

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

CORRINE R. HENSLEY, et al.,	)	
	)	<b>CPSGMHB No. 02-3-0004</b>
Petitioners,	)	
	)	
v.	)	<b>ORDER ON REMAND –</b>
	)	<b>FINDING OF COMPLIANCE</b>
SNOHOMISH COUNTY,	)	<b>in CPSGMHB Case No. 02-3-0004</b>
	)	<b><i>Hensley V v. Snohomish County</i></b>
Respondent.	)	
	)	
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**I. BACKGROUND**

On June 17, 2002, the Board issued its “Order Finding Compliance in *Hensley IV* and Final Decision and Order in *Hensley V* [Clearview]” (**Compliance/FDO**) in CPSGMHB Case No. 02-3-0004 (*Hensley V*). *Hensley IV* dealt with the County’s Plan designation regarding a limited area of more intensive rural development (**LAMIRD**) in the Clearview area. The *Hensley V* matter was a challenge to the implementing development regulations for the Clearview LAMIRD. The two matters were consolidated and coordinated [*i.e.* the hearing on the merits in *Hensley V* occurred at the same proceeding as the compliance proceedings for *Hensley IV*].

In the June 17, 2002 Order the Board found that the County’s revisions to its Plan (*Hensley IV*) regarding the Clearview LAMIRD area as a limited area of more intensive rural development (**LAMIRD**) were compliant with the GMA. In *Hensley V*, the challenge was to Ordinance Nos. 01-132 [a zoning map amendment] and 01-133<sup>1</sup> [setting forth the use requirements for the LAMIRD’s zoning designation]. In resolving the development regulations matter, the Board found the zoning map designation compliant, but that the County’s adoption of Ordinance 01-133 was noncompliant with the GMA’s notice and public participation requirements and Goals 1 (urban growth) and 11 (public participation) and remanded it to the County.

On August 12, 2002, the Board issued an “Order of Reconsideration” (**Reconsideration**), affirming its analysis, conclusions, and decision contained within its June 17, 2002 FDO.

On remand from the Board, the County adopted Ordinance No. 02-106 limiting the number and type of uses to be permitted in the CRC zone for the Clearview LAMIRD. On March 28, 2003, the Board issued an Order of Noncompliance (**Noncompliance Order**). The majority of the Board concluded that, in regard to the uses permitted by the Clearview LAMIRD zoning designation, the “CRC” designation [Ordinance No. 02-106] was clearly erroneous because it

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<sup>1</sup> Ordinance 01-133 amends Snohomish County Code Title 18 (Zoning) related to Clearview rural development standards.

allowed retail uses of any scale and size that did not exist in 1990. Board member McGuire dissented.

Snohomish County sought judicial review of all three of the Board's decisions and appealed the Board's FDO to Snohomish County Superior Court.<sup>2</sup> On August 18, 2006, the Honorable Judge Gerald L. Knight issued a Memorandum Decision followed by the Court's Order on September 8, 2006. In the August 18<sup>th</sup> Memorandum Decision (**Memo Decision**), Judge Knight stated that the Board, in regard to the June 17, 2002 Compliance/FDO and the August 12, 2002 Reconsideration, did not erroneously interpret or apply the law nor did the Board lack sufficient evidence. Therefore, Judge Knight did not reverse the Board as to these two orders. However, Judge Knight did find that, in regard to the March 28, 2003 Noncompliance Order, the Board's decision was not supported by substantial evidence and that its conclusion that development would occur in the Clearview area beyond the scale of that which existed on July 1, 1990 was pure speculation. Accordingly, Judge Knight reversed the Board's Noncompliance Order insofar as it found Ordinance 02-106 noncompliant with the GMA and remanded the matter to the Board to enter an order consistent with the Court's decision.

On January 8, 2007, the Board issued a "Notice of Pre-Remand Hearing Conference in Remand of CPSGMHB Case No. 02-3-0004 *Hensley V v. Snohomish County*." The Order established January 29, 2007 as the date for a telephonic Pre-Remand Hearing Conference (**PRHC**) where the Board would determine if additional proceedings are necessary.

On January 29, 2007, the Board conducted the telephonic PRHC. Board Members Edward G. McGuire, Margaret A. Pageler and David O. Earling were present for the Board. Keith Scully participated on behalf of Jody McVittie and Futurewise; Corinne R. Hensley was unable to participate; and Lara Heisler participated on behalf of Snohomish County. Julie Taylor, Board Law Clerk, and Moani Russell were also in attendance.

## **II. DISCUSSION**

At the PRHC, the Board explained that one of the purposes of the PRHC was to determine whether additional proceedings were necessary, and if so, establish a remand hearing date and briefing schedule. However, in this matter, the Board has reviewed its March 28, 2003 Order as well as the Memorandum Decision of the Court and determined that no additional proceedings are necessary. In light of the Board's review of those decisions the Board adopts the reasoning of the dissent and the discussion and conclusions in the Court's Memorandum Decision and will issue a **Finding of Compliance** in the matter of *Hensley V v. Snohomish County*, CPSGMHB Case No. 02-3-0004.

## **III. ORDER**

Based upon review of the Board's prior Orders, specifically the March 28, 2003 Noncompliance Order, the Snohomish County Superior Court Order and Memorandum Decision, and having considered the statements of the parties and deliberated on the matter on remand, the Board **ORDERS**:

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<sup>2</sup> Snohomish County Superior Court Cause No. 02-2-09336-0 (appealing June 17, 2002 Compliance/FDO and August 12, 2002 Reconsideration) consolidated with Cause No. 03-2-07429-1 (appealing July 17, 2003 Noncompliance)

- Ordinance No. 02-106 setting forth the permitted uses for the CRC zone for the Clearview LAMIRD was not clearly erroneous. The Board concurs with the Snohomish County Superior Court's Order and Memorandum Decision and rescinds the contrary analysis and conclusions in the March 28, 2003 Noncompliance Order, adopting the dissents reasoning and enters a Finding of Compliance pertaining to the Clearview LAMIRD zoning designation.

So ORDERED this 29<sup>th</sup> day of January, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member