NOTICE: SLIP OPINION
(not the court's final written decision)

The opinion that begins on the next page is a slip opinion. Slip opinions are the written opinions that are originally filed by the court.

A slip opinion is not necessarily the court's final written decision. Slip opinions can be changed by subsequent court orders. For example, a court may issue an order making substantive changes to a slip opinion or publishing for precedential purposes a previously "unpublished" opinion. Additionally, nonsubstantive edits (for style, grammar, citation, format, punctuation, etc.) are made before the opinions that have precedential value are published in the official reports of court decisions: the Washington Reports 2d and the Washington Appellate Reports. An opinion in the official reports replaces the slip opinion as the official opinion of the court.

The slip opinion that begins on the next page is for a published opinion, and it has since been revised for publication in the printed official reports. The official text of the court's opinion is found in the advance sheets and the bound volumes of the official reports. Also, an electronic version (intended to mirror the language found in the official reports) of the revised opinion can be found, free of charge, at this website: https://www.lexisnexis.com/clients/wareports.

For more information about precedential (published) opinions, nonprecedential (unpublished) opinions, slip opinions, and the official reports, see https://www.courts.wa.gov/opinions and the information that is linked there.

FILED
SEPTEMBER 22, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

FUTUREWISE, Appellant, v. SPOKANE COUNTY and GROWTH MANAGEMENT HEARINGS BOARD, Respondents.	)	No. 38657-1-III OPINION PUBLISHED IN PART

PENNELL, J. — The Growth Management Act (GMA), chapter 36.70A RCW, requires counties of specified populations to produce and regularly update detailed comprehensive land use plans. One of the mandatory components of a comprehensive plan is a capital facilities plan element. The capital facilities element requires an inventory and assessment of public infrastructure with an eye toward development and growth.

In 2020, Spokane County (County) updated its comprehensive plan (Plan or Comprehensive Plan), including the capital facilities plan element. Futurewise challenges the Plan, citing numerous problems with the capital facilities element. The County concedes several of Futurewise's challenges and agrees this matter must be remanded for reassessment of the capital facilities element. Nevertheless, the parties dispute some of the finer points of what is required of a capital facilities element.

We accept the parties' agreement that remand is required and we further provide interpretive guidance on the capital facilities plan element for use on remand.

BACKGROUND

This case turns largely on statutory interpretation. Our discussion of the facts and procedural background is therefore brief. On June 23, 2020, the Spokane County Board of Commissioners (Commissioners) passed Resolution No. 20-0129, adopting the statutorily required[1] eight-year[2] periodic update to the County's Comprehensive Plan, including an updated capital facilities plan element and associated developmental regulations.

Futurewise filed a petition for review of Resolution No. 20-0129 with the Growth Management Hearings Board (Board), contending the resolution violated various provisions of the GMA. The Board upheld the 2020 Comprehensive Plan over Futurewise's objections.

Futurewise then filed a petition for judicial review of the Board's final decision and order in Thurston County Superior Court. By agreement of the parties, the superior court certified the case under RCW 34.05.518(1)(a) to Division Two of this court for

[1] *See* RCW 36.70A.130(4); former RCW 36.70A.130(5) (2020).

[2] Spokane County's previous comprehensive plan had been adopted in 2007; however, no update to this plan was approved until 2020.

direct review. A Division Three panel considered this appeal with oral argument after receipt of an administrative transfer of the case from Division Two.

ANALYSIS

The GMA

"The legislature enacted the GMA in 1990 and 1991 largely 'in response to public concerns about rapid population growth and increasing development pressures in the state.' " *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd*., 154 Wn.2d 224, 231, 110 P.3d 1132 (2005) (quoting *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 546, 14 P.3d 133 (2000)). Unlike environmental measures such as the Shoreline Management Act of 1971, chapter 90.58 RCW, and the State Environmental Policy Act, chapter 43.21C RCW, "the GMA was spawned by controversy, not consensus." Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 SEA. U. L. REV. 5, 34 (1999). As a result, Washington courts have held the statute is "not to be liberally construed." *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38 (2008). Strict (as opposed to liberal) construction means we will not rewrite the GMA even if the plain meaning of the statute might appear problematic. *Woods v. Kittitas County*, 162 Wn.2d 597, 614, 174 P.3d 25 (2007).

A major feature of the GMA is the requirement that counties with specified populations adopt comprehensive growth management plans. Former RCW 36.70A.040 (2014). "The comprehensive plan is the central nervous system of the GMA." Settle, *supra*, at 26. A jurisdiction's comprehensive plan "must contain data and detailed policies to guide the expansion and extension of public facilities and the use and development of land, as prescribed by the [GMA]." *Id.*

The Growth Management Hearings Board is empowered to adjudicate disputes over GMA compliance and "invalidate noncompliant comprehensive plans." *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d at 340. Judicial review of board actions is governed by the Administrative Procedures Act, chapter 34.05 RCW. *Id*. at 341. The Board's interpretation of the GMA is accorded substantial weight, but we nevertheless review issues of law de novo. *Id*.

Capital facilities

One of the mandatory components of any comprehensive plan under the GMA is the capital facilities plan element, which must consist 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.

RCW 36.70A.070(3).

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. The parties further agree remand is required to address these deficiencies. However, the parties disagree as to some of the details regarding the capital facilities plan element. We address the areas of disagreement in turn.

1. What is the definition of "capital facilities?"

The parties dispute the foundational issue of what the legislature meant by "capital facilities," as that term is used in RCW 36.70A.070(3). This term is not defined in the GMA. *See* RCW 36.70A.030. Thus, we must engage in statutory interpretation. "Our goal in interpreting a statute is to ascertain and carry out the intent of the Legislature." *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Valley*, 135 Wn.2d 542, 564, 958 P.2d 962 (1998). "We look to the language of the statute, interpreting all provisions in relation to each other, to determine that intent." *Id*. Because the GMA is to be strictly construed, we

do not attempt to interpret the GMA in a manner favoring some sort of policy goal. If our legislature has not provided for something in the GMA, "we will not rewrite the statute." *Id*. at 567.

The Growth Management Hearings Board has recognized that "public facilities" as defined by RCW 36.70A.030(20) qualify as "capital facilities." *See Wilma v. Stevens County*, No. 06-1-0009c, 2007 WL 1153336, at *15 (E. Wash. Growth Mgmt. Hr'gs Bd. Mar. 12, 2007), codified at WAC 365-196-415(1)(a). While we accord substantial weight to the Board's interpretation of the GMA, its legal proclamations are not binding. *Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 176 Wn. App. 555, 565, 309 P.3d 673 (2013). Nevertheless, given the consensus that public facilities are capital facilities and the legislature's choice not to amend the GMA to state otherwise, it appears the legislature has acquiesced in this interpretation. *See Skagit Surveyors*, 135 Wn.2d at 542.

While it appears to be well established that "public facilities" as defined by RCW 36.70A.030(20) qualify as "capital facilities" as set forth in RCW 36.70A.070(3), any conclusion that the two terms are synonymous would require impermissible rewriting of the GMA. A well-established rule of statutory construction holds that when the legislature uses different terminology, it intends different definitions. *Densley v. Dep't of*

Ret. Sys., 162 Wn.2d 210, 219, 173 P.3d 885 (2007). Thus, while we accept that all public facilities qualify as capital facilities, we cannot conclude that the reverse holds true.

Based on the different language used, it appears the legislature intended the term "capital facilities" to include, but not necessarily be limited by, the term "public facilities." We may consult dictionary definitions when a term is left undefined by the legislature. *Newton v. State*, 192 Wn. App. 931, 937, 369 P.3d 511 (2016). Thus, we discern the meaning of the term "capital facilities" by reviewing the definition of "public facilities" along with the dictionary definition applicable to "capital facilities."

The legislature has defined "public facilities" as including "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools." RCW 36.70A.030(20).

Merriam-Webster defines "capital" as "accumulated assets, resources, sources of strength, or advantages utilized to aid in accomplishing an end or furthering a pursuit." WEBSTER'S THIRD NEW INT'L DICTIONARY 332 (1993). "Facility" is defined as "something (as a hospital, machinery, plumbing) that is built, constructed, installed, or established to perform some particular function or to serve or facilitate some particular end." *Id*. at 812-13.

From the foregoing definitions it necessarily follows that an asset or resource built, constructed, installed, or established to perform a particular function falls within the scope of a capital facility, as contemplated by RCW 36.70A.070(3). This would naturally include the narrower list of "public facilities" contained in RCW 36.70A.030(20), but it would also extend to other facilities built or installed to perform some sort of service identifiable under the GMA, such the "public services" in RCW 36.70A.030(21).[3]

The language of the capital facilities plan element also indicates the term "capital facilities" refers to fixed, physical assets or resources, not moveable or intangible property such as vehicles or school bus routes. Under RCW 36.70A.070(3)(a), an inventory of capital facilities must show the "locations" of all capital facilities. This requirement makes sense only if one understands the term "capital facility" to refer to a fixed facility that cannot change locations.

According to Spokane County, the definition of "capital facilities" must further be narrowed to include only those facilities "necessary to support development." The authority cited for the County's claim is RCW 36.70A.020(12), which lists the following as one of the GMA's 13 planning goals: "Ensure that those public facilities and services

[3] "Public services" are defined to "include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services." RCW 36.70A.030(21).

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."

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.

In summary, 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.

2. Are transportation facilities included as capital facilities under RCW 36.70A.070(3)?

The parties take different positions on whether transportation facilities qualify as capital facilities for purposes of RCW 36.70A.070(3). According to Futurewise, transportation facilities fall within the definition of "capital facilities" and thus must be included as part of the capital facilities plan element. The County disagrees.

Were we to view RCW 36.70A.070(3) in isolation, Futurewise's position would carry some weight. After all, an airport or a transit station is a fixed facility built or installed to provide a government service such as facilitating public transportation. But in interpreting the GMA, we must not look at statutory provisions in isolation. *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d at 560. We therefore must assess whether interpreting the capital facilities plan element to include transportation facilities runs contrary to other portions of the GMA.

The GMA identifies a specific component of the comprehensive plan as the transportation element. RCW 36.70A.070(6). The transportation element requires an inventory of "air, water, and ground transportation facilities and services." RCW 36.70A.070(6)(a)(iii)(A). It also covers most if not all of the more general components contemplated by the capital facilities plan element contained in RCW 36.70A.070(3). A well-accepted rule of statutory construction is that a specific

statute will supersede a general one when both apply. *Kustura v. Dep't of Labor & Indus.*, 169 Wn.2d 81, 88, 233 P.3d 853 (2010). Given the well-established general-specific rule, it appears to be the legislature's intent that transportation facilities need be addressed only in the transportation element of a comprehensive plan (RCW 36.70A.070(6)), not both the transportation and capital facilities elements.

Had the legislature intended localities to address transportation facilities in both the capital facilities and transportation elements of a comprehensive plan, it would have said so more clearly. Take the example of park and recreation facilities. Like transportation facilities, park and recreation facilities fall under the definition of "capital facilities" as set forth above. Also, like transportation facilities, the legislature has specified that park and recreation facilities must be addressed in their own comprehensive plan element. RCW 36.70A.070(8). Pursuant to the general-specific rule referenced above, one might assume that park and recreation facilities need be addressed only in the park and recreation element. However, in apparent recognition of this assumption, the legislature specifically included park and recreation facilities in the capital facilities plan element. RCW 36.70A.070(3). This double reference makes plain the legislature's intent that park and recreation facilities must be addressed in both elements. In contrast, the legislature did not reference transportation facilities in its discussion of the capital

facilities plan element. This difference is significant and suggests the legislature did not intend transportation facilities to be given double treatment within a comprehensive plan. By its plain terms, the language used in RCW 36.70A.070 indicates transportation facilities need be addressed only in the detailed transportation element set forth in RCW 36.70A.070(6).

Recent amendments to the GMA reinforce our interpretation of the transportation element. Engrossed Senate Substitution Bill 5593, which became effective on June 9, 2022, added subsection (c) to RCW 36.70A.130(3), and permitted counties to revise an urban growth area (UGA) if, during regularly scheduled review, a county determines the patterns of development have created pressure in areas that exceed the available and developable lands within the UGA. *See* LAWS OF 2022, ch. 287. RCW 36.70A.130(3)(c) lists eight requirements that must be met before a county may revise a UGA. One of these requirements is "[t]he transportation element and capital facility plan element have identified the transportation facilities, and public facilities and services needed to serve the urban growth area and the funding to provide the transportation facilities and public facilities and services." RCW 36.70A.130(3)(c)(v). The structure of this sentence indicates the "transportation element" covers "transportation facilities" and the "capital facility plan element" encompasses "public facilities and services."

Futurewise has not assigned error to the adequacy of the County's transportation element under RCW 36.70A.070(6). Thus, our order on remand does not require reassessment of transportation facilities.

3. What are the ownership requirements of capital facilities?

As stated above, the capital facilities plan element must include "(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; [and] (c) the proposed locations and capacities of expanded or new capital facilities . . . ." RCW 36.70A.070(3).

Futurewise contends subsections (a) and (b) of RCW 36.70A.070(3) apply to all publicly owned facilities, regardless of whether the county preparing a comprehensive plan is the owner of such a facility. We agree with this interpretation of the statute. By its plain terms, subsection (a) refers broadly to all publicly owned facilities. If the legislature had intended to limit the scope of subsection (a) to facilities owned by the county, it would have said so more clearly. In addition, subsection (b) refers to "such capital facilities," i.e., the same scope of facilities set forth in the preceding sentence,

subsection (a). Given the wording of subsections (a) and (b),[4] the capital facilities plan element of a comprehensive plan must include facilities such as public schools that are not owned by a county but nevertheless fall under the category of a facility owned by a public entity.

But subsection (c) of RCW 36.70A.070(3) is worded differently from subsections (a) and (b). Subsection (c) refers simply to "capital facilities," not publicly owned facilities or "such capital facilities." The Growth Management Hearings Board has consistently interpreted RCW 36.70A.070(3)(c) to apply only to facilities "'owned and operated by the city or county'" as opposed to any public entity. *Wenatchee Valley Mall P'ship v. Douglas County*, Case No. 96-1-0009, 1996 WL 731191, at *16-17 (E. Wash. Growth Mgmt. Hr'gs Bd. Dec. 10, 1996); *Concerned Citizens for Sky Valley v. Snohomish County*, No. 95-3-0068c, 1996 WL 73491, at *49-50 (Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Mar. 12, 1996). No final enactment of the legislature has ever disturbed this longstanding interpretation.

[4] 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.

There is a rational basis for treating subsection (c) of RCW 36.70A.070(3) differently from subsections (a) and (b). Spokane County has little ability to control the planning and development of other public entities. It makes sense that the County is not required to make plans for expanded or new capital facilities outside its control.

We adopt the Board's interpretation. Unlike subsections (a) and (b) of RCW 36.70A.070(3) that require an inventory of "existing capital facilities owned by public entities," subsection (c) requires only "the proposed locations and capacities of expanded or new capital facilities."

4. Must the capital facilities element include not only the sources of public money, but also a breakdown of the amounts of money to be secured from each source?

The capital facilities plan element must include "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." RCW 36.70A.070(3)(d). According to Futurewise, the capital facilities element contained in Spokane County's 2020 Comprehensive Plan fails to meet this requirement because it does not include a detailed itemization of the amounts of money to be derived from public sources.

The plain meaning of RCW 36.70A.070(3)(d) defeats Futurewise's argument. A capital facilities plan element requires a planner to clearly identify only "sources" of

public money. There is no requirement for a planning jurisdiction to provide additional information on the specific amounts of public money each source is to provide. To read such a requirement into the GMA would be to improperly add to it. We therefore affirm the Board's determination that Futurewise failed to demonstrate the 2020 Comprehensive Plan's treatment of sources of public money was inadequate.

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:

- Schools and other publicly owned capital facilities other than transportation facilities must be included within the capital facilities plan element under RCW 36.70A.070(3)(a) and (b).

- 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.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Whether the capital facilities plan element is internally inconsistent

Futurewise claims Spokane County's capital facilities plan element is internally inconsistent, in violation of RCW 36.70A.070(3)(e). Specifically, Futurewise points to an

implementation schedule in the capital facilities plan indicating there will be a capital facilities plan update every seven years. In contrast, budget forecasts by the County in the Plan cover only five-year or six-year increments. According to Futurewise, this creates a danger of a one-year or two-year gap during which a seven-year comprehensive plan will not have a corresponding budget.

Futurewise's claim of inconsistency fails. There is a difference between the length of time covered by a budget plan and the schedule for plan updates. At any point in time, Spokane County must have a six-year budget plan in place. RCW 36.70A.070(3)(d). But this does not mean the budget cannot or will not be updated before it expires. Spokane County anticipates updating its budget annually. *See* Admin. Record at 155. This expectation is consistent with regulatory goals that recommend six-year budget plans be updated "at least biennially so financial planning remains sufficiently ahead of the present." WAC 365-196-415(2)(c)(ii). So long as the County regularly updates its six-year budget forecast, the six-year forecast will constantly move forward in time and there will be no danger of a gap between an existing budget and a full update of its Comprehensive Plan.[5]

[5] The parties also make reference to a strategy set forth in the appendix to the Spokane County Comprehensive Plan, that mentions yearly updates to the capital facilities plan. The County claims this statement is a recommendation, not a directive.

Public participation under Spokane's zoning code

The GMA requires covered jurisdictions to allow for early and continuous participation in the development and amendment of comprehensive land use plans. RCW 36.70A.140. Futurewise contends portions of the Spokane County Zoning Code (Zoning Code)[6] fail to comport with this requirement because the provisions do not allow for early and continuous public comment when a proposed plan amendment is initiated by a private party. At issue are sections 14.402.080 and 14.402.100 of the Zoning Code.

At the time of the Growth Management Hearing Board's decision in this case, the relevant portions of the foregoing codes provided as follows:

1. Initiation of the Amendment:
   a. The Board[7] or Department of Building and Planning may initiate an amendment to the text of the Zoning Code.
   b. An interested party may request that the Board initiate a zoning text amendment by submitting a request to the Department which will then be forwarded to the Board for consideration. A request to initiate an amendment is subject to a nonrefundable review fee. If

---

We agree. *See* Spokane County Comprehensive Plan, App. A, at A-3, https://spokanecounty.org/DocumentCenter/View/36241/Comp-Plan-2020?bidId= (Implementation strategies are recommendations "that *may* be used by the County to facilitate accomplishing the goals and policies within the Comprehensive Plan.") (emphasis added).

[6] The Zoning Code is available in its entirety at https://www.spokanecounty.org/DocumentCenter/View/26429/2021-Zone-Code?bidId=.

[7] As used in the Zoning Code, "Board" refers to the Spokane County Board of Commissioners. Zoning Code 14.300.100.

initiated by the Board the request will be processed by the Department subject to formal application and applicable fees.

Zoning Code 14.402.080(1).

2. Initiation of Annual Comprehensive Plan Amendment by the Board, Department or Commission.
   The Board, at its discretion, may initiate annual Comprehensive Plan amendments by resolution, including consideration of requests from the Director or Commission. Requests from individuals shall be subject to the requirements under 14.402.100(3) below.

3. Individual Requests for Initiation of Annual Comprehensive Plan Amendment
   Individuals may request initiation of an annual Comprehensive Plan Amendment as follows:
   a. The individual shall submit a "Request for Initiation of Comprehensive Plan Amendment" subject to a nonrefundable review fee as determined by the Board. The request shall be submitted between November 1st and December 20th or the end of the last business day prior to December 20th, for amendments to be considered in the following year.
   b. Upon receipt of the initiation requests, the Department shall conduct a preliminary review of the proposal(s). The preliminary review shall then be forwarded to the Board for consideration in January or as soon as possible thereafter. After consideration by the Board, they may either deny the request or approve the request for consideration in the annual amendment cycle. If the request is denied there will [sic] no further consideration of the request during the amendment cycle. Requests that are approved for further consideration may proceed to the application phase of the process. The Board shall provide their decision by resolution which shall be forwarded to the Department.
   c. The Board shall have full sole authority in the determination of initiation and further review of Comprehensive Plan amendment requests.

Former Zoning Code 14.402.100(2)-(3) (2004).

As Futurewise asserts, the foregoing portions of the Spokane County Zoning Code allowed the Spokane County Board of Commissioners to consider an individual request for an amendment to a comprehensive plan without public input. This is contrary to the requirements of the GMA. However, while this matter was pending review, Spokane County amended Zoning Code 14.402.100 to read as follows:

> 2. Initiation of Annual Comprehensive Plan Amendment by the Board, Department or Commission.
> The Board, at its discretion, may initiate annual Comprehensive Plan amendments by resolution, including consideration of requests from the Director or Commission. Requests from individuals shall be subject to the requirements under 14.402.100(3) below.
> a. Prior to initiation of a Comprehensive Plan Amendment under this subsection, the Planning Commission shall hold at least one duly noticed public hearing. The Planning Commission shall thereafter forward a recommendation to the Board on whether or not to initiate the requested amendment.
> b. After receipt of the Commission's Recommendation, the Board shall hold a public meeting at which they may either approve or deny the initiation of the Comprehensive Plan Amendment.
> c. If the request is denied there will [sic] no further consideration of the request during the amendment cycle. Requests that are approved for further consideration may proceed to the application phase of the process. The Board shall provide their decision by resolution which shall be forwarded to the Department.
> d. The Board shall have full sole authority in the determination of initiation and further review of Comprehensive Plan amendment requests.

3. Individual Requests for Initiation of Annual Comprehensive Plan Amendment
   Individuals may request initiation of an annual Comprehensive Plan Amendment as follows:
   a. The individual shall submit a "Request for Initiation of a Comprehensive Plan Amendment" subject to a nonrefundable review fee as determined by the Board. The request shall be submitted between November 1st and December 20th or the end of the last business day prior to December 20th, for amendments to be considered in the following year.
   b. Upon receipt of the initiation requests, the Department shall conduct a preliminary review of the proposal(s). The preliminary review shall then be forwarded to the Planning Commission for consideration and recommendation at a duly noticed Public Hearing in March or as soon as possible thereafter. The Planning Commission will thereafter forward a recommendation to the Board on whether or not to initiate the proposed amendment.
   c. After receipt of the Commission's Recommendation, the Board shall hold a meeting at which they may either deny the request or approve the request for consideration in the annual amendment cycle. If the request is denied there will [sic] no further consideration of the request during the amendment cycle. Requests that are approved for further consideration may proceed to the application phase of the process. The Board shall provide their decision by resolution which shall be forwarded to the Department.
   d. The Board shall have full sole authority in the determination and initiation and further review of Comprehensive Plan amendment requests.

Zoning Code 14.402.100(2)-(3).[8]

[8] The amendments to the Spokane County Zoning Code have been appended as Attachment A to the County's second supplemental brief, filed on July 20, 2022.

According to Spokane County, the amendment to Zoning Code 14.402.100 moots Futurewise's concerns regarding the Zoning Code's failure to provide for early public participation regarding amendment proposals submitted by individuals. We agree. The amendments to Zoning Code 14.402.100(2) and (3) make plain a public hearing must take place regarding all proposed comprehensive plan amendments, regardless of whether the amendment is initiated by the County or an outside individual. Under Zoning Code 14.402.100(3)(b), all individual requests for amendments will be to the Spokane County Planning Commission for consideration at a public hearing. At the hearing, the Planning Commission will formulate a recommendation regarding the request and then forward the recommendation to the Spokane County Board of Commissioners. The Commissioners must then act on the Planning Commission's recommendation at a subsequent public hearing as set forth in Zoning Code 14.402.100(3)(c). This process allows for early and continuous public participation prior to any action accepting or rejecting the proposed amendment. This is fully consistent with the public participation requirements of the GMA.

Futurewise claims the amendments to the code are inadequate because they do not change Zoning Code 14.402.080(1). Futurewise appears to argue this section still allows the Commissioners to consider individual requests for amendments outside of a public

hearing process. We disagree. Zoning Code 14.402.080(1) does not allow for an end-run around the public participation process set forth in Zoning Code 14.402.100(3). All Zoning Code 14.402.080(1) does is identify the fact that proposals for amendments may be made internally by the Commissioners or the Spokane County Building and Planning Department or externally by an interested party. Zoning Code 14.402.080(1) does not address the process for how proposed amendments are considered. The process for consideration is set forth in Zoning Code 14.402.100(3), as set forth above.[9] Futurewise fails to specify how the process set forth in the amendments to Zoning Code 14.402.100(3) exclude public participation. We therefore agree with the County that this aspect of Futurewise's appeal is moot.

Geiger Spur

Futurewise and the County agree that disputes over the Geiger Spur are now moot. We therefore need not consider this aspect of Futurewise's challenge to the Plan.

[9] Similarly, the flow chart set forth in Zoning Code 14.402.140 does not provide a method for avoiding the public hearing requirements of Zoning Code 14.402.100(3). The flow chart must be read in conjunction with Zoning Code 14.402.100(3), which specifies public hearings must take place before any decisions are made regarding proposed plan amendments.

Other conceded assignments of error

Futurewise and Spokane County agree that, as to the majority of Futurewise's assignments of error, the Board failed to recognize that the capital facilities plan element must be performed county wide and cannot simply rely on prior assumptions or assessments. We accept these concessions.

ORDER ON REMAND

Pursuant to the foregoing analysis and the parties' agreement, 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:

- Schools and other publicly owned capital facilities other than transportation facilities must be included within the capital facilities plan element under RCW 36.70A.070(3)(a) and (b).

- 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.

Pennell, J.

WE CONCUR:

Siddoway, C.J.

Lawrence-Berrey, J.