

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

FUTUREWISE,

Petitioner,

No. 05-2-0013

v.

WHATCOM COUNTY,

Respondent,

WHATCOM COUNTY'S MOTION  
FOR AN EXTENSION OF THE  
COMPLIANCE DEADLINE

And

GOLD STAR RESORTS, INC.,

Intervenor.

I. RELIEF REQUESTED

Whatcom County seeks a 42 day continuance of the current compliance deadline from March 29, 2011 to May 10, 2011.

II. LEGAL AUTHORITY

RCW 36.70A.300(3)(b) authorizes the Board to extend the period for compliance beyond 180 days "in cases of unusual scope or complexity." Similarly, RCW 36.70A.330(2) provides that, after an order of noncompliance has been entered, the Board may "issue any order necessary to make adjustments to the compliance schedule" and set additional hearings as necessary. The facts set forth below demonstrate that these standards have been met and

that the County is seeking the minimum additional time necessary to complete the tasks before it.

### III. FACTS SUPPORTING MOTION

#### A. History

In early 2005, Whatcom County completed the seven year review of its comprehensive plan and development regulations, and documented its action in Resolution No. 2005-006. Futurewise challenged this action by filing a petition for review with the Board. On September 20, 2005, the Board ruled that the County's comprehensive plan and zoning regulations did not comply with the Growth Management Act (GMA). In part, the Board's findings related to rural density and limited areas of more intense rural development (LAMIRDs). The Board set a date of February 14, 2006 for the County to achieve compliance. On October 14, 2005, the Board granted the County's request for an additional year to achieve compliance due to the scope and complexity of the issues. *Futurewise v. Whatcom County*, WWGMHB No. 05-2-0013, Order Extending Date for Compliance and Establishing Compliance Briefing and Hearing Schedule (10/14/05).

On October 18, 2005, Gold Star Resorts, Inc., an intervenor in the case, appealed the Board decision to the Whatcom County Superior Court. On June 8, 2006, the Superior Court reversed the Board's decision. Futurewise then appealed the Superior Court's decision to the Washington State Court of Appeals. On May 18, 2007, while the appeal was pending, the Board entered an order staying the requirement that the County achieve compliance with respect to the matters on appeal until a final decision terminating appellate review and a mandate were issued. *Id.*, Order Finding Continuing Noncompliance, Staying Compliance Obligations Reversed By Superior Court, and Setting New Compliance Schedule (5/18/07).

On December 17, 2009, a final decision in this matter was issued by the Washington Supreme Court. *Gold Star Resorts, Inc., v. Futurewise*, 167 Wn.2d 723, 222 P.3d 791 (2009). The matter was then remanded to the Board for proceedings consistent with the Supreme Court's decision through an order entered by the Superior Court on May 4, 2010. On June 29, 2010, a telephonic prehearing conference was held to address scheduling issues. Thereafter,

the Board set a compliance deadline of December 29, 2010. *Id.*, Order Setting Briefing and Hearing Schedule Following Remand from the Supreme Court (7/6/10). Upon the County's request for an extension of the compliance deadline, the Board again found that this case involved issues of unusual scope and complexity and thus extended the deadline to March 29, 2011. *Id.*, Order Granting Extension of Compliance Deadline and Imposing Invalidation (12/22/10).

B. Steps Taken to Date

The County hereby incorporates by reference Subsection *B. Steps Taken to Date* from Whatcom County's Motion for an Extension of the Compliance Deadline, dated November 30, 2010.

Since the previous motion for an extension was filed, numerous additional Council committee work sessions and two public hearings have been held, and a proposed ordinance has been introduced. Exhibit A, Proposed Ordinance. These work sessions occurred on December 7, 2010, and January 11 and 25, February 8, 15, 17, 22, and 25, and March 1, 4, 14, and 15, 2011 and the public hearings occurred on March 9 and 29, 2011. Exhibit A, Proposed Ordinance, p. 12, Finding No. 71. After the public hearing on March 29, the Council did not adopt the proposed ordinance. Instead, after considering the public comment, it is likely that a revised ordinance will be introduced on April 12, 2011, and the public will have an opportunity to comment on those changes in a public hearing on April 26, 2011. The adoption of a final ordinance is clearly imminent.

C. Emergency Moratorium on Subdivisions

Concerned about the need to conduct a thorough review and the additional time it could take, on October 26, 2010, the County Council unanimously adopted an emergency ordinance imposing a moratorium on the acceptance of new applications for subdivisions and short subdivisions into parcels smaller than 10 acres in the rural areas outside of the boundaries of the LAMIRDs recommended by the Planning Commission in its decision of October 8, 2009. Ordinance No. 2010-053. This was followed by the adoption of an interim ordinance, effective for up to 6 months, on December 7, 2010. Ordinance No. 2010-066.

The Board then issued its decision imposing invalidity based on its concern that the County was approving subdivisions within the boundaries of the LAMIRDs recommended by the Planning Commission and thus allowing the inappropriate conversion of undeveloped land into sprawling low density development. In response to the Board's determination of invalidity, the County Council adopted Ordinance No. 2011-001 on January 11, 2011. This ordinance, adopted on an emergency basis, imposed a moratorium on the acceptance of new applications for subdivisions and short subdivisions into parcels smaller than 10 acres in the rural areas inside of the boundaries of the LAMIRDs recommended by the Planning Commission. At the same meeting, the Council introduced an interim ordinance that would extend this moratorium for up to six months. This ordinance was adopted on January 25, 2011. Ordinance No. 2011-004. The Board then lifted its finding of invalidity. Both of these interim moratoria remain in place and will remain in place during the period of the requested extension.

#### IV. PRIOR BOARD CASES SUPPORT THIS REQUEST FOR AN EXTENSION

The County hereby incorporates by reference Section IV. *Prior Board Cases Support this Request for an Extension* from Whatcom County's Motion for an Extension of the Compliance Deadline, dated November 30, 2010.

This Board has acknowledged twice that the issues involved in this case are of unusual scope and complexity. The County is literally just short of adopting an ordinance revising its Rural Element to meet the GMA's goals and requirements. Moreover, Whatcom County has taken steps to make certain that more intense development does not occur while the planning process is continuing through its adoption of the interim ordinances described above.

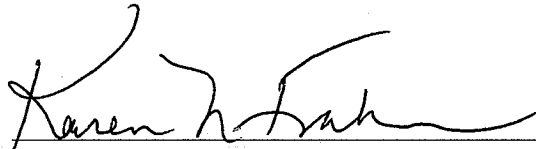
#### V. PROCEDURAL MATTERS

Pursuant to WAC 242-02-530, Whatcom County requests that, if the Board desires oral argument, that it should reserve 15 minutes for the argument. Whatcom County believes that the oral argument can be undertaken by telephone conference call.

VI. CONCLUSION

For the foregoing reasons, Whatcom County requests that the Board extend the compliance deadline to May 10, 2011. Further, the two major issues in this case are inextricably intertwined. It would not make sense to extend the date for the adoption of comprehensive plan criteria and not extend the date for consideration of the rural densities. As it addresses the rural element, the County will not only be adopting comprehensive plan policies regarding LAMIRDs, but will also be mapping LAMIRDs, and reviewing and revising rural densities outside of properly established LAMIRDs. A review of the rural densities before the Council adopts changes to those rural densities in this process would be an inefficient use of the Board's limited time and resources.

DATED this 30<sup>th</sup> day of March, 2011.



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