

Hearing, and Briefing Schedule.

On November 19, 1996, the Board received a Compliance Status Report from the County.

On December 9, 1996, the Board received Snohomish County's Second Statement of Actions Taken to Comply with the GMA and the Final Decision and Order.

On December 19, 1996, the Board held a Second Compliance Hearing. On January 31, 1997, the Board issued a Notice of Third Compliance Hearing, which announced that the Board would consider and determine substantive as well as procedural compliance with the GMA and the Board's FDO.

From February 3, 1997, through February 11, 1997, the Board received four petitions for review (**PFRs**) challenging the County's adoption of four ordinances amending its Plan and implementing development regulations:

Case No. 97-3-0004 Kristin C. Kelly and Carol K. McDonald (**Kelly**)

Case No. 97-3-0005 City of Woodinville (**Woodinville** or the **City**)

Case No. 97-3-0011 1000 Friends of Snohomish County and Corinne R. Hensley (**1000 Friends**)

Case No. 97-3-0012 Concerned Citizens for Clearview Growth & Land Use (**Clearview**)

On February 13, 1997, the Board issued an "Order of Consolidation and Notice of Hearing," denominating the case as Case No. 97-3-0012c [**Kelly**]. The Order granted limited intervention to Cavalero Hill L.L.C. (**CHLLC**) and Snohomish County-Camano Association of Realtors (**SCCAR** or **Realtors**).

On March 26, 1997, the Board issued its Pre-Compliance Hearing Order. After considering whether the question of compliance in *Sky Valley* should be considered together with *Kelly*, the Board determined that the two matters would be heard and decided separately.

On March 28, 1997, the Board issued a Prehearing Order, setting forth the legal issues to be decided in *Kelly*, and setting the schedule for briefing ^[2] and argument.

On May 8, 1997, the Board issued its "Order on Dispositive Motions and Motions to Supplement the Record" (the **Order on Motions**), dismissing Clearview's petition in its entirety, and dismissing 1000 Friends' Legal Issue 8, Kelly's Legal Issues 2 and 3, and Woodinville's Legal Issue 4.

Subsequent to issuance of the Order on Motions, the Board received the following:

May 19, 1997[County's] Motion for Reconsideration of Order Denying County's Motion to Supplement the Record with Documents Related to Lake Stevens Urban Commercial Designation

May 20, 1997City of Woodinville's Prehearing Brief (**Woodinville PHB**)

May 20, 19971000 Friends of Snohomish County and Corinne Hensley Prehearing Brief (**1000 Friends PHB**)

May 20, 1997Kelly & McDonald's Prehearing Brief (**Kelly PHB**)

May 30, 1997Kelly & McDonald's Response to Snohomish County's Motion for Reconsideration

June 13, 1997SCCAR's Response to Petitioner's Prehearing Brief; Motion to Strike Petitioners' Brief; and Motion to Dismiss Claims Concerning Rural Lot Clustering Policies and Regulations, with two attached declarations

June 13, 1997Respondent CHLLC's Prehearing Brief

June 16, 1997Snohomish County's Prehearing Brief: Response to Woodinville (**County Response/Woodinville**)

June 16, 1997Snohomish County's Prehearing Brief: Response to Kelly (**County Response/Kelly**)

June 16, 1997Snohomish County's Prehearing Brief: Response to 1000 Friends/Hensley (**County Response/1000 Friends**)

June 16, 1997Letter from Corinne Hensley to Board re: Extension (of briefing deadline)

June 17, 1997Letter from Snohomish County re: Hensley's Letter

June 20, 1997City of Woodinville's Reply Brief

June 20, 1997Kristin Kelly and Carol McDonald's Prehearing Reply Brief

June 23, 1997Hensley's Reply Brief to Snohomish County's Prehearing Brief and Intervenor's SCCAR Response to Petitioner's Prehearing Brief, Motion to Strike, and Motion to Dismiss (**1000 Friends Reply**)

June 23, 1997CHLLC Motion to Strike Kelly and McDonald’s Reply Brief, with two Declarations attached

June 24, 1997Kristin Kelly and Carol McDonald’s Response to Cavalero Hill L.L.C.’s Motion to Strike, with one declaration attached

On June 25, 1997, the Board held the hearing on the merits of the consolidated case at the Board’s office, 2329 One Union Square, Seattle.Present were Board members Edward G.

McGuire and Chris Smith Towne, presiding officer. ^[3] Court reporting services were provided by Jean M. Ericksen, Robert H. Lewis & Associates.David A. Bricklin represented Kelly; Dawn L. Findlay represented Woodinville; Jane Cooper and Corinne Hensley appeared *pro se* for 1000 Friends.Marya J. Silvernale and Barbara Dykes represented the County;for the Intervenors, Ramona Monroe represented CHLLC and Thomas J. Ehrlichman represented SCCAR.

II. FINDINGS OF FACT

1.On February 4, 1993, the County adopted “Countywide Planning Policies for Snohomish County” (**CPPs**).The CPPs were amended on February 2, 1994, February 15, 1995, and December 20, 1995. Core Document (**CD**)-8.

2.In June, 1995, the County published its Urban Growth Area Residential Land Capacity Analysis (**RLCA**), analyzing residential land capacity for areas of the County.County Response/1000 Friends, Attachment 1.

3.On June 28, 1995, the County adopted its GMA Comprehensive Plan. CD-7.

4.Also on June 28, 1995, the County adopted ordinances establishing urban growth area (**UGA**) boundaries for twenty cities and towns in Amended Ordinances 94-123 and 94-113 through -117, -119 through -122, and 124.CD-11 through -21.

5.On November 27, 1996, the County adopted Amended Ordinance No. 96-071, “Adopting a County-Initiated Areawide Rezone Within Urban Growth Areas (UGAs).” CD-1.

6.On November 27, 1996, the County enacted Amended Ordinance No. 96-073, “Establishing an Urban Growth Area for the Unincorporated Maltby Industrial Area.”The Ordinance responded to the Board’s remand order *in Sky Valley*, which instructed the County to delete the Maltby Employment Area, or designate it as a UGA. CD-2, at 2.

7.On November 27, 1996, the County enacted Amended Ordinance No. 96-074, “Adopting Map and Text Amendments to the Growth Management Act Comprehensive Plan.”CD-3.

8. Also on November 27, 1996, the County enacted Amended Ordinance No. 96-075, "Adopting a County-Initiated Areawide Rezone Within Rural Residential Areas." CD-4.

9. On November 27, 1996, the County enacted Amended Ordinance No. 96-076, "Amending Snohomish County Code Titles 18, 19, 20, and 32, Relating to the Requirements of the County's Comprehensive Plan and Implementation of Development Regulations Under RCW 36.70A." CD-5.

10. On November 27, 1996, the County enacted Emergency Ordinance No. 96-096, "Repealing Snohomish County Code Chapter 32.30.090." CD-6.

11. Cavalero Hill's property is located within the boundaries of the Lake Stevens UGA. CD-3.

12. Ordinance 96-074 redesignated Cavalero Hill's property from Other Land Uses to Urban Commercial. The Ordinance also added policy LU-2.B.9, which provides that the County shall rezone the Cavalero Hill site to Planned Community Business with the approval of a concomitant zoning agreement. CD-3.

13. The northern boundary of the City of Woodinville, which lies wholly within King County, abuts the southern boundary of Snohomish County, specifically the area delineated as the Unincorporated Maltby Industrial Area (**Maltby UGA**).

III. standard of review

The County asks the Board to apply Engrossed Senate Bill (**ESB**) 6094, specifically Section [\[4\]](#) 20, to the three cases before it. Section 20 changes the standard of review to be used by the Boards. The Board takes official notice of ESB 6094, which became effective on July 27, 1997. Section 53 specifically provides that this new law is prospective in effect, except for Section 22, which is explicitly retroactive. In other words, the 1997 amendments to the Growth Management Act apply -- become effective -- on July 27, 1997.

The local government actions [\[5\]](#) subject to challenge in these three consolidated cases occurred on *November 27, 1996*. The Board obtained jurisdiction to review the County's actions when the petitions for review were timely filed on *February 3, 1997* (Kelly), *February 4, 1997* (Woodinville), and *February 10, 1997* (1000 Friends). Briefing, pursuant to the Board's Rules of Practice and Procedure, was received from *May 19, 1997* through *June 24, 1997*. The hearing on the merits was held on *June 25, 1997*. But for the issuance of this final decision and order, all events in this proceeding occurred prior to *July 27, 1997* -- the effective date of ESB 6094.

If, as the County suggests, the date of issuance of the Board's decision is determinative as to the law to be applied, the Board could select the law to apply based upon its desire and ability to accelerate or delay the issuance of its decision. This is an outcome the Board cannot reach, nor can the Board conclude that it is a result the legislature intended. [6] Consequently, to give effect to the legislature's clear direction, as contained in Section 53, the Board has a duty to apply the provisions of the GMA as they existed at the time the local action occurred and at the time the PFRs were filed.

RCW 36.70A.320(1) provides that:

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. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). 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 supplied.)

Any actions taken by a local government after July 27, 1997, to comply with a Board remand order will be subject to the provisions of ESB 6094. The Board's compliance review of the remand action will, likewise, be subject to ESB 6094.

iv. DISCUSSION AND CONCLUSIONS

A. KELLY

Kelly initially raised five issues before the Board. The Board dismissed two issues. [7] The Board's resolution of Legal Issue 1 (regarding public participation) eliminates the need to resolve the remaining issues.

Kelly Legal Issue No. 1

Did the County's adoption of Ordinance Nos. 96-071, -074 and -076 directing a Planned Community Business zone, establishing an Urban Commercial land use designation and implementing regulations on a 33.7 acre site within the Lake Stevens UGA violate the Act, specifically:

a. RCW 36.70A.020(1), (2), (3), (4), (5), (8), (9), (10), (11) and (12)

- b. RCW 36.70A.070(1), (2), (3), (4) AND (6)(c)***
- c. RCW 36.70A.100***
- d. RCW 36.70A.106***
- e. RCW 36.70A.110***
- f. RCW 36.70A.120***
- g. RCW 36.70A.130(1) and (2)***
- h. RCW 36.70A.140***
- i. RCW 36.70A.210(1)***

As a threshold issue, the Board first addresses Kelly’s challenge to the County’s compliance with the GMA public participation requirements of RCW 36.70A.020(11) and .140.

The GMA requires counties to establish a public participation program that provides for “early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans.”RCW 36.70A.140.Those procedures established by a county:

shall 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.RCW 36.70A.140 (emphasis added).

The County’s public participation process for GMA actions is codified at chapter 32.05 SCC.The validity of the County’s codified process is not challenged; what is challenged is the application of that process to the adoption of Ordinance 96-074. ^[8] Specifically, Kelly asserts that the County’s public notice was insufficient regarding the redesignation of certain lands and the adoption of a Plan policy directing future rezoning of those lands (the Cavalero Hill amendments).

SCC 32.05.020 provides in part:

Procedures for adoption of the GMA comprehensive plans and implementing regulations or amendments to such plans and regulations shall, at a minimum, consist of the following:

...

(2)Council Consideration

(a)If the council wishes to consider . . . an amendment to a plan or regulation recommended by the planning commission, the council shall schedule at least one public hearingNotice of the time, date, place and general purpose of such hearings shall be given as follows:

(i)Notice shall be given by one publication, at least 10 days before the

hearing

(b)At its public hearing, the council may concurrently consider additional proposals on the same plan, regulation or amendment thereto which may or may not have been considered by the planning commission.

(c)At the conclusion of its public hearing, the council may make one of the following decisions regarding the proposed plan, regulation or amendment:

(i)Adopt,

(ii)Amend and adopt,

(iii)Decline to adopt,

(iv)Remand in whole or in part to the planning commission for further consideration, or

(v)Adopt such other proposals or modifications of such proposals as were considered by the council at its own hearing.

As applied to the adoption of Ordinance 96-074, the County's public participation process failed to comply with the requirements of the GMA. Notice was ineffective to apprise citizens that the County was considering re-designating the Cavalero Hill property from Other Land Uses to Urban Commercial or that the County was considering adopting a Plan policy that would require zoning of this property as Planned Community Business.

The record shows that when the County has considered amendments regarding specific areas, the "general purposes" included in the public notices have described the specific areas involved. For example, a notice of the July 16 and 23, 1996 Planning Commission hearings regarding potential rezone areas included a map that specifically identified those lands being considered for rezone. County Response/Kelly, at Attachment 21 (Index 8.1.006). A notice of the October 14 and 21, 1996 County Council hearings described the potential creation of the Maltby UGA as follows: "The Maltby Employment Area is proposed to be included in a new Maltby Urban Growth Area (UGA) with 2 options for expansion into the Urban Reserve area to the north." County Response/Kelly, at Attachment 21 (Index 8.2.1325). These two examples illustrate the specificity with which the County has identified areas where changes to the comprehensive plan and implementing regulations were being considered; such specificity should reasonably apprise citizens of the County's contemplated actions.

In contrast to the specificity of the statements of "general purpose" in these notices, the County's only notice regarding the Cavalero Hill property stated: "The county council may also be considering several proposed GPP (General Policy Plan) amendments which would change the plan designation from Urban Residential or Other Land Use to the Urban Commercial designation." County Response/Kelly, at Attachment 21 (Index 8.2.1341). The specific properties involved in the proposed action were not identified. From this notice, concerned citizens could not have known what the County contemplated, for Cavalero Hill as well as other properties.

As the County and CHLLC admit, in a notice of a proposed countywide rezone, the Cavalero Hill property was erroneously identified as being considered for a rezone to R-9600. *See* transcript of Proceedings, Hearing on the Merits, June 25, 1997, at 45-46, 49, 59. A citizen following the County's legal notices would have reasonably believed that the only change being considered for the Cavalero Hill property was residential zoning, not a commercial re-designation and policy for future commercial zoning.

The Board holds that the public participation process used by the County to redesignate the Cavalero Hill property from Other Land Uses to Urban Commercial, and to adopt the Plan policy requiring the future zoning of the property to Planned Community Business did not comply with RCW 36.70A.140. These portions of Ordinance 96-074 concerning the Cavalero Hill property will be remanded to the County, and the County will be required to comply with the public participation requirements of the GMA.

Kelly Conclusion No. 1

Snohomish County failed to comply with the public participation requirements of RCW 36.70A.140 in amending its Plan for the Cavalero Hill property. Those portions of Ordinance 96-074 that re-designated the Cavalero Hill property from Other Land Uses to Urban Commercial and that adopted a Plan policy requiring the future zoning of the Cavalero Hill site to Planned Community Business are remanded to the County. The County is directed to comply with the public participation requirements of the GMA at such time as it amends its Plan to alter land use designations and directs future zoning for the property.

Because the Board finds that the public participation requirements of the GMA have not been satisfied with regard to the amendments relating to the Cavalero Hill property, the substantive issues raised by Kelly in Legal Issues No.4 and 5 need not be addressed here.

Invalidation

The Board finds that the County's notice regarding the Cavalero Hill amendments in no way encouraged the involvement of citizens. Rather, the vague description of the proposed amendment, when compared with other, more specific descriptions of amendments, may have actually discouraged citizen involvement.

Therefore, the Board issues a determination of invalidity, finding the Cavalero Hill amendments invalid.

The Board agrees with Kelly that the Cavalero Hill amendments substantially interfere with GMA planning Goal 11, which provides:

Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts. RCW 36.70A.020(11),

B. woodinville

In *Sky Valley*, the Board's Final Decision and Order directed the County:

to include in the Plan an explanation of how the final configuration of any UGA and Plan land use designations for the Maltby/Grace areas will serve to achieve compact urban development and the transformation of local governance. FDO, at 59 (emphasis in original).

In the Order portion of the FDO, the Board directed that:

2. The Maltby Employment Area portion of the Plan is **remanded** with instructions for the County to delete it from the rural area, or designate it as a UGA, or otherwise amend the Plan to make it consistent with the goals and requirements of the Act and the portions of the Board's holding in the *Gig Harbor* and *Vashon-Maury* decisions referenced in the discussion and conclusions in this Final Decision and Order. FDO, at 134 (emphasis in original).

On November 27, 1996, the Snohomish County Council adopted Amended Ordinance No. 96-073, which established a UGA for the unincorporated Maltby Industrial Area. CD-2. At the same time, it adopted Amended Ordinance No. 96-074, which amended the Plan's text and land use map. Among the text changes was a new policy, IC 1.B.5, which is the subject of Woodinville's appeal.

Woodinville asserts that Plan Policy IC 1.B.5 violates the GMA because it is inconsistent with other Plan policies, CPPs, and the GMA. Policy IC 1.B.5 provides:

The county shall not support any proposed annexation of unincorporated lands in Snohomish County by a city or special district situated predominantly outside of Snohomish County unless and until an annexation agreement has been signed by the county and said district or city. Such agreement shall address and substantially resolve issues of land use, applicable development regulations, permit processing, public services delivery, facilities financing, transportation planning, concurrency management, and any other similar jurisdictional issues identified by the county. Such agreement should be approved prior to city acceptance of an annexation petition. CD-3, Attachment A, at 19.

The County characterizes this policy as reflecting its insistence on an annexation interlocal

agreement as a condition of county support for an annexation petition, and argues that the policy encourages intergovernmental coordination and orderly transition of governmental services, consistent with the GMA and the Washington State Department of Community, Trade and Economic Development (CTED) Procedural Criteria (Chapter 365-195 WAC). [\[10\]](#)

Woodinville Legal Issue No. 1

Did the County's adoption of Ordinance 96-074, where Policy IC 1.B.5 is inconsistent with other provisions of the Plan and CPPs, violate the Act, specifically RCW 36.70A.070?

RCW 36.70A.070 requires comprehensive plans to be internally consistent. This means that one provision of a plan may not thwart another provision. *West Seattle Defense Fund v. Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (1995), at 26-27.

The City argues that IC 1.B.5 is inconsistent with Plan Policy IC 1.B.1, which states that the County "shall cooperate with cities in planning for orderly transfer of service responsibilities in anticipation of potential or planned annexations." CD-7, at IC-2. Policy IC 1.B.1 requires the

County to cooperate with cities, or to work with cities toward the "common end" [\[11\]](#) of planning for the transfer of service responsibilities necessary for annexations. The City argues that IC 1.B.1 directs the County to cooperate with the City's annexation efforts, while a IC 1.B.5 directs the County to withhold support of annexation where there is no interlocal agreement.

The City asserts that these policies are inconsistent because IC 1.B.5, instead of furthering cooperation, operates as a "threat" to the City's planned annexation of the Maltby UGA. Although IC 1.B.5 may pose some additional encumbrance on the City, requiring an interlocal agreement as a predicate for County support of annexation seems wholly consistent with a policy requiring cooperative planning to assure the "orderly transfer of service responsibilities." The County's support of a specific annexation, while a laudable goal, is not a predicate to a GMA-compliant annexation.

The City also argues that IC 1.B.5 is inconsistent with the GMA because it applies only to Woodinville, thus treating Woodinville differently than cities within the County. The fact is that Woodinville is different than cities located within the County -- Woodinville is located wholly outside of the County. The City does not dispute that cross-county annexations raise issues not present with in-county annexations. As this Board observed in *Hensley v. Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order (1997), at 13 (footnote 6), the City is subject to King County CPPs; it is not subject to Snohomish County CPPs. As the County pointed out, this raises issues such as population allocation, fair housing targets, and provision of public transit, which are different in the two counties.

Additionally, the Board acknowledges that, although the City has participated in the County’s GMA planning process, that participation has been limited. The City was incorporated in 1993; thus, meaningful participation prior to incorporation was not possible, and subsequent participation may not have proven adequate to assure the “orderly transfer of service responsibilities” for the proposed annexation area. Nonetheless, the Board cannot find inconsistency between the policies in question. It is appropriate for the County to take precautions regarding the allocation of responsibility for services, and the process for transfer of jurisdiction, especially where the potential annexing city lies outside that county.

The Board holds that Plan Policy IC 1.B.5 is consistent with IC 1.B.1 and does not violate RCW 36.70A.070. [\[12\]](#)

Woodinville Conclusion No. 1

Because Plan Policy IC 1.B.5 is consistent with IC 1.B.1, Snohomish County did not violate RCW 36.70A.070 when it adopted Ordinance 96-074.

Woodinville Legal Issue No. 2

Did the County’s adoption of Ordinance 96-074 (Policy IC 1.B.5) violate the coordination and consistency requirements of the Act, specifically RCW 36.70A.100? [\[13\]](#)

RCW 36.70A.100 requires comprehensive plans to be coordinated and consistent with comprehensive plans of adjacent jurisdictions. The Board has found that, to comply with RCW 36.70A.100, a comprehensive plan must be consistent with the CPPs. *City of Snoqualmie v. King County [Snoqualmie]*, CPSGPHB Case No. 92-3-0004, Final Decision and Order (1993), at 32. The City argues that Policy IC 1.B.5 is inconsistent with the CPPs, specifically CPP OD-1, which provides:

[I]t is appropriate that urban government services be provided by cities, and urban government services should not be provided in the rural areas. CD-8, Ordinance 93-004, Attachment, at 8.

According to the City, these provisions are inconsistent because CPP OD-1 recognizes that annexations should occur and “the City is the appropriate entity to provide urban services” to the Maltby UGA, and Policy IC 1.B.5 “attempts to impede such an annexation.” Woodinville’s PHB, at 12.

The City has not persuaded the Board that Policy IC 1.B.5 is inconsistent with the CPPs. CPP OD-1 correctly recites the GMA principle that cities are the units of local government most appropriate to provide urban governmental services. *See* RCW 36.70A.110(4). Policy IC 1.B.5

encourages (even strongly encourages) mutual planning to address issues resulting from the transition from the County as service provider to a city as service provider. Such anticipatory planning is also evident in CPP TR-1.a, which provides that mitigation of traffic impacts will be addressed by “[i]nterlocal agreements among the cities and county . . . in UGAs and areas proposed for annexation.” CD-8, Attachment, at 22.

The Board holds that Plan Policy IC 1.B.5 is consistent with CPP OD-1 and does not violate RCW 36.70A.100.

Woodinville Conclusion No. 2

Because Plan Policy IC 1.B.5 is consistent with the CPPs, Snohomish County did not violate RCW 36.70A.100 when it adopted Ordinance 96-074.

Woodinville Legal Issue No. 3

Did the County’s adoption of Ordinance 96-074, where Policy IC 1.B.5 is inconsistent with the Act’s holding that cities are the units of local government most appropriate to provide urban governmental services, violate the Act, specifically RCW 36.70A.110(4)?

RCW 36.70A.110(4) provides in part: “In general, cities are the units of local government most appropriate to provide urban governmental services.” This language is repeated in CPP OD-1, as discussed in Legal Issue 2, above. Implicit in RCW 36.70A.110(4) is the principle that “incorporation and annexations must occur.” *Snoqualmie*, at 10 (footnote 7). The City claims that, contrary to the GMA, IC 1.B.5 presents a “road block” to the City’s annexation effort. However, the City has not explained how the County’s lack of support will prevent annexation, thus thwarting the GMA.

IC 1.B.5 articulates the County’s belief that cross-county annexation requires up-front agreement regarding transition issues before the County will lend its support to a city’s annexation effort. The GMA does not require the County to actively support annexation, nor does it make such support a predicate to a GMA-compliant annexation.

The Board holds that Plan Policy IC 1.B.5 is consistent with the Act’s recognition that cities are the units of local government most appropriate to provide urban governmental services; it does not violate, RCW 36.70A.110(4).

Woodinville Conclusion No. 3

Because Plan Policy IC 1.B.5 is consistent with the Act’s recognition that cities are the units of local government most appropriate to provide urban governmental services, it does not violate RCW 36.70A.110(4).

Woodinville Legal Issue 4

Did the County's adoption of Ordinance 96-074, which limits or restricts the annexation of urban areas to cities and/or otherwise limits and alters the City's land-use regulation power of annexation, violate the Act, specifically RCW 36.70A.210?

Legal Issue 4 was dismissed in the Board's May 8, 1997 Order on Dispositive Motions and Motions to Supplement the Record, and will not be considered further.

Woodinville Conclusion No. 4

Legal Issue 4 was dismissed in the Board's May 8, 1997 Order on Dispositive Motions and Motions to Supplement the Record.

C. 1000 Friends

1000 Friends initially raised eight issues before the Board. The Board dismissed one issue ^[14] and Hensley abandoned six issues. ^[15] Only Legal Issue 3, as set forth in the Prehearing Order, is now before the Board.

1000 Friends Legal Issue No. 3

Did the County's adoption of Ordinance 96-071, specifically the County's rezone to R-9600, where it is inconsistent with the County's Urban Growth Area Ordinances (adopted June 1995) and Plan Policy LU 1.A.1 (the safety factor) violate the Act? Specifically:

- a. RCW 36.70A.040(3)(d)***
- b. RCW 36.70A.070(Preamble) and (1)***
- c. RCW 36.70A.110(2)***

1000 Friends appeals that part of Ordinance 96-071 that rezones certain areas within UGAs to R-9600. However, it is not the R-9600 zoning itself that 1000 Friends challenges; rather, it is a challenge to the size of the County's UGAs in the aggregate, considering the total population which can now be accommodated with the addition of the R-9600 zoning. 1000 Friends argues that the County determined the size of its UGAs based on a number of assumptions. One of the many assumptions used to calculate residential land use capacity was a certain combination of zoning densities. 1000 Friends claims that rezoning portions of the UGA to R-9600 creates zoning densities different than the zoning densities contained in the County's assumptions. Because of these different densities, 1000 Friends claims the population capacity of the UGAs is now greater than when originally calculated. According to 1000 Friends, this greater capacity exceeds that allowed by the Plan. The remedy sought by 1000 Friends is not to change the R-9600 zoning or to

change the Plan policies. 1000 Friends' remedy is to re-size the County's UGAs.

To this end, 1000 Friends alleges that the R-9600 rezone violates three provisions of the GMA: RCW 36.70A.040(3)(d); .070(Preamble) and (1); and .110(2). RCW 36.70A.040(3)(d) requires development regulations, such as zoning regulations, to be consistent with the comprehensive plan. 1000 Friends argues that the amended zoning regulations are inconsistent with the Plan because the regulations result in greater capacity than allowed by the Plan.

The preamble to RCW 36.70A.070 requires comprehensive plans to be internally consistent and elements of comprehensive plans to be consistent with the future land use map (FLUM). RCW 36.70A.070(1) specifically requires the land use element to include population densities, building intensities, and estimates for future population growth. 1000 Friends argues that the increased capacity resulting from the zoning amendments create inconsistencies within the Plan. 1000 Friends claims that the FLUM shows that the RLCA is "no longer valid yet [] still the basis for the County's growth estimates." 1000 Friends PHB, at 4.

RCW 36.70A.110(2) instructs counties that UGAs "shall permit urban densities" and that UGA sizing "may include a reasonable land market supply factor." 1000 Friends appears to argue that the increased capacity resulting from the zoning amendments somehow violates .110(2).

None of the GMA provisions cited by 1000 Friends require the County to re-size its UGAs each time an assumption changes or more accurate data becomes available. If this were required, counties would spend considerable resources reviewing and re-sizing UGAs; they would have time for little else. There would be no certainty regarding lands located near the margins of UGAs because UGA boundaries would forever be changing. On the other hand, the GMA does not allow counties to ignore changed circumstances or more accurate data.

The legislature recognized the limitations on long-term planning and provided for periodic, but not continuous, review of UGAs. RCW 36.70A.130(3) provides:

Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.

If the legislature had intended counties to engage in the continuous UGA review and revision urged by 1000 Friends, .130(3) would be unnecessary.

Even if 1000 Friends sought to have the R-9600 rezone remanded, Petitioners have not met their burden to prove the rezone creates an inconsistency in violation of the GMA. 1000 Friends' conclusion that the capacity of the UGAs has increased cannot be supported by the limited analysis provided. The County identifies a number of analytical errors made by 1000 Friends, including miscalculating the number of acres rezoned to R-9600 and disregarding the effect of underbuilding on capacity calculation. The Board agrees with the County:

[1000 Friends] has not made an adequate showing that the County's rezone actions have created an inconsistency with the plan and with the final UGAs. In order to successfully make that showing, [1000 Friends] must re-examine all of the assumptions of the RLCA to determine whether there has been any net effect on capacity from all of the changing variables." County Response/1000 Friends, at 21.

The Board holds that 1000 Friends has not met its burden to show, by a preponderance of the evidence, that the County's R-9600 rezone violated the GMA.

1000 Friends Conclusion No. 3

1000 Friends has not met its burden to show, by a preponderance of the evidence, that Snohomish County's adoption of Ordinance 96-071, the R-9600 rezone, violated RCW 36.70A.040(3) (d), .070(Preamble), .070(1), and .110(2).

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 orders:

The challenged actions in this consolidated case are **in compliance** with the requirements of the Growth Management Act, **except**:

These portions of Ordinance 96-074 comprising the Cavalero Hill amendments are **invalidated** and the matter is **remanded** to the County, and the County will be required to comply with the public participation requirements of the GMA, at such time as it amends its Plan to alter land use designations and directs future zoning for the property.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order and the GMA no later than 4:00 p.m. on December 31, 1997, and to file with a Board a Statement of Actions Taken to Comply not later than January 7, 1998.

So ORDERED this 30th day of July, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
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] The FDO remand was modified in the Board's Order on Motions to Reconsider and Correct, issued April 15, 1996.

[2] The deadline for 1000 Friends' Reply Brief was modified in the Board's Order Modifying Briefing Schedule, issued June 17, 1997.

[3] Board member Joseph W. Tovar has reviewed the record and read the transcript of the hearing on the merits.

[4] See County Response/Kelly, at 26-34; County Response/Woodinville, at 7; and County Response/1000 Friends, at 16.

[5] See Findings of Fact 5 through 10.

[6] The Board takes notice of the legislature's clear intent to reemphasize the importance of all the Boards deferring to local policy choices and decisions when those choices and decisions comply with the GMA.

[7] Legal Issues 2 and 3 raised SEPA issues and were dismissed for lack of SEPA standing. Order on Motions, at 7.

[8] Although Kelly's Legal Issues also identified Ordinances 96-071 and 96-076, their argument is directed only at Ordinance 96-074.

[9] In addition, this notice was published on November 16 and 17, 1996, and allowed only six days for written comment; no oral testimony was allowed.

[10] WAC 365-195-335(3)(k) provides:

Actions which should accompany designations of urban growth areas.

Consistent with county-wide planning policies, cities and counties consulting on the designations of urban growth areas should make every effort to address the following as a part of the process:

(i) Establishment of agreements regarding land use regulations and the providing of services in that portion of the urban growth area outside of an existing city into which it is eventually expected to expand.

(ii) Negotiation of agreements for appropriate allocation of financial burdens resulting from the transition of land from county to city jurisdiction.

[11]

The City provided a definition of “cooperate” – “[t]o work with another toward a common end.” Woodinville PHB, at 11 (quoting The American Heritage Dictionary, Second College Edition, at 155).

[12]

In its Response Brief and at the Hearing on the Merits, the County offered to amend the first sentence of IC 1. B.5 as follows:

The county shall not support any proposed annexation of unincorporated lands in Snohomish County by a city or special district ((predominantly)) inside or outside of Snohomish County unless and until an annexation agreement has been signed by the county and said district or city.

[13]

In its Prehearing Brief, Woodinville “abandoned any claim that the County failed to coordinate with the City pursuant to RCW 36.70A.100.” Woodinville PHB, at 12, footnote 26.

[14]

Legal Issue 8 raised a SEPA issue and was dismissed for lack of SEPA standing. Order on Motions, at 7.

[15]

Legal Issues 1, 2, 4, 5, 6, and 7 were abandoned. *See* 1000 Friends PHB, at 1; 1000 Friends Reply, at 13.