

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID ROBINSON

Petitioner,

v.

FERRY COUNTY,

Respondent.

Case No. 01-1-0019

FIRST COMPLIANCE ORDER

I. BACKGROUND

On December 21, 2001, CONCERNED FRIENDS OF FERRY COUNTY and DAVID L. ROBINSON, by and through David L. Robinson, filed a Petition for Review.

On February 13, 2002, Respondent, Ferry County filed its Motion to Dismiss.

On February 26, 2002, Petitioners filed a Motion to Supplement the Record.

On March 28, 2002, the Board held a telephonic Motions Hearing. Present were Skip Chilberg, Presiding Officer, Dennis Dellwo and Judy Wall, Board Members, David Robinson was present for Petitioners and Stephen Graham was present for Respondent. On April 5, 2002, an Order On Motions was entered allowing the Petitioners' request for additions to the Record and denying the County's motion to dismiss.

On April 11, 2002, the Board received from Ferry County Prosecuting Attorney, Stephen Graham, a letter objecting to the Board's previously issued Motions Order. The Motions Order was modified to correct the inadvertent errors.

On May 9, 2002, a final Hearing on the Merits was held in Republic, Washington. Present were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis A. Dellwo and Judy Wall. Present for Petitioners were David Robinson. Present for Respondent was Stephen Graham, Deputy Prosecuting Attorney.

On June 14, 2002, the Board issued its Final Decision and Order directing Ferry County to come into compliance within 120-days from the date of the Order. Ferry County appealed the Board's Order to Superior Court. September 29, 2003, the Board received the Order of Dismissal of the Superior Court case.

On September 30, 2003, the Board issued its Order Setting Compliance Hearing and Briefing Schedule.

On October 31, 2003, the Board received a Motion for Continuance from Respondent's attorney Steve Graham, asking the Board to move the compliance hearing due to a scheduling conflict.

On November 3, 2003, the Board granted Respondent's request for continuance.

On November 24, 2003, the Board held a telephonic compliance hearing. Present for the Board was Judy Wall and Dennis Dellwo. Present for Petitioners were David Robinson. Present for Respondent was Stephen Graham. D. E. "Skip" Chilberg reviewed the recorded hearing prior to participating in the following order.

II. STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioner to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act. RCW 36.70A.320.

The Washington Supreme Court has summarized the standards for Board review of local government actions under Growth Management Act. It was stated:

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. RCW 36.70A.280, .302. The Board "shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the county, or city is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action "clearly erroneous" the Board must be "left with the firm and definite conviction that a mistake has been committed."

Dep't of Ecology v.

Pub. Util. Dist. No.

1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

The Board will grant deference to counties and cities in how they plan under Growth Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA."

*King County v. Central
Puget Sound Growth
Management Hearings*

Board, 142 Wn.2d 543, 561, 14 P.2d 133 (2000). It has been further recognized that “[c]onsistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not ‘consistent with the requirements and goals of the GMA.” *Thurston County v.*

Cooper Point Association,

108 Wn.App. 429, 444, 31 P.3d 28 (2001).

The Board has jurisdiction over the subject matter of the Petition for Review. RCW 36.70A.280(1)(a).

III. FINDINGS OF FACT

1. Since the Boards Final Decision and Order on June 14, 2002, Ferry County has taken no legislative action to come into compliance regarding protection of shorelines, riparian areas, agricultural lands of long-term commercial significance, or historical and archeological sites. There have also been no legislative enactments regarding regulation of land use within RAID’s, or providing notice on plats within 500 feet of resource lands.
2. Ferry County has enacted legislation to protect aquifer recharge areas, pursuant to compliance review in Case No. 97-1-0018. This regulation was ruled in compliance with the GMA.
3. The Ferry County Planning Commission drafted a proposal to create buffer zones up to 100 feet to protect riparian areas. After two public hearings, the proposal was tabled in the fall of 2002.

IV. DISCUSSION

On June 14, 2002, the Board issued the Final Decision and Order (FDO) ruling Ferry County Ordinance 2001-09 non-compliant in the following issues:

1. Failure to protect shorelines, in violation of RCW 36.70A.060 and RCW 36.70A.172.
2. Failure to protect riparian areas, in violation of RCW 36.70A.060

and RCW 36.70A.172.

3. Failure to protect aquifer recharge areas, in violation of RCW 36.70A.060 and RCW 36.70A.172.
4. Failure to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.040.
5. Failure to address identification and preservation of historical and archeological sites, in violation of RCW 36.70A.020(13) and RCW 36.70A.040(4)(d).
6. Failure to regulate land use within RAID's, in violation of RCW 36.70A.040, RCW 36.70A.070, and RCW 36.70A.120.
7. Failure to provide required notice, in violation of RCW 36.70A.060 (1).
8. In all preceding issues listed, failure to utilize Best Available Science, and failure to provide adequate standards for Planning Department administrative review, in violation of RCW 36.70A.172.

Since the filing of the FDO in this case, Ferry County has resolved Issue No. 3 by enacting an Ordinance to protect aquifer recharge areas, which subsequently was found compliant in proceedings under Case No. 97-1-0018.

Ferry County was given 120-days to bring themselves into compliance on these issues. The Board's Order was appealed to Thurston County Superior Court. Thurston County Superior Court dismissed the appeal on August 5, 2003. The Board had extended the compliance period, with the agreement of the parties, as a courtesy to the County, pending resolution of their appeal. The County has taken no legislative action addressing these remaining issues. The County is proceeding with draft ordinances to protect agricultural lands and historical sites, but gives no indication it intends to proceed on the other issues.

The burden of proof rests with Petitioners on these issues. Petitioners argue the County has enacted no legislation on these issues with the exception of protection of aquifer recharge areas. The County acknowledges it has taken no legislative action, but indicates it is reviewing draft ordinances for protection of agricultural lands and

historical and archeological sites.

The County further argues it did consult with a biologist regarding protection of riparian areas, and drafted an ordinance as a result of those consultations. The County held public hearings on that draft ordinance, and found it to be very unpopular. Consequently, the draft ordinance was tabled, with no further action taken.

Conclusion:

The Board has no choice but to rule Ferry County in continued non-compliance on the remaining issues.

V. ORDER

1. Ferry County is in continued non-compliance for their failure to protect shorelines under RCW 36.70A.060 and RCW 36.70A.172.
2. Ferry County is in continued non-compliance for their failure to protect riparian areas under RCW 36.70A.060 and RCW 36.70A.172.
3. Ferry County has been previously ruled in compliance in Case No. 97-1-0018 on the issue regarding protection of aquifer recharge areas RCW 36.70A.060 and RCW 36.70A.172. This issue is resolved.
4. Ferry County is in continued non-compliance for their failure to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.040.
5. Ferry County is in continued non-compliance for their failure to address identification and preservation of historical and archeological sites, in violation of RCW 36.70A.020(13) and RCW 36.70A.040(4)(d).
6. Ferry County is in continued non-compliance for their failure to regulate land use within RAID's, in violation of RCW 36.70A.040, RCW 36.70A.070, and RCW 36.70A.120.
7. Ferry County is in continued non-compliance for their failure to provide required notice, in violation of RCW 36.70A.060(1).
8. Ferry County is in continued non-compliance for their failure to utilize Best Available Science, and failure to provide adequate standards for administrative review, in violation of RCW 36.70A.172.

9. Ferry County has 90-days from the date of this Order to come into compliance.

Pursuant to RCW 36.70A.300(5), this is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days from the date of service of this Order.

SO ORDERED this 16th day of December 2003.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD

D.E. "Skip" Chilberg, Board Member

Judy Wall, Board Member

Dennis Dellwo, Board Member