

1 Because this EIS reviews a non-project action involving changes to the
2 Comprehensive Plan, adoption of new zoning categories, adoption of development
3 standards and rezoning of certain property, the changes are all on paper and none are on
4 the ground, causing environmental impacts. This does not excuse the City from doing an
5 EIS, but substantially curtails the extent and depth of the required EIS. In this particular
6 instance, the City went well beyond what is required by the law.
7

8 A non-project EIS is discussed in WAC 197-11-442.

- 9
- 10 (1) The lead agency shall have more flexibility in preparing EIS's on non-
11 project proposals, because there is normally less detailed information
12 available on their environmental impacts and on any subsequent project
13 proposals. The EIS may be combined with other planning documents.
 - 14 (2) The lead agency shall discuss impacts and alternatives in the level of
15 detail appropriate to the scope of the non-project proposal and to the
16 level of planning for the proposal. Alternatives should be emphasized.
17 In particular, agencies are encouraged to describe the proposal in terms
18 of alternative means of accomplishing a stated objective (see WAC
19 197-11-060(3)). Alternatives including the proposed action should be
20 analyzed at a roughly comparable level of detail, sufficient to evaluate
21 their comparative merits (this does not require devoting the same
22 number of pages in an EIS to each alternative).
 - 23 (3) If the non-project proposal concerns a specific geographic area, site
24 specific analyses are not required, but may be included for areas of
25 specific concern. The EIS should identify subsequent actions that
26 would be undertaken by other agencies as a result of the non-project
27 proposal, such as transportation and utility systems.
 - 28 (4) The EIS's discussion of alternatives for a comprehensive plan,
 community plan, or other areawide zoning or for shoreline or land use
 plans shall be limited to a general discussion of the impacts of alternate
 proposals for policies contained in such plans, for land use or shoreline
 designations, and for implementation measures. The lead agency is not
 required under SEPA to examine all conceivable policies, designations,
 or implementation measures but should cover a range of such topics.
 The EIS content may be limited to a discussion of alternatives which
 have been formally proposed or which are, while not formally
 proposed, reasonably related to the proposed action. [Statutory
 Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-
 442, filed 2/10/84, effective 4/4/84.]

1 Therefore, the non-project EIS may be less detailed, emphasizing alternatives and
2 identifying subsequent actions that would be undertaken as a result of the non-project
3 proposal, such as a general discussion of improvements to the transportation and utility
4 systems. That is exactly what has been done in this EIS.

5
6 Of course, that does not mean that there will not be further environmental review.
7 WAC 197-11-443 discusses EIS contents when there was a prior non-project EIS.

- 8 (1) The provisions for phased review (WAC 197-11-060(5)) and use of existing
9 environmental documents, Part Six, apply to EIS's on non-project proposals.
10 (2) A non-project proposal may be approved based on an EIS assessing its broad
11 impacts. When a project is then proposed that is consistent with the approved
12 non-project action, the EIS on such a project shall focus on the impacts and
13 alternatives including mitigation measures specific to the subsequent project and
14 not analyzed in the non-project EIS. The scope shall be limited accordingly.
15 Procedures for use of existing documents shall be used as appropriate, see Part
16 Six.
17 (3) When preparing a project EIS under the preceding subsection, the lead agency
18 shall review the non-project EIS to ensure that the analysis is valid when applied
19 to the current proposal, knowledge, and technology. If it is not valid, the
20 analysis shall be reanalyzed in the project EIS. [Statutory Authority: RCW
21 43.21C.110, 84-05-020 (Order DE 33-39), § 197-11-443, filed 2/10/84, effective
22 4/4/84.]

23 Later proposed developments (project actions) will have to comply with this
24 WAC section and, if it is consistent with the approved non-project action, the subsequent
25 environmental review would focus on impacts and alternatives not previously analyzed in
26 the non-project EIS.

27 Phased review is specifically authorized when going from a non-project EIS to a
28 project EIS. WAC 197-11-443(1) and WAC 197-11-060(5)(c)(i).

3. APPELLATE COURT DECISIONS ON THE ADEQUACY OF AN EIS

 Since 1984 twelve Washington Appellate decisions have addressed EIS adequacy.
Only three, and arguably four, of those decisions have found the EIS inadequate. One of

1 those decisions, *Kiewit Construction Group v. Clark County*, 83 Wn. App. 133, 920 P.2d
2 1207 (1996), was a challenge by the project proponent of the city council's decision that
3 the EIS was inadequate. The court found that the EIS did not address the specific impact
4 of truck traffic on a nearby bicycle trail and did not discuss the feasibility of building
5 direct access ramps to the project. The court, therefore, upheld the County's decision to
6 require a supplemental EIS.
7

8 In the case of *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994),
9 the court held an EIS inadequate. In *Weyerhaeuser*, the EIS was found inadequate for
10 failing to include analysis of any alternative sites for a proposed solid waste landfill.
11

12 In *Barrie v. Kitsap County*, 93 Wn.2d 843, 861, 613 P.2d 1148 (1980), an EIS
13 was found to be inadequate because the County did not sufficiently discuss alternative
14 shopping center sites and the adverse affects on the city's downtown business district.
15 Interestingly, the court held that a contemporaneously prepared city EIS was adequate on
16 the question of impact of a proposed shopping center on the Bremerton central business
17 district. The court found the city's EIS adequate when it contained little more than a
18 statement that the shopping center could produce a decade of economic stagnation similar
19 to that created by the building of the Tacoma Mall, but that Bremerton had a concerted
20 planning and renewal effort that could create the conditions that would improve the
21 downtown business climate and that the future of the central business district is highly
22 dependant on what stores decide to remain in the central business district. The court held
23 that the city's EIS was somewhat deficient but still adequate under the rule of reason.
24
25

26 To the extent *Barrie*, a 1980 case, could be held to require a socio-economic
27
28

1 analysis, the rule was changed in 1984, when WAC 197-11-448(3), WAC 197-11-450
2 and WAC 197-11-726 were adopted.

3
4 In fact the rules now state that the term socio-economic is not used in the rules or
5 statutes because it does not have a uniform meaning. WAC 197-11-448(2)

6 The fourth case is *S.A.V.E. v. Bothell*, 89 Wn.2d 862, 865, 576 P.2d 401 (1978).
7 That case did not explicitly address EIS adequacy. The case addressed standing, spot
8 zoning, and the appearance of fairness doctrine. However, subsequent cases, including
9 *Cathcart v. Snohomish County*, supra, have characterized the decision as having held the
10 city's EIS inadequate because the EIS failed to address the extra jurisdictional
11 consequences of a proposed shopping center.
12

13 Therefore, all four of the cases that have held an EIS to be inadequate are project
14 EIS's and not non-project EIS's such as is the case at issue, and each EIS found to be
15 inadequate was found inadequate because of the failure of the document to discuss a
16 required element.

17 Even a passing mention of a required element has been held adequate. *Barrie v.*
18 *Kitsap County*, supra. Similarly in *OPAL v. Adams County*, 128 Wn.2d 869, 913 P.2d
19 793 (1995), the court upheld the adequacy of an EIS for regional solid waste landfill,
20 although the EIS did not discuss alternative sites and did not provide detailed analysis of
21 ground water impacts because they were going to be subsequent required regulatory
22 approvals. In *CAPOW v. City of Auburn*, 126 W.2d 356, 894 P.2d 1300 (1995), the court
23 upheld the adequacy of an EIS against challenges that it failed to include reasonable off-
24 site and on-site alternatives and insufficiently analyzed traffic impacts. The court noted
25 that there was a discussion of traffic impacts and that an already bad traffic situation
26
27
28

1 (level of service F) would be made worse by the track. The court reasoned that the EIS
2 had disclosed, discussed and substantiated the environmental impacts and so was
3 adequate under the rule of reason.
4

5 The conclusion is that the courts have been lenient in deciding the question of
6 adequacy of an EIS and further have been very practical in applying the "cost
7 effectiveness" discussed in *Barrie*, supra at page 2.

8 In the case before the Hearing Examiner, there is no area being challenged that
9 has not been extensively discussed. The transportation section of the EIS is thirty-six
10 pages long and the technical appendix is sixty-two pages with approximately twenty-five
11 pages of attachments. These two sections discuss such things as existing conditions, trip
12 generation of redevelopment and infrastructure improvements necessary to support
13 redevelopment. The surface water discussion is included in the water resources section
14 of the EIS, which is twenty-seven pages long supported by a technical appendix that is
15 twenty-seven pages long with four attached figures and a water quality technical report
16 that is forty-nine pages long. These sections, again, discuss such things as existing
17 conditions, the impacts of redevelopment and infrastructure improvements necessary to
18 support redevelopment. The EIS has a section on fish and wildlife habitat that is ten
19 pages long and supported by a technical appendix that is twenty-seven pages long. These
20 sections discussed the nearby bodies of water, the species of fish in these waters, the
21 infrastructure necessitated by each redevelopment alternative and the improvements to
22 the marine environment under each alternative.
23
24

25 Under any and all of the reported case decisions concerning the adequacy of an
26 EIS, Renton's non-project EIS passes with flying colors. There is absolutely no case
27

28

1 authority that the extensive analysis prepared and presented by the EIS does not
2 completely satisfy SEPA.

3
4 4. AREAS NOT REQUIRED TO BE ANALYZED

5 So the record is complete, certain issues were raised in a sixty-one page brief filed
6 by the appellant and not served on the City Attorney's office. Oral objection was made
7 to these issues at a pre-trial conference held January 13, 2004. The City argued and
8 Boeing concurred that the law supports eliminating certain issues raised by appellant.

9 The City orally cited relevant WAC sections which are documented here. WAC
10 197-11-448(2) stated that "The term socio-economic" is not used in the statute or rules
11 because the term doesn't have a uniform meaning and has caused a great deal of
12 uncertainty. WAC 197-11-448(3) states in relevant part examples of information that are
13 not required to be discussed in an EIS are "economic condition... and social policy
14 analysis (such as fiscal and welfare policies...). Similarly WAC 197-11-450 states that a
15 cost benefit analysis (WAC 197-11-726) is not required by SEPA".
16

17 The Examiner has already ruled by Order dated January 19, 2004 that "so called
18 socio economic issues, political issues or proposed salutary changes to regulations cannot
19 be raised". It would be appropriate for the Examiner to cite the legal basis for his order
20 in the final decision.
21

22 CONCLUSION

23 This non-project EIS goes substantially beyond any legal requirements for an EIS.
24 It fully discloses, discusses and substantiates environmental impacts, chooses four
25 alternative scenarios including maximum build out and analyzes the environmental
26 impacts so that any proposal encompassed within the four alternatives will have been
27

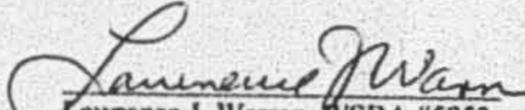
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1 fully analyzed. Additional environmental review will be done for any project proposed in
2 the area analyzed in this EIS. Under the rule of reason, this EIS is adequate.

3 DATED this 9th day of February, 2004.
4

5 Respectfully submitted,

6 WARREN, BARBER & FONTES, P.S.
7

8 
9 Lawrence J. Warren, WSBA #5853
10 Attorney for City of Renton

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CITY OF RENTON

FEB 09 2004

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(See Council Meeting
minutes of 2/2/2004)

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

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In the matter concerning purported) Case No. 04-03-0004
comprehensive planning, development)
regulations, and zoning enactments)
and amendments of the City of Renton;)
Brad Nicholson, a citizen of the City) NOTE FOR RECORD
of Renton;)
Petitioner,)
v.)
City of Renton, a State of Washington)
Municipal Corporation;)
Respondent,)

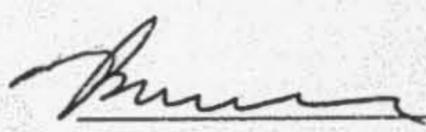
TO: Central Puget Sound Board
AND TO: Administrative Officer of Board
AND TO: Parties of Record
Please take note, Petitioner telephone number and e-mail address.
Telephone: (425) 445-0658
E-mail: brad027@hotmail.com

Phone number note - 1
cc: City Attorney
Rebecca Lind
Brad Nicholson
2300 N.E. 28th St.
Renton, WA. 98056

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Dated this 5th day of February, 2004

Respectfully,



Brad Nicholson
2300 N.E. 28th Street
Renton, Washington
98056

Phone number note - 2

Brad Nicholson
2300 N.E. 28th St.
Renton, Wa. 98056

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

In the matter concerning purported)	Case No. 04-03-0004
comprehensive planning, development)	
regulations, and zoning enactments)	
and amendments of the City of Renton:)	
)	CERTIFICATE OF SERVICE
Brad Nicholson, a citizen of the City)	
of Renton:)	
Petitioner,)	
v.)	
City of Renton, a State of Washington)	
Municipal Corporation:)	
Respondent,)	
)	
)	

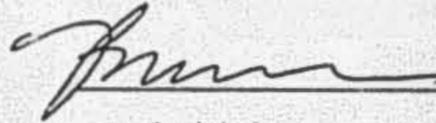
This is to certify that I caused the parties of record and the board and Administrator to receive a copy of a note indicating my telephone number and e-mail address. This was accomplished via U.S. mail (first class postage prepaid).

Brad Nicholson
2300 N.E. 28th St.
Renton, Wa. 98056

1 I swear that the foregoing is true and correct under penalty of the laws of
2 the State of Washington.

3
4 Dated this 5th day of February, 2004

5 Respectfully,
6
7
8

9 

10 Brad Nicholson
11 2300 N.E.28th Street
12 Renton, Washington
13 98056
14 425-445-0658
15 brad827@hotmail.com
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Brad Nicholson
2300 N.E. 28th Street
Renton Washington 98056



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Renton City Clerk
1055 South Grady Way
Renton, Washington 98056

CITY OF RENTON

FEB 09 2004

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OFFICE OF THE HEARING EXAMINER
CITY OF RENTON

IN RE THE BOEING COMPREHENSIVE
PLAN AMENDMENTS 2003 -
NICHOLSON APPEAL

NO. 02-141, ECF, CPA, R, EIS

DECLARATION OF TIA B. HEIM

I, Tia B. Heim, declare as follows:

1. I make this declaration based on my own personal knowledge and, if called to testify, would testify as set forth below.
2. I am legal counsel for the respondent, The Boeing Company.
3. Attached is a true and correct copy of the Central Puget Sound Growth Management Hearings Board Notice of Hearing served on Perkins Coie by the Central Puget Sound Growth Management Hearings Board on February 3, 2004.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. This declaration was executed in Seattle, Washington on February 9, 2004.

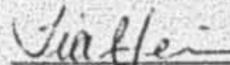
BOEING COMPREHENSIVE PLAN
AMENDMENTS 2003- NICHOLSON
APPEAL - 1

[03003-0174 S10040410 020]

ORIGINAL

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

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Tia B. Heim, WSBA# 31802
Attorneys for the Boeing Company
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206-359-3944
Fax: 206-359-4944
E-mail: THeim@perkinscoie.com

BOEING COMPREHENSIVE PLAN
AMENDMENTS 2003- NICHOLSON
APPEAL - 2
[03003-0174 s1040410.020]

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1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

RECEIVED

FEB 03 2004

PERKINS COIE

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6 BRAD NICHOLSON,

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8 Petitioner,

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10 v.

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12 CITY OF RENTON,

13
14 Respondent.¹

)
)
) Case No. 04-3-0004

)
) NOTICE OF HEARING

)
) (NICHOLSON)

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20
21 **I. BACKGROUND**

22
23 On January 22, 2004 the Central Puget Sound Growth Management Hearings Board (the
24 Board) received a Petition for Review (PFR) from Brad Nicholson (Petitioner or
25 Nicholson) dated September 6, 2003, with four exhibits attached. The matter was
26 assigned Case No. 04-3-0004. Petitioner challenges the City of Renton's (Respondent or
27 the City) adoption of Ordinance Nos. 5026, 5027, 5028, 5029, 5030, 5031, 5032, 5034,
28 5038, 5039 (the Ordinances) and Resolution 3669 (the Resolution), all concerning "...a
29 rezoning action designated LUA-02-141, CPA, R, EIS." The basis for the challenge is
30 noncompliance with the Growth Management Act (GMA or Act), the State
31 Environmental Policy Act (SEPA) and RCW 82.02.

32
33 Petitioner requests the Board find that the Ordinances and Resolution fail to comply with
34 the GMA and SEPA and declare the Ordinances and Resolution invalid. Petitioner
35 requests the Board delay establishing a schedule in this matter "...to complete the city
36 proceedings prior to establishing a schedule..." The Board interprets the "city
37 proceedings" to be a matter pending before the City of Renton Hearing Examiner entitled
38 The Boeing Comprehensive Plan Amendments 2003 - Nicholson Appeal No. LUA 02-
39 141, ECF, CPA, R, EIS as described in the Hearing Examiner's Order dated January 19,
40 2004, a copy of which was attached to the PFR as an exhibit.

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47 ¹ The PFR included the Boeing Company as a respondent. The Board does not have jurisdiction over
48 private corporations. The Boeing Company can petition the Board to participate in this matter as an
49 Intervenor if it chooses to do so.

1 The Board's Rules of Practice and Procedure are found in the Washington Administrative
2 Code (WAC), at Chapter 242-02. Electronic copies of the Board's Rules of Practice,
3 Decisions and a Digest of Decisions (1992-2001) are available at the Board's website:
4 www.gmh.wa.gov. Hard copy of the Digest is available for purchase at the Board's
5 office.
6

7 **II. TENTATIVE SCHEDULE AND**
8 **NOTICE OF HEARING**
9

10 Notice is given in the table below of the Tentative Schedule for conference and
11 hearing(s) as well as filing of briefs and documents with the Board in this case. The
12 table is reproduced in the appendix for easy reference.
13

14
15
16 **TENTATIVE SCHEDULE**
17 **CPSGMHB Case No. 04-3-0004 – Nicholson v. City of Renton.**
18

19 All documents must be filed with the Board (one original plus four copies on three-hole
20 punched paper and copied back-to-back) and a copy served upon the other party by
21 4:00 p.m. on the designated day, unless otherwise noted.
22

DATE	EVENT
Thur. Jan. 22, 2004	Petition for Review filed (04-3-0004)
Mon. Feb 2, 2004	Board Notice of Hearing issued
Tue. Feb 17, 2004	Deadline for Petitioner to Submit Re-Statement of Legal Issues
Mon. Feb. 23, 2004	Deadline for Respondent's Index (original plus one copy)
Mon. Feb. 23, 2004	Prehearing Conference: 10:00 a.m., Board's offices, Suite 2470 ¹
Mon. Mar. 1, 2004	Board Prehearing Order due
Mon. Mar 15, 2004	Deadline for Motions ² and Memoranda in Support (with exhibits)
Mon. Mar. 29, 2004	Deadline for Response to Motions (with exhibits)
Mon. Apr. 5, 2004	Deadline for Rebuttal to Response to Motions (optional)
Mon. Apr. 19, 2004	Board Order on Motions due
Mon. May 3, 2004	Deadline for Petitioner's Prehearing Brief (with exhibits)
Mon. May 17, 2004	Deadline for Respondent's Prehearing Brief (with exhibits)
Mon. May 24, 2004	Deadline for Petitioner's Reply Brief (optional)
Thur. May 27, 2004	Deadline for Requesting Settlement Extension ⁴
Thur. June 3, 2004	Hearing on Merits of Petition: 10:00 a.m. - 12:30 p.m. - Board's offices, Suite 2470
Tue. Jul. 20, 2004	Final Decision and Order due

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¹ The Board's offices are located at 900 4th Avenue, Suite 2470, Seattle.

² Both dispositive motions and motions to supplement the record.

⁴ See: RCW 36.70A.300(2).

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Settlement Conference

The status of settlement negotiations will be the first item of discussion at the Prehearing Conference (PHC). If the parties agree that a member of the Eastern or Western Washington Growth Management Hearings Boards could be of assistance at a settlement conference by serving as a settlement officer¹, the Presiding Officer should be notified of the parties' agreement prior to the PHC.

If the parties reach settlement, the Presiding Officer shall be notified and a Stipulated Dismissal filed with the Board. If settlement is not reached, the case will proceed as finally scheduled.

The parties are advised that the Board is now authorized, in certain situations, to extend the 180-day decision deadline. The Board may grant "settlement extensions" of up to ninety days. However, requests for settlement extensions must be filed with the Board no later than seven days before the Hearing on the Merits (HOM). The deadline for requesting settlement extensions in this case is Monday May 24, 2004.

Interpreter or Assistive Devices

If a limited-English speaking or hearing impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. A form for a request for an interpreter is attached to this Notice.

If any party requires assistive devices because of a disability, please contact the Board at once.

Please coordinate your efforts with the Board's Administrative Officer, Susannah Karlsson. She is available to make final arrangements.

Prehearing Conference

The Prehearing Conference for this case has been set for 10:00 a.m., Monday February 23, 2004 at the Board's offices.

Please be aware that rescheduling the time, date or location of the prehearing conference or hearing on the merits will be difficult. However, if the time or date scheduled for the prehearing conference is not possible for a party, please confer with the other parties to reach agreement on alternative dates or times, and notify the Presiding Officer immediately. If the Board's schedule permits, the Board will attempt to accommodate the proposed change in scheduling.

¹ A Central Puget Sound Board member, serving as a settlement officer, may subject that Board Member to disqualification; thereby prohibiting that member from participating in subsequent proceedings on the case.

1 The purpose of the prehearing conference is specified in the Board's Rules of Practice and
2 Procedure, codified at WAC 242-02-550. In particular, the Board will review the legal
3 issues posed in the PFR. In addition, the parties should be prepared to discuss the general
4 nature of any dispositive motions that they intend to file. If no dispositive motions are
5 anticipated, the case schedule may be modified accordingly. The Board may limit the
6 filing of dispositive motions to questions regarding the Board's jurisdiction.
7

8 By Tuesday February 17, 2004, the Petitioner is directed to submit to the Board, with a
9 copy to the City, a re-statement of Legal Issues. The re-statement of legal issues shall
10 specify which specific provisions of the challenged action are not in compliance with
11 which specific section(s) of the Growth Management Act, Chapter 36.70A RCW.
12 Petitioner is directed to the "Guidelines for Framing Legal Issues" which is appended to
13 this notice.
14

15
16 Please carefully review the Tentative Schedule. Final deadlines for submitting the
17 motions and briefs will be established at the prehearing conference, based on this
18 schedule. Following the prehearing conference, the Board will issue a Prehearing Order
19 (PHO) that contains the final deadlines and the Statement of Issues.
20

21 The Record Below

22
23 RCW 36.70A.290(4) requires the Board to base its decision on the record developed
24 below, in this case, by the City of Renton. This record may be supplemented with
25 additional evidence if the Board determines that supplemental evidence is necessary or of
26 substantial assistance to the Board in reaching its decision.
27

28 Pursuant to WAC 242-02-520, the City is required to prepare an Index within 30 days of
29 service of the PFR that lists all documents considered by the City in taking the challenged
30 action. Each document included in the Index should be given a unique number for
31 identification purposes and to avoid duplication.
32

33 Filing Exhibits

34
35 Only the exhibits referenced in motions and prehearing briefs shall be filed with the
36 Board. Exhibits must be attached to the brief in which they are referenced. Exhibits
37 previously submitted with a brief need not be resubmitted, as long as the subsequent
38 briefing referring to such exhibits specifically identifies the brief to which the exhibits
39 were originally attached.
40

41 Hearing on the Merits

42
43 The Board has scheduled the hearing on the merits of the PFR on Thursday, June 3,
44 2004, at the Board's offices - Suite 2470.
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Final Decision and Order

The Board's Final Decision and Order (FDO) in *Nicholson v. City of Renton* (Case No. 04-3-0004) is due to be issued no later than Tuesday July 20, 2004.

Failure to Attend or Participate

A party who fails to attend or participate in any hearing or other stage of the adjudicative proceedings before the Board in this case may be held in default and the case dismissed pursuant to WAC 242-02-710.

Communication with the Board

The parties are reminded about the requirements of WAC 242-02-130 regarding communications with the Board. The only permissible *ex parte* contacts with the Board are on purely procedural or logistical matters.

So ORDERED this 2nd day of February, 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD


Bruce C. Laing, FAICP
Presiding Officer

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INTERPRETER REQUEST

*CPSGMHB Case No. 04-3-0004
Nicholson v. City of Renton*

I request that an interpreter be present as follows (Please circle as appropriate):

1. Limited English-speaking ability. My primary language is _____
(Indicate language)
2. Hearing impaired.

Dated this _____ day of _____, 2004.

Signature: _____
Party

Mail to:

**Central Puget Sound Growth Management Hearings Board
900 Fourth Avenue - Suite 2470
Seattle, WA 98164**

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PREHEARING CONFERENCE AGENDA

*CPSGMHB Case No. 04-3-0004
Nicholson v. City of Renton*

- I. Introduction of Board Member(s) and parties
- II. Status of Settlement Discussions and Settlement Options
- III. Brief Review of Options and Review Parameters
 - A. Direct Review by Superior Court
 - B. Settlement Extensions
 - C. Presumption of Validity, Burden of Proof and Standard of Review
 - D. Issues as Stated in PFR or as Restated in Prehearing Order
- IV. Record Below
 - A. Index
 - B. Motions to Supplement
- V. Dispositive Motions - Timeliness, Standing and Jurisdiction.
- VI. Scheduling (see attached Tentative Schedule)
 - A. Motions filing deadline
 - 1. Dispositive (if permitted)
 - 2. To Supplement the Record - Include proposed exhibits
 - B. Briefs filing and exhibits filing deadline
 - C. Settlement extension deadline
 - D. Hearing on the Merits date
 - E. Final Decision and Order date
- VII. Review of Legal Issues
 - A. Issues from PFR Case No. 04-3-0004
 - B. Discussion of potential jurisdictional issues, if any.
 - C. Discussion of possible restatement of issues, if any.
- VII. Hearing Location and Format
- VIII. Other Matters
- IX. Adjournment (approximately at 12:00 p.m.)

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State of Washington
Central Puget Sound Growth Management Hearings Board
Guidelines for Framing Legal Issues

- A legal issue should be stated in the form of a question that the Board can answer "yes" or "no".
- A legal issue is an allegation that a local government (city or county) action either *fails to comply* with specific goals and/or requirements of the Growth Management Act (GMA), the Shoreline Management (SMA) or State Environmental Policy Act (SEPA) (as to GMA and SMA actions) or is *inconsistent* with some GMA-adopted enactment, such as countywide planning policies, a comprehensive plan, or a development regulation.
- A legal issue should cite which specific provisions of the local government action are alleged not to comply with which specific provisions of which statute; or which specific provisions of a local government action are inconsistent with which specific provisions of which GMA-adopted enactment.
- A legal issue may include a phrase that briefly identifies the reason for the allegation of noncompliance and/or inconsistency. However, legal issue statements should generally be brief, devoid of argument or evidence, both of which will be presented by the respective parties in the written briefs and during oral argument at the hearing on the merits.

Examples

1. *Did the City/County adoption of its comprehensive plan fail to comply with the requirements of RCW 36.70A.140 because it did not provide for early and continuous public participation?*
2. *Does Transportation Policy T-2 of the City/County Comprehensive Plan fail to comply with the requirements of RCW 36.70A.070(6) because it does not include an analysis of funding capability?*
3. *Is Land Use Policy LU-101 of the City/County Comprehensive Plan inconsistent with County-wide Planning Policies (CPPs) because it prevents the City from accommodating the population target allocated by CPP FW-22?*
4. *Does the City/County Comprehensive Plan fail to comply with RCW 36.70A.070(preamble) because the Land Use Element is inconsistent with the Housing Element?*

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TENTATIVE SCHEDULE

CPSGMHB Case No. 04-3-0004 - Nicholson v. City of Renton.

All documents must be filed with the Board (one original plus four copies on three-hole punched paper and copied back-to-back) and a copy served upon the other party by 4:00 p.m. on the designated day, unless otherwise noted.

DATE	EVENT
Thur. Jan. 22, 2004	Petition for Review filed (04-3-0004)
Mon. Feb 2, 2004	Board Notice of Hearing issued
Tue. Feb 17, 2004	Deadline for Petitioner to Submit Re-Statement of Legal Issues
Mon. Feb. 23, 2004	Deadline for Respondent's Index (original plus one copy)
Mon. Feb. 23, 2004	Prehearing Conference: 10:00 a.m., Board's offices, Suite 2470 ⁶
Mon. Mar. 1, 2004	Board Prehearing Order due
Mon. Mar 15, 2004	Deadline for Motions ⁷ and Memoranda in Support (with exhibits)
Mon. Mar. 29, 2004	Deadline for Response to Motions (with exhibits)
Mon. Apr. 5, 2004	Deadline for Rebuttal to Response to Motions (optional)
Mon. Apr. 19, 2004	Board Order on Motions due
Mon. May 3, 2004	Deadline for Petitioner's Prehearing Brief (with exhibits)
Mon. May 17, 2004	Deadline for Respondent's Prehearing Brief (with exhibits)
Mon. May 24, 2004	Deadline for Petitioner's Reply Brief (optional)
Thur. May 27, 2004	Deadline for Requesting Settlement Extension ⁸
Thur. June 3, 2004	Hearing on Merits of Petition: 10:00 a.m. - 12:30 p.m. - Board's offices, Suite 2470
Tue. Jul. 20, 2004	Final Decision and Order due

⁶ The Board's offices are located at 900 4th Avenue, Suite 2470, Seattle.

⁷ Both dispositive motions and motions to supplement the record.

⁸ See: RCW 36.70A.300(2).

CPSGMIB Case No. 04-3-0004
Brad Nicholson v. City of Renton
DECLARATION OF SERVICE:

I certify that I mailed a copy of the Notice of Hearing to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on February 2, 2004.

Signed: _____

Skarlsom

P (Nicholson) phone and fax not provided

Brad Nicholson
2300 NE 28th Street
Renton, WA 98056

Rr (Renton) 425-255-8678 fax 425-255-5474

Lawrence Warren
Warren Barber & Fontes, PS
P.O. Box 626
Renton, WA 98057

Sent as a courtesy to:

Galen G. Shuler
Perkins Coie
1201 Third Avenue, Suite 4800
Seattle, WA 98101

RENTON CITY COUNCIL
Regular Meeting

February 2, 2004
Monday, 7:30 p.m.

Council Chambers
Renton City Hall

MINUTES

CALL TO ORDER

Mayor Kathy Keolker-Wheeler led the Pledge of Allegiance to the flag and called the meeting of the Renton City Council to order.

**ROLL CALL OF
COUNCILMEMBERS**

DON PERSSON, Council President; MARCIE PALMER; TERRI BRIERE;
DENIS LAW; DAN CLAWSON; TONI NELSON; RANDY CORMAN.

**CITY STAFF IN
ATTENDANCE**

KATHY KEOLKER-WHEELER, Mayor; JAY COVINGTON, Chief
Administrative Officer; RUSSELL WILSON, Assistant City Attorney;
BONNIE WALTON, City Clerk; GREGG ZIMMERMAN,
Planning/Building/Public Works Administrator; NEIL WATTS, Development
Services Director; DEREK TODD, Assistant to the CAO; DEPUTY CHIEF
KEVIN MILOSEVICH, Police Department.

**ADMINISTRATIVE
REPORT**

Chief Administrative Officer Jay Covington reviewed a written administrative report summarizing the City's recent progress towards goals and work programs adopted as part of its business plan for 2004 and beyond. Items noted included:

- At the Sam's Club grand opening last week, the company donated \$24,500 to community organizations, service groups, and non-profit agencies, including \$1,500 to the Renton Fire Department for the purchase of smoke detectors and \$1,500 to the Renton Police Department for emergency services for domestic violence victims.
- Residents new to Renton receive a New Resident Packet that contains information highlighting the different services available in the City. These packets are mailed to new residents weekly, using mailing lists obtained from King County records of completed mortgage transactions.
- The Renton Municipal Arts Commission will hold its Meet the Artist reception, for artist Lisa Bower, in the lobby of Carco Theatre on Friday, February 6th, from 6:30 to 7:30 p.m.

CONSENT AGENDA

Items on the consent agenda are adopted by one motion which follows the listing.

Council Meeting Minutes of
January 26, 2004

Approval of Council meeting minutes of January 26, 2004. Council concur.

Legal: Petition for Review re
Boeing Property, Central Puget
Sound Growth Management
Hearings Board (Nicholson)

R-03-141

City Clerk submitted Petition for Review filed before the Central Puget Sound Growth Management Hearings Board by Brad Nicholson, 2300 NE 28th St., Renton, 98056, requesting that Renton's development regulations, zoning map, and ordinances, related to the Boeing property rezone action, comply with the Growth Management Act. Refer to City Attorney.

Development Services:
National Electric Code (2002)
Adoption

Development Services Division recommended adoption of the 2002 National Electric Code, with City of Renton amendments. Refer to Planning and Development Committee.

Plat: Sunnybrook, S 38th Ct &
Smithers Ave S, FP-03-103

Development Services Division recommended approval, with conditions, of the Sunnybrook Final Plat; 115 single-family lots on 35.02 acres located at S. 38th Ct. and Smithers Ave. S. (FP-03-103). Council concur. (See page 36 for resolution.)

CITY OF RENTON COUNCIL AGENDA BILL

AI #: 5.6

SUBMITTING DATA: Dept/Div/Board.. AJLS/City Clerk Staff Contact... Bonnie Walton	FOR AGENDA OF: February 2, 2004
SUBJECT: Petition for Review before the Central Puget Sound Growth Management Hearings Board - Brad Nicholson, Petitioner v. City of Renton, Respondent, and The Boeing Company, Proponent	AGENDA STATUS: Consent.....XX Public Hearing.. Correspondence.. Ordinance... Resolution... Old Business..... New Business..... Study Session.... Other....
EXHIBITS: Petition for Review	

RECOMMENDED ACTION: Refer to City Attorney	APPROVALS: Legal Dept..... Finance Dept.... Other.....
--	--

FISCAL IMPACT: Expenditure Required... Amount Budgeted.....	Transfer/Amendment.. Revenue Generated...
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SUMMARY OF ACTION:

Petition for Review filed before the Central Puget Sound Growth Management Hearings Board by Brad Nicholson, 2300 NE 28th St., Renton, 98056, requesting that the City of Renton's development regulations, zoning map, and ordinances comply with the Growth Management Act. This petition regards the City's rezoning action (LUA-02-141) on November 24, 2003, related to the 280-acre parcel of land owned by The Boeing Company.

CITY OF RENTON
1:40 p.m.
JAN 22 2004

RECEIVED
CITY CLERK'S OFFICE

RECEIVED
BEFORE THE CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
JAN 22 2004
CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD

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In the matter concerning purported
comprehensive planning, development
regulations, and zoning enactments
and amendments of the City of Renton:
Brad Nicholson, a citizen of the City
of Renton:
Petitioner,
v.
City of Renton, a State of Washington
Municipal Corporation:
Respondent,
The Boeing Company, owning and
operating a commercial airplane
manufacturing plant on land zoned
Industrial Heavy in the City of
Renton:
Proponent.

Case No. 04-3-0004
PETITION FOR REVIEW

COMES NOW, the Petitioner, Brad Nicholson by and through his own motion; for
want of community and consistency, health, safety, general welfare, morality,
economic and social environmental quality, and for want of fulfillment of the
purposes and objectives, common goals, and specific directives of the Laws of
the State of Washington and its Growth Management Act (GMA) (the act);

Petition for Review - 1
cc: City Attorney
EDNSP
Brad Nicholson
2300 N.E. 26th St.
Renton, Wa. 98056

1 Does hereby petition, and requests review and an order and relief in favor of
2 this petition and against the respondents each of them, pursuant to and under
3 the authority of the Growth Management Act and the State Environmental Policy
4 Act, and according to Laws of the State of Washington and according to its
5 Administration and Constitution, aggrieved by the respondents and the threat
6 they pose to the public interest and its environment, through their acts each
7 of them, and alleges the following:

8
9 I. INTRODUCTION

10 1.0 This petition is not related to an appeal of a project action. It is a
11 petition requesting that City of Renton development regulations, zoning map,
12 and ordinances comply with the GMA. This petition concerns itself with a
13 rezoning action designated LUA-02-141, CPA, R, EIS by the City of Renton
14 (city)

15 1.1 Ordinary Renton Citizens have no preference for a large scale shopping
16 center for City government to achieve a greater share of sales tax revenue,
17 along with service related employment, and they are not legitimate objectives
18 of the act: Boeing has made no decision to leave the site according to the
19 facts of record. Proponent wants to rezone for purpose of stockholder value.
20 The facts are that the objectives that the City and Proponent have identified
21 to adopt the following ordinances are not compliant with the specific
22 objectives of the GMA;

23 1.2 The need for this petition arises from the City of Renton adoption of
24 ordinances # 5026, # 5027, # 5028, #5029, #5030, #5031, #5032, #5033, #5034,
25 #5038, #5039, and resolution # 3669 dated November 24, 2003 by the Renton

1 City Council; all relating to a 280 acre parcel of land owned by Boeing.
2 The review committee findings, recommendations, and minutes and summary of
3 adoption are also non-compliant (attached herewith). The Boeing Company
4 proposes a redesignation of the City's land use map and a proposal for a
5 rezone and the necessary code changes and development regulations that would
6 be required of the area generally in the center area of Renton, along Cedar
7 river and Lake Washington and purportedly in order to accomplish the
8 objectives of the Boeing Company, and while an environmental impact statement
9 was performed exclusively for the purpose of considering the possible usage
10 of the property. Such facts raise the question:
11 Why must proponent rezone its present continuing operations that are
12 visualized to continue for the foreseeable future and when the proponent has
13 no preferred alternatives and when it is contrary to the City's comprehensive
14 plan, public morals, general welfare, and present circumstances?
15 There is abundant legal authority available that justifies invalidation of
16 this rezone.
17 1.3 The City and the proponent allege that they have been working for up to a
18 year to analyze the impacts from the four alternative scenario that had, at
19 a previous time, no preferred alternatives and were only for purpose of
20 consideration of the potential of the property relevant to this appeal. They
21 have now adopted a "hybrid" plan that includes approved options for a large-
22 scale retail shopping center and high intensity residential use. All of these
23 actions have been performed concurrent with public rallies for Boeing Jobs,
24 multi-billions of dollars in State legislation and tax value as incentives to
25 promote this type of industrial activity, publicity and signage in the City.

1 and general discontent and disappointment in the appearance of the
2 negative ethical and negative moral role of their industrial offset
3 agreements and their effects on ordinary citizens, while new programs and
4 possibilities hang in the balance, and while circumventing the City's
5 Comprehensive Plan economic development element. It is clear that the
6 proposal also attempts to circumvent mandatory provisions and exclusive
7 objectives of the GMA. The context of the implications have been discussed to
8 a great degree in inner circles, and without being fairly recorded, and
9 portend these actions transform the proponent from an "aircraft manufacturer"
10 to a "systems integrator" with "consolidated operations", and the City into a
11 "mixed use" "urban center" with a "hybrid" large scale retail shopping
12 center. Most all of which present a very bleak outlook for Renton and State
13 citizens, white and blue collar alike, that are educated and work and rely
14 upon their jobs in industry and manufacturing for their livelihoods. Renton
15 has always been considered a town of hard working Americans and still is. It
16 is undisputed fact that these theories and objectives of the proponent and
17 City politicians are conceived by their unilateral, individual benefits and
18 objectives, and their strategy to increase stockholder value and sales tax
19 revenue. And all destined to result in lower standards of living, and
20 decreased capacity for Washington and Renton citizenry. Renton politicians
21 have done nothing to serve the objectives and purposes of statutory
22 authority, while citizenry has expressed their convictions with a three point
23 two billion dollar tax incentive. Petitioner suggested that a compromise be
24 adopted, utilizing a legal, interdisciplinary process, sustaining all of the
25 alternatives but such suggestion has been ignored. In fact, they have

1 arbitrarily and capriciously ignored their own comprehensive plan throughout,
2 and advocated and helped develop the inconsistent and arbitrary plans, and
3 with development regulations that would not implement their comprehensive
4 plan in accordance with 36.70A.130(1)(a)(b) RCW, and while violating internal
5 consistency requirements of 36.70A.070 RCW.

6 That is clearly erroneous, a ground acceptable to invalidation pursuant to
7 242-02-634 WAC. (Copies of the City comprehensive plan economic development
8 element are attached herewith) It is a well known fact that Renton citizens
9 are mainly working class people, that want to be productive and working, need
10 industrially zoned land in the city for purpose of productive output and
11 social and environmental quality, while their values and convictions are
12 given to the industrial and manufacturing history of Renton inclusive of
13 their common goals in accordance with instruments of public policy outlined
14 herewith. Deference should be foregone because the actions would thwart
15 legitimate statutory objectives. Boeing property at issue here is zoned
16 Industrial Heavy.

17 1.4 Petitioner appeared, appealing for logic and reason to be discussed and
18 disclosed relating these issues, but the City and Proponent still proceed
19 with the process upon the unjustifiable goals of the proponent. Petitioner
20 cares about the City of Renton. Petitioner also made his request clear; to
21 make further amendments to the 2003 comprehensive plan and code and
22 development regulations amendments that at present and as submitted are not
23 in compliance with applicable laws. Staff, Planning Commission, Council, and
24 Proponent have still ignored petitioners just and legal requests.

25 1.5 Petitioner appealed to the City hearing examiner, according to City Code.

1 The adequacy of the impact statement is now at issue before that office and
2 the impact statement and the processes involved in completing it are
3 unfinished at this time. An environmental impact statement and its review
4 process should be completed prior to the adoption of related regulations and
5 ordinances. The facts that are contained therein are necessary facts to
6 enable a review by this board, and without which, review by this board may
7 not proceed at this time.

8 1.6 Review and amendment and/or reversal is required of the purported code
9 and regulations and plans for the site zoning, storm water ordinance, impact
10 fee ordinances, public participation requirements, capital facilities
11 element, and transportation planning in order to achieve compliance with the
12 act. The following results:

13

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14 II. JURISDICTION AND STANDING

15 2.1 This Board has jurisdiction because 36.70A.290 RCW commonly known as the
16 Growth Management Act authorizes petitioner to request review of
17 comprehensive plans and zoning and development regulations created and
18 ordained by the City of Renton local jurisdiction through Petition for Review
19 at this board.

20 2.2 Petitioner Brad Nicholson presented himself at the City of Renton public
21 hearing held on the matters that are the subject of this request punctually,
22 requested to become a party of record at same, participated orally and in
23 writing for same, and therefore properly has standing to request review
24 pursuant to 36.70A.280(2)(b) RCW.

25 Such participation in the proceedings that lead up to the purported adoption

1 of certain ordinances, plans, and regulations of the City of Renton, referred
2 to as the 2003 Comprehensive plan amendments and development regulations for
3 Renton and therefore he properly has standing to make this request.

4 2.3 In addition to such proper participation and standing, petitioner Brad
5 Nicholson participated by presenting letters and appeals prior to the
6 deadlines prescribed by the City and addressed according to their
7 specifications, (copies have been incorporated into the EIS final draft and
8 public record of the proceedings) appropriately raising issues of concern
9 that are properly before this board and in the prior proceedings leading up
10 to the unlawful ordinances that are at issue in this appeal. The responses
11 provided to such participation was not guided by the specific and exclusive
12 goals of the act but rather by the specific goals of the proponent, and City
13 goals that are outside of the act in disregard of and without harmony with
14 the laws that are applicable to their proposal. The issues here were properly
15 raised and were not addressed by the proponent, the City, or in the
16 proceedings. Again, petitioner Brad Nicholson has, by right and as a matter
17 of law, lawful standing to make this request.

18 2.4 36.70A.290(2) RCW requires requests of this nature to be made within a
19 period of sixty days from the time the disputed plans, codes, or development
20 regulations are adopted or enacted. This request is made within that
21 timeframe and therefore this petition has been filed in a timely manner and
22 therefore it is properly before this Board and is subject to review under the
23 rules of title 242 WAC, title 365 WAC, and other according to this board.

24 2.5 The ordinances and regulations and codes at issue in the above captioned
25 case concerns property that is located in the City of Renton, County of King,

1 all and both in the State of Washington, and therefore according to
2 Washington Law and 36.70A.250 RCW, this request is properly before the
3 Central Puget Sound Growth Management Hearings Board. This board should
4 review this appeal, pursuant to Washington administrative codes, along with
5 other relevant rules, laws, mandates, and judicial interpretations,
6 because it is a quasi-judicial administrative proceeding.

7 2.6 The regulations and issues here are the unlawful development regulations,
8 planning, zoning and codes of the City of Renton and/or the absence of such
9 codes, planning, zoning, and development regulations herewith. The unlawful
10 planning concerning the rezoning of a Major Industrial Development and a very
11 large area of the City of Renton bordering critical habitat and State high
12 quality water bodies are now at issue and the purported City Planning,
13 development regulations, and development agreements must now be reversed
14 according to this request and Washington Law and 36.70A.280(1)(a)RCW. The
15 City of Renton and State of Washington and its citizens and their morals and
16 their requirement for general welfare consistent with adopted comprehensive
17 plans, have values that are contrary to the City and Proponent planning, as
18 evidenced by recent legislation, resolutions, and social and economic
19 demands, and requirements for general safety, health and welfare, and public
20 morals, 36.70 RCW, and Washington Law effectively prohibits uncoordinated and
21 unplanned growth and according to 36.70A.010 RCW.

22 2.7 All subject matter areas articulated within this petition are properly
23 within this jurisdiction.

24 2.8 Respondent the City of Renton is a municipal corporation of the State of
25 Washington and purports to ordain comprehensive planning, development

1 regulations, zoning, and in subject to the statutory requirements of State
2 Environmental Policy Act (SEPA), under State Growth Management Act and Growth
3 Management Act Impact Fee Statutes 32.02 RCW (GMA), and all other pertinent
4 and applicable requirements of the State of Washington that are relevant to
5 this petition. The City of Renton purported planning and regulations under
6 the requirements of the Growth Management Act 36.70A.040 RCW are inadequate
7 and will not fulfill the purposes and objectives of Washington Law and are
8 made in arbitrary disregard of Washington Law.

9 2.9 The GMA defines development regulation within its provisions, and the
10 ordinances brought to issue here are according to that definition.

11 2.10 WAC 242-02-910 governs petitions for declaratory ruling and this
12 petition is within and will be argued within the substantial form of a
13 request under Cr 56(c) that there are now no genuine issues of material fact
14 that is necessary for a disposition in this case that is in dispute
15 and therefore a ruling should be entered upon the record in favor of this
16 petition as a matter of law.

17 This petition is complete according to the rules properly promulgated by this
18 board.

19 2.11 According to 36.70A.030 RCW, the specific goals of the Growth Management
20 Act must be used exclusively when determining the validity of comprehensive
21 plans, zoning, and development regulations and theretofore declared by policy
22 or enacted by ordinance. Other goals exclusive to the others and proponent's
23 vision were unlawfully used in adopting the purported plans.

24 2.12 43.21C RCW states,

25 "Fulfill the social, economic, and other requirements of present and future

1 generations of Washington citizens"; and,
2 "Fulfill the responsibilities of each generation as trustee of the
3 environment for succeeding generations"; 36.70.010 RCW was enacted while
4 stating, "all to the end of assuring the highest standards of environment for
5 living, and the operation of commerce, industry, agriculture and recreation,
6 and assuring maximum economies and conserving the highest degree of public
7 health, safety, morals and welfare" Washington statutes must be construed in
8 accordance with these purposes.
9 Planning and policy must proceed while effectuating the intent and purpose
10 while attaining the highest standards. The objectives of the act require that
11 we ensure that adequate facilities are available for use at the time
12 developments are ready for occupancy. That would not occur without amendment
13 of the City's capital facilities element and drainage code and impact fee
14 ordinances. Those requirements are non discretionary.
15 2.13 This Board has the authority to make binding declaratory rulings and the
16 power to invalidate the City ordinances and development regulations pursuant
17 to and according to Washington Law and 36.70A.280 RCW, and because of the
18 pertinent facts and laws that would be violated by the City of Renton, this
19 board will thence be required, as a matter of law and fact to do so and
20 complete justice by entering an order upon the public record in the favor of
21 the petitioner and his request.

22
23

III. PARTIES and VENUE

24 3.1 The petitioner is Brad Nicholson and resides in the City of Renton, and
25 County of King. He has an interest in the successful future of his City.

1 lives upon property that is adversely affected by the City actions, and has
2 done so at all times relevant to this petition. His address is
3 2300 N.E. 28th Street, Renton, Washington 98056.

4 3.2 Because of such proper standing above, Brad Nicholson may appear and
5 practice before the Central Puget Sound Growth Management Hearings Board in
6 accordance with 242-02-110 WAC and other relevant statutes.

7 3.3 Again, the City of Renton is a Washington municipal corporation as
8 defined by the Growth Management Act (GMA) and alleges and purports that they
9 are planning under the GMA and 36.70A.040 RCW. The City's actions must be
10 compliant with (GMA) and (SEPA).

11 3.4 Ordinances adopted by City must fulfill the objectives and purposes of
12 aforementioned statutes and all other relevant provisions of Washington Law
13 and while exercising their powers under the Washington State Constitution.
14 Renton actions to amend plans must be compliant with 82.02 RCW, 36.70 RCW,
15 39.04 RCW, 90.48 RCW, 58.17 RCW, 42.36 RCW, 36.70A RCW, and 43.21C RCW;
16 and the objectives and purposes of (GMA) and (SEPA) inclusive.

17 3.5 The respondents, the City of Renton, (City) are in King County. The City
18 Planning and development committee decided the issues that are relevant to
19 this appeal, made their recommendation contrary to law and while sitting in a
20 quasi-judicial capacity. The material facts were unspecified and
21 unaccompanied by determinative findings of fact and conclusions of law
22 fulfilling GMA objectives, and the City Council enacted legislation contrary
23 to the objectives and purposes and of clear and unambiguous sections, and
24 upon improper procedure and arbitrary and capricious and clearly erroneous
25 construction of Washington Law heretofore enumerated and same. The factual

1 findings entered upon the public record were generalized and in reality
2 unsubstantiated conclusions, and unsupported by the required substantial
3 evidence demonstrating compliance with the act; The City acted upon improper
4 procedure and without the required factual justification, without disclosure
5 of the true nature of the proposal, depriving the petitioner and citizenry of
6 the required opportunity to participate in the creation of just comprehensive
7 planning and development regulations and amendments throughout the processes.

8 3.6 The Proponent plans to divide and rezone the lands that are the subject
9 of this appeal without the actions being subject to further public scrutiny
10 and many of the controls that should be required by actions of this nature
11 under Washington law. The City has a history of unlawfully approving
12 subdivisions without observation of 58.17 RCW, and perpetrates the same
13 design or scheme here in this action. The development agreements that the
14 City and the proponent propose to enter into purport to violate the clear and
15 unambiguous language of 58.17 RCW subdivision regulations requiring public
16 participation and notice, and also, are unguided by the exclusive objectives
17 of the act.

18 3.7 Unlawful ordinances and regulations unfavorable to Washington law and
19 Renton and Washington citizenry have now then ensued.

20 3.8 The City of Renton actions are arbitrary or capricious and erroneous
21 according to Washington State Law. The actions taken by the Renton City
22 government were willful, arbitrary, clearly erroneous, and unlawfully taken
23 for the specific purpose of avoiding specific sections of Washington Law.

24 3.9 Therefore, while the land use decisions and regulations relevant to the
25 above captioned case were made within the jurisdiction of this board and are

1 properly before and within the jurisdiction this board, it is subject to
2 review and invalidation by this board. The City's address is
3 Renton City Hall, 1055 South Grady Way, Renton, Washington, 98056. Counsel
4 for City is Mr. Larry Warren, address: 100 South 2nd, Renton Washington 98055.

5 3.10 The Proponent for the Comprehensive Plan amendments and development
6 regulation amendments is The Boeing Company. The Boeing Company failed to
7 justify their proposal and satisfy their burden of demonstrating that their
8 proposal fulfills the proper prongs of legal, judicial, and statutory
9 authority and objectives. Counsel for proponent Mr. Galen G. Shuler appeared,
10 representing proponent. His address is 1201 Third Avenue, suite 4800, Seattle
11 Washington 98101.

12 3.11 The City of Renton Mayor and City Attorney, and Counsel for the
13 proponent have each properly been served this petition. The original and
14 three copies of this petition are presented to this board according to rules
15 promulgated by this board and defined by Washington Administrative Code
16 chapter 242.

17 Affidavits or certificates of service are attached, included, or can be
18 provided hereafter.

19

20

IV. STATUTORY GROUNDS FOR REVIEW

21 4.1 The City planning and regulations under chapter discussed herein are not
22 in compliance with the requirements of 82.02 RCW, 36.70 RCW, 36.70A RCW or
23 90.48 RCW, 42.36 RCW or amendments thereto, or chapter 39.04 RCW, and 43.21C
24 RCW, 58.17 RCW as it relates to plans, development regulations, or amendments
25 thereto, adopted under 36.70A.040 RCW thereto;

1 4.2 The City adoption of ordinances and resolution mentioned above are not in
2 compliance with the Growth Management Act (GMA) and the State Environmental
3 Policy Act, (SEPA) either or both procedurally and substantively. Certain
4 staff, proponents, and City Council took these actions unilaterally, and
5 without following the collaborative procedural and substantive processes
6 required by the GMA and SEPA. The purported development regulations and
7 amendments were adopted without furtherance of legitimate regulatory
8 objectives, and without being guided by its own comprehensive plan as is
9 required by the Growth Management Act. The Staff and Proponent delineated
10 that such designation was only under consideration, in reality it was
11 specifically for purpose of an unjustifiable rezone undermining objectives of
12 the act. The City's purported new Comprehensive Plan contains particular
13 internal inconsistencies relating to its previously adopted comprehensive
14 plan that circumvent or thwart such plan, and such inconsistencies are not
15 permitted under the specific directives of 36.70A.070 RCW.
16 Regional issues affecting transportation, water quality, industry and its
17 employment, social, economic, constitutional requirements, development
18 readiness at the time of occupancy, unambiguous requirements for fee or tax
19 impositions, and public participation in the subdivision process, among
20 others, would be willfully disregarded. Petitioner raised these issues in the
21 processes leading up to the resolutions and ordinances and development
22 agreements leading up to the issues herein. The Growth Management Act was
23 theretofore not properly observed. A new ordinance purports to operate
24 against the wholesome existing elements of the comprehensive plan and
25 development regulations of the City. The City ordinances regarding impact fee

1 mitigation impositions and zoning ignore the plain and unambiguous sections
2 and language of 82.02 and 36.70A RCW and now need to be amended to be
3 compliant with the Growth Management Act. Citizenry thought that there would
4 be a pedestrian friendly and attractive environment in the area proponent
5 intends to surplus, no such amendment to the City plans or codes followed,
6 and insufficient regulations protecting public interest have followed.

7 4.3 The purported amendments must include the Best Available Science
8 according to 36.70A.172 RCW for purpose of protecting the critical areas
9 adjacent to the site; namely Cedar River and Lake Washington that would be
10 adversely impacted or inadequately protected by redevelopment without use of
11 that best available science. The City's surface water ordinance and
12 development regulations should demonstrate that all practical means and
13 measures to protect water quality will be undertaken and according to
14 43.21C RCW.

15 90.48 RCW is of the same subject matter necessary to effectuate the
16 provisions without rendering any provision superfluous and states: "It is
17 declared to be the public policy of the state of Washington to maintain the
18 highest possible standards to insure the purity of all waters of the state
19 consistent with public health and public enjoyment thereof, the propagation
20 and protection of wild life, birds, game, fish and other aquatic life, and
21 the industrial development of the state, and to that end require the use of
22 all known available and reasonable methods by industries and others to
23 prevent and control the pollution of the waters of the state of Washington".
24 It also states, "Consistent with this policy, the state of Washington will
25 exercise its powers, as fully and as effectively as possible, to retain and

1 secure high quality for all waters of the State". This requirement has not
2 been observed, but rather, an unlawful and repugnant demonstration that the
3 proposal might result in fewer pollutants entering waters of the State of
4 Washington and United States is purported to be substituted for compliance.
5 (see exhibit) The proposal is unaccompanied by demonstration that the intent
6 and purpose of the Clean Water Act (33 U.S.C. Chapter 26 section 1251)
7 articulating the requirement to eliminate pollution is observed. This board
8 should now require the City of Renton to observe the best available science
9 requirement, include the best available science in the administrative record,
10 and adopt a surface water ordinance that would in fact utilize all
11 practicable means and measures and all known methods to protect State waters
12 and environment pursuant to 43.21C RCW (SEPA) and objectives of the GMA. Such
13 practices are preferred and required by law and scientific principles. It is
14 now requested that the City articulate its rationale for departing from the
15 best available science recommendation contained in the environmental impact
16 statement relevant to this appeal. That is determinative substantive
17 information necessary for adjudication of the issues outlined herein.

18 4.4 City Code (in particular aspects present and future) purport to ignore
19 the plain and unambiguous language of the GMA impact fee statutes and the
20 requirements iterated within this petition and because an amendment is being
21 proposed as a part of these actions, the City of Renton is now required by
22 law to ordain and implement code or regulations in conformity with such
23 legislation and 36.70A.130(b). City actions and decisions were made in
24 disregard of relevant facts and circumstances. A forecast of future
25 transportation needs is a requisite of the act and other sections of law and

1 administrative rules, and has been omitted, along with other such
2 requirements of the act.

3 4.5 If the City Amendments, Codes, and regulations at issue in this appeal
4 are not invalidated, they will substantially interfere with the fulfillment
5 of the objectives and purposes of the 36.70 RCW, (GMA) and 43.21C RCW, (SEPA).
6 A declaration of invalidity should now be declared under the authority of
7 36.70A.302 RCW.

8 4.6 Because petitioner Brad Nicholson has correctly outlined, detailed, and
9 articulated the substantive and procedural legal issues and according to
10 applicable law and the rules of this board, attaching them herewith and all
11 referred to in this petition along with its material according to Washington
12 Law and the rules of this board, he is now entitled to be heard and his
13 position must be affirmed by this board according to Washington Law in order
14 to produce the single, harmonious body of law outlined in administrative
15 rules pertaining to community, trade, and economic development.
16 WAC 365-195-720 Sources of law.

17 In seeking to identify other relevant legal authorities, planners should
18 refer to sources at all levels of government, including federal and state
19 Constitutions, federal and state statutes, federal and state administrative
20 regulations, and judicial interpretations thereof.

21 WAC 365-195-725 Constitutional provisions.

22 Local plans and regulations adopted under the act are subject to the
23 supremacy principle of Article VI, United States Constitution and of Article
24 XI, Section 11, Washington State Constitution.

25

1 4.7 Petitioner briefed the issues and presented them to the City, its
2 Counsel, Counsel for Proponent in a 61 page brief outlining legal authority
3 and argument applicable here.

4 4.8 Following review and the order declared by this board, all elements of
5 the City's comprehensive plan must be consistent with its adopted
6 comprehensive plan and Washington law in order to be compliant pursuant to
7 36.70A.070.

8 4.9 Petitioner's preliminary list of exhibits will follow upon request and
9 according to a schedule established under WAC 242-02 and this Board. All of
10 the exhibits proposed are contained in the record created before the City of
11 Renton in the processes leading up to this petition.

12 4.10 A designated time and deadline for legal briefing and argument may
13 follow if the City or Proponent would elect to so proceed. This petition
14 should be reviewed and affirmed by this board.

15 4.11 At the conclusion of these proceedings, petitioner will be entitled to
16 relief and an order in his favor under and according to rules of this board
17 and under Washington law because there is now no material fact at issue in
18 this proceeding that is relevant to a disposition of it and therefore a
19 ruling in favor of this petition should follow as a matter of law.

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1 V. AFFIRMATIVE CAUSES OF ACTION

2 5.1 Count 1;

3 GOVERNMENTAL BREACH OF PUBLIC TRUST:

4 City leadership, and Staff are entrusted to carry out the provisions of the
5 Citizen's comprehensive plan, and are entrusted to perform governmental
6 processes according to public policy requirements. The City government and
7 certain officials defied the comprehensive plan and betrayed citizenry, and
8 while the necessary trust in the process was unlawfully foregone, and will,
9 if not subjected to an order invalidating certain provisions, violate lawful
10 provisions and objectives of the act.

11 5.2 Count 2;

12 PROPONENT FAILS TO SATISFY BURDEN OF PROOF:

13 The proponent, The Boeing Company, by necessary implication has the burden of
14 demonstrating that the proposal fulfills public interest requirements. The
15 Company objectives are not relevant to these proceedings. Substantial
16 evidence and facts that prove the necessary prongs of public interest were
17 not articulated by the proponent. Actions at issue here constitute arbitrary
18 and capricious spot zone according to judicial interpretations.

19 5.3 Count 3;

20 UNETHICAL PRACTICES:

21 Boeing Company seeks rezone for purpose of sale of the land without the
22 proposal being within the morals, health, safety, and general welfare of
23 Renton Citizenry and the exclusive goals of the act. Company representatives
24 did not demonstrate required material fact at the public hearings that were
25 held on the matters that are the subject of this appeal.

1 The process deceived the public by hiding the true essence of the proposal
2 until after public comment periods were passed. That proposal is a large
3 scale retail shopping center. Transportation capacity of existing roads and
4 concurrency modeling provided were not for the true proposal and skewed in
5 favor of the proponent. Transportation nightmare that would ensue would be
6 unmitigated and there has been no forecast for improvements that should be
7 made as a result of the direct and cumulative impacts of the proposal through
8 a mandatory capital facilities element. Salmon and clean water and best
9 available science were not incorporated into the purported City amendments.
10 City fee ordinances lack observance of nexus and proportionality limits of
11 United States Constitution. City hearing examiner and Planning commissioner
12 worried for the record that they would be fired if they found facts in favor
13 of the petitioner. Exparte communications occurred every day without public
14 involvement and recordation.

15 5.4 Count 4;

16 REZONE BARRED BY COLLATERAL ESTOPPEL DOCTRINE:

17 There is a quality of subject matter and parties relevant to this petition
18 that has been adjudicated in prior quasi-judicial administrative proceedings.
19 There is an evidentiary burden upon the proponent to prove that the
20 circumstances surrounding the public's interest and reliance upon its current
21 comprehensive planning have substantially changed since the last time the
22 property was zoned. Proponent has failed to counter this evidentiary test
23 with evidentiary material.

24

25

1 5.5 Count 5;

2 INCONSISTENT PLANNING AND LACK OF COMMON PURPOSE OPERATES AGAINST SPECIFIC
3 STATUTORY PROVISIONS:

4 SEPA articulates responsibility to "fulfill the social, economic, and other
5 requirements of present and future generations of Washington citizens", but
6 the ordinances do not carry out those provisions. Objective 5 of the act,
7 among others, would be circumvented by the City determinations and enactments
8 relating to this appeal. Purported ordinances thwart legitimate public
9 purposes. Proponent and respondent litigated to exclude the necessary social,
10 economic, and lawful statutes and judicial interpretations.

11 5.6 Count 6;

12 NONCONFORMITY WITH THE PLAIN AND UNAMBIGUOUS GMA REQUIREMENTS INTERFERES WITH
13 THE GROWTH MANAGEMENT ACT:

14 City of Renton government knows from prior appeals and experience and State
15 legislative enactments that the impact mitigation codes do not comply with
16 unambiguous sections of law. Petitioner pleads to observe growth management
17 objectives and nexus and proportionality requirements have been deliberately
18 omitted by City government and proponent. Adopted City resolution regarding
19 impact fee ordinances disregards its own language requiring readoption under
20 the growth management act. City and Proponent refused to address justifiable
21 petitioner concerns, and non-discretionary, mandatory compliance with the
22 GMA.

23 5.7 Count 7;

24 DEFIANCE OF ESA AND BEST AVAILABLE SCIENCE REQUIREMENT:

25 Extremely valuable and important species including Chinook salmon, Steelhead

1 trout, and Bull trout (among others) are listed as endangered or threatened
2 and inhabit areas immediately adjacent to the proponent, and should be
3 protected using all practicable means and measures according to legal
4 provisions. The Best Management Practices are necessary to protect their
5 habitat according to the GMA. City amendments unlawfully departed from the
6 science based recommendations made within their impact statement.

7
8 VI. ASSIGNMENT OF ERRORS

9 6.1 Petitioner assigns error to all council findings and recommendations and
10 conclusions, and adopted ordinances not specifically articulated as just and
11 lawful within this petition. Error is assigned to Council findings 1, 2, and
12 3 relevant to this petition.

13
14 VII. RESPONSE AND TRANSMITTAL OF RECORD

15 7.1 Petitioner requests that within thirty days of possession of this
16 petition for review, the respondent shall file with the board and serve a
17 copy on the petitioner a response to this petition and an index of and all
18 material used in taking the actions that are the subject of this petition for
19 review and according to the provisions of the Rules properly promulgated by
20 this Board. The response and index should also contain sufficient identifying
21 information to enable unique documents to be distinguishable and the nature
22 of record's factual position to be ascertained. In addition, the written and
23 tape recorded records of the legislative proceedings that created need for
24 this action shall be required to be made available to the petitioner for his
25 inspection and use, all of which are identified in such index according to

1 the administrative procedures required by this board under 242-02 WAC and
2 properly presented to this board for review. Petitioner requests that
3 respondent provide a copy of the purported new zoning map.

4 7.2 The proceedings relevant to this appeal are incomplete at this time.
5 Transmittal of additional material created before the City in these
6 proceedings.

7 VIII. FACTUAL ALLEGATIONS

8 Unjustifiable and Arbitrary and Unlawful Rezoning

9 8.1 Boeing wants the property rezoned and the property is currently
10 designated on the City zoning map as IH or heavy industrial and is delineated
11 on the various exhibits of the environmental impact statement and the record
12 created in the proceedings. City and Proponent failed to demonstrate that the
13 project is guided by legitimate economic objectives of the GMA.

14 The City's adopted comprehensive plan would need to be ignored or reversed
15 in order to accommodate the proposal alternatives and the subsequent rezoning
16 and regulations that are requested. The City current, wholesome, and adopted
17 comprehensive plan outline in the Economic Development Element of the plan
18 its objective, (objective ED-C) is to,

19 "Sustain and expand the current industrial and manufacturing (heavy and
20 light) employment base" and along with direction to develop various
21 "strategies" to achieve those goals. Their proposal indicates only that such
22 a legitimate City of Renton objective (especially considering its historical
23 manufacturing and industrial production) would by necessity need to be
24 overlooked and because the zoning for the subject site is proposed to be
25 overlain by an "Urban Center" designation.

1 The undisputed goals and loyalty of the proponent belongs exclusively to
2 shareholder value, its own vision, and its own objectives according to the
3 undisputed facts of record. That is outside the comprehension of the
4 objectives and purposes of the act. City used increased tax revenue and tax
5 base goals to guide their decision, ignoring capacity losses, outside of the
6 act. That too is outside the comprehension of the act.

7 8.2 36.70A.020 RCW requires and outlines the goals that are to be used
8 exclusively to guide the development and adoption of comprehensive plans. The
9 purported comprehensive plan and zoning amendment ignores it.

10 The City Staff has not performed the actions required by sections of
11 Washington law. It is inconsistent with its own comprehensive plan and
12 current zoning designations surrounding the area. The Boeing Company is
13 guided by profit and its own interests, and has ignored and is not guided by
14 GMA objectives. It agreed with that accusation through its silence and its
15 inability to proffer evidence within the acceptable prongs of jurisprudence.
16 This proposal and purported zoning has been created outside of the objectives
17 of the GMA.

18 8.3 36.70A.070 RCW requires as mandatory that the City comprehensive plan
19 "shall be an internally consistent document and all elements shall be
20 consistent with the future land use map" There is no way that such internal
21 consistency can be achieved unless the proposal and purported adoption of it
22 includes an abrupt and severe change of direction in the City Comprehensive
23 Plans including provisions that presently, even as we review, provides land
24 area designations intended to fulfill social, economic, and other
25 requirements of citizenry according to the act.

1 8.4 There are close to 13,000 employees presently employed in manufacturing
2 and industrial jobs on or around the subject site. Historically, it could
3 accommodate many more. That site has produced more commercial aircraft than
4 any other site in the world. Renton workers are very productive and continue
5 to be. The capacity for many more jobs would be lost if these purported
6 amendments are permitted to stand.

7 8.5 The property in question should be regulated to sustain and expand the
8 City's industrial and manufacturing employment base. It is clear that the
9 City is guided not by The Growth Management Act or its own comprehensive
10 plan, but by other unauthorized objectives. The proposal is made, according
11 to the EIS documents and city documents, in order to benefit the proponent
12 stockholder value and their objectives, and to increase City portion of sales
13 tax revenue. They refuse to discuss economic impacts upon ordinary citizens.

14 8.6 In virtually all of the documents, and throughout the environmental
15 impact statement, the company reiterates; there are no preferred or specific
16 proposals for development, the Company does not intend to discontinue its
17 present operations, and that the proposal represents a potential for a broad
18 range of uses. It has only been suspect that the proposal is specifically for
19 purpose of a quickly profitable rezone. There is no need to rezone the
20 subject property at this time if there are no plans in place to change its
21 use. There is presently a successful and productive commercial airplane
22 factory in operation at the site. Profits gained from operation of the site
23 enabled proponent to diversify its company into a "global enterprise" while
24 purchasing other manufacturers such as McDonnell Douglas, Hughes, Rockwell,
25 and others. High production rates and profitability are still being reported

1 even in the midst of the biggest downturn in aviation history. The 737
2 aircraft is the best selling aircraft in commercial aviation history and even
3 as this petition is read, it continues at a very high volume rate.

4 Possibilities for gaining more high value business exist for its future. To
5 reiterate, proponent has no plans to change its use for the foreseeable
6 futuro. Petitioner briefed the need for discussion and compliance with laws
7 and rules in a 61 page brief, but to no avail, because the proposal still
8 proceeds while being unjustified by substantial evidence.

9 8.7 It is important to note that 36.70A.030 RCW (7) precisely
10 defines the term "development regulations", and as follows: "Development
11 regulations" or "regulation" means the controls placed on development or land
12 use activities by a county or city, including, but not limited to, zoning
13 ordinances, critical areas ordinances, shoreline master programs, official
14 controls, planned unit development ordinances, subdivision ordinances, and
15 binding site plan ordinances together with any amendments thereto".

16 8.8 Therefore, a proposal for a rezone is a proposal for a development
17 regulation and such a proposal is defined as a development regulation by
18 Washington Law. Impact fee and surface water ordinances and regulations also
19 are within this definition.

20 8.9 36.70A.280 RCW delineates the matters that are the subject of board
21 review; 36.70A.280(1) reads: A growth management hearings board shall hear
22 and determine those petitions alleging either:

23 (b) is in compliance with the requirements of this chapter;

24 8.10 Because there is no legal presumption of validity concerning the
25 adoption of zoning ordinances according to Washington law request for this

1 board to take notice of the proponent's burden of proof is now properly and
2 officially requested pursuant to WAC 242-02.

3 8.11 The Proponent and the City worked together to circumvent the primary
4 prongs of established and well recognized zoning rule: That such a rezone
5 must demonstrate that circumstances have substantially changed and that the
6 rezone is made for purpose of the health, safety, general welfare and morals
7 of the Citizens of the City and State. In any case, the purported enactments
8 of Renton do not satisfy such a requirement.

9 8.12 36.70A.040 RCW summarizes the requirements of, and who must plan under
10 the growth management act. The City of Renton falls under this section and
11 therefore a rezoning ordinance is proper subject matter for review by this
12 board.

13 8.13 Zoning and Comprehensive planning and development regulations, like the
14 public morals and general welfare, have lines (laws) delineating their
15 limits, and the overlay and proposals and these unjust regulations cannot be
16 harmonized with such legitimate ethical and moral, legal, statutory,
17 judicial, and Constitutional limits.

18 8.14 Because the quasi-judicial administrative record that has been created
19 is without and lacking any specific facts demonstrating how the public
20 economic interest justify a rezone, a remand for reversal and invalidation of
21 the purported City ordinances is warranted. City and proponent together
22 litigated and argued that social, economic, and other requirements of
23 citizens need not be discussed in this process. Therefore no evidence exists
24 indicating substantial evidence supporting justification for the rezone
25 exists. Under this additional circumstance, the rezone should be declared to

1 be invalid. This should be automatic and is the fundamental rule of zoning.
2 There has been no change of use of the proponent property in district 2, no
3 change is envisioned, and therefore a rezone in that area is especially
4 unlawful.

5 8.15 As a matter of fact, substantial evidence indicating that the purported
6 ordinances were enacted while the quantum of existing evidence necessary for
7 persuasion only tends to prove that the analysis is deceptive. Over a year
8 thereafter expressed further inconsistent facts by resolution. Washington
9 State Legislature offered the proponent multi-Billions of dollars in State
10 tax value as an incentive to continue to do industrial business of the type
11 at issue here over a period of years. ((Renton staff and officials have been
12 encouraging proponent to rezone,) (the largest and most prestigious aerospace
13 company in the world)). That State legislation was enacted as law and
14 expresses the morals and ethical principles of Washington Citizens, and they
15 have expressed it with lots of money. It is not the duty of the respondent
16 Brad Nicholson to bear the burden of making such a demonstration.

17 8.16 Again, a demonstration of current state of the heart, mind, inner
18 conviction, economic and social values and perception of justice and prudence
19 and facts of social, economic, and other requirements of present and future
20 generations of Renton citizenry is required and has not been proven by the
21 proponent. That is grounds for invalidation of the zoning ordinances here at
22 issue.

23 Unlawful and Unconstitutional Impact fee ordinances do not comply with the
24 unambiguous language of the Growth Management Act.

25 8.17 The traffic impact mitigation fees that are currently being imposed by

1 the City of Renton are purported to be under SEPA from Ordinance 3100 adopted
2 by the City in 1994 (copies attached). The State Statutes that these
3 ordinances do not comply with were adopted shortly thereafter.

4 8.18 The City has failed to follow the provisions of its own ordinance, which
5 required under Section IV. Precisely stating: "The traffic impact mitigation
6 fee will be readopted as a fee under the Growth Management Act and reviewed
7 periodically thereafter."

8 8.19 The City has adopted its GMA comprehensive plan amendments and
9 implementing measures that have failed to provide compliance for the
10 transportation and fire impact mitigation fees as growth management fees.
11 Neither has the City periodically reviewed the fees thereafter. Eight years
12 after adoption of Ordinance 3100 and over ten years after resolution 2913,
13 the City has failed to meet the provisions of its own ordinances. Further,
14 this ordinance requires under Section III that:

15 "This fee applies to all new development that is subject to SEPA review."

16 8.20 The fire mitigation fee currently employed by the City requires an
17 automatic universal contribution and without the required language and
18 provisions of 82.02 RCW.

19 8.21 Under 82.02.050(4) RCW, City of Renton is subject to both the
20 requirements of 36.70A.070 and its comprehensive planning under 36.70 RCW,
21 and the pertinent requirements of 82.02.050 RCW thru 82.02.090 RCW inclusive.

22 8.22 Under the above requirements and in order to observe the clear and
23 unambiguous intent of the legislation, the City comprehensive plan must
24 respect the provisions of 82.02.020 RCW that states: Except as provided in
25 RCW 82.02.050 through 82.02.090, "No county, city, town, or other municipal

1 corporation shall impose any tax, fee, or charge, either direct or indirect,
2 on the construction or reconstruction of residential buildings, commercial
3 buildings, industrial buildings, or on any other building or building space
4 or appurtenance thereto, or on the development, subdivision, classification,
5 or reclassification of land*.

6 8.23 There are other related mandates including and outlined in the statutes
7 RCW 82.02.050(1)RCW that states: It is the intent of the legislature:

8 (a) To ensure that adequate facilities are available to serve new growth and
9 development;

10 (b) To promote orderly growth and development by establishing standards by
11 which counties, cities, and towns may require, by ordinance, that new growth
12 and development pay a proportionate share of the cost of new facilities
13 needed to serve new growth and development;

14 8.24 All of the impact fee requirements and plans and regulations should
15 observe our Constitutional nexus and proportionality requirements. While
16 Planning under 36.70A.040, the City of Renton must create impact fee
17 ordinances compliant with 82.02 RCW and GMA, and such fees are a requirement
18 of the GMA. There must be no fee, when there is no special benefit conferred
19 that is not required of the public at large, and when the fee is not imposed
20 in furtherance of legitimate governmental objectives that are the same as
21 those that would be advanced as justifications for prohibiting the use. To be
22 sure, only a voluntary agreement that is reasonable imposed to mitigate the
23 direct impact from the project is permitted, and that requires an
24 articulation of the identity of the specific improvement that must be made as
25 a result of the direct impact of the development.

1 8.25 Again, because the City purports to amend its comprehensive plan and
2 development regulations, it must now become compliant with 36.70 RCW and
3 62.02 RCW by adopting impact fee ordinances compliant with Washington Law. An
4 amendment to its capital facilities element is mandatory under the specific
5 sections of the act. That action has not been performed.

6 Surface water ordinance is outdated and City ignores best available science
7 requirement and causing harm to species listed as endangered

8 8.25 36.70A.172 requires the Best Available Science to be used when
9 protecting critical areas. The rezone and regulations that are proposed
10 border areas critical to salmon and citizens. Habitat for spawning and
11 rearing for valuable Native Steelhead Trout, Chinook Salmon, Coho Salmon,
12 Sockeye Salmon, Dolly Varden, Bull Trout, Lake Washington Cutthroat, and
13 Rainbow and Cutthroat trout (Lake Washington/Sammamish Kokanee need not be
14 mentioned because they are already extinct) are distinct and listed as
15 "threatened" or "endangered" by the ESA, (Endangered Species Act) and are
16 located in or around the subject site.

17 8.26 Petitioner requested code and comprehensive plan amendments in order to
18 observe the best available science. The impact statement performed
19 recommended that the Ecology manual be adopted. In the context of this
20 request, this should mean that the best available scientific engineering
21 available regarding storm water entering lake Washington and Cedar River must
22 be used to inform the related comprehensive planning and public policy
23 decisions and regulations and be contained in the record. City did not make
24 an official finding of fact or conclusion of law regarding the best available
25 science. Petitioner offered scientific information on the subject but it was

1 not properly considered. As a matter of fact, one of the Commissioners
2 mingled in the audience area and stated exactly "that would cost too much".
3 That finding was clearly erroneous. For one, even if it was analyzed in terms
4 of initial costs, it is untrue. The benefits of science far outweigh any
5 negatives when viewed from the perspective of the entire record as submitted
6 and the property might be used for scientific research and manufacturing.

7 8.27 The City of Renton current code is as follows:

8 4-6-030 DRAINAGE (SURFACE WATER) STANDARDS The drainage plan shall be
9 prepared in conformance with the Core and Special Requirements contained in
10 sections 1.2 and 1.3 of chapter 1, the hydrologic analysis methods contained
11 in chapter 3, the hydraulic analysis and design criteria in chapter 4, and
12 the erosion/sedimentation control plan and practices contained in chapter 5
13 of the 1990 King County Surface Water Design Manual, except where amended or
14 appended by the Department.

15 8.28 Again, because 36.70A.130(1)(b) RCW states: "Any amendment of or
16 revision to a comprehensive land use plan shall conform to this chapter".

17 "Any amendment of or revision to development regulations shall be consistent
18 with and implement the comprehensive plan"; The City of Renton Code must use
19 the best available science to protect this critical area. The above code
20 except is one example of sections that are in need of revision, or in the
21 alternate, articulation of the reasonable basis for departure from such a
22 recommendation contained within the record.

23 8.29 No evidence was offered to indicate that the proposal purports to reduce
24 pollution discharges to the maximum extent practicable.

25 8.30 Large amounts of Nitrogen, Phosphorus, Heavy metals, and oil related

1 toxic substances are generated through asphalt paving, vehicles and will
2 cause environmental and aquatic degradation to habitat necessary for the
3 survival of valuable species.

4 8.31 Without sound scientific regulatory controls, a broad understanding of
5 scientific information, performing rigorous empirical observations, and
6 leading to sound interpretations and regulations, the ESA best available
7 science requirement articulated in the relevant Growth Management Act would
8 not occur. There is no legitimate reason why the Ecology Manual should not be
9 adopted in order to reduce pollution discharges to the maximum extent
10 practicable and while protecting the very valuable and vulnerable species
11 that will likely be harmed to a great degree by the proposal. That is what
12 was recommended with the impact statement performed for their proposal. The
13 best engineering and science to protect them is necessary. Any departure from
14 those requirements must be justified with substantive evidence and rational,
15 sound, engineering and scientific fact. That justification is not present in
16 the administrative record leading up to this appeal.

17

18

IX. STATEMENT OF ISSUES

19 LEGAL ISSUE NUMBER 1:

20 Can the City Rezone the Subject property and while the only justification
21 that has been provided indicates that it would benefit only the proponent and
22 sales tax revenue, while its own comprehensive plan provisions indicate a
23 requirement to sustain and expand the current industrial and manufacturing
24 employment base?

25 LEGAL ISSUE NUMBER 2:

1 Is it not Arbitrary and Capricious and Clearly erroneous to proceed with a
2 rezone in this case and when the proponent has utterly failed to prove that
3 the condition of the public morals has changed at all since the last time the
4 property was zoned and argues to exclude substantive evidence and when in
5 fact there is no rational public interest justification for the general
6 economic welfare therefore constituting defiance of the Growth Management
7 Act?

8 LEGAL ISSUE NUMBER 3:

9 Can the City or the proponent show that industry and manufacturing are no
10 longer desirable to Renton and Washington citizens and amend its zoning map
11 and when approximately 13,000 people are presently employed at Boeing,
12 and when the state has now offered the Company over three billion dollars and
13 more in state tax value as an incentive to continue to do business in this
14 state?

15 LEGAL ISSUE NUMBER 4:

16 Can a rezone and map amendment that would allow a large shopping center and
17 condominiums proceed to replace industry and manufacturing and when the
18 proponent has expressed no plans to terminate their present operations, be
19 allowed under the Growth Management Act and the city comprehensive plan?

20 LEGAL ISSUE NUMBER 5:

21 Can the subject property be rezoned and when there has been no specific
22 articulation as to the condition and details as to how the proposal furthers
23 a maximum economy pursuant to the public safety, health, morals and general
24 welfare or the objectives for economic development?

25 LEGAL ISSUE NUMBER 6:

1 Can the City council approve a rezone on the Boeing Consolidated operations
2 portion of the subject site and when it has been specifically stated that
3 there are no plans to change the use of the site for the foreseeable future
4 and that the application was made only for the purpose of consideration and
5 when there has been no expression of the need to perform the planning in
6 accordance with the Growth Management Act and its objectives?

7 LEGAL ISSUE NUMBER 7:

8 Can the City amend and proceed with a code and development regulations change
9 and when their own code requires impact fee statutes to be readopted as
10 Growth Management fees and when the existing code ignores the plain and
11 unambiguous language of RCW 82.02 and 36.70A.070 RCW?

12 LEGAL ISSUE NUMBER 8:

13 Can the City amend its code and development regulations and for the purpose
14 of a converting industrial manufacturing to large retail shopping center and
15 condominiums while alleging that there would be less pollution generated from
16 vehicles and asphalt using the 1990 King County Manual in lieu of maximum
17 extent practicable and best available science regulations and while conveying
18 storm water into Lake Washington and when there are so many sensitive and
19 endangered species immediately adjacent to the subject site and when they
20 have not expressed the rationale for their departure from the science based
21 recommendation contained within the record created before them?

22 LEGAL ISSUE NUMBER 9:

23 Can the City proceed without using Best Management Practices contained in the
24 Ecology manual and when there are no factual findings contained in the
25 official record indicating that the City intends to protect habitat for

1 endangered salmon utilizing best management practices or substantive evidence
2 justifying their departure from best available science requirements?

3 LEGAL ISSUE NUMBER 10:

4 Can the City Hearing Examiner order, and Proponent and Respondent argue and
5 litigate to exclude evidence of social and economic and other consequences
6 and then still not be subject to an order of invalidation and when it has
7 therefore not demonstrated compliance with objective number 5 and other
8 objectives of the act?

9 LEGAL ISSUE NUMBER 11:

10 Are the Zoning ordinances listed above consistent with and do they implement
11 the City economic development element objective as is required by the act
12 without requiring that the City sustain and expand the current manufacturing
13 and industrial employment base and if not should they be invalidated because
14 they do not implement such comprehensive plan provisions?

15 LEGAL ISSUE NUMBER 12:

16 Is the City comprehensive plan an internally consistent document as is
17 required by the act if the map amendments are included into the plans and
18 development regulations?

19 LEGAL ISSUE NUMBER 13:

20 Are these ordinances, zoning, development regulations, new zoning map, and
21 identified issues articulated herein compliant and guided by the exclusive
22 goals and objectives of the Growth Management Act and SEPA, with
23 particularity the environmental objective 10, economic objective 5, and the
24 public participation objective and without inclusion of legal justification
25 for departing from the legal requirements articulated in the attached exhibit

1 originating as a motion to the City Hearing examiner or described in the
2 record or this petition?
3

4 X. AUTHORITY AND ARGUMENT

5 10.1 (Reserved for hearing and argument on merits)
6

7 XI. RELIEF AND ORDER REQUESTED

8 11.1 Having fully set forth the required elements for a Petition for Review
9 and justification for an order of invalidity before this board, Petitioner
10 Brad Nicholson prays for and respectfully requests the following relief:

11 11.2 A determination that this petition is complete and appropriate according
12 to legal procedure and Washington Law and code.

13 11.3 That upon receipt of this Petition, the Board schedule and hold hearings
14 and accept and rule upon these issues in favor of the petitioner and his
15 request.

16 11.4 Petitioner requests that respondents respond to this petition for review
17 and requests within the time limits prescribed by this board or the rules of
18 civil procedure prescribed by this board.

19 11.5 That leave to complete the city proceedings prior to establishing a
20 schedule be ordered, along with the continued right to amend this petition
21 thereto;

22 11.6 That thence a schedule and calendar be created establishing deadlines
23 for the submittal of motions and legal arguments and briefings, and the dates
24 for hearing of same or according to Washington Administrative Code 242-02 or
25 according to the rules properly and fairly promulgated by this Board.

1 11.7 That a date deadline be established for the presentation of preliminary
2 exhibits and pre-hearing briefs and petitioner be notified of same.
3 11.8 That following the hearings held for purpose of fulfillment of the
4 intent and purpose of and specific sections of the laws of the State of
5 Washington, and upon the conclusion of these issues, and after lawful review,
6 this Board issue a final order finding that the City ordinances, regulations,
7 zoning, and codes articulated here and at issue are not in compliance with
8 the requirements of the Growth Management Act, its amendments, the State
9 Environmental Policy Act, its amendments, and are therefore declared invalid.
10 11.9 That this board issue an order requiring the City of Renton to observe
11 the intent and purpose and specific requirements of Washington Law and all
12 articulated and according to petitioners request with regard to those issues
13 stated herein and herewith.
14 11.10 A finding by the board that the issues enumerated herewith are
15 concluded in the favor of the petitioner Brad Nicholson in these proceedings.
16 11.10 For all such other and further relief that the Board determines are
17 necessary to fulfill the objectives and purposes and is appropriate and just
18 and which is within the jurisdiction of the Board to so order.

19
20 **XII. EXHIBITS AND ATTACHMENTS**

- 21 1) City minutes of adoption of ordinances.
22 2) Recent Hearing Examiner order.
23 3) 61 page motion and brief of petitioner to City Hearing Examiner.
24 4) Copy of City Comprehensive plan economic development element.
25 5) Although not provided at this time, petitioner expects to use all of the

1 public information created in this action, Renton Code and Ordinances; Revised
2 Code Washington; Judicial interpretations and court decisions thereto;
3 Washington Administrative code; Federal and State Constitutions and
4 regulations and interpretations thereto; and agency and board decisions
5 thereto; A copy of the purported zoning map.
6
7
8

9 XIII. Requirements

10 13.1 Petitioner believes that the initial hearing upon these matters will
11 consume approximately one half day up to possibly one day of the Board's
12 time. Total time taken is more. Opportunity for petitioner rebuttal is now
13 therefore requested and will consume additional time. This is a very
14 important appeal and it may consume a number of days of the boards time. Such
15 estimate is being offered with regard to the requirement of chapter 242 WAC.
16 Petitioner believes that further time will be requested for motions, further
17 requests, amendments, and/or arguments.
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1 13.2 Wherefore, petitioner Brad Nicholson solemnly and respectfully makes
2 this request upon his honest and true belief that the contents and facts and
3 issues described herein are true, correct, right and just according to
4 Washington Laws and to the best of his ability in accordance with WAC 242.
5

6 Dated this 6th day of September, 2003

7 Respectfully,
8
9
10
11



12 Brad Nicholson
13 2300 N.E. 28th Street
14 Renton, Washington
15 98056
16
17

18 C:\My Documents\Boeing Comprehensive Plan Amendment \A. petition for review.doc
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CITY OF RENTON ECONOMIC DEVELOPMENT ELEMENT

Policy ED-12. Create a tool box of incentives, for example, retail overlay zone, tax increment financing, marketing etc. to encourage retail development.

Policy ED-13. Create incentives, for example, overlay zone, tax increment financing, marketing to encourage office development.

Objective ED-C: Sustain and expand the current industrial and manufacturing (heavy and light) employment base.

Policy ED-15. Develop strategies to attract manufacturing and industrial jobs.

Policy ED-16. Work with private property owners and governmental agencies to remedy contaminated sites and prepare the sites for redevelopment.

Policy ED-17. Work with industrial and manufacturing employers within the City to expand, redevelop and modernize their physical plants.

Policy ED-14. Evaluate the need for expansion of commercial land uses in the context of the City's desire to protect residential land uses.



Objective ED-D: Provide incentives for Downtown Economic Development.



Policy ED-18. Retain existing and attract new businesses that generate consumer oriented commercial activity.

Policy ED-19. Aggressively market downtown as a place to live, shop and do business.

Policy ED-20. Achieve a reasonable balance between parking supply and parking demand.

Policy ED-21. Develop a downtown parking strategy that provides incentives for downtown business and retail development.

Objective ED-E: Ensure a healthier regional economy.

Policy ED-22. Influence local and regional economic development efforts.

MOVED BY KEOLKER-WHEELER, SECONDED BY CLAWSON, COUNCIL APPROVE THE CONSENT AGENDA AS AMENDED TO REMOVE ITEM 6.g. FOR SEPARATE CONSIDERATION. CARRIED.

Separate Consideration
Item 6.g.

Community Services: Henry Moses Aquatic Center Fees

Finance and Information Services Department requested approval of an ordinance establishing admission fees for the Henry Moses Aquatic Center.

Councilman Corman noted that the fees range from \$3 to \$12, with reduced fees of \$3 or \$4 for lap swims. He questioned whether there would be a different fee structure for people who are only going to watch their children swim, and he asked staff to review that possibility.

MOVED BY CORMAN, SECONDED BY PARKER, COUNCIL REFER CONSENT AGENDA ITEM 6.g. TO COMMITTEE OF THE WHOLE. CARRIED.

CORRESPONDENCE

Citizen Comment: Cameron - Boeing Renton Site EIS

Correspondence was read from Eric Cameron, Planning Commission Vice Chair, 55 Williams Ave. S., #308, Renton, 98055, requesting inclusion of two motions approved by the Planning Commission on November 19, 2003, into the final rezone documents regarding the Boeing property rezone. The first restricts big-box retail development south of N. 8th St. in District 1, and the second incorporates only the retail sales category west of Park Ave. N. and north of N. 8th St. in District 1. Additionally, Mr. Cameron expressed concern that the current standards for this rezone include very little definition and standards related to signage, pedestrian-oriented standards, building materials and landscaping.

Citizen Comment: Berkholtz - (CTED), Boeing Renton Site EIS

Correspondence was read from Karin Berkholtz, Washington State Department of Community, Trade and Economic Development (CTED), PO Box 42525, Olympia, 98504, regarding the Boeing Environmental Impact Statement and Comprehensive Plan amendments. The letter detailed what CTED liked about the documents, and also offered suggestions for strengthening the Comprehensive Plan and development regulation amendments.

OLD BUSINESS

Committee of the Whole
Planning: Boeing Renton Site EIS

Council President Keolker-Wheeler presented a report regarding the application (2003-M-13) for The Boeing Company Renton plant site land use map amendment; land use element text amendment; concurrent rezoning and development standards, including parking standards, site development plan review, design guidelines; and two new zone designations - the Urban Center-North 1 and Urban Center-North 2; and the application (2003-M-05) for the Fry's Electronics 2003 Comprehensive Plan amendment and rezone.

The Committee met monthly throughout 2003 and weekly during October and November to review these Comprehensive Plan amendments and associated rezones, and zoning text amendments. The Committee recommended approval of the applications subject to the following findings as documented in the staff reported dated November 17, 2003, for the Boeing application, and October 31, 2003, for the Fry's application.

Findings:

1. The proposed amendments meet Section 4-9-020G, Review Criteria, in Renton Municipal Code Title IV (Development Regulations). The proposals support criteria 1 relating to the vision in the adopted Comprehensive Plan by providing further policy direction to implement the City's Urban Center. The

proposal also meets adopted Business Plan Goal 1 "To promote citywide economic development," by providing additional employment capacity to diversify the employment base. The proposal also provides a policy basis to transition industrial properties to their highest and best use, and facilitates quality development of waterfront land.

2. The property is potentially classified for the proposed zone being requested pursuant to the policies set for the Comprehensive Plan, and the subject reclassification was not specifically considered at the time of the last area land use analysis and area zoning. As a result of regional changes in the manufacturing sector and decisions made by Boeing to consolidate operations on a portion of their plan site (District 2 within the new land use designation), land areas formerly used for parking and operations to support manufacturing of airplanes are no longer used for this purpose. This changed circumstance has created the opportunity for the City to review land use in the North Renton area, including properties owned by Boeing and other privately owned parcels in the immediate vicinity to determine the policy direction for future use and development in ways that were not previously analyzed.

Recommendations:

1. Adoption of a Comprehensive Plan land use map amendment redesignating the 310-acre study area to Urban Center-North. This action includes Boeing North Renton plant, Puget Sound Energy property, Fry's Electronics property, and several small private businesses along Park Ave. N., including the Wendall, Wiemeyer, and Burlington Northern Santa Fe Railroad properties.
2. Adoption of a new Comprehensive Plan designation, as recommended by the Planning Commission in the draft dated November 13, 2003. The text amendment sets forth vision, objectives and policies for the Urban Center-North, and each of its districts. The existing Center Downtown designation is redesignated Urban Center - Downtown. Amendments also update and clarify general Centers policies to be consistent with the new designations, and repeal the Employment Center - Transition policies.
3. Amend the official zoning map of the City to change the classification of property in the Urban Center-North. Property in the area bordered by the Cedar River to Logan Ave. N., and Lake Washington will be in the Urban Center-North 2 (UC-N 2) zone. Property in the area bordered by the Cedar River on the south, Garden Ave. N., N. 5th St., and N. 6th St. will be in the Urban Center-North 1 (UC-N 1) zone.
4. Adopt zoning text amendments to create two new zone districts, including use tables and notes, and development standards tables and notes.
5. Adopt parking code amendments to address parking needs in the UC-N 1 and UC-N 2 zones, and amend standards for shared parking and off-site parking requirements.
6. Amend existing site plan regulations to define applicability for development in the UC-N 1 and UC-N 2 zones, establish the name of the process as "Site Development Plan," and change references from Site Plan Level I and Site Plan Level II to Master Plan and Site Plan throughout Renton Municipal Code Title IV.