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

CASCADE BICYCLE CLUB and)	
KING COUNTY,)	
)	No. 07-3-0010c
)	
Petitioners,)	
)	
vs.)	KING COUNTY'S PREHEARING
)	BRIEF
CITY OF LAKE FOREST PARK,)	
)	
)	
Respondent.)	
)	
)	

I. INTRODUCTION

This dispute goes to the heart of the Growth Management Act (GMA). City of Lake Forest Park Ordinance 951 (the Ordinance) contains fundamental flaws that undermine core GMA goals and objectives. The Ordinance gives the City of Lake Forest Park (the City) the discretion to deny needed permits for certain essential public facilities (EPFs)—namely, trails that function as important non-motorized transportation corridors. The Ordinance gives the City the discretion to impose impracticable permit conditions that could so heavily burden a trail project as to kill it even if the City does not veto it outright. The Ordinance's permit process is not fair or predictable. The Ordinance does not support the City's own comprehensive plan goals. And certain of the Ordinance's substantive requirements conflict with state, federal, and other regulatory standards. These flaws cause the Ordinance to violate the GMA, and threaten to produce "balkanized decision-making and unmet regional needs" contrary to the purpose of the

1 GMA.¹ King County's Burke-Gilman Trail (the Trail), which runs through the City, provides a
2 useful example or practical test case to demonstrate how the Ordinance contravenes the GMA.

3 In addition, the City committed several significant procedural errors when it adopted the
4 Ordinance. These procedural errors also violated important GMA goals and objectives, as well
5 as the State Environmental Policy Act (SEPA), and provide additional reasons for the Board to
6 invalidate the Ordinance and to set it aside.

7 II. STANDARD OF REVIEW

8 The Board must decide whether the Ordinance, a City development regulation, violates
9 the GMA. RCW 36.70A.280(1)(a). The Ordinance is presumed valid and the burden is on King
10 County (the County) to demonstrate that the Ordinance is not in compliance with the GMA.
11 RCW 36.70A.320(1), (2). The GMA instructs the Board to apply a "clearly erroneous" standard
12 of review, under which the Board must find compliance unless it determines that City's actions
13 were clearly erroneous in view of the entire record before the Board and in light of the goals and
14 requirements of the GMA. RCW 36.70A.320(3); WAC 242-02-634. To sustain a finding of
15 clear error, the Board "must be left with the firm and definite conviction that a mistake has been
16 made" by the City. Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). The
17 same standard of review applies to the Board's review of SEPA compliance. 36.70A.280(1)(1);
Cougar Mt. Assocs. v. King County, 111 Wn.2d 742, 747, 765 P.2d 264 (1988); Sound Transit v.
City of Tukwila, CPSGMHB No. 99-3-0003 (1999), FDO at p.3.

18 The Board thus gives a modicum of deference to the City, but the Board's discretion "is
19 bounded . . . by the goals and requirements of the GMA." King County v. CPSGMHB, 142
20 Wn.2d 543, 561, 14 P.3d 133 (2000). "The Board acts properly when it foregoes deference to a
21 plan that is not consistent with the requirements and goals of the GMA." Cooper Point Ass'n v.
Thurston County, 108 Wn. App. 429, 444, 31 P.3d 28 (2001) (punctuation omitted), affirmed,

22
23 ¹ Port of Seattle v. City of Des Moines, CPSGMHB No. 97-3-0014, FDO at p.12 (1997) (Board Member J. Tovar,
concurring).

1 148 Wn. 2d 1, 57 P.3d 1156 (2002). When reviewing Board decisions, the courts examine
2 questions of law de novo but give substantial weight to the Board's interpretation of the GMA.
3 Cooper Point Ass'n, 148 Wn. 2d at 14-15.

4 III. BACKGROUND/STATEMENT OF FACTS²

5 Section III of the County's Petition, incorporated herein by this reference, contains a full
6 recital of the facts and background leading up to this dispute. A much abridged version follows.

7 In brief, the County owns and operates the Trail within a 50-foot wide former railroad
8 right-of-way. Ex. 532 at p.3. A roughly two-mile stretch of the County's Trail lies within the
9 City. Id. The Trail is used daily by a large and growing number of pedestrians and cyclists to
10 commute to work or to shop, and for various recreational pursuits such as bicycling, jogging,
11 walking, bird-watching, in-line skating, skateboarding, and dog walking. Id. Indeed, in the City
12 the Trail has substantially more traffic volume—nearly three times higher, in some locations—
13 than the driveways or neighborhood streets that cross it. Id. at p.18. The trail surface is falling
14 apart, and at typically 10 feet wide, this 1970s-era section of the Trail does not meet modern trail
15 design criteria and is insufficient to support current use levels, let alone the needs of a growing
16 regional population. Compare Id. at pp.7, 9 (describing current trail conditions) with id. at p.24
17 (describing minimum width that would meet current standards) and Id. at Appendix 7A p.21
18 ("[c]urrent conditions along the . . . Trail do not meet best engineering safety practices."). The
19 County plans to realign the Trail within the existing corridor, to repave it and widen it an
20 additional 2 feet, and to add continuous gravel shoulders on each side. Ex. 508 at p.2.

21 However, existing easements and sensitive features (slopes, wetlands, drainage facilities,
22 etc.) reduce the available right-of-way from 50 feet to 35 feet in some locations, and just 30 feet

23 ² For the reasons set forth in section 2.1 of King County's Petition for Review, which paragraph is incorporated
herein by this reference, the Board has personal jurisdiction over the parties, has subject jurisdiction over this matter,
and is the proper venue in which to resolve this dispute. For the reasons set forth in Section 14 of King County's
Petition for Review, which section is incorporated herein by this reference, King County has standing to bring the
Petition and to make the arguments set forth herein. Respondent did not challenge jurisdiction, venue, or standing
prior to the Prehearing Order's deadline for dispositive motions (February 22, 2007). Those matters are therefore
established and not subject to further dispute.

1 in others; and, in many other places, substantial encroachments (landscaping, fencing, and even
2 portions of buildings such as garages and residences) protrude into the County's right of way.
3 Ex. 532 at pp.10 (encroachments), p.12 (stormwater), pp.13-14 (wetlands). These physical
4 impediments necessarily constrain the County's design options in some places within the City.
5 There is also a certain amount of local resistance to the County's plan to improve the Trail. Ex.
6 424. This fact is consistent with the County's past experience as the owner and manager of more
7 than 175 miles of trails, and consistent with public trail siting and improvement projects in
8 general.³

9 The City created another hurdle to such projects when, in November of 2006, the City
10 adopted Ordinance 951 (the Ordinance) and added new conditional use permit (CUP)
11 requirements for "multi-use and multipurpose trail facilities." Ex. 418.⁴ At present there is only
12 one multi-use or multipurpose trail in the City—the Burke-Gilman Trail. See Attachment KC-A
13 at p.105 (Excerpt of City Comprehensive Plan, adopted 12/1/2005 by and through City of Lake
14 Forest Park Ordinance 932; inventorying existing park and recreation facilities). The Ordinance
15 is aimed squarely at the Trail, and the record proves it: the City's bare index to its own record
16 expressly names or references the Burke-Gilman at least **441** times. See City's Index, pp. 1-49.

17 Under the Ordinance, a multi-use or multipurpose trail "may" be allowed, added to or altered
18 as a conditional use. Ex. 418 at p.2 para. C. The Ordinance requires trail development plans to
19 be "compatible with the character and appearance of development in the vicinity and preserves

20 ³ See, e.g., King County v. Rasmussen, 299 F.3d 1077, (9th Cir. Wa. 2002), cert. denied, 538 U.S. 1057, 123 S.Ct.
21 2220, 155 L.Ed.2d 1106 (2003); Friends of the East Lake Sammamish Trail v. City of Sammamish, 361 F.Supp.2d
22 1260 (W.D. WA. 2005); Lawson v. State, 107 Wn.2d 444, 730 P.2d 1308 (1986); Ray v. King County, 120 Wn.
23 App. 564, 86 P.3d 183 (2004); King County v. Squire Investment Co., 59 Wn. App. 888, 801 P.2d 1022 (1990); see
also In re Petition of City of Long Beach, 119 Wn. App. 628, 82 P.3d 259 (2004); Harris v. Pierce County, 84. Wn.
App. 222, 928 P.2d 1111 (1996).

⁴ In section 1.B, the Ordinance defines the term "multi-use trail" and "multi-purpose trail" to mean:
[A] paved recreational path for non-motorized users that connects with or continues with such paths in
other cities, including but not limited to paths designed for use by: bicyclists, in-line skaters, roller
skaters, wheelchair users (both motorized and non-motorized) and pedestrians, including walkers,
runners, people with baby strollers, and people walking dogs.
Ex. 418 at p.2 para. B.

1 the privacy of adjacent uses by the use of setbacks, screening, landscaping, and fencing or grade
2 changes to buffer adjacent properties." Id. at p.4 para. D.4.b.i. The Ordinance instructs the City's
3 hearing examiner to attach "appropriate" conditions including, but not limited to, limits on trail
4 size, trail location on property, setbacks from adjoining property, and fencing and screening (i.e.
5 landscaping) requirements. Id. at p.2 para. C.

6 The Ordinance authorizes the City's hearing examiner to reduce the width of a proposed trail;
7 to change the trail's location within its corridor; to require the trail to remain at least 12 feet away
8 from adjoining property, or to reduce required setbacks in exchange for increased landscaping
9 and fencing to protect the privacy of adjoining landowners. Id. at p.4 para. D.4.b.iv, -.vi.
10 Further, the Ordinance requires that stop signs must be placed (facing the trail) at any
11 intersection serving more than 50 homes, and requires that yield signs must be placed (also
12 facing the trail) at any intersection serving 50 or less homes. Id. at pp. 2-3. para. D.1.a, -.b.
Finally, the Ordinance requires "adequate" lighting for safety, Id. at p.4 para. D.4.b.v.

13 In the months before the City adopted the Ordinance, the County warned the City that it
14 had specific, GMA-based concerns about these requirements, as well as others. See, e.g, Ex. 535
15 p.1; Ex. 613; Supp. Ex. 3; Supp. Ex. 4; Supp. Ex. 7. The County's concerns remain, and they
16 form the basis for the County's petition and for the arguments set forth below.

17 IV. ARGUMENT

18 Three preliminary matters must be addressed before proceeding to the legal issues framed
19 by the Board in its Prehearing Order. The first preliminary matter is the classification of trails
20 (and especially regional trails like the Burke-Gilman) as essential public facilities. The second
21 preliminary matter is the preclusive nature of the Ordinance. The third preliminary matter is the
22 relationship between the Ordinance, the Board's evaluation of the Ordinance under the GMA,
23 and the Board's consideration of the Ordinance's effect on the County's Trail.

Preliminary Matter One. In RCW 36.70A.200(5), the GMA mandates that "[n]o ...
development regulation may preclude the siting of essential public facilities." The GMA defines

1 the term "essential public facilities" (EPFs) to include "those facilities that are typically difficult
2 to site." RCW 36.70A.200(1) (listing examples). In addition to EPF "siting," the mandate in
3 RCW 36.70A.200(5) applies to the expansion or improvement of EPFs. See City of Des Moines
4 v. Puget Sound Regional Council, 98 Wn. App. 23, 988 P.2d 27 (1999), review denied, 140
5 Wn.2d 1022, 10 P.3d 403 (2000); Port of Seattle v. City of Des Moines, No. 97-3-0014, FDO at
6 p.5.⁵ Under the State's GMA regulations, "the broadest view should be taken of what constitutes
7 a public facility, involving the full range of services to the public provided by government,
8 substantially funded by government, contracted for by government, or provided by private
9 entities subject to public service obligations." WAC 365-195-340(a)(i). This inclusive approach
10 is consistent with the legislative intent behind the GMA, which was "to discard the traditional
11 land use system in which each jurisdiction functioned as an isolated entity in favor of a scheme
12 which stresses coordination, cooperation, and integration." City of Des Moines v. Puget Sound
13 Regional Council, 97 Wn. App. 920, 929, 988 P.2d 993 (1999); review denied, 140 Wn.2d 1022,
14 10 P.3d 403 (2000).

15 Under these authorities, multi-purpose or multi-user trails as defined in the Ordinance are
16 properly classified as EPFs. Such trails are a service provided to the public by government and
17 substantially funded by government. WAC 365-195-340(a)(i). Such trails and trail
18 improvements are notoriously difficult to site and improve. See generally Footnote 3 and the
19 cases cited therein. And, like many of the other examples given in RCW 36.70A.200(1), such
20 trails can and frequently do serve a significant transportation function.

21 According to the Puget Sound Regional Council (PSRC), bicycle and pedestrian
22 transportation facilities play a key role in achieving the goals of creating more travel choices
23 while preserving environmental quality and open space:

Biking and walking are efficient, low-impact modes of travel that don't contribute to air
pollution or traffic congestion. They provide mobility to all sectors of society, including

⁵ "It is no less difficult to site the expansion of an existing EPF than it is to site a new EPF." Port of Seattle v. City of Des Moines, FDO at p.5.

1 the young, old, disabled, poor and other who may not drive. Well-designed, strategically
2 located non-motorized facilities can also increase public transit ridership—such as
3 ferries, rail and bus—by providing better access to transit for more people. In addition,
bicycle and pedestrian facilities can provide for economic development in downtowns,
urban centers, and other mixed-use areas.⁶

4 The Burke-Gilman is a prime example. The Trail is owned by the County, funded by the
5 County, and operated for the public by the County. The Trail is more than a valuable
6 recreational asset; as a designated "regional" non-motorized transportation corridor, it is also a
7 critical element of the central Puget Sound Metropolitan Transportation System.⁷ See, e.g.,
8 Supp. Ex. 12 at p.31; Supp. Ex. 13 at 13 at p.A4:15. As such, the Trail connects communities
9 across jurisdictional boundaries, and provides citizens with safe access to work and play across
10 the region—without requiring them to use a motor vehicle. See Supp. Ex. 11 at p.4 ("these trails
11 are intended to carry the bulk of the [non-motorized trail] users between major destinations, or as
recreational attractions in and of themselves.") (bracketed material added).

12 For all of these reasons, EPF designation is clearly appropriate for trails like the Burke-
13 Gilman Trail, which are identified in regional plans as core assets and which serve important
14 cross-jurisdictional transportation functions. Cf WAC 365-195-340(a)(i). Yet, one can also
15 conceive of purely local trails that may serve important transportation functions, or may
16 otherwise fit within the liberal parameters established for EPFs under RCW 36.70A.200(1). See,
17 e.g, Supp. Ex. 13 at p.A4:7 (distinguishing between "regional" and "local" facilities, and noting
18 that "[a]t the local level, facilities are important links in the non-motorized transportation
19

20 ⁶ <http://www.psrc.org/projects/nonmotorized/index.htm> (visited April 16, 2007). The Board may take notice of facts
21 capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority,
including facts stated in any publication authorized to be made by any federal or state officer, department or agency.
22 WAC 242-02-670. The PSRC is designated as the Regional Transportation Planning Organization for Puget Sound
under RCW Ch. 47.80; and it is also designated as a Metropolitan Planning Organization under 23 U.S.C. §134.
The cited website is an official PSRC publication. Therefore the Board may take official notice of the site.

23 ⁷ For GMA purposes, a "regional" EPF is one that is sponsored by a state or regional entity rather than a local entity.
See, e.g, King County v. Snohomish County, CPSGMHB No. 03-3-0011, FDO at p.11 (2003) ("King County I")
(ruling that local governments may not purport to revisit or "second-guess" EPF siting decisions made by regional or
state entities). The Burke-Gilman is a regional trail because it is so designated by the County and the PSRC.

