

G.M.N.
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STATE OF WASHINGTON
County of Jefferson

AN ORDINANCE AMENDING THE }
BRINNON SUB-AREA PLAN, THE }
COUNTY'S COMPREHENSIVE PLAN }
AND THE UNIFIED DEVELOPMENT }
CODE IN ORDER TO ACHIEVE }
COMPLIANCE WITH THE }
JUNE 23, 2004 COMPLIANCE ORDER }
OF THE WESTERN WASHINGTON }
GROWTH MANAGEMENT }
HEARINGS BOARD }

Ordinance #11-1004-04

WHEREAS, the proposed *Comprehensive Plan* amendment known as MLA #02-246 was approved after early and continuous public participation by the Board during the second week of December 2002, said CP amendment making the Brinnon Sub Area Plan (the "BSAP") part of the County's Comprehensive Plan; and

WHEREAS, the Board also adopted in December 2002, through the same Ordinance, Ordinance #13-1213-02, changes to the County's Unified Development Code, or "UDC;" and

WHEREAS, an unincorporated group known as the Better Brinnon Coalition timely appealed the County's legislative decisions relating to the BSAP to the Western Washington Growth Management Hearings Board ("WWGMHB") with a Petition for Review (or "PFR;") and

WHEREAS, after full briefing by the representatives of the respective parties and a Hearing on the Merits held in June 2003, the WWGMHB issued an Amended Final Decision and Order ("AFDO") on November 3, 2003; and

WHEREAS, the AFDO upheld the County and found the County compliant with respect to all but two of the allegations made in the PFR filed by the BBC; and

WHEREAS, the AFDO found that the County had not satisfied the State Environmental Policy Act or "SEPA" because it had not adequately studied the probable significant adverse environmental impacts, if any, of the changes proposed to the

County's *Comprehensive Plan*, Land Use Map and the County's development regulations, known as the Unified Development Code or UDC; and

WHEREAS, the AFDO also concluded that a Light Industrial district, formally known as a RCW 36.70A.070(5)(d)(i) Limited Area of More Intensive Rural Development or "LAMIRD," of some 22 acres immediately north of the Brinnon Rural Village Center (or "RVC") did not comply with the GMA; and

WHEREAS, a Compliance Hearing before the Western Washington Growth Management Hearings Board (or "WWGMHB") was held on April 13, 2004 to determine if the County had achieved Compliance with respect to the two issues listed above: an adequate environmental impacts analysis as is required by SEPA and a GMA-compliant zoning designation for the 22 acres immediately north of the Brinnon RVC; and

WHEREAS, the County, according to the June 23, 2004 Compliance Order, succeeded in gaining GMA compliance on the SEPA issues but its alternative for the 22 acres (an overlay designation permitting small businesses and cottage industries to utilize those 22 acres) was rejected by the WWGMHB as not being compliant with GMA; and

WHEREAS, since the County must take steps to bring those 22 acres into compliance with the GMA, the Board makes the following Findings of Fact

1. RCW Chapter 36.70A, *et seq.*, also known as the Growth Management Act ("GMA"), allows counties planning under the GMA to adopt subarea plans that are consistent with their comprehensive plans.
2. Jefferson County adopted the current Jefferson County *Comprehensive Plan* August 28, 1998. The *Comprehensive Plan* has been amended since adoption. The Brinnon Subarea Plan is the first subarea plan proposed to be included in the *Comprehensive Plan*.
3. On December 18, 2000, Jefferson County adopted the Unified Development Code ("UDC") as the implementing regulations for the *Comprehensive Plan*. The UDC, as amended, provides for the initial adoption of a subarea plan as an exception to the annual *Comprehensive Plan* amendment process (UDC 9.3.1.b), in compliance with the GMA. Amendments to the UDC can be considered at any time (UDC 9.9.1).
4. The Planning Commission recommended a Brinnon Subarea Plan to implement the Jefferson County *Comprehensive Plan* goals, policies and directives to promote "bottoms up" community planning and to increase economic development potential in South County consistent with the rural character of the community.

5. In particular, the Brinnon Subarea Plan is intended to implement and fulfill land use policy 4.8 (LNP 4.8 at page 3-70) in the *Comprehensive Plan*, which states, "Assist the community of Brinnon, within the limits of available resources, in a public process to investigate the feasibility of an additional location for future commercial development, through a comprehensive study to examine factors including but not limited to environmental issues, economic viability, future growth projections, and infrastructure requirements, consistent with GMA requirements."
6. The *Comprehensive Plan* text, at pages 3-14 and 3-19, describes the economy of the Brinnon area as "distressed" and promotes the diversification of the South County economy.
7. Jefferson County adopted a community plan for Brinnon on January 20, 1982 via Resolution 9-82. In the early 1990s, the Brinnon community updated the Brinnon community plan and submitted the updated version to the County in May of 1995. The 1995 Brinnon community plan itself was not adopted, but information from the 1995 plan was incorporated into the 1998 Jefferson County *Comprehensive Plan*.
8. After much community input, dozens of meetings and much analysis by County staff and this Board a Preferred alternative draft BSAP dated May 1, 2002 was presented to this Board.
9. Ordinance #13-1213-02 for MLA #02-246 enacted by the Board during the second week of December 2002, made the Brinnon Sub Area Plan (the "BSAP") part of the County's Comprehensive Plan.
10. That same Ordinance also made effective related changes to the County's Unified Development Code, or "UDC."
11. An appeal of Ordinance #13-1213-02 followed.
12. The AFDO issued by the WWGMHB upheld the County and found the County compliant with respect to all but two of the allegations made in the PFR filed by the BBC.
13. The WWGMHB concluded in the AFDO that the County had A) inadequately studied the probable significant adverse impacts of more intensive rural commercial development in and around the vicinity of the Brinnon Rural Village Center (the unincorporated village of Brinnon), an area sometimes called "the Brinnon Flats" and B) created a Light Industrial LAMIRD in violation of RCW 36.70A.070(5)(d)(i).
14. The Brinnon Light-Industrial Limited Area of More Intensive Rural Development (or "LAMIRD") on the upland 21.6 acres was found to be non-compliant in the AFDO by the WWGMHB because it could not meet the statutory criteria laid out in RCW 36.70A.070(5)(d)(i).

15. In other words, the Light Industrial LAMIRD was non-compliant as a “(d)(i)” type LAMIRD, one of at least three types of LAMIRD now permitted by the state law codified at RCW 36.70A.070(5)(d).
16. The County held the belief that those 21.6 acres met the statutory criteria for a different type of LAMIRD, a so-called “(d)(iii)” LAMIRD because they supposedly met the qualifications laid out in the first sentence of the GMA provision codified at RCW 36.70A.070(5)(d)(iii).
17. The first sentence of RCW 36.70A.070(5)(d)(iii) allows as a type of LAMIRD “the intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.” (Emphasis supplied in this Ordinance.)
18. In light of the above, the County enacted in Ordinance #01-0301-04, for those 21.6 acres a so-called SBCI (“Small Business-Cottage Industry) overlay. While the underlying zoning designation of the 21.6 acres remained Rural Residential, the County’s UDC, as then enacted, allowed for development of new small business and cottage industries employing multiple employees to commence business within the SBCI overlay zone.
19. However, the WWGMHB found that because the SBCI overlay of 21.6 acres was immediately adjacent to the Brinnon RVC it was not “isolated,” a phrase found in the applicable portion of the GMA, from other LAMIRDs, and thus was non-GMA compliant. The Compliance Order reaches this conclusion at Findings of Fact #7 and #8.
20. Additionally, the WWGMHB found the SBCI to be out of compliance with the GMA because it was immediately adjacent to the Brinnon RVC and both LAMIRDs (the RVC zone and the SBCI overlay) allowed the same types of uses. The Compliance Order reaches this conclusion at Finding of Fact #12.
21. The Board is normally required to consider with respect to any proposed *Comprehensive Plan* amendment the “Growth Management Indicators,” or GMI.
22. The Board finds that the Growth Management Indicators need not be analyzed in this Ordinance because this Ordinance is being enacted in response to a Compliance Order.
23. The possible adoption of this Ordinance was advertised in the County’s official newspaper of record (THE JEFFERSON COUNTY LEADER) on September 22, 2004 and this Ordinance was the subject of a public hearing more than ten (10) days after that advertisement, specifically on October 4, 2004.

NOW THEREFORE BE IT ORDAINED as follows:

Section One:

The Brinnon Subarea Plan, specifically the version entitled "Board of County Commissioners Preferred Alternative Draft, May 1, 2002, Modified from January 16, 2002 Draft Recommended by Planning Commission, and August 28, 2001 Draft Recommended by Brinnon Subarea Planning Group," be and hereby is amended by the *deletion* of the Brinnon Subarea Plan Epilog dated February 9, 2004, made part of the Brinnon Subarea Plan by Ordinance #01-0301-04.

Section Two:

Sections Two, Three and Five of Ordinance #01-0301-04 be and hereby are repealed pursuant to the Compliance Order issued on June 23, 2004 by the Western Washington Growth Management Hearings Board in WWGMHB Cause No. 03-2-007.

Section Three:

The 21.6 acres that were the location of the non-GMA compliant SBCI overlay zone shall have a zoning designation of Rural Residential.

Approved and adopted this 4th day of October, 2004.

SEAL:



ATTEST:

Julie Matthes, CMC
Julie Matthes, CMC
Deputy Clerk of the Board

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

Glen Huntingford
Glen Huntingford, Chair

Dan Titterness
Dan Titterness, Member

Patrick M. Rodgers
Patrick M. Rodgers, Member

APPROVED AS TO FORM:

David Alvarny 9/15/04
Prosecuting Attorney