, the Board notes that this percentage falls with acceptable parameters (i.e., 25% or less without justification) for market

supply factors established in *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039, at 42 and 65; *see also* the Final Decision and Order in this case, at 31 and 45.

IV. finding of compliance

The Board, having reviewed its Final Decision and Order and the file in this case, having reviewed the above-referenced documents and attached exhibits, and having considered the arguments of the parties, concludes that the County **has complied** with the Board's Final Decision and Order. Therefore, the Board issues a Finding of Compliance to Pierce County.

So ORDERED this 20th day of May, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member