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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK**

JOHN KARPINSKI, CLARK COUNTY
NATURAL RESOURCES COUNCIL and
FUTUREWISE,

Petitioners below and
Respondents on Review,

v.

CLARK COUNTY,

Respondent below,

and

GM Camas LLC, Johnson Dairy, et al.,
MacDonald Properties, Daryl Germann, Curt
Gustafason, T3G, LLC, Hinton Development
Corporation., and Building Industry Association
of Clark County,

Intervenor-Respondents below,

and

City of LaCenter,

Intervenor-Respondent below and
Petitioner on review.

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Superior Court Case No. _____

WWGMHB Case No. 07C-2-0027

**PETITION FOR JUDICIAL
REVIEW OF FINAL DECISION
AND ORDER OF THE
WESTERN WASHINGTON
GROWTH MANAGEMENT
HEARINGS BOARD**

Clark County petitions this Court for review of the Final Decision and Order (FDO) of
the Western Washington Growth Management Hearings Board (WWGMHB) issued on May 14,

1
2 2008 in Case No. 07-2-0027, pursuant to RCW 36.70A.300(5) and the Administrative
3 Procedures Act, RCW 34.05.510 to 34.05.598.

4
5 1. **Petitioner:** The Petitioner to this appeal is:

6 Clark County
7 1300 Franklin Street
8 Vancouver WA 98660

9
10 2. **Petitioner's Attorney:** Petitioner is represented by:

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18
19 3. **The Agency:** The agency whose Final Decision and Order is challenged in this appeal:

20 Western Washington Growth Management Hearings Board
21 319 7th Avenue, SE, Suite 103
22 P.O. Box 40953
23 Olympia, WA 98504-0953
24 Telephone: (360) 586-0260
25 Fax (360) 664-8975

26
27 4. **Agency Action Challenged in this Appeal:**

28 The agency action challenged in this appeal is a May 14, 2008 FDO by the WWGMHB
29 in Case No 07-2-0027. This decision arose as an appeal by Petitioners, John Karpinski, Clark
County Natural Resource Council and Futurewise (collectively "Futurewise"), pursuant to RCW
36.70A.280 challenging a September 9, 2007 legislative enactment (Ordinance 2007-09-13) by
the Clark County Board of Commissioners that amended the urban growth areas for all cities in
Clark County. Relevant to Futurewise's arguments below, Clark County had de-designated 19
areas of land (4,351 acres) from agricultural to a nonresource designation and included those
lands within the urban growth areas of cities.

1
2 In its FDO – the decision challenged in this appeal – the WWGMHB rejected those
3 portions of Clark County’s decision de-designating the following 10 areas: Camas CA-1 (342.56
4 acres), Camas CB (402.19 acres), LaCenter LB-1 (218.81 acres), LaCenter LB-2 (244.53 acres),
5 LaCenter LE (112.47 acres), Ridgefield RB-2 (199.69 acres), Vancouver VA (125.02 acres),
6 Vancouver VA-2 (22.89 acres), Vancouver VB (780.43 acres) and Washougal WB (116.06
7 acres). The WWGMHB overturned Clark County’s decision to de-designate these 10 areas and
8 include them within urban growth boundaries.

9 **5. Parties to the administrative proceeding and their attorneys of record:**

10 The parties to the adjudicative proceedings that led to the agency action are:

- 11 • Respondent below: Clark County, a political subdivision of the State of Washington.
12 • Intervenor-Respondents below: Johnson Dairy, E.T. Royle Family Partnership, Pacific
13 Lifestyle Homes, Inc., Renaissance Homes, Vision First, LLC, and Lagler Real Property,
14 LLC (collectively the “Johnson Dairy Intervenors”), GM Camas LLC, MacDonald
15 Properties, Daryl Germann, Curt Gustafason, T3G, LLC, Hinton Development
16 Corporation, the Building Industry Association of Clark County, and City of LaCenter.
17 • Petitioners below: John Karpinski, Clark County Natural Resources Council (“CCNRC”)
18 and Futurewise.
19

20 Attorneys or representatives of record for the parties to this appeal are:

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6. **Facts demonstrating entitlement to relief:**

The process employed by the County in revisiting the decisions made in the 10-year update to its urban growth boundaries was lengthy, citizen oriented, and comprehensive. In reviewing the narrow challenges now made to such process, it is important that this Hearings Board have an appreciation for the scope and depth of the County's work. Accordingly, the following description of the County's process is intended to broadly describe the County's process, rather than simply cull those records relevant to the issues on review.

6.1 **The Decision to Re-Open the 2004 Plan.**

The County adopted its initial GMA comprehensive plan in 1994. Urban growth boundaries were first expanded in a major plan update adopted in September of 2004. The 2004

1 plan, in part, responded to the GMA mandate in RCW 36.70A.130(3) that urban growth areas “at
2 least every ten years . . . shall be revised to accommodate the urban growth projected to occur in
3 the county for the succeeding twenty-year period.” Growth projections are to be based upon the
4 range provided by OFM pursuant to RCW 43.62.035. OFM projected a 20-year population
5 increase at an annual rate between 1.15 and 2 percent, resulting in a 20-year need to
6 accommodate between a population range of 465,591 to 600,963 inhabitants. *Ex. 135*. The 2004
7 plan had assumed a growth rate of 1.69 percent.
8
9

10 Fourteen appeals were filed with this Hearings Board challenging the 2004 plan, two by
11 the present petitioners and ten by the City of Battle Ground and various development interests.
12 The latter appeals focused, in part, on the last minute reduction in the assumed growth rate from
13 1.83 to 1.67 percent. 2005 also saw a change in the makeup of the Board of Clark County
14 Commissioners. The new Board expressed its view that the growth rate assumed in the 2004
15 plan was unrealistically low based upon historic trends and committed to reopening the plan. *Ex.*
16 *143*. In reliance upon County assurances for additional local process, the City of Battle Ground
17 and the development petitioners withdrew their appeals. On November 23, 2005, this Hearings
18 Board issued its amended Final Decision and Order in *Building Ass'n of Clark County v. Clark*
19 *County, WWGMHB No. 04-2-0038c*, upholding the 2004 plan.
20
21

22 6.2 The Revised Growth Forecast.

23 The County's early work focused upon the “assumptions” which would provide the
24 framework for plan revisions. Consistent with prior Hearings Board decisions, the County
25 addressed assumptions relating to both “need” and “capacity.” As to “need,” the Board of
26 County Commissioners (BOCC) first addressed residential growth, concluding that a growth rate
27 of 2.0 percent, with 2.2 percent assumed in 2004-2010 for capital facilities planning purposes,
28
29

1 was a more reasonable planning forecast which falls well within the OFM range of 1-2.5% *Exs.*
2 *158 (memorialization of 5/10/05 work session); 5127 (memorialization of 5/17/05 work session).*
3
4 Annual County growth rates from 1990 through 2004 had ranged from a low of 2.4% (2003) to a
5 high of 5.3% (1990), with an average growth rate exceeding 3.1%. *Ex. 135.*

6 As to needed employment lands, the BOCC decided that the County should strive to bring
7 its current County's jobs-to-population ratio (1 to 2.9) more into line with the ratio in the
8 metropolitan areas (1 to 2).
9

10 The County's early work also involved "ground truthing" the capacity assumptions
11 embedded in the Vacant Buildable Lands Model (VBLM) which had been challenged, albeit
12 unsuccessfully, in the appeal of the 2004 plan. Based largely on improved data available from
13 the County's Geographic Information System (GIS), modifications were made to the VBLM
14 model relating to infrastructure set asides, critical area development limitations and
15 redevelopment potential. *E.g., Exs. 90, 189.*
16

17 A partial listing of the resulting planning assumptions underlying the 2007 update process
18 (with similarities or differences with 2004 assumptions noted in parentheses) is set forth in
19 Volume 3 of the FEIS at pages 2-3.
20

21 **6.3 BOCC Principles and Values.**

22 In addition to refining the "need" and "capacity" assumptions which would provide the
23 technical underpinnings for the plan update, County legislative body also wished to provide a
24 policy context. In September, 2005, following several months of discussion in open work
25 sessions, the BOCC adopted the following set of Principles and Values to guide the update
26 process. These Principles and Values were intended to provide broad direction consistent with,
27
28
29

1 but more locally oriented, than GMA's goals. Table 3 of the FEIS, Volume 3 at pages 16-18,
2 evaluates consistence of alternatives with the BOCC's Principles and Values.

3 4 6.4 The Alternatives.

5 In June of 2005, the BOCC invited the public and its cities to recommend potential UGA
6 expansion areas. More than 800 citizens responded with comments either favoring or opposing
7 various UGA expansion alternatives. *See generally, the Index at pages 1 through 37.* City
8 proposals, both for and against expansion, were also provided. Based upon the input received, a
9 "maximum study area" map was produced for consideration by the BOCC in developing the
10 alternatives to be subjected to environmental and capital facilities analysis. *Ex 5269.*

11 Consistent with the revised growth projection, it was decided that all of the alternatives
12 should assume the same population and jobs growth rates allowing environmental and capital
13 facilities impacts to be comparable. Specifically, each alternative would assume that about
14 192,000 more people would live in Clark County over the planning horizon (for a total
15 population of about 584,000), with 90 percent (about 173,000) settling in urban areas. In short,
16 67,000 new urban dwelling units and 138,000 new jobs would be needed. *FEIS Vol. 1, page 3.*

17 The BOCC selected three broad alternatives for environmental analysis, capital facilities
18 review, and public comment. Alternative 1 assumes that urban growth areas will not be
19 expanded so that needed new homes and jobs would have to be achieved by increased density
20 within current UGA's. Alternative 2 is the "preferred alternative" reflecting the BOCC's
21 leanings on UGA expansion based upon the process to date. Alternate 3 consists of additional
22 potential expansion subareas reflecting citizen and city input which could be substituted for lands
23 within Alternative 2 to avoid or reduce significant impacts. *FEIS, Volume 3, at pages 3-4.*

1 **6.5 The EIS.**

2 The County determined that the passage of time warranted a new EIS process, rather than
3 merely supplementing the environmental documents produced for the 2004 plan. In October of
4 2005, the County undertook the public scoping process. A draft EIS was issued on August 25,
5 2006. The comment period was extended. *Ex. 5772*. A public hearing on the DEIS was also
6 held. The FEIS was released on May 1, 2007. Volume 2 of the FEIS includes the numerous
7 comments received and the County responses.
8

9 **6.6 Public Participation.**

10 The County continually solicited, received, and considered public input through its
11 update process.
12

13 The BOCC formally approved a "Public Outreach Plan" for the update on May 2, 2005
14 (*Ex. 20*) calling for news releases, ads, open houses, web site information, newsletters, speaker
15 presentation, and cable television interviews. The County process encompassed all of this and
16 much more. Appendix F of the adopted Plan recites many but not all the extensive steps taken
17 by the County to ensure the public's ongoing awareness of and opportunity to participate in the
18 update process. Nine "open houses" were held at key points in the process. The County web site
19 contained continually updated in-depth information. A county-wide newsletter was mailed in the
20 spring of 2007. A public hearing on the DEIS was held on September 20, 2006. Joint
21 BOCC/Planning Commission public hearings were held June 5 and 6, 2007, and the BOCC held
22 its own public hearings on June 20, 26, 27, 29, July 5, 10, August 14, and September 18, 25,
23 2007.
24
25
26

27 The Index reflects more comprehensively the early and continuous County efforts to engage
28 its citizens. Because of the limited nature of Petitioners' public participation claims, the County
29

1 is not including the numerous documents in the Index reflecting its enormous public outreach
2 effort. However, a brief listing of relevant Index documents is appropriate in giving context to
3
4 Petitioners' claims. Each of the 39 BOCC work sessions noted in the Appendix of the
5
6 Comprehensive Plan, including the agricultural discussions, were noticed and allowed public
7 input.¹ The County issued at least 56 news releases reflecting progress in the plan update effort
8 and inviting public input.² In addition to the county-wide newsletter, information was provided
9 on a regular basis to a mailing list which ultimately included more than 2500 persons who had
10 expressed an interest in the county process. *Comprehensive Plan, Introduction at p. 1.9.*³

11 6.7 The Issues.

12 The extensive public process raised both policy and legal issues. Both were addressed in
13 a series of thirteen "Issue Papers" produced by staff. *Exs. 6605 (Issue Papers 1, 3, 5, 7, 8, 10, 12*
14 *and 13); 6346 (Issue Papers 1, 2, 4, 6, 8, 9 and 11).* The quality of the analysis in these papers is
15 likely a reason why the challenges to the 2007 plan are so limited. A summary of major issues
16 not appealed is set forth below.⁴

19 ¹ See generally, Index Nos. 37, 39, 49, 84, 90, 96, 109, 135, 159, 189, 203, 245, 300, 363, 410, 605, 607, 831, 5127,
20 5131, 5170, 5232, 5235, 5275, 5261, 5291, 5342, 5357, 5403, 5489, 5573, 5604, 5911, 5930, 5931, 5634, 6027,
21 6033, 6094, 6236, 6254, 6302, 6324, 6332, 6333, 6395, 6467, 6479 6490, 6587, 6594, 6595, 6596, 6601, 6605, 6631,
and 6652.)

22 ² See generally, Index Nos. 29, 77, 83, 99, 129, 143, 151, 165, 180, 284, 195, 209, 251, 254, 422, 575, 826, 5275,
23 5279, 5328, 5389, 5400, 5410, 5434, 5748, 5629, 5640, 5758, 5772, 5779, 5816, 5898, 5870, 5935, 6045, 6284,
24 6225, 6283, 6291, 6298, 6299, 6305, 6308, 6315, 6353, 6355, 6405, 6408, 6413, 6423, 6434, 6458, 6480, 6501,
25 6514, and 6561.

26 ³ See generally, Index Nos. 180, 411, 5237, 5299, 5822, 5855, 5965, 6044, 6265, 6276, 6278, 6281, 6368, 6367,
27 6393, 6417, 6455, 6464, 6492 and 6577.

28 ⁴ *Issues Not Appealed:* Major themes of the 2007 update reflecting the BOCC's early enunciation of guiding
29 Principles and Values included: (a) accommodation of a two percent annual increase in population; (b) significantly
increasing the jobs base in the County to be consistent with the Portland Metropolitan average; and (c) providing an
adequate tax base for school districts. Issue Papers 1, 6 and 11 addressed the proposed plan's success in achieving
these goals. Futurewise never contested the validity of the "numbers" underlying the County work. The update
process did surface major philosophical and methodology issues with the City of Vancouver. The former centered

1 Three unresolved issues were raised before the WWGMHB: the adequacy of
2 environmental review, the de-designation of agricultural lands, and the public process. Each was
3 the subject of a staff Issue Paper. A description of the County's public outreach efforts is set
4 forth above. The County process dealing with the environmental and agricultural land
5 conversion issues is summarized below.
6
7
8

9 ⁴cont.

10 on issues regarding annexation and where growth should be encouraged. The latter focused upon technical
11 assumptions imbedded in the VBLM analysis relating primarily to redevelopment assumptions and additional
12 growth which should be assumed based upon subarea planning undertaken by the City. Numerous submittals by the
13 City reflect its position. *Ex. 186 is an example.* Issue Paper No. 2 addresses the technical issues from the County
14 staff perspective. This interjurisdictional friction previously has been before this Hearings Board in an appeal
15 relating to the lifting of the urban holding designations under the 2004 plan. *City of Vancouver v. Clark County,*
WWGMHB No. 06-2-0013. The more narrow issues then presented ultimately were successfully resolved. *Ex. 5656*
(Res. 2006-06-05). The broader disputes presented by this update were partially addressed in the comprehensive
16 plan update and also are the subject of a forward-looking interlocal agreement entered into between the County and
17 City on December 4, 2007. *Ex. 6542.* The City of Vancouver has not challenged the County's 2007 plan.

18 A significant procedural issue underlying the entire update process is the allowed frequency of UGA expansions
19 under statutory and locally enacted limitations. Issue Paper No. 4 deals with this question. Revised County policies
20 addressing UGA expansions are set out in the CP in Chapter 13 and in revisions to Chapter 40.500 of the County
21 Code. The new criteria have not been challenged.

22 The County received letters from the Department of Community, Trade, and Economic Development (CTED) and
23 the Department of Fish and Wildlife (WDFW) questioning whether the proposed plan for expansion of the Camas
24 and La Center UGAs adequately addressed the GMA requirement to designate open space corridors within the
25 between urban growth boundaries. Issue Paper No. 9 deals with this issue. The BOCC addressed the concern in its
26 final designations for both cities. No appeal has been lodged.

27 Not surprising, questions were raised throughout the update process regarding whether projected growth could be
28 accommodated by capital facilities plans. This was a major focus of the technical work underlying the plan update.
29 The capital facilities review commenced in February of 2006 with a request for capability issued to service
providers. The responses provided the basis for environmental review in the EIS. A comprehensive overview of the
capital facilities element is set out in Appendix E of the Plan. Ultimately, the CFP question focused on schools
generally, transportation within the Vancouver UGA, and sewer service capacity for the proposed La Center, Battle
Ground and Ridgefield expansions. For schools, consistent CFPs were submitted, but the fundamental question
came down to long-term funding. Consistent with its Principles and Values, the BOCC saw this as a fundamental
land use question relating to tax base "equity" among districts which informed its decisions on areas/designations
for expansion. For transportation, the analysis indicated that virtually the same major road improvements would be
needed regardless of which alternative was selected. *FEIS; Issue Paper No. 12.* Although the analysis indicated no
financial shortfall in the first six years of the plan, a significant long-term deficit existed. Strategies to deal with
such deficit are set out at Page 5-35 of the Plan. Questions regarding the adequacy of the north county cities' sewer
CFPs also were addressed. Again, no CFP issues are presented for Hearings Board resolution.

1 Three challenges to the adequacy of the FEIS were filed with the County, two by the
2 present petitioners and one by the City of Vancouver. *Exs. 6294, 6649 and 6650.* A hearing
3 devoted solely to these three administrative appeals was conducted by the BOCC on June 27,
4 2007. *Ex. 6431.* Issue Paper No. 8 responded to the challenges. The BOCC deliberations on
5 this matter were held on September 18, 2007. BOCC findings in rejecting the adequacy
6 challenges are set forth in Ordinance No. 2007-09-13 at pages 8-9.

7
8 Issue Paper No. 7 dealing with conversion of agricultural lands is by far the longest. It
9 reflects the in-depth analysis undertaken by the County to address GMA goals and requirements
10 as judicially interpreted. The County undertook two major work efforts to address the
11 conversion issue. First, a consultant was retained to report on the general state of the agricultural
12 industry in Clark County. *Ex. 6548.* Second, staff analyzed all of the agriculturally designated
13 areas under consideration for UGA inclusion against the statutory/WAC criteria. The result of
14 this analysis is reflected in the spreadsheets attached to Issue Paper No. 7. *Ex. 6605.* The
15 BOCC's consideration was also informed by property-specific analyses submitted by a number
16 of property owners. A transcript of the BOCC deliberations, which focused upon relevant
17 agricultural criteria as well as competing GMA goals, is found in *Ex. 6606 and 6430.* A
18 summary of the BOCC's conclusions as to each expansion area is set out in the right-most
19 column of the staff matrix. Such conclusions are also more generally set forth in Ordinance
20 2007-09-13 at pages 9-10.

21
22
23
24
25 **6.8 Ordinance 2007-09-13.**

26 The two-year update process culminated with the adoption by the BOCC of Ordinance
27 2007-09-13 on September 25, 2007. The adopted 2004-2024 Comprehensive Plan adds a total of
28 12,023 acres to urban growth boundaries. A breakdown of acreages added to each UGA by land
29

1 use category is set out in Table 1.3 of the Plan at page 1-5. Of this total, 4352 acres of
2 previously designated agricultural land were included within urban growth boundaries.

3
4 It is this record that supported the actions of the Clark County Board of Commissioners
5 in adopting ordinance. The Board heard and considered testimony and weighed the evidence
6 presented by both proponents and opponents to the GMA update. Yet the WWGMHB failed to
7 properly consider the factual record in reviewing Clark County's comprehensive plan.

8
9 **7. Petitioner's Standing:**

10 Petitioner, Clark County, has standing to appeal as the legislative body whose decision
11 was reversed, in part, by the WWGMHB.

12 **8. The reasons why relief should be granted:**

13
14 Petitioner will assert the following assignments of error:

- 15 8a. The WWGMHB misapplied and misinterpreted WAC 365-109-050 and the statutory
16 definitions of the operative GMA terms in RCW 36.70A.030 when it determined that
17 certain parcels were "agricultural land" under RCW 36.70A.170 and 36.70A.020 and
18 when it then declared that Clark County had improperly de-designated these areas to a
19 non-agricultural designation and included them in the urban growth area.
- 20
21 8b. The WWGMHB exceeded its authority, failed to apply correctly its review standard, and
22 rendered a decision that was arbitrary and capricious by re-weighting and re-evaluating
23 the evidence in the record and independently determining that these areas were
24 agricultural lands of long-term significance.
- 25
26 8c. The WWGMHB erred in concluding that expansions to the Urban Growth Areas
27 (hereinafter "UGA") could not be considered until the issue of dedesignation of resource
28 lands was resolved.
- 29

1 8d The WWGMHB failed to give proper deference to the decision of the Clark County
2 Board of Commissioners as required by RCW 36.70A.320 (3).

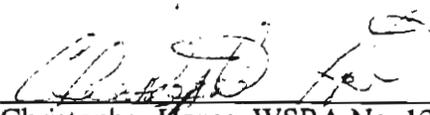
3
4 8e The WWGMHB erred in entering an order of invalidity: no error by the Clark County
5 justified such findings or conclusions under RCW 36.70A.302.

6 8c. The WWGMHB's decision with regard to its factual determinations was not supported by
7 substantial evidence in the whole record or adequate findings.

8
9 **9. Relief Sought:**

10 Petitioner, Clark County, respectfully requests this court to reverse and set aside the
11 WWGMHB's FDO as it applies to those portions of Ordinance 2007-0913 that were modified or
12 reversed by the WWGMHB. Further, Clark County requests this court reverse the finding of
13 invalidity wrongly made by the WWGMHB.

14
15 Respectfully submitted this 12th day of June, 2008.

16
17 
18 _____
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20 Senior Deputy Prosecuting Attorney
21 Of Attorneys for Petitioner Clark County