

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

CITY OF RENTON,	)	<b>Case No. 97-3-0026</b>
Petitioner,	)	<b>FINAL DECISION AND ORDER</b>
v.	)	
CITY OF NEWCASTLE,	)	
Respondent.	)	
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**I. PROCEDURAL HISTORY**

On August 18, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Renton. Petitioner challenges the City of Newcastle’s adoption of its comprehensive plan (the **Plan**) as failing to comply with the Growth Management Act (the **GMA** or the **Act**). Renton alleged that Newcastle’s Plan violates the Act and certain King County Countywide Planning Policies (**CPPs**) with regard to the Plan’s affordable housing provisions, and with regard to the Plan’s designation of potential annexation areas (**PAAs**).

The Board held a prehearing conference on October 14, 1997, and issued its Prehearing Order on October 16, 1997, setting a final schedule and the legal issues to be considered.

The Board held its hearing on the merits on December 18, 1997, in the Chamber of Commerce Board Room, One Union Square, Seattle. Board members Edward G. McGuire, Joseph W. Tovar and Chris Smith Towne, Presiding Officer, participated. Renton was represented by Zanetta L. Fontes; Newcastle was represented by J. Tayloe Washburn. No oral testimony was heard. Court reporting services were provided by Judy Bonicelli, Seattle.

After oral argument and questions from Board members, the presiding officer authorized Renton’s attorney to file additional information to assist the Board in determining the location of Renton’s potential annexation area.

On December 29, 1997, Renton filed with the Board a copy of Renton’s Ordinance 4627 with six attachments (A through F), “Adopting the 1996 Amendments to the City’s Comprehensive Plan,”

and the Comprehensive Plan Land Use Map, adopted by that Ordinance.

## **II. FINDINGS OF FACT**

1. The King County Council adopted CPPs for the unincorporated area of the County and for the cities within the County in July 1992. The CPPs were amended in July 1994, with adoption of Ordinance No. 11446. Ex. 193.

2. The CPPs, Section E, Framework Policy (FW)-1, STEP 3d, provide that:

All jurisdictions shall amend comprehensive plans as needed by December 31, 1995 to be consistent with adopted and ratified Phase II amendments. Ex. 193, Attachment A to Ordinance No. 11446, at 8.

3. Household and Employment Ranges, Appendix 2 to the CPPs, sets forth “Proposed Growth Target Ranges for Households and Employment” for 33 cities and unincorporated King County; Newcastle is not listed in this appendix. Ex. 193, Attachment A to Ordinance No. 11446, at 82.

4. Affordable Housing Index, Appendix 3 to the CPPs, sets forth an “Affordable Housing Job/Housing Index” for 31 cities and unincorporated King County; Newcastle is not listed in this appendix. Ex. 193, Attachment A to Ordinance No. 11446, at 83.

5. The CPPs, Part V, Affordable Housing, Policy AH-1, directs all jurisdictions to:

. . . specify, based on the projected number of net new housing units anticipated in its comprehensive plan, the estimated number of units which will be affordable for the following income segments: 0 to 50 percent of the countywide median household income, 50 to 80 percent of median, 80 to 120 percent of median, and above 120 percent [of] median. The estimates for housing affordable to households below 80 percent of median income shall be consistent with countywide objectives for low and moderate income housing in Policy AH-2. Ex. 193, Attachment A to Ordinance No. 11446, at 61.

6. The CPPs, Part V, Affordable Housing, Policy AH-2B, Existing Needs for Affordable Housing, provides that:

[e]ach jurisdiction shall plan for a number of housing units affordable to households with incomes between 50 and 80 percent of the County median household income that is equal to 17 percent of its projected net household growth. In addition, each jurisdiction shall plan for a number of housing units affordable to households with incomes below 50 percent of median income that is either 20 percent or 24 percent of its projected net household growth. For this housing, the target percentage shall be determined using the Affordable Housing

Job/Housing Index developed using Census-based information, which is contained in Appendix 3.Ex. 193, Attachment A to Ordinance No. 11446, at 63.

7.On September 9, 1994, King County sent the amended CPPs to the cities within the County for their consideration and ratification.Ex. 193, unnumbered memo.

8.The City of Newcastle incorporated on September 30, 1994.Ex. 245, at XI; Ex. 240, at 4.

9.Newcastle discussed its affordable housing target percentage with King County planning staff on May 10, 1996.Ex. 240, at 7-8; Ex. 227, at 2.

10.On August 23, 1996, the Renton City Council enacted Ordinance 4627, amending the City's Comprehensive Plan.New Policy LU 378.1 provides that:

Renton's established Urban Growth Area (UGA) also represents its Potential Annexation Area (PAA).Exhibit E to December 29, 1997 Exhibit (City of Renton Ordinance No. 4627), at 1.

11.Renton's Comprehensive Plan Land Use Map, a part of the 1996 amendments, shows a PAA adjacent to Newcastle's southern municipal boundary.Attachment to December 29, 1997 Exhibit.

12.Newcastle's Plan shows PAAs on the northeast, east, and south boundaries of the City. Newcastle's southern PAA overlaps Renton's PAA extending north of Renton's boundaries. Ex. 245, Figure LU-4.

13.The Newcastle City Council adopted Ordinance 97-143, "Adopting a Comprehensive Plan for the City Pursuant to the Growth Management Act," on June 16, 1997.Ex. 211.

14.For the years 1996 through 2016, Newcastle's Plan projects a net gain of 3,946 population, 1,567 households, and 1,649 total dwelling units.Ex. 245, at LU-25.

15.Newcastle's Plan contains an "Affordable Housing Demand Analysis" for low income (less than 50 %); moderate income (50-80%); middle income 980-120%); and upper income (120% +) and provides that:

Under the King County CPP affordable housing targets, Newcastle should plan for approximately 600 of these units as being affordable for low- and moderate-income households over the next twenty years.Ex. 245, at HO-11.

### **III. standard of review**

The Board “shall find compliance unless it determines that [Newcastle’s] action is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].”RCW 36.70A.320(3).For the Board to find Newcastle’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.”*Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

#### **IV. DISCUSSION AND CONCLUSIONS**

##### **AFFORDABLE HOUSING**

Under the GMA, counties and cities must plan for affordable housing. Affordable housing is an important public policy purpose explicitly identified in the goals of the Act (RCW 36.70A.020 (4)). It is also identified as a planning requirement in the list of mandated elements of comprehensive plans (RCW 36.70A.070(2)(c)-(d)) and CPPs (RCW 36.70A.210(3)(e)).

Renton contends that Newcastle utilized the wrong affordable housing target percentage in its Plan (Legal Issue 2) and that Newcastle’s Plan does not provide a sufficient number of affordable housing units to meet the required percentage (Legal Issue 1).

Among the goals of the Act is the housing goal, which provides:

Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.020(4) (emphasis added). More specifically, the GMA requires that:

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

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. . . .

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

RCW 36.70A.070(1), (2) (emphasis added). In addition, CPPs shall address “[p]olicies that consider the need for affordable housing, such as housing for all economic segments of the

population and parameters for distribution.”RCW 36.70A.210(3)(e).King County CPPs direct Newcastle’s Plan actions regarding affordable housing.

CPP AH-1 provides in part:

[E]ach jurisdiction shall demonstrate its ability to accommodate sufficient, affordable housing for all economic segments of the population.

CPP AH-2 provides:

All jurisdictions shall share the responsibility for achieving a rational and equitable distribution of affordable housing to meet the housing needs of low and moderate-income residents of King County. The distribution of housing affordable to low and moderate-income households shall take into consideration the need for proximity to lower wage employment, access to transportation and human services, and the adequacy of infrastructure to support housing development; recognize each jurisdiction’s past and current efforts to provide housing affordable to low and moderate-income households; avoid over-concentration of assisted housing; and increase housing opportunities and choices for low and moderate-income households in communities throughout King County. Each jurisdiction shall give equal consideration to local and Countywide housing needs.

CPP AH-2B provides in part:

Each jurisdiction shall specify the range and amount of housing affordable to low and moderate-income households to be accommodated in its comprehensive plan. Each jurisdiction shall plan for a number of housing units affordable to households with income between 50 and 80 percent of the County median household income that is equal to 17 percent of its projected net household growth. In addition, each jurisdiction shall plan for a number of housing units affordable to households with incomes below 50 percent of median income that is either 20 percent or 24 percent of its projected net household growth. For this housing, the target percentage shall be determined using the Affordable Housing Job/Housing Index developed using Census-based information, which is contained in Appendix 3.

Appendix 3 is a table which lists jurisdictions and their respective jobs/housing indices. The jobs/housing index is calculated by multiplying a jurisdiction’s proportion of low-wage jobs relative to the county average and the jurisdiction’s proportion of low-cost housing relative to the county average. Those jurisdictions with relatively more low-wage jobs than low-cost housing have jobs/housing indices greater than 1; those jurisdictions with relatively fewer low-wage jobs than low-cost housing have jobs/housing indices less than 1.

Appendix 3 requires jurisdictions with a jobs/housing index greater than 1 to utilize a low-income affordable housing target of 24 percent of projected new housing. Those jurisdictions with a jobs/

housing index of less than 1 are to utilize a low-income affordable housing target of 20 percent of projected new housing. Listed jurisdictions for which a jobs/housing index could not be computed are to use a target of 20 percent.

CPP FW-28 provides:

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

The Board first will address Newcastle's selection of its target percentage (Legal Issue 2), then Newcastle's plan for achieving its affordable housing target (Legal Issue 1).

## LEGAL ISSUE 2

***Did Newcastle fail to comply with the CPPs and RCW 36.70A.210 when it selected a target percentage for affordable housing that is inconsistent with CPPs FW-28, AH-1, AH-2 and Appendices 2 and 3?***

To comply with CPPs, comprehensive plans of cities within a county "must be consistent with the policy framework set forth in the CPPs." *Benaroya v. Redmond*, CPSGMHB Case No. 95-3-0072, Final Decision and Order (March 25, 1996), at 13. **The Board holds that a city incorporated subsequent to adoption of a county's CPPs must comply with those CPPs.**

As a newly incorporated city within King County, there is no question that Newcastle is required to comply with the King County CPPs; consequently, Newcastle must set its target percentage in conformity with Appendix 3. The question is which percentage Newcastle should have used. Renton argues that Newcastle should have obtained the necessary data and calculated its jobs/housing index. Renton stated that it was able to calculate Newcastle's index. Although not offered in its briefs, Renton argued at the hearing on the merits that Newcastle's index was greater than 1 and that Newcastle was therefore required to use a low-income affordable housing target of 24 percent. Even if the index for Newcastle could not be calculated, Renton argues that Newcastle should have used the index computed for unincorporated King County (24 percent), since Newcastle was not incorporated at the time Appendix 3 was created.

Newcastle argues that, because the city incorporated after the 1990 Census, the available data is not specific to Newcastle's municipal boundaries; accurate data will not be available until after the 2000 Census. Because this data is not available now, Newcastle argues it correctly followed the direction of Appendix 3 in using a target of 20 percent. In addition, Newcastle met with King County planners to confirm its choice of this target. Ex. 240 (Personius Declaration), at 7-8.

Both Renton and Newcastle contend the direction of Appendix 3 is clear, but each city reaches a different interpretation. The Board does not find Appendix 3 as clear as the parties find it. The appendix provides no explanation why a jobs/housing index could not be computed for five of the listed jurisdictions; such an explanation might have revealed the calculation problems faced by Newcastle. Although Renton “was able to obtain [the low-wage job and low-cost housing data] and compute the Job/Housing Index for the Newcastle area,” the data and calculations were not presented to the Board and apparently were not presented to Newcastle. Renton’s Pre-Hearing Reply Brief, at 12 (footnote 4).

Renton also argues that, if the index could not be computed, Newcastle should have used the index computed for unincorporated King County, 1.35. However, there is nothing in Appendix 3 that directs newly incorporated cities to use this or any other value; the CPPs are silent regarding which target newly incorporated cities are to use. The King County CPPs evidence a substantial effort by the County and its cities to address affordable housing in a coordinated and multi-pronged fashion. As important as the affordable housing policy is, CPPs can only be as directive and effective as they are clear. *See Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (March 1, 1993), at 13.

The County has determined that 24 percent should be applied to unincorporated areas of the County. Certain cities must use 24 percent and others 20 percent, subject to the application of the jobs/housing index. If the County intended that 24 percent was to be used by all cities incorporated subsequent to adoption of that CPP, it could have said so. The importance of the policy objective cannot, alone, overcome the Plan’s presumption of validity, the silence of the CPPs in this circumstance, and the clearly erroneous standard the Board must use in reviewing Newcastle’s Plan. If there are flaws in the County’s methodology for describing and fairly and effectively directing city actions to attack the housing affordability issue or if, as in the present case, the application of the CPPs for affordable housing to newly incorporated cities is not clear, then only the County can cure them.

In light of the language used in Appendix 3, Renton has not persuaded the Board that a mistake has been made by Newcastle. Renton has not met its burden to show that Newcastle’s use of a low-income affordable housing target of 20 percent was clearly erroneous. Therefore, the Board concludes that Newcastle’s selection of its affordable housing target percentage complies with the CPPs and the Act.

## **Conclusion 2**

Newcastle’s use of a low-income affordable housing target of 20 percent is not clearly erroneous. Therefore, the Board concludes that Newcastle’s selection of its affordable housing target percentage complies with RCW 36.70A.210 and CPPs FW-28, AH-1, AH-2, and Appendices 2

and 3.

## LEGAL ISSUE 1

*Did Newcastle fail to comply with RCW 36.70A.070 (Preamble), (1) and (2) where the amount of land designated for housing, the allocation of housing densities, and provisions for affordability are not sufficient to meet the Plan's housing targets?*

Renton contends that Newcastle's Plan does not provide a sufficient number of affordable housing units. Newcastle is planning for 1,649 potential dwelling units. Ex. 245, Table LU-11. To reach its CPP mandated affordable housing target of 37 percent (20 percent low income and 17 percent moderate income), Newcastle must plan for 610 affordable dwelling units. Renton relies on Table LU-11 as proof that Newcastle has not planned for sufficient affordable housing.

Table LU-11 shows Newcastle's 20-year "Vacant Residential Acreage and Potential Housing and Population Figures." The table calculates the number of potential dwelling units in each subarea of the City. Table LU-11 displays the zoning for each subarea and attempts to make realistic estimates of likely buildout; Table LU-11 does not indicate how many affordable housing units Newcastle is planning for within each zoning area. Renton presupposes that Newcastle is planning for all multi-family and mixed-use residential development to be affordable housing. Based on that supposition, Renton argues that multi-family and mixed-use areas will provide 272 units of affordable housing, leaving 338 units to be derived from areas with other zoning within Newcastle. Petitioner concludes: "Table LU-11 does not indicate what portion, if any, of the single family dwellings are marked for affordable housing. . . . Therefore, Table LU-11 does not meet the 37% target for affordable housing as required in the CPPs." Petitioner's Amended Pre-Hearing Brief, at 8-9. Petitioner reads too much into Table LU-11.

Although Newcastle's Plan recognizes that multi-family housing is a significant source of affordable housing, nothing in the Plan supports Renton's supposition that all multi-family and mixed-use development will be affordable housing. This analysis does not mean that Newcastle has not planned for 610 affordable housing units; it means only that the number of affordable housing units that will be provided cannot be calculated from Table LU-11.

Renton also argues that the record "acknowledges and admits that no matter what is done, Newcastle cannot change the fact that affordable housing in Newcastle is not realistic." Renton's Pre-Hearing Reply Brief, at 4. The Board does not agree. To answer the question posed by Legal Issue 1, the Board first looks for affirmative policies; those must be in the comprehensive plan. The Board then looks for provisions in the plan that could thwart the achievement of such policies; those must not be in the comprehensive plan.

The Plan's housing policies show that Newcastle is encouraging the development of affordable housing. The Plan's housing policies make block grant funds available for affordable housing (HO-10); encourage coordination of affordable housing incentive programs with other cities and the County (HO-P11); allow density bonuses to single-family and multi-family developments that provide affordable units (HO-P12); require the City to review the permit process to reduce negative impacts on housing costs (HO-P13, HO-P17); and encourage the City to work with lending institutions to find solutions that reduce housing financing costs for builders and consumers (HO-P16). These are the types of policies and commitments necessary to meet the GMA's direction to attack the affordable housing issue; these are the types of policies and commitments that encourage availability of and make adequate provisions for affordable housing.

[\[1\]](#)

It is not fatal to Newcastle's Plan that specific units of affordable housing cannot be identified.

In light of the affordable housing policies in Newcastle's Plan, Renton has not met its burden to show that the affordable housing provisions of Newcastle's Plan are clearly erroneous. Therefore, the Board concludes that the affordable housing provisions of Newcastle's Plan comply with the CPPs and the Act.

### **Conclusion 1**

The affordable housing provisions of Newcastle's Plan are not clearly erroneous. Therefore, the Board concludes that the affordable housing provisions of Newcastle's Plan comply with the RCW 36.70A.070(Preamble), (1), and (2).

## **POTENTIAL ANNEXATION AREAS**

### **LEGAL ISSUE 3**

***Did Newcastle fail to comply with CPP LU-31 and RCW 36.70A.210 by identifying PAAs which overlap PAAs identified in Renton's comprehensive plan?***

Renton asserts that Newcastle's Plan violates the GMA's interjurisdictional consistency requirements by failing to comply with CPP LU-31 when it designated its southern PAA. Newcastle's southern PAA overlaps a PAA designated previously by Renton in its Plan. CPP LU-31 provides "[p]otential annexation areas shall not overlap." Ex. 193. CPP LU-31 includes a requirement for adjacent cities to collaborate on designating PAAs; however, the CPPs contain no process for resolving disputes over PAAs.

Although the Act does not mandate that CPPs specifically address areas likely to be annexed, it does require CPPs to address policies "for promotion of contiguous and orderly development and provision of urban services to such development." RCW 36.70A.210(3)(b). Having CPPs that

encourage cities to identify PAAs is a reasonable method to promote “contiguous and orderly development” and to prepare cities to provide urban services to this development. Cities required to plan under the GMA must adhere to the mandates of the CPPs. *Benaroya*, at 19. Therefore, Newcastle must comply with CPP LU-31.

Unlike the language of Appendix 3 discussed in Legal Issue 2 above, the language of CPP LU-31 is clear – “PAAs shall not overlap.” Newcastle’s PAA clearly overlaps Renton’s PAA, contrary to CPP LU-31. Renton designated its PAA prior to Newcastle’s designation and essentially argues “first in time is first in right.” Newcastle responds that the “first in time, first in right” outcome is contrary to major policy precepts of the GMA and of good planning.

The County is the regional government with the authority and the duty to adopt CPPs and to designate UGAs. Here, the County, with the concurrence of the cities, determined “PAAs shall not overlap.” Given the clear directive of CPP LU-31, **the Board holds that the jurisdiction which created the overlap and conflict (in this case, Newcastle) should not benefit from its disregard of the law (CPP LU-31).** Therefore, Newcastle’s PAA will be remanded.

In light of these facts, the Board is left with the firm and definite conviction that a mistake has been made by Newcastle. Therefore, the Board concludes that Newcastle’s adoption of the PAA which overlaps Renton’s previously identified PAA is clearly erroneous and does not comply with the GMA.

### **Conclusion 3**

The Board is left with the firm and definite conviction that a mistake has been made by Newcastle. Therefore, the Board concludes that Newcastle’s adoption of the PAA which overlaps Renton’s previously identified PAA is clearly erroneous and does not comply with RCW 36.70A.210 and CPP LU-31.

### **LEGAL ISSUES 4 AND 5**

Legal Issues 4 and 5 were explicitly abandoned by Renton. *See* Petitioner’s Amended Pre-Hearing Brief, at 26-27. The Board will not consider these issues 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 orders:

The challenged portions of Newcastle’s comprehensive plan are **in compliance** with the requirements of the Growth Management Act, **except:**

The PAA described as the “Southwest May Valley” area, to the extent that it overlaps with Renton’s PAA, does not comply with RCW 36.70A.210 and CPP LU-31.

Newcastle’s comprehensive plan is **remanded** to Newcastle and the City is directed to take appropriate actions to eliminate the Southwest May Valley PAA’s noncompliance with RCW 36.70A.210 and CPP LU-31.

Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than 4:00 p.m. on **August 11, 1998**, and to file with the Board a Statement of Actions Taken to Comply not later than **August 18, 1998**.

So ORDERED this 12th day of February, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

NOTICE: This is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.

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[1]

Renton seems to be arguing that the CPPs direct a specific outcome, i.e., that Newcastle must be able to point to specific Plan provisions for residential densities and housing types sufficient to achieve its affordable housing targets. The CPPs do not say that; the CPPs say that “each jurisdiction shall demonstrate its ability to accommodate sufficient, affordable housing . . .” CPP AH-1. If the County wished to do so, it could adopt more directive CPPs to more actively compel such a specific outcome as Renton wishes to see.