

to provide proper notice and take the necessary legislative actions to comply with the Growth Management Act as set forth and interpreted by this Final Decision and Order by no later than **4:00 p.m. on June 22, 2001**.

3. By no later than **4:00 p.m. on June 29, 2001**, the City shall file with the Board an original and four copies of a Statement of Actions Taken to Comply with this Final Decision and Order (the **SATC**) and shall simultaneously serve a copy on the Petitioner.

4. By no later than **4:00 p.m. on July 6, 2001**, or seven calendar days after the City submits its SATC, whichever comes first, the Petitioner may file with the Board an original and four copies of its Memorandum in Response to the SATC, and shall simultaneously serve a copy on the City.

Pursuant to RCW 36.70A.330(1), the Board gives Notice of Compliance Hearing in this matter to be held at **10:00 a.m. on July 16, 2001** in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. In the event that the City files its SATC earlier than June 29, 2001, the Board will issue an Order amending the date for the Compliance Hearing.

On June 29, 2001, the Board received the City's "Statement of Action Taken to Comply with Order" (**SATC**), with attachments. The SACT indicated that the City had provided notice, conducted additional public hearings and adopted Ordinance No. 2001-14.^[1]

On July 6, 2001, the Board received the Homebuilder's "Petitioner's Response to City's Statement of Actions to Comply with Order" (**Homebuilder's Response**).

On July 16, 2001, after discussion with the parties, the Board issued an "Order Adjusting Hearing Schedule" changing the date of the compliance hearing to August 2, 2001.

On August 1, 2001, the Board received a letter from the City asking the Board to supplement the record (**Motion to Supp.**) with a "Declaration of Michael Pollock" (**Pollock Declaration**).

On August 2, 2001, the Board held the Compliance Hearing (**CH**) in CPSGMHB Case No. 00-3-0014, at the Board's offices. Present for the Board were Board members Edward G. McGuire and Joseph W. Tovar. Dennis D. Reynolds represented Petitioner Homebuilders; Dawn L. Findlay appeared for Respondent City of Bainbridge Island.

The Board did not rule on the Motion to Supplement at the CH. However, Respondent was given until August 7, 2001 to repond to the City's Motion to Supplement. The Board indicated it would

rule on the motion in its Order. Petitioner Homebuilders also indicated that they intended to file a new Petition for Review (**PFR**) challenging the City's adoption of Ordinance No. 2001-14.^[2] On August 6, 2001, the Board received "Declaration of Andy Mueller in Opposition to Motion to Supplement Re: Pollock Declaration" (**Response and Motion to Supp. – Mueller Declaration**).

On August 10, 2001, the Board received a letter from the City captioned "Motion to Strike Portions of Mueller Declaration" (**Motion to Strike**).

II. Discussion

Compliance/Invalidity:

The Board's FDO determined that the *notice procedures* (including notice to the Washington State Office of Community Development (**OCD**)) used by the City of Bainbridge Island in adopting Ordinance No. 2000-13, did not comply with the requirements of the GMA. Based upon these *notice* errors, the Board invalidated the Ordinance. FDO, at 13.

At the CH, Homebuilders' did not dispute that the City provided effective notice^[3] when it reconsidered Ordinance No. 2001-13 (adopted as Ordinance No. 2001-14). The attachments to the City's SATC fully document that the City provided the notice required to comply with GMA, as set forth in the Board's FDO. Consequently, the Board will enter a **Finding of Compliance and Rescind the Determination of Invalidity**.

However, Homebuilders objected to the alleged lack of opportunity to respond to information provided to the City, by City staff, during Council deliberations on Ordinance No. 2001-14. The parties' attempt to frame this issue was limited to filing the Pollack and Mueller Declarations. The Board declines to address this *new issue*, in the context of a compliance hearing, with such a limited record. If Petitioners wish to address this aspect of the City's public participation process as an allegation of noncompliance with the Act, they would need to fashion it as a legal issue to be resolved in the new PFR. Given the new PFR filed by the Homebuilders, the Board would entertain discussion, and possible inclusion, of this new issue at the Prehearing Conference on CPSGMHB Case No. 01-3-0019.

Motions to Supplement and Strike:

The City's Motion to Supplement the compliance hearing record with the Pollock Declaration is **denied**.

The Homebuilders' Motion to Supplement the compliance hearing record with the Mueller

Declaration is **denied**.

In light of the above rulings, the City's Motion to Strike is **denied**.

III. Findings of Fact

1. RCW 36.70A.330 requires the Board to conduct a compliance hearing. The Board conducted its compliance hearing on August 2, 2001.
2. On June 13, 2001, following publication of public notice, notifying OCD and conducting public hearings, the City Council enacted Ordinance No. 2001-14, in order to comply with the GMA and the Board's FDO. SATC, at 2-6, and attachments.
3. Petitioner did not dispute that the City's public notice procedures and notification of OCD complied with the GMA and FDO. However, Petitioner did object to the alleged lack of opportunity to respond to information provided to the City, during Council deliberations on Ordinance No. 2001-14. Homebuilders Response, at 1-4.
4. The motions of the parties to supplement the record with various declarations, do not go to the compliance issue regarding the adequacy of the City's public, or OCD, notice procedures. (See: Motions to Supp., Pollock and Mueller Declarations).

IV. CONCLUSION OF LAW

1. The City's public notice procedures, notification of OCD and adoption of Ordinance No. 2001-14 complies with the Board's FDO, and satisfies the notice and public participation requirements of RCW 36.70A.035, .106(3), .020(11) and .140. Therefore, the Board will enter a finding of compliance in CPSGMHB Case No. 00-3-0014. Additionally, since the Board has found compliance, the determination of invalidity is rescinded.
2. The motions to supplement the record with the Pollock and Mueller Declarations and motion to strike are denied.

V. FINDING OF COMPLIANCE – RECISSION OF INVALIDITY

Having reviewed its February 26, 2001 FDO, the SATC, provisions of the GMA, briefing provided by the parties, and considering Findings of Fact 1–3, and Conclusion of Law 1, *supra*, the Board finds that the City of Bainbridge Island has complied with the requirements of the GMA, as set forth in the Board's February 26, 2001 FDO. Therefore, the Board issues this **Finding of Compliance and Rescinds the Determination of Invalidity** in CPSGMHB Case No.

00-3-0014 (*Homebuilders v. City of Bainbridge Island*).

So ORDERED this 20th day of August, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois North,
Board Member

Joseph W. Tovar, AICP
Board Member

NOTICE: This is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.

[1] The City noted Ordinance No. 2001-14 essentially readopted Ordinance No. 2001-13, but renumbered it.

[2] On August 16, 2001, the Board received Homebuilder's PFR challenging to Ordinance No. 2001-14. This case is numbered CPSGMHB Case No. 01-3-0019.

[3] Homebuilder's did not dispute the City's public notice procedures nor its notice to the Washington State Office of Community Development