



Officer Joseph W. Tovar and Board Member Chris Smith Towne. Present for the County were Darren Carnell and Kevin Wright. Representing the Albergs was Greg McElroy. Board Member Edward G. McGuire subsequently listened to an audio tape of the hearing.

## **II. discussion**

This Order addresses Albergs' motion on Legal Issue 3 and Novelty Neighbors' cross-motion on Legal Issues 1, 2, and 3.

***Legal Issue 1: Did Mineral Plan Amendment No. 6 fail to be guided by RCW 36.70A.020 (6)?***

***Legal Issue 2: Did the Mineral Plan Amendment No. 6 fail to comply with the requirements of RCW 36.70A.035, RCW 36.70A.130 and RCW 36.70A.140?***

***Legal Issue 3: Did Mineral Plan Amendment No. 6 improperly utilize the legislative authority under RCW 36.70A.130 and RCW 36.70A.140 to adjudicate individual property interests in violation of the substantive requirements of RCW 36.70A.020(6)?***

The Comprehensive Plan's (the **Plan**) mineral resource map shows Legal Non-Conforming Mineral (**LNC**) sites with active permits. As part of the County's 1995 amendments to its Comprehensive Plan, the County Council amended the mineral resource map by adding LNC notation for the Albergs' six parcels. As part of the County's 1997 amendments to its Plan, the County Council adopted Amendment No. 6. Amendment No. 6 amends the Plan's mineral resource map by removing the LNC notation from the Albergs' parcels.

Although the County Council may amend the map showing LNC sites, the authority to determine whether a particular parcel satisfies the LNC criteria rests with the County's Department of Development and Environmental Services (**DDES**). To receive LNC status, property owners must demonstrate to DDES, pursuant to County code, that their property qualifies for LNC status. *See* Finding of Fact 1.

The Plan itself qualifies the application of the mineral resource map. The Plan states:

[f]or informational purposes, the Mineral Resource Map also shows legal, non-conforming sites that are subject to operational permits. These sites have not undergone a formal land use approval process and therefore, are not designated for long-term commercial significance.

Plan, at 108.

The presence or absence of a parcel's LNC status on the mineral resource map does not affect the individual property interests of the owner of that parcel. If a parcel is recognized as LNC by DDES, then it is LNC regardless of whether it is noted on the mineral resource map. Since LNC

notation on the mineral resource map does not affect individual property interests, removing the LNC notation from the map in no way affects individual property interests. Therefore, adoption of Amendment 6, which removed the LNC notation from the mineral resource map, did not affect the Albergs' property rights. <sup>[1]</sup> Because no property rights were affected by the adoption of Amendment No. 6, the County has not failed to comply with RCW 36.70A.020(6), as a matter of law. Further, Amendment No. 6 was appropriately adopted by legislative process.

Albergs' motion is **denied** and Novelty Neighbors' cross-motion is **granted** with respect to Legal Issues 1 and 3. Therefore, Legal Issues 1 and 3 are **dismissed**.

Resolution of Legal Issue 2 requires review of facts not presently before the Board. Novelty Neighbors' motion is **denied** with respect to Legal Issue 2.

### **iii. findings of facts and conclusions**

#### **Findings of Fact**

1. Legal, non-conforming mineral use is determined by the County's Department of Development and Environmental Service through the application of County code provisions. See Excerpt of Transcript of the Proceedings Before the King County Council, November 24, 1997, Re: Alberg Amendment No. 6, at 38 (Ex. D to Albergs' Motion). <sup>[2]</sup>

2. The Comprehensive Plan's mineral resource map contains notations of sites with LNC status with operating permits. King County Comprehensive Plan, Chapter Six, Natural Resource Lands, Mineral Resources map, and text on page 108 (Ex. A to Declaration of Jane S. Kiker, Attached to Novelty Neighbors' Motion).

3. As part of the County's 1995 amendments to its Comprehensive Plan, the County Council amended the Plan's mineral resource map; the Council added LNC notation for Albergs' parcels. Ex. B to Declaration of Jane S. Kiker, Attached to Novelty Neighbors' Motion.

4. As part of the County's 1997 amendments to its Comprehensive Plan, the County Council amended the Plan's mineral resource map; the Council removed LNC notation for the Albergs' parcels. Ex. A to Albergs' Motion.

#### **Conclusions of Law**

1. The presence or absence of an LNC notation on the mineral resource map does not affect any individual property owner's rights.

2. Removing LNC notation for a parcel from the mineral resource map does not affect the individual property rights of the owner of that parcel.

3. The County's adoption of Amendment No. 6 did not affect the Albergs' property rights.

4. Because no property rights were affected by the adoption of Amendment No. 6, the County has not failed to comply with RCW 36.70A.020(6), as a matter of law.

#### **iv. order**

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, case law, the Act and prior decisions of this Board, the Board enters the following Order:

Petitioner Albergs' Motion on Legal Issue No. 3 is **denied**. Intervenor Novelty Neighbors' Cross-Motion is **granted** with respect to Legal Issues 1 and 3.

Legal Issues 1 and 3 are **dismissed**.

Novelty Neighbors' Cross-Motion is **denied** with respect to Legal Issue 2.

So ORDERED this 17th day of April, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

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[1] The Board notes that the 1995 Plan amendment to the mineral resource map, which placed the LNC notation on the map, likewise did not affect the Albergs' property rights.

[2] Although the specific King County Code citation was not provided, there is no dispute that the code contains a process for evaluating LNC status.