CENTRAL PUGET SOUND

GROWTH PLANNING HEARINGS BOARD

STATE OF WASHINGTON

NORTHGATE MALL PARTNERSHIP,)**Case No. 93-3-0009**
)
Petitioner,)**ORDER GRANTING**
v.)**SEATTLE'S MOTION TO**
)**DISMISS and DENYING**
CITY OF SEATTLE,)**NORTHGATE MALL'S CROSS**
)**MOTION and ITS MOTION TO**
Respondent.)**STRIKE STATEMENTS**
)

A.PROCEDURAL BACKGROUND

On September 30, 1993 the City of Seattle (**Seattle** or the **City**) filed "Respondent City of Seattle's Motion to Dismiss for Lack of Subject Matter Jurisdiction" (**City's Motion to Dismiss**) with the Central Puget Sound Growth Planning Hearings Board (the **Board**).Separate Declarations of Joan Rosenstock and Rebecca Barnes in Support of City's Motion were attached to the Motion to Dismiss.In addition, the City provided copies of Resolution 28752 and Ordinances 116770, 116794 and 116795.The final, as-adopted version of the Northgate Area Comprehensive Plan (the **Final Northgate Plan**) was attached as Attachment A to each of these first two enactments.
The City raised two legal issues in its motion to dismiss:
1.Does the Board have subject matter jurisdiction to review the Final Northgate Plan and its implementing regulations for compliance with the Growth Management Act (**GMA** or **the Act**?
2.Does the GMA prohibit local jurisdictions from doing any land use planning or enacting land use regulations before a GMA comprehensive plan is enacted?
On October 18, 1993 the Northgate Mall Partnership (**Northgate Mall**) filed "Petitioner Northgate Mall Partnership's Response to City of Seattle's Motion to Dismiss and Cross Motion" [for Partial Summary Judgment][1] (**Northgate Mall's Response Brief**).The Declaration of Peter J. Glase was attached as Appendix 1.Exhibit A to Appendix 1 was a copy of the Final Northgate Plan.Northgate Mall's Petition for Review to the Board in this case was Exhibit B. Appendix 2 consisted of selected portions of the King County Countywide Planning Policies (**CPPs**).Appendix 3 to Northgate Mall's Response Brief was a copy of Seattle Resolution 28195. A Seattle Planning Department document entitled Regional Centers Designation was Appendix 4.

Northgate Mall's Response Brief asked the Board to deny the City's Motion to Dismiss and to declare that the Final Northgate Plan must meet the requirements for comprehensive plans under the Act.

Northgate Mall also filed a Motion to Strike Statements in the Declaration of Joan Rosenstock. (**Northgate Mall's Motion to Strike**).

On October 25, 1993 the "City's Reply Brief in Support of the City's Motion to Dismiss" (**City's Reply Brief**) was filed with the Board.

On October 28, 1993 the Board held a hearing on the City's Motion to Dismiss, Northgate Mall's Motion to Strike and Northgate Mall's Cross Motion for Partial Summary Judgment.The hearing was held in the Board's conference room at 2329 One Union Square, Seattle.The Board's three members were present: M. Peter Philley, presiding; Joseph W. Tovar and Chris Smith Towne. Robert D. Tobin represented the City and participated telephonically.Thomas H. Wolfendale and Cheri Y. Cornell represented Northgate Mall.Court reporting services were provided by Duane W. Lodell of Robert H. Lewis & Associates.

B.FINDINGS OF FACT

1.In 1987, the Seattle City Council adopted Resolution 27607 which directed the Seattle Engineering Department to conduct a comprehensive transportation study of the Northgate area. *See* Final Northgate Plan, at 5.

2.In June, 1989 the Seattle Engineering Department published a "Northgate Area Existing Conditions Report" that documented existing transportation conditions and traffic problems in the Northgate area.Declaration of Joan Rosenstock attached to City's Motion to Dismiss, at 2, ¶ 4;*see* Final Northgate Plan, at 5.

3.On August 7, 1989 the Seattle City Council adopted Resolution 28048 that directed the Seattle Planning Department to recommend interim traffic controls, establish a citizens' participation mechanism through the neighborhood district councils, and begin a comprehensive land use and transportation plan for the Northgate Area. *See* Final Northgate Plan, at 5; Declaration of Joan Rosenstock, at 3, ¶ 4.The Final Northgate Plan noted that:

> Traffic congestion was the problem that gave birth to the Northgate planning process in 1989.By 1990, travel demand had increased beyond the capacity of the street system.Final Northgate Plan, at 2.

4.On August 16, 1989 the Seattle City Council adopted Ordinance 114630 that established interim traffic controls for most of the Northgate Area which prohibited new development that would generate more than 30 vehicle trips in the P.M. peak-hour.*See* Final Northgate Plan, at 5.

5.On November 22, 1989 the Seattle City Council adopted Ordinance No. 114799 that authorized the Planning and Engineering Departments to prepare a Northgate Area Comprehensive Plan. Resolution 28752, at 1 - first finding.

6.On December 18, 1989 the Seattle City Council adopted Ordinance 114899 that amended the interim traffic controls and defined a "total development proposal."*See* Final Northgate Plan, at 5.

7.In December, 1989 the Seattle Planning Department formed the Northgate Advisory Committee, comprised of various community, business and government representatives. Declaration of Peter J. Glase attached to Northgate Mall's Response Brief, at 1, ¶ 2.Northgate Mall was represented on this committee by Peter J. Glase.Declaration of Peter J. Glase, at 1, ¶ 1.
8.On April 1, 1990 the Washington State Legislature adopted SHB 2929, what is commonly referred to as the Growth Management Act and which has been codified primarily as Chapter 36.70A RCW.Laws of 1990, 1st ex. sess., ch. 17.
9.On July 1, 1990 the GMA became effective.Laws of 1990, 1st ex. sess., ch. 17.
10.On August 20, 1990 the Seattle City Council adopted Resolution 28195, entitled:

> A Resolution defining a planning framework for the City of Seattle and calling for the consolidation of city planning functions within a single city department.Resolution 28195, at 1 -- attached as Appendix 3 to Northgate's Response Brief.

Attachment 1 to Resolution 28195 is entitled "City Planning Framework."
11.The ninth and tenth findings of Resolution 28195 discuss the GMA as follows:

> WHEREAS, new state growth management legislation (ESHB 2929) requires that Seattle produce a comprehensive plan by July 1, 1993, including as mandatory elements land use, housing, transportation, capital facilities and public utilities planning; and
> WHEREAS, pursuant to Resolution 28168 and the state growth management legislation, the city has undertaken the city-wide portion of a new comprehensive plan, consistent with the process proposed by the Planning Commission;Resolution 28195, at 1 -- attached as Appendix 3 to Northgate's Response Brief.

12.In the fall of 1990, a preliminary draft Northgate Plan was circulated for comment. Declaration of Joan Rosenstock, at 4, ¶ 8.The official title of this document is the "Northgate Study Area -- Draft Alternatives Report."*See* Declaration of Peter J. Glase, at 2, ¶ 3.
13.In the summer of 1991, the City began preparing its GMA-required citywide comprehensive plan.Declaration of Joan Rosenstock, at 4, ¶ 9.
14.On July 16, 1991 the Washington State Legislature's 1991 amendments to the GMA, enacted as RSHB 1025, became effective.Laws of 1991, 1st sp. sess., ch. 32.
15.In late November, 1991 the Mayor's Draft Northgate Plan (**Draft Plan**) was published for public review.Declaration of Joan Rosenstock, at 5, ¶ 11; Declaration of Peter J. Glase, at 2, ¶ 4.
16.During December, 1991 and January, 1992 the City held hearings on the Draft Plan. Declaration of Peter J. Glase, at 2, ¶ 4.
17.On May 11, 1992 the Seattle City Council received the Mayor's Recommended Northgate Area Comprehensive Plan (**Mayor's Recommended Plan**).*See* Resolution 28752, at 1 - ninth finding.
18.On June 11, 1992 the Seattle City Council held a public hearing on the Mayor's Recommended Plan.Final Northgate Plan, at 1.
19.In June, 1992 the Seattle City Council selected framework policies which are the first stage in developing the City's citywide GMA-required comprehensive plan.Declaration of Rebecca Barnes attached to the City's Motion to Dismiss, at 2, ¶ 4 and 5.

20.On July 6, 1992, the King County Council passed Ordinance No. 10450 which adopted countywide planning polices (**CPPs**) for King County, in compliance with RCW 36.70A.210. Appendix 2 to Northgate's Response Brief.

21.An October, 1992 document entitled "City of Seattle Regional Centers Designation" that was prepared by the Seattle Planning Department indicates:

> This report presents the City of Seattle's designations for **Urban** and **Manufacturing/ Industrial Centers** consistent with the Countywide Policies for King County.
>
> The City of Seattle recommends to the Growth Management [Planning] Council of King County (GMPCKC) designation of five **Urban Centers** and two **Manufacturing/ Industrial Centers** in Seattle....
>
> ...
>
> The designations will be established in the City of Seattle's Comprehensive Plan scheduled for adoption early in 1994, after public review and completion of the Final Environmental Impact Statement.
>
> Further refinements will occur through the development of sub-area plans which will be prepared to implement the centers designation in the Comprehensive Plan.
>
> Final commitments by the City of Seattle in the Comprehensive Plan will depend upon the financing policies that the GMPCKC will support...City of Seattle Regional Centers Designation, at 1 -- Appendix 4 of Northgate's Response Brief (emphasis in original).

Approximately 474 acres in the Northgate area was proposed as an Urban Center.Appendix 4, at 17.

22.In January, 1993 the City Council's Growth Policies and Regional Affairs (**GPRA**) Committee began deliberating on the Mayor's Recommended Plan.Final Northgate Plan, at 1.

23.On April 14, 1993 a draft of each of the City of Seattle's GMA-required comprehensive plan elements and its associated DEIS was published.Declaration of Rebecca Barnes, at 2, ¶ 6.

24.On May 28, 1993 the governor approved the Washington State Legislature's 1993 amendments to the GMA, ESHB 1761, that became effective on June 1, 1993.Laws of 1993, 1st sp. sess., ch. 6.

25.On June 2, 1993 the Seattle City Council held a public hearing on a "mark-up" version of the Mayor's Recommended Plan. Resolution 28752, at 1 - ninth finding.

26.July 1, 1993 was the original deadline for certain cities, including Seattle, and counties to adopt comprehensive land use plans pursuant to RCW 36.70A.040(3).Laws of 1990, 1st ex. Sess., ch. 17, § 4.The deadline was extended to July 1, 1994 by the 1993 amendments to the GMA.Laws of 1993, 1st sp. sess., ch. 6, § 1.

27.On July 6, 1993 the Seattle City Council adopted Resolution 28752, described as:

> A Resolution directing City departments to implement specified policies of the Northgate Comprehensive Plan.Resolution 28752, at 1.

28.Under the heading "Relationship of the Plan to Other City Policies," the Final Northgate Plan provides:

> **Relationship to the Citywide Comprehensive Plan.**The Recommended Framework

Policies for the citywide Comprehensive Plan provide guidance and direction to subsequent subarea and neighborhood plans.These recommendations have not yet been adopted. However, the Northgate Area Comprehensive Plan is consistent with the framework policies....Final Northgate Plan, at 4 (emphasis in original).

. . .

A citywide Comprehensive Plan will be adopted by the City Council in 1994 establishing broader direction for the City.Although begun prior to development of the Framework Policies and citywide Comprehensive Plan, the Northgate Area Comprehensive Plan will be a subarea plan once citywide guidelines are adopted.

. . .

Follow up and Evaluation. To ensure compatibility with the citywide Comprehensive Plan, once it is adopted, and to evaluate the effectiveness of *The Northgate Area Comprehensive Plan*, the Council directs the Planning Department to report to Council as follows:

a)Within six months of adoption of the citywide Comprehensive Plan and implementing ordinances, and of the final Growth Management Act deadline, report to Council any changes in the Northgate Plan necessary to reconcile it with the Comprehensive Plan and implementing ordinances....Final Northgate Plan, at 5 (emphasis in original).

29.Also on July 6, 1993 the Seattle City Council passed Ordinance 116770, entitled:

An Ordinance approving Land Use and SEPA Policies for the Northgate Area.Ordinance 116770, at 1.

30.On August 2, 1993 the Seattle City Council passed Ordinance 116794, entitled:

An ordinance rezoning portions of the Northgate area.Ordinance 116794, at 1.

31.Also on August 2, 1993 the Seattle City Council passed Ordinance 116795, entitled:

An ordinance relating to land use and zoning, amending the Seattle Municipal Code (SMC) [various sections], adding new sections... adding a new Chapter 23.71 to the Seattle Municipal Code to create the Northgate Overlay District; adopting amendments to the official Land Use Map, Chapter 23.32 to establish the Northgate Overlay District; and repealing SMC Chapter 25.07, Interim Traffic Standards for the Northgate Area.Ordinance 116795, at 1.

32.July 1, 1994 is the deadline for Seattle to adopt its citywide comprehensive plan and implementing development regulations as required by the GMA.The City has the option of requesting an additional six months before it is required to adopt its development regulations. Laws of 1993, 1st sp. sess., ch. 6, § 1(3).

C.DISCUSSION -- NORTHGATE MALL'S MOTION TO STRIKE

In support of the City's Motion to Dismiss, Seattle submitted a Declaration of Joan Rosenstock, a Senior Transportation Planner in the City's Department of Planning with a Master's degree in City and Regional Planning and the City's lead staff person on the Final Northgate Plan.Declaration of Joan Rosenstock, at 1-2, ¶ 1 and 2.Northgate Mall objected to the underlined portion of the

following three statements in her declaration (*see* Northgate Mall's Motion to Strike, at 2-3):

> My work on what became the Northgate Area Comprehensive Plan began in 1987.At that time the City became concerned about serious traffic problems in the Northgate area.This concern was heightened by ...Declaration of Joan Rosenstock, at 2, ¶ 3 (emphasis added by Northgate Mall).[2]
>
> In December 1989, the City council appropriated funds for the development of the Northgate Area Comprehensive Plan.It was expected that the Plan would propose policies and regulations to guide urban land use, urban design and transportation decisions which would accommodate new development and maintain and enhance the residential neighborhoods surrounding the Northgate core area.The Interim Traffic Control Ordinance was intended to keep new development from vesting under the existing Land Use Code. Declaration of Joan Rosenstock, at 3, ¶ 5 (emphasis added by Northgate Mall).
>
> [The Final Northgate Plan] ... is not, and was not intended to be, the type of citywide comprehensive plan required by the Growth Management Act.Declaration of Joan Rosenstock, at 4, ¶ 6 (emphasis added by Northgate Mall).

Northgate Mall relied on Evidence Rules (**ER**) 602[3] and 701[4] to support its Motion to Strike. Under ER 602, Northgate Mall argued that the statements are inadmissible due to the declarant's lack of personal knowledge of the intent of the City of Seattle, the City Council, or the state legislature.Under ER 701, Northgate Mall argued that the statements are not helpful to the Board and do not fall within the class of admissible lay witness opinions grounded in rationally based perceptions.

The City's response to Northgate Mall's motion rhetorically asked:if Ms. Rosenstock is unqualified to testify to her understanding that the Final Northgate Plan was never intended to constitute the GMA comprehensive plan, then who in the City would be qualified?The City went on to contrast the applicability of the Rules of Evidence, upon which Northgate Mall relied, with the Board's rules in WAC 242-02-650[5] which the City argued are not as limiting.

The Board's Presiding Officer deferred ruling on the motion at the hearing due to the merit of both parties' arguments and the precedential effect such a ruling would have on future practice before the Board.The Board affirms that WAC 242-02-650 does not require the strict application of the Washington Rules of Evidence in hearings before the Board.

The reasons for the Board's conclusion are twofold.First, only one of the members of each of the three growth planning hearings boards is required to be an attorney.RCW 36.70A.260(1). Arguably, the attorney members of the boards should be familiar enough with the Washington Rules of Evidence to apply them fairly and consistently.However, the attorney member of a board is not always the presiding officer at hearings.Potentially, in two-thirds of the cases argued before the boards, non-attorneys might be required to strictly apply the Rules of Evidence.Requiring strict adherence to the Rules of Evidence is not only contrary to the professional makeup of each board, but it is also contrary to the legislative policy and intent of providing expeditious resolution of GMA disputes through the growth planning hearings boards.The boards are quasi-judicial bodies composed of experts in matters pertaining to land use planning; they are not necessarily experts in the finer points of exclusionary rules of evidence.

Second, pursuant to WAC 242-02-650(1), in lieu of the Rules of Evidence, the Board employs a "reasonably prudent person" standard in ruling on the admissibility of evidence.Given Ms. Rosenstock's position within the City Planning Department, the Board finds that Ms. Rosenstock's accounting of what the City did is the sort of information upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.The same or similar "reasonably prudent person" standard applies in proceedings before the Forest Practices Appeals Board,[6] the Pollution Control Hearings Board[7] and the Shorelines Hearings Board.[8]Though

there is no case law interpreting these regulations, it is clear from their language that the technical rules of evidence that apply in the courts are meant as an aid for quasi-judicial bodies to utilize if and as needed.Though quasi-judicial hearings boards may apply the Washington Rules of Evidence as strictly as the circumstances or other statutory limitations on the introduction of evidence may require, WAC 242-02-650 does not require adherence to the Rules of Evidence.*See Twin Falls, Inc., et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), at 49. Although the Board hereby admits Ms. Rosenstock's statements, the weight given to them, like the weight given any supplemental statements in declaration or affidavits, is low.Admitting Ms. Rosenstock's statements over the objection of opposing counsel is analogous to the Board's authority to admit supplemental evidence as "would be necessary or of substantial assistance to the board in reaching its decision."RCW 36.70A.290(4).Affidavits or declarations submitted in support of or in opposition to dispositive motions may be useful in assisting the Board in its understanding of a case.However, the Board's decision ultimately would be the same whether or not the declaration was submitted.This is so because the Board relies on the language of the GMA and the Act's underlying policies, and the enactment of the local jurisdiction that is the subject of the Petition for Review, to determine the questions before it.

During oral argument on Northgate Mall's Motion to Strike, Northgate Mall expressed concern that the Board decision to grant King County's Motion to Dismiss for Lack of Subject Matter Jurisdiction in *Happy Valley Associates, et al. v. King County*, CPSGPHB Case No. 93-3-0008 (1993)[9], was based on what King County staff said was the County's intent, as stated in their declarations and affidavits, rather than on what the East Sammamish Community Plan Update (**ESC Plan Update**) itself said.Northgate Mall's concern stems not only from the Board's extensive quotation of the County's affidavits and declarations in the Board's order, but also from the following language from the opinion:

> ... [T]he Board concludes that the ESC Plan Update was not adopted pursuant to the GMA. (Emphasis in original).... Several reasons exist for this conclusion.First, nothing in the adopting ordinance (No. 10847) or introductory language to the ESC Plan Update itself clearly indicates that the ESC Plan Update was adopted to comply with the requirements of the GMA.Second, the uncontroverted statements contained in the affidavits and declarations of County personnel clearly indicate that the ESC Plan Update was part of the pre-existing and non-GMA related planning process in King County.Third, as the following discussion reveals, even if the adopting ordinance or the ESC Plan Update itself indicated that either was or both were adopted in order to comply with the GMA, it would nonetheless be impossible for the County to have done so at this time.*Happy Valley*, at 17 (emphasis added).

The Board intends to make clear that it is the language of the GMA-enacted document itself and the language of the GMA and its policy rationale that control the Board's decision.The general public does not have the luxury of easily obtaining affidavits or declarations that explain legislative intent.Instead, citizens must rely on the language of the as-adopted local enactment and the GMA.That is what also guides the Board's decision making, not what a staff member or even an elected official states about the enacted document or the GMA.

In *Happy Valley* the Board went to great lengths immediately following the quote above to discuss the policy behind the requirement for the promulgation of GMA comprehensive plans before subarea plans.[10]The Board quoted from the County's affidavits and declarations to illustrate the County's contradictory statements, not to discern the County's intent or level of compliance.In reading the affidavits and declarations of County personnel and elected officials it was clear to the Board that in the declarants' understanding, the ESC Plan Update was not enacted to satisfy GMA requirements.Yet, in reading the documents that the County actually adopted, it

was anything but clear whether the ESC Plan Update was meant to be a GMA document.
In the final analysis, however, the Board held that even if the language of the ESC Plan Update would have clearly indicated the County's intent that it comply with the GMA, and even if everyone on the King County staff and on the King County Council thought that the ESC Plan Update was enacted for GMA purposes, such clearly expressed intentions did not matter in the absence of an adopted GMA-mandated county-wide comprehensive plan.The Act requires that a county adopt a comprehensive plan before it adopts subarea plans.Likewise, here the City must first adopt a citywide comprehensive plan pursuant to the requirements of the Act before it can adopt GMA subarea plans.
Thus the Board's admonition in *Happy Valley* should be taken as a warning to all local governments to clearly state their intentions and goals concerning the implementation of the GMA.To do less ignores the directives of RCW 36.70A.140 regarding public participation, and invites disenfranchised citizens to seek relief before this Board.
The Board concludes that its regulations do not require adherence to, but allow discretionary use of, the Washington Rules of Evidence.Admissibility of statements in declarations, affidavits, or through witness testimony will be judged considering whether it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.WAC 242-02-650(1).A declarant's experience and training will be taken into consideration in deciding whether to admit statements from the point of view of the reasonably prudent person, not the reasonably prudent attorney practicing in superior court.

D.CITY'S MOTION TO DISMISS and

NORTHGATE MALL'S CROSS MOTION

Positions of the Parties

1.City of Seattle
Seattle contended that the Board lacks subject matter jurisdiction to review the Final Northgate Plan and its implementing regulations because these documents were not enacted under the GMA. In addition, the City argued that "...there is, as yet, no GMA citywide Comprehensive Plan to which the [Final] Northgate Plan must conform."City's Motion to Dismiss, at 8.During oral argument, the City's attorney indicated that Seattle has no existing (non-GMA) citywide comprehensive plan either.Instead, it has a set of subarea plans for specific neighborhoods within the City that happen to be named "comprehensive plans."*See also* City's Motion to Dismiss, at 6.

> Seattle began working on its citywide comprehensive plan, according to the requirements of the GMA, in 1991, more than three years after the [Final] Northgate Plan process began....The citywide comprehensive plan has not been completed, and is not expected or required by RCW 36.70A.040 to be completed until July 1, 1994.Therefore, there is no comprehensive plan yet for this Board to review.City's Motion to Dismiss, at 9.

The City also argued that the Final Northgate Plan is neither a "comprehensive plan", as that phrase is defined in the GMA at RCW 36.70A.030(4), or a document that was "... adopted under

RCW 36.70A.040".*See* RCW 36.70A.280(1).City's Motion to Dismiss, at 10-12.

2.Northgate Mall

Northgate Mall argued that the Board does have broad jurisdiction to review the Final Northgate Plan.It referred to RCW 36.70A.280(1) for the proposition that a party filing a petition for review to a Board must only allege that a city is not in compliance with the requirements of the GMA. Northgate Mall's Response Brief, at 7.Northgate Mall argued that only the Board's SEPA jurisdiction is limited by the language of RCW 36.70A.280(1) and then to only reviewing SEPA as it relates to plan, regulations and amendments thereto.Northgate Mall's Response Brief, at 8. Furthermore, Northgate Mall argued that if Seattle's argument were correct, "... a city could unilaterally escape the jurisdiction of the Board by failing to comply with the GMA, an obviously ridiculous result."Northgate Mall's Response Brief, at 9.

Northgate Mall also contended that the Final Northgate Plan was a comprehensive plan adopted under the Act because the GMA does not define the word "generalized," nor does the definition of "comprehensive plan" contained in the Act indicate that the use of the word "generalized" was intended to distinguish between area-wide and subarea plans.Northgate Mall's Response Brief, at 11.Instead, "... 'generalized' should be understood to distinguish the more generalized [comprehensive] plan from the specific implementing ordinances."Northgate Mall's Response Brief, at 12.

Moreover, Northgate Mall pointed out that the key element for determining whether a document such as the Final Northgate Plan was adopted pursuant to the requirements of the GMA is not when the process began but when the document was actually adopted.

> ... Regardless of when a jurisdiction begins developing a plan, it should be considered adopted pursuant to the GMA whenever it is adopted after the GMA's effective date.The City adopted the [Final] Northgate Plan on July 6, 1993 well after the GMA went into effect and five days after the GMA's original deadline for adopting comprehensive plans. Therefore, the [Final] Northgate Plan was adopted under the GMA.Northgate Mall's Response Brief, at 15-16.

Northgate Mall again expressed its concern that a local jurisdiction could avoid the requirements of the GMA simply by stating that it had not yet adopted a document pursuant to the Act's requirements.It cited RCW 36.70A.180(1) for the proposition that local jurisdictions were not given a grace period until the deadline for adopting GMA documents.Instead, they were to begin implementation on or before July 1, 1990.Northgate Mall's Response Brief, at 16.

Northgate Mall accused Seattle of "squandering" time:

> In sum, rather than spend the three years from July 1, 1990, until July 6, 1993, developing a [Final] Northgate Plan that complied with the Act's requirements, the City continued with a planning approach repudiated by the Legislature when it enacted the GMA.Northgate Mall's Response Brief, at 17.

Discussion

RCW 36.70A.280, entitled Matters subject to board review, provides in part:

> (1) A growth planning hearings board shall hear and determine only those petitions alleging: (a) That a state agency, county, or city is not in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040;...(Emphasis added).

The Board rejects Northgate Mall's contention that all a petition for review has to allege is that a document enacted by a local jurisdiction does not comply with the requirements of the GMA. Although such an allegation is clearly crucial to invoke Board jurisdiction, it neglects an integral part of the Act's requirements quoted above.In addition to the petition for review containing an allegation that a document does not comply with the Act, the document being challenged must have been adopted under or pursuant to the requirements of the Act.In defining "comprehensive land use plan", RCW 36.70A.030(4) also requires that such a document be "... adopted pursuant to" the GMA.(Emphasis added).Therefore, if a legislative action was not undertaken because of (i.e., pursuant to or under) the requirements of the GMA, this Board does not have jurisdiction to review it.

Northgate Mall maintained that if the Board continued this narrow interpretation of its own jurisdiction (*see also* the Board's recent *Happy Valley* decision), it would enable a local government to avoid review by this quasi-judicial body simply by declaring that it did not take an action pursuant to the GMA but rather under some other authority.The Board agrees with Northgate Mall's assessment.If a local jurisdiction adopts a land use planning document (be it a policy document or a regulation) under authority other than the GMA[11], this Board has repeatedly indicated that it lacks the requisite subject matter jurisdiction to review the matter for compliance with the Act.Instead, the appeal must proceed to the superior courts.*SeeTracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 8-9; *Gutschmidt v. Mercer Island*, CPSGPHB Case No. 92-3-0006 (1993), at 7-9; *Twin Falls* - Order on Dispositive Motions, at 4-10 and 12; and *Happy Valley*, at 13.

However, if a local jurisdiction fails to take an action required by the GMA, a petitioner still has recourse through the Act.Clearly, one can file a petition for review with the Board alleging that a local government has failed to comply with the GMA by not meeting a specific deadline.[12] Presumably, the hearing to review such an allegation could then be accelerated by filing a dispositive motion.With passage of the 1993 amendments to the GMA, one may be able to bypass the boards and seek relief directly from the governor.[13]

Here, Seattle has not adopted its Final Northgate Plan under the GMA.The only explicit reference to the Act in the Final Northgate Plan provides just the opposite, that once the City adopts a citywide comprehensive plan under the requirements of the GMA, the Final Northgate Plan will be reviewed in order to reconcile it with that comprehensive plan.*See* Findings of Fact No. 28. Furthermore, the City is not required to adopt its GMA comprehensive plan until July 1, 1994. Therefore, a failure-to-adopt action discussed above is premature until after the relevant date. Filing a petition for review alleging failure to adopt is appropriate only if the City indeed fails to adopt a comprehensive plan pursuant to the GMA's requirements by July 1, 1994.

The Board also agrees with the City's position that, by definition, the Final Northgate Plan is not a comprehensive plan as envisioned by the GMA.RCW 36.70A.030(4) defines "comprehensive land use plan" or "comprehensive plan" or "plan" as:

> ... a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.(Emphasis added).

Northgate Mall pointed out that the word "generalized" is not defined by the Act.It argued that "generalized" is intended to distinguish the comprehensive plan from implementing ordinances, in an attempt to convince the Board that even a local area of a city, such as Northgate, can have a comprehensive plan as contemplated by the GMA.The Board rejects this argument.We previously observed that policy documents are fundamentally different than implementing ordinances such as development regulations.*SeeSnoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (1993), at 12.By the very terms of the above quoted definition, a comprehensive plan is a policy statement, as opposed to an implementing regulation.

The Board concludes, therefore, that the word "generalized" is not used to distinguish between comprehensive plans and development regulations.What, then, does "generalized" mean in this context?Where, as here, a statute does not define a material term, the word should be given its ordinary meaning.In ascertaining common meaning, resort to dictionaries is acceptable.*TLR, Inc. vs. Town of La Center*, 68 Wn. App. 29, 33, 841 P.2d 1276 (1992).

Webster's II New Riverside University Dictionary, 524 (1984) defines "generalized: as:

> Not well-adapted to a specific environment or function:undifferentiated.

This definition suggests that a comprehensive plan consists of policy statements that have general application to the entire city rather than to a specific sub-environment or differentiated portion of the entire city.The Board therefore holds that the term "generalized" refers to the entire geographic area within a city or county.A comprehensive plan for GMA purposes has general application throughout the whole jurisdiction.A plan that covers a subset of that area, such as the Northgate area of Seattle, is too localized to be an area-wide comprehensive plan.It applies only to a discrete area within the whole.Accordingly, a document such as the Final Northgate Plan, if brought into compliance with the GMA, would constitute a subarea plan.At a jurisdiction's option, a subarea plan that is consistent with a comprehensive plan can be a part of that comprehensive plan; however, the subarea plan does not replace the comprehensive land use plan for that geographic area.*See Happy Valley*, at 18-20, and RCW 36.70A.080(2).

The Board held above that the Final Northgate Plan was not adopted under the authority of the GMA.In reviewing the Final Northgate Plan, the Board agrees with the City's argument that it did not adopt that document as a GMA enactment, notwithstanding the use of the City's use of the term "comprehensive plan" and the fact that this term has specific meaning under the Act.The questions that remain are whether or not the Final Northgate Plan must meet the requirements of the GMA and, if not, when and how it would become subject to those requirements.

The Board rejects Northgate Mall's contention that every document enacted by a local jurisdiction after July 1, 1990 must comply with the GMA.RCW 36.70A.180, entitled Report on planning progress, provides in part:

> (1) It is the intent of the legislature that counties and cities required to adopt a comprehensive plan under RCW 36.70A.040(1) begin implementing this chapter on or before July 1, 1990, including but not limited to: (a) Inventorying, designating, and conserving agricultural, forest, and mineral resource lands, and critical areas; and (b) considering the modification or adoption of comprehensive land use plans and development regulations implementing the comprehensive land use plans. It is also the intent of the legislature that funds be made available to counties and cities beginning July 1, 1990, to assist them in meeting the requirements of this chapter.(Emphasis added).

RCW 36.70A.180(1) requires only that cities and counties "begin implementing" the GMA.That mandate must be considered in the context of other portions of the Act that establish specific deadlines for when implementation must be finished.All RCW 36.70A.180(1) requires is that local jurisdictions begin the GMA process.This can include planning to plan by "considering the modification or adoption of comprehensive land use plans."For instance, Resolution 28195 is precisely such an example.*See* Findings of Fact 10.The above quoted language does not mean that local governments must accelerate deadlines ahead of those specified elsewhere in the Act, nor does it mean that any other action taken by local government in the interim before a GMA deadline has passed must be consistent with the Act (unless, of course, the jurisdiction expresses its intent to comply with the GMA).

RCW 36.70A.180(1) was the legislature's way of alerting cities and counties that they should immediately (i.e., as of July 1, 1990) recognize that the GMA would bring major changes to the way they had historically conducted land use planning.Accordingly, the legislature required them to begin the process of changing.Yet, by establishing a series of deadlines phased in over several years, the legislature also recognized the need for a transition.The requirements of the GMA simply could not be put into place overnight.At least an initial measure of a local government's success in planning under the Act is whether a jurisdiction meets its deadlines for compliance. However, the importance of the GMA's deadlines was not diminished by the language of RCW 36.70A.180(1); the deadlines remain in effect despite the language of RCW 36.70A.180(1) and are the controlling dates, not July 1, 1990.

The legislature concluded that the GMA could not be instantaneously implemented, as evidenced by the progression of GMA deadlines that it adopted.Similarly, the legislature also recognized that the pre-existing authority of cities and counties to conduct land use planning activities did not instantly disappear on July 1, 1990.For example, the legislature did not repeal the Planning Enabling Act (Chapter 36.70 RCW) or planning provisions in Titles 35 and 35A RCW when it adopted the GMA.

Accordingly, two-track planning as conducted by King County (*see Happy Valley*) and Seattle was, to some degree, to be expected during the transition period between July 1, 1990 and July 1, 1994.Jurisdictions could not simply "throw away" existing land use planning codes and ordinances before the Act had been implemented.The Board has previously noted the possibility of a "rough" transition period when it discussed the difficulty the GMA could pose, especially for jurisdictions with a "fully established and elaborate land use planning process" in place prior to

adoption of the Act.*Happy Valley*, at 24.Certainly, nothing in the GMA precluded such simultaneous planning from happening.The Board's concern is that as a practical matter such two-track planning can easily lead to confusing and needlessly duplicative efforts if the local jurisdiction does not do a good job of explaining what it is doing and why it is doing it.
Turning to the question of when and how the Final Northgate Plan will be subject to the requirements of the Act, the Board makes the following observations.At the hearing on the Motion, counsel for the City indicated that Seattle intends to adopt its GMA comprehensive plan in 1994 and, some time thereafter, to review the Final Northgate Plan for consistency with the new citywide comprehensive plan.*See also* Findings of Fact 28.If the City wishes to give the Final Northgate Plan status as a subarea plan pursuant to RCW 36.70A.080(2), it will have to explicitly do so by subsequent legislative enactment.A pre-existing neighborhood or community plan does not automatically become a part of the GMA required comprehensive plan.
The Board also observes that incorporating a pre-existing subarea plan into a GMA required comprehensive plan is much more than a perfunctory exercise.The Board is troubled by the candid remark by counsel for the City that he did not expect that the Final Northgate Plan would be substantially different when it is incorporated into the City's GMA comprehensive plan.This may have been an offhand remark, but it compels the Board to express a strong caution to the City.
As the Board held in *Happy Valley*, the consistency requirement of the GMA obliges local comprehensive plans, and subarea plans, if any, to reflect a balance of local, regional and state interests.Thus, in order to make the Final Northgate Plan a part of its comprehensive plan, Seattle would have to review it for consistency with the planning goals of RCW 36.70A.020, the county-wide planning policies adopted pursuant to RCW 36.70A.210, and its own GMA comprehensive plan.Furthermore, the Board notes that Seattle has already nominated the Northgate area as an urban center pursuant to the King County CPPs.*See* Finding of Fact 21.If King County acts affirmatively on the nomination, then the City's GMA comprehensive plan and a Northgate subarea plan would have to meet the requirements for such a center.
While the Final Northgate Plan may continue to exist beyond July 1, 1994 and arguably may have some legal status as a non-GMA enactment, the Board notes that it is not a GMA compliance document, and can have no legal effect in making GMA related decisions.
Importantly, the City should be mindful that not later than July 1, 1994, the City will be obliged by RCW 36.70A.120 to "perform its activities and make capital budget decisions" in conformity with the GMA-required comprehensive plan.[14]

E.ORDERS

Having reviewed and considered the documents filed in support of and in opposition to the City's Motion to Dismiss, Northgate Mall's Cross Motion and its Motion to Strike, and the oral arguments of the parties, and having reviewed the file in this case, the Board enters the following order.

1.Northgate Mall's Motion to Strike Statements of Joan Rosenstock is **denied**.The three statements in question from Ms. Rosenstock's Declaration are admitted as supplemental evidence to assist the Board in reviewing this matter.
2.The City of Seattle's Motion to Dismiss is **granted**.Accordingly, this case is dismissed with prejudice.
3.Northgate Mall's Cross Motion is **denied**.

So ORDERED this 8th day of November, 1993.

CENTRAL PUGET SOUND GROWTH PLANNING HEARINGS BOARD

M. Peter Philley
Board Member
Joseph W. Tovar, AICP
Board Member
Chris Smith Towne
Board Member
Note:This Order constitutes a final order as specified by RCW 36.70A.300.

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[1]The Board's Rules of Practice and Procedure do not discuss motions for summary judgment.Instead, dispositional motions, such as motions to dismiss for lack of jurisdiction, are anticipated.Dispositive motions are similar to a motion for summary judgment but not the same.*See* WAC 242-02-530(4) and *Twin Falls, et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), Order on Dispositive Motions, at 19-21.

[2]This statement is fully corroborated by the Final Northgate Plan itself.*See* Findings of Fact No. 3.

[3]Evidence Rule 602, Lack of Personal Knowledge, provides:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.

[4]Evidence Rule 701, Opinion Testimony by Lay Witnesses, provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

[5]WAC242-02-650, Rules of evidence--Admissibility criteria, provides:

> (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state.The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.
> (2) A board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.
> (3) If not inconsistent with subsection (1) of this section, the presiding officer may refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.(Emphasis added).

[6]*See* WAC 223-05-185(1).

[7]*See* WAC 371-08-187(1).

[8]*See* WAC 461-08-180(1).

[9]The Board did not enter a document entitled "Final Decision and Order" in the *Happy Valley* case.Instead, the Board issued an "Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend Its Petition for Review" that served as the Board's final order for purposes of appeal.

[10]*See Happy Valley*, at 18.

[11]For instance, the City claimed to have adopted the Final Northgate Plan pursuant to its authority under Art. 11, § 11 of the Washington State Constitution.City's Reply Brief, at 11.

[12]When the joint growth planning hearings boards initially adopted Rules of Practice and Procedure, a potential petitioner was given only sixty days to file a petition for review alleging failure to act by a local jurisdiction. Subsequently, the joint boards amended WAC 242-02-220(3) in recognition of the fact that a potential petitioner might have legitimate reasons for not wanting to challenge a failure to take an action within sixty days of a specific GMA deadline.Accordingly, WAC 242-02-220(3) was amended by deleting the following strike-through language, effective June 18, 1993, to enable potential petitioners to bring a "failure to act" action to a board any time after a statutory deadline had been missed:

For all other matters, a petition for review must be filed with a board within sixty days of the final written decision, order, determination, publication, or action being entered. ~~or within sixty days from the failure to act by a specific deadline.~~

[13]A new section was added to the GMA by the legislature in 1993 that provides:

The governor may impose a sanction or sanctions specified under RCW 36.70A.340 on: (1) A county or city that fails to designate critical areas, agricultural lands, forest lands, or mineral resource land under RCW 36.70A.170 by the date such action was required to have been taken; (2) a county or city that fails to adopt development regulations under RCW 36.70A.060 protecting critical areas or conserving agricultural lands, forest lands, or mineral resource lands by the date such action was required to have been taken; (3) a county that fails to designate urban growth areas under RCW 36.70A.110 by the date such action was required to have been taken; and (4) a county or city that fails to adopt its comprehensive plan or development regulations when such actions are required to be taken.

Imposition of a sanction or sanctions under this section shall be preceded by written findings by the governor, that either the county or city is not preceding in good faith to meet the requirements of the act; or that the county or city has unreasonably delayed taking the required action.The governor shall consult with and communicate his or her findings to the appropriate growth planning hearings board prior to imposing the sanction or sanctions.For those counties or cities that are not required to plan or have not opted in, the governor in imposing sanctions shall consider the size of the jurisdiction relative to the requirements of this chapter and the degree of technical and financial assistance provided.Laws of 1993, 1st Sp. Sess., ch. 6, § 5 (emphasis added).

[14]RCW 36.70A.120 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.0040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.