

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

MONTLAKE COMMUNITY CLUB,	)	<b>Case No. 99-3-0002c</b>
	)	
Petitioners,	)	
	)	<i>(Montlake Community Club)</i>
v.	)	
	)	
CITY OF SEATTLE,	)	<b>FINAL DECISION and ORDER</b>
	)	
Respondent.	)	
	)	
	)	

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**I. Procedural Background**

**A. General**

On January 29, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Montlake Community Club (**Petitioner, Montlake or MCC**). The matter was assigned Case No. 99-3-0001. Petitioner challenges the City of Seattle’s adoption of Ordinance Nos. 119230 and 119235 (**Ordinances**). These Ordinances amend the Seattle Comprehensive Plan and Zoning Code, and associated maps, to incorporate and implement portions of the University Community Center Urban Center Plan (**UCUCP**). The grounds for the challenge are noncompliance with several sections of the Growth Management Act (**GMA or Act**).

On February 1, 1999, the Board received a PFR from the Friends of Brooklyn. The matter was assigned Case No. 99-3-0002. Petitioner challenges the City of Seattle’s adoption of the same Ordinances (Ordinance Nos. 119230 and 119235). The basis for the challenge to the Ordinances is noncompliance with several sections of the GMA.

On February 2, 1999, the Board telephonically contacted Petitioners’ attorneys and requested that MCC and Friends provide the identity and address of a representative from each group (MMC and Friends).

On February 3, 1999, the Board received MCC’s “Identification of Petitioner’s Representative”

and “Contact Person and Address for Petitioner Friends of Brooklyn and the University District for a Livable Community.”

On February 9, 1999, the Board issued an “Order of Consolidation and Notice of Hearing in the above-captioned case. The Order set a date for a Prehearing Conference (**PHC**) and established a tentative schedule for the case.

On February 26, 1999, the Board received Montlake Community Club’s “Amended Petition for Review.”

On March 1, 1999, the Board received MCC’s “Corrected Amended Petition for Review.”

On March 3, 1999, the Presiding Officer distributed a memo to the parties’ attorneys, via facsimile transmission, suggesting possible restatements of the issues for discussion at the PHC.

On March 4, 1999, the Board received a letter from MCC’s attorney indicating his unavailability for the scheduled PHC, but indicating that MCC’s president would attend.

On March 8, 1999, the Board held the PHC; both Petitioners were directed to provide the Board with missing citations and references for the Legal Issues by March 12, 1999.

On March 10, 1999, the Board received “Friends of Brooklyn - Restatement of Issues” and “Friends of Brooklyn and the University District for a Livable Community Amended Petition for Review” that included the necessary missing citations.

On March 12, 1999, the Board also received a fax from MCC providing several missing citations. The Board notified MCC’s attorney that citations to the UCUCP adopted by Ordinance No. 119230 were still needed for Legal Issue No. 4. MCC was given until noon, March 15, 1999, to provide the appropriate citations.

On March 12, 1999, the Board issued its “Prehearing Order” (**PHO**) establishing the final schedule and stating the Legal Issues for this matter.<sup>[1]</sup> The PHO allowed Friends to amend its PFR, per their March 10, 1999 submittal.

On March 14, 1999, the Board received a fax from MCC providing citations to the UCUCP and Seattle Comprehensive Plan.

On March 15, 1999, the Board contacted MCC’s attorney asking for verification of the provided citations to the UCUCP.

On March 16, 1999, the Board received a fax stating, “All citations to the University Community Urban Center Plan (UCUCP) accurately reference the most recent document (dated 8/29/98).”

On March 17, 1999, the Board issued its “Order Amending Prehearing Order.” The Order included MCC’s March 14, 1999 references and citations to the UCUCP dated 8/29/98.

## **B. Motions to Supplement And amend index**

On March 4, 1999, the Board received Seattle’s “Index to University Neighborhood Plan Record.”

On March 5, 1999, the Board received Montlake’s “Appendix to Amended Petition for Review.” This document contained 11 attachments (Appendix 1-11).

At the March 8, 1999 Prehearing Conference, the Presiding Officer asked the City to review the 11 attachments contained in Montlake’s “Appendix to Amended Petition for Review,” to determine whether the items were included in the Index.

On March 10, 1999, the Board received Seattle’s “First Amended Index to University Neighborhood Plan Record.” The amended Index included the 11 documents attached to Montlake’s March 5, 1999 filing. Consequently, the 11 Montlake documents are included as part of the record. The City also provided copies of Seattle’s Comprehensive Plan.

On March 25, 1999, the Board received a letter from Montlake’s attorney indicating that the parties had agreed that the UCUCP, as well as the Seattle Comprehensive Plan, should be a **core document** to be provided by the City, thereby avoiding duplicate submittals.

On March 31, 1999, the Board received “City of Seattle’s Motion to Supplement the Record” and attached “Declaration of Richard Conlin”; the Board also received “Friends of Brooklyn Motion to Supplement the Record (Joined in Part by Montlake Community Club).” Attached to the motion was a listing of 34 items, but there were no proposed exhibits appended to the brief.

On April 14, 1999, the Board received “City of Seattle’s Response to Motion to Supplement the Record.”

The Board did not receive a response to the City’s motion to supplement the record or a reply to Seattle’s response to Friends’ motion to supplement the record. The deadline for filing either brief was April 19, 1999.

On April 23, 1999, the Board issued its “Order on Motions to Supplement the Record.” The only supplemental exhibits authorized were dated transcripts of videotape excerpts from various public hearings or meetings. Such transcripts were to be provided with briefing. The Order summarized the items comprising the record in this case. None of the briefing included transcripts of any portion of any of the videotapes from the public meetings or hearings.

On June 2, 1999, the day after the hearing on the merits, the Board issued “Order Directing Submittal of the Entire Core Document.” Throughout the City’s briefing, reference was made to the Neighborhood Plans Volume of the Seattle Comprehensive Plan; however, the two Volumes of the Seattle Comprehensive Plan provided to the Board did not include the referenced Neighborhood Plans Volume. The Board requested a copy of this volume.

On June 5, 1999, the Board received a letter from the City explaining that the Neighborhood Plans Volume of the City’s Plan will consist of a three ring binder containing copies of all the adopted neighborhood plans, in this case, the neighborhood plan provisions adopted by Ordinance No. 119230. The City also explained that there is no content to the neighborhood plans volume at this time, other than the Table of Contents and copies of the individual plans. A copy the neighborhood plan adopted by Ordinance No. 119230 was previously provided to the Board.

### **C. Dispositive Motions**

On March 31, 1999, the Board received “City of Seattle’s Motion to Dismiss SEPA Claims,” with seven exhibits and attachments. In the same filing the Board also received “City of Seattle’s Motion to Dismiss Friends of Brooklyn for Lack of GMA Standing.”

On April 14, 1999, the Board received Montlake’s “Withdrawal of SEPA Claims by Montlake Community Club.”

On April 14, 1999, the Board received: “Friends of Brooklyn’s Response to City of Seattle’s Motion to Dismiss Based on Standing”; “Friends of Brooklyn Motion to Substitute Brian Ramey as Plaintiff/Real Party in Interest for Friends of Brooklyn or to Amend”; “Memorandum in Support of Friends of Brooklyn’s Motion to Substitute Brian Ramey as Plaintiff/Real Party in Interest”; and “Declarations of Brian Ramey, Dana Ritter and Clint Sine.”

On April 19, 1999, the Board received “City of Seattle’s Rebuttal to Friends of Brooklyn’s Response and Motion to Substitute Parties.”

The Board did not hold a hearing on the dispositive motions.

April 23, 1999, the Board issued its “Order on Dispositive Motions.” The Order **granted** Seattle’s motion to **dismiss** Friends of Brooklyn’s PFR for lack of standing and to **dismiss** MCC’s Legal Issue No. 2, pertaining to SEPA compliance.

### **D. Briefing and Hearing on the Merits**

On April 30, 1999, the Board received “Montlake Community Club’s Opening Brief, with 24 attached exhibits” (MCC PHB).<sup>[2]</sup>

On May 21, 1999, the Board received “City of Seattle’s Brief, with five attached exhibits” (City PHB).

On May 28, 1999, the Board received “Petitioner’s Reply to City of Seattle’s Brief” (MCC Reply).

On June 1, 1999, the Board held a hearing on the merits in Suite 1022 of the Financial Center, 1215 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, and Joseph W. Tovar were present for the Board. Petitioner Montlake Community Club was represented by Roger M. Leed. The City of Seattle was represented by Robert D. Tobin. Court reporting services were provided by Cynthia LaRose of Robert H. Lewis & Associates, Tacoma. The hearing convened at 11:00 a.m. and adjourned at approximately 1:30 p.m.

## **II. presumption of validity, burden of proof and standard of review**

Petitioner challenges Seattle’s adoption of the UCUCP as an amendment to its comprehensive plan, as adopted by Ordinance No. 199230. Petitioner also challenges Seattle’s adoption of Ordinance No. 199235, which implements the UCUCP. Pursuant to RCW 36.70A.320(1), Seattle’s Ordinance Nos. 199230 and 199235 are presumed valid upon adoption.

The burden is on Petitioner, Montlake Community Club, to demonstrate that the actions taken by Seattle are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action taken by [Seattle] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For the Board to find Seattle’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

### **iii. board jurisdiction and Prefatory note**

#### **A. Board Jurisdiction**

The Board finds that the Montlake Community Club’s PFR was timely filed, pursuant to RCW

36.70A.290(2); MCC has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinances, which amend the City's Comprehensive Plan and development regulations, pursuant to RCW 36.70A.280(1)(a).

## B. Prefatory Note

The City of Seattle's Comprehensive Plan and its subarea (neighborhood) planning process has been the subject of prior appeals before this Board. However, this is the first case presented to the Board challenging a product of the neighborhood planning process -- the UCUCP. Consequently, excerpts from the Board's decision in *West Seattle Defense Fund et al., v. City of Seattle (WSDF IV)*, CPSGMHB Case No. 96-3-0033, Final Decision and Order (Mar. 24, 1997), are referenced below to establish the background and context for the present case. This is necessary to understand the relationship between Seattle's "City-wide" Comprehensive Plan, including the legislatively adopted portions of neighborhood plans (here, Ordinance No. 119230); and the broader *unadopted* neighborhood plans recognized by the City as representing the wishes of the citizens of the neighborhoods (here, the August 29, 1998 UCUCP of Resolution 29808).

In *WSDF IV*, the Board discussed the effect of neighborhood plans and the City-wide GMA Comprehensive Plan in guiding land use decision-making. The Board stated:

**[T]he Board holds that, in the Central Puget Sound region, comprehensive land use planning is now done exclusively under Chapter 36.70A RCW – the GMA. The Board further holds that any provision or policy of a neighborhood plan that purports to guide land use decision-making (including subarea or neighborhood plans including land use, capital facilities and transportation planning) must be incorporated into the jurisdiction's comprehensive plan to be implemented pursuant to Chapter 36.70A RCW. Conversely, provisions or policies of a neighborhood plan or program that will not be used to guide land use decision-making, and therefore will not be implemented pursuant to Chapter 36.70A RCW, need not be incorporated into a jurisdiction's comprehensive plan.**

*WSDF IV*, at 11 (emphasis in original).

Additionally, the Board stated:

[G]iven the "delegated" context of neighborhood planning in Seattle, and the fact that the legislative body is the ultimate decision-maker in land use matters for the City and its neighborhoods, the Board is not persuaded by *WSDF* that the City should be compelled to incorporate entire neighborhood plans into its Comprehensive Plan

without discharging its decision-making responsibility and exercising its discretion to determine what will be included and implemented. The legislative body must ultimately decide and balance: the competing interests of different neighborhoods in the City; the interests of the City as a whole; and the interests of the City as a significant entity in the region and state. **The Board holds that the jurisdiction’s legislative body has the ultimate responsibility to determine, consistent with Chapter 36.70A RCW, what provisions of neighborhood plans will be incorporated into a comprehensive plan, to be implemented and thereby used to guide land use decision-making.**

*WSDF IV*, at 12 (emphasis in original).

The City of Seattle’s Comprehensive Plan has been amended several times since its original adoption in 1994.<sup>[3]</sup> It was recently amended by Ordinance No. 119230 to incorporate portions<sup>[4]</sup> of the UCUCP developed by the neighborhood. However, as the City explains:

This ordinance [119230] amended the city-wide Comprehensive Plan to incorporate portions of the proposed University Neighborhood Plan [the UCUCP], which was prepared by the citizen group. Section 1 of Ordinance No. 119230 identifies the amendments which are made to the Comprehensive Plan, and which comprise the **adopted** neighborhood plan. These amendments are to be distinguished from unadopted planning documents, which were recognized by Resolution 29808. Exhibit 4.1 [*also Ex 21*]. The Resolution recognizes the unadopted plan provisions “as representing the wishes of the citizens of the University Community,” and providing the basis for a desired work program (“Matrix”) for the neighborhood. These unadopted planning documents are not part of the Comprehensive Plan, and are not the subject of this appeal. All of the 37 neighborhood plans have been bifurcated in similar fashion: portions of the neighborhood’s recommended plan adopted into the Comprehensive Plan, and the remaining portions are recognized by resolution.

The portion of the recommended plan which is incorporated into the Comprehensive Plan consists of two elements: First, the substantive portion of the plan is comprised of various Comprehensive Plan policies, and may affect various legislative or permitting decisions. Second, the plan contains background information and analysis, including an inventory of capital facilities and utilities serving the neighborhood, and an analysis of capital facilities and transportation. This format is also common to all of the 37 neighborhood plans being considered for adoption by the City.

City of Seattle Motion to Dismiss SEPA Claims, at 3-4 (emphasis in original).

The City’s explanation is consistent with the Board’s holdings in *WSDF IV*. Clearly the City Council has exercised its discretion and adopted Ordinance No. 119230, which is distinct and separate from the unadopted August 29, 1998 version of the UCUCP. The City is also clear that it recognizes, in Resolution 29808, that the unadopted August 29, 1998 UCUCP represents “the wishes of the citizens of the University Community,” and that the UCUCP provides the basis for “a *desired* work program (‘Matrix’) for the neighborhood.”<sup>[5]</sup> However, the City has explicitly chosen **not** to include the neighborhood’s August 29, 1998 UCUCP planning document, including the work program (‘Matrix’), as part of the City-wide Comprehensive Plan. It is the City-wide Comprehensive Plan that the City must use to guide land use decision-making in the University Community Plan area. For the University Community Plan area, that guidance will now be provided by the amendments to the City-wide Comprehensive Plan contained in Ordinance No. 119230 and the land use map and other regulatory amendments contained in Ordinance No. 119235.

#### **iv. legal issues and discussion**

##### **A. Legal Issue No. 1**

The Board’s PHO set forth Legal Issue No. 1

***1. Did the City of Seattle fail to comply with the public participation requirements of RCW 36.70A.140 when it adopted Ordinances 119230 and 119235?***

#### **Applicable Law and Discussion**

Petitioner MCC captured the essence of its public participation argument in their Reply Brief: “The petitioner attempted to avail itself of the public process. It repeatedly brought the same points at issue here to the City’s attention. The City ignored this input . . . .” MCC Reply, at 4. Petitioner concludes, “[I]t is painfully obvious from this record that the City ignored essentially all public comments offered on behalf of the Montlake Community and other North End communities.” *Id.*

RCW 36.70A.140 provides:

Each county and city . . . 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. . . .

However, the GMA public participation requirement “does not equate to ‘citizens decide.’ . . . The Act assigns this policy making authority [to decide direction and content of policy documents such as comprehensive plans] to the city and county elected officials, who are accountable to their citizens at the ballot box.” *Poulsbo v. Kitsap County*, CPSGPHB Case No. 92-3-0009, Final Decision and Order (Apr. 6, 1993), at 36.

Petitioner argues that the Montlake community was not represented on the neighborhood advisory committee, that the Plan amendment does not include a summary of public comments, and that there was inadequate time between the public hearing and that adoption of the Plan amendment and that the impacts on affected, contiguous communities were not addressed in the planning process. MCC PHB, at 13–15. The City responds that Petitioner never claims it sought participation on the neighborhood advisory committee and that RCW 36.70A.140 does not require such participation. The City also asserts that it continuously considered and responded to public comments and that the time period between the August 8, 1998 first public Council hearing, the September 23, 1998 second public Council hearing, and the November 16 adoption of the Plan amendments was adequate time to consider and respond to public comments. City PHB, at 7-10.

It is significant that Petitioner does not argue that they were prevented from reviewing and commenting on the proposed Plan amendments. Indeed, Petitioner has identified numerous opportunities it utilized to offer its comments and concerns to the City. Petitioner’s arguments regarding public participation amount to a disagreement with the City over the policy choices made by the City Council. Petitioner’s dissatisfaction and disappointment with the decision made by the City does not mean that the public participation process used by the City for amending its Plan failed to comply with the requirements of RCW 36.70A.140. To the contrary, the City’s public participation process, specifically as it relates to MCC’s concerns and issues, complied with RCW 36.70A.140.

### Conclusion

Petitioner MCC was provided the opportunity to review, comment and participate orally and in writing during the City’s process for amending its Plan. Petitioner’s dissatisfaction and disappointment with the decisions made by the City does not mean the City did not comply with RCW 36.70A.140, nor is the Board persuaded that the City’s action were clearly erroneous in

view of the entire record before the Board and in light of the goals and requirements of the Act. The City of Seattle’s public participation process for the Plan amendments challenged by MCC **complied** with RCW 36.70A.140.

**B. Legal Issue No. 3** <sup>[6]</sup>

The Board’s PHO set forth Legal Issue No. 3

3. *Did the City of Seattle’s adoption of Ordinances 119230 and 119235, fail to comply with the transportation element requirements of:*
- (a) RCW 36.70A.070(6) regarding consistency of the transportation element and the land use element;*
  - (b) RCW 36.70A.070(6)(a)(iii) and (v) regarding LOS and intergovernmental coordination;*
  - (c) RCW 36.70A.070(b) regarding concurrency?*

**Applicable Law and Discussion**

In arguing Legal Issue No. 3, Petitioner offers no argument regarding how Ordinance No. 119235 fails to comply with RCW 36.70A.070(6) in its entirety. Further, Petitioner does not brief how Ordinance No. 119230 fails to comply with RCW 36.70A.070(6), regarding consistency; or brief how Ordinance No. 119230 fails to comply with RCW 36.70A.070(6)(a)(v), regarding intergovernmental cooperation. MCC PHB, at 4-13. Issues not briefed are abandoned. WAC 242-02-570(1).

Petitioner maintains two challenges regarding transportation: level of service (**LOS**) methodology and transportation concurrency. The Board notes that since the challenge to Ordinance No. 119235 was abandoned, its review is limited to the amendments adopted by Ordinance No. 119230. Ordinance No. 119230 amended neither the City’s transportation element nor the City’s concurrency ordinance. <sup>[7]</sup>

RCW 36.70A.070(6) requires comprehensive plans to include a transportation element that, among other things, addresses LOS standards “for all locally owned arterials and transit routes to serve as a gauge to judge performance of the [transportation] system.” RCW 36.70A.070(6)(a)(iii)(B). Seattle adopted its comprehensive plan, including a transportation element, in 1994. Ordinance No. 119230 did not amend the transportation element. Seattle’s 1994 comprehensive plan contained an LOS approach that was based upon a “screenline” <sup>[8]</sup> methodology. Petitioner argues that the City’s screenline LOS approach “does not yield LOS standards for ‘all . . .

arterials and transit routes,’ but only for the arterials and transit routes which are ‘packaged’ with each screenline.” MCC PHB, at 9.

Ordinance No. 119230 did not amend the LOS standard or methodology within the transportation element of the City’s Comprehensive Plan.<sup>[9]</sup> Petitioner’s opportunity to challenge the City’s “screenline” LOS methodology was five years ago when the City adopted its comprehensive plan in 1994.<sup>[10]</sup> Petitioner cannot now challenge the City’s LOS methodology.

RCW 36.70A.070(6) also requires the City to adopt and enforce a transportation concurrency ordinance “which prohibit[s] development approval if the development causes the [LOS] on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development.” RCW 36.70A.070(6)(b). Seattle adopted its concurrency ordinance, Seattle Municipal Code (SMC) Chapter 23.52, in 1994; Ordinance No. 199230 did not amend Seattle’s concurrency ordinance. Petitioner alleges a violation of RCW 36.70A.070(6)(b), arguing that “the [neighborhood plan] is deficient . . . because it does not contain specific requirements for action to comply with the ‘concurrency’ requirements of the statute.” MCC PHB, at 12.

The City met this transportation concurrency provision when it adopted its concurrency ordinance in 1994. Petitioner’s contention that GMA somehow requires neighborhood plans to contain a separate concurrency ordinance is wholly without support. Petitioner’s actual complaint seems to be dissatisfaction with the City’s 1994 concurrency ordinance, arguing that it “does not suffice [at the neighborhood level], since it concerns itself only with screenline levels of service.” MCC Reply, at 6. Petitioner’s opportunity to challenge the City’s concurrency ordinance lapsed long before the present challenge was filed.

Ordinance No. 119230 did not amend the City’s concurrency ordinance.<sup>[11]</sup> As with the City’s LOS methodology, Petitioner’s opportunity to challenge the City’s concurrency ordinance was five years ago when the City adopted it in 1994. Petitioner cannot now challenge the City’s concurrency ordinance.

### Conclusions

Pursuant to WAC 242-02-570(1), Petitioner has **abandoned** its challenge to Ordinance No. 119235’s compliance with RCW 36.70A.070(6) in its entirety; and its challenge to Ordinance No. 119230’s compliance with RCW 36.70A.070(6) (consistency) and RCW 36.70A.070(6)(a)(v) (intergovernmental coordination).

Ordinance No. 119230 did not amend the City's LOS standards within the transportation element of the City's Comprehensive Plan. Therefore, Petitioner's challenge of whether the screenline LOS methodology adopted by the City in its 1994 Comprehensive complies with RCW 36.70A.070(6)(a)(iii) is **untimely**.

Ordinance No. 119230 did not amend the City's concurrency ordinance, Chapter 23.52 SMC. Therefore, Petitioner's challenge of whether the City's concurrency ordinance complies with RCW 36.70A.070(6)(b) is **untimely**.

### C. Legal Issue No. 4

The Board's PHO, as amended, set forth Legal Issue No. 4:

*4. Did the City of Seattle fail to comply with the internal consistency requirement of RCW 36.70A.070(preamble) when it adopted Ordinances 119230 and 119235, because the University Community Urban Center Plan's Goals A4, A-3; Policies A-2.2, B.2.2, A-3.4; Figures III-15, IV-1; and Activities A-3, A-4 and A-6 allegedly are inconsistent with Seattle Plan Policies V-18, V-32, V-33, T-D-4, T-D-13, T-F-3, K, A-2, NP-A-3, NP-D-1, NP-D-1-c, NP-D-2-b and NP-D-2-g?* [\[12\]](#)

### Applicable Law and Discussion

Petitioner's prehearing brief offers no argument regarding Legal Issue No. 4. MCC PHB, at 1-16. Issues not briefed are abandoned. WAC 242-02-570(1).

### Conclusion

Pursuant to WAC 242-02-570(1), Petitioner has **abandoned** its consistency challenge under RCW 36.70A.070(preamble).

### V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

Petitioner Montlake Community Club has withdrawn or abandoned, in whole or in part, Legal Issues 2, 3 and 4. For Legal Issue 1, and those portions of Legal Issue 3 that were not abandoned, Petitioner has failed to overcome the presumption of validity and persuade

the Board that the City of Seattle's actions in adopting Ordinance Nos. 119230 and 119235 were clearly erroneous.

The City's actions and the challenged portions of Ordinance Nos. 119230 and 119235 **comply** with the requirements of the Growth Management Act, Chapter 36.70A RCW.

So ORDERED this 30th day of July, 1999.

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

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

**APPENDIX**

**Findings of Fact**

1. Ordinance No. 119230, amending the Seattle Comprehensive Plan, was adopted by the City Council on November 16, 1998. Ex. 19, Index 2.1, Ordinance No. 199230, at 5.
2. Ordinance No. 199235, relating to land use and zoning and amending the Official Land Use Map, was adopted by the City Council on November 16, 1998. Ex. 20, Index 3.1, Ordinance No. 119235, at 4.
3. The City published Ordinance Nos. 119230 and 119235 in the *Daily Journal of Commerce* on December 3, 1998. MCC PFR, at 2 and attachment 1.
4. The PFR filed by Friends of Brooklyn was dismissed. Dispositive Motion, *supra*, at 4.
5. MCC's PFR was filed with the Board on January 29, 1999. *Supra*, at 1; and PFR, at 1.
6. Petitioner MCC participated, by oral and written testimony, in the public process carried out by the City regarding the challenged ordinances. PFR, at 8.

7. Ordinance No 119230 is entitled: “An Ordinance amending the Seattle Comprehensive Plan to incorporate portions of the University Community Urban Center plan and amending Seattle Municipal Code Sections 23.47.004 and 23.47.006 relating to single purpose residential development.” This Ordinance amends the City’s Comprehensive Plan. Ex. 19, at 1.
8. Ordinance No. 119235 is entitled: “An Ordinance relating to land use and zoning, amending the Official Land Use Map, SMC Chapter 23.32, and Chapter 23.47, to implement the University Community Urban Center Plan.” This Ordinance amends the City’s Official Land Use Map. Ex. 20, at 1.
9. Resolution 29808 is entitled: “A Resolution recognizing the University Community Urban Center Plan and approving the City’s work plan in response to the Plan.” This Resolution does not amend the City’s Comprehensive Plan. Ex. 21, at 1.
10. The University Community Urban Center Plan, dated August 29, 1998, is the planning document recognized by Resolution 29808. Ex. 21, at 1.
11. The City of Seattle first adopted its Comprehensive Plan on July 25, 1994. Core Document, Seattle’s Comprehensive Plan – Toward a Sustainable Seattle – A Plan for Managing Growth 1994-2014.
12. Consistent with the Board’s decision in *WSDF IV*, the City’s Comprehensive Plan and implementing development regulations, as amended by Ordinance Nos. 119230 and 119235, provide the guidance for land use decision-making in the University Community Plan area. *Supra*, at 6-8
13. Petitioner participated in Seattle’s Plan amendment process for considering Ordinance Nos. 119230 and 119235. MCC PHB, at 5-8 and 13-15; Exs 9-15.
14. Petitioner’s prehearing brief offers no argument regarding how Ordinance No. 119235 fails to comply with RCW 36.70A.070(6) in its entirety. MCC PHB, at 4-13.
15. Petitioner’s prehearing brief offers no argument regarding Ordinance No. 119230’s compliance with RCW 36.70A.070(6) [consistency] or RCW 36.70A.070(6)(a)(v) [intergovernmental coordination]. MCC PHB, at 4-13.
16. Ordinance No. 119230 did not amend the level of service standards or LOS methodology within the transportation element of the City’s Comprehensive Plan. Ex. 19, Attachment 4, at 4-6, 4-12 and 4-18; *see also* Footnote 7.
17. Ordinance No. 119230 did not amend the City’s transportation element or the City’s concurrency ordinance. Ex. 19, at 1-5; *see also* Footnote 9.
18. Petitioner’ prehearing brief offers no argument regarding Legal Issue No. 4. MCC PHB, at 1-16.

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<sup>[1]</sup> The references to the policies or provisions of the UCUCP were left out of the PHO’s Statement of Legal Issue No. 4, pending submittal by MCC.

[2] The April 30, 1999 MCC PHB contained several pages of poor copy, rendering certain pages illegible. A legible copy of the PHB was provided to the Board on May 3, 1999.

[3] See Seattle's Comprehensive Plan – Core Document.

[4] The actual text from the Goals and Policies found in the August 29, 1998 UCUCP are not included in the Comprehensive plan amendments of Ordinance No. 119230. Compare Ordinance No. 119230 and the August 29, 1998 University Community Urban Center Plan.

[5] The Board notes that RCW 36.70A.120 requires the City to “perform its activities and make capital budget decisions in conformity with its comprehensive plan.” Thus, any city activities or capital budget decisions arising from the unadopted neighborhood plan, including the work program (Matrix), will have to conform to the City's Comprehensive Plan.

[6] Legal Issue No. 2, regarding a SEPA challenge, was withdrawn by MCC. See Dispositive Motions, *supra*, at 4.

[7] In *LMI/Chevron v. Town of Woodway*, the Board noted that when a subarea plan refines one of the mandatory elements of the jurisdiction's comprehensive plan, the internal consistency requirements of RCW 36.70A.070 apply to that subarea plan. *LMI/Chevron*, CPSGMHB Case No. 98-3-0012, Final Decision and Order (Jan. 8, 1999), at 51.

[8] Seattle's Comprehensive Plan states:

The screenline methodology was used both for the Comprehensive Plan's level-of-service system to judge the performance of the arterial system, and for the traffic forecast analysis described in this Appendix. This system was selected because it steps back from the micro-level focus of traditional intersection LOS analysis, and recognizes explicitly the broader geographic impacts of development and travel patterns. The system recognizes that no single intersection or arterial operates in isolation. Motorists have choices, and they select particular routes based on a wide variety of factors. If traffic congestion on one arterial increases, it may not make sense to expand the capacity of that arterial. The City, instead, may want to shift traffic to a nearby under-used arterial, or to implement measures to reduce travel demand – or a combination of these strategies. Accordingly, this analytic methodology focuses on a “traffic-shed,” an area where arterials are organized for functional analysis.

Seattle Comprehensive Plan, Appendices, at A50.

[9] Ordinance No. 119230, Attachment 4, at 4-6, 4-12 and 4-18, includes tables showing the transportation analysis for the University District NW Urban Center Village; however, these tables do not amend the LOS methodology or the LOS standards for the area set forth in the Seattle Comprehensive Plan. The table and text refer to volume/capacity ratios for the Ship Canal screenline as near 1.0 northbound, and .09 southbound. The text also references the City's adopted LOS standard for the area of 1.2. See also, Seattle Comprehensive Plan, LOS Standards, at 63.

[10] In fact, another petitioner challenged the City's LOS methodology in 1994. In *West Seattle Defense Fund v. City of Seattle (WSDF I)*, CPSGMHB Case No 94-3-0016, Final Decision and Order (Apr. 4, 1995), the Board reviewed Seattle's screenline LOS methodology and found that:

Seattle has adopted a level of service methodology and level of service standards for all arterials and transit routes. Furthermore, this LOS methodology does serve as a gauge to allow the City to objectively measure the performance, or lack thereof, of its transportation system.

*WSDF I*, at 60.

[11] Ordinance No. 119230 amends Chapter 23.47 SMC, not Chapter 23.52 SMC that codifies the 1994 concurrency

ordinance (Ord. 117383).

[\[12\]](#) The University Community Urban Center Plan goals, policies, figures and activities cited in this Legal Issue correspond to the goals, policies, figures and activities included in the University Community Urban Center Plan document, dated August 29, 1998. This document was an attachment to Resolution 29808, which recognized it as “representing the wishes of the citizens of the University Community.” However, the neighborhood plan document recognized by Resolution 29808 is not part of the City’s Comprehensive Plan. Ordinance No. 119230 did not incorporate any of the cited goals, policies or activities of the August 29, 1998 document into Seattle’s Comprehensive Plan. *See* Resolution 29808, Ex 4.1 and Ex 21. Also, the Board was unable to correlate any of the Seattle Plan Policies cited in the Legal Issue with policies in the Seattle Comprehensive Plan. *See* Seattle Comprehensive Plan.