

Central Puget Sound Growth Hearings Board case summaries regarding Urban Densities of 4 dwelling units per acre

Relevant Hearings Board Cases for the Central Puget Sound

1. *Bremerton, et al. v. Kitsap County*, CPSGMHB No. 95-3-0039c (Final Decision and Order, October 6, 1995). Adopted “bright line” rule of 4 net dwelling units per acre, “Satisfies the low end of the range required by the Growth Management Act.”
2. *Benaroya, et al. v. City of Redmond*, CPSGMHB No. 95-03-0072 (Final Decision and Order, March 25, 1996). Findings that density is calculated per parcel, not averaged through the jurisdiction
3. *Litowitz v. City of Federal Way*, CPSGMHB No. 96-3-0005 (Final Decision and Order, July 22, 1996). Findings established the 3 part “Litowitz test” defining circumstances under which low density land use designations would be consistent with city’s duty to ensure compact urban development. Low density zoning of 1 du or lower may be used to protect critical area functions when the critical area in question is: 1) Large in scope; 2) structure & functions are complex, and 3) the rank order value is high.
4. *Hensley vs. City of Woodinville*, CPSGMHB No. 96-3-0031, (Final Decision and Order, February 25, 1997). Findings that lower densities are not justified simply because an area does not currently have sufficient services to support compact urban development.
5. *LMI v. Town of Woodway*, CPSGMHB No. 98-3-0012 (Final Decision and Order, January 8, 1999). Findings that there is not a requirement to force infill within existing neighborhoods, but land use and zoning tools cannot be used to prohibit infill at urban densities.
6. *Master Builders Association & Terry Brink v. Pierce County*, CPSGMHB No. 02-3-0010, (Final Decision and Order, February 4, 2003). Discussed the GMA’s goal to encourage the preservation of existing housing stock, and its requirement to ensure the vitality and character of established residential neighborhoods. However, as the Board stated, “any opportunity to perpetuate an “historic low-density residential” development pattern, [in the subarea], ended in 1994” when the area became part of the Urban Growth Area.

Summaries:

1995

1. *Bremerton, et al. v. Kitsap County*, CPSGMHB No. 95-3-0039c (Final Decision and Order, October 6, 1995). Adopted “bright line” rule of 4 net dwelling units per acre, “Satisfies the low end of the range required by the Growth Management Act.”

Bremerton, 5339c, Final Decision and Order, (Oct. 6, 1995). Kitsap County’s entire Comprehensive Plan and all its implementing regulations were found **not in compliance** with the GMA and were **remanded** and **invalidated**. The Plan was incomplete, did not address certain GMA requirements and inadequately addressed others. [Comprehensive Plan - Development Regulations - General Discussion – UGAs - Market Factor - Rural Element - Rural Densities – Suburban - OFM Population – CFE – EPFs - Forest Lands - Invalidity]

2. *Benaroya, et al. v. City of Redmond*, CPSGMHB No. 95-03-0072 (Final Decision and Order, March 25, 1996). Findings that density is calculated per parcel, not averaged through the jurisdiction.

Benaroya I, 5372c, Final Decision and Order, (Mar. 25, 1996). The challenged portions of Redmond’s Comprehensive Plan were **upheld, except** for: agricultural land designations, consistency of population projections, and urban densities, which were **remanded**. [Comprehensive Plan - Agricultural Lands – TDRs – Consistency – Discretion – Housing Element - OFM Population - Urban Growth – CPPs - Public Participation - Amendments - Average Net Density – CFE - Transportation Element]

1996

3. *Litowitz v. City of Federal Way*, CPSGMHB No. 96-3-0005 (Final Decision and Order, July 22, 1996). Findings established the 3 part “Litowitz test” defining circumstances under which low density land use designations would be consistent with city’s duty to ensure compact urban development. Low density zoning of 1 du or lower may be used to protect critical area functions when the critical area in question is: 1) Large in scope; 2) structure & functions are complex, and 3) the rank order value is high.

Aaron, Faith, David and Becky Litowitz; Bill, Eldrid, Tony and Patricia Segale; Rajinder and Kulwinder Johal v. City of Federal Way (Litowitz), CPSGMHB Case No. 96-3-0005 (**6305**), Final Decision and Order, (Jul. 22, 1996). The challenged portions of Federal Way’s comprehensive plan amendments relating to urban densities in critical areas were **upheld**. [Comprehensive Plan – Discretion - Standard of Review - Public Participation – Amendments - General Discussion – UGAs – Duties – Goals - Show Your Work - Critical Areas - Urban Densities - Pre-GMA - Housing Element – CFE - Localized Analysis – Infrastructure – Precedent - Property Rights]

4. *Hensley vs. City of Woodinville*, CPSGMHB No. 96-3-0031, (Final Decision and Order, February 25, 1997). Findings that lower densities are not justified simply because an area does not currently have sufficient services to support compact urban

development.

Corrine R. Hensley v. City of Woodinville (Hensley III), CPSGMHB Case No. 96-3-0031 (6331), Final Decision and Order, (Feb. 25, 1997). The challenged portions of Woodinville's comprehensive plan were **upheld, except** for two areas: review of drainage, flooding and stormwater; and urban densities that were **remanded**. [Comprehensive Plan - Official Notice - Abandoned Issues – UGAs – Consistency – CFE - Urban Services Housing Element - ILAs]

1998

5. *LMI v. Town of Woodway*, CPSGMHB No. 98-3-0012 (Final Decision and Order, January 8, 1999). Findings that there is not a requirement to force infill within existing neighborhoods, but land use and zoning tools cannot be used to prohibit infill at urban densities.

LMI/Chevron, 8312, Final Decision and Order, (Jan. 8, 1999). The challenged amendments to Woodway's Plan, which limited development to a portion of the City's Subarea Plans area, were found **not in compliance** with the requirements of the GMA and were **remanded**. [Comprehensive Plan - Development Regulations – Amendments – Discrimination - Quasi-Judicial - Abandoned Issues – Consistency - Critical Areas – BAS – Discretion - Minimum Guidelines – Deference - General Discussion – UGAs - Urban Densities - Urban Growth - Land Use Element - Land Use Pattern – Duties – Goals - Subarea Plans - Standard of Review - Housing Element - Property Rights - Transportation Element – CPPs – MPPs - Mandatory Elements - Open Space / Greenbelts]

LMI/Chevron, 8312, Finding of Compliance, (Dec. 20, 1999). In its effort to comply with the GMA, Woodway maintained appropriate urban densities in its Plan, amended its future land use map, and repealed portions of prior ordinances to remove provisions that created internal inconsistencies within the Plan. The Board entered a **Finding of Compliance** and notified the Governor that Woodway had achieved compliance. [Compliance]

2003

6. *Master Builders Association & Terry Brink v. Pierce County*, CPSGMHB No. 02-3-0010, (Final Decision and Order, February 4, 2003). Discussed the GMA's goal to encourage the preservation of existing housing stock, and its requirement to ensure the vitality and character of established residential neighborhoods. However, as the Board stated, "any opportunity to perpetuate an "historic low-density residential" development pattern, [in the subarea], ended in 1994" when the area became part of the Urban Growth Area.

MBA/Brink, 02310, Final Decision and Order, (Feb. 4, 2003). Petitioners challenged numerous provisions of the County's adoption of the Parkland Spanaway Midland Community Plan and implementing regulations. The primary focus of the challenge was on Plan provisions and zoning designations that allowed for residential densities of 1-3 dwelling units per acre and 2-4 dwelling units per acre within this UGA. Petitioners also objected to the introduction and adoption of a new zoning designation at the final hearing. The Board found that the last minute zoning amendment did **not comply** with the notice and public participation requirements of the Act. Additionally, the Board found the 2-4 dwelling unit designations did **not comply** with the GMA. Regarding the 1-3 dwelling unit designations, the Board concluded that five of the eight areas designated as 1-3 dwelling units per acre were not justified on environmental grounds since existing critical areas regulations provide adequate protection. The designation for these five areas did **not comply** with the goals and requirements of the Act. The Board determined that the non-complying provisions were **invalid**. The remaining three designations were **upheld** on environmental grounds. The matter was **remanded** for compliance. [Affordable Housing – Amendment – Consistency – CPPs – Critical Areas – Economic Development Element – Goals – Invalidity – Mandatory Elements – Notice – Open Space – Property Rights – Public Participation – Record – Transportation Element – Urban Densities – UGAs – Zoning]

MBA/Brink, 02310, Order Finding Partial Noncompliance and Continuing Invalidity, (Sep. 4, 2003). On three, and most of the fourth, remanded items, the Board found compliance. However, the Board found **continuing noncompliance** and **continuing invalidity** in one area where the County retained the 1-3 acre zoning designations. [Critical Areas – Public Participation – Zoning]

For the 471 page summary of all Central Puget Sound Growth Management Hearings Board cases, please see their website:

http://www.gmhb.wa.gov/central/CPSGMHB_DIGEST_1992_2004_3rdEd.pdf