

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

KELLY, et al.,)	Case No. 97-3-0012c
Petitioners,)	(Kelly)
v.)	ORDER RESCINDING INVALIDITY
SNOHOMISH COUNTY,)	and FINDING of COMPLIANCE
Respondent,)	
and)	
CAVALERO HILL L.L.C. and)	
SNOHOMISH COUNTY-CAMANO)	
ASSOCIATION OF REALTORS,)	
Intervenors.)	

I. PROCEDURAL HISTORY

On July 30, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) entered a Final Decision and Order (**FDO**) in the above-captioned case. The FDO found one portion of Ordinance No. 96-074, relating to the Cavalero Hill amendments, to be noncompliant with the Growth Management Act (**GMA** or **Act**). Additionally, the County's action in adopting these amendments was found to substantially interfere with RCW 36.70A.020(11) – the public participation goal. Therefore, the FDO invalidated those portions of Ordinance No. 96-074 comprising the Cavalero Hill amendments. The Board's order also set a compliance deadline of December 31, 1997, and directed Snohomish County (the **County**) to file a Statement of Actions Taken to Comply (**SATC**) not later than January 7, 1998.

On January 7, 1998, the Board received Snohomish County's SATC and Motion to Extend Compliance Deadline.

On February 26, 1998, in response to the County's SATC and its request for an extension,

together with the petitioners' and intervenors' responses, the Board changed the compliance schedule, directing the County to file a Second SATC on March 28, 1998.

On March 30, 1998, the Board received Snohomish County's Second SATC.

On April 20, 1998, after considering the County's Second SATC and its request for another extension, together with the petitioners' and intervenors' responses, the Board again changed the compliance schedule, directing the County to file a Third SATC on December 7, 1998.

On December 8, 1998, the Board received Snohomish County's Third SATC.

On February 11, 1999, after considering the County's Third SATC and its request for another extension, together with petitioners' and intervenors' responses, the Board issued an Order granting intervention to the City of Lake Stevens (**City**), denying the County's motion to extend the compliance deadline and setting a hearing on compliance for March 11, 1999.

On March 11, 1999, the Board held a hearing on compliance at its Seattle office.

On March 31, 1999, the Board issued its "Order Finding Noncompliance" (**FNC**). The FNC provided:

1. The County has failed to comply with the GMA as set forth in the July 30, 1997 FDO. Pursuant to RCW 36.70A.300(1)(b), the Board directs the County to take legislative action to remove invalidity by repealing those portions of Ordinance 96-074 comprising the Cavalero Hill amendments by May 27, 1999.

2. The County shall provide a Fourth Statement of Actions Taken to Comply to the Board and the parties by no later than 4:00 p.m. on June 3, 1999.

3. The Board will hold a compliance hearing on this matter on Monday, June 21, 1999. Any response or comments by the parties related to the County's Statement of Actions Taken to Comply shall be filed with the Board no later than 4:00 p.m., Wednesday, June 16, 1999. ^[1]

FNC, at 7.

On June 3, 1999, the Board received "Respondent Snohomish County's Fourth SATC." The SATC attached a copy of Ordinance No. 99-028, passed on May 17, 1999.

On June 8, 1999, the Board issued a "Notice of Change in Compliance Hearing Date" indicating that the compliance hearing would be held telephonically at 11:00 a.m. on Thursday, June 17,

1999.

On June 16, 1999, the Board received “Intervenor Cavalero Hill’s Response to Actions Taken.” Although Intervenor voiced concerns over the repealed and amended designation of the subject property, no objections were raised regarding the County’s effort to comply with the Board’s March 31, 1999 FNC.

On June 17, 1999, the Board held a telephonic Compliance Hearing in Case No. 97-3-0012c at the Board’s offices. Present for the Board were Board Members Joseph W. Tovar and Edward G. McGuire, Presiding Officer. Other participants in the telephonic hearing included: Petitioner Kristen Kelly and Petitioner’s attorney, David Bricklin; Martin Jones, representing Intervenor Cavalero Hill; Dana Kapela, representing Intervenor City of Lake Stevens; and Barbara Dykes and Duana Kolouskova, representing Respondent Snohomish County.

II. FINDINGS OF FACT

1. The Board’s March 31, 1999 FNC directed the County to take legislative action to remove invalidity by repealing those portions of Ordinance No. 96-074 comprising the Cavalero Hill amendments. FNC, at 7.

2. On May 17, 1999, Snohomish County adopted Ordinance No. 99-028, entitled “An Ordinance Relating to the Snohomish County Growth Management Act Comprehensive Plan, Repealing the Land Use Designation and Amending Land Use Policy Applicable to a 33.7 Acre Parcel of Property on Cavalero Hill. Fourth SATC, at 2; Ord. No. 99-028, at 1 and 5.

3. Ordinance No. 99-028 repealed those portions of Ordinance No. 96-074 affecting the 33.7-acre Cavalero Hill parcel. The “Urban Commercial” designation is repealed for the parcel and the designation “Other Land Use” is depicted on the land use map. Policy LU 2.B.9, regarding the future zoning of the parcel and attached map is also amended. Fourth SATC, at 1-3; Ord. No. 99-028, Sections 4, 5 and 6, at 4.

4. The County intends to consider redesignation of the Cavalero Hill property as part of the Lake Stevens UGA subarea planning process. Fourth SATC, at 2; and Ord. No. 99-028, Section 2 (e), at 3.

5. At the telephonic compliance hearing, neither the Petitioner nor Intervenor spoke in opposition to the County’s adoption of Ord. No. 99-028 as a response to the Board’s March 31, 1999 FNC.

III. conclusions of law

1. The County’s adoption of Ordinance No. 99-028, which repealed the 1996 Cavalero Hill amendments and expressed the County’s intention to consider redesignation of the property as part of the Lake Stevens UGA subarea planning process, removes the substantial interference with RCW 36.70A.020(11) as described in the Board’s July 30, 1997 FDO and continued in

the March 31, 1999 FNC.

2.The County's adoption of Ordinance No. 99-028 brings the County into compliance with the GMA, by repealing the Cavalero Hill amendments that failed to comply with the GMA public participation requirements, as set forth in the Board's FDO and FNC.

IV. Rescission of Invalidity

Having reviewed its July 30, 1997 FDO, March 31, 1999 FNC, materials provided by the parties, and considering Findings of Fact 1-5 and Conclusion of Law 1, *supra*, the Board determines that Snohomish County's Plan no longer substantially interferes with the GMA's public participation goal (RCW 36.70A.020(11)).Therefore, the Board **rescinds its determination of invalidity** as set forth in its July 30, 1997 FDO and continued in its March 31, 1999 FNC.

V. FINDING OF COMPLIANCE

Having reviewed its July 30, 1997 FDO, March 31, 1999 FNC, materials provided by the parties, and considering Findings of Fact 1-5 and Conclusion of Law 2, *supra*, the Board finds that Snohomish County has **complied** with the requirements of the GMA, as set forth in the Board's FDO and FNC.Therefore, the Board issues a **finding of compliance** to Snohomish County in CPSGMHB Case No. 97-3-0012c (*Kelly, et al., v. Snohomish County*).

So ORDERED this 28th day of June 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

NOTICE:This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a petition for reconsideration pursuant to WAC 242-02-832.

[1] The time, location and date of the Compliance Hearing was subsequently changed.