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

ROBERT CAVE and JOHN COWAN,)
) **CPSGMHB Case No. 07-3-0012**
)
 Petitioners,) *(Cave/Cowan)*
)
 v.)
)
 CITY OF RENTON,)
) **ORDER ON MOTIONS**
 Respondent.)
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I. BACKGROUND

On January 29, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Robert Cave and John Cown (**Petitioners**). The matter was assigned Case No. 07-3-0012, and is referred to as *Cave/Cowan v. City of Renton*. Board member Margaret A. Pageler is the Presiding Officer (**PO**) for this matter¹. Petitioners challenge the City of Renton's (**Respondent** or **the City**) adoption of Ordinance 5234 rezoning certain properties within the Upper Kenndale area, including those owned by the Petitioners, from Residential 8 units per acre (**R-8**) to Residential 4 units per acre (**R-4**). The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **the Act**) and the State Environmental Policy Act (**SEPA**).

On February 2, 2007, the Board issued a Notice of Hearing and Intent to Consolidate in the above-captioned case.²

On March 1, 2007, the Board conducted the Prehearing Conference (**PHC**) at which the City's "Index of the Record" (**Index**) and a "Restatement of Issues Presented for Resolution" (**Restated Issues**) were received. An Amended Index was filed with the Board on March 13, 2007 (**Amended Index**).

On March 22, 2007, the Board received the City's Motion to Dismiss (**City's Motion**).

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¹ Presiding Officer Pageler was unable to participate in the Motions portion of this case due to illness, and is therefore not a signatory to this Order on Motions.

² The Board had intended to consolidate this matter with CPSGMHB Case No. 07-3-0011 *Petersen v. City of Renton*. However, on February 27, 2007, the Board received a voluntary withdraw of the PFR from the Petitioner in the *Petersen* matter. The Board entered an Order of Dismissal for Case No. 07-3-0011 on February 28, 2007.

1 On April 5, 2007, the Board received Petitioners' "Response in Opposition to the City of
2 Renton's Motion Response to Dismiss" (**Petitioners' Response**). Included within their
3 response, the Petitioners moved to supplement the record with several documents to support their
4 arguments including a declaration by Petitioner Cowan (**Cowan Declaration**).
5

6 On April 12, 2007, the Board received the City's "Reply to the Petitioners' Response and
7 Objection to Supplement the Declaration of John Cowan." (**City's Reply**). In addition, by
8 stipulation of the parties, the City filed a second amendment to the Index, adding three
9 documents (**2nd Amended Index**).³
10

11 On April 13, 2007, the Petitioners filed a "Motion to Strike 'Attachment D' and related City
12 Arguments" (**Motion to Strike**). With this motion, the Petitioners requested that the Board
13 strike Attachment D to Ordinance 5228 as identified by the City in its Motion to Dismiss and
14 included a Declaration by Petitioner Cave (**Cave Declaration**) and a Declaration by Attorney
15 Gendler (**Gendler Declaration**).
16

17 On April 16, 2007, the City requested an opportunity to file a rebuttal to the Petitioners' Motion
18 to Strike. The Board granted this request; and on April 20, 2007 the City filed its response
19 (**City's Rebuttal**). Included within the City's Rebuttal were two declarations – the Declaration
20 of Bonnie Walton (**Walton Declaration**) and the Declaration of Loni Johnson (**Johnson**
21 **Declaration**) – which the City relies upon to support its argument.
22

23 On April 26, 2007, the Petitioners filed a "Reply Memorandum of Petitioners in Support of
24 Motion to Strike" (**Petitioners' Reply**).
25

26 The Board did not hold a hearing on the dispositive motions.
27

28 **II. DISCUSSION AND ANALYSIS**

29 Challenged Action and Motions

30 On December 1, 2006, the City published a total of 14 ordinances (Ordinances 5228 through
31 5241) which were adopted by the City Council on November 27, 2006. Index 342, City's
32 Exhibit 12. With these ordinances, the City had effectively adopted the 2006 amendments to its
33 Comprehensive Plan and changed the zoning classification of certain properties within the City.
34 *Id.* The Petitioners' challenge focused on Ordinance 5234. This ordinance outlined the specific
35 boundaries and mapping of properties within the "Upper Kenndale Area" and authorized the
36 rezone of these properties from R-8 to R-4.
37

38 The impetus for this area-wide rezone appears to have commenced from the request of a single
39 property owner. Located within the Kenndale area is an approximately 3.4 acre parcel of land
40 known as the Kenndale Blueberry Farm. The property owner requested a rezone from
41 Resource Conservation (RC) to *either* R-4 or R-8, asserting that the farm is currently spot zoned;
42 the current RC zoning has failed to protect it from incompatible land use changes in the
43 surrounding area; the Comprehensive Plan Vision directs development at higher density than
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³ Any future reference to the Index shall be to the 2nd Amended Index received by the Board on April 12, 2007.

1 allowable within the RC zone; and land use changes in the surrounding area has affected the
2 viability and continued operation of the farm as a business. Index 53, City’s Exhibit 5.
3

4 Based on this request, the City determined that the rezone of a single parcel of property did not
5 make sense and expanded the rezone to include a larger portion of the Kennydale Area
6 (approximately 49 acres – “Upper Kennydale Area”). This expansion was based not only on the
7 Blueberry Farm but on concerns expressed to the City by area residents in regard to the pressure
8 of more intense development occurring within the area. Index 53, City’s Exhibit 5; Index 128,
9 City’s Exhibit 8 at 4. At the time the City took this amendment under consideration, this area of
10 the City was designated Residential Single Family (RSF) with R-8 zoning and a proposal was
11 put forth to re-designate the area Low Density Residential (LDR) with R-4 zoning.⁴ *Id.* The
12 City based its decision to rezone the Upper Kennydale Area, in part, on the fact that R-4 zoning
13 did not exist when the area was originally designated R-8; the natural features of the land (steep
14 slopes, wetlands, Class 4 stream); the adverse impacts of recent R-8 level development; and the
15 historic large lot estate-style development pattern; R-4 zoning would serve to better preserve and
16 protect the area. *Id.*
17
18

19 • Motion to Dismiss
20

21 The City moved to dismiss Petitioners entire PFR on jurisdictional grounds, or in the alternative,
22 for the Board to dismiss Legal Issue No. 10 (SEPA) and to issue a final disposition on Legal
23 Issue Nos. 1 and 2 (notice and public participation). Motion to Dismiss at 1. With its Motion,
24 the City argues four points:
25

- 26 1. The issue is moot and the Board cannot provide the relief the Petitioner seeks.
- 27 2. The Petitioners are time barred from challenging Ordinance 5228⁵ and issues pertaining
28 to comprehensive plan amendments.
- 29 3. The Board lacks jurisdiction to hear SEPA challenges for which the Petitioners failed to
30 exhaust administrative remedies and establish standing.
- 31 4. The City can demonstrate that it provided adequate notice and substantial opportunity for
32 public participation.
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38 *Id.* at 8.
39

40 • Motion to Supplement the Record
41

42 Within their Response, Petitioners moved to supplement the Record with several items:
43
44

45 _____
46 ⁴ RSF and LDR are both land use designations under the City’s Comprehensive Plan’s Land Use Element. These
47 land use designations are supported by a variety of zoning designations, as set forth in the Land Use Element, but do
48 not actually assign specific zoning to a parcel of land.

49 ⁵ Ordinance 5228 was passed by the City County on November 27, 2006 and published on December 1, 2006. This
50 ordinance amended certain sections of the Capital Facilities, Community Design, Transportation, and Land Use
Elements and the Land Use Map of the City’s Comprehensive Plan. Motion to Dismiss, City Exhibit 17; Index 245.

1 Petitioners' Exhibit 1 – Declaration of John Cowan, dated April 4, 2007
2 Petitioners' Exhibit 29 – City of Renton Policy & Procedure for Ordinance, Resolutions,
3 and Contracts, effective date January 27, 1992⁶

4 Petitioners' Response at 3, fn. 3; at 17, fn. 10.
5

6 The City objected to the inclusion of the Cowan Declaration asserting that the document does not
7 satisfy the criteria of WAC 242-02-520 for supplemental material nor can the Board take official
8 notice of the declaration (citing *Vashon-Maury v. King County/Quadrant*, CPSGMHB Case No.
9 95-3-0008c (Order on Motions, 4/4/00) at 4). *City's Rebuttal* at 2-3.
10

11
12 • Motion to Strike
13

14 After filing its Motion to Dismiss, the City submitted "Attachment D- Ordinance 5228" to the
15 Board, stating that although it was referenced in its Motion to Dismiss, the City had
16 inadvertently omitted it as an attachment in Exhibit 17 (Index 245). Subsequent to the filing of
17 all briefs in the Board's motions practice, the Petitioners' moved to strike Attachment D to
18 Ordinance 5228. Motion to Strike at 1. Petitioners argue that Attachment D is not part of
19 Ordinance 5228, asserting that the ordinance consists only of the 3 pages certified by the City
20 Clerk. *Id.* at 1-3. With their motion, Petitioners seek to submit two Declarations in support of
21 the motion:
22

23
24 Cave Declaration, including 2 attachments
25 Gendler Declaration, including 2 attachments
26

27 In reply, the City argues that Ordinance 5228 incorporates by reference Attachments A through
28 E and therefore Attachment D is, in fact, part of the ordinance. City's Reply at 2-3. The City
29 also requests that the Cave Declaration be stricken or given little weight. *Id.* at 4. With their
30 reply to this motion, the City seeks to submit two Declarations in support of its opposition to this
31 motion:
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33
34 City's Exhibit A – Walton Declaration (City Clerk for the City)
35 City's Exhibit B – Johnson Declaration (Record Management Specialist for the City)
36

37 Board Discussion
38

39 1. Motions to Supplement/Strike – All Parties
40

41 As noted *supra*, Petitioners seek to supplement the record with the Cowan Declaration, the Cave
42 Declaration, and the Gendler Declaration and, the City seeks to supplement the record with the
43 Walton Declaration and the Johnson Declaration. The Board has reviewed each of these and
44 determines the following:
45

46
47 • Declarations of Cave, Gendler, Walton, and Johnson
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49

50 ⁶ This document has been included by the City in the Amended Index as No. 344. See City's Reply at 8, fn. 10;
Amended Index, line item 344.

1 All three of these declarations pertain to the City's inclusion of Attachment D within the record.
2 The *Cave Declaration* speaks to Petitioner Cave's actions in response to the City's assertion that
3 Attachment D to Ordinance 5228 was erroneously omitted from Exhibit 17 to the City's Motion
4 to Dismiss. The *Gendler Declaration* addresses the City's submittal of Attachment D and a
5 review of the duties of the City Clerk. The *Walton* and *Johnson Declarations* set forth the
6 City's response to Petitioner Cave's request for certification of Ordinance 5228 during April
7 2007.
8

9
10 **The Board finds that Attachment D is incorporated by reference within Ordinance 5228**
11 **and is therefore already part of the Record.** Index 245, Section I at 2. The mere fact that the
12 City omitted it from the copies submitted to the Board as an exhibit to its motion does not
13 eradicate it as part of the record. The Board will not supplement the Record with declarations
14 that pertain to actions taken *after the adoption*⁷ of the challenged ordinance and relate to a
15 document which is unmistakably part of the Record.
16

17 **The Petitioners' Motion to Strike Attachment D from the Record is DENIED and the**
18 **declarations submitted by both the Petitioners (Cave and Gendler) and the City (Walton**
19 **and Johnson) will not be included within the Record of this matter.**
20

- 21 • *Cowan Declaration – Exhibit 1, Petitioners' Response*

22
23
24 This declaration recites Petitioner Cowan's experiences during the City's amendment process.
25 It speaks to his awareness and participation of meetings and public hearings held and to
26 communication with both council members and City staff. The declaration contains several
27 hearsay statements (e.g. "Ms. Lind told me ..." or "The City Attorney stated ..."). However,
28 unlike the declarations which the parties submitted with the Motion to Strike, all of the
29 information within this declaration relates to activity occurring prior to the adoption of
30 Ordinance 5234. Nevertheless, all of the information contained within this declaration has not
31 been supported by evidence contained within the Record. The information/arguments contained
32 within this declaration can be presented to the Board within the Petitioner's opening brief and
33 will need to be supported by the Record.
34

35
36 **The Petitioners' request to supplement the Record with the Cowan Declaration is**
37 **DENIED.**
38

39 2. City's Motion to Dismiss Legal Issue 10 - SEPA

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41 The City argues, and the Petitioners concede, that the Petitioners did not timely appeal the City's
42 SEPA Determination of Non-Significance (DNS) and that the SEPA issue should be dismissed.
43 Motion to Dismiss at 13; Petitioners' Response at 2.
44

45 **The City's motion to dismiss Legal Issue No. 10 is GRANTED.**
46

47 3. City's Motion to Dismiss PFR - Mootness & Requested Relief

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49
50 ⁷ The Board's decision is to be based on the record developed by the a jurisdiction *in taking the action* that is the
subject of review by the Board (WAC 242-02-540) and not in actions that occurred subsequent to the action.

1 The City argues that absent a finding of compelling considerations of public policy, the Board
2 should find that the issues presented by the Petitioners, based on Ordinance 5234, are moot and
3 dismiss the PFR in its entirety. *Id.* at 8-9 (citing *Hayes v. Kitsap County*, CPSGMHB Case No.
4 95-3-0081c (April 23, 1996), Order Granting Dismissal at 3)). The basis for the City’s argument
5 is the following:
6

7 Petitioners seek to invalidate Ordinance 5234. Assuming *arguendo* that the Board
8 finds that the City violated provisions of the GMA [and 5234 is invalid], the
9 Board’s recourse would then be to remand the ordinance back to the City to begin
10 new proceedings. Assuming further that the City then undertakes the process
11 anew, the end result remains unchanged.
12

13
14 *Id.* at 9. In addition, the City argues that an unchallenged ordinance - Ordinance 5228 -
15 designates the Upper Kenndale area as Residential Low Density with permits only three
16 applicable zoning designations – R-4, R-1, and RC. *Id.* at 9, fn. 13. According to the City, the
17 highest zoning possible is R-4 and therefore, because of the limitation on zoning, the City asserts
18 that the remedy the Petitioners seek (which the City asserts is “higher zoning based on personal
19 economic gain”) would not be available from the Board. *Id.*
20

21 In response, the Petitioners allege that the City is essentially requesting the Board issue an
22 advisory opinion in regard to any remedial actions that the City may enact. Petitioners’
23 Response at 11. Petitioners assert that the Board’s motion practice is generally limited to
24 questions of jurisdiction, standing, and timeliness and that a mootness argument is not the type of
25 jurisdictional argument for which the Board’s motion practice is provided. *Id.* at 11-12. In
26 addition, Petitioners argue that a variety of remedies are available to both them and the City to
27 cure the issues presented by this appeal. *Id.* at 13-14.
28

29
30 In reply, the City alleges that the Petitioners have failed to present any evidence or support their
31 claim and that it is the Petitioners, and not the City, seeking an advisory opinion. City’s Reply at
32 4.
33

34 *Board Discussion*

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36 The Board has previously applied the doctrine of mootness to questions posed to it. In general,
37 the only time mootness has been found to be applicable is when a jurisdiction has repealed the
38 ordinance being challenged and therefore there is no *currently effective* legislative action to
39 challenge. See *McVittie et al v. Snohomish County*, CPSGMHB Case No. 99-3-0016c (FDO,
40 Feb. 9, 2000) at 14; *Gawenka et al v. Bremerton*, CPSGMHB Case No. 00-3-0011, (OoM, Oct.
41 10, 2000) at 3; *Kent Cares et al v. Kent*, CPSGMHB Case No. 02-3-0019 (OoM, March 3, 2003)
42 at 8; *Giba et al v. Burien*, CPSGMHB Case No. 06-3-0008 (OoM, April 17, 2006) at 3. In this
43 case, the City has not repealed the challenged ordinance – Ordinance 5234 – and it was therefore
44 open to a timely challenge by the Petitioners. Contrary to the City’s assertion, the remedy the
45 Petitioners seek from the Board is not the rezone of their property but rather a finding of non-
46 compliance and a determination of invalidity. See PFR, Section VII. This relief is available
47 from the Board subject to a finding that the City’s actions were clearly erroneous.
48
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50 **The City’s motion to dismiss the petition on the basis of mootness is DENIED.**

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3 4. City's Motion to Dismiss Legal Issue Nos. 3, 4, 5, 6, 7, 8, and 9 - Ordinance 5228
4

5 The City argues that the Petitioners did not challenge the correct ordinance - Ordinance 5228 -
6 and are now time barred from asserting any challenge to the City's land use designation enacted
7 with this ordinance. Motion to Dismiss at 10. According to the City, Ordinance 5228 amended
8 the City's Comprehensive Plan, including the Land Use Map, and Ordinance 5234 implemented
9 this amendment by rezoning properties to be consistent with the land use designations assigned
10 by Ordinance 5228. *Id.*; Index 245 (Exhibit 17); Index 343 (Exhibit 18). The City asserts that
11 Petitioners' Legal Issue Nos. 3 through 9 "deal with aspects which directly correlate to the
12 unchallenged Ordinance 5228, not 5234 which [the Petitioners] challenged" and therefore should
13 be dismissed. *Id.* at 11.
14

15
16 In response, the Petitioners argue that they "can prevail whether or not their petition includes a
17 challenge to [Ordinance 5228] ... [and] the petition for review did include a challenge to a
18 Comprehensive Plan amendment [but that Petitioners] were not able to identify a separate
19 amendment by ordinance number due to the City's inadequate and confusing public notices."
20 Petitioners' Response at 1-2. The Petitioners request that because of these procedural
21 inadequacies the Board should allow Petitioners "a reasonable amount of time ... to amend their
22 petition to identify by ordinance number the comprehensive plan amendment ordinance
23 identified in the City's motion." *Id.* at 2, fn. 1, 19.
24

25
26 In reply, the City points out the Petitioners' argument, in regard to timeliness, is in direct conflict
27 with the GMA's 60-day appeal timeline. City's Reply at 5. The City further argues that without
28 a timely challenge to Ordinance 5228 the Board lacks jurisdiction to review subsequent attacks
29 to that ordinance and must conclude that Ordinance 5234 complies with the GMA. *Id.* at 7-8.
30

31 *Board Discussion*
32

33 The two ordinances at issue – Ordinance 5228 and 5234 - were both adopted on November 27,
34 2006 and were jointly published, in summary format, on December 1, 2006. Index 342 (City's
35 Exhibit 12).
36

37 ORDINANCE 5228: An ordinance of the City of Renton, Washington, adopting
38 the 2006 amendments to the City's 2004 Comprehensive Plan, Maps, and Data in
39 conjunction therewith...
40

41 ORDINANCE 5234: An ordinance of the City of Renton, Washington, changing
42 the zoning classification of certain property within the City of Renton (Upper
43 Kennydale Area) from [R-8 to R-4] zoning...
44

45
46 It is undisputed that the Petitioners did not specifically challenge Ordinance 5228. However, in
47 conceding that their petition failed to cite Ordinance 5228, Petitioners assert that their issue
48 statements "did include a challenge to a Comprehensive Plan amendment" thereby including, by
49 inference, the unchallenged ordinance within each legal issue presented.
50

1 Although the Petitioners' Legal Issue 6 does make a generic reference to a comprehensive plan
2 amendment, Section III of the PFR clearly states: "[T]his petition challenges Renton City
3 Ordinance No. 5234" and the Petitioners attached that ordinance as an exhibit. PFR at 2. No
4 specific reference was made to any other ordinance or legislative action. Even though each and
5 every issue statement does not need to specifically reference the challenged ordinance or
6 resolution - so long as the challenged action is cited within the PFR - in order for the Board to
7 review an action by a jurisdiction, it must know *what legislative action it is that a petitioner*
8 *complains of* and therefore, *the PFR must specifically reference the legislative action* – whether
9 it be an ordinance or a resolution.
10

11 In regard to the Petitioners' request that they should be permitted to amend their PFR, the Board
12 notes that the GMA mandates that a jurisdiction's actions be challenged within 60 days of
13 publication. RCW 36.70A.290(2). To grant the Petitioners' request would be in direct violation
14 of .290(2). In addition, the Board finds that not only was Ordinance 5228 adopted and published
15 concurrently with the challenged ordinance but that CPSGMHB Case No. 07-3-0011 *Petersen v.*
16 *City of Renton*, which was to be consolidated with this matter, *did challenge* Ordinance 5228 and
17 Petitioners had the opportunity to review the ordinance in order to determine if it should be
18 included within their challenge prior to the PHC.
19

20
21 **The Board concludes that the Petitioners' PFR did not specifically challenge Ordinance**
22 **5228 within their PFR and, pursuant to 36.70A.290(2), are time barred from raising a**
23 **challenge to that ordinance now. Therefore, the Petitioners' request to amend their PFR to**
24 **include this ordinance is DENIED.**
25

26 As the noted *supra*, the Petitioners did not challenge Ordinance 5228 and are not allowed to raise
27 any challenges based on this ordinance. However, despite the City's assertion to the contrary,
28 this does not preclude the Petitioners from arguing that the City's adoption of Ordinance 5234
29 violates the provisions of the GMA as stated within their legal issues.
30

31 **The City's motion to dismiss Legal Issue Nos. 3 through 9 is DENIED.**
32

33 5. City's Motion for Final Disposition – Legal Issue Nos. 1 and 2 - Notice and Public
34 Participation
35

36 The City seeks a final disposition on Legal Issue Nos. 1 and 2, asserting that the Record clearly
37 shows substantial and adequate notice along with opportunity for public participation. Motion to
38 Dismiss at 1.
39

40 In response, the Petitioners note that the Board generally limits its motion practice to questions
41 of jurisdiction, standing, and timeliness but has considered dispositive motions on public notice
42 procedures only when the "evidence relevant to the challenge is limited." Petitioners' Response
43 at 2-3 (citing WAC 242-02-530(6)). The Petitioners argue that the evidence in this matter is
44 substantial and includes numerous public notices, minutes, and documents. *Id.* at 3. According
45 to the Petitioners, given the evidence in the Record and the fact that public participation is "the
46 GMA's most cherished planning goals" the issuance of a final decision in the City's favor at this
47 point in time is not warranted. *Id.*
48
49
50

1 In reply, the City reiterates its assertion that it has complied with the notice and public
2 participation requirements of the GMA for the public as a whole and a final disposition should be
3 granted. City's Rebuttal at 8-9.
4

5 *Board Discussion*
6

7 WAC 242-02-530 provides that a party may bring a dispositive motion pertaining to notice and
8 public participation. WAC 242-02-530(6) provides:
9

10 Any party may bring *a motion for the board to decide a challenge to compliance*
11 *with the notice and public participation requirements* of the act raised in the
12 petition for review, provided that the evidence relevant to the challenge is limited.
13 If such a motion is timely brought, the presiding officer or the board shall
14 determine whether to decide the notice and public participation issue(s) on motion
15 or whether to continue those issues to the hearing on the merits.
16

17 As the Petitioners correctly note, the Record for this matter is voluminous and the City had not
18 adequately provided the Board with specific documentation to support its assertion that it
19 complied with all aspects of the GMA's notice and public participation requirements throughout
20 the adoption process for Ordinance 5234. Therefore, pursuant to WAC 242-02-530(6), the
21 Board will reserve the final determination of Legal Issue Nos. 1 and 2 for the Hearing on the
22 Merits. The parties will brief these issues in their pre-hearing briefs.
23
24

25 **III. ORDER**
26

27 Based upon review of the GMA, Board's Rules of Practice and Procedure, briefing and exhibits
28 submitted by the parties, case law and prior decisions of this Board, and having deliberated on
29 the matter, the Board enters the following ORDER:
30

- 31 1. Legal Issue No. 10 is DISMISSED.
- 32
- 33 2. The City's Motion to Dismiss Legal Issue Nos. 3, 4, 5, 6, 7, 8, and 9 is DENIED.
34
- 35 3. The City's Motion to Dismiss any challenges to or arguments asserting Ordinance
36 5228 does not comply with the GMA is GRANTED.
37
- 38 4. The City's Motion for to Dismiss the PFR in its entirety based on mootness is
39 DENIED.
40
- 41 5. The City's Motion to Supplement the Record with the Walton Declaration and
42 Johnson Declaration is DENIED.
43
- 44 6. The City's Motion for Final Disposition of Legal Issue Nos. 1 and 2 is DENIED.
45 As provided in WAC 242-02-530(6), the Board continues the final determination
46 of these legal issues the Hearing on the Merits. The parties will brief Legal Issue
47 Nos. 1 and 2 in their pre-hearing briefs.
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- 49 7. The Petitioner's Motion to Strike "Attachment D" is DENIED.
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- 8. The Petitioners' Motion to Amend the PFR to include a challenge to Ordinance 5228 is DENIED.

- 9. The Petitioner's Motion to Supplement the Record with the Cowan Declaration, Cave Declaration, and Gendler Declaration is DENIED.

So ORDERED this 30th day of April, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire
Board Member

David O. Earling
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.