CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

ANN AAGAARD and SUE KIENAST,)
)
Petitioners,)
)
TRIS SAMBERG, CHERI MILLER,)
MICHAEL HABLEWITZ, ANN)
AAGAARD and SUE KIENAST,)
)
Petitioners,)
)
and)
)**Consolidated**
CRAIG BERNHART and JUDY FISHER,)**Case No. 94-3-0011**
)
Petitioners,)
)
v.)
)
CITY OF BOTHELL,)**FINAL DECISION AND ORDER**
)
Respondent.)
)

PROCEDURAL HISTORY

On August 16, 1994, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from Ann Aagaard and Sue Kienast (**Aagaard**).The matter was assigned Case No. 94-3-0008.On August 18, 1994, the Board received a Petition for Review from Tris Samberg, Ann Aagaard et al. (**Samberg**).The matter was assigned Case No. 94-3-0010.On August 23, 1994, the Board received a Petition for Review from Craig Bernhart and Judy Fisher (**Bernhart**).The matter was assigned Case No. 94-3-0011.
On August 26, 1994, the Board issued an Amended Order of Consolidation and Notice of

Hearing.
On September 21, 1994, the Board received a Motion to Intervene by 240 Properties.
On October 13, 1994, the Board issued its Prehearing Order and Order Granting Intervention to 240 Properties, that granted intervention to 240 Properties, limited to consideration of matters raised in the Bernhart case.
The three Petitioners, Respondent and Intervenor filed prehearing or response briefs with the Board prior to the hearing: Aagaard/Kienast Prehearing Brief on Legal Issues (**Aagaard Brief**); Samberg et al. Prehearing Brief (**Samberg Brief**); Bernhart/Fisher Brief (**Bernhart Brief**); City of Bothell's Responsive Brief (**City's Brief**); and 240 Properties' Prehearing Memorandum (**240 Properties Brief**).
On January 11 and 12, 1995, the Board held a hearing on the merits of the consolidated case at Bothell City Hall.Present were the Board's three members: M. Peter Philley, Joseph W. Tovar and Chris Smith Towne, Presiding Officer.Ann Aagaard appeared *pro se* in Case No. 94-3-0008; Tris Samberg appeared *pro se* in Case No. 94-3-0019; Craig Bernhart appeared *pro se* in Case No. 94-3-0011.Wayne Tanaka represented the City of Bothell, and John W. Hempelmann represented Intervenor 240 Properties.Debbie Carrigan, CSR, Likkel & Associates, recorded the proceedings.There was no witness testimony.
As a preliminary matter, the presiding officer ruled on the admissibility of several offered exhibits: document 2, Phase I only, was admitted; document 3 was admitted; document 4 was admitted; document 5 was withdrawn; document 6 was admitted; and that part of document 7 consisting of a map was admitted for illustrative purposes only.

B.FINDINGS OF FACT

1.Imagine Bothell, the City of Bothell Proposed Comprehensive Plan (the **Proposed Plan**), issued September 8, 1993, is comprised of a vision statement providing overall guidance for the Plan; thirteen Planning Area-wide elements (goals, policies and recommended actions having general application); and thirteen Subarea Plans, which refine those elements for distinct areas of the city.Ex. 1.2, at i.
2.A document entitled Revisions to Proposed Comprehensive Plan (the **Revisions**), consists of revisions numbered to correspond to Proposed Plan sections.In the document, the City sets forth its intent to modify the Proposed Plan to incorporate the revisions.It further notes that "Certain changes approved by the Council affect the total City-wide and Planning Area-wide population and employment numbers.These numbers have not been updated in these Revisions, but will be incorporated in the final version of the Plan." Ex. 1.3, at 1.
3.On June 20, 1994, the City Council of the City of Bothell (the **City)** passed Ordinance No. 1557 (the **Ordinance**), "...adopting the Comprehensive Land Use Plan entitled 'Imagine Bothell, City of Bothell Comprehensive Plan' developed under the GMA..."Notice of adoption was published on June 29, 1994.Ex. 1.1.
4.The Proposed Plan and the Revisions comprise the City's Comprehensive Plan (the

Comprehensive Plan or **Plan**) enacted to comply with the requirements of the Growth Management Act (**GMA or the Act**).

5.The City of Bothell lies partially within King County and partially within Snohomish County.The Comprehensive Plan's planning area includes the land within the municipal boundaries, as well as certain unincorporated lands adjacent to the City within Snohomish and King Counties.Ex. 1.2, Figure LU-1.

6.The planning area is totally within the Interim Urban Growth Areas (**IUGAs**) of those counties.At the time of Plan adoption, the City was participating in discussions with King and Snohomish Counties on establishment of Final UGA boundaries. Ex. 1.2, at I-3.

7.The Proposed Plan provided for a buildout population and employment within the Bothell Planning area, estimated for the year 2014, of 46,414 and 24,671 respectively.The City Council Revisions to the Plan resulted in the City's estimated population and employment figures exceeding the population and employment allocations from King and Snohomish Counties.The Revisions caused the population figures to be exceeded by 16% and the employment figures to be exceeded by 58%.Ex. 5.8 at 3 and 5; Ex. 1.5 at 9 and 11.The City extrapolates its population capacity from the number of housing units multiplied by the average number of persons per dwelling projected at 2.58 persons per unit.Ex. 5.8 at 3; Ex. 1.5 at 9.

8.On November 22, 1993, the City issued the Final Environmental Impact Statment (FEIS) for the City of Bothell Proposed Comprehensive Plan.Ex. 1.14.

9.In June 3, 1992, King County adopted its County-wide Planning Policies.Ex. 1.14.On February 4, 1993, Snohomish County adopted its County-wide Planning Policies.Ex. 1.14.The King County and Snohomish County County-wide Planning Policies established the Urban Growth Area boundaries for the City of Bothell.Ex. 1.14 at 15 and 32.

10.The Waynita/Simonds/Norway Hill (**Norway Hill**) Subarea, approximately 1085 acres, is located in large part on the south side of the Sammamish River, adjoining the south boundary of the Downtown subarea.All of the subarea lies in King County, with 627 acres within the City and the remainder unincorporated.The land use is primarily residential, with 985 single family and 536 multi-family dwelling units, an overall housing density of 1.4 per acre, and a 1992 estimated population of 3,962.There are five areas with low intensity commercial development, and total employment of 46 persons.There are no schools or public parks within the subarea.Sanitary sewer service is provided by the City within its boundaries, and by Northshore Utility District in the unincorporated portion of the subarea.The district provides water service to most of the subarea, with the remainder provided by the City.A significant portion of the subarea does not presently receive public water and sewer services.The Subarea is served by minor and collector arterials.Ex. 1.2, at WS-2, -5, -6, Fig. 6, Fig. 7, Fig. 8.

11.The portion of the Norway Hill Subarea lying outside the City, within unincorporated King County, is governed by the County's Northshore Community Plan and zoning, adopted by the King County Council in January, 1993.*See* Ex. 1.2, p. WS-8.

12.The Fitzgerald/35th SE (**Fitzgerald**) Subarea, in the northeastern portion of the Planning

Area, lies wholly within Snohomish County and the Bothell city limits.When the City annexed the Subarea, it adopted the County's plans and zoning, specifically the North Creek Area Plan. The Proposed Plan notes, however, that "[p]rotection of Critical Areas appears to be more appropriately dealt with through the City's critical area regulations (Title 20, Chapter 10, Bothell Municipal Code)."Ex. 1.2, at FI-7.

13.The Fitzgerald Subarea, comprising approximately 422 acres, contains substantial areas of steep slopes and wetlands, as well as Class 1 and other streams.In 1992, the Subarea had 152 single family detached and two mobile home dwelling units, with approximately 430 persons. There are four commercial developments in the subarea.There are no public schools or parks. Water service is available throughout the Subarea, and sanitary sewer service is provided to portions of the Subarea by the Alderwood Water and Sewer District.Electrical utility service is provided by Snohomish County PUD No. 1, and other utilities are provided privately.The Subarea is served by few arterials, consistent with its low-intensity land use. Ex. 1.3, at FI-2, Fig. 3, FI-4, -5, -6.

14.The Fitzgerald Subarea Plan is intended by the City to be used by Snohomish County to update its comprehensive plan for the area.Depending on current joint planning efforts by the County and City, a potential annexation area may be designated in the subarea. Ex. 1.3, at FI-2.

15.The property at issue in Aagaard's petition, located in the Waynita/Simonds/Norway Hill Subarea, is commonly known as the Bill's Dairy Property.City's Brief, at 9.The Bill's Dairy Property is largely pasture with an old barn that has been used in recent years as a milk distribution facility.The property is located adjacent to the south boundary of Bothell, in unincorporated King County, north of NE 160th Street, and immediately west of I-405 and the NE 160th Street interchange.It is designated Growth Reserve by the County, and includes some critical areas.Ex. 1.2, Figure TR-2.Water and sewer are on or immediately available to the Bill's Dairy property.Ex. 1.2, at TR - 13 and TR - 16 - 17.

16.Revision WS8 proposes a mixed use development by the Cedar Park Church for the Bill's Dairy property.It proposes in material part:

> ...worship buildings and multi-family residential development at up to 15 dwellings units per acre, and associated accessory offices, such as medical/dental clinics, and retail space for selling religious books and handicrafts made by church members.

The designation will require coordination of design and placement and design of residential and office/retail/service buildings in such a manner as to promote pedestrian travel, restrict the location of parking, and design transition from greatest building mass near the interchange to the least mass near single-family development.Ex. 1.3 at 129-130.Although the parcel is currently part of unincorporated King County, it lies within the metropolitan urban growth area designated by King County.

17.The Decker property, which is at issue in Benhart's petition, is located in the Fitzgerald Subarea Plan and was annexed by the City as part of the Canyon Park annexation in 1992.Ex. 1.2 at CP-8.

C.GENERAL DISCUSSION

This is the first case before the Board challenging the validity of a comprehensive plan and therefore raises issues of first impression.The iterative and interactive nature of the various planning provisions of the GMA, as previously determined by the Board[1], requires us to evaluate comprehensive plans in the context of the entire Act.We therefore begin with a general discussion, after which it will be possible to answer the specific legal issues in this case.

1.GMA as a Hierarchy of Policy

In an early case, the Board determined that county-wide planning policies (**CPPs**) are a framework for the development of comprehensive plans, and that the CPPs themselves are "part of a hierarchy of substantive and directive policy."[1]In subsequent cases, the Board determined that the planning goals of RCW 36.70A.020 guide the development of not only comprehensive plans and development regulations, but also CPPs and UGAs, and that CPPs also provide direction to UGAs.*See Edmonds*, at 25, footnote 6.*See also Association of Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-3-0010 (1994), at 14.

Thus, the decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs, IUGAs and comprehensive plans), then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties.*See* RCW 36.70A.120.

2.UGAs and CPPs: The Regional Framework for Comprehensive Plans

The GMA establishes that counties are to be "regional governments within their boundaries" (RCW 36.70A.210(1)), charged with adopting both the UGAs and CPPs.Together, these two county-wide policy documents constitute the regional policy framework from which a county, and the cities within it, prepare comprehensive plans.

Because comprehensive plans must be consistent with these county-wide enactments, they serve the three major purposes of IUGAs and CPPs.These are:

> (1) to achieve consistency among plans pursuant to RCW 36.70A.100; (2) to achieve the transformation of local governance within the UGA such that cities are the primary providers of urban governmental services; and (3) to direct urban development to urban areas and to reduce sprawl.[1]*Rural Residents*, at 14.

The Act, at RCW 36.70A.030(15), defines "urban growth" as:

> ...growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.When allowed to spread over wide areas, urban growth typically requires urban governmental services...[1]

This Board has held that "as an absolute rule, the only place urban growth is permitted is within a

UGA."*Rural Residents*, at 42.(emphasis in original). Moreover, cities are the "focal points of urban growth, governmental service delivery, and governance within UGAs."*Rural Residents*, at 42.

3.Comprehensive Plans:the Framework for Accommodating Growth

Washington's approach to growth management is unique among states.Under GMA, many critical choicesare to be made at the local rather than the state level.There is no requirement for a "state land use plan" under GMA.Instead, the primary instruments for managing future growth are the comprehensive plans adopted by cities and counties.[1]

Comprehensive plans providepolicy direction to actions by local governments as well as state agencies.*See* RCW 36.70A.120 and .103.The comprehensive plans provide the mechanism for balancing local, regional and state interests into coherent policies to guide specific actions.[1]

Within a framework of certain state mandates (e.g. the projected twenty year population must be accommodated, resource and critical areas must be protected) and regional policies (i.e., CPPs and UGAs), the GMA leaves broad discretion for locally adopted comprehensive plans to reflect local choices.

Both the Act and prior Board decisions speak to the specific requirements directingwhere a county may draw a UGA.However, the Act provides no similarly specific direction as to where, within a city, a particular type of land use or development intensity is to occur.The Board has previously held:

> Each city retains the local prerogative of determining just how the regional policy allocation of population and employment is going to be accommodated and configured through local development regulations and other exercise of the land use powers of cities. *Edmonds*, at 29.

The Board has acknowledged that the GMA leaves broad discretion to local governments to include a variety of subjective factors, including market factors, in making certain policy decisions.For example, in *City of Tacoma et al. v Pierce County*, CPSGMHB Case No. 94-3-0001 (1994), the Board clarified the nature of the subjective discretion enjoyed by counties designating UGAs:

> Local circumstances, traditions and identity will result in unique choices and solutions by each county and each city within it.Jurisdictions have broad discretion to make UGA policy decisions.For instance, emphasis on market factors, or a jobs-based economy, or urban village concepts are all policy choices.While such policy choices may be included in the sizing or configuration of the UGA, they must be made in a measurable way and with sufficient documentation as to the rationale.*Tacoma*,at 10.

Later, in *Friends of the Law and Bear Creek Citizens for Growth Management v. King County, (FOTL II)* CPSGMHB Case No. 94-3-0009 (1994), the Board stated:

> While the objective analysis is essential, counties also have the latitude to consider subjective factors, such as a land supply market factor and the preferred vision that each city expresses in its comprehensive plan.[1]The explicit articulation and balancing of these factors has been described as the requirement to "show your work" when designating urban

growth areas.*SeeRural Residents*, at 20-21.*FOTL II* at 15, Order on Dispositive Motions.
While the two above cases refer to UGA decisions made by counties, the Board concludes that cities likewise enjoy broad discretion in comprehensive plan-making, both in terms of the subjective criteria used and the range of specific choices selected.In our representative democracy, and within the decision-making regime of the GMA, local elected officials use their judgment to make many choices.It is expected that the elected officials are aware of the competing and sometimes conflicting values and opinions held by residents and property owners in their jurisdiction.For this reason, the first phase of a comprehensive plan process is frequently a community dialogue about values and vision.*See* WAC 365-195-300(2)(e).Ultimately, however, the elected officials have the discretion and the duty to make many value-driven decisions.
Accordingly, a city enjoys broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated.These choices include the specific location of particular land uses and development intensities, community character and design, spending priorities, level of service standards, financing mechanisms, site development standards and the like.While cities have broad discretion as to the content of their comprehensive plans, this discretion is not limitless.It is subject to several practical and legal limitations.
First, as a practical matter, the localized rate of growth within a UGA or within a city is strongly dependent upon the dynamics of the market.Bothell correctly observed that planning under the GMA is not a "socialistic five-year plan" wherein the policy decisions of government can effectively dictate and effectuate actions, i.e. investment decisions by private individuals or corporations.City Brief, at 14.In a democracy with a private market-based economy, such as ours, even the most persuasive or clairvoyant public policy documents cannot always "make it so."For this reason, a twenty year population target for a city comprehensive plan is just that - a target that expresses intent and aspiration - but which recognizes that many variables can result in a somewhat higher or somewhat lower actual population.
Second, the Act's requirement of internal consistency between the elements of the plan, and with the future land use map (RCW 36.70A.070), will require the local choices to reflect the capabilities of the existing capital facilities and/or the ability to create sufficient future capabilities.
Third, the thirteen planning goals of the GMA (RCW 36.70A.020(1)-(13)) "shall be used exclusively for the purpose of guiding the development of comprehensive plans..."The broad discretion enjoyed by a city regarding the location and configuration of growth within its boundaries is tempered by the GMA's requirement that the legislative body must substantively comply with the planning goals of RCW 36.70A.020 when adopting comprehensive plans.*Rural Residents*, at 18.
Fourth, critical area and natural resource land designations and development regulations must be adopted pursuant to RCW 36.70A.060 and .170 separate from and prior to adoption of the comprehensive plan.While those regulations are subsequently to be made consistent with the plan, rather than vice-versa, it must be remembered that they continue in force and effect unless

and until modified.For example, simply because the land use element of a comprehensive plan identifies a particular area as appropriate for commercial development does not eliminate whatever procedures or protections the city has previously determined apply to a wetland that may exist in the vicinity.

Finally, there are certain specific provisions of the Act that permit state or regional policy decisions to limit the range of local discretion in a comprehensive plan.For example, RCW 36.70A.200 provides, in part, that "No local comprehensive plan or development regulation may preclude the siting of essential public facilities."Similarly, a CPP that meets the three-prong test articulated in *Snoqualmie* may speak directively to a city comprehensive plan.*See Snoqualmie*, at 18.For instance, using this test, the Board has determined that counties have the authority, although not required to do so, to allocate OFM population and employment planning projections to cities to be used in developing their comprehensive plans.*Edmonds*, at 28.

D. DISCUSSION AND CONCLUSIONS

Aagaard Legal Issue No. 1

Is the designation required to, and if so does it, meet the goals of the Act specifically goals (1) Urban growth; (2) Reduce sprawl; (9) Open space and recreation; (10) Environment; and (11) Citizen participation and coordination? [RCW 36.70A.020]

Petitioner's position

Petitioner Aagaard challenges the comprehensive plan's land use designation of Mixed Use (Revision WS8) for a 26-30 acre parcel of property known as "Bill's Dairy."Finding of Fact No. 15.

Aagaard argues the City was required to consider the planning goals of RCW 36.70A.020, but that the City failed to meet five of these goals, listed above, when it adopted Revision WS8.More specifically, Aagaard argues that Revision WS8 fails to meet the requirements of the GMA because the Bill's Dairy property currently lacks, in various ways, the capital facilities necessary to support urban growth.

Respondent's position

The City agrees it was required to consider these goals, but denies that it failed to do so when it adopted Revision WS8.The City points out that the Bill's Dairy property is located within the metropolitan UGA and is a priority for annexation by the City.The City argues that capital facilities such as sewer are already on site or located nearby.

Discussion

The preamble to RCW 36.70A.020 provides that the thirteen planning goals of the GMA "shall be used exclusively for the purpose of guiding the development of comprehensive plans..."Actions taken by a local jurisdiction in adopting a comprehensive plan are presumed

valid."RCW 36.70A.320.The burden rests with the petitioner to show by a preponderance of the evidence that a local jurisdiction has failed to comply with the Act.*Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1993), at 9.

Although local jurisdictions need not show procedural compliance with the planning goals of RCW 36.70A.020, they must be substantively guided by these goals when adopting comprehensive plans.*Rural Residents*, at 27-28; *Gutschmidt, supra*.

RCW 36.70A020(1) and (2)

RCW 36.70A020(1) and (2) provide:

> (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.

Designation of the Bill's Dairy property for Mixed Use under Revision WS8 is consistent with its location within the UGA.Finding of Fact No. 16.The mixed use designation allows development of up to 15 dwelling units per acre; this type of density is consistent with the compact urban development the Act envisions occurring within a UGA under RCW 36.70A.020(1) and (2).

RCW 36.70A.020 (9), (10) and (11)

RCW 36.70A.020 (9), (10) and (11) provide:

> (9) Open space and recreation.Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.
>
> (10) Environment.Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
>
> (11) Citizen participation and coordination.Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

While it is less clear how Revision WS8 satisfies goals (9) open space, (10) environment and (11) citizen participation and coordination, the Board holds that the Act does not obligate the City to designate the Bill's Dairy property for open space.Furthermore, it is unclear from Aagaard's argument how she believes Revision WS8 fails to comply with goals (10) environment and (11) citizen participation and coordination.Aagaard has failed to prove by a preponderance of the evidence that the city failed to meet these goals in its designation of the property as WS8.

<u>Aagaard Conclusion No. 1</u>

Revision WS8 complies with the goals 1, 2, 9, 10 and 11 of RCW 36.70A.020.

<u>Aagaard Legal Issue No. 2</u>

Is the designation required to, and if so does it, meet the preamble to and certain

mandatory elements of the Act's comprehensive plan requirements, specifically (1) land use; (2)(a) and (d) housing; (3) capital facilities; and (6) transportation? [RCW 36.70A.070]

Petitioner's position

Aagaard argues that WS8 fails to meet the mandatory elements of RCW 36.70A.070 in several ways.First, she argues Revision WS8 fails to meet the internal consistency requirements of the preamble because designation of the Bill's Dairy property for mixed use development is inconsistent with plan policies ED-P21 (Ex. 1.2, at ED-7) and LU24 (Ex. 1.3, at 14.)Second, Aagaard argues that the WS8 designation is invalid because it is too specific in its description of future land use and looks more like a development regulation than a comprehensive plan designation. (Aagaard Brief, at 5).Third, she questions if the WS8 designation meets the land use element (RCW 36.70A.070(1)), several aspects of the housing element (RCW 36.70A.070(2)(a), (d)) and the transportation element (RCW 36.70A.070(6)).

Fourth, Aagaard argues Revision WS8 fails to comply with the captial facilities element requirements for comprehensive plans in RCW 36.70A.070 because utilities such as sewers are not yet in place, future development regulations and mitigation measures for the site have not been determined, and the potential uses of the site remain a mere "wish list" of the landowners. Aagaard Brief, at 8.

Finally, Aagaard, as well as Samberg in appealing Revision HO7a, argues that Revision WS8 violates RCW 36.70A.070 because the amount of growth the City can now accommodate pursuant to the Plan exceeds by 16% the population, and by 58% the employment, allocated by King and Snohomish Counties to the City.See Finding of Fact No. 8.These petitioners argue the City must precisely meet the counties' population allocations to the City when planning for the amount of future growth in its comprehensive plan.

Respondent's position

GMA is a planning statute, not authority for the City to adopt and enforce a socialistic "5 year plan" for economic development.The government cannot dictate the timing of development, nor should it.Thus detailed plans for when certain roads get built, when sewers are installed, etc. are in large part dependent upon when, where and how fast development occurs.City's Brief, at 14.

The City admits it exceeded the population projections allocated to it by the county when it adopted Revisions WS8 and HO7a, but states that it can "update" these figures when it incorporates these Revisions into the comprehensive plan.

Discussion

Preamble to RCW 36.70A.070

The preamble to RCW 36.70A.070 contains the mandatory elements for comprehensive plans and provides in material part as follows:

> The comprehensive plan ... shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan.The plan shall be an internally consistent document and all elements shall be consistent with the future

> land use map.A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70.A.140.

Although the Board has not previously addressed the question of whether or not comprehensive plans are required meet the preamble of RCW 36.70A.070, the language of RCW 36.70A.070 is directive and clear.Accordingly, the Board holds that local jurisdictions are required to meet both the preamble and subsequently specified elements of RCW 36.70A.070.

Internal consistency

Policy LU24 was adopted as part of the Revisions to the Plan. Policy LU24 provides in material part as follows:

> Land within identified potential annexation areas shall be developed in accordance with City and County Plans.Undeveloped land immediately adjacent to Bothell should annex before or at the time development is proposed in order to receive a full range of urban services..."

Policy ED-P21 provides in material part as follows:

> Provide for the development of small-scale mixed use neighborhood villages as a means of promoting a sense of community, encouraging pedestrian and bicycle mobility, and reducing the number and length of motorized convenience shopping trips...

Aagaard argues that the WS8 designation is inconsistent with these policies but does not explain how or why she believes the WS8 designation is inconsistent. Thus she fails to meet her burden of proof.

Specificity of comprehensive plan provisions

Comprehensive plans and countywide planning policies are, by their nature, policy documents, which stand in contrast to the more specific regulatory control provided by development regulations.*Edmonds,supra*.Aagaard argues that Revision WS8 is too specific, but fails to explain how or why this specificity prevents Revision WS8 from complying with the preamble of RCW 36.70A.070.Accordingly she fails to meet her burden of proof to show how Revision WS8 violates RCW 36.70A.070.

Capital facilities element

Next Aagaard argues that Revision WS8 does not comply with RCW 36.70A.070(3) because the needed capital facilities are not yet located on site.RCW 36.70A.070(3) requires comprehensive plans to contain:

> (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such captial facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilitates plan element are coordinated and consistent.

The City has set forth a capital facilities element in its comprehensive plan.Ex. 1.2, at CF - i, *et*

*seq.*The Bill's Dairy property already possesses an eight-inch sewer line, and additional sewer trunk lines are located just north and south of the property.Aagaard speculates that these lines may be insufficient to meet the needs of the proposed church, but fails to meet her burden of proof to show by a preponderance of the evidence that the WS8 designation of the property fails to meet the capital facilities element requirement for the Plan.The Board holds that the current absence of public facilities on a site does not automatically bar urban densities from being planned on that land within a UGA.

Counties' allocation of OFM population projections

Unlike the requirement that counties must use exclusively the OFM twenty-year population projection in sizing UGAs, there is no parallel language in the Act telling a city how much population it must or may accommodate once its boundaries are established.

Likewise, although the Act does not specifically direct counties to allocate the county-wide OFM population forecast to individual cities, the Board has authorized such a distributive exercise if it is established in the CPPs.See *Edmonds, supra.*

Both King and Snohomish Counties elected to allocate population and employment to the City. The Board holds that the amount of growth a city plans for in its comprehensive plan must be consistent with the CPPs, including a population allocation, if any, and any interlocal agreement the city may have reached with the county or counties, and must meet the external consistency requirements of RCW 36.70A.100 and internal consistency requirements of RCW 36.70A.070. Furthermore, it is conceivable that legitimate regional reasons could justify limiting the population or employment capacity of a city comprehensive plan to a specific number.However, given the limited facts before the Board in this particular case and the limited legal argument presented by the petitioners, the Board cannot conclude that the comprehensive plan violated the Act by having a population capacity that exceeds the counties' planning population allocations provided to Bothell.

Aagaard Conclusion No. 2

Revision WS8 complies with the capital facility requirements of RCW 36.70A.070(3).The fact that Revision WS8, along with Revisions FI5a and HO7a, causes the City's comprehensive plan to exceed by 16% the Counties' population allocation to Bothell does not, under the facts of this particular case, create a *per se* violation of RCW 36.70A.070.

Aagaard Legal Issue No. 3

Is the designation required to be, and if so is it, coordinated and consistent with the comprehensive plans of certain other jurisdictions, specifically King County's adopted Northshore Community Plan as it relates to joint planning, phased development, public facilities, level of service, Community Centers and Neighborhood Centers, and protection or critical areas? [RCW 36.70A.100][1]

Petitioner's position
Aagaard argues that the WS8 designation of the City's comprehensive plan is improper because it is inconsistent with certain portions of King County's pre-GMA Northshore Community Plan.
Respondent's position
The city argues that its GMA comprehensive plan is not required to be consistent with any of King County's pre-GMA land use enactments.

Discussion

In *Happy Valley, supra.* the Board was asked to determine if a county subarea plan promulgated pursuant to the county's pre-GMA planning authority was required to be consistent with other parts of the county's GMA comprehensive plan, the plans of adjacent jurisdictions and the CPPs.The Board held that:

> **Any sub-area plans within a comprehensive plan must be consistent with the comprehensive plan, not the reverse.A GMA comprehensive plan is more than a cobbling together of thirteen pre-existing subarea plans, each of which was developed without these external considerations and the balancing of interests.**

***Happy Valley, supra.* at 19-20.Regardless of whether or not any inconsistency exists between the City's GMA Comprehensive Plan and the County's Northshore Plan, the GMA does not require the City to make its own Plan consistent with any of the County's pre-GMA plans. Rather, the City is only obligated to ensure that its comprehensive plan is consistent with the Counties' GMA planning enactments adopted before the City took its action, including CPPs, IUGAs, and Comprehensive Plans.**

Aagaard Conclusion No. 3

The Act does not require Revision WS8 to be consistent with King County's Northshore Plan.

Aagaard Legal Issue No. 4

***Is the designation required to be, and if so is it, consistent with the Urban Growth Area (UGA) requirements of the Act? [RCW 36.70A.110(3)*]**
Petitioner's position
Aagaard argues that the Bill's Dairy property is inappropriate for Mixed Use development.
Respondent's position
The City argues that since the parcel is within the metropolitan UGA, the property is destined for urban development and the mixed use designation is appropriate.

Discussion

RCW 36.70A.110(3) states that:

> **Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources. Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.**

The WS8 Revision area, which is predominantly rural in character today, is located in the metropolitan UGA for unincorporated King County.Finding of Fact No. 16.It is too late to challenge the validity of the UGA.Once a parcel is located within a UGA, the decision about whether the future development will be urban or rural has been made.Land use designations within a UGA must allow for urban development regardless of the rural character a parcel of land may have today.*See also Rural Residents*, at 46.The fact that urban services are not immediately and completely available does not mean the designation is inconsistent with the UGA requirements of RCW 36.70A.110(3).

Aagaard Conclusion No. 4

Revision WS8 is required to be and is consistent with the urban growth areas requirements of the Act.

Aagaard Legal Issue No. 5

Is the designation required to be, and if so is it, consistent with the requirement to identify land for public purposes, specifically parks?[RCW 36.70A.150]

Petitioner's position

Aagaard appears to be arguing that because Bothell will need more parks in the future, the Bill's Dairy property should have been designated for public purposes, specifically park and recreation purposes, rather than designated for mixed use.

Respondent's position

The City responds that the Act does not require it to designate the Bill's Dairy property for parks or any other particular public purpose.

Discussion

Local governments preparing comprehensive plans are required by RCW 36.70A.150 to:

> **...identify lands useful for public purposes such as utility corridors, transportation**

corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools, and other public uses....

This section of the Act does not specifically require the City to identify lands for parks; the reference to "recreation" is not necessarily synonymous with "parks."In any event, the City's plan contains a parks and recreation element.The parks and recreation element discusses the background and relationship of the element to the GMA, (PR-1); identifiesLevel of Service scenarios for future park needs (PR-2-9); and identifies goals, policies and actions (PR-10-12).Also included are maps of public parks and open space (figure PR 1); trails (figure PR 2); and discussion and graphic depiction of a proposed trail connection for North Creek (PR-P9).The goals, policies, and actions section identifies the goals of the parks and recreation element (PR-G1, -G2 and -G3); identifies the polices in relationship to the proposed level of service (*see* Scenarios 1-4 at PR10); and identifies specific actions proposed to meet the goals and Level of Service policies.Ex. 1.2, at PR-1 *et seq.*

While Aagaard may be dissatisfied with the substantive planning choice made by the City for the Bill's Dairy property, there is no requirement in the Act that this particular parcel be designated for parks or public purposes. That decision is left to the substantive discretion of the City.The WS8 designation for the property does not necessarily fail to comply with the parks and recreation element of the City's plan simply because the Bill's Dairy property was not designated for park purposes.

Aagaard Conclusion No. 5

Revision WS8 is not required to be consistent with RCW 36.70A.150.

Aagaard Legal Issue No. 6

Is the Comprehensive Plan required to, and if so does it, comply with the requirements of the Act to designate open space corridors in the specific area in question? [RCW 36.70A.160]

Petitioner's position

Aagaard argues the Bill's Dairy property would be more appropriate as open space than as mixed use.

Respondent's position

The City again points out that the property is within the UGA and that the Act does not require the city to designate any particular parcel as an open space corridor.

Discussion

RCW 36.70A.160 requires that, in material part, local governments identify "open space corridors within and between urban growth areas."Open space corridors "shall include

lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030."RCW 36.70A.160.
This section of the Act does not require the City to designate the Bill's Dairy parcel as an open space corridor in its Comprehensive Plan.Again, once the UGAs are established, the Act has left the substantive planning decisions up to the local government about when, where, and how urban growth should be located and configured within a UGA.The same holds true for open spaces.The Board, when asked, will look at whether a jurisdiction has identified open spaces corridors in its planning area.The Board will not inquire into the City's substantive decision to identify this specific parcel for mixed use rather than as an open space corridor.

Aagaard Conclusion No. 6

Revision WS8 does not violate RCW 36.70A.160.

Aagaard Legal Issue No. 7

Is the designation required to be, and if so is it, coordinated and consistent with the County-wide Planning Policies requirements of the Act, specifically King County's Phase II Policies dealing with phasing of development (LU-28, -29, and -30), and provision of urban separators (LU-27), open space corridors (CC-6) and parks and open space (CC-11)?[RCW 36.70A.210]
Petitioner's position
Aagaard largely abandons this issue in her brief, except for stating that the WS8 designation does not comply with "phasing mechanisms" of LU16 -LU17 of King County's Phase I CPPs.However, the legal issue is stated in terms of compliance with Phase II.
Respondent's position
The City argues that the Plan is not required to be consistent with any Phase II policies because they were adopted after the city adopted the plan.

Discussion

Even though Aagaard has abandoned this issue, the Board could not evaluate the City's comprehensive plan for consistency with King County's Phase II CPPs that were not yet in existence when the City adopted its comprehensive plan.

Aagaard Conclusion No. 7

Revision WS8 was not required to comply with the phasing requirements of the Phase II King County CPPs, since those were not in effect at the time of the City's action.However, a city or county may have to amend its comprehensive plan (adopted prior to an amendment

to CPPs) if such an amendment is necessary to make the Plan consistent with the updated CPPs. *See* RCW 36.70A.210(1) and .100.

Samberg Legal Issue No. 1

Is the provision required to, and if so does it, meet the goals of the Act, specifically (10) Environmental protection and (12) Public facilities and services? [RCW 36.70A.020]

Samberg Conclusion No. 1

Samberg has abandoned this issue by failing to brief the issue, so the Board will not reach a decision on this issue.

Samberg Legal Issue No. 2

Is the Provision required to, and if so does it, meet certain mandatory elements of the Act's Comprehensive Plan requirements, specifically (2)(a) housing inventory and analysis; (3) capital facilities; and (6) transportation?[RCW 36.70A.070]
Petitioners' Position
Samberg's petition concerns a plan provision, HO7a, which allows for high-density senior housing throughout the city, subject to restrictions related to land uses on properties adjacent to a proposed site.
RCW 36.70A.070 (preamble)
The preamble to RCW 36.70A.070 recognizes "the vitality and character of established residential neighborhoods ...."
Samberg argues the City failed to comply with several of the requirements of RCW 36.70A.070 for comprehensive plans in the adoption of Revision HO7a, because the City did not analyze the existing inventory and the projected need for senior housing before adopting Revision HO7a.
RCW 36.70A.070(2)(a)
Samberg argues that the City failed to undertake the necessary analysis of the existing and projected need for senior housing, before adopting Revision HO7a.Samberg also argues that it cannot be determined how much of the some 2,342 acres currently zoned single-family in the City will be available for senior housing because the City has failed to update its maps in the Plan.Furthermore, she argues that Revision HO7a is inconsistent with the land use element because it cannot be determined how much of the single family zoned areas would potentially be impacted.
RCW 36.70A.070(3)
Samberg argues that Revision HO7a fails to comply with the capital facilities element required in RCW 36.70A.070(3) because the capital facilities plan does not account for or

calculate the capital facilities needs and revenues that will be generated by additional population and employment figures generated by Revision HO7a.

RCW 36.70A.070(6)

Samberg argues that Revision HO7a does not comply with the transportation element of the Plan.RCW 36.70A.070(6) requires the transportation element to comply with the land use element and to contain a detailed list of subelements.Samberg points out that not only does the transportation element fail to account for the additional population that will be generated by Revision HO7a, but that the City has concluded in the transportation element that the City's current transit and pedestrian facilities are inadequate.Only 10% of the City's residents live within a quarter mile of a transit route (Ex. 1.2, TR-18.)The transportation element of the Plan states that "many large gaps in the [sidewalk] system will remain unless the City develops a comprehensive program to build pedestrian facilities."Ex. 1.2, p. TR-22.

City's Position

The City argues that the Comprehensive Plan does not allow senior housing to be located in all areas of the City because several portions of the Plan, read together, restrict where senior housing can be located.For example, the City argues Revision HO7a should not be read independent of Housing Policy HO P18(3) which requires that the development "shall be accessible to retail and services activity centers and public transportation by sidewalks."[1]The City argues that the requirement that senior housing be accessible to "retail and services activity centers" is a significant limiting factor on the amount of senior housing that will be built since there are few "retail and services activity centers" in the City.The City apparently agrees with Samberg that the City lacks sufficient sidewalks since the City has only 19 miles of sidewalks out of 42 miles of arterials.Ex. 1.12, pg. TR-22; Figure TR-8.Similarly, the City agrees that the lack of public transportation is a limiting factor since the City has few transit routes.Ex. 1.12, Figure TR7.However, the City argues that the lack of sidewalks and public transportation is not an impediment to the inclusion of the senior housing subcategory in the housing element, but merely limits where such housing can be located within the City.City's Brief, at 7 - 8.

Discussion

Revision H07a

Revision H07a provides:

> **A base density of 30 dwelling units per acre is appropriate for senior housing in single family designated areas on properties which are directly adjacent on at least two sides to land uses and/or plan designations more intensive that single family; and in all other non-single-family areas within the Planning Area.**
>
> **Where a proposed senior housing development would be directly adjacent to existing**

> **single family development, compatibility shall be achieved through a combination of measures including but not limited to landscape buffering; modulation of building facades and rooflines; utilization of similar building materials and styles; transitioning of building mass; and location of heating, cooling, and kitchen equipment, and refuse collection facilities, away from single family residences. Ex. 1.3, pp. 27-28.**

HO P18(3) requires senior housing "be accessible to retail and services activity centers and public transportaion by sidewalks."Ex. 1.2, atHO - 10.

RCW 36.70A070(2)(a) requires local governments to include an inventory and analysis of "existing and projected housing needs" and subsection (c) requires an identification of sufficient lands for certain distinct housing categories.The City has taken the initiative to plan for senior housing as a separate subcategory of the Plan's housing element even though RCW 36.70A.070(2) does not require the City to do so.While the Board recognizes that the City may have very important and unique reasons to treat senior housing as a separate subcategory in the Plan's housing element, the Act requires the City to conduct an inventory and analysis of "existing and projected housing needs" under RCW 36.70A.070(2)(c).If the City chooses to create senior housing as a separate housing subcategory in the housing element of its comprehensive plan, it must also conduct an inventory and analysis of that subcategory.

The City's response to Samberg's argument fails to show that it undertook the necessary substantive analysis of the existing and projected needs for senior housing before adopting Revision HO7a as part of its comprehensive plan.*See* i.e. Exhibit 1.14FEIS (comments of the Snohomish County Planning Department to the FEIS), at 312.The fact that Revision HO7a, as well as other portions of the Plan, may limit the number of places where senior housing can be located is beside the point.Moreover, Figure ED1, which the City invited the Board to inspect, does not bolster the City's position that the application of HO P18(3) to the areas shown on the figure would limit the use of Revision HO7a..Figure ED1 shows "community retail/services, specialty retail, and neighborhood retail/services"; the phrase "retail and services activity centers," used in Policy HO P18(3), does not appear and is not defined in Figure ED1.

RCW 36.70A.070(3)

RCW 36.70A.070(3) requires the capital facilities plan element to consist of:

> **(a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element, if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan**

element are coordinated and consistent.

The City has failed to show how the additional population that Revision HO7a may generate is accommodated in its capital facilities plan.Samberg correctly points out that the potential extra population generated by the Revision HO7a, whatever its extent may be, has not been accounted for in the capital facilities element.As explained above, the existence of this additional growth, under the facts of this case, is not a *per se* violation of the Act. However, in order to comply with RCW 36.70A.070(3), the City must account for and calculate the capital facilities needs and revenues that will be generated by the inclusion of Revision HO7a in the Comprehensive Plan.RCW 30.70A.070(3) and (6).If the limiting factors of the Plan do restrict the location of senior housing to isolated locations, as the City argues, then the update of the capital facilities element of the Plan should not be burdensome.

RCW 36.70A.070(6)

RCW 36.70A.070(6) requires the transportation element to comply with the land use element and to contain a detailed list of subelements.These subelements include: land use assumptions used in estimating (a) travel, (b) facilities and services needs, (c) finance, (d) intergovernmental coordination efforts, and (e) demand-management strategies. Likewise, the City has failed to explain how Revision HO7a is accommodated in its transportation plan.The current lack of sidewalks and public transportation in the City does not excuse the City from analyzing how Revision HO7a will impact use of and create additional need for these facilities.Again, if the impact is minimal, as the City argues, then the update of the transportation element of the Plan should not be burdensome.

The City did not meet the procedural requirements of RCW 36.70A.070(2)(a) and (c) when it elected to adopt a senior citizen housing subcategory of its comprehensive planhousing element.

Samberg Conclusion No. 2

Revision HO7a does not comply with RCW 36.70A.070(2)(a), (3), and (6).

Samberg Legal Issue No. 3

Was the provision required to be, and if so was it, adequately analyzed pursuant to the requirements of the State Environmental Policy Act?[Chapter 43.21C RCW]

Petitioners' position

Samberg challenges the sufficiency of the Final Environmental Impact Statement (FEIS) for the comprehensive plan.

Respondent's position

The City offers no response in its brief on this issue.

Discussion

In a recent decision, the Board adopted the two-part test for SEPA standing from *Leavitt v. Jefferson County*, 74 Wn. App. 668, 875 P. 2d 681 (1994) and *Trepanier v. Everett*, 64 Wn. App 380, 824 P. 2d 524, *rev. denied* , 119 Wn 2d 1012 (1992).This test provides:

> **First, the plaintiff's supposedly endangered interest must arguably be within the zone of interests protected by SEPA.Second, the plaintiff must allege injury in fact; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her specific and perceptible harm.The plaintiff who alleges a threatened injury rather than an existing injury must also show that the injury will be "immediate, concrete, and specific"; a conjectural or hypothetical injury will not confer standing.*Leavitt*, at 679 citing *Trepanier*, at 382-83.**

***West Seattle Defense Fund (WSDF) v. Seattle*, CPSGMHB Case No. 94-3-0016, Order Granting Seattle's Motion to Dismiss SEPA Claim, and Order Denying WSDF's Motion for Reconsideration of Order Granting Seattle's Motion to Dismiss SEPA Claim (1995), at 5.**
The burden rests with the petitioner to make a satisfactory evidentiary showing of injury in its petition for review.*WSDF*, at 4.
Since Samberg lives adjacent to property potentially subject to the Revision HO7a designation, her interests are arguably within the zone of interests protected by SEPA.Ex. 6.16.However, Samberg's petition fails to make the necessary showing of "immediate, concrete, and specific" injury to obtain SEPA standing.Her petition generally challenges the sufficiency of the FEIS in its analysis of senior housing, without explaining how she believes this alleged lack of analysis will injure her.

Samberg Conclusion No. 3

Samberg lacks standing to challenge the sufficiency of the FEIS; therefore, the Board will not determine this issue.

Bernhart Legal Issue No. 1.

Is the provision required to, and if so does it, meet the goals of the Act, specifically (1) Urban growth; (2) Reduce sprawl; (8) Natural resource industries; (9) Open space and recreation; (10) Environment; (11) Citizen participation and coordination; and (12) Public facilities and services? [RCW36.70A.020]
Bernhart challenges the City's adoption of Revision FI5a as it applies to a 40 acre parcel known as the "Decker property," owned by Intervenor 240 Properties.
Bernhart generally argues that Revision FI5a fails to comply with the urban growth and reduction of sprawl goals of RCW 36.70A.020 because the area is currently undeveloped and lacks adequate capital facilities.Indeed, Bernhart argues that the Revision "calls for

higher density development which encourages sprawl."Bernhart Brief, at 3.Bernhart argues that the density allowed for the Decker property by the Revision FI5a will create "leapfrogging" of high density development to an existing rural area.

Bernhart argues Revision FI5a violates the natural resource industries goal (8) because the medium density, mixed use development allowed under the Revision will be harmful to his tree farm and harmful to a nearby fish rearing pond.Bernhart Brief, at 5.Bernhart argues that the Revision violates the open space and recreation goal because the Canyon Park area, where the Decker property is located, lacks sufficient open spaces and urban separators.

Bernhart argues that Revision FI5a violates the environmental goal of the Act because the designation will degrade water quality in a "water source used to raise fish at the corner of 40th and 35th."Bernhart Brief, at 4.Bernhart also discusses the critical area overlay of the Plan's Land Use Element Policy 5 (17) and argues that the designation fails to protect critical areas.Bernhart Brief, at 5.

In oral argument Bernhart argued that the citizen participation and coordination goal was violated because the City Council did not remand Revision FI5a back to the Planning Commission for consideration before it adopted the Revision as part of the Plan.Bernhart contends that citizens were confused about whether or not they would have an opportunity to comment on the Revision before the council made a final decision.

The majority of Bernhart's argument is devoted to challenging the city's compliance with the public facilities goal (12) and capital facilities generally.Since Bernhart has not separated his discussion of public facilities and capital facilities, the Board will discuss these issues together under Legal Issue No. 3.

Respondent's and Intervenor's position

The City points out that Bernhart objects to Revision FI5a in a conclusory manner without offering many specific reasons why he believes the Revision does not comply with the GMA.

240 Properties sharply takes issue with Bernhart's contention that Revision FI5a will result in higher density development that will encourage sprawl.240 Properties points out that the Decker property is part of the 1992 Canyon Park annexation, is within the City limits, and is within the UGA.240 Properties Brief, at 13.240 Properties argues the Revision will result in medium density development that will reduce rather than encourage sprawl, because development within the designation will be more compact than is allowed under the current Rural zoning.

240 Properties argues that Revision FI5a cannot violate the natural resource industry goal because there are no natural resource industries in the City.240 Properties Brief, at 14.With respect to the environmental goal, 240 Properties argues that fish not are raised commercially near the property but even if so, the Revision will not necessarily degrade water quality.Finally, 240 Properties argues that Revision FI5a will have to comply with the City's critical area regulations when development is undertaken on the site.

240 Properties denies that Revision FI5a fails to comply with the open space and recreation

goal (9) because a 100 foot buffer will be required for development adjacent to single family zoning and any development will be required to comply with critical area requirements. 240 Properties states that Bernhart concedes that public participation was encouraged and that Bernhart really objects to the substance of Revision FI5a rather than any procedure the City used to adopt the provision.

Discussion

Revision FI5aprovides:

> **The area north of 240th Street SE, extending approximately 330 feet north of 240th west of 39th Avenue extended, and approximately 660 feet north of 240th east of 39th Avenue extended, is appropriate for residential development at a density of eight dwelling units per acre, subject to the availability of necessary utilities and compliance with critical areas regulations and other development standards and impact mitigation requirements (R 6-10 on southern portion of map).**
> **Any development in this area shall incorporate the following measures to protect the existing low-density single family area to the north:**
> **1.Installation of a minimum 100-foot buffer adjacent to single family zoning utilizing fences, walls, berms, existing mature landscaping or dense, fast growing landscaping, or other noise-absorbing or sight-obscuring techniques(exact width of the buffer to buffer to be determined in conjunction with development plan review);**
> **2.A transition of building mass and density from the greatest mass and density near 240th Street SE to the least mass and density adjacent to single family zoning. Abutting the buffer, development should be limited to one story in height.Ex. 1.3, at 109, 110.**

RCW 36.70A.020(1)and (2)

***See* discussion of Aagaard Legal Issue No. 1.The Decker property is located within the parcel annexed by the City as part of the Canyon Park Business Park annexation in 1992Finding of Fact No. 17..The property is within both the City's current boundaries and the UGA.Although the property is currently undeveloped, its location within the UGA means it is destined for urban development.**

The location of the property within the UGA also means that Bernhart's assertion that "higher density development encourages sprawl" is fundamentally wrong.Once a UGA has been drawn, as here, any urban development within the UGA automatically reduces sprawl. Localized intensification of use within a UGA is not sprawl -- it is the opposite of sprawl -- compact urban development.*See Rural Residents,* at 19.Bernhart has failed to meet his burden of proof to show that the City failed to consider planning goals (1) and (2) of RCW 36.70A.020 when it adopted Revision FI5a.

RCW 36.70A.020(8), (9), and (10)

RCW 36.70A.020 provides as follows:

(8) Natural resource industries.Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation.Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

(10) Environment.Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Bernhart has not met his burden to show how Revision FI5a fails to comply with the goals for natural resource industries, open space and recreation and environment.Cities, by virtue of their roles as the focal points for urban development and the primary providers of urban services, are not likely to have natural resource industries.Goal 9 does not obligate the City to designate this particular parcel as open space.Finally, Revision FI5a, providing for medium density development, does not violate the environmental goal simply because it provides for that density.

RCW 36.70A.020(11) and (12)

RCW 36.70A.020(11) and (12) provide:

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

(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.

The fact that the Council chose not to remand Revision FI5a to its Planning Commission before adopting the Revision does not mean the citizen participation and coordination goal was violated.Other than this objection, Bernhart largely concedes that the City encouraged citizen participation.

As discussed in the General Discussion and with respect to Aagaard Legal Issue No. 2, the necessary public facilities need not be already present at the property before the property can be designated for urban development.Clearly, Planning Goal 12 provides that the facilities do not need to be available until the "development is available for occupancy."

Bernhart Conclusion No. 1

Revision FI5a does not violate goals (1), (2), (8), (9), (10), (11), and (12) at RCW 36.70A.020.)

Bernhart Legal Issue No. 2

Must the provision be, and if so is it, consistent with the development regulations for natural resource lands and critical areas required by the Act?[RCW 36.70A.060]

Petitioner's position

Bernhart, rather than arguing that Revision FI5a is not consistent with the City's development regulations for natural resource lands and critical area regulations or other parts of the land use element of the comprehensive plan, argues that the Revision does not comply with several natural environment policies of the Plan: Land Use Element Goal 8, (Ex. 1.2, p. LU-12), Land use Element Policy 10, (Ex. 1.2, p. LU-17), and certain portions of the Fitzgerald/35th Subarea Plan, (Ex. 1.2, pp. FI-1 through 13.)

Respondent's and Intervenor's positions

Both the City and 240 Properties argue that Revision FI5a is not required to be consistent with the City's pre-GMA development regulations, and that the Revision is consistent with the City's interim critical areas regulations.Also, both the City and 240 Properties argue that Bernhart improperly treats the goals and policies of the land use element and portions of the Fitzgerald/35th Subarea plan as if they were developmentregulations.

Discussion

RCW 36.70A.060(1) requires local jurisdictions to adopt development regulations to "assure the conservation of agricultural, forest, and mineral resource lands" while RCW 36.70A.060(2) requires counties and cities to adopt development regulations to protect critical areas.

Although Bernhart argues that Revision FI5a will "negatively affect water source which is used to raise fish at the corner of 240th and 35th," (Bernhart Brief, at 4) he fails to explain how the mixed use designation will degrade water quality.240 Properties correctly points out that when the Decker property is developed, compliance with the City's critical areas regulations will be required.

Land Use Element Goal 8, Land Use Element Policy 10 and certain portions of the Fitzgerald/35th Subarea plan.

Land Use Element Goal 8 discuses control of storm water run-off.Land Use Element Policy 10 prohibits development in the floodplain which would tend to worsen flooding, The portions of the Fitzgerald/35th Subarea Plan cited by Bernhart discuss the acquisition of land for the develoment of park sites.Ex. 3.1 at LU-12, LU-17, FI-1-13.

Other than recite various portions of the land use element of the Comprehensive Plan and the Fitzgerald/35th Subarea Plan, Bernhart fails to explain how Revision FI5a is inconsistent with the portions of the Plan relied upon.Bernhart argues that the Revision is inconsistent with City's interim critical areas ordinance but fails to explain how he believes it is inconsistent.Even if he had, both 240 Properties and the City correctly observe that RCW 36.70A.060(3) requires critical area development regulations to be consistent with

comprehensive plans - not vice versa.

Bernhart Conclusion No. 2

Revision FI5a is not required to be consistent with the City's interim critical areas ordinance.The City's development regulations must be consistent with its Comprehensive Plan.*Seealso* RCW 36.70A.120.

Bernhart Legal Issue No. 3

Is the provision required to, and if so does it, meet the preamble to and certain mandatory elements of the Act's comprehensive plan requirements, specifically (1) land use; (2) housing (preamble) and (d); (3) capital facilities (b) and (d); and (6) transportation (preamble), (b) and (c)? [RCW 36.70A.070]

Petitioner's position
Bernhart argues that Revision FI5a does not meet the preamble and certain mandatory elements of the Act's requirements for a comprehensive plan, and more specifically, that it is inconsistent with the projected capital facilities element of the Plan.Bernhart cites numerous adopted policies from the city's land use, capital facilities, utilities, and transportation elements as well as the policies for the Fitzgerald/35th Subarea Plan.*See* Fitzgerald/35th Subarea Plan: Summary (FI-1); Land Use (FI-4); Existing Plans and Zoning (FI-7); Land Use Policies 1 and 4 (FI-8); Subarea Actions 1 and 2 (FI-8); Transportation Action 2 (FI-11); Utilities Element: purpose and relationship to the GMA, Capital Facilities Element:purpose and relationship to the GMA, Capital Facilities Element: Water Distribution and CP Transportation element.Ex. 1.2.
Respondent's and Intervenor's position
The City points out that Bernhart appears to be making an argument similar to that of petitioner Aagaard in Legal Issue No. 1, that is, the Act requires tiering of development in UGAs.The City argues that because the Decker property is within the existing UGA "the concurrency requirements of the GMA, combined with market forces will largely dictate where and when development occurs within the UGA."City Brief, at 17.
240 Properties argues that Revision FI5a is consistent with LU Policy 5 because it provides a transition between Canyon Park Business Park to the south and the single family area to the north.240 Properties argues that the Revision is consistent with various portions of the Fitzgerald/35th Subarea Plan.

Discussion

Bernhart has failed to meet his burden of proof to show that Revision FI5a fails to comply

with portions of RCW 36.70A.070, because his legal argument consists almost entirely of quoting the various portions of the Plan that he believes are inconsistent with the Revision. Bernhart has offered little analysis explaining his allegation.

Moreover, as explained by the Board in the General Discussion, development within the UGA is driven by a combination of private market forces and public policy.Revision FI5a proposes development at a density of eight dwelling units per acre for the Decker property. However, development at this level of density is:

> **subject to availability of necessary utilities and compliance with critical areas regulations and other development standards and impact mitigation requirements.**

Ex. 3.1, at 109. Not only does the Plan require that the necessary infrastructure be available before the Decker property can be developed at a maximum density of eight dwelling units per acre, the Plan also requires that the development proposal comply with the City's critical area regulations and impact mitigation requirements.Revision FI5a leaves the door open as to whether a private developer or the City will provide the necessary utilities before the proposed urban development is allowed to occur.Such flexibility does not violate the Act.

Bernhart Conclusion No. 3

Revision FI5a meets the requirements of RCW 36.70A.070.

Bernhart Legal Issue No. 4

Is the provision required to, and if so does it, comply with the Act's requirement that comprehensive plans be coordinated and consistent with plans of adjacent jurisdictions, specifically Snohomish County?

Petitioner's position

Bernhart argues that Revision FI5a does not comply with the Act because it is not consistent with the current rural land use and watershed-site sensitive overlay designations of the Snohomish County Zoning Code.

Respondent's and Intervenor's position

Both the City and 240 Properties argue that Revision FI5a is not required to be consistent with pre-GMA land use regulations and that instead, Revision FI5a is required to be consistent only with the Comprehensive Plan Snohomish County enacts under the GMA.

Discussion

As the Board explained in Aagaard Legal Issue No. 3, comprehensive plans adopted by local jurisdictions are not required to be consistent with pre-GMA enactments.The Snohomish County Zoning Code provisions Bernhart relies upon were enacted prior to the

GMA, and are therefore not binding on the City.

Bernhart Conclusion No. 4

Revision FI5a is not required to be consistent with Snohomish County's pre-GMA Zoning Code requirements.Since Snohomish County has not yet adopted its GMA comprehensive plan, the City's Plan cannot be consistent with it.

Bernhart Legal Issue No. 5

Is the provision required to be, and if so is it, consistent with the Urban Growth Area requirements of the Act?

Petitioner's position
Bernhart argues that Revision FI5a is not consistent with the urban growth requirements of the Act because the Decker property is not currently characterized by urban development and lacks necessary infrastructure.
Bernhart also argues the City did not comply with RCW 36.70A.110 because its adoption of Revision FI5a caused it to exceed the counties' planning population allocation for the City.
Respondent's and Intervenor's position
Both the City and 240 Properties argue that Revision FI5a is consistent with the UGA requirements of RCW 36.70A.110 because the Decker property is within the city limits and within the UGA.Both the City and 240 Properties argue that the medium density development proposed by the Revision is consistent with urban development.In addition, 240 Properties argues that the Revision would allow multi-family housing which would provide a transition between Canyon Park Business Park to the south and the existing single family housing to the north.Finally, both the City and 240 Properties argue that the City will "update" its population projections once Revisions FI5a and the other Revisions to the Plan are incorporated.

Discussion

RCW 36.70A.110 (1) provides in material part:

> **Each city ... shall be included within an urban growth area.**

Since the Decker property is located within the city boundaries and within the metropolitan UGA, Revision FI5a is consistent with the UGA requirements of RCW 36.70A.110.In addition, the medium density multi-family development that Revision F15a would allow is consistent with the type of compact urban development envisioned by the Act for areas inside UGAs.
Bernhart's reliance upon RCW 36.70A.110 as authority for the proposition that the City

violated the Act by planning for more growth than King and Snohomish Counties had allocated to the City is not well taken.RCW 36.70A.110 places a duty upon counties to accomodate the OFM planning projections within the county through designation of one or more UGAs, but does not and cannot direct how cities plan for growth within their UGAs.

Bernhart Conclusion No. 5

Revision FI5a is consistent with the UGA requirements of RCW 36.70A.110.

F.ORDER

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board orders:
1.)The City of Bothell Comprehensive Plan is in compliance with the requirements of the Growth Management Act, except for Revision HO7a.
2)Revision HO7a is remanded to the City with instructions to bring it into compliance with the Act and the Board's holdings and conclusions.
3.)Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than 5:00 p.m. on July 21, 1995.
So ordered this 21st day of February, 1995.
CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
M. Peter Philley
Board Member

_____
Joseph W. Tovar, AICP
Board Member

_____
Chris Smith Towne
Presiding Officer
Note:This Final Decision and 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.
Diane - for Certificate of Service, see last board order in this case.
Identity of Party:Petitioners
Name of representative:Ann Aagaard
Address of representative:16524 - 104th NE
Bothell, WA 98011
Telephone number of representative:(206)488-8418
Name of representative:Sue Kienast
Address of representative:16836 - 104th NE

Bothell, WA 98011
Telephone number of representative:(206)488-8408
Name of representative:Tris Samberg and Michael Hablewitz
Address of representative:17507 Eason Avenue
Bothell, WA 98011
Telephone number of representative:(206)488-3642
Name of representative:Cheri Miller
Address of representative:17505 Eason Avenue
Bothell, WA 98011
Name of representative:Craig Bernhart
Address of representative:23413 - 39th Avenue SE
Bothell, WA 98021
Telephone number of representative:(206)487-1412
Name of representative:Judy Fisher
Address of representative:23205 - 35th Avenue SE
Bothell, WA 98021
Telephone number of representative:(206)483-9674
Identity of Party:City of Bothell
Name of representative:Wayne Tanaka, WSBA No. 6303
Ogden Murphy Wallace
Address of representative:1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686
Telephone number of representative:(206)447-7000
FAX number of representative:(206)447-0215

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[1]**The Board has identified the *iterative and interactive* sequence under the GMA as follows:**

> **(1)Designate and adopt *interim* critical areas and resource land regulations (RCW 36.70A.170, .060); (2) Adopt CPPs with at least procedural fiscal analysis (per *Snoqualmie*); (3)Adopt *Interim* Urban Growth Areas (RCW 36.70A.110(4)); (4)Adopt final phases of CPPs and/or substantive fiscal analysis as needed (per *Snoqualmie*); (5)Adopt comprehensive plans, including Final Urban Growth Areas (RCW 36.70A.110(4)); (6) Perform activities and make capital budget decisions in conformity with the adopted comprehensive plan (RCW 36.70A.120).**

***Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Case No. 93-3-0005 (1993) at 26, note 10.The adoption of comprehensive plans occurs as step five of this process.**

[1]**The Board held in *Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (1993):**

> **The CPPs are part of a hierarchy of substantive and directive policy.Direction flows first from the CPPs to the comprehensive plans of cities and counties, which in turn provide substantive direction to the content of local land use regulations, which govern the exercise of local land use powers, including zoning, permitting and enforcement.*Snoqualmie*, at 17.**

[1]**The Board held in an earlier case that a purpose of CPPs and UGAs is to direct urban development to urban areas and to reduce sprawl.*See Edmonds, supra*, at 25.The Board also held that compact urban development is the antithesis of sprawl, and that by striving to achieve a land use pattern and urban form that**

is compact, cities and counties will serve the explicit direction of Planning Goals 1 and 2.*See Rural Residents*, at 14, 19.

[1]"Urban governmental services" is defined at RCW 36.70A.030(7) as including:

> **those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.**

[1]Under the GMA, a comprehensive plan is a complex document comprised of several mandatory elements and possible optional elements.*See* RCW 36.70A.070 and .080 respectively.The Act sets forth the mandatory elements for comprehensive plans in RCW 36.70A.070(1) - (6), requiring cities to adopt: (1) a land use element; (2) a housing element; (3) a capital facilities element; (4) a utilities element and (6) a transportation element.Counties are also required to include a rural element RCW 36.70A.070(5)).Local governments may also include additional elements such as conservation, solar energy, and recreation.RCW 36.70A.080 (a) - (c).

[1]The Board has previously held that a comprehensive plan is:

> **... obliged to balance local, regional and state interests as the GMA requires ... A GMA comprehensive plan is more than a cobbling together of thirteen pre-existing subarea plans, each of which was developed without these external considerations and the balancing of interests.*Happy Valley Associates et al. v. King County*, CPSGPHB Case No. 93-3-0008 (1993), Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend its Petition for Review, at 19-20.**

[1]The history and theory of North American regional development runs from extremes of low to high density. The Board takes official notice of *The Elusive City:Five Centuries of Design, Ambition and Miscalculation*, Jonathan Barnett, Harper & Rowe, New York, 1986.On the one hand, Frank Lloyd Wright's designs for Broadacre City, described on pages 84 - 85, is an accurate prediction of post - World War II suburban sprawl. The GMA intends to reduce, rather than perpetuate sprawl, no matter how well designed.On the other hand, the extreme concentration of Manhattan, described by the Regional Plan for New York, at page 147, is the model for maximum density.Obtaining such extreme densities could result from relying solely on objective criteria, such as theoretical land capacity of existing cities.Presumably, few Washingtonians would be satisfied living with Manhattan's extreme densities.This is why the GMA leaves discretion to local legislative bodies to balance objective factors with subjective factors.

[1]As originally stated the issue included the phrase "the proposed County Comprehensive Plan." Aagaard agreed to amend this issue at the hearing on the merits to eliminate reference to "the proposed County Comprehensive Plan."

[1]Housing Policy 18 is much longer but does not appear to contain any other language that limits where senior housing can be located