

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

JAMES HALMO, <i>et al.</i>)	
)	Case No. 07-3-0004c
Petitioners,)	
)	<i>(Halmo, et al.)</i>
v.)	
)	ORDER ON MOTION FOR
PIERCE COUNTY,)	RECONSIDERATION
)	
Respondent.)	
)	
)	
)	
)	

PROCEDURAL HISTORY

On September 28, 2007, the Central Puget Sound Growth Management Hearings Board (**Board**) issued its Final Decision and Order (**FDO**) in the above-captioned matter.

On October 8, 2007, the Board received a Motion for Reconsideration from Petitioners Halmo, *et al.* (**Motion**). The Motion was timely filed. A second group of Petitioners, referred to as CROWD, did not seek reconsideration.

On October 15, the Board received Respondent Pierce County's Response to Halmo's Motion for Reconsideration. (**Response**)

MOTION AND DISCUSSION

Applicable Law

WAC 242-02-832(2) provides:

- A motion for reconsideration shall be based on at least one of the following grounds:
- a. Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;
 - b. Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or
 - c. Clerical mistakes in the final decision and order.

With the Motion presented, the Petitioners allege a misinterpretation of fact concerning the identity of Petitioners and misinterpretations of law concerning the County's public process and the siting of group homes.

FDO and Motion

In the FDO, the Board dismissed some of the Halmo Petitioners' claims but found that Pierce County's action did not comply with the GMA with respect to other issues raised by Petitioners.

On reconsideration, the Halmo Petitioners allege three errors:

1. The Board made an error of fact when it identified the Halmo Petitioners as "twelve members of the Graham Community Planning Board." FDO, at 1, 7, 11, and 14. More accurately, seven of the Petitioners were appointed to the Graham Community Planning Board, two were appointed to the Graham Land Use Advisory Commission, two more served on both boards, and one was an active participant in the County's review process. Motion, at 1-2.
2. The FDO failed to rule on Petitioners' allegation in Legal Issues 7 and 10 that Pierce County is non-compliant with RCW 36.70A.140 in that it has not adopted and disseminated a public participation process for comprehensive plan amendments. Motion at 2-3.
3. The FDO failed to address Petitioners' allegations in Legal Issue 9 that Pierce County should have enacted in its development regulations, by September 1, 2002, criteria and policies for identifying and siting group homes, as required by RCW 36.70A.200. Motion at 3.

The County Response concedes the issue concerning the identity of Petitioners, but defends and discusses the public participation process, and rests on the Board's FDO determination concerning group homes. Response, at 2.

Board Discussion

Identity of Petitioners

The Board will correct the error of fact pointed out by Petitioners. The FDO is **corrected** as follows (additions shown in underline, deletions shown in ~~striketrough~~)

Page 1, Lines 21 to 26:

Pierce County adopted the Graham Plan and implementing development regulations on October 10, 2006, by enacting Ordinance Nos. 2006-52s and 2006-53s. Two groups of petitioners here appealed various provisions of the Ordinances. The majority of the Halmo petitioners are ~~twelve~~ members of the Graham Community Planning Board that had been appointed by the County Council to develop recommendations for the Graham sub-area plan.

Page 7, Lines 13 to 15:

Several issues of continuing controversy resulted in petitions for review to this Board. First, the Halmo petitioners include nine ~~are twelve~~ members of the Graham Community Planning Board.¹

Page 11, Line 16:

Nine of the twelve ~~The~~ Halmo petitioners are ~~all~~ members of the Graham Community Planning Board. Four of the twelve served on the Graham Land Use Advisory Commission.

Page 14, Lines 44 to 48:

Citizens who have spent four years on an advisory committee analyzing the minutia of various zoning categories and their application in their neighborhood, as have the majority of the Halmo petitioners, understandably expect thoughtful explanations for Council amendments to their proposals.

Public Participation

Halmo requests the Board reconsider its ruling on Legal Issues 7 and 10 concerning notice and public participation. Halmo states that the Board failed to rule regarding the GMA requirement that the County enact a formal public participation program under RCW 36.70A.140.² Halmo states the issue as: “Is Pierce County required to have a formal written public participation program with defined procedures, broadly disseminating it to the County’s citizens as called for in RCW 36.70A.140?” Motion, at 2-3.

The County responds that its notice and public participation provisions for comprehensive plan amendments are contained in various parts of the County Code. Response, at 4-6. This is in part because the process incorporates Planning Commission, (Sub-Area) Land Use Advisory

¹ Of the twelve Halmo petitioners, seven were appointed to the Graham Community Planning Board (Halmo, Willmott, Harris, Balmer, Clough, Carson, Uhl), two were appointed to the Graham Land Use Advisory Commission (Harmier and Bell), two served on both boards (Kelley and Andrews), and one (Sanders) was a citizen activist who did not serve on either of the boards.

² RCW 36.70A.140 provides: “Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.”

Commission, and County Council meetings, each with its own notice and hearing provisions.³ *Id.* According to the County, “the GMA does not require that the County establish these provisions in one comprehensive list.” *Id.* at 6.

The Board finds that Pierce County has enacted Chapter 19C.10: Procedures for Amendments to the Comprehensive Plan, and Chapter 19C.20: Procedures for Developing Community Plans and Updates to Community Plans. The Comprehensive Plan amendment procedures, in Ch. 19C.10, contain requirements for notice (PCC 19C.10.050.E.6.d and PCC 19C.10.055.G), Planning Commission public hearing and recommendation (PCC 19C.10.080), Land Use Advisory Commission Review and Recommendation (PCC 19C.10.085), and additional notice and public hearing prior to Pierce County Council action (PCC 19C.10.090). The Community Plan procedures, in Ch. 19C.20, provide a preliminary step for sub-area plans: the formation of a Community Planning Board to “serve as a sounding board for the community” and to create a draft community plan to forward to the Planning Commission. PCC 19C.20.080.C and .090. The two procedural chapters also provide a wealth of detail about timelines, applications and docketing, staff analysis, and applicable decision criteria.

The Board finds no basis for reconsideration of its ruling in the FDO that the County complied with RCW 36.70A.140 in its notice and public participation process. FDO, at 26-27.

Identification and Siting of Group Homes

Halmo requests that the Board reconsider its ruling on Legal Issue 9, stating that the Board failed to require the County “to establish the criteria for identifying and siting of group homes (an essential public facility) in the Pierce County *Development Regulations* (Title 18A) by the September 2002 deadline, as required in RCW 36.70A.200.” Halmo asserts that the criteria in the County’s *comprehensive plan* are not sufficient to satisfy this requirement.

RCW 36.70A.200 provides in relevant part:

- (1) The *comprehensive plan* of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. ...
- (2) Each county and city planning under 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities *and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities* consistent with statutory requirements applicable to these facilities.
...
- (8) The failure of a county or city to act by the deadlines established in subsections (2) or (3) of this section is not: ...(c) a basis for any petition under RCW 36.70A.280....

³ Planning Commission, PCC 2.78.020; Land Use Advisory Commission, PCC 2.45.120, 2.45.130, PCC 18.80.040C(1)(b); County Council, PCC 1.28(c)(2).
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In the FDO, the Board concluded that Pierce County's *comprehensive plan* contains a process and criteria for identifying and siting essential public facilities, and thus complies with RCW 36.70A.200(1). FDO, at 32-33. Reading the statutory requirement of RCW 36.70A.200(2), the Board finds that the requirement and deadline for adopting *development regulations* is specific to the citing of "secure community transition facilities," not "group homes." Further, the GMA expressly denies any petition challenging a jurisdiction's failure to act on this requirement by the statutory deadline. RCW 36.70A.200(8).

The Board therefore declines to reconsider the FDO in this matter.

Conclusion

The Motion for Reconsideration is **granted** as to the factual error in the FDO. The Board **corrects** the error in order to accurately describe the Halmo Petitioners, as set forth above. However, the Board **declines to reconsider** its decisions concerning Legal Issues 7, 10, and 9, as requested by the Halmo Petitioners.

III. ORDER

Having reviewed the September 28, 2007 FDO, the Halmo Motion for Reconsideration, the County's Response, and the relevant provisions of the GMA and the Board's Rules of Practice and Procedure, prior decisions of the Boards, and having deliberated on the matter, the Board **ORDERS**:

1. The Halmo Motion for Reconsideration pertaining to Legal Issues 7, 10, and 9 [Public Process and Group Homes] is **DENIED**.
2. The Halmo Motion for Reconsideration pertaining to the factual error in the description of Petitioners is **GRANTED** and the errors are **corrected**.

SO ORDERED this 17th day of October, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member and Presiding Officer

Note: This order constitutes a final order as specified at WAC 242-02-832(4). Orders on Reconsideration are not subject to additional motions for reconsideration. WAC 242-02-832(3).