

Motion Re: Failure to Adopt Ordinance” (**Kap Motion – Ord.**), with three attached exhibits A-C.²

On March 14, 2006, the Board received: 1) “Opposition to city of Redmond’s Motion to Dismiss” (**Kap Response – SMJ**), with two exhibits – A and B;³ and 2) “City of Redmond’s Response to Petitioners’ Dispositive Motion Re: Failure to Adopt Ordinance” (**City Response – Ord.**), with two attached exhibits A – B.⁴

On March 20, 2006, the Board received “Petitioner’s Reply to City of Redmond’s Response to Petitioner’s Dispositive Motion Regarding Failure to Adopt Ordinance” (**Kap Reply – Ord.**), with six attached exhibits A – F.⁵ The Board did not receive a reply from the City of Redmond regarding the city’s motion to dismiss.

The Board did not hold a hearing on the dispositive motions.

II. DISCUSSION AND ANALYSIS

A. City of Redmond’s Motion to Dismiss

The City of Redmond moves to dismiss the PFR filed in this matter for lack of subject matter jurisdiction. The City’s theory is that the TMP, adopted by Resolution 1217, is not a comprehensive plan, development regulation or permanent amendment thereto,⁶ but rather a “functional plan” that does not fall within the jurisdiction of the board as set forth in RCW 36.70A.280(1) and RCW 36.70A.290(2). City Motion – SMJ, at 1-9. In essence, Petitioner argues that the TMP is essentially the City’s Transportation Element of its GMA Comprehensive Plan, or at least an amendment thereto, since it “establishes policies, programs, projects and services that are required under the terms of RCW 36.70A.070(6). . .” Kap Response – SMJ, at 1; and 6-10.

The City’s characterization of the TMP as a “functional plan” and not a GMA plan, development regulation or amendment thereto, is a misnomer. The TMP “functions” as a supplement or amendment to the City’s Transportation Element. The City acknowledges that the TMP basically “swallows” the City’s GMA Transportation Element when the City notes that Chapter 2 of the TMP “*reproduces the 2004 Transportation Element in*

² Exs. A and B are excerpts from the Redmond “Transportation Master Plan” (TMP) and Ex. C is a copy of Resolution 1217 – the challenged action.

³ Ex. A is another excerpt from the TMP, and Ex. B is an excerpt from the City’s Transportation Element [update adopted by Ordinance No. 2230].

⁴ Exs. A and B are excerpts from the City’s Plan – Capital Facilities Element and Neighborhood Policies.

⁵ Ex. A is 11/4/03 Memo from the Mayor to the Council regarding a consultant agreement; Ex. B is a 1/7/05 memo from the Mayor to the Council and Planning Commission regarding the TMP Process; Ex. C is and 3/07/05 e-mail transmittal from the City to CTED with attached TMP, including amendments to the Transportation Element; Ex. D is a 8/5/05 Memo from City staff to the Mayor and Council regarding an appeal of the DNS on the TMP; Ex. E is a Map (Map TR-2) showing the Transportation Facility Plan 1997-2017; and Ex. F is an unidentified street map, showing the area around Woodinville Redmond Road.

⁶ Curiously, in its response to Petitioners motion, the City states, “The TMP provides more detailed information on matters covered within the Transportation Element of the Redmond Comprehensive Plan; *it does amend the Transportation element in and of itself.*” See City Response – Ord., at 3, (emphasis supplied).

*full.*⁷” City Motion – SMJ, at 2, (emphasis supplied); *see* also TMP, Chapter 2, at 2-1 through 2-10. The ten pages of Chapter 2 in the TMP, standing alone, fall significantly short of the mandatory components for a Transportation Element as set forth in RCW 36.70A.070(6)(a).⁸ However, the TMP itself appears to address the required GMA components. For example:

- Chapter 3 addresses Trends and Conditions affecting transportation and mobility in the City and provides “data for growth trends and for related traffic trends.” TMP, at 1-2; and Ch. 3, at 3-1 through 3-10.
- Chapter 4 entitled Transportation Objectives and Concurrency Management sets forth the City’s “approach to concurrency and level-of-service (LOS) requirements for streets and transit.” TMP, at 1-2; and Ch. 4, at 4-1 through 4-12.
- Chapter 5, Transportation Mode Plans, describes the City’s foundation for the “development of transportation projects and programs contained in the Transportation Facility Plan (TFP).” TMP, at 1-2; and Ch.5; 5A – Pedestrian Program Plan, at 5A-1 through 5A-16 with tables and maps; 5B – Bicycle System Plan, at 5B-1 through 5B-1 through 5B-12, with tables and maps; 5C – Transit System Plan, at 5C-1 through 5C-16, with tables and maps; 5D – Thoroughfare Plan, at 5D-1 through 5D-14, with tables and maps; 5E – Modal Integration: Access and Circulation, at 5E-1 through 5E-12, with tables and maps; and 5F – Demand Management, at 5F-1 through 5F-6.
- Chapter 6, Transportation Facilities Plan, “listing the projects and programs necessary to meet Redmond’s transportation needs through 2022, and a plan to finance the TFP.” TMP, at 1-2; and Ch. 6, at 6-1 through 6-14, with tables and maps.

Additionally, the TMP was filed, in accordance with RCW 36.70A.106, with the Department of Community, Trade and Economic Development for review and comment.

In accordance with RCW 36.70A.106, the City of Redmond notifies the Department of Community, Trade and Economic Development of the review of the proposed Transportation Master Plan, which is a transportation functional plan, *containing amendments to the Redmond Comprehensive Plan Transportation Element*.

(Emphasis supplied). March 7, 2005 e-mail transmittal from Terry Marpert to CTED re: 60-day notice of Redmond’s TMP; Ex. C, Kap Motion – Ord.

The Board agrees with Petitioner. The Redmond Transportation Master Plan, as adopted by Resolution 1217, is designed to guide the City’s transportation projects and programs in conjunction with its GMA Land Use Element. The TMP,

⁷ Chapter 2 is entitled: “Transportation Vision and Policies”

⁸ The Board recognizes that the City’s 2004 Plan Update, as adopted by Ordinance No. 2230, was not timely challenged and is not before the Board for review.

[S]erves as a plan for the ultimate build-out of Redmond’s transportation network, addressing the needs of each modal element. In compliance with the state Growth Management Act requirements, the TMP also provides a financially feasible plan for the year 2022, the horizon year for the Comprehensive Plan Update, that is based on the adopted land use for 2022.

TMP, at ES-3.

Regarding the City’s notion that the TMP is a “functional” plan,⁹ the Board addressed a similar argument pertaining to other types of “specialized plans” and stated in *West Seattle Defense Fund v. City of Seattle (WSDF III)*, CPSGMHB Case No. 95-3-0073, Final Decision and Order, (Apr. 2. 1996), at 10, “[T]he GMA has removed the discretion of cities and counties to undertake new localized land use policy exercises *disconnected* from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan.” (Emphasis supplied). The City’s TMP cannot exist in a vacuum; it is part and parcel to the City’s system for accommodating and managing growth. Managing growth in the Central Puget Sound region is done exclusively under Chapter 36.70A RCW.¹⁰ The City of Redmond’s TMP is precisely the type of land use planning that the GMA was created to coordinate and manage.

Board Conclusion

The Board finds and concludes that the TMP supplements and *amends* the City’s GMA Plan Transportation Element. The TMP is clearly intended to fulfill the GMA’s Transportation Planning requirements contained in RCW 36.70A.070(6)(a). As such, the TMP falls within the Board jurisdiction as set forth in RCW 36.70A.070.280(1). The City’s motion to dismiss the PFR for lack of subject matter jurisdiction is **denied**.

B. Petitioner’s Dispositive Motion

Petitioner asks the Board for “a dispositive order dismissing the Transportation Management (*sic* Master) Plan (TMP) adopted by the City of Redmond on the grounds that the City failed to adopt an ordinance for the proposed TMP.” Kap Motion – Ord, at 1. The Board interprets Petitioners’ motion as asking the Board to dismiss the case and direct the City to adopt its TMP by ordinance and provide notice of publication. Petitioner relies upon a prior Board case, where in reviewing RCW 36.70A.290(2) the Board stated, “The Board holds that a GMA comprehensive plan can only be adopted by ordinance.” *Id.* at 3, *citing Burlington Northern Railroad v. City of Auburn (BNRR)*, CPSGMHB Case No. 95-3-0050, Order of Dismissal, (Aug. 30, 1995), at 3. Redmond

⁹ The Board notes that other “functional plans” such as sewer or water system plans (developed and adopted pursuant to other Titles of the RCWs) *that are relied upon and intended to fulfill, in whole or in part, GMA requirements*, such as the Capital Facility Element requirements, must be included directly, or incorporated by reference, into the jurisdiction’s GMA Plan. *See: West Seattle Defense Fund v. City of Seattle (WSDF IV)*, CPSGMHB Case No. 96-3-0033, Final Decision and Order, (Mar. 24, 1997), at 28.

¹⁰ *See WSDF IV*, at 11.

contends “The fundamental premise underlying Petitioners’ argument is that the TMP ‘is a comprehensive plan and/or a development regulation’ and therefore required to be adopted by ordinance, not resolution.” But, the City argues, that Petitioners’ fundamental premise is wrong, since “the TMP is neither a comprehensive plan nor a development regulation.” City Response – Ord., at 1; and 2-4. In reply, Petitioner reasserts that the TMP is GMA Plan document, subject to the requirements of the Act and Board review. Kap Reply – Ord., at 1-6.

RCW 36.70A.290(2)(a) provides:

Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes *the ordinance, or summary of the ordinance, adopting the comprehensive plan* or development regulation, *or amendment* thereto, as is required to be published.

(Emphasis supplied). If the notice of publication is that of an adopted ordinance, then the inescapable conclusion is that any plan, implementing development regulation or amendment thereto, must be adopted by ordinance.

The Board has already determined *infra*, that the “TMP supplements and *amends* the City’s GMA Plan Transportation Element. The TMP is clearly intended to fulfill the GMA’s Transportation Planning requirements contained in RCW 36.70A.070(6)(a).” It is an “amendment thereto.”

The Board notes that the January 7, 2005 memo from the Mayor to the City Council and Planning Commission regarding the Transportation Master Plan Approval Process – Study Session 1 (January 11, 2005) indicates in its review schedule that on “May 3, 2005 – Council adopts TMP – *Adoption by ordinance*” Kap Reply – Ord.; Ex. B, at 8. Thus the City had intended that the TMP be adopted by ordinance.

The Board further finds and concludes that it is an uncontroverted fact that the City of Redmond’s TMP was adopted by resolution – Resolution 1217 – rather than by ordinance. *See* Resolution 1217. Pursuant to RCW 36.70A.290(2)(a), the TMP, supplementing and amending the City’s GMA Plan Transportation Element, shall be adopted by ordinance. Additionally, the Board finds and concludes that there is no indication in the body of the Resolution, nor by documents provided by the City, that there was ever “notice of adoption” of the TMP published, as required by RCW 26.70A.290(2)(a).

Board Conclusion

Consequently, the Board finds and concludes that the City of Redmond’s adoption of the Transportation Master Plan, supplements and amends the City’s GMA Plan Transportation Element; and the TMP must be adopted by ordinance and published as provided for in RCW 36.70A.290(2)(a). The City’s adoption of the TMP, via Resolution 1217, was **clearly erroneous** and **does not comply** with RCW 36.70A.290(a) of the Act.

The Board **grants** Petitioners motion. This matter is **dismissed** and **closed**. The City will be directed to adopt the TMP by ordinance and publish “notice of action” as required by RCW 36.70A.290(2)(a).

III. ORDER

Based upon review of the GMA, Board’s Rules of Practice and Procedure, briefing and exhibits submitted by the parties, case law and prior decisions of this Board, and having deliberated on the matter, the Board enters the following ORDER:

1. City of Redmond’s motion to dismiss for lack of subject matter jurisdiction is **denied**.
2. Petitioner’s motion regarding the City’s failure to adopt the TMP by Ordinance is **granted**. This matter of *Kap v. City of Redmond*, CPSGMHB Case No. 06-3-0002, is **dismissed**. This case is hereby **closed**.
3. The Board **directs** and **orders** the City of Redmond to adopt its Transportation Master Plan (as may be amended or revised at the City’s discretion) **by ordinance** and **publish** notice of such action, as required by RCW 36.70A.290(2)(a). The City shall adopt such ordinance by no later than **October 10, 2006**.
4. This Order of Dismissal should not be construed as a Board determination as to whether the City’s TMP substantively complies with the relevant goals and requirements of the GMA. Additionally, the date of publication of the notice of adoption of the City’s Transportation Master Plan will trigger the period for filing subsequent petitions for review, if any.

So ORDERED this 12th day of April, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

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.