

The Board held a prehearing conference on June 17, 1996.

On June 24, 1996, the Board issued its “Prehearing Order and Order Granting Intervention.”

On August 2, 1996, the Board issued its “Order on Motions.”

On September 26, 1996, the Board held a hearing on the merits in Room 1718 of One Union Square in Seattle, Washington. Board members Chris Smith Towne, Edward G. McGuire, and Joseph W. Tovar, Presiding Officer, were present for the Board. Buckles was represented by Richard M. Stephens and Redmond was represented by Wayne D. Tanaka and Dawn L. Findlay. Tim O’Brian appeared *pro se* for Duwamish. The County was represented as to the Buckles and Duwamish matters by R. David Allnutt and as to the Redmond matter by Charles E. Maduell. Sarah E. Mack represented Quadrant, and David A. Bricklin represented Advocates. Court reporting services were provided by Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma. No witnesses testified.

The Board received the following memoranda from the parties:

intervention

On June 3, 1996, the Board received “The Quadrant Corporation’s Motion to Intervene” (**Quadrant’s Motion to Intervene**).

On June 6, 1996, the Board received Advocates for Graceful Growth’s (**Advocates**) “Motion to Intervene” (**Advocates’ Motion to Intervene**).

On June 14, 1996, the Board received “Buckles’ and Banks’ Opposition to Motion to Intervene” (the **Buckles Response**). The Buckles Response opposed granting the Advocates’ Motion to Intervene.

On June 21, 1996, the Board received from Advocates a “Reply to Buckles’ and Banks’ Opposition to Motion to Intervene.”

On June 24, 1996, the Board issued the “Prehearing Order and Order Granting Intervention.”

Motions to dismiss

On June 28, 1996, the Board received Quadrant’s “Motion to Dismiss,” and King County’s “Motion to Dismiss.”

On July 8, 1996, the Board received Redmond’s “Response to King County’s Motion to Dismiss.”

On July 15, 1996, the Board received “Reply of King County Regarding Motion to Dismiss.”

On July 23, 1996, the Board received “Reply of Quadrant Corporation Regarding Motion to Dismiss.”

motions to supplement the record

On June 28, 1996, the Board received Buckles’ “Motion to Supplement the Record,” and Duwamish’s “Motion to Supplement the Record.”

On July 3, 1996, the Board received King County’s “Memorandum in Opposition to Petitioner Buckles’ Motion to Supplement the Record.”

On July 8, 1996, the Board received Advocates’ “Opposition to Buckles’ and Banks’ Motion to Supplement the Record,” and the County’s “Response of King County to Petitioner Duwamish Valley’s Motion to Supplement the Record.”

On July 15, 1996, the Board received “Rebuttal of [Duwamish] to King County’s Response to Our Motion to Supplement the Record.”

On July 16, 1996, the Board received Buckles’ “Reply in Support of Motion to Supplement the Record.”

prehearing briefs

On September 3, 1996, the Board received Duwamish’s Prehearing Brief, Redmond’s Prehearing Brief, and Buckles’ Prehearing Brief.

On September 17, 1996, the Board received Quadrant’s Prehearing Response Brief and Advocates’ Prehearing Response Brief.

Also on September 17, 1996, the Board received King County’s “Response to the Prehearing Brief of [Duwamish],” “Response to the Prehearing Brief of [Buckles],” and “Response to the Prehearing Brief of [Redmond].”

On September 23, 1996, the Board received Duwamish’s “Rebuttal to King County’s Response to Our Prehearing Brief.”

On September 24, 1996, the Board received Buckles’ Reply Brief and Redmond’s Reply Brief.

II. FINDINGS OF FACT

General

1. On November 18, 1994, the Council adopted the Plan pursuant to the requirements of the GMA. The Plan included Amendment 89 (relevant to Duwamish) and Amendment 101 (relevant to Buckles).
2. On October 23, 1995, the Board issued the Final Decision and Order in *Vashon-Maury v. King County [Vashon-Maury]* invalidating Plan Amendments 89 and 101 which were remanded to the County. This Order also invalidated “any site-specific development regulations that implement” Amendments 89 and 101. CPSGMHB Case No. 95-3-0008, at 65-66.
3. On March 11, 1996, the Council adopted Ordinance 12170 (formerly, Proposed Ordinance 96-118), including Amendments 20-2 and 21-2. Exhibits (Ex.) B-1, 2; Index 1001.
4. On March 15, 1996, the Council passed Ordinance 12171, including Amendments 15 and 16-1. Ex. D-1, 2; Index 1001.

buckles

5. The Buckles property consists of two adjacent parcels near the intersection of 228th Ave. NE and Redmond-Fall City Rd. NE.^[1] The two parcels have a combined area of 10.24 acres. The *Addendum to the King County Comprehensive Plan 1994 Draft and Final Supplemental Environmental Impact Statements* describes the Buckles property:

The parcels are forested with second growth timber. Adjacent lands are also predominantly forested, except for a parcel across the highway to the south and parcels to the east within the Rural Neighborhood. These parcels, which comprise about 20 percent of the total adjacent lands, have been cleared or partially cleared for a fire station, grocery store, and Northwest Gas Pipeline uses. Despite this clearing and the presence of non-rural residential uses, the vicinity of the [Buckles] property has a rural land use pattern and is rural in character.

The [Buckles] property is traversed by Evans Creek. This portion of the stream is one of the few stretches which supports salmon spawning. Evans Creek empties into Bear Creek. Ex. B-3, at 19.

6. Amendment 101 of the 1994 Plan designated the Buckles property as Rural Neighborhood Business. Ex. B-3, at 18; Index 0001.
7. Amendment 20-2 of Ordinance 12170 amends the Plan to designate the Buckles property as Rural Residential with 1 dwelling unit per 2.5 - 10 acres. Ex. B-1; Index 1001.

8. Amendment 21-2 of Ordinance 12170 amends the County Zoning Map to designate the Buckles property RA-5 (1 dwelling unit per 5 acres).Ex. B-2; Index 1001.

9. King County Code (KCC) 21A.04.090 provides:

A.The purpose of the neighborhood business zone (NB) is to provide convenient daily retail and personal services for a limited service area and to minimize impacts of commercial activities on nearby properties.These purposes are accomplished by:

1.Limiting nonresidential uses to those retail or personal services which can serve the everyday needs of a surrounding urban or rural residential area;

2.Allowing for mixed use (housing and retail/service) development; and

3.Excluding industrial and community/regional business-scaled uses.

B.Use of this zone is appropriate in urban neighborhood business centers, rural towns, or rural neighborhood centers designated by the comprehensive plan, on sites which are served at the time of development by adequate public sewers when located in urban areas or adequate on-site sewage disposal when located in rural areas, water supply, roads and other needed public facilities and services.

duwamish

10. On February 7, 1994, the King County Council (the **Council**), at the request of property owner Spencer, adopted motion 9226, which requested the King County Parks, Planning and Resources Department to study a 0.9 acre parcel in the South Park area (the **Spencer Properties**) to determine the appropriateness of rezoning the parcel from residential to industrial.Ex. D-5; Index 0001.

11. Amendment 89 of the 1994 Plan changed the land use designation of the Spencer Properties from residential to industrial.Ex. D-6; Index 0001.

12. Duwamish filed a Petition for Review before this Board challenging Amendment 89.This petition was consolidated with other petitions in *Vashon-Maury*.

13. On January 9, 1995, the Council passed Ordinance 11653, adopting zoning maps which zoned the Spencer Properties residential and potential industrial, R-4 [P-I].Duwamish did not challenge the adoption of these development regulations.Ex. D-7; Index 0001.

14. On February 2, 1996, the King County Executive transmitted Proposed Ordinance 96-118 to the Council.Ex. D-9; Index 1064.

15. On February 2, 1996, the County Executive mailed notice of Proposed Ordinance 96-118 to approximately “7,000 people,” including property owners within 500 feet of the Spencer

Properties. The notice advised the public of three meetings of the Council's Growth Management, Housing and Environment Committee (**GMH&E**) -- February 7, 14, and 21. The notice also advised the public of two Council meetings -- February 26 and March 11. Ex. D-10; Index 3005.

16. Also on February 2, 1996, the County published notice in the *Seattle Times*. The notice advised the public of the meetings of the GMH&E and of the Council, identified in Finding of Fact 15, above. Ex. D-11; Index 1068.

17. On February 6, 1996, the County mailed notice described in Finding of Fact 15, above, to interested groups, including Duwamish. Ex. D-12; Index 1050.

18. On February 7, 1996, Duwamish received the mailed notice described in Finding of Fact 17, above. Ex. D-12; Index 1050.

19. On February 7, 1996, GMH&E held a public meeting on Proposed Ordinance 96-118. Ex. D-13; Index 2145.

20. On February 14, 1996, GMH&E held another public meeting on Proposed Ordinance 96-118. Tim O'Brian testified on behalf of Duwamish. Ex. D-14, 15; Index 2147, 2005.

21. On February 21, 1996, GMH&E held a third public meeting on Proposed Ordinance 96-118. Ex. D-16; Index 2151.

22. On February 26, 1996, the Council held a public hearing on Proposed Ordinance 96-118. Tim O'Brian and Penni Cocking testified on behalf of Duwamish. Ex. D-17; Index 1027.

23. On February 29, 1996, Councilmember Ron Sims held a "South Park Community Meeting" in South Park. Notice of this meeting was sent to all addresses in the 98168 and 98101 zip codes. Ex. D-18; Index 2052.

24. On March 4, 1996, the Council met, in open session, to discuss Proposed Ordinance 96-118. County's Response to Duwamish, at 9.

25. On March 11, 1996, the Council held an open session, without public testimony, and adopted Ordinance 12170 (formerly, Proposed Ordinance 96-118). County's Response to Duwamish, at 9.

26. On March 15, 1996, the Council passed Ordinance 12171, including Amendments 15 and 16-1. Amendment 15 amended the Plan by applying "Industrial" land use designation to the Spencer Properties; amendment 16-1 amended the zoning map by applying residential R-4 and potential industrial P-I to the Spencer Properties. Ex. D-1, 2; Index 1001.

27. Concurrent with the Plan amendment process, there is a quasi-judicial effort underway to rezone the Spencer Properties from residential to industrial. This quasi-judicial process is being stayed, pending the outcome of this case. Ex. D-19; Index 0001.

REDMOND

28. The Bear Creek Master Planned Developments (**MPDs**) consist of two large properties located astride Novelty Hill Road, approximately two miles east of the City of Redmond.^[1] The portion south of Novelty Hill Road is owned by the Quadrant Corporation, while the portion north of the road is owned by Port Blakely Tree Farms.

29. On October 23, 1995, the Board issued a Final Decision and Order in case No. 95-3-0008, *Vashon-Maury, et al., v. King County*. The FDO noted that it constituted a final order as specified by RCW 36.70A.300 unless a party filed a Petition for Reconsideration pursuant to WAC 242-02-830. The FDO found that the Plan's designation of the Bear Creek UPDs as within a UGA was consistent with King County CPPs' Policy LU-26. FDO, at 38.

30. On December 1, 1995, the Board issued an "Order on Motions to Reconsider and Motion to Correct" (the **Reconsideration Order**). The Reconsideration Order reversed the Board's determination in the FDO that inclusion of the Bear Creek MPDs in the UGA complied with the Act. Paragraph four of the Reconsideration Order provided:

The Bear Creek island UGA portion of the Plan is remanded to the County with instructions to either: (a) delete it; or (b) adopt it as a fully contained community if it meets the requirements of RCW 36.70A.350; or (c) justify it pursuant to the requirements of RCW 36.70A.110, and the rank order requirements for including lands in the UGA as set forth in the *Bremerton v. Kitsap County* decision, at 38-41.

31. On December 22, 1995, the County appealed to King County Superior Court the portion of the Reconsideration Order relative to the Bear Creek MPDs, specifically, paragraph four cited above. Attachment 1 to Affidavit of Charles Maduell, Attached to the County's June 28, 1996 Motion to Dismiss.

32. On March 11, 1996, the King County Council adopted Ordinance 12170, amending the 1995 Comprehensive Plan. Among other things, Ordinance 12170 deleted the portion of Plan Policy R-104 that stated that "King County finds no need to establish new "fully contained communities" within the Rural Area, as provided for by the Growth Management Act" and replaced it with text that states "Except for the Blakely Ridge and Northridge Fully Contained Community Designations in Policy U-210, no new Fully Contained Communities are needed in King County." Policy U-210 was amended by addition of a new sub-paragraph (f) which provides "include the Bear Creek Urban Planned Development (UPD) sites, unless the

applications for a UPD permit or a Fully Contained Community (FCC) permit are denied by King County or not pursued by the applicants.”Text was also added that provides:“This policy recognizes the appropriateness of designating the Bear Creek UPD sites as a Fully Contained Community under the Growth Management Act.If the applications necessary to implement the Fully Contained Community are denied by King County or not pursued by the applicant(s), and if the sites have not otherwise been approved as a UPD, then the Property shall be designated Rural on the Land Use Map.”Ordinance 12170 also adopted new policy U-212 that defined the term “fully contained,” and stated that the County’s review and approval process for an FCC “shall be the same as that for an Urban Planned Development(UPD) Permit” except for the addition of criteria based upon those listed at RCW 36.70A.350.Ex. R-2; Index 1001.

33. Also on March 11, 1996, the County Council also adopted Ordinance 12171.Ordinance 12171 amended the King County Planning Code and Zoning Code relating to new Fully Contained Communities.Among other things, Ordinance 12171 created a special district overlay - fully contained community (FCC) and a process for the designation of same.

34. On August 15, 1996, King County Superior Court Judge Marsha Pechman entered a “Judgment Reversing in Part Decision of Central Puget Sound Growth Management Hearings Board” (the **Superior Court Ruling**).The Superior Court Ruling provided, in part:

1.The Board’s December 12, 1995 Reconsideration Decision was based upon an erroneous interpretation of King County’s Countywide Planning Policies, requiring reversal of this decision pursuant to RCW 34.05.570(3)(d);

2.The King County Countywide Planning Policies directed King County to include the Bear Creek UPD sites within the County’s urban growth area designated in the County’s 1994 Comprehensive Plan;

King County and Quadrant were substantially prejudiced by the Board’s December 1, 1995 Reconsideration Decision within the meaning of RCW 34.05.570(1)(d);

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the portion of the Central Puget Sound Growth Management Hearings Board’s December 1, 1995 Reconsideration Order in Vashon-Maury Island, et al. v. King County, CPSGMHB Case No. 95-3-0008 (Order on Motions to Reconsider and Motion to Correct), concerning the inclusion of the Bear Creek Urban Planned Development sites within the County’s urban growth area, embodied in paragraph four of said Order, is hereby reversed and the portion of the Central Puget Sound Growth Management Hearings Board’s October 23, 1995 Final Order and Decision concerning the inclusion of the Bear Creek Urban Planned Development sites within the County’s urban growth area, embodied in pages 37-41 and 106 of said Order, is hereby reinstated.

III. GENERAL DISCUSSION

standard of review

Amendments to comprehensive plans and development regulations are presumed valid upon adoption. This presumption can be overcome by a preponderance of the evidence that a local government erroneously interpreted or applied the Growth Management Act. RCW 36.70A.320(1) provides:

Except as provided in subsection (2) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption. In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. . . . The board shall find compliance unless it finds by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied this chapter. (emphasis added).

To successfully challenge a local government's GMA actions, a petitioner must first demonstrate that the local government had a duty to act under the GMA and then must show, by a preponderance of the evidence, how the City violated that duty. *Litowitz v. City of Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (July 22, 1996), at 5. In addressing the legal issues in the present case, the Board will first determine whether petitioners have identified a GMA-imposed duty that the County was required to meet. Where such a duty is demonstrated, the Board will then determine whether the petitioners have proven, by a preponderance of the evidence, that the County has breached that duty.

IV. DISCUSSION AND CONCLUSIONS

A. buckles legal issues

By amendment, the Buckles' property was designated Rural Neighborhood Business in the County's 1994 Plan. The subsequently adopted zoning atlas reflected this designation. The Rural Neighborhood Business designation allows commercial development that provides convenient retail and other services for the rural residential area. In its *Vashon-Maury* decision this designation was remanded and invalidated by the Board because the County failed to provide adequate public participation in changing the area in question from residential to commercial.

In discussing the change made by the (Buckles/Banks) amendment, the Board stated: "This does not imply that such changes are not within the discretion of the legislative body to make, and the Board is not rendering a judgment about the policy merits or substantive GMA compliance of the Amendments. Rather, the conclusion here focuses on the procedural requirements that must be met when a proposed change crosses the threshold of "substantially different." *Vashon-Maury*, at

62. On remand, the County provided appropriate public participation and subsequently changed the Rural Neighborhood Business designation to Rural Residential in the Plan and zoning atlas.

Buckles argues that the County's action violates the Act's property rights goal (*legal issue #1*); that the Plan is internally inconsistent (*legal issue #2*); and that the development regulations are inconsistent with the Plan (*legal issue #3*).

LEGAL ISSUE NO. 1

Did the County fail to comply with RCW 36.70A.020(6) when it adopted Amendments 20-2 and 21-2 (the Buckles Amendments)?

Discussion

Petitioner Buckles argues that the County did not properly comply with RCW 36.70A.020(6) in adopting Amendments 20-2 and 21-1 (the Buckles Amendments).

RCW 36.70A.020(6) provides:

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.

The test for determining whether a local jurisdiction has complied with Planning Goal No. 6 is both procedural and substantive. The County must comply with both of these elements.^[1]

However, it is important to note that the County enters this issue with a presumption of validity; Buckles must actively prove by a preponderance of the evidence that the County did not comply with RCW 36.70A.020(6). In addition, the County has the right to prioritize the goals in any manner it finds appropriate.

Procedural Compliance

The procedural element is the mental process of considering planning goals. *Association of Rural Residents v. Kitsap County [Rural Residents]*, CPSGPHB 93-3-0010, Final Decision and Order (June 3, 1994), at 24. There is no requirement for the County to provide a specified demonstration of its consideration of planning goals, nor must any consideration be in writing. *Id.* "Consider" does not require that the Goal actually be utilized; the Goal must simply be taken into account during the process. Consequently, petitioner must show that the County in fact did not take into account Planning Goal No. 6.

Petitioner has not shown any positive evidence to this effect. In fact, the record shows that the County considered all of the GMA planning goals when it adopted its Plan. *See generally, The*

King County Comprehensive Plan and Its Relationship to Growth Management Act Goals and Countywide Planning Policies, at 16, Ex. B-8. In addition, Buckles alerted the County “to the impacts to petitioners’ property that would be caused by the proposed amendments.” Buckles PHB, at 7 (quoting Ex. P-2108). Buckles’ attorney wrote to Councilperson Vance, chair of the Council’s Growth Management Committee, and stated “a rural residential designation for the [Buckles property] would not only be incompatible with the surrounding environment, but would leave Mr. Banks without a reasonable or likely use of his property.” Ex. P-2108, at 3. If the County had not considered Planning Goal No. 6 before, it considered it when the Council received Buckles’ attorney’s letter.

Substantive Compliance

A local jurisdiction must also substantively comply with Planning Goal No. 6. In order for petitioner to prevail, petitioner must show that the local government’s actions were both arbitrary and discriminatory. *Shulman and Shulman v. Bellevue [Shulman]*, CPSGMHB 95-3-0076, Final Decision and Order (May 6, 1996), at 12. Underlying this dual requirement is a local government’s basic discretionary planning powers. *See generally, Robison et al. v. City of Bainbridge Island*, CPSGMHB No. 94-3-0025, Final Decision and Order (May 3, 1995). The question is whether there actually was arbitrary and discriminatory action, or whether the action was deliberate and well thought out, and simply did not comport with the petitioner’s expectations. *See Shulman*, at 13.

In this matter, Petitioner has failed to show that the County acted inappropriately in making its determination. Petitioner argues that *Bremerton v. Kitsap County [Bremerton]*, CPSGMHB 95-3-0039 Final Decision and Order (October 6, 1995), at 89, stands for the proposition that an action which is arbitrary but not necessarily discriminatory violates Planning Goal 6. The analysis provided in that decision is cursory and exceptionally brief, demonstrating that the Board did not intend a full analysis on the subject of Planning Goal No. 6. Therefore, the *Bremerton* decision is not determinative, nor even very illustrative, of the issue at hand.

Petitioner also argues that *Nectow v. Cambridge* is analogous to the instant case. However, the determination made by the Court was constitutional in nature, a Fourteenth Amendment issue. 277 U.S. 183 (1928). The Board has consistently held that it is an inappropriate forum for constitutional challenges, which should be brought before the judiciary. *Gutschmidt v. Mercer Island*, CPSGPHB 92-3-0006, Order on Prehearing Motions (December 31, 1992), at 10-11.

The Board holds that Buckles has not met its burden to show, by a preponderance of the evidence, that the county failed to comply with RCW 36.70A.020(6) when it adopted the Buckles Amendments.

The County did not fail to comply with RCW 36.70A.020(6) when it adopted Amendments 20-2 and 21-2.

LEGAL ISSUE NO. 2

Did the County apply its adopted plan policies I-201, I-202, and R-307 for comprehensive plan and development regulations amendments with regard to the Buckles Amendments and, if so, did this constitute a violation of RCW 36.70A.040 and RCW 36.70A.070?

Discussion

Counties and cities that are required to plan under the Act “shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan.” RCW 36.70A.040(4)(d).^[1] In addition, the comprehensive plan must be an internally consistent document. RCW 36.70A.070.^[1]

The County subjected the Buckles amendments to analysis under Plan Policies I-201, I-202, and I-203.^[1] Buckles first argues that the County “has rendered its comprehensive plan internally inconsistent” by applying Plan policies I-201 and I-202 when the County considered and adopted the Buckles amendments. Buckles PHB, at 21.

Plan policies I-201^[1] and I-202 provide that amendments to the Plan land use map and to the Plan policies “should include the following elements”:

- a. A detailed statement of what is proposed to be changed and why;
- b. A statement of anticipated impacts of the change, including geographic area affected and issues presented;
- c. A demonstration of why existing Comprehensive Plan guidance should not continue in effect or why existing criteria no longer apply;
- d. A statement of how the amendment complies with the Growth Management Act’s goals and specific requirements;
- e. A statement of how the amendment complies with the Countywide Planning Policies;
- f. A statement of how functional plans and capital improvement programs support the change;
- g. Public review of the recommended change, necessary implementation (including area zoning if appropriate) and alternatives; Ex. B-11.

Buckles argues that I-201 and I-202 apply only “to amendments to GMA comprehensive plan policies designations [sic] in the first instance.” Buckles PHB, at 20. Buckles asserts that no GMA comprehensive plan or zoning regulations applied to the Buckles property because of the Board’s

finding of invalidity in *Vashon-Maury*. Buckles PHB, at 20. Therefore, the Buckles amendments actually amount to the County's initial action for this property. According to Buckles, it was inappropriate for the County to evaluate this initial action using Plan policies designed to govern changes to GMA plans. Buckles PHB, at 21.

Buckles asserts that the County "has rendered its comprehensive plan internally inconsistent" because it applied policies that are inappropriate. Buckles concludes that policies intended to govern changes to GMA plans are more constraining "to ensure that deviations from proper GMA plans do not undo what has already been done consistently with the GMA." Buckles PHB, at 21. However, Buckles provides no authority for this argument, nor has Buckles explained how consideration of I-201 and I-202 cause the Plan to be internally inconsistent.

Additionally, Buckles does not argue that the County lacks a Plan; the challenged amendment clearly became a part of that initial Plan, and thus constitutes an amendment to the Plan.

The Board holds that Buckles has failed to meet its burden to show, by a preponderance of the evidence, how the County has violated RCW 36.70A.040 and .070 by considering Plan policies I-201 and I-202 when it adopted the Buckles amendments.

Next, Buckles argues that the County misapplied Plan policy R-307, which provides:

Convenience shopping and services for Rural Area residents should be provided by existing Rural Neighborhoods and Businesses, the boundaries of which may only be expanded to: 1) accomplish infill by recognizing land which is 75 percent bordered by an existing (as of December 31, 1994) Rural Neighborhood, or 2) recognize existing (as of December 31, 1995) adjacent commercial uses. . . . (quoted in *Policy I-201, -202 and -203 Analysis for Banks [Buckles] Property*, Ex. B-12, at 1) (emphasis added).

Buckles asserts that "[t]he County completely misapplied the second prong of this policy" because there are commercial uses adjacent to (i.e., across the street from) the Buckles property. Buckles argues that the existing adjacent commercial uses justify expansion of the commercial zone to the Buckles property. Buckles PHB, at 22. Buckles' argument appears to read policy R-307 as mandating Rural Neighborhood Business zoning for property with adjacent commercial uses.

This is a forced reading of R-307. The plain language of R-307 provides that boundaries of existing Rural Neighborhoods and Businesses may only be expanded if one of two conditions exists. R-307 does not provide that boundaries of existing Rural Neighborhoods and Businesses must be expanded if one of the two conditions exists. Plan policy R-307 provides guidance for the County, but does not mandate a specific outcome.

The Board holds that Buckles has failed to meet its burden to show, by a preponderance of

the evidence, that the County misapplied Plan policy R-307 and violated RCW 36.70A.040 and .070.

Buckles Conclusion No. 2

The County did not violate RCW 36;.70A.040 or .070 with the adoption of the Buckles Amendments.

LEGAL ISSUE NO. 3

Did the Buckles Amendments render the County's development regulations inconsistent with KCC 21A.040.060 contrary to plan policy I-401(c) and (d), and thereby constitute a violation of RCW 36.70A.130(1) and RCW 36.70A.040?

Discussion

As stated in Legal Issue No. 2, *supra*, counties and cities that are required to plan under the Act “shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan.”RCW 36.70A.040(4)(d).Amendments of comprehensive plans must conform with the Act and changes to development regulations must be consistent with and implement the comprehensive plan.RCW 36.70A.130(1).The County has a Plan policy that requires development regulations to be consistent with the Plan.*See* Plan Policy I-401(c) and (d), Ex. B-9, at 228.Thus, the County's development regulations must be consistent with the County's Plan.

Buckles argues that the Buckles amendments create an inconsistency between the zoning adopted for the Buckles property and the King County Code (KCC) 21A.040.060,^[1] which provides in part:

B.Use of this [rural area zone] is appropriate in rural areas designated by the Comprehensive Plan as follows:

1.AR-2.5/RA-2.5 in rural areas where predominant densities already exceed one dwelling per five acres and the soils can support on-site sewage disposal without damage to water resources;

2.AR-5/RA-5 in rural areas without established subdivision patterns and predominantly environmentally unconstrained lands;

3.AR-10/RA-10 in rural areas next to designated resource production areas where additional buffering is required, or where area-wide environmental features constrain development. . . .Ex. B-14.

Buckles asserts that RA-5 zoning for the Buckles property is contrary to, thus inconsistent with, KCC 21A.040.060.Buckles states that there is an established subdivision adjacent to the property

and that the area is not predominantly environmentally unconstrained land. Buckles PHB, at 23. According to Buckles, the amendments are inconsistent with the Plan and development regulations, thus the County is in violation of the Act.

Buckles' argument fails for several reasons. First, the criteria specified in KCC 21A.040.060 are merely guidelines, not mandates. Second, Buckles has failed to establish that the Buckles property is in an area that has established subdivision patterns. Third, if the Buckles property is not environmentally unconstrained, then it is environmentally constrained and even less dense zoning is appropriate. Finally, Buckles' argument deals with consistency within the County's development regulations, not between the Plan and development regulations.

The purpose of KCC 21A.040.060 is to provide guidance to the County. KCC 21A.040.020 provides:

The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones and designations to all lands in unincorporated King County. The purpose statements also shall guide interpretation and application of land use regulations within the zones and designations, and any changes to the range of permitted uses within each zone through amendments to this title. (emphasis added).

Thus, KCC 21A.040.060 is a guideline; it is not the mandate suggested by Buckles.

Next, Buckles argues that, because there is a subdivision adjacent to the Buckles property, the area has established subdivision patterns. If KCC 21A.040.060 were to have mandatory effect, then Buckles' argument would have some merit. However, the existence of one subdivision, bordering the Buckles property on one side, does not necessarily constitute a subdivision pattern. The County characterized the area as rural, notwithstanding the presence of the subdivision. *See* Addendum to Supplemental Environmental Impact Statement, Ex. B-3, at 19. Buckles has not persuaded this Board that the area containing the Buckles property has established subdivision patterns.

Buckles next asserts that the Buckles property is environmentally constrained.^[1] Pursuing Buckles' assertion leads the Board to the conclusion reached by the County in its Response Brief, at 16, that a development density lower than RA-5 is suggested by KCC 21A.040.060. Buckles did not reply to the County's conclusion. *See* Buckles Reply Brief, at 11-12.

Buckles' final argument deals with consistency within the County's development regulations, not between the Plan and development regulations. Even if Buckles' argument can be construed as addressing inconsistency between the Plan and development regulations, Buckles has not met its burden.

The Board holds that Buckles has failed to meet its burden to show, by a preponderance of the evidence, that the County’s adoption of the Buckles amendments is inconsistent with KCC 21A.040.060, in violation of RCW 36.70A.130(1) and .040.

Buckles Conclusion No. 3

The County did not violate RCW 36.70A.130(1) or .040 with the adoption of the Buckles Amendments.

B. duwamish legal issues

The Spencer properties are located in the South Park neighborhood of the Highline Community. Ex. D-3 (Highline Plan and Area Zoning Amendment Study), at 1; Index 0001. There are 17 small residential lots on the Spencer properties. Ex. D-3, at 2; Index 0001. The County states that there are eight renter-occupied houses on the Spencer properties. County’s Response to Duwamish, at 4. The area surrounding the Spencer properties is a mixture of residential, industrial, and commercial uses. Ex. D-3, at 1-2; Index 0001. The houses on the Spencer properties are “among the oldest and least viable [in the Highline area] . . . [making] rehabilitation untenable.” Ex. D-3, at 2; Index 0001. Nonetheless, the Duwamish Valley Neighborhood Preservation Coalition is dedicated to preserving the residential character of its members’ South Park neighborhood. Industrial zoning of the Spencer properties sounds as a dirge to the members of Duwamish.

The Spencer properties were designated Industrial in the County’s 1994 Plan. This designation was invalidated by the Board because the County failed to provide adequate public participation in making this designation. On remand, the County designated the Spencer properties as residential and potential industrial, R-4 [P-I]. Duwamish now challenges this designation.

LEGAL ISSUE NO. 1

Did the County comply with KCC 20.12.050 and .060 when it adopted Comprehensive Plan Amendment 15 to Ord. 12170 and zoning code amendment 16-1 to Ord. 12171 (the Spencer Amendments)?

Discussion

Duwamish alleges that the County did not comply with its own notice requirements. Duwamish PHB, at 26-28. Specifically, Duwamish asserts that the County failed to provide required notice when it passed Motion 9226 in February 1994. This motion, passed over two years prior to the filing of the PFR, is beyond the scope of the present petition and will not be discussed.

To the extent that Duwamish’s arguments can be applied to the adoption of Amendment 15 to Ordinance 12170 and Amendment 16-1 to Ordinance 12171, Duwamish has failed to identify the

GMA duty allegedly violated. Duwamish relies on the notice requirements of KCC 20.12.050 and .060, code provisions which no longer exist in the KCC. *See* KCC 20.12.

The Board holds that Duwamish has failed to identify a GMA-imposed duty to comply with the notice requirements of extinct codes KCC 20.12.050 and .060.

Duwamish Conclusion No. 1

Duwamish has not identified a GMA-imposed duty with which the County is allegedly noncompliant.

LEGAL ISSUE NO. 2

Was approval of the Spencer Amendments inconsistent with Plan policies ED-201, ED-202, ED-15 and ED-20?

Discussion

ED-201 and ED-202 are Economic Development Policies contained in the County's Plan. Ex. D-24. ED-15 and ED-20 are Economic Development Policies contained in the County-wide Planning Policies (CPPs). Ex. D-25.

Duwamish has not identified the GMA-imposed duty that requires the County's amendments to be consistent with its Plan policies or the CPPs. However, even if Duwamish had identified the GMA duty, it has not shown that the County breached that duty.

Duwamish has offered no evidence to suggest that the Spencer Amendments are in opposition to ED-201's policy that "King County should actively support the retention and expansion of the regional (multi-county) economic base." Ex. D-24; Index 0001.

Nor has Duwamish offered evidence to support its assertion that the Spencer Amendments conflict with the policy articulated in ED-202. ED-202 provides:

King County should develop strategies and actions to retain and expand industries, firms and jobs within manufacturing and industrial areas. Because manufacturing-sector employment is predicted to decline by the year 2010, King County should prioritize its efforts to support family-wage jobs and basic industries, at levels exceeding those forecasted. Basic industries export goods and services thus bringing income into the region. Basic industries include manufacturing, business services, and resource industries (emphasis added). Ex. D-24; Index 0001.

While the Spencer properties are residential, they are surrounded by industrial and commercial uses. It appears to this Board that the Spencer Amendments are precisely that action contemplated

by Plan policy ED-202.

Likewise, the Spencer Amendments reflect the policies articulated in CPPs ED-15 and ED-20.Ex. D-25; Index 0001.ED-15 provides in part:

Jurisdictions should consider zoning or other means to provide opportunities for those [industrial and supporting or compatible activities] in areas where infrastructure facilities can be utilized to exploit the economic benefit of that infrastructure.

ED-20 provides:

Jurisdictions shall identify geographic areas that can be developed or redeveloped into manufacturing/industrial areas, and coordinate with utility providers to build the necessary infrastructure. Jurisdictions are encouraged to provide public incentives to promote basic employment associated with manufacturing.

It is difficult to imagine, and Duwamish has not explained, how the Spencer Amendments are inconsistent with the stated Plan policies and CPPs. **The Board holds that Duwamish has failed to meet its burden to prove, by a preponderance of the evidence, that the County's adoption of the Spencer Amendments is inconsistent with the stated Plan policies and CPPs.**

Duwamish Conclusion No. 2

Duwamish has failed to meet its burden of proof.

LEGAL ISSUE NO. 3

Were the Spencer Amendments guided by RCW 36.70A.020(4), (6), (9), (10), (11), and (13)?

Discussion

Duwamish alleges that the County was not guided by the GMA planning goals when the County adopted the Spencer Amendments. Specifically, Duwamish claims the county was not guided by the Act's goals of housing, property rights, open space and recreation, environment, citizen participation, and historic preservation. *See* RCW 36.70A.020.

Cities and counties planning under the Act must consider the planning goals listed at RCW 36.70A.020 before adopting comprehensive plans and development regulations. However, the GMA does not require written proof to show that the County considered the planning goals. *Gutschmidt v. City of Mercer Island [Gutschmidt]*, CPSGPHB Case No. 92-3-0006, Final Decision and Order (March 16, 1993), at 14. By their very nature, the planning goals sometimes conflict. Thus, it is scarcely conceivable that any one amendment to a plan or development regulation could fully achieve the goals of each of the thirteen GMA planning goals, nor is there

such a GMA requirement.

The record shows that the County considered all of the GMA planning goals when it adopted its Plan. *See generally The King County Comprehensive Plan and Its Relationship to Growth Management Act Goals and Countywide Planning Policies*, Ex. D-26. In addition, the County argues that the *Highline Plan and Area Zoning Amendment Study*, Ex. D-3; Index 0001, demonstrates that the County considered the goals of housing, property rights, open space and recreation, environment, public participation, and historic preservation. County's Response to Duwamish, at 19-20.

The Board holds that Duwamish has not met its burden of proof to show, by a preponderance of the evidence, that the County failed to be guided by the planning goals of RCW 36.70A.020(4), (6), (9), (10), (11), and (13).

Duwamish Conclusion No. 3

Duwamish has not met its burden of proof.

LEGAL ISSUE NO. 4

Did the Spencer Amendments fail to comply with RCW 36.70A.070(2)?

Discussion

Jurisdictions must include a housing element in their comprehensive plans. RCW 36.70A.070 provides:

Each comprehensive plan shall include a plan, scheme, or design for each of the following:
... (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;

RCW 36.70A.070(2)(a)

Duwamish alleges that, when it adopted the challenged ordinances, the County “made no analysis recognizing the vitality of the South Park residential neighborhood”; and made no “inventory and analysis of existing and projected housing needs in South Park.” Duwamish PHB, at 40.

The Board has determined that “inventory” means “to evaluate or survey”; it does not mean a “grocery store type inventory of goods in stock.” *Gutschmidt*, at 22-23. “Analysis” is defined as “[s]eparation of an intellectual or substantial whole into its constituent parts for individual

study.”*Webster’s II New Riverside University Dictionary* 104 (1988). “Analyze” is defined as “[t]o separate into elemental parts or basic principles as to determine the nature of the whole.”*Id.* at 105.

Thus, RCW 36.70A.070(2)(a) requires the County to evaluate or survey existing and projected housing needs, and to separate the results of the inventory into basic principles to determine the nature of housing in the County. The Act does not require the County to evaluate and analyze each house within its jurisdiction.

The record shows that the County performed a site analysis of the South Park area. Ex. D-3, at 1-2. The County determined that, although the existing housing stock “provides viable shelter for moderate and low income people,” it is “among the oldest and least viable.” Duwamish PHB, at 41 (citing Ex. D-3, at 2). Duwamish’s conclusory allegations are insufficient to satisfy its burden of proof.

The Board holds that Duwamish has failed to meet its burden of proof to show, by a preponderance of the evidence, that the County has not complied with RCW 36.70A.070(2)(a).

RCW 36.70A.070(2)(b)

Duwamish also alleges that, when the County adopted the challenged ordinances, it made no “statement of goals, policies and objectives for the preservation, improvement and development of housing in South Park.” Duwamish PHB, at 41.

As with the inventory and analysis requirements of section 070(2)(a), the requirement of 070(2)(b) for comprehensive plans to include “goals, policies, [and] objectives” for the “preservation, improvement, and development of housing” is in the nature of broad jurisdiction-wide planning.

[1] RCW 36.70A.070(2)(b) does not require the County to include in its Plan goals, policies, and objectives for each and every neighborhood within its jurisdiction. Duwamish has not pointed to such a duty, and no such duty exists.

The Board holds that the County has not violated RCW 36.70A.070(2) by not including in its Plan a statement of goals, policies and objectives for the preservation, improvement and development of housing in South Park.

Duwamish Conclusion No. 4

Duwamish has not met its burden of proof.

LEGAL ISSUE NO. 5

Did the County, in adoption of the Spencer Amendments, fail to comply with RCW 36.70A.140?

Discussion

RCW 36.70A.140 provides that jurisdictions planning under the Act must:

provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. . . .In enacting legislation in response to the board’s decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board’s order.

Duwamish claims the County did not provide the required public participation when it adopted the challenged amendments. Duwamish states “there was no communication whatsoever with South Park residents by King County -- NONE!”^[1] Duwamish PHB, at 41. Duwamish’s allegation is belied by the record.

Findings of Facts 15 through 25, *supra*, recite the public participation efforts made by the County. The County mailed notice of the proposed amendments and dates of public meetings to over 7,000 people, including property owners within 500 feet of the Spencer Properties. The County also mailed notice to interested community groups, including Duwamish. Duwamish concedes that it received the mailed notice.

Public meetings began on February 7, 1996. Three public meetings were held by GMH&E (February 7, 14, and 21). Duwamish representative Tim O’Brian testified at the February 14 meeting. The Council held a public hearing on February 26, at which two Duwamish representatives testified. On February 29, Councilmember Ron Sims held a community meeting in South Park. On March 4, the Council discussed the proposed amendments in open session, and adopted Ordinance 12170 on March 11, and Ordinance 12171 on March 15, 1996.

Duwamish fails to explain how the public participation efforts listed above do not satisfy the GMA. It appears as though the only public participation that would be deemed adequate by Duwamish is that which resulted in no rezone of the Spencer Properties. Such a result is not required by RCW 36.70A.140. *See Twin Falls v. Snohomish County*, CPSGPHB Case No. 93-3-0003, Final Decision and Order (September 7, 1993), at 77 (holding that “consider public input” does not mean “agree with” or “obey” public input).

The Board holds that Duwamish has failed to meet its burden to show, by a preponderance of the evidence, that the County has failed to comply with RCW 36.70A.140.

Duwamish Conclusion No. 5

Duwamish has not met its burden of proof.

LEGAL ISSUE NO. 6

Did the County fail to comply with RCW 36.70A.100 by failing to make the Spencer Amendments coordinated and consistent with the comprehensive plan of the City of Seattle?

Discussion

RCW 36.70A.100 requires the comprehensive plans of cities and counties to be coordinated with, and consistent with, the comprehensive plans of those counties or cities with which the county or city has common borders or related regional issues. *Robison v. City of Bainbridge Island*, CPSBMHB Case No. 94-3-0025, Final Decision and Order (May 3, 1995), at 31-32. Thus, the County's Plan must be coordinated with the City of Seattle's Plan.

Duwamish offers five statements, presumably as evidence that the challenged amendments are not coordinated and consistent with the comprehensive plan of the City of Seattle. Duwamish PHB, at 45. However, Duwamish fails to provide legal argument explaining how or why each of the five statements shows that the actions are inconsistent with Seattle's plan. For example, Duwamish states "Seattle's Comprehensive Plan has just designated land within 100 feet of the .9 (nine-tenths) acre triangle as part of a 264 acre residential urban village"; however, Duwamish does not explain how or why the amendments conflict with such a designation. *Id.*

Similarly, Duwamish asserts that two Seattle City Councilpersons expressed dismay that the County was "moving in the direction of a rezone which was in opposition to the wishes that South Park residents had for their neighborhood." *Id.* Again, Duwamish fails to explain how this statement demonstrates that the amendments are not coordinated and consistent with Seattle's plan.

The Board holds that Duwamish has failed to meet its burden to show, by a preponderance of the evidence, that the County has failed to comply with RCW 36.70A.100.

Duwamish Conclusion No. 6

Duwamish has not met its burden of proof.

LEGAL ISSUE NO. 7

Did the County, in adoption of the Spencer Amendments, fail to comply with the State Environmental Policy Act?

Discussion

The County argues that Duwamish lacks standing to challenge the County's action under the State Environmental Policy Act (SEPA). To have standing to challenge a SEPA action, a petitioner must be within the zone of interests protected by SEPA, and must allege an injury-in-fact. To satisfy the evidentiary burden to show an injury-in fact, a "petitioner must show that the government action will cause him or her 'specific and perceptible harm' and that the injury will be 'immediate, concrete, and specific.'" *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008, Final Decision and Order (October 23, 1995), at 94-95 (citations omitted); *HEAL v. City of Seattle*, CPSGMHB Case No. 96-3-0012, Final Decision and Order (August 21, 1996), at 9 (citations omitted).

Duwamish has not explained how the County's action will cause it specific and perceptible harm, or how petitioners will suffer an immediate, concrete, and specific injury. Instead, Duwamish asserts that it has SEPA standing because "[Duwamish is] representing D.V.N.P.C., SPARC as well as the approximately fifty South Park residents who have given money to our legal fund." Duwamish Rebuttal, at 6. Although participation in the legislative process as an identified representative of a citizen group may establish GMA standing, obtaining GMA standing "does not automatically bestow SEPA standing upon petitioner." *Robison v. City of Bainbridge Island*, CPSGMHB Case No. 94-3-0025, Order on Dispositive Motions (February 16, 1995), at 6-7. "The GMA and SEPA are two distinct statutes with their own standing requirements that each must be met by petitioners if they intend to challenge actions for not complying with both statutes." *Id.*

Duwamish attempts to show injury-in-fact by providing the Declaration of Penni Cocking, which alleges the following injuries:

- a. Increasing Industrial zoning decreases the value of my home.
 - b. Seattle and King County's industrial zones allow uses which are not compatible with human life. They pollute the air I breathe, the noise they make invades my living space.
 - c. The Duwamish River is their drain.
 - d. Trucks use the residential streets as their own.
- Duwamish Reply Brief, at 7.

The sincerity of the declarant's belief is not in question. However, the declaration presents only conclusory statements alleging injury; it does not provide the evidentiary facts necessary for the Board to determine the existence of an injury-in-fact. **The Board holds that Duwamish lacks standing to bring a SEPA challenge because it cannot satisfy the injury-in-fact test necessary to confer SEPA standing.**

Duwamish lacks standing to bring a SEPA challenge.

LEGAL ISSUE NO. 8

Was the County's action on the Spencer Amendments area-wide zoning or was it a reclassification?

Discussion

Duwamish asserts that the rezoning of the Spencer Properties was a quasi-judicial reclassification, not the area-wide rezone as characterized by the County. Duwamish PHB, at 11-14. The Board is authorized to review a county or city's legislative action that is alleged to not comply with the Act. *Pilchuck v. Snohomish County [Pilchuck]*, CPSGMHB Case No. 94-3-0018, Order Denying Dispositive Motions (February 1, 1995), at 11; see RCW 36.70A.280. The Board "will not review quasi-judicial actions of local jurisdictions." *Pilchuck*, at 11. Thus, if Duwamish's allegation is true and the adoption of the Spencer amendments was a quasi-judicial action, then the Board is without jurisdiction to review the County's action. However, as this Board stated in *Pilchuck*, "simply because a person has requested that a designation be changed does not mean that the resulting action taken by the local legislative body was quasi-judicial." *Id.* at 16.

RCW 42.36.010 provides in part:

Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, [or] hearing examiner . . . which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive . . . plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

Here, the Council did not determine the legal rights of specific parties in a contested case proceeding. The legislative action of the Council was a vote on two ordinances that amended the county-wide comprehensive plan and amended the county-wide development regulations. Adoption of these ordinances affected property owners throughout unincorporated King County.

[1] The Council had before it Proposed Ordinance 96-118, which contained at least five changes to the County's Plan and development regulations: (1) fully contained communities designation for the Bear Creek Urban Planned Developments; (2) housing density on Vashon-Maury Island; (3) Industrial zoning for certain properties in Preston; (4) four land use map and zoning changes;

[1] and (5) rural city urban growth areas for Duvall, Carnation, Snoqualmie, North Bend and Enumclaw. See Exs. D-9, 10, 13-16. "Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive . . . plans." RCW 42.36.010 (emphasis added).

Additional evidence that the Council's action was legislative is the contemporaneous quasi-judicial action before the Hearing Examiner. Ex. D-19; *see also*, Duwamish PHB, at 15. It is in the proceeding before the Hearing Examiner that the appropriateness of rezoning the Spencer Properties from "R-4 [P-I]" to "I" will be determined; such a proceeding determines the legal rights of parties promoting and contesting a specific rezone request.^[1] In contrast to the specific contested proceeding before the Hearing Examiner, the Council's action is properly characterized as an amendment to the comprehensive plan and adoption of a zoning amendment of area-wide significance.

Before the GMA was enacted, a jurisdiction considering five changes to its comprehensive plan or zoning code might take five separate and discrete actions. Because of the narrow focus of such separate and discrete actions, characterization of the jurisdiction's action as quasi-judicial or legislative may have been difficult. *See Raynes v. Leavenworth*, 118 Wn.2d 237, 243 (1992). However, it is an easier task to characterize a jurisdiction's action under the GMA.

The Act generally limits a jurisdiction's ability to amend its comprehensive plan to no more than once per year. RCW 36.70A.130(2)(a). In these annual amendment cycles, a jurisdiction must consider all proposals concurrently so that the cumulative effect of the various proposals can be ascertained. RCW 36.70A.130(2)(b). Consequently, the proposals that, prior to the GMA, may have been considered on a case-by-case basis through separate actions by the jurisdiction must now be considered as a single bundle of proposals. Such consideration precludes a jurisdiction from functioning in a quasi-judicial manner; it amounts to broad policymaking action by the jurisdiction. The pros and cons of individual proposals are weighed and considered in light of the cumulative effects of all proposals, and action on all proposals is combined into one vote.

The Board holds that adoption of the Spencer Amendments was an amendment to the comprehensive plan and an area-wide zoning amendment, a legislative action. The County's action was not quasi-judicial.

Duwamish Conclusion No. 8

The County's action in approving the Spencer Amendments was legislative, rather than quasi-judicial.

LEGAL ISSUE NO. 9

If the Spencer Amendments were a reclassification, then can the County use an area zoning legislative rezone process for redesignating this 0.9 acre from a residential zoning designation to an industrial zoning designation in the comprehensive plan?

Discussion

Because the Board found that the County acted in a legislative manner and undertook area-wide zoning, not a reclassification, the Board need not address Legal Issue No. 9.

Duwamish Conclusion No. 9

The Board need not answer Legal Issue No. 9.

LEGAL ISSUE NO. 10

If the answer to Legal Issue No. 9 is yes, then can the County adopt area-wide zoning when there is no community plan or area-wide study?

Discussion

Since the Board did not answer “yes” to Legal Issue No. 9, it need not answer Legal Issue No. 10. However, even if the answer to Legal Issue No. 9 were “yes,” Duwamish has not established a GMA duty that requires the County to undertake a community plan or area-wide study. Petitioner’s reliance on a statement allegedly made by Mr. Maduell to that effect is insufficient to establish a GMA duty. *See* Duwamish Reply Brief, at 5-6. Even if Mr. Maduell’s statement is accurately recounted by Duwamish, such a statement of opinion does not create a legal duty.

The Board holds that Duwamish has failed to meet its burden to show, by a preponderance of the evidence, that the County violated the GMA by not undertaking a community plan or area-wide study.

Duwamish Conclusion No. 10

Duwamish failed to meet its burden of proof as to Legal Issue No. 10.

LEGAL ISSUE NO. 11

Is there an adequate community plan or area-wide study for the area that includes the proposed Spencer rezone?

Discussion

Because of the Board’s resolution of Legal Issue No. 10, the Board need not address Legal Issue No. 11.

Duwamish Conclusion No. 11

The Board need not address Legal Issue No. 11.

LEGAL ISSUE NO. 12

Can the comprehensive plan process be used to adopt rezones that benefit an individual land owner at the expense of a large residential neighborhood and area unrelated to any area-wide plan?

Discussion

Duwamish fails to identify the GMA duty it claims the County violated. Even if Duwamish had identified a duty, Duwamish's challenge under Legal Issue No. 12 would fail.

Duwamish does not directly discuss Legal Issue No. 12. Instead, Duwamish argues that the County cannot take a zoning action unless "there is a relationship between the zoning act and the public interest." Duwamish PHB, at 25. Duwamish implies that the County did not act in the public interest when it adopted the challenged ordinances. Duwamish's reasoning appears to be as follows: Because "each person has a fundamental and inalienable right to a healthful environment" and industrial zoning "may potentially have a serious environmental impact" in the South Park area, then it is against the interest of the public (i.e., the citizens of South Park) to zone the area industrial, and therefore the County has acted illegally. *See* Duwamish PHB, at 25 (citing RCW 43.21C.020(3) and *SAVE v. Bothell*, 89 Wn.2d 862, 869, 871 (1978)).

Duwamish relies on a SEPA policy (RCW 43.21C.020(3)) and a SEPA case in which there was a rezone for a specific development proposal with known significant adverse environmental impacts and high costs to upgrade infrastructure. In *SAVE*, a land owner sought a rezone of his farm property to develop a regional shopping center. The *SAVE* court found that Bothell acted arbitrarily and capriciously by rezoning the property to allow the development, because the specific "adverse environmental effects and potentially severe financial burdens on the affected community have been completely disregarded [by Bothell]." *SAVE*, 89 Wn.2d at 870. Such is not the case here.

The County's action was an area-wide zoning action. *See* discussion *supra* Legal Issue No. 8. This was not a rezone for a specific development proposal. Duwamish has pointed to no evidence in the record that describes adverse environmental effects or economic burdens on South Park because of the County's action.

The Board holds that Duwamish has failed to identify a GMA duty that prohibits the County from adopting the challenged ordinances. Even if there were such a duty, Duwamish has failed to meet its burden to show, by a preponderance of the evidence, that the County has violated the Act.

Duwamish Conclusion No. 12

Duwamish has not identified a GMA-imposed duty with which the County is allegedly noncompliant.

LEGAL ISSUE NO. 13

Is the County required to demonstrate how this redesignation is in the public interest, and, if so, did the County do so?

Discussion

Duwamish has made no effort to identify in its legal argument a GMA duty that requires the County to demonstrate that it has acted “in the public interest.” Consequently, pursuant to the Board’s Prehearing Order, section XIII, **Legal Issue No. 13 is deemed abandoned** and the Board need not consider it further.

Duwamish Conclusion No. 13

Legal Issue No. 13 is abandoned and the Board will not consider it further.

C. redmond legal issues

LEGAL ISSUE NO. 1

Are Ord. 12171 and the portions of Ord. 12170 which relate to the designation of the Bear Creek Master Planned Developments as Fully Contained Communities, specifically 1, 2-1, 3, 4, 5-1, 6, 7, 8-1 (the Bear Creek Amendments) in compliance with RCW 36.70A.020(1), (2), and (12)?

LEGAL ISSUE NO. 2

Do the Bear Creek Amendments fail to comply with RCW 36.70A.070 and .110 because they are inconsistent with the remainder of the Plan and the County-wide Planning Policies (CPPs)?

Discussion

WAC 242-02-570(1) provides:

A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.

Redmond did not present legal argument regarding the compliance of the Bear Creek Amendments with RCW 36.70A.020, RCW 36.70A.070 or inconsistency between the Amendments and the Plan or the County-wide Planning Policies. In an early case, the Board stated:

... the Board notes that it need not determine whether an issue was intentionally abandoned (for instance, a tactical decision or because the issue has subsequently been resolved) or abandoned through neglect. As a general rule, so long as the party was afforded ample opportunity to brief its issues, either by means of dispositive motions or hearing briefs, as in the present instance, the Board will treat an unbriefed legal issue as abandoned; it will not be considered, and will be dismissed with prejudice. *Twin Falls, et al., v. Snohomish County*, CPSGMHB Case No. 93-3-0003, October 6, 1993, Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order; and Order Denying SNOCO PRA's Petition for Reconsideration, at 18.

Because Redmond failed to present in its brief legal arguments relative to Legal Issues 1 and 2, the Board holds that the City has abandoned these issues and shall dismiss them with prejudice.

Redmond Conclusions No. 1 and 2

Because it did not brief Legal Issues Nos. 1 and 2, Redmond has abandoned them. The Board will not consider those issues further. Redmond Legal Issues Nos. 1 and 2 are dismissed from this case with prejudice.

LEGAL ISSUE NO. 3

Do the Bear Creek Amendments fail to comply with RCW 36.70A.350 because there was no reservation of the 20-year population projection and because an FCC must be located outside, rather than inside, an urban growth area (UGA)?

Discussion

There are two different allegations made in this legal issue. The City did not brief the portion that alleges that the County did not reserve a portion of the 20-year population projection. **The Board holds that Redmond has therefore abandoned that portion of Legal Issue No. 3.**

With respect to the balance of Legal Issue No. 3 regarding the location of FCCs, the Board holds that the Superior Court ruling had the effect of affirmatively answering the question of inclusion of the Bear Creek MPDs within the UGA. See Finding of Fact 34. The Court reversed the Board on this issue and reinstated pages 37-41 and 106 of the Board's original Order.

See Finding of Fact 2. In essence, the reinstatement of this language acknowledges the Board's reservations about the propriety of "island" UGAs and recognizes the uniqueness of the Bear Creek MPDs, vis-a-vis the CPPs, and the Board's finding that the Bear Creek MPDs, as originally and initially designated by the County in its 1994 Comprehensive Plan, are within the UGA. *See Finding of Fact 34.* Therefore, in this unique situation, to respond to the Board's Order, the County need not have resorted to using the FCC designation process, as set forth in RCW 36.70A.350, to address the Bear Creek MPDs and consequently, the Board need not and will not answer the second portion of Legal Issue No. 3. ^[1]

Redmond Conclusion No. 3

Because it did not brief the portion of Legal Issues No. 3 that dealt with the reservation of the 20-year population projection, Redmond has abandoned that portion of the issue. The Board will not consider that portion of Legal Issue No. 3 further, and it is dismissed from this case with prejudice.

With respect to the balance of Legal Issue No. 3, the Board concludes that the Superior Court Ruling effectively answers the question of whether or not the Bear Creek MPDs will be included within the UGA. Therefore, the County need not rely upon the FCC designation for the Bear Creek MPDs and the Board need not answer this portion of Legal issue No. 3.

Board Member Tovar's Dissent

The question of the County's compliance with RCW 36.70A.110 and .210 has been answered by the Superior Court ruling. However, I do not agree with the majority opinion that the Superior Court ruling somehow renders the second part of Legal Issue No. 3 moot or otherwise obviates the need or the propriety of answering the question asked. The Superior Court ruling speaks to the question of whether or not the Bear Creek MPDS were lawfully designated as within the UGA (i. e., in compliance with RCW 36.70A.110 and .210). It does not speak to the question of whether or not the County has complied with RCW 36.70A.350 by designating the sites in question as FCCs. Indeed, it could not, because the question of compliance with RCW 36.70A.350 was not before the Court.

The County argues that this is an "unusual" case. I can agree that the history and circumstances in this matter are unusual. However, the facts in this particular instance, unusual or not, are not determinative of the narrow legal question before the board. This portion of the question in Legal Issue No. 3 is framed purely as a matter of law - does RCW 36.70A.350 require that an FCC be located outside, rather than inside, an urban growth area (UGA)? My conclusion is that the answer is yes.

The preamble to RCW 36.70A.350 identifies the area where "new fully contained communities"

may be located. The answer is provided in the very next phrase of the preamble, namely “outside of the initially designated urban growth areas.” Emphasis added. There is no dispute about the meaning of the words “outside of the ... urban growth areas.” There does, however, appear to be some dispute, or at least confusion, about the meaning of the phrase “initially designated.”

My own conclusion is that “initially designated” conveys that this is to be a phased exercise. First, there is to be an initial designation of urban growth areas, which would designate both the urban and the rural areas. RCW 36.70A.110. Second, there is the option to establish a process for reviewing proposals for FCCs. Third, there is to be a subsequent “reviewing [of] proposals” for new fully contained communities. This sequential approach is mirrored in the first phrase of the second paragraph of RCW 36.70A.350, which states that the FCCs are to be approved outside of “... established urban growth areas...” How can an FCC, such as the Bear Creek MPDS, be considered and approved unless, as this language suggests, the UGA has already been “established”, i.e., initially adopted?

I conclude that the phrase “initially designated” means the first-time adoption of the urban growth area, which is simultaneous with the adoption of the comprehensive plan.^[1] The County’s adoption of its comprehensive plan in 1994 constituted its “initially designated” urban growth area. That Plan shows the Bear Creek MPD sites as within the UGA and the County has taken no action since that time to re-designate these sites from urban to rural. The status of these sites as urban is affirmed by the Superior Court Ruling.

The legally correct answer to this portion of Legal Issue No. 3 is that any FCCs designated pursuant to RCW 36.70A.350 must be located outside of the UGAs that were initially designated, i.e., adopted in the 1994 Plan.^[1] The County was therefore without authority to designate the Bear Creek MPDs as FCCs, regardless of the projects’ ostensible compliance with the nine criteria listed at RCW 36.70A.350. For this reason, I would have found the County’s adoption of the FCC in noncompliance with the GMA and remanded it to the County with direction that the FCC designation for the Bear Creek MPDs be deleted.

LEGAL ISSUE NO. 4

Did the County’s failure to designate the Bear Creek MPD sites as rural violate RCW 36.70A.020, .070, and .110?

Discussion

The parties concur that the Superior Court Ruling renders Legal Issue No. 4 moot.

Redmond Conclusion No. 4

The parties concur that Judge Pechman's decision moots Legal Issue No. 4. Therefore, the Board need not and will not address it further.

V. ORDER

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board concludes that the County's comprehensive plan amendments, including the Buckles Amendments, the Duwamish Amendment and the Bear Creek Amendments are in compliance with the GMA.

ORDERED this 12th day of November, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member^[1]

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] Some exhibits refer to these two parcels as the "Banks properties."

[1] These same sites are also referred to as the Bear Creek Urban Planned Developments (UPDs).

[1] In *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (October 6, 1995), this Board stated:

While the preamble to RCW 36.70A.020 clarifies that the goals are not listed in any order of priority, a close examination of the 13 goals reveals that there are some important distinctions that can be drawn among them. Unlike the other ten, the three planning goals cited above [urban growth - Goal 1; reduce sprawl - Goal 2; natural resource industries - Goal 8] operate as organizing principles at the county-wide level. Thus, they have not only a procedural dimension, but they also direct a tangible and measurable outcome. In contrast, Goal 6, regarding property rights, and Goal 11, regarding public participation, do not specifically or implicitly describe the physical form or configuration of the region that should evolve. Rather, they address *how* local government is obligated to undertake the comprehensive planning and implementing actions that will shape the region (i.e., without taking private property and with enhanced public participation). *Bremerton*, at 25 (emphasis in original).

[1] RCW 36.70A.040(4) provides:

Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows:(a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

[1] RCW 36.70A.070 provides in part:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

[1] Buckles did not specifically challenge analysis of the Buckles amendments under Plan Policy I-203.

[1] Plan policy I-201 provides:

Amendments to the Comprehensive Plan Land Use Map should be subject to the same requirements as those for policies I-202 and I-203. Ex. B-11.

[1] KCC Title 21A is the County Zoning Code.

[1] “Is this area predominantly ‘environmentally unconstrained?’ . . . [T]he answer is ‘no.’” Buckles PHB, at 23.

[1] RCW 36.70A.030(4) provides:

“Comprehensive land use plan,” “comprehensive plan,” or “plan” means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

[1] Duwamish also claims the public notice requirements were not met for a November 1994 public meeting held at the Spencer Industries property. This meeting took place nearly two years ago and a challenge under the Act is now untimely.

[1] Evidence of the ordinances’ county-wide effect is provided by the number and interests of the parties in this consolidated case: three petitioners challenged the County’s action and two intervenors joined to support the County’s action.

[1]

The four specific land use map and zoning changes included the Spencer Properties, Eastgate Congregational Church Senior Housing, Ring Hill Estates, and the Buckles property. *See* Exs. D-9, 10, 13-16.

[1]

Attachment A to Ordinance 12170 provides the rationale for zoning the Spencer Properties as potential industrial (i.e., R-4 [P-I]):

This amendment enables the Hearing Examiner process to continue and to determine the appropriate zoning and the application of specific development conditions.

[1]

RCW 36.70A.350 provides:

A county required or choosing to plan under RCW 36.70A.040 may establish a process as part of its urban growth areas, that are designated under RCW 36.70A.110, for reviewing proposals to authorize new fully contained communities located outside of the initially designated urban growth areas.

(1) A new fully contained community may be approved in a county planning under this chapter if criteria including but not limited to the following are met:

(a) New infrastructure is provided for and impact fees are established consistent with the requirements of RCW 82.02.050;

(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the new fully contained communities and adjacent urban development;

(d) A mix of uses is provided to offer jobs, housing, and services to the residents of the new community;

(e) Affordable housing is provided within the new community for a broad range of income levels;

(f) Environmental protection has been addressed and provided for;

(g) Development regulations are established to ensure urban growth will not occur in adjacent nonurban areas;

(h) Provision is made to mitigate impacts on designated agricultural lands, forest lands, and mineral resource lands;

(i) The plan for the new fully contained community is consistent with the development regulations established for the protection of critical areas by the county pursuant to RCW 36.70A.170.

(2) New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty-year population projection and offsets the urban growth area accordingly for allocation to new fully contained communities that meet the requirements of this chapter. Any county electing to establish a new community reserve shall do so no more often than once every five years as a part of the designation or review of urban growth areas required by this chapter. The new community reserve shall be allocated on a project-by-project basis, only after specific project approval procedures have been adopted pursuant to this chapter as a development regulation. When a new community reserve is established, urban growth areas designated pursuant to this chapter shall accommodate the unreserved portion of the twenty-year population projection.

Final approval of an application for a new fully contained community shall be considered an adopted amendment to the comprehensive plan prepared pursuant to RCW 36.70A.070 designating the new fully contained community as an urban growth area. [1991 sp.s. c 32 § 16.]

[1]

The timing of the “initially designated” urban growth areas is set forth in RCW 36.70A.110, which provides in part:

(5) Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.Emphasis added.

[1]

Neither the County nor Quadrant have argued that the Bear Creek MPDs were outside the UGAs “initially designated” in the 1994 Plan.

[1]

Board Member Tovar dissents in part as to Redmond Legal Issue No. 3