

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

FRIENDS OF SAN JUANS, LYNN BAHRYCH and
JOE SYMONS

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

No. 03-2-0003

**ORDER GRANTING
EXTENSION
ON COMPLIANCE**

This Matter came before the Board as a compliance hearing scheduled by the Board as part of its decision of non-compliance in this case. Final Decision and Order (March 20, 2003). In response to the County's Motion for Clarification, the Board issued a Corrected Final Decision and Order ("CFDO") on April 17, 2003. In the Corrected Final Decision and Order, this Board found the County out of compliance with the GMA with respect to:

- Ordinance 21-2002 as it amends sections of the County's Code to allow for a freestanding Accessory Dwelling Unit (ADU) on single-family lots with a principal residence in rural lands, that allows for residential uses, without counting it as a unit of density for the purpose of calculating the underlying density is not compliant with RCW 36.70A.020(2) and RCW 36.70A.110(1). These regulations substantially interfere with RCW 36.70A.020 (2) and are invalid according to RCW 36.70A.302(1). Ordinance 21-2002, as it amends sections of the County's code to permit and to rent on a long-term basis a freestanding ADU on a resource parcel, is not compliant with RCW 36.70A.020(8) without the following limitations: (1) limiting the occupants to family members and workers employed by the property owner in resource production, (2) imposing site location standards that ensure that the ADU does not interfere with resource production, and (3) counting the freestanding ADU as a dwelling unit for the purposes of calculating the appropriate underlying density on a resource parcel. These sections of the County's code

substantially interfere with RCW 36.70A.020(8) and are invalid according pursuant to RCW 36.70A.302(1).

The CFDO also required the County to file a progress report on July 1, 2003 and a compliance report on September 16, 2003. The Board also set October 22, 2003 as the date to hear the County's efforts at compliance.

On April 11, 2003, Petitioners filed a Petition for Review with Thurston County Superior Court [\[1\]](#) and submitted an Amended Petition for Review to the same court on April 16, 2003. On April 14, 2003, the County filed a Petition for Review with San Juan Superior Court. These cases have now been consolidated in Thurston County Superior Court Cause No. 03-2-00672-3.

On October 7, 2003, the Board issued an order dividing these cases because of the large number of parties involved and because the issues in the cases were on two different compliance schedules. The issues involving ADUs are now being heard in Case No. 03-2-0003.

On October 15, 2003, we received a Progress/Compliance Report from the County. The report included the statement that the County did not realize that a progress or compliance report was needed since the County has appealed the CFDO and a Declaration by Joseph McKenna-Smith describing the County's actions in response to CFDO. A compliance hearing was held telephonically on October 22, 2003 at 10:00 a.m. Petitioners Stephanie Buffum representing Friends of San Juans, Joe Symons, and Fred Klein attended. Alan Marriner represented San Juan County. All three Board members attended.

DECISION AND ORDER

Positions of the Parties

Mr. Marriner reiterated that the County did not realize it needed to file a Progress Report or a Compliance Report due to the appeal of this case to Thurston County Superior Court. He also reviewed the statements of Mr. McKenna-Smith regarding the following County's actions in response to the CFDO:

- Although the County has not amended their development regulations in accordance with

the Board's order, the County is abiding with the spirit of the Board's order by not accepting any development permits for freestanding ADUs in rural or resource lands. The County had accepted about five permits for internal or attached ADUs.

- The County does not regulate the long-term rental of existing ADUs, including ADUs in resource lands, as they do short-term rentals.
- San Juan Ordinance 21-2002, the ordinance that CFDO addressed, did not amend the County's code with respect to the long-term rental of ADUs.

Mr. Marriner reported that the hearing on the County's appeal of this case had been scheduled in Thurston County Superior Court for November 7, 2003.

Petitioners argued that the County should have amended its ordinance in regard to the Board's order. The Petitioners also asked the Board to clarify whether it was consistent with the Board's order for the County to allow the long-term rental of existing ADUs in resource lands.

Decision

The County is pursuing its appeal in a timely manner. The County is not accepting any permits for freestanding ADUs. **Because the County is complying with the intent of the April 17, 2003 CFDO while it pursues its appeal of the Board's order in this case, we grant the County a 180-day extension to comply with our April 17, 2003 CFDO. The compliance date is extended to March 15, 2004. A Progress Report is required of the County to be delivered to the Board by January 30, 2004 to report the outcome of the appeal and to provide a schedule of how the County intends to comply with the Board's order consistent with Thurston County Superior Court's decision. A Compliance Report is due March 26, 2004. A compliance hearing is scheduled for May 4, 2004.**

III. LONG-TERM RENTAL OF EXISTING ADUs

Friends of San Juan asked the Board to clarify whether the County's allowance of the long-term rental of existing ADUs in resource lands is consistent with the Board's April 17, 2003 CFDO.

Our review of the CFDO shows that the issue relating to long-term rentals of ADU's was framed as follows: "Does permitting the rentals of ADUs fail to contain rural development?" (Petition for Review (2/7/03), at 3).

Our decision only addressed the long-term rental of ADUs in rural lands and the permitting of ADUs in resource lands. It did not address the long-term rental of ADUs in resource lands. The reason the Final Decision and Order did not address long-term rentals of ADUs in resource lands is that the County did not take any action in the challenged ordinance (Ordinance 21-2002) regarding long-term rentals of ADUs in resource lands. Therefore, that issue was not before us.

IV. CORRECTION TO ORDER SETTING COMPLIANCE HEARING AND DIVIDING THE CASE

The County pointed out that page six of our October 7, 2003 Order Setting Compliance Hearing and Dividing the Case contained a scrivener's error.

Page six of that order reads:

7. Provide a report on its progress toward compliance no later than *April 2, 2004*.

Page six of the order should read:

7. Provide a report on its progress toward compliance no later than *April 2, 2003*.

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

So ORDERED on this 31st day of October 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbaw, Board Member

Nan Henriksen, Board Member

Margery Hite, Board Member

[\[1\]](#)

The Board consolidated these three cases, Case No. 99-2-0010c, Case No. 00-2-0062c, and Case No. 03-2-

0003, into one case, Case No. 03-2-0003c, on February 28, 2003.