

On July 25, 2002, the Board conducted the telephonic Reconsideration Hearing. Participating telephonically from the Board's Seattle office were Board Members Joseph W. Tovar, Lois H. North and Edward G. McGuire, Presiding Officer. Staci Smith, the Board's legal extern, was also present at the Board's office. Participating telephonically from remote locations were Brent Lloyd, who represented Snohomish County, and Petitioners Hensley and McVittie. Courtney Flora and Barbara Dykes also participated on behalf of the County. The hearing convened at approximately 10:00 a.m. and adjourned at approximately 11:00 a.m. The Board indicated it intended to issue its Order on Reconsideration by August 14, 2002. The conference provider recorded the hearing. The Board received the tape of the proceeding on July 29, 2002.

II. Discussion

Notice and Public Participation [RCW 35.70A.035, .140 and .020(11) - Legal Issue 1]:

The Board has considered the arguments presented in briefing and at the reconsideration hearing and reviewed the June 17, 2002 FDO. Based upon this review, the Board **affirms** its analysis, conclusions and decision as found in the FDO at 7-13 and 33-34.

The Board notes that here, unlike the *Burrow*^[2] case, an amendment to reduce the proposed impervious surface and buffer dimensions were not among the "alternatives available for public comment." RCW 36.70A.035(2)(b)(ii). The amendment(s) making these changes only appeared after the County Council had closed the public hearing and comment period. In *Burrow*, the inclusion of Port Gamble Village within the Port Gamble Rural Historic Town designation was among the alternatives considered, and open to public comment, before both the Planning Commission and County Commissioners. *See: Burrow*, at 10.

Goal 1 [RCW 36.70A.020(1) – Legal Issue 2]:

The Board has considered the arguments presented in briefing and at the reconsideration hearing and reviewed the June 17, 2002 FDO. Based upon this review, the Board **affirms** its analysis, conclusions and decision as found in the FDO at 29-34. Additionally, the Board **supplements** and **clarifies** the FDO as follows.

RCW 36.70A.020(1), or Goal 1 of the Act, provides:

Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

As the Board noted in its FDO, the goals of the Act provide guidance for the development of comprehensive plans *and development regulations*. This is not the first case wherein the Board

concluded that, apart from other provisions of the Act, Goal 1 must substantively guide a county's development regulations. In *Forster Woods, et al., v. King County (Forster Woods)*, CPSGMHB Case No. 01-3-0008c, Final Decision and Order, (Nov. 6, 2001), the Board stated:

Just as the future land use map must permit appropriate urban densities in the UGA, *so too must the implementing zoning designations*. Also, the duty of a city to provide for appropriate urban densities within a UGA, likewise applies to a county. Counties must provide for appropriate urban densities within unincorporated UGAs.

In the present case, DNR argues that Amendment 15 is inconsistent with and thwarts Goal 1 of the Act. DNR explains that the affected area is in an UGA and has facilities and services available to support the prior urban residential density of four dwelling units per acre. Therefore, DNR asserts, the County rezone to one dwelling unit per acre is *not guided by, thwarts and is inconsistent with Goal 1*. The Board agrees.

Forster Woods, at 32, (emphasis supplied).

By parallel reasoning to the Board's holding in *Forster Woods*, the substantive effect of Goal 1 demands that not only must the comprehensive plan designation permit appropriate rural uses and densities in the LAMIRD, so too must the implementing zoning designations. Therefore, the zoning regulations adopted by Ordinance No. 01-133 must be guided by and comply with RCW 36.70A.020.

In this case, the Petitioners' challenged the new zoning designation's [Clearview Rural Commercial (**CRC**)] compliance with Goal 1. The CRC designation only applies to the *limited areas* of more intense *rural development* (**LAMIRD**) for the Clearview area. RCW 36.70A.030 (17) clarifies that "A pattern of more intensive rural development as provided in RCW 36.70A.070(5)(d) *is not urban growth*." This provision acknowledges and specifically authorizes the continuance of, and even expansion of, the *types* of uses that existed in 1990.^[3] It is over-reaching, however, to suggest that this provision authorizes the inclusion in a LAMIRD of types of commercial uses that **did not exist in 1990**. Thus, by definition, the existing pattern of commercial development (i.e. those uses that existed in Clearview in 1990) is not urban growth. However, a *future* pattern that includes urban commercial uses of a type that did not exist in 1990 **would** constitute urban growth. The Board concludes that such "urban growth" is not permitted in a LAMIRD because of the substantive effect of Goal 1 to "encourage [urban] development in urban areas."

Furthermore, the Act also defines rural development:

“Rural Development” refers to development outside the urban growth area and outside agricultural, forest and mineral resource lands designated pursuant to RCW 36.70A.170. *Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element.* Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

RCW 36.70A.030(15), (emphasis supplied). Rural development must be consistent with the preservation of the rural character of the area. The GMA also defines rural character:

“Rural character” refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- a. In which open space, the natural landscape, and vegetation predominate over the built environment;
- b. That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- c. That provide visual landscapes that are traditionally found in rural areas and communities;
- d. That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- e. That reduce the inappropriate conversion of undeveloped land into sprawling low-density development;
- f. That generally do not require the extension of urban governmental services; and
- g. That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

RCW 36.70A.030(14).

The County does not dispute that the zoning for the commercial areas of Clearview, prior to the CRC designation being created, was Neighborhood Business (NB), Commercial Business (CB) and General Commercial (GC). Each one of these County-zoning designations is an urban zoning designation.^[4] As such these urban zoning designations guided the development of commercial uses in the Clearview area. In other words, the existing pattern of commercial development occurred pursuant to urban zoning designations that allowed and encouraged *urban* commercial development.

Comparison^[5] of the uses permitted in the prior zoning and the new CRC zone demonstrates that

the CRC designation for the Clearview LAMIRD would hasten the proliferation of *new* urban commercial uses (i.e., uses beyond the types of uses that demonstrably existed in 1990). The Board concludes that urban development is impermissibly being encouraged, via the CRC zoning, in the rural area – the Clearview LAMIRD. When read in light of the definitions in RCW 36.70A.030(14) and (15) and the limiting and cautionary language of RCW 36.70A.070(5),^[6] Goal 1 plainly requires that the pattern of new urban development be encouraged within UGAs, not the rural area.

As noted above, the *existing urban pattern* in the Clearview LAMIRD is not considered urban growth, by definition. However, the introduction into Clearview of new types (i.e., those that did not exist in 1990) of commercial uses would constitute urban, not rural, development. Such development would be inconsistent with the preservation of the rural character of rural lands required for LAMIRDs.^[7] LAMIRDs are *Limited Areas of More Intensive Rural Development*. Therefore, the Board **affirms** its analysis, conclusions and decision as found in the FDO, at 29-34, and **supplements** and **clarifies** its analysis, conclusions and decision regarding Ordinance No. 01-133's noncompliance with RCW 36.70A.020(1), as set forth herein.

III. order

Based upon review of the Motion, Answer, the FDO, and having deliberated on the written and oral arguments presented on this matter, the Board Orders:

- The Board **affirms** its analysis, conclusions and decision, as found in the FDO at 7-13 and 33-34, regarding Ordinance No. 01-133's noncompliance with the notice and public participation requirements of the Act [RCW 36.70A.035, .140 and .020(11)];
- The Board **affirms** its analysis, conclusions and decision, as found in the FDO, at 29-34, regarding Ordinance No. 01-133's noncompliance with Goal 1 of the Act [RCW 36.70A.020(1)].
- Additionally, the Board **supplements** and **clarifies** its analysis, conclusions and decision, as set forth in this Order, regarding Ordinance No. 01-133's noncompliance with Goal 1 [RCW 36.70A.020(1)].

So ORDERED this 12th day of August, 2002.

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300. Pursuant to WAC 242-02-832(3), this Order on Reconsideration is not subject to a motion for reconsideration.

[1] On July 18, 2002, the Board, via an Order, provided the phone numbers for the telephonic reconsideration hearing.

[2] *Burrow v. Kitsap County [Pope Resources – Intervenor]* CPSGMHB Case No. 99-3-0018, coordinated and consolidated with *Alpine et al., v. Kitsap County [Port Blakely Tree Farms – Participants]*, CPSGMHB Consolidated Case No. 98-3-0032c [Portion dealing with Compliance and Remand Items 3.d and 3.f], Order on Compliance in Portion of *Alpine* and Final Decision and Order in *Burrow*, (Mar. 29, 2000).

[3] In its first case dealing with LAMIRDs [*Burrow*], the Board reasoned:

As to the question of range of permitted uses, again the Board concurs with the view expressed by Pope – that the GMA’s focus is on the *types* of uses in existence on July 1, 1990, rather than on specific businesses. Therefore, the limitations imposed are upon the types of uses (i.e. office, or residential, or commercial) that existed on July 1, 1990, not on the specific businesses that can be documented. This conclusion is particularly compelling in this specific instance where the range of uses, including mixed use itself, is intrinsic to the concept of a town. In future cases, with a smaller scale settlement and a narrower range of historic uses, the Board may be compelled to more closely examine the actual businesses or uses to determine what the appropriate range of uses might be.

Burrow, at 19-20.

[4] *See*: FDO, at 31.

[5] *See*: FDO, at 31, *citing* Ordinance No. 01-133, Section 2, at 5 and Exhibit 2 to the Ordinance.

[6] The Board has stated:

Since the GMA's initial adoption in 1990, one of its bedrock principles has been to direct urban development into urban growth areas and to protect the rural area from sprawl. The Act's lengthy definitions and requirements regarding urban growth areas and natural resource lands also date to 1990. However, the Act's initial description of future rural uses and development patterns was sparse. While the 1997 rural amendments make accommodation for "infill, development or redevelopment" of "existing" areas of "more intensive rural development," such a pattern of such growth must be "minimized" and "contained" within a "logical outer boundary." *This cautionary and restrictive language evidences a continuing legislative intent to protect rural areas from low-density sprawl.*

Burrow, at 18. (footnotes omitted, emphasis added.)

[7] Note that the LAMIRD requirements are set forth within the requirements for the rural element. RCW 36.70A.070(5).