

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

SUQUAMISH TRIBE, KITSAP CITIZENS)	Case No. 07-3-0019c
FOR RESPONSIBLE PLANNING and)	
JERRY HARLESS,)	
)	<i>(Suquamish II)</i>
Petitioners,)	
)	
PORT GAMBLE S' KLALLAM TRIBE)	
)	
Interveners,)	ORDER ON MOTION
)	FOR RECONSIDERATION
v.)	
)	
KITSAP COUNTY,)	
)	
Respondent.)	
)	

I. PROCEDURAL HISTORY

On August 15, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Final Decision and Order” (**FDO**) in the above-captioned matter.

On August 24, 2007, the Board received “Petitioners’ Request for Reconsideration” (**Suquamish Motion**) filed pursuant to WAC 242-02-832(2)(a).¹ Petitioners’ motion was timely filed.

On August 30, 2007, the Board issued an “Order Requesting Answer to Petitioners’ Request for Reconsideration” (**Board Order**).²

Via e-mail communications, the County asserted that it had not received the Petitioners’ Motion. The affidavit of service attached to the Petitioners’ Motion indicated that mail service was provided. The Board provided an electronic copy of the Petitioners’ Motion to the County on August 30, 2007.

On September 6, 2007, the Board received “Respondent Kitsap County’s Response to Petitioners’ Motion for Reconsideration” (**Kitsap Answer**).

¹ Pursuant to WAC 242-02-832(1), any party may file a Motion for Reconsideration within 10 days of service of the Board’s final decision.

² WAC 242-02-832(1) provides that the Board may require a party to supply an answer.

II. MOTION FOR RECONSIDERATION

FDO and the Motion:

In the Board's FDO, the Board dismissed Petitioners' challenge to Kitsap County's selected urban densities and the County's land capacity analysis [Legal Issues 1 and 2]. FDO, at 10-17, and 64. Also in the FDO, the Board found that Kitsap County's Capital Facilities Element (CFE) did not comply with RCW 36.70A.070(3) and .020(12); the Board also invalidated the CFE, at Appendix A, because it did not demonstrate that adequate public facilities and services [sanitary sewer] would be available within the planning period, thereby interfering with the fulfillment of Goal 12. [Legal Issue 3]. FDO, at 17-27, and 63-65.

On reconsideration, Petitioners ask the Board to:

1. Find noncompliance and invalidate the County's expanded urban growth areas (UGAs) that are based upon the noncompliant and invalid capital facilities element. Petitioners assert that the CFE and Land Use Element, including UGAs, are "inextricably linked." Petitioners cite to prior Board cases discussing the "inextricable linkage" of these two elements - Legal Issue 3. Suquamish Motion, at 3-6.
2. Address arguments offered in briefing that challenged the County's Urban Densities – Legal Issue 1. *Id.* at 7-9.
3. Address argument offered in briefing that challenged the County's Land Capacity Analysis – Legal Issue 2. *Id.* at 9-12.

The County responds by asserting:

1. No matter how "inextricably linked" the Capital Facilities Element and Land Use Element are, Petitioners did not challenge the land use element in their Petition for Review. Therefore, the County contends the Board may not rule on the validity of the UGA expansions – Legal Issue 3. Kitsap Answer, at 12-14.
2. The Board has already addressed Petitioners' arguments challenging the County's Urban Densities and found them unpersuasive. Therefore, the Board need not entertain additional argument. *Id.* at 2-7.
3. The Board has already addressed Petitioners' arguments challenging the County's Land Capacity Analysis and found them unpersuasive. Therefore, the Board need not entertain additional argument. *Id.* at 7-11.

Board Discussion

A motion for reconsideration must be based on alleged material errors of procedures, misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the

hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-832(2)(a)-(c). With the motion presented, the Petitioners allege a misinterpretation of law pertaining to Legal Issues 1, 2 and 3.

Regarding Legal Issue 1 [Urban Densities] and Legal Issue 2 [Land Capacity Analysis], the Board has reviewed the August 15, 2007 FDO, the Suquamish Motion and the Kitsap Answer and agrees with Kitsap County. On Legal Issues 1 and 2, Petitioners simply reargue, or attempt to offer new argument pertaining to these Legal Issues. The Board remains unpersuaded on these issues and finds and concludes that it has not misinterpreted the law. Petitioners' request for reconsideration on Legal Issues 1 and 2 is **DENIED**.

Regarding Legal Issue 3 [Capital Facilities Element], the Board reaches a different conclusion. The Board notes that Petitioners challenged Ordinance No. 370-2006, the County's Plan Update Ordinance, which included the Land Use and Capital Facilities Elements, among others. Additionally, the County acknowledges that Petitioners' issues and briefing addressed the UGA boundaries and their expansion. Kitsap Answer, at 12. Further, the Board's discussion and analysis of the Capital Facilities Element was narrowed to the five UGA expansion areas and the entities that are responsible for providing sewer service to them. *See* FDO, at 20-27. In the FDO, the Board found that the Capital Facilities Element, Appendix A, pertaining to sanitary sewer service, was noncompliant with RCW 36.70A.070(3) and RCW 36.70A.020(12). *See* FDO, at 26-27. Additionally, the Board entered a determination of invalidity for the Capital Facilities Element, Appendix A, pertaining to sanitary sewer service, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12).

Petitioners are correct. Urban facilities and services must be adequate and available for the urban areas included within the County's UGAs – the Capital Facilities Element and Land Use Element are “inextricably linked.” *Bremerton v. Kitsap County (Bremerton)*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (Oct. 6, 1995), at 77; *West Seattle Defense Fund v. City of Seattle (WSDF)*, CPSGMHB Case No. 94-3-0016, Final Decision and Order, (Apr. 4, 1995, at 45; *Suquamish II v. Kitsap County (Suquamish II)*, CPSGMHB Case No. 07-3-0019c, Final Decision and Order, (Aug. 15, 2007), at 24.

If the Capital Facilities Element is found deficient, the UGAs, especially UGA expansions that will require urban services, will likewise be found deficient. Therefore, to avoid the possibility of proposals vesting within the UGA expansion areas lacking documented adequate and available public facilities and services, the Board finds that these UGA expansions do not comply with RCW 36.70A.020(12) and .110 and hereby enters a **determination of invalidity** for the Silverdale UGA expansion, Central Kitsap UGA expansion, West Bremerton UGA expansion, Gorst UGA expansion and the Port Orchard UGA expansion, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board **refines** its determination of invalidity for the County's Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be limited to those provisions dealing with those entities that allegedly provide sanitary

sewer service to these five UGA expansion areas – *i.e.* Kitsap County, Port Orchard and Bremerton.³ Petitioners’ request for reconsideration on Legal Issue 3 is **GRANTED**.

Conclusion

UGA expansions based upon a noncompliant, invalid Capital Facilities Element do not comply with the GMA’s directive that necessary and adequate public facilities and services be available within the UGA. The Capital Facilities Element and the Land Use Element, especially UGA expansions, are inextricably linked. *See Bremerton, WSDF and Suquamish II*. A UGA expansion cannot be sustained if there is no provision for public facilities and services being adequate and available to support the planned-for development. The Petitioners’ request for reconsideration is **GRANTED** and the five UGA expansions related to the noncompliant and invalid Capital Facilities Element are **invalid** for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12).

III. ORDER

Having reviewed the August 15, 2007 FDO, the Suquamish Motion for Reconsideration, the County’s Answer, 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 Suquamish Motion for Reconsideration pertaining to Legal Issues 1 and 2 [Urban Densities and Land Capacity Analysis] is **DENIED**.
2. The Suquamish Motion for Reconsideration pertaining to Legal Issue 3 [Capital Facilities Element] is **GRANTED**.
3. The Board hereby enters a **determination of invalidity** for the *Silverdale* UGA expansion, *Central Kitsap* UGA expansion, *West Bremerton* UGA expansion, *Gorst* UGA expansion and the *Port Orchard* UGA expansion, for substantially interfering with the fulfillment of Goal 12 – RCW 36.70A.020(12). Further, the Board refines its determination of invalidity for the County’s Capital Facilities Element, Appendix A, pertaining to sanitary sewers, to be limited to those provisions dealing with those entities (*i.e.* Kitsap County, Port Orchard and Bremerton) that allegedly provide sanitary sewer service to these five UGA expansion areas.

SO ORDERED this 13th day of September, 2007.

³ It is not clear which entity, if any, would be responsible for providing urban sanitary sewer service to the Gorst area.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire
Board Member

David O. Earling
Board Member

Margaret A Pageler
Board Member

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).