

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

CAL LEENSTRA,

Petitioner,

Case No. 03-2-0011

v.

**FINAL DECISION
AND ORDER**

WHATCOM COUNTY,

Respondent,

and

CONCERNED NEIGHBORS OF LAKE SAMISH, a
Washington nonprofit corporation,

Intervenor.

Lake Samish is a lovely lake of approximately 815 acres in a wooded area of southern Whatcom County. Many recreational users come to the lake for kayaking, water-skiing, swimming and other water sports. Hikers and bicyclists enjoy the lake and its surrounding environs.

Over the years, there has been increasing residential development around the lake. For most of these residents, the lake is also a source of drinking water. In addition, the growing number of recreational visitors to the area has added to traffic around the lake. In 2002, a concerned group of neighbors living in the Lake Samish area, Intervenor Concerned Neighbors of Lake Samish, brought environmental problems to the attention of the county council. The problems range from water quality to traffic safety. As a solution, the neighbors proposed downzoning Lake Samish to eliminate the land use designation that allowed development at the rate of two dwelling units per acre (the "Suburban Enclave" designation), replacing it with general rural zoning.

Petitioner, Mr. Leenstra, is a private landowner with property in the Lake Samish area. He has owned his property for a number of years, holding it as an investment for retirement. Under the 1997 Comprehensive Plan, most of the area along the lake, including the Leenstra property, was zoned Suburban Enclave. The proposal to eliminate the suburban enclave designation would change the density of residential development allowed on Petitioner's property to one dwelling unit per five acres ("R5A" zoning).

Petitioner and some landowners opposed the downzone as interfering with their property rights. Other landowners, including Intervenor, supported the downzone as needed to protect the environment and the rural character of the area. County staff evaluated the proposal and recommended an alternative, which the staff believes better fits the directives of the county's comprehensive plan. This alternative preserves some areas around the lake as Suburban Enclave and downzones others. However, under the staff alternative, Petitioner's property was among those downzoned to R5A, one unit per five acres. The County Council adopted the staff recommended alternative and this appeal followed.

I. PROCEDURAL HISTORY

On December 31, 2001, a group of individuals, including Intervenor, submitted an application for amendments to the zoning code and map, and the comprehensive plan and map. This proposal was reviewed by County staff, who made an alternative recommendation. The proposal was reviewed by the Planning Commission in public meetings. On January 28, 2003, the staff proposed alternative was adopted by the County Council in Ordinance 2003-007. Publication occurred on February 1, 2003. The petition for review was filed by Petitioner on April 2, 2003. An amended petition was filed on May 2, 2003. The prehearing conference was held May 5, 2003. The County filed a motion to dismiss the Petitioner's SEPA claims, based on failure to

exhaust administrative remedies and lack of standing. This motion was granted by the Board.¹ Order on Motion, June 20, 2003.

The remaining issues were heard at the hearing on the merits, held in Bellingham on August 19, 2003.² At the hearing, the County's motion to supplement the record dated July 21, 2003 was granted. The Affidavit of Dana Brown-Davis is admitted as Ex. 289, and the Affidavit of Martha Blakely is admitted as Ex. 290. Ruling on the County's motion for official notice was reserved. WAC 242-02-660 provides that the board may officially notice "codes or standards that have been adopted by an agency of this state". The Board found no need to take official notice of the proffered exhibit.

II. ISSUES PRESENTED

Issue No. 1: Whether Ordinance 2003-2007 and the Whatcom County Comprehensive Plan Rural Element as amended by the Ordinance complies with the Growth Management Act (GMA) requirements for rural elements in RCW 36.70A.070(5).

a) Whether an adequate written record was created explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of the GMA pursuant to RCW 36.70A.070(5)(a).

b) Whether the change in designation from Suburban Enclaves-Rural to Rural and the resulting housing channeled to other rural areas constitute appropriate rural densities consistent with RCW 36.70A.070(5)(b).

c) Whether the challenged action fails to control rural development by directing residential development

¹ Board member Holly Gadbarw recused herself from hearing this case due to her prior work on the issues of the case for the Department of Community, Trade and Economic Development.

² Board member Nan Henriksen was unable to attend the hearing on the merits in person due to an automobile accident. She attended the hearing via telephone.

to other rural areas, improperly perpetuates low-density development in the rural area, and fails to protect against conflicts with agriculture in violation of RCW 36.70A.70(5)(c).

d) Whether the County failed to comply with the requirements for limited areas of more intensive rural development under RCW 36.70A.070(5)(d)(i),(iii) and (v), by improperly establishing the logical outer boundary of the LAMIRD on the basis that the designated area fails to include adjacent lands served by urban services including sewer, roads, parks, and fire service before July 1, 1990, and on the basis that development of the areas, as envisioned in the 1997 Comprehensive Plan, would not constitute low-density sprawl, would efficiently utilize public services, and would avoid low-density sprawl in other rural areas.

Issue No. 2: Whether the County complied with Goal Four and the housing element requirements of the GMA (RCW 36.70A.070(2)), and whether the challenged action is consistent with the Comprehensive Plan Housing Element and the Housing Background Document on the basis that the action eliminated a large percentage of potential housing in the rural area without replacing that housing in other areas thus creating an un-reconciled shortfall of housing to serve the projected population growth.

Issue No. 3: Whether the County complied with the procedural requirements of the GMA requiring: notification of the State Office of Community Development under RCW 35.70A.106(3) of its intent to amend its Comprehensive Land Use Plan; public participation under RCW 36.70A.035 and 36.70A.140, based on an alleged conflict of interest by a Planning Commission member; and proper publication under RCW 36.70A.035 and 36.70A.140.

Issue No. 4: [Dismissed by Order on Motion, June 20, 2003] Whether the County failed to meet the requirements of SEPA in issuing a Determination of

Non-Significance without properly considering the environmental impacts of locating replacement dwelling units in other areas of the County including impacts on critical areas, traffic, agriculture, public services, and loss of open space.

Issue No. 5: Whether the challenged Comprehensive Plan Amendment conflicts with or is otherwise internally consistent with, the Countywide Planning Policies (CPPs), the Comprehensive Plan, and the Chuckanut-Lake Samish Subarea Plan in violation of RCW 36.70A.070, and whether the challenged zoning action, a development regulation, is consistent with and fully carries out the Comprehensive Plan in violation of RCW 36.70A.040.

a) The specific inconsistent planning policies in the Land Use Element are: Goal 2A by failing to ensure sufficient land for residential and agricultural designations, and Policies 2A-2, 2A-3, 2A-4, 2A-5, and 2A-7; Goal 2C and Policy 2C-a by failing to channel growth where adequate services can be provided; Goal 2F and all 2F Policies for failing to give a high priority to incentive programs; Goal 2H and Policies 2H-2 and 2H-3 for failing to preserve property rights; Policy 2L-2 for failing to retain the Chuckanut-Lake Samish Subarea Plan; Goal 2M, Policies 2M-1 and 2M-2, also 2DD-5 for failing to preserve habitat by encouraging more septic systems, groundwater wells, and lake withdrawals rather than sewer hookups and a public water system; Urban Growth Area Goals and Policies because no consideration was given to whether lost residential units could be relocated in rural areas or whether urban growth areas would need to be expanded; Goal 2CC, Policies 2CC-1, 2CC-2, 2CC-3, and 2CC-4 for failing to give proper consideration to the use of rural lands and directing growth to appropriate rural areas rather than promoting sprawling residential uses in the rural area; Goal 2LL

and Policies 2LL-2 and 2LL-3 for lack of proper identification of suburban enclaves; Land Use

Designations for Suburban Enclaves-Rural and Rural since the Rural designation has a minimum density of one unit per two acres; and the Land Use Action Plan.

b) The specific inconsistent planning policies in the Housing Element are: Goal 3B for failing to support housing near employment as the Lake Samish area is near Bellingham; Goal 3C, Policy 3C-1, Goal 3E, Policies 3E-1 and 3E-2, Goal 3F, Policies 3F-1 and 3F-3, Goal 3G, Policies 3G-2, 3G-4 for failing to provide a broad range of housing types and lot sizes since no consideration was given to the need to replace half-acre lot size style housing; and the Housing Action Plan.

c) The specific inconsistent planning policy in the Capital Facilities Element is: Policy 4A-4 for failing to assess coordination with the land use element and changes in the challenged amendment.

d) The specific inconsistent planning policy in the Utilities Element is: Goal 5L for failing to use a proactive process to resolve water-related conflicts, and instead arbitrarily redesignating an area for lower development.

e) The specific inconsistent planning policies in the Transportation Element are: Goals 6A, 6B, 6D, 6E, 6S, 6T and Policy 6D-1 for failing to consider impacts on the transportation system of relocating lost housing units to other areas of the county in a less efficient low density sprawl pattern,

f) The specific inconsistent planning policies in the Economics Element are: Goal 7A, Policy 7A-7 regarding an adequate housing supply; Goal 7F, Policies 7F-1 and 7F-4 for failing to encourage jobs in the construction industry; and Goal 7J, Policy 7J-1 regarding job creation to reduce unemployment and underemployment.

g) The specific inconsistent planning policies in the Resource Lands Element are: Goal 8A, Policies 8A-1, 8A-2, 8A-4, 8A-5, and 8A-6 for failing to conserve agricultural land base by promoting sprawling residential uses; Goal 8B, Policies 8B-1, 8B-2 and 8B-3 regarding maintaining agricultural products industry; and Goal 8D, Policies 8D-1 and 8D-6 regarding reducing land use conflicts with agriculture.

h) The specific inconsistent planning policies in the Environment Element are: Goal 11C, Policies 11C-1, 11C-2, and 11C-3 for failing to protect private property rights.

i) The specific inconsistent Countywide Planning Policies are: Urban Versus Rural Distinctions B1, B2, B3, B4; Urban Growth Areas C3a, C3b, C5, and C7; Affordable Housing G2, G3, G4, and G5; Economic Development I1, I7, I8, I9; and Private Property Rights.

III. BURDEN OF PROOF

As the Board reviews the challenges raised in the amended petition for review, the Board is bound to determine compliance under the “clearly erroneous” standard of review. Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless [it] determine[s] that the action by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” The County’s actions were clearly erroneous if the Board is “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. Public Util. Distr. No.1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.320(1), and the 2000 amendments thereto, the County’s actions are presumed valid upon adoption. The burden is on Petitioners to demonstrate that the action taken by the County is not in compliance with the requirements of the GMA.

IV. SUMMARY OF DECISION

In this decision, we find that the County has properly redesignated the suburban enclave boundaries on Lake Samish to comport with the LAMIRD requirements of the GMA. The County had originally developed the suburban enclave designation before the 1997 amendments to the GMA that created the LAMIRD designation option. At the time the suburban enclave designation was developed, therefore, there was no “logical outer boundaries” requirement (RCW 36.70A.070(5)(d)(iv)). In revisiting the suburban enclaves designated for Lake Samish in Ordinance 2003-007, the County properly established the logical outer boundaries of the limited area of more intense rural development on Lake Samish, by considering the 1990 “built environment”, and addressing the need to preserve the character of the community, its physical boundaries, prevention of abnormally irregular boundaries, and the ability to provide public facilities and services in a manner that does not permit low density sprawl. RCW 36.70A.070(5)(d)(iv).

Petitioner asks us to remand the challenged ordinance due to errors in the title of the ordinance and in a published notice. We find that any such errors do not affect the substance of the ordinance.

Petitioner also challenges the County’s decision to reduce the housing density allowed in the Lake Samish region. Petitioner argues that this cannot be done and meet the housing goals of the GMA and the County’s own planning policies. However, the Petitioner has failed to show that the County cannot meet its housing goals as a result of the change in density. A successful challenge to the consistency of a county’s planning policies will demonstrate that the new enactment precludes the county from meeting its other goals. This the Petitioner has failed to do here.

V. ANALYSIS AND DISCUSSION OF ISSUES

The issues in this case fall into four categories: procedural challenges to the ordinance adoption process; challenges to compliance with the Growth Management Act’s

requirements for the rural element of the County's comprehensive plan; challenges to the housing goal of the GMA and the County's comprehensive plan housing element; and challenges to the consistency of the adopted amendments with the County's comprehensive plan and the countywide planning policies. We will discuss the related issues together.

Procedural challenges:

Issue No. 3: Whether the County complied with the procedural requirements of the GMA requiring: notification of the State Office of Community Development under RCW 35.70A.106(3) of its intent to amend its Comprehensive Land Use Plan; public participation under RCW 36.70A.035 and 36.70A.140, based on an alleged conflict of interest by a Planning Commission member; and proper publication under RCW 36.70A.035 and 36.70A.140.

Applicable Law:

RCW 36.70A.106(3)
RCW 36.70A.035
RCW 36.70A.140

Positions of the Parties:

Petitioner argues that the County failed to properly publish the ordinance after adoption (Petitioner's Opening Brief at 7) and that the self-interest of one of the planning commissioners violates the public participation requirements of the GMA. Petitioner's Opening Brief at 8.³ The Petitioner's argument regarding improper publication is that the ordinance should have been published after it was signed by the county executive, and not merely after the county council adopted it, because this is the procedure established in the County's charter. Petitioner's Opening Brief at 8.

³ Petitioner did not brief the allegation that the County had failed to properly notify CTED and is considered to have abandoned that issue.

Since the ordinance was published on February 3, 2003 and not signed by the county executive until February 11, 2003, Petitioner argues that it must be remanded. In the alternative, Petitioner argues that “the notice given was fatally defective since it used a different title and because the summary was inconsistent with [sic] Ordinance.” Petitioner’s Opening Brief at 8.

The County responds that publication was proper because, under the county charter, the legislative body adopts ordinances. The GMA calls for publication after adoption, which is what was done in this case. Brief of Respondent at 7. The County further notes that even if publication were defective, it would not invalidate the ordinance but would only prolong the appeal period. *Ibid.*

Petitioner also argues that a planning commissioner had a conflict of interest that should have prevented his participation in the planning commission recommendations on the proposal. Petitioner’s Opening Brief at 9-11. The planning commissioner acknowledged that his property was in the area proposed for rezone and stated “I am acting against my better financial interest” in voting for the downzone. Petitioner’s Opening Brief at 9. Petitioner argues that the self-interest of this planning commissioner so infected the process that the hearing was not a fair hearing. *Ibid.* at 10-11. Petitioner argues that if the Board does not invalidate the public participation process which included a vote by a self-interested planning commissioner, “the Board will be sending the clear signal that the public participation requirement is a charade.” *Ibid.*

The County responds that the appearance of fairness doctrine does not apply to zoning and comprehensive plan amendments. Brief of Respondent at 10. Citing RCW 42.36.010, the County points out that the legislature has specifically exempted

legislative actions such as the one challenged here from the appearance of fairness doctrine. *Ibid.*

Discussion and Analysis:

As to Petitioner's first point, the alleged failure to properly publish the adopted ordinance, we agree with the Central Board that the effect of a defect in publication under the GMA is that the appeal period is prolonged. *Jody L. McVittie v. Snohomish County*, CPSGMHB Case No. 00-3-0006c (Order on Dispositive Motion, April 25, 2000). See also *Diehl v. Mason County*, WWGMHB Case No. 95-2-0073 (Amended Motion Order, October 10, 1995). Since there is no challenge to the timeliness of Petitioner's appeal, whether or not proper publication was achieved is a moot point.

Petitioner then argues that the County violated the appearance of fairness doctrine because one of the planning commissioners who voted to recommend the downzone owned property in the affected area. In support of this argument, Petitioner cites several Washington cases: *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969); *Chronbuck v. Snohomish County*, 78 Wn.2d 858, 480 P.2d 489 (1971); and *Buell v. City of Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972). These cases deal with the appearance of fairness doctrine in the land use context.

However, as the County and Intervenor point out, in 1983 the Legislature passed a statute addressing limitations on the appearance of fairness doctrine. Ch. 42.36 RCW. It provides:

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide

zoning ordinances or the adoption of a zoning amendment
that is of area-wide significance.
RCW 42.36.010 (in pertinent part)

It further provides:

No legislative action taken by a local legislative body, its
members, or local executive officials shall be invalidated
by an application of the appearance of fairness doctrine.
RCW 42.36.030

Since the cases cited by Petitioner all pre-date the legislative change in the appearance
of fairness doctrine, those cases are not applicable here.

The action of the County challenged by Petitioner was the adoption of a zoning
amendment of area-wide significance. Ex. 1. This adoption was not a quasi-judicial
action but a legislative action. Pursuant to RCW 42.36.010 and .030, the legislative
adoption of a zoning amendment is not subject to the appearance of fairness doctrine
and therefore the alleged conflict of interest of the planning commissioner does not
violate the appearance of fairness doctrine.

Petitioner has further argued that the alleged conflict of interest so tainted the process
that it does not meet the public participation standards of the GMA. However, the
only authority on which Petitioner relies are the cases cited above, which were decided
before the legislature created the limitations on the appearance of fairness doctrine.
Those limitations clearly express the legislative intent to allow public officials to take
part in legislative decisions in which they may be argued to have some self-interest.
In this case, we further note that the planning commissioner disclosed that he owned
property in the affected area before his vote to recommend the downzone.

Conclusion: The Petitioner has failed to meet his burden that the County's action violated the procedural requirements of the GMA for publication and public participation.

Housing challenges:

Issue No. 2: Whether the County complied with Goal Four and the housing element requirements of the GMA (RCW 36.70A.070(2)), and whether the challenged action is consistent with the Comprehensive Plan Housing Element and the Housing Background Document on the basis that the action eliminated a large percentage of potential housing in the rural area without replacing that housing in other areas thus creating an un-reconciled shortfall of housing to serve the projected population growth.

Applicable Law

RCW 36.70A.070(2)

Positions of the Parties:

Petitioner argues that the County's action in downzoning property around Lake Samish from Suburban Enclave to Rural – 5 acre zoning will result in the loss of 900-1000 potential houses. Petitioner's Opening Brief at 17. Petitioner argues that the County was required to reassess the County's Housing Background Document when it changed potential availability of housing through the downzone at Lake Samish. Petitioner's Opening Brief at 24. Petitioner alleges that the failure of the County to evaluate the Housing Background Document as part of this action is "fatal". *Ibid.*

Further, Petitioner urges that the County's action conflicts with the Housing Element of the comprehensive plan. Petitioner alleges that the County deferred consideration

of how to make up the “lost” housing instead of taking the action required to:

Review any changes to regulations affecting the provision of housing for population and housing preferences and needs prevailing at that time.

Housing Action Plan Item 6; Petitioner’s Opening Brief at 24.

The County responds that the County did consider housing impacts but that there is no requirement that it do so in any formal way. The County points out that the burden is on Petitioner to show the alleged inconsistencies; and the Petitioner has failed to make such factual allegations. Brief of Respondent at 23. “[U]nless there is proof that a downzone would reduce available housing to the point that the planning assumptions underlying a jurisdiction’s comprehensive plan housing element have been compromised by the downzone, the GMA would not call for such action or evaluation”. *Ibid.* at 24.

The County points to Ex. 7 to demonstrate that the County did consider housing impacts. There, county staff explained to the county council that there were 81,000 potential lots in the county and a demand of only 30,000 lots to accommodate projected growth. Thus, the loss of potential lots in the Chuckanut/Lake Samish subarea would not affect the County’s ability to accommodate growth and provide housing. Ex. 7.

Discussion and Analysis:

We start with the Petitioner’s arguments concerning the County’s obligations to demonstrate an evaluation of the Housing Background Document. We agree with the County that the argument made by Petitioner shifts the burden of proof to the County to show that there are no inconsistencies between its planning documents and a new enactment. This is not the County’s obligation. While it is true that the Act imposes on the County the obligation to “show its work” in some contexts, such as in the

creation of its urban growth areas, the GMA does not require the County to demonstrate that it harmonized all of its planning documents when it undertakes an amendment of them. This does not mean that the County is free to enact legislation that is inconsistent with the requirements of the GMA and its own planning policies; it just means that the burden is on any petitioners to show that the inconsistency exists. It is not enough for the Petitioner to allege that the record is deficient in demonstrating the County's review of its planning documents. The Petitioner must show where the alleged inconsistency lies.

Therefore, Petitioner's allegation with respect to the Housing Background Document does not state a violation of the GMA. The County did not have to demonstrate that it reviewed the Housing Background Document before it enacted the zoning changes at Lake Samish. A county fails to do a review of its planning policies when it enacts an amendment of one of them at its peril, however, because failing to conduct the review might lead to an inconsistency – and such an inconsistency *would* state a violation of the GMA. In this case, however, the Petitioner does not point to an inconsistency between the Housing Background Document and the zoning map amendment, so we do not have a specific challenge before us.

On the other hand, Petitioner does cite to various specific portions of the Housing Element of the County's comprehensive plan in support of his allegation that the challenged amendment is inconsistent with the Housing Element. First, Petitioner points to Housing Action Plan Item 6, in the Housing Element of the comprehensive plan at 3-10:

Review any new changes to regulations affecting the provision of housing for population and housing preferences and needs prevailing at that time.
Ex. 75.

Petitioner states that the amendment of the zoning map to downzone the area around Lake Samish is a development regulation change that affects the provision of housing by reducing the available housing stock by 900-1000 units. Petitioner's Opening Brief at 24.

The County responds that the County did consider the potential housing ramifications of the amendment. Brief of Respondent at 24. Ex. 63 expressly addresses the question "Is there sufficient land available to accommodate the 20-year projected population allocated to unincorporated Whatcom County despite the proposed reduction of approximately 900 potential densities within the Lake Samish watershed?" Exhibit 59 analyzes the distribution of present and potential housing units in the urban growth areas and in areas throughout unincorporated Whatcom county. In addition, Exhibit 60 shows increases in densities allowed through ordinances passed since adoption of the comprehensive plan. This analysis clearly addresses the only known impact of the reduction of the Lake Samish suburban enclave on housing supply – a potential reduction in 900 to 1000 housing units on half-acre lots.

Petitioner further argues that the County's action is inconsistent with Goal 3C, Policy 3C-1, Goal 3E, Policies E-1 and 3E-2, Goal 3F, Policies 3F-1 and 3F-3, Goal 3G, and Policies 3G-2 and 3G-4. Petitioner's Opening Brief at 25. Goal 3B supports residential housing near employment and transit. Goal 3C and Policy 3C-1 provide for creating opportunity for a broad range of housing types and encourage mixed affordability, and support creation of small lots and accessory dwelling units to deal with the housing affordability dilemma identified in the comprehensive plan. Goal 3-E provides for future housing needs by responding to changing household demographics. Goal 3F is to provide incentives to create housing across a wide range of affordability. Goal 3G is to identify and remove impediments to housing.

In making a determination whether there is consistency between various parts of a local jurisdiction's planning policies and regulations, this Board has held that consistency means that no feature of the plan or regulation is incompatible with any other feature of the plan or regulation. *CMV v. Mount Vernon*, WWGMHB 98-2-0006 (July 23, 1998 Final Decision and Order). Said another way, no feature of one plan may preclude achievement of any other feature of that plan or any other plan. *Carlson v. San Juan County*, WWGMHB 00-2-0016 (September 15, 2000, Final Decision and Order).

“Consistency” means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

WAC 365-195-210.

None of the cited goals (or their related policies) require the County to address them in every land use action it takes. These are over-all goals and policies of the County, which apply to the County's planning in its entirety. It is not essential that each land use decision address each goal or policy so long as no enactment precludes the County's ability to achieve other adopted goals or policies. Petitioner fails to show that the County cannot meet the cited goals and policies and undertake the enactment challenged here.

Petitioner urges that the challenged ordinance violates RCW 36.70A.020(4) – the “housing goal” of the GMA. However, the GMA does not elevate any one goal in RCW 36.70A.020 over any other. In undertaking the review of the suburban enclave designation at Lake Samish, the County was motivated in large part by its desire to preserve the environment and rural character at Lake Samish. Protecting the environment is another GMA goal – goal 10. Both the goal of protecting the

environment and the goal of affordable housing are goals that the GMA requires a local government to balance in its planning. Moreover, not every action undertaken must address both goals or, indeed, all thirteen goals of the Act. RCW 36.70A.020. Just as the goals in the Housing Element of the County's comprehensive plan are goals for the county as a whole, the goals of the GMA guide the development of comprehensive plans and development regulations rather than having to be represented in every part of the comprehensive plan or in every development regulation. Unless the changed zoning makes it impossible for the County to achieve its goals, including its housing goals, there is no inconsistency.

Conclusion: Petitioner has failed to show that the County's adoption of Ordinance 2003-007 is inconsistent with the Housing Element of the comprehensive plan or the Housing Goal of the GMA.

Challenges to the rural element:

Issue No. 1: Whether Ordinance 2003-2007 and the Whatcom County Comprehensive Plan Rural Element as amended by the Ordinance complies with the Growth Management Act (GMA) requirements for rural elements in RCW 36.70A.070(5).

a) Whether an adequate written record was created explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of the GMA pursuant to RCW 36.70A.070(5)(a).

b) Whether the change in designation from Suburban Enclaves-Rural to Rural and the resulting housing channeled to other rural areas constitute appropriate rural densities consistent with RCW 36.70A.070(5)(b).

c) Whether the challenged action fails to control rural development by directing residential development to other rural areas, improperly perpetuates low-density development in the rural area, and fails to protect against conflicts with agriculture in violation of RCW 36.70A.070(5)(c).

d) Whether the County failed to comply with the requirements for limited areas of more intensive rural development under RCW 36.70A.070(5)(d)(i),(iii) and (v), by improperly establishing the logical outer boundary of the LAMIRD on the basis that the designated area fails to include adjacent lands served by urban services including sewer, roads, parks, and fire service before July 1, 1990, and on the basis that development of the areas, as envisioned in the 1997 Comprehensive Plan, would not constitute low-density sprawl, would efficiently utilize public services, and would avoid low-density sprawl in other rural areas.

Applicable law:

RCW 36.70A.020
RCW 36.70A.070(5)(a)
RCW 36.70A.070(5)(b)
RCW 36.70A.070(5)(c)
RCW 36.70A.070(5)(d)(i),(iv),(v)

Positions of the Parties:

The Petitioner argues that the ordinance eliminated the suburban enclave designation for the Lake Samish area but failed to harmonize this change in the Rural Element of the comprehensive plan with the GMA goals. Petitioner’s Opening Brief at 21. Petitioner claims that the original Lake Samish suburban enclave designation was created as a limited area of more intense rural development (“LAMIRD”) and approved as such by this Board. *Ibid.* Therefore, the logical outer boundaries of the LAMIRDS at Lake Samish have already been determined and, Petitioner argues, cannot be changed. *Ibid.* Further, Petitioner argues, the new boundaries do not comport with the GMA. *Ibid.*

The County responds that the ordinance did not eliminate the suburban enclave designation; it just altered the enclave boundaries, rezoning some lands and leaving some in the suburban enclave designation. Brief of Respondent at 13. The County states that it utilized the existing rural zoning criteria in their (compliant) comprehensive plan so there was no need to harmonize the changes in a written record. *Ibid.* at 15. The County further argues that it was not required to meet the LAMIRD requirements because “creation of a LAMIRD was not the driving force behind the rezone”. *Ibid.* In the alternative, the County argues that the new suburban enclave boundaries do meet the LAMIRD requirements found in RCW 36.70A.070(5)(d)(i). *Ibid.* at 16-20.

Discussion:

Petitioner’s arguments essentially urge this Board to find that the area included in the Lake Samish suburban enclave designation should not have been reduced, despite the county council’s determination that full build-out of the area originally designated “Suburban Enclave” would have detrimental effects upon the environment and the rural character of the Lake Samish area. The Petitioner argues that the logical outer boundaries of the suburban enclave were already approved and cannot now be changed; and that the boundaries of the suburban enclave that have been drawn are not “logical” within the meaning of the GMA.

Petitioner insists that the County eliminated the suburban enclave designation at Lake Samish through Ordinance 2003-007. Petitioner’s Reply Brief at 1. The basis for Petitioner’s position is the title of the ordinance (Ex. 1) and the Notice of Council Action Taken. Ex. 263. The ordinance title states:

AMENDING THE OFFICIAL WHATCOM COUNTY
ZONING MAP FROM RR2, R2A AND R2A TO R2A,
R5A, AND RF WITHIN PORTIONS OF THE LAKE
SAMISH WATERSHED AND AMENDING THE

WHATCOM COUNTY COMPREHENSIVE PLAN MAP
DESIGNATION FROM SUBURBAN ENCLAVE TO
RURAL FOR AREAS WITHIN THE LAKE SAMISH
WATERSHED.

Ex.1.

While Petitioner urges that the title controls the meaning of the ordinance, this is not the function of an ordinance title. The purpose of the title is to give notice which would lead into an inquiry into the body of the act or indicate the “scope and purpose of the law to an inquiring mind.” *Bennett v. State*, 117 Wn. App. 483, 489, 2003 Wash. App. LEXIS 1108 (Div. II, 2003). The title of an ordinance “need not be an index to the contents, nor express every detail contained therein.” *Mount Spokane Skiing Corp. v. Spokane County*, 86 Wn. App. 165, 182, 936 P.2d 1148 (Div. III, 1997).

While the words of the ordinance title might have been “more happily chosen” (*Elliott v. Leavenworth*, 197 Wash. 427, 434, 85 P.2d 1053 (1938)), they clearly put the reader on notice of the subject of the ordinance. Further, the title does not, despite Petitioner’s assertions to the contrary, unambiguously state that the suburban enclave designation has been eliminated as to all areas within the Lake Samish watershed. It simply states that the suburban enclave designation has been changed to rural for “areas” within the watershed. The reader should look to the actual text to determine which areas had been changed. While the notice of Council Action Taken, Ex. 263, does contain a mistaken statement: “[Ordinance 2003-007] amends the Comprehensive Plan text to remove the Suburban Enclave designation for Lake Samish”; Petitioner cites no authority for the proposition that a misstatement of the action taken actually has any legal effect on the ordinance itself.

Petitioner then argues that the County had the obligation to create a record showing that it had harmonized the new ordinance with the rural element of the comprehensive plan. Petitioner’s Opening Brief at 21. This argument is very similar to the one raised

with respect to the Housing Background Document, *infra*, and we do not find it persuasive for the reasons stated in response to the housing argument. The burden is not on the County to show consistency; the burden is on the challenger to show *inconsistency*.

Petitioner raises two substantive arguments with respect to the change in boundaries of the suburban enclave designation in the Lake Samish watershed: the first is that the superior court and the board upon the court's direction approved the County's original boundaries for the suburban enclave. These boundaries are logical outer boundaries of a LAMIRD, the Petitioner argues, and thus cannot be changed. Petitioner's Reply Brief at 2. Petitioner refers our attention to the Order Remanding Case in *Whatcom County v. Western Washington Growth Management Hearings Board*, Whatcom County Cause No. 98-2-00546-3, dated September 25, 1998; and the Order Taking Action Consistent with the Decision of Whatcom County Superior Court in Cause No. 98-2-00546-3, dated March 28, 2001.

We have reviewed the order of the superior court and the subsequent order of this board. We do not find that either order holds that the Lake Samish suburban enclave designation is upheld as a LAMIRD under RCW 36.70A.070(5)(d)⁴. Although there is language in the superior court decision referencing the LAMIRD provisions, that reference is used to support the court's conclusion that the "small lots, public facilities and undeveloped lots" do not render areas "urban". Order Remanding Case at 12. There is no finding that the Lake Samish suburban enclave is a LAMIRD, let alone that the boundaries have been appropriately drawn. The County pointed out that the suburban enclave designation was created before the LAMIRD provisions of the GMA

⁴ The Board's order of March 28, 2001 reflects the lack of prosecution of the remand by the petitioners and simply upholds the County's plan under the presumption of validity as directed by the superior court. The Board order makes no substantive findings with respect to the suburban enclave designation.

went into effect. Thus the suburban enclave designation for Lake Samish was upheld apart from the LAMIRD criteria.

The County urges that the new suburban enclave boundaries do not have to comply with the LAMIRD criteria because they were withdrawn to comply with its pre-existing Subarea Plan, the comprehensive plan, the advice of the Department of Community, Trade and Economic Development, the GMA, and for the protection of an environmentally sensitive area. Brief of Respondent at 16. At argument, however, the County did acknowledge that the rules applicable to LAMIRDs apply to the redrawn boundaries of the Lake Samish suburban enclave.

We agree. The boundaries of suburban enclaves that were originally drawn by the County were drawn without the benefit of the requirements now present in the statute. It would be illogical to determine that the County was bound by those boundaries when they were not drawn in accordance with the logical outer boundaries provisions that now exist. However, when the County re-drew the boundaries in 2003, the GMA provisions regarding LAMIRDs were in effect and the County was required to comply with their directives:⁵

Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether

⁵ The County notes that it has not formally adopted LAMIRD provisions but that integration of the GMA LAMIRD provisions into the comprehensive plan is pending before the County Planning Commission. Brief of Respondent at 16, footnote 4.

characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population.

...

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

RCW 36.70A.070(5)(d)(i) and (iv)

The record demonstrates that the County did apply the LAMIRD requirements for type (d)(i) LAMIRDS when it redrew the suburban enclave boundaries for Lake Samish. The County used information that it had to determine what “built environment” had existed in July of 1990. The Staff Report of July 18, 2002, indicates how the planning staff derived their recommendation to preserve a small area

of suburban enclave and re-zone other primarily undeveloped areas as either rural or forest resource lands:

Delineation of the revised RR2 (Suburban Enclave) boundaries was based upon 1) existing areas of built environment as identified on 1991 DNR aerial photographs; 2) presence of pre-GMA plats of small parcels (< 2 acres) that were located adjacent to the existing built environment; 3) avoidance of critical areas including steep slopes and NWI wetlands; 4) proximity to the Samish Water District ULID boundary (whether in or out); and 5) recognition of physical boundaries and resource lands. All of the areas which meet the criteria for “limited areas of more intensive rural development” should maintain the current RR2 (Suburban Enclave) designation.

Ex. 31, at 3.

Petitioner argues that his property should have been included in the revised suburban enclave designation because his property is within the sewer district ULID and because it does not have steep slopes or NWI wetlands. Petitioner’s Opening Brief at 23. However, the County points out that Petitioner’s land is undeveloped and including it in the outer boundaries of the LAMIRD would not “contain or otherwise control further rural development” or protect surface water as mandated by RCW 36.70A.070(5)(c). Brief of Respondent at 17.

The Suburban Enclave designation allows the development of lots of half an acre. Petitioner owns approximately 25 acres of undeveloped land on Lake Samish. Ex. 183. As the County states, the parcels that were down zoned, including the Petitioner’s, were all on the perimeter of the suburban enclave. Brief of Respondent at 19. Adding Petitioner’s property to the boundary of the suburban enclave LAMIRD would constitute “outfill”, not “infill”. *OEC v. Jefferson County*, WWGMHB Case No. 00-2-0019 (Final Decision and Order, November 22, 2000); Brief of Respondent at 20. The County’s decision not to include undeveloped property outside the existing built environment was a sound choice not to expand low-density sprawl.

The County's choice is also supported by well-documented concerns about the environment and traffic in the area. Exhibits 181 and 200 document a decline in water quality in recent years. According to the State Department of Fish and Wildlife, there has also been a negative impact on hatchery fall Chinook,. Ex. 66. This decrease in water quality for human consumption and fish habitat in turn was linked to increased development in the watershed. Ex. 276.

Many citizens complained about the increase in traffic and the overloaded roads. See Ex. 17, Minutes of the October 8, 2002 Planning and Development Committee, County Council. Traffic engineering studies and counts of traffic are set out in Exhibit 190, to support the argument that traffic safety and mobility had greatly deteriorated around Lake Samish.

The County concluded that the effects of expanding residential development around Lake Samish could be detrimental to the environment:

Existing and potential sources of contamination associated with development within the watershed could significantly impact the availability of safe, adequate supplies of water and fish and wildlife habitat.

Ex. 1, Ordinance 2003-007, Conclusion #1.

The County's choice to contain low-density sprawl by drawing LAMIRD boundaries around existing development not only comports with the directives of RCW 36.70A.070(5)(d)(i) and (iv) for creating such a LAMIRD, but it also clearly represents a responsible decision to address the environmental impacts that such development has already been shown to have on Lake Samish water quality:

The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by: ...

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources;...

RCW 36.70A.070A(5)(c)(iv).

Conclusion:

We conclude that the County used appropriate criteria to re-draw the Suburban Enclave designation boundaries in the Lake Samish watershed as a type (d)(i) LAMIRD. Petitioner has failed to meet his burden to show that the boundaries of the new LAMIRD do not comply with the GMA.⁶

Challenges to the consistency of the adopted amendments with the County's comprehensive plan and the countywide planning policies

Issue No. 5: Whether the challenged Comprehensive Plan Amendment conflicts with or is otherwise internally consistent with, the Countywide Planning Policies (CPPs), the Comprehensive Plan, and the Chuckanut-Lake Samish Subarea Plan in violation of RCW 36.70A.070, and whether the challenged zoning action, a development regulation, is consistent with and fully carries out the Comprehensive Plan in violation of RCW 36.70A.040.

(a) The specific inconsistent planning policies in the Land Use Element are: Goal 2A by failing to ensure sufficient land for residential and

⁶ We understand that the County will integrate the new LAMIRD provisions in its comprehensive plan through its regularly scheduled amendment process.

agricultural designations, and Policies 2A-2, 2A-3, 2A-4, 2A-5, and 2A-7; Goal 2C and Policy 2C-a by failing to channel growth where adequate services can be provided; Goal 2F and all 2F Policies for failing to give a high priority to incentive programs; Goal 2H and Policies 2H-2 and 2H-3 for failing to preserve property rights; Policy 2L-2 for failing to retain the Chuckanut-Lake Samish Subarea Plan; Goal 2M, Policies 2M-1 and 2M-2, also 2DD-5 for failing to preserve habitat by encouraging more septic systems, groundwater wells, and lake withdrawals rather than sewer hookups and a public water system; Urban Growth Area Goals and Policies because no consideration was given to whether lost residential units could be relocated in rural areas or whether urban growth areas would need to be expanded; Goal 2CC, Policies 2CC-1, 2CC-2, 2CC-3, and 2CC-4 for failing to give proper consideration to the use of rural lands and directing growth to appropriate rural areas rather than promoting sprawling residential uses in the rural area; Goal 2LL and Policies 2LL-2 and 2LL-3 for lack of proper identification of suburban enclaves; Land Use Designations for Suburban Enclaves-Rural and Rural since the Rural designation has a minimum density of one unit per two acres; and the Land Use Action Plan.

(b) The specific inconsistent planning policies in the Housing Element are: Goal 3B for failing to support housing near employment as the Lake Samish area is near Bellingham; Goal 3C, Policy 3C-1, Goal 3E, Policies 3E-1 and 3E-2, Goal 3F, Policies 3F-1 and 3F-3, Goal 3G, Policies 3G-2, 3G-4 for failing to provide a broad range of housing types and lot sizes since no consideration was given to the need to replace half-acre lot size style housing; and the Housing Action Plan.

(c) The specific inconsistent planning policy in the Capital Facilities Element is: Policy 4A-4 for failing to assess coordination with the land use element and changes in the challenged amendment.

(d) The specific inconsistent planning policy in the Utilities Element is: Goal 5L for failing to use a proactive process to resolve water-related conflicts, and instead arbitrarily redesignating an area for lower development.

(e) The specific inconsistent planning policies in the Transportation Element are: Goals 6A, 6B, 6D, 6E, 6S, 6T and Policy 6D-1 for failing to consider impacts on the transportation system of relocating lost housing units to other areas of the county in a less efficient low density sprawl pattern, 7F, Policies 7F-1 and 7F-4 for failing to encourage jobs in the construction industry; and Goal 7J, Policy 7J-1 regarding job creation to reduce unemployment and underemployment.

(f) The specific inconsistent planning policies in the Economics Element are: Goal 7A, Policy 7A-7 regarding an adequate housing supply; Goal 7F, Policies 7F-1 and 7F-4 for failing to encourage jobs in the construction industry; and Goal 7J, Policy 7J-1 regarding job creation to reduce unemployment and underemployment.

(g) The specific inconsistent planning policies in the Resource Lands Element are: Goal 8A, Policies 8A-1, 8A-2, 8A-4, 8A-5, and 8A-6 for failing to conserve agricultural land base by promoting sprawling residential uses; Goal 8B, Policies 8B-1, 8B-2 and 8B-3 regarding maintaining agricultural products industry; and Goal 8D, Policies 8D-1 and 8D-6 regarding reducing land use conflicts with agriculture.

(h) The specific inconsistent planning policies in the Environment Element are: Goal 11C, Policies 11C-1, 11C-2, and 11C-3 for failing to protect private property rights.

(i) The specific inconsistent Countywide Planning Policies are: Urban Versus Rural Distinctions B1, B2, B3, B4; Urban Growth Areas C3a, C3b, C5, and C7; Affordable Housing G2, G3, G4, and G5; Economic Development I1, I7, I8, I9; and Private Property Rights.

Applicable law:

WAC 242-02-570(1)

Positions of the parties:

Petitioner alleges a long list of inconsistencies between the enacted legislation at issue here and the County's comprehensive plan. However, Petitioner only discusses one allegation – that the County failed to make any text amendments to the comprehensive plan to make it consistent with the new rural designation for Lake Samish. Petitioner cites to the comprehensive plan at 2-71 and the Chuckanut/Lake Samish Subarea Plan adopted by Policy 2L-2 of the comprehensive plan at 2-12. Petitioner's Opening Brief at 25-6.

The County argues that the failure to provide adequate support or briefing for the Petitioner's allegations constitutes abandonment of those claims. Brief of Respondent at 29. The County further argues that no text amendment was necessary because neither the comprehensive plan nor the zoning ordinance (Title 20 WCC) tied the Lake Samish enclave to any particular density. Brief of Respondent at 29-30.

Discussion:

This Board will ordinarily not consider issues for which support has not been submitted:

A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.

WAC 242-02-570 (in pertinent part)

We have held that when a petitioner chooses not to argue an issue in his brief, the issue is considered to have been abandoned. *OEC v. Jefferson County*, 94-2-0017(Final Decision and Order, February 16, 1995). We agree with our sister board

that “mere conclusory statements in a petition or prehearing brief are insufficient to overcome the statutory presumption of validity.” *Moses Lake v. Grant County*, EWGMHB Case No. 01-1-0010 (Final Decision and Order, November 20, 2001). We will not, therefore, review the unsupported list of alleged inconsistencies but consider them to have been abandoned.

Petitioner also alleges that the comprehensive plan text should have been amended to show the change in rural zoning at Lake Samish. Petitioner cites to 2-71 and 2-72 of the comprehensive plan. Petitioner’s Opening Brief at 26. Without a better description of what is at issue from these pages, the Board is left to assume that Petitioner challenges the consistency of the ordinance with the following provision of the comprehensive plan:

Suburban Enclaves.

The suburban enclaves are comprised of rural residential areas which are not urban or likely to develop into urban areas during the planning period. These include Chuckanut, North Bellingham, Lake Samish and Fort Bellingham, as well as other small non-conforming areas located throughout the county.

CP 2-72

Since we do not agree with Petitioner that the ordinance eliminated the suburban enclave designation at Lake Samish, we do not find this portion of the comprehensive plan to be inconsistent with the ordinance.

On the next page we are likewise left to guess at the challenged language. There is a general discussion of Lake Samish and the use of rural residential densities in that area. CP 2-72. There is also a goal and two policies on “additional areas”. This section references Map 8, which is not included in Ex. 75. We are simply unable to find that the Petitioner has met his burden of proof when we do not even know what language he alleges is inconsistent with the change in the zoning map.

The same thing is true with respect to the Chuckanut/Lake Samish Subarea Plan. Petitioner alleges that this document is inconsistent with the challenged ordinance but with no discussion of where or why. Such unsupported allegations do not rise to the level of proof necessary to show non-compliance.

Conclusion: Petitioner has failed to meet his burden of proof that the challenged ordinance is inconsistent with the comprehensive plan and countywide planning policies.

VI. INVALIDITY

Petitioner requests this Board to enter a finding of invalidity as to the challenged ordinance, Ordinance 200-007. Amended Petition for Review, VII, Q. However, this Board has found the challenged ordinance to be compliant with the GMA and therefore Petitioner fails to sustain his burden to establish that the County's action substantially interferes with the goals and requirements of the GMA, as well.

VII. FINDINGS OF FACT

1. Whatcom County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.
2. Ordinance 2003-007 was passed by the Whatcom County Council on January 28, 2003. Notice of adoption was published on February 1, 2003.
3. Petitioner Cal Leenstra is an individual who participated orally and in writing in the County's public process concerning the adoption of Ordinance 2003-007. Petitioner filed his petition for review on April 2, 2003 and filed an amended petition for review on May 2, 2003.
4. Intervenor, Concerned Neighbors of Lake Samish, is a non-profit organization whose members participated orally and in writing in the

County's public process concerning the adoption of Ordinance 2003-007. Intervenor was granted leave to intervene by order dated May 9, 2003.

5. One of the planning commissioners who voted to recommend the downzone of property in the suburban enclave designation at Lake Samish owned property in the affected area, a fact that he disclosed prior to his vote.
6. In its 1997 comprehensive plan, the County established a "suburban enclave" designation in rural areas, which allows development "at suburban densities in areas already characterized by such development."
7. The density allowed in suburban enclaves is two dwelling units per acre.
8. Prior to the adoption of Ordinance 2003-007, the zoning map included Petitioner's property in the suburban enclave designation for Lake Samish.
9. Ordinance 2003-007 changed the boundaries of the County's suburban enclave designation to reduce the amount of acreage that could be developed at the density of two dwelling units per acre around Lake Samish. Petitioner's property was rezoned to a rural density of one dwelling unit per five acres as a result.
10. As part of its consideration of the need for a change in the encompassed by the suburban enclave designation at Lake Samish, the County Council was presented with evidence that Lake Samish has suffered a decrease in water quality for human consumption and fish habitat, linked to increased development in the watershed.
11. Traffic engineering studies support the argument that traffic safety and mobility had greatly deteriorated around Lake Samish in recent years.

12. Left unchanged, the suburban enclave designation at Lake Samish would have allowed for 900-1000 more housing units on half acre lots than are allowed under the challenged ordinance.
13. The County's analysis of housing needs shows that the County has over 81,000 potential lots available to accommodate a 20-year projected population growth. That population growth is expected to require approximately 45,000 new housing units, of which 8,700 are estimated to be needed for rural zones. There are over 21,000 potential lots in rural zones, so that the reduction in available building lots in the Lake Samish suburban enclave does not prevent the County from accommodating its projected need for housing growth.
14. The property that was rezoned from suburban enclave to rural, one dwelling unit per five acres, is on the perimeter of the developed Lake Samish suburban enclave.
15. The County's comprehensive plan was adopted in 1997, prior to the effective date of the LAMIRD provisions of RCW 36.70A.070(5)(d).⁷
16. Delineation of the revised RR2 (Suburban Enclave) boundaries was based upon 1) existing areas of built environment as identified on 1991 DNR aerial photographs; 2) presence of pre-GMA plats of small parcels (< 2 acres) that were located adjacent to the existing built environment; 3) avoidance of critical areas including steep slopes and NWI wetlands; 4) proximity to the Samish Water District ULID boundary (whether in or out); and 5) recognition of physical boundaries and resource lands.
17. Petitioner's property consists of approximately 25 acres of undeveloped land.

⁷ Prospective application – 1997 c 429 §§ 1-21: “Except as otherwise specifically provided in RCW 36.70A.335, sections 1 through 21, chapter 429, Laws of 1997 are prospective in effect and shall not affect the validity of actions taken or decisions made before July 27, 1997.” [1997 c 429 §53]

18. The property rezoned from suburban enclave to RR5 (rural residential, one dwelling unit per five acres), including that owned by Petitioner, is located on the perimeter of existing development.
19. Because it is located within the ULID boundaries, Petitioner's property could be served by sewer available through the ULID for Lake Samish.
20. Including the Petitioner's property in the LAMIRD boundaries of the Lake Samish suburban enclave designation would constitute "outfill" rather than "infill".

VIII. CONCLUSIONS OF LAW

- A. This Board has jurisdiction over this appeal.
- B. Petitioner timely filed his appeal of Ordinance 2003-007 and has standing to raise the issues addressed in this Final Decision and Order
- C. Intervenor has standing to participate in this appeal.
- D. Ordinance 2003-007 complies with the Growth Management Act:
 1. The newly drawn boundaries of the suburban enclave designation at Lake Samish comply with RCW 36.70A.070(5)(d)(i) and (iv).
 2. The County met the procedural requirements of RCW 36.70A.035, 36.70A.140, and 36.70A.106 in enacting Ordinance 2003-007.
 3. Ordinance 2003-007 is not inconsistent with the housing goal of the GMA (RCW 36.70A.020(4)) or the housing element of the County's comprehensive plan.
 4. Ordinance 2003-007 is consistent with the County's comprehensive plan and countywide planning policies.

IX. ORDER

The County having complied with the Growth Management Act, ch. 36.70A RCW, this appeal is hereby DISMISSED.

This is a final order and maybe appealed to superior court as provided in RCW 34.05.514 or 36.01.050 within 30 days of the final order of the Board. RCW 36.70A.300(5).

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 26th day of September, 2003.

Margery Hite, Board Member

Nan Henriksen, Board Member