

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

TOWN OF FRIDAY HARBOR, FRED R. KLEIN,)
JOHN M. CAMPBELL, LYNN BAHRYCH, et al.,) No. 99-2-0010c
)
Petitioners,)
)
v.) ORDER ON
) RECONSIDERATION
SAN JUAN COUNTY,)
)
Respondent,)
)
and)
)
JOE SYMONS, FRIENDS OF THE SAN JUANS,)
and KAREN J. KEY SPECK, et al.,)
)
Intervenors.)
_____)

On July 21, 1999, we entered our final decision and order (FDO) in this case. On July 28, 1999, Petitioner Klein filed a motion for reconsideration. San Juan County (SJC) filed a motion for reconsideration on July 30, 1999. By memo we established a deadline of August 12, 1999 for any responses to either of the motions. Petitioner Bahrych et. al., filed a response to the County's motion for reconsideration on August 11, 1999.

Klein Motion

As part of his motion for reconsideration Petitioner Klein asked that we clarify two matters. First, he requested that the invalidity ruling on rural densities be clarified to include the rural shoreline zones. At page 8 of the FDO we cited to goal 14 of the Growth Management Act (GMA, Act) which incorporates RCW 90.58.020 into the GMA through the provisions of RCW 36.70A.480. It was clearly our intention to include the rural shoreline densities under the invalidity ruling.

Secondly, Petitioner Klein asked that we clarify the term "densities below" at page 10 dealing

with the minimum densities in both agricultural and forest resource lands (RLs). It was our intention to invalidate all densities more intense than 1 dwelling unit (du) per 10 acres (ac) in agricultural RLs zones and 1du/20ac in forest RLs zones.

We have reviewed the balance of Petitioner Klein's motion. The arguments are not ones that are either necessary nor appropriate to be decided at this time. They are issues that should be considered by SJC. We will review them as appropriate during the compliance hearing.

County's Motion

The first portion of the County's motion dealt with a request to limit the scope of invalidity in villages and hamlets locations that are adjacent to resource lands. At page 10 of the FDO we ruled that densities more intense than 1du/5ac in areas "surrounding designated RLs" were invalid. SJC requested that we limit the scope of the invalidity to areas within the villages and hamlets adjacent to RLs that were designated on the maps submitted with the County's motion. We agree with the County that limiting the areas of invalidity as proposed provides the proper buffering for RLs and is consistent with our concurrent ruling that invalidity did not specifically attach to either the villages or hamlets. We grant the County's request in this regard.

The County also pointed out that at page 14, line 10 of the FDO we held that SJC must review the issue of short-term rentals of existing and new guesthouses in light of RCW 36.70A.070(5)(d) (iv). SJC is correct that the proper citation for that analysis, unless the areas are otherwise included within areas of more intense rural development, is RCW 36.70A.070(5)(a)(b) and (c).

Lastly, the County requested that we provide direction concerning SJC's definition of a single-family dwelling unit that includes both a main residence and a guesthouse. The County has interpreted the language in the FDO to suggest that when doing its remand work it "must, in certain districts, ...prohibit..." guesthouses. Petitioner Bahrych et.al., accurately responded that since the density issue is so intertwined with the guesthouse issue (which is what we found in the FDO) that it is premature to "fill in the details until we know what the framework looks like."

Although we did not specifically find non-compliance from the definition of single-family dwelling unit, we did hold at page 13 of the FDO:

“If the County wishes to allow guesthouses as an accessory dwelling unit *for each SFR* it must first do an analysis...” (emphasis supplied)

SJC requested that we give direction on three sub-issues. The first sub-issue is whether RCW 36.70A.400 mandates “the allowance of accessory dwelling units (guesthouses) in all single-family zones?”

The issue of whether Section .400 mandates guesthouses in all single-family zones was not a specific issue presented in the prehearing order. Nonetheless, in order to assist the County, we make the following observations. RCW 36.70A.400 requires the County to comply with RCW 43.63A.215(3). That sub-section requires incorporation of the Department of Community Trade and Economic Development (CTED) recommendation to the 1993 Legislature for “development and placement of accessory *apartments*” (emphasis added). The sub-section also allows “local flexibility” by placing limitations on the CTED report “as determined by the local legislative authority”. In the FDO we found that the definition of family contained in the comprehensive plan and uniform development code complied with the GMA because, among other reasons, SJC had adopted the CTED model ordinance for accessory dwelling units.

In its analysis of the guesthouse issues for placement in rural areas the County must take into consideration RCW 36.70A.070(5) particularly sub-section (c) to “protect the rural character of the area”. We decline to address the other questions requested by the County. In doing so we are balancing the legitimate request for information concerning compliance or non-compliance versus directing a specific method of achieving compliance, which is not our role.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 25th day of August, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member

Les Eldridge
Board Member