

Documents filed on October 18, 1995 for WSDF I compliance hearing

WSDF's Hearing Statement in Response to Seattle's Statement of Compliance [Attachment 2-I]
Declaration of Bob. C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II] and five attachments:

Exhibit A -- Public Notice 57513 of July 7, 1995

Exhibit B -- August 24, 1995 Land Use Information Service Weekly Bulletin

Exhibit C -- May 11, 1995 Land Use Information Service Weekly Bulletin

Exhibit D -- September 21, 1995 Land Use Information Service Weekly Bulletin

Exhibit E -- Affidavit of Publication in *The Daily Journal of Commerce* for Ordinance 117735 on August 7, 1995

Declaration of Charles Chong [Attachment 2-III] with one attachment:

Exhibit A -- Partial Transcript of June 20, 1995 Seattle City Council Planning & Regional Affairs Committee Public Hearing.

Declaration of Julie Brown [Attachment 2-IV] with one attachment:

Exhibit A -- Transcript of July 12, 1995 Seattle City Council Planning & Regional Affairs Committee Public Hearing;

Documents filed on October 26, 1995 for WSDF I compliance hearing

Declaration of Alfred A. Rousseau in Support of WSDF Response to City Statement of Compliance [Attachment 2-VIII];

Second Declaration of Charles Chong in Support of WSDF Response to City Statement of Compliance [Attachment 2-VII].

Documents filed on November 1, 1995 for WSDF I compliance hearing

WSDF's Reply on Seattle's Statement of Compliance; [Attachment 2-V]

Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI], with fourteen attachments:

Exhibit A -- June 20, 1995 Agenda for Planning & Regional Affairs Committee

Exhibit B -- June 26 - July 21, 1995 Seattle City Council Meeting Schedule

Exhibit C -- July 3 - July 28, 1995 Seattle City Council Meeting Schedule

Exhibit D -- July 10 - August 4, 1995 Seattle City Council Meeting Schedule

Exhibit E -- July 17 - August 11, 1995 Seattle City Council Meeting Schedule

Exhibit F -- July 24 - August 18, 1995 Seattle City Council Meeting Schedule

Exhibit G -- July 28, 1995 Agenda for Planning & Regional Affairs Committee

Exhibit H -- July 31 - August 25, 1995 Seattle City Council Meeting Schedule

Exhibit I -- October 25, 1995 excerpt from *The Seattle Times*

Exhibit J -- July 31, 1995 partial transcript of Seattle City Council hearing

Exhibit K -- October 26, 1995 Land Use Information Service Weekly Bulletin

Exhibit L -- October 24, 1995, memorandum from Sherry D. Harris to interested persons re: public hearing notice.

Exhibit M -- City of Seattle announcement re: availability of Plan

Exhibit N -- July 30, 1992 Land Use Information Service Weekly Bulletin

On February 5, 1996, the City of Seattle's Brief (**City's Brief**) was filed with the Board. The City also incorporated by reference the documents it filed for the compliance hearing in *WSDF I*, but did not attach them to its brief:

Documents filed on September 8, 1995 for *WSDF I* compliance hearing

City of Seattle's Statement of Compliance and five attachments:

Exhibit 1 -- Ordinance 117735 and Attachment 1 and Appendices;

Exhibit 2 -- October 1993 Growth Management Act Projections for the City of Seattle;

Exhibit 3 -- Attachment 3: Capital Facilities Analysis for Five Urban Centers;

Exhibit 4 -- Attachment 4: Planning for Maintenance of Capital Facilities;

Exhibit 5 -- Attachment 5: Background Documents for Transportation Impact Analysis.

Documents filed on October 27, 1995 for *WSDF I* compliance hearing

City of Seattle's Reply to WSDF's Response to City's Statement of Compliance;

Declaration of Bob Morgan.

On February 12, 1996, WSDF's Reply Brief was filed with the Board.

The Board held a hearing on the merits at 9:30 a.m. on Wednesday, February 14, 1996, at 3400 One Union Square in Seattle, Washington. Board members M. Peter Philley, Presiding Officer in this matter, Joseph W. Tovar, and Chris Smith Towne were present from the Board. Peter J. Eglick and Bob C. Sterbank represented WSDF and Robert D. Tobin represented the City. Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma, provided court reporting services. No witnesses testified.

II. FINDINGS OF FACT

No material facts were disputed by the parties. The Board enters the following undisputed facts:

1) July 1, 1994, was the deadline for Central Puget Sound jurisdictions to adopt comprehensive plans. In addition, unless a Central Puget Sound city or county requested an extension in writing, July 1, 1994 was also the deadline for that jurisdiction to adopt development regulations that are consistent with and implement the comprehensive plan. RCW 36.70A.040 (3)(d).

2) On July 25, 1994, Seattle Ordinance 117221 was passed by the Seattle City Council adopting the Seattle Comprehensive Plan (the **Plan**) pursuant to the requirements of the Growth Management Act (**GMA** or the **Act**).

3) On October 7, 1994, WSDF filed a petition for review with the Board challenging Seattle's Plan for failing to comply with the requirements of the GMA and the State Environmental Policy Act (**SEPA**). *West Seattle Defense Fund v. Seattle (WSDF I)*, CPSGMHB Case No. 94-3-0016.

4) On December 12, 1994, Seattle Ordinance 117430 was passed by the Seattle City Council. The ordinance adopted development regulations that implement the City of Seattle's Plan (the **Implementing Development Regulation Ordinance**). It did not take effect until April 3, 1995.

5) Also on December 12, 1994, Seattle Ordinance No. 117434 (the **Map Ordinance**) was

passed by the Seattle City Council. The ordinance amended the Official Land Use Map of the City of Seattle and also did not take effect until April 3, 1995.

6) January 1, 1995, was the deadline imposed upon Central Puget Sound jurisdictions to adopt development regulations to implement comprehensive plans, if the jurisdiction, like Seattle, had obtained a six month extension from the Washington State Department of Community, Trade and Economic Development (**DCTED**) pursuant to RCW 36.70A.040(3)(d).

7) On March 13, 1995, WSDF filed a Petition for Review challenging the City's Implementing Development Regulation and Map Ordinances, CPSGMHB Case No. 95-3-0040 (**WSDF II**).

8) On April 3, 1995, Sections 1 through 90 and 92 of the Implementing Development Regulation Ordinance (*see* Section 95 of the Implementing Development Regulation Ordinance, at 95) and the Map Ordinance (*see* Section 2 of the Map Ordinance, at 1) became effective.

9) On April 4, 1995, the Board entered its Final Decision and Order in *WSDF I*, remanding the Capital Facilities Plan Element and the Transportation Element of the Plan for further action to bring these provisions into compliance with the requirements of the GMA. The Board's Final Decision and Order in *WSDF I* was not subsequently appealed to superior court.

10) On May 11, 1995, the Seattle Department of Construction and Land Use (**DCLU**) published its "Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings and Appeals" announcing a June 6, 1995 public hearing of the City Council's Planning & Regional Affairs Committee to take testimony on items to consider for possible amendments

to the Plan [as part of the annual amendment process authorized by RCW 36.70A.130.] ^[2] This constituted the first step of the annual amendment process. The bulletin also announced a later step would be held in the fall of 1995 when the City Council would accept public testimony on the merits of amendments under review. Exhibit C to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief]. This annual amendment process is separate from the City's efforts to amend its Plan in response to the Board's Final Decision and Order in *WSDF I*, the "remand amendments".

11) On May 15, 1995, Governor Lowry approved all but sections 103, 302 and 903 of Engrossed Substitute House Bill (**ESHB**) 1724, "An ACT Relating to implementing the recommendations of the governor's task force on regulatory reform on integrating growth management planning and environmental review." ESHB 1724 gives the Board the authority to issue a "determination of invalidity."

12) On June 16, 1996, the City "sent" a copy of the agenda ^[3] for the City Council's Planning & Regional Affairs Committee meeting of June 20, 1996 to all persons on the committee's mailing list, i.e., approximately 170 addresses (excluding government recipients) including local newspapers and Peter Eglick, WSDF's counsel. On the agenda was a staff briefing for City staff to present a staff report, recommendation and background briefing to the committee

regarding proposed Plan remand amendments in response to the Board's *WSDFI* decision. The briefing, although open to the public, was not intended to be a public hearing. Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 2.

13) On June 20, 1995, the City Council's Planning & Regional Affairs Committee held a public meeting. Councilmember Jim Street chaired the meeting with Council Member Margaret Pageler present. The staff report and recommendation on the remand amendments were not ready in time for the meeting. Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3, ¶7. Councilmember Street announced that the committee would not receive the scheduled briefing on agenda item no. five, "the Hearing Board Capital Facilities Issues-Response...", because the committee was expected to receive "... the actual recommendations within about five days...." Exhibit A to the Declaration of Charles Chong [Attachment 2-III to WSDF's Opening Brief]. See also Exhibit A to Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of

Compliance, Agenda Item No. 5 [Attachment 2-VI to WSDF's Opening Brief]. [\[4\]](#)

14) On June 26, 1995, the City Council passed Resolution No. 29151, approved a work plan for the OMP to review, consider and recommend to the Executive and Council potential amendments to the Plan [as part of the annual amendment process]. Exhibit A to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief].

15) On June 29, 1995, the "Mayor's Report and Recommendations -- Growth Management Hearings Board Response" (the **Mayor's Report**) in response to the Board's *WSDFI* decision was forwarded to the City Council. The Mayor's Report contained a set of proposed Plan remand amendments, a summary, and a discussion of the amendments. A cover memo from Tom Tierney, Director of OMP, to Jim Street, President of the City Council, indicated that the final City Council action on the proposal was scheduled for July 31, 1995. See Exhibit 1-I.f attached to WSDF's Opening Brief, at 1, first sentence; see also Exhibit 8 to WSDF's Reply in Support of Petition for Review filed in *WSDF II* for an actual copy of the Mayor's Report.

16) On June 29, 1995 and on July 7, 1995, the City sent notice of a July 12, 1995, public meeting and public hearing of the City Council's Planning and Regional Affairs Committee. [\[5\]](#) The notice was mailed to everyone on the City Council's general mailing list of over 550 recipients, including radio stations, major newspapers (including *The West Seattle Herald*) and Peter Eglick, WSDF's attorney of record in this case. Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3, ¶8 and at 2, ¶4.

17) The Seattle City Council Meeting Schedule for July 3 - July 28, 1995, lists a public hearing, abbreviated as "PH", for the Planning Committee at 6:00 p.m. on Wednesday, July 12, 1995. The reverse side of the schedule contained the following details:

Planning and Regional Affairs Committee--Public Hearing

Wednesday, July 12, 6:00 p.m.

The Committee will take public testimony on the City's response to the Growth Management Hearings Board's decision on the Comprehensive Plan. For those wishing to testify, a sign-up sheet will be available outside the door to the Council Chambers at 5:30 p.m. Councilmember Jim Street will chair. Exhibit C to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to

[6]
WSDF's Opening Brief].

18) On July 12, 1995, the City Council's Planning and Regional Affairs Committee held a public hearing on the draft remand amendments to the Plan. See Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 3. Councilmember Jim Street chaired the hearing and was the only member of the committee present. Upon oral request just minutes before the beginning of the hearing, City staff provided members of WSDF with a packet of information on the proposed amendments to the Plan, which included the Mayor's Report and the June 29, 1995 cover memorandum from Tom Tierney to Councilmember Jim Street discussed in Finding of Fact No. 15 above. Four members of the public testified including Charles Chong, a named Petitioner in this case and President of WSDF, and Julie Brown, a member of WSDF. Declaration of Charles Chong, at 3-4 [Attachment 2-III to WSDF's Opening Brief]; and Declaration of Julie Brown, at 3 [Attachment 2-IV to WSDF's Opening Brief]; see also Exhibit A to Declaration of Charles Chong and Exhibit A to Declaration of Julie Brown for a partial transcript of the hearing.

[7]

19) On July 23, 1995, ESHB 1724 took effect.

20) On an unspecified date, the City sent unspecified notice of a July 28, 1995, public meeting of the City Council's Planning and Regional Affairs Committee to all persons listed on the City Council's general mailing list. Declaration of Bob Morgan, attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 4, ¶9. The Morgan Declaration does not indicate when the notice was sent, in what form the notice was given or whether the notice informed the recipient that the committee would be voting upon the proposed Plan amendments, drafted in response to the Board's *WSDF I* decision. Exhibit G to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance (Attachment 2-VI to WSDF's Opening Brief) is a document captioned as follows:

PLANNING AND REGIONAL AFFAIRS COMMITTEE

Friday, July 28, 1995

2:00 p.m.

The second item on this document refers to CB [Council Bill] 110810, which is described as "Amending the City of Seattle Comprehensive Plan." The document further indicates that CB

110810 is up for “discussion and vote.”

21)The Seattle City Council Meeting Schedule for July 3 - July 28, 1995 (Exhibit C to the Declaration of Bob C. Sterbank in Support of WSDF’s Reply on Seattle’s Statement of Compliance [Attachment 2-VI to WSDF’s Opening Brief]) lists a July 28, 1995, meeting of the Planning and Regional Affairs Committee.However, it does not indicate in any manner whatsoever what topics would be considered at the meeting or whether the committee would be voting on any matters.The same is true for subsequent Meeting Schedules for July 28, 1995. See Exhibits D, E, and F to the Declaration of Bob C. Sterbank in Support of WSDF’s Reply on Seattle’s Statement of Compliance [Attachment 2-VI to WSDF’s Opening Brief].

22)A July 28, 1995, City Council staff memorandum from Bob Morgan and Martha Lester to Planning and Regional Affairs Committee members constituted the City Council staff’s recommendation for Plan amendments in response to the Board’s decision in *WSDF I*.The Council staff’s recommendations constituted “amendments to the amendments” proposed in the Mayor’s Report and were referenced as CB No. 110810.Exhibit 1-III.C to WSDF’s Opening Brief.

23)On July 28, 1995, the City Council’s Planning and Regional Affairs Committee held a public meeting where it voted to recommend approval to the full City Council of the Plan remand amendments contained in CB 110810.This meeting was not a public hearing although it was open to the public.See Declaration of Bob Morgan, attached to City of Seattle’s Reply to WSDF’s Response to City’s Statement of Compliance, at 3-4, ¶9;see also Exhibit G to the Declaration of Bob C. Sterbank in Support of WSDF’s Reply on Seattle’s Statement of Compliance, item no. 2 [Attachment 2-VI to WSDF’s Opening Brief].

24)On an unspecified date, unspecified notice of a City Council’s on public meeting July 31, 1995 was “sent” to all persons listed on the City Council’s general hearing and mailing list.See Declaration of Bob Morgan, attached to City of Seattle’s Reply to WSDF’s Response to City’s Statement of Compliance, at ¶10.The Morgan Declaration does not indicate in what form or when the notice was sent or whether the notice informed the recipient that the City Council would be considering and/or voting upon the proposed Plan amendments, drafted in response to the Board’s *WSDF I* decision.

25)The Seattle City Council Meeting Schedules for July 10 - August 4, 1995, July 17 - August 17, 1995, July 24 - August 18, 1995, and July 31 - August 25, 1995, each list a meeting of the full City Council at 2:00 p.m. on Monday, July 31, 1995.None of the schedules contains any information whatsoever indicating that the full City Council would hold a public meeting and/or public hearing on the City’s Plan remand amendments drafted in response to the Board’s decision in *WSDF I*.Exhibit D, E, F, and H respectively to the Declaration of Bob C. Sterbank in Support of WSDF’s Reply on Seattle’s Statement of Compliance [Attachment 2-VI to WSDF’s Opening Brief].

26)The City did not publish any notice in June or July, 1995, in its legal newspaper, *The Daily Journal of Commerce*, regarding public meetings or public hearings of the City Council or any of its committees to take testimony, review, consider and/or vote on the proposed Plan

amendments in response to the Board's Final Decision and Order in *WSDF I*. Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance, at 2, ¶3 [Attachment 2-II to WSDF's Opening Brief].

27) The City did not publish any notice in DCLU's Land Use Information Service Weekly Bulletin for the months May - September, 1995, regarding public meetings or public hearings of the City Council or any of its committees to take testimony, review, consider and/or vote on the proposed Plan amendments in response to the Board's Final Decision and Order in *WSDF I*. Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of

Compliance, at 2, ¶4 [Attachment 2-II to WSDF's Opening Brief]. [\[8\]](#)

28) Nothing in the record before the Board indicates that the City provided notice to anyone that the full City Council would be taking action on the proposed remand amendments to Seattle's Plan, drafted in response to the Board's decision in *WSDF I*.

29) Nothing in the record before the Board indicates that the full City Council ever held a public hearing where members of the public could testify on the proposed remand amendments to Seattle's Plan, drafted in response to the Board's decision in *WSDF I*.

30) On July 31, 1995, the Seattle City Council met to consider and vote on CB No. 110810 as amended, the package of proposed remand amendments to the Plan drafted in response to the Board's *WSDF I* decision. Six motions to amend the proposed amendments carried. Ultimately, the City Council vote was nine in favor and none opposed to pass CB No. 110810 as amended. Consequently, the Seattle City Council passed Ordinance No. 117735 -- "An Ordinance amending the City of Seattle Comprehensive Plan" (the **Plan Amendment Ordinance**). Attachment 1 to City of Seattle's Statement of Compliance. *See also* Exhibit 1-IV.f (Journal of Proceedings) to WSDF's Opening Brief, at 10; Exhibit J (partial meeting transcript) to Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief]; and Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at 4.

31) On August 7, 1995, the City published notice of adoption of Ordinance No. 117735, the Plan remand amendments (in response to the Board's *WSDF I* decision) in *The Daily Journal of Commerce*. Exhibit E to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief]. *See also* the Declaration of Bob Morgan attached to City of Seattle's Reply to WSDF's Response to City's Statement of Compliance, at ¶11.

32) On August 24, 1995, DCLU published its "Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings and Appeals." The document announced a September 27, 1995, public hearing to take comments on proposed amendments to the Plan [as part of the annual amendment process.] Exhibit B to the Declaration of Bob C. Sterbank in Support of WSDF's Response to Seattle's Statement of Compliance [Attachment 2-II to WSDF's Opening Brief].

- 33)September 1, 1995, was the deadline the Board gave Seattle in *WSDF I* to bring its Comprehensive Plan into compliance with the Board's Final Decision and Order and the requirements of the Act.
- 34)On September 11, 1995, the Board entered its Final Decision and Order in *WSDF II* remanding portions of both the Implementing Development Regulation Ordinance and the Map Ordinance and giving the City until December 1, 1995, to bring these ordinances into compliance with the GMA.The decision was not subsequently appealed to superior court.
- 35)On September 21, 1995, DCLU published its “Weekly Bulletin Announcing Land Use Applications, Decisions, Hearings and Appeals” announcing a Determination of Non-Significance had been issued for an amendment [as part of the annual amendment process] that added a human development element to Seattle’s Plan.Exhibit D to the Declaration of Bob C. Sterbank in Support of WSDF’s Response to Seattle’s Statement of Compliance [Attachment 2-II to WSDF’s Opening Brief].
- 36)On October 26, 1995, notice of public hearings of the Seattle City Council to take comments on proposed amendments to the Map Ordinance and the Implementing Development Regulation Ordinance (in response to the Board’s remand in *WSDF II*) was published in *The Daily Journal of Commerce*.See Finding of Fact No. 1 in the Board’s Finding of Compliance in *WSDF II*.
- 37)On November 2, 1995, the Board entered a Finding of Compliance in *WSDF I*, finding that the City “at the barest absolute minimum” had procedurally complied with the Board’s Final Decision and Order, but withholding a determination of substantive compliance until this case, *WSDF III*.The Finding of Compliance was not subsequently appealed to superior court.
- 38)On November 21 and 22, 1995, the Seattle City Council held public hearings on the proposed remand amendments to the Map Ordinance and the Implementing Development Regulation Ordinance (in response to the Board’s decision in *WSDF II*).See Finding of Fact No. 2 in the Board’s Finding of Compliance in *WSDF II*.
- 39)On November 27, 1995, the City Council passed Ordinance No. 117919 that amended the Map Ordinance and the Implementing Development Regulation Ordinance (in response to the Board’s remand in *WSDF II*).
- 40)On January 11, 1996, the Board entered a Finding of Compliance in *WSDF II*. The finding was not subsequently appealed to superior court.

iii. DISCUSSION AND CONCLUSIONS

Legal Issue No. 1

In adopting Ordinance 117735 pursuant to a remand from the Board, did the City comply with the requirements of the Growth Management Act (GMA) at RCW 36.70A.020(11) and .140 for enhanced public participation?

Position of the Parties

WSDF

WSDF contends that when a jurisdiction is ordered by the Board on remand to take certain actions, the Act's enhanced public participation requirements (RCW 36.70A.020(11) and .140) apply. Initially, WSDF claimed that "Seattle completely ignored its obligations" and "... failed to provide any written notice of any public hearings concerning proposed Plan [remand] amendments, or City Council consideration of them...." WSDF's Hearing Statement in Response to Seattle's Statement of Compliance, at 4-5.

In its reply, WSDF acknowledged that the City did provide written notice of the July 12, 1995 standing committee meeting but argued that this notice was "cryptic" and "buried" in coded abbreviations, footnotes and single-space type. Attachment 2-V, at 2 and 4. In particular, WSDF charges that a June 20, 1995 City Council committee meeting was canceled because WSDF members arrived; it further contends that when the City held a public hearing on July 12, 1995, copies of the proposed remand amendments were not made available to the public. Instead, WSDF members "... had to demand to be given the personal copies of the sixty-plus pages of materials carried into the room by City staffers;"

... Without an opportunity to review the City's proposed amendments in advance, the opportunity to testify was meaningless... Attachment 2-V, at 5, fn 10.

Moreover, WSDF contends that the City never held another public hearing to take testimony after the public had the opportunity to thoroughly review the materials. Attachment 2-V, at 7.

Furthermore, WSDF alleges that no "genuine public hearing" was held nor were members of the public notified that they could submit written comments to the City Council. "In short, there was neither an iterative nor an interactive process; there was no public process at all." WSDF's Hearing Statement in Response to Seattle's Statement of Compliance, at 5. On reply, WSDF characterizes the entire course of events as "a stealth compliance process." WSDF's Reply on Seattle's Statement of Compliance, at 2.

WSDF also points out that the notice of the City Council meeting where final action on the proposed remand amendments was taken did "... not reveal that the meeting on July 31 was for the purpose of considering or adopting amendments to the Comprehensive Plan." WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-V], at 4. WSDF asks how it could comment in writing when its members did not know that written comments would be accepted and they did not know when the full City Council would consider and take final action upon the proposed remand amendments. Attachment 2-V, at 7, fn 16.

Finally, WSDF points out that "... when it wants to, the City knows exactly how to provide public notice." WSDF refers to the City's public participation process for the *WSDF II* remand amendments that contain detailed background information, indicates where and when information will be available, announces two public hearings a full month in advance and provides opportunity for written comment. Attachment 2-V, at 6.

Seattle

The City contends that a 1995 amendment to RCW 36.70A.140 allows cities and counties to reduce the amount of public participation required on remand to only that which is "appropriate

and effective under the circumstances.”City’s Brief, at 20.

It is simply not the case that public participation in the context of legislative plan adoption is the same as appropriate public participation in the context of a party’s response to a judicial order of compliance.City’s Brief, at 21.

The City maintains that what the Board primarily required it to do on remand was “perform additional work and describe the results of that work in the Plan.”City’s Brief, at 21.

As such, much of the remand required the City to undertake additional technical analysis, which might or might not have entailed new amendments to the Plan....The proposed amendments did not entail any new policy direction different from what was contained in the adopted Plan.City’s Brief, at 22.

Procedurally, the City claims that its actions were appropriate under the circumstances of the Board’s remand since a public hearing was held, notice was mailed (including to WSDF’s attorney), and members of WSDF appeared at the hearing and testified.Seattle further contends that any member of the public could have requested the staff report on the Plan remand amendments prior to the July 12, 1995 public hearing, and could have submitted written comments on the proposed remand amendments prior to the July 31, 1995 final action on the Plan remand amendments by the City Council.City’s Brief, at 23.

Discussion

RCW 36.70A.020 contains the GMA’s planning goals which:

... are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040.The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

Subsection (11) is the relevant citizen participation goal for the GMA planning process.It provides:

(11) Citizen participation and coordination.Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.140, entitled “Comprehensive plans--Ensure public participation,” was adopted in 1990 when the GMA was first enacted.In 1995, this section was amended ^[9] for the first time so that it now provides (1995 language is underlined):

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans.The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and

consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

In addition, the preamble to RCW 36.70A.070, the section of the Act entitled “Comprehensive plans--Mandatory elements,” provides:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Emphasis added.

At issue here is the City’s amendment of its Plan in response to the Board’s Order in *WSDF I*. As the preamble to RCW 36.70A.070 indicates, the GMA’s public participation requirements apply to both initial adoption and subsequent amendments to comprehensive plans. RCW 36.70A.140 confirms this. Neither provision excludes from the process amendments made on remand. If the legislature intends to distinguish between remand amendments and annual amendments, and to exclude the former from the Act’s public participation requirements, it must amend the Act accordingly.

The City misreads the 1995 amendment to RCW 36.70A.140, particularly the language:

...In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order....

The cited language applies only when the Board has issued a determination of invalidity. The Board did not declare any portion of the Plan invalid in *WSDF I*. Nonetheless, the Board now concludes that by necessary implication, a similar rule regarding the nature and extent of public participation on remand (but without invalidation) is necessary. Unlike the lengthy GMA process for initial adoption of comprehensive plans, which may literally have begun on the day the GMA became effective but did not culminate until adoption of a plan several years later, the maximum timeframe in a remand scenario is 180 days.

Accordingly, the level of public participation may not be the same for the initial adoption of a comprehensive plan and the amendment of such a plan due to a Board remand. Nevertheless, RCW 36.70A.140 still applies on remand. **The Board holds that, in cases where a GMA enactment is remanded but not declared invalid, the following test will be applied to determine how much public participation was appropriate under the circumstances. The Board will apply the following factors to the facts:**

- 1) **the *general public's expectation* of the public participation process that would apply on remand, based on: a) the locally established public participation program and; b) actual past practice in conformance with that program;**
- 2) **the *amount of time* given to a jurisdiction to comply;**
- 3) **the *scope of the remand*;**
- 4) **the *nature of the corrective action* that must be taken to bring an enactment into compliance; and**
- 5) **the *level of discretion* afforded a jurisdiction in taking actions to bring an enactment into compliance.**

Application of the Test

In order to apply this test, the Board first sets forth the order of remand in the Board's April 4, 1995, Final Decision and Order in *WSDP I*. It provided as follows:

The City of Seattle Comprehensive Plan is **in compliance** with the requirements of the Growth Management Act except:

1.) Capital Facilities Plan Element—The Capital Facilities Plan Element is **remanded** with instructions for the City to bring it into compliance consistent with the Board's Final Decision and the requirements of RCW 36.70A.070(3).

2.) Transportation Element—The Transportation Element of the Plan is **remanded** with instructions for the City to bring it into compliance consistent with the Board's Decision and the requirements of RCW 36.70A.070(6).

It is not the Board's role to impose its opinions about the value or wisdom of optional features of a comprehensive plan. Instead, the Board is charged with determining whether those features are internally consistent and comply with the requirements of the Act. The Board's holding that the Plan's Capital Facilities Plan and Transportation Elements do not comply with the requirements of the Act, particularly because of the manner in which only urban centers and urban villages have been adopted, is not a judgment that the urban villages strategy itself is faulty. To the contrary, the City's urban village strategy appears to be the kind of innovative technique that the Act encourages. Yet the Act also requires that a community's vision, as embodied in its comprehensive plan, be supported by an analytical rigor and an ability to provide the necessary infrastructure.

The Board notes that it is up to the City to determine how to comply with the Board's directives. Seattle has several choices, ranging at the extremes from fully adopting all categories of urban villages, to totally deleting references to the urban villages strategy and its components. If the City elects to fully adopt all categories of urban villages, it must be certain to conduct the required analysis and document it either directly or by reference in the Plan itself. The middle ground would be for the City to conduct the required analysis necessary for its urban centers and urban villages adopted to date, and to include that analysis directly in the Plan or by incorporating the relevant analysis by reference.

Additional data and analysis would later be included when the Plan is amended to adopt

other parts of the urban villages strategy, for instance, the adoption of hub and residential urban villages.

3.) Pursuant to RCW 36.70A.300(1)(b), the City is given until **5:00 p.m. on Friday, September 1, 1995**, to bring its Plan into compliance with the Board's Final Decision and Order and the requirements of the Act. The City shall file by **5:00 p.m. on Friday, September 8, 1995**, one original and two copies with the Board and serve a copy on WSDF of a statement indicating what attempts, if any, it made to comply with this Final Decision and Order. The Board will promptly schedule a compliance hearing sometime thereafter. *WSDF I*, at 79-80 (emphasis in original).

Factor 1

The general public might logically turn to the Seattle Municipal Code for assistance in determining what the City's public participation process was. SMC 23.76.062 ^[10] discusses Type

^[11] legislative actions of the City Council, such as the Plan amendment in this case. The Board assumes that adoption of or amendment to a comprehensive plan is a legislative action within the meaning of SMC 23.76.062. This provision required the City Council to "itself conduct a public hearing" and publish notice of the hearing in the City's official newspaper.

The City's actual public participation process for the adoption of the Plan is set forth in *WSDF I*, at 71-73. This process included three public hearings by the City Council. In addition, draft proposals were distributed to libraries and neighborhood service centers, and flyers were mailed announcing the availability of these draft documents, and a schedule of workshops and hearings was distributed. The Board also notes that the City, in response to the remand in *WSDF II*, published notice of public hearings in its official newspaper (*see* Finding of Fact 36) and the full City Council held public hearings (*see* Finding of Fact 38).

In addition, the Board notes that, as part of its annual plan amendment process, the City published notice in DCLU's *Weekly Bulletin* announcing public hearings (*see* Finding of Fact 32; *see also* Finding of Fact 35) and in the process of initially adopting the Plan, utilized the DCLU weekly newsletter for making announcements. *See* Exhibits M and N to the Declaration of Bob C. Sterbank in support of WSDF's Reply on Seattle's Statement of Compliance.

The record before the Board conclusively proves that the City did not publish notice of the actions to adopt the amendments in question here in its official newspaper (*see* Finding of Fact 26); nor did the City publish notice in DCLU's *Weekly Bulletin* (Finding of Fact 27); nor did the City Council itself conduct a public hearing (*see* Findings of Fact 29 and 30). Accordingly, the general public's expectation of the City's public participation process was not met.

Factor 2

Pursuant to RCW 36.70A.300(1)(b), the Board in its discretion may give a noncomplying jurisdiction up to one hundred and eighty days to bring an enactment into compliance. The less time the Board gives to a jurisdiction to comply, the less public participation will be required.

Conversely, if the Board gives a jurisdiction more time to comply, a full 180 days for instance, more public participation will be required. In *WSDF I*, the Board gave the City from April 4, 1995 to September 1, 1995, a period of 150 days -- nearly the maximum amount of time to comply. Accordingly, looking at just this factor, the Board anticipates more, rather than less, public participation than had it given the City a lesser amount of time to comply.

Factor 3

While the first two factors are objective in nature, the next three are more subjective. In examining the test as a whole, the Board cannot look solely to the objective factors. The amount of public participation must also be commensurate with the scope of the remand. Does the remand affect an entire jurisdiction, or limited parcels of property? Does the remand go to “the heart” of the noncomplying legislative enactment or is it a peripheral issue, a minor internal inconsistency, for instance, that must be corrected?

In this case, the scope was limited to urban villages rather than to the entire geographic area of the City. However, pursuant to the Plan, a majority of the anticipated future population and employment growth for the City of Seattle is directed to these urban villages. Therefore, the scope of the remand was very broad.

Factor 4

The Board must also consider the nature of the remand. For instance, occasions will arise where the Board will grant a jurisdiction the maximum 180 day period to achieve compliance, yet the public will not be able to participate until later into the process because the nature of the remand requires the jurisdiction to conduct additional research and/or prepare analysis of additional information that does not become available until sometime into the 180 day period.

In this instance, while some of the information required by the remand order was arguably already available because of the Mayor’s recommended Plan, the Board did require some additional new information, and even the pre-existing information required new analysis. While the Mayor’s Plan was based on urban villages with population dispersed to locations with precise boundaries throughout the City, the adopted Plan had the effect of limiting this population dispersal to only five urban centers. Accordingly, the general public could not have actively participated during the entire 150 day remand period, since some of this period would be consumed with the production and analysis of new information and the re-analysis of old information.

Factor 5

Closely related to the nature of the remand is the maximum level of discretion afforded to a local jurisdiction in taking a compliance action. If no or little discretion is granted by the remand (e.g., delete policy “x”), little public participation will be required. In contrast, if substantial discretion is afforded the local jurisdiction by the remand (e.g., comply with the Act’s requirements), more public participation will be required.

In this case, the Board afforded the City the maximum level of discretion in determining how to

comply with the Board's order. This was not an instance where the Board directed the City to take a specific, easily quantifiable step. Instead, the Board stated that:

...it is up to the City to determine how to comply with the Board's directives. Seattle has several choices, ranging at the extremes from fully adopting all categories of urban villages, to totally deleting references to the urban villages strategy and its components.... Emphasis in original.

Looking at the five factors as a whole, the Board holds that the City did not comply with RCW 36.70A.140. Although a subcommittee of the City Council held a public hearing, and the City did mail notice to certain persons on its mailing list, as the Board has already held, this constituted "at the barest absolute minimum" procedural compliance on remand in *WSDF I*. Such a "barest absolute minimum" does not meet the mandate of RCW 36.70A.140 for "early and continuous" public participation, albeit public participation limited by the five-part test set forth above.

Once Seattle acquired the information necessary and analyzed it, the City had a duty to afford the general public, including WSDF, a reasonable opportunity to review and comment before taking action. The City might adhere to its own public participation practices followed in *WSDF II* as one way to meet this duty. In contrast, here the City followed neither the procedures listed in the Seattle Municipal Code, nor the actual precedent established by past practice in both *WSDF I* and *WSDF II*. A citizen looking for notice of the public hearing would not have found it either in the City's official newspaper or the DCLU weekly newsletter. A citizen who appeared at the public hearing (had she or he known of it) would not have been given copies of the proposal to review. The same citizen never would have discovered when the City Council was to meet to take final action on the remand amendments. Lacking the knowledge of when the Council was scheduled to take action, this person would not only have no opportunity to appear and testify, she or he would not know the deadline for submittal of a timely written comment. Again, from the record in prior cases, the Board is aware that the average citizen would have known all of this from information clearly and broadly disseminated by the City. *See* RCW 36.70A.140.

Conclusion No. 1

The City did not comply with the requirements of the GMA at RCW 36.70A.140 for enhanced public participation, in adopting Ordinance 117735.

Legal Issue No .2

Does Seattle Comprehensive Plan Land Use Policy L127 comply with the GMA's requirements at RCW 36.70A.020(1), (4), (7), (11) and (12), and RCW 36.70A.070?

Positions of the Parties

WSDF

WSDF contends that Land Use Policy L127 is inconsistent with and "openly flouts the Board's express orders previously issued" in *WSDF I* and *II*. WSDF's Opening Brief, at 4-6. WSDF

characterizes the policy as an attempt by the City to “hide the ball” by allowing it to adopt plans that do not have city-wide application and leave them out of the Plan. WSDF points out that a reader of the Plan would never know that village-specific planning had been completed or final urban village boundaries adopted, nor be able to file an appeal to the Board since it is a Plan amendment that triggers the ability to appeal pursuant to RCW 36.70A.290(2). WSDF’s Opening Brief, at 5-6. In addition, WSDF points out that the language of L127 is not mandatory but instead only suggests that the Plan “may” be amended when final urban village boundaries are adopted. WSDF’s Reply, at 5.

WSDF also contends that L127 is inconsistent with RCW 36.70A.020(1), (4), (7) and (11) which require comprehensive plans, and by implication their amendments, to encourage development in areas where urban services exist or can be efficiently provided, to encourage affordable housing and preservation of existing housing stock, to process permits in a timely and fair manner, to provide public participation and to ensure provision of public facilities and services necessary at the time development is available. WSDF contends that if the Act’s analysis for neighborhood plans is not incorporated into the Plan through amendments, that the GMA’s planning goals are “meaningless.” WSDF’s Opening Brief, at 6-7.

Finally, WSDF alleges that L127 is inconsistent with RCW 36.70A.070 (preamble) since a comprehensive plan which, by its own text, defers portions of its planning to a future neighborhood planning process, must be later amended to include those neighborhood plans if the plan is to comply. WSDF’s Opening Brief, at 7. WSDF points out that it is the Plan itself, for instance Policy N14, that required further action on urban villages through the neighborhood planning process. WSDF’s Reply, at 6.

City of Seattle

The City lists several reasons why it should not be required to include neighborhood plans within its Plan, pointing out that the basic purpose of the policy is simply to explain the intended relationship between the many City programs, policies and plans which lack city-wide application, and the Plan itself. City’s Brief, at 3.

First, a comprehensive plan is a generalized policy statement having city-wide application pursuant to RCW 36.70A.030(4). To include neighborhood plans that lack such city-wide application “... would seem contrary to the Act’s intent.” City’s Brief, at 4. Second, the City contends that it is prohibited from amending the Plan more than once a year unless an emergency exists. Therefore, once it incorporates neighborhood plans into its Plan, the City would be prevented from amending the neighborhood plan more than once a year. This would reduce the City’s ability to make “timely decisions” and would “severely” restrict its ability to take action to meet public needs. City’s Brief, at 4.

Third, the City claims that including all neighborhood plans in one document would result in an “unwieldy” Plan that rivals the Internal Revenue Code for size and complexity. City’s Brief, at 4-5. Fourth, the City complains that if neighborhood plans were required to become part of the Plan, then presumably all the Act’s other requirements would apply to neighborhood plans also. City’s

Brief, at 5, fn 4.Fifth, Seattle maintains that RCW 36.70A.080(2) makes subarea planning a purely optional feature which the Board has held need not be completed at the time of Plan adoption.Furthermore, the incorporation of such subarea planning into a comprehensive plan is also purely discretionary.City’s Brief, at 6.

It is the City’s position that the Act’s planning goals apply only to comprehensive plans and development regulations, but not subarea-type plans, such as its neighborhood plans.Seattle also alleges that many actions it takes must be consistent with the Plan, such as its implementing development regulations, but that does not mean that these regulations must be contained within the Plan itself.City’s Brief, at 6.

The City also accuses WSDF of mischaracterizing the Board’s prior decisions regarding neighborhood plans.Specifically, the City claims that the Board never required the Plan to contain all the analysis that went into studying localized capital facilities and transportation issues. Furthermore, in discussing the Board’s prior ruling that when the neighborhood planning process is complete, the boundaries of urban villages must be shown in the Plan, the City contends that “is exactly what L127 contemplates.”City’s Brief, at 7.

Discussion

In adopting the Plan Amendment Ordinance, the City added a new Land Use Policy L127 to the Plan, and renumbered all the following policies in the Plan.L127 provides:

Generally, Council approval of a plan or program that lacks city-wide application will not be included within, or entail amendment of, the Comprehensive Plan.However, when the Plan is amended, plan maps or text may be updated to reflect Council action, as appropriate. For example, when the Council approves a local plan, such as that for an urban village, the final boundaries for the village may be depicted on Plan maps.Attachment 1 to City’s Statement of Compliance, at 2 (emphasis added).

The GMA defines the term “comprehensive plan” at RCW 36.70A.030(4), which provides:

"Comprehensive land use plan," "comprehensive plan," or "plan" means 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.

The GMA also contemplates that a jurisdiction may elect to have a “land use policy statement” for a smaller portion of its geographic area, as evidenced by RCW 36.70A.080 which authorizes subarea plans. While the term “subarea plan” is not defined in the Act, it appears as an “optional element” of comprehensive plans at RCW 36.70A.080, which provides:

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

In prior cases, the Board examined the relationship between the requirements of the GMA, including a GMA comprehensive plan, and pre-GMA “subarea plans”, which is to say, specific land use policy plans with applicability only to a geographic subarea of the jurisdiction.The first such case was *Happy Valley Assoc., et al. v. King County* CPSGPHB 93-3-0008 (1993) (*Happy Valley*), which addressed King County’s East Sammamish Community Plan Update process.In

the Order Granting King County's Motion to Dismiss, the Board stated:

This Board has outlined the interactive and iterative nature of the planning hierarchy established by the GMA. *See*, for instance, *Edmonds and Lynnwood v. Snohomish County*, CPSGPHB Case No. 93-3-0005 (1993), at 26 - fn. 10; and *Snoqualmie*, at 17. The Board has also noted the important distinction in the GMA between policy documents, such as CPPs and comprehensive plans, and development regulations. *Edmonds*, at 26; *Gutschmidt*, at 15; *Poulsbo*, at 23. However, the Board has not yet commented upon subarea plans. As RCW 36.70A.080(2) reveals, they are a subset of comprehensive plans. Therefore, subarea plans also are planning policy documents under the GMA. They may contain more specific policies aimed at a localized area within a city or county. Emphasis added.

In *Northgate Mall Partnership v. City of Seattle*, CPSGPHB 93-3-0009 (1993) (*Northgate*), the Board examined a pre-GMA land use policy enactment of the City of Seattle entitled the "Northgate Area Comprehensive Plan." The Board had to specifically address the meaning of the word "generalized" in the Act's definition of comprehensive plan. In the Order Granting Seattle's Motion to Dismiss (November 8, 1993), the Board concluded:

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. *See Happy Valley*, at 18-20, and RCW 36.70A.080(2). Emphasis added.

...

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.

In *Cities of Tacoma, Milton, Puyallup and Sumner v. Pierce County*, CPSGPHB No. 94-3-0001,

Final Decision and Order (1994) (*Tacoma*), the Board discussed Pierce County's pre-existing community plans:

The Board agrees with the County's characterization of the overlap areas as "for informational purposes" and agrees with the Cities' argument that non-GMA planning documents, including the Pierce County community plans in question, have no binding or directive legal effect on GMA enactments. *Tacoma*, at 44.

....

The County is not prohibited from referring to pre-existing community plans that were adopted under authority other than the GMA. Referring to such plans is a recognition of the hours of effort and community involvement that went into the development of those plans. However, if the County elects to utilize such community plans as subarea plans of its comprehensive plans, they must comply with the Act, including the requirement that they are consistent with the County's comprehensive plan, the plans of adjacent jurisdictions and the PCCPPs. *Tacoma*, at 46 (emphasis added)

Recently, in *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068 (1996) (*Sky Valley*), the Board reiterated the potential status of pre-GMA subarea plans as follows:

At such time as the County elects to incorporate sub-area plans, by whatever name, it will be obliged to comply with the requirements of the Act. The Board notes that the County did not adopt the pre-GMA sub-area plans as GMA enactments. **The Board holds that pre-GMA sub-area plans need not be adopted as GMA enactments in order to continue to have useful application in local land use decision-making. However, such pre-GMA sub-area plans may not be used to satisfy a GMA requirement unless they are specifically incorporated by reference and adopted for that purpose pursuant to the requirements of the Act; nor may they supersede any specific policy or regulatory directive contained in a GMA enactment.** The County understood this nuance, as explicitly acknowledged in the Plan's adopting ordinance No. 94-125. Emphasis in original; footnote omitted.

Most recently, in *Benaroya, et al., v. Redmond*, CPSGMHB Case No. 95-3-0072 (1996), (*Benaroya*), the Board stated:

In this instance, the Board concludes that the Act does not permit a "neighborhood veto", whether *de jure* or *de facto*, and the policies challenged here cannot achieve such an outcome. The ultimate decision-makers in land use matters under the GMA are the elected officials of cities and counties, not neighborhood activists or neighborhood organizations. Citizens provide input to the land use decision-making process, but "citizens do not decide." See *Poulsbo, et al., v. Kitsap County (Poulsbo)*, CPSGMHB Case No. 92-3-0009 (1993), at 36.

The decision-making regime under GMA places great importance on the comprehensive plan. A city may choose to undertake optional neighborhood planning, pursuant to RCW 36.70A.080; however, those neighborhood plans must comply with the Plan and the requirements of the GMA. *Benaroya*, at 22.

From prior cases, the Board is aware that cities (e.g., Bothell, Redmond, and Bellevue) frequently use the term “neighborhood plan” while counties (e.g., King, Pierce and Snohomish) often use the term “community plan” to connote a geographic subset of the entire city or county and have characterized those “plans” as, essentially, localized land use policy documents. The Board concluded that “neighborhood plans” and “community plans” are “subarea plans” within the meaning of RCW 36.70A.080(2).

Accordingly, the Board holds that, by whatever name (e.g. neighborhood plan, community plan, business district plan, specific plan, master plan, etc.), a land use policy plan that is adopted after the effective date of the GMA and purports to guide land use decision-making in a portion of a city or county, is a subarea plan within the meaning of RCW 36.70A.080. While a city or a county has discretion whether or not to adopt such optional enactments, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the comprehensive plan.

The legislature clearly intended for GMA comprehensive plans to replace the land use plans that preceded the Act (i.e., pre-GMA land use plans, both jurisdiction-wide and sub-area in geographic scope). The Board’s holdings in the above cited cases are founded on that key understanding -- that the Act requires a very different framework for planning and a very different type of plan than were required before the enactment of the GMA. At the same time, the Board has acknowledged that this departure from past practice would be so significant for many jurisdictions, that some period of transition from the old to the new was necessary and appropriate. *See Happy Valley*, at 24. Likewise, the Board has concluded that, so long as they did not contradict or otherwise thwart the Act and GMA plans, pre-GMA plans could have some continued, albeit diminishing, value. Thus, the Board concluded that the legislature did not intend that jurisdictions planning under the Act “throw away” all of the effort and value that those earlier planning exercises represent. *See Northgate*, at 17.

In the present case, it is significant to note that, unlike the Board’s prior cases which dealt with pre-GMA subarea plans, the “neighborhood plans” that Seattle contemplates under L127 are not pre-GMA enactments. Rather, they are *prospective* land use policy subarea plans. Here, the City is describing land use policy subarea plans that it intends to adopt more than six years after the effective date of the GMA and at least two years after the adoption of its GMA comprehensive plan. *See Finding of Fact 2*.

The Board has not addressed the length of the period of transition for local governments to wean themselves from the reliance on pre-GMA subarea plans; however, it does not seem unreasonable that, six years after the adoption of the GMA, local governments operate within the Act’s framework for coordinated and internally consistent planning - rather than cling to the fragmented and disconnected land use planning that led to the enactment of the GMA in the first place. While the Board has made reasonable allowance for cities and counties to make limited and diminishing use of pre-GMA subarea plans, both common sense and the Act’s goals and requirements oblige cities and counties to treat new localized land use policy enactments as subarea plans within the meaning of RCW 36.70A.080(2). **The Board holds that the discretion**

conferred upon cities and counties by RCW 36.70A.080(2) is the discretion to undertake new detailed subarea land use policy plans. If they do so, such plans must be adopted as part of the comprehensive plan; the GMA has removed the discretion of cities and counties to undertake new localized land use policy exercise disconnected from the city-wide, regional policy and state-wide objectives embodied in the local comprehensive plan.

Turning specifically to the arguments raised by the City, the Board rejects them. First, the Board responds to the City's argument that the comprehensive plan is a "generalized" policy, and therefore presumably need not include specific policy statements in neighborhood plans. In the *Northgate* case, the Board cited the dictionary meaning of "generalized" to conclude that a subarea plan, by itself, is insufficient to constitute the citywide comprehensive plan required by RCW 36.70A.040. The Board did not then conclude, and does not conclude now, that the generalized nature of a comprehensive plan under the GMA precludes such a plan from having very specific and detailed policies. Indeed, RCW 36.70A.070(1) directs that the land use element of a plan is to designate:

... the proposed *general* distribution and *general* location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses.

The use of the adjectives 'general' in RCW 36.70A.070(1) and 'generalized' in RCW 36.70A.030(4) do not change the basic direction of the Act that the Plan is to be a "coordinated land use policy statement" that directs specifically what uses and densities are to be located within each and every part of the land area of a city or county.

Apart from the foregoing analysis, the Board also notes that the City "opened its own door" on the subject of the form of such urban village adoption by explicitly stating in the Plan that this

will be accomplished through the "neighborhood planning process."^[12] Thus, the City represented that the remainder of the comprehensive plan's core organizing concept, its urban village strategy, would be carried out by the setting of final boundaries in the Plan as determined by the neighborhood plan adoption process, either explicitly or by default. For the City to now argue, by means of Policy L127, that the establishment of such boundaries and the adoption of specific land use policy to accomplish urban villages is a "plan or program that lacks city-wide application," and thus need not be included within the plan, is disingenuous.

Second, the City claims that the Act's limitation of Plan amendments to once a year would unreasonably restrict the City's flexibility to respond to changing needs. The Board is not persuaded by this argument. The Act explicitly allows an exception for the initial adoption of a subarea plan (i.e., a neighborhood plan). See RCW 36.70A.130(2)(a)(i). If, after initial adoption of a subarea plan, Seattle finds a serious need to amend a subarea plan, the Act provides an opportunity for the City to depart from the once-a-year limitation by finding that an emergency exists. See RCW 36.70A.130(2)(b).

Third, the City complains that to include its neighborhood plans as attachments to the Plan would result in a voluminous document rivaling the Internal Revenue Code. The obvious answer to this

problem is to incorporate the neighborhood plans by reference, and make appropriate mutual reference in both documents, rather than attach thirty neighborhood plans to the body of the Plan., Thus, a reader of either a localized neighborhood plan land use policy statement or of the Plan itself, cannot help but be aware of the fact that the neighborhood, and its localized land use policy plan, exist in the broader context of the entire city and its Plan.

The City complains that the subject material of some of these neighborhood plans will be unrelated to land use policy. Again, this seems to be largely a logistical and organizational problem that can be addressed in any number of ways. It would be a simple matter, for example, to identify subsections of a “neighborhood plan” that the City agrees have land use and GMA implications, and other subsections that discuss unrelated matters, such as Green Lake neighborhood dog-leash policy or a Ballard sister-neighborhood program with Poulsbo. The GMA does not require the City to adopt as amendments to the Plan “all manner of municipal plans and programs”; only those that fall within the realm of a “land use policy statement.”

Fourth, the City complains that if neighborhood plans must become a part of the Plan, then all the Act’s other requirements would apply also. The City is correct in this assessment.

Fifth, the City argues that subarea plans are completely optional. While that is correct in the abstract, the Board has rejected the City’s argument that it is optional whether such land use policy enactments are adopted pursuant to the GMA. While the City has the option to undertake neighborhood plans or not undertake neighborhood plans, it does not have the option to keep, in effect, two sets of land use policy books - one to satisfy the GMA and one to shield its local land use policy decisions from the GMA.

In short, the Board does not fault Seattle for utilizing neighborhood planning. Indeed, public participation is the metaphorical and literal bedrock of GMA planning and that bedrock is found at the neighborhood level of every county and city. In order for growth management to be more than a remote and largely irrelevant accounting and legal exercise, it must have meaning on the ground at the neighborhood level. It is with these principles in mind that the Board evaluated the City’s proposal to have L127, in effect, insulate the City’s neighborhood plans from the City’s Plan. For both legal and practical reasons, the Board finds the City’s arguments in defense of L127 unpersuasive.

If GMA stands for nothing else, it stands for the proposition that the citizens of a neighborhood are also citizens of a larger community, be it a city and/or a county, a region and indeed, the state itself. To allow the City to proceed with a neighborhood planning process that is segmented and insulated from the goals and requirement of the Act, and the policy documents that the Act requires of cities and counties, would ignore this basic axiom of comprehensive planning.

Conclusion No. 2

Seattle Comprehensive Plan Land Use Policy L127 does not comply with the GMA’s requirements at RCW 36.70A.020(1), (4), (7), (11) and (12), and RCW 36.70A.070. The Board will remand it to the City with instructions to either delete it or otherwise amend it to clarify that, any neighborhood plan or program, in whole or in part, that purports to guide land use decision-

making, must be adopted as part of the Plan pursuant to RCW 36.70A.080(2).

Legal Issue No. 3

Does the Seattle Comprehensive Plan Capital Facilities Element and Appendices, specifically at 93-94 (including Goals G1-G7 and Policies C1-C6), 95-96 (Sections B-F), and A115-A134, and as amended by Ordinance 117735, comply with the requirements of RCW 36.70A.070(3)?

Conclusion No. 3

Because the Board has answered Legal Issues 1 and 2 in the negative, and is remanding the Plan to the City, it need not and will not address Legal Issue No. 3.

Legal Issue No. 4

Does the Seattle Comprehensive Plan Transportation Element and Appendices, specifically at 57-67, 76-79, A30-A49, and as amended by Ordinance 117735, comply with the requirements of RCW 36.70A.070(6)(a) through (d)?

Conclusion No. 4

Because the Board has answered Legal Issues 1 and 2 in the negative, and is remanding the Plan to the City, it need not and will not address Legal Issue No. 4.

iv. ORDER

Having reviewed and considered the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board orders:

- 1) Ordinance 117735 is **remanded** in its entirety with instructions to the City to first comply with the requirements of the Growth Management Act (GMA) at RCW 36.70A.020(11) and .140 for enhanced public participation before re-adopting it.
- 2) Land Use Policy L127 in Ordinance No. 117735 is **remanded** with instructions to the City to delete it or otherwise bring it into compliance with this decision and the requirements of the Act.
- 3) Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order no later than: **4:00 p.m. on Monday, July 1, 1996.**
- 4) The City shall file by **4:00 p.m. on Monday, July 8, 1996**, one original and three copies with the Board and serve a copy on WSDF of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the City has procedurally complied with this Order. If the Plan is amended, substantive compliance will not be determined until and unless new petitions for review are filed within 60 days of publication of notice of adoption of such Plan amendments.

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So ordered this 2nd day of April, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

[1] The reference in brackets to the documents incorporated by reference in WSDF’s Opening Brief is to the exhibit number WSDF assigned each document.

[2] A proposal from WSDF received a “do not consider” recommendation from both the Executive Department – Office of Management and Planning (**OMP**) and the Seattle Planning Commission.

[3] The Board does not have a copy of a document actually labeled as an “agenda” for the June 20, 1995 meeting. The record (Exhibit A to the Declaration of Bob C. Sterbank in Support of WSDF’s Reply on Seattle’s Statement of Compliance [Attachment 2-VI to WSDF’s Opening Brief]) does contain a document entitled: Planning and Regional Affairs Committee -- Tuesday, June 20, 1995 -- 2:00 p.m., that presumably constitutes the committee’s agenda that was sent to those persons on the committee’s mailing list.

[4] On June 20, 1995, the Planning & Regional Affairs Committee did, by a 2-0 vote, recommend approval of a work plan for OMP to review, consider and recommend to the Executive and Council potential amendments to the

Comprehensive Plan [as part of the annual review process]. Exhibit A to Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance, Addendum, Agenda Item 6 [Attachment 2-VI to WSDF's Opening Brief

[5]

The Board assumes that the actual notice that the City sent was a copy of the Seattle City Council Meeting Schedule discussed immediately below, since the language on it is identical to the language quoted in Mr. Morgan's Declaration at 3, ¶8.

[6]

The Seattle City Council Meeting Schedule for July 10 - August 4, 1995, contained the identical information as the July 3-28, 1995 schedule. *See* Exhibit D to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief

[7]

Sections 801 through 806 of ESHB 1724 took effect on June 1, 1995, pursuant to Section 904.

[8]

In contrast, the City published notice in the October 26, 1995 DCLU Weekly Bulletin of two public hearings, on November 20 and 21, 1995, regarding this Board's remand in *WSDF II* of the City's Implementing Development Regulations and Map Ordinance. The notice contained an extensive, detailed description of the proposed amendments. Exhibit K to the Declaration of Bob C. Sterbank in Support of WSDF's Reply on Seattle's Statement of Compliance [Attachment 2-VI to WSDF's Opening Brief].

[9]

Engrossed Substitute House Bill No. 1724, Chapter 347, § 107, Laws of 1995.

[10]

MC 23.76.062 Council hearing and decision.

A. Public Hearing. The Council shall itself conduct a public hearing for each Type V (legislative) land use decision. The Council may also appoint a hearing officer to conduct an additional fact-finding hearing to assist the Council in gathering information. Any hearing officer so appointed shall transmit written Findings of Fact to the Council within ten (10) days of the additional hearing. B. Notice of Hearings. 1. Notice of the Council hearing on a Type V decision shall be provided by the Director at least thirty (30) days prior to the hearing in the following manner: a. Inclusion in the general mailed release;

b. Posting in the Department; and

c. Publication in the City's official newspaper. 2. Additional notice shall be provided by the Director for public hearings on City facilities, Major Institution designations and revocation of Major Institution designations, as follows: a. Mailed notice; and

b. At least four (4) placards posted on or near the site. C. Council Decision. In making a Type V land use decision, the Council shall consider the oral and written testimony presented at the public hearing, as well as any required report of the Director. The City Council shall not act on any Type V decision until the end of the appeal period for the applicable DNS or Final EIS or, if an appeal is filed, until the Hearing Examiner issues a decision affirming the Director's DNS or EIS decision.

[11]

SMC 23.76.004, entitled "Land use decision framework" describes Type V legislative actions as follows:

A. Land use decisions are classified into five (5) categories based on the amount of discretion and level of impact associated with each decision. Procedures for the five (5) different categories are distinguished according to who makes the decision, the type and amount of public notice required, and whether appeal opportunities are provided. Land use decisions are categorized by type in Exhibit 23.76.004 A....

C.Type IV and V decisions are Council land use decisions. Type IV decisions are quasi-judicial decisions made by the Council pursuant to existing legislative standards and based upon the Hearing Examiner's record and recommendation. Type V decisions are legislative decisions made by the Council in its capacity to establish policy and manage public lands.Emphasis added.

[12]

Policy N-14 provides:

Ensure that all urban centers, urban villages, and manufacturing/industrial centers are included in comprehensive neighborhood plans, which at a minimum do the following:

...

c.Establish boundaries for hub urban villages and residential urban villages considering as one option the boundaries identified in Appendix A for each urban village, provided, that: if at the end of the neighborhood planning cycle, a village boundary has not been established for a hub or residential urban village, the boundary shown in Land Use Appendix A of this plan shall become the boundary for that village;

...Plan, at 115.