

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3
4 1000 FRIENDS OF WASHINGTON

5
6 Petitioners,

Case No. 05-2-0002

7 v.

8 THURSTON COUNTY,

**ORDER ON MOTION FOR
RECONSIDERATION**

9 Respondent,

10 And,

11 WILLIAM AND GAIL BARNETT AND

12 ALPACAS OF AMERICA,

13
14 Intervenors.
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18 THIS Matter comes before the Board upon the County's motion for reconsideration of the
19 Board's Final Decision and Order dated July 20, 2005. Motion for Reconsideration and
20 Brief in Support Thereof (August 1, 2005). Petitioner Futurewise (formerly 1000 Friends of
21 Washington) filed its response on August 5, 2005. Petitioner Futurewise's Answer to
22 Thurston County's Motion for Reconsideration. The County's motion is based on the
23 grounds of errors of procedure or misinterpretation of fact or law material to the County
24 pursuant to WAC 242-02-832(2)(a). *Ibid.*
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27 The County raises five issues for reconsideration: standing; subject-matter jurisdiction, high
28 density zones predating the GMA, rural densities, and sizing of UGAs (urban growth areas).
29 We find no grounds for reconsideration as to standing, subject-matter jurisdiction, rural
30 densities or sizing of UGAs. We grant reconsideration on TCC 20.09.040(1)(a) – Findings
31 of Fact 15 and 17, and Conclusion of Law F.
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1 I. Standing

2 The County argues, again, that 1000 Friends of Washington does not have standing
3 because it is a Seattle-based corporation with no ties to Thurston County. Motion for
4 Reconsideration and Brief in Support Thereof at 2. The County argues that this means that
5 1000 Friends' interests are not within the zone of interests to be protected "by the
6 challenged action." *Ibid.*
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9 A "zone of interests" analysis does not apply to participatory standing under the Growth
10 Management Act (GMA). The GMA establishes four types of standing. RCW
11 36.70A.280(2). Participatory standing allows petitions to be filed by those who "participated
12 orally or in writing before the county or city regarding the matter on which a review is being
13 requested" RCW 36.70A.280(2)(b). Another form of standing exists for persons "qualified
14 pursuant to RCW 34.05.530." RCW 36.70A.280(2)(d). This type of standing incorporates
15 the standing requirements under the Administrative Procedures Act (Ch. 34.05 RCW).
16 While a zone of interests challenge might be applicable to APA standing (RCW
17 34.05.530(2)), it does not apply to standing based on participation under the GMA. Here,
18 1000 Friends participated orally and in writing regarding the matters challenged in this
19 petition in the County's adoption of Resolution No. 13234 and Ordinance No. 13235.
20 Finding of Fact 2. Petitioner therefore has standing to bring the challenges in its petition for
21 review.
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25 II. Subject-Matter Jurisdiction

26 The County again argues that the Board does not have subject-matter jurisdiction over the
27 designation criteria of agricultural lands of long-term commercial significance because that
28 part of the comprehensive plan was adopted in November 2003. Motion for
29 Reconsideration and Brief in Support Thereof at 3.
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1 This argument confuses an appeal of the designation criteria adopted in November 2003
2 with an appeal of the County's failure to revise those criteria as needed to comply with the
3 Growth Management Act in its 2004 update. RCW 36.70A.130(1). If Petitioner had
4 appealed Resolution No. 13039 in its petition for review, then the appeal of that resolution
5 had to be brought within sixty days of publication of adoption. RCW 36.70A.290(2)(a).¹
6 However, Petitioner did not appeal Resolution No. 13039; instead, Petitioner appealed
7 Resolution No. 13234. Petition for Review (January 21, 2005). Resolution No. 13234 was
8 the County's update of its comprehensive plan pursuant to RCW 36.70A.130. Resolution
9 No. 13234 was adopted November 22, 2004, and notice of adoption was published on
10 November 24, 2004. The January 21, 2005, appeal of Resolution No. 13234 was within the
11 sixty-day period and therefore timely. Findings of Fact 4 and 5; Conclusion of Law D.
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15 To the extent the County is arguing that Resolution No. 13039 was its update of its
16 designation criteria for agricultural resource lands pursuant to RCW 36.70A.130, that
17 resolution fails to contain the statutorily required finding that the adoption is a review and
18 evaluation pursuant to RCW 36.70A.130:

19 Legislative action means the adoption of a resolution or ordinance following notice
20 and a public hearing indicating at a minimum, a finding that a review and evaluation
21 has occurred and identifying the revisions made, or that a revision was not needed
22 and the reasons therefore.

23 RCW 36.70A.130(1) (in pertinent part).

24 As Petitioner points out, "Thurston County Resolution No. 13039 contains no citation of
25 RCW 36.70A.130(1)(a) or RCW 36.70A.130(4)(a). Thurston County Resolution No. 13039
26 contains no unambiguous statement that a review and evaluation has occurred. It also
27 includes no reasons for not revising either the County's policies for designating agricultural
28 lands of long-term commercial significance or the designations of agricultural lands of long-
29

30 _____
31 ¹ Petitioner notes that no evidence of publication is in the record. Petitioner Futurewise's Answer to Thurston
32 County's Motion for Reconsideration at 5-6.

1 term commercial significance.” Petitioner Futurewise’s Answer to Thurston County’s Motion
2 for Reconsideration at 8. Such a finding is a necessary part of any legislative action to
3 comply with the update requirements of RCW 36.70A.130. *1000 Friends of Washington*
4 *and Pro-Whatcom v. Whatcom County*, WWGMHB Case No. 04-2-0010 (Order on Motion to
5 Dismiss, August 2, 2004). Without such a finding, the County cannot argue after the fact
6 that Resolution 13039 was the update of its comprehensive plan provisions applicable to
7 agricultural lands.
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10 **III. High Density Zones Predating the GMA**

11 Although the County entitles this section “high density zones predating the GMA,” the
12 County actually only addresses the maximum density under the RR 1/5 zoning. Motion for
13 Reconsideration and Brief in Support Thereof at 4. The County argues that the Board
14 misreads TCC 20.09.040(1)(a) and that this provision does not allow overall densities of
15 more than one dwelling unit per five acres. *Ibid* at 4. The County urges that the Board
16 “should uphold this section of the development regulations as being compliant with rural
17 zoning under the GMA.” *Ibid*.
18

19
20 The County’s argument on this section of its code relates to Findings of Fact 15 and 17 and
21 Conclusion of Law F. Final Decision and Order (July 20, 2005):
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23
24 **Findings of Fact**

- 25 15. T.C.C. 20.09.040(1)(a) establishes a minimum lot size in the RR 1/5 zone as
26 follows: “Conventional subdivision lot (net) – four acres for single family, eight
27 acres for duplexes.” This development regulation allows one single family
28 dwelling unit per four acres, rather than one dwelling unit per five acres, in the
29 RR 1/5 zone.
30 16. ...
31 17. With such a large portion of the County’s rural area designated as RR 1/5, the
32 net density level of one dwelling unit per four acres in the RR 1/5 zone increases
the conversion of undeveloped land into sprawling, low-density development in
the rural area.

1 **Conclusions of Law**

2 F. T.C.C. 20.09.040(1)(a) fails to comply with RCW 36.70A.070(5)(c) and (d) by
3 effectively increasing the rural residential density in the RR 1/5 zone from one
4 dwelling unit per five acres to one single-family dwelling unit per four acres.

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6 The Board's decisions on this point were based upon the positions of the parties. In its
7 opening brief, Petitioner argues that TCC 20.09.040(1)(a) "purports to have a density of one
8 dwelling unit per five acres, [but] the actual net minimum lot size is four acres for single-
9 family residences and eight acres for duplexes." Petitioners Futurewise's and League of
10 Women Voters of Thurston County Prehearing Brief at 9. The County did not object to this
11 characterization of TCC 20.09.040(1)(a) in its response brief. Respondent's Prehearing
12 Brief at 8-12. For that reason, at the hearing on the merits, the Board asked counsel for the
13 County if Petitioner's claim that TCC 20.09.040(1)(a) allowed one dwelling unit per four acre
14 zoning was correct; and counsel replied that it was.

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17 The County now asserts on reconsideration that the code only allows a maximum density of
18 one dwelling unit per five acres in the RR 1/5 zone, but "allows for flexibility in lot sizing
19 when creating a subdivision under TCC 20.09.040." Motion for Reconsideration and Brief in
20 Support Thereof at 4. As an example, the County states that a four-acre lot can only be
21 created in a RR 1/5 zone if it is part of a subdivision in which another lot compensates by
22 being at least 6 acres in size. *Ibid.*

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25 The Board finds this reading of T.C.C. 20.09.040(1)(a) persuasive. Petitioner also
26 acknowledges that the County's reading may be the correct one. Petitioner Futurewise's
27 Answer to Thurston County's Motion for Reconsideration at 9.

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30 While it would have been helpful to have heard this argument earlier, it is better to correct
31 the decision now than to fail to correct an error in it. Reconsideration will be granted and
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1 Findings of Fact 15 and 17 and Conclusion of Law F will be deleted from the Final Decision
2 and Order.

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4 IV. Rural Densities

5 The County argues first that its unique circumstances justify a uniform rural density of one
6 dwelling unit per five acres, and second that the comprehensive plan does provide a variety
7 of rural densities. Motion for Reconsideration and Brief in Support Thereof at 5. However,
8 the comprehensive plan does not set forth unique circumstances for a uniform rural density
9 of one dwelling unit per five acres, nor does it set out a variety of rural densities.
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11
12 Second, the County continues to argue that low residential densities in resource lands
13 provide a variety of *rural* densities. This misses an essential point of the GMA requirement
14 for a variety of rural densities – to count as rural densities, the densities must be in rural
15 lands. RCW 36.70A.070(5)(b).
16

17
18 The County provides no new information that causes the Board to reconsider its decision as
19 to the plan's failure to provide a variety of rural densities.
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21 V. Sizing UGAs

22 The County argues that the Board misapplied and misconstrued RCW 36.70A.110 in
23 concluding that the County's UGAs are too large. Motion for Reconsideration and Brief in
24 Support Thereof at 6.
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26
27 The Board concluded that the urban lands included in UGAs significantly exceed the
28 demand for such lands based upon the population allocated by the County to UGAs. See
29 Findings of Fact 24 and 26 and Conclusion of Law H. The Board further found that there is
30 no indication that a market factor was used to determine additional needed urban lands and
31 no justification for using a market factor in the comprehensive plan. Findings of Fact 27
32

1 and 29. On reconsideration, the County does not contest the Board's finding that the plan
2 provides an excess supply of urban lands over projected demand in 2025. The County
3 offers no place in the comprehensive plan where a market factor is justified or even applied.
4 Therefore, the Board finds no grounds for reconsideration. We would note, however, that
5 the Board did not enter a finding that the UGAs are too large; the Board's finding was that
6 the supply of land significantly exceeds projected demand based upon the County's
7 allocation of population growth to urban areas of the County. Finding of Fact 26. The
8 determination of how to cure this non-compliance with the GMA rests with the County.
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12 **ORDER**

13 Reconsideration of Findings of Fact 15 and 17 and Conclusion of Law F are hereby
14 GRANTED. Reconsideration on other grounds is hereby DENIED. The Final Decision and
15 Order dated July 20, 2005, is hereby AMENDED to delete Findings of Fact 15 and 17 and
16 Conclusion of Law F. All other terms and conditions of the Final Decision and Order shall
17 remain in full force and effect.
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20 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

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22 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal the**
23 **decision to superior court as provided by RCW 36.70A.300(5). Proceedings for**
24 **judicial review may be instituted by filing a petition in superior court according to the**
25 **procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil**

26 **Enforcement. The petition for judicial review of this Order shall be filed with the**
27 **appropriate court and served on the Board, the Office of the Attorney General, and all**
28 **parties within thirty days after service of the final order, as provided in RCW**
29 **34.05.542. Service on the Board may be accomplished in person, by fax or by mail,**
30 **but service on the Board means actual receipt of the document at the Board office**
31 **within thirty days after service of the final order.**
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1 **Service. This Order was served on you the day it was deposited in the United States**
2 **mail. RCW 34.05.010(19)**

3 Entered this 11th day of August 2005.
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8 Margery Hite, Board Member
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11 Holly Gadbaw, Board Member
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14 Gayle Rothrock, Board Member
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