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**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 ON ISSUES
FOR
RECONSIDERATION**

I. SUMMARY OF THE DECISION

This matter comes to us on Petitioners' Motion for Clarification or Reconsideration. That motion asks the Western Washington Growth Management Hearings Board (the Board) to do the following:

- (1) direct the County immediately to discontinue its policy of permitting a second single-family dwelling unit on all lands with existing dwelling units smaller than 1000 square feet and
- (2) direct the County to amend its ordinance within 60 days of June 30, 2004 to bring its ordinances and policies into compliance with the GMA.

In this decision, the Board agrees to modify its Compliance Order of June 30, 2004. In that order, the Board had not directed the County to amend its code and policies to comply with the Corrected Final Decision and Order, April 17, 2003, but had, instead, ordered the County to take some sort of official action that notifies the public that the County is complying with the Board's order during the County's appeal of the Board's April 17, 2003 order. The continued controversy over the County's current practices with respect to accessory dwelling units (ADUs) makes it inappropriate for the Board to accept the County's uncodified policies in lieu of code and comprehensive plan revisions during the pendency of the County's appeal. Therefore, the Board will modify its June 30, 2004 Compliance Order. The County is ordered to bring its ordinance regarding accessory dwelling units

1 in rural and resource lands into compliance with the Board's April 17, 2003, order as modified by the
2 Thurston County Superior Court.

3 4 **II. PROCEDURAL HISTORY**

5 On November 30, 2000, the Board found that the provisions of the County's 2000 comprehensive
6 plan amendments that allowed for new guest house construction in rural and resources lands failed to
7 comply with the GMA and were invalid because the analysis of the impacts of detached Accessory
8 Dwelling Units (ADUs) continued to be inadequate.

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11 On April 6, 2001, the Board issued the Order Clarifying Invalidity. In that order the Board said:

12 [w]e answer the County's question of whether the determination of invalidity also prohibits
13 the issuance of a building permit for the construction of a principle residence if the property
14 owners have previously constructed a guest house on the property in the negative. However,
15 the previously constructed or permit- vested "guest house" must meet the definition of SCC
16 18.40.240. Otherwise the second residence would fall within the determination of invalidity
17 issued on November 30, 2000.

18 *Town of Friday Harbor, Fred Klein, John Campbell, Lynn Bahrych, et al., WWGMHB Case No.*
19 *99-2-0010c, (Order Clarifying Invalidity, April 6, 2001) at 3.*

20 On April 17, 2003, the Board found the County's regulations that allowed free-standing accessory
21 dwelling units (ADUs) in rural and resource lands to be noncompliant and invalid. Corrected Final
22 Decision and Order (April 17, 2003). Both the County and Petitioners appealed the decision, which
23 was heard in Thurston County Superior Court.

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25 On October 31, 2003, the Board granted the County an extension of time to achieve compliance
26 because the County is pursuing its appeal in a timely way and has stated in a signed declaration that
27 it is not issuing any permits for free-standing ADUs in rural and resource lands that did not comport
28 with the Board's decision.

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31 On January 9, 2004, the Thurston County Superior Court issued a decision that upheld the Board's
32 decision on density requirements for free-standing ADUs in rural and resource lands. However, the

1 Superior Court ruled that the occupants of ADUs in resource lands did not have to be limited to
2 family members or farm workers as required by the Board's decision. The Court also upheld the
3 ordinance's site limitations on ADUs.
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6 On January 30, 2004, the County submitted a progress report to the Board. The report stated that the
7 County has appealed the Superior Court's decision to the appellate court, and that the County is not
8 accepting any applications for free-standing ADUs that do not conform with the Board's April 17,
9 2003 order as modified by the Superior Court.
10

11 The Board rescheduled the compliance hearing that had been scheduled for May 4, 2004 in the
12 October 21, 2003 order to May 21, 2004. A telephonic hearing was held on May 21, 2004. After the
13 compliance hearing, the County participated in two mediation sessions with Petitioners. The County
14 filed letter reports on these two sessions held on May 24 and June 10, 2004.¹ Neither of these
15 mediation sessions was successful in resolving the issues. The County requested in its June 21, 2004
16 letter that we use discretion and not issue an order until the appellate court had issued a decision.
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19 On June 30, 2004, the Board issued an order finding continuing noncompliance and invalidity and
20 ordering the County to take some sort of official action that notifies the public that the County is
21 complying with the Board's order.
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24 On July 9, 2004, the Board received Petitioners' Motion for Clarification or Reconsideration.
25 Petitioners allege that the County is permitting a second single-family residence on lots in rural and
26 resource lands that contain a single family dwelling unit of 1000 square or less. Therefore,
27 Petitioners ask the Board to:
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29 (1) direct the County immediately to discontinue its policy of permitting a second single-
30 family dwelling unit on all lands with existing dwelling units smaller than 1000 square feet and
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¹ Letter to Western Washington Growth Management Hearings Board (May 28, 2004) and Letter to Holly Gadbow (June 21, 2004).

1 (2) direct the County to amend its ordinance within a specific time period to bring its
2 ordinances and policies into compliance with the GMA.
3

4 On July 24, 2004, the Board issued an order scheduling a telephonic hearing on Petitioners' Motion
5 for Clarification or Reconsideration. The County requested the hearing be in person in San Juan
6 County. On August 2, 2004, the Board postponed the August 6, 2004 hearing and directed the
7 County to submit a brief in response to Petitioners' motion. The County submitted its response on
8 August 11, 2004.
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11 The Board then scheduled a hearing on Petitioners' motion for October 27, 2004 at the Orcas Island
12 Fire Hall and later, due to Petitioners' representative being unavailable on that day, rescheduled the
13 hearing to November 8, 2004 at the same location.
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16 A hearing was held on November 8, 2004 on Orcas Island. Lynn Bahrych represented Petitioners
17 and Randall Gaylord represented San Juan County. All three Board members attended.
18

19 **III. ISSUE TO BE DISCUSSED**

20 *1. Should the Board revise its June 30, 2004 Compliance Order to:*

- 21 *a. direct the County immediately to discontinue its policy of permitting a second single-family*
22 *dwelling unit on all lands with existing dwelling units smaller than 1000 square feet; and*
23 *b. direct the County to amend its ordinance within 60 days of June 30, 2004 to bring its*
24 *ordinances and policies into compliance with the GMA?*
25
26

27 **IV. DISCUSSION OF THE ISSUE**

28 Petitioners contend that the Board should modify its Compliance Order of June 30, 2004 because the
29 County is not complying with the Board's Corrected Final Decision and Order during the pendency
30 of the County's appeal of that decision and order. Petitioners allege that the County currently permits
31 a second single-family dwelling unit on lots in rural and resource lands that already contain a single-
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1 family dwelling unit of 1000 square feet or less. Petitioners point to statements by the County's
2 planning staff and former deputy prosecutor. Petitioners' Motion for Clarification or
3 Reconsideration, (July 9, 2004) at 2. Petitioners argue that permitting the construction of a second
4 residence on a lot that already has a dwelling unit of 1000 square feet or less without counting the
5 second residence as additional density is contrary to the County's statements that they are abiding by
6 the Board's April 17, 2003 order.²
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9 The County argues that the Board does not have the authority to direct the County to discontinue its
10 policy regarding the constructing of a main house after a guest house has been built. The County
11 points out that the Board only has the authority to determine whether the County's plans and
12 development regulations comply with the Growth Management Act or the Shoreline Management
13 Act pursuant to RCW 36.70A.280 and that pursuant to RCW 36.70A.300 final orders of a growth
14 management hearings board shall be based "exclusively on whether or not ...county is in compliance
15 with the requirements of this chapter." San Juan County's Answer to Requests for
16 Clarification/Reconsideration (August 6, 2004) at 12.
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19 **BOARD DISCUSSION**

20 Both parties agree that the Board's authority is limited to a finding of compliance or non-compliance;
21 and, if noncompliance is found, to an imposition of invalidity. RCW 36.70A.300(3) and
22 36.70A.302(1). The County has represented to the Board that it is pursuing appeals to court, but that
23 during the pendency of those appeals, the County is abiding by the Board's ruling with respect to
24 accessory dwelling units in the rural and natural resource zones. At the time of the June 30, 2004
25 Compliance Order, there was no dispute that the County was abiding by the Board's orders in its
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31 ² At argument, in response to a Board question, the County stated that it permits a second single-family dwelling unit on
32 lots that contain a dwelling unit of 1000 square feet or less if that dwelling unit of 1000 square feet or less was permitted
before April 6, 2001, the date of *Town of Friday Harbor, Fred R. Klein, John M. Campbell, Lynn Bahrych et al v. San
Juan County*, WWGMHB Case No. 99-2-0010c (Order Clarifying Invalidity, April 6, 2001). The County maintains that
this practice is consistent with this order.

1 practices, if not with respect to its enactments. In an effort to accommodate the County, the Board
2 accepted this “practice” compliance while the County’s appeal is being resolved.

3
4 However, now that there is a dispute about the County’s practices, it has become apparent that such
5 an accommodation cannot be granted. The Board’s authority is limited to finding compliance with
6 the GMA as to the enactments challenged. Since April 17, 2003, the Board has never varied from its
7 finding that the County’s ordinances and policies with respect to ADUs in resource and rural lands
8 are non-compliant and invalid. The County is in violation of the GMA until it revises its ADU
9 policies and regulations to comply with the Board’s April 17, 2003 decision and order. **Therefore,**
10 **we will reconsider our June 30, 2004 order.**

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13 **ORDER**

14 **We find the that Ordinance 21-2002 as it pertains to the permitting of freestanding ADUs in**
15 **rural and resource lands is in continuing noncompliance with RCW 36.70A. 110 (1), RCW**
16 **36.70A.020 (2) and RCW 36.70A.020 (8), and continues to substantially interfere with RCW**
17 **36.70A.020(2) and (8), and therefore, continues to be invalid pursuant to RCW 36.70A. 302 (1).**
18 **The County must bring its ordinance regarding freestanding ADUs in rural and resource lands**
19 **into compliance with the Board’s order of April 17, 2003 as modified by Thurston County**
20 **Superior Court, within 120 days of the date of this order. The Board gives the County 120 days**
21 **to achieve compliance so that the County can conduct the necessary public process for**
22 **amending its ordinance.**

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25 *Compliance Schedule*

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April 4, 2005	Deadline for taking official action ensuring compliance with the Board’s order regarding free-standing ADUs in rural and resource lands as modified by the Thurston County Superior Court
April 18, 2005	Compliance Report due
May 9, 2005	Objections to a finding of compliance due
May 31, 2005	County’s Response due
June 9, 2005	Compliance Hearing

1 This is a final decision pursuant to WAC 242-02-832 and RCW 36.70A.300(5) upon which review
2 may be sought in accordance with Ch. 34.05 RCW.
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4 SO ORDERED this 3rd day of December 2004.
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6 WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD
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10 _____
11 Holly Gadbow, Board Member
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15 Margery Hite, Board Member
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19 Gayle Rothrock, Board Member
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