

County Association of Realtors (**SCKAR**) and Building Industry Association of Washington (**BIAW**)” (the **Motion to Intervene**).

On November 14, 1995, the Board issued a “Prehearing Order and Order Granting Motion to Intervene by Seattle-King County Association of Realtors and Building Industry Association of Washington” (the **Prehearing Order**).

On January 5, 1996, the Board issued an “Order on Motions to Supplement the Record.”

On January 9, 1996, the Board issued an “Order on Dispositive Motions and Motion to Intervene” (the **Order on Dispositive Motions**). The Order on Dispositive Motions dismissed with prejudice Legal Issue No. 19 as set forth in the Prehearing Order.

On January 24, 1996, the Board received “King County’s Motion to Request Status as Amicus Curiae” (**County’s Motion**) together with “Amicus Brief of King County” (**County’s Brief**). On this same date, the Board received “Motion to File Amicus Curiae Brief in Support of City of Redmond” from Larry C. Martin and Marsha L. Martin, themselves and on behalf of the Hollywood Hill Association, the Puget Sound Farm Trust, Preserve Land for Agriculture Now (**PLAN**), the Sammamish Valley Grange and the King County Pomona Grange (the **Martin Motion**), together with an “Amicus Curiae Brief in Support of City of Redmond (the **Martin Brief**).

The Board held a hearing on the merits at 9:45 a.m. on Wednesday, January 31, 1996, in the conference room on the 53rd floor of Two Union Square in Seattle, Washington. Joseph W. Tovar, Presiding Officer in this matter, and M. Peter Philley appeared for the Board. Elaine L. Spencer represented Benaroya and Cosmos, Michael A. Spence represented SCKAR/BIAW, and James E. Haney represented the City. Also present were Marsha Martin, representing Martin, et al., and Kevin Wright representing King County. Court reporting services were provided by Jean M. Ericksen, RPR, of Robert H. Lewis & Associates, Tacoma. No witnesses testified. Oral argument was first heard on the County’s Motion and the Martin Motion.

The Presiding Officer orally **granted** the County Motion and Martin Motion. In response to argument by Benaroya/Cosmos, the Presiding Officer ordered that additional post-hearing briefing responding to the County Brief and the Martin Brief would be permitted until 4:00 p.m. on Tuesday, February 13, 1996. Subsequently, no post-hearing briefs were filed.

II. FINDINGS OF FACT

1. The Sammamish River Valley extends from the center of the City of Redmond to the City of Woodinville. Soils in the valley are identified as Class II, using the classification system adopted by the U.S. Soil Conservation Service. The soils of the Sammamish Valley are classified as “prime agricultural soils” by the U.S. Soil Conservation Service. WAC 365-190-

050(2) and Exhibit 26, at 3-10 and 4-7.

2.The City commissioned the firm of Jones & Stokes Associates, Inc., to study agricultural uses in the Sammamish Valley.This study was completed in 1989.Conclusions from these studies were repeated in the Planning Department Land Use Technical Report in January 1995. Exhibit 26.

3.The purpose of the Jones & Stokes study was to provide information to the City about the then-current agricultural zoning in the Sammamish Valley and to analyze the implications of maintaining or altering that zone designation.Exhibit 26, at 1-1.

4.The Sammamish River flows generally in a North-South direction through Redmond.Most of the Sammamish Valley lies within the 100-year floodplain, as identified by the Federal Emergency Management Agency.Both the Benaroya property and that portion of the Cosmos property between the base of the slopes and the Sammamish River lie within the floodplain. DEIS, at 3.3-1 and Appendix A-4 and Exhibit 26, at T 4-13.

5.The Benaroya property is a 32-acre parcel owned by the Benaroya Shareholders Trust that is located on the northeast corner of 116th Street and Willows Road.The Plan designates this land as agricultural.Benaroya's Prehearing Brief (**PHB**), at 4.

6.The Benaroya property was acquired by the Benaroya Company in 1969, two years after it was originally zoned Agriculture by the City of Redmond.Benaroya's intent was to build a light industrial park. Major arterials bound the property on two sides.Benaroya's PHB, at 4 and 5.

7.The Benaroya property lay fallow for 25 years, although in 1982 the property was leased to Robert Muller for use in a dairy operation.That operation ceased no more than three years later. Since then, the property has remained fallow.Exhibit 55, 61-62, 66-67.

8.Cosmos represents property owners who own land within the city limits referred to as the "Redmond 74" site.Ex. 55, August 24, 1994 letter from Oscar Del Moro to Tim Trohimovich. The property consists of 74 gross acres of vacant land located west of the Redmond-Woodinville Road.Ex. 55.The predominant natural features of the site are steep slopes along the center of the property, meandering forested ravines, and a large flat parcel of land along the Sammamish River Valley.Ex. 678, November 3, 1994 letter from Oscar Del Moro to Roberta Lewandowski, at 4.In addition, Cosmos' proposal shows steep slopes and wetlands, the latter within property designated as agricultural near the Sammamish River. Ex. 678, at "Use/Analysis Map." Prior to adoption of the Plan, the property was zoned at 1 du/acre.Ex. 491, at 5.

Cosmos proposed developing the Redmond 74 site as follows:

45.35acres as detached single family

8.65acres as limited mixed-use neighborhood commercial

20.00acres as agricultural

74.00 gross acres.Ex. 678 letter, at 2-5.

The Cosmos proposal was to have the 45-acre parcel designated as provided in Plan polices LU-113 and LU-115, corresponding to large lots and low-moderate density residential; the 8.65 acres as LU-118; and the 20 acres as LU-111 agricultural. Ex. 678, letter, at 2-5; and "Requested Land Use" map. The 8.65 acre parcel is within a triangle formed by the intersection of the existing Redmond-Woodinville Road, and proposed 160th Ave. NE. Ex. 55.

City planning staff and the city's planning commission recommended approval of the Cosmos proposal. Ex. 55. However, the City Council modified the proposal, including removing the LU-118 neighborhood commercial designation for the 8.65 acres. Ex. 491 and Plan, at A-1-11.

The Plan's final designation of the property was a maximum total density on the property west of 160th Ave. NE of 4 du/acre. This designation covers 65.35 gross acres. For the 8.65 acre portion of the site, the maximum density was 6 to 8 du/acre with a 50% bonus density (additional 4 du/acre maximum) permitted if senior housing with the appearance of single-family residences were proposed. Plan, at A-1-11; *see also* Ex. 55 and 491.

Of the 65.35 gross acres outside of the triangular parcel created by the proposed road, 160th Ave., NE, 15 acres was not buildable due to steep slopes. Ex. 491, at 10. Another 20 acres was buildable but only at 1 du/acre because of an agricultural designation. Ex. 491, at 4 and 10. The net buildable acreage of the site is 59 acres.

9. Cosmos became involved in the Universal Holdings property in 1994, at a time when agricultural zoning was applied to the west 20 acres adjacent to the Sammamish River. This is the same portion of the property to which the Agriculture designation is applied in the 1995 Plan at issue here. Cosmos' intent was to develop the property as a mixed commercial/residential project. Exhibit 678.

10. A Draft Environmental Impact Statement (**DEIS**) evaluating the draft comprehensive plan was issued in August 1994. A Final Environment Impact Statement (**FEIS**) was issued in March 1995. On February 28, 1995 the Redmond City Council held a study session on the Draft and Final Environmental Impact Statements on the draft comprehensive plan. Plan, at B-10.

11. On March 29, 1995 the Planning Commission recommended the Comprehensive Plan to the City Council. Plan, at B-2.

12. The City Council began its review of the Planning Commission's recommended Comprehensive Plan in March, 1995, when the Council conducted a study session of the Draft and Final EIS's. This review progressed to a joint public hearing with the Planning Commission on March 22, 1995. Plan, at B-2.

Nine ad hoc City Council committee meetings were held from March through June 1995. There was an open house on May 20, 1995 and two neighborhood meetings in late May, 1995. In addition, study sessions were held by the Council at which the public was allowed to listen

to proposed changes to be made and at which the last fifteen minutes was reserved for public comment. Plan, at B-2 and B-4.

13. During its review process, the City Council made changes to the Draft Comprehensive Plan that was submitted by the Planning Commission. These changes included a reduction in single family neighborhoods from a maximum density of 8 dwelling units (**du**) per acre to a maximum density of 6 du per acre across the city. The Council also reduced development in the North Redmond annexation area to 4 du per acre in parts, with a 1 du per acre in the remainder. The average density of all residential land in Redmond as a whole was reduced from 7 to six and one half du per acre. Similarly, the potential cluster development in the Bear Creek neighborhood was reduced from 10 to 6 du per acre. In addition, the Council limited the Downtown area to buildings of five to six stories and reduced the potential dwelling units by 1,000 units. Plan at A-1-4 and A-1-5.

14. The Plan based its net new household growth on Appendix 2 of King County's County-wide Planning Policies (**CPPs**). The CPP range of net new households for the City of Redmond is from 9,637 to 12,760 households calculated at 2.2 persons per household. The Plan accommodates 9,878 net new households in the next 20 years; the base year of 1993 accounted for 16,517 households calculated at 1.95 persons per household. Therefore, by the year 2012, the Plan will accommodate a total of 26,395 housing units. Plan, Findings of Fact Nos. 41 and 42, at B-7; King County Comprehensive Plan, Technical Appendix D, at D-2.

15. Redmond's projected 2012 employment is 68,500. This is an increase of 29,500 jobs over the base year (1993) figure of 39,000. The projected figure is at the bottom of, but still within, the CPP range established for Redmond of between 29,500 to 34,750 jobs. Plan, at A-1-1 and B-7.

16. The Plan states that Redmond's projected population by the year 2012 will be 51,470. In the 1993 base year, Redmond's population was 38,987. The Planning Commission's proposal contained a population target of 54,700 people for the year 2012. Plan, at A-1-1 and B-7.

17. Public notice of the Council's July 18, 1995, hearing was published on July 5, 1995 in *The Sammamish Valley News*. The City issued a press release on July 10, 1995 giving the time, date and location of the hearing and announcing that copies of the proposed changes could be obtained starting on July 14, 1995. Notice of the hearing was published in two local newspapers. In addition, the date of the hearing was announced at City Council meetings and was posted in City Hall, the Redmond Post Office and the Redmond Public Library. Exhibit 539 and Plan, at B-5.

18. A final list of proposed changes was available to the public on July 14, 1995. Plan, at B-2.

19. Cosmos commented on the changes by letter dated July 18, 1995 which opposed changes to the Plan. Letter from Oscar Del Moro to Mayor and Council, Ex. 830.

20. On July 18, 1995, the Council took public comment. Intervenor SKCAR commented on the changes by appearing and testifying at this hearing. The Council formally adopted the Comprehensive Plan at this meeting, as Ordinance No. 1847. The Plan became effective on July 31, 1995. Exhibit Plan, at 3 and B-2; Exhibit 12.

21. There are eleven amendments to the Plan with which the Intervenors take issue. The Intervenors list these amendments as follows:

1. Policy FV-2 was amended to reduce Redmond's population projection from 54,600 to 51,470.
2. Policy LU-21 was amended to reduce the combined density of all primary residential Comprehensive Plan designations and zoning districts from seven to six-and-a-half du per acre;
3. Policy LU-28 was amended to reduce densities on portions of semi-rural land north of Bear and Evans Creeks and east of Avondale road from 10 to 6 du per acre;
4. Policy LU-34 was renumbered LU-30, and was amended to apply the Plan's residential zoning densities in developed single family residential neighborhoods only when they are consistent with the neighborhood's built densities and development pattern;
5. Policy LU-31 was amended to reduce densities for newly developing neighborhoods from six to five units per acre, and to add a new requirement that the densities must be consistent with neighborhood policies;
6. Policy LU-32 was amended to reduce densities from eight to six units per acre, and to add a new requirement that the densities must be consistent with neighborhood policies;
7. Policy LU-118 was amended to eliminate R-9 zoning and to condition R-8 zoning on being allowed by a neighborhood plan;
8. Policy LU-123 was amended to reduce base residential densities to a range of four to six units per gross acre rather than allowing six to eight units per gross acre;
9. Policy LU-124 was amended to change the range of allowable densities to a range of eight to eighteen units per gross acre, rather than allowing nine to eighteen units per gross acre;
10. Policy N-NR-8 was amended to allow only four units per acre, rather than allowing four to eight units per acre;
11. Policy N-NR-38 was deleted. If allowed to remain it would have permitted owner occupied housing in areas of six to eight units per acre using alternative housing types such as small lot single family homes and zero lot line development. Intervenors' PHB, at 3-4.

23. The Plan contains a policy regarding Neighborhood Commercial Centers. This policy is designed to provide small-scale neighborhood centers that would include convenience goods and services to serve the needs of the surrounding community. The object of these centers is to provide a focal point for the neighborhood that would reduce the length and frequency of automobile trips. Plan, at 74.

24. The City had not adopted a Transfer of Development Rights (**TDR**) program, as of the date of the adoption of the Plan. At the hearing on the merits, the City stated that it had adopted a TDR program the previous evening, Tuesday, January 30, 1996. No documentary evidence of the adoption of a TDR program by the City is contained in the Board's record.

iii. DISCUSSION AND CONCLUSIONS

This is a case of first impression in two important respects. First, it is the first instance where the Board has dealt with the matter of agricultural lands within a city. Second, it is the first case ^[1] where the compliance of a city comprehensive plan with a county allocation has been at issue. For ease of organization, the Board has grouped the issues under the following headings: Agriculture Issues; Housing Supply Issues; Public Participation Issues; Cosmos Property Issues; and Other Issues.

A. AGRICULTURE ISSUES

Legal Issue No. 1

Is the property owned by the Benaroya Shareholders Trust, and that portion of the property owned by Universal Holdings which has been given “agriculture” designation (the two properties collectively referred to hereafter as the “agriculture lands”) “agricultural land” within the meaning of RCW 36.70A.030 (2)?

Petitioners’ Position

Benaroya argues and Cosmos agrees that, under the GMA, its property may not be designated as agricultural land because the land is not “primarily devoted to” agricultural uses. Both Petitioners maintain that the correct interpretation of “primarily devoted to” is that the land must currently be used for such a purpose, and that this interpretation is consistent with the Board’s decision in *Twin Falls v. Snohomish County (Twin Falls)*, CPSGPHB Case No. 95-3-0003 (1993).

City’s Position

The City argues that individual parcels do not need to be in current agricultural use for the City to designate them as agricultural. It argues that the Act requires an area-wide rather than a parcel-specific approach, and that the record shows that the Sammamish Valley, in which the Benaroya property is located, is agricultural. The City bases its assertion in part on subsection (1)(a) of RCW 36.70A.170 which requires cities to designate agricultural lands that are not already characterized by urban growth and that have long-term commercial significance for agricultural products, instead of using the Act’s definition of “agricultural lands” found in RCW 36.70A.030(2) to make its designations.

Amicus Curiae King County and Martin

King County agrees with the City that the Act requires local governments to take an area-wide, rather than a parcel-by-parcel, approach to designating lands as agricultural. The County maintains that the use of the word “land” in the phrase “land primarily devoted to” which is found in the Act’s definition of “agricultural lands” refers to a broader area than an individual parcel. Therefore the relevant inquiry in deciding this issue is whether the area which includes the property in question has been primarily devoted to agricultural use and has not been characterized by urban growth.

The County also asks the Board to consider several policy reasons in support of its position. First, the area-wide approach furthers the Act's policy of preserving agricultural land. Also, the Benaroya property is bordered by parcels that have agricultural designations. If the Benaroya property is allowed to be developed for residential or commercial purposes there will be friction because such land uses are not compatible with agricultural land uses.

Martin agrees with the County and emphasizes its argument that a parcel-by-parcel approach allows the land owner to make zoning decisions that should be made instead by local governments.

Discussion

RCW 36.70A.170, Natural resource lands and critical areas — Designations, required the City to designate resource lands, including agricultural lands, by September 1, 1991. Subsection (a) describes which lands were to be designated:

Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;

The term "agricultural land" is defined at RCW 36.70A.030(2):

"Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

"Long-term commercial significance" is defined at RCW 36.70A.030(10):

"Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

RCW 36.70A.060(1) required the City to adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural lands designated under RCW 36.70A.170.

RCW 36.70A.060(4) provides that agricultural land of long-term significance cannot be designated within a UGA under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

The record shows that the Benaroya property has not been primarily devoted to commercial agricultural production for many years. *See* Finding of Fact No. 7. Although these lands are not already characterized by urban growth, in order to be designated as agricultural lands under the GMA, they must both be primarily devoted to agricultural uses and have long-term significance for the commercial production of food or other agricultural products. The record does not reveal either.

In contrast, there is no mention in the record regarding the subject of whether the Cosmos property is presently or has been devoted to commercial agricultural production. Therefore, the Board cannot determine whether or not a portion of that property meets the Act's definition of "agricultural lands." However, as noted in the discussion of Legal Issue No. 2, absent a TDR

program, the City was without authority to designate as agricultural land any property within a UGA, including the Cosmos property.

Conclusion No. 1

Because the Benaroya property has not been primarily devoted to the commercial production of agriculture, it does not meet the definition of agricultural lands pursuant to RCW 36.70A.030(2).

[2]

The Board has no evidence before it to determine whether the portion of the Cosmos property designated for agricultural lands meets the definition.

Legal Issue No. 2

If the answer to Legal Issue #1 is yes, can the agriculture lands be given that designation where the City did not have in place a viable density transfer program as required by RCW 36.70A.060 (4)?

Petitioners' Position

Benaroya argues that the City does not have a viable program in place. The mere declaration of intent in the Plan does not constitute a viable program.

City's Position

The City argues that the Plan map does not violate RCW 36.70A.060(4) because that provision of the Act is intended to address "enactment of development regulations." City PHB, at 23. If the Board disagrees with this assessment, the City then argues that it does have a program, by virtue of Policy LU-8 which, because of the Act's consistency requirement, must be implemented. At the hearing on the merits, the City asserted that it had adopted a transfer of development rights program the previous night, January 30, 1996.

Discussion

RCW 36.70A.060(4) provides:

Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

Policy LU-8 provides:

Redmond shall adopt a transfer of development rights program and purchase of development rights program for properties designated Agriculture. The transfer of development rights program should allow density transfers to contiguous uplands within the same ownership outside the Agriculture designation and to designated receiving areas. Receiving areas shall not be located within existing, developed single-family neighborhood.

The Benaroya and Cosmos properties are both located within a UGA. There is no dispute that the

City did not have a program authorizing the transfer or purchase of development rights adopted on the date that it designated the Benaroya property and a portion of the Cosmos property as agricultural. Therefore, by the terms of RCW 36.70A.060(4), the City was without authority to designate any land within Redmond as “agricultural” at the time it adopted its Plan. Regardless of the answer to Legal Issue No. 1 (i.e. do the Cosmos and/or Benaroya parcels meet the Act’s definition of “agricultural lands”), **the Board holds that the City was without authority to make any agricultural lands designations within a UGA prior to its enactment of a program authorizing a transfer or purchase of development rights pursuant to RCW 36.70A.060(4).** Because, by the City’s own admission, it did not adopt such a program until January 30, 1996, it was without authority in July of 1995 to designate any portion of the Cosmos or Benaroya properties as agricultural lands. The City may not designate any agricultural lands until and unless it complies with the requirements of RCW 36.70A.060(4).

Conclusion No. 2

The City may not designate agricultural lands within a UGA without having enacted a program authorizing a transfer or purchase of development rights as required by RCW 36.70A.060(4), and the Board concludes that LU-8, by itself, does not constitute such a program. Because the City did not have such a program in place at the time of its Plan adoption, it acted in noncompliance with RCW 36.70A.060(4) by designating as agricultural lands the entirety of the Benaroya property and a portion of the Cosmos property.

Legal Issue No. 3

If the answer to Legal Issue #1 is no, can the City deny appropriate urban use to the property and be in compliance with RCW 36.70A.110?

Discussion

The Board held above that the City’s action designating the Benaroya property and a portion of the Cosmos property for agricultural land did not comply with RCW 36.70A.060(4). Therefore, the City is obliged to designate said parcels for an urban non-agricultural land use.

Conclusion No. 3

The City acted in noncompliance with RCW 36.70A.060(4) when it placed an agricultural designation on the Benaroya property and a portion of the Cosmos property. Unless and until it adopts a program authorizing the transfer or purchase of development rights, it is obliged to designate the properties in question for non-agricultural urban uses. The Board notes that it remains within the City’s discretion to determine what an “appropriate” use of those properties is, pursuant to the requirements of the Act and the other pertinent holdings in this Final Decision and Order.

Legal Issue No. 4

Is the City required under RCW 36.70A.160 to acquire the development rights to the

agriculture lands if it wishes to restrict them to agricultural use for open space purposes?

Discussion

Petitioners argue that the City is required by RCW 36.70A.160^[3] to pay for placing an agricultural designation on the Cosmos and Benaroya parcels if the preservation of open space is City's motivation for such agricultural designation. It is not the Board's role to determine a city's "wishes" or motivation with regard to any agricultural designation. Rather, we look to the requirements of RCW 36.70A.060 and .170. Open space is an inevitable byproduct of land being put to an agricultural use. However, this fact alone is insufficient grounds for a claim that agricultural designation by a local government requires development rights acquisition pursuant to RCW 36.70A.160. Only if a government restricts the use of designated agricultural lands solely to maintain or enhance the value of such lands as open space, must the City or County acquire a sufficient interest in the property.

Conclusion No. 4

The City was not required by RCW 36.70A.160 to acquire the development rights to the agricultural lands that it designated pursuant to RCW 36.70A.170 and regulated pursuant to RCW 36.70A.060.

B. HOUSING supply ISSUES

Cosmos and the Intervenors have asked the Board to review the City's Plan to see if it is consistent with King County's CPPs regarding growth targets and affordable housing. Legal issues 8, 14, 16 and 17 all generally address the question of how the housing provided for in the Plan complies with the GMA's goals and requirements, the CPPs and the plans of adjacent jurisdictions. They collectively cite key sections of the Act and the CPPs. In addition, the Board has taken official notice of the King County Comprehensive Plan, specifically Technical Appendix D, which explains the genesis and the assumptions that support the household allocation made to Redmond by the CPPs.

The GMA requires cities and counties to adopt comprehensive plans which are coordinated and consistent with the comprehensive plans of bordering counties and cities and other counties and cities with related regional issues. RCW 36.70A.100. In order to effectuate this goal, counties must adopt CPPs. RCW 36.70A.210(1). The CPPs provide a policy framework for cities within the county to ensure that the coordination and consistency mandates of RCW 36.70A.100 are met. See RCW 36.70A.210(1). The CPPs interact with the development of comprehensive plans "as part of

a hierarchy of substantive and directive policy."^[4]

The Board clarified this hierarchy in *Aagaard v. City of Bothell (Aagaard)*, CPSGMHB Case No. 94-3-0011 (1995). The Board said:

[T]he 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.Aagaard*, at 6.

In order to achieve consistent and coordinated comprehensive plans among the cities within a county, these plans must be consistent with the policy framework set forth in the CPPs.

The hierarchy of policy demonstrates the focus of GMA planning on local governments. The comprehensive plans guide specific actions of local governments by balancing local, regional and state interests in the adoption of coherent policies. *Aagaard*, at 7. Local governments and agencies are responsible for implementing these policy directives. Thus, “[w]ithin 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.” *Aagaard*, at 7.

Legal Issue No. 8

Does the reduction in density for the Cosmos property, and other properties across the city, allow the City to meet the growth targets established by adopted Countywide Planning Policies FW-28, AH-1, AH-2 and Appendices 2 and 3?

Petitioner’s/Intervenors’ Position

Cosmos and the Intervenors argue that Redmond’s comprehensive plan violates the GMA because it will cause the City to fail to meet its growth targets established in the CPPs. Therefore, the Plan is inconsistent with CPP policies FW 28, AH-1, AH-2 and Appendices 2 and 3. Cosmos believes that the change in density which occurred when the final Plan was adopted may bring the Plan out of compliance with the CPPs. Petitioner’s PHB, at 44. However, Cosmos admits that the Plan’s household target falls within the range established for the City by the CPPs.

The Petitioners argue that the City Council’s reduction of the density in the single-family neighborhoods and reduction of the ratio of multi-family to single-family units was inconsistent with the GMA goals to reduce sprawl and provide affordable housing. Petitioners PHB, at 31. Petitioners cited to the City Planning Director’s admonition to the Council, during its Plan review, that it was significantly reducing residential density city-wide while simultaneously increasing employment:

... every decision that’s been made of almost two days of decisions has already reduced the overall housing capacity. We’ve already reduced the capacity of single family [R-4/8 to R-4/6]. I have no doubt that you’ll do more of that tonight... and now we’re reducing the capacity of multifamily. We’ve done it downtown and we’re doing it... you’re proposing this for Overlake. We don’t want the rural area to change east of us. We don’t want the rural area to change north of us. But we want to take all these jobs which raise — create tremendous demand for housing in Redmond. It just doesn’t hold together as a plan.

Petitioners’ PHB, at 31-32.

The Intervenors object to the City’s use of a 1.95 person per household (**PPH**) factor to determine

population growth for Redmond over the next 20 years. The Intervenor's argue that the PPH, combined with the household target of 9,878, results in a population capacity that violates the CPPs and the Act.

The Intervenor's also object to the requirement that all density designations be "consistent with the neighborhood's built densities and development pattern." The Intervenor's refer to this provision as a "neighborhood veto" that would essentially allow neighborhoods an opportunity to reduce the City's residential development capacity even further. *See* Intervenor's' PHB, at 9.

Redmond's Position

Redmond responds by noting that the Plan's net new household target is within the CPP target range and that lower-density zoning will not bring the Plan's capacity outside of this range. The City also disagrees with the Intervenor's regarding the use of a 1.95 PPH factor. The City argues it is free to use its own measure because the CPPs do not provide a recommended PPH.

Discussion

The Plan specifies that 9,878 net new households will be built in Redmond over the next 20 years. Appendix 2 of the CPPs contains the proposed growth target ranges for households; the proposed range for Redmond runs from 9,637 to 12,760 net new households. The City's provision for 9,878 households falls within this range.

Even though Redmond's Plan is facially consistent with the proposed household target range in the CPPs, the Intervenor's question whether this goal will be met. The Intervenor's argue that the City's use of a 1.95 person PPH factor will cause the Plan to fail to meet the CPPs' growth targets. They also claim that the Plan's density capacities will be reduced to such a level that the household target will not be met because of the operation of Policies LU-30 through LU-32 that will require future zoning actions to be consistent with built neighborhood densities and future neighborhood policies.

a. Will the City's use of a 1.95 PPH figure cause the Plan to be inconsistent with the CPP growth targets?

RCW 36.70A.110(2) requires counties to designate urban growth areas (UGAs) based on the population projection made by OFM. In order to give meaning to this process, counties must disaggregate OFM's county-wide projection by allocating population projections to the various cities within it. *See Edmonds*, at 31. Counties can either allocate by numbers of people or convert the population projection to persons per household (PPH). King County elected to do the latter. *See Vashon-Maury*, at 20.

The outcome of this issue centers on how the County allocated these population projections. The County took its OFM population projection and converted it into households by using a 2.2 PPH factor. The County then set projected growth targets for cities in the County for the year 2012 in households.

The County's household range for Redmond is from 9,637 to 12,760 net new households. The City's Plan accommodates 9,878 new households by 2012 and is therefore on its face consistent

with the CPPs. However, the City altered the County's allocation by using a 1.95 PPH factor. The difference is illustrated below:

Table 1

Population Projections for Redmond — Difference between 2.2 PPH & 1.95 PPH
1993 Base Projected Population Projected Total
Population Increase By 2012 Population by 2012

County	38,987 ^[5]	21,201 (to 28,072) ^[6]	60,188 (to 67,059)
City	38,987	19,262 ^[7]	58,249

Difference between County and City: 1,939

The City's population projection is inconsistent with the CPPs because of the significant difference in population numbers projected by 2012.

The Board also notes that the City's projection is also inconsistent with its own Plan. If the City had also used its new household figure and multiplied it by the 1.95 PPH factor, then the City

should have planned for 58,249^[8] people instead of the lower 51,470 that was used in the Plan.

The following table illustrates this:

Table 2

1993 Base Projected Population Projected Total
Population Increase By 2012 Population by 2012

County	38,987	21,201	60,188
City	38,987	12,483 ^[9]	51,470

8,718

How did the City arrive at its population projection of 51,470 people? The projection was arrived at by deflating the past and existing PPH in Redmond. This deflation is set forth in the following table and is based on the Council's findings of fact for the Plan.

Base Year Net New PPH Total

of Households Households Factor Population

16,517 + 9,878 x 1.95 = 51,470

The City must comply with the County's population allocation and, except as noted below, cannot unilaterally modify the PPH assumptions upon which it was based. This is true whether the County gives cities a range of allocations or simply one number. This is especially true here where the County gave Redmond a range of choices. A city is not without recourse, however, if it disagrees with the County's allocation. The Board recognizes that a local jurisdiction may be able

to document local circumstances to justify a PPH different from that of some other jurisdiction or the County as a whole. However, in order for such differences to be reflected in GMA planning, they must be acknowledged and agreed to by the County when it makes its population allocations. Otherwise, the County's ability to meet its duty to appropriately size the UGA to meet the twenty-year projected population growth will be seriously impaired, if not thwarted.

The Board will remand the Plan with instruction to the City to make one of two choices. First, the City could adjust its PPH factor to 2.2 to correspond to the assumption that underlies the household allocation in the CPP. In that event, the City must also make appropriate revisions to its 2012 population and any other population-driven assumptions contained in its Plan. The City's second choice would be to retain its 1.95 PPH assumption, and instead make an upward adjustment to the number of future households sufficient to accommodate the 21,201 to 28,072 additional people allocated to the City.

Regardless of which choice the City makes to comply with this Order, it is free to petition the County to amend the household allocation to Redmond based on "new information."

Alternatively, the City can simply wait and see if the market and other factors oblige the County to consider modification of Redmond's allocation. The County has a statutory duty to re-calculate its CPPs/UGAs at least every ten years. RCW 36.70A.130(3).

For the Board to hold otherwise would result in a lack of the coordination and consistency among

local governments that is required by RCW 36.70A.100. [10] While OFM's twenty-year population projection to an individual county — as well as that county's allocation of the projected population to its cities — can be characterized as simply "best guesses" about the future, there can be no effective growth management without such a forecasting and allocation exercise. In order for state, county and city governments to coordinate their efforts to manage growth, they must be operating from the same set of assumptions and policy directives. To determine how and by whom growth will be accommodated requires a shared understanding of how much growth is coming (i.e., the OFM projection) and where specifically it will be directed

(i.e., the sub-county allocations to cities). [11]

Further, to allow the City to "under-plan" by manipulating the allocations would mean that it will not be planning for the "x" number of people that the County thinks are coming to Redmond. Redmond is free to plan for more than the allocation, possibly even beyond the high end of the allocation (*see WSDFI*, at 55) as long as it can provide for the necessary capital facilities and services; however, it may not plan for less. By lowering the PPH, it has effectively done so.

It must be remembered that the County's duty under RCW 36.70A.110 is to accommodate the county-wide *population* growth projected by OFM. Expressing the projected population increase as a number (or range) of households is logical, because it is easier to relate a demand expressed

in such terms to a supply of land designated at various densities. [12] Nevertheless, the record does not suggest that the County contemplated that cities would manipulate the PPH assumptions after

[13]

the CPPs assigned them their household targets.

The County needs to be able to rely upon cities to accommodate the population that it has allocated to them. Redmond must therefore meet the household growth target and comply with the County's population projection. The City has met the first requirement, but fallen short of the second. To allow a city to meet the household range, but then deflate its population projection, would constitute an inconsistency between the City's Plan and the regional framework to accommodate growth — namely, the UGAs and CPPs adopted by the County.

The Board holds that Redmond must recalculate its persons per household figure, and therefore its city-wide population forecast, so that it complies with the assumption that underlies the County's household allocation. Alternatively, the City may retain its PPH factor, but then must increase the number of households so that it accommodates the population implicit in the county's household allocation.

b. Do the Plan policies that direct residential zones to be consistent with built neighborhood densities and future neighborhood policies constitute a neighborhood veto which will, in effect, enable the City to lower density beyond what is set forth in the Plan?

The City Council's amendments to the adopted Plan policies dealing with residential densities appear on page A-1-4 to Exhibit A to Ordinance No. 1847. The Council's revisions, shown below with underlining and strikethroughs, provide:

LU-34 30In developed single-family residential neighborhoods, residential zones shall be applied in a manner that is consistent with the neighborhood's built densities and development pattern ~~discourages excessive re-subdivision of built lots in existing, single-family residential neighborhoods.~~

LU-31 0 For newly developing neighborhoods, a four-unit-per-acre residential zone should be applied to areas which comply with the Low-Moderate Density Residential designation criteria, but due to land capability, public facility limitations, neighborhood policies, or other factors, are not designated for or suitable for development at a greater density.

[14]

LU- 31 For newly developing neighborhoods, a five ~~six~~ unit-per-acre residential zone should be applied to single-family residential neighborhoods that comply with the Low-Moderate Density Residential designation criteria and have public facilities and land capability that is suitable for development at an overall density of five ~~six~~ units per gross acre where this density is consistent with neighborhood policies.

LU-32 For newly developing neighborhoods, ~~an~~ a ~~six~~ ~~eight~~ unit-per-acre residential zone should be applied to areas that meet the Low-Moderate Density Residential designation criteria, have land with the capability of being developed at ~~six~~ ~~eight~~ units per gross acre without significant adverse environmental impacts, ~~and~~ can be adequately served with public facilities and services, and where such a density is consistent with neighborhood policies. (emphasis added)

In addition, policy LU-118 was amended to eliminate R-9 zoning and to condition R-8 zoning on its being "allowed by a neighborhood plan or this chapter."

The City claims that these amendments were made by the Council to assure internal consistency in the Plan between allowed densities and to assure the preservation of existing single-family neighborhoods, as required by the 1995 amendment to RCW 36.70A.070 passed as Chapter 307,

[15]

Laws of 1995.

Both Cosmos and the Intervenors argue that the above cited amendments to Redmond's policies amount to a "neighborhood veto" which would allow zoning densities to be reduced below the range provided in the Plan. For example, an area that is designated Low-Moderate Density Residential, which allows for 4-6 du per acre, could, under the language in these policies, possibly be reduced to 3 du per acre if the City were to subsequently determine that such a reduction in density was necessary to be consistent with either "the neighborhood's built densities and development pattern", per LU-30, or with "neighborhood policies", per LU-31, LU-31~~0~~ and LU-32. Intervenors contend that these policies invite the City, in response to neighborhood opposition, to reduce the development potential of Redmond's neighborhoods below what the Plan ostensibly permits and, in effect, freeze the development density of neighborhoods at their pre-GMA levels.

The language in these policies is ambiguous. It is unclear what specific policies the City may potentially apply to the zoning of residential areas and what actual effect those policies will have on the ability of neighborhoods to achieve the densities ostensibly assigned by the Plan. Are these neighborhood policies to be set forth in neighborhood plans yet to be adopted? Are these other city-wide neighborhood policies, existing or yet to be adopted? Will these policies be used to help shape the physical form and type of improvements associated with new development or are they intended to reserve the City's discretion to lower density below the ranges already designated in the Plan?

On their face, LU-30, LU-31~~0~~, LU-31, and LU-32 appear to be intended, as the City claimed, to meet the direction of RCW 36.70A.070(2) to "[ensure] the vitality and character of established residential neighborhoods" and to provide for "the preservation, improvement, and development of housing, including single-family residences..."

The Board agrees that ensuring the vitality and character of neighborhoods is a legitimate city objective — indeed, it is directed by RCW 36.70A.070(2). However, the requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas — while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character." The Board's conclusion that these GMA objectives are not mutually exclusive rests upon several fundamental cornerstones of the GMA — that cities

[16]

are to be the focal points of new urban growth, that the Act contemplates well-furnished and

[17]

well-designed compact urban development, and that the development process must be timely,

predictable and equitable, to developers and residents alike. See RCW 36.70A.020(6)(7) Accordingly, the Board holds that the City may not, under the guise of RCW 36.70A.070(2), use policies LU-30 through LU-32 to lower a neighborhood density below the applicable neighborhood density range set forth in the Plan. Such an interpretation of these policies would render the Plan internally inconsistent. In other words, it would be inconsistent for the Plan to designate a density of 4 - 6 du per acre in a certain neighborhood and then invoke Policies LU-30 through LU-32 to zone that area for a density of less than 4 du per acre. Likewise, the

requirements for consistency at RCW 36.70A.120 would preclude a permit review from yielding a unit count (of lots or dwelling units) that is below the minimum density set forth in the Plan, absent some sort of clustering, transfer of development rights or other innovative land use management technique.

The City has argued that the policies in question were not intended to operate as a “neighborhood veto.” The Board cannot and need not determine the motivation for adoption of specific policies — the scope of our inquiry is whether the challenged policies, on their face, comply with the Act. In this instance, the Board concludes that the Act does not permit a “neighborhood veto”, whether *de jure* or *de facto*, and the policies challenged here cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. Citizens provide input to the land use decision-making process, but “citizens do not decide.” See *Poulsbo, et al., v. Kitsap County (Poulsbo)*, CPSGMHB Case No. 92-3-0009 (1993), at 36.

The decision-making regime under GMA places great importance on the comprehensive plan. A city may choose to undertake optional neighborhood planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. Conversely, a city cannot “pick and choose” — to adopt some and not other neighborhood plans under the authority of the GMA.

In conclusion, the amended language in the LU-30 through LU-32 can operate to lower densities below the ranges set forth in the Plan. Therefore, the Board holds that these policies do not comply with the requirements of RCW 36.70A.070 and will remand them to the City with instructions to amend the Plan to make clear that these policies cannot operate to lower the residential densities below those set forth in the Plan.

Conclusion No. 8

While the City’s Plan is facially consistent with the CPPs as to the number of net new households it will accommodate, the Board notes that the County’s household allocation was based upon a PPH of 2.2 — and that the County’s duty under GMA is to accommodate population, not households. While it is logical and permissible for the County to express population allocations or targets as households, the Act’s consistency requirement requires that the County’s conversion factor (PPH) be reflected by the “receiving” local comprehensive plans.

The Plan is internally inconsistent as to its population projection and as to the population

allocation to Redmond that is implicit in the CPP's household allocation. The Plan will therefore be remanded with instructions to the City to either adjust its PPH to correspond to the 2.2 used by the County (together with appropriate adjustment to the 2012 City population) or retain its PPH assumption and increase the number of households (i.e., dwelling units) permitted by the Plan sufficiently to accommodate the population allocation implicit in the CPPs household allocations. The Plan's policies at LU-30 through LU-32 do not comply with RCW 36.70A.070. They will be remanded to the City with instructions to amend the Plan to make clear that policies cannot operate to lower the residential densities below those set forth in the Plan.

Legal Issue No. 14

Does the Plan fail to comply with RCW 36.70A.020 (4) and Countywide Planning Policies FW-28, AH-1, AH-2 and Appendices 2 and 3, because it does not make adequate provisions for housing for all economic segments of the community?

Petitioner's/Intervenors' Position

Cosmos argues that the City Council's reduction of the density on the Cosmos property conflicts with the CPPs, because the Plan does not meet Redmond's current needs for affordable housing. The Board understands Cosmos' inconsistency argument to be that because of the City's current affordability gap, Redmond will not be sharing equitably in providing housing opportunities for people with low and moderate incomes as required by CPP AH-2.

In its reply brief, Cosmos also argues that, because Redmond is providing a low number of net new households and because affordable housing is based on a percentage of this total, Redmond is not providing its fair share of housing in terms of actual households. Further, the laws of supply and demand dictate that through this low net new household figure, housing prices will be driven up by restricted supply. One way to prevent this from occurring is to increase housing density. The Intervenors question whether the City will be able to meet those percentages of affordable housing that it has planned for. They rely on a statement in the City's Plan which says that "[t]he Comprehensive Plan is intended to be realistic and capable of being carried out (emphasis added)." Plan, at 15. The Intervenors contend that this statement requires that Redmond show how it intends to meet the affordability percentages in the plan.

City's Position

The City argues that its Plan complies with the CPPs because the Plan sets forth the percentage targets indicated in the CPPs. In addition, the City maintains that it has established a policy basis in the Plan which meets the targets and requirements of AH-1 and AH-2 as interpreted by policy AH-6, which sets the standard for determining whether the City has complied with the CPPs. The City also points out that the market will play a significant role in determining whether the City's efforts to stimulate affordable housing will be effective.

Discussion

RCW 36.70A.020(4) provides the following GMA goal:

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 GMA requires comprehensive plans to include a “plan, scheme, or design” for, (2)A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the [\[20\]](#) community.RCW 36.70A.070(2).

The “economic segments” clause of .070(2)(d) repeats the “affordability” element of the planning goals.In addition, county-wide planning policies must “consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution.”RCW 36.70A.210(3)(g).

Consistent with these GMA mandates, King County adopted the following policies in its CPPs. King County’s CPP FW-28 states:

All jurisdictions shall provide for a diversity of housing types to meet a variety of needs and provide for housing opportunities for all economic segments of the population.All jurisdictions shall cooperatively establish a process to ensure an equitable and rational distribution of low-income and affordable housing throughout the county in accordance with land use policies, transportation, and employment locations.

In addition, policies AH-1 and AH-2 require each jurisdiction within the County to plan to meet the needs of all economic segments of the population.Also, AH-2 provides that all jurisdictions share equally in the distribution of affordable housing which will meet the needs of low and moderate income residents in the County.CPP AH-2, at 61.In order to meet these goals, the City is required to have 24 percent of its new household growth affordable to households with incomes between 0 and 50 percent of the county median income. AH-2 and Appendix 3.AH-1 requires a city to:

. . . plan for a number of housing units affordable to households with incomes between 50 and 80 percent of the County median household income that is equal to 17 percent of its projected net household growth.In addition, each jurisdiction shall plan for a number of housing units affordable to households with incomes below 50 percent of median incomes that is either 20 percent or 24 percent of its projected household growth.CPP AH-2, at 63.

Given these sections, has the City done enough to satisfy the requirements of the GMA and the CPPs?**The Board holds that the City has satisfied the percentage goals of affordable housing mandate in the CPPs.**

What does the GMA require cities and counties to do with regard to affordable housing? The verbs used in the housing sections are: “encourage,” “ensuring,” and “consider.” Subsection 2 of RCW 36.70A.070 has the most substantive mandate. This subsection requires comprehensive plans to include a plan, scheme or design for housing. Among its other provisions (a) - (c) as quoted above, the housing element must make “adequate provisions for existing and projected needs of all economic segments of the community.”

RCW 36.70A.070(2)(d).

This requirement is a separate duty from what counties must do in the county-wide planning policies. Thus, cities are required to plan under both the GMA mandate for comprehensive plans and must also follow the mandates of the CPPs applicable to its jurisdiction. All the county-wide planning policies need do is “consider the need for affordable housing.” RCW 36.70A.210(3)(g). King County’s CPPs go beyond what the GMA demands for county-wide planning policies, by setting forth actual percentage requirements for affordable housing for each UGA. Because the CPPs are binding on the City, it must follow them. Redmond has followed this CPP requirement by requiring 24 percent of its net new households to be affordable to households with 0 to 50 percent of the county median income.

Pages 91-99 of the Plan set forth the housing element. Redmond’s Plan divides its housing element into two main sections. The “Housing Needs” section outlines the housing needs that Redmond will face in the next 20 years. It includes an analysis of existing needs as well as an explanation of the CPP requirements. In this section, the Plan also recognizes that 24 percent of Redmond’s future households must be affordable to low-income households as defined in the CPPs. In addition, this section sets forth ways in which the City may ensure affordable housing. However, this section does not include any adopted policies or procedures for carrying out these goals.

Instead, the relevant housing policies are found in the second housing section entitled “Housing Framework Policies.” Policies HO-5 through HO-34 deal with housing affordability. Each of these policies is designed to carry out the affordability goals discussed in the “Housing Needs” section as well as fulfill the GMA planning goals. For example, Policy HO-16 provides that, in order to encourage the development of affordable housing, incentives and bonuses that are intended to minimize costs to the developer or builder shall be provided by the City. Plan, at 105.

The Intervenors question whether the City will be able to fulfill these policies because of the lower density zoning directed by the Plan. The Intervenors cite the City’s own requirement that the plans be “realistic” and “capable of being carried out” and suggest that the Plan must demonstrate how its housing element is realistic and capable of being carried out.

Nothing in the GMA or the CPPs requires Redmond to show a detailed plan as to how these policies will be achieved. There is nothing in the Plan or in the record that suggests the housing affordability policies are not capable of being carried out. **The Board holds that Redmond’s housing policies fulfill the GMA requirement that the comprehensive plan “make adequate provisions for affordable housing.”** The Plan also satisfies the CPP requirement that 24 percent of all new households be affordable to low-income households.

Conclusion No. 14

The Board concludes that the City's plan is consistent with the percentage requirements expressed in the County's CPP which require cities to make adequate provisions for housing for all economic segments of the community.

Legal Issue No. 16

Did the City violate RCW 36.70A.100 by failing to coordinate the changes with the comprehensive plans of King County and other cities with which Redmond shares common borders or related regional issues?

Intervenors' Position

The Intervenors' arguments on this issue are based on the premise that the Plan is inconsistent with the comprehensive plans of King County and with other cities with which Redmond shares common borders or related regional issues. The Intervenors do not address the issue as stated above, i.e., whether by failing to coordinate changes in residential density with King County and other cities, Redmond has violated RCW 36.70A.100. The Intervenors' arguments will therefore be addressed under the next section which asks whether the Plan is consistent with the plans of King County and other cities within the County.

Legal Issue No. 17

Did the residential changes adopted by the Redmond Council citywide, and as to the Cosmos property specifically, render the adopted Plan inconsistent with the comprehensive plans of King County and other cities and with adopted Countywide Planning Policies LU-37, FW 28, AH-1, AH-2 and Appendices 2 and 3?

Petitioner's/Intervenors' Positions

The Petitioners and Intervenors maintain that the Plan is inconsistent with the comprehensive plans of King County and with other cities with which Redmond shares common borders or related regional issues because the Plan does not promote compact urban development, does not encourage efficient development, and encourages inefficient development. The Intervenors argue that Redmond's housing/job ratio contributes to such inefficient development because it plans for significant growth in employment, but restricts residential growth far below what had been recommended by the Planning Commission.

The Intervenors assert that the Plan is inconsistent because it does not promote compact urban development. In support of this assertion, the Intervenors point to language used by the Puget Sound Regional Council, the King County Comprehensive Plan and the Board which emphasizes the desirability of compact urban development. *See* Intervenor's PHB, at 25.

The Intervenors' claim that the reduction of the city's housing-to-jobs ratio to 0.36 contributes to inefficient development because this ratio contributes to sprawl and inefficient use of

transportation facilities, forces Redmond and King County out of compliance with the GMA's housing mandates, and contributes to adverse environmental impacts.

According to the Plan, the City's population is expected to increase by 15,674 people by 2012. Similarly, the number of employees is expected to increase to 68,500 by 2012. This represents an increase of 29,500 jobs from the base year of 1993.

Currently Redmond provides 9,480 fewer households than are demanded by employees within the City. This figure is expected to increase to 14,500 households by 2012. Plan, at 99. Thus, the Intervenor's argue, the Plan will not correct this imbalance and will force these employees to live outside of the City. This, they allege, means that there will be an increase in sprawl.

City's Position

The City points to portions of its Plan to demonstrate that, contrary to Petitioners/Intervenor's claims, the Plan promotes compact development. Except as to critical areas and resource lands, the Plan provides for residential densities of four or more units per acre. City's PHB, at p. 51; Plan, at 71-75. The City maintains that its minimum density planning meets the "bright line" test for compact development that the Board set forth in *Bremerton v. Kitsap County (Bremerton)*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (1995):

The Board holds that up to 2.5-acre lots are urban. However, rather than adopt a maximum urban lot size, the Board instead adopts as a general rule a "bright line" at four net dwelling units per acre. Any residential pattern at that density, or higher, is clearly compact urban development and satisfies the low end of the range required by the Act. *Bremerton*, at 50 (emphasis in original omitted; Board emphasis added by underlining).

The City further argues that the housing and employment ranges in the Plan are within the ranges of the CPPs and are therefore consistent with the CPPs. Finally, since the CPPs provide the framework for cities planning in the County, as long as the City's Plan is consistent with the CPPs, the City argues that it is also consistent with other cities that have related regional issues.

Discussion

Countywide Planning Policy FW-28, AH-1, AH-2 are cited in the discussion above regarding Legal Issue No. 14. Countywide Planning Policy LU-37 provides:

All jurisdictions shall cooperate in developing comprehensive plans which are consistent with those of adjacent jurisdictions and with the countywide planning policies.

LU-37 simply parallels statutory language, as does FW-28. Turning to the specific arguments raised by the Petitioners and Intervenor's under this legal issue, the Board begins with the allegation that the Plan does not encourage efficient development. The Board rejects the Intervenor's argument that the City's Plan is inconsistent because it does not encourage efficient development. The requirement that efficient development be encouraged is found in Planning Goal 1 in the GMA. RCW 36.70A.020(1) requires comprehensive plans to "encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."

The Board fails to see how the City's Plan fails to meet this efficiency requirement, nor have the

Intervenors met their burden of showing that the Plan directs development into areas where adequate public facilities cannot be provided in an efficient manner.

The Board likewise rejects the Petitioners' argument that forcing employees to live outside the City necessarily increases sprawl. Despite the potential effects outlined by the Intervenors, the Board holds that the Plan is consistent with the CPPs. The CPPs set a proposed target range for net new employees for Redmond between 29,500 and 34,750. County CPP, Appendix 2.

Redmond's Plan accounts for 29,500 net new employees by 2012 and is within the range set forth in the CPPs. Therefore, the Plan is coordinated with the CPPs within the meaning of the GMA.

Conclusion No. 17

Petitioners and Intervenors have failed to meet their burden to prove that the residential changes adopted by the City Council rendered the Plan inconsistent with the comprehensive plans of King County and other cities or the CPPs.

C. PUBLIC PARTICIPATION ISSUES

Legal Issue No. 6

Does the record support the Council's action to reduce the density proposed by the Planning Commission and remove the nonresidential component?

Legal Issue No. 18

Did the process used by the Council to consider changes in the Planning Commission's recommendations satisfy the public participation requirements of RCW 36.70A.140, including the test set forth by the Board in the WSDF I decision?

Petitioner's/Intervenors' Position

Cosmos contends that the City violated the public participation requirements of the GMA because, under the Board's test in *WSDF I*, the changes to the draft proposal were substantial and there was not sufficient information and/or analysis in the record to support those changes.

Cosmos argues that the Plan was based on the EIS and that the EIS that was issued for the Plan was premised on a greater population projection and a greater supply of new households.

The Intervenors assert that the City has violated the GMA's public participation requirements because the final changes that were made to the draft Plan in July did not allow for continuous participation within the meaning of RCW 36.70A.140. They also agree with Cosmos that the City fails the *WSDF I* public participation test. The Intervenors argue that the population projection decrease and the density reductions are substantial changes and that the City failed to "show its work," with the result that there was insufficient analysis in the record to support the changes.

City's Position

The City responds by setting forth the record of when public participation was allowed during the Plan's review process. *See* Comprehensive Plan Findings 5 through 25, Ex. 6, pages B-1 through B-5. Cosmos and the Intervenors focus upon the changes made in July. The City argues that there was an opportunity for public comment regarding these changes and that Cosmos submitted written comments to the Council and the Intervenors provided testimony on July 18, 1995, at the meeting where the Plan was adopted.

Yet, the City concedes that:

.. at least some of the changes made by the City Council in the Planning Commission's recommended plan were substantial. City PHB, at 53.

Discussion

The GMA requires cities to establish procedures for "early and continuous" public participation. RCW 36.70A.140. Requiring local officials to consider public input does not mean that the officials must agree with or obey such input. *See WSDF I*, at 70. In *WSDF I*, the Board set forth a test for determining whether a local government has met the public participation requirement, when the government makes changes to the draft proposal of a proposed comprehensive plan. The test provides:

If a local legislative body wishes to make changes to the draft of a proposed comprehensive plan that, to that point, has ostensibly satisfied the public participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to do so. However, if the changes which the legislative body wishes to make are substantially different from the recommendations received, its discretion is contingent on two conditions: (1) that there is sufficient information and/or analysis in the record to support the Council's new choice (e. g. SEPA disclosure was given, or the requisite financial analysis was done to meet the Act's concurrency requirements) and (2) that the public has had a reasonable opportunity to review and comment upon the contemplated change. If the first condition does not exist, additional work is first required to support the Council's subsequent exercise of discretion. If the second condition does not exist, effective public notice and reasonable time to review and comment upon the substantial changes must be afforded to the public in order to meet the Act's requirements for "early and continuous" public participation pursuant to RCW

[21]

36.70A.140. Emphasis in original. *WSDF I*, at 76.

Application of the *WSDF I* Test

Are the changes in Redmond's Plan substantially different from the recommendations received? Only if the answer is yes does the inquiry move to the questions of whether there was sufficient analysis and information in the record to support the changes and whether the public had a reasonable opportunity to review and comment on the changes.

The changes at issue in this case are the decreased population projection, the addition of the requirement that density be consistent with neighborhood plans, and the decreased unit/acre ranges, which amounted to a reduction in the combined density of all primary residential Plan

designation and zoning districts from seven to six-and-a-half units per acre.

The population projection was changed from 54,600 people to 51,470 people. The population projection of 51,470 is substantially different from the population projection in the draft of 54,600; this is a difference of 3,130 people and amounts to a 6 percent reduction. The change in the population projection is substantially different.

The changes in density that were made by the Council are as follows:

1. The combined density of all primarily residential Plan designations and zoning districts was changed from an average of seven units per gross acre to an average of six-and-a-half. Policy LU-21.
2. The maximum average density on a portion of land North of Bear and Evans Creeks and East of Avondale Road was reduced from 10 units per acre to 6. Policy LU-28
3. For newly developing neighborhoods, the 6 unit per acre designation, to be applied to single-family residential neighborhoods, was reduced to 5 units per acre. Policy LU-31.
4. A reduction from 8 to 6 units per acre was made for areas that meet the Low-Moderate Density Residential designation criteria, that have the land capacity to meet this requirement without significant adverse environmental impacts, and that can be adequately served with public facilities. Policy LU-32.
5. The Moderate Density Residential density category was amended to eliminate R-9 zoning. Policy LU-118. Also, the residential density range for this category was reduced from 9 - 18 units per gross acre to 8 - 18 units per gross acre. Policy LU-124.
6. The Low-Moderate Density Residential base residential densities range was reduced from 4 - 8 units per gross acre to 4 - 6 units per gross acre. Policy LU 123.

The Board holds that these density changes in the Plan, taken as a whole, are substantially different from the recommendations received. Because these changes are substantially different, we move to the next part of the *WSDFI* public participation test which asks whether there is sufficient information and/or analysis in the record to support the new choices.

The Board can find no information in the record which supports these changes in density or which provides analysis of the consequences of the reductions. In addition, the City has not provided information or noted any analysis in the record that would demonstrate that the new changes were supported by facts and analysis in the record. Under the *WSDFI* test, the substantial changes made by the City Council must be supported by facts and analysis in the record. Absent such facts and analysis, the Council cannot wield its discretion to depart from the recommendations it received, recommendations that were supported by facts and analysis. Since the Board concludes that substantial changes were made to the Plan without sufficient supporting analysis, it need not determine whether the public had a reasonable opportunity to review and comment upon the contemplated change.

The Board holds that the Council's changes in the final Plan lowering residential densities were substantial and were not supported by information and analysis in the record.

Therefore, the Board holds that the City did not comply with the requirements of RCW 36.70A.140.

Conclusion No. 18

The City Council's actions in adopting the 11 amendments identified in Finding of Fact 21 violate RCW 36.70A.140 because substantial changes were made to the Plan without citation to supporting information or analysis. The Council's amendments to these policies will be remanded to the City with instructions to either delete the amendments or provide factual and analytical support for the amendments and subsequently, to provide the public with a reasonable opportunity to review and comment upon this information prior to any subsequent re-adoption.

D. COSMOS PROPERTY ISSUES

Discussion

A common and central argument raised by many of the Cosmos issues is that the City did not designate an appropriate urban density for the property. Cosmos argued that the Board's holding in *Bremerton* identified 4 du/acre as an appropriate urban density.

The Board rejects the Cosmos argument that the City has failed to comply with the requirement for 4 du per acre within the UGA. The Board has not said that anything less than 4 du per acre is not urban — rather, the *Bremerton* holding cited by Cosmos simply identifies a “bright line” net density threshold, at or above which, the Board concluded, residential development would clearly constitute urban development. The consequence of a plan including a density designation below 4 du per acre on some portion of a city's land area is simply increased Board scrutiny to determine if there was adequate justification, such as the presence of environmentally sensitive features.

With regard to the claim that the City impermissibly calculated the urban density for the Cosmos property using the entire property, the Board finds no inconsistency between the City's action and the meaning of “net density”. As applied to GMA planning exercises, “net” has the same general meaning as “buildable.” Most cities within King County determined what their “net” land supply was for purposes of the County's UGA allocation exercise. From the record in *Vashon-Maury*, the Board is aware that various cities in King County deducted, for example, public rights-of-way and environmentally sensitive lands in order to determine the “net supply” of buildable land. Generally speaking, the concept of “net” remains the same when applied to a specific parcel of land — that portion which is encumbered with rights-of-way or certain critical areas would not be available for the placement of housing, for example.

In the present instance, the Cosmos property has been given several different density designations, giving rise to a claim that the City did not achieve a “localized” 4 du/acre density on every portion of the ownership. The Board distinguishes here between the “net density” and “average net density,” the latter of which equals the average density of a property with multiple land use designations. For example, on a 60 acre residential ownership consisting of three 20 acre portions designated for 2 du/acre, 4 du/acre and 6 du/acre, the average density equals 4 du/acre:

$$40 \text{ units} + 80 \text{ units} + 120 \text{ units} = 240 \text{ units}/60 \text{ acres} = 4 \text{ du/acre}$$

In determining whether a given property is designated by the City for an appropriate urban density, it is necessary to look at this “average net density.” Obviously, this is more of an issue with larger sites that are capable of more than one density designation. There is no need to average a 12,500 square foot parcel.

The Board holds that, on parcels large enough to have more than one density designation, the Board will look at the average net density of that entire ownership. If the average net density of a parcel is 4 du/acre or greater, that collective designation is clearly urban, and requires no further Board inquiry. This would permit a city to have clustered heavy density on a large parcel, but still allow for lower densities elsewhere on the property for environmental reasons (e. g., a stream running through it) or for buffering of adjacent less intense land uses.

Having set forth the above holding, the Board now applies it to the Plan’s designations for the Cosmos Property.

Cosmos contends that the average density on the larger 65.4-acre portion of the site is 2.3 du/acre, which falls below the Board’s “bright line” of 4 du/acre or more in urban areas. Cosmos PHB, at 6 and 36. The City counters by pointing out that Cosmos failed to include the 8.65-acre portion of the site, and that Cosmos’ calculation was based on gross rather than net acres. The City contends that the average net density of the parcel is 5.5 du/acre, well within the standard urban densities.

The Board concurs with the City that the acreage of an entire parcel must be calculated. Therefore, Cosmos erred by not including the 8.65-acre portion of the site in its calculations. Thus, the gross acreage at issue here was 74.0 acres and not 65.4 as suggested by Cosmos. The Board also concurs with the City that acreage that is unbuildable must be deducted in order to obtain the net acreage of a site. The City claims that the site contains 44 net developable acres but does not cite specific provisions in the record for support of this claim. City’s PHB, at 34. The Board has reviewed the record and found conflicting information. On the one hand, City staff member Tim Trohimovich indicated that “...35 acres is in agriculture and slopes...” when asked how much land is not buildable. Ex. 491, at 4. Assuming that this is correct information, we calculate that:

$$74 \text{ gross acres} - 35 \text{ non-buildable acres (agriculture and steep slopes)} = 39 \text{ net acres}$$

Of the 39 net acres, 8.65 acres are permitted a maximum density of 12 du/acre (assuming the bonus density applied).

$$8.65 \text{ acres} \times 12 \text{ du/acre} = 104 \text{ dwelling units}$$

The remaining 30.35 acres (39 acres - 8.65 acres) can have a maximum density of 4 du/acre.

$$30.35 \text{ acres} \times 4 \text{ du/acre} = 121 \text{ dwelling units}$$

$$104 \text{ du} + 121 \text{ du} = 225 \text{ du}/39 \text{ acres} = \mathbf{5.7 \text{ average net du/acre}}$$

The record further indicates that of the 35 acres of nondevelopable land referenced by Mr. Trohimovich, 20 acres were agricultural and 15 acres were steep slopes. According to Planning Director Lewandowski, this was land "... we do not want them to build on." See Ex. 491, at 10. The conflict arises because the record also indicates that low density residential development of 1 du/20 acres was permitted on a portion of the Cosmos site designated agricultural. The Board notes the following exchange between a Council member and a staff member as follows:

Misner: O.K. In the agriculture, do they get any development potential?

Trohimovich: Sure, they get 1 unit per 20 acres. Ex. 491, at 4. See also, City's PHB, at 34.

Accordingly, the Board assumes that the lower 20 acres of the site was designated agriculture and the residential density permitted was 1 du/20 acres. Therefore, the City cannot deduct 20 acres because development is permitted, albeit at an extremely low density. As a result, only 15 acres of the site are completely non-developable:

$$74 \text{ gross acres} - 15 \text{ non-buildable acres (steep slopes only)} = 59 \text{ net acres.}$$

Of the 59 net acres, 8.65 acres have a maximum of 104 dwelling units; 20 acres have a density of 1 du/20 acres; and the remaining 30.35 acres (59 - 8.65 acres, - 20 acres) can have a maximum density of 4 du/acre.

$$8.65 \text{ acres} \times 12 \text{ du/acre} = 104 \text{ dwelling units}$$

$$20 \text{ acres} \times 1 \text{ du}/20 \text{ acres} = 1 \text{ dwelling unit}$$

$$30.35 \text{ acres} \times 4 \text{ du/acre} = 121 \text{ dwelling units}$$

$$104 \text{ du} + 1 \text{ du} + 121 \text{ du} = 226 \text{ du}/59 \text{ acres} = \mathbf{3.8 \text{ average net du/acre}}$$

Thus, when 35 acres of the entire parcel are not developable, the average net density is 5.7 du/acre. However, when only 15 acres are considered not buildable, the average net density is 3.8 du/acre. This latter density falls below the 4 du or greater/acre "bright line" urban density. Although the Board normally, under the physical circumstances of the Cosmos site, would have concluded that a density just below 4 du/acre was permitted, here the Board cannot reach such a result. It is the City's designation of twenty acres of agricultural land that reduces the site's overall net density, assuming as the record indicates, that residential structures are permitted on agricultural lands. As previously held, the City was not authorized to designate any lands within a UGA as agricultural. Therefore, the Board will remand the Cosmos site designation matter. [\[22\]](#)

With regard to other points raised in Cosmos' arguments, the Board concludes that the Petitioner has not met its burden to show how the City violated the Act. A city has broad discretion in its comprehensive plan to make many specific choices about how growth is to be accommodated. *See Aagaard*, at 9.

Conclusion

The Board concludes that the City's designations for the Cosmos property result in an average net du/acre density below 4 du/acre. This falls below the "bright line" set forth by this Board in the *Bremerton* decision and has therefore caused the Board to more closely scrutinize the circumstances and rationale for the resulting 3.8 density. The Board has remanded the Cosmos matter because of the City's unauthorized agricultural designation for a portion of the Cosmos property, and it will therefore be necessary for the City to reconsider the matter of the appropriate densities on that property. After the agricultural designation matter is resolved, the City is instructed to bring the average net density for the Cosmos property within urban densities.

[23]

With regard to Legal Issues Nos. 5, 7, 9, 10, 11, 12 and 13, in light of the holding above and Finding of Fact 8, the Petitioner has not met its burden to show how the City failed to comply with the requirements of the Act in its land use designations for the Cosmos property.

E. OTHER ISSUES

Legal Issue No. 15

Does the Plan fail to comply with RCW 36.70A.070(3) regarding capital facilities and RCW 36.70A.070(6) regarding transportation because it directs growth away from areas where capital facilities already exist or are funded?

Discussion

The Board addressed a similar matter in *Robison, et al., v. Bainbridge Island (Robison)*, CPSGMHB Case No. 94-3-0025 (1995). In that case, a property owner argued that the City of Bainbridge Island was obligated by the Act to designate a specific parcel of land for a more intense urban use because of the availability of adequate public facilities near that parcel. The Board concluded:

The fact that certain infrastructure may exist near a parcel does not mean that high intensity urban development at the site within the 20-year horizon of the comprehensive plan is a foregone conclusion. *Robison*, at 19.

Here the City selected an alternative for the Cosmos property which provided for a combination of densities, in recognition of the high intensity uses on one side of the property and the low intensity residential uses on the other side. The Cosmos site designations have been remanded for other reasons. When the City takes further action on the Cosmos property pursuant to the Board's remand, it retains discretion to locate and configure growth within its urban growth boundaries. The Act does not require the City to designate the Cosmos property for the highest intensity uses

simply because infrastructure already may exist that is capable of supporting urban growth.

Conclusion No. 15

The Act does not require the City to designate for the highest intensity uses any specific areas of the City with infrastructure adequate to support urban development.

Legal Issue No. 19

Did the Council comply with Chapter 43.21C RCW (SEPA) in its action on the Redmond Plan?

Legal Issue No. 19 was dismissed with prejudice by the Order on Dispositive Motions and Motion to Intervene entered by the Board on January 9, 1996.

iv. ORDER

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board finds that the Redmond Comprehensive Plan is **in compliance** with the requirements of the GMA and the King County County-wide Planning Policies, except for those provisions discussed below.

1)The Plan's agricultural land designations are **remanded** with instructions for the City to re-designate these lands, until and unless the City adopts a program authorizing transfer of purchase of development rights pursuant to RCW 36.70A.060(4).

2)The Plan's agricultural land designation of the Benaroya property is **remanded** with instructions for the City to re-designate the property consistent with the Act.

3)The Plan's new household allocation and population projections for the year 2012 are **remanded** with instructions for the City to make them internally consistent and consistent with the King County County-wide Planning Policies.

4)The Plan's policies at LU-30 through LU-32 are **remanded** with instructions to bring them into compliance with the Act and the Board's findings and conclusions as set forth in this Order.

5)The Plan's designation of the Cosmos property is **remanded** with instructions for the City to bring the average net density of the property within urban densities.

6)The amendments made to the Plan as listed in the discussion of Legal Issue No. 18 are **remanded** with instructions to the City to provide additional information and analysis to support the changes and to provide the public with a reasonable opportunity to review and comment upon the changes prior to any subsequent re-adoption.

7)Pursuant to RCW 36.70A.300(1)(b), the City is given until **4:00 p.m. on Monday, September 23, 1996** to bring its comprehensive into compliance with the Board's Final Decision and Order and the requirements of the Act.

8)The City shall file by **4:00 p.m. on Monday, September 30, 1996** one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a

compliance hearing to determine whether the County has procedurally complied with this Order. If the Plan is amended, substantive compliance will not be determined until and unless new petitions for review are filed within 60 days of publication of notice of adoption of such Plan amendments.

So ordered this 25th day of March, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

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.

[1] This is not the first case to touch on the relationship of county population allocations and city plans. In *Edmonds v. Snohomish County*, (**Edmonds**), CPSGPHB Case 93-3-0005 (1993), the Board held that a County CPP may allocate both population and employment to cities. *Edmonds*, at 31. In *WSDF I v. Seattle (WSDF I)*, CPSGMHB Case 94-3-0016 (1995), the Board held that, absent a legitimate regional reason to the contrary, articulated in a CPP, a city plan may have greater population capacity than is allocated to the city by a county. *WSDF I*, at 55.

[2] The Board is frankly troubled that, when viewed in the long term and given broad application, this site-specific legal conclusion has rather alarming practical implications. Nevertheless, the legislature was clear in its definition of “agricultural lands” as to the policy it wanted. This Board reviewed that definition in 1993 in *Twin Falls*. Although the definition of “forest lands” was subsequently modified, the definition of agricultural lands remained untouched. Only the legislature can make the policy choice to amend the GMA’s agricultural lands definition to better protect the agricultural industry. Unless and until a statutory change is made to the definition of agricultural lands, this Board is compelled to give the legally correct answer, regardless of the policy or practical consequences.

[3] RCW 36.70A.160 provides (emphasis added):

Each county and city that is required or chooses to prepare a comprehensive land use plan under RCW 36.70A.040 shall identify open space corridors within and between urban growth areas. They shall include lands useful for recreation, wildlife habitat, trails, and connection of critical areas as defined in RCW 36.70A.030. Identification of a corridor under this section by a county or city shall not restrict the use or management of lands within the corridor for agricultural or forest purposes. Restrictions on the use or management of such lands for agricultural or forest purposes imposed after identification solely to maintain or enhance the value of such lands as a corridor may occur only if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec.

1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources.

[4] The Board held in *Snoqualmie v. King County (Snoqualmie)*, 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.

[5] This figure is found in the Plan, Finding of Fact No. 41., at B-7. At other places in the Plan, a base figure of 39,100 is used. *See* Plan, at 2.

[6] This range was created by taking the County's allocation for Redmond's range of net households and multiplying it by the County's factor of 2.2 PPH. Thus, 9,637 households times 2.2 PPH equals 21,201 people. Similarly, 12,760 households times 2.2 PPH equals 28,072 people.

[7] 9,878 households listed in the Plan times 1.95 PPH = 19,262.

[8] 9,878 households times 1.95 persons per household equals 19,262 people. 19,262 people plus the base year figure of 38,987 equals 58,249. This figure would have been consistent with the City's PPH factor and would have been very close to the County's allocation on the low end of the range of 60,188 people.

[9] The Plan, at B-7, projects that 51,470 people will live in Redmond by 2012. 51,470 minus the base year figure of 38,987 people equals 12,483 people.

[10] RCW 36.70A.100 provides:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues. Emphasis added.

[11] The Board has previously acknowledged the limitations on the accuracy of long-term forecasting, while nevertheless underscoring the importance of adherence by counties to the best forecasting assumptions available. In *Kitsap v. OFM*, CPSGMHB Case No. 94-3-0014 (1995), the Board observed:

The fact that it is impossible to know with great confidence whether a twenty year projection is a precise prediction of the future does not lessen the importance of making that projection as accurate as possible. A twenty-year population projection is an externally derived frame of reference to guide the direction in which the comprehensive plans in a county are to move; it is more a star by which to navigate than a milepost to be reached. *Kitsap v. OFM*, at 9 (emphasis in original):

[12] The Board also notes that population projections frequently form the basis for capital facilities standards. A city's need for transportation, schools, and parks facilities may be calculated based on population rather than households. While this may not be the case for Redmond, it is important that all cities comply with OFM's population projections and the counties' allocations of that population, whether by households or by population.

[13]

The Board finds the Intervenor’s metaphor appropriate. Imagine that instead of people, water is being allocated, and, instead of adopting household allocations, the County is allocating buckets. The State OFM tells the County that it must accommodate 325,000 gallons of water, but is silent as to how many buckets, of what size, and where specifically the buckets are to be placed. The County must tell its thirty-four cities how many gallons of water each must accommodate, calculates that each bucket can hold 2.2 gallons, and then assigns an appropriate number of buckets to each, confident that the total assigned buckets can hold 325,000 gallons of water. In Redmond’s case, the County assigns between 9,600 and 12,760 buckets. Redmond looks at this and decides that, instead of 2.2-gallon buckets, it is going to use 1.95-gallon buckets. Redmond may have the correct number of buckets, but what happens to the quart of water that that won’t fit into each of Redmond’s smaller buckets?

[14]

The Board notes an apparent numbering anomaly on page A-1-4 of Exhibit A to the Plan. Two successive policy statements are listed with the descriptor “LU-31.”

[15]

The legislature amended language describing the housing element of comprehensive plans as follows:

(2) A housing element (~~(recognizing)~~) ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, ~~(and)~~ objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community. (Strikethroughs show language deleted, underlining shows language added by the legislature in 1995.)

[16]

In a prior case, the Board concluded that the GMA identifies the pivotal role of cities in accommodating future urban growth. In *Association of Rural Residents v. Kitsap County (Rural Residents)*, CPSGMHB Case No. 93-3-0016 (1994), the Board observed:

...Thus, cities are the focal points of urban growth, governmental service delivery, and governance within UGAs. This is the *fundamental tenet* of RCW 36.70A.110(1). *Rural Residents*, at 19.

[17]

The Board has previously described the regional physical form required by the Act as:

...a compact urban landscape, well designed and well furnished with amenities,^[17] encompassed by natural resource lands and a rural landscape. Neither this vision nor this reality are new to Western civilization. It describes two millennia of European growth and most of the past two centuries of North American growth. *Bremerton*, at 28.

[18]

RCW 36.70A.020 provides in pertinent part:

(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.

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

[19]

RCW 36.70A.120 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and

make capital budget decisions in conformity with its comprehensive plan.

[20]

The Board is using the GMA as revised in 1995 because Redmond's comprehensive plan was adopted subsequent to the legislative amendments made in 1995.

[21]

The legislative body would have the option of allowing written comment, oral comment or both. If a public hearing was selected, the legislative body would have the option of remanding to a Planning Commission or other hearing body and/or conducting its own hearing.

[22]

The Board notes the irony that the Plan contains a neighborhood commercial designation on paper that has not been readily utilized in fact, nor designated on the Cosmos property. Upon questioning at the hearing on the merits, the City could not identify any such designations in the Sammamish or Education Hill neighborhoods or any of significant size elsewhere in the City.

[23]

The text of these Legal Issues, as set forth in the Prehearing Order is as follows:

Legal Issue No. 5

Does the reduction in density of the upland residential areas and the elimination of the non-residential use component of the upland areas fail to comply with Planning Goals (1), (2), (3), (4), and (12) of RCW 36.70A.020 and .070 (2)?

Legal Issue No. 7

Is the Plan, as applied to the Cosmos property, internally inconsistent, in violation of RCW 36.70A.070 preamble?

Legal Issue No. 9

Do the adopted densities for the Cosmos property fail to comply with RCW 36.70A.110 and Countywide Planning Policy LU-26 by impermissibly requiring suburban densities within an urban growth area?

Legal Issue No. 10

Has the City failed to meet the requirements of RCW 36.70A.320 because it has failed to show any justification for its treatment of the slope area of the Cosmos property differently from other similar areas in the immediate vicinity?

Legal Issue No. 11

Is the large lot designation for the slope areas (which the Plan indicates will be zoned R-1) of the Cosmos property required for protection of a critical area or is it instead merely a means to create lower density within an urban area in violation of RCW 36.70A.020 (1), (2) and RCW 36.70A.110?

Legal Issue No. 12

Is the large lot designation on the Cosmos property (which the Plan indicates will be zoned R-1) simply intended as an open space designation and, as such, does it require the City to acquire the development rights to the slope area under RCW 36.70A.160?

Legal Issue No. 13

Was the Council's action to designate large lots on the sloped portion of the Cosmos property supported by the record?