

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 FUTUREWISE

6
7 Petitioner,

8 v.

9
10 WHATCOM COUNTY,

11 Respondent,

12 And

13
14 GOLD STAR RESORTS, INC.

15
16 Intervenor.
17

Case No. 05-2-0013

**ORDER GRANTING EXTENSION OF
COMPLIANCE DEADLINE
AND FINDING CONTINUING NON-
COMPLIANCE**

18
19 THIS Matter comes before the Board on Whatcom County's Motion for an Extension of the
20 Compliance Deadline, filed on March 30, 2011. On April 1, 2010, Futurewise filed a
21 response to the Motion in which it indicated that it did not object to an extension of the
22 compliance deadline, but instead objected to the date of the hearing on the County's
23 motion, based on its concern that the hearing date followed the previously established date
24 for Futurewise to file an objection to the County's actions to achieve compliance¹.
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30 ¹ Futurewise's Response in which it expressed its concern that it was in an "absurd" situation of responding to
31 the County's compliance efforts in accordance with the previous schedule is not well-founded. The County
32 has not claimed that it has achieved GMA compliance and has not filed a compliance report for the Board's or
Futurewise's review. No response is expected from Futurewise until such time as that compliance report is
filed.

1 A compliance/motion hearing was held telephonically on April 14, 2011. Futurewise was
2 represented by Jill Smith. Whatcom County was represented by Karen Frakes. Board
3 members William Roehl, Nina Carter and James McNamara were present.
4

5 I. DISCUSSION

6 The Growth Management Act (GMA), at RCW 36.70A.300(3), requires the Board to set a
7 date for compliance if it makes a finding of noncompliance on any matter. This provision
8 provides: (in relevant part, emphasis added)
9

- 10 (a) Find that the state agency, county, or city is not in compliance with the
11 requirements of this chapter... as it relates to adoption of plans,
12 development regulations, and amendments thereto, ... in which case the
13 board shall remand the matter to the affected state agency, county, or
14 city. **The board shall specify a reasonable time not in excess of one
15 hundred eighty days, or such longer period as determined by the
16 board in cases of unusual scope or complexity, within which the
17 state agency, county, or city shall comply with the requirements of
18 this chapter.** The board may require periodic reports to the board on
the progress the jurisdiction is making towards compliance.

19 Following remand from the Washington State Supreme Court of the Board's September 20,
20 2005 Final Decision and Order (FDO),² the Board held a status conference and set a
21 compliance schedule in this matter.
22

23 In response to a previous request by the County, the Board extended the compliance
24 deadline by 90 days. In its present motion, the County requests an additional 42 days to
25 accommodate the adoption of a proposed ordinance and allow for adequate public
26 participation. At the April 14, 2011 hearing, the County amended its request for extension to
27 request an additional two weeks to accommodate necessary public process associated with
28 the Planning Commission's review of amendments to the proposed ordinance. Futurewise
29
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31 _____
32 ² *Gold Star Resorts Inc v. Futurewise, et al.*, 167 Wn.2d 723 (2009).

1 does not object to the request for additional time, but requests that if the compliance
2 deadline is extended, the briefing schedule be likewise extended.

3
4 The Board previously found that the compliance issues involved in this case – LAMIRDs
5 and Rural Density - are of unusual scope and complexity.³ Therefore, the Board is willing
6 to grant the additional time requested.

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8 While the Board is able to grant extensions in the compliance schedule, RCW
9 36.70A.330(1) requires that “After the time set for complying with the requirements of this
10 chapter under RCW 36.70A.300(b) has expired, . . . the board shall set a hearing for the
11 purpose of determining whether the state agency, county or city is in compliance with the
12 requirements of this chapter.” The date set for compliance was March 29, 2011. Because
13 the County filed its request for an extension of the compliance period *after* the compliance
14 period expired, the Board was statutorily required to conduct a compliance hearing.⁴
15 Therefore, the April 14, 2011 deadline could not be extended by motion.
16

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18 As the County did not achieve compliance by April 14, 2011, as previously ordered, the
19 Board makes a finding of continuing non-compliance as to the County’s rural densities and
20 LAMIRDs. Further, the Board notes that this matter was remanded from the Supreme Court
21 on December 17, 2009. The County has had more than an adequate period of time to
22 achieve compliance. The County is cautioned against further delay.
23

24 **Conclusion:** Based on the foregoing, the Board finds that the rural densities and LAMIRD
25 issues remaining in this case are of unusual scope and complexity. In light of the progress
26 the County has made in revising the Rural Lands section of its Land Use Element to meet
27 the requirements of the GMA, it is appropriate to grant additional time to complete this work.
28 Thus, the Board will grant the additional time as requested by Whatcom County. Since the
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31 ³ Order Extending Date for Compliance and Establishing Compliance Briefing and Hearing Schedule (Oct. 14,
32 2005).

⁴ RCW 36.70A.330 requires the Board to hold a compliance hearing after the time for complying has expired.

1 deadline for compliance has been extended, the Board also grants Futurewise's motion for
2 an extension of the briefing schedule so as to correspond with the compliance schedule.

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4 **II. ORDER**

5 The Board finds that the rural densities and LAMIRD issues remaining in this case are of
6 unusual scope and complexity and grants additional time for compliance as set forth below.

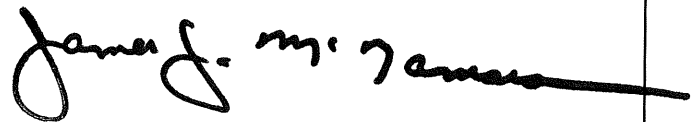
7 The following schedule shall apply:
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10 Compliance Due	May 24, 2011
11 Compliance Report and Index to Compliance Due	June 7, 2011
12 Objections to a Finding of Compliance on Rural Densities Due*	
13 Objections to a Finding of Compliance on LAMIRDs Due	June 21, 2011
14 Record Additions/Supplements Due*	
15 County Response to Objections on Rural Densities Due*	
16 County's Response to Objections on LAMIIRDs Due*	June 28, 2011
17 Compliance Hearing (location to be determined)	July 6, 2011 @1:30 p.m.

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19 * 30 page limit to pleadings, unless prior permission from Board is granted to
20 exceed this limit.

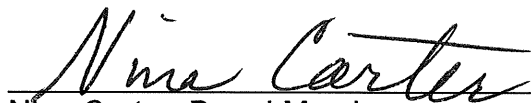
21 Entered this 15th day of April, 2011.

22 

23 James McNamara, Board Member

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25 William Roehl, Board Member

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27 Nina Carter, Board Member