

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

MAXINE KEESLING,)	Case No. 04-3-0024
)	
)	<i>(Keesling III)</i>
Petitioner,)	
v.)	ORDER DENYING
)	RECONSIDERATION
KING COUNTY,)	
)	
)	
Respondent.)	
)	

I. BACKGROUND

On May 31, 2005, the Board issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 04-3-0024. The Board found King County Ordinance No. 15028 non-compliant with the consistency requirements of RCW 36.70A.070 in that the Ordinance designated a portion of the Sammamish Valley Agricultural Production District (**SVAPD**) both agricultural resource land and rural area. FDO, at 32 – 36, 42. The Board ordered the County to take appropriate legislative action to comply with the consistency requirements of RCW 36.70A.070 and set a compliance schedule. FDO, at 42 – 43. The Board indicated that the Compliance Hearing would be limited to determining whether the actions comply with the legal issues addressed and remanded in the FDO. FDO, fn. 64 at 43.

On November 21, 2005, the Board received King County’s Statement of Actions taken to Comply (**SATC**). On December 5, 2005, the Board received Petitioner Maxine Keesling’s Response to King County’s SATC (**Response to SATC**). On December 12, 2005, the Board received Respondent King County’s Reply to Petitioner’s Response to King County’s Statement of Actions Taken to Comply (**County’s Reply**). The Board conducted the Compliance Hearing on December 19, 2005,

On January 3, 2006, the Board issued its Order Finding Compliance in this case. (**Compliance order**). The Board found that King County adoption of Ordinance 15326, amending Ordinance 15028, corrects the deficiencies found by the Board and complies with the goals and requirements of the GMA as set forth in the FDO. Compliance Order, at 4. The Board entered a finding of compliance for King County and closed the case. *Id.*

On January 6, 2006, the Board received Petitioner’s Motion for Reconsideration of Order Finding Compliance. (**Motion for Reconsideration**).

On January 13, 2006, the Board received Respondent's Reply to Motion for Reconsideration.¹

On January 17, 2006, the Board received Petitioner's Response to Respondent's Reply to Motion for Reconsideration.²

II. DISCUSSION

WAC 242-02-832 - Reconsideration - provides:

(1) After issuance of a final decision any party may file a motion for reconsideration with a board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and three copies of the motion for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. A board may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

(c) Clerical mistakes in the final decision and order.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. A motion is deemed denied unless the board takes action within twenty days of filing the motion for reconsideration. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(4) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served by the board on each party or the party's attorney or other authorized representative of record.

Petitioner's Motion for Reconsideration.

Petitioner asserts that the Board's Order Finding Compliance did not address the following issues presented in Petitioner's Response to the County's Statement of Actions

¹ The Board did not direct or request parties to file an answer to the Motion for Reconsideration. Under the provisions of WAC-242-02-832, *infra*, Respondent's reply to the Motion for Reconsideration was not timely filed and will not be considered by the Board.

² The Board did not direct or request parties to file an answer to the Motion for Reconsideration. Petitioner's Response to Respondent's Reply to Motion for Reconsideration will not be considered by the Board.

Taken to Comply: 1. The County's action³ exceeded the action required to comply with the Boards FDO; 2. King County did not follow due process in establishing the SVAPD in the 1985 Comprehensive Plan nor in subsequent actions which place rural land within the SVAPD. Motion for Reconsideration, at 1 – 2.

Discussion

The Compliance Order addresses the issues presented in Petitioner's Motion for Reconsideration. Order Finding Compliance, at 3 – 4. There the Board concluded:

The compliance proceeding is limited to the issue of whether the County complied with the FDO. Petitioner agrees that the County has complied with the FDO. Petitioner's assertions that the Board's decisions in the FDO were erroneous⁴, that the County violated due process in past actions related to the SVAPD, and Petitioner's disagreements with the re-designation of property under Ordinance 15326⁵ are outside the scope of the compliance proceeding.

Order finding Compliance, at 4.

Issues related to whether or not provisions of Ordinance 15326 comply with the GMA are subject to appeal under the RCW 36.70A.280 and .290 but are not within the scope of the compliance proceeding. Order Finding Compliance, at 4, fn 4.

Petitioner's Response to the County's SATC argues that the FDO should have included a finding that the County violated due process in past actions related to the SVAPD. Response to SATC, at 1 – 2. In its Order Finding Compliance the Board noted that Petitioner had not requested the Board to reconsider its FDO at the time it was issued, as provided in WAC 242-02-832, and the Board concluded this issue is outside the scope of the compliance proceeding. Order Finding Compliance, at 4, fn 3.

Conclusion

The Board finds and concludes that Petitioner has not presented a basis for reconsideration of the Order Finding Compliance. The motion for reconsideration is **denied**.

III. ORDER

Based on the GMA, Board rules, Petitioner's Motion for reconsideration, and prior decisions of this Board and other Growth Management Hearings Boards, and having deliberated on the matter, the Board enters the following Order:

³ King County adoption of Ordinance No 15326

⁴ Petitioner did not request the Board to reconsider the FDO. See WAC 242 -02-832.

⁵ The County's adoption of Ordinance 15326 is subject to the provisions of the GMA, including RCW 36.70A.280 and .290.

- Petitioner Keesling's Request for Reconsideration of the Order Finding compliance is **denied**.

So ORDERED this 26th day of January, 2006.

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.300⁶.

⁶ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, a board's order on a motion for reconsideration is not subject to a motion for reconsideration.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)