

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

SKILLS, INC., a Washington non-profit corporation,	)	<b>Case No. 07-3-0008c</b>
	)	
	)	<i>(Skills, Inc.)</i>
Petitioner,	)	
	)	
v.	)	<b>FINAL DECISION and ORDER</b>
	)	
CITY OF AUBURN,	)	
	)	
Respondent.	)	
	)	

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**SYNOPSIS**

*On January 18, 2007, the Central Puget Sound Growth Management Hearings Board received a Petition for Review from Skill,, Inc., an Auburn-based non-profit corporation. The Petition challenged the City of Auburn’s adoption of Ordinance No. 6064 adopting changes to the land use designations of several properties, including a parcel owned by the Petitioner.*

*The Petitioner alleged that in adopting Ordinance No. 6064, the City failed to be guided by the notice and public participation goals and requirements of the GMA. In addition, the Petitioner asserted constitutionally-based claims and violations of statutes other than the GMA. With the exception of the Petitioner’s challenge based on RCW 36.70A.020(11) and RCW 36.70A.035(1), all other claims were dismissed at the outset.*

*With respect to RCW 36.70A.020(11) and .035(1), the Board found that the Petitioner did not carry its burden of proof to demonstrate that the City was clearly erroneous in its adoption of Ordinance 6064 and dismissed the Petition for Review in its entirety.*

**I. BACKGROUND<sup>1</sup>**

On January 18, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Skills, Inc., a Washington non-profit corporation, (Petitioner or **Skills**). The matter was assigned Case No. 07-3-0007, and is hereafter referred to as *Skills, Inc. v. Auburn*. Board member David O. Earling is

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<sup>1</sup> See Appendix A for a complete procedural history of this matter.

the Presiding Officer (**PO**) for this matter.<sup>2</sup> With this PFR, Petitioner challenges the City of Auburn's (**Respondent** or the **City**) adoption of Ordinance 6064, which amended the City's Future Land Use Map. The basis for the challenge is noncompliance with the notice and public participation provisions of the Growth Management Act (**GMA** or **Act**).

On February 22, 2007, the Board conducted the Prehearing Conference and subsequently issued its Prehearing Order (**PHO**) on February 26, 2007 which articulated the legal issues for review and the final schedule for the proceedings.<sup>3</sup>

No supplemental or dispositive motions were received from the parties during the identified period for filing of motions.

In May and June, the Board received prehearing briefing and exhibits from the parties. The following references are used throughout this Final Decision and Order:

- Petitioner Skills, Inc Prehearing Brief – **Petitioner's PHB**
- Respondent City of Auburn's Prehearing Response Brief – **City's Response**<sup>4</sup>
- Petitioner Skills' Reply Brief – **Petitioner's Reply**<sup>5</sup>

On June 7, 2007, the Board held a Hearing on the Merits (**HOM**) at the Board Offices beginning at approximately 10:00 AM. Board Member Dave Earling presided, with Board members Ed McGuire and Margaret Pageler, the Board's Law Clerk, Julie Taylor, and legal extern, Linda Jenkins, in attendance. Sue Sampson represented the Petitioner and Daniel Heid represented the Respondent. Charles Harris, CEO of Skills, Inc. and Elizabeth Chamberlain, Planner for the City of Auburn were also in attendance. 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 Barbara Hayden of Byers & Anderson.

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<sup>2</sup> On January 19, 2007, the Board received a PFR from CNB Properties LLC (CPSGMHB Case No. 07-3-0008) which also challenged Auburn's adoption of Ordinance 6064. In February, the Board consolidated the Skills PFR and the CNB Properties PFR into one consolidated case – *Skills, Inc., et al v. Auburn*, CPSGMHB Consolidated Case No. 07-3-0008c. On May 31, 2007, the Board received and granted a joint 90-day settlement extension from CNB Properties and the City. In conjunction with this extension, the Board segregated the CNB portion of the case from this matter.

<sup>3</sup> The Board issued a Corrected PHO on February 28, 2007, however, corrections within this Order pertained solely to the schedule.

<sup>4</sup> The Board notes that the filing of the City's Response Brief was not timely. Pursuant to the schedule established in the Corrected PHO issued February 28, 2007, the City was to have filed its brief by May 24. The Board received the City's brief on May 31, 2007. HOM Transcript at 5-8.

<sup>5</sup> As noted *supra* (Footnote 4), the City's responsive brief was not timely filed. The due date for the Petitioner's Reply Brief was May 31, 2007. However, due to the tardiness of the City's brief, the Petitioner was permitted to file its Reply Brief at the HOM. The Board received Petitioner's Reply Brief on June 6, 2007, one day prior to the HOM.

## **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF REVIEW, AND DEFERENCE TO LOCAL JURISDICTIONS**

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the Legislature directed the Boards to hear and determine whether the challenged actions are in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The Legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). As articulated most recently by the Supreme Court, "the Board is empowered to determine whether county decisions comply with GMA requirements, to remand noncompliant ordinances to counties, and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance." *Lewis County v. Western Washington Growth Management Hearings Board (Lewis County)*, 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

Legislative enactments adopted by the City of Auburn pursuant to the Act are presumed valid upon adoption. RCW 36.70A.320(1). The burden is on the Petitioner to demonstrate that the actions taken by the City are not in compliance with the Act. 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 Auburn] 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 action of the City is 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 of Auburn in how it plans for growth, provided that its policy choices are consistent with the goals and requirements of the GMA. The Supreme Court has stated: "We hold that deference to [a jurisdiction's] planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a [jurisdiction'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). In *Lewis County*, the Court reaffirmed and clarified its holding in *Quadrant*, stating that: "... the GMA says that Board deference to [a jurisdiction's] decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds." 157 Wn. 2d at 506, fn. 16.<sup>6</sup>

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<sup>6</sup> The *Lewis County* majority 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*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). *See also*, *Cooper Point Association v. Thurston*

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to only those issues presented in a timely petition for review. RCW 36.70A.290(1).

### **III. BOARD JURISDICTION, PRELIMINARY MATTERS AND PREFATORY NOTE**

#### **A. BOARD JURISDICTION**

The Board finds that the PFR filed by the Petitioner was timely filed, pursuant to RCW 36.70A.290(2); the Petitioner 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, pursuant to RCW 36.70A.280(1)(a).

#### **B. PRELIMINARY MATTERS**

##### Legal Issues for Review by the Board

The Petitioner's PFR challenged Ordinance No. 6064 and set forth just two legal issues which are both founded in allegations that the City failed to provide adequate notice and/or public participation. The Petitioner's issues, as stated in the PFR, were as follows:

1. *Did the adoption of amendments to the future land use map comply with the public notice requirements of the Growth Management Act where notice to affected owners were limited to one newspaper publication that did not name the parcels identified, but rather, referred to a class of properties that were distributed throughout the City?*
2. *Does the adoption of amendments to the future land use map comply with the public notice requirements of the Growth Management Act where the Council refuses to consider evidence from an affected land owner, in violation of RCW 35.63.120, while over-ruling the recommendation of the Planning Commission?*

Petitioner's PFR at 2-3. Based on discussion during the PHC, the Board's PHO, issued February 26, 2007,<sup>7</sup> established seven legal issues which included those raised by CNB

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*County*, 108 Wash. App. 429, 444, 31 P.3d 28 (2001) ("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"); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3<sup>rd</sup> 1156 (2002).

<sup>7</sup> A Corrected PHO was issued on February 28, 2007. No modification was made to the legal issues with this corrected PHO, only to the scheduled dates for these proceedings.

Properties. Of those legal issues, the Board finds that three pertain to this Petitioner's claims. Therefore, the Legal Issues which the Board will review in this matter are<sup>8</sup>:

1. *Did the City's adoption of Ordinances 6064 ~~and 6067~~ fail to comply with the goals of the Growth Management Act, RCW 36.70A.020(5) and 36.70.A.020(11)?*

4. *Did the City's adoption of Ordinances 6064 ~~and 6067~~ fail to comply with the requirements of RCW 36.70A.035(1) because the City provided inadequate notice of public meetings and hearings, and the public notice for Ordinance 6064 was limited to one newspaper publication that did not name the parcels identified, but rather, referred to a class of properties that were distributed throughout the City?*

7. *Did the City's adoption of Ordinances 6064 ~~and 6067~~ fail to comply with the requirements of RCW 35.63.120 because the City failed to consider public comments and Planning Commission recommendations?*

However, within its PHB, Petitioner raises what the Board views as new issues or alleges provisions of the RCW, WAC, and/or Auburn City Code (ACC) which were not raised by the Petitioner's legal issues or elsewhere within the PFR. Nor were these issues and alleged violations of the GMA included by the Board in its PHO.

First, Petitioner asserts that the City has deprived the Petitioner of property without due process of law – based on Constitutional law principals. Petitioner's PHB at 24, Section G. The Board has previously held that allegations regarding constitutional matters are beyond the Board's jurisdiction. *See, e.g. Gutschmidt v. City of Mercer Island*, CPSGMHB Case No. 92-3-0006, Final Decision and Order (Mar. 16, 1993) at 10; *Bridgeport Way Comm. Assoc., et. al. v. City of Lakewood*, CPSGMHB Case No. 04-3-0003, Final Decision and Order (July 14, 2004) at 12; *Hensley/McVittie v. Snohomish County*, CPSGMHB Case No. 01-03-0004c (*Maltby UGA Remand*) 12/9/02 Order at 6. The Board, as it has consistently done in the past, will not address this constitutionally-based assertion.

Second, the preamble to Petitioner's Section II – Legal Issues provides: "The City ... failed to comply with the public participation requirements of the [GMA], RCW 36.70A *et. al.*, and the public participation requirements of the City Code ..." Petitioner's PHB, at 4. Petitioner then lists 11 ways the City's actions failed to comply and goes on to set forth the '*applicable law*,' citing to text of RCW 36.70A.020(11), .140, .070, .130, and

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<sup>8</sup> The Board notes that Skills, challenge was limited to Ordinance No. 6064. It was CNB Properties which raised a challenge to Ordinance No. 6067. Therefore, due to the segregation of the Skills Petitioner the Board has stricken Ordinance No. 6067 and any related provisions of the GMA cited by CNB Properties from the Skills Legal Issues.

WAC 365-190-600. *Id.* at 16-20. With the exception of .020(11) and .035 (surprisingly not cited in the Petitioner’s ‘*applicable law*’ section) which are explicitly set forth in the legal issues, careful review of the Petitioner’s PFR does not reveal any basis for these assertions. [The Board notes that .140 is at least alluded to in the PFR, at 2 - *see* Section II – Action for Which Review is Sought which stated: “Notice was limited ... in violation of RCW 36.70A.140.”].

In addition, Petitioner alleges that the City failed to establish a public participation program in accordance with RCW 36.70A.130(2). Petitioner’s PHB at 20, Section C. The Board notes that neither the Petitioner’s original legal issues, as stated in its PFR, nor the modified legal issues, as provided in the Board’s PHO, asserts a violation of .130.<sup>9</sup> Finally, Petitioner asserts that the City failed to comply with general notice requirements and its own procedures for providing notice (see ACC 18.68). Petitioner’s PHB at 21-24, Sections D-F).

It appears that the Petitioner is under the misperception that an “*et. al.*” citation within their PHB permits it to argue any and all provisions of the RCW, WAC, or ACC which may align with the notice and public participation claims it is asserting. Or, in the alternative, that the mere claim that the City has violated the GMA’s notice and public participation requirements opens the door to these provisions. Petitioners are mistaken. The GMA requires that a petition filed with the Board must contain a “*detailed statement of issues*” (36.70A.290(1)) that “*specifies the provision of the act or other statute allegedly being violated.*” (WAC 242-02-210(2)(c)).

One of the purposes of the PHC, in addition to the ability of a Petitioner to amend a PFR by right within 30-days of filing (WAC 242-02-260(1)), is to “obtain agreement as to the issues of law and fact presented and their simplification, limitation, or resolution” (WAC 242-02-550(3)) so that the concerns of the Petitioners are being properly presented to the Board and the responding jurisdiction has received adequate notice as to the basis of the claims against it. In addition, as an added measure of assurance that the legal issues are adequately stated, a party is permitted to object to the PHO. WAC 242-02-558(10).

In this matter, the Petitioner did not object to the legal issues as set forth in the Board’s PHO. Therefore, the **Petitioner is strictly limited to arguing that the City of Auburn is in violation of those specific provisions contained within their legal issues – RCW 36.70A.020(11) and 36.70A.035(1).**

### Subject Matter Jurisdiction

With Legal Issue 7, the Petitioner asserts that the City violated RCW 35.63.120, a section of the RCW which pertains to Planning Commissions, when it adopted Ordinance 6064.

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<sup>9</sup> Legal Issue 5, as stated in the PHO, does cite to RCW 36.70A.130 but does so in relation to infrastructure and capital facilities – an issue not raised by this Petitioner.

Petitioner fails to link this Planning Commission provision in any way to the GMA or any provision or procedure of the City adopted to comply with the GMA.

The Board's jurisdiction is limited to RCW 36.70A and RCW 90.58 and RCW 43.21C, as those chapters relate to the GMA. RCW 36.70A.280(1)(a). Absent any showing whatsoever by Petitioner that the City has folded RCW 35.63.120 into its GMA procedures, the Board simply lacks jurisdiction to review the City of Auburn's compliance with RCW 35.63.120.

Therefore, the Board declines to address this issue, as it lacks subject matter jurisdiction. **Legal Issue 7 is DISMISSED.**

### Supplemental Evidence

At the HOM, the Board acknowledged that the City's brief included new information which was not included within the City's Index of the Record (City's Response at 10) and that the Reply Brief filed by the Petitioner objected to these supplemental exhibits (Petitioner's Reply at 1-2). HOM Transcript at 8-9. The Board finds that these items are necessary or of substantial assistance to the Board in resolving the legal issues presented and authorizes their inclusion in the Record of this matter. These exhibits are as follows and identified by the reference provided:

- HOM Exhibit 1:** Supplemental information for Index No. 66
- HOM Exhibit 2:** Public Information Brochure – "Auburn Comprehensive Plan – Year 2006 Amendments"
- HOM Exhibit 3:** Affidavit of Publication – *King County Journal*, dated August 22, 2006
- HOM Exhibit 4:** Affidavit of Publication – *King County Journal*, dated October 24, 2006

## **IV. LEGAL ISSUES AND DISCUSSION**

### The Challenged Action

In 1986, the City of Auburn adopted its first Comprehensive Plan, which included a map depicting the location of the Comprehensive Plan Land Use Designations throughout the City. Pursuant to RCW 36.70A.130, the City has subsequently amended its Comprehensive Plan over the years to reflect changes occurring within the City and to better effectuate the City's long-range planning goals. Ordinance No. 6064 is the City's effort in this regard for the year 2006.

The Planning Commission held meetings and/or public hearings on various amendments to the City's Comprehensive Plan from July 2006 until November 2006.<sup>10</sup> In addition, the City Council held meetings on proposed amendments during the months of July, October, and November 2006.<sup>11</sup> A number of parcels designated for industrial use were proposed to be changed to a "Heavy Commercial" designation.

The Petitioner's property, a single parcel of land providing manufacturing facility and corporate offices for its operations, was under consideration for a change in the comprehensive land use designation. During the course of the City's review, the Petitioner's parcel was identified as "Area 16" or "CPM#16" within the "Group 3" Comprehensive Plan Docket. Index No. 49.<sup>12</sup>

Skills is a non-profit entity which operates a manufacturing facility as a sheltered workshop for disabled employees. Skills PFR, at 3. Skills manufactures aerospace components and provides employment for over 100 people. Petitioner's PHB, at 1-2. Specialized heavy equipment at Skills' 85,000 square foot facility would be difficult to relocate. *Id.* at 3. Skills indicates a "threat to Skills' continued ability to obtain funding for operations if it becomes a non-conforming use." *Id.*

With Ordinance No. 6064, adopted on November 20, 2006, the City of Auburn amended its comprehensive plan map (referred to herein as its Future Land Use Map (FLUM)) and amended the text of certain elements of its Comprehensive Plan. At issue in this matter is the amendment of the FLUM which changed the land use designation for Petitioner's parcel of property and other parcels throughout the city from "Light Industrial" to "Heavy Commercial."<sup>13</sup>

## B. LEGAL ISSUES

As discussed supra, the Legal Issues the Board is to resolve, as stated in the PHO, are:

1. *Did the City's adoption of Ordinances 6064 and 6067 fail to comply with the goals of the Growth Management Act, RCW 36.70A.020(5) and 36.70.A.020(11)?*

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<sup>10</sup> According to the Record and briefing submitted, Planning Commission meetings were held on July 5, 2006, September 6, 2006, October 3, 2006, October 24, 2006, and November 8, 2006.

<sup>11</sup> Based on the Record and the briefing submitted, the City Council held meetings on July 31, 2006, October 30, 2006, and November 20, 2006.

<sup>12</sup> Petitioner also makes reference to "Area S". Petitioner's PHB at 2. However, this designation pertained to the subsequent rezone of the property (adopted by Ordinance No. 6067) and not the amendment to the land use designation.

<sup>13</sup> Ordinance No. 6064, amending the land use designation, was the impetus for a subsequent action by the City to modify the zoning of the property to comply with the new comprehensive land use designation. Ordinance 6067, adopted on December 18, 2006, rezoned the Petitioner's property. This Ordinance was not challenged by the Petitioner.

4. *Did the City's adoption of Ordinances 6064 and 6067 fail to comply with the requirements of RCW 36.70A.035(1) because the City provided inadequate notice of public meetings and hearings, and the public notice for Ordinance 6064 was limited to one newspaper publication that did not name the parcels identified, but rather, referred to a class of properties that were distributed throughout the City?*

### **Applicable Law**

RCW 36.70A.020(11) provides:

Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.035(1) provides:

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to the property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulations. Examples of reasonable provisions include:

- (a) Posting the property for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
- (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

### **Discussion**

#### *Position of the parties*

As to the two issues before the Board, Petitioner contends that prior to the passage of Ordinance No. 6064 on November 20, 2006, the City did not provide adequate notice or encourage public participation as required under the GMA. Petitioner argues that only one notice, mailed on September 14, 2006, was provided to Petitioner and adjacent

property owners to inform them of a October 3, 2006 Planning Commission meeting. Petitioner's PHB at 2, citing to Index No. 64; *see also* HOM Exhibit 1. According to Petitioner, that notice was addressed to "Sylvia Sandoval," an employee of the Petitioner, and did not mention the company name - "Skills, Inc." - in the address and therefore was subsequently returned to the City. *Id.*, citing to Index No. 66. Petitioner does acknowledge that a later mailing with a corrected address did reach the Petitioner, but it was received after the Planning Commission had voted in favor of recommending approval of CPM #16 to the City Council. Petitioner's PHB, at 2; *see* Index Nos. 78 and 88.

In addition to not receiving mailed notice, the Petitioner charges that published notices of various Planning Commission meetings were either inadequate in details, regarding identification of impacted properties, were not published within the required 10 days to provide sufficient notice to the public-at-large, or that no notice was provided at all. Petitioner's PHB at 8-9, 22.<sup>14</sup> Petitioner further alleges that notice of several City Council meetings suffered from these same defects.<sup>15</sup> *Id.* at 10.

Petitioner argues that the lack of timely and sufficient notice equates to the failure of the City to provide adequate public participation. *Id.* at 11. Essentially, Petitioner asserts that because the public was not adequately notified of the City's intended actions, it was unable to provide the necessary and correct information to the decision-makers (Planning Commission or City Council) so that these bodies could make reasoned, informed decisions. *Id.* at 3, 11-14, 26-32.<sup>16</sup> Therefore, according to the Petitioner, because of this faulty process, the City's actions undermined the public participation requirement of the GMA and should be invalidated. *Id.* at 26.

In response, the City asserts that it has met the requirements of RCW 36.70A.035. City Response, at 1. The City notes that, for both Planning Commission and City Council meetings, public notice which clearly stated what was being considered by the City was sent to all property owners in the impacted area and that in addition to these mailed notices, the City published notice in the *King County Journal* and on the City's website. *Id.* at 3-4. The City acknowledges the mailing error that Petitioner complains of, but notes that it sent the notice to the 'taxpayer of record' and that any error was cured when it provided special notice to the Petitioner on October 10, 2006. *Id.* at 4 (citing Index No. 78).

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<sup>14</sup> Within this section of its PHB, Petitioner alleges defective notices for December 5, 2006 and December 18, 2006 meetings of the Planning Commission. These meetings pertained to zoning map amendments which were implemented by Ordinance No. 6067, which was not challenged by the Petitioner. Therefore, the sufficiency of these notices is not under consideration by the Board.

<sup>15</sup> Like the Planning Commission meetings, Petitioner cites to City Council meetings that occurred after the adoption of Ordinance No. 6064 and are applicable only to Ordinance No. 6067.

<sup>16</sup> When the City Council approved Ordinance No. 6064, the Petitioner contends that the City Council received inadequate information regarding the site and function of the business. The Skills property was characterized at the City Council meeting as a small professional office. Petitioner's PHB at 3.

As to the Petitioner's argument that inadequate notice precluded the public's participation in the amendment process (i.e., the City Council was not afforded sufficient information about the use of Petitioner's property), the City argues that sufficient information was provided to both bodies so that each understood the character and nature of the Petitioner's property. *Id.* at 4. In addition, the City notes that both the Planning Commission and the City Council held several meetings/hearings on the proposed comprehensive plan amendments which provided many opportunities for the public to engage in the process. *Id.* at 6-7.

In reply, the Petitioner reiterates its argument that the City simply did not provide adequate notice and that the notice provided by the City lacked sufficient detail to inform potentially impacted property owners. Petitioner's Reply, at 3-4.

### Analysis

Petitioner only points specifically to two alleged defects in the City's efforts at providing notice regarding its action. *First*, Petitioner asserts that the mailed notice of the October 3, 2006 Planning Commission meeting was addressed to "Sylvia Sandoval", not direct to Skills, Inc. Index No. 66, HOM Exhibit 1. According to the Petitioner, because of this error Skills was not informed of the proposed amendment and its opportunity to participate was foreclosed. The *second* assertion made by Petitioner is that the published notice of the October 3, 2006 Planning Commission hearing was defective because the published notice lacked details (identifying Petitioner's property) and was not published 10 days prior (only 6 days) to the October 3, 2006 hearing, the hearing where the Planning Commission acted to recommend approval of the proposed change to the designation. Index No. 50.

While the City acknowledges that it did in fact misaddress the first notice, it cured this mistake when it corrected the addressee and proper (specific) notice was mailed to Skills. Index No. 78. The Board notes that this correction came *before* the City Council's final action and even before the Planning Commission had made its final recommendation to the City Council.

The Board further notes that the published notice provided within the Record for the October 3, 2006 hearing is not a model to be emulated by jurisdictions. This notice, which appears to be an excerpt, states the location of the public hearing but fails to provide the date and time or the governmental body conducting the hearing within its text. Index No. 50; HOM Transcript at 12-14. All these are important elements to providing effective notice.

However, it is apparent from the Record that any inadequacy in notice did not preclude Petitioner's participation in this matter. Petitioner attended a Planning Commission public hearing on October 24, 2006 and November 8, 2006 (*See* Index Nos. 13, 14, 32, 33, 74, 75 – notice, agenda, minutes) and submitted written comments to the Planning Commission (Index No. 23) and the City Council (Index Nos. 68 and 69). Petitioner's

attorney sought access to public records (Index No. 73). All of this occurred *prior to* the City Council's final action in adopting Ordinance No. 6064 on **November 20, 2006**.

In fact, the CEO of Skills Inc. (Mr. Harris) was not only provided the opportunity to participate, but was able to persuade the Planning Commission to reverse its recommendation for approval of the amendment (*see* Index No. 88), apparently because of Mr. Harris's testimony. Index No. 33. Despite the Planning Commission's 4-1 recommendation to deny the proposed amendment based on Mr. Harris's input, the Planning and Community Development Committee (PCDC), noting the Planning Commission's change in position, voted to recommend approval of the change in the land use designation. Index No. 71. The City Council, having all this information before them and hearing testimony once again from Mr. Harris, the Council voted unanimously to approve Ordinance No. 6064. Index No. 94. The Board has previously stated that the public participation requirements of the GMA do not equate to "citizens decide" but rather the Legislature has directed that it is the local elected officials, here the City Council, who are the ultimate decision-makers in land use matters under the GMA. *See e.g. City of Poulsbo, et. al. v. Kitsap County*, CPSGMHB Case NO. 92-3-009c, Final Decision and Order (Apr. 6, 1993) at 36; *West Seattle Defense Fund v. Seattle*, CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995) at 71; *City of Burien, et. al. v. City of Sea-Tac*, CPSGMHB Case No. 98-3-0010, Final Decision and Order (Aug. 10, 1998) at 10.

The Board notes that the City acknowledges that several missteps occurred in this Plan amendment process and that notice to the citizens of Auburn could have been more detailed. However, in this context, the Board cannot conclude that the City was not guided by Goal 11 – to encourage citizen involvement in the planning process – or in violation of RCW 36.70A.035(1) - notice. Consequently, the Board concludes that Petitioner Skills, Inc. failed to carry the burden of proof in demonstrating that the City of Auburn did not comply with the challenged requirements of RCW 36.70A.020(11) or 36.70A.035(1).

However, the City of Auburn should learn from its missteps and take steps to clarify its public participation procedure to foster a better understanding for all involved. Chapter 15 of the Auburn Comprehensive Plan outlines a public process including 12 potential methods of communication. However, the information does not provide a sequence of events to take place or a potential timeline for amending the Comprehensive Plan. Clarification of the City's procedures and timeline would likely aid the City in avoiding the problems it encountered here, and it would certainly encourage citizens to participate.

### **Conclusion**

The Petitioners **failed to carry their burden** in demonstrating that the City's adoption of Ordinance 6064, amending the land use designations of certain properties, was **clearly erroneous** in that it violated the GMA's requirements for notice and public participation,

as cited by the Petitioner's in Legal Issues 1 and 4. **Legal Issues 1 and 4 are DISMISSED.**

**V. ORDER**

Based upon the 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. Petitioner Skills has **failed to carry the burden of proof** in demonstrating that the City of Auburn's adoption of Ordinance No. 6064 was **clearly erroneous**. **Petitioner's Legal Issues 1 and 4** pertaining to non-compliance with RCW 36.70A.020(11) and .035(1) **are dismissed with prejudice**.
2. The Board does not have jurisdiction over RCW 35.63.120. **Legal Issue 7 is dismissed with prejudice**.
3. The matter of Skills, Inc. v. City of Auburn, CPSGMHB Case No. 07-3-0008c, is closed.

So ORDERED this 18<sup>th</sup> day of July, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling, Board Member

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Edward G. McGuire, AICP  
(Board Member McGuire files a Concurring Opinion)

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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.<sup>17</sup>

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<sup>17</sup> 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 Member McGuire's Concurring Opinion

I *reluctantly* concur in the Board's conclusion in this matter. While I agree that the City of Auburn's "missteps" in its notice procedures do not poison its Plan amendment process, I am less charitable with the City's failure to adhere to this tribunal's Rules of Practice and Procedure.

Auburn is the first Respondent jurisdiction to miss (or ignore) the filing deadlines for practicing before this Board. This Board has always been, *when given "notice"* of problems, accommodating to jurisdictions in preparing and filing their Index, in rescheduling briefing deadlines, and even in rescheduling the Hearings on the Merits, to assure all parties have adequate time to prepare their case. However, here, the City of Auburn simply *did not file its Response Brief according to the deadline agreed to in the prehearing order*. Over a week later, without a phone call, e-mail or any "notice" to the Board, the Response Brief appeared. To my mind, the City was the first jurisdiction to default and concede noncompliance. I voiced my displeasure to the City at the HOM. See HOM Transcript, at 5-8. Nonetheless, the case proceeded.

The Board owes *deference* to local governments in how they plan for growth, consistent with the goals and requirements of the Act. RCW 36.70A.3201. The Board *does not owe deference* to a local jurisdiction's disregard, recalcitrance or ineptness in failing to adhere to the Board's rules governing the resolution of GMA disputes and the disadvantage it places upon the opposing party(s), especially in light of the City of Auburn's admitted "missteps on notice." Again, I reluctantly concur.

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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)

*Skills Inc. v. City of Auburn* 07-3-0008c (July 18, 2007)

**07308c Final Decision and Order**

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## APPENDIX A

### Procedural Background

#### A. General

On January 18, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Skills, Inc. (**Petitioner** or **Skills**). The matter was assigned Case No. 07-3-0008c and is captioned *Skills, Inc. v. City of Auburn*. Board member David Earling serves as the Presiding Officer (PO) for this matter. Petitioner challenges the City of Auburn's adoption of Ordinance No. 6064 (**Ordinance**).<sup>18</sup> The Ordinance *amends* the Future Land Use Maps ("FLUM") to, among other things, facilitate rezoning from "light industrial" to "heavy commercial." The grounds for the challenge are noncompliance with several sections of the Growth Management Act (**GMA** or **Act**).

On February 12, 2007, the Board issued a "Notice of Hearing and Intent to Consolidate" in the above-captioned cases. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case. The two matters were consolidated into CPSGMHB Consolidated Case No. 07-3-0008c and captioned *Skills, Inc., et al. v. City of Auburn*.

On February 22, 2007, the Board held the PHC; and on February 26, 2007, the Board issued a "Prehearing Order" setting the schedule and Legal Issues for this case. On February 28, 2007, the Board issued a "Corrected Prehearing Order (As to Final Schedule Dates Only)."

On February 27, 2007, the Board received the Respondent's "Index to the Record" (**Index**) listing 110 items.

#### B. Briefing and Hearing on the Merits

On May 10, 2007, the Board received "Petitioner Skills, Inc.'s Prehearing Brief with Exhibits," with 28 attached exhibits (**Petitioner's PHB**).

On May 31, 2007, the Board received "Response of City of Auburn," with seven attached exhibits (**Respondent's Response**).

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<sup>18</sup> On January 19, 2007, the Board received a PFR from CNB Properties LLC (CPSGMHB Case No. 07-3-0008) which also challenged Auburn's adoption of Ordinance 6064. In February, the Board consolidated the Skills PFR and the CNB Properties PFR into one consolidated case – *Skills, Inc., et al v. Auburn*, CPSGMHB Consolidated Case No. 07-3-0008c. On May 31, 2007, the Board received and granted a joint 90-day settlement extension from CNB Properties and the City. In conjunction with this extension, the Board segregated the CNB portion of the case from this matter.

On June 1, 2007, the Board received the Respondent's complete compilation of the Record, with 110 numbered exhibits (**Index**).

On June 6, 2007, the Board received "Petitioner Skills, Inc.'s Reply Brief" (**Petitioner's Reply**).

On June 7, 2007, the Board held a hearing on the merits at the Attorney General's Office, Sealth Training Center, 20<sup>th</sup> Floor, 800 5<sup>th</sup> Avenue, Seattle, Washington. Board members David Earling, Presiding Officer, Edward McGuire, and Margaret Pageler were present. The Board's Law Clerk, Julie Taylor, and Extern, Linda Jenkins, were also present for the Board. Petitioner Skills, Inc. was represented by Susan Sampson and Jean Jorgensen. Respondent City of Auburn was represented by Daniel Heid. Court reporting services were provided by Barbara Hayden of Byers and Anderson, Inc. The following persons also attended the HOM to observe: Elizabeth Chamberlain and Charlie Harris. The hearing convened at 10:00 a.m. and adjourned at approximately 12 p.m.