

[Verbarendse].¹ The County also noted that it had appealed the FDO in Snohomish County Superior Court. Mr. Verbarendse and Mr. Davis joined the County in this appeal.

On November 30, 2004, the Honorable Judge Ellen J. Fair of Snohomish County Superior Court issued an “Order and Judgment” (**Superior Court Order**). The Superior Court Order reversed the Board regarding the Verbarendse Type-3 LAMIRD [*See* Superior Court Order, at 5] and Davis Arlington UGA expansion issues [*See* Superior Court Order, at 6-7]. The matter was remanded to the Board for further proceedings. Portions of the Superior Court decision, which now appear to be not germane here,² were then appealed to Division I of the Court of Appeals.

On August 30, 2006, the Board received a copy of letter from Molly Lawrence to the Court Administrator for Division I, clarifying that the recent Court of Appeals’ decision did “not affect Judge Fair’s rulings regarding Mr. Verbarendse’s property or Mr. Davis’ property.”

After clarifying the status of the various pieces of the *Hensley VI* matter, on January 4, 2007, the Board issued a “Notice of Pre-Remand Hearing Conference in Remand of CPSGMHB Consolidated Case No. 03-3-0009c *Hensley VI v. Snohomish County* [Verbarendse and Davis portion]. The 1/4/07 Order set 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 10, 2007, the Board received a “Notice of Intent to Withdraw” filed by Mr. Richard R. Wilson, on behalf of Mr. Mike Davis. The withdrawal notice indicated that the Respondent, Mr. Davis of Windermere Real Estate, should be served with any further pleadings in this matter.

On January 29, 2007, the Board conducted the telephonic PHRC. Board Members Edward G. McGuire, Margaret A. Pageler and David O. Earling were present for the Board. Keith Scully participated on behalf of Futurewise, Molly A. Lawrence participated on behalf of Mr. Verbarendse, Shawn J. Aronow participated on behalf of Snohomish County. Mr. Davis did not participate. Julie Taylor, Board Law Clerk also was in attendance.

II. DISCUSSION

Davis – Arlington UGA expansion:

In the FDO, the Board found that the Arlington UGA expansion was not supported by the County’s Buildable Lands Report - reasonable measures were not considered in expanding the UGA, and the County did not comply with its own Countywide Planning Policies – CPP UG-14. {RCW 36.70A.210 and .215}. Judge Fair’s Order and Judgment concluded that the Davis property is adjacent to territory already characterized by urban growth since it is adjacent to a residential subdivision and high school and concluded that the Board erred by not deferring to the County’s interpretation of its own CPP UG-14. Contrary to the Board’s conclusion, the Court found that the County considered reasonable measures in expanding the Arlington UGA by 5.8 acres to include the Davis property.

¹ The County’s action also corrected other aspects of this case not at issue here, namely, the MacAngus amendments.

² Until the Court of Appeals’ decision was issued and the Board received a copy of Ms. Lawrence’s letter, the Board was not apprised of the scope of the issues before the Court of Appeals; hence the delay in addressing Judge Fair’s remand.

At the PRHC, none of the parties disputed the Court’s conclusion, nor sought to pursue the matter further. The Board concurs in Judge Fair’s conclusion as stated in the Order and Judgment, at 5. Consequently, the Board will issue a **Finding of Compliance** as it relates to the Davis Amendment – Arlington UGA expansion – as initially adopted in Ordinance Nos. 03-001, 03-002 and 03-005.

Verbarendse Type-3 LAMIRD³:

In the FDO the Board found the County’s designation, via Ordinance No. 03-001, of 9 acres at the intersection of Interstate 5 and 300th Street NW as a Type 3 LAMIRD noncompliant with RCW 36.70A.070(5)(d)(iii) and invalid for substantially interfering with RCW 36.70A.020(2) [reduce sprawl]. The Board reasoned that while new development may be permitted, such new development must be isolated and a location along I-5 did not meet this criterion. The Court concluded that the question of “isolation” was not briefed or argued before the Board and the Board lacked the authority to consider that issue. Instead the Court focused on the intent of .070(5)(d)(iii) to allow new development on previously undeveloped land. The Court found the Board’s conclusion to be an error of law and remanded the matter to the Board.

At the PRHC, none of the parties disputed the Court’s conclusion, nor sought to pursue the matter further. The Board agrees with the Court, none of the parties briefed or argued the question of “isolation” and consequently, the Board concurs with the Court’s Order and Judgment as stated at 6-7. Consequently, the Board will issue a **Finding of Compliance** as it relates to the Vervbarendse Type-3 LAMIRD – as initially adopted in Ordinance No. 03-001.

III. ORDER

Based upon review of the Board’s September 22, 2004 FDO, subsequent Board Orders in this matter, the Snohomish County Superior Court Order and Judgment, and having considered the statements of the parties and deliberated on the matter on remand, the Board ORDERS:

- Ordinance Nos. 03-001, 03-002 and 03-005 expanding the Arlington UGA [Davis] by 5.8 acres and redesignating the property from Rural Residential and Rural Urban Transition Area to Urban Low Density Residential (4-6 du/acre) and rezoning the property from Rural 5 to R-9600 was not clearly erroneous. The Board concurs with the Snohomish County Superior Court’s Order and Judgment, rescinds contrary analysis and conclusions in the September 22, 2003 FDO, and enters a **Finding of Compliance** pertaining to the Davis amendment – Arlington UGA expansion.
- Ordinance Nos. 03-001, adopting the Type-3 LAMIRD [Verbarendse] for 9 acres or property located at the intersection of Interstate 5 and 300th Street NW and designating the area as Rural Freeway Service was not clearly erroneous. The Board concurs with the Snohomish County Superior Court’s Order and Judgment,

³ RCW 36.70A.070(5)(d)(iii) permits “The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designated to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.”

rescinds contrary analysis and conclusions in the September 22, 2003 FDO, and enters a **Finding of Compliance** pertaining to the Verbarendse amendment – Type-3 LAMIRD.

So ORDERED this 29th day of January, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member