

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

WEST SEATTLE DEFENSE FUND,	)	<b>Consolidated</b>
NEIGHBORHOOD RIGHTS	)	<b>Case No. 95-3-0073</b>
CAMPAIGN, AND CHARLES	)	<b>[WSDF III]</b>
CHONG,	)	<b>FINDING OF COMPLIANCE</b>
Petitioners,	)	
v.	)	
CITY OF SEATTLE,	)	
Respondent.	)	
	)	
	)	

**I. PROCEDURAL BACKGROUND**

On October 5, 1995, the Central Puget Sound Growth Management Hearings Board (**CPSGMHB** or the **Board**) received a Petition for Review from West Seattle Defense Fund, Neighborhood Rights Campaign, and Charles Chong (hereafter referred to as **WSDF**). The case was captioned *WSDF III v. Seattle [WSDF III]* and assigned CPSGMHB Case No. 95-3-0073. WSDF claimed that specified amendments to the City of Seattle (**Seattle** or the **City**) comprehensive plan, adopted in Ordinance 117735 in response to a remand order from this Board, are not in compliance with the Growth Management Act (**GMA** or the **Act**).

The Board held a hearing on the merits on Wednesday, February 14, 1996, and on April 2, 1996, the Board entered its Final Decision and Order (the **FDO**) in this case. The FDO provided as follows (emphasis in original):

- 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.**

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. FDO, at 29-30.

On August 19, 1996, the Board received "The City of Seattle's Statement of Compliance" with respect to the Board's Order in the above-captioned case. The City's statement describes its actions to comply with the Board's remand order in this case. Accompanying the five-page statement were Attachments 1 through 13.

On August 23, 1996, the Board entered an "Order Requiring Response to Statement of Compliance and Notice of Compliance Hearing" (the **Notice of Compliance Hearing**). The Notice of Compliance Hearing established September 25, 1996 as the date for the compliance hearing and set forth a briefing schedule. Subsequently, neither party filed any briefs.

On September 9, 1996 the Board received a letter from Bob C. Sterbank, representing WSDF, that indicated

that WSDF would not be appearing at the compliance hearing, presuming that the Board intended to consider only procedural compliance by Seattle. The letter also indicated that WSDF planned to submit a separate appeal to challenge the substantive compliance by the City.

On September 24, 1996, the Board received a telephone call from Robert D. Tobin, representing the City, indicating that the City would not be appearing at the compliance hearing. On this same date, the Board received a Petition for Review from the West Seattle Defense Fund and Neighborhood Rights Campaign (**WSDF**). The matter was assigned Case No. 96-3-0033 and captioned **WSDF IV v. Seattle**.

On September 25, 1996, the Board held a compliance hearing in Case No. 95-3-0073c, **WSDF III v. Seattle**. Present for the Board were members Edward G. McGuire, Chris Smith Towne and Joseph W. Tovar, presiding officer.

[1] Neither the City nor WSDF appeared.

## **II. FINDINGS OF FACT**

1. On July 31, 1995, the Seattle City Council adopted Ordinance 117735, amending the comprehensive plan of the City of Seattle. **WSDF III**, Final Decision and Order, Finding of Fact 30, at 9-10.
2. On April 2, 1996, the Board issued its FDO, remanding Ordinance 11735 and instructing the City to (1) conduct enhanced public participation pursuant to RCW 36.70A.020 and .140 prior to re-adoption and (2) either delete comprehensive plan policy L 127 or otherwise bring it into compliance with the FDO and the GMA. **WSDF III** FDO, at 29.
3. On July 1, 1996, the Seattle City Council adopted Ordinance 118197 amending the City's comprehensive plan, incorporating by reference the record developed for Ordinance 117735 and as supplemented by the public participation process summarized in Attachment 1 to Ordinance 118197. Attachment 11 to City's Statement of Compliance.
4. On July 9, 1996, Mayor Norman B. Rice approved Ordinance 118197. Attachment 11 to City's Statement of Compliance.
5. Ordinance 118197 deleted comprehensive plan policy L 127, which had been re-numbered as policy L 126.5 Attachment 2 to Ordinance 118197, which is Attachment 11 to City's Statement of Compliance.
6. On July 26, 1996, notice of adoption of Ordinance 118197 was published in the *Daily Journal of Commerce*. Attachment 13 to City's Statement of Compliance.

## **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.

In *Vashon-Maury, et al., v. King County* [**Vashon-Maury**], CPSGMHB Case No. 95-3-0008, Finding of Compliance (May 24, 1996), the Board clarified the circumstances under which it would attempt to determine substantive as well as procedural compliance:

....On occasion, the Board may determine both procedural and substantive compliance in a compliance finding if it determines that the circumstances are appropriate. The Board will consider the following factors in deciding whether it will consider substantive compliance at a compliance hearing: the Board's own schedule, the number of parties in the case, the scope and nature of the legal issues before the Board, and (if possible to determine at

the time) whether new petitions for review challenging the substance of the remand amendment have been timely filed. *Vashon-Maury*, Finding of Compliance, at 9. Emphasis added.

The Board notes that a petition for review has been timely filed challenging the substance compliance of Ordinance 118197. Therefore, it is not appropriate for the Board to attempt to determine substantive compliance in this determination of compliance.

#### **IV. FINDING OF COMPLIANCE**

Having reviewed its Final Decision and Order and the file in this case and having reviewed the above referenced documents, the Board concludes 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 10th day of October, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

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[1] Board Member Joseph W. Tovar became presiding officer in this matter when Board Member M. Peter Philley's term expired on July 1, 1996. Board Member Edward G. McGuire's term began on August 12, 1996.