

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

RABIE, et al.,)	
)	Consolidated
Petitioners,)	Case No. 98-3-0005c
)	
and)	FINAL DECISION AND ORDER
)	
ROBERT E. RAMBOLL,)	
)	
Intervenor,)	
)	
v.)	
)	
CITY OF BURIEN,)	
)	
Respondent,)	
)	
and)	
)	
ROBERT E. RAMBOLL,)	
)	
Intervenor.)	
)	

I. PROCEDURAL BACKGROUND

From January 12 through January 20, 1998, the Central Puget Sound Growth Management Hearings Board (the **Board**) received three petitions for review (**PFRs**) from Lee Rabie, Keith W. Inness, and Randall L. Parsons, challenging the City of Burien’s (the **City**) adoption of Ordinance No. 212, adopting the City’s comprehensive plan (the **Plan**) and Ordinance No. 216, implementing a portion of the Plan (**Implementing Regulations**), alleging violations of certain provisions of the Growth Management Act.

Dates originally set in the Board’s Prehearing Order for the filing of briefs and the hearing on the merits were subsequently modified, most recently by an “Order Changing Hearing Schedule,” issued by the Board on June 23, 1998.

On August 7, 1998, the Board issued an “Order Granting Motion to Intervene” to Robert E.

Ramboll, with intervention as to petitioners' and the City's positions.

On August 18, 1998, the Board received "Intervenor's Motion for Board's Decision of GMA Conflicts in City's Action" (**Motion for Board's Decision**).

On August 20, 1998, the Board received a "Brief by Petitioner Randall Parsons" (**Parsons' PHB**).

On September 1, 1998, the Board received "Intervenor's Reply and MOTION for 'Board' Determination of Compliance or Ruling of Invalidity of Burien's Comp. Plan as in Argument with and against Randall L. Parson's Brief" (**Intervenor's Reply and Motion**).

On September 3, 1998, the Board received the "City of Burien's Prehearing Brief" (**City's Response**), together with its "Motion to Amend Index to Record."

On September 10, 1998, the Board received "Intervenor's Reply to City of Burien's Prehearing Brief and Motion for Direct Review by King County Superior Court with Motion for Review by Such Court."

Also on September 10, 1998, the Board issued an "Order Dismissing Petitions [of Rabie and Inness], Deferring Consideration of Motions [by Ramboll] and Announcing Location and Schedule for Hearing."

On September 21, 1998, the Board held a hearing on the merits of the case at the Financial Center, 1215 4th Avenue, Seattle. Edward G. McGuire and Chris Smith Towne, presiding officer, appeared for the Board. Randall Parsons appeared *pro se*; Robert Ramboll appeared *pro se*; Graham Black and Michael Kenyon represented the City. Court reporting services were provided by Cynthia LaRose, Robert Lewis & Associates. Mr. Parsons announced that he would withdraw his motions to supplement the record. Mr. Ramboll withdrew his motion to supplement the record with recent photographs of a wetland. The City moved to supplement the Index with Minutes of a November 5, 1997 meeting; the motion was granted.

II. FINDINGS OF FACT

1. The City incorporated in February 1993.
2. The City enacted Ordinance No. 212 adopting its Plan on November 17, 1997. City's Response, at 7, footnote 5.
3. Plan Policy LU 1.10 provides:

Implementation of the plan shall be phased by means of an interim transition ordinance which provides:

1. That land division (platting) in areas designated as single family residential shall be governed by the standards (including minimum lot sizes) in effect at the time of adoption of the plan for one and a half calendar years from the time of adoption. After one and a half years the City shall apply the adopted comprehensive plan in approving land divisions (platting).

2. Until the current zoning ordinance is amended by the City Council, uses in areas zoned for business, office or industrial/manufacturing shall continue to be governed by the existing zoning ordinance. The City shall develop procedures to facilitate rezoning and other zoning code amendments by the City Council in planned business, office or industrial/manufacturing areas to carry out objectives of the plan.

3. Building permits in areas zoned or planned for multiple family uses shall not exceed densities designated in either the zoning ordinance or the comprehensive plan, whichever is less.

4. In areas currently zoned multiple family and that are planned to be converted to a designation that allows mixed uses, no multiple family permit may be issued that exceeds the allowable density of the mixed use designation in the comprehensive plan. City's Response, at 6.

4. The City enacted Ordinance No. 216, implementing Plan policy LU 1.10, on March 16, 1998. The City characterizes it as an innovative land use management technique, authorized by RCW 36.70A.090. City's Response, at 7.

5. Ordinance No. 216 provides:

Section 1. Division of Land. Any division of land for single family residential purposes shall be regulated until May 17, 1999, by the ordinances and standards in effect on November 16, 1997, including but not limited to ordinances and standards regarding minimum lot size. Effective May 18, 1999, any division of land shall be regulated by the applicable ordinances and standards then in effect.

Section 2. Building Permits for Multiple-Family Uses. The densities specified in Burien Municipal Code section 18.30.030 shall be used to determine the allowable residential density for any site zoned R-12 through R-48, except as follows:

a) The Department of Community Development Services shall not issue building permits on sites currently zoned for multiple-family development (Zones R-12 to R-48) that exceed the residential density permitted for the site under the adopted comprehensive plan.

b) In residentially zoned areas that are designated in the comprehensive plan as a commercial area which allow mixed residential uses, the Department of Community

Development Services shall not issue any building permit that exceeds either the residential density allowed by the zone or the planned mixed uses, whichever density is the lesser.

In no case shall a building permit be issued for a residential use that exceeds the density of 24 units.

...

6. The first public discussion of a conditional multifamily density of R-24 occurred at a Council meeting on October 11, 1997. City's Response, at 21. Proposed Plan Policy RE 1.7 was first made public on November 13, 1997, and was adopted on November 17, 1997, when the Plan was adopted. The Policy provides in relevant part:

The *Low and High Density Multifamily Neighborhood* designations should provide for the location of stable and attractive multifamily development near transit, employment, shopping and recreation facilities.

... Development within these designations includes existing multifamily dwellings at an average of 8 to 48 units per acre.

...

Allowed Uses and Description: The *High Density Multifamily Neighborhood* designation permits multiple family housing, accessory uses associated with residences, and public and semi-public uses. ... The maximum density for new multifamily development in these areas shall be 24 units per net acre.

There are a number of conditional uses that may be allowed within areas designated for high density multifamily development:

a. Assisted living units for seniors or disabled persons, subject to a conditional use permit process involving a public hearing. ... Densities greater than 24 units per acre may be allowed when the proposed development is appropriate for the site.

b. ...

Designation Criteria: Properties designated for *High Density Multifamily Neighborhood* uses shall reflect all of the following criteria:

1. The area is already primarily characterized by multifamily residential uses as 12 to 24, or more units per acre.

2. ...

City's Response, at 16.

7. The City held 41 public meetings and four Council hearings regarding Plan adoption, with 1,600 participants. City's Response, at 3, 28; Ex. 6.

iii. Standard of review

The City's actions are presumed valid. RCW 36.70A.320(1). Petitioner and intervenor bear the burden of demonstrating that the City is not in compliance with the requirements of this chapter. RCW 36.70A.320(2). The Board "shall find compliance unless it determines that [the City'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 the County'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

A. Introduction

The petitions of Rabie and Inness were dismissed by the Board because those petitioners failed to file briefs.

Petitioner Parsons argues that Plan Policy LU 1.10, which delays implementation of downzoning provisions of the Plan for eighteen months, should not be applied to certain areas containing environmentally critical areas.^[1] In addition, Parsons objects to the City's terminology for multi-family residential densities as used in Plan Policy RE 1.7.^[2]

Intervenor Ramboll challenges generally the City's downzone and the City's designation of Business Park/Warehouse within a Special Planning Area (SPA). Ramboll objects to this commercial designation because he believes the existing residential area within the SPA would be negatively impacted by such commercial development.

B. Planning Goal Issues

Many of the GMA provisions argued by Parsons^[3] and all of the GMA provisions argued by Ramboll^[4] are planning goals, RCW 36.70A.020. The GMA planning goals "guide the development and adoption of comprehensive plans and development regulations." RCW 36.70A.020. The first prong of the mandate to "be guided by" requires *procedural* compliance. The second prong requires *substantive* compliance. First, the elected decisionmakers must consider the planning goals when adopting or amending the plan or development regulations; second, the adopted or amended plan or development regulations must substantively comply with the planning goals. *See Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-3-0010, Final Decision and Order (Jun. 3, 1994), at 23-28. Local governments must use the

planning goals “to point the way for the enactment of development regulations and comprehensive plans that substantively comply with the GMA.” *Id.*, at 27. The Board will review the challenged enactments to “determine whether [they] achieve the legislature’s intended result: consistency with the planning goals of the Act.” *Id.*, at 28. In other words, to show substantive noncompliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal.

1. Did the City violate RCW 36.70A.020(9) when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

2. Did the City violate RCW 36.70A.020(10) when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

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

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

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

Parsons asserts that the City’s failure to immediately downzone single-family areas located in or discharging surface water runoff to critical and sensitive areas is contrary to RCW 36.70A.020(9) and (10). Parsons’ PHB, at 6-7. However, Parsons’ assertion is supported only by a quotation from the City’s “Draft Storm Drainage Master Plan” which provides general observations that “it is important that the City make an effort to prevent future [drainage] problems and, hopefully correct some past mistakes through the fair but firm enforcement of development regulations for both new development and existing development” and that “[t]he City development codes should be revised” Parsons’ PHB, at 7.

Although Parsons quotes from the Draft Storm Drainage Master Plan, he does not explain why the identified quotes cause the Plan or development regulations to not comply with Goals 9 or 10. Parsons has not met his burden of demonstrating that the City’s actions were clearly erroneous.

Ramboll argues that the City does not comply with Goal 9 because “[i]n all of the fees that Burien has collected from builders I [do not] see any results in new parks or the justification in money received and money spent.” Motion for Board’s Decision, at 3. Ramboll does not argue that the Plan was not guided by Goal 9; instead, he argues that new parks have not been built.

This is not the measure of compliance with Goal 9. The Board's role is limited to ascertaining whether the Plan was guided by Goal 9's requirement to "develop parks." *Gig Harbor v. Pierce County*, CPSGMHB Case No. 95-3-0016, Final Decision and Order (Oct. 31, 1995), at 14. "Complaints that insufficient numbers of a certain type of parks are proposed, or will not be developed soon enough and/or at the proper locations must be addressed locally through the legislative process or at the ballot box." *Id.* Ramboll does not identify any portion of the Plan or development regulation that is not consistent with Goal 9, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 9. Ramboll has not met his burden of demonstrating that the City's actions were clearly erroneous.

Ramboll argues that the City does not comply with Goal 10 because "[t]o protect the environment and the states' high quality of life would also include not permitting industry and commercial activities in residential areas. . . . Increased carbon monoxide levels [from increased traffic] do not promote good health." Motion for Board's Decision, at 3. Ramboll's arguments are speculative and unsupported. Although Ramboll's concern with air quality is well taken, the record does not support the conclusion that adopting the Special Planning Area will have the negative result anticipated by Ramboll. Ramboll does not identify any portion of the Plan or development regulation that is not consistent with Goal 10, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 10. Ramboll has not met his burden of demonstrating that the City's actions were clearly erroneous.

5. Did the City violate RCW 36.70A.020(12) when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

RCW 36.70A.020(12) provides:

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Parsons argues that:

[s]ince downzoning of the single family areas is a basic assumption [of the City's capital facilities strategy], delaying the implementation [of downzoning] puts a high degree of uncertainty in the success of the identified capital facilities planned. Since resources are very limited this strategy is thrown to the unpredictability of the rate of permit applications during the year and a half moratorium. Parsons' PHB, at 20.

Parsons argues that planned capital facilities will be developed only when demanded by permit applications and that such a state of affairs somehow fails to comply with Goal 12. Indeed, the

City's Plan states that:

Development shall be allowed only when and where all public facilities are adequate and only when and where such development can be adequately served by essential public services without reducing levels of service elsewhere.

See CD-1, at II-119 (Policy CF 4.1).

Although Parsons quotes the Plan, he does not explain why the identified quotes cause the Plan or development regulations to not comply with Goal 12. Parsons has not met his burden of demonstrating that the City's actions were clearly erroneous.

8. Did the City violate RCW 36.70A.020(1) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

9. Did the City violate RCW 36.70A.020(2) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

10. Did the City violate RCW 36.70A.020(3) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7? ^[5]

11. Did the City violate RCW 36.70A.020(4) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

12. Did the City violate RCW 36.70A.020(5) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

RCW 36.70A.020(1) through (5) provide:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. 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.

(5) Economic development. Encourage economic development throughout the state that is

consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

Parsons states that the City does not comply with Goals 1 and 2 because the City “fail[ed] to provide proper public notice or consistency with historically and commonly applied terminology to land use designations through adopting policy RE 1.7” Parsons’ PHB, at 27. In addition, Parsons argues that the City does not comply with Goals 1 through 5 because “[r]educing to only 24 units per acre [from proposed density of 48 units per acre] has not been addressed and no analysis has been performed on how this change will impact the Plan’s ability to meet RCW 36.70A.020(1) through (5).” Parsons’ PHB, at 28.

Parsons does not explain how the City’s choice of terminology for land use designations implicates the GMA’s urban growth and sprawl goals. To the extent Parsons’ argument can be construed to challenge the City’s decision to reject the Planning Commission’s “preferred alternative” of 48 units per acre for multi-family development in certain areas of the City, his brief is devoid of any argument or analysis to demonstrate to the Board how the City’s decision fails to comply with Goals 1 through 5. Parsons does not identify any portion of the Plan or development regulations that is inconsistent with Goals 1 through 5, nor does Parsons explain why the Plan or development regulations do not comply with Goals 1 through 5. Parsons has not met his burden of demonstrating that the City’s actions were clearly erroneous.

Ramboll argues that the City does not comply with Goal 1 because “[t]he Burien Comp. Plan with its massive indiscriminate downzoning does not allow for sufficient growth. It will hinder and not allow builders to realize enough profit to want to build in Burien.” Motion for Board’s Decision, at 2. Ramboll asserts, without support in the record, that the City’s intended downzone will chill development in Burien. Ramboll does not identify any portion of the Plan or development regulations that is not consistent with Goal 1, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 1. Ramboll has not met his burden of demonstrating that the City’s actions were clearly erroneous.

Ramboll argues that the City does not comply with Goal 2 because “[i]n the area designated Special Planning Area [in the Plan] it has been Residential R-6 Urban. [The Plan] reduces density to R-3 and changes zoning to include Business/Park Warehouse This area is entirely residential and should remain so.” Motion for Board’s Decision, at 2. This “argument” is a statement of preference; it does not implicate planning Goal 2. Ramboll does not identify any portion of the Plan or development regulations that is not consistent with Goal 2, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 2. Ramboll has not met his burden of demonstrating that the City’s actions were clearly erroneous.

Ramboll argues that the City does not comply with Goal 4 because the Plan “discourages the retention [of] existing housing stock in the Special Planning Area [and] would require the demolition or relocation of single-family residences in the hundreds.” Motion for Board’s Decision, at 2. This position is apparently based on the belief that any commercial development would necessarily drive out residents. Although some people certainly choose not to live next to commercial uses, absent a zoning change and evidence of the extent of commercial development, predictions of impacts of commercial designation are speculative. Ramboll does not identify any portion of the Plan or development regulations that is not consistent with Goal 4, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 4. Ramboll has not met his burden of demonstrating that the City’s actions were clearly erroneous.

13. Did the City violate RCA 36.70A.020(11) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

RCW 36.70A.020(11) provides:

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

Parsons argues that “RE 1.7 was added by the City Council on November 17, 1997, . . . when the Plan was adopted. There was no notification to the public or affected property owners and there has been none since the Plan was adopted. . . . [T]here was not opportunity for public notice or hearing.” Parsons’ PHB, at 29. If the amendments the City wishes to make are substantially different from the recommendations received during public participation in developing the comprehensive plan, two conditions must be satisfied: (1) the record must contain sufficient information to support the city's new choice; and (2) the public must have had a reasonable opportunity to review and comment on the contemplated amendment. *West Seattle Defense Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995), at 76-77.

The City responds that any change to RE 1.7 on November 17, 1997, was previously considered by the Planning Commission and subject to adequate public participation. The record supports the City’s position. See Ex. 10 (Index 418) (minutes of November 5, 1997 City Council Workshop), at 1-3; Ex. 11 (Index 120) (minutes of January 23, 1996 Planning Commission Meeting), at 5; Ex. 12 (Index 120) (minutes of June 11, 1996 Planning Commission Meeting), at 5; Ex. 14 (Index 137) (minutes of October 11, 1997 City Council Workshop), at 1-9; and Ex. 15 (Index 127) (minutes of November 17, 1997 Regular Meeting of the City Council), at 14.

Parsons’ explanation of why the challenged actions fail to comply with Goal 11 is not supported by the record. Parsons has not met his burden of demonstrating that the City’s actions were

clearly erroneous.

Ramboll argues that the City did not have “area coordinated meetings” while it was in the process of adopting its Plan, and that the public meetings were “generic in format.” Motion for Board’s Decision, at 3. Ramboll also states that the recommendations of the Planning Commission “were sometimes ignored and not followed.” *Id.* The City responds that the City conducted “exhaustive” public process prior to adoption of the Plan, consisting of at least 41 meetings involving 1,600 participants. Finding of Fact 7.

Ramboll does not explain how Goal 11 requires public meetings to be focused on specific geographic areas as opposed to meetings focused on the whole of the City’s comprehensive planning effort. Even assuming the City’s meetings were “generic in format,” Ramboll has not identified a GMA violation. In addition, nothing in the GMA requires the City Council to adopt the Planning Commission’s recommendations.

Ramboll’s explanation of why the challenged actions fail to comply with Goal 11 is not supported by the GMA or the record. Ramboll has not met his burden of demonstrating that the City’s actions were clearly erroneous.

Other Goals

In addition to the goal issues raised by Petitioner Parsons, Intervenor Ramboll asserts that the City does not comply with Goals 6 and 7. RCW 36.70A.020(6) and (7) provide:

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

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

Ramboll asserts the City does not comply with Goal 6 because there are residential areas within the Special Planning Area and “no city or planning commission has the authority to condemn or take land that is not theirs and zone it beyond its present use or for another incompatible use such as Business/Park Warehouse or Commercial.” Motion for Board’s Decision, at 2. There is no support in the record for the argument that the City is condemning or taking property. Ramboll also states that “Burien does not have legal authority to zone land for commercial purposes as it would be a taking under Property Rights.” *Id.* This contention is legally incorrect. It is well-settled law that cities and counties have constitutional police powers that include the authority to regulate land use. *See Donwood, Inc. v. Spokane County*, 1998 WL 209416 (Wash. App. Div. 3, Mar. 19, 1998) (citing Wash. Const. Art. XI, sec. 11); *see also, State ex rel. Miller v. Cain*, 40 Wn.2d 216 (1952).

Ramboll does not identify any portion of the Plan or development regulations that is not consistent with Goal 6, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 6. Ramboll has not met his burden of demonstrating that the City's actions were clearly erroneous.

Ramboll asserts the City does not comply with Goal 7 because “[a] permit for short-plat subdivision [for the Miller Court Subdivision] took nearly a year to process in Burien.” Motion for Board's Decision, at 2. The City responds that the Miller Court Subdivision is not part of the City's record. Ramboll does not identify any portion of the Plan or development regulations before this Board that is not consistent with Goal 7, nor does Ramboll explain how the Plan or development regulations do not comply with Goal 7. Ramboll has not met his burden of demonstrating that the City's actions were clearly erroneous.

C. Other Issues

3. Did the City violate RCW 36.70A.060(2) when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

RCW 36.70A.060(2) provides in part:

Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170.

Parsons argues that “[b]y failing to implement the downzoning of the single-family areas upon adoption of the Plan, and not adopting the required updates and revisions to the development regulations, the critical areas will remain inadequately protected” Parsons' PHB, at 8. The City, citing to chapter 18.60 of the Burien Municipal Code, responds that it has critical (sensitive) area regulations and that Parsons has not shown how these regulations fail to protect critical areas. The Board agrees with the City.

Parsons does not argue that the City's existing regulations do not protect critical areas; Parsons argues only that, by not amending the existing regulations, the City is inadequately protecting its critical areas. The GMA requires the City to have development regulations that protect critical areas. Parsons has not shown that the City's existing development regulations do not protect critical areas as required by RCW 36.70A.060(2); Parsons has not met his burden of demonstrating that the City's actions were clearly erroneous.

4. Did the City violate RCW 36.70A.370(2) when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

RCW 36.70A.370(2) provides:

Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.

RCW 36.70A.370(2) requires the City to utilize a process established by the Washington Attorney General to assure that the City's actions do not result in an unconstitutional taking.^[6] If the City did not utilize the Attorney General's process when it adopted the challenged actions, then it would have violated .370(2). Parsons does not argue that the City failed to utilize the Attorney General's process. Instead, Parsons argues that the effect of the Plan and the implementing development regulations may result in inadequately controlled surface water runoff, which may cause damage to private property, which may be a taking. Parsons' argument does not explain how the City violated RCW 36.70A.370(2); Parsons has not met his burden of demonstrating that the City's actions were clearly erroneous.

6. Did the City violate RCW 36.70A.070(1) and (3) when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

RCW 36.70A.070 provides:

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. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

...

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan

that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

RCW 36.70A.070 identifies the GMA's mandatory elements of a comprehensive plan. However, Parsons does not argue that the Plan fails to include the mandatory elements described in .070(1) and (3); Parsons argues that the City's development regulations have not been amended to implement the Plan. Parsons' argument does not implicate a violation of RCW 36.70A.070(1) or (3); Parsons has not met his burden of demonstrating that the City's actions were clearly erroneous.

7. Did the City violate RCW 36.70A.120 when it: (a) adopted Policy LU 1.10 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy LU 1.10?

Parsons' PHB contains no argument regarding RCW 36.70A.120. *See* Parsons' PHB, at 25-27. At the hearing on the merits, Parsons conceded he abandoned Issue 7.

Failure to brief an issue shall constitute abandonment of that issue. WAC 242-02-570(1). The Board concludes that Issue 7 is abandoned.

14. Did the City violate RCA 36.70A.035(1) and (2) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

Parsons' PHB contains no argument regarding RCW 36.70A.035. *See* Parsons' PHB, at 29. At the hearing on the merits, Parsons conceded he abandoned Issue 14.

Failure to brief an issue shall constitute abandonment of that issue. WAC 242-02-570(1). The Board concludes that Issue 14 is abandoned.

15. Did the City violate RCW 36.70A.070(1) and (2) when it: (a) adopted Policy RE 1.7 in its Plan; or (b) adopted Ordinance No. 216 to implement Policy RE 1.7?

Parsons' PHB contains no argument regarding RCW 36.70A.070(1) and (2) as they relate to Policy RE 1.7. At the hearing on the merits, Parsons conceded he abandoned Issue 15.

Failure to brief an issue shall constitute abandonment of that issue. WAC 242-02-570(1). The Board concludes that Issue 15 is abandoned.

16. Should the Board make a determination of invalidity of Policy LU 1.10 and Ordinance No. 216, pursuant to RCW 36.70A.302(1), (4) and (5)?

Parsons' PHB contains no argument regarding RCW 36.70A.302. At the hearing on the merits, Parsons conceded he abandoned Issue 16.

Failure to brief an issue shall constitute abandonment of that issue. WAC 242-02-570(1). The Board concludes that Issue 16 is abandoned.

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:

1. Issues 7, 10, 14, 15, and 16 are abandoned.
2. As to Issues 1, 2, 3, 4, 5, 6, 8, 9, 11, 12 and 13, neither Petitioner Parsons nor Intervenor Ramboll has overcome the presumption of validity of Ordinance Nos. 212 and 216.
3. Ordinance Nos. 212 and 216 are in compliance with the requirements of the Growth Management Act.

So ORDERED this 19th day of October, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

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.

[\[1\]](#) See Finding of Fact 5.

[2] See Finding of Fact 6.

[3] Ramboll argued goals 1, 2, 4, 6, 7, 9, 10 and 11; Parsons argued goals 1, 2, 3, 4, 5, 9, 10, 11, and 12.

[4] The Board derived Ramboll's issues from "Intervenor's Motion for Board's Decision of GMA Conflicts in City's Action." Ramboll also filed "Intervenor's Reply and Motion for 'Board' Determination of Compliance or Ruling of Invalidity of Burien's Comp. Plan as in argument with and against Randall L. Parson's [sic] Brief" and "Intervenor's Reply to City of Burien's Pre-hearing Brief and Motion for Direct Review by King County Superior Court with Motion for Review by Such Court." Both of these filings identified only "relief requested"; they contained no argument.

[5] Petitioner did not brief Issue No. 10. Failure to brief an issue shall constitute abandonment of that issue. WAC 242-02-570(1). Issue 10 is abandoned.

[6] RCW 36.70A.370(1) requires the Attorney General to establish a process for local governments to use to evaluate proposed regulatory or administrative actions, to assure that such actions do not result in an unconstitutional taking of private property. That process is found at Wash. AGO, 1992, No. 23 (Oct. 13, 1992).