

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

MASTER BUILDERS ASSOCIATION OF)	CPSGMHB Case No. 05-3-0027
KING AND SNOHOMISH COUNTIES, <i>et.</i>)	
<i>al,</i>)	(<i>MBA/Camwest</i>)
Petitioners,)	
)	
v.)	
)	ORDER RESCINDING
CITY OF SAMMAMISH,)	INVALIDITY and FINDING
)	COMPLIANCE [Re: Ordinance
Respondent.)	No. 02005-169]
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I. BACKGROUND

On August 4, 2005, 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:

1. The City of Sammamish’s adoption of Ordinance 02005-169 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.020, RCW 36.70A.390, RCW 36.70A.040(3), and of Chapter 43.21C RCW.
2. Therefore the Board **remands** Ordinance 02005-169 to the City of Sammamish with direction to the City to repeal the Ordinance or take other legislative action to comply with the requirements of the GMA and SEPA as set forth in this Order.
3. The Board also found and concluded that the continued validity of Ordinance 02005-169 would **substantially interfere** with the goals of the GMA at RCW 36.70A.020(1), (2), (4), and (7). Therefore the Board enters an order of **invalidity**, and sets the following schedule for the City’s compliance.
 - The Board establishes **September 29, 2005**, as the deadline for the City of Sammamish to take appropriate legislative action.
 - By no later than **October 10, 2005**, the City of Sammamish shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioners. By this same date, the City shall also file a **“Compliance Index,”**

listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

- By no later than **October 14, 2005**, 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.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **11:00 a.m. October 17, 2005**, at the Board's offices, coordinated with the scheduled compliance hearing in CPSGMHB Case No. 05-3-0012. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Sammamish takes the required legislative action prior to the September 29, 2005, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 21-22.

On August 18, 2005, the Board received Respondent's Motion for Reconsideration and Stay of Order. Respondent's Motion, at page 7, indicated that the Moratorium, rather than being renewed for an additional six months as it had been for six years, had "by its own terms ended on August 14."

The Board received no submissions from the City regarding compliance with the FDO prior to the scheduled Compliance Hearing.¹ On October 14, 2005, the Board notified the parties electronically: "The Board has received no filings from either party regarding compliance in the Moratorium Ordinance case. The Board anticipates that this matter can be handled by stipulation at the telephonic compliance hearing on Monday so that the Moratorium Ordinance case can be closed."

On October 17, 2005, beginning at 10:00 a.m. the Board conducted the Compliance Hearing in the above captioned matter by telephonic conference call. Board member Margaret Pageler presided. Board member Bruce C. Laing was also present. Duana Kolouskova represented Petitioners. Bruce Disend represented Respondent City of Sammamish. The parties stipulated that the moratorium ordinance had been allowed to expire rather than being extended for an additional six months.

The Board orally indicated its intent to enter an order rescinding invalidity and finding compliance.

II. DISCUSSION

¹ The Compliance Hearing in this matter was scheduled concurrently with the compliance hearing in Case No. 05-2-0012, involving the same parties.

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This case concerns City of Sammamish Ordinance No. 02005-169, the twelfth in a consecutive series of six-month moratorium enactments that continued for six years. The Board's FDO found the Moratorium Ordinance (1) did not comply with the GMA because it was *de facto* a continuing regulation that did not implement the City's Comprehensive Plan and (2) substantially interfered with the goals and requirements of the GMA. The FDO remanded the Ordinance to the City of Sammamish with direction to the City "to repeal the Ordinance or take other legislative action to comply with the requirements of the GMA and SEPA as set forth in this Order."

The City of Sammamish did not repeal the Ordinance but instead allowed it to expire on August 14, 2005. The Ordinance being no longer effective, the Board's finding of non-compliance and order of invalidity is moot.²

III. FINDING OF COMPLIANCE and RECISSION OF INVALIDITY

Based upon review of the August 4, 2005 Final Decision and Order, and on the stipulation of the parties at the Compliance Hearing that Ordinance No. 02005-169 has now expired, the Board finds:

- Ordinance No. 02005-169 expired on August 14, 2005. The Board's Finding of Noncompliance and Order of Invalidity has no further prospective effect and is moot.
- By not renewing and extending the Moratorium Ordinance but allowing it to expire on August 14, 2005, the City of Sammamish has complied with the goals and requirements of the GMA with respect to Ordinance 02005-169, as set forth in the aforementioned Board FDO and the GMA. The Board therefore enters a **Finding of Compliance** for the City of Sammamish.
- Further, because Ordinance No. 02005-169 was not renewed but rather was allowed to expire on August 14, 2005, there is no longer a basis for invalidity; consequently the Board's **Determination of Invalidity**, as set forth in the Board's August 4, 2005 FDO is **rescinded**.

² Each of the parties has reserved its challenge to related or underlying issues.

On September 9, 2005, the Board received service of the City's appeal of the FDO to King County Superior Court. [*City of Sammamish v. CPSGMHB*; No. 05-2-29747-6SEA].

On August 24, 2005, the Board received a petition for review from these same Petitioners challenging City of Sammamish Ordinance No. 02005-183, the "Growth Phasing Ordinance." [*MBA/Camwest III v. City of Sammamish*, CPSGMHB Case No. 05-3-0041]. The Growth Phasing Ordinance went into effect on August 15, 2005, and one of Petitioners' issues in Case No. 05-3-0041 is whether Ordinance No. 02005-183 is in effect a continuation of the invalidated moratorium. This Order of the Board, while addressing compliance on the challenged action, is not to be construed as making any determination concerning the matters in dispute in CPSGMHB Case No. 05-3-0041 concerning the "Growth Phasing Ordinance."

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V. ORDER

Based upon review of the August 4, 2005, Final Decision and Order, and on the stipulations of the parties at the Compliance Hearing, and having deliberated on the matter, the Board ORDERS:

CPSGMHB Case No. 05-3-0027, *MBA/Camwest v. City of Sammamish* is **closed**. The City of Sammamish action allowing Ordinance 02005-169 to expire on August 14, 2005, corrects the deficiencies found by the Board and **complies** with the goals and requirements of the GMA as set forth in the Board's August 4, 2005, Final Decision and Order. The Board therefore enters a **Finding of Compliance** for the City of Sammamish in the present matter. Further, the Board finds that its order of invalidity is now moot and therefore **rescinds** the determination of invalidity.

So ORDERED this 20th day of October 2005.

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, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.