

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

WEST SEATTLE DEFENSE FUND,)	Case No. 95-3-0040
NEIGHBORHOOD RIGHTS)	FINDING OF COMPLIANCE
CAMPAIGN, and CHARLES CHONG,)	[WSDF II]
Petitioners,)	
v.)	
CITY OF SEATTLE,)	
Respondent.)	
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)	
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)	
)	

I. Procedural Background

On March 13, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from the West Seattle Defense Fund, Neighborhood Rights Campaign and Charles Chong (hereafter collectively referred to as **WSDF**) in the above-captioned case, challenging the validity of the City of Seattle’s Ordinances Nos. 117430 and 117434, development regulations that implement the City’s Comprehensive Plan.

The Board issued a Final Decision and Order in the above referenced case on September 11, 1995 that was not subsequently appealed to superior court.

The order provided as follows (emphasis in original):

1. 1. City of Seattle Ordinance No. 117430, the Implementing Development Regulations Ordinance, is in compliance with the requirements of the Growth Management Act, except for those provisions that regulate “urban village commercial areas” inside urban villages, whether or not the final boundaries of urban villages have been formally established in the Comprehensive Plan. Specifically, SMC 23.47.002(C).009, .010(A)(3) and .023 are affected by this order.

2. City of Seattle Ordinance No. 117434, the Map Ordinance, is in compliance with the requirements of the Growth Management Act, except for those provisions that map “urban village commercial areas” inside urban villages.
3. Ordinances Nos. 117430 and 117434 are **remanded** to the City with instructions to bring them into compliance with the requirements of the Act and the Board’s Final Decision and Order in this case by making them consistent with the Seattle Comprehensive Plan.
4. Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than **5:00 p.m. on December 1, 1995**. The City shall provide the Board with an original and three copies of a Statement of Compliance indicating what steps it took to comply with this Order, and serve a copy on WSDF, by **5:00 p.m. on December 7, 1995**.
5. Section 110 of ESHB 1724 amended RCW 36.70A.300 to authorize the growth management hearings boards to enter a “determination of invalidity.” WSDF has requested that the Board make such a determination regarding the Map and Implementing Development Regulations Ordinances. In order to do so, the Board must conclude that the continued validity of a regulation would substantially interfere with the fulfillment of the goals of the GMA. The Board **denies** WSDF’s request since it is unable to conclude, from the facts and argument before it, that the requisite substantial interference exists.

On December 7, 1995, the Board received the City of Seattle’s Statement of Compliance and three attachments: Attachment 1 -- Ordinance No. 117919; Attachment 2 -- Affidavit of Publication; Attachment 3 -- unidentified and undated newspaper publication of the ordinance.

On December 13, 1995, the Board entered a Notice of Compliance Hearing and Briefing Schedule. Subsequently, neither party filed any briefs.

On January 8, 1996, the Board received a letter from Bob C. Sterbank, representing WSDF, that indicated that WSDF would not be appearing at the compliance hearing.

The Board held a compliance hearing in this matter on Wednesday, January 10, 1996. M. Peter Philley, Presiding Officer in this case, participated telephonically for the Board; Robert D. Tobin participated telephonically for the City. WSDF did not appear. Court reporting services were provided by Duane W. Lodell of Robert H. Lewis & Associates, Tacoma.

II.STATEMENT OF FACTS

1. On October 26, 1995, notice of public hearings of the Seattle City Council to take comments on proposed amendments to the Official Land Use Map and the Land Use Code was published in *The Daily Journal of Commerce*. Attachment 2 to City's Statement of Compliance.
2. On November 21 and 22, 1995, the Seattle City Council held public hearings on the proposed amendments. City's Statement of Compliance, at 2. *See also* Attachment 2 to City's Statement of Compliance.
3. On November 27, 1995, the Seattle City Council passed Ordinance No. 117919 (the **Ordinance**). Section 1 of the Ordinance amended Seattle Municipal Code (**SMC**) 23.47.010(A) (3) by deleting reference to office uses in C1 and C2 zones "within urban village commercial areas as shown on the Official Land Use Map." Section 2 amended the Official Land Use Map by removing the "v" or village commercial areas designation. Attachment 1 to City's Statement of Compliance.
4. On November 29, 1995, Mayor Norman B. Rice approved the Ordinance. Attachment 1 to City's Statement of Compliance.
5. On December 7, 1995, notice of adoption of the Ordinance was published. City's Statement of Compliance, at 2.

III.DISCUSSION

In *West Seattle Defense Fund v. Seattle (WSDF I)*, CPSGMHB Case No. 94-3-0016 (1995), the Board issued a Finding of Compliance that explained the scope of a compliance hearing when the Board had previously determined that the jurisdiction's action had failed to comply with the requirements of the Growth Management Act (**GMA** or the **Act**):

When a local jurisdiction takes an action to comply with the Act's requirements but a petition for review is filed challenging that action as failing to comply with the GMA and the Board issues a final decision and order concluding that the action indeed failed to comply with the Act, and orders the jurisdiction to take subsequent action that will require an amendment(s) to the document enacted by a specified deadline, then the scope of the compliance hearing will be limited. The scope of such hearing will be limited to whether the subsequent action was taken by the compliance deadline and, in taking such an action, whether the minimal requirements of pre-hearing notice, a public hearing and post-adoption publication of notice of adoption took place. *WSDF I*, Finding of Compliance, at 5.

The Board now applies this limited analysis. The record before the Board indicates that the City published pre-hearing notice of public hearings. Finding of Fact No. 1. It is unrefuted that the City Council held public hearings on the proposed amendments. Finding of Fact 2. Subsequently, the City Council passed the Ordinance. Finding of Fact No. 3. Further, it is not disputed that the City published notice of adoption of the Ordinance. Finding of Fact No. 5. *See also* Attachment 3 to the City's Statement of Compliance.

IV. ORDER

Having reviewed and considered the City's Statement of Compliance and attachments, having considered the City's oral argument, and having reviewed the file in this case, the Board concluded that the City **has procedurally complied** with the Board's Final Decision and Order. Therefore, the Board issues a **finding of compliance** to the City.

So ordered this 11th day of January, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member