

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

RICHARD APOLLO FUHRIMAN,)	
)	
Petitioner,)	Case No. 05-3-0040
)	
v.)	<i>(Fuhriman III)</i>
)	
CITY OF BOTHELL,)	ORDER ON MOTION TO
)	SUPPLEMENT THE RECORD
Respondent,)	
)	

I. PROCEDURAL BACKGROUND

On October 3, 2005, the Board received the City of Bothell’s certification of “Index of Documents” (**Index**). The Index lists 566 items by Index number.

On October 17, 2005, the Board received “Petitioner Fuhriman’s Motion to Amend Respondent City of Bothell’s Index of Documents” (**Fuhriman Motion**). Petitioner asks that the record be supplemented with 48 items [consecutively numbered from 567 through 612. No proposed exhibits were attached to the motion.

On October 24, 2005, the Board received “City of Bothell’s Response to Petitioner Fuhriman’s Motion to Amend City Index of Documents” (**City Response**).

On November 4, 2005, the Board received “Petitioners Fuhriman’s Reply to City of Bothell’s Response Regarding Fuhriman’s Motion to Amend” (**Fuhriman Reply**).

The Board, having reviewed the above-referenced documents, enters the following ORDER:

II. DISCUSSION AND ORDER ON MOTION TO SUPPLEMENT

Petitioner asks that 48 items be included in the record. Fuhriman Motion, at 2-5. The requested items for supplementation are not attached to Petitioner’s motion.¹ “Copies of exhibits proposed for supplementing the record must accompany the Motion to Supplement.” See 9/26/05 Prehearing Order, at 3.

¹ The Board notes that even if some items requested by Petitioner were included in an *Index* of a prior case, those items are not necessarily part of a subsequent record, unless the jurisdiction includes them in its Index of the Record. Even if an item was listed in the Index of a prior case, the present proceeding is a separate case, with a separate file, and the Board will not necessarily have copies of exhibits submitted in prior cases. Therefore, it is important for parties to submit copies of proposed exhibits to supplement the record in order for the Board to evaluate whether they may be necessary or of substantial assistance to the Board.

Notwithstanding the lack of attached exhibits, the City of Bothell does not object to supplementing the record with 10 items [Items 572, 574, 584, 585, 597, 606-609 and 612]. City Response, at 1-2. Additionally, the City notes that nine items proposed by Petitioner are already included on the Index as part of the record [Items 586, 587, 590, 591, 592, 593, 594, 595 and 610 are already in the Index as items 478/558, 163, 179, 140, 141, 144/480, 144/480, 167 and 175, respectively. *Id.* at 5-6. The City objects to inclusion of the other 29 items in the record because: 1) the proposed exhibits were not attached to the motion; 2) five items are unknown to the City; and 3) the remaining 25 proposed items were not considered by the City's Planning Commission or Council during the 2005 Update. *Id.* at 2-8.

In reply, Petitioner argues that the City has been considering changes and amendments to its development regulations since 1996 and that it would be absurd to reintroduce all the materials produced over the past decade. Fuhriman Reply, at 2. Petitioner acknowledges that the City has no objection to certain proposed items being added to the Index, and that some proposed items already are included. *Id.* at 3-4. However, Petitioner still did not provide the Board with copies of any of the proposed items for review.

Petitioner's failure to provide copies of the proposed exhibits with the initial motion is contrary to the explicit direction given to the parties in the 9/26/05 PHO, at 3. Consequently, the Board **denies** the motion to supplement the record **except for those items that the City does not object to**. *See* Summary Table *infra*. **The parties are advised that the Board does not have copies of any of the exhibits at this time; consequently relevant exhibits, referenced in briefing, must be attached to briefs.** To avoid confusion on numbering exhibits, the numbers referenced in briefing by the parties shall be the assigned supplemental exhibit numbers – any Exhibit with a number beyond 566 is a supplemental exhibit.

The parties are cautioned that **each exhibit must be relevant** to the issues before the Board. Its listing on the Index as a part of the record below, or its admission as a supplemental exhibit, does not necessarily mean that a specific exhibit is relevant to the legal issues, as set forth in the PHO.

The items included in the Record as supplemental exhibits are noted in the summary table below, and have been determined to be necessary or may be of substantial assistance to the Board in reaching its decision.

In the summary tables below:

- “Admitted” means the proposed exhibit becomes a supplemental exhibit. Each new exhibit is assigned a Supplemental Exhibit No.
- “Already in Record” means that the exhibit is already listed on the Index and therefore is automatically admitted and need not be the subject of a motion to supplement. No Index No. is assigned.

Proposed Exhibit – Numbers from briefing:	Ruling
Proposed Ex. 572 – demographics memo	<i>Admitted – Supplemental Ex. No. 572</i>
Proposed Ex. 574 – BLR	<i>Admitted – Supplemental Ex. No. 574</i>
Proposed Ex. 584 – urban density memo	<i>Admitted – Supplemental Ex. No. 584</i>
Proposed Ex. 585 – CTED letter	<i>Admitted – Supplemental Ex. No. 585</i>
Proposed Ex. 597 – FEIS	<i>Admitted – Supplemental Ex. No. 597</i>
Proposed Ex. 606 – Council Video ²	<i>Admitted – Supplemental Ex. No. 606</i>
Proposed Ex. 607 – Council Video	<i>Admitted – Supplemental Ex. No. 607</i>
Proposed Ex. 608 – Council Video	<i>Admitted – Supplemental Ex. No. 608</i>
Proposed Ex. 609 – Council Video	<i>Admitted – Supplemental Ex. No. 609</i>
Proposed Ex. 612 – Council Video	<i>Admitted – Supplemental Ex. No. 612</i>
Proposed Ex. 586	Already in Record as Index No. 478/558
Proposed Ex. 587	Already in Record as Index No. 163
Proposed Ex. 590	Already in Record as Index No. 179
Proposed Ex. 591	Already in Record as Index No. 140
Proposed Ex. 592	Already in Record as Index No. 141
Proposed Ex. 593	Already in Record as Index No. 144/480
Proposed Ex. 594	Already in Record as Index No. 144/480
Proposed Ex. 595	Already in Record as Index No. 167
Proposed Ex. 610	Already in Record as Index No. 175

The Record for CPSGMHB Case No. 05-3-0040 consists of the **Core Documents identified in the PHO, at 5, footnote 9**; the 566 items listed in the City’s “Index”; and the 10 additional items included in the Record as noted in the summary table above. These documents constitute the Record to this proceeding. It is up to the parties to provide copies of relevant exhibits, referenced in briefing to the Board at the time a brief is filed. Each exhibit filed with the Board shall reference the document numbers as indicated in the Index or as specified above. Relevant exhibits, from the record, shall be clearly tabbed by exhibit number and filed with briefs. The respective briefs shall include a table of attached exhibits. *See* PHO, Section XIII, at 5.

² If either party chooses to submit a video of the Council’s proceedings to support argument in briefing, the party **shall also provide a certified transcript of the relevant portions of the proceeding** and indicate by the video recording’s time sequence numbering where the relevant portion of the proceedings are located.

So ORDERED this 9th day of November, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Presiding Officer