

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 Kevin Widell,

4
5 Petitioner,

6 v.

7 Jefferson County Commissioners,

8
9 Respondent.

Case No. 06-2-0004

ORDER ON DISPOSITIVE MOTION

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12 **This Matter** comes before the Board upon the County's motion to dismiss the petition for
13 review filed by Kevin Widell. Dispositive Motion of Respondent Jefferson County (April 5,
14 2006). Petitioner filed his response to the motion on April 17, 2006. Response to
15 Dispositive Motion of Jefferson County. Having reviewed the arguments of the parties, the
16 petition for review, and the files and records herein, the Board grants the County's
17 dispositive motion.
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20 **PROCEDURAL MATTERS**

21 In its April 5, 2006, dispositive motion, Jefferson County proposed the following
22 supplements to the record:
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- 24 • Page from Jefferson County Assessor's web site showing parcel APN 002 212 0001
25 indicating Petitioner purchased this parcel, the subject of this petition in August 2004
26 – Proposed Exhibit No. 1000.
- 27 • Aerial Photo from County's web site of a GIS map showing "unknown road," which is
28 a subject of this appeal – Proposed Exhibit 1001.

29 Dispositive Motion of Respondent Jefferson County at 1 and 4.

30 The February 27, 2006, Prehearing Order established March 27, 2006, as the deadline for
31 motions to supplement the record. The County did not timely file a motion requesting to
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1 supplement the record nor did it include in its request to supplement the record the
2 information required by WAC 242-02-540. Petitioner objected to the addition of Proposed
3 Exhibit 1000 in his response to the County's dispositive motion. Response to Dispositive
4 Motion of Jefferson County at 4.
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7 Because the County did not meet either the record supplement deadline or the
8 requirements for motions to supplement the record and because the Petitioner objected to
9 the addition of Proposed Exhibit No. 1000, the proposed exhibit will not be added to the
10 Index. However, since Petitioner had no objection to adding Exhibit No. 1001 to the Index,
11 it will be added and may be considered as an exhibit in this case.
12

13 **DECISION**

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15 The petition for review was filed in this case on February 7, 2006. In his petition, Mr. Widell
16 challenges the failure of the County to grant his request to include his property in the Glen
17 Cove Limited Area of More Intense Development (LAMIRD). Mr. Widell's petition alleges
18 that this failure causes sprawl because the County has not contained commercial uses
19 within a LAMIRD and therefore, violates RCW 36.70A.070(5)(d) and Comprehensive Plan
20 Policy (CP) LNP 5.1.
21

22 Positions of the Parties

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24 Mr. Widell objects to the County's rejection of his proposal to add his property to the Glen
25 Cove LAMIRD on the following grounds: (1) The County opened the door for this challenge
26 by accepting monies from the Petitioner for the proposed amendment. The amendment
27 was proper because the County violated RCW 36.70A.070(5)(d) when it last designated the
28 Glen Cove LAMIRD since the County left out property adjoining the Glen Cove LAMIRD.
29 This is property on which the County has allowed commercial development, and therefore
30 the County has not contained sprawl or protected rural character. (2) The County based its
31 decision to deny the proposed amendment on the lack of new information, not previously
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1 considered. Petitioner says he has produced new information showing a road on the
2 adjoining parcel which makes his proposal appropriate. (3) The Petitioner alleges that the
3 County refused to consider any comprehensive plan amendments in 2004 due to its heavy
4 workload on the Tri-Area UGA. Accordingly, the Petitioner asserts he was not able to raise
5 this issue at the time of the 2004 comprehensive plan update. (4) The County
6 commissioners failed to base their denial of the proposed comprehensive plan amendment
7 on its compliance with the comprehensive plan but relied instead on the condition in
8 Ordinance 15-1213-02 which specifies that the boundaries of the Glen Cove LAMIRD are
9 considered permanent until 2016. Petition for Review at 1 and 2. Response to Dispositive
10 Motion of Jefferson County at 3.
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13 The County seeks dismissal of this petition on the grounds that it is untimely. The County
14 points out that the boundaries of the Glen Cove LAMIRD were actually reviewed in
15 December 2004. Ex. 12-3. The Petitioner failed to timely appeal that decision.
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18 Timeliness Issue

19 The Growth Management Act (Ch. 36.70A RCW, GMA) requires petitioners to file their
20 challenges to comprehensive plan policies and development regulations “within sixty days
21 after publication by the legislative bodies of the county or city.” RCW 36.70A.290(2).
22 Exhibit 12-3 establishes that the County updated its comprehensive plan pursuant to RCW
23 36.70A.130(1) in December 2004. Ordinance No. 17-1213-04.
24
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26 We agree with the County that any challenge to the exclusion of Mr. Widell’s property or any
27 other property from the Glen Cove LAMIRD should have been raised when Jefferson
28 County finalized the boundaries for this LAMIRD in 2002 or reviewed them in 2004 as part
29 of the update to its comprehensive plan required by RCW 36.70A.130(1). The time to
30 challenge the enactment of these boundaries has long passed according to RCW
31 36.70A.290(2).
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2 Regarding Petitioner's claim that the County re-opened the issue of LAMIRD boundaries by
3 accepting his application, the evidence shows that the County considered Petitioner's
4 application requesting an amendment to the Glen Cove LAMIRD and the new information
5 presented by Petitioner. Exhibit 8-10 and Exhibit 11-4. Having considered the application,
6 the County determined not to re-visit the LAMIRD boundaries. Outside of the update
7 process, the choice whether to revisit prior LAMIRD boundary adoptions is within the
8 discretion of the County. Unless the County changes the boundaries of the Glen Cove
9 LAMIRD, Petitioner's request to expand the existing Glen Cove boundaries does not reopen
10 the underlying compliant LAMIRD designation to challenge. See *Pepper v. Jefferson*
11 *County*, WWGMHB Case No. 06-2-0002, Order on Dispositive Motion (March 24, 2006)
12 at 4. RCW 36.70A.280 and RCW 36.70A.290(2).
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16 Mr. Widell further contends that this is the first time that he could bring his challenge
17 because the County did not allow any comprehensive plan amendments in 2004. However,
18 Mr. Widell does not offer any evidence to support this contention. Response to Dispositive
19 Motion of Jefferson County at 2. Without such evidence, Petitioner does not meet his
20 burden of proof pursuant to RCW 36.70A.320(2). Therefore, we find that the challenges
21 alleging GMA violations concerning the designation of the Glen Cove LAMIRD are untimely
22 pursuant to RCW 36.70A.290(2).
23
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25 Consistency with RCW 36.70A.070(5)(d) and CP LNP 5.1

26 Petitioner Widell also argues that RCW 36.70A.070(5)(d) and CP policy LNP 5.1 were
27 violated when the County did not genuinely consider new information: his property had
28 received a "road approach" permit from the Washington State Department of Transportation.
29 Response to Dispositive Motion of Jefferson County at 2. Mr. Widell appears to argue that
30 this "road approach" permit demonstrates that his property had "built environment" previous
31 to 1990 and for that reason is eligible for inclusion in the Glen Cove LAMIRD.
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2 The County urges dismissal of this issue on the grounds that RCW 36.70A.070(5)(d) does
3 not obligate the County to designate any property a LAMIRD, nor does it require the County
4 to agree with Petitioner's assessment that the "road approach" permit and/or presence of a
5 gravel driveway constitutes "built environment." Dispositive Motion of Respondent Jefferson
6 County at 8. Additionally, the County contends that this Hearings Board has found past
7 County attempts to include properties with similar characteristics in LAMIRDS noncompliant
8 and cites the Board's November 11, 2000, Final Decision and Order in *Olympic*
9 *Environmental Council v. Jefferson County*, WWGMHB Case No. 00-2-0019. The County
10 states that characterizing Mr. Widell's property as developed and adding it to the Glen Cove
11 LAMIRD would likely meet with a similar Growth Board challenge and result. Dispositive
12 Motion of Respondent Jefferson County at 7.
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16 The County also explains that the commercial use on the Rural Residential zoned property
17 in close proximity to the Petitioner's was allowed because this development was permitted
18 before the adoption of the County's 1998 GMA-required comprehensive plan. The County
19 maintains that the development of this neighboring property offers no reason consistent with
20 RCW 36.70A.070(5)(d) for adding the Widell parcel to the Glen Cove LAMIRD. Dispositive
21 Motion of Respondent Jefferson County at 8. The County also documents why the
22 commercial properties west of Highway 20 and north of Petitioner's property were included
23 in the Glen Cove LAMIRD. The choice to include those properties in the Glen Cove
24 LAMIRD was challenged in prior petitions and found compliant by this Board. Dispositive
25 Motion of Respondent Jefferson County at 3. Exhibit 12-2. Exhibit 17-5.
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29 County comprehensive plan policy LNP 5.1 states, "All rural commercial lands shall be
30 designated based on the provisions of the Growth Management Act (RCW 36.70A)." Exhibit
31 15-3. RCW 36.70A.070(5)(d) states:

32 Subject to the requirements of this subsection and except as otherwise specifically
provided in this subsection (5)(d), the rural element *may allow* for limited areas of

1 more intensive rural development, including necessary public facilities and public
2 services to serve the limited area as follow...
3 RCW 36.70A.070(5)(d) (emphasis added).

4 This section then goes on to delineate specific requirements for the designation of
5 LAMIRDS. Therefore, reading policy LNP 5.1 and RCW 36.70A.070(5)(d) together, we
6 conclude that a Jefferson County GMA action that complies with RCW 36.70A.070(5)(d)
7 also complies with LNP 5.1.
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10 The County, prior to the adoption of final boundaries for the Glen Cove LAMIRD in 2002, did
11 extensive study on the location of this LAMIRD's boundaries. Exhibit 12-2. These
12 boundaries were then challenged and found compliant with the criteria established in RCW
13 36.70A.070(5)(d). Exhibit 17-2. Petitioner does not point to any County comprehensive
14 plan policy that provides that the consideration of Petitioner's proposal re-opens the
15 question of the propriety of existing LAMIRD boundaries outside of the seven-year update
16 process.
17

18 **FINDINGS OF FACT**

- 19 1. Jefferson County is a county, located west of the crest of the Cascade Mountains,
20 that is required to plan pursuant to RCW 36.70A.040.
21
- 22 2. Petitioner Widell filed a petition on February 7, 2006, challenging the County's refusal
23 to adopt his proposed comprehensive plan amendment.
24
- 25 3. Ordinance No. 17-1213-04 establishes that the County updated its comprehensive
26 plan pursuant to RCW 36.70A.130(1) in December 2004. Exhibit 12-3.
- 27 4. The County considered Petitioner's request for an amendment to the Glen Cove
28 LAMIRD and the new information presented by Petitioner. Exhibit 8-10 and Exhibit
29 11-4.
- 30 5. Having considered the application, the County determined not to re-visit the LAMIRD
31 boundaries.
32

- 1 6. Unless the County changes the boundaries of the Glen Cove LAMIRD, Petitioner's
2 request to expand the existing Glen Cove boundaries does not reopen the underlying
3 compliant LAMIRD designation to challenge.
- 4 7. Mr. Widell offered no evidence to support his contention that this is the first time that
5 he could bring this challenge because the County did not allow any comprehensive
6 plan amendments in 2004.
- 7 8. Mr. Widell has a "road approach" permit for his property granted to him by the
8 Washington State Department of Transportation.
- 9 9. Ordinance 15-1213-02 documents why the commercial properties west of Highway
10 20 and north of Petitioner's property were included in the Glen Cove LAMIRD.
11 Exhibit 12-3.
- 12 10. Ordinance 15-1213-02 establishing the Glen Cove LAMIRD was previously
13 challenged and found compliant by this Board in 2005. *People for a Livable*
14 *Community v. Jefferson County*, WWGMHB 03-2-0009c (Order Finding Compliance,
15 March 30, 2005).
- 16 11. Petitioner points to no part of the County's comprehensive plan that provides that
17 consideration of a request for a comprehensive plan amendment re-opens the
18 question of the propriety of existing LAMIRD boundaries outside of the seven-year
19 update process.
- 20 12. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby
21 adopted as such.

22 **CONCLUSIONS OF LAW**

- 24 A. This Board has jurisdiction over the parties in this case.
- 25 B. Petitioner's challenge to the Glen Cove boundaries is not timely. RCW 36.70A.
26 290(2). Therefore, the Board does not have jurisdiction to consider this challenge to
27 the Glen Cove boundaries.
- 28 C. Petitioner Widell has standing to challenge the rejection of his proposed amendment
29 to Jefferson County's comprehensive plan on the grounds that it was required by the
30 comprehensive plan. The Board has jurisdiction to consider the challenge to the
31 consistency of the denial of Petitioner's request with the County's comprehensive
32 plan.

- 1 D. A written application for a property's inclusion in a compliant LAMIRD does not open
2 the underlying compliant LAMIRD designation to challenge. RCW 36.70A.280.
- 3 E. Petitioner has failed to identify any comprehensive plan policy that requires his
4 comprehensive plan amendment be adopted. He has not, therefore, met his burden
5 of proof. RCW 36.70A.320(2).
- 6 F. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby
7 adopted as such.

8
9 **ORDER**

10 The Petition for Review fails to timely challenge the adoption of the Glen Cove LAMIRD
11 boundaries pursuant to RCW 36.70A.290(2). Additionally, Petitioner has not carried his
12 burden of proof pursuant to RCW 36.70A.320(2) to show that the County's comprehensive
13 plan requires the County to revisit its LAMIRD boundaries upon application for a designation
14 change outside of the seven-year update process. RCW 36.70A.130. The Petition is
15 hereby DISMISSED.

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18 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

19 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
20 of mailing of this Order to file a petition for reconsideration. The original and three
21 copies of a motion for reconsideration, together with any argument in support
22 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
23 original and three copies of the motion for reconsideration directly to the Board, with
24 a copy to all other parties of record. **Filing means actual receipt of the document at**
25 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
26 of a motion for reconsideration is not a prerequisite for filing a petition for judicial
27 review.

28 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
29 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
30 judicial review may be instituted by filing a petition in superior court according to the
31 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
32 Enforcement. The petition for judicial review of this Order shall be filed with the
appropriate court and served on the Board, the Office of the Attorney General, and all
parties within thirty days after service of the final order, as provided in RCW

1 34.05.542. Service on the Board may be accomplished in person or by mail, but
2 service on the Board means actual receipt of the document at the Board office within
3 thirty days after service of the final order. A petition for judicial review may not be
4 served on the Board by fax or by electronic mail.

5 Service. This Order was served on you the day it was deposited in the United States
6 mail. RCW 34.05.010(19)

7 Entered this 2nd day of May 2006.

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10 _____
11 Holly Gadbow, Board Member

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13 _____
14 Margery Hite, Board Member

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16 _____
17 Gayle Rothrock, Board Member