

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

OLYMPIC ENVIRONMENTAL COUNCIL et al.,))
)	No. 00-2-0019
Petitioners,)	
)	FINAL
v.)	DECISION
)	AND
JEFFERSON COUNTY,)	ORDER
)	
Respondent,)	
)	
and,)	
)	
BRUCE and BARBARA BAILEY,)	
)	
Intervenors)	
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SYNOPSIS OF THE ORDER

We find the following map amendments and comprehensive plan (CP) amendments referenced in our order to be noncompliant. The expansion of limited areas of more intense rural development (LAMIRDs) fails to meet the requirement of the Growth Management Act (GMA, Act) to establish logical outer boundaries delineated by the built environment. The “clearly erroneous” mapping amendment method was inappropriately applied to mapping errors in the magnitude of 600 acres. It also precluded public participation. We do not find that the density results of the County’s action were noncompliant. We find the amendment rezoning the Bailey property to be compliant. We do not find substantial interference with the goals of the Act.

PROCEDURAL HISTORY

Petitioners Olympic Environmental Council, et al. challenged Jefferson County's comprehensive plan amendments and its use of the "clearly erroneous" mapping error method in changing the zoning for several Jefferson County properties. The hearing on the merits of the case was held September 28, 2000, in the City of Port Townsend Council Chambers at City Hall. All three Board members were present. Janet Welch appeared for petitioners. David Alvarez, Deputy Prosecuting Attorney, represented Jefferson County. Stephen Sheehy represented Intervenor Bailey.

**Presumption of Validity, Burden of Proof,
and Standard of Review**

Pursuant to RCW 36.70A.320(1), the CP amendments are presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the action taken by Jefferson County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we "shall find compliance unless [we] determine that the action by [Jefferson County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." In order to find the County's action clearly erroneous, we must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

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SUMMARY OF CHALLENGES

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Petitioners challenged actions of the County which expanded three LAMIRDs, charging that the expansions went beyond logical outer boundaries, were inconsistent with the Growth Management Indicators (GMIs) called for by the CP, and were untimely in that the CP calls for a reevaluation of boundaries only after the Tri-Area Special Study was completed. Comprehensive Plan Amendment (CPA) 99-01, 99-02, 99-05. They further alleged that commercial- industrial expansion is inappropriate within LAMIRDs, particularly when it causes LAMIRD expansion.

Petitioners asserted that the Board of County Commissioners (BOCC) failed to comply with the CP by responding to site-specific rezone requests rather than awaiting the results of the Study to set final boundaries. They maintained that LAMIRD boundary expansions do not comply with the Act.

Regarding “clearly erroneous” mapping errors (Jefferson County’s term), Petitioners alleged that there was no documentation of a technical error or inaccurate information causing the purported error. Map corrections (MCR) 98-0001, 99-0001. They maintained that there was no provision in the CP for properties to revert to preplan zoning, such as the densities found in the Interim Growth Strategies Ordinance (IGSO), densities assigned to the Scout Camp, the recreational vehicle park, and the golf course owned by the Baileys, (MCR 99-0001) and to mineral resource lands (MCR 98-0001).

Petitioners contested the rezone of the Bailey property from the “mapping error” rezone (one unit per 10 acres) to a second rezone through the CP amendment process (one unit per 5 acres). They asserted that the BOCC used an “old pattern of low-density residential sprawl as a basis for allowing the development of a new pattern of low-density sprawl.” They noted that the County had failed to apply GMIs as called for by the CP.

We decline to review MCR 98-0001, as it was not included in the petition for review or the prehearing order.

CONTENTIONS

LAMIRDS

Petitioners observed that the amendments to the CP diminished the excellence of a fine document. Petitioners noted that the question of whether LAMIRDs are expandable has not previously been addressed by the Growth Management Hearings Boards. Petitioners maintained that the object of LAMIRDs was to limit more intensive rural development. Therefore, they are not expandable except under certain conditions of a CP. In this case Petitioners noted that the CP provided for changes to LAMIRDs after special studies regarding urban growth areas (UGA)

were complete. Petitioners further noted that we had insisted on this condition since the very first Jefferson County case in 1994. The County has still not completed the study. Expansion of LAMIRDs, they argued, was therefore inconsistent with the CP and noncompliant with the GMA and our previous orders.

In arguing against expansion, Petitioners noted that County Finding of Fact #52 identified the properties as adjacent to existing commercial property which, they claimed, is “the exact argument that has in the past led to strip development and commercial sprawl.” They commented that “infill” onto vacant property within a commercial boundary is very different from expansion of that boundary to include adjacent vacant land. They argued that this definition of “infill” could best be described as “outfill.” Further they noted this would not concentrate growth into limited areas whose boundaries are delineated predominately by the built environment.

The County responded that this was the very same CP which we had earlier found to be an excellent document for growth management. *Cotton v. Jefferson County*, 98-2-0017. The County described its actions as *de minimus*, and asserted that the need for expansion was the result of originally “tight-lining” the boundaries of LAMIRDs. It pointed to a need for an additional 300 acres of commercial area as a strong justification for expansion of LAMIRD boundaries. The County also pointed out that we had never made a ruling against LAMIRD expansion.

Mapping Error and CP Amendments

Petitioners argued that it was a mistake to use the “clearly erroneous” mapping error approach for an area larger than 600 acres and pointed out that staff had recommended using the second mapping error approach, involving a CP amendment. They stated that the assignment of residential density for more than 600 acres of rural land was a GMA action and should have been subject to full public review as recommended by staff (Ex. 3-28, Staff Report, p. 3). They also asserted that reversion to an ordinance predating the CP (the IGSO) resulted in a land use map that was internally inconsistent as well as noncompliant with the GMA. They alleged that there was no public participation, no documentation of the action, and that the action was counter to staff recommendations.

With regard to the CP amendment rezoning the Bailey property (CPA 99-13), Petitioners stated that “if the County’s intent is to preserve the golf course for open space and recreational purposes, then it should have zoned the county land appropriately, requiring the property to be maintained in large acreages with appropriate clustering provisions available.” They claimed that the BOCC action had accelerated the inappropriate conversion of undeveloped land into sprawling low-density development.

The County maintained that the three properties in MCR 99-0001, including the Bailey property, needed underlying density, and that this density was omitted in the Private Reserves and Recreation (PR&R) zoning classification, owing to an oversight. The County asserted that this enactment would not reduce the variety of rural densities as it was only a small percentage of the rural area.

The County acknowledged that GMIs include population growth, land capacity, economic indicators, changes in technology, omissions or errors, or a declared emergency. The County asserted that “it is doubtful that the County’s plan intended the GMIs would have any significant bearing on whether or not the plan amendments should succeed.” The County recognized that it is “forced to give life to all of the language in its plan.” Yet, claimed the County, “this should not change the outcome of this petition for review.”

Intervenors Bailey argued that they intended to preserve space for recreation, and noted that 130 acres were already devoted to the golf course. The 70 undeveloped acres needed to be more dense than the one to 10 density assigned after the mapping error approach because the golf course development would not otherwise be economically viable.

CONCLUSION

LAMIRDS

We conclude from the record in this case that the County was clearly erroneous in approving CPAs 99-01, -02, and -05, allowing expansion of LAMIRDS, and thus failed to comply with the Act. In each case the expansion went beyond the original logical outer boundaries as

predominantly delineated by the built environment. The expansions were also inconsistent because the County failed to apply the GMIs called for in the CP. Further, the County was clearly in error in assuming that LAMIRDs were an appropriate target for commercial industrial expansion in the County in general. LAMIRDs were never designed to accommodate large commercial industrial tracts. The Act calls for such accommodation in UGAs or other special districts under GMA sections .365 and .367.

The Discovery Bay property, including the motel of Mr. Moa, was expanded by amendment beyond the logical outer boundary of the Discovery Bay Neighborhood/Visitor LAMIRD. The County ordinance precluded use of residential areas for drain fields to support commercial enterprises. Without the rezone and expansion of the LAMIRD, the motel could not expand. The added land is vacant. In *Vines v. Jefferson County*, #98-2-0018, the County denied an addition to a LAMIRD preventing Mr. Vines from expanding his commercial enterprise. Like the Vines LAMIRD, the Moa expansion does not provide a logical outer boundary predominately delineated by the built environment as of 1990. It is more properly termed “outfill” than “infill.” The same holds true for the Spigarelli and Smith LAMIRD expansions.

LAMIRDS were never designed to be used as a safety valve for commercial growth and expansion. LAMIRD commercial activity is limited to infill development and redevelopment within the logical outer boundary as predominately delineated by the built environment in 1990. In and of itself, need for additional acreage is not a justification for expanding LAMIRDs beyond their logical outer boundaries. Commercial acreage should be encouraged within Urban Growth Areas. LAMIRDs are not required to have population assigned to them, whereas UGAs are. Expanding LAMIRDs to increase commercial acreage or population removes incentives for directing population growth to UGAs. The BOCC may wish to “fully utilize any and all opportunities provided by law that might promote rural commercial growth.” County brief p. 18. Expansions of LAMIRD boundaries is not an “opportunity provided by law.” The “limited” in LAMIRD means just that.

The CP states that when the Special Study is complete the County will decide whether or not the LAMIRD interim boundaries are sufficient in light of the need for additional UGAs. The County notes in its brief that the Tri-Area Special Study was released in 1999 by Trottier

(Regional Economic Analysis and Forecast). In contrast, Petitioners allege that actions to expand LAMIRD boundaries were untimely because they were taken prior to the completion of the Special Study. Petitioners pointed out that the Trottier report was only the first phase of the Tri-Area Study.

The CP further requires GMIs to be a basis for amendments to the Comprehensive Plan regarding UGAs and LAMIRDs. The CP delineates the indicators which shall be considered as the basis for findings regarding the necessity for UGA designation or LAMIRD expansion. The record shows no clear findings regarding the three subject LAMIRDs. We found the County's action regarding the application of GMIs to be inconsistent with its comprehensive plan.

Mapping Errors and Other CP Amendments

We have a firm and definite conviction that the County's use of the "clearly erroneous" mapping error approach failed to comply with the public participation requirements of the Act. Public participation is required for a change of this magnitude of more than 600 acres. The need for public participation is underscored by the Bailey's own statement in Ex. 133 (12-1-99 letter to the Planning Commission):

“On July 16, 1999, we submitted a Comprehensive Plan Amendment Application to Jefferson County for the approximately 200 acres of our property, that presently contains the Chevy Chase Golf Course. We did so because:

1. When we were made aware of a decision by Jefferson County on March 1, 1999 that was an attempt to correct, a “clearly erroneous mapping error” that identified our property (as well as other privately owned land parcels) on the Comprehensive Land Use Map as “Private Reserves and Recreation.” With this correction our property was assigned a density of RR 1/10, but we were never informed of and/or included in this decision making process. Obviously, had we been informed in March, we would have made then the same case we have in this current formal application.”(Emphasis supplied)

This approach was also internally inconsistent, as GMI were not applied. We note, however, that the densities assigned through this approach were in compliance with the GMA requirement for a variety of rural densities. We do not find they contributed to low-density sprawl.

The Petitioners have failed to demonstrate clear error on the part of County regarding CPA 99-13, despite the fact that the stated aim of the Baileys in preserving a County recreational facility will be more difficult to meet because the County failed to distinguish the property as a unique zone for recreational purposes, and because of the absence of clustering provisions, which would make the operation of the golf course and properties more economically viable. The County was within its discretion to consider surrounding densities in its rezone deliberations. One unit to 5-acre density does not, *per se*, constitute low-density sprawl.

We do not find that reliance on the densities in the IGSO constitutes failure to comply with the Act as the resultant densities are within the parameters of varieties of rural densities called for in Section .070 of the Act.

Invalidity

Petitioners have not met their burden of demonstrating that the County's noncompliance substantially interferes with the goals of the Act.

ORDER

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We find CPAs 99-01, -02, and -05 and MCR 99-0001 fail to comply with the Act and remand them to the County. Within 90 days of this order the County must return the logical outer boundary of the Chimicum Neighborhood Visitor Crossroad, Ness' Corner General Crossroad, and Discovery Bay Neighborhood Visitor Crossroad, to their positions prior to the County's approval of the above- noted CPAs. MCR 99-0001 (Recreational Vehicle Park and Scout Camp only) must be reconsidered under the map amendments approach involving an error in interpretation of criteria. This approach includes full public participation. With regard to the third property under MCR 99-0001 (Bailey's Chevy Chase Golf Course) the spirit and intent of the public participation requirements, including consideration of GMIs, was achieved through the CPA 99-13 process, and need not be repeated. RCW 36.70A.140

Any findings of noncompliance included in previous sections of this final decision are

incorporated in this order by reference.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted and attached as Appendix I and incorporated herein by reference.

So ORDERED this 22nd day of November, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

FINDINGS OF FACT

APPENDIX I

1. Logical outer boundaries (LOBs) of LAMIRDs must be delineated predominately by the built environment.
2. After establishing such LOBs, Jefferson County expanded its LAMIRDs into vacant land beyond these LOBs in CPA 99-01, 02, and 05.
3. There is no provision in the Act for interim LAMIRD outer boundaries.
4. GMIs were not applied to the CPAs in question.
5. One unit per five acres does not constitute low-density sprawl under this record.
6. The failure of the County to provide density for more than 600 acres of PP&R space does

not constitute a “clearly erroneous” mapping error under the terms of the CP.