

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 1000 FRIENDS OF WASHINGTON,

4 Petitioner,

5 v.

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7 THURSTON COUNTY,

8 Respondent,

9 And

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11 CARL D. TEIGE, et al.,

12 Intervenor.

CASE No. 05-2-0002

**ORDER FINDING COMPLIANCE ON
REMAND**

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16 **I. RELEVANT PROCEDURAL HISTORY**

17 This matter came before the Board at a Compliance Hearing on October 20, 2008 following
18 a remand from the Thurston County Superior Court. The hearing was held telephonically.
19 1000 Friends of Washington (now, Futurewise) was represented by Robert Beattey.
20 Thurston County was represented by Jeff Fancher. Intervenor Rochester Water Association
21 was represented by John Cooke. Intervenor Carl Teige appeared pro se. Board Members
22 Holly Gadbaw, William Roehl and James McNamara were present.
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25 On appeal, the Superior Court reversed the Board's decision that found Thurston County
26 had improperly included certain areas within the Rochester LAMIRD. In a September 4,
27 2008 Agreed Order the Thurston County Superior Court agreed with the County's original
28 determination and concluded that the logical outer boundary of Options 1-6 of the Rochester
29 LAMIRD: (a) preserves the character of existing natural neighborhoods and communities,
30 (b) follows physical boundaries, (c) prevents abnormally irregular boundaries, and (d) allows
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1 the ability to provide public facilities and public services in a manner that does not permit
2 low-density sprawl.¹

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4 The Superior Court further concluded that land included in Options 1-6 by the County does
5 not extend beyond the logical outer boundary of the existing area or use. Further, the outer
6 boundary is delineated predominantly by the built environment. The Superior Court
7 concluded that the County's decision was not clearly erroneous.² No appeal was taken from
8 this decision; therefore it is binding upon this Board. The Superior Court remanded the
9 case to the Board for further proceedings consistent with that Order.³
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11 On September 19, 2008 Thurston County filed a compliance report for the Rochester
12 LAMIRD⁴ as required by this Board's June 24, 2008 Compliance Order. The County noted
13 that the Board's July 20, 2005 Order found the County's rural residential zoning districts and
14 policies that allowed more than one dwelling unit per five acres were not compliant with the
15 GMA, unless higher densities areas were designated as Limited Areas of More Intense
16 Development (LAMIRDs). If these areas did not meet LAMIRD criteria, the Board ruled,
17 they must be rezoned to rural densities. In response to the Board's order, the County
18 placed a temporary moratorium on new subdivisions in unincorporated areas zoned at
19 densities greater than one dwelling unit per five acres.⁵ To comply with the Board's 2005
20 order, the County adopted Ordinance 13834 that designated land outside of areas that did
21 not qualify as LAMIRDs at various densities that included densities at one dwelling unit per
22 five acres, one dwelling unit per 10 acres, and one dwelling unit per 20 acres.
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29 ¹ Rochester Water Association et al. v. Western Washington Growth Management Hearings Board, et al.
30 Thurston County Superior Court Case Nos. 07-2-02533-0 and 07-2-02557-7 (9/4/08).

² Id.

³ Id. at 3.

⁴ Thurston County's Second Compliance Report for Rochester LAMIRD for Compliance Due Date September
31 15, 2008.

⁵ Id. at 1.

1 Of the LAMIRDs designated by this ordinance, only the Rochester LAMIRD was challenged.
2 The Board found the designation of the Rochester LAMIRD noncompliant.

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4 After the Board's November 20, 2007 compliance order in which the Board found 344 acres
5 in the areas designated "Options 2, 3, 4, and 5" did not meet the LAMIRD criteria of RCW
6 36.70A.070(5(d), the County adopted interim measures removing these areas from the
7 Rochester LAMIRD temporarily, and rezoned them to one dwelling unit per five acres on an
8 interim basis.⁶ The County reports that now that the Superior Court has reversed the Board
9 with regard to the Rochester LAMIRD, the County will not be renewing the interim
10 measures, and that they expired on October 7, 2008.

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13 Futurewise filed an objection to a finding of Compliance.⁷ The objection was filed late, on
14 October 10, 2008, rather than by October 6, 2008, the date for filing of objections set by the
15 Board's June 24, 2008 Order Granting Amendment to the Compliance Schedule. This late
16 filing was not served on Thurston County until October 17, 2008.⁸ During oral argument, the
17 County did not formally object to the late filing or argue prejudice and for that reason the
18 Board will consider Petitioner's objections.

19 20 **II. BOARD DISCUSSION**

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22 Petitioner's principal objection appears to be that it is premature for the County to conclude
23 that its originally adopted LAMIRDs are in compliance with the Growth Management Act
24 (GMA) and that its interim measures are no longer necessary because the Board has not
25 yet altered its finding of noncompliance.⁹ Petitioner suggests that it is not a legal or factual
26 certainty that the Board will lift the order of noncompliance, as the Superior Court merely
27 returned the case to the Board for "proceedings consistent with this order". Petitioner
28 argues that the County, by its action in advance of a Board order, is seeking to deny it an
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31 ⁶ Id. at 3-4.

⁷ Petitioner Futurewise's Objections to a Finding of Compliance.

32 ⁸ Futurewise's First Amended Certificate of Service.

⁹ Id. at 1.

1 opportunity to be heard in this proceeding. Petitioner urges that “The board should not
2 enter a finding of compliance in this case as the county has not acted in accordance with
3 the Board’s lawful order.”¹⁰ At oral argument at the compliance hearing Petitioner
4 suggested that it would be more appropriate for the Board to conduct a hearing on
5 compliance in which Petitioner would have the opportunity to argue alternative grounds as
6 to why the County is still not in compliance with the GMA.
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9 Petitioner has not demonstrated that an additional compliance hearing is appropriate or
10 necessary. While Petitioner argues that it should have the opportunity to argue why the
11 County is not in compliance even in light of the September 4, 2008 Superior Court Agreed
12 Order, approved as to form by Futurewise,¹¹ the October 20, 2008 compliance hearing was
13 in fact that opportunity. This compliance hearing was scheduled by the parties in
14 anticipation that a decision from the Superior Court on the Rochester LAMIRD appeal would
15 be issued in advance of the compliance hearing.¹² Yet, in its submittals, Petitioner offered
16 no basis for this Board not to enter a finding of compliance based on the decision of the
17 Superior Court, a decision which has not been appealed and is thus final and binding on this
18 Board. While Petitioner urges that determining compliance with the GMA is a matter
19 reserved for the Board, the Superior Court reversed the Board on the issue of whether the
20 Rochester LAMIRD was oversized and the matter was remanded to the Board for “further
21 proceeding consistent with this order”¹³.
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24 **Conclusion:** There is no further action that the County must take in this regard, nor is there
25 any further action that the Board would require of it. All that remains is for the Board to
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29 ¹⁰ Id at 2.

30 ¹¹ Agreed Order at 3 and 4.

31 ¹² During the June 17, 2008 hearing on the joint motion for extension of the compliance period, the parties
32 indicated that a decision from the Superior Court was expected in mid-September. As a result, the Board
granted a 90 day extension in the compliance schedule.

¹³ Agreed Order at 3.

1 enter an order finding compliance, consistent with the Superior Court's order, and this we
2 shall do.

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III. ORDER

Based on the order of the Thurston County Superior Court, the Board finds that Thurston County is in compliance with the Growth Management Act (Ch.36.70A RCW) with regard to the Rochester LAMIRD.

Entered this 23rd day of October 2008.

James McNamara, Board Member

Holly Gadbaw, Board Member

William Roehl, Board Member