

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

LOW INCOME HOUSING)	
INSTITUTE,)	Case No. 00-3-0017
)	<i>[LIHI]</i>
)	
Petitioner,)	
)	
v.)	FINAL DECISION AND ORDER
)	
CITY OF LAKEWOOD,)	
)	
Respondent.)	

I. Background

On September 12, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Low Income Housing Institute, Fair Housing Center of South Puget Sound, V.L. Kershaw, Starlit Rothe, and Beverly Edwards (collectively, **LIHI**). The PFR challenges the compliance of the City of Lakewood (the **City** or **Lakewood**) in two respects. First, the PFR alleges that the City’s adopted comprehensive plan (the **Plan**) does not comply with various requirements of the Growth Management Act (**GMA** or the **Act**). Second, the PFR alleges that the City has failed to comply with the GMA requirement that it adopt development regulations. The matter was assigned Case No. 00-3-0017, and is referred to as *LIHI v. City of Lakewood*.

On October 9, 2000, the Board received “Respondent City of Lakewood Index of Record.”

On October 11, 2000, the Board conducted the prehearing conference in the above captioned case.

On October 19, 2000, the Board issued a “Prehearing Order and Notice of Coordination,” (the **PHO**). Also on this date, the Board received “Respondent City of Lakewood Amended Index of Record.”

On October 27, 2000, the Board received the City’s “Second Amended Index of Record.”

On October 30, 2000, the Board received the “City of Lakewood’s Motion to Supplement the Record” (**Lakewood’s Motion to Supplement**). On this same date, the Board received ‘Petitioners’ Motion to Exclude Items from the Index” (the **Petitioners’ Motion to Exclude**) and “Petitioners’ Motion to Change Location of Board’s Hearing” attached to which were the “Declaration of Michael Mirra” and the “Declaration of V.L. Kershaw.”

On November 8, 2000, the Board received “Petitioners’ Response to City’s Motion to Supplement Record.” On this same date, the Board received “City of Lakewood’s Response to Petitioners’ Motion to Exclude Items from the Index” and “City of Lakewood’s Response to Petitioners’ Motion to Change Location of Board’s Hearing.”

On November 15, 2000, the Board received “City of Lakewood’s Reply Memorandum in Support of Petitioners’ Response to City’s Motion to Supplement the Record.” On this same date, the Board received “Petitioners’ Reply to City’s Response to Motion to Exclude Items from the Index” and “Petitioners’ Reply in Support of Motion to Change Location of Board Hearing.”

On November 22, 2000, the Board issued an “Order on Motions.”

On December 12, 2000, the Board received “Petitioners’ Prehearing Brief” (**LIHI’s PHB**).

On January 10, 2001, the Board received “City of Lakewood’s Hearing Brief” (the **City’s Brief**).

On January 17, 2001 the Board received “Petitioner’s Reply Brief” (**LIHI’s Reply**).

On January 22, 2001, the Board conducted the hearing on the merits in the Boardroom of the Metropolitan Park District headquarters in Tacoma, Washington. Present for the Board were Edward G. McGuire, Lois H. North and Joseph W. Tovar, presiding officer. Representing LIHI were Michael Mirra and John Purbaugh. Representing the City was J. Tayloe Washburn. No witnesses testified. Court reporting services were provided by Robert Lewis of Tacoma, Washington.

II. FINDINGS OF FACT

1. The present land use pattern between Interstate 5 and the military bases of Fort Lewis and McChord developed under the land use policies and regulations of Pierce County. City’s Brief, at 4.
2. The City of Lakewood incorporated in 1996. *Id.*
3. On February 22, 2000, the City contacted the Washington State Department of

Community, Trade & Economic Development (CTED) to formally request an extension for adoption of new development regulations pursuant to WAC 365-195-810(2). PFR, Attachment A.1.

4. On February 28, 2000, CTED contacted the City, stating that “Approval for such a request is automatic.” PFR, Attachment A.2.

5. On July 10, 2000, the City of Lakewood adopted Ordinance No. 237, the title of which read “An Ordinance of the City Council of the City of Lakewood, Washington, adopting the City of Lakewood Comprehensive Plan.” The Notice of Action was published on July 19, 2000. PFR, Attachment B.

6. Springbrook (a/k/a McChord Gate) and American Lake Gardens are geographically isolated from the rest of Lakewood by Interstate 5. Both neighborhoods are also bordered by fenced military installations. McChord Air Force Base borders Springbrook on the east and south. American Lake Gardens is bordered on the north and east by McChord and on the south and most of its western border by Fort Lewis. Plan, Chapter 3, page 31.

7. Both Springbrook and American Lake Gardens lack sewer systems and most property is “old, run down, and undervalued.” *Id.*

8. Springbrook and American Lake Gardens have a higher rate of police incidents per 1,000 population than the City as a whole. The incidence rate reported by the Lakewood Police Department is 298/1000 for McChord Gate, 239/1000 for American Lake Gardens, and 207/1000 for the City as a whole. Ex. 26, titled “Lakewood and its Gate Neighborhoods.”

9. Approximately one-third (35%) of the total land area in the combined neighborhoods of Springbrook and American Lake Gardens is designated in the Plan for “Industrial” uses. Ex. 44, cited in City’s Brief, at 28.

10. The lands in Springbrook not designated “Industrial” are designated “High-Density Multi Family,” “Multi Family,” “Neighborhood Business District,” and “Open Space and Recreation.” Plan, Figure 2.1 Future Land Use Map.

11. The lands in American Lake Gardens not designated “Industrial” are “High-Density Multi Family,” “Multi Family,” “Mixed Residential,” “Residential Estate,” “High-Density Multi Family,” “Multi Family,” “Public and Semi-Public Institutional,” “Single Family and “Military Lands”. *Id.*

III. STANDARD OF REVIEW/BURDEN OF PROOF

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and

amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the Petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board “shall find compliance with the Act, unless it determines that the [City’s] action[s] are] **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 City’s actions 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. PREFATORY NOTE

While the Board has previously heard cases involving allegations of noncompliance with the GMA’s housing provisions, this case was unique for several important and distinct reasons. It dealt with a newly incorporated city attempting to plan creatively and responsibly to overcome decades of what can only be characterized as “benign neglect” of these neighborhoods by the county and federal governments. This case dealt with the most extreme and distressing neighborhood conditions of any in the region, if not the state, and posed the serious question of how can and must local government do a better job of addressing these issues than they did before enactment of the GMA. While LIHI and the City disagreed sharply regarding the GMA sufficiency of Lakewood’s efforts, the Board was impressed with the passionate commitment by both parties to address in a meaningful way the pressing needs of the people, both now and in the future, who will call these neighborhoods home.

LIHI correctly observed that the GMA’s provisions for “ensuring” the “vitality” and “character” of established residential neighborhoods applies to all neighborhoods, including those that house predominantly low income people. In many ways, the GMA represents a break from the land use decision-making that preceded it, learning from and attempting not to repeat the mistakes of the past. Among the most sobering of those failures nationally has been the needless wholesale destruction of entire neighborhoods in the name of “urban renewal.” With this history clearly in mind, the Board has looked closely at the GMA’s provisions and the City’s actions.

On balance, the Board concludes that the City has been forced to make some very difficult choices from the range of options that the GMA allows it to make. The conversion of up to a third of American Lake Gardens and Springbrook to industrial uses is strong, albeit necessary, medicine. Had it been in a larger dosage, the Board would seriously have questioned whether these areas could remain viable as residential neighborhoods. The Board notes that much of LIHI’s concern is focused on the City’s willingness to follow through on the commitments ostensibly made by Lakewood’s many policies. While LIHI’s anxiety is understandable, the Board does not question Lakewood’s good faith commitment to follow through. Indeed, the

Board has ordered the City to adopt development regulations that the GMA mandates be “consistent with and implement” the comprehensive plan and that its capital budget and other “activities” be done “in conformity with its comprehensive plan.”^[1]

V. LEGAL ISSUES

A. FAILURE TO ACT

Legal Issue 1

Has the City failed to comply with the requirements of RCW 36.70A.040(3)(d) and supporting regulations because it failed to adopt development regulations that are consistent with and that implement the housing policies of its comprehensive plan by the August 28, 2000 expiration of DCTED’s 6-month extension on the deadline for doing so?

Applicable Law and Discussion of Legal Issue 1

RCW 36.70A.040(3) provides in relevant part:

Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows:

.....

(d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan

and development regulations.

Emphasis added.

The City requested, and CTED granted, the six-month extension described in RCW 36.70A.040 (3)(d) (Findings of Fact 3 and 4). Six months from the date of CTED's **extension** would have been August 28, 2000. The City does not dispute that it did not meet the extended deadline, and further admitted that it has not yet enacted development regulations. The City indicated that it is working hard to complete the development regulations and intends to adopt them "during the second quarter of 2001." City's Brief, at 64.

Conclusions re: Legal Issue 1

The Board concludes that the City has **failed to act** to comply with the requirements of RCW 36.70A.040(3)(d). The Board will therefore enter a **finding of noncompliance** and direct the City to take legislative action adopting development regulations that are consistent with and implement its Plan by no later than **Wednesday, September 5, 2001**.

B. HOUSING ELEMENT AND GOAL LEGAL ISSUES

1. Applicable Law

The GMA's Housing Goal is set forth at RCW 36.70A.020(4), which provides:

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

The GMA's Housing Element provisions are found in RCW 36.70A.070, which provides in relevant part:

Each comprehensive plan shall include a plan, scheme, or design for each of the following: . . . (2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (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.

2. Discussion of Legal Issues 2, 3, 4, 5, 6, 7, 8 and 9 ^[2]

a. Positions of the Parties

Legal Issues 2 and 4

LIHI alleges that the City has adopted an “industrial rezone” of the neighborhoods of American Lake Gardens and Springbrook, and asserts that this rezone would “affirmatively destroy . . . [these] neighborhoods,” including their stock of affordable housing and, also contends that the plan’s policies “fail to provide for adequate replacement housing” caused by “the industrial rezone.” LIHI’s PHB, at 13, and 20-21. It continues the “industrial rezone” theme by contending that the plan does not constitute a “plan, scheme or design” for the reason that its net effect is the “destruction of housing affordability.” LIHI’s PHB, at 41.

LIHI argues that the Plan does not identify sufficient land for low-income families and manufactured homes. LIHI’s PHB, at 36. It also takes issue with what it sees as the City’s choice to discount or dismiss the value of affordable housing in existing neighborhoods by stating that “Substandard housing that is “affordable” by virtue of its poor condition, undesirable location, or other such physical factors is not an acceptable substitute for livable affordable housing.” LIHI’s PHB at 34, citing Exh. 98, p. 3-5. Petitioner continues:

“In the context of a CP which eliminates 868 units of existing (albeit ‘unacceptable’ to the City) affordable housing which Lakewood has no ‘strategy’ or other plan to replace, it is hard to ascribe any meaning to this policy other than disregarding the value of both substandard affordable housing and the people who have been forced by their economic circumstances to live in it.” LIHI’s PHB, at 34.

In response, Lakewood states that LIHI mischaracterizes the industrial land use designation in the plan as a “rezone.” City Brief, at 64. With respect to the Act’s mandate to “ensure” the “vitality” and “character” of “established residential neighborhoods,” the City argues that Springbrook and American Lake Gardens are not “established residential neighborhoods” and that the GMA was never intended to perpetuate the preservation of what the City describes as unhealthy, unsafe and sub-standard housing. The City also argues that adequate replacement housing is provided and the supply of affordable housing will increase. City’s Brief, at 21. Lakewood argues:

The City looked at what it was capable of providing to these areas in terms of infrastructure and made a legislative choice to redesignate portions of American Lake

Gardens and Springbrook. It then enacted numerous policies directed at relocation assistance. City's Brief, at 22.

The City points to the "numerous policies" that it has adopted to address not only relocation assistance but the provision of sufficient land to meet its obligations for affordable housing. ^[3] As to LIHI's charge that there will be a shortfall of affordable housing, Lakewood responds:

There is no evidence in the record that the City will not successfully foster at least 1,604 additional units of affordable housing plus the 868 units of housing that may be lost within the industrial redesignation in the next twenty years. City's Brief, at 61.

Legal Issues 3 and 6

In Legal Issue 3, LIHI reiterates its argument about the "destructive effect" of the industrial designation and states:

This destructive effect on housing affordability, . . . signals such a profound degree of internal incompatibility that the whole cannot qualify as either "plan," "scheme" or "design" . . . LIHI PHB, at 41.

In Legal Issue 6, LIHI asserts that the City's many housing policies are "anemic" and that the City has hedged its commitment to follow through on implementation. It argues:

. . . the City appears to have carefully reserved the right not to implement at all any of the affordable housing policy language that follows. Though some "affirmative policies" favoring affordable housing are "present" . . . they can be correctly understood only if the caveat quoted above is parenthetically considered as part of each such policy. Consequently, not even policies in Lakewood's CP which use directive verbs can truly be considered "mandatory" within the meaning of GMA. LIHI PHB, at 33.

In responding to the allegations in Issues 3 and 6, Lakewood states:

These extensive policies were created "for the preservation, improvement, and development of housing, including single-family residences . . ." They are designed to encourage the provision of affordable housing to all economic groups [and] preserve existing housing stock The incentives for the development of housing, the urban design requirements, and the areas targeted for special attention and funneling of City resources are designed to "ensure the vitality and character of

established residential neighborhoods.” All total, this “plan, scheme or design” encourages “the availability of affordable housing to all economic segments of the population of the state,” “[e]ncourages preservation of existing housing stock,” and promotes “a variety of residential densities and housing types.” City Brief, at 51.

The City goes on to group the Plan’s policies^[4] into eight different approaches that it is undertaking to address low income housing. These are (1) Plan Policies on Funding Affordable Housing; (2) Plan Policies on Density Bonuses for Creation of Single and Multi-Family Development Which Includes Affordable Units; (3) Plan Policies on Restructuring Permit Processes to Lower Housing Costs and Increase the Number of New Affordable Units; (4) Plan Policies on City Coordination with Lenders to Reduce Housing Costs; (5) Plan Policies on Coordination of Affordable Housing Incentive Programs with Other Cities and the County; (6) Plan Policies on Mitigation Measures to Reduce Possible Impacts to Housing Supply Over the Life of the Plan; (7) Plan Policies and Goals Targeted at Isolated Areas, including American Lake Gardens and Springbrook; and (8) Plan Policies Specifically Aimed at Creating a Diversity of Housing Types. City Brief, at 53-60.

Legal Issue 5

In Legal Issue 5, LIHI originally questioned the City’s inventory and needs assessment for housing. LIHI eventually conceded that the City had, in fact, completed the required inventory and analysis of its housing needs. LIHI, at 42.

Legal Issue 9

In Legal Issue 9, LIHI alleges that the City has violated the GMA’s housing goal, RCW 36.70A.020(4). Petitioner acknowledges prior Board cases have “discounted the independent significance of the goals” and stated that when a petitioner alleges violations of both a goal and an analogous specific requirement, it would review only the specific requirement. LIHI PHB, at 45, citing to *Litowitz, et al. v. City of Federal Way*, CPSGMHB Case No. 96-3-0005 (July 22, 1996), Final Decision and Order, at 7. Notwithstanding this Board holding, LIHI then fashions an argument that the housing goal has a substantive effect independent of the Act’s specific requirements.

b. Analysis

Legal Issues 2 and 4

The major foundation for each of these eight legal issues is a core premise articulated in Legal

Issues 2 and 4.^[5] Legal Issue 2 alleges that the “rezone” and the housing element will “affirmatively destroy two established . . . residential neighborhoods . . . [and] fail to provide for adequate replacement housing.” Legal Issue 4 alleges that the plan (i.e., the “rezone” and housing element) will not “ensure the vitality and character” of the neighborhoods of American Lake Gardens and Springbrook. When read together, these two issues can be stated as follows: *does the challenged Plan constitute an “industrial rezoning” of American Lake Gardens and Springbrook and, if so, does that rezoning destroy not only the affordable housing stock that presently exists there, but the very vitality and character of those neighborhoods?*

LIHI characterizes the plan, specifically the map designation, as “zoning.” However, just as plans are not regulations, a plan designation on the future land use map does not constitute a “rezone.” Since RCW 36.70A.040 will require Lakewood to adopt development regulations that are consistent with and implement its Plan, the Plan designation of “industrial” should lead to a zoning designation that has a similar, if not identical, name.^[6] Because a review of the PFR and LIHI’s briefing makes clear that they take issue with the Plan’s industrial land use designations for these neighborhoods, these legal issues and associated briefing are still germane and the Board will address them.^[7] Because these issues constitute the heart of the Petitioner’s case, the Board will begin its analysis with Legal Issues 2 and 4.

The City essentially concedes the point that Springbrook and American Lake Gardens are neighborhoods by virtue of referring to them as such^[8], and the Plan states that these neighborhoods both have and are planned for a mix of uses, the predominant of which is residential. The Board agrees with LIHI that Springbrook and American Lake Gardens are “established residential neighborhoods” pursuant to RCW 36.70A.070(2). LIHI is also correct that Lakewood has a GMA duty to “ensure” the “vitality and character” of these established residential neighborhoods through the provisions of its Housing Element. So the question before the Board is not whether Lakewood must ensure the vitality and character of Springbrook and American Lake Gardens as residential neighborhoods – clearly, it must. Rather, the question is whether the content of the City’s plan, including not just the industrial designation for portions of these two neighborhoods, but also the other goals, policies and strategies set forth in the Plan, meet the duty of ensuring neighborhood vitality and character.

The Board has previously examined the Act’s requirement that a Housing Element must ensure the *vitality* and *character* of established residential neighborhoods. In *Benaroya, et al. v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, FDO (Mar. 25, 1996), the Board held:

The requirement to “ensure neighborhood vitality and character” is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels.

The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, i.e., in urban areas - while also requiring that such growth be accommodated in such a way as to “ensure neighborhood vitality and character.” *Benaroya*, at 21. Emphasis supplied.

In the present case, the type of “infill development” contemplated in the Plan is to encourage the replacement of a portion (approximately one third) of these two residential neighborhoods with non-residential uses, specifically industrial. Residential infill could be desirable in these areas if adequate service capacity existed, however, adequate services do not exist in these neighborhoods. Here, the City proposes to promote the *vitality* of these two entire residential neighborhoods, and perhaps others (i.e., Tillicum) by making non-residential land use designations for a portion of them. These non-residential designations may reasonably be expected to lead to the elimination of some amount of sub-standard residential housing and its replacement with industrial uses that will have several benefits for the vitality of the area. For one, it provides a mechanism for the private sector to help pay for the extension of sewers to the area,^[9] reducing or eliminating a major public health problem. For another, it provides an opportunity for employment that does not now exist in the neighborhood.^[10] The City has made a credible argument that such policies are an appropriate strategy to encourage long-term investment in these neighborhoods. The Board concludes that, given the somewhat extreme circumstances and pressing needs of American Lake Gardens and Springbrook, as well documented in the record,^[11] the City has crafted a Plan that, in its totality, complies with the GMA’s mandate to ensure the vitality of an established residential neighborhood.

As to the question of the neighborhood’s *character*, several points bear making. Ensuring the neighborhood’s character is not simply a matter of maintaining homogeneity of land use – but rather, as the Board noted in *Benaroya*, a question of accommodating growth and change in such a way as to respect, maintain or even improve residential character. This would be true even with regard to non-residential uses, whether they are industrial, as here, or neighborhood commercial, or institutional. The Plan lays some policy groundwork for the integration of industrial uses into what will remain a predominantly residential area,^[12] however the details of many project design considerations (e.g., building bulk, signage, grading, landscaping, noise, traffic and access) are largely the focus of development regulations. Therefore, the Board would expect the City to pay close attention to such details when it complies with the duty to adopt development regulations that “are consistent with and implement the plan.” Similarly, the Board notes that many of the above-cited City policies for providing for the housing needs of its residents, including those who may be displaced from the Gate Neighborhoods, will be the subjects not only of development regulations but of other City implementing actions. RCW 36.70A.040 and .120.

Legal Issues 3, 5, 6, 7, 8, and 9.

LIHI's failure to carry its burden with respect to Legal Issues 2 and 4 are fatal to Legal Issues 3, 5, 6, 7, and 8. Because LIHI cannot show a noncompliance with a specific requirement of the Act, it cannot prove that the City has failed to be guided by the Housing Goal. Therefore, Legal Issue 9 must similarly be dismissed.

Conclusions re: Legal Issues 2, 3, 4, 5, 6, 7, 8 and 9

LIHI has failed to show that the City's action was clearly erroneous. The City has not "rezoned" the neighborhoods of American Lake Gardens and Springbrook, nor does its plan designation of a portion of these areas as "industrial" fail to comply with the requirements of RCW 36.70A.070 (2). The Board concludes that the Petitioner's allegations in Legal Issues 2 and 4 fail to carry the burden of proof. By allowing the conversion of up to a third of American Lake Gardens and Springbrook, the City will ensure the vitality of these established residential neighborhoods by providing job opportunities, sewerage the area and improving public services, including public health and safety. The "character" of these neighborhoods will inevitably change over time, and the City's policy of having new industrial uses as a part (not the whole) of that character is not inconsistent with preserving a residential character for the remaining two-thirds of the area. Because "character" is largely a matter of the scale and design of specific projects, the GMA policy objective of ensuring that future growth that is "in character" with an existing residential neighborhood must be a focus for the specific development regulations that the City has yet to adopt.

The Board also concludes that LIHI has failed to carry its burden of proof with respect to Legal Issues 3, 5, 6, 7, 8, and 9.

OTHER LEGAL ISSUES

Legal Issue No. 10

Does Lakewood's Plan fail to meet the internal consistency requirements of RCW 36.70A.070 (preamble) and supporting regulations because while portions of the plan purport to promote the availability of affordable housing (e.g., LU-7, LU-8, LU-11), ^[13] to modernize and upgrade existing mobile home parks and other housing (e.g. LU-5, LU 7.7, LU 7.16), ^[14] to accommodate special living needs (e.g. LU-6) ^[15] and to preserve and support neighborhoods

(e.g. LU-1, LU-5)^[16] still other portions will affirmatively destroy through industrial rezoning two of the City's largest residential neighborhoods that also provide an important supply of the City's affordable housing, manufactured housing, and housing for senior and disabled persons (e.g. Chapter 2, Official Land Use Maps)?

Applicable Law and Discussion of Legal Issue 10

RCW 36.70A.070(preamble) provides in relevant part: "The plan shall be an internally consistent document and all elements shall be consistent with the future land use map."

LIHI grudgingly concedes that the many policy statements in the Plan may be fine as far as they go, but that they are not enough to overcome the "destruction" wrought by the industrial designation of these two neighborhoods. LIHI argues that the plan is internally inconsistent because of a:

. . . fundamental clash between those of its sections that purport to address the City's affordable housing needs and to preserve residential neighborhoods and that one section that foils these efforts by eliminating large amounts of affordable housing through the industrial rezone of American Lake Gardens and Springbrook. LIHI PHB, at 51.

The alleged inconsistency in this issue depends upon the premise that the industrial designation does not comply with RCW 36.70A.070(2), a premise that the Board has rejected. *Supra*. It is therefore impossible for LIHI to carry its burden to prove inconsistency.

Conclusions re: Legal Issue 10

The Board concludes that LIHI has failed to carry its burden to show inconsistency between the Plan's Goal and Policies statements on the one hand, and the industrial designation of portions of American Lake Gardens and Springbrook on the other.

Legal Issue No. 11

Does Lakewood's plan violate RCW 36.70A.100 and RCW 36.70A.210, and supporting regulations, because it is inconsistent with policies 1 and 2 of Pierce County's "County-Wide Policy On The Need for Affordable Housing For All Economic Segments of the Populations and Parameters For Its Distribution" (Part III, page 12), which provide as follows:

(1) that "each municipality in the County, shall determine the extent of the need (i.e. the demand) for housing for all economic segments of the population that are projected for the community over the planning period....."

(2) that “each municipality in the County shall meet their projected demand for housing by one or more or all of the following: 2.1 preservation of the existing housing stock through repair and maintenance, rehabilitation and redevelopment;....”

Applicable Law and Discussion of Legal Issue 11

RCW 36.70A.100 provides:

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

RCW 36.70A.210 provides in relevant part, that county-wide planning policies shall include:

(3)(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution.

LIHI cites several Pierce County-Wide Planning Policies ^[17] and argues that the City has breached its duty to comply with these CPPs. While conceding that some of the CPPs are not very detailed, LIHI argues that the CPPs clearly require the City to project its own demand for affordable housing and to then meet that locally defined demand. LIHI PHB, at 62. LIHI also advances arguments that Lakewood’s Plan is “repugnant to other applicable statutes [which] the Board must consider . . . when it interprets the GMA.” LIHI PHB, at 63. Included in this list of “other” statutes are the Washington Housing Policy Act: Chap. 43.185B.RCW, the Federal Fair Housing Act and Title VI of the Civil Rights Act of 1964. *Id.*

Lakewood responds that it has met the CPP requirement pertaining to demand. It argues that “The extent of the research that went into the inventory of current demand is so impressive that even LIHI has conceded the issue of the adequacy of the Plan’s inventory and analysis.” City’s PHB, at 63-64.

Conclusions re: Legal Issue 11

The Board concludes that LIHI has failed to carry its burden to show inconsistency between the provisions of Lakewood’s Plan and the requirements of the Pierce County CPPs. The Board’s jurisdiction is limited by RCW 36.70A.280. The other state and federal statutes to which LIHI points are outside the Board’s jurisdiction.

IV. INVALIDITY

Legal Issue No. 12

Should the board invalidate the plan's industrial rezone of the neighborhoods of American Lake Gardens and Springbrook under RCW 36.70A.302 because it constitutes noncompliance with the housing goals, housing element or consistency requirements of Chap. 36.70A. RCW (see above) and because either alone or in combination with other non-complying portions of the plan, its continued validity would substantially interfere with the fulfillment of the goals of Chap. 36.70A. RCW?

Applicable Law and Discussion of Legal Issue 12

The City has not yet “rezoned” property to implement the comprehensive plan. While there is no “industrial rezone” presently before the Board, the Board construes LIHI’s argument to be that the Plan’s “industrial” land use designation does not comply with the requirements of the Act. For the reasons discussed above, the Board does not find any of the City’s plan noncompliant with any provisions of the GMA.

The Board’s only finding of noncompliance, perhaps ironically, addresses the City’s ‘failure to act’ to adopt development regulations, including any rezoning specifically required by plan land use designations. Until and unless the City takes action to adopt development regulations, including a zoning map designation that is consistent with and implements its Plan, there is no action for the Board to determine noncompliant, much less invalid, under this legal issue.

Conclusions re: Legal Issue 12

The Petitioner has not met its burden of proof to show that the continued validity of Ordinance 237 will substantially interfere with any goals of the GMA. Therefore, the Board declines to enter a finding of invalidity as to Ordinance 237.

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. The Board issues the City of Lakewood a **finding of noncompliance** with RCW 36.70A.040(3)(d) because it has not adopted development regulations consistent with and that implement its Plan.

2. The Board establishes **4:00 p.m. on Wednesday, September 5, 2001** as the deadline for the City to adopt development regulations that are consistent with and implement its Plan. In the event that Lakewood adopts development regulations consistent with this Order and the GMA earlier than this deadline, the City may file a motion for the Board to move forward the date for the compliance hearing and the schedule for associated pre-compliance hearing briefing.
3. By **Wednesday, September 12, 2001, at 4:00 p.m.**, the City shall submit to the Board, with a copy to LIHI, an original and four copies of its Statement of Actions Taken to Comply (the **SATC**). Attached to the SATC shall be a copy of any legislative action taken by the City in response to this Order.
4. By **Wednesday, September 26, 2001, at 4:00 p.m.**, Petitioner LIHI shall submit to the Board, with a copy to the City, an original and four copies of any Response to the City's SATC.
5. The Board schedules a **Compliance Hearing** in this matter for **10:00 a.m. on Thursday, October 4, 2001**. The Compliance Hearing will be held in Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle.

So ORDERED this 9th day of March, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

[1] RCW 36.70A.120 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan. Emphasis supplied.

[2] These eight legal issues, as set forth in the PHO, are:

Legal Issue No. 2 Does the City’s industrial rezone of the neighborhoods of American Lake Gardens and Springbrook or the plan’s housing element violate the Growth Management Act and the supporting regulations in any of the ways listed below because, among other provisions and consequences (i) the rezone will affirmatively destroy two established and existing residential neighborhoods that are important sources of the City’s affordable housing for poor people and the City’s manufactured housing (ii) the plan fails to provide for adequate replacement housing for the housing lost because of the industrial rezone, or (iii) the plan does not enable the City to meet its present or projected needs of affordable housing and will instead likely significantly decrease the supply of this housing?

Legal Issue No. 3 Does Lakewood’s comprehensive plan constitute a “plan, scheme or design” for fulfillment of the housing element as required by RCW 36.70A.070 (preamble) and supporting regulations?

Legal Issue No. 4 Does Lakewood’s comprehensive plan ensure the vitality and character of established residential neighborhoods as required by RCW 36.70A.070(2) and supporting regulations?

Legal Issue No. 5 Does Lakewood’s comprehensive plan include an inventory and analysis of existing and projected housing needs as required by RCW 36.70A.070(2)(a) and supporting regulations?

Legal Issue No. 6 Does Lakewood’s comprehensive plan include a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences, as required by RCW 36.70A.070(2)(b) and supporting regulations?

Legal Issue No. 7 Does Lakewood’s comprehensive plan identify 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, as required by RCW 36.70A.070(2)(c) and supporting regulations?

Legal Issue No. 8 Does Lakewood’s comprehensive plan make adequate provisions for existing and projected needs of all economic segments of the community, as required by RCW 36.70A.070(2)(d) and supporting regulations?

Legal Issue No. 9 Has Lakewood violated RCW 36.70A.020(4) and supporting regulations because it failed to be guided by, its plan fails to further or its plan affirmatively impedes any of the following goals: a. Encourage the availability of affordable housing to all economic segments of the population of the state; b. Promote a variety of residential densities and housing types; and c. Encourage preservation of existing housing stock?

[3] Among the policies cited by the City in its brief and oral argument are the following:

Policy LU-5.7: Improve the existing multi-family housing stock by encouraging, through public-private partnerships, revitalization and replacement of existing apartment complexes in appropriate locations throughout the city.

Policy LU-7.11: Monitor creation and availability of affordable housing on an annual basis, in order to establish benchmarks to evaluate housing affordability within Lakewood for the comprehensive plan’s five-year review cycle.

Policy LU-7.20: Develop programs to support the replacement of substandard affordable housing or affordable housing lost to other land uses, or rising real estate values or rent increases.

Policy LU-7.22: Establish public programs and/or public-private partnerships to encourage and assist redevelopment of outdated or substandard multi-family dwellings aimed at providing opportunities for affordable housing.

Policy LU-7.23: Provide incentives for developers to increase the supply of affordable housing through mechanisms such as density bonuses or fee waivers.

Policy LU-54.9: During the redevelopment of portions of Springbrook from residential to industrial, facilitate relocation assistance to residents as residential lands convert to industrial uses.

LU Goal 55: Seek a smooth and efficient transition from residential to industrial use for American Lake Gardens.

Policy LU-55: Monitor redevelopment plans and facilitate relocation assistance to residents as residential lands in American Lake Gardens convert to industrial uses in response to City-sponsored land use re-designation.

Policy LU-15.1: On an annual basis, provide a report to policy makers on the loss of affordable housing due to demolition or conversion, which also documents what steps have been taken to provide replacement affordable housing.

Policy LU-15.2: Identify affordable housing resources that may be lost due to area-wide redevelopment or deteriorating housing conditions. Prior to actions that result in the major reuse or major redevelopment of residential areas into other non-residential activities, provide relocation assistance plan(s).

Policy LU-15.3: Require housing studies as part of project-level environmental review for new non-residential developments involving the major reuse or redevelopment of existing residential areas.

[4] See, e.g., footnote 3.

[5] For example, if the Board were to agree with LIHI on Legal Issue 4, it would further the argument that the City does not have sufficient land for housing (Legal Issue 7) and has not made adequate provisions for the needs of all segments of the community (Legal Issue 8). Legal Issues 5 and 6 would be similarly implicated, but they are somewhat distinct from the other issues. They share a less directive verb (includes) which largely defines the question of compliance as simply whether the plan “includes” an inventory and analysis of need (Issue 5) and a “Statement of goals, policies, objectives and provisions for the preservation, improvement and development of housing.” (Issue 6).

[6] Local governments have used a wide variety of zoning district titles to correspond to a plan designation of “industrial.” These include “Industrial,” “Light Industrial,” “Manufacturing,” and “Business Park” to name a few.

[7] The Board will use the term “industrial designation” rather than “rezone.”

[8] For example, the Board notes the title of the background report “Lakewood and its Gate Neighborhoods.” Ex. 26. Emphasis supplied.

[9] Policy CF-4.4 provides:

Deny land use and/or development permit applications unless sufficient water, sewer, and electrical capacity or LOS are available to the development at time of occupancy.

[10] Policy LU-33.1 provides:

Facilitate the planned development of the [American Lake Gardens and Springbrook] industrial area, actively seeking high employment generating land uses that can capitalize on proximity to regional transportation and markets and nearby military bases.

[11] See Findings of Fact 6, 7, and 8.

[12] Policy LU-33.5 provides:

Reduce land use conflicts between industrial and other land uses through the provision of industrial buffers, setbacks, and screening devices, as well as strict enforcement of noise and air quality laws.

[13]

Goal LU-7 provides:

Encourage affordable housing and home ownership opportunities.

Goal LU-8 provides:

Participate in regional housing initiatives and support Pierce County's Fair Share Allocation Program or successor efforts to meet a wide variety of housing needs county-wide.

Goal LU-11 provides:

Continue enforcing aesthetic standards, life safety regulations and crime prevention in housing design.

[14]

Goal LU-5 provides:

Improve the quality and availability of multi-family housing choices.

Policy LU-7.7 provides:

Develop public policy strategies to modernize and/or upgrade existing mobile home parks.

Policy LU-7.16 provides:

Support efforts to develop affordable housing on vacant, underutilized, or blighted properties. Encourage and assist owners of vacant or blighted properties to upgrade their properties or partner with developers of affordable housing.

[15]

Goal LU-6 provides:

Accommodate special living needs in Lakewood.

[16]

Goal LU-1 provides:

Support quality single-family residential neighborhoods.

Goal LU-5 provides:

Improve the quality and availability of multi-family housing choices.

[17]

The CPP provisions to which LIHI points provide in relevant part:

1. The County, and each municipality in the County, **shall determine** the extent of **the need (i.e., the demand) for housing for all economic segments** of the population that are projected for the community over the planning period . . .
2. The County, and each municipality in the County, **shall meet** their projected demand for housing by one or more or all of the following:
 - 2.1 preservation of the existing housing stock through repair and maintenance, rehabilitation and redevelopment . . . ;
 - 2.2 identification of vacant, infill parcels appropriately zoned for residential development . . . ;
 - 2.3 identification of other vacant lands suitable for residential development;
 - 2.4 . . . consider the availability and proximity of transit facilities, governmental facilities and services and other commercial services . . .
3. [Monitoring of "their success in meeting the housing demands: not less than once every five years.]
4. . . . maximize local, state and federal funding opportunities and private resources in the development of affordable housing.

5. . . . explore and identify opportunities for non-profit developers to build affordable housing.
6. . . . explore and identify opportunities to reutilize and redevelop existing parcels where rehabilitation of the buildings is not cost-effective.
7. [Comply with the GMA and] shall contain a mix in the range of dwelling units to provide their “fair share” of the County-wide housing need for all segments of the population that are projected for the County over the planning period.

County-Wide Planning Policies for Pierce County, WA, as amended December 17, 1996 (pp. 12-14). Emphasis by LIHI.