



## **I. BACKGROUND**<sup>2</sup>

On March 1, 2005, the City of Sammamish adopted Ordinance No. 02005-174 (**Net Density Ordinance**) amending the Sammamish Municipal Code regarding density calculations.

On April 29, 2005, Master Builders Association of King and Snohomish Counties, a Washington non-profit corporation; Pacific Land Investment, Inc.; Camwest Development, Inc.; Conner Homes Company; John F. Buchan Construction, Inc.; Lozier at Gramercy Park, LLC; William Buchan Homes, Inc.; Windward Real Estates Services, Inc., (**Petitioners** or **MBA/Camwest**) filed a Petition for Review (**PFR**) challenging Ordinance No. 02005-174, as noncompliant with the urban density requirements of the Growth Management Act (**GMA**). The case was numbered 05-3-0030 and captioned *MBA/Pacific Land v. City of Sammamish*.

The same petitioners had previously filed a Petition for Review challenging City of Sammamish Ordinance No. 02005-169, another Sammamish development regulation (*MBA/Camwest II v. City of Sammamish*, CPSGMHB Case No. 05-3-0027). On May 2, 2005, the Board issued its “Prehearing Order (Case No. 05-3-0027), Notice of Hearing (Case No. 05-3-0030), and Order of Consolidation.” The PFRs were consolidated as CPSGMHB Case No. 05-3-0030c, captioned *MBA/Camwest II v. City of Sammamish*.

On May 9, 2005, the Board convened the Prehearing Conference in the consolidated case by telephone conference call. The Board affirmed the schedule already proposed in *MBA/Camwest II* [Case No. 05-0027] for briefing and hearing, adjusting the date for the Final Decision and Order to 180 days from the filing of the later PFR [Case No. 05-3-0030] pursuant to WAC 242-02-830(3).

On May 13, 2005, the Board issued its Second Prehearing Order establishing the case schedule.

The Board received Respondent’s Index to the Record in Case No. 05-3-0030 on May 31, 2005. The Board received Core Documents – City of Sammamish Comprehensive Plan and City of Sammamish development regulations Ordinance No. 02003-132 (without attachments) – electronically. At the Hearing on the Merits, the Board requested the City to provide paper copies of these documents.

The parties mutually agreed to minor adjustment of brief filing deadlines, with the consent of the Presiding Officer. On June 17, 2005, the Board received Petitioners’ Prehearing Brief (**MBA/Camwest PHB**) with Exhibit A, in 12 parts, and Exhibit B, in two parts. On July 5, 2005, the Board received the City of Sammamish Prehearing Brief (**City Response**) with Exhibits A through I. On July 18, 2005, the Board received Petitioners’ Reply Brief (**MBA/Camwest Reply**) appending the whole of the City’s record, #010-#050, related to this ordinance.

---

<sup>2</sup> The procedural history of this case is set forth in full at Appendix A.

The Hearing on the Merits (**HOM**) was held on July 25, 2005, from 10:00 a.m. until 12:00, in the Seattle Municipal Tower, Conference Room 2190, 700 Fifth Avenue, in Seattle. Present for the Board were Board members Bruce Laing and Ed McGuire, and Presiding Officer Margaret Pageler. Board externs Brad Paul, Sabrina Wolfson, Heather Bowman, and Rachel Henrickson also attended. Duana Kolouskova represented Petitioners and Bruce Disend represented Respondent City of Sammamish. Court reporting services were provided by Barbara Hayden, of Byers & Anderson, Inc. The Board did not order a copy of the transcript.

Having heard arguments on the merits and reviewed the briefs and exhibits, the Board found the issues regarding the two challenged ordinances to be sufficiently discrete to merit segregating the cases for decision. On August 4, 2005, the Board issued its Order Segregating Case No. 05-3-0027 from the Consolidated Case and Final Decision and Order in Case No. 05-3-0027.

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

Petitioners challenge the City of Sammamish's adoption of Ordinance No. 02005-174. Pursuant to RCW 36.70A.320(1), the Ordinance is presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the action taken by the City is 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, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.3201, the Board will grant deference to the City of Sammamish in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA ... cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005). The *Quadrant* decision affirms prior State Supreme Court rulings that "[L]ocal discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals of the GMA.'" *Cooper Point Association v. Thurston County*, 108 Wn.App. 429, 444, 31 P.3d 28 (2001); *affirmed*

*Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3d1156 (2002) and cited with approval in *Quadrant, supra*, at fn. 7.

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review. RCW 36.70A.290. Unchallenged elements of the City's plan or regulations are presumed valid as a matter of law.

### **III. JURISDICTION, PRELIMINARY MATTERS, PREFATORY NOTE AND ABANDONED ISSUES**

#### **A. BOARD JURISDICTION**

The Board finds that the Petitioners' PFR was timely filed, pursuant to RCW 36.70A.290; Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, pursuant to RCW 36.70A.280(1)(a).

#### **B. PRELIMINARY MATTERS**

The Presiding Officer granted a modification of the briefing schedule, as stipulated to by Petitioners and Respondent; accordingly, the City's Response was filed on July 5, 2005, and the MBA/Camwest Reply was filed on July 18, 2005. The location of the Hearing on the Merits was changed to Seattle Municipal Tower, Room 2190, because the assigned conference room at the Board's offices was too small to accommodate the hearing.

In their Prehearing Brief, Petitioners requested to supplement the record with a comment letter which had been submitted to Sammamish City Council at the public hearing concerning Ordinance 02005-174 but which was not included in the City's index to the record. MBA/Camwest PHB, at 2, Exhibit B. Without objection, the Board admitted the exhibit.

#### **C. PREFATORY NOTE AND ABANDONED ISSUE**

In this decision, the Board addresses the legal issues concerning City of Sammamish Ordinance 02005-174 – identified in the Second Prehearing Order (May 13, 2005) as Legal Issues No. 6-9 of Consolidated Case No. 05-3-0030c. The briefs of both parties discuss these issues under the numeration in the PFR – Legal Issues No. 1-4 – and the Board will follow that numeration to avoid confusion.

Legal Issues 1-3 are addressed jointly as those issues address the same question: Whether the City has failed to provide appropriate urban densities to assure urban growth by and through the net density definition adopted in Ordinance 02005-174.

Legal Issue No. 4 was expressly abandoned by Petitioners. MBA/Camwest PHB, at 4.

The Board addresses the question of invalidity separately, as a prayer for relief.

## **IV. LEGAL ISSUES AND DISCUSSION**

### **A. THE CHALLENGED ACTION**

On March 1, 2005, the City of Sammamish adopted Ordinance No. 02005-174 amending the density calculations in its development regulations as follows:

#### **Calculations – Site area used for base density and maximum density floor area calculations.**

(1) All site areas may be used in the calculation of base and maximum allowed residential density or project floor area except as outlined under the provisions of subsection (2) of this section.

(2) Submerged lands, steep slopes and buffers, class 1-3 wetlands and buffers, class 1-3 streams and buffers, and property to be used as a street(s), shall not be credited toward base and maximum density or floor area calculations, provided that subdivisions or short plats that meet the tree retention standards of SMC 21.35.210(2), Tree Retention Incentives, shall be credited ten (10) percent of the environmentally sensitive areas and associated buffers identified above.

The prior regulation had allowed only submerged lands to be deducted from the calculation.

At the time of adoption of the Net Density Ordinance, residential subdivisions and multifamily development had been prohibited for six years in the City of Sammamish, and were still prohibited, under a continuing series of development moratoriums. MBA/Camwest PHB, Exhibit A. Initially, the moratorium was enacted in order to allow the newly-incorporated City of Sammamish to establish its municipal services. The moratorium was then extended while the comprehensive plan was being developed. *Id.*

The Sammamish Comprehensive Plan, adopted September 16, 2003, calculated growth capacity by subtracting environmentally critical areas, roads and a market factor. City Response, Exhibit H. The Land Use Element of the Plan provided, at page III-4, that “the City may consider revising its zoning ordinance by changing the method by which density is calculated, such as a net density system in place of gross density system, or down-zoning parcels encumbered by significant sensitive areas.” City Index #010, Exhibit D, at 2 [attached to MBA/Camwest Reply].

On December 2, 2003, the City adopted new development regulations designed to implement the Sammamish Comprehensive Plan. Ordinance No. 02003-132, Core Document 2. However, with the continued renewal and extension of the development moratorium, these regulations were largely a paper exercise.

The Net Density Ordinance was enacted shortly after adoption of the twelfth moratorium extension. The net density amendment was considered by the City together with three other code amendments – tree retention standards, utility yards, and park structure

setbacks – which were reviewed as a package under SEPA and through the public process. City Index #010, Exhibit A. In this context, little substantive record was developed, although some of these petitioners testified and submitted written comments. MBA/Camwest PHB, Exhibit 2.

## **B. BOARD ANALYSIS**

### **Legal Issues**

Petitioners' Legal Issues are set forth as follows:

*In adopting Ordinance No. 02005-174, did the City violate the Growth Management Act in the following ways?*

*Legal Issue No. 1: Did the City fail to be guided by the goals contained in RCW 36.70A.020, specifically goals (1), (2), and (4), in adopting Ordinance No. 02005-174?*

*Legal Issue No. 2: Does Ordinance No. 02005-174 fail to comply with RCW 36.70A.020 (1), (2) and (4) by failing to satisfy the standards set forth in and providing evidence in the record as required by LMI v. Woodway in order to support densities less than four dwelling units per acre?*

*Legal Issue No. 3: Does Ordinance No. 02005-174 fail to comply with RCW 36.70A.110(2) by precluding urban densities?*

### **Applicable Law**

The GMA provisions relied upon by Petitioners are Goals 1, 2, and 4 of RCW 36.70A.020 and the urban density requirement of RCW 36.70A.110(2).

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.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(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.

RCW 36.70A.110(2) concerns designation of urban growth areas:

(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. ... Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

### **Board Discussion**

#### *Positions of the Parties.*

Petitioners argue that the substantive GMA goals of encouraging urban development and reducing sprawl require cities to enact development regulations that allow urban densities, that is, at minimum, four dwelling units per acre. MBA/Camwest PHB, at 11. Petitioners cite Board precedents establishing that, “absent a critical need to protect unique areas, there is no basis for a city to reduce density below the bright line urban density of 4du/acre.” *Id.* at 13.<sup>3</sup>

Petitioners point to the fundamental GMA premise that urban growth areas are designed to accommodate projected urban growth and ensure that growth targets are achieved. *Id.* at 13. They argue that in this scheme, “any policy or development regulation adopted by a city that does not permit urban densities” falls afoul of the RCW 36.70A.110(2) requirement that “each urban growth area shall permit urban densities.” *Id.*

Petitioners contend that calculating densities on a net basis invites lack of predictability (because cities can change the specifics of net calculations arbitrarily at any time) and inconsistency among jurisdictions. *Id.* at 14. They hypothesize that if cities are allowed to use net density calculation, they will manipulate housing regulations to reduce development “in order to artificially promote larger lots in what should be urbanized areas.” *Id.* at 15. They note that allocating growth targets to cities becomes “fundamentally inconsistent and unfair” when local jurisdictions have widely varying methods of calculating residential densities. *Id.*

---

<sup>3</sup> *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order (June 3, 1994), at 35; *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (October 6, 1995), at 50; *Benaroya, et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072, Final Decision and Order (March 25, 1996), at 32-33; *Rabie v. Burien*, CPSGMHB Case No. 93-3-0005c, Final Decision and Order (October 19, 1998), at 5-6; *LMI v. Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (January 14, 1999), at 24.; *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (July 22, 1996), at 12.

The City responds that the Petitioners have provided no evidence in the record to prove their case, although they are all sophisticated and “well-known members of the Puget Sound area development community.” City Response, at 19. “Generic opposition,” according to the City, is insufficient to meet Petitioners’ burden of proof. *Id.*<sup>4</sup>

The City maintains that its comprehensive plan and development regulations provide sufficient densities to accommodate the growth projected to occur within the next 20 years. *Id.* at 21; Exhibit H.

The City cites a number of Board decisions which it reads to support its argument.<sup>5</sup>

In reply, Petitioners assert that the issues presented are legal; therefore no record evidence is required to support their argument. MBA/Camwest Reply, at 5. According to Petitioners, the only justification the Board accepts for density lower than 4du/acre is record evidence of high value critical areas; the City’s record contains no such evidence. *Id.*; Exhibit 010-050. “Sammamish’s minimal record contains no evidence at all supporting the need to exclude critical areas, buffers, and streets from the calculation of density.” *Id.* at 6.

Petitioners urge that the City can protect critical areas and require road and storm water dedications through direct regulation, without lowering urban densities on a city-wide basis. *Id.* at 7.

Finally, Petitioners argue that allowing a net density calculation will permit Sammamish to establish a pattern of low-density development that may effectively preclude accommodation of future growth in subsequent twenty-year planning cycles: “[I]f Sammamish can force development to occur at lower densities between now and the next time King County issues its housing targets in 2012, King County will be forced to send urban growth elsewhere: Sammamish will have effectively insulated itself from urban growth, ensured larger suburban lots, and increased property values making it a more exclusive, ‘bedroom’ community.” *Id.* at 8.

### Board Discussion

The question whether cities may calculate residential densities based on *net*, rather than *gross*, acreage, without violating the GMA requirement to accommodate urban growth efficiently in urban areas was recently decided by this Board in *Furhiman II v. Bothell*

---

<sup>4</sup> The City doesn’t indicate how Petitioners could possibly provide any factual record concerning the impact of the City’s density calculation rules on urban density where the City has maintained a six-year moratorium on residential development. See generally *MBA/Camwest II v. Sammamish*, CPSGMHB Case No. 05-3-0027, Final Decision and Order (August 4, 2005).

<sup>5</sup> Citing, *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (October 6, 1995); *Benaroya, et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072, Final Decision and Order (March 25, 1996); *LMI v. Town of Woodway*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (January 14, 1999); *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (July 22, 1996); and *Master Builders et al. v. Snohomish County*, CPSGMHB Case No. 01-3-0016, Final Decision and Order (December 13, 2001).

*(Fuhriman II)*, CPSGMHB Case No. 05-3-0025c, Final Decision and Order (August 29, 2005).

In the present case, as in *Fuhriman II*, it is not disputed by any of the parties that 4du/acre is an appropriate urban residential density. The disputed issue is how that urban residential density is calculated. As the Board explained in *Fuhriman II*:

Although the parties have characterized the conflict as being whether urban residential density is calculated on a *gross* acreage basis<sup>6</sup> or a *net* acreage basis,<sup>7</sup> there is no persuasive argument offered indicating that the GMA, or this Board, has ever indicated that urban residential density must be calculated based on *gross* acreage.

The GMA is silent. It does not define urban density or the basis for calculating urban density. This Board, however, has discussed urban density on numerous occasions.

*Id.* at 23-24.

The Board in *Fuhriman II* went on to review its key precedents concerning county calculations of UGAs<sup>8</sup> and city provision for urban development.<sup>9</sup> In these decisions, the Board “acknowledged and recognized that net acreage equated to buildable acreage, which involved the deduction of unbuildable areas (here, rights-of-way and certain critical areas) from the gross acreage.” *Id.* at 25. The Board notes that as a result of these precedents, “the distinction between gross versus net, equating net with buildable, and the 4du/acre designation [appropriate urban density] has been generally accepted as common practice in jurisdictions within the region.” *Id.*

In the cases presented to this Board, the Board has discussed density in terms of a net unit yield on buildable acreage. The present dispute focuses on how the City of Sammamish has chosen to define its buildable acreage. In reviewing this question, the Board recognizes that local governments have discretion in how they plan for growth consistent with the goals and requirements of the Act. *Fuhriman II*, at 26; *see* RCW 36.70A.3201.

Here the City of Sammamish Comprehensive Plan Land Use Element contemplated consideration of enacting net density calculations, and the City’s Comprehensive Plan growth capacity analysis deducted certain critical areas and roads. Petitioners’ argument is focused on the proposition that, as a matter of law, density calculations must be based on gross, rather than net acreage. Petitioners have presented no cogent attack on the

---

<sup>6</sup> Permitted density divided into total acres.

<sup>7</sup> Permitted density divided into buildable acres; buildable meaning gross acreage minus unbuildable acreage.

<sup>8</sup> *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order (June 3, 1994), at 35; *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order (October 6, 1995), at 50.

<sup>9</sup> *Benaroya, et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072, Final Decision and Order (March 25, 1996), at 32-33.

specific deductions – critical areas, critical areas buffers, etc. – in the City’s ordinance. Accordingly, Petitioners have **failed to meet their burden of proof** in demonstrating that the net density ordinance was clearly erroneous.

Consequently, the Board finds that the City’s adoption of the “Net Density Ordinance” [Ordinance No. 02005-174] was **not clearly erroneous**; this decision is within the scope of the City’s discretion and not inconsistent with the goals and requirements of the Act. Legal Issues 1, 2 and 3 are **dismissed**.

Although the Board finds for the City, the Board again notes the concern voiced in *Fuhriman II*:

[D]ifferent definitions of “net buildable area” with varying deductions could be adopted by each jurisdiction. This uncoordinated and inconsistent approach in methodology could create a balkanization in the Central Puget Sound region, and could undermine coordinated planning under the GMA.

*Id.* at 27. The City of Bothell’s deductions at issue in *Fuhriman II* differ from those adopted by the City of Sammamish in the present case.

Within the past month, the Central Puget Sound Board has reviewed and deferred to the discretion of two separate King County cities with differing definitions and methodology for calculating net density. While the Act and the Board acknowledge local discretion, the result of its exercise in the context of this important methodology is that the amount of land available for development within these two similarly-situated King County cities will vary because of their divergent local definitions and methods of calculating net density.<sup>10</sup>

If local discretion discounts the importance of coordinated planning among jurisdictions, and yields a trend of diverging definitions and methodology in calculating density, the ability to manage Central Puget Sound regional growth in a coordinated and predictable manner under the GMA will be adversely affected and the purpose of the Act undermined.

### **Conclusion**

- Petitioners have **failed to carry the burden of proof** in demonstrating non-compliance with RCW 36.70A.020 (1), (2), and (4) and RCW 36.70A.110(2). Petitioners’ Legal Issues 1, 2, and 3 are **dismissed**.

---

<sup>10</sup> The *Fuhriman II* decision suggested that this discrepancy might be resolved through Countywide Planning Policies.

### C. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18.

Here, Petitioners pose a request for invalidity by arguing that the Net Density Ordinance “thwarts” GMA planning goals: “In the end, the goals of urban growth and reducing sprawl found in RCW 36.70A.020(1) and (2) are thwarted by this net density calculation, since it will result in increasingly large UGAs with lower density development, more suburban than urban in nature.” MBA/Camwest Reply, at 9. However, since the Board has not found that the Petitioners’ challenge succeeded in demonstrating noncompliance with the goals and requirements of the Act, **the Board need not address any request for invalidity.**

### V. ORDER

Based upon review of the Petition for Review, the briefing and exhibits submitted by the parties, having conducted the hearing on the merits, considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

- The City of Sammamish’s adoption of Ordinance No. 02005-174 was **not clearly erroneous.**
- Petitioners either **abandoned** issues, **failed to carry their burden of proof**, or the City’s challenged actions were found to **comply** with the various provisions of the Act.
- The Legal Issues posed in the Petition for Review are **dismissed.**

So ORDERED this 22nd day of September 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

Bruce C. Laing, FAICP  
Board Member

---

Edward G. McGuire, AICP  
Board Member

---

Margaret A. Pageler  
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.<sup>11</sup>

---

<sup>11</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

**APPENDIX – A**  
**Procedural Chronology in CPSGMHB Case No. 05-3-0030**

On March 25, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Master Builders Association of King and Snohomish Counties, a Washington non-profit corporation; Camwest Development, Inc.; Conner Homes Company; John F. Buchan Construction, Inc.; Lozier at Gramercy Park, LLC; Pacific Land Investment, Inc.; William Buchan Homes, Inc.; Windward Real Estates Services, Inc., (**Petitioners** or **MBA/Camwest**) challenging the City of Sammamish (**Respondent** or **City**) adoption of Ordinance No. 02005-169 renewing a moratorium on the filing of applications for development permits and subdivision approvals. The matter was assigned Case No. 05-3-0027, and captioned *MBA/Camwest II v. Sammamish*. Board member Margaret A. Pageler is the Presiding Officer for this matter.

On April 8, 2005 the Board received a Notice of Appearance from Bruce Disend of Kenyon Disend, PLLC, on behalf of the City of Sammamish.

On April 4, 2005, the Board issued its Notice of Hearing, setting a Prehearing Conference and establishing a tentative schedule for Case No. 05-3-0027.

The Prehearing Conference was held on April 25, 2005, in the Fifth Floor Conference Room, Union Bank of California Building, 900 Fourth Avenue, Seattle, with Board member Margaret Pageler presiding and Board members Ed McGuire and Bruce Laing in attendance. Duana Kolouskova represented Petitioners, and Bruce Disend represented Respondent City of Sammamish. The parties informed the Board that the case has been filed concurrently in Superior Court.

On April 26, 2005, the Board received Respondent's Index to the Record. On April 27, 2005, the Board received Petitioners' corrected Petition for Review, correcting scrivener's errors, as discussed in the Prehearing Conference.

On April 29, 2005, the Board received a Petition for Review (**PFR**) from the same eight petitioners challenging the City of Sammamish's adoption of Ordinance No. 02005-174, which amends development regulations regarding residential density calculations. The matter was assigned Case No. 05-3-0030 and captioned *MBA/Pacific Land v. City of Sammamish*. On May 2, 2005, the Board issued its "Prehearing Order (Case No. 05-3-0027), Notice of Hearing (Case No. 05-3-0030), and Order of Consolidation." The PFRs were consolidated as CPSGMHB Case No. 05-3-0030c, thereafter captioned as *MBA/Camwest II v. City of Sammamish*. A Prehearing Conference in the consolidated case was set for 2:00 p.m. May 9, 2005, by telephone conference call, later rescheduled to 4:00 p.m. for the convenience of the parties.

On May 9, 2005, the Board convened the Prehearing Conference in the consolidated case. Board members Margaret Pageler, Ed McGuire and Bruce Laing, counsel for Petitioners Duana Kolouskova, and City Attorney Bruce Disend participated in the telephone

conference. The Board discussed with the parties the requirements for filing Respondent's Index to the record with respect to the first PFR, the Board concurring with Petitioner that the Index requirement is not satisfied by merely producing the Ordinance at issue. The Respondent's Index to the Record for the first matter is due May 23, 2005 and for the second matter is due May 31, 2005. The Board affirmed the schedule already proposed in *MBA/Camwest II* for briefing and hearing, adjusting the date for the Final Decision and Order to 180 days from the filing of the later PFR. There will be no motions calendar for *MBA/Pacific Land*; any motions to supplement the record or dispositive motions in the *MBA/Pacific Land* matter will be submitted concurrent with the briefs on the merits. Based on the parties' discussions, no dispositive motions were anticipated.

On May 13, 2005, the Board received Respondent City of Sammamish's Notice of Appearance in the Case No. 05-3-0030. On May 13, 2005, the Board issued its Second Prehearing Order establishing the case schedule.

The Board received Respondent's Index to the Record in Case No. 05-3-0027 on May 24, 2005, electronically and on May 25, 2005, in hard copy. The Board received Respondent's Index to the Record in Case No. 05-3-0030 on May 31, 2005, electronically and in hard copy on June 2, 2005. The Board received Core Documents – City of Sammamish Comprehensive Plan and City of Sammamish development regulations Ordinance No. 02003-132 (without attachments) – electronically. At the Hearing on the Merits, the Board requested the City to provide paper copies of these documents.

The parties mutually agreed to minor adjustment of brief filing deadlines, with the consent of the Presiding Officer. On June 17, 2005, the Board received Petitioners' Prehearing Brief (**MBA/Camwest PHB**) with Exhibit A, in 12 parts, pertaining to Ordinance No. 2005-169, and Exhibit B, in two parts, pertaining to Ordinance No. 02005-174. On July 5, 2005, the Board received the City of Sammamish Prehearing Brief (**City Response**) electronically, followed by hard copy the next day with Exhibits A through I. On July 18, 2005, the Board received Petitioners' Reply Brief (**MBA/Camwest Reply**) appending the whole of the City's record on Ordinance No. 02005-174, Index #010 - #050.

The Hearing on the Merits (**HOM**) was held on July 25, 2005, from 10:00 a.m. until 12:00, in the Seattle Municipal Tower, Conference Room 2190, 700 Fifth Avenue, in Seattle. Present for the Board were Board members Bruce Laing and Ed McGuire, and Presiding Officer Margaret Pageler. Board externs Brad Paul, Sabrina Wolfson, Heather Bowman, and Rachel Henrickson also attended. Duana Kolouskova represented Petitioners and Bruce Disend represented Respondent City of Sammamish. Court reporting services were provided by Barbara Hayden, of Byers & Anderson, Inc. The Board did not order a copy of the transcript.

On August 4, 2005, the Board issued its Order Segregating Case No. 05-3-0027 from the Consolidated Case and Final Decision and Order in Case No. 05-3-0027. The remaining issues, now segregated, are decided as *MBA/Pacific Land v. City of Sammamish*, CPSGMHB Case No. 05-3-0030.