

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

HAPSMITH, et al.)

) Consolidated

Petitioners,) Case No. 95-3-0075c

)

v.) SECOND FINDING OF

) COMPLIANCE

CITY OF AUBURN,)

)

Respondent.)

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)

)

I. PROCEDURAL BACKGROUND

On November 13, 1995, the Burlington Northern Santa Fe Railroad (**BNSF**) filed a Petition for Review (the **PFR**) with the Central Puget Sound Growth Management Hearings Board (the **Board**), challenging the City of Auburn's (**Auburn** or the **City**) adoption of a comprehensive plan (the **Plan**) pursuant to the requirements of the Growth Management Act (**GMA** or the **Act**). The PFR was consolidated with an earlier filing by the Hapsmith Company (**Hapsmith**) which also challenged the Plan. The consolidated case was captioned *Hapsmith, et al., v. City of Auburn* (*Hapsmith*) CPSGMHB Case No. 95-3-0075c.

On May 10, 1996, the Board issued a Final Decision and Order in the consolidated *Hapsmith* case.

On February 13, 1997, the Board issued its "Finding of Non-Compliance and Notice of Second Compliance Hearing" (the **Board's First Finding of Compliance**) in the *Hapsmith* case.

On December 1, 1997, regarding Case No. 97-2-06689-1KNT, King County Superior Court Judge Suzanne Barnett issued a "Judgment Reversing in Part and Remanding in Part the Decision of the Central Puget Sound Growth Management Hearings Board" (the **Judgment**) and "Findings

of Fact and Conclusions of Law" (the **Judicial Findings and Conclusions**). The Court reversed the portion of the Board's Finding of Compliance that upheld Policy CF-62(1) and remanded it to the Board for further action consistent with the Court's Ruling. Judgment, at 1. In addition, the Court remanded that portion of the Board's Finding of Compliance that upheld Policy CF-62(2) to the Board for further action consistent with the Court's Ruling on Policy CF-62(1). Judgment, at 2. The Court concluded in part:

15. The Board's decision makes clear that a policy that requires only policy level, rather than site specific, inclusion of EPFs in a state or regional plan would comply with RCW 36.70A.200. However, because amendments to Policy CF-62 must be made by the City and not the Board, the City, upon remand from the Board, may either amend the Comprehensive Plan consistent with the Board's interpretation of RCW 36.70A.200 to bring the existing policy into compliance with the Board's decision, or it may take such other action as would be consistent with the GMA, subject to Board review under the GMA. Judicial Findings and Conclusions, at 8.

On January 6, 1998, the Board issued "Order of Remand Pursuant to Superior Court Judgment in Case No. 97-2-06689-1KNT" (the **Order of Remand**) which provided:

Plan Policy CF-62(1) and (2) are **remanded** to the City with instructions that they be amended to achieve compliance with the above referenced Judgment and Judicial Findings as well as the goals and requirements of the GMA. The City shall submit to the Board, with a copy to BNSF, a Statement of Actions Taken to Comply with this Order of Remand, by no later than **4:00 p.m.** on **Friday, April 10, 1998**. The Board will subsequently schedule a Compliance Hearing and arrange briefing schedule. Order of Remand, at 2.

On April 8, 1998, the Board received from Auburn a "Statement of Compliance" which notified the Board that the City had complied with the Order of Remand by the April 6, 1998 adoption of Ordinance No. 5082. A copy of Ordinance No. 5082 was attached. On April 16, 1998, the Board issued "Notice of Compliance Hearing."

On April 20, 1998, the Board received a letter from counsel for BNSF commenting on a statement in the Notice of Compliance Hearing.

On April 21, 1998, the Board received a letter from counsel for Auburn responding to the BNSF letter of April 20, 1998. Attached to the letter was a verbatim transcript of a portion of the Auburn City Council meeting of April 6, 1998.

II. FINDING OF COMPLIANCE

The Board, having reviewed its Final Decision and Order in this case and the above referenced

documents, concludes that the City has complied with the requirements of the GMA, as interpreted by the Superior Court in the above referenced Judgment and Judicial Findings. Therefore, the Board issues to Auburn this **Second Finding of Compliance**.

So ordered this 24th day of April, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP

Board Member

Joseph W. Tovar, AICP

Board Member

Chris Smith Towne¹

Board Member

¹ Board Member Towne has been on sick leave since April 13, 1998 and did not participate in the

deliberation on this Finding of Compliance.

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