

On February 17, 2004, the Board conducted the PHC on this matter in the Fifth Floor Conference Room of the Bank of California Center, 900 4th Avenue, Seattle. Present for the Board were Edward G. McGuire and Bruce C. Laing, Presiding Officer. Steven J. Peiffle represented the City. Duana T. Kolouskova represented the Petitioners. Present with Ms. Kolouskova was Michael Pattison, Master Builders Association of King and Snohomish Counties.

On February 19, 2004, the Board issued a Prehearing Order (**PHO**) stating the legal issues to be addressed and the schedule for this case.

B. MOTIONS

During the February 17, 2004 PHC, Counsel for the City filed a “Dispositive Motion of Respondent City of Arlington” with the Board asserting first that the Board lacks subject matter jurisdiction and second that Petitioners Michael Davis and Oscar and Barbara Larson lack standing. Respondent’s Dispositive Motion included a copy of City Ordinance No. 1304 as an attachment.

On March 16, 2004, the Board received “Petitioners’ Master Builders of King and Snohomish Counties, Davis and Larson Response to Dispositive Motion of Respondent City of Arlington”. Petitioner’s Response included four attachments: Exhibit A - Page CF -55, The City of Arlington Final Comprehensive Plan, June 1995; Exhibit B - Chapter 30.29 Sewer Connection Regulations, Snohomish County Code; Declaration of Bruce Crawford; and Declaration of Michael Davis.

On March 23, 2004, the Board received “Reply of Respondent City of Arlington Re: Dispositive Motion”.

On March 24, 2004, the Board requested the City to submit a “red-lined” copy of the ordinance showing the changes to the code that were enacted by the Council in adopting the ordinance.²

On March 26, 2004, in response to the Board’s March 24th request, the Board received from the City a letter containing City Counsel’s summary of the significant changes made by Ordinance 1304 with two enclosures: Arlington Ordinance 1233 and Arlington Ordinance 1299.

The Board did not hold a hearing on Arlington’s Dispositive Motion.

On April 2, 2004, the Board issued its Order on Dispositive Motion (Order). The Order **denied** Arlington’s motion to dismiss the Petition for Review on the basis that the Board lacks subject matter jurisdiction. Further, the Order **granted** Arlington’s motion to **dismiss** the individual Petitioners for lack of standing.

² The City was unable to provide an official red-lined version of the Ordinance.

C. BRIEFING AND HEARING ON THE MERITS

On April 13, 2004, the Board received a request from Counsel for Petitioners requesting the deadline for Petitioner's Opening Brief be changed to Monday, April 19, 2004 and the deadline for Respondent's Brief be changed to Monday, May 3, 2004, and indicating that the parties have agreed to the changes. The Board approved the request via telephone.

On April 16, 2004 the Board issued its Order Revising Final Schedule in accordance with the Petitioner's April 13, 2004 request.

On April 19, 2004 the Board received Petitioner Master Builders' Prehearing Brief (**MBA PHB**) with eight exhibits attached.

On April 20, 2004 the Board received from the City the following Core Documents: The Countywide Planning Policies for Snohomish County and the City of Arlington Final Comprehensive Plan – June 1995.

On May 3, 2004, the Board received City of Arlington's Prehearing Brief (**City's Response**) with sixteen exhibits attached.

On May 7, 2004, the Board received Petitioner Master Builders Association Reply Brief (**MBA Reply**) with five exhibits attached. Also attached was the Declaration of David Toyer with two additional exhibits.

On May 17, 2004, the Board held a Hearing on the Merits (HOM) in the Training Center adjacent to the Board's offices, 24th Floor, Bank of California Center, 900 4th Avenue, Seattle. Board Members Edward G. McGuire, Joseph W. Tovar and Bruce C. Laing, Presiding Officer, were present for the Board. Petitioner Master Builders Association was represented by Duana Kolouskova. With Ms. Kolouskova were Mike Pattison, a Snohomish County manager, and David Toyer, a former Snohomish County manager. Respondent City of Arlington was represented by Eric Laschever. With Mr. Laschever were Denise Lietz, City Attorney Steve Peiffle, and City Administrator Kristin Banfield. Court reporting services were provided by Eva P. Jankovits, CCR, of Byers & Anderson, Inc. The hearing convened at 10:00 a.m. and adjourned at approximately 12:30 p.m.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioner challenges Arlington's adoption of Ordinance No.1304 amending the provisions of Arlington Municipal Code (**AMC**) Chapter 13.20 AMC related to utility connections outside city limits. Pursuant to RCW 36.70A.320(1), Arlington's Ordinance No.1304 is presumed valid upon adoption.

The burden is on Petitioner MBA to demonstrate that the actions taken by Arlington are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action taken by [the City] is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of [the GMA].” For the Board to find the City’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.320(1) the Board will grant deference to the City in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. As the State Supreme Court has stated, “Local discretion is bounded . . . by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified: “Consistent with King County and notwithstanding the ‘deference’ language of RCW 36.70A.320(1), the Board acts properly when it foregoes deference to a . . . plan that is not ‘consistent with the requirements and goals of the GMA.’” *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 31 P.3d 28 (2001).

In affirming the Cooper Point court, the Supreme Court stated:

Although we review questions of law de novo, we give substantial weight to the Board’s interpretation of the statute it administers. See *Redmond*, 136 Wn.2d at 46. Indeed “[I]t is well settled that deference [to the Board] is appropriate where an administrative agency’s construction of statutes is within the agency’s field of expertise . . .

Thurston County v. Western Washington Growth Management Hearing Board, Docket No. 71746-0, November 21, 2002, at 7.

III. BOARD JURISDICTION, PRELIMINARY MATTERS AND PREFATORY NOTE.

A. BOARD JURISDICTION

The Board finds that the MBA PFR was timely filed, pursuant to RCW 36.70A.290(2); that Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and that the Board has subject matter jurisdiction over the challenged ordinance, which amends the City’s development regulations, pursuant to RCW 36.70A.280(1)(a).

B. PRELIMINARY MATTERS

During the Hearing on the Merits, the Board made the following rulings:

1. The Board took **official notice** of Washington statutes and case law, Arlington Ordinance No. 1233, Arlington Ordinance 1299, the City of Arlington Comprehensive Plan³, City of Arlington Comprehensive Sewerage Plan, and the Board's decisions.⁴
2. The Board admitted the document "Interlocal Agreement between the City of Arlington and Snohomish County Concerning Annexation and Urban Development within the Arlington Urban Growth Area, Sept. 29, 1999", as **Exhibit HOM #1**.⁵
3. The Board admitted Master Builders Association letter of July 8, 2003 to the Arlington City Council, **Exhibit HOM #2**, and Snohomish County letter of August 1, 2003 to Arlington Mayor Bob Kraski, **Exhibit HOM #3**.⁶
4. Board Member McGuire disclosed that this matter was a topic on the agenda at a Continuing Legal Education Seminar he attended. However, he did not attend the relevant session.

C. PREFATORY NOTE

Petitioner asks the Board to address six legal issues. Running through all of these issues is a common theme underlying MBA's theory of the case which asserts that a requirement of annexation to the city as a condition of sewer service by the City is the same as a denial of sewer service to the unincorporated part of the Urban Growth Area (UGA). The Board will first address this premise and then address the legal issues posed by Petitioner.

IV. LEGAL ISSUES AND DISCUSSION

A. MBA PREMISE - ANNEXATION AND THE PROVISION OF URBAN SERVICES

³ The Board's February 19, 2004 Prehearing Order designated the City of Arlington Comprehensive Plan **Core Document No. 1** and the Snohomish County Countywide Planning Policies **Core Document No. 2**. Prehearing Order at 2.

⁴ City Response, footnote 2 at 3.

⁵ City Response, footnote 3 at 6.

⁶ MBA Reply at 6.

The Action

Only one provision of Ordinance No. 1304 is at issue in this case. That provision amends AMC 13.20.060(a), to read as follows:

13.20.060 Service Outside City Limits – Sanitary Sewer.

The City may allow applicants to connect to the city’s sanitary sewer system, subject to compliance with AMC 13.20.040, above, under the following terms:

- a. Within the UGA
 - i. New or existing single-family residential buildings on existing lots may be allowed to connect to the city’s sanitary sewer system only upon annexation to the City.
 - ii. New subdivisions or short plats may be allowed to connect to the city’s sanitary sewer system only upon annexation to the City.
 - iii. New or existing multi-family residential, commercial, industrial or other non-SFR developments may be allowed to connect to the city’s sanitary sewer system only upon annexation to the City.

See Ordinance No. 1304, Section 1.

Position of the Parties

The Petitioner argues that Arlington has retracted all of its previously made policy statements and agreements by adopting Ordinance No. 1304, which “...conclusively denies sewer service to the unincorporated UGA” Petitioner’s PHB at 5. To illustrate their case theory, the Petitioner introduces portions of many of the City’s land use planning documents to assert that Arlington is the sole sewer service provider for the incorporated and unincorporated UGA and is thus required to make this service available throughout the entire UGA. Given these facts, MBA then asserts that any condition or delay affecting this duty to provide sewer service is tantamount to denial of service and urban densities within the UGA and a violation of the GMA. Petitioner then uses the issue sections to argue the specific ways that Ordinance No. 1304 violated the GMA and concludes with a request for relief based on these arguments. Petitioner’s PHB, at 4-8, 25. Petitioner’s PHB, at 8-24.

Noting that Petitioner’s PHB never analyzes or even discusses key provisions of Ordinance No. 1304 that allow connection to water and sewer upon annexation to the City, Respondent argues that Petitioner ignores the established role of annexation in Arlington’s growth planning process and notes that Petitioner failed to produce evidence to support its contention that the requirement to annex will prevent development in the unincorporated UGA. Respondent addresses the case theory another way, arguing that the Petitioner’s repeated premise, that the Ordinance forecloses urban densities, fails both

legally and factually. City Response, at 10.

Respondent states that Petitioner's failure legally is the assumption that the GMA contemplates the unincorporated UGA will remain subject to County development standards while enjoying City services, when actually the UGA will ultimately be governed by cities, either through incorporation or annexation. Factually, Respondent notes that Petitioner's brief does not reference the record on this point at all and therefore Petitioner fails to show that the City's ordinance is clearly erroneous based on the record, RCW 36.70A.320(3). City's Response, at 10.

Finally, Respondent argues that the planning documents cited by MBA demonstrate that annexation is a key part of Arlington's development and services plan, rather than supporting their contention that Ordinance No. 1304 imposes a "moratorium" on development in the unincorporated UGA. In fact, Arlington's growth planning process clearly contemplates the future extension of sewer service into the UGA and implements an orderly and phase plan for UGA development that incorporates annexation as a part of the process. City's Response, at 11.

Applicable Law

RCW 36.70A.020 - Planning goals. The relevant GMA goals are:

...

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

...

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development *at the time the development is available for occupancy and use* without decreasing current service levels below locally established minimum standards

RCW 36.70A.030 - Definitions. The relevant GMA definitions are:

...

(17) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. *When allowed to spread over wide areas, urban growth typically requires urban governmental services.* "Characterized by urban growth" refers to land having urban growth located on it, or to land

located in relationship to an area with urban growth on it as to be appropriate for urban growth.

...

(19) *"Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.*

...

RCW 36.70A.110 Comprehensive plans -- Urban growth areas. The relevant provisions are:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth. . . .

(3) *Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either*

public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) *In general, cities are the units of local government most appropriate to provide urban governmental services.* In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

...

(7) *An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.*

RCW 36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development.

Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations *provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.*

RCW 36.70A.210 County-wide planning policies. The relevant CPP provision is:

(1) The legislature recognizes that counties are regional governments within their boundaries, *and cities are primary providers of urban governmental services within urban growth areas.* For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. *Nothing in this section shall be construed to alter the land-use powers of cities.*

...

(All emphases added).

Board Discussion

Under the explicit provisions of GMA, counties and cities are required to provide land suitable for development capable of accommodating the growth projected to occur based on a twenty year population forecast.⁷ Urban growth can only occur within designated urban growth areas.⁸ Urban growth requires urban services, including sanitary sewer systems.⁹ Urban services should be adequate to serve development at the time the development is available for occupancy.¹⁰ Cities are the most appropriate providers of urban services.¹¹ Urban growth areas may include urban service areas or potential annexation areas for specific cities.¹² These are axioms clearly set forth in the GMA.

In interpreting these provisions of the Act in previous cases the Board has made findings, conclusions and rulings relevant to annexation and the provision of urban services within urban growth areas. The interpretations expressed by the Board include the following:

- Cities are the focal point of urban growth, delivery of urban services and governance within UGA's;¹³
- Cities should be the primary providers of urban services;¹⁴
- Cities will make available and provide urban services;¹⁵
- Phasing of development within UGAs is an option under the Act;¹⁶
- Provision of urban services is to take place by the time development is available for occupancy and use;¹⁷

⁷ RCW 36.70A.115

⁸RCW 36.70A.110 (1)

⁹ RCW 36.70A..030 (17), (19).

¹⁰ RCW 39.70A.020 (12).

¹¹ RCW 36.70A.030 (19); .110 (4); 210 (1).

¹² RCW 36.70A.110 (7).

¹³ *Association of Rural Residents v. Kitsap County (Rural Residents)*, CPSGPHB Case No. 93-3-0010 (**3310**), Final Decision and Order, (Jun. 3, 1994), at 42.

¹⁴ *Bremerton, et al., v. Kitsap County / Alpine Evergreen, et al., v. Kitsap County (Bremerton/Alpine)*, CPSGMHB Case No. 95-3-0039c Coordinated with Case No. 98-3-0032c (**5339c/8332c**), Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, (Feb. 8, 1999), at 47

¹⁵ *Corrine R. Hensley v. City of Woodinville (Hensley III)*, CPSGMHB Case No. 96-3-0031 (**6331**), Final Decision and Order, (Feb. 25, 1997), at 10.

¹⁶ *Citizens for Responsible Growth of Greater Lake Stevens, Ruth Brandal and Jody McVittie v. Snohomish County [Crescent Capital X and Master Builders Association of King and Snohomish County-Camano Association of Realtors – Intervenors] (Citizens)*, CPSGMHB Case No. 03-3-0013 (**03313**), Final Decision and Order, (Dec. 8, 2003), at 11.

- One purpose of both CPPs and UGAs is to achieve transformation of local governance within UGAs from counties to cities;¹⁸
- Designating a UGA adjacent to a city fosters the transformation of local governance;¹⁹
- Because cities are the primary providers of urban services, annexations and incorporations are logical occurrences;²⁰
- CPPs cannot direct cities as to the methods of annexation.²¹
- A county plan may not condition or limit the exercise of a city's annexation land use power.²²

Conclusions

Here, the City is requiring annexation as a condition of providing sewer service within the UGA. The City is responsible for providing urban services to development within the UGA at the time such development is available for use and occupancy, and within the twenty year horizon of the City's plan for the UGA. The approach the City has chosen to managing growth, specifically the provision of sewer service, is a valid option which the City may choose in order to transform governance and phase development within the UGA. It is not a denial of sewer service or *de facto* moratorium on development within the UGA. As such, the premise upon which MBA builds its case – the amendment is a denial of services and a moratorium - is false. In fact, such a provision is consistent with, and complies with, the GMA as this Board has interpreted it.

The Board now proceeds to address Petitioner's individual issues within this context and understanding.

B. LEGAL ISSUES NO. 2 THROUGH NO. 5

The Board's PHO sets forth Legal Issues No. 2 through No. 5 as follows:

¹⁷ *City of Gig Harbor, et al., v. Pierce County (Gig Harbor)*, CPSGMHB Case No. 95-3-0016c (**5316c**), Final Decision and Order, (Oct. 31, 1995), at 13. *City of Gig Harbor, et al., v. Pierce County (Gig Harbor)*, CPSGMHB Case No. 95-3-0016c (**5316c**), Final Decision and Order, (Oct. 31, 1995), at 13.

¹⁸ *Rural Residents, 3310*, FDO at 14.

¹⁹ *Doreen Johnson, Christy Ellingson, Daniel Palmer, Gil and Marlene Bortelson and Friends of the Green v. King County [Plum Creek Timber Company, L.P. and Palmer Coking Coal Company – Intervenors] (Johnson II)*, CPSGMHB Case No. 97-3-0002 (**7302**), Final Decision and Order, (Jul. 23, 1997), at 7.

²⁰ *City of Poulsbo, City of Port Orchard and City of Bremerton v. Kitsap County (Poulsbo)*, CPSGPHB Case No. 92-3-0009c (**2309c**) Final Decision and Order, (Apr. 6, 1993), at 27.

²¹ *Poulsbo, 2309c*, FDO at 27.

²² *Bremerton/Alpine, 5339c/8332c*, FDO at 48.

2. *Did the City violate RCW 36.70A.110(2) by adopting development regulations in Ordinance No. 1304, specifically Section 13.20.060(a), which effectively preclude adequate urban densities within the urban growth areas?*

3. *Did the City violate RCW 36.70A.110(2) by adopting development regulations in Ordinance No. 1304, specifically Section 13.20.060(a), which effectively preclude urban densities sufficient for urban growth that is projected to occur in the county for the twenty-year period?*

4. *Did the City violate RCW 36.70A.110(2) and WAC 365-195-335 by adopting development regulations in Ordinance No. 1304, specifically Section 13.20.060(a), which change available urban densities, and lower minimum densities in urban growth areas below minimum urban density standards, without showing its work as to the impact of Ordinance 1304 on the sizing of the UGA?*

5. *Did the City violate RCW 36.70A.110(4) by adopting development regulations in Ordinance No. 1304, specifically Section 13.20.060(a), which fail to provide urban governmental services, i.e. sewer service, generally to property within the UGA?*

Applicable Law

The relevant provisions of RCW 36.70A.110 are set forth, *supra*.

Position of the Parties

The Petitioner argues that City of Arlington’s adoption of Ordinance 1304 effectively precludes urban densities in the UGA and ignores both the City’s duty to provide public services in the UGA and its duty to “show its work” as to how the Ordinance will affect the UGA and population allocation. Accordingly, the City argues that Ordinance 1304 violates the Growth Management Act by being inconsistent with the GMA requirements to permit urban densities and provide urban governmental services in the UGA for both new growth and twenty year countywide population growth projections. RCW 36.70A.110(2),(4) and WAC 365-195-335. Petitioner’s PHB, at 12-17.

The Respondent first argues that Legal Issues 2 through 5, alleging noncompliance with RCW 36.70A.110, should be dismissed because Ordinance No. 1304 is a development regulation as defined by RCW 36.70A.030(7) and RCW 36.70A.110 governs only comprehensive plans. [Citing: *Citizens for Responsible Growth v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order (2003)]. City’s Response, at 9, 13-14, 16.

For arguments sake, Respondent notes that even if RCW 36.70A.110 applies to Ordinance No. 1304, there is no evidence to support Petitioner’s assertion that an

Ordinance that allows utility connections upon annexation will preclude adequate urban densities in either the short term or over a twenty year period. The term “preclude” means “incapable of being performed or accomplished by the means employed or at command” and Arlington’s requirement for annexation does not preclude development of adequate urban densities, but rather leaves the timing, location, and conditions of urban growth and services to the City’s discretion. [Citing: *Hensley v. City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order (1997) at 8-9]. Finally, because Ordinance No. 1304 does not designate or alter the size of the UGA, the “show your work” requirement does not apply to its adoption. City’s Response, at 13-16.

In reply Petitioner asserts that the Board has not conclusively held that RCW 36.70A.110 can never apply to development regulations. MBA Reply, at 12. And Petitioner expands on arguments presented in the Prehearing Brief.

Board Discussion

The Board has previously agreed with the Petitioner that Arlington Ordinance No. 1304 is a development regulation as defined in RCW 36.70A.030(7).²³ Petitioner asserts that Section 30.20.060(a) of the Ordinance violates RCW 36.70A.110(2) and (4) and WAC 365.195.335. In past decisions, the Board has addressed the applicability of the statutory requirements of RCW 36.70A.110 and the procedural criteria of WAC Chapter 365-195 to development regulations.

The Board has repeatedly determined that the requirements of .110 do not apply to development regulations, but rather to comprehensive plans and UGA sizing and designations. See *Forster Woods Homeowners’ Association et al., v. King County*, CPSGMHB Case No. 01-3-0008c, Final Decision and Order, (Nov. 6, 2001), at 29; *Master Builders Association, et al. v. Snohomish County (Master Builders Association)*, CPSGMHB Case No. 01-3-0016 (**1316**), Final Decision and Order, (Dec. 13, 2001), at 9-10; *Citizens for Responsible Growth, et al. v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final Decision and Order, (Dec. 8, 2003), at 11. The Board has also stated that the procedural criteria of Chapter 365-195 WAC are advisory only; the GMA does not require that local governments comply with the recommendations set forth in the CTED Minimum Guidelines. See *Twin Falls Inc., Weyerhaeuser Real Estate Co., Snohomish County Property Rights Alliance and Darrell R. Harting v. Snohomish County (Twin Falls)*, CPSGMHB Case No. 93-3-0003c, Final Decision and Order, (Sep.7, 1993) at 21; *Master Builders Association*, at 7.

Conclusion

The Board **affirms** and **upholds** its prior conclusions that RCW 36.70A.110 does not apply to development regulations in general. Consequently, RCW 36.70A.110 does not

²³ See Order on Dispositive Motion (April 2, 2004), at 11.

apply to Arlington Ordinance No. 1304 Section 30.20.060(a), which is a development regulation. Therefore, Legal Issues 2, 3, 4 and 5 are **dismissed with prejudice**.

C. LEGAL ISSUES NO. 6

The Board's PHO set forth Legal Issue No. 6 as follows:

6. Did the City violate RCW 36.70A.040(3), RCW 36.70A.120, and/or RCW 36.70A.130(b) by adopting development regulations in Ordinance No. 1304, specifically Section 13.20.060(a), which fail to ensure that its amendment of development regulations was consistent with and implemented the City's Comprehensive Plan specifically:

a. Page LU-1, third paragraph, which provides the Land Use Element was prepared consistent with Countywide Planning Policies, which include CPPs OD-2 ((a) city to provide for urban governmental services and capital facilities; (b) County to regulate development in unincorporated UGAs). Ordinance No. 1304 conflicts with this provision by effectively denying provision of sewer in the unincorporated UGA.

b. Page LU-2, first paragraph, which provides that the Arlington UGA was selected to ensure that "urban services will be available to all anticipated new development. The location of the boundary for this area was based on land supply needs to meet expected future development demands Public sewer and water . . . will be extended to serve existing and future development over the next 20 years in the planning area." Ordinance No. 1304 conflicts with this policy by effectively precluding development and denying public sewer service in the unincorporated UGA.

c. LUP 2, which requires the City to concentrate new growth within or adjacent to existing development in the UGA. Ordinance No. 1304 conflicts with this policy by effectively precluding development in the unincorporated UGA.

d. LUP 3, which requires the City to strive toward equitable distribution of the costs of growth. Ordinance No. 1304 conflicts with this policy by barring the extension of sewer to development in the unincorporated UGA, thereby precluding a distribution of growth costs.

e. LUP 5, which requires a mix of housing types and densities. Ordinance No. 1304 conflicts with this policy by effectively precluding development in the unincorporated UGA.

f. LUP 12, which requires the City to locate and develop industrial land uses in the vicinity of the airport to take advantage of

transportation systems. Ordinance No. 1304 conflicts with this policy by effectively precluding industrial development in the unincorporated UGA.

g. LUP 13, which relates to land allocation for industrial uses. Ordinance No. 1304 conflicts with this policy by effectively precluding industrial development in the unincorporated UGA where the Comprehensive Plan otherwise anticipates industrial development.

h. LUP 22, which provides that the City was to consider certain criteria in designating commercial lands in the UGA. Ordinance No. 1304 conflicts with this policy by effectively nullifying commercial designations LUP in the unincorporated UGA.

i. LUP 23, which requires the City to encourage clustering commercial activities. Ordinance No. 1304 conflicts with this policy by effectively precluding commercial development in the unincorporated UGA.

j. LUP 32, which provides land use designation categories and densities for each category. Ordinance No. 1304 conflicts with this policy by effectively nullifying land use designations in the unincorporated UGA.

k. Future Land Use Map, Figure LU-4 (Preferred Plan), as amended, which anticipates residential development in the unincorporated UGA at urban densities and which anticipates commercial and industrial development in the unincorporated UGA. Ordinance No. 1304 conflicts with this policy by effectively precluding development in the unincorporated UGA.

l. First Goal, page CF-54, which requires the City to ensure that decisions to provide, extend, or expand capital facilities are coordinated with the goals and policies of the land use element. Ordinance No. 1304 conflicts with this policy by effectively precluding the City's ability to ensure that development in the unincorporated UGA complies with the Land Use Element.

m. Second Goal, page CF-54, which requires the City to guarantee continuous capital facilities and public services to development in the UGA. Ordinance No. 1304 conflicts with this policy by effectively precluding development entirely in the unincorporated UGA.

n. Fourth Goal, page CF-54, which requires the City to ensure that public facilities necessary to support new development be adequate at the time development is ready for occupancy. Ordinance No. 1304 conflicts with this policy by precluding necessary public facilities from being available for new development in the unincorporated UGA.

o. CFP 9, which provides that the City phase in water and sewer services according to land use needs and GMA concurrency requirements. Ordinance No. 1304 conflicts with this policy by effectively precluding any phasing in the unincorporated UGA.

p. CFP 10, which requires the City to extend capital facilities and public services to the boundaries of the UGA. Ordinance No. 1304 conflicts with this policy by refusing to extend sewer service into the unincorporated UGA.

q. CFP 11, which requires the City to connect all new development in the UGA to public sewer and water systems. Ordinance No. 1304 conflicts with this policy by precluding new development in the unincorporated UGA from connecting to the public sewer system.

Applicable Law

RCW 36.70A.040(3)(d) provides in relevant part:

[E]ach city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan.

RCW 36.70A.120 provides in relevant part:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

RCW 36.70A.130(1)(b) provides in relevant part:

Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.²⁴

Position of the Parties

The Petitioner argues that the City of Arlington's development regulations adopted via Ordinance No. 1304 contain goals and policies that are inconsistent with and/or fail to implement the goals and policies of Arlington's own Comprehensive Plan and are therefore inconsistent with several provisions of the GMA that mandate that a City's development regulations be consistent with its Comprehensive Plan, RCW 36.70A.040(3)(d), RCW 36.70A.120, and RCW 36.70A.130. Petitioner's PHB, at 17-18.

²⁴ The citation in the PFR and the PHO was RCW 36.70A.130 (b) which the Board interprets to refer to RCW 36.70A.130 (1) (b).

Petitioner specifically argues that the General Text used in Ordinance No. 1304 is inconsistent with Arlington's Comprehensive Plan because there is not specific policy in the Comprehensive Plan that ties directly to the City's obligations under the CPPs and that Ordinance No. 1304 thwarts Arlington's prior acknowledgement that the entire UGA must be served by sewer and other public facilities and Arlington's agreement to serve the entire UGA with sewer. Petitioner states, "While MBA understands there is not a specific policy it can dispute under these textual portions of Arlington's Comprehensive Plan, this general language should color the Board's understanding of what the actual Comprehensive Plan Policies were designed to achieve." Petitioner's PHB, at 18-20.

Furthermore, Petitioner argues that Arlington's Comprehensive Plan Capital Facility Goals and Policies require the City to provide sewer service to the entire UGA and Ordinance 1304 directly contradicts these goals and policies because under it Arlington will not extend capital facilities and services to the boundaries of the UGA, it will not connect any new development in the unincorporated UGA to the sewer system, and there is nothing in it that allows Arlington to phase development of the sewer system. Petitioner's PHB, at 20-21.

Finally, Petitioner argues that Ordinance No. 1304 conflicts with Arlington's Land Use Policies by denying growth entirely within the UGA, by not allowing new housing to develop in the unincorporated UGA and thereby precluding equitable distribution of growth costs, by denying any housing in the unincorporated UGA and effectively denying urban density, by prohibiting Arlington from locating and developing industrial land uses in the vicinity of the airport, by not allowing land in the unincorporated UGA to be developed for industrial uses at all, and by disallowing any sort of clustering of commercial activities at all. Petitioner's PHB, at 22-25.

The Respondent argues that through Ordinance No. 1304, the City used administrative action/revised development procedures approved in their Comprehensive Plan to ensure that new development within the UGA will meet Arlington's performance standard and therefore, they are compliant with RCW 36.70A.040. Moreover, Petitioner's argument that the annexation requirement will impose a "*de facto*" moratorium is flawed and the record shows that Ordinance No. 1304 is fully consistent with Arlington's Comprehensive Plan. Finally, the Respondent notes that Petitioner has abandoned its arguments related to the First and Second goals on page CF-54 by failing to brief the issues.

In reply Petitioner elaborates on arguments presented in the Prehearing Brief.

Board Discussion

Petitioner concedes that "[while] there is not a specific policy it can dispute under these textual portions of Arlington's Comprehensive Plan, this general language should color the Board's understanding of what the actual Comprehensive Plan Policies were designed

to achieve.” MBA PHB, at 20. The City’s Comprehensive Plan states that sewer and water service will be extended to existing and future development over a twenty year planning period. Core Document No. 1, at LU-2. The Land Use Element of the plan includes a “Growth and Annexation Strategy” that proposes a sequence of residential, commercial and industrial growth and annexation related to the accessibility of sewer and water facilities. *Id.*, at LU-17, Figures L-5, LU-6. The Capital Facilities Element of the plan includes goals to guarantee public services and facilities to development in the UGA in a phased manner, reflecting the sequence of development in the Land Use Element, and adequate to serve development at the time the development is ready for occupancy and use. *Id.*, at CF-54. The policies related to these goals call for the following: phase in sewer service according to future land use needs and to meet GMA concurrency requirements (CFP-9); extend facilities and services to the boundaries of the urban growth area (CFP-10); connect all new development in the urban growth area to public sewer systems (CFP-11). *Id.*, at 55. Taken together, these Comprehensive Plan goals, policies and strategies illustrate what the Plan is to achieve: in respect to sewer service, it calls for the provision of sewer service to the entire UGA in a phased sequence over a twenty year period.

Each of the specific issues a. through q. under Legal Issue No. 6 is based on the premise that Ordinance No. 1304 denies sewer service to the “unincorporated UGA” and thereby denies development in the unincorporated parts of the UGA. The Board has addressed this premise in Section IV-A. *supra*. To reiterate, requiring annexation as a condition of providing sewer service is a valid option which the City may choose in order to transform governance and phase development within the UGA. It is not a denial of sewer service or *de facto* moratorium on development within the UGA.

Petitioner has not shown that Arlington Ordinance No. 1304 is inconsistent with and fails to implement the Arlington Comprehensive Plan, specifically the following goals, policies and provisions cited in Legal Issue No. 6: Page LU-1, third paragraph; Page LU-2, first paragraph; LUP 2, LUP 3, LUP 5, LUP 12, LUP 13, LUP 22, LUP 23, and LUP 32; Future Land Use Map, Figure LU-4 (Preferred Plan), as amended; First Goal, Second Goal, and Fourth Goal, page CF-54; CFP 9, CFP 10, and CFP 11. In fact the City’s action implements the plan provisions.

Therefore, the Board concludes that Ordinance No. 1304 implements the Arlington Comprehensive Plan goals, policies and strategy related to the provision of sewer service to development within the UGA over a twenty year period on a phased basis reflecting the sequence of development in the Land Use Element of the plan. Ordinance No. 1304, amending AMC 13.20.060(a) complies with the requirements of RCW 36.70A.040(3), .120 and .130(1)(b).

Conclusion

The Board concludes that City's adoption of Ordinance No. 1304 was **not clearly erroneous** and **complies** with the provisions of RCW 36.70A.040(3), RCW 36.70A.120, and RCW 36.70A.130(1)(b).

D. LEGAL ISSUES NO. 1

The Board's PHO set forth Legal Issue No. 1 as follows:

1. *Did the City fail to be guided by the goals contained in RCW 36.70A.020, specifically goals (1) and (4) in adopting Ordinance No. 1304, specifically Section 13.20.060(a)?*

Applicable Law

RCW 36.70A.020 provides in relevant part:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

...

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

Position of the Parties

The Petitioner argues that City of Arlington's adoption of Ordinance No. 1304, specifically Section 13.20.060(a), ensures that urban densities cannot be provided in the UGA because no development will be allowed without exception or phasing; that the availability of affordable housing will be entirely eliminated due to the inability to construct new housing in the unincorporated UGA; and that, therefore, the adoption of Ordinance 1304 violates the Growth Management Act due to inconsistencies with the GMA's goals for urban growth, sprawl reduction and sufficient transportation and housing, RCW 36.70A.020 (1) through (4). Petitioner's PHB, at 8-11.

The Respondent asserts that Petitioner fails to show that Arlington's ordinance does not comply with GMA goals 1 and 4. With respect to goal 1, Petitioner notes that the MBA's assertion that Ordinance No. 1304 prohibits development in Arlington's UGA is unsupported and in fact contradicted by the record, which demonstrates the City's history in willingness and ability to annex such territory. Regarding goal 4, Respondent notes Petitioner's concession that it is unable to meet its burden showing that Ordinance No.

1304 does not comply with the affordable housing goal and asks the Board to declines Petitioner's invitation to revisit the issue, noting RCW 36.70A.290(4)'s requirement that the Board's action be based on the record. City's Response, at 12-13.

Board Discussion

Again Petitioner's assertions that Ordinance No. 1304 conflicts with planning goals 1 and 4 in RCW 36.70A.020 are based on the premise that the requirement of annexation to the City as a condition of sewer service by the City is the same as a denial of sewer service to the unincorporated part of the UGA. The Board has addressed this premise in Section IV-A, *supra*, at 5-12, and found this premise to be faulty. Further, the Board has concluded that Ordinance No. 1304 implements Arlington's Plan. *See* discussion of Legal Issue 6, *supra*. Absent reliance on the faulty premise, Petitioner offers no argument as to how the provisions of Ordinance No. 1304 thwart or contradict the guidance provided by Goal 1 or 4.

Conclusions

Petitioner has **failed to carry the burden of proof** in demonstrating that Ordinance No. 1304 fails to comply with GMA Goals 1 and 4. The Board concludes that the City's adoption of Ordinance No. 1304 was guided by, and complies with, goals 1 and 4. Therefore the City's action was **not clearly erroneous** and **complies with** the goals of the Act [RCW 36.70A.020(1) and (4)].

V. ORDER

Based upon review of the Petition for Review, 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 ORDERS:

- Legal issues 2, 3, 4 and 5 are **dismissed with prejudice**.
- The City's adoption of Ordinance No.1304, amending AMC 13.20.60, was **not clearly erroneous**, and **complies with** the requirements of RCW 36.70A.040(3), .120 and .130(1)(b) [Legal Issue 6] and was guided by Goals 1 and 4 RCW 36.70A.020(1) and (4) [Legal Issue 1].

So ORDERED this 14th day of July, 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.