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

FUTUREWISE, Petitioner, v. SNOHOMISH COUNTY, Respondent.	**CASE No. 22-3-0003** **FINAL DECISION AND ORDER**

SYNOPSIS

Petitioner alleged that the County's adoption of an Ordinance allowing detached Accessory Dwelling Units) on residential lots in the rural and resource areas failed to protect rural character and resource lands and was inconsistent with multi-county and countywide planning policies. The Board found that the County's action failed to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.177, and was inconsistent with multi-county and countywide planning policies in violation of RCW 36.70A.210.

I. INTRODUCTION

Futurewise (Petitioner) challenged Snohomish County's (County's) adoption of Ordinance No. 22-006 (Ordinance), amending development regulations pertaining to accessory dwelling units (ADUs) in rural and resource lands.

The Briefs and exhibits of the parties were timely filed and are referenced in this

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order as follows:

- Petitioner's Prehearing Brief (Petitioner's Brief).[1]
- Response Brief (County's Response).[2]
- Petitioner's Reply Brief (Petitioner's Reply).[3]

The Hearing on the Merits convened on May 23, 2023. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Legal issues are summarized below and set out fully, as established in the Prehearing Order, in Appendix A.

II. BACKGROUND

In 2022, the County adopted Amended Ordinance No. 22-006 (the Ordinance) expanding the ability of property owners to build Detached Accessory Dwelling Units (DADUs) on residential lots in the rural and resource areas. In 1996, to comply with the Growth Management Act (GMA), the County downzoned a portion of the rural area to a density of one dwelling for five acres. The immediate effect of that downzoning was to create many legacy or substandard lots, lots that had been legally created but which no longer met the zoning standards of the zone in which they were located. While the County permitted DADUs on lots that met the current minimum lot size, no DADU could be built on these substandard lots. Amended Ordinance 22-006 permits the building of a DADU on a substandard lot and eliminates the requirement that the DADU be located within 100 feet of the existing residence.

The difference in how the parties view this action is clearly expressed in the

[1] Filed on April 17, 2023.
[2] Filed on May 1, 2023.
[3] Filed on May 15, 2023.

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introductions to their briefs.

Petitioner opposes the expanded allowance for DADUs, as distinguished from *attached* accessory dwellings, for multiple reasons, including that the County *repealed* the requirement that prohibited DADUs on lots that do not meet the required minimum lot area. Petitioner believes that this action allows densities in rural areas which violate the GMA by failing to protect rural character, allowing urban growth outside the urban growth areas (UGAs), failing to protect agricultural lands and forest lands of long-term commercial significance, failing to comply with requirements for accessory uses in such agricultural areas, and thwarting achievement of density targets identified in the Multicounty Planning Policies and Countywide Planning Policies.[4]"

The County's Response focuses on the purpose of allowing DADUs on certain lands outside of UGAs, expanding the current allowance "to lots that contain an existing single-family dwelling but do not meet current zoning requirements." The County asserts that expanding the number of lots on which DADUs may be built balances "the equally important goals of reducing sprawl and providing housing," allowing counties to define rural character "according to local circumstances and the values that are important to people who live in rural communities," and expanding housing opportunity to "families seeking the financial means to live intergenerationally in the rural communities they call home."[5]

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.[6] This presumption creates a high threshold for challengers as the burden is on the Petitioners to demonstrate that any action taken by

[4] Petitioner's Brief at 1.
[5] County's Response at 1.
[6] RCW 36.70A.320(1).

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the jurisdiction is not in compliance with the GMA). The Legislature's intent is laid out in RCW 36.70A.3201:

> The legislature intends that the board applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

This section lays out clearly the requirement that the Board must "grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals" of the GMA.[7]

The scope of the Board's review is limited to determining whether a County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.[8] The Board is directed to find compliance unless it determines that the challenged action is ***clearly erroneous*** in view of the entire record before the Board and in light of the goals and requirements of the GMA.[9] In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. Pub. Util. Dist. No. 1,,* 121 Wn.2d 179, 201 (1993).

III. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW

[7] RCW 36.70A.3201.
[8] RCW 36.70A.290(2).
[9] RCW 36.70A.320(3).

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36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

IV. ANALYSIS AND DISCUSSION

Issue One: Did the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on Accessory Dwelling Units (ADUs) in rural zones permit urban uses, fail to protect rural character, and fail to include measures that apply to rural development to protect rural character?

Petitioner argues that the challenged Ordinance fails to protect "rural character" and allows "urban growth" outside of the urban growth areas (UGAs**),** in violation of RCW 36.70A.020(2) and RCW 36.70A.070(5)(c).[10]

Petitioner cites cases in which the Board based its decision on ADUs on a bright-line rule for density, and on that basis found detached ADUs to hinder the protection of rural character.[11] Subsequent to those Board holdings, the Supreme Court twice disapproved the Board's attempts to create bright-line rules concerning density, including rural density.[12] The Court held that the Board "may not use a bright-line rule to delineate between urban and rural densities, nor may it subject certain densities to increased scrutiny."[13]

In focusing on the idea of rural character, Petitioner looks to definitional sections of the GMA[14] and RCW 36.70A.070, describing the mandatory elements that must be addressed in a comprehensive plan, and then concludes that permitting detached ADUs

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[10] Petitioner's Brief at 2-3, citing RCW 36.70A.020(2) and RCW 36.70A.070(5)(c).
[11] Petitioner's Brief at 5.
[12] County's Response at 7-9, citing *Viking Props., Inc. v. Holm*, 155 Wn.2d 112 (2005) and *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329 (2008).
[13] *Thurston*, 164 Wn.2d at 359.
[14] RCW 36.70A.030(23) and (24).

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will violate these sections. For example, Petitioner alleges:

> RCW 36.70A.030(23)(g) and RCW 36.70A.070(5)(c)(iv) require that vegetation predominate over the built environment, that rural land use patterns be compatible with the use of the land by wildlife, and that critical areas including fish and wildlife habitats and surface water and groundwater resources are to be protected.

First, definitional sections of the GMA do not constitute goals and requirements sufficient to sustain a violation. This Board early set out its view that definitions cannot create a GMA duty which can be violated.[15]

Secondly, the requirements for mandatory elements of a comprehensive plan do not establish requirements beyond the plain meaning of the words. Specifically, RCW 36.70A.070(5)(c) states that the rural element shall include measures:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

Petitioner's concerns are somewhat speculative. There is no bright line for words like "containing," "assuring," or "inappropriate." While the ordinance will permit two freestanding residences on some substandard lots that currently have only one residence, it is speculative to assert doubling of density *on some lots* will inevitably result in a doubling of density throughout the entirety of these zones. Neither has

[15] *Hansen, et al v. King County*, CPSGMHB Case No. 98-3-0015c, Final Decision and Order (Dec. 16, 1998), at 7.

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Petitioner shown that the Ordinance will allow the built environment to predominate, that critical area protections will be bypassed, or that sufficient development will occur to constitute sprawl.

The County argues that permitting DADUs on substandard lots created prior to the adoption of the GMA is precisely the sort of "local circumstances" for which the Court has indicated that jurisdictions should be granted a "broad range of discretion."[16]

The County notes that our Supreme Court has made clear that whether a particular density is rural in nature is a question of fact based on the circumstances of each case.[17] The County points to substantial data on Snohomish County's experience with ADUs over decades, and extrapolates that "[e]ven if the proposed amendments result in a minor increase in the number of permitted ADUs per year, it will not result in urban net densities in rural and resource areas."[18] Neither argument is particularly persuasive, particularly where the County's historical experience is from prior decades in which the dearth of affordable housing was less extreme.

As evidence that the Ordinance will protect rural character, the County points to regulations requiring that DADUs be constructed of "similar materials" to existing structures.[19] Here, the County's argument is similarly unpersuasive in that it rests on a bucolic vision of quaint rural structures that may not comport with the reality that existing residences may already be mobile homes or geodesic domes.

The burden is on Petitioner, and it has not shown evidence of probable negative impacts sufficient to convince the Board that a mistake has been made as to rural character that will result in excessive density in the rural area.

The Board finds Petitioner has not shown that the Ordinance violates GMA requirements to protect rural character.

Petitioner also asserts the allowance of DADUs will result in excessive water use,

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[16] *Viking Props., Inc. v. Holm*, 155 Wn.2d at 130 (2005).
[17] *Thurston County*, 164 Wn.2d at 359.
[18] County's Response at 9, Finding E.1.
[19] County's Response at 9.

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in violation of RCW 36.70A.050(5)(c)(iv, due to increased landscaping, irrigation and impervious surface.[20] Petitioner's assertion is countered by the requirement of RCW 36.70A.590, which the legislature adopted to codify a court case requiring the observance of minimum instream flow rules.[21] Existing ADU regulations provide that permitting any ADU is subject to the physical and legal availability of water.[22] The County is entitled to a presumption that it follows state law concerning water use and its own permitting requirements as to water availability.

The Board finds that Petitioner has not met its burden to show that the Ordinance fails to protect groundwater resources in the rural area.[23]

Issue One is dismissed.

Issue 2: Did the adoption of Amended Ordinance No. 22-006 Section 4 removing ADU limitations in rural, agricultural, and forestry zones permit urban uses, fail to protect agricultural and forestry lands and uses, and allow non-agricultural accessory uses?

Petitioner argues that the Ordinance fails to protect agricultural lands and forest lands of long-term commercial significance and fails to comply with the requirements for accessory uses on such lands. Petitioner briefs only allegations of violation of RCW 36.70A.020(8), RCW 36.70A.060(1) and RCW 36.70A.177; all other issues raised in the Prehearing Order's recitation of Issue 2 are dismissed.

Petitioner argues that the ordinance violates the GMA because the detached ADUs do not constitute an "innovative zoning technique" under RCW 36.70A.177(3).[24] The County responds that ADUs were previously allowed in the agricultural zone and

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[20] Petitioner's Brief at 9 – 12.
[21] *Whatcom Cty v. W. Wash. Growth Mgmt. Hr'gs Bd*., 186 Wn.2d 648, 381 P.3d 1 (2016).
[22] SCC 30.28.010(1)(b).
[23] As a separate sub-set of Issue 1, Petitioners allege that the ordinance is inconsistent with the County's Comprehensive Plan Objective LU 6.A, calling for the reduction in "the rate of growth that results in sprawl in rural and resource areas" in violation of RCW 36.70A.130(1)(d). This argument is dealt with more thoroughly in the discussion of Issue 3.
[24] Petitioner's Brief at 16-18.

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that even with the amendment "entire parcels will not be converted to non-agricultural or forestry use; rather, a small number of subordinate accessory dwellings might annually be developed. The Ordinance does not interfere with the conservation of resource lands."[25]

The Supreme Court held that "RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land. Further, RCW 36.70A.177 must be interpreted to harmonize with that mandate."[26] The Court also held that "[t]he County was required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.[27] RCW 36.70A.177(2)(a) authorizes "[a]gricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in …[RCW 36.70A.177(3)]." "In order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry."[28] As the Supreme Court held in *Lewis County*, allowing "non-farm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands."[29]

Under the County's action, DADUs are considered accessory uses, but without limiting them to DADUs that support, promote, or sustain agricultural operations and

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[25] County's Response at 17, 19.
[26] *Soccer Fields*, 142 Wn.2d at 561, 14 P.3d at 142
[27] *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140 King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142.2d 543, 14 P.3d 133 (2000) (emphasis in original).
RCW 36.70A.060(1)(a) WAC 365-196-815.
[28] *Soccer Fields*, 142 Wn.2d at 560, 14 P.3d at 142. King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142.2d 543, 14 P.3d 133 (2000).
[29] *Lewis Cty. v. Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106 (2006).

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production.[30] The newly allowable DADUs could be used to house those who work on the agricultural operation, but there is no limitation to solely those uses.[31]

The Board finds that the ordinance will allow the development of DADUs that do not "constitute an innovative zoning technique" in violation of RCW 36.70A.177 (3).[32]

While the Board agrees with Petitioner's argument discussed above, the Board finds its remaining arguments unpersuasive.

The deletion of the prior requirement that an ADU must be within 100 feet of the primary residence is cited for the proposition that the ordinance violates RCW 36.70A.177(3)(b)(ii), which the Petitioner alleges would require adjacency. Petitioner seems to conclude that this section *would not apply* to DADUs proposed for Agricultural Lands of Long Term Commercial Significance (ALLTCs). Petitioner makes the same sort of assumption for the application of the ordinance to Forestry zones.[33]

The County challenges Petitioner's assertion that the ordinance doubles the allowed density in Agriculture or Forestry zones, pointing to the zoning matrix in SCC 30.22.110. The Ordinance only removes the restriction prohibiting a DADU on a *substandard* lot. The focus of the challenged ordinance is on those substandard lots. As the County points out, an ADU, attached or detached, is allowed only if it is subordinate to the primary dwelling.

Petitioner's argument for violation of RCW 36.70A.060(1)(a)[34] is limited to an

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[30] Amended Ordinance No. 22-006, p.14 of 15 in SCC 30.28.010(3) attached to Petition for Review in Tab Ord. No. 22-006.

[31] *Id*.

[32] *Soccer Fields*, 142 Wn.2d at 560, 14 P.3d at 142. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd*., 142.2d 543, 14 P.3d 133 (2000)

[33] Petitioner's Prehearing Brief at 19.

[34] RCW 36.70A.060 Natural resource lands and critical areas—Development regulations. (1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations ….to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170… . Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. …

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argument that the Ordinance permits the *conversion* of forest land to residential uses.[35] The problem with this argument is that there must be existing residential use on the forestry zoned land before an ADU can be built. As noted by the County, these provisions have been part of Snohomish County Code since 2006; it is not a new provision arising from the Ordinance. The Ordinance merely expands the capacity of that existing residential use to include another dwelling. The zoning continues to require a minimum of 10 acres and the DADU is limited in size. Likewise, allowing the DADU to be a mobile home in lieu of a conventional "stick-built" structure does not prove that the land is being *converted* to residential use, and may play on subconscious bias[36] in favor of one type of housing over another.

The Board finds and concludes that the Petitioner met its burden to show that the Ordinance fails to protect designated agricultural lands of long-term commercial significance in violation of RCW 36.70A.177.

The remaining allegations under Issue Two are dismissed.

Issue Three: Is the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on ADUs in all rural, agricultural, and forestry zones inconsistent with countywide planning policies; VISION 2050's Regional Growth Strategy as to the population allocation for rural areas or Multicounty Planning Policies?

Petitioner argues that the Ordinance fails to comply with the Multicounty Planning Policies and Countywide Planning Policies, in violation of RCW 36.70A.130(1) and .210(1) and (7).[37] Petitioner did not brief most of the violations

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[35] Petitioner's Brief at 19.

[36] Such expectations may be acceptable in communities created with covenants and restrictions, but are not reasonable merely because the land is zoned rural or resource.

[37] In the Petitioner's Brief at 19, Issue 3 appears as:
Is the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on ADUs in all rural, agricultural, and forestry zones inconsistent with countywide planning policies DP-25 and DP-26; VISION 2050's Regional Growth Strategy as to the population allocation for rural areas or Multicounty Planning Policy (MPP) MPP-RGS-1, MPP-RGS-12, MPP-RGS-14, MPP-DP-33, MPP-DP-37, or MPP-DP-43 violating RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.020(9), RCW 36.70A.020(10), RCW 36.70A.030(28), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.210, or RCW 36.70A.290(2)?

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asserted in the issues as adopted in the Prehearing Order. Pursuant to WAC 242-03-590(1), unbriefed issues are deemed abandoned.

Counties must comply with the Snohomish County Countywide Planning Policies (CPPs) and the Puget Sound Regional Council Multicounty Planning Policies (MPPs).[38] RCW 36.70A.100 provides that:

> The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

RCW 36.70A.210 (1) and (7) require comprehensive plans to comply with CPPs and MPPs. RCW 36.70A.130 (1)(d) provides that "[a]ny amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." The Supreme Court has stated, "The Board was therefore correct to conclude that CPPs are binding on the County."[39]

Snohomish Countywide Planning Policy (CPP) DP-26 provides that "[d]ensity and development standards in rural and resource areas shall work to manage and reduce rural growth rates over time, consistent with the Regional Growth Strategy, GF-5, and the growth targets in Appendix B."[40] Appendix B sets an initial population growth target of 3.3 percent, or an increase of 10,063 people, for the unincorporated rural areas and resource lands.[41]

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[38] *Stickney v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 11 Wn. App. 2d 228, 244–48, 453 P.3d 25, 33–35, 453 P.3d 25, 34 (2019).
[39] *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 176, 979 P.2d 374, 380 (1999) as amended on denial of reconsideration (Sept. 22, 1999).
[40] Countywide Planning Policies for Snohomish County p. 31 in Tab CPP enclosed with this brief. WAC 242-03-630 (4) authorizes the Board or Presiding Officer to take office notice of ordinances, resolutions, and motions enacted by regulations adopted by counties. The Countywide Planning Policies are adopted by ordinance. Countywide Planning Policies for Snohomish County p. 1. Futurewise respectfully requests that the Board take legislative notice of the countywide planning policies cited in this brief.
[41] Countywide Planning Policies for Snohomish County p. 68.

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Multicounty Planning Policy MPP-RGS-14 directs Snohomish County to "[m]anage and reduce rural growth rates over time, consistent with the Regional Growth Strategy, to maintain rural landscapes and lifestyles and protect resource lands and the environment."[42] The Regional Growth Strategy adopted a 2017-50 population growth rate target for rural Snohomish County of 4.5 percent or 18,500 people.[43] MPP-RGS-1 also directs Snohomish County to "[i]mplement the Regional Growth Strategy through regional policies and programs, countywide planning policies and growth targets, local plans, and development regulations."[44]

Unfortunately, the record indicates that adoption of the Ordinance is inconsistent with the achievement of these growth targets. The County's staff report on the Ordinance alerted the County Council to the possibility of the challenged ordinance adding to the rural growth rate, in opposition to the policies:

> Overall population growth in rural and resource areas is another consideration [regarding Rural Character]. GMA and, more recently, the Regional Growth Strategy (RGS) adopted by Puget Sound Regional Council (PSRC), obligate Snohomish County to act to reduce rural population growth. Current growth targets for 2035 allow for only 6% of the County's overall projected growth in rural areas. In 2020, PSRC updated the RGS to plan for 4.5% of Snohomish County's growth in rural areas. Countywide Planning Policies and an interlocal agreement with PSRC create an expectation that Snohomish County will adopt the lower rural growth target of 4.5% in 2024 as part of the comprehensive plan update due that year.
>
> The share of rural housing unit growth has been declining over time although it is still above the current 6% target ….[45]

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[42] IRE # 3.3.005g in Tab IRE # 3.3.005g Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 49 (Adopted Oct. 29, 2020).
[43] *Id.* p. 33; IRE # 1.0003 in Tab IRE # 1.0003, Staff Report on Referral Motion 21-297 Proposed Code Revisions for Detached Accessory Dwelling Units p. 6 of 9 (Oct. 8, 2021).
[44] IRE # 3.3.005g in Tab IRE # 3.3.005g Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* p. 48 (Adopted Oct. 29, 2020).
[45] IRE # 1.0003 in Tab IRE # 1.0003, Staff Report on Referral Motion 21-297 Proposed Code Revisions for Detached Accessory Dwelling Units p. 6 of 9 (Oct. 8, 2021) footnote omitted.

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> [R]ecent rural population growth against the current target of 6% of projected rural growth. It shows that recent growth has exceeded that target. Part of the excess is because overall county growth has also been faster than projected. That said, the share of new units in the rural areas would need to drop faster than it has been to meet the current 6% growth target. A larger change would be necessary to meet the new 4.5% expectation.[46]

Petitioner argues that the growth rate occasioned by permitting detached ADUs will exacerbate the County's failure to meet its targets and is thus inconsistent with these MPPs and CPPs.[47] The County responds by pointing out that it is in the process of updating its comprehensive plan by the statutory deadline of December 31, 2024, about 18 months hence, emphasizing that the Multicounty Planning Policies refer to the need for the County to manage rural growth rates *over time* - but not by any specific time.[48]

Here the Board is skeptical. There is nothing in the record to indicate that the Ordinance will assist in achievement of the growth target over any timeframe and Counsel for the County admitted during the Hearing on the Merits that the County may need to reverse the changes brought by this Ordinance as part of the 2023 comprehensive plan update to achieve the growth target. Thus, the County admits that Ordinance may thwart achievement of the policies adopted by the County as part of the countywide and multicounty planning activities it engaged in pursuant to the GMA. The County further argues, without evidence, that these provisions establish the logical time for evaluation of the County's efforts to be the time of the comprehensive plan update. The Board is unpersuaded.

The Board finds and concludes that Ordinance No. 22-006 is inconsistent with achievement of the growth targets in the County's adopted Multicounty Planning Policies and Countywide Planning Policies, in violation of RCW 36.70A.130(1)(d) and

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[46] *Id.* p. 7 of 9.
[47] Petitioner's Brief, page 21-23.
[48] MPP-RGS-14, CPP DP-26.

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RCW 36.70A.210(1) and (7).

Invalidity

Petitioner has requested that the Board invalidate the Ordinance. While RCW 36.70A.302(1) grants the Board the power to determine that a GMA related legislative enactment is invalid, a determination of invalidity is based on a finding that continued validity of a local government's "action 'would substantially interfere with the fulfillment' of a GMA planning goal." The Board is not convinced that the Ordinance will result in substantial interference with GMA goals during the pendency of the remand.

Petitioner's request for invalidity is denied.

V. ORDER

Based upon review of the petition, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds that:

- Ordinance No. 22-006 fails to protect designated agricultural lands of long-term commercial significance in violation of RCW 36.70A.177.
- Ordinance No. 22-006 is inconsistent with achievement of the growth targets in the County's adopted Multicounty Planning Policies and Countywide Planning Policies, in violation of RCW 36.70A.130(1)(d) and RCW 36.70A.210(1) and (7).
- Ordinance No. 22-006 is remanded to the County for action to bring it into compliance with the GMA.
- Petitioner's request for invalidity is **Denied**.
- The following compliance schedule shall be in effect:

Growth Management Hearings Board
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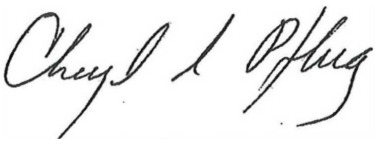
P.O. Box 40903
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Item	Date Due
Compliance Due	Dec 13, 2023
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	Dec 27, 2023
Objections to a Finding of Compliance	Jan 10, 2024
Response to Objections	Jan 22, 2024
Telephonic Compliance Hearing	**Jan 30, 2024 10:00 am**

Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: "Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions." **Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.**

So ORDERED this 20th day of June 2023.



Cheryl Pflug, Board Member

Rick Eichstaedt, Board Member

This is a Final Decision and Order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300. 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.

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Appendix A: Legal Issues

Issue One: Did the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on accessory dwelling units (ADUs) in rural zones permit urban uses, fail to protect rural character, and fail to include measures that apply to rural development to protect rural character violating RCW 36.70A.020(2), RCW 36.70A.020(9), RCW 36.70A.020(10), RCW 36.70A.030(23), RCW 36.70A.030(24), RCW 36.70A.030(28), RCW 36.70A.070 (internal consistency), RCW 36.70A.070(5), RCW 36.70A.110(1), RCW 36.70A.130(1), RCW 36.70A.290(2), or General Policy Plan Objective LU 6.A?

Issue Two: Is the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on ADUs in all rural, agricultural, and forestry zones inconsistent with countywide planning policies DP-25 and DP-26; VISION 2050's Regional Growth Strategy as to the population allocation for rural areas or Multicounty Planning Policy (MPP) MPP-RGS-1, MPP-RGS-12, MPP-RGS-14, MPP-DP-33, MPP-DP-37, or MPP-DP-43 violating RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.020(9), RCW 36.70A.020(10), RCW 36.70A.030(28), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.210, or RCW 36.70A.290(2)?

Issue Three: Is the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on ADUs in all rural, agricultural, and forestry zones inconsistent with countywide planning policies DP-25 and DP-26; VISION 2050's Regional Growth Strategy as to the population allocation for rural areas or Multicounty Planning Policy (MPP) MPP-RGS-1, MPP-RGS-12, MPP-RGS-14, MPP-DP-33, MPP-DP-37, or MPP-DP-43 violating RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.020(9), RCW 36.70A.020(10), RCW 36.70A.030(28), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.210, or RCW 36.70A.290(2)?

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