

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

KENT CARES, NORTHWEST)	
ALLIANCE, INC. and DON B. SHAFFER,)	Case No. 04-3-0011
)	
Petitioner,)	<i>(Shaffer)</i>
)	
v.)	
)	
PUGET SOUND REGIONAL COUNCIL,)	ORDER of DISMISSAL
)	
Respondent,)	
)	

I. BACKGROUND

On April 14, 2004, 2004, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Kent CARES, Northwest Alliance Inc., and Don B. Shaffer (**Petitioner** or **Shaffer**). The matter was assigned Case No. 04-3-0011, and is hereafter referred to as *Shaffer v. Puget Sound Regional Council*. Petitioner challenges the Puget Sound Regional Council’s (the **PSRC**) adoption of a “Policy Framework for the PSRC’s Project Selection Process.” The basis for the challenge is alleged noncompliance with the Growth Management Act (**GMA** or **Act**).

II. DISCUSSION

Applicable Law

RCW 36.70A.280 – Matters subject to Board review, provides in relevant part:

- (1) A growth management hearings board shall hear and determine *only* those petitions alleging either:
 - a. That a *state agency, county or city* planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW *as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040.*

(Emphasis supplied.)

RCW 36.70A.290(3) authorizes the Board to dismiss frivolous petitions.

Black's Law Dictionary,¹ at 677, defines "frivolous" as "Lacking a legal basis or legal merit; not serious; not reasonably purposeful."

Discussion

Petitioner Shaffer poses 16 Legal Issues asserting that the PSRC did not comply with numerous provisions of the GMA. PFR, at 4-6. Among the claims for relief sought, Shaffer asks the Board to "invalidate the recent adoption of the 'Policy Framework for the PSRC's Project Selection Process' and recommend to the State Governor that sanctions be imposed on the non-compliant governmental entity, the PSRC." PFR, at 6.

In reviewing this PFR, challenging an action of the PSRC,² the Board is faced with the following threshold question – Is the Shaffer PFR "frivolous," because it lacks a legal basis for board review? The Board concludes that this PFR is frivolous for the following reasons:

First, the PSRC is not a state agency, county or city. The PSRC is a multi-jurisdictional entity formed by agreement of participating cities and counties, and including port districts, and certain state agencies and tribal governments in the Puget Sound region. State agencies are required to comply with local comprehensive plans and development regulations, pursuant to the provisions of RCW 36.70A.103; however, the PSRC is not a *state agency*. Additionally, while the PSRC is a multi-jurisdictional entity created by Puget Sound counties and cities, it is not itself a *county* or *city*. The Board lacks jurisdiction over this action of the PSRC. Second, as a multi-jurisdictional entity, the PSRC is not one of the governmental entities required to plan pursuant to the provisions of RCW 36.70A.040. Again, the Board lacks jurisdiction.³ Third, the document challenged (a Policy Framework for the PSRC's Project Selection Process) is not a plan, development regulation or amendment thereto; it apparently governs the selection process for individual projects.⁴ Once again, the Board lacks jurisdiction. Fourth, while the Board has jurisdiction to review multi-county planning policies (MPPs) pursuant to RCW 36.70A.210(7), the PFR frames no issues regarding noncompliance with MPPs.⁵ See PFR, at 4-6. Fifth, the Board's authority to invalidate actions extends only to plans and development regulations, not a project selection process for a regional entity. The

¹ Black's Law Dictionary, Seventh Edition, Brian A. Garner, Editor in Chief, (1999)

² This is not the first PFR filed that challenged an action of the PSRC. In 1996, a PFR was filed by the Cities of Des Moines, Burien, Federal Way, Normandy Park, Tukwila, the Highline School District No. 401 and the Airport Communities Coalition challenging the PSRC and the Port of Seattle regarding SeaTac International Airport [*Des Moines v. PSRC and Port of Seattle*, CPSGMHB Case No. 96-3-0032]. However, all parties stipulated to dismissal of that matter and filed in King County Superior Court. Consequently, based upon the stipulation, the Board dismissed the PFR.

³ The Board notes that the PSRC, in its role as a regional transportation planning organization (See chapter 47.80 RCW), is authorized to certify that the transportation elements of local comprehensive plans and county-wide planning policies are consistent with the regional transportation plan. Neither of which is at issue in this PFR.

⁴ Even if a city or county were to adopt a similar document for guiding its "project selection process," it is questionable whether the Board would have jurisdiction to review the action since it is not a plan or development regulation as defined in the Act.

⁵ The PSRC apparently adopted the most recent MPPs in the spring of 2001. See PFR, at 1.

Board has no authority to provide the relief requested. Finally, RCW 36.70A.340 and .345 permit the Board to recommend to the Governor that sanctions be imposed; however, sanctions may only be imposed on noncompliant cities and counties. The Board has no authority to provide, or recommend, the relief requested.

While Mr. Shaffer may wish to argue the legal merits of the PSRC action in another forum, given the Board's limited authority and powers, the PFR lacks a legal basis for Board review. The Board's review of this PFR would not be reasonably purposeful. Therefore, it will be dismissed with prejudice.

Conclusion

Pursuant to RCW 36.70A.280(1) and .290(3), the Board concludes that PFR 04-3-0011 is frivolous. PFR 04-3-0011, *Shaffer v. Puget Sound Regional Council*, will be dismissed with prejudice.

III. ORDER

Based upon review of the Petition for Review, the GMA, and having deliberated on the matter the Board ORDERS:

- Pursuant to RCW 36.70A.280(1) and .290(3), the Board concludes that PFR 04-3-0011 is frivolous. PFR 04-3-0011, *Shaffer v. Puget Sound Regional Council*, is **dismissed with prejudice**.

So ORDERED this 19th day of April 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, FAICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.