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

2101 MILDRED LLC and)
BRUCE & DEBBIE BODINE,) **CPSGMHB Case No. 06-3-0022**
) *(Mildred/Bodine)*
Petitioners,)
v.)
CITY OF UNIVERSITY PLACE,) **ORDER OF DISMISSAL**
Respondent.)
)

I. BACKGROUND

On May 19, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from 2101 Mildred LLC and Bruce and Debbie Bodine (**Petitioners** or **Mildred/Bodine**). The matter was assigned Case No. 06-3-0022, and is hereafter referred to as *Mildred/Bodine v. City of University Place*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioners challenge the City of University Place's (**Respondent** or the **City**) adoption of Ordinance 469, amending a planned action and implementing provisions of the City's Comprehensive Plan. The basis for the challenge is noncompliance with various provisions of the Growth Management Act¹ (**GMA** or **Act**) and the State Environmental Policy Act (**SEPA**).²

On May 24, 2006, the Board issued a "Notice of Hearing" (**NOH**) in the above-captioned case and conducted the Prehearing Conference (**PHC**) on June 20, 2006. The City submitted its "Index of the Record" (**Index**) at the PHC.

On June 21, 2006, the Board issued its "Prehearing Order" (**PHO**) that set the final schedule and one legal issue to be decided.

On July 21, 2006, the Board received the City's Motion to Dismiss (**City's Motion to Dismiss**).

On July 31, 2006, the Board received Petitioners' Mildred/Bodine Response to Dismiss (**Petitioners' Response to Dismiss**).

On August 7, 2006, the Board received the City's Reply in Support of Motion to Dismiss (**City's Reply**).

¹ RCW 36.70A

² RCW 43.21C

1 The Board did not hold a hearing on the dispositive motions.
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5 **II. DISCUSSION AND ANALYSIS**

6
7 Petitioners challenge the City's adoption of Ordinance No. 469 which implemented provisions of
8 the City's Comprehensive Plan relating to the Town Center, amended design standards for the
9 Town Center, and amended a planned action for 24 parcels of land, totaling approximately 31.7
10 acres. The City adopted Ordinance No. 469 on March 20, 2006. The Petitioners' PFR set forth
11 four legal issues based on the City's failure to revise its Environmental Impact Statement (EIS);
12 transportation impacts (volume, ingress/egress); the expanded scope of the "Town Center"
13 project; and errors in the City's Traffic Impact Analysis (TIA) methodology. At the PHC, it was
14 determined that the Petitioners' challenge could be consolidated in one legal issue:
15

- 16 1. *Did the City of University Place fail to comply with the requirements of RCW*
17 *36.70A.070(6)(a)(iii)(D) and .070(6)(b) [Transportation Element requirements],*
18 *RCW 36.70A.280(1)(a) [Board Jurisdiction], and the provisions of RCW*
19 *43.21C.030, .031, and .240 [SEPA], when it adopted Ordinance No. 469?*³
20

21 The City requests that the Board dismiss this matter because (1) the Board lacks jurisdiction to
22 hear challenges to planned project actions; (2) Petitioners' have failed to demonstrate SEPA
23 standing, and (3) the PFR fails to identify any violation of the GMA applicable to the challenged
24 ordinance. Motion to Dismiss at 1.
25

26 Discussion and Analysis

27
28 In order for the Board to hear and determine any matter, the Legislature must have given the
29 Board the authority to perform this service for the parties. RCW 36.70A.280(1) sets forth the
30 Board's subject matter jurisdiction, statutorily limiting it to petitions which allege violations of
31 RCW 36.70A, RCW 90.58 (as its relates to the adoption of or amendments to shoreline master
32 programs), or RCW 43.21C (as it relates to plans, development regulations, or amendments,
33 adopted under RCW 36.70A.040 or RCW 90.58).
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38 ³The Petitioners allege non-compliance with portions of RCW 36.70A.070 (6) which sets forth the requirements for
39 a transportation element that implements, and is consistent with, the land use element. Provisions include the
40 requirement for bringing into compliance locally owned transportation facilities or services that are below an
41 established level of service standard (LOS) and the ability of a jurisdiction to prohibit development if the LOS
42 would decline below the adopted standards.
43

44 Petitioners also allege non-compliance with RCW 36.70A.280(1) which limits the Board's jurisdiction to actions
45 arising under RCW 36.70A, RCW 90.58 (as its relates to the adoption of or amendments to shoreline master
46 programs), or RCW 43.21C (as it relates to plans, development regulations, or amendments, adopted under RCW
47 36.70A.040 or RCW 90.58).

48 Finally, Petitioners allege non-compliance with RCW 43.21C.030, 43.21C.031, and 43.21C.240, all provisions
49 found within the State Environmental Policy Act (SEPA). These sections of SEPA set forth not only general
50 administrative and interpretation requirements of SEPA but also the requirement for producing an environmental
impact statement (EIS). In addition, RCW 43.21C.240 speaks to project review under the GMA.

1 The City asserts that the Petitioners' alleged violations of the GMA are based on its adoption of
2 Ordinance 469, a Planned Action⁴ adopted pursuant to RCW 43.21C⁵ not 36.70A and that the
3
4

5 ⁴ WAC 197-11-164 (1) Under RCW 43.21C.031, GMA counties/cities may designate a planned action. A planned
6 action means one or more types of project action that:

- 7 (a) Are designated planned actions by an ordinance or resolution adopted by a GMA county/city;
8 (b) Have had the significant environmental impacts adequately addressed in an EIS prepared in
9 conjunction with:
10 (i) A comprehensive plan or subarea plan adopted under chapter 36.70A RCW; or
11 (ii) A fully contained community, a master planned resort, a master planned development, or a
12 phased project;
13 (c) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;
14 (d) Are located within an urban growth area, as defined in RCW 36.70A.030, or are located within a
15 master planned resort;
16 (e) Are not essential public facilities, as defined in RCW 36.70A.200; and
17 (f) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.
18 (2) A GMA county/city shall limit planned actions to certain types of development or to specific geographical
19 areas that are less extensive than the jurisdictional boundaries of the GMA county/city.
20 (3) A GMA county/city may limit a planned action to a time period identified in the EIS or the designating
21 ordinance or resolution adopted under WAC 197-11-168.
22

23 WAC 197-11-168(1) If a GMA county/city chooses to designate a planned action, the planned action must be
24 designated by ordinance or resolution. Public notice and opportunity for public comment shall be provided as part of
25 the agency's process for adopting the ordinance or resolution.

- 26 (2) The ordinance or resolution:
27 (a) Shall describe the type(s) of project action being designated as a planned action;
28 (b) Shall describe how the planned action meets the criteria in WAC 197-11-164 (including specific
29 reference to the EIS that addresses any significant environmental impacts of the planned action);
30 (c) Shall include a finding that the environmental impacts of the planned action have been identified and
31 adequately addressed in the EIS, subject to project review under WAC 197-11-172; and
32 (d) Should identify any specific mitigation measures other than applicable development regulations that
33 must be applied to a project for it to qualify as the planned action
34 (3) If the GMA county/city has not limited the planned action to a specific time period identified in the EIS, it
35 may do so in the ordinance or resolution designating the planned action.
36 (4) The GMA county/city is encouraged to provide a periodic review and update procedure for the planned action
37 to monitor implementation and consider changes as warranted.
38

39 ⁵ RCW 43.21C.030(2)(a) For purposes of this section, a *planned action* means one or more types of project action
40 that:

- 41 (i) Are designated planned actions by an ordinance or resolution adopted by a county, city, or town planning
42 under RCW 36.70A.040;
43 (ii) Have had the significant impacts adequately addressed in an environmental impact statement prepared in
44 conjunction with (A) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (B) a fully
45 contained community, a master planned resort, a master planned development, or a phased project;
46 (iii) Are subsequent or implementing projects for the proposals listed in (a)(ii) of this subsection;
47 (iv) Are located within an urban growth area, as defined in RCW 36.70A.030;
48 (v) Are not essential public facilities, as defined in RCW 36.70A.200; and
49 (vi) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.
50 (b) A county, city, or town shall limit planned actions to certain types of development or to specific geographical
areas that are less extensive than the jurisdictional boundaries of the county, city, or town and may limit a planned

1 Board has no jurisdiction. *City's Motion to Dismiss* at 11. The City, relying on *Kent CARES v.*
2 *City of Kent*, CPSGMHB Case No. 02-3-0015 Order on Motions (Nov. 27, 2002), asserts that the
3 Board has previously determined that an ordinance which specifies its adoption under other
4 authority is not subject to GMA review. *Id.* at 12. The City notes that Ordinance 469 clearly
5 states that it is a planned action ordinance adopted pursuant to RCW 43.21C.031 and meets all of
6 SEPA's requirements for a planned action. *Id.* at 13-14.

7
8 In response, the Petitioners allege that Ordinance 469 is a development regulation subject to the
9 Board's jurisdiction under 36.70A.280(1)(a) because it "controls density, height requirements,
10 and other aspects of development within ... the Town Center Overlay Zone" and, therefore, is
11 more similar to a development regulation, a zoning ordinance, or a PUD ordinance than a
12 decision on a distinct project [noting the diverse ownership interests in affected parcels]." *Petitioners' Response* at 6-7. In addition, the Petitioners assert that the broad reaching scope
13 of the ordinance's effect exceeds the limited nature of a project action, creating a legislative,
14 non-project action that is subject to the Board's review. *Id.* at 8.

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16
17 In reply, the City reiterates its claim that Ordinance 469 is a planned action. *City's Reply* at 4.
18 The City asserts that the Ordinance was not adopted pursuant to the GMA, is not a sub-area plan,
19 nor does it amend a sub-area plan. *Id.* The City responds to the Petitioners' allegation that
20 Ordinance 469 is a development regulation by noting that the challenged ordinance does not
21 contain development regulations and, in fact, it was Ordinance 470, passed concurrently, that
22 amends development regulations and zoning boundaries. *Id.* at 3. According to the City, all that
23 Ordinance 469 does, much like the challenged ordinance in *Kent CARES*, is "establish a planned
24 action to accelerate review and spur development under existing development regulations for a
25 limited geographic area in a downtown core." *Id.*

26
27 *Analysis*

28
29 In 1995, the City of University Place was incorporated and in 1998, the City adopted its first
30 comprehensive plan that called for a "Town Center" - a proposed mixed residential, commercial,
31 and business development - between 35th Street and 44th Street on Bridgeport Way. In 1999,
32 design standards were adopted by the City for the Town Center in order to implement the
33 conceptual plan developed shortly after passage of the City's 1998 comprehensive plan. Between
34 2000 and 2003, the City produced several economic and design planning documents including a
35 conceptual Master Plan, which was adopted in 2002, and amended the Comprehensive Plan in
36 2003 to include the "Town Center Overlay Zone." *City's Motion to Dismiss* at 2-9.

37
38 A Traffic Impact Analysis (TIA) for the Town Center was completed in December 2003 and
39 updated in December 2005. *City's Motion to Dismiss* at 3-5, Exhibits 7 and 8. The TIA
40 evaluated alternatives which included locating the Town Center solely on the east side of
41 Bridgeport Way or locating it on both the east and west side of Bridgeport Way. *Id.*, Exhibit 7 at
42 2-3. The City issued a Final Environmental Impact Statement (FEIS) for the Town Center in
43 February 2004. *Id.*, Exhibit 5. The TIA identified and evaluated impacts to the intersections that
44 Petitioners allege affect their property. *Id.* at 4. The FEIS looked at two aspects - a non-project
45 action component examining the potential impacts of development under the proposed design
46 standards and a planned action component examining impacts of developing a pedestrian
47 friendly mixed-use Town Center. *Id.* at 3, Exhibit 5 at 5. The City asserts, and the Petitioners

48
49 action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under
50 this subsection.

1 do not dispute, that there is no record of the Petitioners participating in the environmental review
2 process. *Id.*
3

4 In regard to the Planned Action, the FEIS evaluated the same alternatives that the Traffic Impact
5 Analysis did – development only on the eastern side of Bridgeport Way and development on
6 both the eastern and western side of Bridgeport Way. *Id.* at 5-6. In March 2004, the City
7 adopted Planned Action Ordinance 409, establishing design standards and identifying the land
8 uses and activities described as Planned Actions or Planned Action Projects, referencing only
9 RCW 43.21C, for the Town Center. After issuance of an Addendum to the FEIS (Exhibit 6), the
10 City adopted Ordinance 469, also referencing only RCW 43.21C, which amended Ordinance 409
11 and modified the Town Center’s area and some design standards. *Id.* at 7-8; Exhibit 1. At this
12 same time, the City concurrently adopted Ordinance 470 which amended UPMC Title 19 in
13 regard to the enlargement of the Town Center Overlay, floor area ratios, height limits, and
14 residential densities. *Id.* at 8.
15

16 It is well established through both the Board’s own case law and the Washington Courts that the
17 jurisdiction of the Board is statutorily limited to the review of comprehensive plans and
18 development regulations, adopted, or amended, pursuant to RCW 36.70A, for compliance with
19 the GMA. *RCW 36.70A.280; Skagit Surveyors LLC v. Friends of Skagit County*, 135 Wn.2d
20 542, 558 (1998) (the Board is a creature of the Legislature, without inherent or common-law
21 powers and, as such, may exercise only those powers conferred by statute, either expressly or by
22 necessary implication); *Woods v. Kittitas County*, 130 Wash.App. 573, 581 (Div 3, 2005)
23 (Growth Board has very limited jurisdiction); *Gutschmdit v. City of Mercer Island*, CPSGMHB
24 Case No. 98-3-0003, FDO at 8 (no jurisdiction for any statute other than one named in RCW
25 36.70A.280(1)); *Happy Valley et. al., v. King County*, CPSGMHB Case No. 93-3-0008c, FDO at
26 13-14 (Oct. 25, 1993) (Board jurisdiction is limited to a jurisdiction’s enactments that were
27 adopted in an effort to comply with the requirements of the GMA); *Hanson et. al., v. King*
28 *County*, CPSGMHB Case No. 98-3-0015c, Order on Motions at 5 (Sept. 2, 1998) (no jurisdiction
29 to review land use project decisions); *Petersville Road Residents v. Kitsap County*, CPSGMHB
30 Case No. 00-3-0013, Order on Motions at 4-5 (Oct. 23, 2000) (no jurisdiction to hear a petition
31 that does not involve a comprehensive plan or development regulation under the GMA; the PFR
32 does not challenge these documents, or amendment thereto, and therefore 36.70A.280(1) does
33 not confer jurisdiction to review).
34

35 The Petitioners point to no reference in Ordinance 469, nor could the Board find reference, that
36 the ordinance was adopted pursuant to RCW 36.70A. Rather, the text of Ordinance 469
37 specifically references RCW 43.21C.031, the Comprehensive Plan EIS, the Town Center FEIS,
38 and the Addendum to the Town Center FEIS. *City’s Motion to Dismiss* at 14; Exhibit 6.
39 Ordinance 469 is a Planned Action Ordinance. The crux of the Petitioners’ concern, as stated in
40 their PFR and in their Response, is the adverse traffic impacts potentially stemming from the
41 proposed *project*, namely the re-channelization of Mildred Street, impacts on intersections within
42 and outside of the city, traffic patterns, and downstream traffic flow. These *project* level
43 concerns are more appropriately addressed at the *project* review level provided by the City and
44 not by this Board. Project decisions and related issues are outside of the Board’s jurisdiction.
45 The Board has no subject matter jurisdiction. Therefore, all of the Petitioners’ claims pertaining
46 to RCW 36.70A.070(6) are **dismissed**.
47

48 In regard to the Petitioners’ claim that the City violated RCW 36.70A.280(1), the Board notes
49 that RCW 36.70A.280(1) statutorily sets forth what *matters the Board may hear and determine*.
50 It *does not* create a duty for which a local jurisdiction must comply and, therefore, it is

1 impossible for a local jurisdiction to be in violation of this section of the GMA. The Petitioners’
2 claim pertaining to RCW 36.70A.280(1) is **dismissed**.

3
4 Standing

5
6 Even if there was a scintilla of chance that the Board could find subject matter jurisdiction in the
7 case, the Petitioners must still satisfy the Board’s requirements for standing.

8
9 • *GMA Standing*

10 The Petitioners allege standing based on RCW 36.70A.280(2)(b) (participation standing) and
11 RCW 36.70A.280(2)(d) (APA standing). *PFR* at 6. The Petitioners only need to demonstrate
12 one type to achieve standing before the Board. Interpreted liberally, *GMA participation*
13 *standing* (.280(2)(b)) requires only that the petitioner, either orally or in writing, must have
14 provided the jurisdiction with information that is reasonably related to the petitioner’s issue, as
15 presented to the Board, so that the jurisdiction had the opportunity to consider the issue prior to
16 taking the challenged action. *Bremerton, et. al., v. Kitsap County, et. al.*, CPSGMHB
17 Coordinated Case No. 95-3-0039c/98-3-0032c, Order on Motions (Oct. 7, 1998). This, the
18 Petitioners did when they submitted written comments to the City’s Planning Commission
19 pertaining to traffic impacts on March 10, 2006. *City’s Motion to Dismiss*, Exhibit 20;
20 *Petitioners’ Response to Dismissal* at 14. The Petitioners have adequately demonstrated
21 participation standing.⁶

22
23 • *SEPA Standing*

24 Despite the fact that the Petitioners allege violations of SEPA, no mention is made in the PFR in
25 regard to Petitioners’ standing pursuant to RCW 43.21C.⁷ In addition, even though the City’s
26 argument pertaining to Petitioners’ SEPA standing took 9 pages of its Motion to Dismiss and
27 was again reference in their Reply, the Petitioners still failed to demonstrate, let alone allege,
28 SEPA standing in their Response. *City’s Motion to Dismiss* at 20-29; *City’s Reply* at 6. Now,
29 from what the Board can discern, Petitioners’ appear to be attempting to bootstrap standing⁸
30 pursuant to RCW 36.70A.280(2)(d) to justify SEPA standing, without ever addressing the issue.

31
32 ⁶ The Board does not need to determine whether, for GMA purposes, the Petitioners have demonstrated standing
33 pursuant to .280(2)(d) (APA Standing) since they have already demonstrated participation standing and only need to
34 satisfy one type to achieve standing before the Board. However, there is a separate standing requirement for a
35 SEPA challenge.

36 ⁷ To bring a challenge based on SEPA, the party must satisfy the stringent two-part test for SEPA standing. This
37 test requires that *first*, the plaintiff’s supposedly endangered interest must be arguably *within the zone of interests*
38 *protected by SEPA*. *Second*, the plaintiff must *allege an injury in fact*; that is, the plaintiff must present sufficient
39 evidentiary facts to show that the challenged SEPA determination will cause *specific and perceptible harm*. The
40 plaintiff who alleges a *threatened injury* rather than an existing injury must also show that the injury will be
41 “*immediate, concrete, and specific*”; a conjectural or hypothetical injury will not confer standing. *MBA/Brink v.*
42 *Pierce County*, CPSGMHB No. 02-3-0010, Order on Motion to Dismiss SEPA Claims (Oct. 21, 2002) (emphasis in
43 original, internal citations omitted).

44 ⁸ See Petitioners’ Response to Dismissal at 14-17. This portion of Petitioners’ Response is entitled “Petitioners
45 have standing pursuant to RCW 36.70A.280(2)” and argues the 3 factors of RCW 35.05.530, concluding that
46 “Petitioners have met the standing requirements in both RCW 36.70A.280(2)(b) and (d).” Although the Petitioners
47 have alleged standing pursuant to RCW 36.70A.280(2)(d) – APA Standing - this does not satisfy SEPA Standing.
48 Under RCW 34.05.530, a person has standing if they are aggrieved or adversely affected by the jurisdiction’s action.
49 A person is aggrieved or adversely affected only when the action has prejudiced or is likely to prejudice that person;
50 a person’s asserted interests are among those that the jurisdiction was required to consider when it engaged in the
action challenged; and a judgment in favor of that person would substantially eliminate or redress the prejudice

1 Standing based on provisions of the GMA does not automatically satisfy standing under SEPA.
2 The *GMA and SEPA are distinct statutes with their own standing requirements*, each of which
3 must be met by the Petitioners if they intend to challenge actions for non-compliance with both
4 statutes. *Assoc. to Protect Anderson Creek, et. al., v. Bremerton*, CPSGMHB No. 95-3-0053c,
5 Order on Motions (Oct. 18, 1995) (citing *Robison v. Bainbridge Island*, CPSGMHB No. 94-3-
6 0025 at 6-7, Order on Motions (Feb. 24, 1995) (Emphasis added).

7
8 Grounding their argument in RCW 36.70A.280(2)(d), Petitioners assert that their alleged “*injury-*
9 *in-fact*” is the potential increase in traffic which would cause significant delays in and out of
10 Petitioners’ property and compromise safety for persons coming and going to the Petitioners’
11 shopping center. *Petitioners’ Response to Dismiss* at 14-15. Although the Petitioners have
12 identified the *sources of an injury*, they have not established what that injury is or whether these
13 sources will cause any *immediate, concrete, or specific injury* – such speculative injuries are
14 merely conjectural and hypothetical and can not confer standing.

15
16 In addition, without ever using the phrase “*zone of interests*” the Petitioners state that SEPA
17 required the City to consider the adverse environmental impacts when it engaged in the
18 development and subsequent expansion of the Town Center Overlay Zone. *Petitioners’*
19 *Response to Dismiss* at 16. While this may be a true statement, the City did evaluate the
20 environmental impacts of the Town Center in both the FEIS and the subsequent Addendum. In
21 February 2004, the City issued its FEIS for the proposed project which evaluated both a non-
22 project design standards component and a planned action component. *City’s Motion to Dismiss,*
23 *Exhibit 5.* The FEIS evaluated alternatives which included development of the Town Center
24 solely on the east side of Bridgeport Way and development on both the east and west sides of
25 Bridgeport Way.⁹ *Id.*

26
27 In March 2006, the City issued an Addendum to the FEIS. *Id.*, Exhibit 6. The Addendum
28 considered the impacts of the modifications to the Town Center that were later adopted with
29 Ordinance 469. The City, acting as lead agency for review and identification of the
30 environmental impacts of the proposal, determined that “the impacts associated with the
31 proposed modifications had been addressed in the FEIS and supporting documentation for the
32 Town Center Development.” *Id.* at 1. In addition, the Addendum noted that the “proposal does
33 not generate traffic that exceeds the volumes analyzed under both alternatives in the FEIS and
34 Traffic Impact Analysis” and that the “design elements [height and floor area ratio] were
35 discussed in detail in the FIES.” *Id.* at 2.

36
37 Moreover, the Washington Supreme Court has defined the “*zone of interests*” protected by
38 SEPA:

39
40 SEPA is concerned with ‘broad questions of environmental impact, identification

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42
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44 caused or likely to be caused by the action. The first and third factors are the ‘injury-in-fact’ requirement and the
45 second is the ‘zone of interest’ requirement. *Allan v. University of Washington*, 140 Wn.2d 323, 327 (2000);
46 *Friends of the Law, et al., v. King County*, CPSGMHB Case No. 94-3-0003, Order on Motions at 14-15 (April 22,
47 1994). In this regard, the test for standing under RCW 36.70A.280(2)(d) is similar to the Board’s test for standing
48 under RCW 43.21C.

49 ⁹ The City’s Future Land Use Map (University Place Comprehensive Plan, Land Use Element, Figure 1-3) depicts
50 the area included in the Town Center with Ordinance 469 with the land use designation of “Town Center.” As
provided in WAC 242-02-660, the Board will take official notice of the City’s map.

1 of unavoidable adverse environmental effects, choices between long and short
2 term environmental uses, and identification of the commitment of environmental
3 resources.
4

5 *Kucera v. Washington State Department of Transportation*, 140 Wn.2d 200, 212-213, 995 P.2d
6 63 (2000).
7

8
9 And, this Board and the Washington Courts have stated that economic interests are not within the
10 “zone of interests” protected or regulated by SEPA. *Harris v. Pierce County*, 84 Wash. App.
11 222, 231, 928 P.2d 1111 (1996); *Hood Canal Environmental Council, et al v. Kitsap County*,
12 CPSGMHB Case No. 06-3-0012C, Order on Motions (May 8, 2006). Purely economic interests
13 include “the protection of individual property rights, property values, property taxes, [and]
14 restrictions on the use of property.” *Snohomish County Property Rights Alliance v. Snohomish*
15 *County*, 76 Wash. App. 44, 52 (1994). Although Petitioners make passing reference to a concern
16 for the safety of their customers, the Board is of the opinion that, as the owner of a shopping
17 center near the Town Center, the Petitioners’ core interest is economically based.¹⁰
18

19 As noted supra, the GMA and SEPA are two distinct statutes and alleging standing under one
20 does not satisfying the standing requirement under the other. Although the Petitioners have
21 adequately demonstrated participation standing under the GMA, they have failed to specifically
22 allege or adequately demonstrate standing pursuant to SEPA. Given the fact that, as
23 acknowledged by the Petitioners in their Response – “*Petitioners challenge Ordinance 469 on*
24 *the basis that the FEIS and its addendum ... are defective...*” and a review of the exhibits
25 submitted to the Board, the Board determines that this matter is based on issues not arising under
26 the GMA but under SEPA. Without SEPA standing the Petitioners have no ability to bring this
27 matter before the Board and all claims arising under RCW 43.21C.030, .031, and .240 are
28 **dismissed.**¹¹
29

30 31 32 **III. ORDER** 33

34 Based upon review of the GMA, Board’s Rules of Practice and Procedure, briefing and exhibits
35 submitted by the parties, case law and prior decisions of this Board, and having deliberated on
36 the matter, the Board enters the following ORDER:
37

- 38
39 1. Legal Issue No. 1, as stated in the Board’s Prehearing Order issued June 21, 2006
40 is **DISMISSED in its entirety** due to lack of jurisdiction and failure to
41 adequately allege or demonstrate standing under SEPA.
42

43 ¹⁰ Petitioners’ comment letter to the City (*Petitioners’ Response to Dismiss, Exhibit 8*) specially noted that “we are
44 concerned that customers’ spending habits... will be impacted if the University Place Town Center plans continue as
45 proposed.”

46 ¹¹ Generally, RCW 43.21C.060, 43.21C.075, 43.21C.080 and WAC 197-11-680 requires that an appeal of a SEPA
47 environmental determination must be filed within 21 days of publication. University Place Municipal Code
48 (UPMC) 17.40.110 (Administrative Appeal of SEPA Determination) sets a time limitation of 14 days from the date
49 of environmental determination. Under either the RCW, WAC, or UPMC the time limitation for appeal of
50 environmental determinations has long passed. The FEIS was issued in 2004. The Addendum to the FEIS was
issued in March 2006. The Petitioners did not file their PFR until May 2006.

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2. CPSGMHB Case No. 06-3-0022, *2101 Mildred LLC and Bruce & Debbie Bodine v. City of University Place* is **CLOSED**.

This Order of Dismissal should not be construed as a Board determination as to whether the City of University Place substantively complies with the relevant goals and requirements of the GMA.

So ORDERED this 17th day of August, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
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.