

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

CORINNE R. HENSLEY,)	
)	Case No. 03-3-0010
Petitioner,)	
)	<i>(Hensley VII)</i>
v.)	
)	
SNOHOMISH COUNTY,)	ORDER FINDING
)	COMPLIANCE
Respondent.)	
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I. BACKGROUND AND DISCUSSION

On April 10, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Corinne R. Hensley (**Petitioner** or **Hensley**). The matter was assigned Case No. 03-3-0010, and was referred to as *Hensley VII v. Snohomish County (Hensley VII)*. Petitioner challenged Snohomish County’s adoption of Emergency Ordinance No. 02-106 amending the development regulations for the Clearview LAMIRD.

Emergency Ordinance No. 02-106 was the Ordinance adopted by the County in response to the Board’s remand in *Hensley V*, CPSGMHB Case No. 02-3-0004. The Board subsequently issued several Orders supporting its conclusion of noncompliance. These matters were appealed to Superior County Superior Court.

In the Board’s August 11, 2003 Order on Motions in *Hensley VII* [CPSGMHB Case No. 03-3-0010, the Board stated,

- Having previously found that the Clearview LAMIRD *Plan provisions comply* with the GMA; and having previously found that the Clearview LAMIRD *development regulations do not comply* with the GMA; the Board now determines that Ordinance No. 02-106 (adopting the Clearview LAMIRD development regulations) **does not comply** with the requirement of RCW 36.70A.040(3) and .130, that development regulations implement the Plan.

- The Board will neither remand nor schedule a compliance hearing on this issue at this time. Further Board proceedings on this case and this issue will be coordinated with the *Hensley V* matter once it is decided by the Snohomish County Superior Court. Following the Superior Court’s decision on *Hensley V*,

the County shall promptly notify the Board so the Board can determine what further proceedings, if any, are necessary.

8/11/03 Order, at 9.

On August 18, 2006, the Honorable Judge Gerald L. Knight issued a Memorandum Decision followed by the Court's Order on September 8, 2006. In the August 18th Memorandum Decision (**Memo Decision**), Judge Knight stated that the Board, in regard to the June 17, 2002 Compliance/FDO and the August 12, 2002 Reconsideration, did not erroneously interpret or apply the law nor did the Board lack sufficient evidence. Therefore, Judge Knight did not reverse the Board as to these two orders. However, Judge Knight did find that, in regard to the March 28, 2003 Noncompliance Order, the Board's decision was not supported by substantial evidence and that its conclusion that development would occur in the Clearview area beyond the scale of that which existed on July 1, 1990 was pure speculation. According, Judge Knight reversed the Board's Noncompliance Order insofar as it found Ordinance 02-106 noncompliant with the GMA and remanded the matter to the Board to enter an order consistent with the Court's decision.

On January 8, 2007, the Board issued a "Notice of Pre-Remand Hearing Conference in Remand of CPSGMHB Case No. 02-3-0004 *Hensley V v. Snohomish County*." The Order established January 29, 2007 as the date for a telephonic Pre-Remand Hearing Conference (**PRHC**) where the Board would determine if additional proceedings are necessary.

On January 29, 2007, the Board held the PRHC and determined that no additional proceedings would be necessary in the *Hensley V matter*. Consequently, that same day, the Board issued an "Order on Remand Finding of Compliance in CPSGMHB Case No. 02-3-0004 *Hensley V. v. Snohomish County*. This Order stated,

- Ordinance No. 02-106 setting forth the permitted uses for the CRC zone for the Clearview LAMIRD was not clearly erroneous. The Board concurs with the Snohomish County Superior Court's Order and Memorandum Decision and rescinds the contrary analysis and conclusions in the March 28, 2003 Noncompliance Order, adopting the dissent's reasoning and enters a Finding of Compliance pertaining to the Clearview LAMIRD zoning designation.

1/29/07 Order, at 3.

Unfortunately, the parties, as well as the Board, overlooked the Board's stated linkage between *Hensley V* and *Hensley VII*, and the Board neglected to address the *Hensley VII* matter during that proceeding. The County's attorney, Lara Heisler, contacted the Board to inquire as to how to proceed in the matter of *Hensley VII*. As in the *Hensley V* matter, the Board concludes that no further proceedings are not necessary for *Hensley VII* and hereby addresses the matter of *Hensley VII*.

On remand, having agreed with Judge Knight's Memo Decision regarding the County's adoption of Emergency Ordinance No. 02-106, and having entered a Finding of Compliance, the Board concludes that its resolution of *Hensley V* is binding in the *Hensley VII* matter. Consequently, the Board enters this Order of Dismissal and Finding Compliance.

III. ORDER

Based upon review of the Board's prior Orders, in *Hensley VII* and *Hensley V*, specifically the *Hensley V*, March 28, 2003 Noncompliance Order, the Snohomish County Superior Court Order and Memo Decision, and having considered the statements of the parties and deliberated on the matter on remand, the Board ORDERS:

- Ordinance No. 02-106 setting forth the permitted uses for the CRC zone for the Clearview LAMIRD was not clearly erroneous. The Board concurs with the Snohomish County Superior Court's Order and Memorandum Decision and rescinds the contrary analysis and conclusions in the March 28, 2003 Noncompliance Order, adopting the dissent's reasoning and enters a **Finding of Compliance** pertaining to the Clearview LAMIRD zoning designation.
- Since the Board has found Ordinance No. 02-106 in compliance with the GMA—the same Ordinance challenged in *Hensley VII*; the challenge is resolved and the matter of *Hensley VII v. Snohomish County*, CPSGMHB Case No. 03-3-0010, is **dismissed**.

So ORDERED this 30th day of January, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member