

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

KENMORE MHP LLC, JIM PERKINS, and
KENMORE VILLAGE MHP, LLC,

Petitioners,

v.

CITY OF KENMORE,

Respondent.

Case No. 19-3-0012

FINAL DECISION AND ORDER

SYNOPSIS

Kenmore MHP LLC, Jim Perkins, and Kenmore Village MHP, LLC (Petitioners) challenged the City of Kenmore's (City) adoption of Ordinance 19-0481. Petitioners contend the imposition of the development regulations related to the Manufactured Housing Community (MHC) zone, in an area previously planned for intense development, violated the Growth Management Act (GMA) and County-wide Planning Policies by failing to provide justifications for zoning changes and by failing to meet the county-wide housing growth targets.

The Board dismissed Petitioners' challenges related to RCW 36.70A.070, RCW 36.70A.100, RCW 36.70A.110, and RCW 36.70A.210 because they apply to comprehensive plans and not development regulations. The Board dismissed issues related to WAC 365-196-800 because it does not set forth substantive requirements of the GMA. The Board dismissed issues related to RCW 36.70A.040(3) because it applies to the initial adoption of comprehensive plans and development regulations, which are not at issue in this

1 matter. Finally, the Board determined that Petitioners have failed to meet their burden of
2 establishing the City's actions were inconsistent with its Comprehensive Plan or that the
3 City's Ordinance was clearly erroneous in view of the entire record before the Board and in
4 light of the goals and requirements of the GMA. The Petition was, therefore, dismissed.
5

6 I. INTRODUCTION

7 In 2017, the City began exploring, among other things, how to preserve existing
8 mobile home parks to be consistent with the City's Housing Strategy and
9 RCW 36.70A.070(2)(c). On November 26, 2018, the City created the MHC land use zoning
10 designation and applied this designation to existing manufactured housing within the City,
11 including four parcels consisting of 22 acers of total land owned by the Petitioners.
12

13 On April 15, 2019, the City adopted its Development Regulations related to the MHC
14 zone through Ordinance 19-0481 (Ordinance). The notice was published on April 18, 2019.
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16 On June 14, 2019, Petitioners filed their Petition for Review, which asserted that the
17 Ordinance reduced the availability of land for dense urban housing sufficient for development
18 potential for the number of residential dwelling units planned as required by the County-wide
19 Planning Policies and RCW 36.70A.070 and .110(2), (3), and (4); that the Ordinance failed
20 to encourage growth in areas where adequate public facilities are located, and in densities
21 to permit the projected growth for the next twenty years as required by RCW 36.70A.110(2),
22 (3); that the City was prohibited from decreasing its land supply for housing and must take
23 "its fair share" of growth, particularly in areas like the City's downtown area where there are
24 existing public facilities and service capacities; and finally, that the City's Development
25 Regulations are inconsistent with its Comprehensive Plan.
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27 Procedural matters relevant to the case are detailed in Appendix A.
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29 Legal issues relevant to the case are detailed in Appendix B.
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1 **II. BOARD JURISDICTION**

2 The Board finds the Petition for Review was timely filed, pursuant to
3 RCW 36.70A.290(2). The Board finds the Petitioners have standing to appear before the
4 Board pursuant to RCW 36.70A.280(2)(b), and .280(4). The Board also finds it has
5 jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).
6

7 **III. STANDARD OF REVIEW**

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9 Comprehensive plans and development regulations, and amendments to them, are
10 presumed valid upon adoption.¹ This presumption creates a high threshold for challengers
11 as the burden is on the petitioners to demonstrate that any action taken by a city is not in
12 compliance with the Growth Management Act (GMA).² The Board is charged with
13 adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and
14 development regulations.³
15

16 The scope of the Board’s review is limited to determining whether a city has achieved
17 compliance with the GMA only with respect to those issues presented in a timely petition for
18 review.⁴ The Board is directed to find compliance unless it determines that the challenged
19 action is clearly erroneous in view of the entire record before the Board and in light of the
20 goals and requirements of the GMA.⁵
21

22 **IV. ANALYSIS AND DISCUSSION**

23 **Issue No. 1. Whether Kenmore is not in compliance with RCW 36.70A.110 and**
24 **RCW 36.70A.070 by removing potential urban housing for at least a decade, because**
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26 ¹ RCW 36.70A.320(1). As the City correctly indicate, Petitioners incorrectly apply the “show your work”
27 requirement. See Petitioners’ Prehearing Brief at 2. The “show your work” requirement pertains to a county’s
28 sizing of a UGA, which is not relevant here. See *Kittitas County Conservation v. Kittitas County*, Case No.
07-1-0004c Finding Continuing Non-Compliance and Invalidity as to Legal Issues 4 and 13 (RE: . . . City of
29 Kittitas UGA), (Feb. 4, 2009) at 36-37. Respondent City of Kenmore’s Prehearing Brief, fn 70 p. 14.

30 ² RCW 36.70A.320(2).

31 ³ RCW 36.70A.280, RCW 36.70A.302.

32 ⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3). In order to find a city’s action clearly erroneous, the Board must be “left with the firm
and definite conviction that a mistake has been committed.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201,
849 P.2d 646 (1993).

1 it causes Kenmore to fail to meet its obligation to provide sufficient dwelling units
2 under RCW 36.70A.110(2), (3) and (4), thereby forcing the creation of new dwelling
3 units on other cities or unincorporated areas of King County.

4 **Applicable Laws:**

5 **RCW 36.70A.070 Comprehensive plans—Mandatory elements.**

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7 The comprehensive plan of a county or city that is required or chooses
8 to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive
9 text covering objectives, principles, and standards used to develop the
10 comprehensive plan. The plan shall be an internally consistent document and
11 all elements shall be consistent with the future land use map. A comprehensive
12 plan shall be adopted and amended with public participation as provided in
13 RCW 36.70A.140. Each comprehensive plan shall include a plan, scheme, or
14 design for each statutorily required planning element.

15 **RCW 36.70A.110(2)-(4)**

16 (2) Based upon the growth management population projection made for
17 the county by the office of financial management, the county and each city
18 within the county shall include areas and densities sufficient to permit the urban
19 growth that is projected to occur in the county or city for the succeeding twenty-
20 year period, except for those urban growth areas contained totally within a
21 national historical reserve. As part of this planning process, each city within the
22 county must include areas sufficient to accommodate the broad range of needs
23 and uses that will accompany the projected urban growth including, as
24 appropriate, medical, governmental, institutional, commercial, service, retail,
25 and other nonresidential uses.

26

27 (3) Urban growth should be located first in areas already characterized
28 by urban growth that have adequate existing public facility and service
29 capacities to serve such development, second in areas already characterized
30 by urban growth that will be served adequately by a combination of both
31 existing public facilities and services and any additional needed public facilities
32 and services that are provided by either public or private sources, and third in
the remaining portions of the urban growth areas. Urban growth may also be
located in designated new fully contained communities as defined by
RCW 36.70A.350.

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2 (4) In general, cities are the units of local government most appropriate
3 to provide urban governmental services. In general, it is not appropriate that
4 urban governmental services be extended to or expanded in rural areas except
5 in those limited circumstances shown to be necessary to protect basic public
6 health and safety and the environment and when such services are financially
7 supportable at rural densities and do not permit urban development.

7 **Board Discussion**

8 Petitioners assert the City's Ordinance fails to assure sufficient development potential
9 for the number of residential dwelling units planned and as required by the County-wide
10 planning policies and RCW 36.70A.070 and 110(2), (3), and (4).⁶ Specifically, Petitioners
11 assert the City failed to encourage growth in areas where adequate public facilities are
12 located, and in densities to permit the projected growth for the next twenty years as required
13 by RCW 36.70A.110(2), (3).⁷ Additionally, Petitioners assert the City must take its fair share
14 of growth particularly in areas like the City's downtown area where there are existing public
15 facilities and service capacities.⁸ Petitioners also assert the City cannot decrease the land
16 supply for housing.⁹

17
18 The City asserts RCW 36.70A.070 and .110 do not apply to development regulations,
19 but instead only to comprehensive plans.¹⁰ The City also asserts Petitioners have failed to
20 meet their burden because the City has demonstrated it has sufficient excess capacity to
21 meet its growth target even after removing Petitioners' properties, the ability to transfer
22 development rights results in "no net loss" of density; and the 2021 "Buildable Lands Report"
23 shows that the City is meeting its growth target.¹¹

24
25 Petitioners largely take issue with the City's decision to place its properties in the City's
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28 ⁶ Petitioners' Prehearing Brief at 8.

29 ⁷ *Id.* at 9.

30 ⁸ *Id.* at 10.

31 ⁹ *Id.* at 9-10.

32 ¹⁰ Respondent City of Kenmore's Prehearing Brief at 16-18 (citing *Hanson v. King County*, Case 98-3-0015c, Final Decision and Order, (Dec. 16, 1998) at 7-8 and 9, *et al.*) (City's Prehearing Brief).

¹¹ *Id.* at 19.

1 earlier adopted MHC zone. Previously, Petitioners' properties had been in a zone planned
2 for more intense resident development or redevelopment. However, as Petitioners
3 acknowledge, they are challenging the City's Development Regulations and not the City's
4 Comprehensive Plan. Petitioners also acknowledged at the Hearing on the Merits that they
5 are inviting the Board to overturn long-standing precedent in applying RCW 36.70A.070 and
6 RCW 36.70A.110 to development regulations. The Board we will not overturn precedent
7 without a clear showing that an established rule is incorrect and harmful.¹² Petitioners have
8 failed to demonstrate either. As the City correctly notes and this Board reaffirms,
9 RCW 36.70A.070 and RCW 36.70A.110 apply to comprehensive plans and do not apply to
10 development regulations.
11

12 Petitioners also assert the Ordinance violates the City's obligations under
13 RCW 36.70A.110(4). The City is entirely urbanized, and this matter involves the City's
14 Development Regulations within its urban boundaries. Because this case does not involve
15 expanding urban services into the rural environment, the Board sees no application of this
16 statute in this matter and dismisses any issues related thereto.
17

18 Petitioners next assert the City must demonstrate a change in circumstances to
19 change the underlying zoning.¹³ Petitioners also argue our holding in *Suquamish Tribe*
20 creates a presumption that downsizing within an Urban Growth Area (UGA) frustrates the
21 GMA.¹⁴ The Board disagrees with Petitioners' reading of *Suquamish Tribe* and find it and
22 *Parkridge* inapplicable to this matter. *Suquamish Tribe* involved sizing an Urban Growth Area
23 and not reducing density as Petitioners assert and *Parkridge* involved zoning and not
24 development regulations, which is the subject of this Ordinance.¹⁵ Petitioners also assert
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28 ¹² *Futurewise v. Spokane County*, Case No. 18-1-0007, Final Decision and Order (June 23, 2021) at 3
29 (citing, *G. Clark Constr. Co. v. Pac. Nw. Reg'l Council of Carpenters*, 180 Wn.2d 54, 66, 322 P.3d 1207
30 (2014)).

31 ¹³ Petitioners' Prehearing Brief at 11 (citing *Parkridge v. City of Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359
32 (1978) and *Smith v. Skagit County*, 75 Wn.2d 715, 731 (1969)).

¹⁴ *Suquamish Tribe v. Kitsap County*, CPSPGMHB No. 07-3-0019c, Final Decision and Order on Remand
(Aug. 31, 2011).

¹⁵ Petitioners' Prehearing Brief at 13-14; *Parkridge supra*.

1 *Children’s Alliance* applies and stands for the proposition that a city may not reduce its land
2 supply available for housing.¹⁶ The Board disagrees. *Children’s Alliance* addressed a
3 different factual scenario involving the prohibition of locating and operating group homes
4 within a city and is inapplicable here.

5 Here, the City adopted its Comprehensive Plan following an 18-months long process,
6 which considered competing needs, including, among other things, buildable lands and
7 housing for the moderate, low, very low, and extremely low-income households, as well as
8 manufactured housing as required.¹⁷ The Board agrees with the City and the record reflects,
9 particularly the King County Buildable Lands Report, that the City has met and is exceeding
10 its housing obligations.¹⁸ While Petitioners dispute the City’s zoning choices, clearly the shift
11 in direction, and perhaps even the math, they nevertheless acknowledged at the Hearing on
12 the Merits that “on paper” the record reflects that the City has demonstrated it exceeds its
13 housing obligations. Thus, the Board cannot find a GMA violation. Furthermore, Petitioners
14 are impermissibly attempting to challenge the City’s zoning choices through its Development
15 Regulations.
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18 Petitioners also, improperly, argue issues related to RCW 36.70A.115 and
19 RCW 36.70A.130.¹⁹ As we have previously ruled, those issues are not properly before the
20 Board as Petitioners made an untimely request to add these substantive issues.²⁰ However,
21 considering the merits, Petitioners nevertheless fail to meet their burden on these issues.
22

23 The Board is persuaded that, as demonstrated by the City in Table H-G “Existing
24 Housing Units, Capacity, and Targets, Kenmore” from the 2014 King County Buildable Lands
25 Report, that “the City complied with the GMA to accommodate its growth target and had
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28 ¹⁶ *Children’s Alliance v. City of Bellevue*, Case No. 95-3-011, Final Decision and Order (May 17, 1995);
29 Petitioners’ Prehearing Brief at 9-10.

30 ¹⁷ RCW 36.70A.070(2)(c).

31 ¹⁸ Exhibits 47-5, 50 (adequate capacity and excess capacity to meet the 20-year growth targets).

32 ¹⁹ Despite the Boards repeated Orders to the contrary, Petitioners nevertheless included and raised RCW
36.70A.115 and .130 issues. The City objected to the inclusion of .115 and .130 issues.

²⁰ See Order Clarifying Basis for Denial of Motion to Amend, Denying Renewed Motion to Amend, and
Denying Motion to Strike, September 22, 2023.

1 excess capacity to spare even with the ‘downzone’ of the four MHC parcels”²¹ That is, the
2 City has land suitable land for development within its jurisdiction to accommodate its
3 allocated and projected residential housing needs.

4 The Board finds and concludes RCW 36.70A.070 and RCW 36.70A.110 apply to
5 comprehensive plans and do not apply to development regulations. Consequently, this issue
6 is dismissed.
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8 **Issue No. 2. Whether Kenmore is not in compliance with RCW 36.70A.210 and**
9 **RCW 36.70A.100, by removing potential urban housing for at least a decade because**
10 **Kenmore’s actions conflict with County-wide planning policies and, therefore,**
11 **RCW 36.70A. 210(1) and RCW 36.70A.100.**

12 **Applicable Laws:**

13 **RCW 36.70A.210(1)**

14 (1) The legislature recognizes that counties are regional governments
15 within their boundaries, and cities are primary providers of urban governmental
16 services within urban growth areas. For the purposes of this section, a
17 “countywide planning policy” is a written policy statement or statements used
18 solely for establishing a countywide framework from which county and city
19 comprehensive plans are developed and adopted pursuant to this chapter. This
20 framework shall ensure that city and county comprehensive plans are
21 consistent as required in RCW 36.70A.100. Nothing in this section shall be
22 construed to alter the land-use powers of cities.

23 **RCW 36.70A.100 Comprehensive Plans – Must be coordinated.**

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

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32 ²¹ City’s Prehearing Brief at 21 (emphasis omitted).

1 **Board Discussion**

2 Petitioners assert the City’s Ordinance causes the City to be out of compliance with
3 RCW 36.70A.210(2), county-wide planning policies, and RCW 36.70A.100, coordinated
4 comprehensive plans, because the City is not taking its fair share of housing growth.²²

5 The City asserts RCW 36.70A.100 and RCW 36.70A.210 only apply to the adoption
6 and consistency of comprehensive plans and not development regulations.²³ The City also
7 asserts the Legislature’s adoption of RCW 36.70A.115, which specifically included
8 development regulations, demonstrates the Legislature’s intent to exclude development
9 regulations from other provisions.²⁴

10 The Board agrees with the City. RCW 36.70A.100 and RCW 36.70A.210 do not apply
11 to development regulations. Had the Legislature intended these statutes to apply to
12 development regulations, it would have taken the opportunity to do when it adopted RCW
13 36.70A.115. Furthermore, RCW 36.70A.115 does not alter our prior decisions. Moreover, as
14 we have previous stated, the City has demonstrated it is meetings its projected growth
15 targets.
16

17 Thus, we cannot find a GMA violation and this issue is dismissed.
18

19
20 **Issue No. 3. Whether Kenmore is not in compliance with RCW 36.70A.040,**
21 **RCW 36.70A.130 and WAC 365-196-800 because Ordinance No. 19-0481 is**
22 **inconsistent with and fails to implement numerous provisions of the City’s**
23 **Comprehensive Plan regarding the vision for downtown Kenmore in relation to**
24 **redevelopment goals to concentrated and dense pedestrian and transit-oriented**
25 **residential and multiuse development in the downtown area.**

26 **Applicable Laws:**

27 **RCW 36.70A.040(3)-(4) Who must plan—Summary of requirements—Resolution for**
28 **partial planning—Development regulations must implement comprehensive plans—**
29 **Tribal participation.**

30 ²² Petitioners’ Prehearing Brief at 18-19.

31 ²³ City’s Prehearing Brief at 33.

32 ²⁴ *Id.* at 34 (citing *Leonard v. City of Bothell*, 87 Wn.2d 847, 853, 557 P.2d 1306 (1976) (“when a legislature enacts a law, it is presumed to be familiar with its prior enactments and judicial decisions”)).

1
2 (3) Any county or city that is initially required to conform with all of the
3 requirements of this chapter under subsection (1) of this section shall take
4 actions under this chapter as follows: (a) The county legislative authority shall
5 adopt a countywide planning policy under RCW 36.70A.210; (b) the county and
6 each city located within the county shall designate critical areas, agricultural
7 lands, forestlands, and mineral resource lands, and adopt development
8 regulations conserving these designated agricultural lands, forestlands, and
9 mineral resource lands and protecting these designated critical areas, under
10 RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take
11 other actions related to urban growth areas under RCW 36.70A.110; and (d) if
12 the county has a population of fifty thousand or more, the county and each city
13 located within the county shall adopt a comprehensive plan under this chapter
14 and development regulations that are consistent with and implement the
15 comprehensive plan on or before July 1, 1994, and if the county has a
16 population of less than fifty thousand, the county and each city located within
17 the county shall adopt a comprehensive plan under this chapter and
18 development regulations that are consistent with and implement the
19 comprehensive plan by January 1, 1995, but if the governor makes written
20 findings that a county with a population of less than fifty thousand or a city
21 located within such a county is not making reasonable progress toward
22 adopting a comprehensive plan and development regulations the governor
23 may reduce this deadline for such actions to be taken by no more than one
24 hundred eighty days. Any county or city subject to this subsection may obtain
25 an additional six months before it is required to have adopted its development
26 regulations by submitting a letter notifying the department of its need prior to
27 the deadline for adopting both a comprehensive plan and development
28 regulations.

29 (4) Any county or city that is required to conform with all the
30 requirements of this chapter, as a result of the county legislative authority
31 adopting its resolution of intention under subsection (2) of this section, shall
32 take actions under this chapter as follows: (a) The county legislative authority
shall adopt a countywide planning policy under RCW 36.70A.210; (b) the
county and each city that is located within the county shall adopt development
regulations conserving agricultural lands, forestlands, and mineral resource
lands it designated under RCW 36.70A.060 within one year of the date the
county legislative authority adopts its resolution of intention; (c) the county shall
designate and take other actions related to urban growth areas under RCW
36.70A.110; and (d) the county and each city that is located within the county
shall adopt a comprehensive plan and development regulations that are

1 consistent with and implement the comprehensive plan not later than four years
2 from the date the county legislative authority adopts its resolution of intention,
3 but a county or city may obtain an additional six months before it is required to
4 have adopted its development regulations by submitting a letter notifying the
5 department of its need prior to the deadline for adopting both a comprehensive
6 plan and development regulations.

7 **RCW 36.70A.130(1)(a), (d)-(e) — Comprehensive plans—Review procedures and
8 schedules—Implementation progress report.**

9 (1)(a) Each comprehensive land use plan and development regulations
10 shall be subject to continuing review and evaluation by the county or city that
11 adopted them. Except as otherwise provided, a county or city shall take
12 legislative action to review and, if needed, revise its comprehensive land use
13 plan and development regulations to ensure the plan and regulations comply
14 with the requirements of this chapter according to the deadlines in subsections
15 (4) and (5) of this section.

16 (d) The review and evaluation required by this subsection shall include,
17 but is not limited to, consideration of critical area ordinances and, if planning
18 under RCW 36.70A.040, an analysis of the population allocated to a city or
19 county from the most recent 10-year population forecast by the office of
20 financial management.

21 (e) Any amendment of or revision to a comprehensive land use plan
22 shall conform to this chapter. Any amendment of or revision to development
23 regulations shall be consistent with and implement the comprehensive plan.

24 **WAC 365-196-800(1)— Relationship between development regulations and
25 comprehensive plans.**

26 (1) Development regulations under the act are specific controls
27 placed on development or land use activities by a county or city. Development
28 regulations must be consistent with and implement comprehensive plans
29 adopted pursuant to the act.

30 "Implement" in this context has a more affirmative meaning than merely
31 "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of
32 conflict but also a sufficient scope to fully carry out the goals, policies,
standards and directions contained in the comprehensive plan.

1 **Board Discussion**

2 Petitioners assert the City’s Development Regulations are inconsistent with its
3 Comprehensive Plan because it failed to consider or evaluate the population allocations
4 derived from the population forecast.²⁵ Petitioners also assert the Ordinance is inconsistent
5 with the City’s Comprehensive Plan because it removes residential capacity, fails to provide
6 redevelopment opportunities, fails to promote high density, multi-family housing and
7 concentrating such housing downtown near multi-modal transportation opportunity, and fails
8 to make downtown the focal point of the community.²⁶

9
10 The City requests the Board dismiss argument related to RCW 36.70A.130 based on
11 the Board’s prior Order, and dismiss issues related to RCW 36.70A.040(3) because that
12 statute is limited to the initial adoption of comprehensive plans and development
13 regulations.²⁷ The City also requests the Board dismiss any issues related to a WAC 365-
14 196-800 based on our holding in *Peranzi*.²⁸ Lastly, the City asserts Petitioners have failed to
15 meet their burden of demonstrating the City’s Development Regulations are inconsistent with
16 its Comprehensive Plan.²⁹

17
18 As it relates to WAC 365-196-800 and RCW 36.70A.040(3), the Board agrees with
19 the City. As we have previously noted, WAC 365-196-800 does not set forth substantive
20 requirements.³⁰ Additionally, RCW 36.70A.040(3) applies to the initial adoption of
21 comprehensive plans and development regulations.³¹ Consequently, issues related thereto
22 are dismissed.
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26 ²⁵ Petitioners’ Prehearing Brief at 20.

27 ²⁶ *Id.* at 27, 28, 29, 31-39.

28 ²⁷ City’s Prehearing Brief at 35-36.

29 ²⁸ *Peranzi v. City of Olympia*, Case No. 11-2-011, Final Decision and Order (May 4, 2012). Petitioners
30 misapply and miscite *Peranzi*. Petitioners cited materials discuss the definition of Consistency. However,
31 more relevant to the issue here, the Board in that matter dismissed issues related WAC 396-196-800 holding
32 that WAC does not set forth substantive requirements.

²⁹ City’s Prehearing Brief at 37-42.

³⁰ *Peranzi supra*.

³¹ *Friends of San Juan et. al. v. San Juan County*, Case No. 13-2-0012c, Final Decision and Order (Sept. 6,
2013) at 9.

1 Petitioners assert the City’s Development Regulations are inconsistent with the City’s
2 vision in the Comprehensive Plan of promoting centrally located multi-family and mix use
3 development, with high density housing and other activities, using multi-modal
4 transportations services, that meet environmental and affordable housing goals by taking
5 significant sites and removes them from redevelopment.³² However, Petitioners fail to
6 demonstrate an actual conflict or explain how retaining four existing mobile home parks
7 consisting of 22 acres is inconsistent with the City’s Comprehensive Plan. Clearly, removing
8 the highest and best use of certain acreage impacts development and redevelopment, but
9 that alone does not create an inconsistency. As the Board has noted, the City has
10 demonstrated sufficient residential capacity. Thus, the balance amounts to a community
11 choosing how to accommodate its growth. The Board grants deference to communities and
12 their choices about how growth is to be accommodated within its city limits.
13

14 Petitioners, despite an order to the contrary, assert the City’s Ordinance is
15 inconsistent with RCW 36.70A.130 because it failed to reallocate densities to accommodate
16 the projected urban growth.³³ The Board disagrees. As noted above, the City has
17 demonstrated sufficient residential housing capacity.
18

19 While the Board is sympathetic with the position the Petitioners find themselves in as
20 owners of property now affected by the MHC zone, however, ultimately Petitioners have
21 failed to demonstrate an inconsistency with or within the City’s Comprehensive Plan. Thus,
22 the Board finds and concludes Petitioners have failed to meet their burden and this issue is
23 dismissed.
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31 _____
32 ³² Petitioners’ Prehearing Brief at 25-26.

³³ *Id.* at 21.

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V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds:

- Petitioners have failed to establish the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.
- The Petition is dismissed.

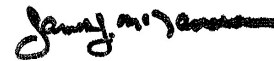
SO ORDERED this 2nd day of April, 2024.



MARK McCLAIN, Presiding



RICK EICHSTAEDT, Board Member



JAMES J. McNAMARA, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.³⁴

³⁴ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514; RCW 36.01.050. See also RCW 36.70A.300(5); WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

Appendix A: Procedural matters

On June 14, 2019, Petitioners Kenmore MHP LLC, Jim Perkins, and Kenmore Village MHP, LLC filed a Petition for review with this Board challenging a moratorium adopted by the City of Kenmore (“City”). The petition was assigned case no. 19-3-0012.

A notice of hearing and preliminary scheduled issued on June 20, 2019.

A prehearing conference was held telephonically on July 15, 2019. Petitioners appeared through their counsel, Richard Stephens. Respondent, City of Kenmore, appeared through its counsel, Dawn Reitan.

On July 18, 2019, Petitioners filed a Motion to Amend seeking to add two statutory bases to two of their claims (identified as Issues B and D in Paragraph 13 of the Petition for Review).

In its Prehearing Order dated July 23, 2019, the Board denied the Motion to Amend stating, “Petitioners filed a Motion to Amend requesting to add two legal bases to their list of issues. This motion is denied.”

On July 29, 2019, the City filed a Motion for Summary Judgment. Petitioners filed an Opposition to City’s Motion for Summary Judgment on August 7, 2019.

On August 29, 2019, the Board issued an order on motion for summary judgment dismissing Petitioners’ Petition for Review in its entirety. Thereafter, Petitioners sought review in the Thurston County Superior Court. The Thurston County Superior Court reversed and remanded the case back to the Board, but indicated in their ruling that the reasons for denying the Petitioners’ motion were necessary to review the decision on the motion to amend. Thereafter, the City filed a notice of appeal and Division II of the Court of Appeals reversed the Superior Court’s ruling. Petitioners sought and were granted review by the Supreme Court.

On May 4, 2023, the Supreme Court reversed the Court of Appeals’ decision and remanded this matter back to the Thurston County Superior Court. In its order dated June 23, 2023, the Thurston County Superior Court stated that “the Board is directed to articulate

1 the bass for its decision to deny Petitioners’ Motion to Amend.” Further, that “the Board may
2 exercise its discretion to reconsider its decision on Petitioners’ motion to amend, should it
3 choose to do so.”

4 On August 31, 2023, Petitioners filed a Renewed Motion to Amend reiterating the
5 request to amend the issues as previously requested in their July 18, 2019, motion. On
6 September 11, 2023, the City filed a response opposing the renewed motion to amend. On
7 September 14, 2023, Petitioners filed a reply in support of their renewed motion to amend.
8 On September 14, 2023, the City filed a Motion to Strike Petitioners’ Reply in Support of
9 Renewed Motion to Amend Petition for Review. A response to that motion was filed by
10 Petitioners on September 14, 2023. On September 22, 2023, the Board denied Petitioners’
11 Renewed Motion to Amend as untimely and adding new substantive legal claims; the Board
12 also denied the City’s Motion to Strike Petitioners’ Reply in Support of Renewed Motion to
13 Amend Petition for Review.
14

15 On October 23, 2023, Petitioners filed a Motion to Supplement the Record. The City
16 agreed, but requested clarification of the Board’s September 22, 2023, Order. On November
17 6, 2023, an Order on Motion to Supplement the Record issued, directing the Record to
18 include the City of Kenmore’s Comprehensive Plan, the King County County-wide Planning
19 Policies, and the 2021 King County Urban Growth Capacity Report June 2021 (Urban Growth
20 Capacity Report), and further amplified the Board’s September 22, 2023, Order, indicating to
21 the extent that Order needs clarification, the inclusion of RCW 36.70A.130 improperly raises
22 a new legal issue and will not be considered.
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25 On November 27, 2023, the City filed a Motion to Supplement the Record to include
26 the Housing Strategy Plan, approved by the City Council on March 20, 2017, and three
27 decisions. On November 29, 2023, the Board Ordered it would take official notice of the
28 requested items.
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30 On December 5, 2023, the Parties filed a Joint Request to Postpone Proceedings to
31 Facilitate Settlement Discussions, which was granted by the Board’s Order on December 7,
32 2023.

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On February 26, 2024, the Parties filed a Status report.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioners Prehearing Brief with Exhibits, November 14, 2023.
- City filed its Prehearing Brief (Respondent City of Kenmore’s Prehearing Brief) with Exhibits, November 27, 2023.
- Petitioners Prehearing Reply Brief and Exhibits, December 5, 2023.

Hearing on the Merits

The Hearing on the Merits convened March 7, 2024. Petitioners appeared through their counsel, Richard Stephens. The City of Kenmore appeared through its counsel, Dawn Reitan. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Appendix B: Legal Issues

Per the Second Prehearing Order, legal issues in this case were as follows:

1. Whether Kenmore is not in compliance with RCW 36.70A.110 and RCW 36.70A.070 by removing potential urban housing for at least a decade, because it causes Kenmore to fail to meet its obligation to provide sufficient dwelling units under RCW 36.70A.110(2), (3) and (4), thereby forcing the creation of new dwelling units on other cities or unincorporated areas of King County.
2. Whether Kenmore is not in compliance with RCW 36.70A.210 and RCW 36.70A.100, by removing potential urban housing for at least a decade because Kenmore's actions conflict with County-wide planning policies and, therefore, RCW 36.70A.210(1) and RCW 36.70A.100.
3. Whether Kenmore is not in compliance with RCW 36.70A.040, RCW 36.70A.130 and WAC 365-196-800 because Ordinance No. 19-0481 is inconsistent with and fails to implement numerous provisions of the City's Comprehensive Plan regarding the vision for downtown Kenmore in relation to redevelopment goals to concentrated and dense pedestrian and transit-oriented residential and multiuse development in the downtown area.