

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 ADAMS COVE GROUP and FUTUREWISE,

4
5 Petitioners,

6 v.

7 THURSTON COUNTY,

8 Respondent,

9 And

10 CITY OF YELM,

11 Intervenor.

Case No. 07-2-0005

ORDER ON MOTION FOR RECONSIDERATION

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16 This matter comes to the Board on Thurston County and the City of Yelm’s (hereafter,
17 “County and City’s”) Motion for Reconsideration of the Board’s July 28, 2008 Final Decision
18 and Order. The County and City request that the Board reconsider its conclusions to Issues
19 one and four – violations of RCW 36.70A.020(2) and RCW 36.70A.110(1) and (2), and the
20 Board’s failure to address the County’s consistency argument.
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22 This order denies the County and City’s Motion for Reconsideration.
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24 **I. DISCUSSION**

25 County and City Position

26 The County and City take issue with the Board’s conclusion that the Yelm/Thurston County
27 Joint Plan (“Yelm Joint Plan”) violates RCW 36.70A.020(2) and RCW 36.70A.110(1) and
28 (2), and assert that the land supplies approved in Resolution 13734 are “completely
29 irrelevant as new population projections have been arrived at and have been subsequently
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1 approved by this Board in case No. 05-2-0002”.¹ They further assert that “It is impossible for
2 Futurewise to meet its burden of proof based on figures that are outdated.”²

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4 The County and City also request the Board reconsider its decision in light of the
5 consistency provisions contained in the Yelm Joint Plan which provides that where a
6 variation between plans occurs, the more recent plan shall control.
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8 Futurewise’s Position

9 In response, Futurewise argues that the numbers in the Yelm Joint Plan are relevant as the
10 population projection and capacity data adopted by the County and City were the basis for
11 the finding in Resolution 13734 that Yelm and its UGA have sufficient area to accommodate
12 projected growth consistent with RCW 36.70A.110(2). Futurewise points out that it was this
13 finding that Futurewise challenged in this appeal.³
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16 Futurewise also argues that, while population and capacity data have been updated in
17 another part of the comprehensive plan, the County and City have not amended or updated
18 the Yelm Joint Plan, and that data continues to be a part of the Yelm Joint Plan .
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20 Futurewise argues that the consistency provisions in the Yelm Joint Plan do not cure the
21 defects in the Plan documents. Futurewise alleges that this provision cannot be relied on for
22 four reasons: the provision predates the update of Resolution No. 13734; merely deferring
23 to the most recently adopted data does not ensure that all elements of the comprehensive
24 plan are consistent; the language the County and City rely on is not clear and may merely
25 be a requirement to update a plan so it is consistent; and both the City the County must
26 adopt the most recent plan before it controls.⁴
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31 ¹ Motion for Reconsideration at 2.

32 ² Id.

³ Answer to Motion for Reconsideration at 3.

⁴ Id. at 6-7.

1 Board Discussion

2 **Burden of Proof**

3 A motion for reconsideration, pursuant to WAC 242-02-832(2), shall be based on at least
4 one of the following grounds:

- 5 (a) Errors of procedure or misinterpretation of fact or law, material to the party
6 seeking reconsideration;
7 (b) Irregularity in the hearing before the board by which such party was prevented
8 from having a fair hearing; or
9 (c) Clerical mistakes in the final decision and order.

10 While Futurewise asserts that the County and City simply reiterate their arguments from the
11 Hearing on the Merits, rather than address errors of fact or law,⁵ the Board understands the
12 moving parties to be arguing that the Board misinterpreted facts, material to the City and
13 County, by addressing the population projections found in Resolution 13734, rather than
14 rely on updated evidence presented in the compliance hearing on case No. 05-2-0002.

15 As the Board said in its Final Decision and Order (FDO) in this case,

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17 It is undisputed that the Joint Plan approved by Resolution 13734 permitted land
18 supplies 97% in excess of residential needs, 116% in excess of commercial needs,
19 and 1040% in excess of industrial needs. The Board finds nothing in the record that
20 demonstrates this supply of land is necessary to accommodate projected growth.
21 Instead, such excess supply is likely to lead to the inappropriate conversion of
22 undeveloped land into sprawling, low-density development in violation of RCW
23 36.70A.020(2).⁶

24 Thus, while it was not disputed that the Joint Plan contained an excessive supply of
25 residential, commercial and industrial lands, the County and City insist that the Board
26 considered the wrong numbers. However, as we noted in the FDO: “. . .the Board’s task in
27 this appeal is to determine whether, *on the record created for the adoption of Resolution*
28 *13734, the Yelm/Thurston County Joint Plan complies with the GMA.”* (emphasis added).⁷
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32 ⁵ Id. at 2.

⁶ FDO at 15.

⁷ FDO at 13-14.

1 On that record, the Board found that nothing in the record demonstrated the land supplies
2 permitted by Resolution 13734 were necessary to support projected growth and that
3 instead, such excess supply would lead to the inappropriate conversion of undeveloped
4 land in violation of RCW 36.70A.020(2).
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6 The County and City do not argue the Board committed error by finding Resolution 13734
7 out of compliance with the UGA, but instead argue that "This Board knows . . . that the
8 population numbers and market factor analysis relied upon by Futurewise is
9 inaccurate/outdated".⁸ More to the point, the County and City know this information is
10 outdated as well, yet it remains in the Plan. The County should amend the Yelm Joint Plan
11 accordingly.
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13 **County's Consistency Arguments**

14 The County and City argue that the Board should have relied on the following language that
15 requires the jurisdictions to use and apply the most recent available data:
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17 The Joint Comprehensive Plan for the UGA ~~Urban Growth Area~~ incorporates
18 and consolidates much of the planning which has been going on in the UGA.
19 Many plans, including transportation and water, were completed using
20 assumptions or calculations somewhat different from the assumptions used in
21 this Comprehensive Plan. Where a variation exists, the more recent shall
22 control and nonconforming plans are to be modified accordingly.⁹

23 Futurewise has identified several problems with an attempt to rely on this language, not the
24 least of which is that merely providing that "the more recent shall control" does nothing to
25 address the update of plan elements that were based on those numbers. As all parties
26 concede, this has not yet occurred. This is not an inconsistency argument. As the County
27 and City correctly point out, an allegation of inconsistency has not been raised in this
28 appeal.¹⁰ Instead, the question before the Board was whether Resolution 13734 that
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31 ⁸ Motion for Reconsideration at 2.

32 ⁹ IR No. 21, Resolution 13734 Attachment A: City of Yelm Comprehensive Plan Update 2006 p. I-5. In Tab 21 of the Adams Cove Group's & Futurewise's Prehearing Brief.

¹⁰ Motion for Reconsideration at 3.

1 amended Thurston County's Comprehensive Plan (CP) to include amendments to the Yelm
2 Joint Plan, adopted as an element of Thurston County's Comprehensive Plan (CP),
3 complied with the GMA. The amendments to the Yelm Joint Plan adopted by Resolution
4 13734 permitted land supplies well in excess of needs in violation of the GMA. The part of
5 the County's CP that was amended by Resolution 13734 has not been amended based on
6 the County's most recent action to change the amount of population allocated to Yelm in
7 another part of its plan. Therefore, the County's CP's Yelm Joint Plan Element remains
8 noncompliant until "modified accordingly".
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11 Additionally, the Board is not persuaded that the language relied upon by the County and
12 City operates to cure defects in the challenged part of the CP in the way they suggest. As
13 Futurewise suggests,¹¹ this provision may simply be a requirement to update the Yelm Joint
14 Plan, "where a variation exists" between other plans using "somewhat different"
15 assumptions or calculations, so that it is compliant. This language cannot be relied upon to
16 cure defects in the CP.
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18 The Board commends the County's practice of including Joint Plans of Thurston County's
19 cities in its CP so that it can coordinate planning between itself and other jurisdictions in
20 Thurston County and implement those plans in the UGAs. Further, the Board recognizes
21 the difficulties in coordinating the updating and adopting of these joint plans as elements in
22 the County's CP with the process of allocating population among the cities without creating
23 non-compliant features in its plan. Nevertheless, it was the Board's obligation to determine if
24 Resolution 13734 complied with the GMA, and we have concluded that it does not.
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¹¹ Answer to Motion for Reconsideration at 6.

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II. ORDER

For the foregoing reasons, the County and City’s Motion for Reconsideration is DENIED.

Entered this 26th day of August 2008.

James McNamara, Board Member

William Roehl, Board Member

Holly Gadbow, Board Member

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

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil 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 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

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