CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

CORINNE R. HENSLEY and JODY L. McVITTIE, Petitioners, v. SNOHOMISH COUNTY, Respondent.	)	**Case No. 01-3-0004c** ***(Hensley IV)*** **ORDER ON DISPOSITIVE MOTION [Motion to Invalidate]**

I. Procedural Background

On April 5, 2001, the Board received "Motion to Enter a Finding of Invalidity" from Petitioner McVittie (**McVittie Motion**). The McVittie Motion had two attachments.

On April 18, 2001 the Board received Snohomish County's "County Response to Motion to Enter a Finding of Invalidity" (**County Response**). The County Response had 17 items from the Index attached.

On April 23, 2001, the Board received "Reply to County's Response to Motion to Enter a Finding of Invalidity" (**McVittie Reply**).

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

II. DISCUSSION

Petitioner asks the Board to invalidate that portion of Ordinance No. 00-091 that adopted the Transportation Element amendments to the County's Comprehensive Plan.[1] The basis of the request is that "the County failed to provide adequate (any) public notice of its pending consideration of amendments to the Transportation Element." McVittie Motion, at 2. Petitioner does not dispute that the County provided notice of its consideration of Ordinance No. 00-091, but instead asserts that the notice "failed to give any indication that amendments to the

Transportation Element were being considered." McVittie Motion, at 2. McVittie cites to the notice provisions of the Snohomish County Code (**SCC**) – SCC 32.05.020 – to support her argument, and attaches a copy of the published notice for the County's December 6, 2000 public hearing. McVittie Motion, at 3, and attachments 1 and 2.

In response, the County states,

> After examining the record and consulting with council staff, the County has concluded that although the council hearing on the transportation element was properly noticed in every newspaper in the affected areas and in a direct mailing to 6716 interested citizens, **due to a clerical mistake, the required notice in *The Herald* omitted reference to these amendments. The County agrees with petitioner McVittie that this oversight has resulted in noncompliance with SCC 32.05.020(2),[2] and asks that the Board remand the transportation element amendments to the County to allow for proper notice and public participation.**

County Response, at 1-2 (emphasis supplied). Although the County acknowledges noncompliance with notice and public participation requirements, it asserts that the clerical omission in the notice that resulted in noncompliance does not warrant a determination of invalidity. County Response, at 5-6.

In reply, Petitioner notes the County's admission of error and acknowledges, "The County is correct that it did mention amendments to the Transportation Element in many of the local newspapers." McVittie Reply, at 1. However, Petitioner continues to assert that the County's noncompliance regarding notice and public participation on the Transportation Element constitutes substantial interference with RCW 36.70A.020(11), therefore meriting a determination of invalidity by the Board. Petitioner also asks that on remand, effective notice be given that includes reference to the Level of Service (LOS) standards being adopted in the Transportation Element McVittie Reply, at 1-3.

Applicable Law and Discussion

The County acknowledges that it has failed to comply with the notice and public participation requirements of the GMA as it relates to the County's adoption of the Transportation Element amendments of Ordinance No. 00-091. The County has requested a remand to correct this defect. The only question remaining for the Board is whether the County's admitted noncompliance with the Act substantially interferes with RCW 36.70A.020(11) – Goal 11 – the public participation goal.

RCW 36.70A.302 provides:

> (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
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> (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
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> (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
>
> (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
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> (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

The County attributes its admitted noncompliance to clerical error. Review of the attachments submitted with the County's Response shows that amendments to the Transportation Element were mentioned in several of the newspapers, however the County's official newspaper – *The Herald* – was not among them. Petitioner also acknowledges that, "The County is correct that it did mention amendments to the Transportation Element in many of the local newspapers." Although the notice and public participation requirements of the Act are extremely important to effective GMA planning and implementation, the Board recognizes that clerical mistakes regarding notice can occur – some clerical errors may have dire consequences, others may not. This clerical error did not foreclose any notice or public participation on the Transportation Element. This clerical error may be easily remedied. The Board concludes that the clerical error providing the basis for a finding of noncompliance **does not** substantially interfere with fulfillment of Goal 11. The Board declines to issue a determination of invalidity.

Conclusion

In light of the County's admission, the Board concludes that the County failed to comply with the notice and public participation requirements of the GMA, as reflected in the SCC. Therefore the Board enters a **finding of noncompliance** with the provisions of RCW 36.70A.020 (11), .035, .070(preamble) and .140, as stated in McVittie Issues: Legal Issue 1, Prehearing Order (March 23, 2001), at 9. The Board will also **remand** the County's Transportation Element amendments as adopted in Section 6 of Ordinance No. 00-091, including Exhibits C and C-1.

Additionally, the Board concludes that the clerical error providing the basis for a finding of noncompliance **does not** substantially interfere with fulfillment of Goal 11. The Board declines to issue a determination of invalidity.

III. Order

Based upon review of the PFR, PHO, motions, briefs and exhibits submitted by the parties, the Act, and prior decisions of this Board, the Board enters the following ORDER:

> Petitioner McVittie's motion requesting the Board to enter a finding of invalidity is **denied**.[3]
>
> Snohomish County's adoption of the Transportation Element amendments contained in Exhibits C and C-1 to Ordinance No. 00-091 was **clearly erroneous** and **does not comply** with the public participation goal and requirements of RCW 36.70A.020 (11), .035 and .140.
>
> The Board therefore, **remands** the Transportation Element amendments contained in Exhibits C and C-1 to Ordinance No. 00-091 to the County with the following directions:
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> In order to comply with the provisions of RCW 36.70A.020(11) .035 and .140, as set forth in this Order, the Board directs Snohomish County as follows:
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> 1. By no later than **June 29, 2001**, the County shall provide effective notice, consistent with this Order, conduct a public hearing on amendments to the County's GMA Comprehensive Plan Transportation Element, and *take appropriate legislative action* to repeal, modify or reenact the Transportation Element amendments contained in Ordinance No. 00-091, but found to be noncompliant with the GMA due to defective notice. If LOS standards are to be adopted or modified in the Transportation Element amendments, the notice shall so indicate.
> 2. By no later than **July 6, 2001**, the County shall file with the Board an original and four copies of a Statement of Actions to Comply (**SATC**) with the GMA, as set forth in this FDO. The County shall simultaneously serve a copy of the SATC on Petitioner McVittie.
> 3. By no later than **July 18, 2001**, Petitioner McVittie *may* file with the Board an original and four copies of Comments on the SATC. Petitioner shall simultaneously serve a copy of such Comments on the SATC on the County.
> 4. By no later than **July 31, 2001**, the County *may* file with the Board an

original and four copies of Response to Comments on the SATC. The County shall simultaneously serve a copy of such Comments on the SATC on Petitioner.

5. Pursuant to RCW 36.70A.330(1), a Compliance Hearing is scheduled for **10:00 a.m. August 16, 2001**, Suite 1022 at the Board's Offices. The subject matter of the compliance hearing is limited to whether the County has provided effective notice and taken appropriate action to comply with the requirements of RCW 36.70A. 020(11) .035 and .140 as set forth in this Order.

So ORDERED this 30th day of April, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP
Board Member

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Lois H. North
Board Member

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Joseph W. Tovar, AICP
Board Member

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

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[1] Ordinance No. 00-091, among other things, adopted Exhibit C and C-1 to the Ordinance, which contained the County's amendments to the County GMA Comprehensive Plan. Ord. No. 00-091, Sec. 6, at 18.

[2] Chapter 32.05 SCC establishes the County's procedures for providing notice and public participation pursuant to the GMA. *See:* SCC 32.05.010. SCC 32.05.020 establishes the County's notice and public participation procedures.

[3] Having found noncompliance with the GMA regarding amendments to the Transportation Element, Petitioner has prevailed on Legal Issues 1 and 4. (*See*: PHO, at 9). Any further participation in this consolidated case by Petitioner McVittie will be limited to Legal Issues 2 and 3 as they relate to the Clearview amendments. (*See*: PHO, at 9).