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6 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
7 WESTERN WASHINGTON REGION
8 STATE OF WASHINGTON

8 ERIC HIRST, LAURA LEIGH BRAKKE,
9 WENDY HARRIS, DAVID STALHEIM, &
10 FUTUREWISE

10 Petitioners,

11 v.

12 WHATCOM COUNTY

13 Respondent.

Case No.:

PETITION FOR REVIEW

14
15 **I. PETITIONERS**

16 Petitioners, each of whom separately challenges this action through this joint petition, are:

- 17 A. Eric Hirst
18 1932 Rhododendron, Bellingham, Washington 98229
(360) 656-6690
EricHirst@comcast.net
- 19 B. Laura Leigh Brakke
20 585 Pleasant Bay Road, Bellingham, Washington 98229
(360) 734-3771
lbrakke@hotmail.com
- 21 C. Wendy Harris
22 3925 E. Connecticut, Bellingham, Washington 98226
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24 PETITION FOR REVIEW - 1

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2 1232 Roland Street, Bellingham, Washington 98229
3 (360) 733-1232
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4 E. Futurewise
5 816 Second Avenue, Suite 200, Seattle, Washington 98104
6 (206) 343-0681 Ext. 188
7 tim@futurewise.org

7 Attorneys Representing Petitioners:

8 Jean O Melious
9 Nossaman LLP
10 1925 Lake Crest Drive
11 Bellingham, Washington 98229
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15 **II. THE CHALLENGED ACTION**

16 Whatcom County (“County”) adopted Ordinance No. 2012-032 (“Ordinance”) on August 7,
17 2012 and published it on August 11, 2012. A signed copy of Whatcom County Ordinance No.
18 2012-032 is attached to this petition.

19 The Ordinance is the County’s effort to respond to the Growth Management Hearings Board
20 (“Board”), Western Washington Region’s findings of noncompliance and invalidity as set forth
21 in the Board’s Final Decision and Order in Case No. 11-2-0010c, dated January 9, 2012

1 (“FDO”).¹ Exhibit A to the Ordinance amends the County’s Comprehensive Plan (“CP
2 Amendments”). Exhibit B to the Ordinance amends the County’s Zoning Code (“Zoning Code
3 Amendments”). Exhibit C to the Ordinance consists of “Official Zoning Map and
4 Comprehensive Plan Map 8 Amendments” (“Map Amendments”).²

5 On August 28, 2012, Whatcom County filed a Compliance Report, contending that the
6 Ordinance complies with the FDO.³ Petitioners Eric Hirst, Laura Leigh Brakke, Wendy Harris,
7 and David Stalheim (“Hirst et al.”), as well as Futurewise, concurred in part with the County’s
8 statement of compliance and objected in part. In its “Response to Objections to a Finding of
9 Compliance,” dated September 21, 2012, the County objected to a number of arguments,
10 claiming that these arguments exceeded the scope of the Board’s compliance jurisdiction.

11 While Petitioners believe, and continue to assert, that the issues discussed in each of our
12 responses to the County’s Compliance Report⁴ are within the Board’s compliance jurisdiction,
13 the Board will not decide the issue until after the date for filing a new Petition for Review.
14 Therefore, this Petition raises issues that the County claimed to be beyond the scope of
15 compliance jurisdiction in order to ensure that these issues are preserved (Issues 1, 2 and 3 in
16 Section III, “Statement of Issues”). The Petition also raises issues relating to inconsistency with
17 and failure to carry out the County’s Transportation and Capital Facilities Elements (Issues 4 and
18 5 in Section III).

21 ¹ *Governors Point/Futurewise v. Whatcom County*, WWGMHB Case No. 11-2-0010c, Final Decision and Order
(Jan. 9, 2012).

22 ² References to the Ordinance and its Exhibits are based on the version attached to the County’s Compliance Report,
dated August 28, 2012, which is also the version attached to this Petition.

23 ³ Compliance Report at p. 2.

24 ⁴ Both Hirst *et al.* and Futurewise filed a “Concurrence in Part With a Finding of Compliance and Objection to a
Finding of Compliance” in Case Number 11-2-0010c on Sept. 11, 2012.

1 **III. STATEMENT OF ISSUES**

2 Issue 1: Do the “Rural” designation descriptor, future land use map, and related policies and
3 development regulations, including the amendment to Chapter 1, the “Rural Character
4 and Lifestyle” narrative in the Comprehensive Plan, Policies 2DD-1, 2DD-2, 2GG-2,
5 2GG-7, the “Rural Communities” narrative in the Comprehensive Plan, 2JJ-6, 2LL-2, the
6 “Rural Neighborhoods” narrative in the Comprehensive Plan, Goal 2MM and all policies
7 thereunder (*i.e.*, all Policies 2MM), WCC Chapters 20.32, 20.36, 20.60, 20.61, 20.63,
20.64, 20.67 and 20.69, WCC 20.80.100 and WCC 20.82.030 violate RCW
36.70A.030(15) and (16), RCW 36.70A.040(3), RCW 36.70A.070, RCW
36.70A.130(1)(d), RCW 36.70A.070(5), RCW 36.70A.020(9) and (10), and case law
because the enactments fail to protect water resources, including surface and groundwater
quality and quantity?

8 Issue 2: Do the “Rural” designation descriptor, future land use map, and related policies and
9 development regulations, including the “Rural Character and Lifestyle” narrative in the
10 Comprehensive Plan, Policies 2DD-2, 2GG-2, 2GG-3, 2GG-7, and WCC Chapters 20.32
11 and 20.36 violate RCW 36.70A.070, RCW 36.70A.070(5), 36.70A.040(3), RCW
36.70A.130(1)(d), RCW 36.70A.020(2), (9) and (10), and case law because the County
failed to ensure a variety of rural densities?

12 Issue 3: By failing to prevent the expansion of urban services into the rural area, do the “Rural”
13 designation descriptor, future land use map, and related policies and development
14 regulations, including the “Rural Character and Lifestyle” narrative in the
15 Comprehensive Plan, Policies 2DD-1, 2DD-2, 2GG-2, 2GG-3, 2GG-7, 2HH-2, the
16 “Rural Neighborhoods” narrative in the Comprehensive Plan, Goal 2MM and all policies
thereunder (*i.e.*, all Policies 2MM), WCC Chapters 20.32, 20.36, 20.60, 20.61, 20.63,
20.64, 20.67 and 20.69, WCC 20.80.100 and WCC 20.82.030 violate RCW
36.70A.110(1) and (4), RCW 36.70A.070, RCW 36.70A.070(5), RCW 36.70A.030(15),
(16), and (17), RCW 36.70A.040(3), RCW 36.70A.130(1)(d), RCW 36.70A.020(1), (2),
(9) and (10), and case law?

17 Issue 4: Do the “Rural” designation descriptor, future land use map, and related policies and
18 development regulations, including the amendment to Chapter 1, the “Rural Character
19 and Lifestyle” narrative in the Comprehensive Plan, Policies 2DD-1, 2DD-2, 2GG-2,
20 2GG-3, 2GG-7, the “Rural Communities” narrative in the Comprehensive Plan, Policy
21 2JJ-6, the “Rural Neighborhoods” narrative in the Comprehensive Plan, Goal 2MM and
22 all policies thereunder (*i.e.*, all Policies 2MM), WCC Chapters 20.32, 20.36, 20.60,
20.61, 20.63, 20.64, 20.67 and 20.69, and WCC 20.80.100 violate RCW 36.70A.030(17),
RCW 36.70A.040(3), RCW 36.70A.130(1)(d), RCW 36.70A.070, RCW 36.70A.070(5),
RCW 36.70A.020(1), (2), (3) and (12), and case law because the enactments are
inconsistent with and fail to carry out the County’s Transportation Element?

23 Issue 5: Do the “Rural” designation descriptor, future land use map, and related policies and
24 development regulations, including the amendment to Chapter 1, the “Rural Character

1 and Lifestyle” narrative in the Comprehensive Plan, Policies 2DD-1, 2DD-2, 2GG-2,
2 2GG-3, 2GG-7, the “Rural Communities” narrative in the Comprehensive Plan, Policy
3 2JJ-6, Policy 2LL-2, the “Rural Neighborhoods” narrative in the Comprehensive Plan,
4 Goal 2MM and all policies thereunder (*i.e.*, all Policies 2MM), WCC Chapters 20.32,
5 20.36, 20.60, 20.61, 20.63, 20.64, 20.67 and 20.69, WCC 20.80.100 and WCC 20.82.030
6 violate RCW 36.70A.030(15) , RCW 36.70A.040(3), RCW 36.70A.130(1)(d), RCW
7 36.70A.070, RCW 36.70A.070(5), RCW 36.70A.020(1), (2), (10) and (12), and case law
8 because the enactments are inconsistent with and fail to carry out the County’s Capital
9 Facilities Element?

6 IV. STANDING

7 This action is brought pursuant to RCW 36.70A.280(1)(a) and RCW 36.70A.280(2)(b). Each
8 Petitioner has individual standing based on participation in the process preceding the adoption of
9 the Ordinance through oral and written testimony reasonably related to the issues raised in this
10 petition, as required by RCW 36.70A.280(2) and (4) and WAC 242-03-200(3).

11 On July 20, 2012, Nossaman LLP submitted a letter to the County on behalf of Petitioners
12 Hirst, Brakke, Harris, and Stalheim. The letter addresses numerous issues relating to the
13 County’s compliance with the Growth Management Act, including water resources issues, CP
14 and Zoning Code issues relating to the failure to protect rural character, and internal
15 inconsistencies. In addition, the letter incorporated all of the following by reference:

- 16 • 6/19/2012: Wendy Harris’s e-mail to Whatcom County Council re: Design standards
17 for Chuckanut Wildlife Corridor
- 18 • 6/18/2012: Nossaman LLP e-mail to Whatcom County Council re: Calculation of
19 Rural Residential Development Potential.
- 20 • 6/10/2012: Wendy Harris’s e-mail to Whatcom County Council re: Chuckanut
21 Wildlife Corridor.
- 22 • 5/24/2012: Wendy Harris’s e-mail to Whatcom County Planning Commission re:
23 Chuckanut Wildlife Corridor.
- 24 • 5/24/12: Wendy Harris’s e-mail to Whatcom County Planning Commission re: Rural
Element.
- 5/24/2012: Eric Hirst’s e-mail to the Whatcom County Planning Commission re:
Rural Element Compliance.
- 5/23/2012: Nossaman LLP letter to Whatcom County Executive and Whatcom
County Planning Commission re: Staff Memorandum dated May 21, 2012.

- 1 • 5/22/2012: Letter from Futurewise to Whatcom County Planning Commission re: Comments on the May 11, 2012 Draft Comprehensive Plan Amendments.
- 2 • 5/21/2012: Nossaman LLP letter to the Whatcom County Planning Commission re: Rural Element Compliance Recommendation (addresses issues including Rural
- 3 Element Measures to Contain or Otherwise Control Rural Development, Measures to
- 4 Reduce Inappropriate Conversion of Undeveloped Land Into Sprawling, Low-Density
- 5 Development in Rural Areas, Measures to Protect Critical Areas and Surface and
- 6 Groundwater Resources, Comprehensive Plan Internal Inconsistency; Development
- 7 Regulations in LAMIRDs; and Inconsistency with Whatcom County Criteria for
- 8 Approval).
- 9 • 4/25/2012: Nossaman LLP e-mail to the Whatcom County Planning Commission re: Rural Population Allocation.
- 10 • 4/20/2012: Laura Leigh Brakke’s e-mail to Gary Davis re: Fact Check on Public
- 11 Testimony at Public Hearing and Comments of Compliance.
- 12 • 4/17/2012: Nossaman LLP e-mail to the Whatcom County Planning Commission re: Planning Commission Work Sessions (April 12 and 19).
- 13 • 4/11/2012: Wendy Harris’s e-mail to the Whatcom County Planning Commission re: Rural Element Issue 10
- 14 • 4/11/2012: Nossaman LLP e-mail to Gary Davis and the Whatcom County Planning Commission re: Rural Element Comments.
- 15 • 4/10/2012 Nossaman LLP letter to Gary Davis re: Compliance with Growth Management Hearings Board Order.
- 16 • 3/22/2012 Nossaman LLP e-mail to the Whatcom County Planning Commission, which stated, *inter alia*, that “The County has not addressed the Board’s finding of risks to the water supply in [Rural Neighborhoods and Rural Residential Development Overlay areas]. In finding that the County had not protected the rural character element of water resources, the Board specifically cited ‘ample evidence about risks,’” including “[c]losure to surface and groundwater appropriation in the Nooksack River Basin, affecting North Bellingham and Fort Bellingham/Marietta areas proposed for LAMIRD and RRDO designation.’ FDO at 43.”
- 17 • 3/22/2012: Futurewise’s letter to the Whatcom County Planning Commission re: Comments on the Rural Element and Development Regulation Amendments.
- 18 • 3/19/2012: Nossaman LLP e-mail and letter to the Whatcom County Planning Commission re: Comments on Proposed Rural Element Compliance.
- 19 • 3/16/2012: Nossaman LLP e-mail to the Whatcom County Planning Commission et al. re: 2012 Initiatives to Protect Lake Whatcom and Growth Management Act Compliance
- 20 • 3/7/2012: Nossaman LLP e-mail to Gary Davis re: Rural population allocation.
- 21 • 2/24/2012: Nossaman LLP e-mail and letter to the Whatcom County Planning Commission et al. re: Rural Element Compliance.
- 22 • 2/22/2012: Nossaman LLP e-mail and letter to the Whatcom County Planning Commission, County Executive and County Council re: Rural Element Compliance: Rural Population Allocation and Rural Development Capacity.
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1 On August 6, 2012, Nossaman LLP submitted a letter to the County on behalf of Petitioners
2 Hirst, Brakke, Harris, and Stalheim, further addressing water resources issues and addressing the
3 County's changes to the CP and Zoning Code since the time of the July 20, 2012 letter. David
4 Stalheim's letter of March 21, 2012, adopted by reference by Nossaman LLP, addressed
5 inconsistencies between the Ordinance and the Transportation and Capital Facilities chapters of
6 the Comprehensive Plan. Additionally, individual plaintiffs and Nossaman LLP, on behalf of the
7 plaintiffs, testified at public hearings on issues relevant to this petition. Through their lengthy
8 and active participation in the administrative process, the petitioners have standing to file this
9 Petition.

10 Petitioner Futurewise submitted a letter on August 6, 2012 to the Whatcom County Council
11 addressing the ordinance challenged and issues raised in this appeal. Futurewise members and
12 staff also testified about the issues raised in this appeal. Futurewise had also submitted other
13 letters on these issues.

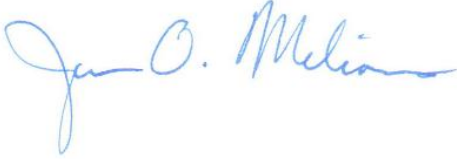
14 This petition is timely filed pursuant to RCW 36.70A.290(2) and WAC 242-03-220(1).

15 **V. RELIEF SOUGHT**

16 Petitioners request that the board issue an order to Whatcom County requiring action
17 consistent with the Growth Management Act. Petitioners also requests that the Board make a
18 determination of invalidity as authorized by RCW 36.70A.302 because the continued validity of
19 amendments adopted by the Ordinance would substantially interfere with the fulfillment of the
20 following goals of the Growth Management Act: RCW 36.70A.020(1), (2), (3), (4), (9), (10) and
21 (12).

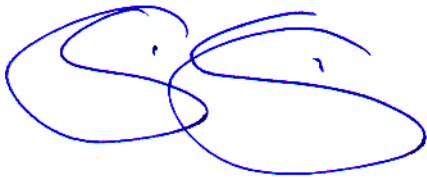
1 **THE PETITIONERS HAVE READ THIS PETITION FOR REVIEW AND BELIEVE**
2 **THE CONTENTS TO BE TRUE.**

3 DATED this 10th day of October, 2012

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Jean O. Melious, WSBA # 34347
Attorney for Eric Hirst, Laura Leigh Brakke, Wendy Harris, and David Stalheim

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11

Tim Trohimovich, WSBA # 22367
Attorney for Futurewise

1 **DECLARATION OF SERVICE**

2 I, Jean O. Melious, declare under penalty of perjury and the laws of the State of
3 Washington that, on October 10, 2012, I caused the following documents to be served on the
4 persons listed below in the manner shown:

5 **PETITION FOR REVIEW + ATTACHMENT**

6 Growth Management Hearings Board
7 Western Washington Region
8 PO Box 40953
9 Olympia, Washington 98504-0953
10 Tel: (360) 664-9170
Original and three copies
11 E-Mail: western@elaho.wa.gov
Original + 3 copies
12 *By e-mail and U.S. Mail*

13 Honorable Debbie Adelstein
14 Whatcom County Auditor
15 311 Grand Avenue, Suite 103
16 Bellingham WA 98225
17 E-mail: dadelste@co.whatcom.wa.us
By e-mail and U.S. Mail

18 **Courtesy copy to:**
19 Ms. Karen Frakes
20 Whatcom County Prosecuting Attorney's Office
21 311 Grant Avenue, Suite 201
22 Bellingham, Washington 98225
23 E-mail: kfrakes@co.whatcom.wa.us
By e-mail

24 DATED this 10th day of October, 2012.



21 _____
22 Jean O. Melious
23 WSBA #3437
24 Attorney for Petitioners

PETITION FOR REVIEW - 9

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