

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 CHIMACUM HEIGHTS LLC,

4
5 Petitioner,

6 v.

7
8 JEFFERSON COUNTY,

9 Respondent.
10

Case No. 09-2-0007

ORDER ON DISPOSITIVE MOTION

11
12 **THIS Matter** comes before the Board on the Dispositive Motion of Respondent Jefferson
13 County filed April 27, 2009. With its motion, Jefferson County seeks dismissal of Chimacum
14 Heights LLC's (Petitioner) Petition for Review (PFR). Petitioner filed its response to the
15 Motion on May 6, 2009. A telephonic hearing to allow the parties to present oral argument
16 was conducted on May 13, 2009. Petitioner was represented by Mr. James A. Jackson, Jr.
17 and Mr. James E. Jackson, Sr. The County was represented by David Alvarez. Board
18 members Nina Carter, William Roehl and James McNamara were present, with Ms. Carter
19 presiding. Having reviewed the arguments of the parties, the PFR, and the files and records
20 herein, the Board grants the County's dispositive motion.
21
22

23
24 **DISCUSSION**

25 Prehearing Order Issues No. 1, 2, 3, and 4: Timeliness and Failure to Act

26 On March 5, 2009, Petitioner Chimacum Heights LLC filed a PFR. The basis for the
27 challenge was whether the adoption of Jefferson County's Ordinance No. 01-0105-09,
28 which denied Petitioner's requested Comprehensive Plan amendment, Application No. MLA
29 08-73 violated provisions of RCW 36.70A, the Growth Management Act (GMA), the
30 Jefferson County Comprehensive Plan, and the Jefferson County Code.¹ The
31
32

¹ Petition for Review at 2.
ORDER ON DISPOSITIVE MOTION
Case No. 09-2-0007
May 20, 2009
Page 1 of 9

1 Comprehensive Plan amendment requested by the Petitioner would have re-designated its
2 property from Commercial Forest to Rural Residential.

3
4 Jefferson County's dispositive motion to dismiss the PFR argues that the Petitioner's
5 request to change its 120 acre land use designation from Commercial Forestry (1:80) to
6 Rural Residential (1:10) is not timely. The County alleges the request for re-designation
7 should have come in 1998 when the County initially designated Petitioner's property as
8 Commercial Forest 1:80. RCW 36.70A.290(2) requires that all petitions challenging a local
9 jurisdiction's actions must be filed within 60 days of publication by the jurisdiction. The
10 County alleges that the land use designation of Commercial Forest should have been
11 challenged in 1998, in accordance with RCW 36.70A.290(2), and that the Petitioner cannot
12 now challenge the land use designation.
13

14
15 The Petitioner states in its PFR that it filed its request for a Comprehensive Plan
16 amendment through the County's 2008 Comprehensive Plan Amendment Docket. The
17 Petitioner's request was reviewed by both the Jefferson County Planning Commission and
18 the Jefferson County Department of Community Development. Both entities recommended
19 the Board of County Commissioners (BOCC) deny the Petitioner's application to re-
20 designate the property. The Petitioner's request and three other Comprehensive Plan
21 amendments were denied by the BOCC.²
22

23
24 Therefore, when the BOCC adopted the challenged action, Ordinance No. 01-0105-09,
25 Petitioner's requested comprehensive plan amendment was not incorporated into this
26 legislative enactment as it had been denied. Thus, those portions of the County's
27 Comprehensive Plan which Petitioner bases its GMA violation on, Chapter 3 - Land Use and
28 Rural Element and Chapter 4 - Natural Resource Conservation Element, were not
29 amended.
30
31
32

² Ex. 14.1 Dispositive Motion by Respondent Jefferson County.
ORDER ON DISPOSITIVE MOTION
Case No. 09-2-0007
May 20, 2009
Page 2 of 9

1 Denial of a proposed amendment to a Comprehensive Plan does not amount to an
2 amendment of the Comprehensive Plan. RCW 36.70A.280 grants the boards' jurisdiction to
3 hear and determine only those petitions alleging a jurisdiction is not in compliance with the
4 GMA as it relates to the *adoption* of plans, development regulations or amendments of
5 same. If a County, in exercising its GMA permitted discretion, does not take action to
6 amend its Comprehensive Plan, the Growth Management Hearing Boards cannot over-ride
7 a County decision and amend a Comprehensive Plan. Unless required by the GMA, it is in
8 the County's discretion to decide to amend its comprehensive plan.³
9

10
11 The Petitioner's claim that the County failed to act under WAC 242-02-220(5) is incorrect.
12 That subsection of the administrative code refers to the failure of a local jurisdiction to meet
13 a deadline specified in the Growth Management Act such as a deadline to initially adopt a
14 comprehensive plan or a Shoreline Management Act amendment to the comprehensive
15 plan. The County is not out of compliance with the Growth Management Act simply
16 because it does not take action requested by a land owner. The County has not missed a
17 GMA mandated deadline or failed to adopt a required policy simply by not taking action on a
18 landowner's request. WAC 242-02-220(5) does not apply to County decisions to deny a
19 requested Comprehensive Plan amendment.
20

21
22 **Conclusion:** For the reasons noted *supra*, the Board GRANTS Jefferson County's Motion
23 to Dismiss Issue Nos. 1, 2, 3, and 4.
24

25 Prehearing Order Issue No.5: Taking Claims Checklist

26 The Petitioner claims that the County failed to follow the requirements in the "Takings
27 Claims Checklist" found in Appendix F of the Jefferson County Comprehensive Plan, as
28 required by RCW 36.70A.370.⁴ However, this section of the statute is not triggered by the
29
30

31
32 ³ RCW 36.70A.280 and RCW 36.70A.290; *Widell v. Jefferson County*, WWGMHB Case No. 06-2-0004, Order
on Dispositive Motion (May 2, 2006) at 4; *1000 Trails v. Skagit County*, Case 07-2-0022 (Order on Motions,
4/3/08).

⁴ Petition for Review at 3, March 5, 2009; Response by Petitioner at 18, May 6, 2009.

1 County's denial of Petitioner's application because there were no "proposed regulatory or
2 administrative actions" in the case of a decision to not amend the land use designation.
3 Therefore, the Board finds that RCW 36.70A.370 was not violated by the County.
4

5 **Conclusion:** For the reasons noted *supra*, the Board GRANTS Jefferson County's Motion
6 to Dismiss Issue No. 5.
7

8 Prehearing Order Issue No. 6 and No.7: Land Use or Future Land Use Maps

9 Petitioner claims that the County does not have a Future Land Use Map and this lack
10 substantially thwarts the goals of the GMA⁵ and makes the plan internally inconsistent.
11 Despite the County's assertion to the contrary,⁶ RCW 36.70A.070 (Preamble) requires that
12 a County's comprehensive plan shall consist of a map or maps and descriptive text to
13 describe objectives, principles and standards used to develop the comprehensive plan and
14 that the plan and all of its elements be consistent with the future land use map. So, the
15 GMA does require a land use map, however, a zoning map, which serves to regulate the
16 use of land, can serve as a future land use map Absent further description in RCW
17 36.70A.070 about the specifications of a "Future Land Use Map", Jefferson County's zoning
18 map and its Comprehensive Plan meet the requirements of RCW 36.70A.070.
19
20

21 **Conclusion:** For the reasons noted *supra*, the Board GRANTS Jefferson County's Motion
22 to Dismiss Issues No. 6 and 7.
23

24 **ORDER**

25 Based upon a review of the Petition for Review, the briefs and exhibits submitted by the
26 parties, and having considered oral argument, and deliberated, the County's motion to
27 dismiss the Petition for Review is GRANTED.
28
29
30
31
32

⁵ Petition for Review at 4, March 5, 2009

⁶ Dispositive Motion to Respondent Jefferson County at 13.

1 ENTERED this 20TH day of May, 2009.

2
3 _____
4 Nina Carter, Board Member

5
6 _____
7 James McNamara, Board Member

8
9 _____
10 William Roehl, Board Member

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

12
13 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
14 mailing of this Order to file a petition for reconsideration. Petitions for
15 reconsideration shall follow the format set out in WAC 242-02-832. The original and
16 three copies of the petition for reconsideration, together with any argument in
17 support thereof, should be filed by mailing, faxing or delivering the document directly
18 to the Board, with a copy to all other parties of record and their representatives.
19 **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6),
20 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
21 filing a petition for judicial review.

22 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
23 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
24 judicial review may be instituted by filing a petition in superior court according to the
25 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

26 **Enforcement.** The petition for judicial review of this Order shall be filed with the
27 appropriate court and served on the Board, the Office of the Attorney General, and all
28 parties within thirty days after service of the final order, as provided in RCW
29 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
30 but service on the Board means **actual receipt of the document at the Board office**
31 within thirty days after service of the final order.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975