

State of Washington

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

ASSOCIATION TO PROTECT)

ANDERSON CREEK, ET. AL.,) Consolidated

) Case No. 95-3-0053

Petitioners,)

)

v.) **FINDING OF COMPLIANCE**

)

CITY OF BREMERTON,)

)

Respondent,)

)

and)

)

RON SCIEPKO and ELLEN LUNDE,)

)

Intervenors.)

_____)

I. PROCEDURAL BACKGROUND

On December 26, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**), issued a Final Decision and Order (the **Order**) in the above-captioned case, remanding the City of Bremerton's Comprehensive Plan (the **Plan**) for compliance with that Order. Compliance was to be completed not later than February 26, 1996, and a statement of actions taken was to be filed with the Board on March 4, 1996.

The Board's Order directed the City to: adopt its Plan by ordinance; correct an internal inconsistency in a

Land Use Element table; and modify the text of the Land Use Element regarding the amount of industrial acreage in the West Bremerton planning area and the current use of the Anderson Creek property.

On February 26, 1996, the Board received a letter from the City concerning "Corrective Actions to comply with final Decision and Order of the CPSGMHB, Case No. 95-3-0053", with an attached copy of Ordinance No. 4545, entitled "An Ordinance adopting the Bremerton Comprehensive Plan and including amendments ordered by the Growth Hearings Board." Six exhibits were attached to the Ordinance: exhibits A through F set forth the revisions made, and exhibit G summarized the Ordinance. Also attached was a Staff Report dated February 8, 1996, summarizing the City's proposed compliance actions.

On March 19, 1996, the Board received "Anderson Creek I & II's Response to City of Bremerton's Statement of Compliance," with seven attached documents: draft minutes of the Planning Commission's January 30, 1996 meeting; the City Council's February 14, 1996 meeting agenda; excerpts of the minutes of that meeting; a letter to the City Council, dated February 14, 1996, from Helen E. Havens-Saunders; the City's Staff Report on Plan amendments; and excerpts of minutes of the March 22 and April 5, 1995 City Council meetings. A videotape of the City Council's February 14, 1996 hearing was also included.

Also on March 19, 1996, the Board received "Intervenors' Adoption of City of Bremerton's Statement of Compliance."

On March 26, 1996, the Board received the City's "Reply to Response of Helen E. Havens-Saunders and Michael E. McCuddin."

The Board held a compliance hearing in this matter on April 3, 1996 at the Board's office. Chris Smith Towne served as presiding officer and Joseph W. Tovar was also present. Helen Havens-Saunders appeared for herself and Michael E. McCuddin. Jane Ryan Koler represented the City; G. Perrin Walker represented Intervenors Ron Sciepko and Ellen Lunde. Court reporting services were provided by Robert H. Lewis of Lewis & Associates, Tacoma.

II. STATEMENT OF FACTS

1. The City's Long-range Planning Division prepared proposed modifications to the City's Plan, developed to comply with the Board's remand order. Attachment to City's compliance memorandum, February 23, 1996.
2. The proposed modifications were transmitted to the Planning Commission and reviewed by the Commission at a January 16, 1996 hearing.
3. The Planning Commission considered the proposed modifications at its January 30, 1996 meeting. Intervenor Ron Sciepko commented on the Board's hearing process. Representatives of the Association to Protect Anderson Creek expressed their concerns with the process used for

surplusing lands; the land use designations for the Anderson Creek property; provision of urban services to the site; and their preferences as to future land uses. The Commission voted to transmit the Plan, including the proposed amendments, to the City Council, with its recommendation for approval.

4. The City Council conducted a first reading and public hearing on the re-adoption of the Plan, with proposed changes, on February 14, 1996. Ron Sciepko, Helen Haven-Saunders and representatives of the Association to Protect Anderson Creek testified.
5. The City Council adopted Ordinance No. 4545 on February 21, 1996; that ordinance adopted the entire Comprehensive Plan, previously adopted by resolution, and included the amendments required to comply with the Board's remand order. In addition, the City redesignated a portion of the Anderson Creek property in question as low density residential (LDR).

III. POSITIONS OF THE PARTIES

Petitioners Anderson Creek I and II contend that the City failed to comply with the Growth Management Act (**GMA** or the **Act**) in making changes to the Plan, specifically alleging deficiencies in public participation. As to the City's actions in response to the Board's remand, petitioners describe them as narrowly focused, citing to the City's characterization of the actions as "legislative housekeeping," and with public comment discouraged and limited. Petitioners assert that the City failed to formally consider public comment at any stage of the amendment proceedings, directing the Board's attention to the instructions it placed in its Order to "meet the requirements of RCW 36.70A.020(11) and RCW 36.70A.140, as well as any City adopted local public participation and notice procedures." Order, at 29.

In response, the City argues that the issues of concern to petitioners, including the sale of property and the industrial designations placed on that land, are irrelevant to compliance with the Board's Order, noting that the Board has already decided those issues. *See* order, at 11 and 19. It further asserts that it complied with public participation requirements, pointing to pre-adoption hearings of the Planning Commission and City Council. Finally, the City argues that the Board could not have intended that the City undertake full citizen participation efforts on the entire Plan, rather than on the remanded portions of the Plan.

Intervenors Ron Sciepko and Ellen Lunde stated their belief that the City's actions taken in response to the Board's Order met the requirements of that order. They note that there was no alternative land use designation for the Anderson Creek property required to be considered during the remand period, because the Board had found the current designation to be in compliance with the Act. Order, at 20-21.

Petitioners responded that they agree that the City complied with the Board's "technical revision requirements." The question is whether there was compliance with the letter and spirit of the public participation requirements of the Act, specifically in regard to the manner in which the City listened and responded to citizens during the remand period. Finally, Petitioners stated that they had expected to participate in discussions of alternatives to industrial development of the watershed during the compliance period, and that while the brevity of the compliance period would have limited the quantity

of public participation, it would not have limited the quality of such participation.

IV. DISCUSSION

The Board agrees with the City, and with Petitioner's statement at the compliance hearing, that the City's actions taken in response to the section No. 1 of the Board's order of remand comply with that order. The Board is not taking a position as to whether the redesignation of a portion of the property in question meets the substantive requirements of the Act.

On remand, the City could have substantively amended its comprehensive plan, had it elected to do so. However, the Board's Order clearly did not require any substantive changes. The Board addressed the substantive merits of the Plan in its Final Decision and Order, and found that the designation of the property as industrial complied with the Act. Given the amount of time afforded the City to comply with the Board's Order, 62 days, the City was virtually precluded from making many substantive changes, in light of the Act's public participation requirements.

As to the City's public participation process for the actions it took on remand, the Board **holds that the City met the requirements set forth in section No. 2 of the Board's Order.**

In a recent decision, the Board analyzed the question of the nature and extent of public participation required for actions on remand, and established a five-part test, for use in cases where a GMA enactment is remanded but not declared invalid:

1. the *general public's expectation* of the public participation process that would apply on remand, based on: a) the locally established public participation program and; b) actual past practice in conformance with that program;
2. the *amount of time* given to a jurisdiction to comply;
3. the scope of the remand;
4. the *nature of the corrective action* that must be taken to bring an enactment into compliance; and
5. the *level of discretion* afforded a jurisdiction in taking actions to bring an enactment into compliance. *West Seattle Defense Fund v. City of Seattle*, Case No. 95-3-0073, Final Decision and Order (1996), at 15.

In applying those factors to the facts in this case, the Board found that:

- 1) The Citizens Advisory Committee (CAC), the City's mechanism for public involvement in the development of its Plan, ceased to operate at the time the Plan was initially adopted. Given the limited nature and scope of the remand, the Act did not require the City to reactivate the CAC to participate in the actions taken;
- 2) **The Board allowed only 62 days for the City to bring its Plan into compliance with the Act. It could have allowed 180 days, but given the limited nature and scope of the remand concluded that the shorter period**

was adequate;

- 3) The Order directed the City to make three minor text changes, and to adopt its amended Plan by enactment of an ordinance, rather than by resolution;
- 4) The action required minimal staff effort, and minimal review time for the City Council; and
- 5) The level of discretion involved in the actions required to be taken by the City was extremely limited. The Board directed that specific technical provisions in the Plan be made initially consistent.

In summary, the City, through its Planning Commission and City Council, afforded opportunities for public participation appropriate to the actions required by the Board's remand order.

V. FINDINGS

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 City **has complied** with the Board's Final Decision and Order. Therefore, the Board issues a Finding of Compliance to the City of Bremerton. [\[FN1\]](#)

So ordered this 15th day of April, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley

Board Member

Joseph W. Tovar, AICP

Board Member

Chris Smith Towne

Board Member

[FN1](#)

The Board is not ruling on whether the redesignation of a portion of the Anderson Creek property substantively complies with the Act. Such a determination would only be reached if a petition for review challenging that action is timely filed with the Board.

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