

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 1000 FRIENDS OF WASHINGTON
4 Petitioners,

Case No. 05-2-0002

**ORDER FINDING COMPLIANCE
(UGAs)**

5
6 v.

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9 THURSTON COUNTY,
10 Respondent.

11
12 This matter comes before the Board following the submittal of Thurston County's
13 Compliance Report for Urban Growth Areas (Compliance Report).

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15 **I. SYNOPSIS OF DECISION**

16 On the July 20, 2005, the Board issued its Final Decision and Order (FDO) in this matter. In
17 the FDO, the Board found that the size of any UGA must be based upon the projected
18 population growth allocated to that UGA and, since the supply of urban residential lands
19 denoted by the County within its UGAs significantly exceeded the projected demand for
20 such lands over the course of the 20-year planning horizon, the County's UGAs failed to
21 comply with RCW 36.70A.110.¹

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24 The Compliance Report describes that the County, in response to the Board's July 20, 2005
25 FDO, adopted Resolution No. 14034 and Ordinance No. 14035 which reflect the County's
26 determination that, with the exception of the City of Tumwater UGA, its UGAs were
27 appropriately sized to accommodate the anticipated 20-year forecasted population, taking a
28 reasonable land market support factor into consideration.²

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32 ¹ July 2005, FDO, at 26.

² County Compliance Report, at 4.
COMPLIANCE ORDER
Case No. 05-2-0002
May 29, 2008
Page 1 of 8

1 The Board finds and concludes the County has achieved compliance with regard to its
2 Urban Growth Areas (UGAs) with the adoption of Resolution No. 14034 and Ordinance No.
3 14035.

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5 **II. PERTINENT PROCEDURAL HISTORY**

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7 The matter came before the Board at a Hearing on the Merits on June 16, 2005. On July
8 20, 2005, this Board issued its FDO finding the County's action in the sizing of its UGAs,
9 among other things, was not in compliance with the Growth Management Act (GMA).

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11 Subsequent to the issuance of the FDO, the County requested and the Board granted four
12 requests for an extension of the compliance period.³

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14 On April 1, 2008, the City filed its Compliance Report. No objections were filed by
15 Petitioner.

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17 On May 22, 2008, the Board held a telephonic compliance hearing. Jeff Fancher
18 represented the County. With Mr. Fancher were Vena Tabbutt and Pete Swensson of the
19 Thurston County Regional Planning Staff. Futurewise was represented by Tim Trohimovich.
20 Also attending was Brent Dille, City Attorney for the City of Yelm, and Grant Beck, Yelm
21 Community Development Director. Board members Holly Gadbow and James McNamara
22 attended.
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25 **III. BURDEN OF PROOF**

26 After the Board has entered a finding of non-compliance, the local jurisdiction is given a
27 period of time to adopt a legislative enactment to achieve compliance. RCW
28 36.70A.300(3)(b). After the period for compliance has expired, the Board is required to hold
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32 ³ January 27, 2006 Order Extending Compliance Period; October 24, 2006 Second Order Extending
Compliance Period; June 13, 2007 Third Order Extending Compliance Period; and December 13, 2007 Fourth
Order Extending Compliance Period.

1 a hearing to determine whether the local jurisdiction has achieved compliance. RCW
2 36.70A.330(1) and (2).

3
4 For purposes of board review of the comprehensive plans and development regulations
5 adopted by local governments in response to a non-compliance finding, the presumption of
6 validity applies and the burden is on the challenger to establish that the new adoption is
7 clearly erroneous. RCW 36.70A.320(1),(2) and (3). If a finding of invalidity has been
8 entered, the burden is on the local jurisdiction to demonstrate that the ordinance or
9 resolution it has enacted in response to the finding of invalidity no longer substantially
10 interferes with the goals of the GMA. RCW 36.70A.320(4).

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13 In order to find the County's action clearly erroneous, the Board must be "left with the firm
14 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
15 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

16
17 Within the framework of stated goals and requirements, the Board must grant deference to
18 local governments in how they plan for growth:

19 In recognition of the broad range of discretion that may be exercised by counties and
20 cities in how they plan for growth, consistent with the requirements and goals of this
21 chapter, the legislature intends for the boards to grant deference to the counties and
22 cities in how they plan for growth, consistent with the requirements and goals of this
23 chapter. Local comprehensive plans and development regulations require counties
24 and cities to balance priorities and options for action in full consideration of local
25 circumstances. The legislature finds that while this chapter requires local planning to
26 take place within a framework of state goals and requirements, the ultimate burden
27 and responsibility for planning, harmonizing the planning goals of this chapter, and
28 implementing a county's or city's future rests with that community.
29 RCW 36.70A.3201 (in part).

30 In sum, the burden is on the Petitioner to overcome the presumption of validity and
31 demonstrate that any action taken by the County is clearly erroneous in light of the goals
32 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
Where not clearly erroneous and thus within the framework of state goals and requirements,

1 the planning choices of the local government must be granted deference.

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3 **IV. ISSUE PRESENTED**

4 *With the adoption of Resolution No. 14034 and Ordinance No. 14035, are Thurston*
5 *County's UGAs sized appropriately, taking a reasonable land market supply factor into*
6 *consideration, to accommodate the projected demand for urban residential lands over the*
7 *20-year planning horizon as required by RCW 36.70A.110?*
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9 **V. DISCUSSION**

10 **Position of the Parties**

11 Thurston County requests that the Board find its UGAs now comply with the GMA. The
12 County states that it performed the necessary analysis and has determined its UGAs are
13 sized appropriately to accommodate projected demand. The County presented the details
14 of this adoption process to the Board in its Compliance Report, with the adopted Resolution
15 and Ordinance attached.⁴
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18 No objection to a finding of compliance was filed by Petitioner 1000 Friends of Washington
19 (now Futurewise).
20

21 **Board Discussion**

22 In the July 20, 2005 FDO, the Board had found that the size of any UGA must be based
23 upon the projected population growth allocated to that UGA and, since the supply of urban
24 residential lands denoted by the County within its UGAs significantly exceeded the projected
25 demand for such lands over the course of the 20-year planning horizon, the County's UGAs
26 failed to comply with RCW 36.70A.110.⁵ This finding was set forth in Conclusions of Law H
27 and I.⁶
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31 ⁴ County's Compliance Report.

32 ⁵ July 2005, FDO, at 26.

⁶ July 2005 FDO, at 35.

1 H. The County's UGA designations and development regulations implementing
2 them fail to comply with RCW 36.70A.110 by creating UGA boundaries that
3 significantly exceed the projected demand for urban residential lands over the
4 course of the 20- year planning horizon.

5 I. Urban Growth Area Policy 8(b) fails to comply with RCW 36.70A.110(1) and
6 (2).

7 On remand, the County took a number of steps to comply with RCW 36.70A.110,
8 specifically the Compliance Report describes the County's actions:
9

- 10 1. Established a moratorium on subdivisions in several areas of the County;
- 11 2. Contracted with the Thurston Regional Planning Council (TRPC) to perform technical
12 analysis to determine the capacity of the urban growth areas (UGAs) to
13 accommodate growth and any excess capacity through the Buildable Lands Report
14 (BLR);
- 15 3. Updated the BLR, subsequent to the adoption of Rural Rezoning and Limited Areas
16 of More Intensive Rural Development amendments, to reflect the associated shift in
17 population from rural to urban areas;
- 18 4. Updated population forecast and allocation information;
- 19 5. Evaluated the sizing of UGAs based on updated information;
- 20 6. Worked in cooperation with cities and the public to determine an acceptable market
21 factor and address local circumstances;
- 22 7. Held work sessions and public hearings, at which public comment and testimony was
23 received, regarding the amendments and issues; and
- 24 8. Determined that the County's UGAs were appropriately sized to accommodate the
25 anticipated 20-year forecasted population, with the exception of the Tumwater UGA
26 which was reduced in size, and adopted Resolution No. 14034 and Ordinance No.
27 14035 to reflect this determination.
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1 With the adoption of Resolution No. 14034 and Ordinance No. 14035, the County amended
2 its Comprehensive Plan, Chapter 2 Land Use, and Future Land Use Map (Plan Map 15) to
3 incorporate the analysis and resulting conclusions, including those pertaining to population
4 allocation, residential land demand, and market factors. The analysis provided shows that
5 the County's UGAs, with the exception of the Tumwater UGA, are sized appropriately to
6 accommodate the 20-year projected population growth including a reasonable land use
7 market factor which, when the UGAs are considered cumulatively, has a market factor of 25
8 percent.⁷

10
11 **Conclusion:** Based on Thurston County's adoption of Resolution No. 14034 and
12 Ordinance No. 14034 and the lack of objections by the Petitioner to a finding of compliance,
13 the Board finds that the County's actions cure its non-compliance with RCW 36.70A.110.
14

15 VI. FINDINGS OF FACT

- 16 1. Thurston County is located west of the crest of the Cascade Mountains, and is
17 required to plan under the terms of RCW 36.70A.040.
18 2. The Board's July 20, 2005 Final Decision and Order found the size of the County's
19 UGAs must be based upon the projected population growth allocated to that UGA
20 and, since the supply of urban residential lands denoted by the County within its
21 UGAs significantly exceeded the projected demand for such lands over the course of
22 the 20-year planning horizon, the County's UGAs did not comply with RCW
23 36.70A.110.
24 3. The County adopted Resolution No. 14034 and Ordinance No. 14035, amending
25 the Thurston County Comprehensive Plan and Zoning Map, on March 3, 2008.
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31 ⁷ The Tumwater UGA was reduced in size. The Eastern Portion of 93rd Avenue was removed. See *Resolution*
32 *14034*. Only the City of Yelm, due to unique local circumstances, has a market factor of greater than 25
percent. Yelm's market factor is 35 percent. See *Ordinance 14035*.

1 4. The County's action was based on an analysis of the buildable land capacity of its
2 UGAs, including a reasonable land use market factor and updated population
3 forecasts, and provided for adequate public participation.

4 5. Petitioner did not object to a finding of compliance.
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6 **VII. CONCLUSIONS OF LAW**

7 A. The Board has jurisdiction over the parties and subject matter of this case.
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9 B. Thurston County Resolution No. 14034 and Ordinance No. 14035, amending the
10 Thurston County Comprehensive Plan and Zoning Map, complies with RCW
11 36.70A.110.
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13 **VIII. ORDER**

14 The County's adoption of Resolution No. 14034 and Ordinance No. 14035 cures the non-
15 compliance of Thurston County's Urban Growth Areas with the GMA. Therefore, the portion
16 of Case No. 05-2-0002 dealing with UGA issues is **CLOSED**.
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18 Entered this 29th day of May 2008.
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20 _____
21 James McNamara, Board Member
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23 _____
24 Holly Gadbow, Board Member
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26 Pursuant to RCW 36.70A.300 this is a final order of the Board.

27 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
28 of mailing of this Order to file a petition for reconsideration. The original and three
29 copies of a motion for reconsideration, together with any argument in support
30 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
31 original and three copies of the motion for reconsideration directly to the Board, with
32 a copy to all other parties of record. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing

1 of a motion for reconsideration is not a prerequisite for filing a petition for judicial
2 review.

3 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
4 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
5 judicial review may be instituted by filing a petition in superior court according to the
6 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
7 Enforcement. The petition for judicial review of this Order shall be filed with the
8 appropriate court and served on the Board, the Office of the Attorney General, and all
9 parties within thirty days after service of the final order, as provided in RCW
10 34.05.542. Service on the Board may be accomplished in person or by mail, but
11 service on the Board means actual receipt of the document at the Board office within
12 thirty days after service of the final order. A petition for judicial review may not be
13 served on the Board by fax or by electronic mail.

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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)