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**Supreme Court Case No. 101542-9
(Court of Appeals Case No. 38657-1-III)**

SUPREME COURT OF THE STATE OF WASHINGTON

FUTUREWISE,

Respondent,

v.

SPOKANE COUNTY,

Petitioner,

and

GROWTH MANAGEMENT HEARINGS BOARD,

Respondent.

**FUTUREWISE'S ANSWER TO SPOKANE COUNTY'S
MOTION FOR DISCRETIONARY REVIEW**

(Treated as an Answer to Petition for Review)

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I. INTRODUCTION

This answer will show that the Court of Appeals decision carefully and correctly interpreted the Growth Management Act's capital facility plan element requirements.¹ The decision is consistent with the State of Washington Department of Commerce's (Commerce) procedural criteria for capital facility plans. The Court of Appeals decision also provides guidance for counties and cities that fully plan under the Growth Management Act (GMA). There is no reason for the State of Washington Supreme Court to take review of this decision.

II. STATEMENT OF THE CASE

Spokane County Resolution 20-0129 adopted the periodic, eight-year, update to the Spokane County Comprehensive Plan.² The deadline for this update was June 30, 2017, but the

¹ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 1-16 (Sept. 22, 2022), 517 P.3d 519, 521-27 (2022). The slip opinion is in Appendix A of Spokane County's Motion for Discretionary Review.

² Searchable Electronic Certification of the Record (CR) 000019, Resolution 20-0129 p. 13.

update was not completed until June 23, 2020.³ This update included a new capital facility plan (CFP), a new procedure for deciding which comprehensive plan and development regulation amendments should reviewed for adoption, and readopted a comprehensive plan designation and adopted a new zone for the Geiger Spur along with other amendments.⁴

The prior CFP expired in 2012.⁵ The *2020 CFP* adopted by Resolution 20-0129 runs from 2018 through 2023 for most facilities.⁶ The CFP is required to address the capital facility needs of incorporated Spokane County which is projected to grow from a 2017 population of 144,903 to a 2037 population

³ CR 000020, *Id.* p. 14; CR 000039, Planning Report p. 2-2.

⁴ CR 000019, CR 000048 – 58, CR 000106 – 429, Resolution 20-0129 p. 13, pp. 4-2-4-12, & *Spokane County Capital Facilities Plan* pp. 1-(Appendix 3) 7 (2020).

⁵ CR 000679 – 833, *Spokane County Capital Facilities Plan* pp. ES-1-T-6 (2007) hereinafter *2007 CFP*.

⁶ CR 000202-87, *Spokane County Capital Facilities Plan* pp. 95-180 (2020) hereinafter *2020 CFP*.

of 176,780, an increase of 31,877.⁷ The CFP, as even Spokane County conceded, contained numerous violations of the GMA.⁸

Futurewise appealed the CFP, the procedure, and the comprehensive plan designation and zone for the Geiger Spur to the Growth Management Hearings Board (Board). The Board concluded the CFP and procedure for initiating comprehensive plan and zoning amendments complied with the GMA.⁹ The Board concluded the appeal of the rezone was not ripe for a decision by the Board.¹⁰ Futurewise appealed the Board's decision to Thurston County Superior Court and then filed along with Spokane County an agreed motion to transfer the appeal to the court of appeals which the superior court granted.

⁷ RCW 36.70A.070(3); CR 000148, *2020 CFP* p. 41.

⁸ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 1-16 (Sept. 22, 2022), 517 P.3d 519, 521-27 (2022).

⁹ CR 001993, *Futurewise v. Spokane Cnty.*, Eastern Region Growth Management Hearings Board (ERGMHB) Case No. 20-1-0007, Final Decision and Order (May 12, 2021), at 1 of 21.

¹⁰ CR 002011, *Id.* at 19 of 21.

The Court of Appeals concluded that the CFP violated several requirements of the GMA.¹¹ The County first filed a motion for reconsideration which was denied. The County then filed its “Motion For Discretionary Review” requesting review by the Washington State Supreme Court of the portion of the opinion addressing CFPs.

III. ARGUMENT

A. Standard of Review.

Rule of Appellate Procedure (RAP) 13.4(b) includes four considerations the State of Washington Supreme Court analyzes when deciding whether to accept review. Only one of those considerations apply in this case: “(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.”¹²

¹¹ *Id.*

¹² *See* Spokane County Motion For Discretionary Review p. 11.

B. Principles of Statutory Construction

Courts review questions of law de novo.¹³ “‘The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature.’ In order to determine legislative intent, the court begins with the statute’s plain language and ordinary meaning.”¹⁴ When interpreting the Growth Management Act (GMA), it is read as a whole.¹⁵

C. Rules for Interpreting Regulations

The Washington State Supreme Court has identified the rules for interpreting regulations:

If a rule’s meaning is plain on its face, then the court must give effect to that plain meaning. *J.M.*, 144 Wn.2d at 480, 28 P.3d 720. Under the “plain meaning” rule, examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 10, 43 P.3d 4 (2002);

¹³ *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 555, 14 P.3d 133, 139 (2000).

¹⁴ *Id.* citations omitted.

¹⁵ *Id.* 142 Wn.2d at 560, 14 P.3d 133 at 142.

C.J.C. v. Corp. of the Catholic Bishop of Yakima, 138 Wn.2d 699, 708 – 09, 985 P.2d 262 (1999). A term in a regulation should not be read in isolation but rather within the context of the regulatory and statutory scheme as a whole. *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993). The court should not construe a regulation in a manner that is strained or leads to absurd results. *Burke*, 92 Wn.2d at 478, 598 P.2d 395.¹⁶

D. Capital Facilities Plan Element (CFP) Requirements.

RCW 36.70A.020 provides that the GMA “goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040.” Spokane County is required to plan under RCW 36.70A.040.¹⁷ RCW 36.70A.020(12), the “public facilities and services” goal, requires: “Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the

¹⁶ *City of Seattle v. Allison*, 148 Wn.2d 75, 81, 59 P.3d 85, 88 (2002).

¹⁷ CR 000007, Resolution 20-0129 p. 1.

development is available for occupancy and use without decreasing current service levels below locally established minimum standards.”

RCW 36.70A.070(3) requires:

- (3) A capital facilities plan element consisting of:
 - (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
 - (b) a forecast of the future needs for such capital facilities;
 - (c) the proposed locations and capacities of expanded or new capital facilities;
 - (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
 - (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Amendments to comprehensive plans must comply with the GMA.¹⁸

¹⁸ RCW 36.70A.130(1)(d).

E. The Court of Appeals decision is not overbroad and is consistent with the plan language of the GMA.

In this case, the Court of Appeals held that:

a “capital facility” as contemplated by RCW 36.70A.070(3) is a fixed, physical facility that has been built, constructed, or installed to perform a service relevant to the considerations at issue in the GMA, such the “public services” listed in RCW 36.70A.030(21). Capital facilities include the “public facilities” listed in RCW 36.70A.030(20), but are not necessarily limited to facilities falling under the “public facilities” definition.¹⁹

The court of appeals based this holding on the plain language of the GMA and the dictionary definitions of undefined terms consistent with this Court’s *Quadrant Corp* decision.²⁰

1. The CFP must address all capital facilities.

The County’s claim that the decision is overbroad is based on the argument that planning for capital facilities should be limited to those capital facilities “necessary for development.”

¹⁹ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III p. 9 (Sept. 22, 2022), 517 P.3d 519, 524 (2022).

²⁰ *Id.* Slip Opinion No. 38657-1-III pp. 5-9, 517 P.3d at 523-24; *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.3d 1132, 1140 (2005)

The County made this argument to the court of appeals which correctly rejected it.

¶21 We disagree with the County that RCW 36.70A.020(12) modifies the definition of the term “capital facility.” The definition of a “capital facility” as set forth above contemplates that a facility is one that performs some sort of service. As noted above, it stands to reason that the service contemplated by a capital facility under the GMA must be GMA-related, such as the “public services” set forth in RCW 36.70A.030(21). But nothing in the GMA empowers local jurisdictions to exclude capital facilities from the capital facility plan element because the locality deems the facility unnecessary for development. This is contrary to a strict reading of the statute.²¹

Nothing in RCW 36.70A.070(3) limits capital facilities to those a local government deems necessary for development. Instead, RCW 36.70A.070(3) requires planning for capital facilities owned by public entities. In addition, the legislature added “[p]ark and recreation facilities shall be included in the capital facilities plan element” to RCW 36.70A.070(3).²² If the

²¹ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III p. 9 (Sept. 22, 2022), 517 P.3d 519, 524 (2022).

²² Ch. 154, Laws of 2002 § 2.

County's argument that capital facilities are limited to those facilities a local government deems necessary for development was correct, then surely the legislature would have added that language to the last sentence in RCW 36.70A.070(3). That the legislature did not shows the County's argument is wrong.

RCW 36.70A.020(12) also does not limit capital facility planning to those public facilities and services necessary to support new development. The goal requires that "those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use," but also requires that this must occur "without decreasing current service levels below locally established minimum standards."²³ Existing uses and existing development must continue to be

²³ RCW 36.70A.020(12) "(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards."

served by public facilities and services and that requires the maintenance and replacement of those facilities.²⁴ That requires capital facility planning.²⁵

The Court’s decision also does not require the County to use one level of service standard for the entire county.²⁶ The opinion correctly states:

The parties agree RCW 36.70A.070(3)(b) implicitly requires Spokane County to set level of service standards for capital facilities in order to forecast future needs. We accept this agreement, and further note that as RCW 36.70A.070(3)(b) applies to all publicly owned capital facilities, on remand the County is required to set level of service standards for all such facilities.”²⁷

The opinion’s use of the term “standards” shows that the County can have one or more standard for urban areas and one or more standard for rural areas.²⁸ In fact WAC 365-196-

²⁴ WAC 365-196-415(2)(b)(ii)(A).

²⁵ RCW 36.70A.070(3); WAC 365-196-415.

²⁶ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 1-16 (Sept. 22, 2022), 517 P.3d 519, 521-27 (2022).

²⁷ *Id.* Slip Opinion No. 38657-1-III p. 14 fn. 4, 517 P.3d at 526 fn. 4.

²⁸ *Id.*

425(4)(c) recommends establishing a rural level of service standard and recognizes that multiple level of service standards can be established for different rural areas. This is consistent with the Court’s opinion.²⁹

The County’s Motion on pages 22 and 23 argues that it should not be required to plan for domestic water services in rural areas where private wells are adequate. But nothing in the Court’s opinion or RCW 36.70A.070(3) requires the County to plan for unneeded public capital facilities either in rural or urban areas.³⁰ RCW 36.70A.070(3)(b) requires “a forecast of the future needs for such capital facilities”³¹ Only planning for needed capital facilities is required by the GMA and the opinion.³² One of the reasons the GMA requires planning and

²⁹ *Id.*

³⁰ *Id.* Slip Opinion No. 38657-1-III pp. 1-16, 517 P.3d at 521-27.

³¹ Underlining added.

³² RCW 36.70A.070(3)(b); *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 13-14 (Sept. 22, 2022), 517 P.3d 519, 525-26 (2022).

capital facility planning is to make accommodating growth and providing capital facilities more efficient.³³ But unless the County undertakes a capital facility planning process, the County will not know what, if any, publicly owned capital facilities are needed in an area and what is the most efficient way to provide them. That is why RCW 36.70A.070(3)(b) requires “a forecast of the future needs for such capital facilities ...,” not just capital facilities needed to accommodate growth. That is also why WAC 365-196-415(2)(b)(i) calls for “a forecast [of] needs for capital facilities during the planning period, based on the levels of service or planning assumptions”

On page 13 the County’s motion claims that the CFP guidance in the Washington Administrative Code only mandates that facilities necessary for development must be included in the CFP. That is not the case, WAC 365-196-

³³ RCW 36.70A.010; RCW 36.70A.020(1), (3).

415(2)(b)(i) recommends “forecasting needs for capital facilities during the planning period ...” This recommendation is not limited to capital facilities that are necessary for development; it applies to all capital facilities.³⁴

The Counties preferred approach of only planning for capital facilities it deems necessary for growth ignores the needs of existing communities that may have deficiencies or need new or rehabilitated capital facilities “to preserve the ability to maintain existing capacity.”³⁵ It also risks ignoring the capital facilities needed for growth because a county chooses not to properly plan for some capital facilities such as schools as the County did in this case.³⁶

³⁴ WAC 365-196-415(2)(b)(i) underlining added.

³⁵ WAC 365-196-415(21)(b)(ii)(A).

³⁶ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III p. 5 (Sept. 22, 2022), 517 P.3d 519, 523 (2022) “¶11 The parties agree Spokane County’s 2020 Comprehensive Plan failed to satisfy the required components of the capital facilities plan element. Specifically, they agree the Plan failed to address noncounty-owned public facilities such as schools and failed to include unincorporated rural areas.”

2. The Court’s holding does not require counties to plan for or provide urban services in rural areas.

The Court of Appeals opinion in this case states in part that:

¶36 We affirm in part, reverse in part, and remand to the Board with instructions that the following corrections be made to the Spokane County Comprehensive Plan:

...

- The capital facilities plan element must cover Spokane County’s entire planning area, not just UGAs, and cannot simply rely on prior capital facility plans without reanalyzing present validity.³⁷

This conclusion is amply supported by the plain language of the GMA and Commerce’s minimum guidelines.³⁸

It is also supported by Spokane County’s concessions in its briefing. The County’s Opening Brief on page 44 concedes that Spokane County’s Capital Facilities Plan (CFP) fails to plan for capital facilities outside urban growth areas and that the CFP

³⁷ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III p. 16 (Sept. 22, 2022), 517 P.3d 519, 526 (2022).

³⁸ RCW 36.70A.030(5); RCW 36.70A.070; RCW 36.70A.070(3); WAC 365-196-415.

should be remanded to the County to correct this error. The County's Opening Brief also on page 44 concedes that the County "cannot rely on prior CFPs without reanalyzing their validity at present." "Spokane County also concedes [on page 44 of the County's Opening Brief] that part of determining the LOS includes addressing the needs for maintenance and rehabilitation of the existing systems of County-owned facilities and the need to address existing deficiencies, and these together constitutes the capital facilities demand."

Despite the County's concession that it did not plan for the entire jurisdiction and that this is an error the County must correct, the County's Motion on pages 18 to 20 argues the Court's opinion requires the county to plan for and provide urban services in rural areas. However, the opinion does not require that urban governmental services must be provided in the rural area.³⁹ The opinion does correctly state that:

³⁹ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 1-16 (Sept. 22, 2022), 517 P.3d 519, 521-27 (2022).

The parties agree Spokane County’s 2020 Comprehensive Plan failed to satisfy the required components of the capital facilities plan element. Specifically, they agree the Plan failed to address noncounty-owned public facilities such as schools and failed to include unincorporated rural areas.⁴⁰

This is the only mention of rural in the opinion.⁴¹ The opinion does not state that the County must plan for the same levels of service and the same capital facilities in both the urban and rural areas.⁴²

The County points out that the Court wrote that “nothing in the GMA empowers local jurisdictions to exclude capital facilities from the capital facility plan element because the locality deems the facility unnecessary for development.”⁴³ But RCW 36.70A.110(4) prohibits the extension or expansion of urban governmental services in rural areas. The Court’s

⁴⁰ *Id.* Slip Opinion No. 38657-1-III p. 5, 517 P.3d at 523.

⁴¹ *Id.* Slip Opinion No. 38657-1-III pp. 1-16, 517 P.3d at 521-27.

⁴² *Id.*

⁴³ *Id.* Slip Opinion p. 9, 517 P.3d at 524.

decision did not conflict with this requirement.⁴⁴ RCW 36.70A.110(4) is the reason that Counties cannot plan for urban governmental services in rural areas. It is not because counties do not consider them necessary to serve new development.

F. The Court of Appeals decision in this case does not abrogate WAC 365-196-840(2), WAC 365-196-415(2)(b)(ii)(B) or (5), WAC 365-196-425(4)(c), or WAC 365-196-440(2)(g)(iii). Read together with the other procedural criteria these regulations require capital facility planning for all public capital facilities.

The GMA's requirements for the capital facility plan element are in RCW 36.70A.070(3). WAC 365-196-415 includes the procedural criteria adopted by the Commerce to interpret RCW 36.70A.070(3).⁴⁵ "The department's purpose is to provide assistance in interpreting the act, not to add provisions and meanings beyond those intended by the legislature."⁴⁶

⁴⁴ *Id.* Slip Opinion pp. 1-16, 517 P.3d at 521-27.

⁴⁵ WAC 365-196-020(3).

⁴⁶ *Id.*

The County's Motion argues that the opinion abrogated WAC 365-196-415(2) and (5). Courts construe regulations "as a whole giving effect to all of the language used."⁴⁷ Reading WAC 365-196-415 as a whole shows that that the opinion does not abrogate WAC 365-196-415(5).

WAC 365-196-415(2)(b) recommends in part:

- (b) Forecast of future needs.
 - (i) Counties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions selected and consistent with the growth, densities and distribution of growth anticipated in the land use element. The forecast should include reasonable assumptions about the effect of any identified system management or demand management approaches to preserve capacity or avoid the need for new facilities.
 - (ii) The capital facilities element should identify all capital facilities that are planned to be provided within the planning period, including general location and capacity.
 - (A) Counties and cities should identify those improvements that are necessary to address existing deficiencies or to preserve the ability to maintain existing capacity.

⁴⁷ *Mader v. Health Care Auth.*, 149 Wn.2d 458, 472, 70 P.3d 931, 937 (2003), *as corrected on denial of reconsideration* (Aug. 12, 2003), *as corrected* (Sept. 3, 2003).

(B) Counties and cities should identify those improvements that are necessary for development.
(C) Counties and cities may identify any other improvements desired to raise levels of services above locally adopted minimum standards, to enhance the quality of life in the community or meet other community needs not related to growth such as administrative offices, courts or jail facilities.

So, WAC 365-196-415(2)(b)(i) recommends “forecasting needs for capital facilities during the planning period ...” This recommendation is not limited to capital facilities that are needed to accommodate growth, it includes all capital facilities.⁴⁸ WAC 365-196-415(2)(b)(ii) further recommends the identification of three categories of capital facilities: (A) improvements “necessary to address existing deficiencies or to preserve the ability to maintain existing capacity,” (B) improvements “necessary for development,” and (C) “improvements desired to raise levels of services above locally adopted minimum standards”

⁴⁸ WAC 365-196-415(2)(b)(i).

WAC 365-196-415(5) recognizes that capital facility plan includes capital facilities in addition to facilities considered necessary for development, that is why it recommends the capital facility element identify facilities necessary for development. If all capital facilities in the capital facility plan were necessary for development, this recommendation would not be needed.

WAC 365-196-415(5) only addresses part of the forecast recommended by WAC 365-196-415(2)(b). WAC 365-196-415(5) also only addresses a subset of one of the three categories recommended by WAC 365-196-415(2)(b)(ii) the “[r]elationship between growth and provision of adequate public facilities.” The opinion’s conclusion defining capital facilities properly recognize all of categories of capital facilities recommended in WAC 365-196-415(2)(b). WAC 365-196-415(5) does not conflict with WAC 365-196-415(2)(b)’s recommendations, instead it augments part of the recommendations. By seeking to confine the definition of

capital facilities to only one of the subsets of capital facilities in WAC 365-196-415(2)(b) and WAC 365-196-415(5)(b) and ignoring the other parts of WAC 365-196-415, the County erroneously interprets RCW 36.70A.070(3) and WAC 365-196-415 by failing to read the regulations as a whole.

The opinion by correctly interpreting RCW 36.70A.070(3)(b) to require a forecast of the future needs for all publicly owned facilities, not just those necessary for growth, does not inadvertently abrogate WAC 365-196-415(5).⁴⁹ Instead the opinion is consistent with WAC 365-196-415 read as a whole.

WAC 365-196-425 are the procedural criteria that interpret the comprehensive plan's rural element requirements in RCW 36.70A.070(5).⁵⁰ WAC 365-196-425(4)(c) provides "[w]hen establishing levels of service in the capital facilities and

⁴⁹ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 13-14 (Sept. 22, 2022), 517 P.3d 519, 525 (2022).

⁵⁰ WAC 365-196-425.

transportation element, each county should establish rural levels of service, for those rural services that are necessary for development, to determine if it is providing adequate public facilities.” Note that WAC 365-196-425(4)(c) recommends “rural levels of service, for those rural services that are necessary for development ...” but does not recommend against level of service standards for other capital facilities. This is consistent with the minimum guidelines for capital facility plan elements in WAC 365-196-415(2)(b)(i) which recommends that “[c]ounties and cities should forecast needs for capital facilities during the planning period, based on the levels of service or planning assumptions” WAC 365-196-415(2)(b)(i) applies to forecasts for all capital facilities in urban areas, rural areas, and on natural resource lands. This is consistent with WAC 365-196-425(4)(c) because that WAC recommends level of service standards for rural services that are necessary for development but does not prohibit level of service standards for other capital facilities while WAC 365-196-415(2)(b)(i) calls

for level of service standards or planning assumptions for all capital facilities. The opinion by correctly interpreting RCW 36.70A.070(3)(b) to require a forecast of the future needs for all publicly owned facilities does not abrogate WAC 365-196-425(4)(c).⁵¹

WAC 365-196-440 are the procedural criteria that interpret the parks and recreation element which is required by RCW 36.70A.070(8) if funded by the legislature.⁵² WAC 365-196-440(2)(g)(iii) provides:

- (iii) Strategies for financing must be consistent with the financing plan in the capital facilities element. If a local government intends to adopt impact fees as a strategy, it must identify those facilities as necessary for development and should identify them in:
 - (A) The parks and recreation element;
 - (B) A separate parks plan; or
 - (C) In the capital facilities element.

⁵¹ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III pp. 13-14 (Sept. 22, 2022), 517 P.3d 519, 525 (2022).

⁵² RCW 36.70A.070(8).

Nothing in WAC 365-196-440(2)(g)(iii) limits planning for publicly owned capital facilities to those necessary for growth or development. Instead, WAC 365-196-440(2)(g)(iii) expects that capital facility plans will include both capital facilities necessary for development and other capital facility improvements. Otherwise, why would it be necessary to identify those facilities necessary for development in the parks and recreation element, a separate parks plan, or the capital facilities element? If only facilities necessary to accommodate growth are included in the capital facilities plan element, this separate identification would not be necessary. The opinion did not abrogate WAC 365-196-440(2)(g)(iii)

The story is the same for WAC 365-196-840. WAC 365-196-840 are the procedural criteria that interpret the concurrency requirements in RCW 36.70A.070(6)(b). WAC 365-196-840(2) provides that “[c]ounties and cities may adopt a concurrency mechanism for other facilities that are deemed necessary for development. See WAC 365-196-415(5).” But

WAC 365-196-840(2) does not allow counties and cities to only plan for capital facilities that are deemed necessary for development. And as we have seen, WAC 365-196-415(2)(b) recommends that capital facility plans forecast needs for all publicly owned capital facilities including (A) improvements “necessary to address existing deficiencies or to preserve the ability to maintain existing capacity,” (B) improvements “necessary for development,” and (C) “improvements desired to raise levels of services above locally adopted minimum standards” WAC 365-196-415(5) does not conflict with WAC 365-196-415(2)(b)’s recommendations. WAC 365-196-840(2) by addressing the concurrency requirements but not all of the CFP requirements does not conflict with WAC 365-196-415(2)(b)’s recommendations because they apply more broadly to CFPs. The opinion did not abrogate WAC 365-196-840(2).

In sum, nothing in WAC 365-196-840(2), WAC 365-196-415, WAC 365-196-425(4)(c), and WAC 365-196-440(2)(g)(iii) recommend or allow capital facility plan elements

to only plan for capital facilities necessary for development. To the contrary, WAC 365-196-415(2)(b) recommends that capital facility plans forecast needs for all publicly owned capital facilities. While these regulations are not part of the GMA, they do support the opinion’s conclusion that “nothing in the GMA empowers local jurisdictions to exclude capital facilities from the capital facility plan element because the locality deems the facility unnecessary for development.”⁵³ This conclusion from the court of appeals opinion does not abrogate WAC 365-196-840(2), WAC 365-196-415(5), WAC 365-196-425, or WAC 365-196-440(2)(g)(iii).

G. The Court of Appeals decision provides the necessary guidance to counties and cities that fully plan under the GMA.

The Court of Appeals decision answered important questions such as the definition of “capital facilities,” that capital facility planning must take place for the entire

⁵³ *Futurewise v. Spokane Cnty.*, Slip Opinion No. 38657-1-III p. 9 (Sept. 22, 2022), 517 P.3d 519, 524 (2022).

jurisdiction, that transportation facilities are not included in the CFP, but instead are addressed in the transportation element, that the requirements of RCW 36.70A.070(3)(c) to apply only to facilities “owned and operated by the city or county” rather than capital facilities owned by any public entity, and that sources of public money does not require a breakdown of the amounts of money to be secured from each source.⁵⁴ The Court of Appeals decision provides the guidance Spokane County seeks.

Contrary to the County’s motion pages 14 and 15, there is no conflict between the *McVittie* and *Wilma* Board decisions. As *McVittie VI* wrote: “The Board does not here definitively state the totality of the ‘facilities’ that the Act requires be included in the [capital facility plan element] CFE” recognizing CFP must address more than public facilities.⁵⁵ The *Wilma*

⁵⁴ *Id.* Slip Opinion No. 38657-1-III pp. 1-16, 517 P.3d at 521-26.

⁵⁵ *McVittie v. Snohomish County (McVittie VI)*, Central Puget Sound Growth Management Hearings Board (CPSGMHB)

decision also recognized that the CFP requirements extend beyond “[p]ublic facilities.”⁵⁶ In fact, the Board CFP decisions have been consistent frequently citing each other.⁵⁷

IV. CONCLUSION

As this answer has shown, the Court of Appeal’s holdings are consistent with RCW 36.70A.020(12), RCW 36.70A.070(3), WAC 365-196-840(2), WAC 365-196-415(5), WAC 365-196-425, and WAC 365-196-440(2)(g)(iii). The Court’s holdings do not require Spokane County to plan for or provide urban services outside the urban growth area.

Spokane County has failed to show that the Court of Appeals decision “involves an issue of substantial public

Case No. 01-3-0002, Final Decision and Order (July 25, 2001), at *24 fn. 17. Spokane County’s Opening Brief includes the *McVittie VI* decision in Appendix B. Footnote 17 is on page 100 of the County’s Opening Brief.

⁵⁶ *Wilma et al., v. Stevens County*, EWGMHB Case No. 06-1-0009c, Final Decision and Order (March 12, 2007), at 23, 2007 WL 1153336, at *15.

⁵⁷ *Wilma et al., v. Stevens County*, EWGMHB Case No. 06-1-0009c, Final Decision and Order (March 12, 2007), at 22-25, 2007 WL 1153336, at *15-17.

interest that should be determined by the Supreme Court.”⁵⁸

The State Supreme Court should deny Spokane County’s motion.

As required by RAP 18.17, the undersigned certifies that this brief includes 4,721 words based on Word’s word count function.

Dated: January 2, 2023, and respectfully submitted.

s/ Tim Trohimovich

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⁵⁸ RAP 13.4(b)(4).

CERTIFICATE OF SERVICE

The undersigned certifies that on this 2nd day of January 2023, he, she, or they caused the following document to be served on the persons listed below in the manner shown: Futurewise’s Answer to Spokane County’s Motion For Discretionary Review.

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