CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

MASTER BUILDERS ASSOCIATION OF KING AND SNOHOMISH COUNTIES, et al.,	)	**CPSGMHB Consolidated Case No. 05-3-0030c**
Petitioners,	)	
v.	)	**ORDER SEGREGATING CASE NO. 05-3-0027 FROM THE CONSOLIDATED CASE and FINAL DECISION AND ORDER IN CASE NO. 05-3-0027**
CITY OF SAMMAMISH,	)	
Respondent.	)	***(MBA/Camwest I)***

SYNOPSIS

On February 1, 2005, the City of Sammamish adopted Ordinance No. 02005-169 ***(Moratorium Ordinance)****. The Moratorium Ordinance was the twelfth consecutive six-month extension of a moratorium on applications for development approvals and permits in the City of Sammamish. Originally enacted in May 1999, prior to the City's incorporation, the moratorium was necessary at the outset to give the new City time to hire staff and adopt a comprehensive plan and development regulations. The City's comprehensive plan was adopted in September 2003, and development regulations, except for critical areas ordinances, were adopted in December 2003. The City continued to extend the moratorium every six months.*

The Board found that the Moratorium Ordinance is a development regulation within the meaning of RCW 36.70A.030(7). The Board found that the continuing moratorium is no longer an interim control under RCW 36.70A.390, but is a development regulation that is required to be consistent with and implement the City's comprehensive plan, pursuant to RCW 36.70A.040(3).

The Board was persuaded that the City's action, in adopting Ordinance 02005-169 was ***clearly erroneous*** *and* ***non-compliant with the GMA****. The Board concluded that in enacting the Moratorium Ordinance, the City failed to be consistent with and implement its comprehensive plan,* ***failed to comply with SEPA****, and failed to consider and be guided by the goals of the GMA. The Board entered an order of non-compliance and* ***remanded*** *the Moratorium Ordinance to the City. Concluding that the Moratorium Ordinance substantially interferes with Goals 1, 2, 4, and 7 of the GMA, the Board* ***invalidated*** *the Ordinance.*

I. BACKGROUND[1]

On March 25, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) [Case No. 05-3-0027] from Master Builders Association of King and Snohomish Counties; 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**). Petitioners challenge the City of Sammamish (**Respondent** or **City**) adoption of Ordinance No. 02005-169 (**Moratorium Ordinance**) which is the twelfth renewal of a moratorium on the filing of applications for development permits and subdivision approvals. Petitioners contend that the Moratorium Ordinance does not comply with the Growth Management Act (**GMA or Act**) or the State Environmental Policy Act (**SEPA)**.

On April 25, 2005, the Board conducted the Prehearing Conference in the Fifth Floor Conference Room, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board members Ed McGuire and Bruce Laing in attendance. Duana Kolouskova represented Petitioners, and Bruce Disend represented Respondent City of Sammamish. At the prehearing conference the parties informed the Board that the Petitioners have concurrently filed a challenge to the City's moratorium in superior court on constitutional and other grounds.

On April 29, 2005, the Board received a Petition for Review (**PFR**) [Case No. 05-3-0030] from the same eight petitioners challenging the City of Sammamish's adoption of Ordinance No. 02005-174 (**Net Density Ordinance**), which amends development regulations regarding residential density calculations, as noncompliant with the **GMA**. The PFRs were consolidated as CPSGMHB Case No. 05-3-0030c, hereafter captioned as *MBA/Camwest v. City of Sammamish.*

The Board convened the Prehearing Conference in the consolidated case by telephone conference call on May 9, 2005. The Board affirmed the schedule already proposed in *MBA/Camwest* for briefing and hearing, adjusting the date for the Final Decision and Order to 180 days from the filing of the later PFR, pursuant to WAC 242-02-830. On May 13, 2005, the Board issued its Second Prehearing Order establishing the amended case schedule.

The Board received Respondent's Index to the Record in Case No. 05-3-0027 on May 24, 2005, and 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] – electronically. At the Hearing on the Merits, the Board requested the City to provide paper copies of these documents. The Board received the Comprehensive Plan on July 29, 2005.

[1] See Appendix A for the complete procedural history of this case.

The Parties agreed to adjustment of brief filing deadlines, with the consent of the Presiding Officer. The briefs of the parties are referenced herein as follows: Petitioners' Prehearing Brief (**MBA/Camwest PHB**); Sammamish Prehearing Brief (**City Response**); and Petitioners' Reply Brief (**MBA/Camwest Reply).**

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.

II. ORDER SEGREGATING CPSGMHB Case No. 05-3-0027

Consolidated Case No. 05-3-0030c is the consolidation of two PFRs filed by the same set of eight petitioners challenging two different ordinances of the City of Sammamish. Case No. 05-3-0027 challenged Ordinance No. 02005-169 (the Moratorium Ordinance) and Case No. 05-3-0030 challenged Ordinance No. 02005-174 (the Net Density Ordinance). The cases were consolidated for briefing and hearings. (Second Prehearing Order, May 13, 2005) The due date for the Final Decision and Order in the consolidated case is October 26, 2005.

Because the issues in the two PFR's are readily severable, and in order to avoid undue delay in resolving the first matter, the Board **segregates** the MBA/Camwest PFR challenging Ordinance 02005-169 from the consolidated case. The MBA/Camwest PFR filed March 25, 2005, is hereby **reassigned CPSGMHB Case No. 05-3-0027** and hereafter this case is captioned as *MBA/Camwest I v. City of Sammamish.*

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

Petitioners challenge the City of Sammamish adoption of Ordinance No. 02005-169 (Moratorium Ordinance). Pursuant to RCW 36.70A.320(1), the Moratorium 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. The Board's decision does not extend to unchallenged elements of the City's plan or regulations, which are presumed valid as a matter of law.

IV. JURISDICTION, PRELIMINARY MATTERS AND PREFATORY NOTE

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[2] 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,

[2] *See* Section IV, D, Legal Issue 1, and Legal Issue 2, *infra*.

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.

C. PREFATORY NOTE

In this decision, the Board addresses the legal issues concerning City of Sammamish Ordinance 02005-169 (Moratorium Ordinance) – Legal Issues No. 1-5 in PFR Case No. 05-3-0027, now segregated from Consolidated Case No. 05-3-0030c.

- Legal Issues No. 1 and 2 go to a determination of the Board's subject-matter jurisdiction.
- Legal Issues 3 and 4 address the Planning Goals of the GMA, first asking whether the City considered the planning goals and then whether the Moratorium Ordinance substantially interferes with the goals.
- Legal Issue No. 5 concerns SEPA compliance.

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

V. LEGAL ISSUES AND DISCUSSION

A. THE CHALLENGED ACTION

The City of Sammamish enacted a moratorium on development applications in 1999, prior to incorporation of the City. The moratorium has been extended every 6 months for 6 years, with some slight changes. What *hasn't* changed is the City's prohibition on applications for subdivisions, short plats, and multi-family dwellings.

The most recent extension was Ordinance No. 02005-169 (the Moratorium Ordinance), adopted February 1, 2005, and titled: "An Ordinance of the City of Sammamish, Washington, relating to Land Use and Zoning, amending Ordinance No. 2004-156, to extend a moratorium on the filing of certain specified applications for development permits and approvals, within the corporate limits of the City of Sammamish." The moratorium is extended until August 14, 2005.

Section 2 of the Moratorium Ordinance prohibits the filing of applications for

- subdivision approvals,
- short subdivisions of more than two lots,
- multi-family dwellings (apartments, townhouses, condominiums, mobile home parks, group residences) including building permits,
- rezones, and
- communications facilities. Section 2.

Ordinance No. 02005-169 was challenged by a consortium of home builders and property owners who brought a GMA and SEPA challenge to the Central Puget Sound Growth

Management Hearings Board as well as filing an action against the City in superior court on other grounds.

The Moratorium Ordinance, by its terms, is an extension of the moratorium first enacted on May 19, 1999, prior to incorporation of the City of Sammamish, by **Resolution No. R99-04**. As authorized by RCW 35.02.137, the newly elected Sammamish City Council adopted R99-04 to impose a moratorium on filing of development applications with King County during the governance transition.

The City officially incorporated on August 31, 1999. On August 25, the City Council adopted **Ordinance No. 099-28**, "Establishing a moratorium on the filing of applications for development permits and approvals within the corporate limits of the City of Sammamish."[3] Ordinance 099-28 was a six-month moratorium, effective August 31, 1999, based on the authority of RCW 35A.63.220. Ordinance 099-28 rested on two findings: that the City Council needed time to develop the necessary land use plans and regulations to comply with state law, and that "the City currently has no permanent staff and needs time to hire staff in order to carry out the business of the City." Ord. 099-28, at 2.

Ordinance 099-28 prohibited application for subdivisions and short plats, site plan approvals, rezones, building permits, multi-family projects, conditional use permits, communications facilities, commercial construction, and shoreline permits. Single family homes on already-platted lots were exempt from the moratorium.[4] Ord. 099-28, Section 3.d. There was also a hardship exemption which required approval by City Council. *Id.*

Ordinance 02000-51 (February 16, 2000) extended the moratorium for six months. This time the findings spoke in more detail about the process of developing GMA-compliant plans and regulations for the new City: "[I]n accordance with the State Growth Management Act, the city is diligently pursuing a planning process that will result in the adoption of the City's first comprehensive plan." Ordinance 02000-51 made two other changes in the moratorium: acknowledging and allowing projects already fully vested under King County regulations [Section 3] and allowing projects with time-limited water availability certificates.[5]

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[3] The moratorium extension ordinances are appended to the MBA/Camwest PHB as Exhibit A and are referenced herein by ordinance number.

[4] Other exemptions were allowed for churches, schools, health services, parks and recreation, streets, utilities and law enforcement. Ord. 099-28, Sec. 3.

[5] A recognized hardship was based on water certificates. For some of the years in question, the Sammamish water and sewer district was issuing very limited water availability certificates, and these were issued by lottery and expired in a given time. So a project proponent could claim a hardship if not allowed to build prior to the expiration of a water availability certificate. Ordinance 02000-51 recites: "[B]ased upon the hardship exemptions granted by the City Council to date, the Council finds that it would be appropriate to establish a categorical exemption from the terms of the moratorium for property owners holding water permits whose right to connect to a public water supply will lapse unless exercised during the term of this moratorium." Ord. 02000-51, at 2.

Ordinance 02000-68 (August 16, 2000) extended the moratorium six months with no new findings or changed provisions.

Ordinance 02001-77 (February 7, 2001) recited that the City "is adhering to an adopted work plan" for adoption of a comprehensive plan. The preamble to the Ordinance also stated that the City was processing applications that had vested under King County prior to incorporation and also processing building permits for single family homes on existing platted lots.[6] Ord. 02001-77, at 2.

Ordinance No. 02001-86 (August 1, 2001) extended the moratorium for six months with no new findings but one additional categorical exemption – for residential development at very low densities. Section 3.j exempts short subdivisions of no more than two lots, tracts or parcels within the R-1 and R-4 zoning districts.

Ordinance No. 02002-98 (February 5, 2002) extended the moratorium another six months with the recital that the City Council intends to adopt a comprehensive plan by the end of the year.

Ordinance No. 02002-106 (August 6, 2002) incorporated the new GMA mandate to adopt regulations concerning the siting of essential public facilities, including "secure community transition facilities" for sexual offenders. Secure community transition facilities were added to the list of prohibited applications, and the moratorium was extended another six months.

Ordinance No. 02003-120 (February 4, 2003) extended the moratorium with the recital that the Planning Advisory Board had requested more time to complete the comprehensive plan and development regulations.

Ordinance No. 02003-127 (July 1, 2003) extended the moratorium again while the City Council held hearings and work-study sessions to complete the comprehensive plan. The City of Sammamish Comprehensive Plan was adopted on September 16, 2003 (Ordinance 02003-130), and a new development code was enacted on December 2, 2003 (Ordinance 02003-132), but the moratorium on development applications was not lifted.

Ordinance No. 02004-135 (February 3, 2004) extended the moratorium[7] for another six months despite completion of the comprehensive plan and enactment of th new development code, based on the stated need for "updated development regulations related to land use performance standards, including concurrency management." Ord. 02004-135, at 4.

Ordinance No. 02004-156 (July 20, 2004) extended the moratorium for another six months with no new findings or changed provisions. *There was still a prohibition on filing of applications for development permits including subdivisions, short plats, site*

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[6] Ordinance 02001-77 also incorporated an exemption for certain wireless telecommunications facilities. Section 3.i.

[7] A new categorical exemption was added for dock construction. Section 3.k.

plan approvals, multi-family dwellings, rezones, building permits, conditional use permits, commercial construction in business or office zones, shoreline substantial development permits, and secure community transition facilities. Ord. 02004-156, Sec. 2.

Ordinance No. 02005-169 (February 1, 2005) - the moratorium extension challenged here - recites the City Council's determination that "continuing the moratorium for commercial development, certain rezones, conditional and special use permits, and shoreline substantial development permits" is no longer necessary, but the moratorium on subdivisions and multi-family development is still needed "in order to ensure that adequate development standards and growth controls are in place" prior to allowing such applications. By its terms, this moratorium expires August 14, 2005.

B. LEGAL ISSUES

The Board's Prehearing Order sets forth the Legal Issues with respect to Ordinance 02005-169:

In adopting Ordinance No. 02005-169, did the City violate the Growth Management Act, specifically as follows:

> *Legal Issue No. 1:* Whether Ordinance No. 02005-169 is a development regulation under 36.70A.030(7)?
>
> *Legal Issue No. 2:* Whether Ordinance No. 02005-169 fails to be an interim regulation under 36.70A.390?
>
> *Legal Issue No. 3:* Whether the City failed to adequately consider, be guided by, and adopt findings of fact and conclusions of law relating to any of the goals contained in RCW 36.70A.020?
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> *Legal Issue No. 4:* Whether the City in adopting Ordinance 02005-169 failed to be guided by the following specific GMA goals found in RCW 36.70A.020: (1) Urban Growth; (2) Reduce Sprawl; (3) Transportation; (4) Housing; (5) Economic Development; (6) Property Rights; (7) Permits; (9) Open Space and Recreation; (10) Environment; (11) Citizen Participation and Coordination; (12) Public Facilities and Services.
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> *Legal Issue No. 5:* Whether the City failed to perform appropriate and adequate environmental review under RCW 43.21C RCW, specifically RCW 43.21C.030, and WAC 197-11-310 and 197-11-060?

C. APPLICABLE LAW

Matters subject to Board review are set forth in **RCW 36.70A.280(1)** which provides that "A growth management hearings board shall hear and determine only those petitions alleging … [that a] city planning under this chapter is not in compliance with the

requirements of this chapter … or chapter 43.21C RCW [SEPA] as it relates to … development regulations … adopted under [the GMA].”

RCW 36.70A.030(7) defines “development regulations” as follows:

> (7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

RCW 36.70A.390 makes the following provision with respect to moratoria:

> A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section *may be effective for not longer than six months*, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control *may be renewed for one or more six-month periods* if a subsequent public hearing is held and findings of fact are made prior to each renewal.

RCW 36.70A.040 provides the framework and deadlines for cities and counties to adopt their comprehensive plans and consistent development regulations to implement their plans. Subsections (3), (4), and (5) contain virtually identical provisions to ensure that plans and regulations are consistent and contemporaneous. The relevant language of Subsection (3) is as follows:

> (3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: … (d) if the county has a population of fifty thousand or more, the county and *each 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* on or before July 1, 1994, …. Any county or city subject to this subsection *may obtain an additional six months before it is required to have adopted its development regulations* by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

RCW 36.70A.020 adopts a set of goals "to guide the development and adoption of comprehensive plans and development regulations" by cities and counties planning under the GMA. Petitioners contend that the City has ignored and failed to be guided by the Goals of the GMA which are set forth verbatim in the discussion of Legal Issues 3 and 4, below.

D. DISCUSSION AND ANALYSIS

Legal Issue 1: Is the moratorium a development regulation as defined in the GMA [RCW 36.70A.030(7)]?[8] ***YES***

Petitioners argue that the City's six-year moratorium on subdivisions, short plats and multi-family housing is a development regulation subject to hearing before this Board. Petitioners point to language in the Moratorium Ordinance itself indicating that it is intended to prevent application for specified types of developments and permits. MBA/Camwest PHB, at 4. Petitioners contend that the precise goal of a moratorium is to regulate development. MBA/Camwest Reply, at 1.

Petitioners cite to *City of Seattle v. Yes for Seattle*, 122 Wn.App. 382, 93 P.3d 176 (2004). In *Yes for Seattle*, the Court held that a proposed citizen initiative containing building requirements and stream-restoration mandates was a development regulation within the scope of the GMA. "All enactments that fall under the GMA definition of development regulations are subject to the requirements of the GMA," the Court said. Allowing "cities to enact development regulations outside the requirements of the GMA would defeat the comprehensive nature of the GMA and frustrate its purpose." 122 Wn.App. at 393.

The City responds that "the City's moratorium is not a development regulation, [and therefore] the Board lacks jurisdiction to rule upon its validity." City Response, at 5-6, citing RCW 36.70A.280(1). The City argues that the legislature's failure to include "moratoria" in the list of development controls itemized in RCW 36.70A.030(7) was an intentional omission signaling that moratoria are not within the class of "development regulations" subject to Board review. *Id*. at 5.

The Board looks to the GMA definition of development regulations in RCW 36.70A.030(7):

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[8] *Legal Issue No. 1:* Whether Ordinance No. 02005-169 is a development regulation under 36.70A.030(7)?

> "Development regulations" or "regulation" means the *controls placed on development* or land use activities by a county or city, *including, but not limited to*, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, *subdivision* ordinances, and binding site plan ordinances together with any amendments thereto.

Sammamish for six consecutive years has "placed controls on development" that prohibit application for residential subdivisions, short plats, and multi-family housing, among other land use activities. These controls fall squarely within the statutory definition of development regulations. Even if the "development regulation" definition did not expressly include subdivision regulations, the Board would read the phrase "including, but not limited to," as interpreted by the Court in *Yes for Seattle*, as requiring a broad application.[9]

The Board finds that Ordinance 02005-169 is a development regulation under the GMA.

Legal Issue 2: Is Sammamish's moratorium an interim regulation under RCW 36.70A.390?[10] ***NO.***

Having found that the Sammamish moratorium is a development regulation, the Board must next determine whether it is an interim control under RCW 36.70A.390.

Petitioner argues that the GMA allows for only "temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur." MBA/Camwest PHB, at 5, *citing SHAG v. City of Lynnwood*, CPSGMHB Case No. 01-3-0014, Order on Motions (Aug. 3, 2001). Petitioners acknowledge that RCW 36.70A.390 allows a six-month moratorium on development, with "one or more" extensions. Petitioners even concede that the initial justification for the City of Sammamish moratorium – that the City needed time to get its local government up and running and to develop its comprehensive plan – is "likely to fall within the purview of RCW 36.70A.390." *Id*. at 6.

However, reviewing the six-year history of twice-yearly moratorium extensions, Petitioner concludes that the City's rationale has become merely a pretext for stopping urban development.

> As should be apparent from this history, there is simply no clear end in sight to what has become a permanent moratorium. The city has absolutely

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[9] The City's reliance on *Landmark Development v. City of Roy*, 138 Wn.2d 561, 980 P.2d 1234 (1999), is misplaced. The City of Sammamish tries to read the *Landmark* case as meaning that because "moratoria" are expressly dealt with in RCW 36.70A.390, the omission of an express reference to moratoria in the definition of "development regulations" must signify that moratoria are not development regulations. *Landmark* involved parallel statutory schemes for determining utility cost recovery, where the statute required offsets of federal grants by certain classes of utilities but was silent as to the treatment of federal grants by other classes of utilities. The case is not analogous.

[10] *Legal Issue 2:* Whether Ordinance No. 02005-169 fails to be an interim regulation under 36.70A.390?

> no legitimate basis for the moratorium at this point except to artificially stop urban development for as long as possible. The City adopted its Comprehensive Plan and development regulations in 2003. However, instead of lifting the moratorium, the City perpetuated it for another two years and running to 'update' its plan and development regulations *that have never been implemented.*

Id. at 7. Petitioners appeal to *Byers v. Board of Clallam County Commissioners (**Byers**)*, 84 Wn.2d 796, 529 P.2d 823 (1974), a pre-GMA case where the State Supreme Court held that an "interim zoning" ordinance effective for four years is a "misnomer."

The City counters that Petitioners' challenge is too late. According to the City, the time to challenge the moratorium was when the moratorium was first adopted, not six years later.[11] City Response, at 6-7, *citing Montlake Community Club v. Central Puget Sound Growth Management Hearings Board*, 110 Wn.App. 731, 43 P.3d 57 (2002); *1000 Friends v. Snohomish County*, CPSGMHB Case No. 04-3-018, Final Decision and Order (Dec. 13, 2004), at 5.

The City asserts that adopting and extending moratoria are actions within the broad legislative grant of power to municipalities and are discretionary actions that must be upheld by the Board under the deference to local jurisdictions which the GMA requires. *Id*. at 9. The City contends that, because each ordinance extending the moratorium was based on an "extensive public participation process" and a determination that "keeping the moratorium in place is in the public interest," the action was not clearly erroneous. *Id*. at 10.

The City further argues that a six-year moratorium is not unreasonable.[12] In any event, the City states, any harm to Petitioners is purely speculative.[13]

The Board finds the Court's reasoning in *Byers* persuasive. There the Court looked beyond the title of the challenged regulation and found that although it was titled an "interim" zoning ordinance, because it was scheduled to be *effective for four years*, the title was a "misnomer." The Court held that the zoning should have been adopted pursuant to the procedural requirements of the Planning Enabling Act [RCW 36.70] and SEPA [RCW 43.21C]. *Byers*, 84 Wn.2d at 800. The Court said that "interim zoning" is

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[11] The City also argues that the MBA appeal is barred by *laches*. City Response, at 7-8. *Laches* is an equitable defense which may be asserted in the courts, but the Board has no equitable jurisdiction and will not address this question.

[12] The City cites three examples which are readily distinguishable: a six-year "moratorium" that may be imposed as a penalty under the Forest Practices Act; Seattle's long-running moratorium on new strip clubs, which has never been legally tested or brought before this Board; and *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002), a takings case. In *Tahoe-Sierra*, the Court determined that a 32-month moratorium was not an unreasonable length of time for adoption of a comprehensive plan. Here, however, the Sammamish comprehensive plan has been adopted (after 52 months of moratorium) and yet the moratorium continues to be extended.

[13] This argument is grounded in constitutional questions that are not within the purview of the Board. A challenge before the Board does not require any showing of actual injury or individual harm but rather is based on allegations of failure to comply with the Growth Management Act.

"meant only to be a temporary protective measure" and is not intended to be used "for a relatively extended period of time." *Id.*

Under the GMA, RCW 36.70A.390 states that a moratorium or interim zoning "may be renewed for one or more six-month periods." The statute does not indicate how many extensions it takes before a moratorium becomes, in effect, a permanent regulation. However, the Board views Sammamish's most recent renewal of its moratorium in the light of its actions over the past six years since incorporation. The Board concurs with Petitioners: "What emerges is that Sammamish has been under a comprehensive moratorium on subdivisions and short subdivisions (i.e., virtually all residential land development) since incorporation. The moratorium has in fact become a permanent fixture in Sammamish." MBA/Camwest Reply, at 2.

The Board recently had opportunity to review in detail the GMA timelines for adoption of comprehensive plans and development regulations. *1000 Friends/KCRP v. Kitsap County*, CPSGMHB Case. No. 04-3-0031c, Final Decision and Order (June 28, 2005), at 30-35. The Growth Management Act, from its inception, incorporated the principle that local development regulations must be consistent with and implement local comprehensive plans. RCW 36.70A.040(3), (4), and (5) contain identical language: cities required to plan under the GMA are subject to statutory deadlines which mandate a date by which both initial comprehensive plans and consistent development regulations to implement the plans must be in place. A city may obtain an additional six months to adopt its development regulations by submitting a letter to CTED, prior to the deadline, which notifies CTED of its need for more time.

Neither Petitioners nor Sammamish have provided the Board with any indication that Sammamish asked CTED for an extension of time to adopt its development regulations. In fact, Sammamish adopted development regulations in December 2003; Ordinance 02003-132, by its title "amends the municipal code to adopt new development regulations in order to implement the Sammamish Comprehensive Plan." The ordinance adopts code chapters on clearing and grading, subdivisions, short plats, binding site plans, permitted use, and development standards, along with the official zoning map. Nevertheless, Sammamish has continued to extend the moratorium so that its development regulations concerning most residential development have never been implemented. The City contends that it is still working on adoption of critical areas ordinances, "performance standards" and "growth controls."

The Board finds that the continuing moratorium on project applications is counter to the GMA requirement that "each city …shall adopt … development regulations that are consistent with and *implement* the comprehensive plan" by no later than six months after adoption of the Plan. A city may not continually refuse to implement its plan through the device of a moratorium. The City's moratorium is in effect a permanent control on development in the City of Sammamish and **does not comply** with RCW 36.70A.390.

The Board is persuaded that the City's action, in failing to implement development regulations consistent with and reasonably concurrent with adoption of its comprehensive plan, is **clearly erroneous**. The Board finds the City's continued extension of a

moratorium on development applications, in lieu of implementing its comprehensive plan, is **clearly erroneous** and **does not comply** with the GMA.

Legal Issues 3 and 4: Did the City adopt findings, consider, or was it guided by the Goals of the GMA?[14] ***NO.***

Petitioners contend that the Moratorium Ordinance ignores the GMA planning goals. MBA/Camwest PHB, at 8. According to Petitioners, the City did not weigh the goals in extending the moratorium and "did not even pay lip service" to the GMA goals in its findings in support of the Ordinance. *Id*.

The City responds that the findings in the Moratorium Ordinance are replete with references to the Growth Management Act, the City's comprehensive plan and development regulations, and to the City's purpose of managing and controlling growth. City Response, at 14-16. The "Whereas" provisions of the Ordinance thus demonstrate the "the city council was fully aware that they were acting under the guidance of the GMA." *Id.* at 14. The City also contends that all the GMA Planning Goals are addressed in the City's Comprehensive Plan and will be implemented when the development regulations are completed and become effective. *Id*. at 16.

Petitioners reply that a simple recitation of the words "Growth Management Act," "Comprehensive Plan," and "development regulations" in the preamble to an ordinance does not satisfy the requirement that a city be guided by the goals of the GMA. MBA/Camwest Reply, at 4.

The Board concurs with Petitioners. *There is no evidence in the Moratorium Ordinance itself that the City explicitly considered or weighed any of the GMA planning goals*. Neither party has provided the Board with any staff memoranda, Council meeting minutes or other documentation in the record indicating any review or consideration of GMA goals as a part of the decision to extend the moratorium.

Nevertheless, in giving the City the benefit of the doubt, as is required by RCW 36.70A.3201, the Board reviews the Moratorium Ordinance in light of each of the GMA Goals cited by Petitioners.

Goal 1. Urban Growth.

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

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[14] *Legal Issue No. 3:* Whether the City failed to adequately consider, be guided by, and adopt findings of fact and conclusions of law relating to any of the goals contained in RCW 36.70A.020? *Legal Issue No. 4:* Whether the City in adopting Ordinance 02005-169 failed to be guided by the following specific GMA goals found in RCW 36.70A.020: (1) Urban Growth; (2) Reduce Sprawl; (3) Transportation; (4) Housing; (5) Economic Development; (6) Property Rights; (7) Permits; (9) Open Space and Recreation; (10) Environment; (11) Citizen Participation and Coordination; (12) Public Facilities and Services?

The Moratorium Ordinance continues to extend a six-year prohibition on permit applications for residential development in the City of Sammamish. The Board finds that this prohibition is not guided by the goal of "encouraging development in urban areas."

Goal 2. Reduce Sprawl.

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

The Sammamish moratorium from its inception has prohibited applications for any form of multifamily housing or new subdivisions. However, beginning in the third year (August, 2001) of the continuing moratorium, Sammamish exempted from the moratorium "short subdivisions of no more than two lots, tracts or parcels within the R-1 and R-4 zoning districts." Ord. 02001-86, Section 3.j. Sammamish calculates a density of 0.5 homes per acre in the R-1 zone and 3.0 homes per acre in the R-4 zone. City Response, Ex. H, at E-7. These yields do not meet the accepted regional standard of four homes per acre for urban residential density.[15] The Board finds that by prohibiting residential development at urban densities and by allowing only sprawl development, the City was not guided by the goal of reducing "the inappropriate conversion of undeveloped land into sprawling low-density development."

Goal 3, Transportation; Goal 9, Open Space and Recreation; Goal 12, Public Facilities and Services.

> (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
>
> (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
>
> (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.

Permits and approvals for park and recreational uses (Section 3.a), permits and approvals for government services including streets, utilities and surface water improvements (Section 3.c), and permits and approvals for law enforcement, emergency medical, and disaster relief facilities (Section 3.f) have been exempted from the Sammamish moratorium from its inception.. Petitioners have presented no argument showing why the moratorium, with these exemptions, is not guided by Goals 3, 9, and 12. The Board finds

[15] *See generally, Kaleas v. City of Normandy Park*, CPSGMHB Case No. 05-3-0007c, Final Decision and Order (July 19, 2005); *1000 Friends VII v. Issaquah*, CPSGMHB Case No. 05-3-0006, Final Decision and Order (July 20, 2005).

that Petitioners have failed to carry their burden of proving non-compliance with these goals.

Goal 4. Housing.

> (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.

The Moratorium Ordinance from the outset in 1999 has exempted single-family homes on already-platted lots but has prohibited applications for subdivisions, short plats or multi-family housing. Since 2001, short plats for no more than two homes have been allowed in the R-1 and R-2 zones, producing large-lot development. The City in 2002 had an estimated 12,599 single family units and only 1,751 multi-family units. City Response, Ex. H, at E-1. This is a far cry from the Goal 4 requirement to "encourage the availability of affordable housing" and "promote a variety of residential densities and housing types." The Board finds that Sammamish failed to be guided by Goal 4.

Goal 5. Economic Development.

> (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

The 2005 Moratorium Ordinance, for the first time since 1999, lifted the prohibition on commercial development. The Preamble states the City Council's determination that "continuing the moratorium for commercial development" is no longer needed. The Board finds that Petitioners have failed to carry their burden of proving non-compliance with Goal 5.

Goal 6. Property Rights.

> (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

Petitioners have made no specific property rights arguments here and acknowledge that the issue of constitutional takings is not before the Board. MBA/Camwest Reply, at 3. The Board finds that Petitioners have abandoned this issue.

Goal 7. Permits.

> (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

The Moratorium Ordinance prohibits the filing of applications for "development permits and approvals" for subdivisions and multi-family projects except in undefined cases of "hardship." The Board finds that the City of Sammamish, by continuing this prohibition for six years, including more than 18 months beyond adoption of comprehensive plan and development regulations, was not guided by the goal of providing timely, fair and predictable processing of development permits.

Goal 11. Citizen Participation.

> (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

The preamble to the Moratorium Ordinance states: "Based upon public testimony and other information submitted at a public hearing conducted on February 1, 2005, the City Council finds that it is in the public interest to extend the development moratorium." Ord. 02005-169, at 4. Petitioners here acknowledge that "each petitioner participated before the City Council in its hearing to renew the moratorium." MBA/Camwest PFR, at 5. The Board finds that the Petitioners have failed to carry their burden of proving non-compliance with Goal 11.

The Board finds that in adopting Ordinance No. 02005-169, the City of Sammamish **did not consider the GMA planning goals** [RCW 36.70A.020(1)-(12)]. Petitioners have **not** carried their burden of proving that the Moratorium Ordinance violates GMA Goals 3, 5, 6, 9, 11, and 12. But as to GMA Goals 1, 2, 4, and 7, the Board is persuaded that the City's action was **clearly erroneous.** The City was not guided by Goals 1, 2, 4, and 7 and **did not comply** with RCW 36.70A.020.

Legal Issue 5: Did the City violate SEPA?[16] ***YES.***

Petitioners argue that the Moratorium Ordinance is a "nonproject action" under WAC 197-11-704(b) that "controls the use or modification of the environment," and that there is no categorical exemption in SEPA for continuing, long-term moratoria. MBA/Camwest PHB, at 9. According to Petitioners, SEPA requires the City to issue, at a minimum, a threshold determination that would identify potential impacts to the physical environment and to such factors as affordable housing. *Id.*

The City denies that SEPA analysis is required. City Response, at 17. The City further contends that the SEPA challenge is barred because MBA failed to file a SEPA appeal to the City's hearing examiner and therefore has not exhausted administrative remedies. *Id.*

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[16] *Legal Issue No. 5:* Whether the City failed to perform appropriate and adequate environmental review under RCW 43.21C RCW, specifically RCW 43.21C.030, and WAC 197-11-310 and 197-11-060?

The Board agrees with Petitioners. The Board has jurisdiction of petitions alleging noncompliance with "chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040." RCW 36.70A.280(1)(a).

It is undisputed that the City failed to conduct any SEPA analysis prior to extending its six-year moratorium. The Board concludes that the reasoning of the Washington Supreme Court in *Byers* governs this case. In *Byers,* the Court held that a four-year development regulation was subject to SEPA requirements notwithstanding the fact that its title was "interim zoning ordinance." *Byers*, 84 Wn.2d at 800. A development regulation "for a relatively extended period of time" (*id.)* is subject to SEPA, despite the fact that it is titled a six-month moratorium.

The Board finds that the City, in adopting Ordinance 02005-169, **failed to comply** with SEPA. The Board is persuaded that the City's action was **clearly erroneous.**

E. CONCLUSIONS

The Board finds that Petitioners have **carried their burden of proof** as to Legal Issues No. 1 and 2 in demonstrating that Ordinance 02005-169 is a development regulation subject to the jurisdiction of the Board [as defined in RCW 36.70A.030(7)] and, by virtue of its six-year extension, is not an interim regulation under RCW 36.70A.390. The Board is persuaded that the action of the City, in extending the Moratorium with Ordinance 02005-169, is **clearly erroneous**. The Board concludes that the City's continued extension of a moratorium on development applications, in lieu of implementing its comprehensive plan, **does not comply** with the Growth Management Act.

As to Legal Issues No. 3 and 4, the Board finds and concludes that, in adopting Ordinance No. 02005-169, the City of Sammamish **failed to comply** with RCW 36.70A.020 in that the City **did not consider and weigh the GMA planning goals** [RCW 36.70A.020(1)-(12)]. Petitioners have **not** carried their burden of proving that the Moratorium Ordinance violates GMA Goals 3, 5, 6, 9, 11, and 12, but the Board is persuaded that the City's action was **not guided by** Goals 1, 2, 4, and 7 of the Act and is **clearly erroneous**.

As to Legal Issue No. 5, the Board finds and concludes that the City, in adopting Ordinance 02005-169, **failed to comply** with SEPA.

The Board **remands** Ordinance 02005-169 to the City to take legislative action to comply with the GMA and SEPA.

VI. INVALIDITY

GMA's Invalidity Provisions

RCW 36.70A.302 provides:

(1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
    (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
    (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
    (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

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.

In the discussion of the Moratorium Ordinance, *supra*, the Board found and concluded that the City of Sammamish's extension of its six-year moratorium on multi-family projects and subdivision applications, as adopted in Ordinance 02005-169, was **clearly erroneous** and **did not comply** with the requirements of RCW 36.70A.020, RCW 36.70A.390, RCW 36.70A.040(3), and of Chapter 43.21C RCW. The Board is entering an order of non-compliance and **remanding** the Moratorium Ordinance with direction to the City to comply with the requirements of the GMA and SEPA.

The Board further finds and concludes that the continued validity of the Moratorium as extended in the challenged Ordinance **substantially interferes** with the fulfillment of the following goals of the Growth Management Act.

> Goal 1 - Urban Growth – requires "encourag[ing] development in urban areas." The Board finds that the Moratorium Ordinance continues to extend a six-year prohibition on permit applications for subdivisions, short plats, and multi-family residential development within the City of Sammamish. The Board concludes that Ordinance 02005-169 significantly restricts, rather than "encouraging," normal residential development in the City; therefore, the continued validity of the Ordinance would substantially interfere with Goal 1 of the Act.

Goal 2 - Reduce Sprawl – requires plans and regulations that "reduce the inappropriate conversion of undeveloped land into sprawling low-density development." The Board finds that the City exempts from its moratorium single-family residential development at very low densities (less than 4 dwelling units per acre) so that low-density sprawl is allowed to continue. The Board finds that, at the same time, the Moratorium Ordinance prohibits application for residential development at urban densities, including subdivisions, short plats and all forms of multi-family housing. The Board concludes that the continued validity of Ordinance 02005-169 would frustrate and substantially interfere with the GMA goal of reducing "sprawling low-density development."

Goal 4, Housing – requires plans and regulations that "encourage the availability of affordable housing" and "promote a variety of residential densities and housing types." The Board finds that the Moratorium allows single-family development on previously platted lots and short plats of not more than two homes in the R-1 and R-4 zones, *i.e.*, on very large lots. The Board finds that the Moratorium prohibits applications for subdivisions, larger short plats, and all forms of multi-family housing. The Board concludes that Ordinance 02005-169 contravenes the GMA goal of variety in housing types and densities and of encouraging affordable housing; therefore, the continued validity of the Ordinance would substantially interfere with fulfillment of Goal 4.

Goal 7, Permits – provides that permit applications "should be processed in a timely and fair manner to ensure predictability." The Board finds that the City adopted development regulations, including its subdivision ordinance, short plat regulations, and other portions of its development code in December, 2003. The Board finds that the Moratorium Ordinance, notwithstanding adoption of the development code, continues to extend a six-year prohibition on the filing of applications for "development permits and approvals" for subdivisions and multi-family projects, except in undefined cases of "hardship." The Board finds and concludes that the continued validity of the Moratorium Ordinance would substantially interfere with the goal of timely, fair and predictable permit processing.

The Board finds and concludes that the continuing validity of the Moratorium Ordinance would substantially interfere with the fulfillment of the goals and requirements of the Growth Management Act, specifically RCW 36.70A.020(1), (2), (4) and (7). Therefore the Board enters an **order of invalidity.**

VII. ORDER

Based upon review of the GMA, case law, prior Orders of this Board and the other Boards, the PFR, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The City of Sammamish's adoption of Ordinance 02005-169 was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.020, RCW 36.70A.390, RCW 36.70A.040(3), and of Chapter 43.21C RCW.

2. Therefore the Board **remands** Ordinance 02005-169 to the City of Sammamish with direction to the City to repeal the Ordinance or take other legislative action to comply with the requirements of the GMA and SEPA as set forth in this Order.

3. The Board also found and concluded that the continued validity of Ordinance 02005-169 would **substantially interfere** with the goals of the GMA at RCW 36.70A.020(1), (2), (4), and (7). Therefore the Board enters an order of **invalidity,** and sets the following schedule for the City's compliance**.**

- The Board establishes **September 29, 2005,** as the deadline for the City of Sammamish to take appropriate legislative action.

- By no later than **October 10, 2005**, the City of Sammamish shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioners. By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

- By no later than **October 14, 2005**,[17] the Petitioners may file with the Board an original and four copies of Response to the City's SATC. Petitioners shall simultaneously serve a copy of their Response to the City's SATC on the City.

- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **11:00 a.m. October 17, 2005,** at the Board's offices, coordinated with the scheduled compliance hearing in CPSGMHB Case No. 05-3-0012. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Sammamish takes the required legislative action prior to the September 29, 2005, deadline set forth in this Order, the City

[17] October 14, 2005 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 4th day of August 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 Petition for Reconsideration pursuant to WAC 242-02-830.

APPENDIX – A
Procedural Chronology in CPSGMHB Case No. 05-3-0027

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**). The matter was assigned Case No. 05-3-0027, and is hereafter referred to as *MBA/Camwest v. Sammamish.* Board member Margaret A. Pageler is the Presiding Officer for this matter. Petitioners challenge 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 basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**) and the State Environmental Policy Act (**SEPA**).

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 this case.

On April 25, 2005, the Board conducted the Prehearing Conference in the Fifth Floor Conference Room, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference, with Board members Ed McGuire and Bruce Laing in attendance. Duana Kolouskova represented Petitioners, and Bruce Disend represented Respondent City of Sammamish.

The Board took note of the deadline for the parties to mutually consent to take their case directly to Superior Court. The parties informed the Board that the case has been filed concurrently in Superior Court.

On April 27, 2005, the Board received Petitioners' corrected Petition for Review, correcting scrivener's errors.

On April 26, 2005, the Board received Respondent's Index to the Record.

On April 29, 2005, the Board received a Petition for Review (**PFR**) from the same eight petitioners. The matter was assigned Case No. 05-3-0030 and is referred to as *MBA/Pacific Land v. City of Sammamish.* Petitioners challenge the City of Sammamish's adoption of Ordinance No. 02005-174, which amends development regulations regarding residential density calculations, as noncompliant with the **GMA.**

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, hereafter captioned as *MBA/Camwest v. City of Sammamish.* Board member Margaret Pageler is the Presiding Officer. 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* 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 Ordiancne 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 agreed to 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 14 exhibits, grouped as Exhibit A, 1-12, and Exhibit B, 1-2.. On July 5, 2005, the Board received the City of Sammamish Prehearing Brief (**City Response**) electronically and on July 6, 2005, the Board received hard copy with 9 exhibits, identified as Exhibits A to I. On July 18, 2005, the Board received Petitioners' Reply Brief (**MBA/Camwest Reply)** with 3 exhibits.

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 and Anderson, Inc. The Board did not order a copy of the transcript.