

**BEFORE THE WESTERN WASHINGTON GROWTH  
PLANNING HEARINGS BOARD**

DONALD E. BERSCHAUER,	)	No. 94-02-0002
	)	
Petitioner,	)	FINDING OF
	)	COMPLIANCE
vs.	)	BYCITY OF
	)	TUMWATER
CITY OF TUMWATER, a municipal corporation,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
CITIZENS OF THE SAPP ROAD LAND USE PLAN OVERLAY AREA	)	
	)	
Intervenors	)	
	)	

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On February 3, 1994, Donald E. Berschauer filed a petition for review with the Western Washington Growth Management Hearings Board (Board) in the above-entitled matter. The petition challenged the adoption of the Sapp Road Land Use Plan Overlay (SRLUPO) area as part of the Tumwater Land Use Plan (Resolution #480).

On July 27, 1994, we issued a Final Decision and Order. Pursuant to RCW 36.70A.300(1)(b), we allowed the City of Tumwater until November 4, 1994, to achieve compliance.

On November 4, 1994, Tumwater filed a Memorandum in Support of Compliance with Final Order and an Index of Exhibits/Attachments documenting the process leading to adoption of Resolution No. R94-033 on November 1, 1994, and the changes to the Land-Use Plan.

A compliance hearing was held on November 9, 1994, at 10:00 a.m. at the McCleary Mansion conference room. The three Board members; Nan A. Henriksen, William H. Nielsen and Les Eldridge participated in the hearing. Curt Smelser represented the Petitioner, Patrick Brock represented Tumwater and Mark Tyler represented the Intervenors. Patrick Brock, with assistance from Tumwater planning staff, delineated the process followed and the justification for

the requested finding of compliance. Petitioner agreed that Tumwater had complied. Intervenors affirmed that some of the plan was actually better than the original, but were not satisfied with the process leading to adoption. They also believed the comprehensive plan amendments allowed too much density.

## DISCUSSION

In the conclusion of our final decision on this case we stated at page 21:

“The GMA requires that governments planning under the Act comply with the goals and requirements of the Act. The Act requires that a comprehensive plan be based on objectives, principles and standards; be consistent with adopted county-wide planning policies; be an internally consistent document; and that each element of the comprehensive plan must be consistent with the land use map. The planning goals of the Act must be considered and the land use plan must substantively achieve the goals. We conclude that a jurisdiction must comply with these requirements in its decision-making and its product whether planning on a sub-area or single plan basis.”

We also stated at p. 13 and 14:

“Where facial inconsistencies appear there must be some evidence in the record of how the decision-makers found these land use designations to be based on and consistent with the goals, policies and objectives of their plan.”

In the three month period between our July 27, 1994, Order and adoption of resolution No. R94-033, Tumwater staff, Planning Commission and City Council worked hard to bring their plan into compliance with the Act. They did a conscientious job of crafting a Residential/Sensitive Resource Designation (2/4 DU/Acre) to recognize areas of unique open space character and sensitivity to environmental disturbances. In order to achieve internal consistency, they developed objective criteria for this designation to determine where else in the City this designation might apply.

The Planning Commission held two public hearings and analyzed the alternative designations and their applicability before making a final recommendation to the City Council. On October 18, 1994, the City Council conducted a public hearing on the recommendation before passing a motion to send the issue to the General Government Committee for careful analysis and a

recommendation to be submitted at the next council meeting.

On October 25, 1994, the General Government Committee met to scrutinize the alternatives. They carefully analyzed the Residential/Sensitive Resource Designation for consistency and fairness in the criteria used and areas covered by this designation. They painstakingly endeavored to ensure protection of Percival Creek from storm water run-off and septic failures. They carefully evaluated consistency with the Capital Facilities Plan and checked to ensure that the findings of fact and other revisions were consistent with the Growth Management Act, County-wide Planning Policies and other elements of their comprehensive plan. After seven hours of analysis and deliberation, the committee unanimously endorsed the Planning Commission's recommendation with minor modifications.

By the time the City Council adopted Resolution #R94-033 on November 1, 1994, the city of Tumwater had done a good job of overcoming the shortcomings of their original plan and complying with our previously quoted recommendations.

We do remain concerned about Tumwater's ability to handle their assigned population. In the original version of the land-use plan the City assigned no residential population to mixed-use areas, based on the assumption that such residential development was unpredictable and might not be viable. During the SRLUPO process the City changed that assumption without analysis. The excess population, no longer accommodated by the SRLUPO area, was assigned to the mixed-use areas.

In the new resolution, assignment of this excess population to mixed-use areas continued. We would hope to see a strong element in Tumwater's development regulations directing residential development to mixed-use areas. Tumwater will also need to track carefully residential development densities and make corrections, if necessary, to ensure that the assigned population is actually accommodated.

The 2-4 DU level gives the opportunity but not the certainty of maintaining appropriate urban density and reduced infrastructure costs in accordance with the goals of the Act.

FINDING OF COMPLIANCE

Having reviewed the exhibits and tapes presented by Tumwater and having considered the arguments of the parties, we conclude that the city of Tumwater has achieved compliance by enacting Resolution #R94-033.

SO ordered this \_\_\_\_\_ day of December, 1994.

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Nan A. Henriksen  
Presiding Officer

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member