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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

SOUTHGATE NEIGHBORHOOD COUNCIL,  
NEIGHBORHOOD ALLIANCE OF SPOKANE,  
GINGER PATANO, AND FUTUREWISE,

Petitioner(s),

v.

CITY OF SPOKANE,

Respondent,

ARTHUR RICHEY/RPDC, INC., BLACK  
DEVELOPMENT and DAVE BLACK  
PROPERTIES, SPOKANE RADIO, INC., d/b/a  
KXLY,

Intervenor(s).

Case No. 08-1-0014

ORDER ON MOTIONS

Post-It™ brand fax transmittal memo 7671		# of pages > 30
From <i>Mr. Dea-Hay, Mr. Eichstadt</i>		<i>Angie</i>
To <i>Mr. Richey, Mr. Anster</i>		Co.
Dept. <i>Ms. Bjordahl, Mr. Schwartz</i>		Phone #
Fax #		Fax #

**I. PROCEDURAL HISTORY**

On July 25, 2008, SOUTHGATE NEIGHBORHOOD COUNCIL, NEIGHBORHOOD ALLIANCE OF SPOKANE, GINGER PATANO, AND FUTUREWISE, by and through their representatives, Robert Beattey and Rick Eichstadt, filed a Petition for Review and Motion for Expedited Review.

Between August 4, 2008, and August 7, 2008, the Board received Motions to Intervene from Arthur Richey/RPDC, Inc.; Black Development and Dave Black Properties, and Spokane Radio, Inc., d/b/a/ KXLY.

1 On August 13, 2008, the Board held the telephonic Prehearing Conference. Present  
 2 were, John Roskelley, Presiding Officer, and Board Members, Joyce Mulliken and Raymond  
 3 Paoella. Present for the Petitioners were Robert Beattey and Rick Eichstaedt. Present for  
 4 the Respondent was James Richmond. Present for Intervenor, Arthur Richey was Glen  
 5 Amster, for Intervenor, Black Development was Stacy Bjordahl, and for Intervenor, Spokane  
 6 Radio, Inc. was Stanley Schwartz. During the telephonic prehearing conference the Board  
 7 heard the Motions to Intervene and Motion for Expedited Review filed by the parties. The  
 8 Board **GRANTED** intervention status to all parties requesting intervenor status and  
 9 **DENIED** Petitioners' Motion for Expedited Review.

10 On August 15, 2008, the Board received Petitioners' First Amended Petition for  
 11 Review & Notice of Appearance.

12 On August 18, 208, the Board issued its Prehearing Order.

13 During September 2008, the Board received several dispositive motions in this  
 14 matter.<sup>1</sup> On September 29, 2008, the Board held the telephonic motion hearing. Present  
 15 were, John Roskelley, Presiding Officer, and Board Members, Joyce Mulliken and Raymond  
 16 Paoella. Present for the Petitioners were Robert Beattey and Rick Eichstaedt. Present for  
 17 the Respondent was James Richmond. Present for Intervenor, Arthur Richey was Glen  
 18 Amster, for Intervenor, Black Development was Stacy Bjordahl, and for Intervenor, Spokane  
 19 Radio, Inc. was Stanley Schwartz.

20 **II. DISCUSSION**

21 The Eastern Washington Growth Management Hearings Board (Board) received the  
 22 following motions, joinders, and replies from the parties:

- 23 (1) September 5 – Arthur Richey/RPDC, Inc.'s Motion to Dismiss Petitioners
- 24 Futurewise and Neighborhood Alliance of Spokane.

25 <sup>1</sup> See Section II for details as to these filings.

- 1 (2) September 5 – Spokane Radio, Inc., DBA KXLY, Black Development and Dave
- 2 Black Properites’ Motion to Dismiss Petitioners Futurewise, Neighborhood
- 3 Alliance of Spokane, and Southgate Neighborhood Council.
- 4 (3) September 5 – Spokane Radio, Inc. DBA KXLY letter joining item (1) Motion to
- 5 Dismiss.
- 6 (4) September 5 - Intervenor-Respondents<sup>2</sup> Motion to Dismiss Issues RE
- 7 Neighborhood Planning.
- 8 (5) September 8 – Petitioners’ Dispositive Motion.
- 9 (6) September 9 – Respondent’s Joinder in Intevenor-Respondents’ Motion to
- 10 Dismiss Issues RE: Neighborhood Planning.
- 11 (7) September 18 – Petitioners’ Response to Intervenors Motion to Dismiss for
- 12 Lack of Standing.
- 13 (8) September 18 – Petitioners’ Response to Intervenor-Respondents Motion to
- 14 Dismiss Re: Neighborhood Planning.
- 15 (9) September 19 – Intervenors’ Response to Petitioners’ Dispositive Motion Re
- 16 Neighborhood Planning.
- 17 (10) September 19 – Respondent City of Spokane Response to Petitioners’
- 18 Dispositive Motion Re: Neighborhood Planning.
- 19 (11) September 19 – Joinder In Respondent City of Spokane’s Response to
- 20 Petitioners’ Dispositive Motion Re: Neighborhood Planning.
- 21 (12) September 25 - Intervernors Black Development, David Black Properties, and
- 22 Spokane Radio, Inc.’s Reply on Motion to Dismiss Petitioners Futurewise,
- 23 Southgate Neighborhood Council and Neighborhood Alliance of Spokane.
- 24 (13) September 25 - Auther Richey/RPDC, Inc.’s Reply on Motion to Dismiss
- 25 Petitioners Futurewise and Neighborhood Alliance of Spokane.
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<sup>2</sup> Arthur Richey/RPDC, Inc., Spokane Radio, Inc., dba KXLY, David Black Properties, and Black Development.

1 (15) September 25 - City of Spokane's and Intervenor-Respondents Rebuttal  
2 Memorandum Re: Neighborhood Planning.

3 The Board will consolidate motions with similar issues and arguments.

4 **Motions and Arguments:**

5 **First Motion:**

6 Arthur Richey/RPDC, Inc.'s Motion to Dismiss Petitioners Futurewise and Neighborhood  
7 Alliance of Spokane; and Spokane Radio, Inc., DBA KXLY, Black Development and Dave  
8 Black Properties' Motion to Dismiss Petitioners Futurewise, Neighborhood Alliance of  
9 Spokane, and Southgate Neighborhood Council.

9 **Parties Positions:**

10 Intervenor, Richey, et al., claim the following: (A) Petitioners Futurewise and the  
11 Neighborhood Alliance of Spokane lack standing because they do not satisfy one of the four  
12 grounds for establishing standing set forth in RCW 36.70A.280(2); and (B) neither Petitioner  
13 exhausted their administrative remedies before asserting a claim based on the State  
14 Environmental Policy Act (SEPA), RCW 43.21C. The Intervenor request that the Board  
15 dismiss both Petitioners from this appeal or preclude them from participating in the SEPA  
16 aspects of the appeal.

17 Intervenor, Richey, et al., further claim neither Futurewise nor the Neighborhood  
18 Alliance "participated in a meaningful way"<sup>3</sup> in the hearings, during the public participation  
19 opportunities associated with the SEPA process, or at the appeal process before the Hearing  
20 Examiner, and have not had "actual substantive involvement in the administrative process"<sup>4</sup>  
21 until the filing of this appeal. Intervenor argue the Court stated in *Wells v. WWGMHB*<sup>5</sup> that  
22 a petitioner is required to make "a showing of some nexus between the petitioner's  
23 participation in the county process and the issues it raises before the growth management  
24 hearings board." Intervenor claim "mere presence at a meeting does not constitute

25 <sup>3</sup> Arthur Richey/RPDC, Inc.'s Motion to Dismiss Petitioners Futurewise and Neighborhood Alliance of Spokane at 4.

26 <sup>4</sup> Ibid at 3.

<sup>5</sup> *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657, 997 P.2d 405 (2000).

1 sufficient participation to establish standing,<sup>6</sup> even though Intervenors admit that "at least  
2 one member from Futurewise may have briefly spoke at a public hearing."<sup>7</sup>

3 Intervenors, Spokane Radio, et al., have similar claims as those expressed by Arthur  
4 Richey, et al., concerning the standing issue and failure to exhaust administrative remedies  
5 of Futurewise and the Neighborhood Alliance, but also argue that Southgate Neighborhood  
6 Council lacks standing on the SEPA issues as well. Spokane Radio, et al., claim, in addition  
7 to Futurewise and the Neighborhood Alliance, the Southgate Neighborhood Council also fails  
8 to have standing to appeal the SEPA determination. According to Spokane Radio, et al., the  
9 City of Spokane Hearing Examiner rejected the Southgate Neighborhood Council's standing  
10 to appeal in a written decision dated November 13, 2007.<sup>8</sup> Spokane Radio, et al. also argue  
11 that Futurewise, the Neighborhood Alliance, and the Southgate Neighborhood Council fail to  
12 meet the independent two-prong SEPA standing test articulated in *Trepanier v. City of  
Everett*.<sup>9</sup> (1) Injury in fact; and (2) zone of interest.

13 Petitioners, Southgate Neighborhood Council, Neighborhood Alliance of Spokane,  
14 Ginger Patano, and Futurewise, disagree with the Intervenors and argue the following: (A)  
15 under RCW 36.70A.280(2)(b), Futurewise and Neighborhood Alliance participated either  
16 orally and/or in writing in the approval process and have participatory standing under the  
17 GMA; and (B) Futurewise, Neighborhood Alliance, and Southgate Neighborhood Council  
18 have demonstrated GMA participation standing to challenge SEPA-related issues in this case  
19 and Southgate Neighborhood Council filed SEPA appeals for all the challenged amendments  
and provided written and oral argument to the City's Hearing Examiner.

20 Petitioners argue the Court of Appeals in *Wells* held participation standing is "not  
21 issue-specific,"<sup>10</sup> and that "matter" as intended by RCW 36.70A.280(2)(b), is "not the  
22

23 <sup>6</sup> Richey Motion at 4.

<sup>7</sup> Ibid.

24 <sup>8</sup> Spokane Radio, et al. Motion to Dismiss Petitioners Futurewise, Neighborhood Alliance of Spokane, and Southgate  
Neighborhood Council, Exhibit C at 4.

25 <sup>9</sup> *Trepanier v. City of Everett*, 64 Wn. App. 380, 824, P.2d 524 (1992).

26 <sup>10</sup> Petitioner's Response to Intervenors' Motions to Dismiss For Lack of Standing at 4.

1 equivalent of an "issue" and "all three growth management hearings boards have  
 2 consistently rejected a requirement of issue-specific standing."<sup>11</sup> According to Petitioners,  
 3 "comments need only relate to the City's approval of the challenged actions and need not  
 4 be specific legal arguments."<sup>12</sup>

5 Arthur Richey, et al., in their reply, concede that Futurewise and the Neighborhood  
 6 Alliance did participate in the hearings before the City Council, but their participation was  
 7 limited and did not pertain to all of the issues set forth in the petition, specifically in regards  
 8 to the SEPA issue.

9 Intervenors Spokane Radio, et al., in their reply, also concede Futurewise and the  
 10 Neighborhood Alliance did submit written comment to the City, but also contend these two  
 11 groups have limited participation in this proceeding and must be limited only to those issues  
 12 raised before the City. Spokane Radio argues that the Southgate Neighborhood Council,  
 13 Futurewise and the Neighborhood Alliance do not have standing in regards to the SEPA  
 14 issues because they lack SEPA standing or failed to exhaust administrative remedies.

15 **Board Discussion:**

16 ***GMA Standing:***

17 Petitioners must satisfy one of the four types of standing set forth in RCW  
 18 36.70A.280(2), which governs the standing requirements for appearing before the Boards.  
 19 Petitioners claim they satisfy RCW 36.70A.280(2)(b) which provides (emphasis supplied):

20 A petition may be filed only by: (2)(b). . . *a person who has participated orally  
 21 or in writing before the county or city regarding the matter on which a review  
 22 is being requested.*

23 In *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App.  
 24 657, 999 P.2d 405 (2000), the Court of Appeals clarified that, to establish participation  
 25 standing under the GMA, a person must show that his or her participation before the  
 26 jurisdiction was reasonably related to the person's issue as presented to the Board. The

<sup>11</sup> *Wells* at 671.

<sup>12</sup> Petitioners' Motion Response at 5.

1 *Wells* Court stated that a "matter," as intended by RCW 36.70A.280(2)(b), is not the  
 2 equivalent of an "issue" and "all three growth management hearings boards have  
 3 consistently rejected a requirement of issue-specific standing."<sup>13</sup> The Court concluded that  
 4 "matter" in RCW 36.70A.280(2)(b) refers to a broad "subject or topic of concern or  
 5 controversy."<sup>14</sup> Thus, the Court held participation standing is not issue-specific, stating  
 6 "[O]ur conclusion [is] that the Legislature did not intend petitioners to raise specific legal  
 7 issues during the local government planning process."<sup>15</sup> The Court went on to say: "[I]t  
 8 would be unrealistic given the time and resource constraints inherent in the planning  
 9 process to require each individual petitioner to demonstrate to the growth management  
 10 hearings board that he or she raised a specific legal issue before the board can consider  
 11 it."<sup>16</sup> The enactment of RCW 36.70A.280(4) incorporated the *Wells* holding into the GMA.<sup>17</sup>

12 A party's standing under RCW 36.70A.280(2)(b) is relatively easy to determine. The  
 13 City's record will reflect what was before the City when the decision was being made and all  
 14 written and/or oral testimony should be in the record. Petitioners raise issues in their PFR  
 15 pertaining to the procedural requirements of SEPA, capital facilities planning, transportation  
 16 planning, public participation, and internal consistency of the City's Comprehensive Plan  
 17 with the neighborhood planning process.

18 Here, Petitioners submitted declarations from Ms. Kathy Miotke and Mr. Paul Kropp,  
 19 and accompanying exhibits, to show that the Neighborhood Alliance participated in the  
 20 public participation process for the challenged actions.<sup>18</sup> The record shows Ms. Miotke  
 21 submitted a letter to the City Council on behalf of the Neighborhood Alliance on June 9,

21 <sup>13</sup> *Wells* at 671.

22 <sup>14</sup> *Wells* at 672-73.

23 <sup>15</sup> *Wells*, 100 Wn. App. at 672.

24 <sup>16</sup> *Id.* at 674.

25 <sup>17</sup> RCW 36.70A.280(4) provides:

26 To establish participation standing under subsection (2)(b) of this section, a person must show  
 that his or her participation before the county or city was reasonably related to the person's issue  
 as presented to the board.

<sup>18</sup> Petitioners Response to Motions to Dismiss; Attachments are not numbered and exhibits have similar lettering. See  
 Response brief at 3 for reference to exhibits.

1 2008,<sup>19</sup> with comments pertaining to capital facilities, transportation, public participation  
 2 and inconsistency. Petitioners also submitted a Declaration from Paul Kropp, which shows  
 3 he submitted an e-mail in his role as "observer on behalf of the Neighborhood Alliance" to  
 4 two City Councilmen on April 17, 2008; a letter to the City Council President, Joe Shogan,  
 5 on June 9, 2008, on the Neighborhood Alliance of Spokane County letterhead in his official  
 6 capacity as Secretary of the Neighborhood Alliance (internal inconsistency, CP policy  
 7 violations); and another e-mail to two City Councilmen on June 19, 2008, (neighborhood  
 8 planning session). The Index of the Record does not have the Kropp exhibits listed  
 9 separately.

10 In addition, Petitioners filed a Declaration of Kitty Klitzke and accompanying Exhibit A  
 11 to show Petitioner Futurewise participated in the public participation process by submitting  
 12 a letter on Futurewise stationary to the City Council on June 12, 2008, (capital facilities,  
 13 transportation, neighborhood planning process).<sup>20</sup> Petitioners also show that Ms. Klitzke, on  
 14 behalf of Futurewise and Southgate Neighborhood Council participated in the negotiation  
 15 sessions arranged and moderated by the City between the neighborhood and the  
 16 proponents.<sup>21</sup> Furthermore, Petitioners point to the Declaration of Virginia Patano to show  
 17 the Southgate Neighborhood Council through Ms. Patano and others participated in the  
 18 process and appealed the SEPA DNS.<sup>22</sup>

19 In the Board's opinion, there is no question that Futurewise, the Neighborhood  
 20 Alliance, and the Southgate Neighborhood Council through their representatives have  
 21 commented on the subject matter of the issues raised in this appeal through written  
 22 testimony and have participation standing per RCW 36.70A.280(2)(b).  
 23

24 <sup>19</sup> Petitioners' Declaration of Kathy Miotke, Attachment A and listed under Exhibit #131 in the Record.

25 <sup>20</sup> Id.

26 <sup>21</sup> Id.

<sup>22</sup> Petitioners' Declaration of Virginia Patano, Exhibit A.

1 ***Failure to Exhaust Administrative Remedies:***

2 **Parties Positions:**

3 As previously noted in the Parties' Positions above, Intervenors, Richey, et al. and  
4 Spokane Radio, et al., claim Futurewise, and the Neighborhood Alliance failed to exhaust  
5 their administrative remedies, and Spokane Radio also claims the Southgate Neighborhood  
6 Council failed to do so as well, as required by RCW 43.21.C.075(4). Intervenors point to the  
7 Central Washington Growth Management Hearings Board (Central Board) decisions in  
8 *Master Builders Association of Pierce County et al. v. Pierce County*,<sup>23</sup> and *Tulalip Tribes of*  
9 *Washington v. City of Monroe*,<sup>24</sup> both of which required petitioners to exhaust  
10 administrative remedies prior to seeking review before the Hearing Board. The Central  
11 Board reads "judicial review", which is required by the language in the statute, as inclusive  
12 of the Growth Boards.<sup>25</sup>

13 According to the Intervenors, the Western Washington Growth Management  
14 Hearings Board (Western Board) rejected the application of the SEPA exhaustion  
15 requirement for appeals before Hearings Boards in the *Island County Citizens' case*,  
16 choosing instead to hold a strict interpretation of "judicial review", not quasi-judicial  
17 review,<sup>26</sup> in the statute. Intervenors claim this interpretation results in an inconsistent  
18 procedural anomaly because a petitioner could be permitted to pursue a SEPA claim before  
19 the Board, yet be precluded from seeking judicial review of the Board's final decision based  
20 on lack of participation at the Hearing Examiner level.<sup>27</sup>

21 In addition, Intervenors claim the City adopted WAC 197-11-545 by reference under  
22 the Spokane Municipal Code, Title 17E.050.150, which states a person who fails to  
23 comment during the SEPA comment period cannot challenge the environmental documents.

23 *Master Builders Association of Pierce County, et al. v. Pierce Co.*, CWGMHB Case No. 02-3-0010, Order on  
24 Petitioners' Motion to Dismiss SEPA Claims, (Oct. 21, 2002).

24 *Tulalip Tribes of Washington v. City of Monroe*, CWGMHB Case No. 99-3-0013, FDO (Jan. 31, 2000).

25 RCW 43.21.C.075(4).

26 *Island County Citizens' Growth Management Coalition et al. v. Island County*, WWGMHB Case No. 98-2-0023C,  
27 Order on Motion to Dismiss (March 1, 1999).

27 Spokane Radio Motion to Dismiss at 6.

1 Intervenor contend neither Futurewise nor Neighborhood Alliance filed written comments  
2 during the commenting period and are thus barred from challenging the City's  
3 environmental determination.<sup>28</sup>

4 Petitioners claim SEPA's requirement for the exhaustion of administrative remedies  
5 does not bar them from raising SEPA-based issues before the Board as long as their  
6 participation in the underlying matter, here the adoption of Ordinance Nos. C34261,  
7 C34256, and C34257, satisfies the GMA's requirement for participation standing. Petitioners  
8 rely on this Board's holding in *Cascade Columbia Alliance v. Kittitas County*<sup>29</sup>, *Loon Lake*  
9 *Property Owners Association v. Stevens County*<sup>30</sup> and *Knapp v. City of Spokane*,<sup>31</sup> along  
10 with the Western Board's in *Whidbey Environmental Action Network v. Island County*,<sup>32</sup>  
which summed up the standing issue:

11 In sum, the GMA's standing provision read together with the GMA's grant  
12 of jurisdiction in the same section unambiguously provides that  
13 participatory standing is sufficient to bring a SEPA petition before the  
boards. RCW 36.70A.280(2).

14 Petitioners argue the Western Board and Eastern Board have ruled that the GMA's  
15 standing requirements forecloses the need to exhaust SEPA administrative remedies and  
16 cite *Knapp v. City of Spokane*, which rejected arguments that petitioners lacked SEPA  
17 standing for failing to comment on a SEPA document and failing to exhaust administrative  
18 remedies.

#### 19 **Board Discussion:**

#### 20 **Standing**

21 As noted *supra*, Petitioners have demonstrated that they participated in the  
22 proceedings giving rise to the City's adoption of Ordinance Nos. C34261, C34256, and

23 <sup>28</sup> Spokane Radio Motion to Dismiss at 6.

24 <sup>29</sup> *Cascade Columbia Alliance v. Kittitas County*, EWGMHB Case No. 98-1-0007, Order on Motions (March 1, 1999).

25 <sup>30</sup> *Loon Lake Property Owners Association v. Stevens County*, EWGMHB Case No. 01-1-0002c, Order on Motions (April  
23, 2001).

26 <sup>31</sup> *Knapp v. City of Spokane*, EWGMHB Case No. 97-1-0015C, Order on Motions (September 24, 1997).

<sup>32</sup> *Whidbey Environmental Action Network v. Island County*, WVGMB Case No. 03-2-0008, FDO (August 22, 2003).

1 C34257, and, therefore, have standing to raise issues related to the subject matter of their  
 2 comments before the Board. As such, the Board finds and concludes Petitioners have  
 3 standing to raise SEPA Issues.

4 **Exhaustion of Administrative Remedies**

5 However, under SEPA, even if a party has standing to raise the issue, a party must  
 6 still exhaust their administrative remedies prior to further review of administrative actions,  
 7 and the County's own code provision similarly sets forth a process for exhaustion.

8 The Intervenors, Arthur Richey, et al., and Spokane Radio, et al., based the second  
 9 part of their motions on the SEPA statute, RCW 43.21.C.075(4), which states:

10 (4) If a person aggrieved by an agency action has the right to judicial appeal  
 11 and if an agency has an administrative appeal procedure, such person shall,  
 12 prior to seeking any judicial review, use such agency procedure if any such  
 13 procedure is available, unless expressly provided otherwise by state statute.

14 As a background, exhaustion is generally reviewed in light of the courts pursuant to  
 15 RCW 34.05.534, where a party must exhaust all available administrative remedies before  
 16 the Superior Court can grant relief. In *Citizens for Mount Vernon v. City of Mount Vernon*,<sup>33</sup>  
 17 the Court stated that a court will not intervene where an exclusive administrative remedy is  
 18 provided. The Court also said that the exhaustion of remedies doctrine is based on a  
 19 number of legal policies. The doctrine: (1) avoids premature interruption of the  
 20 administrative process; (2) provides for full development of the facts, and (3) allows the  
 21 exercise of agency expertise. The exhaustion of administrative remedies also protects the  
 22 autonomy of administrative agencies, such as the City Council, by giving them the  
 23 opportunity to correct their own errors, and discourages litigants from ignoring  
 24 administrative procedures by resort to the courts, while allowing the administrative review  
 25 process to run its course.

26 <sup>33</sup> *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866, 947 P.2d 1208 (1997).

1 Intervenor, Spokane Radio, et al. and Richey, et al., ask the Board to eliminate  
2 Futurewise and the Neighborhood Alliance from participating in the SEPA aspect of the  
3 appeal, and Spokane Radio, et al. also includes the Southgate Neighborhood Alliance.  
4 Intervenor claim these Petitioners did not appeal the DNS at the hearing examiner level  
5 and, therefore, did not exhaust their administrative remedies as required by RCW  
6 43.21C.075(4) and WAC 197-11-545, which the City adopted under SMC 17E.050.150.

7 The Board agrees in part. The Southgate Neighborhood Council filed a SEPA appeal  
8 to the City of Spokane Hearing Examiner and, therefore, exhausted complied with the  
9 administrative process set forth in SMC 17E.050.150 and are not barred from raising SEPA  
10 issues before the Board. However, Futurewise and the Neighborhood Alliance failed to  
11 exhaust their administrative remedies because they failed to file an appeal on the SEPA  
12 documents to the City's Hearing Examiner as required by SMC 17E.050.150 and, therefore,  
13 are precluded from participating in the SEPA aspect of this matter.

14 Petitioners argue that in *Knapp v. City of Spokane*<sup>34</sup> the Board "rejected arguments  
15 that Petitioners lacked SEPA standing for failing to comment on a SEPA document,"<sup>35</sup> thus  
16 failing to exhaust administrative remedies. This case involved failure of the party to  
17 comment on the DEIS, not file an appeal and exhaust administrative remedies and,  
18 therefore, the Board determined that this was not fatal to the parties standing before the  
19 Board. The determination for standing under RCW 36.70A.280 is different than the  
20 requirement for a party to exhaust the administrative remedies under RCW 43.21C.075(4).

21 The record shows Ms. Virginia Patano and Ms. Teresa Kafentzis signed an application  
22 for appeal of the Determination of Non-significance (DNS) for File No. Z2006-083-LU. Ms.  
23 Kafentzis signed this application in her capacity as Secretary of the Southgate Neighborhood  
24 Council.<sup>36</sup> In addition, the Record shows Ms. Kafentzis, again in her capacity as Secretary of  
25 the Southgate Neighborhood Council, submitted an "Affidavit of Southgate Neighborhood  
26

<sup>34</sup> *Id. Knapp v. City of Spokane.*

<sup>35</sup> Petitioners Response at 7.

<sup>36</sup> Petitioners' Response to Intervenor's Motions to Dismiss For Lack of Standing, Declaration of Teresa Kafentzis, Attachment A, SEPA appeal.

1 Council" on November 26, 2007, which indicates the Southgate Neighborhood Council voted  
2 to appeal the SEPA DNS for this file.

3 The record also shows Ms. Patano, for herself and on behalf of the Southgate  
4 Neighborhood Council, also filed an appeal on the Mitigated Determination of Non-  
5 significance (MDNS) for File Nos. Z20051113LU & Z2005114LU on August 30, 2007.  
6 Futurewise and the Neighborhood Alliance failed to appeal the DNS and the MDNS to the  
7 hearing examiner.

8 Therefore, the Board finds that Ms. Virginia Patano and the Southgate Neighborhood  
9 Council did exhaust their administrative remedies, pursuant to SCC 17E.050.150 and RCW  
10 43.21C.075(4), and are not barred from raising Issue No. 1, the SEPA-based issue, to this  
11 Board. Futurewise and the Neighborhood Alliance failed to exhaust their remedies and  
12 having failed to do so, are barred from participating in the SEPA aspect of this appeal under  
13 Issue No. 1.

14 **Board Decision:**

15 Arthur Richey/RPDC, Inc.'s Motion to Dismiss Petitioners Futurewise and  
16 Neighborhood Alliance of Spokane for failure to exhaust administrative remedies is  
17 **GRANTED**. Spokane Radio, Inc., DBA KXLY, Black Development and Dave Black Properties'  
18 Motion to Dismiss Petitioners Futurewise, Neighborhood Alliance of Spokane, and Southgate  
19 Neighborhood Council for failure to exhaust administrative remedies is **GRANTED** for  
20 Futurewise and the Neighborhood Alliance of Spokane and **DENIED** for the Southgate  
21 Neighborhood Council and Virginia Patano. Futurewise and the Neighborhood Alliance are  
22 barred from participating in Issue No. 1, the SEPA aspect of this appeal. The Southgate  
23 Neighborhood Council and Virginia Patano may argue Issue No. 1 in future briefing before  
24 this Board.  
25  
26

**Second Motion and Joinder:**

Intervenor-Respondents<sup>37</sup> Motion to Dismiss Issues RE Neighborhood Planning;  
Respondent's Joinder in Intervenor-Respondents' Motion to Dismiss Issues RE:  
Neighborhood Planning.

**Parties Positions:**

Intervenor-Respondents filed a Motion to Dismiss Issue Nos. 4 and 5, in which the Petitioners claim the City failed to comply with the GMA goals and requirements that all development actions be "internally consistent," and local governments base their decisions on "broad public participation," when the City failed to use a "neighborhood planning process."<sup>38</sup> Intervenor-Respondents ask the Board to rule on whether the City was "required to complete a neighborhood planning process as a prerequisite to the Amendments."<sup>39</sup>

Intervenor-Respondents contend the following: (1) The GMA does not require neighborhood planning as part of the public participation process; (2) the amendments do not violate the GMA's internal consistency requirements because the City did not follow its neighborhood planning process; (3) the City Council is the ultimate decision-maker, not the neighborhood planning process; (4) the City's Comprehensive Plan is a guide and has no regulatory effect; and (5) neighborhood planning is not a prerequisite to amending the City's Comprehensive Plan.<sup>40</sup>

Respondent, City of Spokane, joins the Intervenor-Respondents' motion, adopts and incorporates by reference the facts, arguments and legal authorities set forth in that motion, and adds that "in addition to the presumption of validity enjoyed by the subject comprehensive plan amendments under the GMA, the underlying ordinances approving the subject amendments are also entitled to a presumption of validity."<sup>41</sup>

<sup>37</sup> Arthur Richey/RPDC, Inc., Spokane Radio, Inc., d/b/a KXLY, David Black Properties, and Black Development.

<sup>38</sup> Petitioners' First Amended Petition for Review.

<sup>39</sup> Intervenor-Respondents Motion to Dismiss at 2.

<sup>40</sup> Id. at 6-12.

<sup>41</sup> Respondent's Joinder in Intervenor-Respondents' Motion to Dismiss Issues Re: Neighborhood Planning at 2.

1 Petitioners in response argue the following: (1) The City of Spokane is entitled to  
2 discretion in establishing participation provisions, but once these provisions are incorporated  
3 into its Comprehensive Plan, and they are unambiguous, they must be followed; (2) the City  
4 Council failed to follow its own rules for amending its CP, creating impermissible  
5 inconsistency within the CP; and (3) while the result of the Neighborhood Planning Process  
6 is not binding on the Council, that does not make the process voluntary or waive the  
7 requirement for the City to follow its CP.<sup>42</sup>

8 Respondent and Intervenor, in their Rebuttal Memorandum Re: Neighborhood  
9 Planning, claim the Petitioners concede the City is entitled to discretion in adopting its public  
10 participation program (PPP)<sup>43</sup> which does not require neighborhood planning as a pre-  
11 requisite to establishing a new center.<sup>44</sup> Respondent, et al. argue that the Petitioners failed  
12 to appeal the PPP, which they have collaterally attacked.

13 Respondent, et al. claim that comprehensive plans are guides and more specific  
14 implementing regulations prevail, and the Petitioners failed to address this legal principle.<sup>45</sup>  
15 According to the Respondent, the City's implementing regulations encourage, but do not  
16 require neighborhood planning.<sup>46</sup> Where there is a conflict between a comprehensive plan  
17 and a specific development regulation, the regulation prevails.

18 Respondent, et al. contend that the Board must defer to the City Council's  
19 interpretation of its own CP. They argue that a municipal ordinance is ambiguous if it is  
20 subject to more than one interpretation<sup>47</sup> and here, Petitioners concede the CP's  
21 neighborhood planning provisions are ambiguous.<sup>48</sup> Additionally, the Respondent claims the

22 <sup>42</sup> Petitioners' Response to Intervenor-Respondents Motion to Dismiss Re: Neighborhood Planning; at 2-7.

23 <sup>43</sup> Petitioners Response Re: Neighborhood Planning at 2.

24 <sup>44</sup> SMC 17G.020.010(I) & (J).

25 <sup>45</sup> *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007); *Citizens of Mount Vernon v. City of Mount Vernon* at  
26 footnote 31.

<sup>46</sup> SMC 17G.020.010(J)(4).

<sup>47</sup> *Department of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002).

<sup>48</sup> Miotke Declaration.

1 ordinance approving the subject amendments are presumed valid under both the GMA and  
2 Washington common law.<sup>49</sup>

3 In addition, Respondent argues the Petitioners failed to refute the inapplicability of  
4 LU 3.3, which relates to neighborhood centers, not district centers, and failed to refute that  
5 neighborhood planning occurred for the subject applications.

6 **Board Discussion:**

7 The Board will take Issue Nos. 4 & 5 separately.

8 **Issue No. 4:**

9 Issue No. 4 asks the Board to determine if the City of Spokane failed to comply with  
10 GMA goals 7 and 11, and RCW 36.70A.070, which requires all development actions be  
11 *internally consistent*, when the City failed to use a neighborhood planning process to  
12 approve the Spokane South Gate project, as stated by the City's CP. The City's code  
13 provisions requires GMA internal consistency.<sup>50</sup>

14 RCW 36.70A.070 requires a county or city comprehensive plan, consisting of maps,  
15 and descriptive text, to be an *internally consistent* document and all elements shall be  
16 consistent with the future land use map.<sup>51</sup> RCW 36.70A.040 defines "consistency" as  
17 meaning no feature of a plan or regulation is incompatible with any other feature of a plan  
18 or regulation.

19 RCW 36.70A.020(7) Permits, suggests that permit applications *should* be processed  
20 in a timely and fair manner to ensure predictability; and RCW 36.70A.020(11) Citizen  
21 participation and coordination, *encourages* the involvement of citizens in the planning  
22 process and asks government to *ensure coordination between communities and jurisdictions*  
23 to reconcile conflicts.<sup>52</sup> While Goal 7 is not considered a requirement per se, Goal 11 is  
24 backed by the following statutes: (1) RCW 36.70A.140, which requires counties and cities to  
25 establish and broadly disseminate a public participation plan; (2) RCW 36.70A.035, which

26 <sup>49</sup> RCW 36.70A.320(1); *Commonwealth Title Insurance Co. v. City of Tacoma* 81 Wn.2d 391, 502 P.2d (1972).

<sup>50</sup> Id. at Chapter 17G.020(C)(2) and (D)(4).

<sup>51</sup> RCW 36.70A.070.

<sup>52</sup> RCW 36.70A.020(7) and (11).

1 specifies notice provisions; (3) RCW 36.70A.130(2)(a), which requires counties and cities to  
 2 establish and broadly disseminate to the public a PPP per .035 and .140; and (4) RCW  
 3 36.70A.140, which requires a broad dissemination to the public a public participation  
 4 program identifying procedures providing for early and continuous public participation.

5 The City's public participation plan was adopted in 2005 and codified under Spokane  
 6 Municipal Code 17G.020.010(J). The plan incorporates the statute requirements found in  
 7 the GMA and was not appealed. Additional public participation opportunities are required  
 8 throughout the CP and development regulations amendment process codified under SMC  
 17G.020.010(G) and (H).

9 The thrust of Petitioners argument is that the City Council failed to amend its CP with  
 10 a procedure consistent with the "legal requirements of the Plan", and the adoption of the  
 11 ordinances creates inconsistency in the CP by failing to use the neighborhood planning  
 12 process as the CP requires.<sup>53</sup> Petitioners contend the City Council's imposition of the  
 13 neighborhood planning process is a "legal requirement", that once established, the Council  
 14 is obligated to follow.<sup>54</sup>

15 Petitioners' argument relies heavily on the City's CP Land Use Policies, LU 3.2 and LU  
 16 3.3, which are written as follows:

17 **LU 3.2 Centers and Corridors**

18 Designate centers and corridors (neighborhood scale, community or district  
 19 scale, and regional scale) on the land use plan map that encourages a mix of  
 uses and activities around which growth is focused (Board emphasis):

20 **Discussion:**

21 Suggested centers are designated where the potential for center development  
 22 exists. *Final determination is subject to the neighborhood planning process.*

23  
 24  
 25 <sup>53</sup> Id. footnote 33 at 4-5.

26 <sup>54</sup> Id. at 7.

1 **LU 3.3 Planned Neighborhood Centers**

2 Designate new centers or corridors in appropriate locations on the land use  
3 plan map through a neighborhood planning process.

4 **Discussion:**

5 The comprehensive plan recognizes that centers and corridors are the most  
6 appropriate venue for the location of commercial and higher density  
7 residential uses. In some areas of the city, there may be a need to establish a  
8 center or corridor. *The exact location, boundaries, size and mix of land uses in  
9 a potential neighborhood center should be determined through the  
10 neighborhood planning process.* This process may be initiated by the city at  
11 the request of a neighborhood or private interest...

12 LU 3.2 is arguable, but the Board agrees with the City and Intervenors that Land Use  
13 (LU) 3.3 is irrelevant here because it specifically relates to "neighborhood centers", not  
14 "district centers". In addition, Petitioners failed to address this policy in their brief (LU 3.3  
15 was mentioned. Therefore, the Board will address LU 3.2 only.

16 The City's Comprehensive Plan states that the Plan's goals and policies provide  
17 specificity for planning and decision-making<sup>55</sup> with the understanding the Comprehensive  
18 Plan is a "guide" or "framework" to future growth and development.<sup>56</sup> This same concept is  
19 articulated in *Woods v. Kittitas County*,<sup>57</sup> where the Court reiterated the "guide" or  
20 "blueprint" language found in *Citizens for Mt. Vernon v. City of Mount Vernon*.<sup>58</sup>

21 Thus, the GMA indirectly regulates local land use decisions through  
22 comprehensive plans and development regulations, both of which must  
23 comply with the GMA. See former RCW 36.70A.130(1)(a), (b) (2002).  
24 Comprehensive plans serve as "guide[s]" or "blueprint[s]" to be used in  
25 making land use decisions. *Citizens for Mount Vernon v. City of Mount Vernon*.

26 <sup>55</sup> City of Spokane's Comprehensive Plan; Land Use Chapter 3, 3.4 Goals and Policies.

<sup>56</sup> Id. "Adoption" at ii.

<sup>57</sup> *Woods v. Kittitas County*, 162 Wn.2d 597, 613 (2007).

<sup>58</sup> *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997).

1           Within the City's Comprehensive Plan are the required GMA elements, including the  
 2 Land Use Element. The Land Use Element's goals and policies establish a "framework for  
 3 future growth and development of the City."<sup>59</sup>

4           Land Use (LU) 3.2 states that a final determination for the location of a suggested  
 5 center is subject to the neighborhood planning process, as long as the potential for center  
 6 development exists in a particular area. As specifically noted, this policy refers to  
 7 neighborhood, district and regional centers. There is an assumption by the authors of the  
 8 document that "Final determination" is made by the City Council because the City Council  
 9 has the ultimate responsibility for making plan amendment decisions.<sup>60</sup> The term "subject  
 10 to" is defined by Encarta and, in this case, refers to "depending on somebody or  
 11 something". The City Council's final determination to locate a center is therefore dependent  
 12 on the neighborhood planning process, which is defined in the CP,<sup>61</sup> but was not available  
 13 to the neighborhood groups because of a lack of City funding. LU 3.2 has a place in the  
 14 process in the future, and, as written, is a directive, but was a "guide" during the  
 15 amendment process for lack of a neighborhood planning process.

16           The Board notes that the wording in LU 3.2 is not as "unambiguous"<sup>62</sup> as Petitioners'  
 17 argue. For instance, the neighborhood planning process cannot subvert the role of the City  
 18 Council as the final decision maker.<sup>63</sup> The question then is when is the "final  
 19 determination" supposed to take place? Is it after the Planning Commission decision; after  
 20 an appeal to the Hearing Examiner, or after the City Council's decision and before project  
 21 permits are issued? As written, the policy indicates the neighborhood planning process has

22 <sup>59</sup> Id. 3.4 Goals and Policies at 9.

23 <sup>60</sup> RCW 36.70A.040(4); SMC 17G.020.010(H)(14).

24 <sup>61</sup> CP at Chapter 11, N8: "Neighborhood planning is defined as any planning activity conducted in the city's Urban  
 25 Growth Area (UGA) that implements or is more focused and detailed than the comprehensive plan. Examples of  
 26 neighborhood planning may include center and corridor planning..."

<sup>62</sup> Petitioners Response Re: Neighborhood Planning at 3.

<sup>63</sup> RCW 36.70A.040(4); SMC 17G.020.010(H)(14).

<sup>64</sup> Benaroya, et al. v. City of Redmond, CPSGMHB Case No. 95-3-0072, FDO (1996).

1 the final say as to the location of neighborhood, district and regional centers, which, of  
2 course, is not the case.

3 For instance, the City provided numerous opportunities for the public to have  
4 significant input into the amendment process, including planning commission meetings; a  
5 two-day City-sponsored planning workshop; a series of meetings with the neighborhood  
6 representatives; and a public hearing before the City Council. Within this process, when  
7 does the public participation process stop and the neighborhood planning process begin? It  
8 can be argued, as neighborhood planning is defined in CP, Chapter 11, NR, that the  
9 neighborhood planning process took place after the Planning Commission when a City-  
10 sponsored two-day meeting was held among the applicants, the Southgate Neighborhood  
11 Council, and the public, but prior to the adoption of the ordinances by the City Council.

12 As Intervenors argued, the area in question has all the criteria necessary to be  
13 designated as a center where a portion of the City's projected growth at highest density  
14 would occur, and where neighborhood centers, district centers, employment centers and  
15 corridors may be located.<sup>65</sup>

16 Based on significant input from the public and neighborhood groups, including the  
17 Southgate Neighborhood Council and the Neighborhood Alliance,<sup>66</sup> the City Council  
18 conditioned approval of the three amendments on the execution of development  
19 agreements between the owners and the City that would "scale back future development on  
20 the properties in a number of ways," and included compliance with neighborhood design  
21 guidelines. Proposals, such as these amendments, are required to be consistent with any  
22 adopted neighborhood plan or center plan and applicants are encouraged to address site-  
23 specific amendments through the neighborhood planning process.<sup>67</sup> Unfortunately, no  
24 adopted neighborhood plan or center plan existed for this area and, as mentioned above,  
25 neither did a neighborhood planning process.

26 <sup>65</sup> Intervenor-Respondents Motion to Dismiss Issues Re: Neighborhood Planning; Exhibit C, Land Use Plan map.

<sup>66</sup> Second Amended Preliminary Index of Record (See list. Too many references to list here.)

<sup>67</sup> Id. at Chapter 17G.020(J)(4).

1 The Board agrees that the City's CP at LU 3.2 and its development regulations at  
2 SMC 17G.020.010(J)(4) conflict. The CP directs a final determination as to the location of a  
3 center to be subject to the neighborhood planning process, yet the Spokane Municipal Code  
4 at (J)(4) only "encourages" the persons proposing site-specific amendments to address  
5 these through the neighborhood planning process.

6 Washington Courts have previously determined that in the event of an inconsistency  
7 between the CP and a regulation, the more specific regulation prevails. For example, when  
8 analyzing the application of pre-GMA regulations, the Supreme Court, in *Citizens for Mount  
9 Vernon* opined:

10 Since a comprehensive plan is a guide and not a document designed for  
11 making specific land use decisions, conflicts surrounding the appropriate use  
12 are resolved in favor of the more specific regulations, usually zoning  
13 regulations. *A specific zoning ordinance will prevail over an inconsistent  
14 comprehensive plan. Cougar Mountain Assocs. v. King County*, 111 Wn.2d  
15 742, 757, 765 P.2d 264 (1988). If a comprehensive plan prohibits a particular  
16 use but the zoning code permits it, the use would be permitted. *Weyerhaeuser  
17 v. Pierce County*, 124 Wn.2d 26, 43, 873 P.2d 498 (1994).<sup>68</sup>

18 In the *Woods v. Kittitas County* case, the Supreme Court reiterated the earlier  
19 Court's decision in *Citizens for Mount Vernon*:

20 A comprehensive plan does not directly regulate site-specific land use  
21 decisions. *Id.*; *Viking Props.*, 155 Wn.2d at 126, ¶ 31. Instead, *local  
22 development regulations, including zoning regulations, directly constrain  
23 individual land use decisions. Viking Props.*, 155 Wn.2d at 126, ¶ 31. Such  
24 regulations must be consistent with the comprehensive plan and be sufficient  
25 in scope to carry out the goals set forth in the comprehensive plan. RCW  
26 36.70A.040(3)(d), (4)(d); WAC 365-195-800(1).<sup>69</sup>

<sup>68</sup> *Id. Citizens for Mount Vernon.*

<sup>69</sup> *Id. Woods v. Kittitas County.*

1 The Court of Appeals has similarly read and applied the Court's decision in *Citizens for*  
 2 *Mount Vernon* to stand for the premise that conflicts are resolved in favor of the more  
 3 specific regulation:

4 ...a comprehensive plan, standing alone, cannot be used to make specific land  
 5 use decisions. *Citizens for Mt. Vernon, 133 Wn. 2<sup>nd</sup> at 837*. Where there are  
 6 conflicts between a general comprehensive plan and a specific zoning code [a  
 7 development regulation], the conflicts must be resolved in the zoning codes'  
 8 favor.<sup>70</sup>

9 Generally, a specific zoning ordinance will prevail over an inconsistent  
 10 comprehensive plan. Because a comprehensive plan is a guide and not a  
 11 document designed for making specific land use decisions, conflicts  
 12 concerning a proposed use are resolved in favor of the more specific  
 13 regulations. Thus, to the extent the comprehensive plan prohibits a use that  
 14 the zoning code permits, the use is permitted.<sup>71</sup>

15 Although these cases address the application of comprehensive plan policies and  
 16 development regulations to specific development proposals, the Board concurs with the  
 17 Courts' interpretation in that if there is an inconsistency between the CP, which is  
 18 considered a guide, and more specific regulations, such as the City's public participation  
 19 plan, the more specific regulations should prevail.

20 The Board believes policy LU 3.2, as written, is flawed and needs attention by the  
 21 City Council in the future. Neighborhood groups should have significant input into their  
 22 communities, but their elected representatives have the ultimate responsibility for making  
 23 final decisions, and this Board must apply a more deferential standard of review to the  
 24 actions of the City<sup>72</sup> and the City Council's interpretation of its own CP and development  
 25 regulations.<sup>73</sup> The City Council determined through an extensive public process to adopt

26 <sup>70</sup> *Cingular Wireless LLC v. Thurston County*, 131 Wn. App. 756 (2006).

<sup>71</sup> *Lakeside Industries v. Thurston County*, 199 Wn. App. 886, 894-95 (2004) (Internal citations omitted)

<sup>72</sup> RCW 36.70A.3201.

<sup>73</sup> *McTavish v. City of Bellevue*, 89 Wn.App. 561, 564, 949 P.2d 837 (1998); *Meridian Minerals Co. v. King Co.*, 61 Wn.App. 195, 208-09, 810 P.2d 31 (1991).

1 Ordinance Nos. C34261, C34256, and C34257 and followed its PPP, plus additional City-  
2 sponsored meetings to reach that decision, which, under the circumstances and definition,  
3 can be considered the "neighborhood planning process". Given the facts that there was no  
4 adopted neighborhood plan or a neighborhood planning process in place, LU 3.2 is moot.

5 **Board Decision:**

6 The Board finds the Petitioners failed to carry their burden of proof under Issue No.  
7 4 for the reasons stated above and the Intervenor-Respondents Motion to Dismiss Issues  
8 Re: Neighborhood Planning, Issue No. 4, is **GRANTED**.

9 **Issue No. 5:**

10 Issue No. 5 asks the Board to determine if the City of Spokane failed to comply with  
11 the GMA goals [RCW 36.70A.020(7) and .020(11)] and requirements (RCW 36.70A.070;  
12 .035; .130(2) and .140), which require local governments to base its decisions on broad  
13 public participation, when City failed to use a neighborhood planning process to approve the  
14 Spokane South Gate project, as stated by the City's CP.

15 The Board finds and the record shows<sup>74</sup> the City of Spokane followed its public  
16 participation plan, SMC 17G.020.010(J)(4), throughout the amendment process. As detailed  
17 under the Board's discussion for Issue No. 4, the City offered numerous opportunities for  
18 the public, neighborhood councils and special interest groups to provide written and oral  
19 testimony at the Planning Commission and City Council levels. In addition, the City held a  
20 two-day City-sponsored neighborhood planning workshop, which involved the City, the  
21 Southgate Neighborhood Council, the public and applicants prior to approving the  
22 amendments in question.<sup>75</sup> As stated in the discussion above, this workshop is paramount  
23 to the definition found in the CP, Chapter 1.1, N8 for neighborhood planning. Given that  
24 there was no process in place to practice the directive found in LU 3.2 for a neighborhood  
25 planning process, the specificity discussed at the workshop, and based on the timing of the

26 <sup>74</sup> Second Amended Preliminary Index of Record (See list. Too many references to list here.)

<sup>75</sup> City of Spokane's and Intervenor-Respondent's Rebuttal Memorandum Re: Neighborhood Planning at 5.

1 workshop prior the City Council's adoption of Ordinance Nos. C34261, C34256, and C34257,  
 2 the "neighborhood planning process" may very well have taken place. We must remember  
 3 that the neighborhood planning process does not dictate a particular result.

4 **Board Decision:**

5 The Board finds the Petitioners failed to carry their burden of proof under Issue No.  
 6 4 for the reasons stated above and the Intervenor-Respondents Motion to Dismiss Issues  
 7 Re: Neighborhood Planning, Issue No. 5, is **GRANTED**.

8 **Third Motion:**

9 Petitioners' Dispositive Motion

10 **Parties Positions:**

11 Petitioners contend the City of Spokane failed to comply with the GMA by amending  
 12 its Comprehensive Plan and Land Use Plan Map when the City failed to use a neighborhood  
 13 planning process as required by its CP violating RCW 36.70A.070 and RCW 36.70A.020(7)  
 14 and (11). Petitioners argue that when the City adopted Ordinance Nos. C34261, C34256  
 15 and C34257 it failed to follow its own requirements found in the City's CP at LU 3.2 and 3.3  
 16 and the adoption of the ordinance violates the requirements and goals of the GMA.

17 Intervenor's argue the motion must be denied for the following reasons: (1)  
 18 Petitioners failed to meet their burden of proof because there is no internal inconsistency  
 19 between the City's CP and the adopted amendments; Petitioners failed to argue the  
 20 applicability of RCW 36.70A.020(7); and the City followed its adopted public participation  
 21 program in adopting the amendments; (2) the CP amendments do not violate the GMA's  
 22 consistency requirements, nor do the amendments render the City's planning documents,  
 23 specifically CP Land Use Policies LU-3.2 and LU-3.3., internally inconsistent; (3) the City's  
 24 public participation program does not require neighborhood planning.

25 Respondent, City of Spokane, have similar arguments as the Intervenor's and state  
 26 the following reasons: (1) The CP amendments do not violate the GMA's consistency  
 requirements and do not render the City's planning documents internally inconsistent; (2)  
 the Petitioners' motion is an untimely collateral attack on the City's compliant PPP; (3)

1 comprehensive plans are guides and more specific implementing regulations prevail; (4) it is  
2 within the City Council's legislative discretion to interpret its own comprehensive plan and  
3 its interpretation is entitled to substantial weight and deference by this Board; and (5) the  
4 underlying ordinances are presumed valid, providing an independent basis for rejecting  
5 Petitioners' claims.

6 Petitioners did not respond to the Respondent's or the Intervenors' arguments.

7 **Board Discussion:**

8 Having dismissed Issue Nos. 4 & 5 above based on the same arguments presented  
9 by the parties, the Board will not reiterate its discussion here, but incorporate the  
10 discussions above into our decision concerning Petitioners' dispositive motion.

11  
12 **Board Decision:**

13 The Board finds the Petitioners failed to carry their burden of proof that the City of  
14 Spokane failed to comply with the GMA by amending its CP and Land Use Plan Map when  
15 the City failed to use a neighborhood planning process, as required by the City's CP,  
16 violating RCW 36.70A.070; .120; .020(7); and .020(11). Petitioners Dispositive Motion is  
17 **DENIED.**

18 **III. ORDER**

19  
20 Based upon the briefing by the parties, the Board's prior cases, the GMA, court  
21 decisions, and having considered the arguments of the parties at the Hearing on the  
22 Motions and deliberated on the matter, the Board ORDERS:

- 23  
24 1. Arthur Richey/RPDC, Inc.'s Motion to Dismiss Petitioners Futurewise  
25 and Neighborhood Alliance of Spokane for failure to exhaust  
26 administrative remedies is **GRANTED.**

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2. Spokane Radio, Inc., DBA KXLY, Black Development and Dave Black Properties' Motion to Dismiss Petitioners Futurewise, Neighborhood Alliance of Spokane, and Southgate Neighborhood Council for failure to exhaust administrative remedies is **GRANTED** for Futurewise and the Neighborhood Alliance of Spokane and **DENIED** for the Southgate Neighborhood Council and Virginia Patano. Futurewise and the Neighborhood Alliance are barred from participating in Issue No. 1, the SEPA aspect of this appeal. The Southgate Neighborhood Council and Virginia Patano may argue Issue No. 1 in future briefing before this Board.

3. As to Intervenor-Respondents Motion to Dismiss Issues RE Neighborhood Planning and Respondent's Joinder in Intervenor-Respondents' Motion to Dismiss Issues RE: Neighborhood Planning, the Board finds the Petitioners failed to carry their burden of proof under **Issue No. 4** for the reasons discussed. Intervenor-Respondents Motion to Dismiss Issues Re: Neighborhood Planning, Issue No. 4, is **GRANTED**.

4. As to Intervenor-Respondents Motion to Dismiss Issues RE Neighborhood Planning and Respondent's Joinder in Intervenor-Respondents' Motion to Dismiss Issues RE: Neighborhood Planning, the Board finds the Petitioners failed to carry their burden of proof under **Issue No. 5** for the reasons discussed. Intervenor-Respondents Motion to Dismiss Issues Re: Neighborhood Planning, Issue No. 5, is **GRANTED**.

5. As to Petitioners' Dispositive Motion, the Board finds the Petitioners failed to carry their burden of proof that the City of Spokane failed to comply with the GMA by amending its CP and Land Use Plan Map when the City failed to use a neighborhood planning process, as required by

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the City's CP, violating RCW 36.70A.070; .120; .020(7); and .020(11).

Petitioners Dispositive Motion is **DENIED**.

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 mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and four (4) copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition 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. Service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.


1 **Service:**

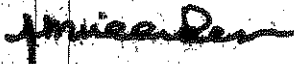
2 **This Order was served on you the day it was deposited in the United States mail.**

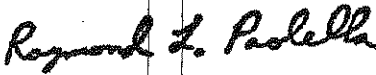
3 **RCW 34.05.010(19)**

4 **SO ORDERED** this 6<sup>th</sup> day of October 2008.

5 EASTERN WASHINGTON GROWTH MANAGEMENT  
6 HEARINGS BOARD

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8 \_\_\_\_\_  
9 John Roskelley, Board Member

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11 \_\_\_\_\_  
12 Joyce Mulliken, Board Member

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15 Raymond L. Paolella, Board Member

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**State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON**

SOUTHGATE NEIGHBORHOOD COUNCIL,  
NEIGHBORHOOD ALLIANCE OF SPOKANE,  
GINGER PATANO, AND FUTUREWISE,

Petitioner(s),

v.

CITY OF SPOKANE,

Respondent,

ARTHUR RICHEY/RPDC, INC., BLACK  
DEVELOPMENT and DAVE BLACK  
PROPERTIES, SPOKANE RADIO, INC., d/b/a  
KXLY,

Intervenor(s).

Case No. 08-1-0013

CERTIFICATE OF SERVICE

I am a citizen of the United States of America; I am over the age of 18 years and not a party to the within entitled action; am an employee of this board and my business address is 15 West Yakima Avenue, Suite 102, Yakima, Washington 98902.

On this date, I mailed a true copy of ORDER ON MOTIONS, in the above entitled matter, to each of the persons listed below by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at Yakima, Washington as addressed herein:

Robert Beattey  
814 2<sup>nd</sup> Ave., Ste. 500  
Seattle, WA 98104

Rick Eichstaedt  
35 W. main, Ste. 300  
Spokane, WA 99201

Eastern Washington  
Growth Management Hearings Board  
15 W. Yakima Avenue, Suite 102  
Yakima, WA 98902  
Phone: 509-574-6960  
Fax: 509-574-6964

1 City Manager, City of Spokane  
2 808 W. Spokane Falls Blvd.  
3 Spokane, WA 99201

4 James Richman  
5 Assistant City Attorney  
6 808 W. Spokane Falls Blvd.  
7 Spokane, WA 99201

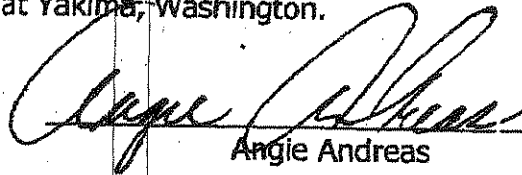
8 Glen Amster  
9 1420 5<sup>th</sup> Ave., Ste. 4100  
10 Seattle, WA 98101

Stacy Bjordahl  
505 W. Riverside Ave., Ste. 500  
Spokane, WA 99201

Stanley Schwartz  
422 W. Riverside Ave., Ste. 1100  
Spokane, WA 99201

11  
12 I certify under penalty of perjury, that the foregoing is true and correct.

13 DATED this 6<sup>th</sup> day of October 2008, at Yakima, Washington.

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16 Angie Andreas

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26  
Eastern Washington  
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