

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

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MICHAEL GAWENKA, HELEN)	Case No. 02-3-0003
MILLER, JOANNE and DAVID)	
FORBES, JOHN and JENNIFER)	<i>(Miller)</i>
DIDIO)	
)	
Petitioners,)	
)	
v.)	
)	ORDER ON RECONSIDERATION
CITY OF BREMERTON,)	
)	
Respondent.)	

I. background

The Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Final Decision and Order” (**FDO**) in the above referenced case on July 29, 2002. The Board found the City’s actions relating to the adoption of Ordinance Nos. 4771, 4783 and 4784 were noncompliant with the requirements of RCW 36.70A.130(1). The FDO noted that it constituted a final order as specified by RCW 36.70A.300 unless a party filed a motion for reconsideration pursuant to WAC 242-02-832.

On August 8, 2002, [\[1\]](#) the Board received “Respondent City’s Motion for Reconsideration” (**Motion to Reconsider**). The Motion to Reconsider was timely filed. The City “[S]eeks guidance from the Board on the appropriate means of complying with the Final Decision and Order. In this motion for reconsideration, the City will describe its proposed means of compliance and requests that the Board issue a decision on reconsideration or reopen the hearing to provide the City with some assurance that the proposal is acceptable.” Motion to Reconsider, at 2.

The Board did not require the Petitioners to file an answer to the Motion to Reconsider, nor did the Petitioners’ file an answer of their own accord by August 13, 2002.

II. Discussion

The City describes a potential course of action that it is considering in order to comply with the GMA as set forth in the Board's July 29, 2002 FDO. *See*: Motion to Reconsider, at 4 and 5. The City states, "While the City's request for reconsideration does not assign specific error to the Board's decision in the way a traditional motion for reconsideration might, the City is really interested in obtaining guidance from the Board on the best method for achieving compliance with the Final Decision and Order." Motion to Reconsider, at 5. In essence, the City wants the Board's guidance and advice on whether the proposed course of action will comply with the Act.

The Board concurs that the City's Motion does not assign error to the Board's FDO and consequently, the request is beyond the scope of a motion for reconsideration. Further, RCW 36.70A.290(1) prohibits the Board from issuing advisory opinions.^[2] The Board is charged with determining whether a challenged action of a jurisdiction complies with the goals and requirements of the Act. Therefore, the Board must decline the City's request for guidance and **deny** the City's motion to reconsider.

Since the Board

has begun rendering decisions in 1992, the Board has seen various approaches that "noncompliant" jurisdictions have undertaken to achieve compliance with the goals and requirements of the Act. Often it seems that the "best methods" for achieving compliance by a jurisdiction takes form and evolves *during the jurisdiction's public hearing process* for the remand. Consequently, the Board does not presume to know the "best method for achieving compliance" by a jurisdiction in any of its remand cases; the Board simply reviews the action taken for compliance.

III. ORDER

Based upon review of the Motion to Reconsider, the GMA, the FDO, prior Orders of the Boards, and having deliberated on the arguments presented on this matter, the Board Orders:

- The City of Bremerton's Motion for Reconsideration is **denied**.

So ORDERED this 19th day of August, 2002.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire,
AICP Board Member

Lois H. North
Board Member

Joseph W.
Tovar, AICP
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300. Pursuant to WAC 242-02-832(3), this Order on Reconsideration is *not* subject to a motion for reconsideration.

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BOARD MEMBER TOVAR'S CONCURRENCE

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The City has made a sincere and candid request for guidance as it attempts to extricate itself from an unusual predicament, albeit a predicament of its own making. I concur with my colleagues that the Board is constrained by the limits of the law from providing the sort of detailed and reliable guidance that the City apparently desires. I write separately here simply to provide food for thought as the City undertakes its efforts, in conjunction with the petitioners and the rest of the public, to achieve compliance with the Board's FDO.

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The record suggests that the City understands one of the underlying policy bases for the "once-a-year" limits of RCW 36.70A.130; namely, to grasp and weigh the cumulative effects of various policy and map amendments prior to taking action. This is one of the things that

distinguishes *comprehensive* planning under the GMA from the disjointed, incremental, and reactive “planning” that preceded GMA. Even so, absent a declared emergency or other exception specifically named in .130, a local government must take care to bundle not just the *consideration* of the cumulative impacts of all these policy and map changes, but also the *actions*.

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When, as here, two actions are taken without the requisite intervening 12-month increment, there are potentially any number of GMA compliant courses of action. Rather than articulate which would clearly pass muster with a Board majority, all I can offer here are some questions for the City to ponder: what if the first action is simply repealed? What if the second action is repealed? What if both are repealed and proposed for re-adoption after appropriate notice, public participation and joint consideration and action by the Council? Would any of these approaches achieve the ostensible purposes of .130, which is to have the City consider and weigh the cumulative implications of all its proposed policy choices prior to taking a single action that disposes of all of them?

[1] On this same date the Board also received a “Notice of Withdrawal and Substitution of Counsel,” indicating Gregory F. Amann had withdrawn from representation of the City and consented to the substitution of Carol A. Morris as attorney of record.

[2] RCW 36.70A.290(1) provides in relevant part:

The board shall not issue advisory opinions on issues not presented to the board in the statement of issues [PFR], as modified by any prehearing order [PHO].