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 – McVittie Portion)***[1] **FINDING OF PARTIAL COMPLIANCE**

I. Procedural Background

On April 30, 2001 the Central Puget Sound Growth Management Hearings Board (the **Board**) entered an Order on Dispositive Motion [Motion to Invalidate] in the above-captioned case. The Order only addressed a portion Petitioner McVittie's (**McVittie**) Issues in the case related to the County's Transportation Element (**TE**). The Order set a compliance deadline of June 29, 2001, and directed Snohomish County (the **County**) to file a Statement of Actions Taken to Comply (**SATC**) by July 6, 2001. The Order also established August 16, 2001 as the date for a compliance hearing.

The Board's April 30, 2001 Order provided, in relevant part:

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**.
>
> 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:

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:

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.

April 30, 2001 Order, at 4-5.

On July 2, 2001, the Board received "Snohomish County's Statement of Actions Taken to Comply with the Board's April 30, 2001 Order on Dispositive Motion" (**SATC**). The newly adopted Ordinance No. 01-040, with attached exhibit [Transportation Element Amendments] was attached to the SATC.

On July 17, 2001, the Board received "Documents Establishing Public Notice of the Reenactment

of the Transportation Element Amendments in Amended Ordinance No. 01-040, on Remand in *Hensley, et al. v. Snohomish County*, Consolidated (***Hensley IV***), Case No. 01-3-0004c" (**Notice Documents**)

On July 18, 2001, the Board received "Petitioner's Comments on County's Statement of Actions of Compliance" (**McVittie Comment**).

On July 31, 2001, the Board received "Reply to Petitioner's Response to County's Statement of Actions to Comply with the Board's April 30, 2001 Order on Dispositive Motion" (**Co**. **Reply**).

On August 9, 2001, the Board issued an "Order Scheduling Coordinated Compliance Hearings and Prehearing Conference." This Order affirmed August 16, 2001 as the date for the Compliance Hearing in *Hensley IV*, wherein the McVittie portion [**TE**] of the case would be heard.

On August 16, 2001, the Board held the Compliance Hearing (**CH**) in Case No. 01-3-0004c – McVittie Portion [TE], at the Board's offices. Present for the Board were Board Members Joseph W. Tovar, Lois H. North and Edward G. McGuire, Presiding Officer. Parties participating in the hearing included: 1) Jody L. McVittie appeared *pro se*, and 2) Courtney Flora, appeared for Snohomish County. The hearing was recorded.

II. Discussion

As noted *supra*, the Board's Order found that Snohomish County's adoption of the TE amendments contained in Exhibits C and C-1 to Ordinance No. 00-091 did not comply with the public participation goal and requirements of RCW 36.70A.020(11), .035 and .140. The County was directed to provide effective notice, conduct a public hearing on amendments to the County's GMA Comprehensive Plan TE, and take appropriate legislative action to repeal, modify or reenact the TE amendments contained in Ordinance No. 00-091. In the Order, the Board acknowledged that the County agreed with Petitioner McVittie and that due to a clerical error, notice had not been provided for the County's adoption of the TE amendments in Ordinance No. 00-091. The County requested the remand to correct this error. The error was an undisputed procedural error.

To achieve compliance the County states that it "adopted Amended Ordinance No. 01-040, which ratified and reenacted the transportation element amendments after proper notice and publication." SATC, at 2; *see also* attachments and Notice Documents. The County noted that it did change the 180th Street Project improvement listed in Exhibit C from rural 2-lane standard to a rural 3-lane standard; but it did not adopt or modify any LOS standards." SATC, at 2.

Petitioner agrees that "The County did publish notice prior to the re enactment of the Transportation Element Amendments of Ordinance No. 01-040." McVittie Comment, at 1. However, Petitioner contends that the notice provided was not effective because it did not indicate that the County was including Washington State Department of Transportation LOS standards for state roads in its transportation element. Petitioner then requests that the Board find that the County did provide "notice" for the adoption of Ordinance No. 01-040, but defer consideration of whether the notice was effective until the *McVittie VIII* case is heard and decided. McVittie Comment, at 1.

The County counters, "[T]he County's documentation of state service standards in [the ordinance] does not represent a change in GMA policy because the Council neither adopted, nor considered adopting, changes to LOS standards. Because the transportation element amendments simply document existing LOS standards, encouragement of public participation on this issue would not have furthered GMA public participation goals." Co. Reply, at 3. The County presents a plausible counter to Petitioner's assertion.

It is undisputed that the parties agree **notice was provided** for the Council's consideration and adoption of the Transportation Element amendments. However, the parties dispute what the notice must include to adequately reflect the nature of the County's pending action. This is an important question for the Board to resolve. However, it is beyond the scope of this compliance hearing – with minimal record, briefing and argument[2]. Additionally, Petitioner McVittie has preserved this question in her latest PFR.[3] Consequently, the Board will not address it here in the context of a compliance hearing, but resolve it in the subsequent PFR. Issuance of a compliance finding here, finding that the County did provide notice for the Council's consideration and adoption of the Transportation Element amendments, therefore complying with the notice requirements of the Act, does not preclude or prevent Petitioner from challenging the effectiveness of the notice and public participation process for Ordinance No. 01-040 , in the *McVittie VIII* proceeding

III. FINDING OF PARTIAL COMPLIANCE

Having reviewed its April 30, 2001, Order on Dispositive Motion, the SATC, Comments and Reply submitted, provisions of the GMA, argument provided by the parties, and considering the parties agreement that notice was provided, the Board finds that Snohomish County has **complied** with the requirements of the GMA [RCW 36.70A.020(11), .035, .130(2)(b) and .140.], as set forth in the Board's April 30, 2001 Order, for purposes of concluding this portion [compliance with Order on Dispositive Motion] of the *Hensley IV* proceeding. Therefore, the Board issues this **Finding of Partial Compliance** to Snohomish County in CPSGMHB Case No. 00-3-0004c, *Hensley, et al., v. Snohomish County,* (*Hensley IV*). This finding of partial

compliance extends only to the April 30, 2001, Order on Dispositive Motion, not the remainder of the pending *Hensley IV* proceeding. Further, the Finding of Partial Compliance is based upon the fact that the County did provide notice for the Council's consideration and adoption of the Transportation Element amendments. However, this finding of partial compliance does not address the substance of that notice; nor does this finding of partial compliance preclude or prevent Petitioner from challenging the effectiveness of the notice and public participation process for Ordinance No. 01-040, in the pending *McVittie VIII* proceeding.

So ORDERED this 16th day of August 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP
Board Member

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Joseph W. Tovar, AICP
Board Member

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Lois H. North
Board Member

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

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[1] Roger Olsen is an Intervenor in the Hensley IV case; however, he did not intervene in this portion of the case.

[2] Neither party has referred to the presence, or absence, of language in the notices or publications to support their claims.

[3] The Board notes that the Amended PFR in CPSGMHB Case No. 01-3-0017, filed by Ms. McVittie includes the following Legal Issue " Did Snohomish County fail to comply with the public participation requirements of RCW 36.70A.020(11), .035. .070(preamble) and .140 when it adopted Ordinance 01-040? August 9, 2001, Amended PFR, at 2. The Board also notes that the Prehearing Conference in *McVittie VIII* was held following this compliance hearing, where the parameters of this issue were discussed.