

OVERARCHING ISSUE:

What is the proper interpretation of the Growth Management Act?

Does it require planning for compact urban growth

Or

Does it sanction suburban sprawl and the inefficient use of land?

SIX QUESTIONS

- A. Is there a live case or controversy?**
Yes. The appeal is not moot.
- B. Are interim ordinances immune from Board review?**
No. They must comply with GMA.
- C. Is the Board a “rubber stamp” for local legislative action?**
No. The Board is to undertake a “critical review” of local legislative action.
The Board’s interpretation of GMA is due “substantial weight.”
- D. Does Ordinance 431 perpetuate sprawl in violation of GMA?**
Yes. A pattern of one-acre lots perpetuates sprawl.
- E. Is Ordinance 431 inconsistent with the City’s comprehensive plan?**
Yes. The City’s comprehensive plan promotes urban density.
- F. Is Ordinance 431 inconsistent with GMA’s goal on affordable housing?**
Yes. A pattern of one-acre lots discourages affordability.

CHRONOLOGY OF KEY EVENTS

February 25, 1997	<i>Hensley v. Woodinville</i> Final Decision and Order Inefficient pattern of one-acre lots is unlawful sprawl
June 1997	In response, City adopts WMC 21.04.080(1)(a) R-4 density required if public services (sewer) available
Years following 1997	City's Comprehensive Plan and zoning allowed areas zoned R-1 to be converted to R-4 contingent on sewer
June-November 2004	Phoenix submits Wood Trails and Montevallo R-4 density proposed – sewer available
Year 2005	Phoenix proposals generate community opposition
January 2006	Sustainability Development Plan proposed to Council “To support a City decision to limit residential densities...”
March 20, 2006	Council adopts R-1 development moratorium
May 10, 2006	Council meets with CTED GMA manager Councilmember Brocha: “If we could have R-1, then we wouldn't even be having this meeting tonight. There would be no question about it. We'd just go ahead and do it.”
September 11, 2006	Council extends R-1 development moratorium
February 20, 2007	Sustainability Study Environmental findings

Transportation and capital facilities

Neighborhood character

May 7, 2007

Adoption of Ordinance 431

Deletes R-4 density provision from Code

Effective for six months unless renewed

August 20, 2007

Adoption of Ordinance 447

Renews Ordinance 431 for six months, without change

August 20, 2007

City Council denies Phoenix rezone to R-4

Despite fact that sewer is available

Council finds R-1 appropriate in consideration of:

“The maintenance of the existing suburban

neighborhood character”

September 2007

Buildable Lands Report projects new development

density at 1.1 units per acre throughout 56% of

developable residential zoned land in Woodinville

FIRST QUESTION: LIVE CASE OR CONTROVERSY?

Ordinance 431 deletes the following language from the City’s zoning code:

“Developments with densities less than R-4 are allowed only if adequate services cannot be provided.”

Ordinance 447 renews the identical deletion for six additional months.

“A case is moot if there is no longer any case or controversy between the parties.”

Alderwood Assoc. v. Wash. Env’tl. Coun. (1981)

“[A] case is moot if a court can no longer provide effective relief. Likewise, the Board will make an exception to the mootness rule involving ‘matters of continuing and substantial public interest... After a hearing on the merits, it is a waste of judicial resources to dismiss an appeal on an issue of public importance which is likely to recur in the future...”

Clark v. City of Covington (2002) (citations omitted)

**SECOND QUESTION: ARE INTERIM ORDINANCES IMMUNE FROM
BOARD REVIEW?**

“The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW [36.70A.040](#).”

RCW 36.70A.020

“A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed

for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.”

RCW 36.70A.390

THIRD QUESTION: IS THE BOARD A “RUBBER STAMP”?

“While the Board must defer to [the local government’s] choices that are consistent with GMA, the Board itself is entitled to deference in determining what the GMA requires. [The Washington Supreme Court] gives ‘substantial weight’ to the Board’s interpretation of the GMA.”

Lewis County v. W. Wash. Growth Mgmt Hearings Bd. (2006)

“In the absence of legislative guidance, the boards are left to adopt some consistent approach. But guidelines are one thing and bright lines another.”

Gold Star Resorts v. Futurewise (2007)

“I write separately to clarify a misconception that has crept into the case law concerning the Growth Management Hearings Boards’ adoption of a “bright line rule” governing urban and rural densities under the Growth Management Act... While the Supreme Court in *Viking Properties v. Holm* rejected the Boards’ authority to adopt a “bright line minimum urban density of four dwelling units per acre,” it did not reject the approach the Boards have actually taken in evaluating proposed urban and rural densities in GMA plans. Neither our decision today nor the *Viking* opinion is designed to undercut the Boards’ authority to evaluate GMA plans under the guidelines established by the Act, judicial decisions interpreting the Act and the Boards’ own decisions. Thus, characterizing four units to the acre as “clearly compact urban development that satisfies the low end of the range required

by the Act” is not impermissible “public policy” making under the GMA and *Viking*. Similarly, the Boards may recognize that, in order to avoid sprawl as required by the Act, ‘as a general rule, new 1- and 2.5 acre lots are prohibited as a residential development pattern in rural areas.’ Neither is a bright line rule. Rather, they are rebuttable presumptions that serve as guidelines for local jurisdictions seeking to develop plans that comply with the urban and rural density requirements of the Act.’

Goldstar Resorts v. Futurewise (2007) (Judge Agid concurrence)

“The GMA was amended again in 1997 to provide that growth management hearings boards should ‘grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter’ and that ‘[l]ocal comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances.’ But these amendments add little in the way of guidance...

We agree with the Board that the County has not established appropriate benchmarks...

The relevant question is the degree of deference to be granted under the ‘clearly erroneous’ standard. The amount is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the County’s actions a ‘critical review’ and is a ‘more intense standard than the arbitrary and capricious standard.’”

Swinomish Indian Tribal Cmty v. W. Wash. Growth Mgmt Hearings Bd. (2007)

(citations omitted)

FOURTH QUESTION: DOES ORDINANCE 431 PERPETUATE SPRAWL?

Since 1990, one of GMA's "bedrock principles has been to develop urban development into urban growth areas" to protect from low-density sprawl.

Burrow v. Kitsap County (2000)

Jurisdictions should "encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."

RCW 36.70A.020(1)

Jurisdictions should "reduce the inappropriate conversion of undeveloped land into sprawling, low-density development."

RCW 36.70A.020(2)

In urban growth areas, "urban growth shall be encouraged."

"[E]ach urban growth area shall permit urban densities."

(Both of these are GMA *requirements*.)

RCW 36.70A.110

"[A]n urban land use pattern of one... acre lots would constitute sprawl... and is not an appropriate urban density..."

Bremerton v. Kitsap County (1995)

“[T]he inappropriate conversion of undeveloped land into sprawling [one-acre lot] low-density development... would effectively thwart long-term urban development within the City’s boundaries...”

Hensley v. Woodinville (1997)

The GMA duty to “encourage urban growth” and “permit urban densities” is an ongoing duty which is separate and independent from the requirement to accommodate the allocated population projection.

Benaroya v. City of Redmond (1997)

“Sprawl, in all of its characterizations, is the antithesis of Smart Growth...”

[T]he central goal of the Smart Growth movement... is ending the low density development... of sprawl...

The benefits of compact development at higher densities are assumed to include: efficiencies in the use of land resources; efficiencies in the provision of transportation infrastructure and other public facilities and services; greater choice and diversity in housing, which are believed to increase prospects for affordability in housing; and increased employment and business opportunities that further the goal of economic vitality.”

G. Zovanyi, *The role of Initial Statewide Smart-Growth Legislation in Advancing the Tenets of Smart Growth*, The Urban Lawyer (Spring 2007)

(citations omitted)

“[O]ne of the key organizing principles in the GMA is to concentrate urban development within urban growth areas and to prohibit it in rural areas and resource lands...

The long term viability of the UGA... depends upon the ability to utilize serviceable and environmentally unconstrained land in an efficient manner...

It is neither practical nor equitable for cities that are stepping up to meet new growth demands, that outlying jurisdictions consider a pattern of large lots to be frozen in perpetuity...

[T]he four units per acre threshold constitutes a ‘safe harbor’ which is to say that it is an irrefutably valid appropriate urban density.”

J. Tovar, *Appropriate Urban Densities in the Central Puget Sound Region* (2005)

“The bottom line is that communities that zone large amounts of land for minimum lot sizes of one to three acres are facilitating sprawl and denying many households an opportunity to live at higher, affordable densities.”

Porter recommends 6-10 units per acre in suburban locations and 15-20 units or more per acre in urban locations “in terms of the efficient use of land resources.”

D. Porter, *Making Smart Growth Work* (2002)

**FIFTH QUESTION: IS ORDINANCE 431 CONSISTENT WITH THE CITY'S
COMPREHENSIVE PLAN?**

**Development regulations must be consistent with and implement a City's
comprehensive plan.**

RCW 36.70A.040(3)

**“Regulations shall include provisions such as: (1) Requiring minimum densities for
subdivisions to ensure full land use where urban services are provided.”**

Comprehensive Plan Policy H 1.4

**SIXTH QUESTION: DOES ORDINANCE 431 PROMOTE AFFORDABLE
HOUSING?**

“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.”

RCW 36.70A.020(4)

CONCLUSION

This case presents the Board with a choice:

Stay the course in your interpretation of the GMA – GMA requires planning for compact urban development and to prevent the perpetuation of suburban sprawl

Or

Chart a new course as advocated by the City – defer to local jurisdiction's predilections to maintain their existing suburban, sprawling, residential character.

The vast majority of urban jurisdictions have faithfully followed (and relied upon) the urban density course you have charted by designating their UGAs for urban densities (including, until 2007, Woodinville).

Judges Ellington and Agid, and the Swinomish Supreme Court majority, have reaffirmed the propriety of the Board's role in interpretation of the goals and requirements of the GMA.

At this time, jurisdictions, planners, and property owners throughout Central Puget Sound are looking to the Board to reaffirm its urban density jurisprudence.

Phoenix respectfully asks the Board to do so.