

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

JODY L. McVITTIE,)	Case No. 01-3-0002
)	
Petitioner,)	(<i>McVittie VI</i>)
)	
v.)	ORDER FINDING COMPLIANCE
)	
SNOHOMISH COUNTY,)	
)	
Respondent.)	
)	
)	

I. Procedural Background

On July 25, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued the Final Decision and Order (the **FDO**) in the above captioned case. The FDO provided in part:

The Board holds that effective notice of an amendment to a Capital Facilities Element involving the addition or subtraction of facilities deemed to be “necessary for development” or a change in a level of service (LOS) for a listed facility must clearly and concisely describe the nature or magnitude of modifications being considered. Likewise, if a jurisdiction wishes to consider amending a previously adopted standard, by increasing or decreasing a level of service, by revising the methods used to measure performance, or by deletion of the standard altogether, it must explicitly say so in its notice. It is not sufficient for a notice to simply say that the jurisdiction is considering updating or changing previously adopted facilities, standards or methods. It must give a clear indication of WHAT, HOW and, if applicable, HOW MUCH the facility, standard or method might be changed.

FDO, at 9-10.

After reviewing the above cited holding, and considering the facts and arguments presented by the parties, the Board then concluded and ordered:

Snohomish County's adoption of Ordinance Nos. 00-074 and 00-075 was **clearly erroneous** and **does not comply** with the public participation requirements of .035, and .140, and fails to be guided by RCW 36.70A.020(11), as set forth and interpreted in the Final Decision and Order (**FDO**).

The Board therefore, **remands** Ordinance Nos. 00-074 and 00-75 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 FDO, the Board directs Snohomish County as follows:

(1) The County shall provide effective notice, set a public hearing date and provide the opportunity for public participation regarding the Plan amendments and zoning designations proposed in the two Ordinances. *By no later than 4:00 p.m. Monday – October 2, 2001*, the County shall take appropriate legislative action to repeal, modify or readopt the subject matter addressed in the two Ordinances.

(2) Within ten days of taking the legislative action(s) set forth in Paragraph (1) of this Order, 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) Within ten days of service of the SATC, Petitioner McVittie *may* file with the Board an original and four copies of Comments on the SATC. If she wishes to ask the Board to revisit the question of invalidity, pursuant to RCW 36.70A.330(4), she must so indicate in her pleading.

(4) Petitioner shall simultaneously serve a copy of such Comments on the SATC on the County.

FDO, at 23-24.

On August 24, 2001, in response to pleadings from the parties, the Board issued a "Notice of Partial Reconsideration and Notice of Schedule to Rule on Remaining Issues" (the **Notice of Partial Reconsideration** or **NOPR**) which provided in part:

After a review of the FDO, the above referenced pleadings, and the relevant provisions of the GMA and the Board's Rules, the Board enters the following Order:

1. That portion of the County's Motion set forth as Reconsideration Issue 1 is **granted**. Consequently, paragraph 1 of the Order as originally set forth on page 22 of the FDO, is stricken and replaced with an amended paragraph 1 which reads as follows:

(1) On remand, the County shall provide effective notice, set a hearing date, and provide the opportunity for public participation regarding the changes in Level of Service ("LOS") standards and the "necessary for development" designation implemented by Amended Ordinance 00-074 and Ordinance 00-075. The County may combine the notice, hearing, and opportunity for public participation required for the remanded Ordinances with notice, hearing, and opportunity for public participation on the 2001 updates to the County's Capital Facilities Plan ("CFP") and Capital Improvement Program ("CIP"), provided in part that:

- a. the combined notice clearly describes what LOS standards are and how Amended Ordinance 00-074 and Ordinance 00-075 changed the standards previously in place, while also describing any changes to LOS standards contained in the proposed 2001 updates to the CFP and CIP;
- b. the combined notice clearly describes what the "necessary for development" designation is and explains what facilities Amended Ordinance 00-074 and 00-075 included and excluded from the "necessary for development" designation, while also describing any changes to that designation contained in the proposed 2001 updates to the CFP and CIP; and
- c. public hearings before the Planning Commission and Council for the 2001 updates to the CFP and CIP shall provide opportunity for public comment on the changes to LOS standards and the implementation of the "necessary for development" designation resulting from adoption of Amended Ordinance 00-074 and Ordinance 00-075, in addition to public comment on the proposed 2001 updates to the CFP and CIP.
- d. By no later than 4:00 p.m. on Wednesday, November 28, 2001, the County shall take appropriate legislative action to repeal, modify or readopt the subject matter addressed in the two ordinances in a manner consistent with the direction set forth in subparagraphs 1(a)-(c) above.

2. The Board does not rule at this time on Reconsideration Issue 2 in the County's Motion or any of the three Reconsideration Issues addressed in the Petitioner's Motion.

Notice of Partial Reconsideration, at 2-3.

On October 11, 2001, the Board issued an "Order on Motions" (the **Order on Motions**) which provided in part:

After a review of the FDO, the above referenced pleadings, and the relevant provisions of the GMA and the Board's Rules, the Board enters the following Order:

1. Reconsideration Issue 1 set forth in the County's motion was granted by the Board in the Notice of Partial Reconsideration.
2. Reconsideration Issue 2 in the County's Motion is **granted** in part. To the extent that the County requested clarification regarding notice requirements for changes in LOS standards, the Board has provided it.
3. Petitioner's Reconsideration Issues 1, 2 and 3 are **denied** . . .

Order on Motions, at 8.

On December 11, 2001, the Board received "Respondent Snohomish County's Statement of Actions to Comply" (the **SATC**) with attachments "A" through "F."

On January 3, 2002, the Board received "Petitioner's Response to Statement of Actions to Comply" (**Petitioner's Response**).

On January 14, 2002, the Board received "Rebuttal to Petitioner McVittie's Response to Snohomish County's Statement of Actions to Comply" (the **County's Rebuttal**).

Beginning at 10:00 a.m. on January 14, 2002, the Board conducted a compliance hearing in this matter in Suite 1022 of the Financial Center, 1215 Fourth Ave. in Seattle. Present for the Board were Edward G. McGuire, Lois H. North, and Joseph W. Tovar, presiding officer. Representing herself, pro se, was petitioner Jody McVittie. Representing the County was Brent Lloyd. No witnesses testified.

II. Findings of Fact

1. On August 24, 2001, the Board issued a "Notice of Partial Reconsideration" which extended the County's compliance deadline from October 2, 2001 to November 28, 2001. NOPR, at 2.
2. On November 7, 2001, the County published a "Notice of Introduction of Ordinances and Notice of Public Hearing" (the **County's Notice**) which set November 19, 2001 as the date for

a public hearing before the County Council regarding Amended Ordinance No. 00-074 (Capital Facilities Plan/Year 2000 Update) and Ordinance No. 00-075 (2000-2006 Capital Improvement Plan). NOPR, Ex. C.

3. The County's Notice states the purpose of the hearing as:

I. Comply with the ruling of the Central Puget Sound Growth Management Hearings Board (GMHB) requiring the county to engage in additional public participation concerning two ordinances, originally considered and enacted by the County Council in November 2000, adopting the Capital Facilities Plan/Year 2000 Update and the 2001-2006 Capital Improvement Program (CIP), as well as related amendments to the General Policy Plan.

II. Consider the Planning Commission's recommendations and two proposed ordinances adopting the Capital Facilities Plan/Year 2001 Update and the 2002-2007 Capital Improvement Program.

NOPR, Ex. C, at 1.

4. The County's Notice includes detailed text and charts describing the proposed amendments, including the following:

In addition to making other changes to the county's CFP and CIP, these ordinances implement the following fundamental policy changes:

§ Designating certain public facilities as "necessary for development," including roads, transit routes, public water supply and wastewater systems for urban areas, surface water facilities, electric power facilities and public schools, but not law and justice and solid waste facilities. Facilities designated as "necessary for development" must be built or expanded if a planned intensification of land use at the parcel or tract level would otherwise result in a reduction of the adopted Level of Service (LOS) standard (i.e., the minimum acceptable level of supply for particular facilities established in the CFP).

§ Changing LOS methodology for sheriff's facilities, courtrooms, correctional facilities and related support facilities from "per capita" facility needs to total facility needs through 2015. The methodology for parklands and recreational activities are not changed, but the actual guidelines are adjusted to reflect changes in the inventory, and the level of service standard for Resource Conservancy lands are adjusted upward from the 1999 range to 7.83 acres/per every 1000 population.

NOPR, Ex. C., at 1.

5. On November 19, 2001, the Snohomish County Council held a public hearing to consider the policy shifts resulting from the two remanded ordinances, as well as the CFP Year 2001 update in its entirety and the Planning Commissioner's recommendations. NOPR, at 7. *See also* NOPR, Exhibits C (text of published legal notice) and D (text of mailed notice.)

6. Petitioner filed a response on January 3, 2002, opposing the County's SATC.

7. RCW 36.70A.330 requires the Board to conduct a compliance hearing. The Board conducted the compliance hearing in this matter on January 14, 2002.

III. Conclusions of Law

The Board concludes that the County's Notice and public participation conducted at the Planning Commission and County Council public hearings cures the noncompliance found by the Board in its Final Decision and Order.

IV. finding of compliance

Based upon review of the Board's FDO, the County's Statement of Actions to Comply, the Petitioner's Response, and the comments of the parties at the compliance hearing, and considering Findings of Fact 1-7 and Conclusion of Law, *supra*, the Board finds that the County has **complied** with the requirements of the GMA as set forth in the FDO.

So ORDERED this 7th day of February, 2002.

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.