

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 ADVOCATES FOR RESPONSIBLE
4 DEVELOPMENT and JOHN E. DIEHL,

5 Petitioners,

6 v.

7 MASON COUNTY

8 Respondent,

9 And

10 SHAW FAMILY L.L.C.,
11 Intervenor.

Case No. 07-2-0006

ORDER FINDING COMPLIANCE

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16 **I. SYNOPSIS**

17 The Board finds that Mason County's adoption of Ordinance 01-08 cures the noncompliant
18 sections of the County's Master Planned Development (MDP) regulations. The Board
19 further finds that the County's adoption of Ordinance 19-08 causes the designation of the
20 Shaw Family Property to no longer interfere with RCW 36.70A.020(8) and cures its
21 noncompliance with RCW 36.70A.070.

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23 **II. PERTINENT PROCEDURAL HISTORY**

24 The Board's August 20, 2007 Final Decision and Order found several sections of Mason
25 County's Master Planned Development (MDP) regulations out of compliance for these
26 reasons:

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- 28 • Allowance for a developer to place urban densities and urban uses on rural lands did
29 not comply with RCW 36.70A.110(1) and RCW 36.70A.070 (5)(d) and (5)(d)(iv).
30 (Finding of Fact H)
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- 1 • Creation of a density bonus that could cause inconsistency with the density allowed
2 by the County's established rural densities failed to comply with RCW 36.70A.110
3 requirement to prohibit urban growth outside of rural areas. (Finding of Fact I).
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5 The Board also requested that Mason County clarify the changes to a MDP that would be
6 considered a minor amendment to ensure compliance with RCW 36.70A. 020(2),(8),(9), and
7 (10). (Finding of Fact L)
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9 In that Final Decision and Order, the Board also found that the amendment to the
10 comprehensive plan that changed the Long Term Commercial Forest (LCTF) designation of
11 the Shaw Family LLC property to In Holding did not comply with the consistency
12 requirement of RCW 36.70A.070. Later, on September 14, 2007, in the Order on
13 Petitioner's Motion for Reconsideration, the Board found this change in designation invalid
14 because it substantially interfered with RCW 36.70A.020(8).
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17 Mason County passed the following ordinances to respond to the Board's compliance order:
18 Ordinance 01-08 amending its MDP regulations and site plan review process on January 2,
19 2008 and Ordinance 19-08 changing the designation of the Shaw Family's property on
20 February 5, 2008.
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22 On February 27, 2008 Mason County's Compliance Report and Index to the Record was
23 filed. Petitioner submitted no objections to a finding of compliance.
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25 The Board held a telephonic compliance hearing on April 17, 2008. Deputy Prosecutor
26 Monty Cobb represented Mason County. Barbara Adkins, Planning Manager, also attended
27 for Mason County. Board Members Holly Gadbow and James McNamara attended. Board
28 Member Gadbow presided.
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1 **III. DISCUSSION**

2 Compliance Order

3 The Board's August 20, 2007 Final Decision and Order found the following sections of
4 Mason County's Master Planned Development (MDP) out of compliance:

- 5 • §17.10.015(3)(B)(iii) that allowed a developer to place urban densities and urban
6 uses on rural lands did not comply RCW 36.70A.110(1) because it allowed the
7 densities and intensities in an established LAMIRD to be extended outside the
8 LAMIRD boundaries without meeting the criteria of RCW 36.70A.070(5)(d), and
9 therefore did not comply with RCW 36.70A.070(5)(d)(iv). (Finding of Fact H)
- 10 • §17.60.015(B)(iii)(c) that created a density bonus that could cause an inconsistency
11 with the density allowed in the County's established rural densities failed to comply
12 with RCW 36.70A.110 requirement to prohibit urban growth outside of rural areas.
13 (Finding of Fact I).
- 14 • The Board also requested that Mason County clarify that a change considered a
15 minor amendment to the MDP is measured from the original approval rather than
16 from the last "minor" amendment and that the nine criteria all must be met for the
17 amendment to be considered "minor" under the requirements in §17.61.034 to
18 ensure compliance with RCW 36.70A.020 (2),(8),(9), and (10). (Finding of Fact L).

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22 In that Final Decision and Order, the Board also found that the amendment to the
23 comprehensive plan adopted in Ordinance 139-06 which changes the LCTF designation of
24 the Shaw Family LLC property to In Holding failed to address the requirements of Mason
25 County comprehensive plan policies RE-205(C) and RE-206 and did not comply with the
26 consistency requirement of RCW 36.70A.070. Later, on September 14, 2007, in the Order
27 on Petitioner's Motion for Reconsideration, the Board found the change in designation of the
28 Shaw's Family LLC property invalid because it substantially interfered with RCW
29 36.70A.020 (8).
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1 Compliance Actions

2 Ordinance 01-08 (Ordinance) prohibits development straddling the urban growth boundary
3 to take place at urban levels on rural land immediately adjacent to the urban area (MCC
4 17.70.015 (2)(B)(iii)). The Ordinance prohibits densities bonuses to occur in rural areas
5 (MCC 17.70.015 (2)(B)(iii)(c)). The Ordinance now defines and clarifies the nine criteria
6 points which must be met before a MDP amendment can be considered a minor
7 amendment and requires amendments to be weighed against the original plan approval
8 rather than the last minor amendment (MCC 17.71.019(2)).
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11 Conclusion: The adoption of Ordinance 01-08 now complies with RCW 36.70A.110(1),
12 RCW 36.70A.070 (5)(d) and RCW 36.70A.070(5)(d)(iv) and ensures compliance with RCW
13 36.70A.020 (2), (8), (9), and (10).
14

15 Ordinance 19-08 rescinds the change of designation of the Shaw Family property (parcel
16 61918-10-00000) from Long-Term Significant Commercial Forest Land to In Holding Lands.
17 This change also cures the County's noncompliance with RCW 36.70A.070.
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19 Conclusion: The designation of the Shaw Family property to In Holding Lands causes the
20 designation of the Shaw Family property to no longer substantially interfere with RCW
21 36.70A.020(8). The Board's September 7, 2007 order imposing invalidity is rescinded. The
22 designation of the Shaw Family property also cures noncompliance with RCW 36.70A.070.
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25 **FINDINGS OF FACT**

- 26 1. Mason County is a county located west of the crest of the Cascade Mountains that is
27 required to plan pursuant to RCW 36.76A.040.
28 2. Mason County passed the following ordinances: Ordinance 01-08 amending its MDP
29 regulations and site plan review process on January 2, 2008 and Ordinance 19-08
30 changing the designation of the Shaw Family's property on February 5, 2008.
31 3. On February 27, 2008 Mason County filed its Compliance Report.
32 4. Petitioner submitted no objections to a finding of compliance.

- 1 5. MCC 17.70.015 (2)(B)(iii) prohibits development straddling the urban growth
2 boundary to take place at urban levels on rural land immediately adjacent to the
3 urban area.
4 6. MCC 17.70.015 (2)(B)(iii)(c) prohibits density bonuses to occur in rural areas.
5 7. MCC 17.71.019 (2) now defines and clarifies the nine criteria points which must be
6 met before a MDP amendment can be considered a minor amendment and requires
7 amendments to be weighed against the original plan approval rather than the last
8 minor amendment.
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10 8. Ordinance 19-08 rescinds the change of designation of the Shaw Family property
11 (parcel 61918-10-00000) from Long-Term Significant Commercial Forest Land to In
12 Holding Lands.
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14 **CONCLUSIONS OF LAW**

- 15 A. The Board has jurisdiction over the parties to this action.
16 B. The Board has jurisdiction over the subject matter of this action.
17 C. MCC 17.70.015 (2)(B)(iii) and MCC 17.70.015 (2)(B)(iii)(c) adopted by Ordinance
18 01-08 cause the County's MDP regulations now to comply with RCW 36.70A.110 and
19 RCW 36.70A.070 (5)(d) and (5)(d)(iv).
20 D. MCC 17.71.019 (2) clarifies and confirms that the County's process for minor
21 amendments to MDPs comply Goals 2, 8, 9 and 10 of RCW 36.70A.020(2),(8),(9),
22 and (10).
23 E. The designation of the Shaw Family property to In Holding Lands causes the
24 designation of the Shaw Family property to no longer substantially interfere with
25 RCW 36.70A.020(8).
26 F. The designation of the Shaw Family property to In Holding Lands cures this
27 designation's noncompliance with RCW 36.70A.070.
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1 **ORDER**

2 After a review of the County's compliance report and no Petitioner objections, the Board
3 finds that through the adoption of Ordinance 01-08, Mason County's MDP regulations have
4 achieved compliance with the Growth Management Act on the issues found noncompliant in
5 the Board's August 20, 2007 Final Decision and Order.
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7 After review of Ordinance 19-08 and with no Petitioner objections, the Board finds that the
8 designation of the Shaw Family Property no longer interferes with RCW 36.70A.020(8) and
9 cures noncompliance with RCW 36.70A.070. Invalidity for the Shaw Family property
10 designation is rescinded.
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12 No further compliance issues are outstanding. Therefore, this case is hereby CLOSED.
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14 DATED this 25th day of April, 2008.
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17 _____
18 Holly Gadbow, Board Member

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20 _____
21 James McNamara, Board Member

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23 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

24 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
25 **mailing of this Order to file a petition for reconsideration. Petitions for**
26 **reconsideration shall follow the format set out in WAC 242-02-832. The original and**
27 **three copies of the petition for reconsideration, together with any argument in**
28 **support thereof, should be filed by mailing, faxing or delivering the document directly**
29 **to the Board, with a copy to all other parties of record and their representatives.**
30 **Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),**
31 **WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for**
32 **filing a petition for judicial review.**

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the

1 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
2 judicial review may be instituted by filing a petition in superior court according to the
3 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
4 Enforcement. The petition for judicial review of this Order shall be filed with the
5 appropriate court and served on the Board, the Office of the Attorney General, and all
6 parties within thirty days after service of the final order, as provided in RCW
7 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
8 but service on the Board means actual receipt of the document at the Board office
9 within thirty days after service of the final order.

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Service. This Order was served on you the day it was deposited in the United States
mail. RCW 34.05.010(19)

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