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BEFORE THE CENTRAL PUGET SOUND GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

KING COUNTY,

Petitioner,

vs.

CITY OF LAKE FOREST PARK,

Respondent.

)
)
) No. _____
)

) PETITION FOR REVIEW AND
) REQUEST FOR ORDER OF
) INVALIDITY ON LAKE FOREST
) PARK ORDINANCE NO. 951
)
)
)

I. INTRODUCTION

Petitioner KING COUNTY respectfully requests that the Board declare that City of Lake Forest Park Ordinance 951 violates portions of the Growth Management Act (GMA), including provisions related to the siting of essential public facilities (EPFs); and requests that the Board declare that Ordinance 951 is not in compliance with the GMA, all pursuant to RCW 36.70A.300. King County further requests that the Board issue an Invalidation Order pursuant to RCW 36.70A.302 because Ordinance 951 fails to comply with RCW 36.70A.020, 36.70A.120, 36.70A.130, and 36.70A.200; and because Ordinance 951 substantially interferes with the goals set forth in RCW 36.70A.020(3), (7), and (9). King County also petitions the Board to declare that when the City adopted Ordinance 951, the City failed to comply with RCW 36.70A.106, and with the State Environmental Policy Act, RCW Ch. 43.21C (SEPA); and to order or declare that under established SEPA law, Ordinance 951 shall have no force or effect unless and until the City of Lake Forest Park complies with SEPA.

KING COUNTY'S PETITION FOR REVIEW OF
LAKE FOREST PARK ORDINANCE 951

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COPY

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II. JURISDICTION AND VENUE

2.1 The Board has jurisdiction over this petition and is the proper venue for it under RCW 36.70A.250(1)(b) and WAC 242-02-030(1)(b) because King County and the City of Lake Forest Park are located in King County, Washington, which is within the jurisdiction of the Central Puget Sound Growth Management Hearings Board. The Board has subject matter jurisdiction over this petition pursuant to RCW 36.70A.280(1)(a) and WAC 242-02-030(2) because King County alleges that Ordinance 951 is a development regulation not in compliance with the GMA, RCW Ch. 36.70A; and because the County alleges that the City of Lake Forest Park failed to comply with SEPA, RCW 43.21C, when the City adopted Ordinance 951. This appeal is timely because King County filed it within 60 days of November 24, 2006, which is the date that the City of Lake Forest Park published Ordinance 951. See RCW 36.70A.290(2) and WAC 242-02-220; see also Exhibit A (copy of Ordinance 951) and Exhibit B (Affidavit of Publication), attached to this Petition.

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III. BACKGROUND/STATEMENT OF FACTS¹

3.1 The Burke-Gilman trail ("the Trail") is a 17-mile long, paved, multipurpose, nonmotorized trail that extends from the City of Kenmore at the north end of Lake Washington, along the Lake Washington shoreline roughly south to the University of Washington campus, and then west along the Lake Washington Ship Canal to the Ballard neighborhood in Seattle. The Trail connects to the County's Sammamish River Trail, which extends from Kenmore to Marymoor Park in Redmond. The Trail is built on a former railroad right-of-way that the City of Seattle and the County acquired from the Burlington Northern Railroad with funding from the region's 1968 Forward Thrust bond issue, community development block grants, and federal gas

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¹ This Background section recites facts that are so generally and widely known as not to be subject to reasonable dispute, as well as specific facts which are capable of immediate and accurate demonstration via accessible sources of generally accepted authority, and thus are facts that the Board may officially notice pursuant to WAC 242-02-670(2). In the alternative, the County requests that the Board take official notice of the facts recited in the Background section pursuant to WAC 242-02-670(4).

1 tax revenues. The County owns the former railroad right-of-way in fee simple from the Seattle
2 city limits at NE 145th St, through the cities of Lake Forest Park, Kenmore, and Bothell, all the
3 way to Redmond. The County owns, operates, and maintains the Trail on the right-of-way
4 outside of Seattle.

5 3.2 The Burke Gilman Trail, like other regional multipurpose nonmotorized trails in
6 the area, is a critical element of the Puget Sound transportation infrastructure. It is identified as a
7 core component of the County's Regional Trails Plan (issued in October of 1992), which
8 established a network of multi-purpose trails connecting communities inside and outside the
9 County; and it is also a core component of the County's Nonmotorized Transportation Plan
10 (issued in May of 1993), which outlines a system of facilities for non-motorized transportation
11 within and without road rights of way. Finally, the Trail is designated as an important regional
12 nonmotorized transportation corridor in "Destination 2030," a regional transportation plan
13 mandated by state and federal law and adopted by the Puget Sound Regional Council ("PSRC")
14 in May of 2003.² The Trail's designation as an important regional transportation asset is well-
15 deserved: a large and growing number of pedestrians and cyclists use the Trail to commute to
16 work or to shop, and in addition, the public uses the Trail for many other purposes, including
17 recreational bicycling, jogging, walking, bird-watching, in-line skating, skateboarding, and dog
18 walking. In the City of Lake Forest Park ("the City"), the Trail has substantially more traffic
19 volume than the driveways or neighborhood streets that cross it.

20 3.3 A roughly two-mile long section of the Trail passes through the City. This
21 section is the oldest portion of the Trail belonging to the County. The 10-foot wide Trail was

22 ² The PSRC is the designated Regional Transportation Planning Organization for Puget Sound
23 under RCW 47.80. The PSRC is also designated as a Metropolitan Planning Organization under
24 23 U.S.C. §134. "Destination 2030" is the plan that the PSRC developed in response to the
25 mandates set forth in those statutes. The PSRC's regional transportation plan (including its
26 designation of the Trail as a critical nonmotorized transportation corridor) thus carries the force
27 of state and federal law, and prevails over local plans. See City of Des Moines v. Puget Sound
28 Regional Council, 97 Wn. App. 920, 988 P.2d 993 (1999), rev. den., 140 Wn. 2d 1022, 10 P.3d
29 403 (2000).

1 considered innovative and forward-looking when the County built it in the mid-1970s; but since
2 then regional population growth has resulted in substantially increased trail use, especially by
3 cyclists, for both commuting and recreation. Looking forward, the City's 2005 Comprehensive
4 Plan specifies that the City must provide an additional 523 new housing units between 2005 and
5 2020 to meet the City's housing targets under the GMA. This growth, coupled with additional
6 population growth in neighboring jurisdictions, will result in additional pressure on the Trail and
7 other regional recreational and transportation facilities. The Trail's existing size and alignment in
8 the City do not meet modern trail design criteria and are insufficient to support current use
9 levels, let alone the needs of a growing regional population. To that end, the County intends to
10 upgrade the Trail in the City consistent with state and federal requirements, as well as nationally-
11 recognized trail design standards.

11 3.4 However, the County's redevelopment options are constrained in some locations,
12 because existing easements reduce the available right-of-way to 35 or even just 30 feet; and in
13 many other places, substantial encroachments (landscaping, fencing, and even portions of
14 buildings such as garages and residences) protrude into the County's right of way. Moreover,
15 physical constraints are not the only challenges that the County must overcome. As the owner of
16 more than 175 miles of trail, the County has learned from experience that it can be very difficult
17 to site or to improve multipurpose trails, and especially regional trails like the Burke-Gilman.
18 Neighboring property owners often fear they will experience impacts such as increased noise;
19 loss of privacy; additional crime; difficulty in access to and from their homes; and reduced
20 property values. These fears and concerns can lead to local resistance in the face of planned
21 regional trail improvements. With these concerns in mind, the County and the City jointly
22 invited members of the public to participate on a Citizen's Advisory Group ("CAG") to guide the
23 County in refining its plans to upgrade the Trail. The 13-member CAG included a Lake Forest
Park City Council member (ex officio), a City parks and recreation commissioner, trailside
homeowners, cyclists, and other trail users. In all, 12 of the 13 CAG members were City

1 residents. The CAG was tasked to provide the County with thoughtful and informed
2 recommendations on Trail redevelopment issues such as design, safety, liability, maintenance,
3 enforcement, and environmental concerns. All CAG meetings were open to the public. The
4 CAG process ultimately resulted in two reports to the County, ensuring that representative
5 community input was considered during Trail redevelopment planning.

6 3.5 The County is now preparing an environmental impact statement (EIS) to analyze
7 the potential impacts of Trail redevelopment. The existing trail has an asphalt surface
8 approximately 10-feet wide with about 2 feet of dirt shoulders and discontinuous grass and
9 gravel shoulders on both sides of the trail. The proposed redevelopment project would widen the
10 asphalt portion of the trail to a width of 12 feet; provide a continuous 1-foot wide gravel shoulder
11 on the west and north sides; and provide a continuous gravel shoulder 3 feet wide on the east and
12 south sides, plus an additional foot on either side to stabilize the trail shoulders. The EIS will
13 evaluate three alternatives: the proposed trail design, alternative alignments within the existing
14 right-of-way corridor, and no action.

15 3.6 Meanwhile, in November of 2006, the City adopted Ordinance 951 ("the
16 Ordinance") to enact a new conditional use permit ("CUP") requirement for "multi-use and
17 multipurpose trail facilities." Ex. A. at p.1. There is only one multi-use or multipurpose trail in
18 the City; it is the Burke-Gilman Trail. The Ordinance is aimed squarely at the Trail and the
19 County's plan to redevelop it. However, the City did not conduct any SEPA analysis of the
20 Ordinance's impacts on the Trail, on the County's plans for it, on trail users, or on neighboring
21 properties; nor did the City affirmatively determine that adoption of the Ordinance was exempt
22 from SEPA under RCW 43.21C.110(1)(a) or WAC 197-11-800. It appears that the City made no
23 attempt to comply with SEPA at all.

3.7 The Ordinance provides that a multi-use or multipurpose trail "may" be allowed,
added to or altered as a conditional use in any land use zone in the City, subject to the criteria
outlined in the Ordinance. Ex. A at p.2 para. C (LFPMC 18.54.47.C). It instructs the hearing

1 examiner to attach appropriate conditions "such as, but not limited to, the following: limitation
2 of size, location on property and screening[;] and to only issue [CUPs] conditioned with any
3 requirements under Chapter 18.54, unless otherwise provided herein." Id. (bracketed material
4 added.) In addition, the Ordinance also requires:

- 5 • Stop signs requiring trail users to stop for cross-trail traffic at any driveway or "minor
6 roadway" providing access to 50 or more homes; and yield signs requiring trail users to
7 stop for cross-trail traffic at any driveway or "minor roadway" providing access to less
8 than 50 homes;
- 9 • A trail development plan that is "compatible with the character and appearance of
10 development in the vicinity and preserves the privacy of adjacent uses by the use of
11 setbacks, screening, landscaping, and fencing or grade changes to buffer adjacent
12 properties";
- 13 • A design of non-paved areas and shoulders including a screening plan that complies with
14 the screening and landscaping requirements in LFPMC Chapter 18.62, and requiring
15 screening/landscaping 12 feet wide whenever a trail is adjacent to single family
16 residential zones, except where the hearing examiner determines that 12 feet of
17 landscaping would not be practicable;
- 18 • A design of adequate trail lighting for safety at drives and intersections while minimizing
19 light shining into residences to the extent reasonably possible consistent with safety;
- 20 • Depending on adjacent property zoning, 10- to 12-foot setback from the property line of
21 the trail right of way to the edge of the trail shoulder; but if setback or landscaping
22 requirements cannot be met by realigning a proposed or expanded trail, due to existing
23 structures or topography, available right of way, or applicable environmental laws and
regulations, then the hearing examiner may reduce the width of the proposed trail, or
reduce the width of the required setback or landscaping, or a combination of both. If the
hearing examiner reduces the width of the required setback or landscaping, then the
hearing examiner shall include as a condition of the permit enhanced landscaping to
provide screening that meets or exceeds screening provided by the combination of the
require setback and landscaping; but if the remaining setback is inadequate to allow for
enhanced landscaping, the hearing examiner may require installation of fencing that shall
provide an effective visual barrier to the proposed trail.

21 See Ex. A at pp.2-3 (LFPMC §18.54.47.D.1.a-b; §18.54.47.D.4.b.i, iv-vi).

22 3.8 Months before the City adopted the Ordinance, the County identified problems in
23 the draft Ordinance and put the City on notice that the Ordinance would adversely affect the

1 County's plans to improve the Trail. By way of example, on August 24, 2006, King County
2 Executive Ron Sims wrote to City Councilmember Ed Sterner (the Ordinance's sponsor),
3 outlining in detail how the Ordinance would affect the Trail; on September 14, 2006, King
4 County Department of Natural Resources and Parks Director Pam Bissonnette and King County
5 Parks and Recreation Division Director Kevin Brown sent a joint letter to Councilmember
6 Sterner, restating the County's concerns; and on November 8, 2006, Kevin Brown sent and faxed
7 yet another letter outlining specific problems with the Ordinance. City Council meeting minutes
8 also show that County representatives appeared at Council meetings and testified about the flaws
9 in the Ordinance and the Ordinance's effect on the County's plans to improve the Trail.

10 3.9 Many of the flaws that the County identified in the Ordinance still remain.
11 Portions of the Ordinance violate the GMA and are contrary to elements of the City's own
12 comprehensive plan. Moreover, the City employed a flawed process when it adopted the
13 Ordinance: the City failed to follow SEPA, and the City also failed to notify the Department of
14 Community, Transportation, and Economic Development ("CTED") that it was adopting a
15 development regulation. Each of these issues is alleged more fully below.

16 **IV THE ORDINANCE VIOLATES RCW 36.70A.200(5).**

17 4.1 Section III is re-alleged in full and incorporated herein by reference.

18 4.2 The Ordinance violates RCW 36.70A.200(5)'s mandate that "[n]o ... development
19 regulation may preclude the siting of essential public facilities." The GMA defines the term
20 "essential public facilities" ("EPFs") to include "those facilities that are typically difficult to site."
21 RCW 36.70A.200(1) (listing examples). Under state GMA regulations, "the broadest view
22 should be taken of what constitutes a public facility." WAC 365-195-340(a)(i). The expansion
23 or improvement of essential public facilities is covered by RCW 36.70A.200(5). See City of Des
Moines v. Puget Sound Regional Council, 108 Wn. App. 836, 988 P.2d 27 (1999); Port of Seattle
v. City of Des Moines, CPSGMHB No. 97-3-0014 (1997).

