CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

KELLY, et al., Petitioners, and CITY OF LAKE STEVENS, Intervenors, v. SNOHOMISH COUNTY, Respondent, and CAVALERO HILL, L.L.C. and SNOHOMISH COUNTY-CAMANO ASSOCIATION OF REALTORS, Intervenors.	))))

On February 26, 1998, in response to the County's Statement and its request for an extension, together with the petitioners' and intervenors' responses, the Board changed the compliance schedule, directing the County to file a second statement on March 28, 1998.

On March 30, 1998, the Board received Snohomish County's Second Statement of Actions Taken to Comply.

On April 20, 1998, after considering the County's Second Statement and its request for another extension, together with the petitioners' and intervenors' responses, the Board again changed the compliance schedule, directing the County to file a third statement on December 7, 1998.

On December 8, 1998, the Board received Snohomish County's Third Statement of Actions Taken to Comply.

On February 11, 1999, after considering the County's Third Statement and its request for another extension, together with petitioners' and intervenors' responses, the Board issued an Order granting intervention to the City of Lake Stevens (**City**), denying the County's motion to extend the compliance deadline and setting a hearing on compliance for March 11, 1999.

On February 19, 1999, the Board received from the County a Supplemental Index of Record.

On February 26, 1999, the Board received Snohomish County's Prehearing Brief (**County PHB**) with an attached Declaration of Duana Kolouskova.

Also on February 26, 1999, the Board received Intervenor Cavalero Hill, L.L.C.'s Hearing Brief re Compliance Hearing (**Cavalero Hill Hearing Brief**).

On March 5, 1999, the Board received Snohomish County's Reply to Intervenor Cavalero Hill, L. L.C.'s Hearing Brief re: Compliance Hearing (**County Reply Brief**).

Also on March 5, 1999, the Board received Kristin C. Kelly and Carol K. McDonald's Compliance Hearing Brief (**Kelly Hearing Brief**) with an attached Declaration of K. C. Kelly.

Also on March 5, 1999, the Board received Cavalero Hill, L.L.C.'s Reply to Snohomish County's Prehearing Brief (**Cavalero Hill Reply Brief**).

On March 11, 1999, the Board held a hearing on compliance at its Seattle office. Board members Edward G. McGuire, Joseph W. Tovar and Chris Smith Towne, presiding officer, appeared for the Board.David Bricklin represented Petitioner Kelly, et al. (**Kelly**); Intervenor City of Lake Stevens was represented by Dana Kapela; Respondent Snohomish County was represented by Barbara Dykes; Intervenor Cavalero Hill, L.L.C. was represented by Dennis D. Reynolds.Court reporting services were provided by Cynthia LaRose, Robert H. Lewis & Associates.

II. FINDINGS OF FACT

1.On November 27, 1996, the County Council adopted Ordinance 96-074, "Adopting Map and Text Amendments to the Growth Management Act Comprehensive Plan," which redesignated the Cavalero Hill property and added a Plan policy directing the rezoning of that property (the **Cavalero Hill amendments**).Findings of Fact 7 and 12, FDO, at 4-5.

2.On July 30, 1997, the Board remanded that portion of Ordinance 96-074 comprising the Cavalero Hill amendments for failure to comply with the public participation requirements of the GMA.The notice issued by the County advising the public of the proposed Cavalero Hill amendments had erroneously advised that the County was considering a residential designation for the Cavalero Hill property, instead of the commercial designation actually being considered by the County.The County was directed to file a Statement of Actions Taken to Comply no later than January 7, 1998.FDO, at 9.

3.On February 26, 1998, the Board granted the County an extension to comply with the FDO. The County was given until March 28, 1998 to file a Second Statement of Actions Taken to Comply.

4.The Cavalero Hill property lies within the Lake Stevens Urban Growth Area (**UGA**). City of Lake Stevens' Motion to Intervene, at 4-5.The Lake Stevens UGA contains approximately 7,400 acres; the Cavalero Hill property at issue in this case is comprised of 33.7 acres. Cavalero Hill Hearing Brief, at 2.

5.The County is presently working to develop a subarea plan for the Lake Stevens UGA, including the Cavalero Hill property, and has elected to consider the appropriate land use designation and zoning for that property as a part of the subarea planning process.County PHB at 6-8.

6.On April 20, 1998, the Board granted the County another extension to comply with the FDO. The County was given until December 7, 1998 to file a Third Statement of Actions Taken to Comply.

7.Since April 20, 1998, the County has met frequently with citizens' groups, individual citizens and the City of Lake Stevens.As a direct result of citizen and City requests, and the County's review and revision of population figures for the area in question, three new land use alternatives were developed, in addition to three previously developed, and the County undertook environmental review for those six alternatives.County Third Statement, at 3-4; Second Declaration of Cynthia Pruitt-Davidson, at 2-3.

8.On January 26, 1999, after four public hearings, the Planning Commission recommended

three alternatives to the County Council: Alternatives 3, 5 and 6. County PHB, at 5.

9.On February 11, 1999, the Board rejected the County's request for a third extension of time to comply with the FDO.

10.At the March 11, 1999 compliance hearing, the County advised the Board that it would likely not complete its subarea planning process, including addressing the designation of the Cavalero Hill property, until November 1999.

III. GENERAL DISCUSSION

In its challenge to the County's adoption of Ordinance 96-074, Kelly asserted that the County had failed to apply its public participation process for GMA actions to the adoption of Ordinance 96-074, specifically that public notice was insufficient regarding the redesignation of the Cavalero Hill property.The Board agreed, holding that "the public participation process used by the County to redesignate the Cavalero Hill property . . . and to adopt the Plan policy requiring the future zoning of the property . . . did not comply with RCW 36.70A.140."FDO, at 9.The County's public participation failed because "in a notice of a proposed countywide rezone, the Cavalero Hill property was erroneously identified as being considered for a rezone to [a residential designation] . . . not a commercial re-designation and policy for future commercial zoning."FDO, at 9 (emphasis in original).

The Order portion of the FDO provided that:

> These portions of Ordinance 96-074 comprising the Cavalero Hill amendments are **invalidated** and the matter is **remanded** to the County, and the County will be required to comply with the public participation requirements of the GMA, at such time as it amends its Plan to alter land use designations and directs future zoning for the property.
>
> Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with this Final Decision and Order and the GMA no later than 4:00 p.m. on December 31, 1997, and to file with the Board a Statement of Actions Taken to Comply not later than January 7, 1998.

FDO, at 18.

IV. DISCUSSION AND CONCLUSION

In November 1996, the County adopted Ordinance 96-074, which amended Snohomish County's General Policy Plan (the **Plan**).Following this action, several petitions for review (**PFRs**) were filed with the Board challenging various amendments adopted by Ordinance 96-074.These PFRs were ultimately consolidated into the present case.One of the Plan amendments included in Ordinance 96-074, challenged by Kelly, affected the Cavalero Hill property.The designation of

Cavalero Hill's 33.7-acre property, which is within the Lake Stevens UGA, was changed from "Other Land Use" to "Urban Commercial."[1] It is the *process* effecting the amendment, not the amendment itself, that the Board found to be noncompliant with the GMA and that caused the determination of invalidity.

As noted above in General Discussion, what the Board found noncompliant with the public participation requirements of the Act was the erroneous notice regarding the Cavalero Hill property.The Board never addressed the substance of the redesignation of the property.However, since the notice was in error, the public participation process consequently failed to comply with the GMA, and that amendment (Cavalero Hill) adopted pursuant to the defective notice was found invalid.

The Board's invalidation of the amendment had the effect of returning the property to its classification under the Plan prior to the amendment.In other words, since the property was designated "Other Land Use" prior to the amendment, the Board's invalidation of the amendment ("Urban Commercial") resulted in the property retaining the "Other Land Use" designation.

The Board's July 30, 1997 FDO remanded those portions of the Ordinance comprising the Cavalero Hill amendments to the County directing it to comply with the GMA's public participation requirements, *at such time as it amends its Plan to alter the land use designation and direct future zoning of the property*.The Board's FDO also established a December 31, 1997 compliance date.

Subsequent to that remand and immediately before the compliance period was to lapse, the County decided to consider the designation of the Cavalero Hill property in the context of a detailed Lake Stevens UGA subarea plan.*See* Snohomish County's Statement of Actions Taken to Comply and Motion to Extend Compliance Deadline, attached Motion 97-445, at 2.The logic of this decision caused the Board to allow the County to propose a compliance schedule, which the Board ultimately approved, giving the County until December 1998 to take action to remove the invalidity and comply with the FDO.

The County thus embarked on its process to develop the Lake Stevens UGA subarea plan.The geographic scope of the Lake Stevens UGA involves approximately 7,400 acres, including the 33.7-acre Cavalero Hill property.Based upon the size of the UGA, the process has affected far more property owners and citizens than Cavalero Hill and Kelly.Likewise, the scope and duration of the public participation process for development of the subarea plan has dwarfed the extent of the actions required to correct the defective notice originally addressed in the Board's FDO. Nineteen months of process have occupied the time between the issuance of the July 30, 1997 FDO and the March 11, 1999 compliance hearing.

During this period, Cavalero Hill and Kelly, among many others, have participated in the public process for developing the Lake Stevens UGA subarea plan.To date, the process has resulted in the development of six land use alternatives, with three of those, Alternatives 3, 5 and 6, being recommended by the Planning Commission for consideration by the County Council.However, the County Council has yet to act on these or other alternatives for the Lake Stevens UGA. Further, at the compliance hearing, the County indicated that the Council would not be prepared to act on the Lake Stevens UGA subarea plan until November 1999.

Other than adopting Motion 97-445, which directed staff to *regard* the Cavalero Hill amendment as invalid, there is no question that the County has not yet taken any legislative action that could allow the Board to remove its determination of invalidity.Since the County has not taken action to repeal or amend Ordinance 96-074's designation of the Cavalero Hill property, if the Board were to remove invalidity, the Cavalero Hill amendments of Ordinance 96-074 arising from the defective notice would become effective.Consequently, the Board's determination of invalidity must continue until the County takes legislative action to address those portions of Ordinance 96-074 comprising the Cavalero Hill amendments.

The Board concludes that the County has had more than adequate time to take action to remove invalidity and comply with the GMA and the Board's FDO.The County's decision to attempt to comply with the FDO and address the land use of the Cavalero Hill property in the broader context of the Lake Stevens UGA subarea plan is a commendable planning strategy.The time and effort expended on the present process illustrate the difficulty and complexity of developing the optional Lake Stevens UGA subarea plan.The Board does not want to dissuade the County from subarea planning and notes that neither the substance of the Lake Stevens subarea plan nor the appropriateness of that public process is presently before the Board.[2] Unfortunately, the action needed for the County to address the Board's finding that the notice was defective for the County's amendment to 33.7 acres in Ordinance 96-074 has been needlessly enmeshed in the subarea planning process.The County's inaction in addressing Ordinance 96-074, combined with its decision to pursue subarea planning for the entire Lake Stevens UGA, leaves an invalid ordinance on the County's books and inadvertently and inappropriately involves the Board in scheduling the County's consideration of the subarea plan.Further, the County's Lake Stevens UGA subarea plan process has interjected broader GMA and subarea planning issues[3] into the compliance proceedings, that were not before the Board in the *Kelly* case nor part of Kelly's 1997 PFR. Consequently, the time has come for the County to address the narrower action invalidated in Ordinance 96-074.

The Board will again remand those portions of Ordinance 96-074 comprising the Cavalero Hill amendments, and direct the County to repeal those amendments.Repealing those provisions will remove the result of the defective notice and remove the substantial interference with the GMA's

public participation goal.The result of repeal will be that the Cavalero Hill property will remain "Other Land Use," the same designation that resulted when the Board invalidated portions of Ordinance 96-074.Thus, the County can proceed with the Lake Stevens UGA subarea plan without further involvement by the Board.Nonetheless, the County is urged to expeditiously resolve the present uncertainty surrounding the Lake Stevens UGA and specifically the Cavalero Hill property.

V. ORDER

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

1.The County has failed to comply with the GMA as set forth in the July 30, 1997 FDO. Pursuant to RCW 36.70A.300(1)(b), the Board directs the County to take legislative action to remove invalidity by repealing those portions of Ordinance 96-074 comprising the Cavalero Hill amendments by May 27, 1999.

2.The County shall provide a Fourth Statement of Actions Taken to Comply to the Board and the parties by no later than 4:00 p.m. on June 3, 1999.

3.The Board will hold a compliance hearing on this matter on Monday, June 21, 1999.[4] Any response or comments by the parties related to the County's Statement of Actions Taken to Comply shall be filed with the Board no later than 4:00 p.m., Wednesday, June 16, 1999.

So ORDERED this 31st day of March, 1999.
CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Edward G. McGuire, AICP
Board Member

_____
Joseph W. Tovar, AICP
Board Member

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Chris Smith Towne
Board Member

NOTICE:This is a final order for purposes of appeal.Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.

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[1] The Cavalero Hill amendments under discussion here also include an amended Plan policy requiring the future

zoning of the property consistent with the designation.

[2] The Board notes that the Lake Stevens UGA subarea plan ultimately adopted by the County may come before the Board in the event that a subsequent PFR is filed.

[3] Alternatives under consideration by the County include, for example, modifying the delineation of the UGA. County PHB, at 7.

[4] Time and location to be announced.