

## GMA AND URBAN DENSITIES

Memo from Alan Marriner, Assistant City Attorney, City of Bellingham

The apparent "bright line" rule of 4 dwelling units per acre was overturned by the State Supreme Court in *Viking Properties v. Holm*, 144 Wn.2d 112, 129 (August 2005). In that case, the Court held the growth boards did not have the authority to adopt a "bright line" minimum urban density of four dwelling units per acre.

A month after the *Viking Properties* case, the Western Washington Growth Management Hearings Board discussed and applied the 4 dwelling units per acre rule in a Whatcom County case. The Board stated "[t]he principle of 4 dwelling units per acre for urban growth is not to be seen as an inflexible requirement but as a general rule of thumb. Where there are reasons to deviate from it, the County's record should show what they are." In that case, the Board allowed lower urban densities in portions of the UGA in the Lake Whatcom Watershed, as part of the County's effort to protect Lake Whatcom's water quality. It also allowed lower densities in the UGA near the airport to discourage incompatible land uses around public use airports.

In summary, local governments can have urban densities of less than 4 dwelling units per acre; however such densities must be adequately supported by the record.

I have attached the portion of the Board's decision in the Whatcom County case that discusses this issue.

Attachment:

Western Washington Growth Management Hearings Board  
State of Washington

\*1 FUTUREWISE, PETITIONER

v.

WHATCOM COUNTY, RESPONDENT

AND

GOLD STAR RESORTS, INC., INTERVENOR

Case No. 05-2-0013

September 20, 2005

FINAL DECISION AND ORDER

### C. Urban Densities

Issue No. 4: Does the County's failure to review and revise the Comprehensive Land Use Chapter and Designations Map, Zoning Map and implementing regulations that allow the UR3 zone within the urban growth area (allowing 3 du/ 1 acre in an urban designation) fail to comply with RCW 36.70A.110, RCW 36.70A.020(1) RCW 36.70A.020(2) and RCW 36.70A.130 when this density is too low to qualify as urban growth under the GMA?

### Positions of the Parties

Futurewise argues that minimum urban residential densities are **4 dwelling units** per acre and any new residential land use pattern within a UGA that is less dense constitutes urban sprawl. Pre-Hearing Brief of Futurewise at 22. For this reason, Futurewise argues that residential densities of 3 dwelling units per acre do not qualify as urban growth and allowing such urban

densities fails to comply with RCW 36.70A.110, 36.70A.020(1) and (2). Ibid at 23-4.

**\*15** The County responds that the UR3 zone allows 3 dwelling units per acre as a net density calculation. Brief of Respondent at 10. Because the UR3 zone addresses gross densities, the County argues, deductions for infrastructure and critical areas may lead to a net density of 3 dwelling units per acre in a given subdivision. Ibid. The County's planned unit development provisions also allow for greater density. Ibid. Moreover, the County argues that the comprehensive plan policies encourage even higher residential densities in urban areas and that these policies ensure consideration of higher densities in the platting process. Ibid at 11. Also, the County points to exceptions to the general rule of **4 dwelling units** per acre in urban areas. In the Lake Whatcom Watershed, the County urges that the lesser density is necessary to protect water quality and availability. Ibid at 12. In the area south of the Bellingham International Airport, the County argues that lesser densities are needed to discourage incompatible land uses around public use airports. Ibid.

The growth boards have generally considered **4 dwelling units** per acre to be a minimum urban residential density. The Central Puget Sound Growth Management Hearings Board has said that any residential pattern of four net dwelling units per acre (or higher) is compact urban development and satisfies the low end of the range required by the Act. *Bremerton, v. Kitsap County*, CPSGMHB Case No. 95-3-0039c (Final Decision and Order, October 6, 1995). This Board has also adhered to this general principle. See *Berschauer v. Tumwater*, WWGMHB Case No. 94-2-0002 (Final Decision and Order, July 27, 1994); and *Klein v. San Juan County*, WWGMHB Case No. 02-2-0009 (Final Decision and Order, October 15, 2002). ("The ratio of **four dwelling units** per acre as a minimum urban density level... more accurately reflects an urban level of density.")

However, the boards have not held rigidly to this standard. The Central Board has stated that there may be other factors that justify residential densities under **4 dwelling units** per acre in urban growth areas. *Benaroya, v. City of Redmond*, CPSGMHB Case No. 95-3-0072c (Final Decision and Order, March 25, 1996). This Board has also recognized that environmental factors may play a part in determining appropriate urban densities. *Berschauer v. Tumwater*, WWGMHB Case No. 94-2-0002 (Compliance Order, December, 17, 1994). Most recently, we held that environmental factors may be a basis for allowing residential densities of 3.5 dwelling units per acre in a non-municipal UGA. *Irondale Community Action Neighbors and Dorgan v. Jefferson County*, WWGMHB Case No. 04- 2-022 (Final Decision and Order, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 03-2-0010 (Compliance Order, May 31, 2005).

**The principle of 4 dwelling units per acre for urban growth is not to be seen as an inflexible requirement but as a general rule of thumb. Where there are reasons to deviate from it, the County's record should show what they are.** Here, the County's plan demonstrates that the Lake Whatcom Watershed requires special treatment due to its importance as a source of water for the county overall. CP 2-83 - 87. The comprehensive plan also sets out policies to reduce densities as well as to adopt best management practices to preserve the resource. Policies 2PP-5, 2PP-6, 2PP-7, and 2PP-8. These provide a rationale for the UR3 zone in the Lake Whatcom Watershed and are compliant with RCW 36.70A.110. Futurewise concedes that the Lake Whatcom Watershed is an environmentally sensitive area. Pre-Hearing Reply Brief of Futurewise at 9.

**\*16** The County also points to the use of the UR3 zone in the area south of the Bellingham International Airport. Brief of Respondent at 12. The purpose of the UR3 zone in that area is to discourage incompatible land uses around public use airports as required by CP Policy 2D-7: Incompatible uses will be discouraged adjacent to general aviation airports to preserve the safety and efficient use of these airports.

Policy 2D-7 (in part); See also Exhibit 6, Urban Fringe Land Use Subarea Plan, pp. 38-40, Map 2 (Airport/Marine Drive Mixed Use).

Futurewise concedes that "a small area directly to the south of the Bellingham Airport may be maintained at 3 du/acre." Pre-Hearing Brief of Futurewise at 10. The County has done the analysis of the hazards in the area of the airport and the burden is on Futurewise to show that

the County's analysis is clearly erroneous. Futurewise has not met this burden and we find that the UR3 zone shown on Map 2 of Exhibit 6 complies with RCW 36.70A.110, RCW 36.70A.020(1), RCW 36.70A.020(2), and RCW 36.70A.130.

The remaining areas of UR3 zone shown on Exhibit 5, Whatcom County Title 20 Zoning and Comprehensive Plan Designations, which do not fall within the Lake Whatcom Watershed or the Airport/Marine Drive Mixed Use areas, allow residential densities in the urban area that are not urban, that is, at least **4 dwelling units** per acre. The prospect that final platting decisions might actually achieve greater densities does not alter the fact that the zone itself allows less than urban densities in urban areas. This fails to comply with RCW36.70A.110 and the failure to update the plan and development regulations fails to comply with RCW 36.70A.130.

Conclusion: The UR3 zone in the Lake Whatcom Watershed complies with RCW 36.70A.110 because the County's decision to allow lesser-than-urban densities in that location is based on the environmental sensitivity of the watershed. The UR3 zone shown on Map 2: Airport/Marine Drive Mixed Use in Exhibit 6 complies with RCW 36.70A.110 because Futurewise has failed to show that the County's analysis of the need for lesser densities in this area in proximity to a general aviation airport was clearly erroneous. However, the UR3 zone in all other urban areas fails to achieve urban residential densities without analysis or rationale and thus fails to comply with RCW 36.70A.110.