

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

)	
LOW INCOME HOUSING)	
INSTITUTE, et al.,)	
)	ORDER ON SUPERIOR COURT
Petitioners,)	REMAND [No. 01-2-000608-5] in
)	LIHI I, CPSGMHB Case No. 00-3-
v.)	0017
)	
CITY OF LAKEWOOD,)	
)	
Respondent.)	
)	

I. Background

On March 9, 2001, the Board issued its Final Decision and Order (**FDO**) in Low Income Housing Institute, et al., v. City of Lakewood (**LIHI II**), CPSGMHB Case No. 00-3-0017. The Board found that LIHI had failed to demonstrate that Lakewood’s Comprehensive Plan was not in compliance with the challenged provisions of the GMA. However, since Lakewood had not adopted development regulations to implement its Plan, the Board entered a finding of noncompliance and ordered Lakewood to adopt development regulations that are consistent with and implement its Plan.

LIHI filed an appeal of the Board’s FDO with Thurston County Superior Court challenging the Board’s decision on five of the Plan related issues.

On August 20, 2001, Lakewood adopted its Land Use and Development Code to implement its Plan and filed a statement of actions taken to comply with the Board on September 13, 2001.

The Board conducted a telephonic compliance hearing on October 8, 2001, and issued a “Finding of Compliance” on October 11, 2001.

LIHI filed an appeal of the Board’s Finding of Compliance with Thurston County Superior Court.

On October 19, 2001, LIHI filed a new petition for review (**LIHI II** – CPSGMHB Case No. 01-3-

0023) challenging Lakewood's Development Regulations compliance with the GMA.

On November 26, 2001, following a prehearing conference, the Board issued its "Prehearing Order" establishing the schedule for *LIHI II* (regulation challenge) and the Legal Issues to be decided by the Board.

In mid December, LIHI filed a "Motion to Consolidate [*LIHI I* and *LIHI II*] or Delay [*LIHI II*] case" pending a remand from Thurston County Superior Court in *LIHI I*. Lakewood opposed the motion. The Board issued an "Order Denying Motion to Consolidate or Delay" on December 21, 2001.

On December 24, 2001, the Board received Thurston County Superior Court Judge Gary Tabor's Decision, Final Order and Judgment regarding the *LIHI I* case. Of the five issues appealed by LIHI, the Court affirmed the Board's FDO on three issues and set aside and remanded two issues, finding that "the Board has failed to adequately articulate a sufficient basis for its decision on [the two remand issues]." The Court expressed no view on whether the Board's decision on these two issues was correct or incorrect.

On January 8, 2002, the Board received LIHI's "Motion to Consolidate [the Court Remand of *LIHI I* and *II*] or Coordinate Schedules [of the Court Remand of *LIHI I* and *LIHI II*] and Application for Prehearing Conference."

On January 14, 2002, the Board received "Respondent City of Lakewood's Response to Motion to Consolidate or Coordinate Schedules for Prehearing Conference" with an attached Superior Court Order Denying LIHI's Motion to Add a Document to the Record and a transcript of the Superior Court proceeding.

On January 16, 2002, the Board received "Petitioners' Reply in Support of Motion to Consolidate or Coordinate and for Status Conference."

On January 17, 2002, the Board received "Notice of Appeal to Court of Appeals, Division II" filed by LIHI, appealing the three issues affirmed by the Superior Court in *LIHI I*.

On January 18, 2002, the Board office contacted the parties to establish a date for a telephonic conference call to discuss the status of the various pieces of pending litigation and Board proceedings in *LIHI II*.

On January 24, 2002, the Board Member McGuire, the Presiding Officer in the Remand proceeding and *LIHI II*, held a telephonic status conference with the parties.

On January 25, 2002, the Board issued “Order Scheduling Briefing on Superior Court Remand [No. 01-2-000608-5] in *LIHI I*, CPSGMHB Case No. 00-3-0017.” This Order set forth a briefing schedule and Board decision date for the consideration of the two remand issues in *LIHI I*.

On February 7, 2002, the Board received a cover letter and a copy of a February 1, 2002 letter from LIHI indicating the parties had stipulated to including Lakewood’s (April 30, 2001) Determination of Non-significance (**DNS**) on its Land Use Development Code in this remand proceeding. Attached to the February 7, 2002 letter were: 1) Stipulation to Supplement the Record and Amend the Index of Record [in *LIHI I* Remand]; 2) a copy of Lakewood’s DNS; and 3) a Stipulation and Agreed Order of Dismissal [of the challenged compliance order] signed by the Honorable Judge Paula Casey, Thurston County Superior Court. **Pursuant to the stipulation, the Board will include Lakewood’s DNS as part of the record in the *LIHI I* Remand proceeding.**

Also on February 7, 2002, the Board received: “Petitioners’ Opening Brief Following Remand” (**LIHI Remand Brief**), with two attached exhibits; and “City of Lakewood’s Brief on Remand Issues” (**Lakewood Remand Brief**), with an attached Plan Map and 31 exhibits. Lakewood also provided an additional copy of its Plan.

On February 14, 2002, the Board received: “Petitioners’ Response Brief Following Remand” (**LIHI Response**); and “City of Lakewood’s Rebuttal Brief on Remand Issues” (**Lakewood Response**).

The Board did not hold a hearing or entertain oral argument in this remand proceeding.

II. SUPERIOR COURT REMAND OF LEGAL ISSUES 4 AND 8

The Thurston County Superior Court’s remand Order stated, in relevant part:

[T]he Court finds that the Board has failed to adequately articulate a sufficient basis for its decision on Legal Issue No. 4, as required by RCW 36.70A.290. The Court concludes that LIHI has met its burden under 34.05.570(3)(f) by establishing that the Board failed to decide Legal Issue No. 4, making a remand to the Board for further proceedings consistent with the decision and order. In making this decision the Court expresses no view on whether the Board’s decision on Legal Issue 4 was otherwise correct or incorrect, or whether on remand the Board should or could reach the same or a different result.

December 21, 2001, Decision, Final Order and Judgment by Judge Gary R. Tabor, Thurston County Superior Court (**Remand Order**), at 6-7. The remand Order continued, in relevant part:

[T]he Court finds that the Board has failed to adequately articulate a sufficient basis for its decision on Legal Issue No. 4, as required by RCW 36.70A.290. The Court concludes that LIHI has met its burden under 34.05.570(3)(f) by establishing that the Board failed to decide Legal Issue No. 4, making a remand to the Board for further proceedings consistent with the decision and order. In making this decision the Court expresses no view on whether the Board’s decision on Legal Issue 4 was otherwise correct or incorrect, or whether on remand the Board should or could reach the same or a different result.

Remand Order, at 8. The Remand Order further provided:

The Board’s Decision and Final Order is SET ASIDE and REMANDED to the Board for further proceedings on LEGAL ISSUES 4 and 8 consistent with this decision.

Remand Order, at 9. The Court also found that the Board had erred in finding that Springbrook did not have sewers. The Board stands corrected. Finding of Fact 7, is corrected in Appendix B of this Order (corrected language is shown in ~~strikeout~~ and underlining.)

III. DISCUSSION OF REMAND ISSUES 4 AND 8

To better understand LIHI’s challenge to Lakewood’s Plan, a brief overview of the nature of GMA comprehensive planning and the relationship plans to implementing regulations is necessary to provide context for the Board’s discussion. Reference to several recent and early Board decisions aides in this explanation.

Context and Background

Context:

GMA comprehensive plans are *required* to contain specific elements including land use, housing, capital facilities, utilities, [rural for counties], and transportation elements. RCW 36.70A.070. Other plan elements, such as recreation, environment, economic development or subarea plans, are *optional* and may be included at the local governments discretion. RCW 36.70A.080. Whether the elements are mandatory or optional the jurisdiction’s comprehensive plan “*shall be an internally consistent document and all elements shall be consistent with the future land use map.*” RCW 36.70A.070.

In *McVittie v. Snohomish County (McVittie V)*, CPSGMHB Case No. 00-3-0016, Final Decision and Order (Apr. 12, 2001), the Board explained:

In an early case, the Board determined that *plans are not development regulations*.

[1] *Comprehensive plans do not control the issuance of permits nor directly control the use of land. Rather, comprehensive plans are directive to development regulations and capital budgeting decisions.* [2] This relationship has caused the Board to describe the decision-making regime under the GMA as a “*cascading hierarchy of substantive and directive policy.*” [3]

McVittie V, at 14, (emphasis supplied). In that same decision, the Board went on to explain that implementing regulations are different in nature from comprehensive plans.

Unlike plans, *development regulations control the issuance of permits and conditions imposed upon those permits*, such as locally adopted building envelope, density, site and design details and service level requirements for infrastructure.

McVittie V, at 14-15, (emphasis supplied).

GMA Plans are not mere paper plans; once adopted, they must be implemented through regulatory, fiscal and other means. With regard to Lakewood, RCW 36.70A.040(3) requires the City “*to adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan.*” (Emphasis supplied.) Additionally, RCW 36.70A.120 requires the City to “perform its activities and make capital budget decisions in conformity with its comprehensive plan.”

Thus, the mandatory and optional elements of a comprehensive plans must be consistent; the policies within the various elements must work together, in harmony, and not thwart each other. Although the Plan identifies and designates future land uses, the Plan itself does not *directly regulate* land use. However, the Plan is required to be implemented. The Plan is implemented through various methods, such as development regulations (*e.g.* zoning maps and code and other land development controls), and other implementing techniques, such as the fiscal measures contained in a jurisdiction’s capital expenditure program for infrastructure or road improvements or land acquisitions. The Plan provides an assessment of present conditions and a template for the future. It provides a desired future outcome for a city or county and establishes, through map designations and policy statements, the basis and direction to achieve that outcome. The Plan’s future land use *map* designations indicate *where* certain land use outcomes are desired, the Plan’s *policy* statements, objectives and goals indicate *how* those outcomes are to be achieved. In short, a jurisdiction’s Plan should generally address the questions: how many must you accommodate, what do you have, what do you need and want, where can your needs and wants be met, and how are you going to meet your needs and wants.

LIHI's challenge focuses on the City's locational choice of designating a portion of two existing residential neighborhood "Industrial." LIHI does not directly or specifically challenge any of the Plan policies adopted by Lakewood to address the eventual change of use and transition of the neighborhoods. LIHI seems to attack only the *where*, not the *how*.

The March 9, 2001 FDO:

The Board's March 9, 2001 FDO addressed eleven issues posed by LIHI. In short, the Board upheld Lakewood's *Plan*, finding it to be in compliance with the challenged requirements and goal of the GMA. However, on one issue, the Board found that Lakewood had not yet adopted development regulations to implement its plan as required by the GMA. On remand, the Board directed Lakewood to adopt the required development regulations to implement its Plan. As directed, Lakewood has since adopted development regulations. However, those development regulations (Plan implementing or supporting regulations) are now the subject of a separate and second appeal filed before this Board by LIHI. That matter is known as *LIHI II v. City of Lakewood*, CPSGMHB Case No. 01-3-0023, and will not be discussed further in this Order.

The Housing Element:

The Board's March 9, 2001 FDO addressed Legal Issues 2, 3, 4, 5, 6, 7, 8 and 9 together.^[4] One issue included in that discussion was a general challenge [Issue 2 - not alleging any specific violation of a GMA provision] to Lakewood's Plan related to housing. Another issue discussed related to the "plan, scheme or design" requirement found in the preamble of .070 [Issue 3]. The last issue included related to compliance with the GMA's Housing Goal - RCW 36.70A.020(4) [Issue 9]. The other five of the issues discussed therein related specifically to requirements for the City's housing element involving the provisions of RCW 36.70A.070(2) [Issues 4, 5, 6, 7 and 8].

LIHI's Issues 5, 6, 7 and 8 specifically challenged the City's compliance with the GMA's required components for the housing element - RCW 36.70A.070(2)(a), (b), (c) and (d), respectively. Only the challenge to .070(2)(d) [Issue 8] was remanded. The Board's reasoning and decision on RCW 36.70A.070(2)(a), (b) and (c) [Issues 5, 6, and 7] was upheld and not disturbed by the Court. Issue 4, which is also part of the Court's remand, challenges compliance with the requirements of the housing element in its entirety.

RCW 36.70A.320(1) provides that Lakewood's Plan was presumed valid upon adoption. RCW 36.70A.320(2) places the burden of proof on the petitioner, LIHI, to demonstrate how or why Lakewood's plan is not in compliance with the requirements of the Act. In its FDO the Board found that LIHI had failed to carry its burden of proof in demonstrating how or why Lakewood's

plan failed to comply with the requirements of RCW 36.70A.070(2).

The Remand Issues

The Legal Issues as stated in the petition for review, the Board's Prehearing Order, and by the Superior Court are, as follows:

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. 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?

Applicable Law

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.***

RCW 36.70A.070(2), (emphasis provided to illustrate the challenged requirements in Issues 4 and 8). The Board will first address Issue 8, dealing with a component of the housing element [.070(2)(d)]; then address Issue 4 [.070(2)].

Discussion Re: Issue 8

Legal Issue No. 8 Does Lakewood's comprehensive plan make adequate provisions for existing and projected needs of all economic segments of the community?

On remand, LIHI continues to argue, “The Plan fails . . . because the record has abundant evidence that it [Lakewood] will fail to develop the [needed] housing.” LIHI Remand Brief, at 19. Instead of challenging the adopted housing policies in Lakewood’s Plan, LIHI again simply points to the City’s analysis of its existing and projected housing needs, as well as the needs projected due to the “Industrial” designation in the Plan in the Springbrook and American Lake Gardens (ALG) neighborhoods as support for its allegation. LIHI then quotes, and relies upon, a statement in Lakewood’s July 2000 Plan FEIS – [The] supply of affordable housing [is] likely to decrease significantly by 2017. - as the basis for its claim. LIHI Remand Brief, at 22-24.

Lakewood responds by noting that it has adopted a holistic community reinvestment strategy to ensure neighborhood vitality and adequately provide for all economic segments of the community. The *five part strategy* involves: 1) the redesignation of a limited number of parcels, including vacant and underutilized parcels, for industrial use throughout the City, including areas in Springbrook and ALG; 2) an economic development Plan element to attract investment and jobs throughout the City, including Springbrook and ALG; 3) funding and investment strategies to provide and upgrade inadequate infrastructure throughout the City, including Springbrook and ALG; 4) policies and strategies to improve urban design and create a safe environment throughout the City, including Springbrook and ALG; and 5) targeted strategies and policies (e.g. funding, density bonuses and developer incentives, permit processing reform, coordination with other governmental agencies and lenders, mitigation measures and use of special study areas) to increase affordable housing in Springbrook and ALG. Lakewood Remand Brief, at 2-5. Lakewood also contends that many of these policies were adopted in response to comments included and addressed in the FEIS, including the affordable housing question. Lakewood Remand Brief, at 7.

Also in its remand brief, the City identifies (citing to the record) the poverty, social problems, service and infrastructure deficiencies and lack of investment facing the Springbrook and ALG neighborhoods. Lakewood Remand Brief, at 11-17. Specifically related to Issue 8 – adequately providing for the housing needs of all economic segments of the City, including Springbrook and ALG – the City quotes almost 40 Plan goals and policies ^[5] to demonstrate that its Plan provides for all economic segments of the community, including Springbrook and ALG. Lakewood Remand Brief, at 35-44.

In response, LIHI discounts the relationship of the City’s economic development element in meeting affordable housing needs, argues that the City has not countered the statement in the FEIS that the supply of affordable housing will decrease and the City offers no support, other than statements in the brief, for its assertions that the City has adequately provided for all economic segments of the community. LIHI Response, at 6-14.

The Board has reviewed its March 9, 2001 FDO, the Court Order, Lakewood’s Plan, and the briefing provided by the parties on remand. The Board has considered these materials and

deliberated on the matter. The Board hereby incorporates and affirms its discussion and conclusions of the housing element issues as set forth in the March 9, 2001 FDO. *See*: Appendix A. Again the Board finds that LIHI has failed to carry its burden in demonstrating why or how the strategy and approach, as reflected in Plan goals and policies, adopted by the City of Lakewood for affordable housing fails to comply with the requirements of RCW 36.70A.070(2)(d).

Notwithstanding LIHI's failure to carry its burden, the Board has nonetheless reviewed Lakewood's Plan. The Board is convinced that the City has demonstrated that its adopted strategy and approach to providing affordable housing, *as reflected in its Plan goals and polices*, makes adequate provisions for existing and projected needs of all economic segments of the community, throughout the City, and as it relates to the Springbrook and ALG neighborhoods.

The Board finds that the strategy, approach, goals and policies articulated in the City's Plan ^[6] is sufficient to satisfy the GMA's requirement "to make adequate provision for" and they meet the housing needs identified.

The Board is not left with a firm and definite conviction that a mistake was made by the City in designing its strategy and approach to addressing its housing needs; Lakewood's action was not clearly erroneous. Therefore, the Board concludes that the strategy, approach, goals and policies contained City of Lakewood's Plan complies with the requirements of RCW 36.70A.070(2)(d). The City must now take the appropriate steps to implement these Plan goals and policies.

Conclusion Re: Issue 8

The Board concludes that the City of Lakewood has demonstrated that its adopted strategy and approach to providing affordable housing, as reflected in its Plan goals and polices, *makes adequate provisions for existing and projected needs of all economic segments of the community*. The City's Plan makes adequate provision for Lakewood's housing needs, throughout the City, as well as for the Springbrook and American Lake Gardens neighborhoods. The City's action was not clearly erroneous. Therefore, the Board concludes that the City of Lakewood's Plan **complies** with the requirements of RCW 36.70A.070(2)(d).

Discussion Re: Issue 4

Having determined that Lakewood has satisfied the adequate provision component of RCW 36.70A.070(2)(d), the Board now turns to the broader question of whether the City's Plan ensures the vitality and character of established neighborhoods, especially Springbrook and ALG – remand of Issue 4.

Legal Issue No. 4 - *Does Lakewood's comprehensive plan ensure the vitality and character of*

established residential neighborhoods?

LIHI argues that the operative terms of RCW 36.70A.070(2) mean that housing element of Lakewood's Plan is required to make sure or certain of the vitality and character of Springbrook and ALG. LIHI Remand Brief, at 7. LIHI suggests that the Board's use of the word promote in its FDO dilutes or weakens the GMA mandate to ensure. LIHI Remand Brief, at 9. LIHI also suggests that the Board's FDO hinged on the lack of sewers in the neighborhoods, yet Springbrook has sewers. LIHI Remand Brief, at 12.

In response, the City cites the record to demonstrate the infrastructure deficiencies, isolation, criminal activity, poverty, and chronic disinvestments of capital in the Springbrook and ALG neighborhoods. Lakewood Remand Brief, at 11-17. The City also calls upon its five-part strategy (outlined *supra*, at 8) to demonstrate the Plan's ability to ensure the vitality and character of existing neighborhoods. Lakewood Remand Brief, at 2-5. To further demonstrate that its Plan ensures the vitality and character of its existing neighborhoods, including Springbrook and ALG, Lakewood quotes over 60 Plan goals and policies.^[7] Lakewood Remand Brief, at 18-35.

In response, LIHI argues that an industrial designation does not ensure the vitality and character of Springbrook and ALG. LIHI does not dispute the City's description and characterization of Springbrook and ALG and does not argue why the cited goals and policies cannot work to ensure the vitality of the neighborhoods. Instead, LIHI argues that the City cites to nowhere in the record to indicate the Cities cause and effect assertions pertaining to economic development will work. LIHI Response, at 3-5.

First, the Board acknowledges its erroneous finding that Springbrook lacks sewers. Finding of Fact 7 has been corrected to reflect this error. *See*: Appendix B. However, sewers, or the lack thereof, is not the only factor concerning the Board in reviewing Lakewood's efforts to maintain and rejuvenate the Springbrook and ALG neighborhoods. As discussed by the City, and not disputed by LIHI, infrastructure deficiencies, isolation from the rest of the City, criminal activity, poverty, and chronic disinvestments of capital and economic opportunities in the Springbrook and ALG neighborhoods are issues that the City is addressing in its Plan. The Board's decision is based upon taking steps to improve all these ills, not just the lack of sewer in one neighborhood.

The Board has reviewed its March 9, 2001 FDO, the Court Order, Lakewood's Plan and the briefing provided by the parties on remand. The Board hereby incorporates and affirms its discussion and conclusions of the housing element issues as set forth in the March 9, 2001 FDO. *See*: Appendix A.

Lakewood has described its strategy and approach as a holistic one, attempting to integrate the requirements of various elements of the GMA to maintain and enhance the quality of life of all

the citizens of Lakewood. The Board is impressed that the various provisions of the Plan's mandatory and optional elements work together, are in harmony, and do not thwart each other. Additionally, the Plan is directive; it identifies regulatory, capital budgeting decisions and coordination efforts that need to be undertaken to implement the Plan. The Plan identifies numerous methods to achieve the outcomes, including the improvement and redevelopment of Springbrook and ALG, and relocation of potentially displaced people from the Springbrook and ALG neighborhoods.

LIHI contested the map designation that made approximately one-third of the Springbrook and ALG neighborhoods Industrial. However, LIHI never disputed the Plan policies and goals that the City included to respond to the City's housing needs as well as the housing needs of Springbrook and ALG. Recall that the Plan's future land use *map* designations indicate *where* certain land use outcomes are desired, the Plan's *policy* statements, objectives and goals indicate *how* those outcomes are to be achieved. LIHI did not like the industrial designation of parts of the two neighborhoods (one of the areas *where* Lakewood would act to address its needs), but never explained *how*, in its opinion, the City's Plan goals and policies failed to ensure the vitality and character of the existing neighborhoods (*how* the outcomes are to be achieved). Again, the Board finds that LIHI has failed to carry its burden of demonstrating how the plan fails to comply with RCW 36.70A.070(2).

Again, notwithstanding LIHI's failure to carry its burden, the Board has nonetheless reviewed Lakewood's Plan. Lakewood's Plan provides the substantive direction to make sure or certain the vitality and character of existing neighborhoods. Lakewood's Plan ensures the vitality and character of its existing neighborhoods, including Springbrook and ALG. The Board is convinced that the City has demonstrated that its adopted strategy and approach to providing affordable housing, *as reflected in its Plan goals and policies*, ^[8] ensures the vitality and character of existing neighborhoods, throughout the City, and for the Springbrook and ALG neighborhoods.

The Board is not left with a firm and definite conviction that a mistake was made by the City in designing its strategy and approach to addressing its housing needs while ensuring the vitality and character of its existing neighborhoods; Lakewood's action was not clearly erroneous. Therefore, the Board concludes that the strategy, approach, goals and policies contained in the City of Lakewood's Plan complies with the requirements of RCW 36.70A.070(2). Again, the City must now take the appropriate steps to implement these Plan goals and policies.

Conclusion Re: Issue 4

The Board concludes that the City of Lakewood has demonstrated that its adopted strategy and approach to providing affordable housing, as reflected in its Plan goals and policies, *ensures the vitality and character of established residential neighborhoods, including Springbrook and*

American Lake Gardens. The City's action was not clearly erroneous. Therefore, the Board concludes that the City of Lakewood's Plan **complies** with the requirements of RCW 36.70A.070 (2)(d).

III. ORDER

Having reviewed and considered the record in LIHI I, the Board's FDO, the Decision, Final Order and Judgment of the Thurston County Superior Court, having considered the briefing of the parties, and having deliberated on the matter, the Board ORDERS:

LIHI's challenge to the City of Lakewood's compliance with the requirements of RCW 36.70A.070(2) and .070(2)(d), as remanded by the Thurston County Superior Court, are **dismissed**. The City of Lakewood's Comprehensive Plan **complies** with these requirements of the Act.

So ORDERED this 22nd day of February, 2002.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Appendix A

The Board's March 9, 2001 Final Decision and Order in *LIHI v. City of Lakewood* (CPSGMHB

Case No. 00-3-0017) provides, at 6-13, as follows:

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.

[9]

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

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 substandard 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. [\[10\]](#) 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^[11] 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.^[12] 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. ^[13] 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. ^[14] 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 ^[15], 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, ^[16] reducing or eliminating a major public health problem. For another, it provides an opportunity for employment that does not now exist in the neighborhood. ^[17] 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, ^[18] 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, ^[19] 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.

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

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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 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.

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Appendix B

Pursuant to the Remand Order, the Board corrects its Finding of Fact 7 pertaining to Springbrook as indicated below. (Deletions are shown through ~~strikeout~~; new language is shown underlined.)

The Board's March 9, 2001 Final Decision and Order in *LIHI v. City of Lakewood* (CPSGMHB Case No. 00-3-0017) provided, at 2-3, as follows:

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. a) Both Springbrook and American Lake Gardens lacks sewer systems and most property is "old, run down, and undervalued." *Id.* b) Most property in Springbrook 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.*

[1] The Board has stated:

[The GMA] definition of policy refers to “principles,” “plans,” or “courses of action” pursued by government. Such definitions describe the nature of . . .the comprehensive plans of cities and counties. Policy documents such as . . .comprehensive plans are not “development regulations” under the GMA.

Snoqualmie v. King County, CPSGMHB Case No. 92-3-0004, Final Decision and Order, (Mar. 1, 1993), at 12.

[2] *See: Vashon – Maury, et al., v. King County [Bear Creek Portion]*, CPSGMHB Case No. 95-3-0008c, Order Finding Partial Noncompliance and Partial Invalidity, (Nov. 3, 2000), at 9.

[3] The Board has stated:

[T]he decision-making regime under GMA is a cascading hierarchy of substantive and directive policy, flowing first from the planning goals to the policy documents of counties and cities (such as CPPs [county-wide planning policies], IUGAs [interim urban growth areas] and comprehensive plans, then between certain policy documents (such as from CPPs to IUGAs and from CPPs and IUGAs to comprehensive plans), and finally from comprehensive plans to development regulations, capital budget decisions and other activities of cities and counties.

Aagaard, et al., v. City of Bothell, CPSGMHB Case No. 94-3-0011, (Feb. 11, 1995), at 6.

[4] The entire text of the housing element discussion from the Board’s FDO is included as *Appendix A* to this Order. Also attached, as *Appendix B*, are the Board’s Findings of Fact [with corrections] from the FDO.

[5] Lakewood identifies the following Plan goals and policies to document and support the Plan's seven pronged approach to compliance with .070(2)(d)'s requirement: 1) regarding affordable housing: Plan policies LU-7.3, LU-7.9, LU-7.14, LU-7.17, LU-7.18, LU-7.19 and LU-15.4; 2) regarding density bonuses: Plan policies LU-4.2, LU-5.2, LU-5.6, LU-6.6, LU-7.5 and LU-7.23; 3) regarding permit reform: Plan policy LU 7.15; 4) regarding reducing housing costs: Plan policies LU-7.12 and LU-7.13; 5) regarding coordination and incentives: Plan policy LU-7.8, LU-8, LU-8.1, LU-8.2, LU-8.3, LU-8.4, LU-8.5, LU-8.6 and LU-8.7; 6) regarding mitigation: Plan policies LU-15.2, LU-15.3, LU-15.4, LU-15.5, LU-54.9, LU-55 and LU-55.1; and regarding diversity of housing: Plan policies LU-5.6, LU-6.3, LU-6.6, LU-6.7, LU-6.8, LU-6.9, LU-7.6 and LU-7.7. The Plan also specifically sets forth policies for Springbrook (Policies LU-54.1 through 54.9) and ALG (Policies LU-55 through 55.2). Lakewood Remand Brief, at 35-44 and 26-27.

[6] *See*: footnote 5.

[7] Lakewood identifies the following Plan goals and policies to document and illustrate that its Plan ensures the vitality and character of existing neighborhoods, including Springbrook and ALG, and complies with the requirement of RCW 36.70A.070(2): Plan Policies ED-1, ED-1.5, ED-1.6 and ED-2.2 (Job Creation and Business Development); ED-3.1, ED-3.2 and ED-3.4 (Public Infrastructure); ED-1.1 and ED-3.6 (Working with the Public Sector); ED-4.1, ED-4.2 and ED-4.3 (Permit Reform); ED-2.4 (Ongoing Review); LU-52, LU-52.1, LU-52.2 and LU-52.3 (Capital Improvements and Infrastructure); LU-54, LU-54.1, LU-54.2, LU-54.3, LU-54.4, LU-54.6, LU-54.7, LU-54.8, and LU-54.9 (Policies for Springbrook); LU-55, LU-55.1 and LU-55.2 (Policies for ALG); UD-3, UD-3.1, UD-3.2, UD-4, UD-4.1, UD-4.2, UD-4.3, UD-13, UD-13.1 and UD-13.2 (Urban Design, Development Standards and Open Space); UD-12, UD-12.1 and UD-12.2 (Enhancement Programs in Springbrook and ALG); LU-18.6, LU-55.1, LU-54.9, LU-55, LU-15.3, LU-15.4, LU-15.5, LU-15.1 (Mitigation and Relocation Assistance, including Springbrook and ALG); UD-11, UD-11.1, UD-11.2, LU-11, LU-11.1, LU-11.2, LU-11.3, LU-11.4 and LU-11.5 (Crime Reduction and Safety); and U-21, U-2.2, U-2.3, U-6, U-6.1, U-7, U-7.1, U-7.2, U-7.3, U-7.4, U-7.5 and U-7.8 (Sewer and Infrastructure Investment to Reduce Health Hazards).

[8] *See*: footnote 7.

[9] 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?

[10]

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.

[11]

See, e.g., footnote 3.

[12]

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).

[13]

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.

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

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

[16] 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.

[17] 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.

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

[19] 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.