BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

JAMES L. HALMO, Petitioner, v. PIERCE COUNTY, Respondent, and HOWE INVESTMENTS II, LLC, and L 80 LLC, Intervenors.	**CASE No. 14-3-0002** ***(Halmo III)*** **ORDER FINDING COMPLIANCE**

On July 23, 2014, the Board issued its Final Decision and Order (FDO) in this case. The Board ruled that Pierce County's adoption of Ordinance No. 2013-59 failed to comply with the Growth Management Act with respect to three challenged 2013 Comprehensive Plan Amendments – Amendments T-2, C-2, and M-6 – that designated a local area of more intensive rural development (LAMIRD) known as Fisherman's Village. The FDO provided:[1]

> Ordinance No. 2013-59, Amendments T-2 [PCC 19A.30.060 B.4] and M-6 [north LOB] fail to comply with RCW 36.70A.070(5)(d) and are clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. The Board remands the Ordinance to the County to bring it into compliance with the GMA as set forth in this Order.

On September 26, 2014, the Pierce County Council adopted Pierce County Emergency Ordinance No. 2014-72 (Compliance Ordinance). On December 4, 2014, Pierce County filed its Statement of Actions Taken to Comply, providing a copy of the Compliance

[1] Final Decision and Order (FDO) (July 23, 2014), p. 28.

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Ordinance and attached exhibits. The County also filed the original proceeding index and compliance index. Neither Petitioner nor Intervenor filed responses.

Pursuant to RCW 36.70A.330(1) and (2), the Board conducted a telephonic compliance hearing on January 9, 2015. Board members Margaret Pageler, Cheryl Pflug, and Nina Carter attended the hearing. Todd A. Campbell represented Pierce County. Petitioner James Halmo attended. Margaret Archer appeared on behalf of the Intervenors.

The County at the hearing described the components of Ordinance No. 2014-72 responsive to the FDO. The hearing provided the Board an opportunity to clarify the action of the County in adopting the Compliance Ordinance. The Petitioner and Intervenor each indicated support for a finding of compliance.

DISCUSSION

The comprehensive plan provision which the FDO found noncompliant read as follows:

> PCC 19A.30.060 B.4. Recognize isolated areas of commercial/business park development which *were approved* or had existing uses or areas of higher intensity use on *or before* July 1, 1990, and were not identified as an RNC in a community plan as of January 2012. The size of the area and "logical outer boundaries," as defined by the LAMIRD criteria, should be established by amendment to a community plan and an area-wide map amendment. (emphasis added)

The FDO pointed out the GMA LAMIRD criteria specify the uses that allow designation of a LAMIRD must be in existence July 1, 1990; neither development approved but not built, nor prior uses that have been abandoned, qualifies as a basis for LAMIRD designation pursuant to RCW 36.70A.070(5)(d). FDO, at 16-18. In response, the County has revised the provision to bring it into compliance with the statute as follows:

> PCC 19A.30.060 B.4. Recognize isolated areas of commercial/business park development which ~~were approved or~~ had existing uses or areas of higher intensity use on ~~or before~~ July 1, 1990, and were not identified as an RNC in a community plan as of January 2012. The size of the area and <u>determination of</u> "logical outer boundaries," as defined by the LAMIRD

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criteria, should be established by amendment to a community plan and an area-wide map amendment.[2]

The FDO found the challenged area-wide map amendment failed to provide a logical outer boundary for the north of the Fisherman's Village LAMIRD, as it included a large parcel with a vacant single family residence, adjacent to further residential uses. FDO at 24-25. The Compliance Ordinance adopted a new map, drawing the northern boundary of the LAMIRD at the lot line of a property containing more intensive development dating prior to 1990. The new boundary minimizes and contains the more intensive commercial development in Fisherman's Village in accordance with RCW 36.70A.070(5)(d) and WAC 365-196-425(6)(C) and (D).[3] Reducing the size of the LAMIRD required corresponding changes to references in the Gig Harbor Community Plan.

Based upon the stipulation of the parties and upon the motion, exhibits and arguments of the County, and being fully informed, **the Board finds and concludes:**

- By adopting Ordinance No. 2014-72 the County revised comprehensive plan provisions in PCC 19A.30.060 B.4 which had been determined by the Board to violate GMA criteria concerning local areas of more intensive rural development (LAMIRDs) set forth in RCW 36.70A.070(5)(d). The revised provisions **comply** with the statutory criteria.
- Ordinance No. 2014-72 establishes a logical outer boundary on the north of the Fisherman's Village LAMIRD that **complies** with the GMA by minimizing and containing more intensive rural development. The Ordinance also amends sub-area plan provisions and the land use map consistent with the revised LAMIRD boundary.
- Accordingly, the County's comprehensive plan complies with the GMA as set forth in the Board's July 23, 2014, Final Decision and Order.
- All parties to the proceedings stipulate to compliance and dismissal.

[2] Compliance Ordinance, Ex. A.
[3] Compliance Ordinance Ex. B, and *see* Statement of Actions Taken to Comply, Ex. 2.

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ORDER

The Board orders:

- By revising PCC 19A.30.060 B 4 and establishing a logical outer boundary for the Fisherman's Village LAMIRD, Pierce County **complies** with the provisions of the GMA set forth in the July 23, 2014, Final Decision and Order.
- Case No. 14-3-0002 is **closed**.

SO ORDERED this 13th day of January, 2015.

_____
Margaret Pageler, Board Member

_____
Cheryl Pflug, Board Member

_____
Nina Carter, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.[4]

[4] Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

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