

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

DAN AND RANDY JENSEN,))
)	CPSGMHB Case No. 04-3-0010
Petitioners,)	<i>(Jensen)</i>
)	
v.)	
)	
CITY OF BONNEY LAKE,)	ORDER FINDING PARTIAL
)	COMPLIANCE
Respondent.)	
)	

I. BACKGROUND

On September 20, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its Final Decision and Order (**FDO**) in the above captioned case. The FDO provided in relevant part:

Based upon review of the GMA, case law, prior Orders of this Board and the other Boards, the PFR, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having considered and deliberated on the matter, the Board ORDERS:

1. *The City's inclusion of the five repealed UGA expansions and urban designations for those areas on the FLUM was **clearly erroneous and does not comply** with the requirements of RCW 36.70A.110.*

2. The City of Bonney Lake's adoption of the Phase 1 Plan Update, specifically the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.130, .070(preamble), .210 and was **not guided by** Goals 1 and 2 – RCW 36.70A.020(1) and (2).

3. Further, the adoption of the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element, substantially interfere with the fulfillment of Goals 1 and 2 – RCW 36.70A.020(1) and (2); therefore, the Board enters a **Determination of Invalidity** with respect to these FLUM designations and corresponding text in the Land Use Element.

4. *The Board **remands** Ordinance 1011, the Phase I Plan Update, specifically the Very Low-Density and Low-Density Residential FLUM designations and corresponding text in the Land Use Element and the five repealed UGAs and their corresponding urban designations on the FLUM, to the City of Bonney Lake with direction to take legislative action to: a) delete the five erroneous UGAs; and b) take appropriate legislative action to amend, modify or otherwise revise the Very Low-Density and Low-Density Residential FLUM land use designations and text in the Land Use Element to provide for appropriate urban densities as required by the goals and requirements of the Act, as well as the CPPs and Plan.*
5. The Board recognizes that the City intended to complete its Comprehensive Plan and development regulation revisions in two phases to be completed by December 1, 2004, as required by RCW 36.70A.130(4). The Board also acknowledges that the City's Phase II Plan Update (the Capital Facilities and Transportation Elements) must be consistent with the remanded Land Use Element and FLUM. Additionally, the City's development regulations must be revised to be consistent with and implement the Plan. Therefore, pursuant to RCW 36.70A.300(3)(b), the Board has determined that, but for the correction to the FLUM regarding the UGAs, the City's task is of unusual scope and the compliance schedule will be extended beyond the statutorily required 180-days. The compliance schedule for the remand period is as follows:
 - *By no later than **November 10, 2004**, the City shall revise its FLUM to delete the five UGAs and the related urban designations. The City shall transmit copies of the revised FLUM and enacting Ordinance to the Board by no later than **November 17, 2004**. Upon receipt of the City's corrected FLUM and adopting Ordinance, the Board will issue a finding of partial compliance. Full compliance and the rescission of invalidity will be contingent upon the City achieving compliance by completing its remaining work according to the following schedule.*
 - *By no later than **June 20, 2005**, the City shall take appropriate legislative action to achieve appropriate urban densities and bring its Plan (FLUM and Land Use Element) into compliance with the goals and requirements of the GMA, as interpreted and set forth in this FDO.*
 - *By no later than **June 30, 2005**, the City shall file with the Board an original and four copies of a Statement of Action Taken to Comply (SATC) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation, with attachments, enacted in order to comply. The City shall simultaneously serve a copy of the SATC, with attachments, on Petitioners. By this same date, the City shall also file a "**Remand Index**," listing the procedures (meetings, hearings etc.) occurring during the remand period and materials (documents, reports,*

analysis, testimony etc.) considered during the remand period in taking the remand action.

- By no later than **July 15, 2005**,¹ the Petitioners may file with the Board an original and four copies of Response to the City's SATC. Petitioners shall simultaneously serve a copy of their Response to the City's SATC on the City.
- By no later than **July 22, 2005**, the City may file with the Board an original and four copies of the City's Reply to Petitioners Response, if any. The City shall simultaneously serve a copy of such Reply on Petitioners.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. July 28, 2005** at the Board's offices.

FDO, at 27-29, (emphasis supplied).

On November 17, 2004, the Board received a certified copy of Bonney Lake Ordinance No. 1075, adopted in response to the Board's FDO.

II. DISCUSSION

The Board's FDO broke the compliance schedule for the City of Bonney Lake into two phases. The first phase deals with the deletion of the five UGAs and the related urban designations. The City was directed to accomplish this corrective action and notify the Board by November 17, 2004. The City responded by adopting Ordinance No. 1075.

The title of Ordinance No. 1075 states:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE MAP TO COMPY WITH THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD ORDER

Ordinance No. 1075, at 1. The Ordinance further provides:

WHERAS, the Central Puget Sound Growth Management Hearings Board, in its September 20, 2004 order regarding Case No. 04-3-0010, ordered the City to remove from its Comprehensive Plan Future Land Use

¹ July 15, 2005 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

Map those Urban Growth Areas which Pierce County in 2004 adopted and subsequently withdrew; and

WHEREAS, said order requires an ordinance adopting the amended map.

...

Section 1. The attached Future Land Use Map (Figure 3-5 of the Comprehensive Plan Land Use Element) is hereby adopted in place of the previous version of said map.

Id.

III. FINDING OF PARTIAL COMPLIANCE

Based upon review of Ordinance No. 1075 and the Board's September 20, 2004 FDO, the Board finds:

- In adopting Ordinance No. 1075, the City of Bonney Lake has complied with the first phase remand action directed by the Board. Ordinance No. 1075 complies with Section VI.1 of the Board's FDO and the first phase compliance schedule established for correcting the UGA boundaries and FLUM designations. The Board therefore enters a **Finding of Partial Compliance** for the City of Bonney Lake regarding this discrete compliance action.
- However, the second phase of the remand action remains noncompliant, pursuant to Section VI. 2-5 of the FDO, until the City has completed its work to achieve compliance according to the compliance schedule set forth in the September 20, 2004 FDO. This Order Finding Partial Noncompliance in no way alters the compliance schedule for the remainder of the work the City needs to accomplish to achieve compliance with the goals and requirements of the Act. The remaining noncompliant provisions remain noncompliant and invalid until compliance is achieved.

VIII. ORDER

Based upon review of the FDO and Ordinance No. 1075, and having deliberated on the matter the Board ORDERS:

- The City of Bonney Lake's enactment of Ordinance No. 1075 correcting its FLUM to delete areas no longer within the UGA, complies with the requirements of RCW 36.70A.110 as interpreted by the Board and reflected in Section VI.1 of the Board's FDO. The Board enters a **Finding of Partial Compliance**.

- The remaining noncompliant and invalid provisions of Bonney Lake's Plan continue to be governed by the compliance schedule and direction set forth in the Board's September 20, 2004 FDO.

So ORDERED this 19th day of November 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, regarding this portion of the case, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.