

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

LAWRENCE MICHAEL)	
INVESTMENTS, L.L.C.;)	Case No. 98-3-0012
CHEVRON USA INC.; and)	
CHEVRON LAND AND)	<i>(LMI / Chevron)</i>
DEVELOPMENT COMPANY,)	
)	ORDER Finding
Petitioners,)	NONCOMPLIANCE and
)	NOTICE OF SECOND
v.)	COMPLIANCE HEARING
)	
TOWN OF WOODWAY,)	
)	
Respondent,)	
)	

I. Procedural Background

On June 18, 1998, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lawrence Michael Investments, L.L.C., Chevron USA, and Chevron Land and Development Company (**Petitioners** or **LMI**). The matter was assigned Case No. 98-3-0012 (hereafter referred to as ***LMI/Chevron***). Petitioners challenged the Town of Woodway's (**Woodway** or **City**) adoption of Ordinances No. 98-338 and 98-339 (**Ordinances**), amending Woodway's Comprehensive Plan (**Plan**). The general ground for the challenge is noncompliance with various sections of the Growth Management Act (**GMA** or **Act**).

The Board issued its Final Decision and Order (**FDO**) in the above referenced case on January 8, 1999. The Board's ORDER provided as follows:

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board Orders:

1. Woodway's Comprehensive Plan, as amended by Ordinance Nos. 98-338 and 98-339, **does not comply** with: a) RCW 36.70A.020(1) and (2); b) RCW

36.70A.070(preamble); c) RCW 36.70A.070(1); and d) RCW 36.70A.210. With regard to these provisions of the Act, Woodway's actions were clearly erroneous.

2. In order for Woodway to achieve compliance with the Act, as set forth in this Final Decision and Order, the Board **remands** Woodway's Comprehensive Plan, as amended, to Woodway with the following directions:

a) Regarding compliance as noted above in this Order at 1a, b, c and d, **amend** the map designations, as contained in Section 1 of Ordinance No. 98-339, to permit appropriate urban densities consistent with the goals and requirements of the GMA for the entire 60.8-acre Plan Amendment Area;

b) Regarding compliance as noted above in this Order at 1a, b and d, **repeal** the Special Study Area Criteria (SSAC) and Subarea, as contained in Ordinance No. 98-338, **or amend** the SSAC to provide for compact urban growth within and throughout the Subarea at appropriate urban densities consistent with the goals and requirements of the GMA;

c) Regarding compliance as noted above in this Order at 1a and b, **amend** the Comprehensive Plan, as amended, to clarify that the amendatory language, as contained in Section 3 of Ordinance No. 98-339 ("where appropriate and provide for compact urban growth consistent with the policies of this plan and goals of the Growth Management Act"), means that low density development is appropriate only as a description of existing development and any new development or redevelopment shall consist of compact urban growth at appropriate urban densities, consistent with the goals and requirements of the GMA.

d) Regarding compliance as noted above in this Order at 1b, **remove** the inconsistencies between the amended goals, policies and text, as contained in Section 3 of Ordinance No. 98-339, and the Woodway Comprehensive Plan, consistent with the goals and requirements of the Act.

3. The Board directs the Town of Woodway to comply with the goals and requirements of the Act, as set forth in the Final Decision and Order, and as noted in this Order at items 2a, b, c and d of this Order, by no later than **May 11, 1999**. Woodway is instructed to submit to the Board a "Statement of Compliance" (SOC). The SOC shall include: 1) a description of the legislative actions taken to comply with the Act, as directed in this FDO; and 2) copies of all legislative enactments adopted to achieve compliance with the Act, as directed in

this FDO. Woodway shall provide four copies of the SOC to the Board and a copy to the parties by no later than **4:00 p.m., Friday, May 21, 1999.**

LMI / Chevron, FDO, at 55-57.

On May 21, 1999, the Board received “Town of Woodway’s Statement of Actions to Comply and Motion to Extend Compliance Deadline.” Woodway indicated in its filing that it had entered into a settlement agreement with LMI / Chevron that included a schedule for amending its Plan.

On May 24, 1999, the Board issued its “Order Granting Compliance Extension and Notice of Compliance Hearing” (**Order Granting Extension**). The Order required the City to comply by July 26, 1999, and to submit a second SOC by August 6, 1999. The Compliance Hearing was rescheduled for September 27, 1999.

On August 6, 1999, the Board received Woodway’s “Statement of Compliance” (**SOC2**).

On August 25, 1999, the Board received “LMI’s and Chevron’s Precompliance Hearing Brief.” The brief merely noted that the Petitioners would attend the compliance hearing and comment at that time.

On September 27, 1999, the Board held a Compliance Hearing in CPSGMHB Case No. 98-3-0012 at the Board’s Offices. Present for the Board were Board Members Joseph W. Tovar and Edward G. McGuire, Presiding Officer. Other participants at the hearing included: David Bricklin, representing the Town of Woodway; Courtney A. Kaylor, representing LMI and Robert I. Heller, representing Chevron. Andrew Lane, law clerk to the Board, also attended. Cynthia LaRose, RPR, of Robert H. Lewis & Associates, Tacoma, provided Court reporting services.

II. Compliance Issues

A. Applicable Law

RCW 36.70A.330 provides, in relevant part:

- (1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired . . . the board shall set a hearing for the purpose of determining whether the . . . city is in compliance with the requirements of this chapter.
- (2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance

schedule established by the board in its final order. . . .

(3) If the board after a compliance hearing finds that the . . . city is not in compliance, the board shall transmit its findings to the governor. The board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the . . . city's efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

. . .

B. Discussion

Woodway's August 6, 1999 SOC states: "Ordinance 99-369 was unanimously adopted by the Town of Woodway Town Council on June 17, 1999 to comply with this Board's January 8, 1999 Final Decision and Order." SOC2, at 1. Ordinance 99-369 amends Woodway's Comprehensive Plan Land Use Policy LU-8, to read in its entirety as follows:

The 60.8-acre Chevron property is suitable for single-family residential development and should be developed consistent with the studies done on the property and the goals and requirements of the Growth Management Act. The Urban Restricted designation for the Chevron property permits single-family detached residential development at a density of four (4) dwelling units per acre.

Section 1, Ordinance 99-369.

The Board acknowledges that Woodway has amended LU-8 to permit a density of four (4) dwelling units per acre for the entire 60.8-acre Plan Amendment Area. However, the Board notes that none of the map designations, legends or map notes changed by Ordinance 98-339^[1] is revised to reflect the new policy.

At the Compliance Hearing Woodway reaffirmed that it had adopted Ordinance 99-369 to comply with the Board's FDO. Woodway stated that Ordinance 99-369 amended the Town's Comprehensive Plan to allow for 4 dwelling units per acre in the 60.8-acre area designated as "UR" (Urban Restricted), and rescinded the two Ordinances that were the subject of the FDO (Ordinances 98-338 and 98-339). The Board noted that Ordinance 99-369 did not rescind or repeal either one of the two 1998 Ordinances in question.^[2]

The Board asked how Woodway had addressed Section XI, 2 (b)(c) and (d) of the FDO (regarding Ordinances 98-338 and 98-339's compliance with the GMA). Woodway responded that to address those items it *intended* to rescind or repeal Ordinances 98-338 and 98-339.

Woodway's attorney suggested that the rescission of Ordinances 98-338 and 98-339 could have occurred in a separate Ordinance, not attached to the SOC. However, Woodway concurred that Ordinance 99-369 did not fully address compliance with the GMA as set forth in the Board's FDO, specifically Section XI, 2 (b)(c)(d)^[3], nor did it rescind or repeal Ordinances 98-338 or 98-339.

Woodway was given until 12:00 p.m. October 1, 1999, to provide the Board and the parties with either: 1) other ordinances adopted by Woodway that rescinded or repealed Ordinances 98-338 and 98-339, or otherwise achieved compliance with the GMA and FDO; or 2) a timeframe for achieving compliance pursuant to the GMA, as directed in the Board's FDO.

On October 1, 1999, the Board received a letter from Woodway's attorney, with attached memorandum, indicating a timeframe for achieving compliance (**Woodway Letter**). The letter stated: "[A]lthough the Town contemplated rescinding ordinances 98-338 and offending portions of 98-339, the focus was so much on reaching and implementing a settlement agreement with Chevron and LMI that the act of rescinding the two ordinances was overlooked." Woodway Letter, at 1.

C. Findings of Fact

The Board finds:

1. The compliance schedule set forth in the Board's FDO was extended to allow Woodway time to implement a settlement agreement with Petitioners and achieve compliance with the GMA, as directed by the Board's FDO. (Order Granting Extension).
2. On June 17, 1999, Woodway adopted Ordinance 99-369, to comply with the Board's FDO. SOC2, at 1.
3. Ordinance 99-369 amended Woodway's Comprehensive Plan Land Use Policy LU-8, to read in its entirety as follows: "The 60.8-acre Chevron property is suitable for single-family residential development and should be developed consistent with the studies don on the property and the goals and requirements of the Growth Management Act. The Urban Restricted designation for the Chevron property permits single family detached residential development at a density of four (4) dwelling units per acre." Ordinance 99-369.
4. Woodway had until July 26, 1999^[4] to comply with the requirements of the GMA as directed in the Board's FDO. FDO and Order Granting Extension.
5. The Board conducted a compliance hearing on September 27, 1999. *Supra*, at 3.
6. While Ordinance 99-369 amends Plan policy LU-8, it does not amend or revise the map designations, legends or notes as directed in the Board's FDO, specifically Section XI, 2

(a). Ordinance 99-369.

7. Ordinance 99-369 does not address the items set forth in the FDO, specifically, Section XI, 2 (b)(c)(d). Ordinance 99-369.

8. Ordinance 99-369 does not rescind or repeal Ordinances 98-338 and 98-339. Ordinance 99-369.

9. In implementing a settlement agreement with Petitioners, Woodway overlooked the FDO directing compliance with the GMA. Woodway Letter, at 1.

10. Woodway has proposed a compliance schedule wherein it will comply with the requirements of the GMA, as directed by the FDO, by November 16, 1999. Woodway Letter, at 1 and attachment.

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D. Conclusions of Law

The Board concludes:

1. The revision of Woodway's Comprehensive Plan policy LU-8, in Section 1 of Ordinance 99-369, permits an appropriate urban density for the entire 60.8-acre Plan Amendment Area, consistent with the requirements of the GMA as directed in the FDO, Section XI, 2 (a) [partial]. Ordinance 99-369 achieves partial compliance with the Act. Therefore, Woodway **complies**, in part, with the goals and requirements of the GMA.

2. Ordinance 99-369 does not amend the map designations, legends or notes as changed by Section 1 of Ordinance 98-339, thereby creating internal inconsistency and ignoring the requirements of the GMA as directed in the FDO, Section XI 2(a) [partial]. Therefore, Woodway **does not comply**, in part, with the goals and requirements of the GMA.

3. Ordinance 99-369 does not address compliance with the GMA as directed in the FDO, Section XI 2 (b)(c) and (d). Therefore, Woodway **does not comply** with the goals and requirements of the GMA.

4. Pursuant to RCW 36.70A.330(3), the Board shall transmit this **Finding of Noncompliance** to the Governor.

5. Pursuant to RCW 36.70A.330(5), the Board will schedule an additional compliance hearing to determine whether Woodway has complied with the goals and requirements of the GMA.

III. FINDING OF NONCOMPLIANCE

Having reviewed the FDO, materials provided by the parties and considering Findings of Fact 1-10 and Conclusions of Law 1-3, *supra*, the Board determines and finds that the Town of

Woodway has **not complied** with the goals and requirements of the GMA. Therefore, the Board issues a **Finding of Noncompliance** to the Town of Woodway, and transmits this Finding of Noncompliance to the Governor. At this time, the Board will not recommend that the Governor impose sanctions as authorized by the GMA. An additional compliance hearing for Woodway is scheduled as set forth below.

IV. ORDER

Based upon the Finding of Noncompliance, the Board ORDERS:

1. The Town of Woodway shall fully comply with the goals and requirements of the GMA, as directed in the Board's January 8, 1999 FDO and this October 7, 1999 Finding of Noncompliance, prior to the scheduled second compliance hearing.
2. The Board hereby schedules a second compliance hearing in CPSGMHB Case No. 98-3-0012 (*LMI/Chevron v. Woodway*) for **Monday, December 13, 1999, at 10:00 a.m.** in the Board's offices.
3. The Town of Woodway shall file a "Third Statement of Compliance" (**SOC3**) with the Board that includes copies of all legislative enactments adopted to achieve compliance with the GMA. Woodway shall provide four copies of the SOC3 to the Board and to the parties by no later than **4:00 p.m., Monday, December 6, 1999.**
4. Petitioners LMI/Chevron may, at their option, submit comment on Woodway's SOC3 by no later than **4:00 p.m., Thursday, December 9, 1999.** If comment is received, Woodway may respond at the compliance hearing.

So ORDERED this 7th day of October, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

[1] On the Comprehensive Plan map, the property was designated “C” and “IPS” prior to it being amended by Ordinance 98-339 to “UR.” Likewise, Ordinance 98-339 amended the Critical Areas map to indicate that portions of the property are permanently protected.

[2] *See* Ordinance 99-369, Sections 1, 2, 3 and 4.

[3] The Board notes that its FDO did not require Woodway to rescind or repeal Ordinances 98-338 or 98-339.

[4] 199 days.