

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

LAURELHURST COMMUNITY)
CLUB, FRIENDS OF BROOKLYN,)
RAVENNA-BRYANT COMMUNITY)
ASSOCIATION, UNIVERSITY)
DISTRICT COMMUNITY COUNCIL,)
UNIVERSITY PARK COMMUNITY)
CLUB, SEATTLE DISPLACEMENT)
COALITION, HAWTHORNE HILLS)
COMMUNITY COUNCIL and)
NORTHEAST DISTRICT COUNCIL,)
)
 Petitioners,)
)
 v.)
)
CITY OF SEATTLE, a municipal)
corporation; UNIVERSITY OF)
WASHINGTON,)
)
 Respondents.)
)

Case No. 03-3-0016

(Laurelhurst II)

ORDER ON MOTIONS

I. Background

On September 5, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Laurelhurst Community Club, Friends of Brooklyn, Ravenna-Bryant Community Association, University District Community Club, University Park Community Club, Seattle Displacement Coalition, Hawthorne Hills Community Council and Northeast District Council (collectively **Laurelhurst**.) Petitioners challenge the adoption by the City of Seattle’s (the **City** or **Seattle**) adoption of Ordinance No. 121193 and actions taken by the University of Washington (the **UW** or **University**) in approving and executing the First Amendment to the 1988 Agreement Between the City and the University. PFR, at 4.

On September 16, 2003, the Board issued the Notice of Hearing.

On October 3, 2003, the Board received “Supplement to Petition for Review.”

On October 6, 2003, the Board received from the City a “Notice of Filing Index to the Record” (the **City’s Index**). On this same date, the Board also received from the University a “Notice of Filing Index to the Record” (the **University’s Index**).

The Board conducted a prehearing conference in this matter on October 23, 2003 in the Training Room on the 24th floor of the Bank of California Building, 900 Fourth Avenue in Seattle. Present for the Board were members Edward G. McGuire and Joseph W. Tovar, presiding officer. The parties were represented as follows: Jane Kiker for Petitioners; Terese Neu Richmond and T. Ryan Durkan for the University and Bob Tobin for the City. Also present were Michelle Isaacson and Steve Roos.

On September 16, 2003, the Board issued the “Prehearing Order” (the **PHO**) in this matter.

On November 14, 2003, the Board received “Petitioners’ Motion to Supplement the Record and Memorandum in Support” (the **Laurelhurst Motion to Supplement**) attached to which were forty-three proposed supplemental exhibits. On this same date, the Board received from the City and the University “Respondents’ Motion to Dismiss Petition for Review” (the **City/UW Motion to Dismiss**) attached to which were Exhibits A through E.

On November 21, 2003, the Board received “Petitioners’ Response to City of Seattle’s and University of Washington’s Motion to Dismiss” (the **Laurelhurst Response**) attached to which was the “Declaration of Jeannie Hale in Support of Petitioners’ Response to City of Seattle’s and University of Washington’s Motion to Dismiss. On this same date, the Board received “The City/UW Response to Petitioners’ Motion to Supplement the Record” (the **City/UW Response**).

On November 26, 2003, the Board received “Petitioners’ Reply on Motion to Supplement the Record” (the **Laurelhurst Reply**) attached to which was a letter dated April 10, 2003 from Matthew Fox to the Seattle City Council (the **April 10, 2003 Fox letter**) and a copy of an email dated July 9, 2002 from Diane Sugimura to Stephanie Haines (the **July 9, 2002 Sugimura email**). On this same date, the Board received “Respondents’ Reply to Petitioners’ Motion to Dismiss Petition for Review” (the **City/UW Reply**).

II. FINDINGS OF FACT

1. The City of Seattle adopted its GMA comprehensive plan in 1994 in Ordinance No. 117221. *Legislative History of Comprehensive Plan, Seattle Comprehensive Plan, Toward a Sustainable Seattle*, at v. See *Laurelhurst I*, Order on Motions, Findings of Fact. [\[1\]](#)

2. On the Seattle Future Land Use Map, the University of Washington Campus is partially located in the University Community Urban Center (UCUC) neighborhood, which was adopted by the City in Ordinance No. 119235. *Montlake Community Club, et al., v. City of Seattle*, CPSGMHB Case No. 99-3-0002c, Order on Dispositive Motions, Apr. 23, 1999, at 15. *Laurelhurst I*, Order on Motions, Findings of Fact.
3. Policy UC-P32 of the UCUC states, “in pursuit of Comprehensive Plan Policy L130, ensure that the University Community plays an active role in the UW’s Campus Master Plan on subjects of mutual interest.” *Seattle’s Comprehensive Plan: Toward a Sustainable Seattle, University Community Urban Center*, at NP-180. *Laurelhurst I*, Order on Motions, Findings of Fact.
4. The City of Seattle’s land use and zoning code (Seattle Municipal Code – SMC) is a GMA document, adopted pursuant to the GMA. “WHEREAS, the Council has determined that (various land use policies of the City) should be integrated with the Comprehensive Plan and development regulations to avoid multiple policy documents, and to implement the Growth Management Act as interpreted by the Growth Management Hearings Board; and . . .” *See* Ordinance No. 120691, adopted December 17, 2001. *Laurelhurst I*, Order on Motions, Findings of Fact.
5. The City of Seattle’s Major Institutional Ordinance (MIO), including the major institutional overlay provisions (chapter 23.69 SMC), is a GMA development and implementing regulation. *See* Ordinance No. 120691. *Laurelhurst I*, Order on Motions, Findings of Fact.
6. The 1998 Agreement (the **1998 Agreement**) between the City of Seattle and the University of Washington took effect on October 1, 1998. The 1998 Agreement contains applicable policies and implementation guidelines for the University. Appendices to Petitioners’ Response, B-5.24. *Laurelhurst I*, Order on Motions, Findings of Fact.
7. The 1998 Agreement between the City and the University of Washington was adopted as an amendment to the City’s MIO. *See* Ordinance No. 120691, Section 22, amending 23.69.006. *Laurelhurst I*, Order on Motions, Findings of Fact.
8. The 1998 Agreement sets forth the “Procedures for Consideration, City Approval and University Adoption of the University Master Plan.” Section II B 1-13, 1998 Agreement, at 5-7. *Laurelhurst I*, Order on Motions, Findings of Fact.
9. The Agreement provides that the University will formulate a ten year conceptual Master Plan and EIS that include the specific elements such as boundaries outlined by SMC, zone

designations, site-plan, traffic, transportation, and development phases, outlined in Section II of the Agreement, “Master Plan and Cumulative Impacts.” Appendices to Petitioners’ Response, B-5.24. *Laurelhurst I*, Order on Motions, Findings of Fact.

10. The Seattle City Council adopted Ordinance No. 121193 on June 16, 2003. PFR, Attachment 1.

11. The caption of Ordinance No. 121193 reads “AN ORDINANCE authorizing the execution of the First Amendment to the 1998 Agreement Between the City of Seattle and the University of Washington to revise land acquisition and leasing provisions of that Agreement.” *Id.*

III. MOTION TO SUPPLEMENT THE RECORD

The Laurelhurst Motion to Supplement addresses forty-three specific items the Petitioners seek to have included in the record: (1) two City of Seattle ordinances or resolutions; (2) five sets of meeting minutes of the City University Citizens Advisory Committee (**CUCAC**); (3) four University of Washington Annual Reports regarding Leasing and Acquisition in Impact Zones; (4) two reports prepared by the City of Seattle Department of Design, Construction and Land Use; and (5) thirty other documents of various types. Petitioners present argument that the offered supplemental exhibits will satisfy the criteria for supplementation of the record by providing a better “context” for consideration of the issues presented in the Motion to Dismiss. Laurelhurst Motion to Supplement, at 1-19. Laurelhurst Reply, at 1-14.

Respondents argue that the Board should defer ruling on the Laurelhurst Motion to Supplement or, if it does not defer the ruling, to deny the motion, or if it grants the motion, to provide an opportunity to offer rebuttal evidence. The City/UW Response, at 1-6.

After considering the offered exhibits, the arguments of the parties, and the Board’s Rules of Practice and Procedure, the Board rules on the Laurelhurst Motion to Supplement the Record in the summary table below:

- “Admitted” means that the Board has determined, pursuant to WAC 242-02-540, that the offered exhibit may be necessary or of substantial assistance to the Board in rendering its decision. Each “admitted” exhibit becomes a supplemental exhibit and is assigned a Supplemental Exhibit No.
- “Board takes notice” means that the Board recognizes the existence of a decision, order, statute, ordinance, resolution or document adopted by such instrument and that, pursuant to

WAC 242-02-660, the Board takes official notice. Each such exhibit is assigned a Supplemental Exhibit Index No. However, since the Board may not have access to a copy of such documents, the party offering the exhibit shall provide a complete copy to the Board.

- “Denied” means that the Board has determined these offered exhibits are not necessary or of substantial assistance to the Board in rendering its decision. No reference to “denied” exhibits may appear in the prehearing briefs.

Offered Exhibit No.	Date	Description	Ruling	Supplemental Ex. No.
LCC 1	1/7/03	DCLU Report to City Council on Major Institution Status Reports for the 2001 Reporting Period	Admitted	Supp.Ex. 1
LCC 2	3/26/97	DCLU City-University of Washington Agreement Discussion Paper	Admitted	Supp.Ex. 2
LCC 3	2000	2000 Annual Report, UW General Physical Development Plan (City CMP Record Index 5.28)	Admitted	Supp.Ex.3
LCC 4	1999	1999 Annual Report, UW General Physical Development Plan	Admitted	Supp.Ex.4
LCC 5	1998	1998 Annual Report, UW General Physical Development Plan	Admitted	Supp.Ex.5
LCC 6	1997	1997 Annual Report, UW General Physical Development Plan	Admitted	Supp.Ex.6
LCC 7	11/16/98	Ordinance No. 119230, Amending Seattle Comprehensive Plan to incorporate portions of the UCUC plan	Board Takes Notice	Supp.Ex.7
LCC 8	8/29/98	University Community Urban Center Plan	Admitted	Supp.Ex. 8
LCC 9	8/1997	Economic Analysis of Development Potential in University Community Urban Center	Admitted	Supp.Ex. 9
LCC 10	6/1997	UCUC Neighborhood Planning News	Admitted	Supp.Ex.10
LCC 11	11/27/02	Memo to all Councilmembers transmitting comments from parties on the Council’s preliminary decision (City CMP Record Index 1.8)	Admitted	Supp.Ex.11

LCC 12	10/9/02	<p>Comments received on City Council's Preliminary Decision (redacted per 11/27/02 memo):</p> <ul style="list-style-type: none"> • University of Washington • City University Community Advisory Committee • University District Community Council • Friends of Brooklyn (Brian [sic] Ramey) • Friends of Brooklyn (Richard Ellison) • University Park Community Club (Willie Williams) • University Park Community Club (Douglas Wills Jr.) • Laurelhurst Community Club (Peter Elick) • Northeast District Council (Bonnie Miller) • Northeast District Council (Hans Aschenbach) <p>(City CMP Record Index 1.11)</p>	Admitted	Supp.Ex.12
LCC 13	9/9/02	Resolution 30496 (v.4) Full Council Preliminary Decision, with Attachment 1 – Seattle City Council Preliminary Recommendation for Amendment of the University of Washington Master Plan (City CMP Record Index 2.1)	Board Takes Notice	Supp.Ex.13
LCC 14	8/12/02	Briefing Paper for City Council Briefing Meeting on UW Campus Master Plan (City CMP Record Index 2.8)	Admitted	Supp.Ex.14
LCC 15	8/5/02	Transportation Issues Decision Agenda for August 6 Land Use Committee (City CMP Record Index 2.9)	Admitted	Supp.Ex.15
LCC 16	8/5/02	Development Issues Decision Agenda for August 6 Land Use Committee (City CMP Record Index 2.10)	Admitted	Supp.Ex.16

LCC 17	8/5/02	Housing, Neighborhood Impacts and Miscellaneous Issues Decision Agenda for August 6 Land Use Committee (City CMP Record Index 2.11)	Admitted	Supp.Ex.17
LCC 18	7/15/02	Decision Agenda for July 16 Land Use Committee (City CMP Record Index 2.12)	Admitted	Supp.Ex.18
LCC 19	7/15/02	Partial transcript of Land Use Committee meeting re: University of Washington Ten-Year Campus Master Plan (City CMP Record Index 6.1)	Admitted	Supp.Ex.19
LCC 20	7/2/02	Memo to all Councilmembers, attaching recommendations to the Land Use Committee about possible amendments to the proposed UW Master Plan (City CMP Record Index 2.13)	Admitted	Supp.Ex.20
LCC 21	6/18/02	Copy of Comments at Land Use Committee by Matthew Fox, University District Community Council (City CMP Record Index 3.2)	Admitted	Supp.Ex.21
LCC 22	6/17/02	Friends of Brooklyn's Response to UW Response (Brian Ramey) (City CMP Record Index 3.8)	Admitted	Supp.Ex.22
LCC 23	6/11/02	UW Rebuttal to Response Documents (City CMP Record Index 3.10)	Admitted	Supp.Ex.23
LCC 24	6/6/02	Laurelhurst Community Club's Response to State Attorney General's Office Suggested Corrections to Hearing Examiner's Report (City CMP Record Index 3.12)	Admitted	Supp.Ex.24
LCC 25	6/6/02	University District Community Council's response to State Attorney General's Office Suggested Corrections to Hearing Examiner's Report (City CMP Record Index 3.14)	Admitted	Supp.Ex.25
LCC 26	6/6/02	Friends of Brooklyn's Response (City CMP Record Index 3.15)	Admitted	Supp.Ex.26

LCC 27	5/29/02	Briefing Paper: Summary – University of Washington Seattle Campus Master Plan (City CMP Record Index 3.20)	Admitted	Supp.Ex.27
LCC 28	5/24/02	Laurelhurst Community Club’s Response to Request for Clarification, with copies of earlier comment letters from LCC (City CMP Record Index 3.25)	Admitted	Supp.Ex.28
LCC 29	5/24/02	University District Community Council’s Response to Request for Clarification (City CMP Record Index 3.26)	Admitted	Supp.Ex.29
LCC 30	5/24/02	Friends of Brooklyn’s Response to Request for Clarification, with enclosures (Brian Ramey) (City CMP Record Index 3.28)	Admitted	Supp.Ex.30
LCC 31	5/17/02	University Park Community Club Clarification Letter (Douglas Wills, Jr.) (City CMP Record Index 3.31)	Admitted	Supp.Ex.31
LCC 32	5/16/02	Friends of Brooklyn Letter Describing Testimony to be Given (Brian Ramey) (City CMP Record Index 3.34)	Admitted	Supp.Ex.32
LCC 33	4/12/02	University of Washington’s Letter re public hearing, noting corrections to Hearing Examiner’s findings (City CMP Record Index 3.41)	Admitted	Supp.Ex.33
LCC 34	6/17/02	Memo from Bob Morgan to Council Committee re Supplementation of the record re the UW Seattle Campus Master Plan (City CMP Record Index 4.21)	Admitted	Supp.Ex.34
LCC 35	4/1/02	Findings and Recommendation of the Hearing Examiner (City CMP Record Index 5.2)	Admitted	Supp.Ex.35
LCC 36	3/11/03	CUCAC Meeting Summary	Admitted	Supp.Ex.36
LCC 37	9/24/02	CUCAC Meeting Summary	Admitted	Supp.Ex.37
LCC 38	9/10/02	CUCAC Meeting Summary	Admitted	Supp.Ex.38
LCC 39	6/12/01	CUCAC Meeting Summary	Admitted	Supp.Ex.39

LCC 40	3/9/99	CUCAC Meeting Summary	Admitted	Supp.Ex.40
LCC 41	6/26/03	Email from Richard Conlin re June 26, 2003 edition of Making It Work (contents: UW property leasing/Making the University District Thrive)	Denied	
LCC 42	6/3/03	Email from Nick Licata re Urban Politics #157 – Lifting the UW Lease Lid	Denied	
LCC 43	6/6/02	Letter from Laurelhurst Community Club (Jeannie Hale) to Bob Morgan, Seattle City Council, re Response to State Attorney General’s Office Suggested Corrections to the Hearing Examiner’s Report (<u>unredacted</u> , with attachments)	Admitted	Supp.Ex.41

In addition, the Board notes that neither the April 10, 2003 Fox letter nor the July 9, 2002 Sugimura email were offered by a Motion to Supplement. Unless these documents appear in the City’s Index or the University’s Index, they are not part of the record before the Board.

iv. MOTION TO DISMISS

The City and the UW seek to dismiss the Laurelhurst PFR based on two grounds. First, the Respondents argue that the Board lacks subject matter jurisdiction. City/UW Motion to Dismiss, at 4-9. Second, the Respondents argue that the Petitioners lack standing. City/UW Motion to Dismiss, at 9-12. Laurelhurst’s response includes a counterstatement to the facts presented by the City and University. Laurelhurst Response, at 2-6. Petitioners ask that the Board dismiss the City/ UW Motion to Dismiss, and argue that the Board has jurisdiction over the adoption and elimination of the 1998 City-University Agreement Leasing and Acquisition Restrictions. Laurelhurst Response, at 6-17. Petitioners also argue that the City/UW arguments regarding standing fail. Laurelhurst Response, at 37.

The Board’s PHO provides in part:

Generally, the Board will consider only motions that address purely legal issues (as contrasted with issues of fact or mixed legal and factual issues.) Therefore, if any material facts are in dispute, the Board will not decide a dispositive motion until its Final Decision and Order.

PHO, at 3.

Here, it is apparent to the Board that not only do the parties disagree on the law, but there is fundamental disagreement about factual issues, including the appropriate scope, relevance and weight of facts that the Board should consider in reaching its decision. As determined in Section III, *supra*, in addition to the supplemental facts that the Board admits with this order, there may be additional facts that the Respondents offer in the nature of rebuttal evidence.

The Board concludes that it would be inappropriate to decide the City/UW Motion to Dismiss prior to the Final Decision and Order. The Board enters no ruling on the City/UW Motion to Dismiss at this time and will invite the parties to provide briefing and oral argument on the relevance and appropriate weight of any supplemental or rebuttal evidence before doing so.

V. order

Based upon review of the Petition for Review, the pleadings of the parties, the facts set forth above, and having deliberated on the matter, the Board ORDERS:

1. The Record before the Board is supplemented with the Supplemental Exhibits 1 through 41 identified in Section III , *supra*.
2. The City and the University may, at their discretion, submit to the Board, with a copy served simultaneously on Laurelhurst, offered rebuttal evidence in response to the Supplemental Exhibits named above. Any such offered rebuttal evidence must be filed, with supporting memoranda, at the time of the submittal of the City/UW Response Brief on the merits.
3. Petitioners may file with the Board, with a copy served simultaneously on opposing counsel, any objection to any offered rebuttal evidence, by **noon on Wednesday, Jan. 14, 2004.**
4. The Board will issue an order ruling on the admissibility of any offered rebuttal exhibits by **noon on Friday, Jan. 16, 2004.**
5. The Board will not rule on the Motion to Dismiss at this time. The Board does not intend to rule on the Motion to Dismiss until after the hearing on the merits.
6. Each party may, at its discretion, include additional argument regarding the Motion to Dismiss in its opening brief on the merits and at the hearing on the merits.

So ORDERED this 5th day of December 2003.

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

[\[1\]](#)

The Board may take official notice of prior decisions. WAC 242-02-660(6). *Laurelhurst I* is the short caption for an earlier case titled *Laurelhurst, et al., v. City of Seattle*, CPSGMHB Case No. 03-3-0008c. Findings of Fact 1 through 9 cited in Section II, *supra*, appear in the *Laurelhurst I* Order on Motions, June 6, 2003.