

**STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

SADDLE MOUNTAIN MINERALS,
LLC, a Washington corporation, and
GARY MAUGHAN,

Petitioners,

v.

CITY OF RICHLAND, a municipal
corporation,

Respondent

Case No.: 99-1-0005

ORDER ON COMPLIANCE

On October 1, 1999, the Board issued a Final Order and Decision finding the City of Richland out of compliance on certain issues and remanding for compliance within 90 days. In that Order, the Board concluded: “The City of Richland is out of compliance regarding adoption of development regulations, through a failure to utilize best available science, failure to ensure consistency with the comprehensive plan, and failure to follow public participation requirements.”

On January 4, 2000, the City of Richland adopted Ordinances 1-2000, 2-2000 and 3-2000 in an effort to comply with the Board’s Order.

On March 7, 2000, the Board held a compliance hearing in the City of Richland. All parties were represented.

The following summarizes the arguments on compliance heard by the Board:

Petitioners’ position: Petitioner contends the City of Richland remains non-compliant because the actions taken in response to the Board’s Order (a) failed to use best available science and (b) failed to assure consistency with the comprehensive plan. In their brief the Petitioners stated they chose not to challenge the adequacy of meaningful public participation in this appeal.

Petitioners contend the record contains no evidence that the best available science was considered in the adoption of development regulations. Further, they allege the record contains no evidence of a formal review for consistency of the development regulations with the comprehensive plan.

Respondent’s position: In response to the Board’s Order, the City of Richland maintains: (1) development regulations have been adopted; (2) “best available science” requirements apply only to critical area” issues, which do not include mineral resource areas; (3) they utilized and distributed the “Growth Management Development Regulations Checklist” to ensure internal

consistency, and (4) the City gave public notice of and held numerous open meetings regarding the development regulations, and, specific notice of these meetings was mailed to known interested parties.

Discussion:

A. Best Available Science:

The Board concluded in its finding of non-compliance, that best available science had not been utilized in the process the City had followed to enact development regulations, as required by RCW 36.70A.172. The City's development regulations consisted of re-adoption of existing pre-GMA regulations. The City now argues that since this petition deals with mineral resource lands, best available science is not an issue. While the City is correct, BAS does not apply to the designation and protection of mineral resource lands, this does not eliminate the requirement of the inclusion of best available science in developing policies and development regulations to protect the functions of critical areas.

RCW 36.70A.172(1) reads as follows:

Critical areas – designation and protection – best available science to be used. (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. (emphasis added)

The City of Richland record has no evidence a review of the development regulations has included any analysis of their effect on critical areas. Nothing in the record shows the City's review, inclusion or consideration of the best available science to protect critical areas. The City did not comply with RCW 36.70A.172(1) or our Final Decision and Order. The City must include best available science in the adoption of its development regulations. The record must reflect this process. Here, it does not.

B. Failure to ensure consistency with the comprehensive plan:

The provisions of any GMA enactment must be internally consistent. This includes the comprehensive plan and development regulations, both interim and final. RCW 36.70A.070. Internal consistency means provisions are compatible with each other and they fit together properly. In other words, one provision may not thwart another. A development regulation must be internally consistent and all development regulations must be consistent with each other.

Our October 1, 1999 Final Order found the City was not in compliance with the GMA due to its failure to ensure consistency with the comprehensive plan. The record (Index #4) indicates a review for internal consistency was performed to correct this defect. The document found in

Index #4 was circulated to appropriate public agencies for comment with no response from these agencies. However, the Board notes the review for consistency was not a public process. Apparently the review involved only staff of the City and affected agencies.

The Board finds no exception in the law for public participation in the GMA process, This includes the review for consistency. It is this public participation that could bring out the inconsistencies found in the development regulations or the Plan itself. The City must not exclude the public from this process. Further comments on public participation follow.

C. Public participation:

Even though the petitioner has not argued in their brief the public participation requirements in enacting GMA development regulations, the Board nonetheless must address this issue. The Board had found the City out of compliance for its failure to follow the public participation requirements of the GMA.

RCW 36.70A.140 states in part...“Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.”

During the compliance hearing, in response to a question from the Board, the City indicated they had no public participation plan. The extent of their public participation had been open public meetings of the planning commission and public hearings held by the city council, as well as notifying known interested parties of those meetings. In responding to a draft decision by the Board, the City cited portions of its Comprehensive Plan listing the public involvement in the development of that Plan. While that involvement may have been adequate for most of the Plan, it did not include involvement of the public in the review for internal consistency. The listing of past involvement of the public does not meet the requirements of RCW 36.70A.140 for the development and wide dissemination of a Plan for “early and continuous” public participation in the GMA processes.

The Board takes note of the hours of community service given by many citizens during the enactment of Richland’s development regulations. However, RCW 36.70A.140 requires the City to develop and broadly disseminate a plan for seeking public input in the GMA process. Cities and counties in Eastern Washington have enacted numerous written public participation plans which could be used as a guide for the City of Richland.

Conclusions:

The Board concludes:

(1) The City of Richland is not in compliance with the Final Decision and Order dated October 1, 1999 due to their failure to utilize best available science as required by RCW 36.70A.172 in enacting development regulations to protect the functions and values of critical areas.

(2) The City of Richland is not in compliance with the Board's order regarding internal consistency of the comprehensive plan and the development regulations for their failure to allow public participation in the review process..

(3) The City of Richland continues to be in non-compliance with the Board's Order regarding RCW 36.70A.140, public participation requirements. They are directed to develop and broadly disseminate a plan for seeking public input in the GMA process.

ORDER

The City of Richland is found to be in continued non-compliance with Board's Final Decision and Order dated October 1, 1999. The City is given 120 days from the date of this order to achieve compliance.

SO ORDERED this 21st day of June, 2000.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

D.E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member