

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

COVINGTON GOLF COURSE, INC., d/b/a	)	
ELK RUN GOLF COURSE,	)	<b>Case No. 05-3-0049</b>
	)	
Petitioners,	)	<i>(Covington Golf)</i>
	)	
v.	)	<b>ORDER OF DISMISSAL</b>
	)	
CITY OF MAPLE VALLEY,	)	
	)	
Respondent.	)	
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**SYNOPSIS**

*In December, 2005, Covington Golf Course, Inc., d/b/a Elk Run Golf Course, challenged the City of Maple Valley's adoption of Ordinance No. 0-05-308, which amended and updated the Maple Valley Comprehensive Plan. Covington Golf objected to portions of the Plan that changed the designation of the golf course property from Residential to Park/Recreation/Open Space, and prohibited residential development on the golf course land.*

*The parties agreed to seek a series of 90-day settlement extensions while the City considered and processed amendments to its comprehensive plan and development regulations. The City adopted amendments November 26, 2007, in Ordinance No. 0-07-351.*

*The Board finds and concludes that Maple Valley Ordinance No. 0-07-351, specifically Section 5, amending Table A of MVMC 18.30.030, renders the Covington Golf dispute moot. The Petition for Review is **dismissed**.*

**I. BACKGROUND**

The complete procedural history of this matter is attached as Appendix A.

In brief, the Petition for Review in this matter, filed December 23, 2005, alleged that Maple Valley's Ordinance No. 0-05-308 was non-compliant with the GMA. During the subsequent two years, the City of Maple Valley considered and adopted changes to its Comprehensive Plan Land Use Map and zoning regulations, resulting in the enactment on November 26, 2007, of Ordinance No. 0-07-351. During these two years, the parties jointly made eight requests to the Board for 90-day settlement extensions, representing that the proposed legislative changes would resolve the Covington Golf dispute.

On January 18, 2008, Covington Golf filed a Petitioner's Status Report indicating that the City had enacted new legislation and that petitioners were seeking an interpretation of the ordinance from the city attorney. The Board requested a copy of the ordinance. On February 6, 2008, the Board received a copy of City of Maple Valley Ordinance No. 0-07-351, enacted December 4, 2007.

## **II. DISCUSSION**

Subsequent to the Board's review of the Petitioner's Status Report and ordinance O-07-351, the Board, sua sponte, questioned whether the original issue presented by the Petitioner remained. A petition challenging a city or county ordinance is moot if the challenged ordinance is subsequently repealed or expires, the objectionable provisions are amended, or the terms are replaced by a new ordinance. *Fallgatter VI v. City of Sultan*, CPSGMHB Case No. 07-3-0017, Final Decision and Order (July 9, 2007), at 7-8; *Giba v. City of Burien*, CPSGMHB Case No. 06-3-0008, Order of Dismissal (April 17, 2006), at 3; *Phoenix Development v. City of Woodinville*, CPSGMHB Case No. 07-3-0028c, Final Decision and Order (Oct. 12, 2007), at 8-12; *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0025 and 04-3-0012, Order of Dismissal (May 26, 2004).

Covington Golf challenged the provisions of Maple Valley Ordinance No. 0-05-308 which designated the property of the golf course PRO – Parks, Recreation, Open Space – and prohibited residential development in the PRO designation. Maple Valley has now enacted Ordinance No. 0-07-351, which allows residential development in the PRO designation. Section 5 of the ordinance amends MVMC 18.30.030 “Allowed uses by zoning district – Residential.” Table A indicates that single family, factory built and townhome dwellings are permitted in the PRO zone. Section B.13 specifies: “Single family and townhouse residential developments are allowed as accessory uses in the PRO zones....” The Table and Specific Requirements of Section 5 of Ordinance No. 0-07-351 are attached to this Order as Appendix B.

The regulations objected to in this case have been replaced, and the present matter is **moot**. Case No. 05-3-0049 is **dismissed**.<sup>1</sup>

## **III. ORDER**

Based upon review of Maple Valley Ordinance No. 0-07-351, the GMA, prior orders of the Board and of the courts, the Board enters the following ORDER:

- The City's adoption of Ordinance No. 0-07-351 renders the Petition for Review of Ordinance No. 0-05-380 **moot**.

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<sup>1</sup> Because the regulations in the new ordinance replaced the prior provisions, any objection by Covington Golf to the new regulations would require a new Petition for Review challenging the new ordinance.

- The matter of *Covington Golf Course, Inc., v. City of Maple Valley*, CPSGMHB Case No. 05-3-0049 is **dismissed**.
- All further scheduled hearings on this matter are **cancelled** and the case is **closed**.

So ORDERED this 7th day of February, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling  
Board Member

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Edward G. McGuire, AICP  
Board Member

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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.<sup>2</sup>

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<sup>2</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

**APPENDIX A –  
Chronology of Procedures in CPSGMHB Case No. 05-3-0049**

On December 23, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Covington Golf Course, Inc., d/b/a/ Elk Run Golf Course (**Petitioner** or **Covington Golf**). The matter was assigned Case No. 05-3-0049, and is hereafter referred to as *Covington Golf/Elk Run v. City of Maple Valley*. Board member Margaret Pageler is the Presiding Officer for this matter. Petitioner challenges the City of Maple Valley’s (**Respondent** or **City**) adoption of Ordinance No. 0-05-308, which amended and updated the Maple Valley Comprehensive Plan. Petitioner alleges that portions of the Plan Update changing the designation of the golf course property from Residential to Park/Recreation/Open Space, are noncompliant with the Growth Management Act (**GMA** or **Act**).

The Prehearing Conference (**PHC**) was convened on January 26, 2006, at the Board’s Offices, with Board members Margaret Pageler, Ed McGuire and Bruce Laing<sup>3</sup> in attendance. Jane Ryan Koler represented Petitioner, and Bruce Disend represented Respondent. At the PHC the parties indicated that the Maple Valley City Council is expected to consider amendments to its development regulations which may resolve some or all of Petitioner’s issues. Immediately following adjournment of the PHC, the parties jointly executed a Motion to Extend Date for Hearing, requesting a 90-day extension for settlement negotiations.

On January 27, 2006, the Board issued its “Prehearing Order and Order Granting Settlement Extension” extending the case schedule by 90 days and requiring a Petitioner’s status report on settlement discussions by April 27, 2006.

On April 27, 2006, the Board received Petitioner’s status report indicating that legislation currently under consideration by the City of Maple Valley has the potential to resolve the issues in dispute in this case and that the City concurs in the request for extension of the period for settlement. Accordingly, on April 28, 2006, the Board issued an Order Granting Second Settlement Extension, extending the case schedule by 90 days and requiring a Petitioner’s status report on July 26, 2006.

On July 26, 2006, the Board received Petitioner’s Status Report setting out the progress of the proposed legislation and indicating that the likely date for resolution of the matter is no sooner than February, 2007. On July 28, 2006, the Board issued its Order Granting Third Settlement Extension, extending the case schedule by 90 days and requiring a Petitioner’s status report on October 26, 2006.

On October 24, 2006, the Board received Petitioner’s Status Report and Request for a Settlement Extension and Revision of Schedule. Petitioner again states that the issues in this case will be resolved when the City of Maple Valley adopts a new zoning ordinance

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<sup>3</sup> Bruce Laing has retired and David O. Earling has been appointed to the Board.

which is under consideration but is unlikely to be finalized within the next ninety days. Accordingly, on October 25, 2006, the Board issued its Order Granting Fourth Settlement Extension, extending the case schedule by ninety days, and requiring a Petitioner's status report by January 24, 2007.

On January 24, 2007, the Board received Petitioner's Status Report and Request for a Settlement Extension and Revision of Schedule. Petitioner states that the Council is considering legislation which, if approval is recommended in February or March of 2007, must be forwarded to CTED for a 60-day review period prior to final adoption. On January 25, 2007, the Board issued its Order Granting Fifth Settlement Extension, extending the case schedule by 90 days and requiring a Petitioner's status report by April 24, 2007.

On May 7, 2007, the Board received Petitioner's Request for Extension of Date for Filing Status Report requesting that the date be extended to May 8, 2007. On May 8, 2007, the Board received Petitioner's Status Report and Request for the Settlement Extension and Revision of Schedule, indicating that the City of Maple Valley is in the process of adopting a new zoning code that is likely to resolve the matter disputed in the PFR. However, the zoning code may not be adopted and reviewed by CTED prior to September or October of 2007. On May 10, 2007, the Board issued its Order Granting Sixth Settlement Extension, requiring a Petitioner's status report by July 24, 2007.

On July 24, 2007, the Board received Petitioner's Status Report and Request for a Settlement Extension and Revision of Schedule, stating that the City's rezone ordinance has now been submitted to CTED for comment. On July 24, 2007, the Board issued its Order Granting Seventh Settlement Extension, requiring a Petitioner's status report by October 22, 2007.

On October 22, 2007, the Board received Petitioner's Status Report and Request for a Settlement Extension and Revision of Schedule. Petitioner indicated that the rezone ordinance at issue has been sent to CTED, the CTED comment period has expired, and the ordinance is expected to be scheduled before the Maple Valley City Council on December 10, 2007. Adoption of the ordinance would resolve the matters at issue in Petitioner's appeal. On October 23, 2007, the Board issued its Order Granting Eighth Settlement Extension and Amending Case Schedule.

On January 18, 2008, Covington Golf filed a Petitioner's Status Report indicating that the City had enacted new legislation and that petitioners were seeking an interpretation of the ordinance from the city attorney and would file an updated report in a week. The Board did not receive an updated report. The Board then requested a copy of the ordinance. On February 6, 2008, the Board received a copy of City of Maple Valley Ordinance No. 0-07-351, enacted December 4, 2007.

**APPENDIX B**

**Section 5, City of Maple Valley, Washington  
Ordinance No. O-07-351**

Section 5. Amendment. MVMC 18.30.030 is hereby amended to read as follows:

**MVMC 18.30.030 Allowed uses by zoning district – Residential.**

A. Table.

USE	ZONING DISTRICT										
	R-4/6	R-8	R-12	R-18/24	O	NB	CB	MU <sup>2, 11</sup>	BP	PUB	PRO
Dwelling, Single Family	P	P <sup>12</sup>	P <sup>12</sup>	P <sup>12</sup>				P			P <sup>13</sup>
Factory-Built Home	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>							P <sup>1, 13</sup>
Townhouse	C <sup>4</sup>	P	P	P				P			P <sup>4, 13</sup>
Group Home	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>			P <sup>3</sup>			
Bed and Breakfast	C <sup>5</sup>	C <sup>5</sup>	C <sup>5</sup>	C <sup>5</sup>				C <sup>5</sup>			
Dwelling, Multiple Family		C	P	P	P <sup>6</sup>	P <sup>6</sup>	P <sup>6</sup>	P			
Retirement Home			P	P				P			
Senior Assisted Housing	P <sup>3</sup>	P <sup>3, 14</sup>	P <sup>3, 14</sup>	P <sup>3</sup>				P <sup>3</sup>	P <sup>3, 14</sup>		
Nursing Home	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>				P <sup>3</sup>	P <sup>3</sup>		
Hotel/Motel					P		P	P			
Home Occupation	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>	A <sup>7</sup>				A <sup>7</sup>			
Accessory Dwelling Unit	A <sup>8</sup>	A <sup>8</sup>	A <sup>8</sup>	A <sup>8</sup>				A <sup>8</sup>			
Caretaker Dwelling Unit					A <sup>9</sup>	A <sup>9</sup>	A <sup>9</sup>	A <sup>9</sup>	A <sup>9</sup>	A <sup>9</sup>	A <sup>9</sup>
Animals	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>	A <sup>10</sup>		

B. Specific Requirements.

1. Mobile, manufactured and modular homes shall be subject to the following development standards:

a. The home comprises at least one 14-foot-wide by 60-foot-long section or two parallel sections each of not less than 12 feet wide by 36 feet long;

b. The home must be placed on a permanent foundation similar to that required of other residential construction;

c. The home was originally constructed with and now has a pitched roof with a slope no less than three-inch rise to 12-inch run, and the roof must be an integral part of the home and shall be made of either composition, shakes or shingles (wood or metal);

d. The home has exterior siding similar in appearance to siding materials commonly used on conventional site-built single-family residences;

e. All requirements of this title and other applicable regulations must be met.

2. Subject to the multiple use regulations.

3. Group homes, senior assisted living homes and nursing homes shall be subject to the following development standards:

a. The home shall be limited to individuals who need special care due to sensory, mental, or physical disabilities and who are considered handicapped or who are otherwise within the scope of Title 42 USC, Section 3602;

b. The home shall be licensed by an appropriate agency of the State;

c. The home shall conform to the development standards of this code applicable to other residential uses in the zone in which it is located; and

d. Off-street parking spaces meeting the requirements of this code shall be provided.

4. Townhouse units located within the R-4, R-6 and PRO zones as applicable shall be limited to no more than 50% of the total units within a development and limited to buildings with no more than four attached units. A Conditional Use Permit is not required for townhouse units on lots in a subdivision designed and designated for townhouse units.

5. Bed and breakfasts shall meet the following development standards:

a. The facility must serve as an accessory use to the permanent residence of the operator;

b. The only meal to be provided to guests shall be breakfast and it shall only be served to guests taking lodging in the facility;

c. Guest rooms shall be limited to three or fewer;

d. Length of stay shall be no longer than two consecutive weeks; and

e. Adequate off-street parking of one space for each guest room plus the required minimum two spaces for the residence shall be provided, and the parking shall not be in the required front yard unless it is screened from the street with at least Type I landscaping and is compatible with the surrounding neighborhood.

6. Residential uses allowed as a part of a development at second story and above only in the Office, Community Business and Neighborhood Business zoning districts.

7. Home occupations shall be subject to the following restrictions:

a. The total area devoted to all home occupation(s) shall not exceed 20 percent of the floor area of the total dwelling unit;

b. There shall be no visible permanent change in the appearance of the dwelling unit, such as signs, lighting, exterior display, or permanent (longer than 60 days) unscreened outdoor storage of material or equipment, which would attract attention to the home occupation conducted therein;

c. No more than one nonresident shall be employed on-site by the home occupation(s);

d. The following activities shall be prohibited:

i. Automobile, truck and heavy equipment repair;

ii. Auto body work or painting;

iii. Parking and storage of heavy equipment; and

iv. Storage of building materials for use on other properties;

e. The home occupation(s) shall not generate pedestrian traffic or vehicular traffic or parking demand unreasonable for the district or neighborhood in which it is located;

f. In addition to required parking for the dwelling unit, on-site parking shall be provided as follows:

i. One stall for a nonresident employed on-site by the home occupation(s); and

ii. Minimum one additional stall for patrons when services are rendered on-site; and to prevent visual and traffic impacts, the home occupation may use or store no more than one vehicle for the pickup of materials used by the home occupation or the distribution of products from the site;

g. The home occupation(s) shall not use equipment or processes which generate noise, vibration, dust, glare, fumes, odors, radio/television/electrical interference, fire hazards, or any other nuisance-like effect to any greater or more frequent extent than that which is normal to the district or neighborhood in which it is located.

8. Accessory dwelling units shall comply with the following development standards:

- a. Only one accessory dwelling shall be permitted per lot;
- b. The accessory dwelling must be in the same building as the principal residence when the lot is less than 10,000 square feet in area;
- c. The primary residence or the accessory dwelling unit shall be owner-occupied;
- d. The accessory dwelling unit shall not be larger than 50 percent of the living area of the primary residence;
- e. At least one additional off-street parking space shall be provided; and
- f. The accessory dwelling unit shall be converted to another permitted use or shall be removed if one of the dwelling units ceases to be owner-occupied.

9. Caretaker units may be allowed, subject to the following restrictions:

- a. Only one caretaker dwelling unit shall be permitted for each primary use or multitenant building;
- b. At least one additional off-street parking space shall be provided; and
- c. The caretaker dwelling unit may only be occupied by a watchman, custodian, manager, or property owner for the subject property.

10. Animals may be kept as an accessory to a residential use in accordance with animal control regulations and subject to the following conditions:

- a. Small Animals.
  - i. Small animals kept indoors as household pets shall not be limited in number.
  - ii. Small animals kept outdoors shall be limited to five, unless the resident obtains a hobby kennel license from King County Animal Control.
  - iii. Structures for the keeping of small animals outdoors such as aviaries, apiaries, kennels, runs, cages, etc., shall be set back from property lines a minimum of 10 feet.
- b. Large Animals.
  - i. Large animals are limited to one per each one-half acre of property.
  - ii. Enclosures or structures for the housing of large animals shall be set back from property lines a minimum of 20 feet.
  - iii. Large animals not kept within enclosures shall be restricted to roaming areas which are set back a minimum of 10 feet from property lines.
  - iv. The keeping of large animals on properties containing streams, wetlands, shorelines or other protected water sources shall be in compliance with critical area requirements.

11. Any conditional use in the multiple use zone shall be considered a permitted use if submitted and approved with the original Multiple Use Master Permit application. Any conditional use proposed as an amendment to a Multiple Use Master Permit will require a Conditional Use Permit review.

12. Single-family detached development in Multifamily zones (R-8 through R-24) shall be subject to the development standards applicable to single-family detached development in the R-6 zone.

13. Single-family and townhouse residential developments are allowed as accessory uses in the PRO zones:

- i. When utilizing less than 50 percent of the amount of land area dedicated toward the primary recreational use.
- ii. At a maximum density of one dwelling unit per gross acre.
- iii. Subject to the development standards set forth in Chapter 18.40 MVMC for single-family development in the R-4 zone;

14. Density may be calculated at the rate of 0.5 dwelling units per senior assisted housing unit. To qualify for this density calculation, and as a condition of development permit approval, the applicant must record with the King County Assessor a covenant that runs with the land stating that the building(s) will be used for senior assisted living housing. This covenant shall not be released without the express written approval of the City of Maple Valley. Prior to releasing the covenant, the City shall determine that the intended use of the property meets density requirements for the current zoning of the property.

Section 6. Amendment. MVMC 18.30.040 is hereby amended to read as follows:

**18.30.040 Allowed uses by zoning district – Commercial**

A. Table.

USE	ZONING DISTRICT										
	R-4/6	R-8	R-12	R-18/24	O <sub>3</sub> <sup>1</sup>	NB <sup>4,8,11,23</sup>	CB <sup>9</sup>	MU <sup>5</sup>	BP	PUB	PRO
Adult Entertainment/Facility									P <sup>1</sup>		
Family Child Care Home	P	P	P	P	P		P	P			
Car Wash						C <sup>22</sup>			P <sup>15</sup>		
Child Day Care/Adult Day Care	C	C	C	C	P	P	P	P	A <sup>6</sup>		
Eating/Drinking Establishment					A <sup>3</sup>	P	P	P <sup>11</sup>	A <sup>6</sup>		A <sup>24</sup>
Fueling Station – Retail						C <sup>21</sup>			P <sup>7, 16</sup>		
Fueling Station – Commercial									P <sup>7, 17</sup>		
Funeral Home							P	P			
Medical/Dental Clinic					P	P	P	P	P <sup>6</sup>		
Veterinary Clinic					P	P <sup>20</sup>	P	P	P <sup>6</sup>		
USE	ZONING DISTRICT										