

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

JASON KAP and FRIENDS OF 172ND,)	Case No. 06-3-0026
)	
Petitioners,)	
)	(Kap II)
v.)	
)	
CITY OF REDMOND,)	FINAL DECISION and ORDER
)	
Respondent.)	
)	
)	
)	

SYNOPSIS

On June 30, 2006, the Central Puget Sound Growth Management Hearings Board received a Petition for Review from Jason Kap and Friends of 172nd, a non-profit organization. The Petition challenged Ordinance 2287, which adopted specific sections of the City of Redmond’s Transportation Master Plan as an amendment to the Transportation and Capital Facilities Elements of the City’s Comprehensive Plan.

The Petitioners’ challenge alleges that several portions of the Growth Management Act had been violated. Included in their complaint are RCW 36.70A.100 and RCW 36.70.020 (3) and (11), dealing with consistency and coordination between the City of Redmond and King County along with RCW 36.70A.070(6) (b), 36.70A.020 (12) and 36.70A.070(6)(a)(iii)(B), dealing with regional coordination.

The Board found that the Petitioners did not carry their burden of proof to demonstrate that the City was clearly erroneous in its adoption of Ordinance 2287 and dismissed the Petition for Review in its entirety.

I. BACKGROUND¹

On June 30, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Jason Kap and Friends of 172nd, a Washington non-profit organization, (**Petitioners** or **Kap**), challenging the City of Redmond’s (**Respondent** or the **City**) adoption of Ordinance 2287. With Ordinance 2287, the City adopted specific sections of its Transportation Management Plan and

¹ See Appendix A for full procedural history.

amended the Transportation and Capital Facilities Element of the City's Comprehensive Plan.

During the months of September and November 2006, the Board received two separate stipulated motions for a settlement extension from the parties. Both of these requests were granted.

On February 20, 2007, the Board held a Hearing on the Merits (**HOM**) at the Board Offices at 10 AM. Board Member Dave Earling presided, with Board members Margaret Pageler and Ed McGuire and legal extern Moani Russell in attendance. Richard Aramburu represented the Petitioner and James Haney represented the Respondent. The Hearing on the Merits afforded the Board the opportunity to ask a number of questions and develop a clear understanding of the City's process and Petitioner's challenge. Court Reporter services were provided by Rebecca Mayse at Byers & Anderson.

Subsequent to the HOM, the Board received information in response to specific requests made by Board Members Pageler and McGuire at the HOM. The Petitioners objected to the materials furnished by the Respondent. The Board notified the parties, via e-mail, that the Petitioners' objection to the submittal of the additional material would be addressed in the Final Decision and Order (**FDO**).

II. PRESUMPTION OF VALIDITY

Petitioner challenges Redmond's adoption of Ordinance No. 2287, adopting the City's Transportation Management Plan (**TMP**). Pursuant to RCW 36.70A.320(1), Ordinance No. 2287 is presumed valid upon adoption.

The burden is on the Petitioner to demonstrate that the action taken by the City of Redmond is not in compliance with the goals and 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 actions taken by [the City of Redmond] are 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 the City'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, 849 P.2d 646 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to the City in how it plans for growth, provided that its planning actions or policy choices are consistent with, and comply with, the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that

deference to county [and city] planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

The *Quadrant* decision is in accord with prior rulings that "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). As the Court of Appeals explained, "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*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15, 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240 (2005). And *see*, most recently, *Lewis County*, 157 Wn 2d 488, 139 P.3d 1096 (2006) at fn. 16: "[T]he GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds."

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PRELIMINARY MATTERS, and PREFATORY NOTE

A. BOARD JURISDICTION

The Board finds that Kap's PFR was timely filed, pursuant to RCW 36.70A.290; Kap has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which amends Redmond's *Comprehensive Plan and development regulations*, pursuant to RCW 36.70A.280(1)(a).

B. PRELIMINARY MATTERS

1. Supplemental Evidence

At the HOM, the Board requested that the City provide a copy of documents contained within the Record. HOM Transcript at 59. Specifically, the Board requested Index Item No. 77, a March 8, 2006 e-mail exchange between the City and King County Department of Transportation regarding the 172nd Avenue Northeast corridor study with attachments. *Id.* In addition to this item, the City provided Index Item No. 73, a January 13 and January 26, 2006 e-mail exchange between the City and King County relating to the corridor study.

The Petitioners objected to the inclusion into the record of these documents because they were not part of City's Response brief, citing WAC 242-02-52001. In reply, the City asserted that WAC 242-02-640(7) permits that Board to receive supplemental evidence at a hearing in response to a question by the Board. The City noted that it provided Index No. 73 because it believed that the Board would be interested in this document as it was similar to Index No. 77.

Discussion

At the HOM, pursuant to WAC 242-02-640(7), the Board specifically requested the City to provide the Board with a copy of Index No. 77. HOM Transcript at 59. The City did just this. Although the Board did not request a copy of Index No. 73, this document is part of the City's Record in this matter and pertains to the same/similar subject matters as Index No. 77. Therefore, the Board sees no basis for Petitioners' objections. These items are part of the Record for the City in making its decision in the challenged action and were specifically requested by the Board. These exhibits are included as part of the City's exhibits in this matter.

2. Petitioners' reference to RCW 36.70A.070(6)(a)(v) and *West Seattle Defense Fund*.

Also at the HOM, the City objected to the Petitioner's argument pertaining to intergovernmental impacts and assessments, and their reliance on the Board's holding in *West Seattle Defense Fund*. HOM transcript at 22. The City's objection was grounded in a belief that this argument, and the statutory section it relies on, was not raised by the Petitioners as a legal issue or within their opening briefing, rather solely in the Reply Brief and at the HOM. *Id.* at 22-23.

The City is correct; with these arguments the Petitioners seek to introduce a new issue – did the City's actions violate RCW 36.70A.070(6)(a)(v)² which requires that the City perform an assessment of the impacts of its transportation plan on adjacent jurisdictions, including King County? RCW 36.70A.290(1) prohibits the Board from issuing opinions on “issues not presented to the board in the [Petitioner's] statement of issues, as modified by any prehearing order.”

None of the Petitioners' Legal Issues specifically cite to the impacts and needs assessments as set forth in .070(6)(a)(v) and referenced in the *West Seattle Defense Fund* cases (CPSGMHB Case No. 94-3-0016 (April 4, 1995); CPSGMHB Case No. 96-3-0033 (March 24, 1997)). Any arguments based on these assertions were not made until the Petitioners filed their reply brief and/or at the HOM. *See* Petitioners' Reply at 4-5, 11-12; HOM Transcript at 16, 19-20. Accordingly, the Board strikes any reliance

² This section of the GMA requires that the Transportation Element contain a sub-element which addresses intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions.

by the Petitioners on .070(6)(a)(v) and the *West Seattle Defense Fund* holdings pertaining to intergovernmental impacts and assessments required under .070(6)(a)(v).

C. PREFATORY NOTE

The six legal issues identified in the Prehearing Order fall into two broad categories. The first four legal issues assert violations of RCW 36.70A.100 and RCW 36.70A.020(3) and (11), which require consistency and coordination between a jurisdiction's comprehensive plan and the plans of adjacent jurisdictions.. Issues 5 and 6 assert violations of 36.70A.070(6) and 36.70A.020(12), which require that cities and counties adopt level of service standards and that transportation plans should be regionally coordinated.

The Board will first discuss Legal Issues 1 to 4, pertaining to consistency and coordination, and then discuss Legal Issues 5 and 6, pertaining to regional coordination.

All briefing received by the Board was timely. This FDO refers to the briefing received as:

- Opening brief - Petitioners: **Petitioners' PHB**
- Response brief - Respondent: **Redmond Response**
- Reply brief – Petitioners: **Petitioners' Reply**.

IV. THE CHALLENGED ACTION AND CONTEXT

On May 2, 2006, the City of Redmond adopted Ordinance 2287, which approved the City's Transportation Master Plan (**TMP**) as part of its Comprehensive Plan. The stated purpose of the ordinance is to adopt a document which contains specific features comprising Redmond's transportation system, including programs, projects and services that are necessary to support planned land issues. Index No. 86. In addition, Ordinance 2287 amended the transportation and capital facilities elements of the City's Comprehensive Plan by inserting references to the TMP within these elements. One of the projects approved within Ordinance 2287 is a roadway extension (Project RED-TOM-007) which proposes to develop an extension of 172nd Avenue NE from NE 122nd Street to NE 124th Street.

The Petitioners' neighborhood currently is adjacent to the northern city limits of Redmond, but is located within unincorporated King County. The basis of the Petitioners' challenge is their contention that when the extension is completed, additional traffic would impact their neighborhood as the street would serve as a connector, creating a new corridor from NE 111th to NE 128th and channeling traffic into State Route 202 and Avondale Road in King County. Petitioners additionally contend that because their neighborhood does not currently have sidewalks, curbs or gutters and their homes front 172nd Avenue NE, potential traffic safety issues will be created by the City's proposal. In light of these project related concerns, Petitioners

filed its PFR challenging whether Redmond's transportation planning was coordinated and consistent with King County's transportation planning in the area.

V. LEGAL ISSUES AND DISCUSSION

LEGAL ISSUES NOS. 1, 2, 3, and 4 – Consistency and Coordination

The Board's Prehearing Order states the legal issues as follows:

Legal Issue No. 1. Does the action of the City in approving the TMP with the 172nd Ave NE Extension violate the terms of RCW 36.70A.100 and RCW 36.70A.020(3) and (11) requiring coordination with adjacent jurisdictions when the approval of the TMP was not coordinated with King County and when the action of the City will add traffic to a transportation corridor (NE 124th ST and NE 128th Street between SR 202 and Avondale Road) which does not meet King County travel time standards as found in its [King County's] Comprehensive Plan, including Policies T-210 and T-501?

Legal Issue No. 2. Does the action of the City in approving the TMP with the 172nd Ave NE Extension violate the terms of RCW 36.70A.100 and RCW 36.70A.020(3) and (11) requiring consistency with adjacent comprehensive plans because the action of the City will add traffic to a transportation corridor (NE 124th Street and NE 128th Street between SR 202 and Avondale Road) which does not meet King County travel time standards as found in its [King County's] Comprehensive Plan, including Policies T-210 and T-501?

Legal Issue No. 3. That portion of 172nd Ave NE in King County is neither designed, intended nor constructed for use as a collector, connector or arterial street that would carry the traffic volumes that will result from the approval and construction of 172nd Ave NE Extension. As such, does the approval of the 172nd Ave NE Extension violate the terms of RCW 36.70A.100 and RCW 36.70A.020(3) and (11) because it is not coordinated with the King County comprehensive plan and designations for this road?

Legal Issue No. 4. That portion of 172nd Ave NE in King County is neither designed, intended nor constructed for use as a collector, connector or arterial street that would carry the traffic volumes that will result from the approval and construction of 172nd Ave NE Extension. As such, does the approval of the 172nd Ave NE Extension violate the terms of RCW 36.70A.100 and RCW 36.70A.020(3) and (11) because it is not consistent with the King County comprehensive plan and designations for this road?

Applicable Law

Chief among the many tenets of the GMA is to encourage neighboring cities and counties to plan and coordinate comprehensive plans. RCW.36.70A.100 provides (Emphasis added):

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be *coordinated with, and consistent with*, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

The GMA sets forth 13 planning goals to be carried out by cities and counties in order to guide development and the adoption of comprehensive plans and development regulations. Petitioners raise issue with two goals (Emphasis added):

RCW 36.70A.020(3): “Transportation. Encourage efficient multi-modal transportation systems that are based on regional priorities and *coordinated with county and city comprehensive plans.*”

RCW 36.70A.020(11): “Citizen participation and coordination. Encourage the involvement of citizens in the planning process and *ensure coordination between communities and jurisdictions* to reconcile conflicts.

Position of the Parties

As a preamble to Petitioners’ first four issues, Petitioners indicate that: “RCW 36.70A.100 and RCW 36.70A.020(3) and (11) require that the comprehensive plan of each city that is adopted pursuant to the GMA [*i.e.* per RCW 36.70A.040] be *coordinated with, and consistent with*, the comprehensive plans adopted by other counties or cities with which the city has, in part, common borders or related regional issues. King County and the City of Redmond have common borders.” *See* PFR Issues 3.1, 3.2, 3.3, 3.4, at 3-4.

Petitioners argue that the opening of 172nd Avenue NE between NE 122nd Street and NE 124th Street will cause a dramatic increase in traffic volume and pose increased safety risks, altering the quality of life in their neighborhood. According to the Petitioners, opening 172nd Avenue NE will divert traffic through their neighborhood which now moves east-west on NE 124th Way and 128th Street, both of which connect Avondale Road with the Woodinville-Redmond Road. Petitioner PHB, at 10. The Petitioners assert that the proposed extension of 172nd Avenue NE would permit traffic from this existing corridor to bypass these roadways and provide a southern link to Redmond, causing disruption to their neighborhood. *Id.*

Petitioners argue that 36.70A.100 requires the City to ensure that its comprehensive plan is coordinated with King County’s plan. *Id.* at 8. Petitioners cite two King County Comprehensive Plan Transportation Element policies in support of this allegation – T209, defining the Level of Service (LOS) standard and T210, designating the LOS standard of “E” for Urban Areas and Rural Towns and the LOS standard “B” for Rural Areas.³ *Id.* at 5. The Petitioners then go on to cite to, and build their argument on, King County Code (KCC) 14.70 which addresses traffic concurrency. According to the Petitioners, this section of the KCC states that development should not be permitted in areas that have been designated as a “red zone” under KCC 14.70.230. *Id.* at 5-6, Petitioners’ Exhibit No. 5, Index 63. The Petitioners allege that the extension of 172nd Avenue NE would funnel traffic into the NE 124th Way and 128th NE corridor, a red zone under the county’s plan. *Id.*

Additionally, the Petitioners allege that traffic volume will increase “six-fold” on 172nd Avenue NE and that the County’s portion of the road is not designed to carry this volume of traffic. *Id.* at 10. The end result, according to the Petitioners, is neighborhood incompatibility and traffic safety issues. *Id.* The Petitioners assert that there is no evidence in the record which shows that the City requested King County to undertake construction of the County’s portion of 172nd Avenue NE, so to accommodate the increased volumes. *Id.*

Petitioners contend no meaningful coordination or consultation occurred between the City and County regarding the proposed project. Petitioners allege the record is devoid of any such consultation and the City has a responsibility to coordinate its plan with that of the County, including the LOS deficiencies on King County roads, via direct action by the City. *Id.* at 11-13.

³ The Petitioners’ PHB (at 5) notes two policies - T209 and T210 - of the Transportation Element for King County’s Comprehensive Plan. However, review of the County’s Transportation Element reveals that what Petitioners reference as T209 is, in actuality, the introduction of Chapter 6, Section C – Level of Service Standards.

Chapter 6(C): Level of service is a qualitative measure that describes traffic flow and is often represented by a system using the letters A through F. Level of Service A is the highest quality of service and Level of Service F is the lowest. Level of Service B is indicative of stable traffic flow. However, unlike Level of Service A, operating speed is beginning to be restricted by other traffic. At Level of Service E, operation is unstable, and speeds are reduced but will fluctuate widely from point to point. There is little independence of speed selection and maneuverability at Level of Service E. Level of Service F is indicative of forced flow of traffic with extremely low speeds and long delays at intersections.

King County uses two sets of measures to determine whether a proposed development meets the LOS standards. They are in averaging of traffic congestion on roadways in the area and a measure of traffic congestion in an individual corridor. Area-wide averaging is used to judge performance of the road system as measured against the adopted LOS standards. An individual corridor measure is used to judge performance of monitored corridors as measured against the adopted LOS standards.

T210: The level of service (LOS) standard for the Urban Area and designated Rural Towns shall be E except as provided in Policy T-212. The LOS standard for the Rural Area shall be B except as provided in Policy T-212. These standards shall be used in concurrency testing.

In response, the City asserts that 36.70A.100 requires consistency only between the comprehensive plans of adjacent jurisdictions and not the comprehensive plan of one jurisdiction and the development regulations of another. Redmond Response, at 7. The City cites several Central Board cases in support of this position including *Pruitt v. Eatonville*, *SOS v. Kent* and *Snoqualmie/Issaquah v. King County*. *Id.* at 8. The City argues that since its TMP is a comprehensive plan amendment, it is not required to be consistent with KCC 14.70, which is a county development regulation. *Id.* The City further argues that even if the Board were to determine that the TMP must be consistent, the City's planned extension of 172nd Avenue NE long predates the failing LOS of the NE 124th Way/NE 128th Street corridor and thus it cannot be required to be consistent with today's traffic condition. *Id.* at 8-9.

The City goes on to an exercise in statutory construction, namely the meaning of "development" and "consistency." Redmond Response, at 10-11. The City contends that the extension of 172nd Avenue NE is not "development" but simply a change in traffic circulation. *Id.* at 11. Accordingly, the King County plan is not applicable because its concurrency requirements speak to traffic impacts caused by residential and non-residential development. *Id.* at 10-11. Further, the City argues that "consistency" requires compatibility and that the Petitioners have not demonstrated that the 172nd Avenue NE extension would cause any area of unincorporated King County to fall below the County's required LOS E standard that is applicable to the area. *Id.* at 11-15. According to the City, the Record presented at the SEPA appeal (Exhibit 7 of City's Response) for the matter demonstrates that the City's traffic modeling showed key intersections would operate efficiently with or without the project. *Id.* at 13-14.

As for "coordination," the City asserts that the GMA does not equate this term to "consultation" as the Petitioners supposedly claim. *Id.* at 17 (*citing SOS v. Kent*, CPSGMHB Case No. 04-3-0019, FDO (Dec. 16, 2004)). Rather, what "coordinate" requires is for the City and County plans to "work together in a coordinated fashion to achieve the goals of the GMA." *Id.* (*citing Lawrence Michael Invs. LLC v. Woodway*, CPSGMHB Case No. 98-3-0012, FDO (Jan. 8, 1999); *WSDF I v. Seattle*, CPSGMHB Case No. 94-3-0016, FDO (April 4, 1995)). In addition, the City argues that any required "consultation" can be satisfied by compliance with the public participation requirements of the GMA. *Id.*

The City asserts that Goal 3 is actually supported by the proposed extension because it will achieve exactly what those goals mandate – efficient transportation and the provision of public services. *Id.* at 15.

In reply, Petitioners argue that the fact the 172nd Avenue NE extension predated the County's regulations is wrong. Petitioners' Reply, at 3-4. The Petitioners note that the extension was not included in the transportation element of the City's comprehensive plan only within North Redmond Neighborhood Policies. *Id.* In addition, citing to *WSDF I v. Seattle*, the Petitioners argue that the fact one plan predated another does not eliminate the requirement for assessment of impacts and coordination. *Id.* at 5.

The Petitioners further argue that the City did not consult the County and the City does not cite to efforts of any kind to communicate with the County, a requirement that cannot be met solely through the satisfaction of public participation requirements. *Id.* at 10. In addition, this requirement is necessitated by the need to address “regional coordination”. *Id.* at 10-11.

Discussion and Analysis

The Petitioners’ argument centers around potential negative traffic impacts to their neighborhood that will result with the opening of 172nd Avenue NE. The Petitioners contend the action taken by Redmond is inconsistent not primarily with King County’s Comprehensive Plan, but with development regulation KCC 14.70, the Traffic Concurrency Ordinance, because the area north of the proposed extension is currently a “red zone” denoting that it is deficient in regard to the County’s (LOS) standards.

The Board has previously held that the GMA establishes five major consistency requirements, one of which is external consistency with an adjacent jurisdiction’s comprehensive plan. *Alberg, et al., v. King County*, CPSGMHB Case No. 95-3-0041c, FDO at 17 (Sept. 13, 1995). External consistency is the basis for the Petitioners’ challenge: “the *comprehensive plan* of each county or city...shall be in coordination with and consistent with comprehensive plans...of other counties or cities with which the county or city has in part, common borders or related regional issues.” RCW 36.70A.100; (emphasis supplied).

As the City correctly noted, the Board has previously stated that 36.70A.100 does not apply to development regulations. *Children’s Alliance v. Bellevue*, CPSGMHB Case No. 95-3-0011, Order on Motions, (May 15, 1995), at 6. However, the Petitioner is not solely alleging inconsistency with KCC 14.70 but with policies in the County’s comprehensive plan. The Petitioners cite T-209 and T-210 of the County’s Transportation Element Policies, for which KCC 14.70 is the implementing development regulation, and argue that the County’s plan “explicitly provides that no new traffic should be funneled into traffic corridors that already fail to meet concurrency standards.” Petitioner PHB, at 8. The provisions cited by the Petitioners do not specifically state this; rather they provide an overview of the LOS measurement and a statement that Urban Areas and Rural Towns are assigned a level of LOS E with Rural Areas being assigned a level of LOS B. It is KCC 14.70, a *development regulation*, that speaks to prohibiting development for residential and non-residential development in areas which will result in a reduction of the LOS unless mitigation can alleviate the impact.

The City’s TMP is part of its comprehensive plan and is required to be consistent with the County’s Comprehensive Plan. It is therefore reasonable to conclude that if two neighboring jurisdictions’ comprehensive plans are consistent, then so too are the development regulations implementing those plans. However, the Board notes that

consistency does not equate to mirror images and development regulations can achieve the same goals or purposes though they may not be identical.

Under a 36.70A.100 challenge, the Petitioner must show *inconsistency between comprehensive plans and not development regulations*. The goals for the King County plan state that the transportation system should connect transportation to form an integrated, balance system, strengthen the economy, provide a range of affordable transportation options and minimize adverse effects on the environment. In addition, as noted below with Legal Issue Nos. 5 and 6, the City has, and is, addressing regional transportation issues and that its review process involves the development of a comprehensive transportation corridor study for the area. This is evidence of coordination between the City and the County that the Petitioners seek.

The Petitioners' contention that "coordination" equates to "consultation" is not correct. The word "consultation" is used throughout the GMA, but nowhere is the word used in the context suggested by the Petitioners. In addition the *SOS v. Kent* case, involving urban separators, addressed the issue of - "coordination" as a synonym for "consultation." In *SOS v. Kent*, the Petitioners alleged that 36.70A.100 requires cities to consult with surrounding jurisdictions including the County in regard to various policies; and by performing this consultation, the cities will ensure that not just their preference will be considered by those of other jurisdictions. *SOS v. Kent* did not prevail in that matter as the record showed that the City sought comment from adjoining jurisdictions.

Here, the City has amassed an impressive index that makes clear there has been a significant effort to involve and engage the public in the process. The Petitioners have been actively involved with ongoing communication from County residents since 2005. To presume King County has not been aware of this project until recently is not correct. There is a clear record that demonstrates at least back to early 2006 that clear communication between the County and the City has taken place. *See*, Index 73 (E-mails between King County Dept. of Transportation and the City, January 2006); Index 77 (E-mail between King County Dept. of Transportation and the City, March 2006); Index 78 (E-mail between King County Dept. of Transportation and City, March 2006); Index 81 (E-mail between City and King County Council, April 2006) – all relating to the 172nd Avenue NE Corridor Study.

Petitioners have not met their burden of proof on the issues related to 36.70A.100 and 36.70A.020(3)(11). The City and County have established a record of coordination of their comprehensive plans. RCW 36.70A.020(3) calls for the development of efficient multi-modal transportation systems and as the City correctly argues, this corridor will add to regional connections for portions of East King County. RCW 36.70A.020(11) encourages citizen involvement in the planning process and ensures coordination between communities and jurisdictions in order to reconcile conflicts. The record demonstrates citizens outside the City limits have been involved and the City and County have established a working relationship to ensure coordination. Because communication and coordination has and is taking place, the Board finds the Petitioners

have not met their burden of proof and the Board additionally finds the Respondents comply with RCW 36.70A.100 and 36.70A.020(3)(11).

LEGAL ISSUES NOS. 5 and 6 – Level of Service Standards and Regional Coordination⁴

The Prehearing Order sets forth Legal Issues 5 and 6 as follows:

Legal Issue No. 5. Does the approval of the TMP with the 172nd Ave NE Extension violate the terms of RCW 36.70.070(6)(b) and RCW 36.70A.020(12)?

Legal Issue No. 6.⁵ Where approval of the 172nd Ave NE Extension by the City will funnel new traffic into substandard streets in King County and onto corridors that fail to meet minimum King County standards, is the provision of the GMA requiring level of service standards to be regionally coordinated violated?

The Petitioners' Legal Issues state that the City's adoption of its TMP violates RCW 36.70A.070(6)(a)(iii)(B), .070(6)(b), and .020(12). Although the Petitioners' argument is based on regional coordination of traffic standards, the language of the cited GMA provisions only .070(6)(a)(iii)(B) states that LOS standards *should be regionally coordinated*.⁶ Neither .020(12)⁷ or .070(6)(b)⁸ contain specific language pertaining to regional coordination.

⁴ With Legal Issues 5 and 6, the Petitioners did not allege a violation of RCW 36.70A.100, requiring coordination and consistency between comprehensive plans of adjacent jurisdictions.

⁵ Within the PFR, Petitioners include a preamble to Legal Issue 6 which states: "RCW 36.70A.070(6)(a)(iii)(B) requires that the transportation element of all comprehensive plans include facilities and service needs, including: (B) Level of Service standards ..." The Board presumes that the challenged GMA provision for this Legal Issue is .070(6)(a)(iii)(B).

⁶ The Legislature specifically utilized the word *should* as opposed to *must* or *shall* in the text of 070(6)(iii)(b), denoting a more permissive standard.

⁷ RCW 36.70A.020(12) Public facilities and services. 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 minimum standards.

⁸RCW 36.70A.070(6) (b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally-owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

Applicable Law

In relevant part, RCW 36.70A.070(6) provides:

RCW 36.70A.070(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

...

(iii) Facilities and services needs, including:

...

(B) Level of service standards for all locally-owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

...

Position of the Parties

Petitioners argue that the County has designated the North Redmond area of unincorporated King County as a “red zone,” a failing concurrency standard, for which any development, residential or non-residential, should not be allowed because of congested traffic conditions. Petitioner PHB, at 11. Petitioners assert that the level of service standards (**LOS**) required by .070(6)(a)(iii)(B) and .020(3) are “given teeth” under .070(6)(b). *Id.* Petitioners argue that the opening of 172nd Avenue NE will “send new traffic to the 124/128 Corridor and result in further deterioration of already failing LOS standards, including traffic from new residential subdivisions in Redmond, both pending approval and in the pipeline. *Id.* at 12.

Petitioners assert that the GMA requires local governments to “adhere to concurrency rules and that their transportation plans, such as the TMP, should recognize and adhere to standards adopted by adjacent local jurisdictions.” *Id.* Petitioners further argue that the City made its determination in isolation, without the benefit of King County’s participation, in violation of the GMA’s requirement for regional coordination. *Id.* at 12-13. The Petitioners note that the TMP does not specify a timeline or funding options for when the County portion of the right-of-way will be updated. *Id.* at 13.

In response, the City argues that Petitioners’ assertion that the TMP is non-compliant with the GMA’s requirement for regional coordination is unsupported by the law. Redmond Response, at 18. The City argues that .070(6)(a)(iii)(B) requires that LOS standards should be coordinated, not that each jurisdiction should be required to meet the standards of other jurisdictions. *Id.* The City points to five King County CPPs in support of its assertion, all of which address LOS standards – T-9, T-10, T-11, T-12, and T-13. *Id.* at 19-20. The City asserts that nowhere in these five policies does it state that every county and city must have LOS standards which are exactly the same, rather the policies promote local variation. *Id.* at 20. Lastly, the City notes that its own

transportation studies show that the LOS would be LOS A or B with the 172nd Extension, or LOS A without the 172nd Extension. *Id.* at 15, City’s Exhibit 9, Page 5 – Table 6. With or without the proposed extension, the LOS standard for the challenged area would not fall below LOS B, at or in excess of the LOS standards set by the County’s Policy T-210. *Id.*

In reply, Petitioners argue that the City has failed to “cite to any efforts of any kind to coordinate, communicate or achieve consistency with the King County Comprehensive Plan” and, that the City cannot meet consultation requirements through the GMA’s public participation requirements. Petitioners’ Reply, at 10. Petitioners further assert that the opening of 172nd Avenue will (1) create new traffic that will impact a transportation corridor that exceeds established King County LOS standards and (2) the County’s portion of 172nd Avenue is not designed or constructed for high traffic volumes. Petitioners’ Reply at 11. Petitioners allege that the City has simply “ignored its responsibilities to address extra-jurisdictional traffic impacts through coordination and consistency with the transportation element and plans of adjacent jurisdictions.” *Id.* at 12.

Discussion and Analysis

The question submitted by the Petitioners appears to be one grounded in the meaning of “regionally coordinated” found in .070(6)(a)(iii)(B). From the arguments presented, it seems that the Petitioners equate the need for regional *coordination* to a mandate that the City must *conform* to the LOS concurrency standards set by the County and any subsequent development (residential or non-residential) must therefore be prohibited because the Petitioners’ neighborhood is a “red zone.” The Board disagrees.

Although regional traffic presents a significant challenge to a city’s ability to achieve its LOS standards, the GMA does not provide for a requirement that a jurisdiction adhere to the rules and regulations set for territory outside its boundaries, whether it is a city or the county, or that its standards must mirror those of an adjacent jurisdiction. The GMA leaves the implementation of transportation concurrency to local discretion and requires only that LOS standard should be regionally coordinated, meaning that the tools or measurement standards should be compatible. In this regard, both the City and King County are utilizing a LOS rating system of LOS A to LOS F. City’s Exhibit 6, Table TR-1; King County Comprehensive Plan, Chapter 6, Section C.

The GMA does demonstrates the Legislature's intent to discard a system in which each jurisdiction functioned as an isolated entity in favor of a scheme which stresses coordination, cooperation, and integration (*see Des Moines v. Puget Sound Regional Council*, 97 Wash. App. 920, 929, 988 P.2d 993 (1999)), and the Board recognizes that the GMA places a premium on inter-jurisdictional consultation and cooperation, previously noting that “plans must work together in a coordinated fashion to achieve the goals of the GMA.” (*see West Seattle Defense Fund v. Seattle*, CPSGMHB Case No. 94-3-0016 FDO at 27 (April 4, 1995) (addressing consistency and coordination)). But

the Board has not yet defined “consultation” to mean anything other than the inclusion of public participation nor included the word within its definition of coordination.⁹

Within the GMA, the word consultation is used in several places but it is not in the sections which the Petitioners allege are violated by the City’s TMP. What the cited provisions of the GMA require is that transportation planning from varying jurisdictions be coordinated - *they should work together* - so as to address regional impacts. Therefore, a jurisdiction shouldn’t ignore transportation issues that are occurring outside of its borders in neighboring jurisdictions it should, at the minimum, give consideration to how its transportation plans will impact areas outside of its borders.

It is significant here that the Record demonstrates that the City has, and is, addressing regional transportation issues and that its review process involves communication with stakeholders, including the County. The TMP does address “Eastside and Regional Transportation”. Core Document, TMP at 2-10. With this section, the City recognizes the regional nature of traffic within the area and the need to mitigate cross-jurisdictional transportation impacts. *Id.* Policy TR-41. In addition, Chapter 8 – Regional Transportation or the TMP addresses the need to work with regional partners (including King County) on transportation issues. Additionally, Index No. 77, and arguments presented at the HOM, clearly demonstrated that the City is *currently* working with King County in developing a 172nd Avenue Corridor Study which includes not only extensive community involvement but specific coordination with King County in regards to transportation issues within the Petitioners’ neighborhood (Section 4, Index No. 77). (*See also*, Redmond Response, Exhibit 9, Page 5 “The City will undertake a corridor study cooperatively with King County for 172nd Ave NE”). The very existence of this Study is evidence of inter-jurisdictional coordination between the City and the County that the Petitioners seek. Further, the results of this study may relieve many of Petitioners’ concerns.

With regard to the challenged provisions of the GMA, the Board does not find that RCW 36.70A.020(12) or the cited provisions of 36.70A.070(6) require the City to adhere to King County’s LOS standards and therefore is prevented from seeking to improve traffic circulation within the City by opening up and improving a public right-of-way. **Legal Issues 5 and 6 are dismissed.**

⁹ The City cites to a 2004 Board case to distinguish support their assertion that the Board has found that “coordination” is not synonymous to “consultation.” City’s Response at 17. The case, *SOS v. Kent*, CPSGMHB Case No. 04-3-0019, FDO at 6 (Dec. 16. 2004), was a challenge by residents of unincorporated King County against the City of Kent. The Petitioners asserted that RCW 36.70A.100 required the City to consult with the County and the City of Auburn prior to designating land. The Board did not define the word “consultation” in that case, it simply held that the City’s requirement for public outreach to other jurisdictions is contained within RCW 36.70A.140 – Public Participation.

Conclusion

The City's adoption of Ordinance 2287 adopting the City's Transportation Master Plan as a part of the Redmond Comprehensive Plan complies with RCW 36.70A.100 and RCW 36.70A.020(3) and (11).

In addition, the City's adoption of Ordinance 2287 adopting the City's Transportation Master Plan as a part of the Redmond Comprehensive Plan complies with RCW 36.70A.020(12) and RCW 36.70A.070(6)(b).

ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties and having deliberated on the matter, the Board ORDERS:

1. The City of Redmond's adoption of Ordinance No. 2287, pertaining to the City's Transportation Management Plan and Comprehensive Plan, was **not clearly erroneous** and **complies** with the consistency and coordination requirements of RCW 36.70A.100, 36.70A.020(3) and .020(11). Legal Issue Nos. 1, 2, 3, and 4 are **dismissed with prejudice**.

2. The City of Redmond's adoption of Ordinance No. 2287, was **not clearly erroneous** and **complies** with the level of service standards requirements of RCW 36.70A.070(6) and 36.70A.020(12). Legal Issue Nos. 5 and 6 are **dismissed with prejudice**.

So ORDERED this 5th day of April, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
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 242-02-832.¹⁰

¹⁰ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX A

Procedural History

On June 30, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Jason Kap and Friends of 172nd, a Washington non-profit organization, (**Petitioners** or **Kap**). The matter was assigned CPSGMHB Case No. 06-2-0026 and is hereafter referred to as *Kap II v. City of Redmond*. Board member David O. Earling is the Presiding Officer in this matter. Petitioners challenge the City of Redmond's (**Respondent** or the **City**) adoption of Ordinance 2287, approving the City's Transportation Management Plan and amending the Transportation and Capital Facilities Element of the City's Comprehensive Plan.

On July 5, 2006, the Board issued a "Notice of Hearing" (**NOH**) setting a date for a Prehearing Conference (**PHC**) and establishing a tentative schedule for the case.

On July 10, 2006, the Board received a Notice of Appearance from James W. Haney of Ogden Murphy Wallace, P.L.L.C., on behalf of the City of Redmond.

On July 31, 2006, the Board received Respondent's Document Index (**Index**).

On August 3, 2006, the Board conducted the PHC at the Board's offices in Seattle.

On August 7, 2006, the Board issued its Prehearing Order (**PHO**) establishing the case schedule and the issues to be decided.

On August 18, 2006, the Board received Respondent's Amended Document Index (**Amended Index**).

On September 11, 2006, the Board received a Stipulated Motion for Settlement Extension signed on behalf of both parties.

On September 15, 2006, the Board issued an Order Granting the Settlement Extension and Amending the Case Schedule.

On November 9, 2006, the Board received a Status Report on settlement from Petitioner.

On November 16, 2006, the Board received a Stipulated Motion for a Second Settlement Extension signed by both parties.

On November 17, 2006, the Board issued an Order Granting the Second Settlement Extension and Amending the Case Schedule.

On January 3, 2007, the Board received a Status Report on settlement from Petitioner.

On January 16, 2007, the Board received the Petitioners' Pre-Hearing Brief (**Petitioner PHB**) with 9 attachments.

On January 30, 2007, the Board received the Respondent City's Pre-Hearing Brief (**Redmond Response**) with 9 attachments.

On February 6, 2007, the Board received the Petitioners' Reply Brief (**Petitioner Reply**) with 2 attachments.

On February 20, 2007, the Board held a Hearing on the Merits (**HOM**) at the Board Offices at 10:00 AM. Board Member Dave Earling presided, with Board members Margaret Pageler and Ed McGuire and legal extern Moani Russell in attendance. Richard Aramburu represented the Petitioner and James Haney represented the Respondent. Court Reporter services by Rebecca Mayse at Byers & Anderson.

On February 25, 2007, the Board received a letter from the Respondent which furnished information in response to specific requests made by Board Members Pageler and McGuire at the HOM.

On February 28, 2007, the Board received a letter from Petitioners objecting to the materials furnished by the Respondent.

On March 5, 2007 the Board received a letter from the Respondent's countering the Petitioner objections and on the same day, the Board notified the parties, via e-mail, that the issue of the submitted additional material furnished by the Respondent would be addressed in the Final Decision and Order (**FDO**).