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4 **State of Washington**
5 **GROWTH MANAGEMENT HEARINGS BOARD**
6 **FOR EASTERN WASHINGTON**

7 FUTUREWISE,

Case No. 05-1-0011

8 Petitioner,

ORDER FINDING NON-COMPLIANCE

9 v.

10 PEND OREILLE COUNTY,

11 Respondent.

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14 **I. PROCEDURAL HISTORY**

15 On December 14, 2005, FUTUREWISE, by and through its representative, John
16 Zilavy, filed a Petition for Review.

17 On January 18, 2006, the Board held a telephonic Prehearing conference. Present
18 were, Judy Wall, Presiding Officer, and Board Members Dennis Dellwo and John Roskelley.
19 Present for Petitioners was John Zilavy. Present for Respondent was Thomas Metzger.

20 On January 18, 2006, the Board issued its Prehearing Order.

21 On April 6, 2006, the Board received a Joint Motion for Extension of Case Schedule
22 signed by the parties requesting a ninety (90) day extension. The parties are currently
23 pursuing settlement discussions. The Board is asked by the parties to grant a ninety (90)
24 day extension.

25 On April 7, 2006, the Board issued an Order of Extension.

1 On July 6, 2006, the Board received a Joint Motion for Extension of Case Schedule
2 signed by the parties requesting a thirty (30) day extension. The parties are currently
3 pursuing settlement discussions. The Board is asked by the parties to grant a thirty (30) day
4 extension.

5 On July 14, 2006, the Board issued its Order on Extension.

6 On July 28, 2006, the Board received a Joint Motion for Extension of Case Schedule
7 signed by the parties requesting a thirty (30) day extension. The parties are currently
8 pursuing settlement discussions. The Board is asked by the parties to grant a thirty (30) day
9 extension.

10 On July 31, 2006, the Board issued an Order of Extension.

11 On October 4, 2006, the Board held the Hearing on the Merits. Present were, acting
12 Presiding Officer, John Roskelley and Board Member Dennis Dellwo. Presiding Officer, Judy
13 Wall was unavailable. Present for Petitioner was Alexandria Doolittle. Present for
14 Respondent was Tom Metzger and Michael Kenyon.

15 On November 1, 2006, the Board issued its Final Decision and Order.

16 On May 3, 2007, the Board received Respondent's Statement of Actions Taken to
17 Comply.

18 On May 18, 2007, the Board received Petitioner's Response to Statement of Actions
19 Taken to Comply.

20 On June 18, 2007, the Board held a telephonic compliance hearing. Present were,
21 acting Presiding Officer, John Roskelley and Board Members Dennis Dellwo and Joyce
22 Mulliken. Present for Petitioner was Keith Scully. Present for Respondent was Prosecuting
23 Attorney Tom Metzger.
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1 **II. DISCUSSION**

2 On April 23, 2007, the Pend Oreille County Commissioners (BOCC) adopted
3 Resolution 2007-24, imposing new development regulations as interim zoning controls. The
4 new regulations require a minimum five-acre parcel. The Rural 2.5 designation is no longer
5 available and, according to Tom Metzger, Pend Oreille County Prosecuting Attorney, the
6 interim zoning controls will not allow any new lot designation below a five-acre minimum.
7 Since the Eastern Washington Growth Management Hearings Board's (Board) Final Decision
8 and Order (FDO) was received after the 2006 Comprehensive Plan Update Docket was
9 closed, Pend Oreille County (County) could not delete the Rural 2.5 designation in the 2006
update, but will do so when the Comprehensive Plan is updated in late 2007.

10 The Petitioner, Futurewise, in their Response to Statement Of Actions Taken To
11 Comply, requests that the Board find the County in continuing non-compliance, but agrees
12 that the Board should extend the compliance schedule by an additional 180 days to give the
13 County an opportunity to update its Comprehensive Plan later this year.

14 The Board's FDO ordered the County to bring its Comprehensive Plan into
15 compliance with the Growth Management Act (GMA). The County acknowledges that its
16 Comprehensive Plan is non-compliant, but will bring itself into compliance when it updates
17 its Comprehensive Plan later this year. Meanwhile, in an effort to work toward compliance,
18 the County passed Resolution 2007-24 that imposes new development regulations as
19 interim zoning controls, effectively eliminating the division of land into parcels smaller than
five acres.

20 The Board finds the County in non-compliance, but agrees that an additional 180
21 days for the County to come into compliance with its Comprehensive Plan is appropriate
22 based on its passage of Resolution 2007-24.

23 **III. ORDER**

24 Based upon the Board's review of the GMA, prior decisions of the Boards, the
25 November 1, 2006 Final Decision and Order, the presentations of the parties at the
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1 compliance hearing, and having discussed and deliberated on the matter, the Board enters
2 a Finding of Non-compliance and directs that the County bring itself into compliance with
3 the Board's Order and the GMA within 180 days from the date of this Order.

4 1. Pend Oreille County must take the appropriate legislative action to
5 bring itself into compliance with this Order by **December 17, 2007,**
6 **180** days from the date issued. The following schedule for compliance,
7 briefing and hearing shall apply:

- 8 • The County shall file with the Board by **January 2, 2008, an original**
9 **and four copies** of a Statement of Actions Taken to Comply (SATC)
10 with the GMA, as interpreted and set forth in this Order. The SATC shall
11 attach copies of legislation enacted in order to comply. The County
12 shall simultaneously serve a copy of the SATC, with attachments, on
13 the parties. By this same date, the County shall file a "Remanded
14 Index," listing the procedures and materials considered in taking the
15 remand action.
- 16 • By no later than **January 16, 2008,** Petitioners shall file with the
17 Board an **original and four copies** of Comments and legal arguments
18 on the County's SATC. Petitioners shall simultaneously serve a copy of
19 their Comments and legal arguments on the parties.
- 20 • By no later than **January 30, 2008,** the County shall file with the
21 Board an **original and four copies** of the County's Response to
22 Comments and legal arguments. The County shall simultaneously serve
23 a copy of such on the parties.
- 24 • By no later than **February 6, 2008,** Petitioners shall file with the
25 Board an **original and four copies** of their Reply to Comments and
26 legal arguments. Petitioners shall serve a copy of their brief on the
parties.
- Pursuant to RCW 36.70A.330(1) the Board hereby schedules a
telephonic Compliance Hearing for **February 11, 2008, at 10:00**
a.m. The parties will call **360-357-2903 followed by 17790 and**
the # sign. Ports are reserved for Mr. Scully, Mr. Metzger, and Mr.

1 Kenyon. If additional ports are needed please contact the Board to
2 make arrangements.

3 If the County takes legislative compliance actions prior to the date set forth in
4 this Order, it may file a motion with the Board requesting an adjustment to this
5 compliance schedule.

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

7 **Reconsideration:**

8 Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this
9 Order to file a petition for reconsideration. Petitions for reconsideration shall
10 follow the format set out in WAC 242-02-832. The original and four (4) copies of
11 the petition for reconsideration, together with any argument in support thereof,
12 should be filed by mailing, faxing or delivering the document directly to the
13 Board, with a copy to all other parties of record and their representatives. **Filing**
14 **means actual receipt of the document at the Board office.** RCW 34.05.010(6),
15 WAC 242-02-330. The filing of a petition for reconsideration is not a
16 prerequisite for filing a petition for judicial review.

16 **Judicial Review:**

17 Any party aggrieved by a final decision of the Board may appeal the decision to
18 superior court as provided by RCW 36.70A.300(5). Proceedings for judicial
19 review may be instituted by filing a petition in superior court according to the
20 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

21 **Enforcement:**

22 The petition for judicial review of this Order shall be filed with the appropriate
23 court and served on the Board, the Office of the Attorney General, and all parties
24 within thirty days after service of the final order, as provided in RCW 34.05.542.
25 Service on the Board may be accomplished in person or by mail. Service on the
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1 Board means actual receipt of the document at the Board office within thirty
2 days after service of the final order.

3 Service:

4 This Order was served on you the day it was deposited in the United States mail.

5 RCW 34.05.010(19)

6 SO ORDERED this 19th day of June 2007.

7 EASTERN WASHINGTON GROWTH MANAGEMENT
8 HEARINGS BOARD

9 _____
10 John Roskelley, Board Member

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12 Joyce Mulliken, Board Member

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14 Dennis Dellwo, Board Member

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