

GROWTH MANAGEMENT HEARINGS BOARD UPDATE



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F A I C P

My focus for my remarks today

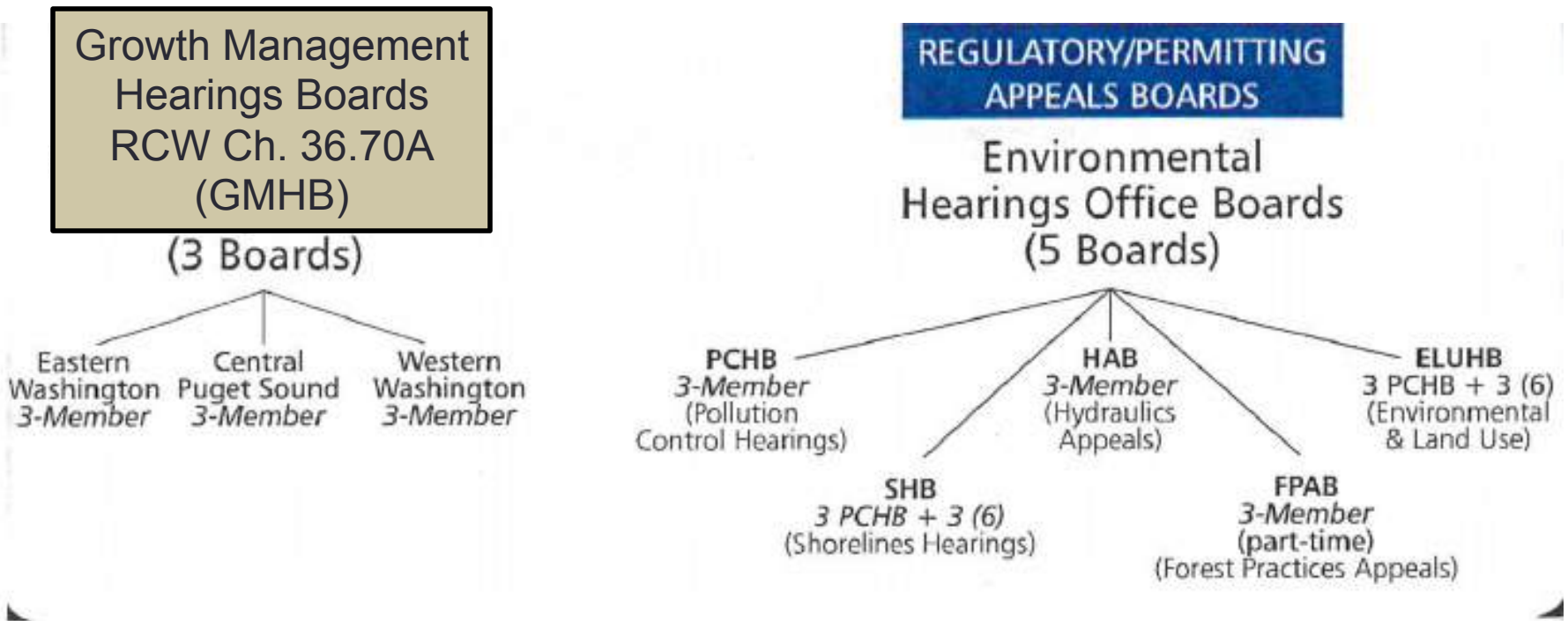
1. Overview and evolution of the GMHB structure and jurisdiction
2. Implementing comprehensive plans through subarea plans, master plans and permits - Two “book end” Decisions by the Growth Management Hearings Board
3. Tips for Planners

Growth Management Hearings Board

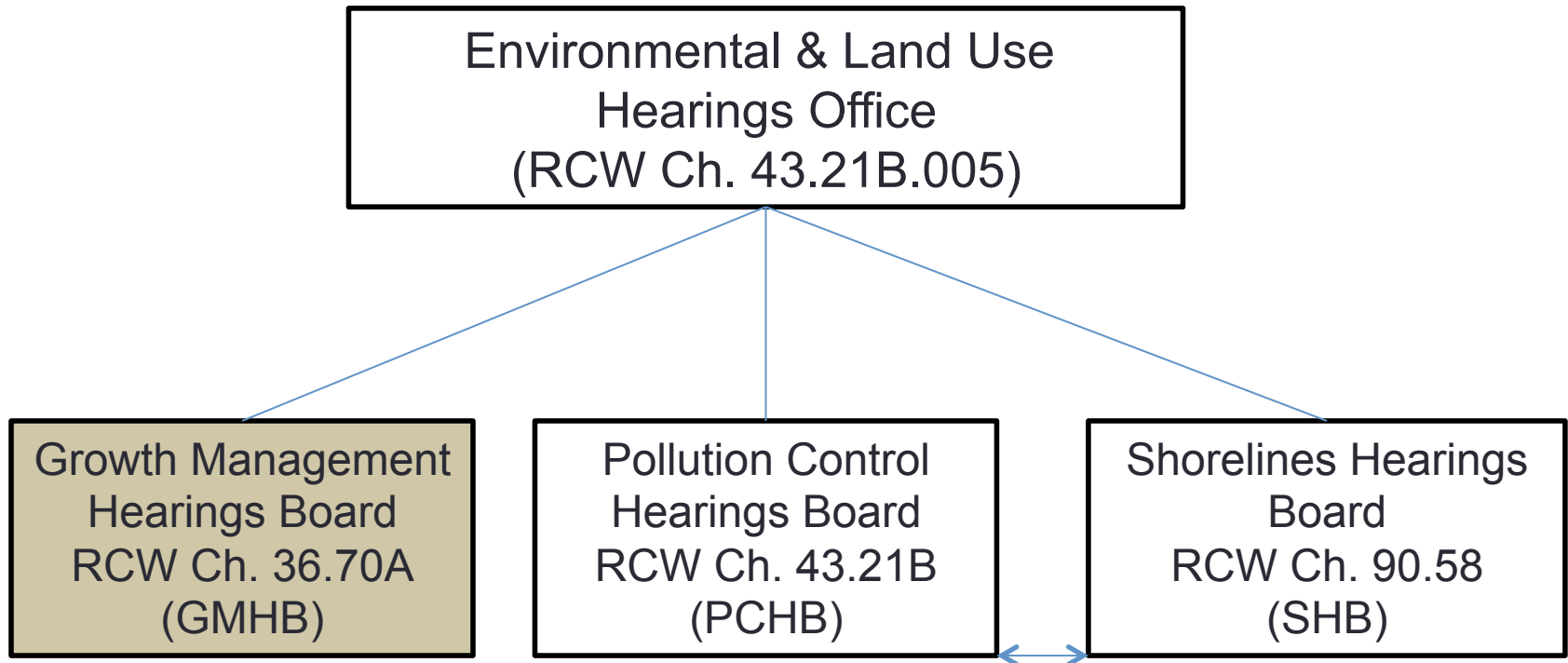


Who are those guys?

From 1992 to 2010



From 2010 to present



ELUHO created in RCW 43.21B.005

- ELUHO is the administrative umbrella agency for 3 independent, quasi-judicial Boards.
- Governor appoints all board members for 6 years with salary/benefits.
- Senate confirms PCHB members, but not GMHB members.
- Each Board has Chair (PCHB/SHB) or Administrative Officer (GMHB).

2016 Board and Staff at ELUHO

Director*
Confidential Secretary
3.5 Support Staff

*Growth Management
Hearings Board***

6 Board Members*
From 3 Regions

*Pollution Control
Hearings Board*

3 Board Members*
2 Admin. Law Judges
as staff support

Shorelines Hearings Board

Same members from
PCHB, plus 1
representative from
Counties, Cities and DNR

** 7 GMHB members total; one at-large, but vacant now

* Appointed by Governor

Resources Available from GMHB www.gmhb.wa.gov



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Growth Management Hearings Board

Home

About GMA

Of Special Interest

Contact GMHB

Print Friendly

ELUHO Homepage

Appeal Process

Settlement & Mediation

Handbook

Forms

Calendar

Digests

Case and Decision Search

RCWs & WACs

Resources

Login

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Eastern Washington



Western Washington



Central Puget Sound

On March 25, 2010 the Governor signed SSB 6214 which consolidated the three boards into one. The bill left intact the regional structure to hear cases in the three regions from which they arose. For details click here: [Board Consolidation Information](#).

In 1990, the Washington State Legislature passed the Growth Management Act (GMA) and subsequently created three independent Growth Management Hearings Boards to resolve land use disputes and to reflect regional diversity. The jurisdictional regions for the three boards are as

GMHB Case Decision Search webpage...



THE STATE OF WASHINGTON

Growth Management Hearings Board

Home

About GMA

Of Special Interest

Contact GMHB

ELUHO Homepage

Appeal Process

Settlement & Mediation

Handbook

Forms

Calendar

Digests

Case and Decision Search

RCWs & WACs

Resources

Login



Case and Decision Search

* Document Contents:	<input type="text"/>
Panel:	-- select all panels --
Boolean Search:	<input checked="" type="checkbox"/> (when checked keyword searches such as: tin or iron or tin and iron can be performed)

Case Status:	-- select all statuses --
Keyword:	-- all keywords -- <small>(Under construction. See Digests for more information)</small>

Sub Keyword:	-- N/A --
Case Number:	<input type="text"/>
Case Name:	<input type="text"/>
City:	<input type="text"/>
County:	-- select all counties --

Dates:	From	To
Decision Issued:	<input type="text"/>	<input type="text"/>
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Dates:	From	To
Hearings:	<input type="text"/>	<input type="text"/>
Closed:	<input type="text"/>	<input type="text"/>

Order Type:	-- select all order types --
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Digest of all GMHB Decisions...

THE STATE OF WASHINGTON

Growth Management Hearings Board

Home

About GMA

Of Special Interest

Contact GMHB

Digest of Decisions

[Digest of Decisions - July 2010-Present](#)

Board Digests through June 30, 2010

Eastern Board

[Digest](#)

Western Board

[Digest](#)

Central Puget Sound Board

[Digest](#)

ELUHO Homepage

Appeal Process

Settlement & Mediation

Handbook

Forms

Calendar

Digests

Case and Decision Search

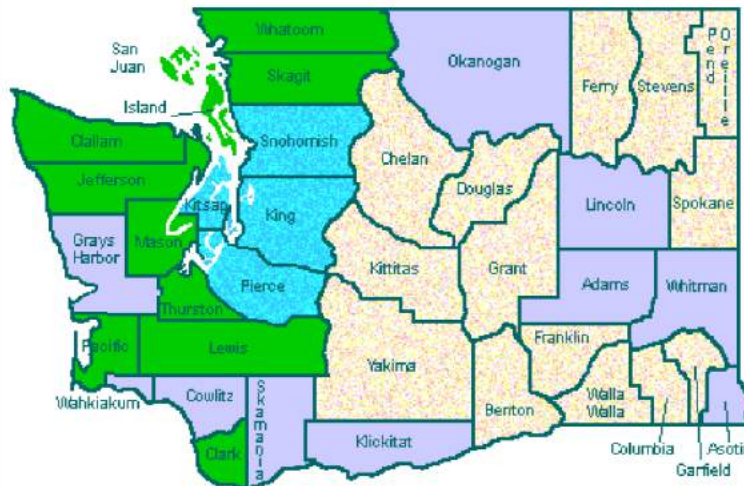
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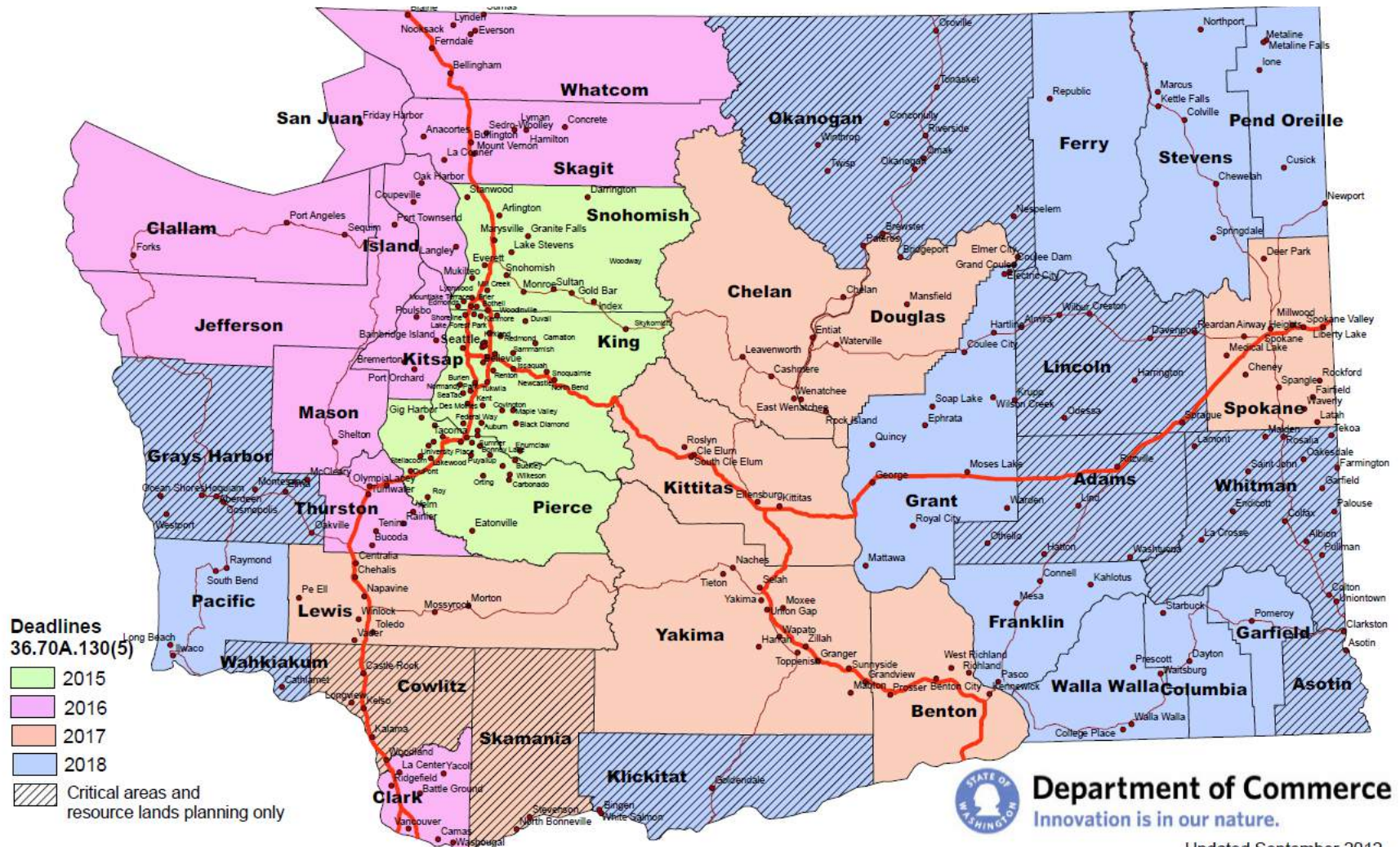
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Digest of Decisions

Growth Management Hearings Board



GMA comprehensive plan Update schedule



Bookends re: Subarea Planning, Master Plans, Regulations and Permits



Laurelhurst vs. City of Seattle

Case No. 03-3-0008c (6/18/03)

Order on Motions

When is a “master plan” a subarea plan and when is it a “development regulation” or a “permit”?

Abolins vs. City of Seattle

Case No. 14-3-0009

Final Decision and Order (4/1/15)

How much discretion does a city have in Subarea Plans and development regulations for urban infill?

Laurelhurst, et al. vs. City of Seattle

Case No. 03-3-0008c Order on Motions



Laurelhurst

“What is a subarea plan?”

Petitioners point to the Board’s language in *WSDF III* to support their argument that a master plan is a subarea plan. However, neither this excerpt from *WSDF III*, nor the statute itself defines what a subarea plan is. Subarea plans are neither defined nor required by the GMA; subarea plans are an optional element that a jurisdiction may include in its GMA Plan. RCW 36.70A.080(2).

All that can be inferred from the statute, and prior Board cases, is that subarea plans are, as the pre-fix “sub” implies, subsets of the comprehensive plan. Additionally, subarea plans typically augment and amplify policies contained in the jurisdiction-wide comprehensive plan.

Thus subarea plans are, in effect, portions of comprehensive plans. Like comprehensive plans, subarea plans are land use policy documents that purport to guide land use decision-making and they must be adopted in compliance with the goals and requirements of the Act.”

Order on Motions, at 6.

Laurelhurst

The Board has consistently indicated that plans, including subarea plans, are not development regulations. In *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (FDO), Mar. 1, 1993, at 12, the Board explained: [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. (Emphasis supplied).

The Board has also clarified: “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 budget decisions.”

Order on Motions, at 7.

Laurelhurst

“Master Plans and Subarea Plans within the GMA Planning Hierarchy

The above review of prior Board decisions, and the discussion of the master plan and subarea plan concepts, helps clarify how the concept of a “master plan” fits into the GMA decision-making regime, and therefore answer the jurisdictional question presently before the Board. An updated and clarified statement of the GMA Planning Hierarchy is:

Laurelhurst

The land use decision-making regime in counties and cities fully planning under GMA is a cascading hierarchy of substantive and directive policy. This policy direction flows first from the planning goals and requirements of the Growth Management Act to county-wide planning policies and from the goals and requirements of the GMA and the SMA to the comprehensive plans and development regulations.

Policy direction then flows from CPPs to comprehensive plans, and then from comprehensive plans, including subarea plans (if any), to development regulations.

Finally, direction flows from development regulations to land use decisions, and other planning activities of cities and counties. See RCW 36.70A.120. Land use decisions, governed by RCW 36.70B, include both site plan approvals, (including but not limited to planned unit developments, conditional use permits, and site master plans), as well as construction approvals, such as grading and building permits. Order on Motions, at 8, footnotes omitted.

Abolins vs. City of Seattle



Abolins

- *Abolins* case involved Seattle's upzoning an area around one of the light rail stations in the Mount Baker neighborhood of Southeast Seattle.
- Petitioners were neighbors raising concerns about density, traffic, and lack of public open space.
- They focused on the relationship between increased density and the need for more and improved public open space.

North Rainier Hub Urban Village (HUV)

Petitioners challenged ordinance that would:

- Rezone land within the City of Seattle's North Rainier Hub Urban Village
- Amend Official land Use Map
- Implement affordable housing and open space bonus provisions through development standards



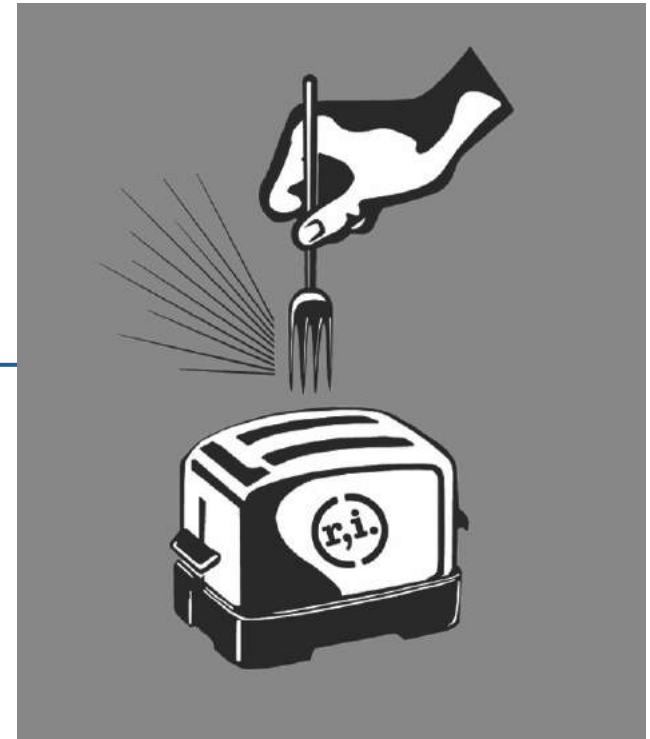
Abolins

The Board rejected the petitioners arguments and upheld the City's action.

Board's reasoning for its decision:

- The Board affirmed a prior Board holding that if policies “purport to direct land use decisions” they must be adopted as part of the comprehensive plan. *West Seattle Defense Fund IV*, GMHB 96-3-0033, FDO (March 24, 1997) at 11.
- Since many of the city reports and studies that called for increased open space and view preservation were not adopted as part of the comprehensive plan, the Board held that they did not create a duty for the rezoning to be compliant with those documents.
- Conversely, the City and its neighborhood citizens are free to develop non-binding “**aspirational goals**” which may be too general to be incorporated into a comprehensive plan, but the community may continue striving toward those goals in manners that do not “purport to direct land use decisions.”

Tips for planners



NAVIGATING THE RIVER OF GMA GOALS AND REQUIREMENTS

The river is wide – cities and counties have broad discretion in making decisions . . .

But you can still run aground on snags and sand bars, so watch out.

GMHB decisions are not case law or bright lines . . . but the reasoning in those decisions can serve you as “channel markers” if you look for them.

Growth Board makes decisions

“on the record” --

What does this mean for Planners?

- **RCW 36.70A.290(4)** The board shall base its **decision on the record** developed by the city, county or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision
- **RCW 36.70A.320(3)** The board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous **in view of the entire record before the board** and in light of the goals and requirements of this chapter.

Compiling the Record

- Keep a running index of documents and proceedings, if possible
- Index due 30 days after a petition for review is filed
- Documents must be available for petitioner to review and copy
- Tapes or recordings of public meetings must be available for transcription

GMHB review relies on the record YOU assemble as the elected officials adopt the plan or regulation.

Board hearings consider oral argument based on facts and documents in the record, **not** examination of witnesses



Tips for Planners

Your preparation of a complete record may affect the outcome of an appeal to the Growth Board.

- Compile the record of materials given to the electeds
- Document the process used to make a decision
- **YOUR** staff report is a key document
- Keep track of public comments
- Maintain a compliance record
- Document consideration of specific GMA/SMA criteria, including Best Available Science

Thank you!



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