CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

STEPHEN W. COSSALMAN, CHARLES K. McTEE, ARLEN PARANTO and STEVEN VAN CLEVE,	)	**CPSGMHB Case No. 05-3-0032**
	)	***(Cossalman/VanCleve)***
Petitioners,	)	
v.	)	
TOWN OF EATONVILLE,	)	**ORDER ON MOTIONS**
Respondent.	)	

I. BACKGROUND

On March 29, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Stephen W. Cossalman, Charles K. McTee, Arlen Paranto and Steven Van Cleve (**Petitioners** or **Cossalman**). The matter was assigned Case No. 05-3-0028. Edward G. McGuire is the presiding officer (**PO**) in this matter. Petitioners challenge the Town of Eatonville's (**Respondent** or **Eatonville**) failure to act in reviewing, evaluating and updating its comprehensive plan and development regulations as required by the Growth Management Act (**GMA** or **Act**), and the adoption of Resolution 2005-O, declaring certain lands surplus and authorizing their sale.

On April 8, 2005, the Board issued a "Notice of Hearing" (**NOH**) in the above-captioned case. On May 9, 2005, the Board conducted the prehearing conference, and on May 13, 2005, the Board issued its "Prehearing Order and Order of Segregation" (**PHO**). The PHO established the final schedule for the case.

On May 16, 2005, at the PHC, the Board received the Town of Eatonville's "Index of Record."

On May 23, 2005, the Board received Respondent's "Motion to Supplement the Record" that included "Revised Index of the Record," noting 35 items (**Amended Index**). On the same day, the Board also received "Respondent's Motion to Dismiss" (**Town Motion – Dismiss**).

On May 26, 2005, the Board received Petitioners' "Motion to Supplement the Record," with 10 attached proposed exhibits (**Cossalman Motion – Supp**).

On June 8, 2005, the Board received "Memorandum in Opposition to Motion to Supplement the Record" from the Town of Eatonville. (**Town Response – Supp**).

On June 9, 2005, the Board received "Petitioners' Response to Town of Eatonville's Motion to Dismiss" (**Cossalman Response - Dismiss**).

On June 14, 2005, the Board received "Respondent's Reply Memorandum Regarding Motion to Dismiss" (**Town Reply - Dismiss**).

The Board did not hold a hearing on the motions.

II. DISCUSSION OF MOTIONS

A. Town Motion to Dismiss

Position of the Parties:

The Town of Eatonville argues that their adoption of Resolution 2005-O, entitled "A Resolution of the Eatonville Town Council Declaring Land a Surplus and Authorizing the Sale [of *sic*.] Said Land," is not within the Board's jurisdiction to review for compliance with the goals and requirements of the Act. In essence, the Town argues that the Resolution is not a plan or development regulation, or amendment thereto, over which the Board has jurisdiction. Town Motion – Dismiss, at 1-8.

The Town acknowledges that the Plan identifies the "surplus" property as a "park," but also acknowledges that the development regulations identify the "surplus" property as single family residential. *Id*. at 3. The Town asserts Petitioners cannot challenge a 1994 zoning designation at this late date. *Id*. The Town argues the Board does not have "authority to review actions taken by a town council of a proprietary nature regarding the surplusing of city property." *Id*. at 4.

The Town also acknowledges that it has stipulated that it did not comply with the compliance review requirements of RCW 36.70A.130 and states, "The Town intends to adopt a revised comprehensive plan within at least a few months, and certainly will adopt a revised comprehensive plan and development regulations within the time set out in the Board's Order.[1]" *Id*. at 5. The Town asserts that the 4 remaining issues in *this* matter relating to compliance with the Act were essentially addressed in the Board's prior Order. *Id*. 5-8.

[1] *See* Cossalman, et al., v. Town of Eatonville, CPSGMHB Case No. 05-3-0028, Order Finding Noncompliance – Failure to Act [failure to update comprehensive plan and development regulations], (May 13, 2005).

In response, Petitioners assert that Resolution R-2005-O was an amendment to the Town's comprehensive plan and the Board has jurisdiction to review comprehensive plans. Cossalman Response – Dismiss, at 2. Alternatively, Petitioners argue that the GMA gives the Board jurisdiction to review "petitions alleging state agencies, counties or cities are not in compliance with the GMA." *Id*. at 2-3. Petitioners then contend the Board has jurisdiction to decide the four issues pending before the Board.

In reply, the Town contends that Resolution R-2005-O is not an amendment to the comprehensive plan and the Board does not have the broad ranging jurisdictions Petitioners profess. Town Reply – Dismiss, at 4.

Board Discussion:

Resolution R-2005-O, on its face, does not amend the Town's comprehensive plan. It is a resolution authorizing the sale of property declared surplus. Petitioners' argument on this point is without merit.

Second, the Board's jurisdiction is limited by RCW 36.70A.280(1). This section of the Act provides in relevant part:

> A growth management hearings board shall hear and determine only those petitions alleging either:
>
> (a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to shoreline master programs or amendments thereto, or chapter 43.21C as it relates to *plans, development regulations or amendments, adopted under RCW 36.70A.040* or chapter 90.58 RCW; . . .

(Emphasis supplied). The Board's jurisdiction is limited to review of plans, development regulations and amendments thereto. Just as Resolution R-2005-O does not amend the Town's plan, it does not amend the Town's development regulations. The Resolution simply declares property surplus and authorizes its sale. This is not a matter within the Board's purview. Therefore, the Board will **grant** the Town's motion and **dismiss** Petitioners' PFR – Legal Issues 1-4.

Regardless of ownership, the Town's Plan and development regulations will govern the property's ultimate use and development. As noted above, the Town has stipulated that it has not updated its plan or development regulations as required by RCW 36.70A.130. The Board has issued an Order Finding Noncompliance and set a deadline of November 7, 2005 for the Town to "take appropriate legislative action to comply with the comprehensive plan and implementing development regulations update requirements of RCW 36.70A.130." *See* May 13, 2005 Order, at 4.

The Board notes with interest that the Town acknowledges that there is an inconsistency between its present plan and present implementing development regulations and that its development regulations *do not implement its comprehensive plan*. The GMA requires the Town of Eatonville to "adopt a comprehensive plan . . . and development regulations that *are consistent with and implement the comprehensive plan* (RCW 36.70A.040(3)(d)) and "*Any amendment of or revisions to development regulations shall be consistent with and implement the comprehensive plan*." (RCW 36.70A.130(1)(b)). The Town is on notice that the inconsistency between the plan and regulations *must be reconciled* in the Town's update so that the plan and development regulations are consistent and the development regulations implement the plan.

B. Petitioners' Motion to Supplement the Record

Having granted the Town's motion to dismiss, the Board need not address the Petitioners' motion to supplement the record.

III. ORDER

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the Act, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following Order:

- The Town of Eatonville's motion to dismiss the *Cossalman/Van Cleve* PFR [Legal Issues 1-4], CPSGMHB Case No. 05-3-0032, is **granted**.
- The matter of *Cossalman/Van Cleve, et al., v. Town of Eatonville*, CPSGMHB Case No. 05-3-0032 is **dismissed with prejudice**.
- Further proceedings on this matter are **cancelled** and the matter is **closed**.

So ORDERED this 20th day of June 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP
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.