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3 **State of Washington**
4 **GROWTH MANAGEMENT HEARINGS BOARD**
5 **FOR EASTERN WASHINGTON**

6 RICHARD RUSH,

7 Petitioner,

8 v.

9 CITY OF SPOKANE,

10 Respondent.

Case No. 06-1-0006

FINAL DECISION AND ORDER

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14 **I. SYNOPSIS**

15 The Petitioner, Mr. Richard Rush, challenges the City of Spokane's (City) Ordinance
16 No. C 33838, adopting Chapter 17H.010 Street Development Standards of the City's
17 municipal Code (Ordinance). The Petitioner argues that the Ordinance is inconsistent with
18 the City's Comprehensive Plan (CP) in violation of several sections of the Growth
19 Management Act (GMA). In Issue No. 1, the Petitioner argues that the Ordinance is
20 inconsistent with the Comprehensive Plan's policies regarding crosswalks, external
21 connections, and traffic calming measures. In Issue No. 2, the Petitioner argues that the
22 Ordinance includes an exemption for transportation preservation projects (*i.e.*, resurfacing,
23 rehabilitation or reconstruction of the existing street pavement, sidewalks or bridges) that is
24 inconsistent with a similar exemption found in the City's Comprehensive Plan, contending
25 that the exemption included in the Ordinance is much broader than the Comprehensive
26 Plan's exemption. The Petitioner asks the Eastern Washington Growth Management

1 Hearings Board (Board) to issue an order of non-compliance and invalidity and to remand
2 the Ordinance to the City Council for action consistent with the GMA.

3 The Board finds that the Petitioner failed to carry his burden of proof for Issue No. 1
4 and Issue No. 2. Without a finding of non-compliance and substantial interference with the
5 goals of the GMA, the Petitioner's request in Issue No. 3 fails to overcome the presumption
6 of validity.

7 **II. PROCEDURAL HISTORY**

8 On May 21, 2001, the City Council adopted the City's Comprehensive Plan
9 ("Comprehensive Plan").

10 On May 15, 2007, the City Council adopted (1) Ordinance C33831 relating to the
11 public ways and property, subdivision, and zoning and (2) Ordinance C33838 relating to
12 engineering – street development standards for the Unified Development Code, and
13 adopting Chapter 17H.010 of Division H of Title 17 of the Spokane Municipal Code
14 ("Ordinance" or "Street Standards Ordinance").

15 On July 21, 2006, RICHARD RUSH filed a Petition for Review, by and through
16 himself.

17 On August 22, 2006, the Board held a telephonic Prehearing conference. Present
18 were, John Roskelley, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo.
19 Petitioner, Richard Rush, was present. Present for Respondent was James Richman,
20 Assistant City Attorney. The legal issues, proposed schedule and other procedural matters
21 were reviewed.

22 On August 29, 2006, the Board issued its Prehearing Order.

23 On September 13, 2006, the Board received Petitioner's Motion to Supplement the
24 Record.

25 On September 14, 2006, the Board received a Stipulated Motion for Continuance
26 requesting a thirty (30) day extension signed by the parties in this matter, for purposes of
settlement negotiations. The Board granted a 30-day extension.

On October 19, 2006, The Board granted a second 30-day extension.

1 On December 13, 2006, the Board received a Stipulated Motion to Supplement the
2 Record signed by the Petitioner and Respondent agreeing to supplement the record with
3 documents requested by Petitioner on September 13, 2006. The Respondent also requested
4 the Board cancel the telephonic motion hearing scheduled for December 20, 2006, at 10:00
5 a.m. The Board also received a signed Stipulated Motion for Continuance requesting a thirty
6 (30) day extension signed by the parties in this matter, for purposes of settlement
7 negotiations.

8 On December 14, 2006, the Board issued an Order on Stipulated Motion to
9 Supplement the Record and Motion for Continuance.

10 On January 26, 2007, the Board received a Stipulated Motion and Order for
11 Continuance requesting a sixty (60) day extension signed by the parties in this matter, for
12 purposes of settlement negotiations.

13 On January 31, 2007, the Board issued its Order on Stipulated Motion and Order for
14 Continuance.

15 On February 12, 2007, the Board received the parties Report of Mediation Meeting
16 Dates.

17 On April 16, 2007, the Board received a Stipulated Motion and Order for Continuance
18 requesting a thirty (30) day extension signed by the parties in this matter, for purposes of
19 settlement negotiations.

20 On April 17, 2007, the Board issued its Order on Stipulated Motion for Continuance.

21 On June 22, 2007, the Board held the hearing on the Merits. Present were, John
22 Roskelley, Presiding Officer, and Board Members Joyce Mulliken and Dennis Dellwo.
23 Petitioner, Richard Rush, was present. Present for Respondent was James Richman,
24 Assistant City Attorney.

25 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 26 **REVIEW**

Comprehensive plans and development regulations, and amendments thereto,
adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon

1 adoption by the local government. RCW 36.70A.320(1). The burden is on the Petitioner to
2 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
3 the Act. RCW 36.70A.320(2). The Board "shall find compliance unless it determines that
4 the [City's] action[s are] clearly erroneous in view of the entire record before the Board and
5 in light of the goals and requirements of [Growth Management Act]." RCW 36.70A.320(3).
6 To find an action clearly erroneous, the Board must be "left with the firm and definite
7 conviction that a mistake has been committed." *Department of Ecology v. Central Puget*
8 *Sound Growth Management Hearings Board*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000).

9 **IV. ISSUES AND DISCUSSION**

10 **Issue No. 1:**

11 Does the adoption by the City of Spokane of Title 17, Chapter H of the Spokane
12 Municipal Code fail to comply with RCW 36.70A.040 and/or RCW 36.70A.020(3) because it
13 is inconsistent with the City of Spokane Comprehensive Plan policies regarding new street
14 construction, reconstruction of rural roads into urban streets as urbanization occurs, and
15 other street construction projects that involve major redesign of the street itself?

16 **The Parties' Position:**

17 **Petitioner:**

18 The Petitioner contends that the City's Street Standards Ordinance violates RCW
19 36.70A.040 and/or RCW 36.70A.020(3) because it is inconsistent with the City's
20 Comprehensive Plan policies regarding new street construction. In particular, the Petitioner
21 argues that the Ordinance is inconsistent with the Comprehensive Plan's policies regarding
22 crosswalks, external connections (gated communities), and traffic calming measures.

23 **A. Crosswalks**

24 With respect to crosswalks, the Petitioner argues that the City's Comprehensive Plan
25 envisions locating crosswalks in a broad range of pedestrian zones, as follows:

26 **TR 2.9 Crosswalks**

Establish and maintain crosswalks at key locations used by pedestrians.
Discussion: Key locations for crosswalks include heavily traveled street
crossing, transit stops, parks, and school sites. Crosswalk types include the

1 traditional crosswalk formed by painted lines or distinctive crosswalks, such
2 as those surfaced with scoured or colored concrete or brick pavers.
3 Comprehensive Plan, Transportation Element, p. 17.

4 The Petitioner argues that this language evidences a policy of liberal use of
5 crosswalks, while on the other hand, the new Street Standards Ordinance places restrictions
6 on the use of crosswalks, as follows:

- 7 A. Generally, painted crosswalks are installed only at patrolled school
8 crossings and signalized intersections, as approved by the director of
9 streets.
- 10 B. Installation of painted crosswalks at other locations requires an
11 engineering study and the approval of the director of streets. The
12 engineering study shall identify locations where there is a substantial
13 conflict between vehicle and pedestrian movements or where
14 pedestrians could not otherwise recognize the proper place to cross.
- 15 C. Any new marked crosswalk must be approved by the director of streets
16 prior to construction.

17 Street Standards Ordinance, SMC 17H.010.210.

18 The Petitioner contends that the provisions in the Street Standards Ordinance are
19 more restrictive than the more liberal Comprehensive Plan policies regarding crosswalks. In
20 particular, the Petitioner contends that procedural requirements (including the requirement
21 of an engineering study) are inconsistent with the Comprehensive Plan's policy regarding
22 crosswalks.

23 **B. Gated Communities**

24 The Petitioner argues that the Comprehensive Plan prohibits gated communities
25 under any circumstance. Relevant sections of the Comprehensive Plan provide:

26 **TR 4.5 External Connections**

Design subdivisions and planned unit developments to be well-connected to
adjacent properties and streets on all sides.

1 Discussion: It is important that subdivisions and planned unit developments
2 (PUDs) be connected to their surrounding areas and the larger community
3 and not be physically isolated because of poor transportation connections. . .
4 One intent of this policy is to stop the development of gated communities
5 that are isolated and disconnected from their surroundings. Subdivisions and
6 PUDs should have multiple ingress and egress points to enable good
7 transportation connections. The connections should not, however, result in
8 inappropriate cut-through traffic through neighborhoods; connections should
9 direct traffic onto appropriate streets. Connections are needed for all
10 transportation users and can take the form of both streets and paths.
11 Comprehensive Plan, Transportation Element, p. 24 . (Emphasis supplied).

12 The relevant sections of the Street Standards Ordinance provide:

- 13 A. Residential private streets are allowed only in conjunction with an
14 approved planned unit development, binding site plan or mobile home
15 park. The written conditions of approval for the project must permit lot
16 frontage on a private street.
- 17 B. Private streets require the approval of the director of engineering
18 services. New private streets are allowed only when street connectivity
19 is unachievable, such as property that is isolated by topography or the
20 configuration of existing lots and streets.
- 21 C. Pedestrian access shall be provided from the private street to an
22 existing or future street or public pathway if vehicular access cannot be
23 provided.
- 24 D. Private streets shall not obstruct traffic circulation or cut off future
25 development from public access or utilities.
- 26 E. Streets must be public if they are designed to connect to an adjacent
site, or will serve lots on an adjacent site.
- F. Private streets shall be constructed in accordance with the design
standards for public streets.
- G. Private streets require private water and sewer systems.
- H. Private streets shall be owned in common by the owners of the
property served by the private streets or by a homeowners' association.

1 The tract shall be designated on the plat as a special purpose tract. A
2 maintenance agreement shall be recorded with the Spokane county
3 auditor that commits the owner(s) to maintain all elements of the
4 private street. Accessibility (snow plowing, etc) shall be maintained at
all times for emergency vehicles.

- 5 I. Transitions from public to private streets should not occur mid-block.
6 Where a mid-block transition is unavoidable, a public turn-around
designed to meet city standards shall be provided.

7 Street Standards Ordinance, SMC Section 17H.010.090 Private Streets.

- 8 A. Gates are prohibited on public streets.
- 9 B. Gates are allowed only in conjunction with a planned unit development,
10 binding site plan or mobile home park and must be permitted by the
11 decision-maker in a written decision.
- 12 C. The property served by a gated street must be isolated by topography
13 or the configuration of existing platted lots and streets.
- 14 D. Gated streets shall not obstruct traffic circulation or cut off future
15 development from public access or utilities.
- 16 E. The decision to allow a private street based on the criteria in SMC
17 17H.010.090 must be made by the director of engineering services
before a gate will be considered. A proposed gate is not in itself
justification to allow a private street.
- 18 F. Entrance gates shall be placed on private property and maintained by a
19 homeowners' association.
- 20 G. Proposed gates shall not interfere with emergency vehicle access. Fire
21 lanes meeting city standards shall be provided.
- 22 H. Gated streets require a queuing area meeting city standards on the
23 public side of the gate. If a gated street connects to an arterial, a
public turn-around shall be provided on the public side of the gate.
- 24 I. If the queuing area on the public side of the gate is on a public street,
25 the homeowners' association shall accept responsibility for all surface
26 maintenance (snow plowing, street sweeping/ flushing, and street sign

1 replacement) of the segment of public street from the gate to the
2 nearest paved connecting public street intersection unless a public turn
3 around is provided. The City will be responsible for maintaining the
4 asphalt and all public water, sewer and stormwater facilities located in
5 the public portion of the roadway. Maintenance responsibilities shall be
addressed in the CC&Rs for the development as well as in a written
agreement with the City of Spokane.

6 J. The hours during which the gate is to be closed may be restricted
7 depending on the configuration of the queuing area and the location of
8 the gated street. The hours of operation will be addressed in a written
agreement with the City of Spokane.

9 K. A KNOX-BOX meeting city fire department criteria shall be provided for
10 all gated streets to allow emergency vehicle access at all times.

11 L. Gates may be added to existing planned unit developments or mobile
home parks provided all of the following criteria are met:

- 12 1. All streets in the development are private.
- 13 2. The addition of the gate will not isolate or disconnect the development
14 from its surroundings based on topography and the configuration of
15 existing platted lots and streets.
- 16 3. Adequate queuing area on the public side of the gate and a public turn-
17 around, if required, is provided.
- 18 4. Service and emergency vehicle access meeting the requirements of the
19 fire department and the department of engineering services is
provided.

20 Street Standards Ordinance, SMC Section 17H.010.100.

21 The Petitioner contends that the foregoing provisions, which do permit gated
22 communities under limited circumstances, is inconsistent with the Comprehensive Plan's
23 policy of preventing development of gated communities that are isolated and disconnected
24 from their surroundings.

25 C. Traffic Calming

1 The Petitioner argues that traffic calming measures figure significantly in the City's
2 Comprehensive Plan as part of a strategy to put pedestrians first, as follows:

3 **TR 5.4 Traffic Calming Measures**

4 Use traffic calming measures in neighborhoods to discourage speeding, reduce
5 non-neighborhood traffic, and improve neighborhood safety.

6 Discussion: Traffic calming measures create safer and quieter streets. They
7 help reduce traffic speed and discourage the inappropriate use of
8 neighborhood streets by non-neighborhood residents as shortcuts to bypass
9 arterials. They make neighborhoods healthier and more appealing places to
10 live. Examples of traffic calming measures include narrowed streets, curved
11 streets, roundabouts (traffic circles), pedestrian islands, textured crosswalks,
12 and large street trees and overhanging canopies, and speed bumps and dips.
13 Comprehensive Plan, Transportation Element, p. 31.

14 The Street Standards Ordinance differs in that it contains the following guidance
15 regarding traffic calming measures:

- 16 A. Allowable traffic calming features include traffic circles, chicanes, curb
17 extensions, medians, entry-way treatments, landscaping and turn or
18 access restrictions.
- 19 B. Installation of traffic calming features on existing streets requires a
20 public meeting and a petition representing at least sixty percent of the
21 households in the petition area. This process is outlined in the
22 Neighborhood Traffic Calming and Management Guidelines for
23 Residential Access Streets.
- 24 C. Installation of traffic calming features on new streets will be evaluated
25 on a case by case basis and approved by the director of engineering
26 services and the director of streets.
- D. All proposed traffic calming features will be evaluated based on posted
speed, traffic volumes, pedestrian generators within the project area,
roadway geometry, residential density and collision history as
applicable.
- E. Traffic calming features shall not create a street maintenance, safety or
parking enforcement problem.

1 Street Standards Ordinance, Section 17H.010.160 Traffic Calming.

2 In addition, “[r]oundabouts shall be reviewed in every case and are intended for
3 arterial intersections only.” Street Standards Ordinance, Section 17H.010.150 Roundabouts.
4 The Petitioner contends that these sections of the Street Standards Ordinance are
5 inconsistent with the traffic calming discussion in the Comprehensive Plan, primarily
6 because the Street Standards Ordinance is more restrictive regarding development and
7 placement of traffic calming measures than the Comprehensive Plan.

7 **Respondent:**

8 The City contends that the Street Standards Ordinance is consistent with the
9 Comprehensive Plan and that the Petitioner has failed to carry his burden of showing an
10 inconsistency. In support, the City notes that:

11 [a] finding of inconsistency requires a showing of actual conflict between
12 competing provisions of a city’s planning policies and development
13 regulations. There is no inconsistency if it is possible for a particular
14 development to meet the requirements of both sets of policies or regulations.
Ray v. City of Olympia, WWGMHB Case No. 02-2-0013 (Final Decision and
15 Order 6-11-03).

16 “[I]nconsistency” under the GMA is not a matter of inconsistency at an
17 abstract level: Consistency does not mean consistency of vision or philosophy.
18 In making a determination whether there is consistency between various parts
19 of a local jurisdiction’s planning policies and regulations, the Board has held
20 that consistency means that no feature of the plan or regulation is
21 incompatible with any other feature of the plan or regulation. Said another
22 way, no feature of one plan may preclude achievement of any other feature of
23 that plan or any other plan. (Citations omitted.) *Camp Nooksack Association*
24 *v. City of Nooksack*, WWGMHB No. 03-2-0002 (Final Decision and Order 7-11-
25 03) (Citations omitted).

26 Applying these standards to the instant case, the Petitioner has failed to carry his
burden of proof and has failed to provide evidence to overcome the presumption of validity
enjoyed by the Street Standards Ordinance. RCW 36.70A.320(1). For example, requiring
an engineering study prior to installation of many crosswalks will not preclude the

1 Comprehensive Plan's policy of locating crosswalks in a broad range of pedestrian zones
2 and is instead consistent with the City's legal duty to build and maintain its roadways and
3 sidewalks in a condition that is reasonably safe for ordinary travel. *Keller v. City of*
4 *Spokane*, 146 Wn.2d 237, 44 P.3d 845 (2002). Similarly, allowing gated communities in the
5 limited circumstances identified in the Street Standards Ordinance will not preclude
6 realization of the Comprehensive Plan's policies of stopping the development of gated
7 communities that are isolated and disconnected from their surroundings.

Board Analysis:

8 The "presumption of validity enjoyed by the Street Standards Ordinance", as
9 expressed by the Respondent in their response above, is a delicate balance between the
10 City's legislative action and the requirements set forth in the Growth Management Act. The
11 Petitioner has not overcome that burden and shown that the actions of the City are clearly
12 erroneous

13 The Board looked at the Petitioner's examples to determine whether there was
14 inconsistency between the City's Comprehensive Plan and the Street Standards Ordinance.

15 Under **TR 2.9 Crosswalks** in the Comprehensive Plan, the City was explicit in its
16 requirement to "Establish and maintain crosswalks at key locations...", which included
17 "heavily traveled street crossing[s], transit stops, parks and school sites."

18 **TR 2.9 Crosswalks**

19 Establish and maintain crosswalks at key locations used by pedestrians.

20 Discussion: Key locations for crosswalks include heavily traveled street
21 crossing, transit stops, parks, and school sites.

22 Under the City's Street Standards Ordinance, no mention is made of placing
23 crosswalks near parks or transit stops and at some heavily traveled street crossings without
24 signalization. But the City leaves the door open to that possibility by including the wording,
25 "Installation of painted crosswalks at other locations requires an engineering study and the
26 approval of the director of streets." In addition, there is no mention of "crosswalk types" in

1 the Ordinance, as if this alternative was abandoned since the Comprehensive Plan was
2 adopted.

3 Under **Gated Communities**, the Petitioner argues that the Comprehensive Plan
4 prohibits gated communities under any circumstance.

5 **TR 4.5 External Connections**

6 Design subdivisions and planned unit developments to be well-connected to
7 adjacent properties and streets on all sides.

8 Discussion: It is important that subdivisions and planned unit developments
9 (PUDs) be connected to their surrounding areas and the larger community
10 and not be physically isolated because of poor transportation connections. . .

11 One intent of this policy is to stop the development of gated communities
12 that are isolated and disconnected from their surroundings.

13 The Board disagrees with the Petitioner's assessment of the statute, but understands
14 why he came to this conclusion. In the City's Comprehensive Plan, Policy **TR 4.5 External**
15 **Connections** is written to "stop the development of gated communities that are isolated
16 and disconnected from their surroundings." The City seemingly ignores **TR 4.5** and passes
17 an Ordinance providing multiple ways to develop gated communities under Street Standards
18 Ordinance, SMC Section 17H.010.090 Private Streets. The City words **TR 4.5 External**
19 **Connections** in such a way as to leave the door slightly ajar for future gated communities.
20 In the Street Standards Ordinance, however, the City opens the door all the way by
21 authorizing gated communities through a variety of means. Although the Comprehensive
22 Plan and the Street Standards Ordinance can be construed as inconsistent, as the Petitioner
23 did, fortunately for the City, its wording keeps it from being clearly erroneous in view of the
24 entire record before the Board and in light of the goals and requirements of Growth
25 Management Act.

26 Under **Traffic Calming**, the Petitioner contends that the Ordinance is more
restrictive than the Comprehensive Plan.

TR 5.4 Traffic Calming Measures

Use traffic calming measures in neighborhoods to discourage speeding, reduce
non-neighborhood traffic, and improve neighborhood safety.

1
2 The Comprehensive Plan directs the City to use traffic calming measures for stated
3 reasons and under "Discussion" explains why traffic calming measures should be used. The
4 Ordinance, on the other hand, specifies the process which needs to be followed in order to
5 install traffic calming devices. The Board finds that the City accomplished its goal for traffic
6 calming measures under both the Comprehensive Plan and the Ordinance, and both
7 statutes, on their face, are consistent.

8 The Board certainly understands why the Petitioner believes the City's
9 Comprehensive Plan as being inconsistent with the newly adopted Street Standards
10 Ordinance. Much of the wording in one document contradict and/or eliminates what is said
11 in the other. But the City, through its use of words, has managed to pass the consistency
12 test as defined by WAC 365-195-210, "no feature of one plan may preclude achievement of
13 any other feature of that plan or any other plan."

14 Clearly, one of the potential pitfalls of the Street Standards Ordinance is its reliance
15 on administrative decisions by one individual or manager. For example, in the Street
16 Standards Ordinance for crosswalks, the director of streets has final authority; for gated
17 communities, the director of engineering services has final authority; and for traffic calming
18 measures, either or both of the director of engineering services and director of streets make
19 the final decision. Administrative decisions, without recognized checks and balances, a
20 public process, and further oversight, lead to inconsistencies in projects, potential improper
21 decisions and potential corruption. The Board encourages the City to eliminate sole-
22 authority administrative decisions or clearly describe the oversight available for those
23 decisions.

24 Under the GMA, cities that are required to conform to GMA's requirements must
25 adopt comprehensive plans and development regulations that are consistent with and
26

1 implement¹ the comprehensive plan. RCW 36.70A.040. "Consistency" means that no
2 feature of a plan or regulation is incompatible with any other feature of a plan or regulation.
3 Consistency is indicative of a capacity for orderly integration or operation with other
4 elements in a system. WAC 365-195-210.

5 Applied here, the Petitioner has failed to satisfy his burden of proof demonstrating
6 inconsistency between the Street Standards Ordinance and the City's Comprehensive Plan.

7 As the City observes, consistency does not mean consistency of vision or philosophy.
8 *Camp Nooksack Association v. City of Nooksack*, WWGMHB No. 03-2-0002 (Final Decision
9 and Order 7-11-03). Instead, it means that no feature of one plan may preclude
10 achievement of any other feature of that plan or any other plan. *Id.*

11 The Petitioner has failed to carry his burden of proving that provisions of the Street
12 Standards Ordinance will preclude achievement of the goals and policies of the City's
13 Comprehensive Plan.

14 **Conclusion:**

15 The Board finds that Petitioner has not carried his burden of proof on Issue No. 1.

16 **Issue No. 2:**

17 Does the exemption codified in Title 17, Chapter H Section 010.010 fail to comply
18 with RCW 36.70A.040 and/or RCW 36.70A.120 and/or RCW 36.70A.020(3) because it is
19 inconsistent with the City of Spokane Comprehensive Plan 4.6 exemption regarding
20 transportation preservation projects?

21 ¹ The petition filed in this case does not allege that the Ordinance fails to implement the
22 City's Comprehensive Plan. Nor is the issue raised in the statement of issues set forth in
23 the Board's pre-hearing order. *See* WAC 242-02-558 (prehearing order must set forth
24 legal issues and shall control ensuing proceedings); *CMV v. Mount Vernon*, WWGMHB No.
25 98-2-0006 (Final Decision and Order, 7-23-98) (the 1997 amendment to RCW
26 36.70A.290(1) provides clear legislative direction that, absent a claim in the statement of
issues or prehearing order, a Board is precluded from deciding or addressing an issue).

1 **The Parties' Position:**

2 **Petitioner:**

3 The Petitioner contends that the exemption for transportation preservation projects
4 codified in the Street Standards Ordinance violates RCW 36.70A.040 and/or RCW
5 36.70A.020(3) because it is inconsistent with the exemption set forth in the City's
6 Comprehensive Plan. In particular, the Petitioner argues that the exemption for
7 transportation preservation projects set forth in the City's Comprehensive Plan applies only
8 to a discrete set of "physical" street standards. By contrast, the exemption found in the
9 Street Standards Ordinance is more in the nature of a blanket exemption. Consequently,
10 the Petitioner contends the exemption is inconsistent with the Comprehensive Plan.

11 The Petitioner argues that the Comprehensive Plan recognized that it would be
12 impractical to require existing arterials in urban areas to be brought up to the same physical
13 standards being applied to new road construction when these existing arterials were being
14 resurfaced, rehabilitated, or reconstructed. In many circumstances, it would not be
15 physically possible to bring the existing roadway into compliance with current physical street
16 standards for new construction because the built environment and existing right-of-way in
17 many cases would not allow it. To address this concern, the Comprehensive Plan adopted
18 an exemption from the physical street standards for "transportation preservation projects."

19 "This section describes the physical street standards to be used for street
20 improvement projects. These standards will be used for new streets, for
21 reconstruction of rural roads into urban streets as urbanization occurs,
22 primarily for deficiencies related to capacity, safety, and land widths, and for
23 other street construction projects that involve major redesign of the street
24 itself. Transportation preservation projects (projects involving the resurfacing,
25 rehabilitation, or reconstruction of the street pavement, sidewalks, or bridges)
26 are exempt from these standards." Comprehensive Plan, Transportation
Element, p. 58.

The Petitioner contends that the list of physical street standards that are exempted
by the Comprehensive Plan for preservation projects are enumerated in section 4.6 of the
Transportation Element, Arterial Standards and includes traffic volumes, number of lanes,

1 lane widths, medians, sidewalks, 208 treatment/drainage, bicycle lanes, on-street parking,
2 building set backs, posted speed limits, and access spacing. In addition, if the City
3 reconstructs an existing street and that street did not previously have bicycle lanes and on-
4 street parking, the Comprehensive Plan exemption forgives the City from having to add
5 those features during reconstruction. The Petitioner argues, however, that the
6 Comprehensive Plan exemption does not forgive the City from installing pedestrian buffer
7 strips, utilizing traffic calming techniques, installing ADA curb ramps, installing safe
8 driveways, considering cross walks, installing street trees, and installing street lights.

9 The Petitioner contends that the exemption to the Comprehensive Plan that Section
10 4.6 grants these transportation preservation projects is only from the "physical street
11 standards" as enumerated within Section 4.6. On the other hand, Petitioner argues that the
12 Comprehensive Plan fully expects all of the other goals, policies, and requirements of the
13 Transportation Element to be implemented. The Comprehensive Plan notes that:

14 "Without this policy, little would be done to retrofit the City of Spokane's
15 existing street system to meet the new pedestrian design standards and thus
16 achieve the intent of the transportation element..... This policy is a practical,
17 direct way to implement the City of Spokane's pedestrian standards and
18 create Spokane's desired transportation future. The fundamental pedestrian
19 standard to be implemented is the policy to provide for safe pedestrian
20 circulation." Comprehensive Plan, Transportation Element, pp. 37-38 TR 9.3
21 Dedicated Funds for Retrofitting.

22 The Petitioner contends that, with the adoption of Section 17H.010.010, the City
23 Council misinterpreted the exemption language within the Comprehensive Plan and applied
24 it too broadly to its street development standards.

25 The street development standards are applicable to new streets,
26 reconstruction of rural roads into urban streets as urbanization occurs, and
other street construction projects that involve major redesign of the street
itself. Transportation preservation projects (resurfacing, rehabilitation, or
reconstruction of the existing street pavement, sidewalks, or bridges) are
exempt. Section 17H.010.010, 'Purpose and Applicability'

1 The Petitioner contends that, while the two exemption clauses contain almost
2 identical language, there is a significant difference that puts 17H.010.010 in conflict with
3 the Comprehensive Plan. The Comprehensive Plan exempts transportation preservation
4 projects from only the 'physical street standards' enumerated in Section 4.6. Preservation
5 projects would still be held to the other goals and policies set forth in the Comprehensive
6 Plan. Section 17H.010.010 contains a blanket exemption from all elements of the street
7 development standards – even those that are required by the Comprehensive Plan.

7 **Respondent:**

8 The City contends that the exemption for transportation preservation projects set
9 forth in the Street Standards Ordinance is fully consistent with the exemption found in the
10 Comprehensive Plan. The exemption arises in the Street Standards Ordinance as follows:

11 The street development standards² are applicable to new streets,
12 reconstruction of rural roads into urban streets as urbanization occurs, and
13 other street construction projects that involve major redesign of the street
14 itself. Transportation preservation projects (resurfacing, rehabilitation or
15 reconstruction of the existing street pavement, sidewalks or bridges) are
16 exempt. Street Standards Ordinance, Section 17H.010.010.

15 The City's Comprehensive Plan contains nearly identical language:

16 This section describes the physical street standards to be used for street
17 improvement projects. These standards will be used for new streets, for
18 reconstruction of rural roads into urban streets as urbanization occurs,
19 primarily for deficiencies related to capacity, safety, and land widths, and for
20 other street construction projects that involve major redesign of the street
21 itself. Transportation preservation projects (projects involving the resurfacing,
22 rehabilitation, or reconstruction of the street pavement, sidewalks, or bridges)
23 are exempt from these standards. (Emphasis supplied.) Comprehensive Plan,
24 Transportation Element, p. 57.

22 ² The street standards from which transportation preservation projects are exempt under
23 the Comprehensive Plan are the standards that guide street design and describe the desired
24 street environment – *i.e.*, the street standards provide the tools for implementing the goals
25 and policies of the Transportation Element of the Comprehensive Plan. Comprehensive
26 Plan, Transportation Element, p. 57.

1
2 This exemption is referenced a number of times in the Transportation Element of the
3 City's Comprehensive Plan. The following passage is illustrative:

4 The proposed City of Spokane street standards, hereafter referred to as
5 "Standards," are intended to apply to all newly constructed public and private
6 streets. As required by the city, these Standards would also apply to the
7 reconstruction of arterials as outlined in the current capital improvement
8 program. They would also be required, at the discretion of the city, as land
9 development-related improvements for the following situations:
10 [generally requiring new development to retrofit existing transportation
11 facilities to the extent of the new development's impact on the existing
12 system]. The Standards are not intended to apply to the resurfacing,
13 restoration, or rehabilitation of existing arterials. (Emphasis by Respondent.)
14 Comprehensive Plan, Transportation Element, p. 58; *see also* Comprehensive
15 Plan, pp. 37-38 (the standards are not intended to apply to the resurfacing,
16 restoration, or rehabilitation of existing arterials).

17 The City's Comprehensive Plan contains a broad and blanket exemption for
18 transportation preservation projects and, therefore, the City is not required to implement all
19 of the goals and policies set forth in the Comprehensive Plan for new streets as a condition
20 to maintaining its existing streets.

21 Despite the broad exemption for transportation preservation projects found in the
22 Comprehensive Plan, the Petitioner maintains that such projects must nevertheless comply
23 with all of the goals and policies of the Transportation Element of the City's Comprehensive
24 Plan. The City submits this argument would render meaningless the exemption set forth in
25 the Transportation Element of the Comprehensive Plan.

26 The street standards are to guide street design and to describe the desired
street environment. The street standards provide for streets that meet
functional, safety, and aesthetic requirements. . . .

This plan develops guidelines to match street standards to needs and to allow
street design to foster a sense of place consistent with the unique
characteristics of the surrounding area. . . (Emphasis supplied.) Comprehensive
Plan, p. 57.

1 As these passages make clear, the street standards from which transportation
2 preservation projects are exempt are the standards that are intended to implement the
3 goals and policies of the Transportation Element by creating the street environment
4 envisioned therein. As set forth in the City's Comprehensive Plan, the City is not required to
5 implement all of the goals and policies set forth in the Comprehensive Plan for new streets
6 as a condition maintaining its existing streets.

7 Additional support for this conclusion is found in TR 9.3 Transportation Element:

8 **TR 9.3 Dedicated Funds for Retrofitting**

9 *The City of Spokane shall dedicate some amount of its annual transportation
10 capital budget to retrofitting the street system to meet the city's pedestrian
11 design standards.*

12 Discussion: As noted in the "Street Standards" (section 4.6, see subsection
13 titled "General Considerations"), the City of Spokane's street standards apply
14 to *newly constructed* public and private streets. The standards are also
15 applied in certain situations as land development occurs (such as where level
16 of service is impacted or where development abuts an existing arterial). The
17 standards, however, are not intended to apply to the resurfacing, restoration,
18 or rehabilitation of existing arterials. Without this policy, little would be done
19 to retrofit the City of Spokane's existing street system to meet the new
20 pedestrian design standards and thus achieve the intent of the transportation
21 element. (The Transportation Capital Facilities Program does include a
22 program to construct sidewalks along arterials where they are missing, but no
23 other such retrofitting program was planned as part of the comprehensive
24 planning process.) This policy is a practical, direct way to implement the City
25 of Spokane's pedestrian standards and create Spokane's desired
26 transportation future. The fundamental pedestrian standard to be
implemented is the policy to provide for safe pedestrian circulation, primarily
in the form of sidewalks with a pedestrian buffer strip (TR 2.7, "Safe
Sidewalks").

This policy creates a project type of its own in the Transportation Capital
Facilities Program (section 4.7), called "Pedestrian Facilities Retrofitting
Program." To identify the funds to allocate to this program and thus
implement this policy, each year City of Spokane staff will develop a proposal
for an amount of the transportation capital budget to devote to fulfilling this
policy. The city will develop a program to identify where and how to apply
these funds (a task for, at least in part, the Pedestrian/Bicycle Coordination

1 staff, policy TR 2.3). (Italics original, underline added.) Comprehensive Plan,
2 Transportation Element, pp. 37-38 TR 9.3 Dedicated Funds for Retrofitting.

3 As the foregoing policy recognizes, the Comprehensive Plan does not require the City
4 to retrofit its existing streets as a condition of maintaining those streets. Instead, this
5 policy recognizes that there are scarce and limited resources available for street
6 maintenance and that requiring the City to retrofit its entire transportation system as a
7 condition of maintaining it is not financially feasible. As a compromise, the Transportation
8 Element establishes a goal of budgeting for some retrofitting on an annual basis. The
9 Petitioner does not allege in this case that the City is failing to honor this policy.

10 **Board Analysis:**

11 The Petitioner has failed to carry his burden of proof demonstrating inconsistency
12 between the exemptions for transportation preservation projects set forth in the City's
13 Comprehensive Plan and the Street Standards Ordinance. While the Board does not
14 necessarily agree with the City's decision to provide an exemption for transportation
15 preservation projects in its Street Standards Ordinance, the Board must presume the
16 validity of the Ordinance, and it is the Petitioner's burden to demonstrate inconsistency. The
17 Petitioner has failed to do so.

18 In applying the "clearly erroneous" standard of review, the Board has recognized that
19 it is much more deferential and creates a "greater burden of proof" than would a mere
20 "preponderance of the evidence" standard. *See Knapp v. Spokane County*, EWGMHB Case
21 No. 97-1-0015c, August 23, 1999 (Order on 4th Compliance Hearing. Given this substantial
22 deference, the Board can only rule against a city when it is "left with the firm and definite
23 conviction that a mistake has been made." *See Dept. of Ecology v. PUD 1*, 121 Wn.2d 179,
24 201, 849 P.2d 646 (1993). Applying the foregoing standards, the Board cannot rule against
25 the City of Spokane in this case.

26 The Board finds that the exemption for transportation preservation projects set forth
in the recently adopted Street Standards Ordinance is very similar to the language

1 contained in the Transportation Element of the City's Comprehensive Plan. While the
2 language may not be exactly the same, minor inconsistencies in the language are not fatal.
3 Instead, the question is whether the exemption found in the Street Standards Ordinance is
4 compatible with the general policy language found in the Comprehensive Plan. *See e.g.,*
5 *Camp Nooksack Association v. City of Nooksack*, WWGMHB No. 03-2-0002 (Final Decision
6 and Order 7-11-03) (consistency means that no feature of one plan may preclude
7 achievement of any other feature of that plan or any other plan). Applying this standard,
8 the Board cannot say that the Petitioner has carried his burden of proving that the
9 exemption contained in the Street Standards Ordinance is inconsistent with the one found
10 in the Comprehensive Plan.

10 **Conclusion:**

11 The Board finds that the Petitioner has not carried his burden of proof on Issue No.
12 2.

13 **Issue No. 3:**

14 Does the exemption granted under Spokane Municipal Code 17.H010.010
15 substantially interfere with RCW 36.70A.020(3), thereby warranting and issuance of an
16 Order of Invalidity pursuant to RCW 36.70A.302?

16 **The Parties' Position:**

17 **Petitioner:**

18 The Petitioner contends that exempting transportation preservation projects from the
19 standards that implement the goals and policies of the Comprehensive Plan will substantially
20 interfere with and frustrate the goals and requirements of GMA, warranting an order of
21 invalidity.

22 **Respondent:**

23 The City argues that the Petitioner has failed to carry his burden of proof on Issues
24 No. 1 and No. 2 above and an order of invalidity is inappropriate in this case.

1 **Board Analysis:**

2 Due to Petitioner's failure to satisfy his burden of proof on the first two issues, his
3 request for an order of invalidity must be denied.

4 The Petitioners have a heavy burden when seeking invalidity of all or part of
5 the comprehensive plan or development regulations. The Board must first
6 find the County out of compliance and then find those noncompliant actions to
7 substantially interfere with the goals of the GMA. This is not something the
8 Board does lightly. *Citizens for Good Governance, 1000 Friends of Washington*
9 *and City of Walla Walla v. Walla Walla County*, EWGMHB, 01-0015c & 01-1-
10 0014cz (Final Decision and Order, May 1, 2002).

11 The Board rarely invokes invalidity. Invalidity can only be invoked when the
12 Board finds the actions taken by a City or County seriously impair the goals of
13 the GMA. *Neighbors for Responsible Development v. City of Yakima*,
14 EWGMHB, 02-1-0009 (Final Decision and Order, December 5, 2002).

15 The Petitioner has not satisfied this burden. As outlined above, the Petitioner has
16 failed to overcome the presumption of validity to which the Street Standards Ordinance is
17 entitled. Consequently, there is no legal basis for the Petitioner's suggestion that the Street
18 Standards Ordinance substantially interferes with the goals of the Growth Management Act.

19 **Conclusion:**

20 The Board finds that Petitioner has not carried his burden of proof on Issue No. 3.

21 **V. FINDINGS OF FACT**

- 22 1. The City of Spokane is a county located east of the crest of the
23 Cascade Mountains and has chosen to plan under Chapter 36.70A.
24 2. The Petitioner is a citizen of Spokane County and participated in the
25 adoption of the Street Standards Ordinance.
26 3. The Petitioner filed a timely petition on July 21, 2006, arguing that the
Street Standards Ordinance is inconsistent with the City's
Comprehensive Plan in a number of respects.

1
2 Pursuant to RCW 36.70A.300 this is a final order of the Board.

3 **Reconsideration:**

4 Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of
5 this Order to file a petition for reconsideration. Petitions for reconsideration shall
6 follow the format set out in WAC 242-02-832. The original and four (4) copies of
7 the petition for reconsideration, together with any argument in support thereof,
8 should be filed by mailing, faxing or delivering the document directly to the
9 Board, with a copy to all other parties of record and their representatives. Filing
10 means actual receipt of the document at the Board office. RCW 34.05.010(6),
11 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite
12 for filing a petition for judicial review.

13 **Judicial Review:**

14 Any party aggrieved by a final decision of the Board may appeal the
15 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
16 judicial review may be instituted by filing a petition in superior court according
17 to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and
18 Civil.

19 **Enforcement:**

20 The petition for judicial review of this Order shall be filed with the
21 appropriate court and served on the Board, the Office of the Attorney General,
22 and all parties within thirty days after service of the final order, as provided in
23 RCW 34.05.542. Service on the Board may be accomplished in person or by mail.
24 Service on the Board means actual receipt of the document at the Board office
25 within thirty days after service of the final order.
26

1 Service:

2 **This Order was served on you the day it was deposited in the United States mail.**

3 **RCW 34.05.010(19)**

4

5

SO ORDERED this 13th day of July 2007.

6

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

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John Roskelley, Board Member

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Dennis Dellwo, Board Member

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Joyce Mulliken, Board Member

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