CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

DAN OLSEN, BONNIE OLSEN, ALLAN McFADDEN and KAREN McFADDEN,	)	**Case No. 03-3-0003** (***Olsen***)
Petitioners,	)	
v.	)	
CITY OF KENMORE,	)	**FINAL DECISION AND ORDER**
Respondent.	)	

I. Procedural Background

A. General

On January 24, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Dan and Bonnie Olsen and Allan and Karen McFadden (collectively **Petitioners** or **Olsen**). The matter was assigned Case No. 03-3-0003, and is hereafter referred to as *Olsen v. City of Kenmore*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioners challenge the City of Kenmore's (**Respondent, Kenmore** or **City**) adoption of Ordinance No. 02-0157 amending its development regulations. The basis for the challenge is noncompliance with provisions of the Growth Management Act (**GMA** or **Act**).

On January 30, 2003, the Board issued a "Notice of Hearing"; on February 24, 2003, the Board held a prehearing conference; and later that day, issued the "Prehearing Order" (**PHO**) setting the schedule and Legal Issues for this case.

B. Motions to Supplement And amend index

On February 24, 2003, the Board received "Respondent's Index to Record" (**Index**).

On March 4, 2003, the Board received the following "Core Documents" from the City: 1) Kenmore's GMA Comprehensive Plan; and 2) Ordinance No. 98-0026 and appropriate sections

of King County Code [KCC 21A.41.100].

On March 20, 2003, the Board received a "Motion to Supplement the Record" from Petitioners. Attached were eight potential exhibits.

On March 27, 2003, the Board received "City of Kenmore's Memorandum in Opposition to Petitioners' Motion to Supplement the Record."

On April 2, 2003, the Board received Petitioners' "Response to Memorandum in Opposition to Motion to Supplement the Record."

On April 7, 2003, the Board issued its "Order on Motions." The Order **granted** Petitioner's motion to supplement the record with the eight submitted items. The Order summarized and set forth the items comprising the record in this case.

C. Dispositive Motions

On March 21, 2003, the Board received "City of Kenmore's Motion to Dismiss for Lack of Subject Matter Jurisdiction;" attached was one exhibit.

On March 27, 2003, the Board received Petitioners' "Rebuttal of Motion to Dismiss."

The City did not file an optional reply brief on the motion to dismiss.

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

On April 7, 2003, the Board issued its "Order on Motions." The Order **denied** Kenmore's motion to dismiss for lack of subject matter jurisdiction**,** finding that development regulations that establish or affect the time period for which permits are valid control development and the use of land. Such regulations are GMA development regulations subject to Board review.

D. Briefing and Hearing on the Merits

On April 28, 2003, the Board received Petitioners' "Prehearing Brief;" no additional exhibits were attached. (**Olsen PHB**).

On May 23, 2003, the Board received "Respondent City of Kenmore's Prehearing Brief," with three attached exhibits [10 documents] (**Kenmore Response**).

On June 3, 2003, the Board received "Appellants' Rebuttal to City of Kenmore Pre-hearing Brief

Response" (**Olsen Reply**).

On June 5, 2003, the Board held a hearing on the merits (**HOM**) in the Board's offices – meeting room adjacent to Suite 2074, 900 4th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, Lois H. North and Joseph W. Tovar were present for the Board. Petitioners Dan Olsen, Bonnie Olsen, Karen McFadden and Allan McFadden appeared *pro se*. Respondent City of Kenmore was represented by Joseph C. Schultz and Michael R. Kenyon. Simi Jain, Board Extern, also attended. Court reporting services were provided by Brenda Steinman from Mills & Lessard, Inc. The hearing convened at approximately 10:00 a.m. and adjourned at 11:30 a.m. No transcript was requested.

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

Petitioners challenge Kenmore's adoption of amendments to development regulations, as adopted by Ordinance No. 02-0157. Pursuant to RCW 36.70A.320(1), Kenmore's Ordinance No. 02-0157 is presumed valid upon adoption.

The burden is on Petitioners, Olsen & McFadden, to demonstrate that the actions taken by Kenmore 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 Kenmore 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 Kenmore'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).

Pursuant to RCW 36.70A.3201 the Board will grant deference to Kenmore in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. As the State Supreme Court has stated, "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board* (***King County***), 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, No. 26425-1-II, 108 Wn.App. 429, 31 P.3d 28 (Wn.App. Div. II, 2001).

In affirming the *Cooper Point* court, the Supreme Court recently stated:

> Although we review questions of law *de novo*, we give substantial weight to the

> Board's interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed "[I]t is well settled that deference [to the Board] is appropriate where an administrative agency's construction of statutes is within the agency's field of expertise . . .

Thurston County v. Western Washington Growth Management Hearing Board, Docket No. 71746-0, November 21, 2002, at 7.

iii. board jurisdiction, issues before the board, and Prefatory note

A. Board Jurisdiction

The Board finds that: 1) the Olsen/McFadden PFR was timely filed, pursuant to RCW 36.70A.290 (2); 2) Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and 3) pursuant to RCW 36.70A.280(1)(a), the Board has subject matter jurisdiction over the challenged ordinance, which amends Kenmore's development regulations.

B. ISSUES BEFORE THE BOARD

RCW 36.70A.290(1) provides in relevant part, "The Board shall not issue advisory opinions on issues not presented to the Board in the statement of the issue [PFR], as modified by any prehearing order [PHO]." As the City correctly noted, the Legal Issues presented in the PFR and reflected in the PHO did not include reference to the City's compliance with RCW 36.70A.470 or chapter 43.21C RCW. Nonetheless, Petitioners briefed and argued these points in prehearing briefing. Since compliance with these statutory provisions was neither presented in the PFR, nor stated in the PHO, the Board will not address them in this Order.

C. Prefatory Note

The Ordinance challenged in this case amends the City of Kenmore's City Code (**KCC**), by adding a section that allows the Director [of Community Development] to grant extensions for commercial site development permits. This was accomplished by adding a new section "C" to KCC 21A.41.100. Ordinance No. 02-0157 provides in relevant part:

> WHEREAS, the City desires to amend KCC 21A.41.100, regarding limitation of permit approval for commercial site development permits, to provide for extensions of time limits for commercial site development permits provided certain findings are made by the Director;
> . . .

Section 1, KCC 21A.41.100 Amended. King County Code[1] Section 21A.41.100 (Limitation of permit approval), adopted by reference in Kenmore Ordinance No. 98-0026, is hereby amended to read as follows:

21A.41.100. Limitation of permit approval.

A. A commercial site development permit approved without a phasing plan shall be null and void if the applicant fails to file a complete building permit application(s) for all buildings within three years of the approval date, or by a date specified by the Director, and fails to have all valid building permits issued within four years of the commercial site development permit approval date; or

B. A commercial site development permit approved with a phasing plan shall be null and void if the applicant fails to meet the conditions and time schedules specified in the approved phasing plan.

C. The Director may grant one or more extension of the time limits set forth in subsections A and B above, each of a duration determined by the Director, if the following findings are made:

a. Initial building permits have not been submitted or the project has not been completed due to causes beyond the applicant's control, such as litigation, acts of God, unanticipated site conditions or adverse economic market conditions;
b. The applicant has shown good faith effort to commence or complete the project within the time previously allotted;
c. Conditions identified as part of SEPA or other permit processes remain appropriate to address project impacts. The Director has the authority to establish additional conditions designed to address incremental changes in project impacts arising or occurring as a result of any extension of time; and
d. The period of extension granted is reasonable in light of the conditions warranting the extension and the incremental changes, if any, in project impacts.

Ordinance No. 02-0157, at 1-2 (*italics* added to indicate amendatory language).

The crux of Petitioners' allegation is that the "extension provisions" of this Ordinance are not guided by Goal 7 of the Act and are not consistent with, and do not implement, the City of Kenmore's Comprehensive Plan. The PFR and PHO set forth three Legal Issues. However, the

Board combines portions of the different issues to address the alleged Goal challenge (part of Legal Issue 1 and 3) and the consistency/implementation challenge (part of Legal Issue 1 and 2).

iv. legal issues

A. GOAL 7

[Part of Legal Issue No. 1 and Legal Issue 3]

The Board's PHO set forth Legal Issue Nos. 1 and 3 as follows:

> 1. *Did the City of Kenmore's (**City**) adoption of Ordinance No. 02-0157 (the **Ordinance**) to amend Ordinance No. 98-0026 fail to comply with the requirements of RCW 36.70A.020 (7)*, RCW 36.70A.130(1), and the Kenmore Comprehensive Plan (the **Plan**) Objective 2.2, Policy LU-2.2.3(b) and (c) [pages 4A 20-21], and Objective 44.3, Policy PS-44.3 [pages 9-27 and 12-80, 12-81], *in that it does not fulfill the mandate for clear, predictable permitting procedures* implemented in a manner that is consistent with the GMA? [*Italics* indicate the Goal portion of this challenge, addressed herein.]
>
> *3. Did the City's adoption of the Ordinance fail to comply with the requirements of RCW 36.70A.020(7) in that it does not comply with the GMA directive to be fair, but instead appears to be fashioned in favor of the Lakepointe development?*

Applicable Law

Goal 7 is found at RCW 36.70A.020(7), which provides, "Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability."

Discussion

Position of the Parties:

In essence, Petitioners assert that the extension process adopted by the City is unfair in its administration and does not ensure predictability since there are no limits on the number or duration of extensions. "It is not possible to predict consequences or to know how to appropriately enforce decisions made under the ordinance." Olsen PHB, at 5, 7-8.

Petitioners further argue, "[T]he Director can grant extensions for an unlimited number of years, as well as multiple extensions for which standards are ambiguous." Olsen Reply, at 5.

The City counters, "[T]his planning goal was adopted to provide certainty to project permit applicants – not third parties – that applications would be timely and fairly processed. . . . [Additionally, the Ordinance] sets forth very specific criteria under which the Planning Director may issue an extension to any holder of a valid commercial site development permit. This 'extension review' process can only occur if all criteria set forth in subsections (a) – (d) of the Ordinance are met. Kenmore Response, at 5.

Analysis:

Planning is about expanding the realm of predictability. Part of the predictability that the GMA provides to citizens is through the future land use map and zoning designations for different parts of the City. These designations delineate lands into different land use categories with different types of land uses allowed. Upon reference to these maps and designations, citizens can then predict that areas designated and planned for commercial development, as here, will ultimately be developed for commercial uses. This predictability remains regardless of the specific applicant that succeeds in obtaining a commercial site development permit and subsequent building permits. In fact, issuance of a commercial site development permit provides more specific detail regarding the type and configuration of commercial development being pursued.

Just as the GMA provides all citizens predictability in the location and type of future growth and development that will be accommodated, those citizens that seek to carry out these GMA Plans – developers and project proponents – seek an additional degree of predictability for pursuing their development proposals. Goal 7 of the GMA addresses this need.

The Board finds that the City's reading of Goal 7 is correct. The "ensure[d] predictability" included in Goal 7 is directed towards, and attaches to project *applicants*. Predictability for a permit applicant is ensured through a permit application review process that is timely and fair.[2] There is nothing in the record to indicate that any of the Petitioners are "applicants" whose timely and fair processing of applications would be directly affected by the extension process. In fact, the City notes that the extension process was not objected to, and was supported by, the project applicants. Kenmore Response, at 5.

The Board notes that the addition of the extension process "diminishes" the predictability originally set forth in KCC 21A.41.100 (A) and (B).[3] Nonetheless, it is clearly within the City of Kenmore's discretion to determine whether it desires a permit extension process or not, and to establish the criteria for granting, denying or otherwise limiting the frequency or duration of such extensions.

While the Board may question the wisdom of the City in granting the Director such broad discretion to extend commercial site development permits indefinitely; such delegation of discretion does not run afoul of Goal 7. That is, the extension process falls within the realm of predictability envisioned by Goal 7. The Board concludes that Petitioners have **failed to carry their burden of proof** in demonstrating that Kenmore's adopted extension process fails to be guided by Goal 7 – RCW 36.70A.020(7).

Conclusion re: Part of Legal Issue 1 and Legal Issue 3

Petitioners have **failed to carry their burden of proof** in demonstrating that Kenmore's adopted extension process fails to be guided by, and comply with, RCW 36.70A.020(7). Regarding this issue, the City of Kenmore's adoption of Ordinance No. 02-0157 was not clearly erroneous.

B. **CONSISTENCY AND IMPLEMENTATION**
[Part of Legal Issue 1 and Legal Issue 2]

The Board's PHO set forth Legal Issue Nos. 1 and 2 as follows:

> 1. *Did the City of Kenmore's (**City**) adoption of Ordinance No. 02-0157 (the **Ordinance**) to amend Ordinance No. 98-0026 fail to comply with the requirements of* RCW 36.70A.020 (7), *RCW 36.70A.130(1), and the Kenmore Comprehensive Plan (the **Plan**) Objective 2.2, Policy LU-2.2.3(b) and (c) [pages 4A 20-21], and Objective 44.3, Policy PS-44.3 [pages 9-27 and 12-80, 12-81], in that it does not* fulfill the mandate for clear, predictable permitting procedures *implemented in a manner that is consistent with the GMA?* [*Italics* indicate the Consistency/Implementation portion of this challenge, addressed herein.]
>
> 2. *Did the City's adoption of the Ordinance fail to comply with the requirements of RCW 36.70A070(preamble), RCW 36.70A.130(1), and the Plan Objective 2.4, Policy LU-2.4.2 [page 4A 23] in that it does not meet the internal consistency requirements of the preamble, and in that it does not meet the requirement in RCW 36.70A.130(1) that amendments to development regulations be consistent with the comprehensive plan?*

Applicable Law

RCW 36.70A.130(1) provides in relevant part:

> (b) Any amendment of or revision to a comprehensive plan shall conform to this chapter. *Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.*

(Emphasis supplied). It is undisputed that the City of Kenmore's development regulations, including the provisions challenged in this matter, are GMA development regulations that must be consistent with and implement Kenmore's Plan. Further, it is undisputed that Ordinance No. 02-0157 amends the City's development regulations, *not* the City of Kenmore's GMA Comprehensive Plan. Olsen PHB, at 1-12; Kenmore Response, at 1-13; and Olsen Reply, at 1-9. The internal consistency provisions of RCW 36.70A.070 (preamble) pertain to internal consistencies within a Plan, which was not amended here. RCW 36.70A.130(1) governs the present matter, not .070(preamble). *See Corrine R. Hensley and Jody L. McVittie v. Snohomish County* (***Hensley IV***), CPSGMHB Case No. 01-3-0004c, Final Decision and Order, (Aug. 15, 2001), at 20. Therefore, the Board need not, and indeed may not, address compliance with this section of the Act.

In their PFR, Petitioners allege that the extension process of Ordinance No. 02-0157, is inconsistent with, and does not implement, the Kenmore Comprehensive Plan. *See* Kenmore's Final Integrated Comprehensive Plan and Environmental Impact Statement, March 2001 (***Plan***). Specifically, Petitioners point to the following Plan Objectives and Policies:

> **Objective 2.2** Prepare clear development regulations consistent with the Comprehensive Plan. *Plan, at 4A-20.*
>
> **Policy LU-2.2.1** Prepare zoning maps, classifications, and development standards that are consistent with the Comprehensive Plan and functional plans. *Plan, at 4A-20.*
>
> **Policy LU-2.2.3** Kenmore's regulation of land use should:
>
> a) Protect public health, safety and general welfare;
>
> b) Implement and be consistent with the Comprehensive Plan and other adopted land use goals, policies and plans;
>
> c) Be expeditious, predictable, clear, straightforward, and internally consistent;
>
> d) Provide clear direction for resolution of regulatory conflict;
>
> e) Be enforceable, efficiently administered, and provide appropriate incentives and penalties;
>
> f) Be consistently and effectively enforced;
>
> g) Create public and private benefits worth their cost;
>
> h) Be coordinated with timely provision of necessary public facilities and

services;

i) Be coordinated with special purpose districts and other public agencies to promote compatible development standards in Kenmore;

j) Be responsive, understandable, and accessible to the public;

k) Provide effective public notice and reasonable opportunities for the public (especially those directly effected) to be heard and to influence decisions;

l) Avoid intruding on activities involving constitutionally protected freedoms of speech, petition, expression, assembly, association and economic competition, except when essential to protect public health, safety and welfare (and then the restriction should be no broader than necessary);

m) Treat all members of the public equally and base regulatory decisions wholly on the applicable criteria and code requirements; and

n) Provide for relief from regulations when they would deprive a property of reasonable use, and when such relief would neither endanger public health and safety nor conflict with adopted land use policies. *Plan, at 4A-20-21*.

Objective 2.4 Coordinate land use, road and utility planning. *Plan, at 4A-22.*

Policy LU-2.4.2 Implement an annual monitoring program to assess land use development trends, and service and infrastructure provision. If service deficiencies, such as a city, county or state roads, public water supply and wastewater treatment, or communication infrastructure are identified, the City of Kenmore and the affected service providers should adopt Capital Improvement Programs to remedy identified deficiencies in a timely fashion, or the City of Kenmore should reassess the land use plan. *Plan, at 4A-23.*

Objective 44.3 Develop and implement permit processes that are timely, predictable and fair to all effected parties. *Plan, at 9-27.*

Policy PS-44.3.1 Review development regulations to ensure they are necessary and directly relate to implementation of the Comprehensive Plan and other State and Federal mandates. Eliminate duplicative and unnecessary regulations. *Plan, at 9-27*.

Discussion

Position of the Parties:

None of the cited Plan Objectives or Policies speaks directly to an extension process for any issued permits or approvals, commercial site development or otherwise. Consequently, there is no blatant inconsistency or implementation failure between the Plan and the implementing regulations.

However, Petitioners argue that the City's Plan "[C]alls for development regulations to be predictable, clear, and straightforward. [Apparently referring to Policy LU-2.2.3(c)] It also states that development regulations should support the timely provision of necessary public facilities and services. [Apparently referring to Policy LU-2.2.3(h)]. . . .[The extension provision] in its current form makes it impossible for the city to fulfill these directives of the comprehensive plan." Olsen PHB, at 4-5. Petitioners continue,

> The ordinance does not provide measurable limits. Ordinance No. 21A.41.100 gives the Director of Community Development freedom to grant an unlimited number of extensions. Such subjective criteria are ambiguous and cannot result in decisions that are predictable. Under this arrangement, the city cannot know when adequate capital facilities will be required to accommodate the needs for infrastructure resulting from development. The city also cannot know when funding for such needs should be in place. . . . In order to enable such decision-making by the City of Kenmore and to comply with the GMA requirements, the ordinance should contain measurable criteria and limits on the extensions allowed developments."

Olsen PHB, at 6.

The City counters that "[The extension] criteria do not provide boundless discretion to the Planning Director. Rather, they embody well-established principles of jurisprudence, including the good faith standard and the concept of reasonableness. [Additionally, the Director's interpretation of those standards is reviewable.]" Kenmore Response, at 5-6.

The City also contends that the allegation that it is impossible for the City to know when adequate public facilities will be required is untrue and unsupported.

> An extension of the commercial site development permit would only provide Kenmore with greater opportunity to insure that appropriate infrastructure is in place for the development. Allowing an extension will not impact the capital facilities originally determined to be required for a project, and, even if it did, the Ordinance ensures that conditions sufficient to address any impacts could be imposed by the Director.

Kenmore Response, at 6-7. The City continues, "The ability of an applicant to apply for an extension conserves Kenmore's resources and public funds (as well as those of the applicant) by reducing duplicative proceedings, thereby satisfying the provisions of the Land Use Element of the Comprehensive Plan. . . . Nothing in the extension process is inconsistent with any portion of the Act of the Plan." Kenmore Response, at 7-8.

Analysis:

Although Petitioners' underlying concern about the timing of when development occurs is understandable, the Board is persuaded by the City. As noted *supra*, the City has discretion to establish an extension process for existing permits if it chooses to do so.

In establishing an extension process, the City has provided criteria[4] to guide the discretion of the Director in making such extension decisions. Petitioners want these criteria to be more measurable. "Measurable" or objective extension criteria are not compelled by either the City's Plan or the GMA even though desirable for Petitioners (and perhaps the Director). The Board notes that the City's extension criteria, or findings that the Director must make, while somewhat subjective, are neither unreasonable nor ambiguous.[5] In short, the extension process chosen by the City appears to be straightforward.

As to the question of the City's ability to provide necessary infrastructure and services to support development, the City seems willing to accept any potential risks associated with altered timing of development. Extensions may, or may not, precipitate the need for modifications to the City's financing plan within the Capital Facilities or Transportation Elements of the City Plan. Nonetheless, necessary infrastructure must be provided. RCW 36.70A.020(12) requires the City's Plan and regulations to "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 standards."[6]
The Board finds that Petitioners have **failed to carry their burden of proof** in demonstrating that Kenmore's adopted extension process is not consistent with, or fails to implement the Kenmore Comprehensive Plan, as required by RCW 36.70A.130(1).

The Board is encouraged that during argument and questioning at the HOM, the City indicated that it would be open to considering modifications to the newly adopted commercial site development permit extension process that might include: specifying appeal procedures; establishing a number of extensions permissible; and limiting the duration of extensions. The

Board encourages the parties to continue talking in order to pursue any appropriate modifications.

Conclusion re: Part of Legal Issue 1 and Legal Issue 2

Petitioners have **failed to carry their burden of proof** in demonstrating that Kenmore's adopted commercial site development permit extension process [KCC 21A41.100(C)] is not consistent with, or fails to implement the Kenmore Comprehensive Plan, as required by RCW 36.70A.130 (1). Regarding this issue, the City of Kenmore's adoption of Ordinance No. 02-0157 was not clearly erroneous.

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:

- Petitioners have **failed to carry their burden of proof** in demonstrating that Kenmore's adopted commercial site development permit extension process is: 1) not guided by Goal 7 – RCW 36.70A.020(7); or 2) not consistent with, or fails to implement the Kenmore Comprehensive Plan, as required by RCW 36.70A.130(1). The City of Kenmore's adoption of Ordinance No. 02-0157 was not clearly erroneous. CPSGMHB Case No. 03-3-0003, *Olsen, et al., v. City of Kenmore*, is **dismissed with prejudice**.

So ORDERED this 30th day of June 2003.

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 pursuant to WAC 242-02-832.

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[1] The City of Kenmore incorporated in 1998. Upon incorporation, it adopted many provisions of the King County Code as an interim land use code for the City of Kenmore. *See* Ordinance No. 98-0026

[2] The Board's reading of Goal 7 is that it is directed to local government development regulations, and the process those regulations set forth for permits, as opposed to local government behavior or conduct generally.

[3] Both KCC 21A.41.100(A) and (B) indicate that if the timeframes and conditions of approved commercial site development permits are not met by the permit holder, the permits become null and void.

[4] *See* Ordinance No. 02-0157, Section 1, amending KCC 21A.41.100(C) (a through d), at 1-2.

[5] As the Board has previously stated:

> The successful delegation of such decisions to administrators will depend largely upon the diligence, competence and judgment of the individuals that local governments place in such roles, yet it is not the place of this Board to make personnel decisions, nor to evaluate their performance.
>
> What is within our realm are the development regulations that provide administrators with clear and detailed criteria so that, in wielding professional judgment, the Director has regulatory "sideboards" and policy direction. Failure to provide such parameters does not just place the administrator in an uncomfortable position – it would undermine, perhaps fatally, the duty of the legislative body to articulate in its adopted development regulations its expectations and requirements with regard to [its regulations].

Pilchuck Audubon Society v. Snohomish County [Master Builders Association and Snohomish County Realtors Association – Intervenors] (***Pilchuck II***), CPSGMHB Case No. 95-3-0047, Final Decision and Order, (Dec. 6, 1995), at 36.

[6] For a Board discussion of Goal 12 of the Act and requirements of the Capital Facility Element, *see: Jody McVittie, et al., v. Snohomish County [Snohomish County-Camano Association of Realtors – Intervenor]* (***McVittie I***), CPSGMHB Case No. 99-3-0016c, Final Decision and Order, (Feb. 9, 2000) and *Jody McVittie, et al., v. Snohomish County [Snohomish County-Camano Association of Realtors – Intervenor, 1000 Friends of Washington - Amicus]*(***McVittie IV***), CPSGMHB Case No. 00-3-0006c, Final Decision and Order, (Sep. 9, 2000).