

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

DAVID RADABAUGH,)	
)	Case No. 00-3-0002
)	
Petitioner,)	FINAL DECISION AND ORDER
)	
v.)	
)	
CITY OF SEATTLE,)	
)	
Respondent.)	
)	
)	
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I. Procedural Background

On January 29, 2000 the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from David Radabaugh (**Radabaugh** or **Petitioner**). Petitioner alleges that the City of Seattle (**Seattle** or the **City**) failed to meet the requirements of the Growth Management Act (**GMA** or the **Act**) when it adopted Ordinance 119743, an ordinance relating to the Greenwood/Phinney Ridge Neighborhood Plan; amending the Seattle Comprehensive Plan and amending the City’s Official Land Use Map. The matter was assigned Case No. 00-3-0002, and captioned *Radabaugh v. City of Seattle* (short case title is *Radabaugh*).

On February 4, 2000, the Board issued a Notice of Hearing in this matter.

On March 1, 2000, the Board conducted a prehearing conference in the conference room of the Financial Center, 1215 Fourth Ave., Seattle.

On March 2, 2000, the Board issued the “Prehearing Order” which set forth the legal issues in this case and established dates for the hearing on the merits as well as the submittal of motions and briefs.

On March 31, 2000, the Board received the “City of Seattle’s Motion to Dismiss Legal Issues 2 and 3” (the **City’s Dispositive Motion**) and “Petitioner’s Motion to Supplement the Record” (the **Petitioner’s Motion to Supplement**).

On April 7, 2000, the Board received “City of Seattle’s Response to Motion to Supplement the Record,” and “Petitioner’s Response to City of Seattle’s Motion to Dismiss Legal Issues 2 & 3.”

On April 14, 2000, the Board received “City of Seattle’s Reply on City’s Motion to Dismiss Legal Issues 2 & 3” and “Petitioner’s Reply relating to Motion to Supplement the Record.”

On April 21, 2000, the Board issued an “Order on Dispositive Motion” which denied the City’s Dispositive Motion. On this same date, the Board issued an “Order on Motion to Supplement the Record.”

On May 1, 2000, the Board received the Petitioner’s “Prehearing Brief” (**Petitioner’s PHB**).

On May 15, 2000, the Board received “City of Seattle’s Hearing Brief” (the **City’s Brief**).

On May 22, 2000, the Board received “Petitioner’s Reply Brief” (the **Petitioner’s Reply**).

On Monday, June 5, 2000, beginning at 10:00 a.m. the Board conducted the hearing on the merits in room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle, Washington. Present for the Board were Edward G. McGuire, Lois H. North and Joseph W. Tovar, presiding officer. Representing the City was Robert Tobin. Also present for the City were Jennifer Carman and Anne Sutphin. Petitioner David Radabaugh represented himself *pro se*.

II. FINDINGS OF FACT

1. On September 7, 1999, the Seattle City Council held a public hearing on the proposed Greenwood/Phinney Ridge Neighborhood Plan including the Greenwood/Phinney Ridge Residential Urban Village. This hearing was the last publicly noticed opportunity for citizen review and comment on this matter.
2. Wording for proposed Neighborhood Plan Policy P10 was first presented at a City Council Committee meeting on October 12, 1999. The record does not show evidence of public notice regarding the Council’s consideration of proposed Policy P10.
3. On November 15, 1999 the Seattle City Council adopted Ordinance 119743, the title block of which reads: AN ORDINANCE relating to the Greenwood/Phinney Ridge Neighborhood Plan; amending the Seattle Comprehensive Plan to incorporate portions of the Greenwood/Phinney Ridge Neighborhood Plan, and amending the Official Land Use Map, Title 23 of the Seattle Municipal Code, to reflect the boundaries of the Greenwood/Phinney Ridge Residential Urban Village.

4. Attachment 5 to Ordinance 119743, is a map titled “Comprehensive Plan Map Amendments- Urban Village Boundaries – Greenwood/Phinney Ridge Residential Urban Village”
5. The boundaries of the Greenwood/Phinney Ridge Residential Urban Village are shown with a dashed line on Attachment 5 to Ordinance 119743. The southernmost extent of the boundary is N 65th Street and the northernmost extent is N 92nd St. The east and west boundaries, between approximately NW 84th St. and N 67th St., vary slightly, but generally lie a half-block either side of Greenwood Avenue North. South of N 67th St., the western boundary is approximately one half block west of Phinney Ave. N. The boundary east of Phinney Ave. N extends from N 65th St. to N 67th St.
6. The Woodland Park Zoo is outside the boundaries of the Greenwood/Phinney Ridge Residential Urban Village, lying east of Phinney Ave N. between NE 50th St. and NE 59th St.
7. The Phinney Neighborhood Association site is partially outside the boundaries of the Greenwood/Phinney Ridge Residential Urban Village, lying generally east of Phinney Ave N, between N 66th St. and N 67th St.

III. STANDARD OF REVIEW

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board “shall find compliance with the Act, unless it determines that the [City’s] action[s] are] **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the [GMA].” RCW 36.70A.320 (3). For the Board to find the City’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).

IV. LEGAL ISSUES

LEGAL ISSUE 1

Did the City fail to comply with RCW 36.70A.070 (preamble) when it adopted Ordinance 119743 (the Greenwood/Phinney Ridge Neighborhood Plan) because it adopted an Urban Village Boundary in a long, narrow configuration primarily confined along two arterial streets?

Discussion of Legal Issue 1

RCW 36.70A.070(preamble) requires that comprehensive plans be internally consistent documents. ^[1] The Greenwood/Phinney Ridge Neighborhood Plan and Urban Village is incorporated as a portion of the City of Seattle Comprehensive Plan. *See* Finding of Fact No. 3. Therefore, the Greenwood/Phinney Ridge Neighborhood Plan and Urban Village is required by the GMA to be consistent with the provisions of the City’s Comprehensive Plan.

There is no dispute that the Greenwood/Phinney Ridge Neighborhood Plan and Urban Village adopted in Ordinance 119743 has a long and narrow configuration. It is approximately 27 city blocks in length, centered on two arterials, Greenwood Avenue North and Phinney Avenue North. Within its southern 20 blocks, it is approximately one city block wide. Petitioner alleges that this long, narrow configuration creates an internal plan inconsistency between the Neighborhood Plan, specifically its *boundary*, and various provisions of the Comprehensive Plan, including the residential densities directed to urban villages, policy preferences to direct capital investment into urban villages and policy admonitions against strip development along arterials. Petitioner alleges that:

The strip development configuration of the adopted urban village makes the concentrations of density envisioned in this goal [G6] unlikely, if not impossible. Petitioner’s Reply, at 4.

Petitioner disputes the City’s contention that the Greenwood/Phinney Ridge Neighborhood Plan constitutes compact urban growth. Petitioner’s Reply, at 8. He argues that this boundary is in conflict with LU G4, which states “Support densities and mixes of uses that support walking and use of public transportation” and G5, which calls for “reducing strip development along arterials.” He also argues that the development potential of the strip urban village is too low to support increased transit use.

The City responds that the GMA doesn’t contain standards that prescribe the location of urban village boundaries, and that this is a purely local matter. The City argues that “The Board should reject Mr. Radabaugh’s attack on the Council’s judgment, discretion and decision.” City’s PHB, at 6. The record shows that the groups and individuals studying the urban village proposal advanced very different ideas about its ultimate boundary. The City says that this debate was vigorous and even rancorous and urges the Board not to subject the neighborhood to that process by re-opening the question of boundaries. The City contends that:

The boundary selected represents a compromise between competing positions and a balancing of numerous policies pertaining to urban village designation . . . In assessing whether local policies are internally consistent, it is necessary to evaluate the challenged

policy . . . here the village designation . . . in the context of all applicable policies, not simply against the language of a few policies that have been selectively chosen solely to achieve a partisan result. City’s Brief, at 6-8.

The Board has previously determined that it is within a city’s sound discretion to adopt as part of its comprehensive plan optional elements such as sub-area plans.^[2] The City correctly points out that neither the Act, nor the Plan itself, contain standards, or even generalized parameters, for the boundaries of an urban village or neighborhood plan. The Board holds that decisions about the geographic extent or shape of such sub-areas, absent explicit direction elsewhere in the plan, are also within the sound discretion of the city.

Here, the Petitioner points to no definitive local policy guiding or limiting the boundaries of sub-areas. Petitioner has failed to meet his burden of proof to show that the boundary of the urban village creates an inconsistency with the cited provisions of the Plan, and thereby has failed to show how this specific portion of the challenged City action was clearly erroneous.

Conclusion re: Legal Issue 1

Petitioner has failed to meet his burden of proof to show that the adoption of the boundary for the Greenwood/Phinney Ridge Neighborhood Plan creates an inconsistency pursuant to RCW 36.70A.070(preamble).

LEGAL ISSUE 2

Did the City fail to comply with RCW 36.70A.070 (preamble) when it adopted Policy P8 in the Greenwood/Phinney Ridge Neighborhood Plan?

Discussion of Legal Issue 2

Greenwood/Phinney Ridge Neighborhood Plan Policy P8 provides:

Seek to provide a landscaped civic plaza around the Phinney Neighborhood Association [PNA] building near the intersection of N 67th St. and Phinney Avenue N.

The Petitioner’s undisputed characterization of the PNA site is that it was:

... formerly an elementary school . . . large enough to hold one or more of an array of major public facilities such as schools, libraries, and/or parks. Petitioner’s Reply, at 10.

Radabaugh argues that Policy P8 is inconsistent with the Comprehensive Plan because the PNA

site is *outside* of the adopted urban village boundary. The crux of this argument is that Policy P8, a creature of the Greenwood/Phinney Ridge Neighborhood Plan, on its face advocates provision of a public facility that lies outside the adopted boundaries of the neighborhood. A secondary argument is that, even if the PNA site was to be entirely within the adopted boundaries, it is too far from the “core” of the urban village. For this, Petitioner cites the urban villages strategy articulated in the Comprehensive Plan, which calls for:

. . . community facilities, including schools, community, and recreation centers, libraries, parks, and human services within walking distance of the village core. Comprehensive Plan, p. ix, cited in Petitioner’s PHB, at 12. Emphasis added.

Radabaugh also argues that Policy P8 is inconsistent with Capital Facilities Element (CFE) Goals G1 and G3^[3] as well as CFE Policy C6, which provides:

Encourage the location of new community-based capital facilities, such as schools, libraries, little city halls, parks and playgrounds, community centers, clinic and human service facilities, in urban village areas. Written justification will be provided for proposals to locate a major capital facility outside of an urban village area. The City will consider providing capital facilities or amenities in urban villages as an incentive to attract both public and private investments to an area. Emphasis added.

Petitioner contends that, when read together, these city-wide comprehensive plan policies direct the City to plan for capital investments, such as the “civic plaza” described in the Greenwood/Phinney Ridge Neighborhood Plan Policy P8, *in* urban village areas. He acknowledges that CFE Policy C6 contains an “exception” phrase. i.e., “[if] written justification [is] provided to locate a major capital facility outside of an urban village area,” but points out that there is no evidence in the record of such written justification. As further evidence of this policy’s inconsistency, Radabaugh alleges that the City was advised by its own staff that adoption of a proposed neighborhood plan such as Policy P8 would have implications for the existing city-wide comprehensive plan. The decision to adopt P8, would be “. . . giving a greater degree of consideration in favor of making capital improvements in areas outside the [urban village . . . and would be] a policy choice which modifies existing comprehensive plan policy. Petitioner’s PHB, at 14, quoting October 8, 1999 Council Central Staff Report, at 7.

The City acknowledges that “P8 and P10 pertain to the possible location of capital facilities outside urban village boundaries.” City Brief, at 12. However, the City argues that:

“. . . Policies P8 and P10 can be read to coexist with C6, G1 and G3, because the latter do not forbid what P8 and P10 recognize, i.e., the possible location of capital facilities outside an urban village. City’s Brief, at 16.

The City also argues that:

The fact that some comprehensive plan policies were adopted pursuant to a “city-wide” process, or a neighborhood planning process, or by some other process should have no effect upon the weight accorded the respective policies. They are all policies of the municipal comprehensive plan, entitled to equal weight . . . City’s Brief, at 17.

The City goes on to suggest that, employing one rule of statutory construction, the more recent policy enactment (in this case Neighborhood Policy P8) would prevail if inconsistency were to be found with a less recent policy enactment (in this case Plan Policy C6). City’s Brief, *Id.* Finally, the City argues that, if the Board does find an inconsistency between P8 and C6, the appropriate remedy is to remand to the City with direction to cure the inconsistency, citing the Board’s decision in *Woodway*.^[4] City’s Brief, at 18.

The Board agrees with the Petitioner that Policy P8 is inconsistent with the City’s Plan. When a local government adopts an optional element, such as a neighborhood plan, it must be consistent both with the GMA and the provisions of the City-wide comprehensive plan.^[5] P8 must be consistent with the City’s Plan; it may not over-ride, amend or “modify” such city-wide provisions as CFE Goals G1 and G3 and CFE Policy C6.

While CFE Goals G1 and G3 indicate a general policy preference to direct capital facility investments into such areas as the Greenwood/Phinney Ridge urban village, the Board agrees with the City that these statements are of a precatory, rather than prescriptive nature. However, CFE Policy C6 is a different matter. While this policy does begin with the somewhat equivocal word “encourage,” the second sentence uses the unequivocal word “will.” This word, and the structure of the rest of the sentence, can only be read to convey that capital facilities may be located *outside* of urban villages only with “written justification.” Absent such written justification, CFE Policy 6c precludes the location of capital facilities, such as the ‘civic plaza’ on the PNA site described in Neighborhood Policy P8, from being placed outside an urban village.

The Board is not persuaded by the City’s argument that such “written justification” can be produced if and when an actual project is proposed for the PNA site. This would reduce the “justification” exercise to a perfunctory, ad-hoc, project approval step. To give reasonable meaning to the language of C6, which is a city-wide capital facilities policy, such “written justification” would have to be done with some degree of pre-meditation, in the policy context of city-wide plan policies. The Board also rejects the City’s curious argument that, in case of an internal plan inconsistency, the most recent policy prevails. While there may be a circumstance wherein a local government chooses to cure such an inconsistency by amending the older, rather

than the newer, policy, it is simply unsupportable to suggest that previously adopted policies must yield to newer ones. Such a contention over-reaches both logic and the very nature of planning under the GMA.

Conclusion re: Legal Issue 2

Radabaugh has carried his burden of proof to show that the adoption of Policy P8 creates an inconsistency with CFE Policy C6 and that the City's action was **clearly erroneous**. The Board will remand Neighborhood Plan Policy P8 to the City with direction to take legislative action to resolve the inconsistency.

LEGAL ISSUE 3

Did the City fail to comply with RCW 36.70A.070 (preamble) when it adopted Policy P10 in the Greenwood/Phinney Ridge Neighborhood Plan?

Discussion of Legal Issue 3

Greenwood/Phinney Ridge Neighborhood Plan Policy P10 provides:

Consider capital improvements and infrastructure to be important for the commercial area along Greenwood/Phinney Avenue N. from the Woodland Park Zoo to N. 105th Street, as well as for the Greenwood/Phinney Ridge Residential Urban Village, because this area provides goods and services to the Greenwood/Phinney Ridge Residential Urban Village and their adjoining residential areas, and is accessible by walking, bicycling, car-pooling or public transit. Emphasis added.

Petitioner alleges that P10 is inconsistent with the Seattle Comprehensive Plan, specifically Capital Facilities Goals G1 and G3 and Capital Facilities Policy C6. Radabaugh makes many of the same arguments that he made regarding alleged inconsistency of Policy P8, namely, that these policies both divert public investment away from urban villages and specifically advocate expenditure of public funds outside the Greenwood/Phinney Ridge Urban Village. Petitioner's PHB, at 15-16. Petitioner argues that:

Policy P10 encourages, as a matter of policy, capital improvements and infrastructure investment for unspecified purposes which could be far outside of the urban village . . . [and] locating infrastructure and public services on an almost three mile long strip of Greenwood Avenue and Phinney Avenue would disperse public investment without regard for need or efficiency of services. Petitioner's PHB, *Id.*

Petitioner argues that P10, like P8, runs counter to the adopted urban village strategy and specifically CFE Policy C6. Because the capital facility projects contemplated by P10 are outside the urban village boundary^[6] and are not specifically identified, Radabaugh argues, there is no way that they can be authorized by the written justification called for in CFE Policy C6. Petitioner's PHB, at 16.

Because the City briefed Legal Issues 2 and 3 jointly, many of its arguments regarding P8 also apply to its defense of Policy P10. By way of explanation of the purpose of P10, the City stated:

This policy was adopted by the Council in response to citizen concerns that another Comprehensive Plan Policy, Capital Facility Policy C6, might be construed to restrict the construction of desired capital improvements outside urban villages. Despite representations from City staff that C6 is precatory rather than prescriptive in nature, and does not prevent capital facilities from being located outside urban villages, the citizens sought explicit assurances to that effect from the Council, in the form of a policy that expressly recognizes the importance of possible improvements along Greenwood/Phinney Avenue, both within and outside the urban village boundary. The Council adopted P10 in response to the community and to provide the desired assurances. City's Brief, at 14.

The Board agrees with Petitioner as to the inconsistency of Policy P10 with CFE Policy C6. P10 must be consistent with the City's Plan; it may not over-ride, amend or "modify" such city-wide provisions as CFE Goals G1 and G3 and CFE Policy C6. The Board will remand Neighborhood Policy P10 to the City with direction to remove the inconsistency between this neighborhood policy and the City-wide policy. Either one, or the other, or both, must be amended or deleted, to remove this inconsistency.

The Board understands that the City wishes to provide non-urban village citizens with some assurance that capital facility investments can be made outside of designated urban village boundaries. However, as suggested by the City's own staff, such a policy choice would have implications for existing (city-wide) comprehensive plan policies. For this and other reasons, not the least of which is the public notice requirements of RCW 36.70A.035 (*see* Legal Issue 6 below), the avenue to pursue that end would be in a proposed amendment to adopted city-wide policy rather than incremental, ad-hoc amendment of thirty-seven individual neighborhood plans.

Conclusion re: Legal Issue 3

Radabaugh has carried his burden of proof to show that the adoption of Policy P10 creates an inconsistency with CFE Policy C6 and that the City's action was **clearly erroneous**. The Board will remand Neighborhood Plan Policy P10 to the City with direction to take legislative action to

resolve the inconsistency.

legal issue 4

Did the City fail to comply with RCW 36.70A.070(6)(a)(iii)(A) when it did not adequately inventory sidewalks and walkways within the planning area in Northern Greenwood in the course of adopting the Greenwood/Phinney Ridge Neighborhood Plan?

Discussion of Legal Issue 4

RCW 36.70A.070(6) lists as a required element of a Comprehensive Plan “A transportation element that implements, and is consistent with, the land use element.” RCW 36.70A.070(6)(a)(iii) requires that the transportation element contain a facilities and service needs subelement, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county’s jurisdiction boundaries; . . . Emphasis added.

Petitioner argued that because sidewalks are included in the definition of public facilities^[7] they must be included in the inventory of transportation facilities mandated by RCW 36.70A.070(6)(a)(iii)(A). Petitioner argued that Seattle has failed to identify areas without sidewalks or walkways and that this is a fundamental inadequacy in the City’s transportation facilities inventory.

Radabaugh argued:

It is clear that the City has identified pedestrian transportation to be an integral part of its transportation system in its Comp[rehensive] Plan. Yet, when adopting the Greenwood/Phinney Ridge Neighborhood Plan, the City didn’t even attempt to inventory the pedestrian transportation infrastructure in the planning area. This is contrary to the plain language of the GMA”. Petitioner PHB, at 24.

Petitioner asked that the City conduct an inventory and make provisions for adequate sidewalks and walkway facilities to serve the Greenwood/Phinney Ridge Urban Village.

The City argued that it had a complete inventory of sidewalks within the planning area, and the City as a whole, when the plan was being developed and adopted in 1996-1997. City’s Brief, at 20. Subsequent to the submittal of the City’s Brief, the City submitted to the Board a large city-wide map titled “Sidewalk Inventory (Intersection of Sidewalks with Urban Villages, Schools,

and Service Providers). In the lower right-hand corner of the map is the notation “April 21, 2000.” Included in the information displayed on the map, and noted in a legend were several notations about the status of sidewalks on streets.^[8] The map shows sidewalk inventory notations for Greenwood Ave. N. and Phinney Ridge Ave. N. and the adjacent neighborhood streets. Although the Sidewalk Inventory map does not show the configuration of the Greenwood/Phinney Ridge Neighborhood Plan adopted by Ordinance 119743, it does appear to cover all streets within those adopted boundaries.

The record before the Board does not make clear whether the “Sidewalk Inventory” map was produced, or available, during the pendency of the adoption of the Greenwood/Phinney Ridge Urban Village. Even if the Board were to agree with Petitioner that the necessary inventory was not available during that process, the fact that it presently exists arguably renders legal issue 4 moot. In any event, the Petitioner has failed to carry his burden of showing that the City has failed to adopt a sidewalk inventory and therefore is not in compliance with RCW 36.70A.070(6)(a)(iii)(A).

Conclusion re: Legal Issue 4

Radabaugh has failed to carry his burden of showing that the City has failed to adopt a sidewalk inventory. Petitioner therefore has not convinced the Board that the City failed to comply with RCW 36.70A.070(6)(a)(iii)(A).

LEGAL ISSUE 5

Did the City fail to comply with RCW 36.70A.070 (preamble), RCW 36.70A.020(12), RCW 36.70A.070(6)(a)(iii)(F), and RCW 36.70A.070(6)(a)(iv) when it did not make provision for sidewalks and walkways to serve the Greenwood/Phinney Ridge Urban Village in the course of adopting Ordinance 119743?

Discussion of Legal Issue 5

Radabaugh alleges that the City has not complied with RCW 36.70A.020(12), and certain of its transportation requirements, RCW 36.70A.070(6)(a)(iii)(F) and RCW 36.70A.070(6)(a)(iv).^[9]

RCW 36.70A.020(12) provides:

Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels

below locally established minimum standards. Emphasis added.

The Board has determined in answering Legal Issue 4 that the City has met its duty, albeit belatedly, to prepare an inventory of sidewalks. The Petitioner asserts, and the City does not dispute, the fact that there are areas of the Greenwood/Phinney Ridge Urban Village that do not have sidewalks. The “Sidewalk Inventory” cited above, now locates those deficiencies with some precision. The heart of Legal Issue 5 is Radabaugh’s contention that, with an inventoried sidewalk deficiency in hand, Seattle has a GMA duty to “provide a mechanism to provide adequate sidewalks” and that the City has breached that duty. Petitioner argues:

RCW 36.70A.020(12), RCW 36.70A.070(6)(a)(iii)(F), and RCW 36.70A.070(6)(a)(iv) require that a jurisdiction plan for adequate public facilities and identify system needs to meet transportation demands and provide a financing plan based on those needs. In light of the existing lack of sidewalks or walkways in Northern Greenwood, growth in the northern part of Greenwood, analysis in the Seattle Comprehensive Plan, and needs identified during neighborhood planning, the City has failed to provide a mechanism to provide adequate sidewalks within the adopted urban village and neighborhood Plan. Petitioner’s PHB, at 25. Emphasis added.

Radabaugh cites a prodigious number of Seattle Comprehensive Plan Policies which make mention of pedestrian facilities.^[10] However, although great in number, none of them contain an objective, directive and measurable **mandate** to build sidewalks in urban villages. For example, Petitioner cites a Comprehensive Plan provision that states:

Seattle will strive to develop and enhance these qualities o[f] urban villages: Transit, bicycle and pedestrian facilities with connections to neighboring villages, good circulation within the village and between the village and surrounding neighborhoods. Seattle Comprehensive Plan, page ix, cited in Petitioner’s PHB, at 28. Emphasis added.

Petitioner contends that the general direction of these many policies is that sidewalks should be installed, but complains that the Greenwood/Phinney Ridge Neighborhood Plan contains no explicit policy mandate to actually do so.

In adopting Ordinance 119743, the City Council paid scant attention to the need for sidewalks and walkways in Greenwood. The City Council adopted no policy that commits to building pedestrian infrastructure to go with the urban village designation. What policies that were adopted contain language so weak that the policies are, by themselves, essentially meaningless. The City Council adopted no analysis as to what is necessary to make provision for sidewalks or walkways necessary to serve the urban village. Petitioner’s PHB, at 27. Emphasis added.

Radabaugh goes on to argue that RCW 36.70A.020(12) contains a “requirement” that public facilities, including sidewalks, must have a locally adopted minimum standard.

...shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards . . . The City made no effort to articulate a locally established minimum standard for sidewalks . . . Petitioner’s PHB, at 34. Emphasis added.

The majority of the City’s response explains the historical reasons why Seattle has a sidewalk deficiency in the North End, complains about how expensive it would be to cure all of the deficiencies,^[11] how limited are its resources to do so and describes the City’s strategy for ad hoc developer installation of sidewalks as permit conditions and a modest annual expenditure of public funds.^[12] The City asserts that it is fully aware where sidewalks are lacking in the city and is currently searching for new ways to fund sidewalk construction. The City argues that a City-wide Plan Policy L47,^[13] expresses Seattle’s conscious policy decision to designate certain candidate areas as urban villages, notwithstanding documented sidewalk deficiencies.

The only rebuttal the City offers to Petitioner’s substantive arguments is:

Mr. Radabaugh never identifies, specifically, what measures the Council was legally required to enact in order to “provide for” sidewalks throughout this neighborhood. City’s Brief, at 21.

Radabaugh correctly points out that the City’s Plan contains “no policy that commits to building pedestrian infrastructure . . . [and that] policies that were adopted contain language so weak that the policies are, by themselves, essentially meaningless.” Clearly, the City has taken some pains to place no policy duty upon itself to do anything other than “strive” to provide pedestrian infrastructure in urban villages. Nevertheless, the City appears to agree with the thrust of Petitioner’s point, which is that sidewalks and other pedestrian infrastructure are not just a desirable amenity, but an important part of compact urban development.

By citing Planning Goal 12 and asserting that the City has a GMA duty to adopt both “minimum standards” and a “mechanism” to assure sidewalk installation, the Petitioner appears to argue that sidewalks are subject to the “concurrency” requirements of the Act. Because the challenged action here is a Neighborhood Plan, rather than the Transportation Element of a comprehensive plan, it is not clear that a question of “sidewalk concurrency” is even properly framed in this legal issue. While the Board is sympathetic to Petitioner’s central concern, i.e., that sidewalks are a critical component of successful compact urban development, Radabaugh has not carried the

burden of showing clear error. The Board cannot, with the facts and argument presented in this case, discern a GMA duty that would oblige the City to adopt “levels of service” for sidewalks in urban villages nor subject projects in urban villages to a “concurrency” requirement for the installation of such facilities. ^[14]

Conclusion re: Legal Issue 5

Radabaugh has failed to meet his burden of proof to show that the Neighborhood Plan’s provisions for sidewalks do not meet the requirements of RCW 36.70A.070 (preamble), RCW 36.70A.020(12), RCW 36.70A.070(6)(a)(iii)(F), and RCW 36.70A.070(6)(a)(iv). Petitioner has thereby failed to show how this specific portion of the challenged City action was clearly erroneous.

LEGAL ISSUE 6

Did the City fail to comply with RCW 36.70A.035(2) when it adopted the Policy P10 in the Greenwood/Phinney Ridge Neighborhood Plan without public notice?

Discussion of Legal Issue 6

Radabaugh alleges that the City’s adoption of Policy P10 did not satisfy the requirements of RCW 36.70A.035(2). ^[15] Wording for proposed Neighborhood Plan Policy P10 was first presented at a City Council meeting on October 12, 1999. *See* Finding of Fact 2. The last Public Hearing on the proposed Greenwood/Phinney Ridge Neighborhood Plan was held on September 7, 1999. *See* Finding of Fact 1. The record does not show evidence of any public notice regarding the Council’s consideration of proposed Policy P10 nor of any opportunity for public comment on this proposed policy.

RCW 36.70A.035(2) requires additional analysis and opportunity for public participation if, subsequent to public hearing, a change to a comprehensive plan is proposed which is outside of the scope of what has been thus far analyzed and publicly noticed. Policy P10 is outside the scope of what had been available for public comment at the September 7, 1999 public hearing. Policy P10 would allow for certain areas outside of the urban village boundary to receive public investment without accepting the responsibilities that go with being in an urban village such as receiving a fair amount of growth.

Even if the Board had not found Policies P8 and P10 substantively out of compliance with the requirements of the GMA, the Board observes that the public process herein outlined flies in the

face of RCW 36.70A.035(2). The Act mandates that the public must have an opportunity to be heard and comment before an “11th hour” change is adopted as part of a comprehensive plan.

Conclusion re: Legal Issue 6

Radabaugh has carried his burden of proof to show that the City failed to comply with RCW 36.70A.035(2) when it adopted Policy P10 in the Greenwood/Phinney Ridge Neighborhood Plan without public notice. The City’s action was **clearly erroneous**.

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:

Policies P-8 and P-10 are **not in compliance** with the requirements of the Growth Management Act. The Board finds that the City’s action adopting Policies P-8 and P-10 was **clearly erroneous**. Pursuant to RCW 36.70A.300(1)(b), the Board directs the City to comply with the GMA as set forth and interpreted by this Final Decision and Order as follows:

1. By no later than **4:00 p.m. on Wednesday, November 22, 2000**, the City shall take legislative action to remove the inconsistency between Policies P-8 and P-10 in the Neighborhood Plan and the City-wide Capital Facilities Element Policy C6.
2. By no later than **4:00 p.m. on Thursday, November 30, 2000**, the City shall file with the Board an original and four copies of a Statement of Actions Taken to Comply with this Final Decision and Order (the **SATC**) and shall simultaneously serve a copy on Petitioner.
3. By no later than **4:00 p.m. on Thursday, December 7, 2000**, or seven calendar days after the City submits its SATC, whichever comes first, the Petitioner may file with the Board an original and four copies of its Memorandum in Response to the SATC, and shall simultaneously serve a copy on the City.

Pursuant to RCW 36.70A.330(1), the Board gives Notice of Compliance Hearing in this matter to be held at **10 a.m. on Thursday, December 14, 2000** in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. In the event that the City files its SATC earlier than November 30, 2000, the Board will issue an Order amending the date for the Compliance Hearing.

So ORDERED this 26th day of July, 2000

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

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.

[1] RCW 36.70A.070(preamble) 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 objective, 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. Emphasis added.

[2] The Board has stated:

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 with the requirements of the GMA. *Benaroya v. Redmond*, CPSGMHB Case No. 95-3-0072c, Final Decision and Order, June 17, 1996, at 22.

[3] Capital Facilities Goal G1 provides:

Provide capital facilities that will serve the most pressing needs of the greatest number of Seattle citizens, and that will enable the City to deliver services efficiently to its constituents.

Capital Facilities Goal G3 provides:

Make capital investments consistent with the vision of the Comprehensive Plan, including the urban village strategy.

[4] *LMI/Chevron v. Woodway*, CPSGMHB Case No. 98-3-0012 (January 8, 1999) (fn 39).

[5] The Board has held:

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 a 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 an optional enactment, once it does so, the subarea plan is subject to the goals and requirements of the Act and must be consistent with the plan. *West Seattle Defense Fund v. City of Seattle*, (*WSDF III*) CPSGMHB Case No. 95-3-0073, Final

Decision and Order, (April 2, 1996) at 25.

[6]

For example, the Woodland Park Zoo is clearly outside the boundaries of the Greenwood/Phinney Ridge Urban Village. *See Findings of Fact 5 and 6.*

[7]

The definition of “public facilities” appears at RCW 36.70A.030(12) which provides:

Public facilities include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

Emphasis added.

[8]

The four notations in the key, and on the map, are: “No Sidewalk on One or Both Sides of Residential Street;” “Sidewalk on Two sides of Residential Street;” “No Sidewalk on One or Both Sides of Arterial Street;” and “Sidewalks on Two Sides of Arterial Street.”

[9]

RCW 36.70A.070(6)(a)(iii)(F) requires a comprehensive plan transportation element to include:

Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the state-wide multi-modal transportation plan required under chapter 47.06 RCW; . . . Emphasis added.

RCW 36.70A.070(6)(a)(iv) requires a comprehensive plan transportation element to include:

(A) An analysis of funding capability to judge needs against probable funding resources:

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.050.030.

[10]

These cited policies include: Transportation Goal G4, 5, 6, 7, 10, 20, and 21 and Transportation Policies T11, 12, 13, 43, 45, 46, 47, 48, and 49.5; also, Land Use Element Policies L2, 12, 42, 43, 45, 46, 47, and 48. Petitioner’s PHB, at 28-32.

[11]

For example, the City states that, based upon an inventory and analysis of sidewalks in the city, it would cost approximately \$1.5 billion to provide sidewalks where they are currently lacking. City’s Brief, at 21. The City acknowledged that much of the northern part of the city, including portions of the Greenwood neighborhood, did not have sidewalks because they were developed when it was part of unincorporated King County. *Id.*

[12]

The City states that it has historically built approximately two to four block lengths of sidewalk per year, city-wide, from public funds, such as general appropriations or grants. City’s Brief, at 22.

[13]

Comprehensive Plan Policy L47, provides:

Permit residential urban villages to include those areas that possess the desired characteristics and infrastructure to support a moderately dense residential population and areas that, while lacking infrastructure or other characteristics of a residential urban village, warrant public investment in order to promote a transition to a higher density residential neighborhood.

[14]

Interestingly, the project review process that is implicit in the operation of a concurrency ordinance is somewhat

paralleled by the City's practice of requiring the installation of sidewalks as sites are developed. If the City is following this historic practice, it is, in effect, assuring that a new transportation facility (i.e., the sidewalk) is installed at the time the new development occurs.

[\[15\]](#)

RCW 36.70A.035(2) provides:

- (a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

- (b) An additional opportunity for public review and comment is not required under (a) of this subsection if:
 - (i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
 - (ii) The proposed change is within the scope of the alternatives available for public comment;
 - (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
 - (iv) The proposed change is to resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
 - (v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.