

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

CHARLES K. McTEE, STEVEN W. COSSALMAN, ARLEN PARENTO and STEVEN VAN CLEVE)	CPSGMHB Consolidated Case No. 05-3-0046c
)	
Petitioners,)	<i>(Cossalman/McTee/Van Cleve)</i>
)	
v.)	
)	
TOWN OF EATONVILLE,)	
)	FINAL DECISION and ORDER
Respondent.)	
)	

SYNOPSIS

This case is the third in a series of challenges launched by the same Petitioners against the Town of Eatonville’s GMA planning efforts. In this challenge, Petitioners argue that the Town’s action of deleting reference to a park commonly known as Van Eaton Park from its Plan Update violated the GMA’s notice and public participation procedures, CTED review, and SEPA.

*The Board concluded that the issue of whether Van Eaton Park would, or would not, be deleted from the Plan Update was appropriately noticed to apprise citizens of the issue before the Town Council. Likewise, these Petitioners, and others, made their views known to the Council, but did not prevail. The Board also concluded that: CTED had been provided with the Town’s notice of intent to adopt the Plan Update, but declined to comment; and Petitioners had failed to carry their burden of proof in showing the Town had not complied with the SEPA issues allegedly violated by the Town. The Board found **compliance** with RCW 36.70A.035, .140 and .106. and closed the case.*

I. BACKGROUND¹

This case is the third in a continuing series of challenges launched by Petitioners against the Town of Eatonville. On March 29, 2005, Petitioners filed a petition for review (**PFR**) [CPSGMHB Case No. 05-3-0028] alleging that the Town of Eatonville had “failed to act” in updating its Comprehensive Plan (**Plan**) and development regulations by the December 1, 2004 deadline. That PFR also challenged the Town’s adoption of Resolution R-2005-O, which declared certain property surplus and authorized its sale. At

¹ The complete procedural history of this case is set forth in Appendix A.

the prehearing conference in Case No. 05-3-0028, the Town stipulated to noncompliance with the GMA's update requirements, but sought to defend its action regarding the surplus property issue. In light of the stipulation, on May 13, 2005 the Board issued an "Order Finding Noncompliance – Failure to Act [failure to update comprehensive plan and development regulations]."² The Board also segregated the "surplus and sale" matter [R-2005-O] into a separate case – CPSGMHB Case No. 05-3-0032.

In its June 20, 2005 Order, the Board dismissed Petitioners' challenge to the surplus and sale matter for lack of subject matter jurisdiction. *See Cossalman/Van Cleve*, CPSGMHB Case No. 05-3-0032, Order on Motions, (Jun. 20, 2005).

Following the Town's update of its Plan through the adoption of Ordinance No. 2005-9, Petitioners filed two PFRs [CPSGMHB Case No. 05-3-0044 and 05-3-0046] which were consolidated into the present proceeding – CPSGMHB Consolidated Case No. 05-3-0046c. The issues involved in the present challenge revolve around two general issues: the Plan's designation of: 1) certain park land; and 2) areas surrounding an airfield – Swanson Field.

During November, the Board held the prehearing conference and issued its prehearing order (**PHO**) setting the schedule and framing the issues to be decided. From November through February, the Town filed several amendments and supplements to its Index of the Record, but there were no motions to supplement the record. Likewise there were no dispositive motions filed.

On February 27, 2006, the Board received Petitioners' "Prehearing Brief" (**Cossalman PHB**), with five attached exhibits [A – E]. On March 20, 2006, the Board received "Prehearing Brief of Respondent Town of Eatonville" (**Eatonville Response**), with 19 attached exhibits [Index numbers were used to identify exhibits, and two prior Board Orders were also included]. On March 27, 2006, the Board received "Petitioners Reply to Prehearing Brief of Town of Eatonville" (**Cossalman Reply**), with five attached exhibits [F – K]. The Board subsequently received correspondence questioning whether certain exhibits attached to the Cossalman Reply were part of the record. The Board indicated the matter would be taken up and resolved at the hearing on the merits.

On April 3, 2006, the Board held a hearing on the merits at the Board's offices in Suite 12470, 900 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, and Bruce C. Laing and Margaret A. Pageler were present for the Board. Petitioners Cossalman, McTee and Van Cleve appeared *pro se*, with Mr. Van Cleve arguing on behalf of Petitioners. Respondent Town of Eatonville was represented by Robert E. Mack and Ed Hudson. Mart Kask and Tom Smallwood [Town of Eatonville] were also present. Board externs, Justin Titus and Amie Hirsch and the

² The Town ultimately complied with the GMA and updated its Plan and development regulations. *See* 11/29/05 Order Finding Partial Compliance [Re: Plan] and Order Finding Continuing Noncompliance [Re: Development Regulations and 3/13/06 Order Finding Compliance [Re: Development Regulations].

Board's law clerk Julie Taylor also attended. Court reporting services were provided by Eva Jankovitz of Byers and Anderson. The hearing convened at 10:00 a.m. and adjourned at approximately 11:30 a.m.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Petitioners challenge the Town of Eatonville's adoption of its new Comprehensive Plan, as adopted by Ordinance No. 2005-9. Pursuant to RCW 36.70A.320(1), the Town of Eatonville's Ordinance No. 2005-9 is presumed valid upon adoption.

The burden is on Petitioners, Cossalman, McTee, Parento, and Van Cleve, to demonstrate that the actions taken by the [Town of Eatonville] are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by the Town of Eatonville is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Eatonville's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to the Town of Eatonville in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005). The *Quadrant* decision affirms prior State Supreme Court rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3rd 1156 (2002) and cited with approval in *Quadrant*, fn. 7, at 248.

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PREFATORY NOTE, PRELIMINARY MATTERS and ABANDONED ISSUES

A. BOARD JURISDICTION

The Board finds that the two's PFRs [05-3-0044 and 05-3-0046] were timely filed, pursuant to RCW 36.70A.290(2); Petitioners Cossalman, McTee, Parento, and Van Cleve have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and pursuant to RCW 36.70A.280(1)(a), the Board has subject matter jurisdiction over the challenged ordinance, which adopts the Town of Eatonville's updated Comprehensive Plan.

B. PREFATORY NOTE

The Action Challenged:

The Ordinance challenged here, Ordinance No. 2005-9, repeals the Town of Eatonville's 1993 Comprehensive Plan and adopts a new Comprehensive Plan – it is the Town's Plan Update, as required by RCW 36.70A.130(4). *See* Finding of Fact (**FoF**) 1; Appendix B.³ Petitioners' appeal centers on the Town's deletion of parkland from Chapter 12 of the Plan, entitled "Parks and Recreation." The 3.1 acres of parkland at issue is generally bounded by Larson Street on the north, Rainier Avenue on the east, Prospect Street on the south and Orchard Street on the west. The park area is generally known as "Van Eaton Park" but has also been described as "parkland at Rainier Avenue and Larson Street" and "Rainier/Orchard Avenue parkland." FoF 2. The Plan Update *deleted* reference to two neighborhood parks [at Rainier Ave. S [1.6 acres] and Orchard Ave. S [1.5 acres] from the Chapter 12 list of parks owned by the Town of Eatonville. The "Rainier/Orchard Parkland" was also *deleted* from the "Park and Recreation Facilities" map [Figure 12-1] in that Chapter of the Plan.⁴ FoF 3 and 4. The Plan Update does not show these parklands in the listing of Town owned parks or on the map. Petitioners challenge the Town for deleting these parklands from the Plan Update. For consistency sake, the Board will use "Van Eaton Park" when referring to the parklands at issue here.

The second set of issues focused on the Town's designation of land adjacent to and around Swanson Field. However, as discussed *infra*. Petitioner **abandoned** all these issues [Legal Issues 4, 5, 6 and 7 in the PHO]. Therefore, the Board need not discuss them here.

³ Appendix B contains all the Findings of Fact in this matter.

⁴ These parklands were the subject of the Petitioners' prior appeal of the Town's decision to declare them surplus and authorize their sale, which the Board dismissed for lack of subject matter jurisdiction. Apparently, the "surplus and sale" of the property provided a rationale for the Town to delete them from their list of parks and map in Chapter 12 of the Plan Update.

Of the three remaining Legal Issues in this matter, the Board addresses them in the following order: first, Legal Issue 3 [Notice and Public Participation]; second, Legal Issue 2 [CTED Review]; and finally, Legal Issue 1 [SEPA Compliance].

C. PRELIMINARY MATTERS

Oral Rulings at the Hearing on the Merits (HOM):

At the HOM, after hearing argument, the Board ruled on the following exhibits attached to Petitioners Reply brief:

- Proposed Ex. F = Eatonville Municipal Code 204.011. – **Board takes official notice.**
- Proposed Ex. G = Parcel map showing soils and slope around the area of “Van Eaton Park” prepared by Pierce County Department of Planning and Land Services, dated 2/25/05, allegedly exhibits submitted in CPSGMHB Case No. 05-3-0028 and as part of a SEPA appeal to the Town. – **Admitted – HOM Ex. 1**
- Proposed Ex. H = text explaining soil type and slope for “19D and 19E” in prior Parcel Map. – **Admitted – HOM Ex. 2.**
- Proposed Ex. J = Eatonville Municipal Code 15.20.070 – excerpt from Town of Eatonville Critical Areas Code (Geological Hazard Areas). The Board questioned whether the excerpt provided was from the current code update. The Town was asked to provide verification of this citation or provide the current version of this portion of the Town’s Code. On April 7, 2006, the Town provided a complete copy of the Town’s Critical Areas Code, and noted that the prior critical areas code had been repealed, replaced, and re-codified. The new Critical Areas Code, relating to Geologically Hazardous Areas is contained in the Town Code at Chapter 15.16.160 through .165. – **Board takes official notice**
- Proposed Ex. K = Photograph of the park site showing two deer and a for sale sign, allegedly part of Petitioners’ SEPA appeal to the Town. – **Admitted – HOM Ex. 3.**

During the course of the HOM, the attorney for the Town offered copies of three pages of Chapter 12 [12-1, 12-2 and 12-3] from the prior Plan to illustrate the deletions from the listing of Eatonville owned parkland and the map showing Park and Recreation Facilities that was before the Council at the July 11, 2005 meeting. – **Admitted – HOM Ex. 4.**

D. ABANDONED ISSUES

The Board’s Rules of Practice and Procedure provide:

A petitioner . . . shall submit a brief on each legal issue it expects a board to determine. *Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.* Briefs shall enumerate and set forth

the legal issue(s) as specified in the prehearing order if one has been entered.

WAC 242-02-570(1), (emphasis supplied).

Additionally, the Board's November 29, 2005 PHO in this matter states: "Legal issues, or portions of **Legal issues, not briefed** in the Prehearing Brief **will be deemed to have been abandoned and cannot be resurrected** in Reply Briefs or in oral argument at the Hearing on the Merits." PHO, at 6 (emphasis in original). *See also, City of Bremerton, et al., v. Kitsap County*, CPSGMHB Consolidated Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5; and *Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7.

Regarding the Airfield issues in this matter [Legal Issues 4-7⁵], Petitioner states:

In the second portion of this case [airfield issues], at issue is whether the comprehensive plan and its associated development regulations failed to comply with the requirements to discourage incompatible land use around the public use general aviation airport located within the town as required under RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.548. The newly adopted comprehensive plan was not available when this PFR was filed. After careful review, the petitioner concedes that the comprehensive plan meets the requirements to discourage incompatible land use around the general aviation airport. The adoption of the appropriate development regulations to comply with the goals and policies of the comprehensive plan remain at issue.

⁵ The noted Legal Issues are:

4. Does the Eatonville Comprehensive Plan [related to Swanson Field] fail to comply with the requirements of RCW 36.70A.510 and RCW 36.70.547 to discourage the siting of incompatible land use near general aviation airports?
5. Does the Eatonville Comprehensive Plan [related to Swanson Field] fail to comply with the requirements of RCW 36.70A.100 to coordinate their comprehensive plan with Pierce County on this regional issue?
6. Does the Eatonville Comprehensive Plan [related to Swanson Field] file to comply with the requirements of RCW 36.70A.130(1) and .040(3) to develop development regulations that are consistent with and implement the comprehensive plan?
7. Does the Eatonville Comprehensive Plan [related to Swanson Field] fail to comply with the requirements of RCW 36.70A.070(3) to properly address the airport in the Capital Facilities Plan?

Cossalman PHB, at 2. The PHB does not address the airport issues. See Cossalman PHB, at 1-10. Therefore, the Board takes this statement and the absence of any briefing or argument on the airfield issues, to mean Petitioner Van Cleve has withdrawn or abandoned Legal Issues 4-7. The Board therefore deems these issues **abandoned**; and as such they are **dismissed with prejudice** and will not be discussed further in this Order.

IV. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NO. 3

The Board's PHO set forth Legal Issue No. 3

3. Does the Plan change⁶ conflict with proper notice and public processes and public input required by RCW 36.70A.035 and .140?

Applicable Law

RCW 36.70A.035 specifies the notice provisions for GMA actions. Notice of pending GMA actions must be "reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts and organizations of proposed amendments to comprehensive plans and development regulations." Examples of reasonable notice are given. RCW 36.70A.035(1)(a) through (e). Additionally, this section of the Act provides:

[I]f the legislative body for a county or city chooses to consider a change to an amendment of a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

RCW 36.70A.035(2)(a). There are exceptions to the requirement of reopening the hearing, but they are not relevant here.

RCW 36.70A.140 sets forth the GMA's procedures to ensure public participation. The key provision in this section of the Act is that the local government's procedures provide for "early and continuous public participation in the development and amendment of comprehensive plans and development regulations implementing such plans." RCW 36.70A.140.

⁶ Petitioners' PFR and the PHO characterize the "plan change" as the "alleged removal of the 'Orchard Avenue Parkland,' but alleged non removal of the 'Rainier Avenue Parkland.'

Discussion

Position of the Parties:

Petitioners offer several arguments on this issue: 1) The area commonly known as Van Eaton Park did not appear in the legal notices or the amendment to delete the park from the Plan Update, rather references were to “Orchard Avenue, Rainier Avenue or Larson Street” parklands. Therefore the Town’s notice was not reasonably calculated to provide notice to the public; 2) Only one notice was published – for the July 11, 2005 hearing – notifying the public of the removal of the parkland from the Plan Update; 3) The Ordinance was adopted after only one reading, while the Eatonville Code requires two readings; and 4) The motion to delete the parklands occurred at the final hearing, with limited time for comment. Cossalman PHB, at 5-6.

In response, the Town counters that: 1) Petitioners, among others, had notice of the parkland issue and knew the site involved; 2) The July 11, 2005 hearing was a continuation of the first hearing, and Petitioners, among others, participated in all meetings and hearings where the issue was considered, their participation was early and continuous; 3) The Council can suspend its rules to move a first reading to a second reading and final passage, and that in essence, is what the Council did when they adopted the Plan Update; and 4) Petitioners did comment after the motion to adopt the amendment was made and even if the opportunity to comment was not provided at that time, the amendment was within the scope of alternatives available for public comment, per RCW 36.70A.035(2)(b)(ii), therefore additional opportunity for review and comment is not required. Eatonville Response, at 10-16.

In reply, Petitioners reiterate their arguments and assert that they felt that they “anticipated a last minute change to remove Van Eaton Park [but their anticipation] does not relieve the Town of its responsibility to properly notify the public.” Cossalman Reply, at 3. The Board now reviews the sequence of meetings and hearings on the challenged parkland issue.

Board Discussion:

It is evident to the Board that Petitioners were deeply concerned about the Town’s intention to remove Van Eaton Park from the Plan Update. This is evidenced by their attendance at the April 4, 2005 Planning Commission (**PC**) meeting where they voiced their concerns on the topic. This is especially evident since the PC was considering a request from the Mayor to forego a public hearing on the parkland issue, because the Town Council would conduct the required public hearing. While the PC did not officially add the parkland issue to its agenda, it certainly entertained public comment on the question, notwithstanding the Mayor’s request. *See* FoF 9; Exs. 101 and 102, at 10-29. Additionally, Petitioners, among others, commented at the May 10, 2005 PC meeting about the decision to forward the Plan Update to the Town Council with all references to

the parklands at issue included and intact. Van Eaton Park had not been deleted by the PC from the proposed Plan Update. See FoF 10; Exs. 86 and 103, at 33-35.

The first indication, in the record, of published notice is a copy of a June 15, 2005 notice published in The Dispatch providing “Notice of Public Hearing” for the June 27, 2005 meeting of the Town Council beginning at 7:00 p.m. regarding the Plan Update. This notice indicates that the Draft Plan Update contains various elements and chapters, including a chapter dealing with “12) parks and recreation.” FoF 11; Ex. 35.

At the June 27, 2005 Town Council public hearing, the Town heard testimony on a proposal to delete references to the parklands in question from the Plan Update. Petitioners, among others, testified in support of retaining Van Eaton Park in the Plan Update. Instead of acting on the proposed amendment, the Town Council continued the public hearing until its July 11, 2005 meeting to consider the parkland issue, among others. FoF 12; Ex. 80 and 104, at 2-12.

On June 29, 2005, the Town again published notice in The Dispatch indicating “Notice of Continued Public Hearing” continuing review of the Plan Update from the June 27, 2005 Town Council meeting to the July 11, 2005 Town Council meeting, beginning at 7:00 p.m. This notice indicates that the Draft Plan Update contains various elements and chapters including “12) parks and recreation” and “18) proposed amendment relating to deleting parkland at Rainier Avenue and Larson Street and adding a park to Mashell Avenue north of Center Street.” FoF 13; Ex. 37.

On July 11, 2005, the Town Council resumed its public hearing on the Plan Update. Testimony was received on the parkland issue, including deletion of parkland at Rainier Avenue and Larson Streets. At that meeting, the Town Council heard testimony about removing Van Eaton Park from the Plan Update. FoF 14; Exs. 81 and 105, at 4-9 and 51-74. The Town Council intended to consider testimony after each amendment was moved.

The transcript from the July 11, 2005 hearing provides:

Council member Harper: Bob [Mack] do we need to make an amendment removing the Rainier and Orchard?

Mack: I would recommend it because I think it is ambiguous now as to whether they’re included or not.

Harper: I make a motion we include a motion in the Comp Plan to eliminate Rainier Park and Orchard Park on Chapters 12-1 and 12-3.

[?] Second.

Mayor Rath: Okay we’ve got a motion and a second to eliminate Rainier, Orchard, and Larson. Is that the way it reads? From the Comp Plan. Question.

. . .

Mayor: This is still a public hearing. Anybody have any comment out there?

[Testimony is presented opposing the deletion of Van Eaton Park from Petitioners Van Cleve, Parento and McTee

Mayor: Anybody else out there? Public testimony? Okay. We have a motion to eliminate Rainier south, Larson west, referred to as Van Eaton Park.

Mack: Mr. Mayor, there's reference on page 12-1 of the proposed plan and on page 12-3.

Mayor: Okay. We have a motion and a second. All in favor?

Council: Aye.

Mayor: Those opposed?

Council: Aye.

Mayor: Motion carries. . .

[?]: Is there more than one reading?

[?]: Bob? First reading? Second reading?

Mack: I think it is our second reading. It was read at the last meeting.

[?]: We did. And then we amended it. And we went to . . .

[?]: We amended it at this meeting. I do not think it was amended at the last meeting.

[?]: No.

[?]: But we haven't voted on it at all yet.

[?]: We only have to vote on it once.

[?]: Okay.

Mayor: This is the second reading. Okay. Not seeing any questions, we'll close the public hearing part and we'll have discussion if the Council wants. Not seeing any we will vote on Ordinance 2005-9. All in favor?

Council: Aye

Mayor: Those opposed? Motion carries.

Ex. 105, at 69-73.

Review of this record and exhibits leads the Board to conclude that notwithstanding the name given to the parkland in question, there is no question that the location of the land, or site, involved was adequately described in the notice of June 29, 2005. Ex. 37. It appears that Petitioners, among others, were aware of the pending amendment to the Plan Update to remove Van Eaton Park from the Plan. The Board further concludes that the June 29, 2005 published notice was adequate to reasonably provide notice to interested persons that the Town Council would be considering an amendment to delete Van Eaton Park from the Plan Update on July 11, 2005 – there were more than 10 days “published” notice. *Id.* Also, Petitioners, among others testified and commented often about the status of Van Eaton Park – at least as early as the April 4, 2005 PC meeting and their participation continued through the Town Council’s hearing on the amendment to delete reference to the parklands from the Plan Update. Ex. 102, 86, 103, 80, 104, 81 and 105. The opportunity for public participation was early and continuous. Finally, on the question of whether a second reading needed to occur before the vote, the Board acknowledges that the legislative body may suspend its rules in enacting legislation, and in the Board’s view, this is what the Council did upon final passage of Ordinance No. 2005-9 – *albeit* not very clearly or artfully. Ex. 105.

Therefore, the Board finds and concludes that the Town of Eatonville **did not err** in providing notice and the opportunity for public participation in adopting Ordinance No. 2005-9, specifically as it pertains to the amendment to delete reference in the Plan Update of the property commonly known as Van Eaton Park. The Town of Eatonville **complied** with the requirements of RCW 36.70A.035 and .140 relating to the deletion of this property from the Plan Update.

Conclusion

The Board finds and concludes that the Town of Eatonville **did not err** in providing notice and the opportunity for public participation in adopting Ordinance No. 2005-9, specifically as it pertains to the amendment to delete reference in the Plan Update of the property commonly known as Van Eaton Park. The Town of Eatonville **complied** with the requirements of RCW 36.70A.035 and .140 relating to the deletion of this property from the Plan Update.

B. LEGAL ISSUE NO. 2

The Board’s PHO set forth Legal Issue No. 2

- 2. Does the Plan change fail to comply with the review requirements as defined in RCW 36.70A.106?***

Applicable Law

RCW 36.70A.106, pertains to the GMA requirement that the Department of Community, Trade, and Economic Development (**CTED**) be notified of a jurisdiction's intent to adopt Plans, development regulations, and amendments to such documents "at least sixty days prior to final adoption." RCW 36.70A.106 provides in relevant part:

(3)(a) Any amendment for permanent changes to a comprehensive plan . . . that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this chapter.

Thus, Plan amendments, particularly Plan Updates, are to be submitted to CTED at least sixty days prior to final adoption. The Board has previously noted that "Providing CTED with notice of pending actions is a critical part of CTED's GMA coordination function, and is not one to be dismissed lightly by the Board." *Corinne Hensley v. Snohomish County (Hensley VIII)*, CPSGMHB Case No. 03-3-0015, Order on Motions, (Oct. 8, 2003), at 5.

Discussion

Position of the Parties:

Petitioners assert that the July 11, 2005 amendment deleting Van Eaton Park from the City's Plan Update was a substantive and permanent change to the Plan yet it was not submitted to CTED at least sixty-days prior to adoption as required by RCW 36.70A.106. Cossalman PHB, at 8. Eatonville counters that it notified CTED of its Plan Update on June 15, 2004 by completing CTED's Plan Checklist. Eatonville Response, at 10; Ex. 50 and FoF 5. The Checklist indicates that the Town intends to adopt the Plan Update on February 28, 2005 and that the Plan Update includes a Parks and Recreational Element at page 12-1 of the Plan Update. Ex. 50, at 7; FoF 6. The City goes on to argue that the amendment related to the deletion of Van Eaton Park was not an amendment meriting its own sixty-day review by CTED, but fell within the scope of the original notification to CTED. *Id.* In reply, Petitioners reiterate that the removal of the park from the Plan is a permanent change requiring compliance with .106. Cossalman Reply, at 3.

Board Discussion:

Exhibit 50 clearly indicates that on June 15, 2004, the Town notified CTED of its intent to adopt its Plan Update on February 28, 2005; and that the Plan Update included a Parks and Recreation Element. FoF 5. The Board must assume that the version of the Plan Update referred to in the CTED checklist includes Van Eaton Park. This information was provided "at least sixty-days prior to final adoption." An e-mail from Elliot D. Barnett of CTED to Mart Kask of Eatonville, dated March 4, 2005 states, "This is to notify you that CTED will not be commenting formally on Eatonville's draft comprehensive plan amendments and Critical Areas Ordinance amendments submitted for review in 2004.

We hope we can provide input later in the process, and welcome any discussions or inquiries from the city.” Ex 54, FoF 7. Thus, it is not unreasonable for the Town, and this Board, to conclude that the Town had discharged its duty under RCW 36.70A.106.

Additionally, as discussed in Legal Issue 3, *infra*, the topic of removing Van Eaton Park from the Plan Update was certainly within the scope of alternatives available for public comment. See RCW 36.70A.035(2)(b)(ii). In fact, the record discloses substantial testimony regarding the challenged issue. *Infra*. Falling within the scope of such alternatives, and arguably [from the Town’s perspective] a technical amendment to clarify the Town’s inventory and location of Town owned parklands; it does not warrant submittal to CTED for additional review. This is especially true in light of CTED’s non-comment on the original submittal. The Board finds and concludes that the Town’s action was **not clearly erroneous**; and **complied** with the CTED submittal requirements of RCW 36.70A.106.

Conclusion

The Board finds and concludes that the Town’s action was **not clearly erroneous**; and **complied** with the CTED submittal requirements of RCW 36.70A.106.

C. LEGAL ISSUE NO. 1

The Board’s PHO set forth Legal Issue No. 1

- 1. Does the plan change fail to comply with the requirements of SEPA, specifically RCW 43.21C.030?*

Applicable Law

The Board’s role in review of SEPA actions is limited to compliance with “chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040.” RCW 36.70A.280(1)(a). Thus, SEPA review, including the preparation of an environmental checklist and threshold determination leading to a declaration of significance, nonsignificance (**DNS**), or mitigated DNS, is required when a Plan, Plan Update, or Plan amendment is adopted by a local jurisdiction. At issue here is the Town of Eatonville’s issuance of a DNS, rather than a more detailed environmental review, for the Plan Update.

Discussion

Position of the Parties:

Petitioners argue that the Town’s amendment to its Plan Update that deleted Van Eaton Park from the Comprehensive Plan was not subject to environmental review. While Petitioners acknowledge a prior [unspecified date] DNS was issued, that environmental

review was not supplemented, nor was an addendum adopted that addressed the park deletion. Cossalman PHB, at 6-7. In response, the City argues that Petitioners point to no authority indicating that “the DNS was issued improperly, or that it needed to be withdrawn and supplemented.” Eatonville Response, at 9. Further, the City argues that the deletion of Van Eaton Park from the Plan did not constitute a substantial change, nor was new information provided indicating the DNS was in error. *Id.* In reply, for the first time, Petitioners argue that Van Eaton Park is a critical area and if it is developed, that any such permitted development is a substantial change that will have probable significant adverse impacts, necessitating further environmental review. Cossalman Reply, at 2.

Board Discussion:

It is apparent to the Board that the Town conducted environmental review of its Plan Update and its Critical Areas Code and that Petitioners were engaged in that process. *See* Ex.57, 61, 68 and 83. While the Board understands Petitioners’ concerns, there is no basis for the Board to find that there was *no environmental review* to accompany the Plan Update as a whole. Petitioners may have wanted more environmental detail; however, the Town’s decision that deleting 3.5 acres of parkland in one part of Town and adding .3 acres of park in another, does not merit additional environmental review of the Plan Update is not a clearly erroneous decision.

What Petitioners appear to be upset about is the lack of *specific* environmental review in the context of the removal of Van Eaton Park from the Plan Update, and its potential development in the future. However, it appears that Petitioners fail to understand that if an area, any area, is proposed to be developed, and any development permits are required, additional environmental review, including a threshold determination, must occur at the *project* level. With more specific information on a proposed project development, specific environmental impacts can be identified, mitigated, or provide the basis for permit denial. Environmental review of a Plan Update, such as the adoption of Ordinance No. 2005-9, does not rise to this level of detail. Additionally, it is undisputed that the Town has a new Critical Areas Code, which includes identified critical areas, review procedures, and regulations to protect designated critical areas. If critical areas are found within the site of particular concern to Petitioners, the Town’s critical area regulations will apply to any development proposed for that site.

Therefore, the Board finds and concludes that Petitioners have **failed to carry their burden of proof** in demonstrating noncompliance with SEPA as it relates to the Plan Update. Petitioners’ Legal Issue 1 is **dismissed**.

Conclusion

Petitioners have **failed to carry their burden of proof** in demonstrating noncompliance with SEPA as it relates to the Plan Update. Petitioners Legal Issue 1 is **dismissed**.

D. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Nevertheless, here Petitioners have framed the request for invalidity as a Legal Issue 8 from the PHO:

- 8. *Should the Board find noncompliance with the GMA in any of the issues noted supra, does such noncompliance substantially interfere with the goals of the Act meriting the imposition of a determination of invalidity by the Board?***

Applicable Law

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
 - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
 - (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

In its discussion of Legal Issues 3 and 2, *supra*, the Board has found compliance. On Legal Issue 1, *supra*, the Board has concluded that Petitioners did not carry their burden of proof. Because there is no Board finding of noncompliance and there is no remand, there is no basis for considering invalidity. Therefore the Board **declines** to enter a determination of invalidity.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

- Petitioner Van Cleve has **abandoned** all issues related to the Plan Update's treatment of Swanson Field – Legal Issues 4-7 [airport issues] in the PHO. Legal Issues 4-7 are **dismissed with prejudice**.
- The Town of Eatonville's adoption of Ordinance No. 2005-9, specifically as it applies to the amendment deleting Van Eaton Park from the Plan Update, **complies** with the notice and public participation requirements of RCW 36.70A.035 and .140 and the CTED review requirements of RCW 36.70A.106.
- Petitioners have **failed to carry their burden of proof** pertaining to compliance with chapter 43.21C RCW. Legal Issue No. 1 is **dismissed with prejudice**.
- The matter of *Cossalman, Parento, McTee and Van Cleve v. Town of Eatonville*, CPSGMHB Consolidated Case No. 05-3-46c, is **closed**.

So ORDERED this 1st day of May 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member [Board member McGuire files a
concurring opinion]

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.⁷

Concurring Opinion of Board Member McGuire

I concur with my colleagues in all respects on the analysis and conclusions drawn in this Final Decision and Order. However, I write separately to alert the Town of Eatonville to inconsistencies in its Plan and flaws in its process that were not presented in issues raised or argued by Petitioners, but became apparent in my review of this matter. First, is the matter of the Plan's internal inconsistency – between the Town's future Land Use Map (**FLUM**) and chapter 12 [Parks and Recreation chapter]. Second, is the flaw in the Town's environmental review process – the DNS.

Internal inconsistency in the Plan Update:

While the Town succeeded in amending its Plan Update to delete reference to the area commonly known as Van Eaton Park from the parks inventory and map in Chapter 12 ; it did not alter its FLUM. *Compare* Chapter 12, at 12-1 and 12-3 *with* the Town's FLUM, Figure 10-2 ,at 10-18 of the Plan Update.⁸

The Town's FLUM, the map that graphically depicts the Town's plan for future development through 2022, indicates the area commonly known as Van Eaton Park as "Parks and Open Space." Thus, it appears to me that the recent action of the Town muddies the water instead of clarifying it. The adopted amendment suggests that the Town Council wants the parkland deleted and perhaps devoted to other uses; yet the

⁷ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

⁸ I note that at the April 4, 2005 Planning Commission meeting the subject of changing the designations on the FLUM from "green" to "yellow" was discussed, but no action occurred at the PC or at the Council on amending the FLUM. *See* FoF 9.

FLUM in the Plan Update expresses a contrary intent to maintain the area as parks and open space. This can only add to the confusion among the citizens of the Town as to what the Town envisions for this property. I would remind the Town that the GMA not only requires *internal* consistency, but it requires development regulations to be *consistent with, and implement*, the Plan. See RCW 36.70A.040 and .130. The Town’s development regulations cannot be consistent with, and implement, two internally inconsistent Plan provisions. The Town would be well advised to remove any internal inconsistency in its Plan and make sure its development regulations – *i.e.* zoning – implement the Plan and the FLUM.

The DNS:

It is undisputed that: the Town prepared an Environmental Checklist regarding the Plan Update; that Petitioners commented on that checklist; and Petitioners unsuccessfully appealed the DNS. FoF 15 through 18. However, I am puzzled by the timing of the Town’s issuance of the DNS and action on the Plan Update.

On July 18, 2005, the Town’s Responsible Official, on behalf of the Town or lead agency, issued “Determination of Nonsignificance – Draft Comprehensive Plan, 2002-2022, Town of Eatonville, July 11, 2005.” FoF 16, Ex. 61. On the face of the July 18, 2005 DNS there are two boxes: one indicates there is “ no comment period for this DNS;” the other states “ This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below [July 18, 2005].” *Id.* Neither box is checked, but given that Petitioners commented on, and appealed, the DNS, I conclude that there was a comment period and that therefore the second box applied.

WAC 197-11-340(2) provides in relevant part:

(a) an agency [*i.e.* local government – Town of Eatonville] *shall not act upon a proposal for fourteen days after the date of issuance of a DNS if the proposal involves:*

...

(v) *A GMA Action.*

(Emphasis supplied).

Thus, pursuant to SEPA, and the SEPA rules, if a jurisdiction is considering a GMA action, such as a Plan Update, and a DNS on the Plan Update is issued, the jurisdiction “shall not act” [*i.e.* take legislative action] until 14 days after the DNS is issued. The 14-day waiting period is to allow the opportunity for comment on the DNS on the proposed action. WAC 197-11-340(2)(c). Comments might provide new information or otherwise cause the lead agency to withdraw the DNS, do an addendum, issue a determination of significance or conclude its DNS is appropriate.

Here, it seems to me that the Town got the cart way before the horse. The Town adopted Ordinance No. 2005-9 [its Plan Update] on July 11, 2005. *See* Ordinance No. 2005-9, at 2; City Response, at 6; Exs. 81 and 105. Yet the DNS for the Plan Update was not issued until July 18, 2005 – one week *after* the GMA action occurred. The Town adopted the Plan Update *prior to issuance* of the DNS, let alone adhering to the waiting period contained on the DNS itself. For the Town to adopt [act upon] the Plan Update without even the benefit of a threshold determination [in this case the DNS] to my mind was a **clear error** by the Town of Eatonville and contrary to the informed decision-making provisions and requirements of SEPA – chapter 43.21C RCW. Environmental review is to occur prior to a decision being made.⁹ However, this error was not raised, argued or proved by Petitioners, and therefore, is not an error the Board can assign. But the Town should be mindful that a guiding purpose of SEPA is to bring environmental concerns into the realm of informed decision-making.

⁹ I acknowledge that Petitioners did appeal the DNS to the Town Council, albeit unsuccessfully. Yet this appeal was resolved in September – two months after the adoption of the Plan Update.

APPENDIX A

Procedural Background

A. General

On October 31, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Charles K. McTee, Steven W. Cossalman, Arlen Parento and G. Steven Van Cleve (**Petitioner I**). The matter was assigned Case No. 05-3-0044. Edward G. McGuire is the presiding officer (**PO**) in this matter. Petitioner I challenges the Town of Eatonville's (**Respondent** or **Eatonville**) July 11, 2005 adoption of a new Comprehensive Plan – Ordinance No. 2005-9. The focus of Petitioner I's concern is an area generally referred to as the Rainier Avenue Parkland and/or Orchard Avenue Parkland. The basis for the challenge is noncompliance with several provisions of the Growth Management Act (**GMA** or **Act**) and the State Environmental Policy Act (**SEPA**).

On November 7, 2005, the Board received a PFR from G. Steven Van Cleve (**Petitioner II**). The matter was assigned Case No. 05-3-0046. Edward G. McGuire is the PO in this matter as well. Petitioner II also challenges Eatonville's adoption of a new Comprehensive Plan – Ordinance No. 2005-9. The focus of Petitioner II's concern is a general aviation airport – Swanson Field. The basis for the challenge is noncompliance with several provisions of the GMA.

On November 7, 2005, the Board issued an "Order of Consolidation and Notice of Hearing" in the above-captioned cases. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On November 28, 2005, the Board conducted the PHC at the Financial Center, Seattle. Board member Edward G. McGuire, conducted the conference. Board Members Bruce C. Laing and Margaret A. Pageler also attended the PHC. Petitioners Charles K. McTee, Stephen W. Cossalman and G. Steven Van Cleve appeared *pro se*. Ed Hudson represented Respondent Town of Eatonville. Mart Kask, consultant to the Town of Eatonville, was also present.

At the PHC, Petitioners submitted a timely "Supplement to Petition for Review" (**Amended PFR** [PFR 05-3-0044 re: Park land Issues]). The Board accepted the filing and the Town of Eatonville was provided a copy of the Amended PFR.

On November 29, 2005, the Board issued its "Prehearing Order." (PHO) in this matter. The PHO set the final schedule and framed the issues to be addressed by the Board.

B. Motions to Supplement the Record and Amend the Index

At the PHC on November 28, 2005, the City presented copies of Eatonville's "Index of Record" (**Index**). The Index identified 76 items.

On December 9, 2006, the Board received a letter from the Town indicating it had supplemented the Index to include an additional 19 items. (**Index Supplement**). The letter indicated that copies of the Amended Index had been mailed to Petitioners.

On December 22, 2006, the Board received another letter from the Town indicating that it was going to consolidate the Index and Index Supplement and, if necessary revise the description of the indexed documents.

By January 9, 2006, the deadline for filing motions to supplement the record, the Board did not receive any motions to supplement the record by any of the Petitioners. However, on this date, the Board did receive a “Revised Index of Record” (**Revised Index**) from the Town. The Revised Index listed 101 items. The cover letter indicated that in addition to renumbering and consolidating the Index and Index Supplement and revising the document descriptions, the Town had added a few items to the record. The additions were items noted in a prior appeal.

On February 9, 2006, the Board received a “Supplemental Revised Index of Record” (**Revised Index Supplement**). This version of the Index noted 106 items.

Other than Respondent’s three revisions to the initial Index, which added approximately 30 items over a three month period, there were no motions to supplement the record made by Petitioners.

C. Dispositive Motions

There were no dispositive motions made in this matter.

D. Briefing and Hearing on the Merits

On February 22, 2006, five days before Petitioners’ prehearing brief was due, the Board received a “Motion for Time Extension or Alternative Remedy” (**Extension Motion**) from Petitioners. The motion asked for additional time (sixty-days) for Petitioners prepare and file their prehearing brief. Petitioners asserted that more time was needed to review the latest revisions to the Index submitted by the Town.

Via e-mail, on February 23, 2006,¹⁰ the Board’s Administrative Officer contacted Petitioners on behalf of the Board, and indicated that the Board would have to receive, by

¹⁰ The February 23, 2006 e-mail from Linda Stores to Petitioners, cc to Respondent stated:

The Board has met, discussed Mr. Van Cleve's motion, and asked me to send you the following message:

- **Regarding the Index.** The Board accepts the jurisdiction's filing of the index at face value. It has seen them amended from time to time. The key is -- based upon the original index filed [and here

February 27, 2006, either: 1) a request for a settlement extension; 2) an agreement from the parties to adjust the briefing schedule [without altering the April 3, 2006 HOM date]; or 3) Petitioner's prehearing brief.

On February 27, 2006, the Board received Petitioners' "Prehearing Brief" (**Cossalman PHB**), with five attached exhibits [A – E].

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- the original was filed 11/28/05, then amended several times afterwards to expand, not contract, its contents], the petitioner needs to make sure that documents they will need to make their case are included on that index. If not, they should first ask the jurisdiction to amend the index to include the needed document. If that is unsuccessful, petitioners may make a motion to supplement the record within the timeframe set in the prehearing order. Absent a motion to supplement, the index, whether amended or not, brackets the potential record for the case. The Board never received a motion to supplement from petitioner indicating that even the original index was inadequate to make their arguments. Therefore the Board assumes that the index included the materials petitioner needs to prepare their brief. The record actually seen and reviewed by the Board consists of the exhibits attached to the prehearing brief, response and reply briefs. Those attached exhibits have to be from the record [index] provided by the jurisdiction.
- **Regarding an Extension.** The only way the Board can extend its 180-day decision time frame is to receive a request for a settlement extension [typically in 30, 60 or 90 day increments]. Consequently, the Board cannot, by statute, extend the schedule for additional time absent a written request signed by both parties that also indicates they need additional time to meet and discuss resolving their dispute. The parties cannot merely agree to want more time - the stated purpose of the settlement extension is to pursue settlement. Thus, if petitioner and respondent request, in a writing signed by the parties, an additional 60 or 90-days to pursue settlement, the Board would grant such extension; thereby moving the decision, hearing and briefing dates out by the extended time frame. Lacking such a request, it is required, by statute, to have the Final Decision and Order issued by no later than May 8, 2006. Also, since the schedule as set only allowed approximately a month between the Hearing on the Merits and the FDO date, there is no flexibility in moving the hearing back. The Board needs time to write the decision. Also, it has additional hearings scheduled in other matters during that timeframe, so moving the HOM date will not be possible.
 - **Additional time for briefing.** If a settlement extension is not forthcoming, the petitioner is required to file the PHB on 2/27/06 -- unless, petitioner and respondent can agree on a slight adjustment in the briefing schedule that nonetheless has the last brief filed no later than March 27, 2006. With the HOM scheduled for April 3, 2006, the Board has no leeway. Thus, if the parties mutually agree to a revision to the briefing schedule within that parameter, the Board would be amenable to granting it [*e.g.* PHB due 3/13, Response brief due 3/23 and Reply due 3/27].

Given the late date of this request, and the fact that the petitioners' PHB is due Monday **2/27/06, the Board will have to receive on that day** either: 1) a request for settlement extension; 2) an agreement from the parties to adjust the briefing schedule [within the parameters noted above]; or 3) Petitioners' Prehearing brief with attached exhibits.

In view of the timing here, I have marked this message Urgent, and I anticipate hearing back timely. Thank you.

On March 20, 2006, the Board received “Prehearing Brief of Respondent Town of Eatonville” (**Eatonville Response**), with 19 attached exhibits [Index numbers were used to identify exhibits, and two prior Board Orders were also included].

On March 27, 2006, the Board received “Petitioners Reply to Prehearing Brief of Town of Eatonville” (**Cossalman Reply**), with five attached exhibits [F – K].

On March 28, 2006, the Board received the Town of Eatonville’s “Table of Exhibits” for their response brief.

On March 29, 2006, the Board received Petitioners “Table of Exhibits” for their opening and reply briefs.

On March 30, 2006, the Board received a letter from the Town’s attorney indicating that they had received Petitioners reply brief and it included five exhibits [F – K] that were not included on the Town’s Index. The same day, the Board received an e-mail from Petitioners explaining exhibits F – K. The Board informed the parties that the question of the exhibits would be addressed at the April 3, 2006 hearing on the merits.

On April 3, 2006, the Board held a hearing on the merits at the Board’s offices in Suite 12470, 900 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, and Bruce C. Laing and Margaret A. Pageler were present for the Board. Petitioners Cossalman, McTee and Van Cleve appeared *pro se*, with Mr. Van Cleve arguing on behalf of Petitioners. Respondent Town of Eatonville was represented by Robert E. Mack and Ed Hudson. Mart Kask and Tom Smallwood [Town of Eatonville] were also present. Board externs, Justin Titus and Amie Hirsh and the Board’s law clerk Julie Taylor also attended. Court reporting services were provided by Eva Jankovitz of Byers and Anderson. The hearing convened at 10:00 a.m. and adjourned at approximately 11:30 a.m.

APPENDIX B

Findings of Fact

1. Ordinance No. 2005-9 repeals the Town of Eatonville's 1993 Comprehensive Plan and adopts a new Comprehensive Plan – it is the Town's Plan Update, as required by RCW 36.70A.130(4). Ordinance No. 2005-9, Title.
2. The 3.1 acres of parkland at issue in this matter is generally bounded by Larson Street on the north, Rainier Avenue on the east, Prospect Street on the south and Orchard Street on the west. The park area has been described a "Van Eaton Park" and "parkland at Rainier Avenue and Larson Street." HOM Ex. 1, at 12.1.
3. The Plan Update *deleted* reference to neighborhood parks at Rainier Ave. S [1.6 acres] and Orchard Ave. S [1.5 acres] from the Chapter 12 list of parks owned by the Town of Eatonville. *Compare* HOM Ex. 4, at 12-1 and Plan Update, at 12-1.
4. The "Rainier/Orchard Parkland" was also *deleted* from the "Park and Recreation Facilities" map in that Chapter 12 of the Plan Update. *Compare* HOM Ex. 4, Figure 12-1, at 12-3 and Plan Update, Figure 12-1, at 12-3.
5. On June 15, 2004, the Town of Eatonville filled out and submitted the following form to the Department of Community, Trade and Economic Development (**CTED**) "Comprehensive Plan Checklist: A Technical Assistance Tool from the Washington State Office of Community Development Growth Management Program" (**CTED Checklist**) Ex. 50.
6. The CTED Checklist indicated that the Town of Eatonville intended to adopt the Plan Update on February 28, 2005 and that the Plan Update included a Parks and Recreational Element at page 12-1 in the Plan Update. Ex. 50, at 13.
7. On March 4, 2005, CTED notified the Town that "CTED will not be commenting formally on Eatonville's draft comprehensive plan amendments and Critical Areas Ordinance amendments submitted for review in 2004." Ex. 54.
8. On March 29, 2005, Mayor Rath sent a letter to the Eatonville Planning Commission (**PC**) informing them that the Town Council had declared Van Eaton Park surplus and authorized its sale. Consequently, the Mayor asked that the Draft Comprehensive Plan be revised to delete reference to the park. The Mayor also suggested that the public hearing on the matter be conducted by the Town Council. Ex. 101.
9. At the April 4, 2005 PC meeting the Commissioners considered the Mayor's letter but did not place the park question on the hearing agenda; nonetheless they invited and heard comment on the issue from Petitioners. The future land use map FLUM indicated the area in question as green [parks and open space] and the suggestion was to change it to yellow [residential SF]. Ex. 102, at 10-29.
10. On May 10, 2005, the PC voted to pass the Plan Update up to the Council as contained on a compact disc version. The version transmitted to the Town Council retained all references to the park, including the FLUM designation. The Exs. 86 and 103, at 33-35.
11. On June 15, 2005, the Dispatch published a "Notice of Public Hearing" for June 27, 2005 before the Town Council, beginning at 7:00 p.m., regarding the Plan

- Update, among other things. The notice indicated that the Draft Plan Update contains various elements and chapters, including “12) parks and recreation.” Ex. 35,
12. On June 27, 2005, the Town Council conducted a public hearing on the Plan Update. The Council had a proposed amendment before it to delete the references to the park. Petitioners and others testified in support of retaining the parkland (Van Eaton Park). The Council continued the hearing until its July 11, 2005 meeting to consider the parks issue, among others. Exs. 80 and 104, at 2-12.
 13. On June 29, 2005, the Dispatch published a “Notice of Continued Public Hearing” continuing review of the Plan Update from the June 27, 2005 meeting to the July 11, 2005 Town Council meeting, beginning at 7:30 p.m. The notice indicated that the Draft Plan Update contains various elements and chapters, including “12) parks and recreation” and “18) proposed amendment relating to deleting parkland at Rainier Avenue and Larsen Street and adding a park to Mashell Avenue north of Center Street.” Ex. 37.
 14. On July 11, 2005, the Town Council resumed its public hearing on the Plan Update. Testimony was received on the parks issues, including deletion of parkland at Rainier Avenue and Larsen Streets. There was a motion to delete references to Van Eaton Park [located at Rainier Avenue and Larson Street] on pages 12-1 [listing of Town owned parks] and 12-3 [park and recreational facilities map]. The amendment was adopted and Ordinance No. 2005-9 was passed. The designation of the property on the FLUM was not changed by the amendments – it remained “green” - parks and open space” – it was not changed to “yellow” [residential SF]. Exs. 81 and 105, at 4-9, 51-74; *see also* Plan Update – FLUM, “Land Use Plan – 2022” Figure 10-2, at 10-18.
 15. On July 11, 2005, Petitioners submitted their comments on the SEPA checklist [no date of issuance indicated] for the Plan Update and Critical Areas Code, and indicated their intent to appeal if a Declaration of Significance was not issued. Ex.57.
 16. On July 18, 2005, the Town’s Responsible Official issued a Determination of Nonsignificance (**DNS**). The DNS stated “This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.” [7/18/05]. Ex. 61.
 17. On September 22, 2005, the Dispatch published a “Notice op Public Hearing – Appeal of (SEPA) Determination of Nonsignificance (DNS) on the Draft Revised Comprehensive Plan 2002-2022.” Petitioners’ appeal hearing was set for September 26, 2005 at 7:00 p.m. Ex.68.
 18. On September 26, 2005, the Council heard the appeal and upheld the issuance of the DNS on the Plan Update. Ex.83.