



# Kitsap County Department of Community Development

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
<b>AMENDMENT: CLARIFYING EDITS</b>			
17.	Jerry Harless	<p>Topics: Density Calculation Methods (Amendment #6)</p> <p>Summary of attached comment:</p> <ul style="list-style-type: none"> <li>The zoning code directs maximum densities to be calculated as dwelling units per acre of gross land area. The Comp Plan is silent as to how density should be calculated (gross or net), but the UGAs were sized by applying permitted (allowed) density ranges as dwellings per acre of net developable area as calculated in the land capacity analysis.</li> <li>DCD proposes bringing the density measurement methods from the zoning code into Appendix B of the Comp Plan. On the surface, this would appear to resolve the inconsistency issue, but it actually exacerbates the problem. The effect is to convert a plan-zoning inconsistency into an internal plan inconsistency.</li> <li>Amending the plan to require measurement of maximum densities as dwellings per acre of gross land area contradicts the land capacity analysis used to size the UGAs in 2016. Thus, the plan will now be internally inconsistent because the UGAs were sized by a method of measuring density that is at odds with the new language added to Appendix B.</li> <li>I appreciate DCD's attempt to resolve the plan-zoning inconsistency, but the proposed solution only makes the problem worse.</li> <li>Please recommend to the Board of Commissioners, as you did in 2016, the reasonable solution.</li> </ul>	<p>Thank you for this comment regarding the portion of amendment #6 related to density calculations. The Growth Management Act (GMA) and the Kitsap Countywide Planning Policies do not specify how to calculate permitted density. The Comp Plan definition of density in Chapter 10 describes two methods (using net and gross acreage) for measuring permitted density. Appendix B of the Comp Plan specifies the permitted density in each zone but does not specify which measurement method to use. The County's development regulations (KCC 17.420.020.A) specifies that minimum permitted density is calculated using net developable acreage and maximum permitted density is calculated using gross acreage.</p> <p>While the County has prevailed before the Growth Management Hearings Board and Superior Court on this issue, the process before the Court of Appeals has not finished. Given that litigation on this issue remains ongoing, this topic is not appropriate as a clarifying edit at this time.</p>

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RE: Proposed 2018 Comprehensive Plan Amendments

Commissioners,

On December 5, 2017 I wrote to DCD Director Louisa Garbo to suggest that the 2018 comprehensive plan amendment cycle would be an opportune time for the County to correct the inconsistency between how density is defined in the zoning code and how density was calculated when the current Urban Growth Areas were designated with the 2016 plan update. The DCD staff has proposed amendments to Appendix B of the plan to address this issue, but the proposed changes will not resolve it.

### **The 2016 Issue**

The zoning code directs maximum densities to be calculated as dwelling units per acre of gross land area. The plan is silent as to how density should be calculated (gross or net), but the UGAs were sized by applying permitted (allowed) density ranges as dwellings per acre of net developable area as calculated in the land capacity analysis (cf. FSEIS for the 2016 plan update). Because net developable area averages about half of gross land area in urban residential zones, this means that the zoning code authorizes at least twice the growth capacity in UGAs as does the plan.

The Planning Commission in 2016 recommended correcting this by amending the zoning code to measure maximum density as dwellings per acre of net developable land, but the Board of County Commissioners rejected this recommendation without comment in the final plan update ordinance (Ordinance 534-2016).

The Central Puget Sound Growth Management Hearings Board dismissed my appeal of this issue, not on its merits, but by refusing to consider the land capacity analysis as a basis for the claim. The Board's order is currently pending before the Court of Appeals, Division II.

### **The 2018 Proposal**

I see from the “clarifying edits” staff report and attachments that DCD proposes bringing the density measurement methods from the zoning code into Appendix B of the comprehensive plan. On the surface, this would appear to resolve the inconsistency issue, but it actually exacerbates the problem.

The Growth Management Act requires counties to adopt development regulations, including zoning ordinances, that “are consistent with and implement” comprehensive plans.” Cf. RCW 36.70A.040. Amendments to development regulations

also must be consistent with and implement comprehensive plans (including amended plans). Cf. RCW 36.70A.130(1)(d).

What DCD is proposing is to amend the plan so that it is consistent with and implements the zoning code rather than the other way around as the GMA requires – amending the horse to fit the cart if you will. You might assume that “consistency” works like an equal sign and it really doesn’t matter which is consistent with which as long as they are both the same. But the proposed “clarifying edits” miss the most important point – how the UGAs were sized in 2016.

The effect of this proposed amendment to Appendix B is to convert a plan-zoning inconsistency into an internal plan inconsistency. The GMA requires the plan to be “an internally consistent document” (cf. RCW 36.70A.070), so the GMA compliance problem is not solved but pops up in another section of the GMA.

Amending the plan to require measurement of maximum densities as dwellings per acre of gross land area contradicts the land capacity analysis used to size the UGAs in 2016. Thus, the plan will now be internally inconsistent because the UGAs were sized by a method of measuring density that is at odds with the new language added to Appendix B. That inconsistency produces UGAs with double the capacity needed to accommodate the forecast growth in violation of three separate sections of the GMA: RCW 36.70A.110(2), .115 and .130(3)(b).

For example, the Urban Low Residential (URL) zone allows a minimum of 5 du/acre and a maximum of 9 du/acre. The land capacity analysis, applying all densities to net developable area, assumes an average future density of 6 du/acre, or 67% of the maximum allowed. Calculating that maximum as 9 du/gross acre as the “clarifying edits” would do, increases the maximum to the equivalent of 18 du/net acre. 67% of that maximum would be 12 du/net acre. The other urban residential would be similarly affected.

I appreciate the DCD staff’s attempt to resolve the plan – zoning density inconsistency, but the proposed solution only makes the problem worse. The only real GMA-compliant options are to define density consistently with how it was applied in the 2016 land capacity analysis used to size the UGAs (du/net acre) or reduce the geographic size of the UGAs by half. The former would be a “clarifying” text edit. The latter would be a political and practical disaster.

Please recommend to the Board of Commissioners, as you did in 2016, the reasonable solution. Thank you for your attention.

Respectfully, 

Jerry Harless

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