

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

FRIENDS OF SAN JUANS, LYNN BAHRYCH and
JOE SYMONS

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

No. 03-2-0003c

**ORDER
SCHEDULING
COMPLIANCE
HEARING AND
DIVIDING THIS CASE**

I. COMPLIANCE HEARING

On April 17, 2003 the Board issued a Corrected Final Decision and Order (FDO) in this case that found that San Juan County was not in compliance with the Growth Management Act (GMA) on the following issues:

- 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 allow 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).

On April 14, 2003 the Board extended the compliance date for the issues involving the Lopez and Eastsound UGAs and the airport issues. This extension order required that the County produce a progress report and deliver to the Board by August 15, 2003. This report was received in a timely manner. A compliance hearing is scheduled on December 3, 2003 for these issues.

The April 16, 2003 Final Decision and Order concerning the ADU issues also required that a progress report be delivered to the Board on July 1, 2003 and that a compliance report was due on September 16, 2003. The Board, to date, has received neither of these reports.

On April 11, 2003 Petitioners filed a Petition for Review with Thurston County Superior Court 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.

The filing of these petitions does not relieve the County of the obligation to comply with the Board's order.

If parties wish to stay the effectiveness of this, they must obtain an order from the superior court and provide it to the Board.

Pursuant to our April 17, 2003 Corrected FDO, **a Compliance Hearing will be held telephonically on October 22, 2003 at 10 a.m. until 12:00 p.m.** Participants must notify the Board by October 15, 2003 by mail, fax or e-mail if they wish to participate in the compliance hearing by using the attached form.

II. DIVISION OF CASE

Background

Since July 21, 1999, the Western Washington Growth Management Hearings Board (WWGMHB) has issued various compliance orders regarding San Juan County's

comprehensive plan and development regulations. The order in the first case, *Town of Friday Harbor v. San Juan County*, Case No. 99-2-0010c, involved several noncompliant issues, including the permitting of guesthouses in rural and resource lands in the County. Later, on November 30, 2000, the guesthouse provisions in the County's Uniform Development Code (UDC), as well as provisions relating to the designation of Resource Lands in San Juan County's comprehensive plan were found invalid.

In 2001, another case, *Durland v. San Juan County*, Case No. 00-2-0062c, began to be heard with Case No. 99-2-0010c. The order issued in these cases on May 7, 2001 found the following noncompliant issues: nonmunicipal urban growth area (UGA) boundaries and capital facilities plans to serve these UGAs, transient and long-term rentals in resource lands, and a rural land designation.

In 2002, another case, *Fred Klein v. San Juan County*, Case No. 02-2-0008 began being heard with Cases 99-2-0010c and 00-2-0062c. The compliance order that was issued on October 15, 2002 in these cases directed the County to do the following:

1. Complete final growth boundary lines in the Lopez UGA after studies on water availability and saltwater intrusion are concluded.
2. Complete a Lopez UGA capital facilities plan.
3. Complete an Eastsound UGA capital facilities analysis with respect to wastewater and drainage services.
4. Reconsider the Eastsound market factor.
5. Reconsider the inclusion of the westernmost, low-density properties in the Eastsound UGA and establish appropriate urban densities for a non-municipal UGA.
6. Reconsider incompatible uses in the Airport Overlay Zone.
7. Provide a report on its progress toward compliance no later than April 2, 2003.

On February 7, 2003,

the Western Washington Growth Management Hearings Board (WWGMHB) received a Petition for Review from Friends of San Juan County, Lynn Bahrych and Joe Symons (Case No. 03-2-

0003). Petitioners challenged adoption of San Juan County Ordinance Number 21-2002, adopted on December 11, 2002 and published on December 19, 2002 and San Juan County's August 13, 2002 Determination of NonSignificance on this action that amended various county development regulations regulating attached or free-standing accessory dwelling units. The Board issued a Notice of Preliminary Hearing and Schedule on February 13, 2003 and held a telephonic Prehearing Conference on February 25, 2003 for Case No. 03-2-0003.

At the Compliance Hearing, the Petitioners, and the County discussed whether the issues raised in the Petition in Case No. 03-2-0003 and the issues in Case Nos. 99-2-0010c and 00-2-0062c in regard to ADU issues were all before the Board. On February 25, 2003, the Board received a stipulation in Case No. 03-2-0003 in which the parties stipulated that issues raised in Petition 03-2-0003 were heard at the Compliance Hearing on February 18, 2003. The parties also stipulated (1) that no additional briefing or argument was needed for the WWGMHB to decide these issues in its compliance order to be issued in March 2003, and (2) that all of these issues would be decided in the April 16, 2003 Final Decision and Order, subject to the usual rights of appeal. The Petitioners and the County accordingly stipulated to a consolidation of Case No. 03-2-0003 with Case Nos. 99-2-0010c and 00-2-0062c. 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.

On March 20, 2003, the Board issued a Final Decision and Compliance Order in regard to the northern portion of the Sandwith property and the remaining ADU issues. The noncompliant issues in regard to the designation of agricultural land of long-term commercial significance and ADUs decided in 03-2-0003c are described in the Compliance Hearing section of this order.

On March 31, 2003, the Board received a Motion and Declaration to Clarify Order from San Juan County (County) regarding the Compliance Order and Final Decision and Order issued on March 20, 2003 in Case No. 03-2-0003c. The County asked us to clarify our decision concerning the construction and rental of new freestanding (detached) ADUs in the County's resource lands. We issued a clarification of our order on April 17, 2003.

On April 17, 2003, we also issued a Corrected Final Decision and Order that included the clarification requested by the County.

III. ORDER ON DIVISION

Because of the large number of participants in this case and because the issues in this case are on two different compliance schedules, pursuant to WAC 242-02-522(11) to better manage this case, the consolidated case of WWGMHB Case No. 03-2-0003c is hereby divided into three cases:

The remaining issues involving ADUs will be heard in this case captioned as follows:

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and
JOE SYMONS, et al.,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

No. 03-2-0003

The following issues will be heard in their original cases, WWGMHB Case No. 02-2-62c and WWGMHB Case No. 02-2-0008:

1. Complete final growth boundary lines in the Lopez UGA after studies on water availability and saltwater intrusion are concluded.
2. Complete a Lopez UGA capital facilities plan.
3. Complete an Eastsound UGA capital facilities analysis with respect to wastewater and drainage services.
4. Reconsider the Eastsound market factor.
5. Reconsider the inclusion of the westernmost, low-density properties in the Eastsound UGA and establish appropriate urban densities for a nonmunicipal UGA.
6. Reconsider incompatible uses in the Airport Overlay Zone.
7. Provide a report on its progress toward compliance no later than April 2, 2004.

These cases will be captioned as follows:

Holly Gadbow, Presiding Officer