

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

JOCELYNNE FALLGATTER,)	
)	Case No. 06-3-0034
Petitioner,)	
)	<i>(Fallgatter VIII)</i>
v.)	
)	
CITY OF SULTAN)	FINAL DECISION AND ORDER
)	
Respondent.)	
)	
)	
)	

SYNOPSIS

On August 10, 2006, by Resolution No. 06-10, the City of Sultan adopted its six-year Transportation Improvement Plan (TIP) for 2006-2011. The City’s action followed the Board’s Final Decision and Order in a prior case – Fallgatter V v. City of Sultan, CPSGMHB Case. No. 06-3-0003 (FDO, June 29, 2006) - in which the Board had found that the City’s previous TIP for 2005-2011 failed to comply with the GMA. The deficiencies called out in Fallgatter V were inconsistency between the TIP and the Comprehensive Plan, a legally deficient Transportation Element in the Comprehensive Plan, and the lack of a twenty-year Capital Facilities Element. Notwithstanding the lack of a compliant Transportation Element and Capital Facilities Element, the City of Sultan readopted its TIP, making just one project change.¹

Petitioner Jocelynn Fallgatter, pro se, challenged Resolution No 06-10, adopting the 2006-2011 TIP, as non-compliant with RCW 36.70A.120, which requires that a city’s actions and capital budget decisions be consistent with its comprehensive plan. The City conceded that Resolution No. 06-10 ‘readopted’ the 2005-2010 TIP which the Board had previously found non-compliant, acknowledged that its transportation plan was not complete, and indicated that it had retained a consultant to assist in the relevant analysis.

The Board concluded that Petitioner carried her burden of proving that the City’s action in adopting the 2006-2011 TIP failed to comply with RCW 36.70A.120. Further, the Board found that the City’s action substantially interferes with the goals of the GMA, specifically, Goals 1, 3, and 12. The Board entered a finding of invalidity.

¹ The City deleted the completed 5th Street signalization project.

I. BACKGROUND

On October 6, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Jocelyne Fallgatter (**Petitioner** or **Fallgatter**). The matter was assigned Case No. 06-3-0034, and is hereafter referred to as *Fallgatter VIII v. City of Sultan*. Board member Margaret Pageler is the Presiding Officer (**PO**) for this matter. Petitioner challenges the City of Sultan's (**Respondent** or **Sultan**) adoption of Resolution 06-10 which adopted a six-year Transportation Improvement Program (**TIP**) for noncompliance with provisions of the Growth Management Act (**GMA** or **Act**).

On October 12, 2006, the Board received a Notice of Appearance from Thom Graafstra of Weed, Graafstra and Benson, Inc., P.S. on behalf of the City of Sultan.

On October 16, 2006, the Board issued its Notice of Hearing (**NOH**) which requested that the parties consider resolution of the issue² in conjunction with the compliance proceedings in *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003. The NOH set an expedited date for a Prehearing Conference (PHC) by teleconference and established a tentative schedule for hearing.

On October 26, 2006, the PHC was conducted by teleconference. Presiding Officer Margaret Pageler convened the conference. Board members Ed McGuire and Dave Earling also attended. Petitioner Jocelyne Fallgatter participated *pro se*. Cheryl Beyer of Weed, Graafstra, Benson represented the Respondent. Rick Cesar, City of Sultan Director of Community Development, also attended telephonically.

The Board discussed with the parties the possibility of settling their dispute within the context of the City's current planning efforts. The City represented that its consultant, Reid Shockey, was assisting in the completion of an updated Capital Facilities Plan to be adopted by the City in connection with its annual budget cycle (i.e., by the end of the year). Petitioner indicated that she had spoken with the consultant; her understanding was that the CFP update process will address the financing plan for transportation improvements and will consolidate the project list (or link it by reference) in the

² The Notice of Hearing stated:

The Board's Final Decision and Order in CPSGMHB Case No. 06-3-0003, *Fallgatter V*, remanded the City's TIP and other matters to the City to be brought into compliance with the GMA through action to ensure the consistency of the TIP (and other elements) with the City's Comprehensive Plan. ...

In the present matter, Petitioner challenges the 2006 TIP as non-compliant with the GMA and inconsistent with the Comprehensive Plan. **If the City's planning work program anticipates and includes actions such as amending the Comprehensive Plan to fully meet the statutory requirement for the transportation and capital facilities elements and to incorporate the current TIP by reference, and if such actions seem likely to address Petitioner's challenge without undue delay, the Board would suggest that the parties seek a settlement extension to allow the City's process to be completed (while preserving Petitioner's issues).** [Emphasis added.]

Comprehensive Plan, but may not provide the analysis necessary to complete the Transportation Element in the Plan.

The Board then reviewed its procedures for the hearing, including the Legal Issue to be decided and a Final Schedule. The Board's Prehearing Order was issued on October 27, 2006. The City of Sultan's Index to the Record was supplied on November 3, 2006.

No motions were filed during the time set on the Board's calendar for motions.

The following briefs on the merits were timely filed:

- Petitioner's Prehearing Brief with Exhibits 1 and 2 [**Fallgatter PHB**]
- Respondent City of Sultan's Prehearing Brief [**City Response**]
- Rebuttal to Respondent City of Sultan's Prehearing Brief, with 1 exhibit [**Fallgatter Reply**]

The Hearing on the Merits was convened in the Boards offices at 2:00 p.m. on February 5, 2007. Board member Margaret Pageler presided, with Board members Dave Earling and Ed McGuire, law clerk Julie Taylor and legal extern Moani Russell in attendance. Thom Graafstra represented Respondent City of Sultan, accompanied by Rick Cesar, Sultan Development Director. Petitioner Fallgatter appeared *pro se*. Stanley Heydrick attended as an observer. The HOM afforded the Board the opportunity to ask a number of questions and develop a clear understanding of the City's process and Petitioner's challenge.

Court reporting services at the HOM were provided by Shelly Hoyt of Byers & Anderson, Inc. The Board did not order a transcript of the HOM.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF REVIEW, AND DEFERENCE TO LOCAL JURISDICTIONS

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the legislature directed the Boards to hear and determine whether the challenged actions are in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). As articulated most recently by the Supreme Court, "the Board is empowered to determine whether [city] decisions comply with GMA requirements, to remand noncompliant ordinances to [cities], and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance." *Lewis County v. Western Washington Growth Management Hearings Board (Lewis County)*, 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

Legislative enactments adopted by the City of Sultan pursuant to the Act are presumed valid upon adoption. RCW 36.70A.320(1).

The burden is on the Petitioner to demonstrate that the actions taken by the City of Sultan are not in compliance with the Act. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the actions taken by [the City of Sultan] are 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 the action of the City of Sultan 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, 849 P.2d 646 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to the City of Sultan in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The Supreme Court has stated: “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). In *Lewis County*, the Court reaffirmed and clarified its holding in *Quadrant*, stating that: “... the GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds.” 157 Wn. 2d at 506, fn. 16.³

The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to only those issues presented in a timely petition for review. RCW 36.70A.290(1).

III. BOARD JURISDICTION

The Board finds that the Petitioner’s PFR was timely filed, pursuant to RCW 36.70A.290(2); that Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and that the Board has subject matter jurisdiction over the challenged Resolution 06-10, which amends the City’s six-year transportation improvement plan, pursuant to RCW 36.70A.280(1)(a) and RCW 36.70A.070(6)(a)(iv)(B) and (6)(c).

³ The *Lewis County* majority is in accord with prior rulings that “Local discretion is bounded . . . by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). See also, *Cooper Point Association v. Thurston County*, 108 Wash. App. 429, 444, 31 P.3d 28 (2001) (“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”); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3rd 1156 (2002).

IV. THE CHALLENGED ACTION AND CONTEXT

The City of Sultan is a small but fast-growing city located in the Skykomish River Valley east of Monroe. In November 2004, the City of Sultan had 1,500 dwelling units and a population of 3,800. Comprehensive Plan, at 24. Information submitted by Petitioner (and not disputed by the City) indicates the subsequent addition of almost 1,000 housing units, putting the City on track to double its population in as little as five years. Fallgatter Response, at 6-8.

On August 10, 2006, the City of Sultan passed Resolution 06-10 adopting a six-year TIP for 2006-2011 (**2006 TIP**). That action is challenged here. The City's adoption of the 2006 TIP followed an Order of this Board in a prior case – *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), in which the Board found the City's prior TIP (**2005 TIP**) noncompliant because it was inconsistent with the City's Comprehensive Plan and was based on a deficient Transportation Element and Capital Facilities Plan (**CFP**). The Board explained in that case:

Petitioners contend that Sultan's 2005 TIP adopted by Resolution 05-18 is inconsistent with the 2004 Comp Plan and non-compliant with specific GMA requirements for the Transportation Element of the comprehensive plan. Fallgatter PHB at 9-11. They point out that the TIP adds new projects at significantly increased costs without amending the financing plan. *Id.* at 11. Petitioners assert that the TIP fails to address the "estimated traffic impacts to state owned transportation facilities resulting from land use assumptions" [.070(6)(a)(ii)], "forecasts of traffic for at least ten years based on the adopted land use plan" [.070(6)(iii)(E)], or the required "analysis of funding capability to judge needs against probable funding resources" [.070(6)(iv)(A)]. *Id.* at 10.

Fallgatter V, FDO at 9.

In its *Fallgatter V* FDO, the Board remanded the 2005 TIP (among other matters), and provided an exceptional one-year compliance schedule because the City's planning function was unusually deficient.⁴ The Board noted in *Fallgatter V*, FDO, at 7: "It appears to the Board that the City of Sultan, with limited specialized staff and consultant resources, has struggled to catch up and keep up with the multiple demands and deadlines of urban planning."

Petitioner Jocelyne Fallgatter is a former Sultan Planning Commissioner who has undertaken a series of challenges in an effort to ensure that the City of Sultan, in light of

⁴ The City has apparently chosen to use permanent staff for projects and permit application processing and to retain consultants for planning activities. Another model would be to employ a full-time planner and then retain consultants for permitting activities as needed, funded by applicant permit fees. Alternatively, fast-growing jurisdictions may impose reasonable moratoriums in order to complete the necessary planning to properly accommodate that growth.

its significant growth pressures, complies with the GMA.⁵ The Board noted in *Fallgatter V*, FDO, at 7:

One of Petitioners' expressed goals is a rational coordination of the periodic updates and amendments of comprehensive plan elements and regulations so that financing strategies are in place and public participation in these decisions is optimized as the City grows.

The City of Sultan is served by State Route 2, the state highway that runs from Everett and the Central Puget Sound metropolitan area east across the Cascades through Stevens Pass to Leavenworth and Wenatchee. Traffic back-ups on Route 2 in the Sultan area are a "notorious fact," of which this Board takes official notice pursuant to WAC 242-02-670(2).

V. LEGAL ISSUE AND DISCUSSION

The Board's Pre-Hearing Order states the legal issue in this case as follows:

Did the City of Sultan substantially interfere with the goals of the Growth Management Act, specifically RCW 36.70A.020(1), (3), and (12) and fail to perform its activities and make capital budget decisions in conformity with its comprehensive plan as required by RCW 356.70A.120, when it re-adopted a Six-Year Transportation Improvement Program previously ruled by the Board to be inconsistent with the Comprehensive Plan and non-compliant with the GMA?

Applicable Law

The GMA embodies the Legislature's answer to the problem of "uncoordinated and unplanned growth." At the heart of the GMA is the requirement for comprehensive planning by local jurisdictions, and then that the jurisdiction's actions conform to its plan.

RCW 36.70A.120 provides:

⁵ See, *Fallgatter I v. City of Sultan*, CPSGMHB Case No. 04-3-0021, Final Decision and Order (June 13, 2005) (PFR challenged Comp Plan update, **deficiency of capital facilities plan** related to parks, and parks regulations); *Fallgatter II v. City of Sultan*, CPSGMHB Case No. 05-3-0008, consolidated with *Fallgatter III v. City of Sultan*, CPSGMHB Case No 05-3-0010c, Order of Dismissal (June 24, 2005) (PFR challenged Comp Plan amendments and Urban Center Zone regulations for **deficiency of capital facilities plan and transportation plan**)- settled; *Fallgatter IV v. City of Sultan*, CPSGMHB Case No. 05-3-0035, Order of Dismissal (Oct. 27, 2005) (PFR challenged water and sewer availability procedure) – repealed; *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006) (PFR challenged **deficiency or failure to update six-year TIP and CFP**, water and sewer plans, parks plan and critical areas ordinances) – compliance pending; *Fallgatter VI v. City of Sultan*, CPSGMHB Case No. 06-3-0017, Order on Motions (June 29, 2006) (PFR challenged lack of stormwater management plan) – pending; *Fallgatter VII v. City of Sultan*, CPSGMHB Case No. 06-3-0023, Order of Dismissal (June 29, 2006) (PFR challenged annexation) – dismissed on jurisdictional grounds; *Fallgatter IX v. City of Sultan*, CPSGMHB Case No. 07-3-0017, PFR filed Feb. 12, 2007 (alleging **deficiencies in the updated CFP**).

Each ... city that is required ... to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

Local comprehensive plans must be guided by statutory goals – RCW 36.70A.020 - and must contain mandatory elements – RCW 36.70A.070. Petitioner appeals to Goals 1, 3, and 12 in this case:

(1) Urban Growth. Encourage development in urban areas where adequate public facilities or services exist or can be provided in an efficient manner.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(12) Public Facilities and Services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current levels of service below locally established minimum standards.

RCW 36.70A.070 sets forth the mandatory elements of each local comprehensive plan.

RCW 36.70A.070(3) requires a Capital Facilities Plan (**CFP**) element:

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

RCW 36.70A.070(6) states the requirements for the Transportation Element of a local comprehensive plan. *Because this is one of the most detailed and prescriptive elements in the statute, the Board sets it out in full.*⁶ The provisions of RCW 36.70A.070(6) – the Transportation Element - give substance to the concurrency goal in RCW 36.70A.020(12), cited above, and also specifically incorporate the six-year TIP [in sections (6)(a)(iv)(B) and (6)(c)].

(6) A transportation element that implements, and is consistent with, the land use element.

⁶ The CFP element requirements, for example, are much more generalized than the Transportation Element. Only the Rural Element, which is not applicable to the City of Sultan, has lengthier requirements in the statute.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions [e.g., traffic impact on State Route 2 of projected development in Sultan] to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. ...

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) *A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;*

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) *The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.*

RCW 36.70A.070(6), emphasis supplied.

Discussion and Analysis

Positions of the Parties

Petitioner argues that RCW 36.70A.070(6)(a)(iv)(B) and .070(6)(c), cited above, “inextricably link the Six Year TIP with the Transportation Element of the Comprehensive Plan in that the Transportation Element forms the basis for the Six Year TIP and the two must be consistent.” *Fallgatter PHB*, at 4. Petitioner contends that the City’s re-adoption of its non-compliant 2005 TIP, with omission of one completed project, does not resolve the inconsistency with the Transportation Element of Sultan’s 2004 Comprehensive Plan (**Plan**). *Id.* at 5.

Petitioner points out that the Transportation Element of the Plan lacks significant mandatory components including traffic forecasts and impacts, and analysis of funding capabilities. RCW 36.70A.070(6). *Id.* at 6. She contends the Plan contains:

- no “estimated traffic impacts to state owned transportation facilities [i.e., State Route 2] resulting from land use assumptions,” as required by RCW 36.70A.070(6)(a)(ii);
- no “forecasts of traffic for at least ten years based on the adopted land use plan to provide information of the location, timing and capacity needs of future growth,” as required by RCW 36.70A.070(6)(iii)(E);
- no financial “analysis of funding capability to judge needs against probable funding sources,” as required by RCW 36.70A.070(6)(iv)(A);
- no “multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year [TIP] for cities,” as required by RCW 36.70A.070(6)(iv)(B);
- no discussion of “intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions” [i.e., Monroe to the west and Gold Bar to the east along Route 2], as required by RCW 36.70A.070(6)(a)(v).

Id., Ex. 2, at 10-13.

In response, the City states that its 2006 TIP was due just three days after the issuance of the Board’s FDO in *Fallgatter V* which ruled the 2005 TIP noncompliant. The City argues that it had no choice but to respond to the TIP deadline with a reenacted TIP, anticipating that its Capital Facilities Plan and the Transportation Element of its Comprehensive Plan would be updated and amended in the subsequent year pursuant to the *Fallgatter V* compliance schedule. *City Response*, at 1-2. The City states that, since the filing of this petition, it has adopted an update CFP contemporaneous with its 2007 budget adoption and has retained a consultant to revise the Transportation Element of the City’s Plan. *Id.* at 3. The City does not dispute the deficiencies of the 2006 TIP or the CFP and Transportation Element on which it was purportedly based, but urges the Board to allow the City to complete its process “without the distraction of further orders from the Board.” *Id.*

In reply, Petitioner contends that the deficiencies in the City's CFP and Transportation Element were pointed out when the 2004 Comprehensive Plan update was challenged two years ago in *Fallgatter III v. City of Sultan*, CPSGMHB Case No. 05-3-0010c. According to Petitioner, in spite of the clear warning that adopting a TIP under non-compliant plan elements would be found erroneous, in the subsequent two years the City has failed "to take the necessary planning steps to create a consistent and compliant Transportation Element upon which to base the Six-Year TIP." Fallgatter Reply, at 3.

Petitioner also points out that Sultan is growing rapidly without a compliant transportation plan. Petitioner references 338 new units in 2005-2006⁷ and appends a 2006 news article concerning another 600 units. In a town of just 4,000 residents, almost a thousand new homes could mean well over 2,000 new residents, with resultant traffic increase, and increased demand for capital facilities and urban services. Fallgatter Reply, at 6. Petitioner contends that the City's failure to comply with the GMA requirements for transportation planning and lack of a consistent TIP thwarts the goals of the GMA for absorbing urban development in cities, providing efficient transportation systems, and ensuring the provision of public facilities and services timed to meet the needs of a growing population without decreasing current services. *Id.* at 6.

Board Discussion

The City of Sultan doesn't deny that its 2006 TIP is inconsistent with its Plan and is based on a deficient and non-compliant Transportation Element; rather, the City argues that it is a victim of multiple demands and should be allowed time to complete its work. The City asserts that it is making a good faith effort to comply, having adopted an updated CFP since the filing of the PFR in this matter and having retained a consultant to develop the Transportation Element of the Plan. The City's best argument is that it will reach compliance before the deadline for adoption of the 2007 TIP.

The Board finds the City's argument unconvincing. The City's deadline for a compliant updated Comprehensive Plan was December 1, 2004. That Plan was required to include an updated Capital Facilities Plan and the mandatory Transportation Element. Petitioner's first PFR to this Board in January 2005, raised those very issues (among others). See *supra*, fn. 5. Yet in the February 5, 2007 HOM on the present case, the City stated that its City Council meeting *this week* will consider a contract with a transportation consultant to develop a Transportation Element meeting GMA requirements. In the Board's view, the time has long past for the City of Sultan to have completed its work on these required core components of GMA planning.

The long-missed deadline for updating its Plan to include a compliant 20-year Transportation Element (December 1, 2004) has been put on a back burner by the City in order to pursue short-term funding by adopting, for the second year in a row, a free-

⁷ "There is currently an 87 unit development, approved in 2005, under construction; 135 units were approved in 2006, some of which are also under construction; and 116 units are still pending approval from 2005." Fallgatter Reply at 6.

standing TIP that has no Transportation Element for support. Under the GMA, the citizens of Sultan are entitled to coordinated and comprehensive planning for growth in their community, including transportation planning that goes beyond ad hoc project approvals. The Transportation Element is one of the most detailed mandatory elements in the statute. Local transportation analysis forms the basis for applying concurrency as a growth management strategy as well as for assessing impact fees to fund transportation improvements. Lacking a compliant Transportation Element in its Plan on which to base its TIP, Sultan is without a basic building block for managing its growth.

Petitioner contends that the City's TIP adoption was not guided by GMA Planning Goals 1, 3, and 12. The Board concurs. GMA Goal 1 calls for urban development to be encouraged where adequate public facilities and services exist or can be provided in an efficient manner. GMA Goal 3 calls for encouragement of efficient multimodal transportation systems. GMA Goal 12 calls for ensuring that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

In November 2004, the City of Sultan had 1,500 dwelling units and a population of 3,800. Comprehensive Plan, at 24. The addition of almost 1,000 units in a two-year period (Fallgatter Response, at 6-8) illustrates the challenge facing the City and its citizens. In this case, a transportation system analysis is not only required by statute but demanded by circumstances.

The Petitioner has met her burden of proof in this case. The City does not even attempt to argue that the 2006 TIP is consistent with the City's Plan or is supported by a compliant CFP and Transportation Element. The Board finds and concludes that the adoption of the 2006 TIP was **clearly erroneous**. The City's action **does not comply** with RCW 36.70A.120, which requires the City to perform its activities and make capital budget decisions in conformity with its Comprehensive Plan. The City's action **was not guided by** Goals 1, 3, and 12, which call for coordinated planning that makes capital facilities and services, including an efficient transportation system, available when needed to support growth. The Board is left with a firm and definite conviction that a mistake has been made.

Conclusion

The City of Sultan's adoption of Resolution 06-10, adopting the 2006 TIP, was **clearly erroneous** and **does not comply** with RCW 36.70A.120 and **was not guided by** GMA Goals 1, 3, and 12 – RCW 36.70A.020(1), (3), (12). The Board **remands** Resolution 06-10 to the City to take legislative action to comply with the GMA and with this Order.

VI. INVALIDITY

The Board has previously held that a request for an order of 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. Petitioner here has requested the Board to find Resolution 06-10 – the City of Sultan 2006-2012 TIP – invalid and that the Board request the Governor to apply appropriate sanctions, either now, or if compliance is not achieved during the allotted compliance period. PFR, at 3.

Applicable Law

The GMA’s Invalidation Provision, 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 county. 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 county or city or to related construction permits for that project.

Discussion and Analysis

This is the eighth PFR filed by Jocelyne Fallgatter in 30 months. See *supra*, fn. 5. Four of the petitions have alleged inadequacies in the City of Sultan’s CFP and transportation plans. Petitioner states that her request for invalidity is “a prayer for relief.”

At what point does this Petitioner find a remedy from filing PFR after PFR in order to compel the City to follow through on its statutory duty to accommodate growth? More importantly, at what point does this Petitioner find relief from the unplanned and uncoordinated growth caused by the City’s distain for its planning duties?

Fallgatter Reply, at 4.

In the discussion of the Legal Issue in this case, the Board found and concluded that the City of Sultan’s adoption of Resolution No. 06-10 (2006 TIP) was **clearly erroneous** and **non-compliant** with the requirements of RCW 36.70A.120. The Board further found and concluded that the City’s action **was not guided by the goals** of the Act, specifically

Goals 1, 3, and 12.⁸ The Board is **remanding** the 2006 TIP with direction to the City to take legislative action to comply with the goals and requirements of the GMA as set forth in this Order.

Petitioner argues that adoption of the 2006 TIP should be deemed invalid because it substantially interferes with the goals of the GMA. Petitioner contends that the flawed TIP is based on a deficient Transportation Element and CFP, thus failing to encourage urban development where adequate services are provided and failing to ensure concurrency in the provision of services, particularly transportation services, to support growth. Petitioner points to the City's ongoing permitting of subdivisions in the absence of a compliant transportation plan as thwarting the goals of the GMA. The City's response is that it needs more time to complete the Transportation Element of its plan.

A Board may enter an order of invalidity upon a determination that the continued validity of a non-compliant city or county enactment substantially interferes with fulfillment of the goals of the GMA. RCW 36.70A.302(1)(b). As set forth in the findings and conclusions below, Sultan's adoption of the 2006 TIP, a TIP which is inconsistent with its Plan and based on a non-compliant Transportation Element and CFP, interferes with the fulfillment of the goals of the GMA, in particular RCW 36.70A.020(1), (3), and (12), because the enactment thwarts the GMA mandate to accommodate urban growth where urban services can be provided, to encourage an efficient and coordinated transportation system, and to ensure provision of urban services in urban areas as growth occurs, without decreasing service levels for existing residents.

In *Fallgatter V*, the Board explained the interdependence of these goals:

The Growth Management Act, from its inception, was built around the concept of coordinating urban growth with availability of urban infrastructure. Determining that "uncoordinated and unplanned growth" posed a threat to the state and its citizens [RCW 36.70A.010], the Legislature created a framework that requires consistency between urban land use planning and coordinated provision of capital facilities and urban infrastructure. *See, e.g.*, RCW 36.70A.070(3), .110(3). The "urban growth" and "public facilities" goals used to guide local comprehensive plans are cross-referenced:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

⁸ Petitioner relies on the following goals:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

Fallgatter V, FDO, at 11. The goal of an efficient transportation system, coordinated with local comprehensive plans, is equally interrelated. RCW 36.70A.020(3).

The Board is cognizant that the City of Sultan has retained a consultant to assist it in developing a Transportation Element for its Plan. However, the statutory deadline for this work has long passed, and a TIP based on the non-compliant Plan element is clearly erroneous. Particularly in light of the City's rapid growth, the Board finds that the lack of a compliant TIP thwarts the goals of the GMA and **substantially interferes** with the achievement of Goal 1, Goal 3, and Goal 12.

Accordingly, the Board enters a **determination of invalidity** and remands Resolution No. 06-10 to the City of Sultan to take legislative action consistent with this Order.

Conclusion

The Board makes a finding of **noncompliance** and issues an order of **remand**. The Board further **enters a determination of invalidity**.

Findings of Fact and Conclusions of Law

1. On August 10, 2006, the City of Sultan adopted its six-year TIP for 2006-2011. Resolution No. 06-10.
2. The City of Sultan faces significant challenges from rapid growth, traffic problems, and financial/staff deficits. See *supra*, at Section IV.
3. The 2006 TIP was not consistent with the Sultan Comprehensive Plan when enacted. City Response at 1-2.
4. At the time the 2006 TIP was adopted, the City of Sultan lacked a GMA-compliant Capital Facilities Plan and Transportation Element. *Fallgatter V*, FDO (June 29, 2006) at 11-13, 20-21.
5. Sultan's adoption of the 2006 TIP did not comply with RCW 36.70A.120 and was clearly erroneous.
6. Subsequent to enacting the 2006 TIP, the City of Sultan has updated its Capital Facilities Plan (December 14, 2006) and has since engaged a consultant to review the Transportation Element of its Comprehensive Plan. City Response at 3.
7. The statutory deadline for updating comprehensive plans and development regulations was December 1, 2004. RCW 36.70A.130(4)(a).
8. The Board finds and concludes that the City's ongoing permitting of subdivisions in the absence of a compliant Transportation Element and TIP thwarts the goals of the GMA.
9. The Board finds and concludes that the 2006 TIP substantially interferes with the goals of the GMA because it fails to encourage urban development where

adequate services are provided and fails to ensure concurrency in the provision of services, particularly transportation services, to support growth.

10. The Board finds and concludes that Sultan's adoption of the 2006 TIP, a TIP which is inconsistent with its Plan and based on a non-compliant Transportation Element and CFP, interferes with the fulfillment of the goals of the GMA, in particular RCW 36.70A.020(1), (3), and (12), because the enactment thwarts the GMA mandate to accommodate urban growth where urban services can be provided, to encourage an efficient and coordinated transportation system, and to ensure provision of urban services in urban areas as growth occurs, without decreasing service levels for existing residents.

VI. ORDER

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

1. The City of Sultan's adoption of Resolution No. 06-10, the 2006-2012 TIP, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120, and **is not guided** by GMA goals RCW 36.70A.020(1), (3), and (12).
2. Therefore the Board **remands** Resolution No. 06-10 to the City of Sultan with direction to the City to take legislative action to comply with the requirements of the GMA as set forth in this Order.
3. The Board further finds and concludes that the enactment of Resolution No. 06-10 substantially interferes with the goals and requirements of the GMA. The Board therefore enters a **determination of invalidity**.
4. The Board sets the following schedule for the City's compliance:
 - The Board establishes **May 15, 2007**, as the deadline for the City of Sultan to take appropriate legislative action.
 - By no later than **May 21, 2007**, the City of Sultan shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
 - By no later than **May 29, 2007**,⁹ the Petitioner may file with the Board an original and four copies of Response to the City's SATC.
 - By no later than **June 1, 2007**, the City may file with the Board a Reply to Petitioner's Response.

⁹ May 29, 2007, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

- Each of the pleadings listed above shall be simultaneously served on the other party to this proceeding.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **June 4, 2007, at 10:30 a.m.**, or immediately following the Compliance Hearing in CPSGMHB Case No. 06-3-0003. The hearing will be held at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Sultan takes the required legislative action prior to the May 21, 2007, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 13th day of February, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
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 242-02-832.¹⁰

¹⁰ 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)