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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

WILMA et al.,

Petitioners,

v.

STEVENS COUNTY,

Respondent,

Case No. 06-1-0009c

ORDER ON MOTION FOR
RECONSIDERATION AND
CLARIFICATION

I. PROCEDURAL HISTORY

On September 8, 2006, SAUNDRA WILMA and ROBERT BERGER, filed a Petition for Review.

On September 11, 2006, JAMES DAVIES and LARSON BEACH NEIGHBORS and JEANIE WAGENMAN, filed Petitions for Review.

On October 10, 2006, the Board held a telephonic Prehearing conference for Case Nos. 06-1-0007, 06-1-0008, and 06-1-0009 collectively. Present were, John Roskelley, Acting Presiding Officer, Board Members Judy Wall and Dennis Dellwo were unavailable. Present for Petitioners were Sandra Wilma, Robert Berger, James Davies, and Jeanie Wagenman. Present for Respondent was Peter Scott.

The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-0009. The new Case Name and Number is as follows and shall be captioned accordingly: WILMA et al. v. STEVENS COUNTY, 06-1-0009c. The acting Presiding Officer instructed the

1 Petitioners to consolidate the issues and provide the Board and Respondent with copies of
2 consolidated issues by October 16, 2006. The Petitioners advised they were unable to meet
3 the October 16, 2006, deadline for submitting the proposed consolidated issues and would
4 provide the Board and Respondent the issues as soon as possible.

5 On October 24, 2006, the Board received the proposed consolidated issues.

6 On October 25, 2006, the Board asked the Respondent to advise the Board if it
7 objected to the rewritten issues. Mr. Scott on October 31, 2006, filed with the Board
8 Respondent's Objection and Motion for Extension.

9 On October 31, 2006, the Board received Petitioners' Motion to Supplement the
10 Record.

11 On November 1, 2006, the Board issued its Prehearing Order.

12 On November 8, the Board received Respondent's Motion to Dismiss Issue Nos. 11,
13 12, and 13, filed by Petitioner James Davies.

14 On November 15, 2006 the Board received from Petitioner James Davies, Response
15 to Motion to Dismiss, Respondent Stevens County's Response to Motion to Supplement the
16 Record, and Request for Extension.

17 On November 20, 2006, the Board received Respondent's Reply in Support of Motion
18 to Dismiss and Response to Petitioners' Request for Extension.

19 On November 27, 2006, the Board received Larson Beach Neighbors & Jeanie
20 Wagenman's Response to Stevens County's Response to Motion to Supplement Record.

21 On November 27, 2006, the Board held the telephonic motion hearing. Present were,
22 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.
23 Present for Petitioners were, Sandra Wilma, James Davies, Larson Beach Neighbors, &
24 Jeanie Wagenman. Present for Respondent was Peter Scott, Clay White, and the Stevens
25 County Board of County Commissioners.

26 On December 4, 2006, the Board issued its Order on Motions.

1 On December 18, 2006, the Board received from Stevens County's PUD No. 1 a
2 Request for Permission to File a Motion After the Date Set Forth in the Prehearing Order;
3 and Motion to File Amicus Curiae Brief.

4 On December 20, 2006, the Board issued its Order on Motion to File Amicus Brief.

5 On December 29, 2006, the Board received Petitioners' Wilma et al. Response to
6 Stevens County P.U.D. Request to File Late Motion and Response to PUD Motion to File
7 Amicus Curiae Brief.

8 On January 3, 2007, the Board received CTED's Request for Permission to File a
9 Motion After the Date Set Forth in the Prehearing Order and Motion to File Amicus Brief.

10 On January 4, 2007, the Board issued its Order on Stevens County PUD's Motion to
11 File Amicus Curiae Brief.

12 On January 11, 2007, the Board received Petitioners Larson Beach Neighbors and
13 Jeanie Wagenman's letter expressing concern over CTED's involvement in this matter.

14 On January 12, 2007, the Board issued its Order on CTED's Motion to File Amicus
15 Curiae Brief.

16 On January 31, 2007, the Board received Petitioner Larson Beach Neighbors and
17 Jeanie Wagenman's Motion to File a Motion, a Motion to File an Extended Reply Brief, and
18 Motion Requesting the Eastern Washington Growth Management Hearings Board
19 (EWGMHB) ask for a complete CD record.

20 On February 5, 2007, the Board issued its Order on Petitioners' Motion to File a
21 Motion, Motion to File an Extended Reply Brief, and Motion for Complete CD Record.

22 On February 7, 2007, the Board held the hearing on the merits. Present were, John
23 Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member Joyce
24 Mulliken was unavailable. Present for Petitioners were, Sandra Wilma, Larson Beach
25 Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott.

26 On February 12, 2007, the Board received Petitioners Larson Beach Neighbors and
Jeanie Wagenman's Re-Submitted Hearing on the Merits Reply Brief.

1 On February 14, 2007, the Board received Respondent's Motion to Reconsider Order
2 and Strike Portions of Petitioners' Reply Brief.

3 On February 15, 2007, the Board issued its Order on Respondent's Motion for
4 Reconsideration.

5 On March 12, 2007, the Board issued its Final Decision and Order.

6 On March 21, 2007, the Board received Petitioners LBN & Wagenman's Motion for
7 Clarification/Reconsideration of FDO and Petitioner Wilma's Motion and Argument for
8 Reconsideration and Request for Rebuttal Briefing to Respondent's Expected Clarification of
the Record.

9 On March 22, 2007, the Board received Respondent's Motion for Partial
10 Reconsideration.

11 On March 27, 2007, the Board received Petitioner Wagenman's Request for
12 Completed Record of Exhibits.

13 On March 29, 2007, the Board received Respondent's Motion for Clarification and
14 Declaration of Sarah E. Steiner.

15 On April 2, 2007, the Board received Petitioner Wagenman & LBN's Response to
16 Respondent's Motion for Clarification.

17 On April 4, 2007, the Board held a teleconference. Present were, John Roskelley,
18 Presiding Officer, and Board Member Dennis Dellwo and Joyce Mulliken. Present for
19 Petitioners were, Sandra Wilma, Larson Beach Neighbors, & Jeanie Wagenman. Present for
Respondent was Peter Scott.

20 II. DISCUSSION

21 **Petitioner Wilma, et al.:**

22 The Petitioners, Wilma and Berger, filed a Motion and Argument for Reconsideration
23 and Request for Rebuttal Briefing to Respondent's Expected Clarification of the Record
24 requesting that the Eastern Washington Growth Management Hearings Board (Board)
25 reconsider their decision on Issue No. 6 and Issue No. 10.

1 Under Issue No. 6, the Petitioners argue that their property rights have been violated
2 by arbitrary and discriminatory actions by the Stevens County (County) for not adding their
3 six acres to the Loon Lake LAMIRD (limited area of more intense rural development). They
4 contend that the County only showed its work in deciding if Loon Lake should be an urban
5 area, not as a LAMIRD. The qualifications differ because RCW 36.70A.070 requires that a
6 designated LAMIRD area must be in existence at the date a county comes under the
7 Growth Management Act (GMA). The Petitioners argue that there isn't any work in the
8 record showing how the County drew the Loon Lake LAMAID boundaries around the built
9 environment as of September 1993, when the County opted into growth management. They
10 contend that the day-care center and post office, which were not built in 1993, were placed
11 in the LAMIRD. Neither was the public utilities district building, which is still not developed.
12 The Petitioners contend there is no justification for these arbitrary boundaries. In addition,
13 the Petitioners argue that there is no revised UGA/LAMIRD analysis as stated in the Final
14 Draft Comprehensive Plan. They claim the boundaries were arbitrarily drawn, just like the
boundaries for the Arden and West Kettle Falls LAMIRDs.

15 The Petitioners also contend the County's action was discriminatory. They argue that
16 the County included the Public Utility District's (PUD) 6.2 acre property, which isn't built, but
17 failed to include the Petitioner's six acre property. An additional triangular piece was also
18 added by the County to create a less jagged boundary.

19 Under Issue No. 10, the Petitioners argue that their request for inclusion into the
20 UGA/LAMIRD was left out of the documents presented to the "commissioners". Petitioners
21 brief at 9. According to the Petitioners, the staff made a "grave error of omission" by not
22 including their land use change request on the document being considered by the
23 commissioners prior to the "June 6 hearing". Petitioners brief at 9. Petitioners contend that
24 exhibit 1066 shows that the planners had the Petitioners' property hand written into the
25 working notebook and the date for the request was wrong and the request numbers were
out of sequence. The Petitioners argue that the staff decided not to include the Petitioners'

1 land within the LAMIRD by leaving it off the decision grid for the Board of County
2 Commissioners' deliberations. The Petitioners contend that their land couldn't be considered
3 as part of the LAMIRD if their property was left off the "Response to Map Change Request"
4 document.

5 **Board Discussion:**

6 The Board believes there is sufficient argument to reconsider Issue No. 6. The
7 County's decision to create two LAMIRDs at Loon Lake and include properties that were not
8 part of the built environment when the County opted into growth management were not
9 explained sufficiently in its analysis by the County. The Board, however, will not reconsider
10 Issue No. 10. There is no evidence that the Petitioners' property was originally left out of
11 the analysis intentionally, nor is there any evidence that the Commissioners failed to
12 consider the addition of the property in their final deliberations.

13 **Petitioners Wagenman, et al.:**

14 Petitioners Wagenman, et al., filed a Motion for Clarification/Reconsideration
15 requesting the Board reconsider their decisions on Issue No. 20; Issue No. 21; and invalidity
16 for Issue Nos. 16, 17, and 19; and clarification for Issue No. 21.

17 The Petitioners' first request is for an opportunity to respond to any information
18 provided by the County, should the County respond, and an opportunity for reconsideration
19 or clarification prior to the Board's fourteen day determination.

20 Under Issue No. 20, the Petitioners want the Board to reconsider adding in their
21 Findings of Fact or Conclusions that open space corridors not only include "within" UGAs,
22 but also "between" urban growth areas. The Petitioners argue that Wilma did not include
23 "between", but the Petitioners did to make it clear.

24 Under Issue No. 21, the Petitioners contend that the Board did not make it clear in
25 their Conclusions or in their Findings of Fact that the County is required to develop a written
26 record explaining how the rural element harmonizes the planning goals as per RCW
36.70A.070(5)(a).

1 In addition, the Petitioners also would like clarification under Issue No. 21 as to how
2 a variety of rural densities relates to the discussion concerning rural character. The
3 Petitioners would like the Board to clarify in their conclusions any determination of invalidity
4 concerning the variety of rural densities as to how designation of larger densities in
5 agricultural, forest and environmentally sensitive areas should be connected and, in doing
6 so, add any necessary language to the Findings of Fact, Conclusions of Law and final Order.

7 Under Issue Nos. 16, 17, and 19, the Petitioners argue that the lack of compliance in
8 these three issues by the County's failure to adopt an adequate capital facilities plan (CFP),
9 failure to adopt a six-year financial plan, failure to complete a land quantity analysis
10 justifying the new urban growth areas, and failure to ensure that adequate public facilities
11 and services are available, substantially interferes with the goals of the GMA. The
12 Petitioners ask the Board to reconsider and issue an Order of Invalidity based on the
13 seriousness of the lack of compliance and the potential harm by the County's actions.

Board Discussion:

14 The Petitioners request the opportunity to respond to the County's replies. Unless
15 otherwise stated, the Board will always give the Parties an opportunity to brief, respond,
16 and reply to the response.

17 Under Issue No. 20, the Board agrees with the Petitioners that RCW 36.70A.160
18 requires counties to identify open space corridors *within* and *between* urban growth areas.
19 The Board failed to include this language in their Order under Issue No. 20 and will include
20 it in the Order on Reconsideration.

21 Under Issue No. 21, the Petitioners argue that the County should be required to
22 develop a written record explaining how the rural element harmonizes the planning goals as
23 per RCW 36.70A.070(5)(a). The Board agrees, but will give the Respondent an opportunity
24 to show where it has done so in the record.

25 Also under Issue No. 21, the Petitioners would like clarification by the Board
26 concerning the relationship between a variety of rural densities and the rural character. The

1 Petitioners are asking the Board to clarify, if they find invalidity, as to how designation of
2 larger densities in agricultural, forest and environmentally sensitive areas should be
3 connected to rural character. The Board will reconsider the language in their Findings of
4 Fact and Conclusions of Law, but will give the Respondent an opportunity to brief this issue
5 and the Petitioners an opportunity to reply.

6 The Board agrees with the Petitioners that invalidity is warranted under Issue Nos.
7 16, 17 and 19. The failure of the County to adopt an adequate capital facilities plan (CFP),
8 to adopt a six-year financial plan, to complete a land quantity analysis justifying the new
9 urban growth areas, and to ensure that adequate public facilities and services are available,
10 substantially interferes with the goals of the GMA. The Board will give the Respondent an
11 opportunity to brief this issue and the Petitioners an opportunity to reply.

11 **III. ORDER**

- 12 1. The Board will reconsider Issue No. 6 after giving the Respondent the
13 opportunity to brief the issue and the Petitioners the opportunity to
14 issue a reply brief.
- 15 2. The Board will not reconsider Issue No. 10.
- 16 3. The Board will allow the Petitioners' opportunity to respond to
17 Respondent's briefs.
- 18 4. The Board will reconsider the Petitioners' request to add "between"
19 urban growth areas to their Order. Respondent will be given an
20 opportunity to brief this issue and the Petitioners the opportunity to
21 reply.
- 22 5. The Board will reconsider their language under Issue No. 21 to include
23 requiring the County to develop a written record explaining how the
24 rural element harmonizes the planning goals as per RCW
25 36.70A.070(5)(a). The Respondent will be given an opportunity to brief
26 this issue and the Petitioners the opportunity to reply.

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6. The Board will reconsider the language under Issue No. 21 concerning rural densities and rural character in their Findings of Fact and Conclusions of Law, but will give the Respondent an opportunity to brief this issue and the Petitioners an opportunity to reply.
7. The Board will consider issuing a finding of invalidity concerning the determination of non-compliance in Issue Nos. 16, 17 and 19. The Respondent will be given an opportunity to brief this issue and the Petitioners an opportunity to reply.
8. Respondents response briefs and exhibits are due to the Board and parties in this matter by **April 24, 2007**.
9. Petitioners reply briefs and exhibits are due to the Board and parties in this matter by **May 1, 2007**.

SO ORDERED this 10th day of April 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

John Roskelley, Board Member

Dennis Dellwo, Board Member

Joyce Mulliken, Board Member