

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

CITY OF SUMNER,) **Case No. 94-3-0013**

)
Petitioner,) **ORDER GRANTING**
) **RESPONDENTS' MOTIONS TO**
v.) **DISMISS**

)
PIERCE COUNTY BOUNDARY REVIEW)
BOARD and CITY OF PACIFIC,)
)
Respondents.)

)
On September 23, 1994, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from the City of Sumner (**Sumner**) challenging the action of the Washington State Boundary Review Board for Pierce County (**BRB**) in approving the annexation of lands within Pierce County to the City of Pacific (**Pacific**).

On October 24, 1994, the "Respondent Boundary Review Board's Motion to Dismiss" was filed, alleging that the Board lacked jurisdiction over BRB decisions.

On Wednesday, October 26, 1994, the Board held a prehearing conference, at which time the legal issues before the Board and a schedule for filing and responding to dispositive motions were established.

On November 18, 1994 two dispositive motions were filed with the Board related to Legal Issue No. 1 as set forth in the Board's Prehearing Order. One was entitled "Respondent Boundary Review Board's Motion to Dismiss for Lack of Jurisdiction" (**BRB's Motion**), and the other, "Respondent City of Pacific's Motion to Dismiss" (**Pacific's Motion**). Pacific's motion incorporated by reference the BRB's Motion in its entirety. Since both motions involve questions of law only, no exhibits were attached.

On November 30, 1994, the "City of Sumner's Memorandum in Opposition to BRB's Motion to Dismiss" (**Sumner's Response**) was filed with the Board. Neither the BRB nor Pacific filed a reply brief.

The Board held a hearing on the dispositive motions at 10:00 a.m. on Wednesday, December 7, 1994 at 1225 One Union Square, Seattle. The Board's three members were present: M. Peter Philley, presiding, Joseph W. Tovar and Chris Smith Towne. Madeleine A. F. Brenner

represented Sumner; Chris Quinn-Brintnall represented the BRB, and Rod P. Kaseguma represented Pacific. Court reporting services were provided by Duane W. Lodell, CSR of Robert H. Lewis & Associates, Tacoma. No witnesses testified. On December 13, 1994, the City of Sumner's Supplemental Brief was filed.

I. FINDINGS OF FACT

1. Pacific is a municipal corporation located in King County, Washington. Petition for Review, at 1, ¶ 2.
2. On April 12, 1994, Pacific filed with the BRB a Notice of Intention to annex approximately 377 acres of unincorporated lands located in Pierce County, contiguous to Pacific's southern boundaries. Exhibit A to the Petition for Review, at 1 and 2. This land is described as "the Affected Area." Sumner's Response, at 2.
3. On September 13, 1994, the BRB issued a Resolution and Hearing Decision approving Pacific's annexation request of the Affected Area. Exhibit A to Petition for Review.
4. Sumner is a municipal corporation located in Pierce County, Washington.
5. Sumner has filed an appeal of the BRB's decision with the Pierce County Superior Court, Cause No. 94-2-10200-7. BRB's Motion, at 2 and 10; Sumner's Response, at 3 and 14.

II. LEGAL ISSUE BEFORE THE BOARD

Legal Issue No. 1

Whether the Central Puget Sound Growth Management Hearings Board (the Board) has jurisdiction to review decisions of the Pierce County Boundary Review Board (BRB) for consistency with the Growth Management Act (GMA), specifically RCW 36.70A.020, .103, .110 and .210?

III. POSITION OF PARTIES

BRB/Pacific

The BRB contends that the Board's jurisdiction is limited to reviewing only those matters specified in RCW 36.70A.280. Because BRB approval of annexation proposals such as those brought by Pacific are not listed, the BRB maintains that the Board lacks jurisdiction over it. BRB's Motion, at 2 and 5. During oral argument, the BRB denied that it was a state agency, and instead, contended that it is a local government body. Therefore, the BRB maintains that the Board cannot invoke jurisdiction pursuant to the "state agency" element of RCW 36.70A.280(1) (a).

The BRB cites RCW 36.93.160 as the controlling statute governing appeals of BRB decisions on annexation proposals. Because RCW 36.93.160 specifies superior court review of BRB decisions,

the BRB contends that the Pierce County Superior Court is the proper forum for reviewing this matter. The BRB also refers to the rule of statutory construction that holds that a specific statute controls over a general one; therefore, the specific provisions of RCW 36.93.160 control over the more general provisions of RCW 36.70A.280, and the superior court rather than this Board has jurisdiction. BRB's Motion, at 3-4.

The BRB also points out that, like the Board, it is a quasi-judicial body, not a legislative body. Yet, the BRB must base its decision solely on the record before it while this Board is authorized to supplement the record with additional material. The BRB is required to comply with its authorizing legislation, Chapter 36.93 RCW (the **BRB Statute**). Although RCW 36.93.157 requires the BRB to make decisions that are consistent with specified provisions of the GMA, the BRB contends that it is not required to comply with those sections of the Act since the BRB is not charged with adopting comprehensive plans, development regulations, urban growth areas or countywide planning policies. In addition, the BRB points out that if the legislature intended the growth management hearings board to have jurisdiction over BRB decisions, it would have so specified. BRB's Motion, at 5-6.

The BRB contends that RCW 36.93.170 refers to numerous factors a boundary review board must consider in reaching a decision. The GMA is not listed in this subsection. BRB's Motion, at 7.

Referring to recent case law and the fact that the GMA permits the disbanding of boundary review boards after completion of comprehensive plans, the BRB contends that it is "precisely designed to operate when the growth management plan is not completed and in effect." BRB's Motion, at 9.

Finally, the BRB argues that because Sumner has simultaneously filed an appeal in Pierce County Superior Court, having an ongoing appeal before the Board duplicates "the expenditure of scarce state resources." BRB's Motion, at 10.

Sumner

Sumner contends that the Board does have jurisdiction to determine whether the BRB complied with RCW 36.93.157 even though that provision is found in the BRB Statute, and not in the GMA. Sumner bases its contention on the language of RCW 36.70A.280(1)(a), which gives the Board GMA jurisdiction over any state agency. Since Sumner maintains that the BRB is a state agency (pursuant to the BRB's own title, the BRB Statute, the Administrative Procedure Act (APA), and a Washington State Supreme Court decision - *King County v. Washington State Boundary Review Board for King County*, 122 Wn. 2d 648, 860 P.2d 1024 (1993)), Sumner concludes that the Board has jurisdiction over the BRB for compliance with the GMA. Sumner's Response, at 4-9.

Sumner rejects the BRB's contention that the BRB Statute would have to be amended in order for the Board to obtain jurisdiction over the BRB, claiming that there was no need to amend the BRB Statute since the Board had already been given jurisdiction by RCW 36.70A.280(1)(a). Sumner's Response, at 11. In addition, Sumner argues that the Legislature did not have to amend RCW 36.93.160 when it adopted the GMA because:

Not all statutes which are impacted by new legislation need to be amended to cross-reference the new legislation. Sumner's Response, at 11 (no authority cited).

Sumner cited to Chapter 47.06 RCW and RCW 72.65.220 as examples of legislation where the Board had GMA jurisdiction even though the Board was not specifically mentioned. Sumner's Response, at 11-12.

Finally, Sumner maintains that the Board is fully capable of dealing with bifurcated appeals and could easily limit its review solely to whether the BRB complied with RCW 36.93.157. The Board's determination on that legal issue would then assist the superior court in its review of the case.

IV. DISCUSSION

The Board holds that it does not have jurisdiction to review decisions of the Washington State Boundary Review Board for Pierce County or any other boundary review board. RCW 36.70A.280, entitled "Matters subject to board review," specifies the Board's subject matter jurisdiction. Subsection (1)(a) is the relevant provision in this case. It provides:

(1) A growth management hearings board shall hear and determine only those petitions alleging either:

(a) That a state agency, county, or city is not in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, or amendments, adopted under RCW 36.70A.040; ...

The Board has determined on numerous occasions whether this statute enables it to review a case and, as pointed out by Pacific, has conservatively invoked its jurisdiction.^[1] Since the BRB is not a county or city, in the absence of a more specific statute, the Board would first have to determine whether the BRB is a state agency.^[1] Indeed, during oral argument, a great deal of time was spent debating precisely that question^[1] -- one which no Washington appellate case has explicitly answered and one of first impression for the Board. However, the Board need not nor will it answer this intriguing legal question because, even if the BRB is a state agency, a more explicit authority, the BRB Statute, controls appeals of actions of a BRB.

RCW 36.93.160, entitled "Hearings--Notice--Record--Subpoenas--Decision of board--Appellate review," provides in part:

...

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within thirty days from the date of the action a governmental unit affected by the decision or any person owning real property or residing in the area

affected by the decision files in the superior court a notice of appeal. The filing of the notice of appeal within the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board....(Emphasis added.)

RCW 36.93.160(5) specifically requires any appeals of BRB decisions to be filed in the local superior court. In comparison, RCW 36.70A.280(1)(a) generally gives the Board jurisdiction if challenges against actions of unspecified state agencies are brought for their failure to comply with the requirements of the Act.

When there is a conflict between one statutory provision which treats a subject in a *general* way and another which treats the same subject in a *specific* manner, the *specific* statute will prevail. *Pannell v. Thompson*, 91 Wn.2d 591, 597, 589 P.2d 1235 (1979), *Olson v. University of Wash.*, 89 Wn.2d 558, 562, 573 P.2d 1308 (1978); *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 536 P.2d 157 (1975); *Johnston v. Beneficial Mgt. Corp. of America*, 85 Wn.2d 637, 538 P.2d 510 (1975); *Knowles v. Holly*, 82 Wn.2d 694, 513 P.2d 18 (1973); 2A Sutherland, *Statutory Construction* SS 51.05 (4th ed. C. Sands 1973), (emphasis in original).

Here, the specific language of RCW 36.93.160(5) controls over the general language of RCW 36.70A.280(1)(a). A specific statute will supersede a general one when both apply. *Waste Management of Seattle, Inc. v. Washington Utilities and Transportation Commission*, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994), *General Tel. Co. of Northwest, Inc. v. Utilities & Transp. Comm'n.*, 104 Wn.2d 460, 464, 706 P.2d 625 (1985). Therefore, the Board cannot invoke its jurisdiction over the BRB. Unless the Legislature amends either the Board's jurisdictional statute or the BRB Statute or both, the Board will not review decisions of any boundary review board. In keeping with its holding, the Board notes that "legislative bodies . . . are presumed to have full knowledge of existing statutes affecting the matter upon which they are legislating." *Martin v. Triol*, 121 Wn.2d 135, 148, 847 P.2d 471 (1993); *Bennett v. Hardy*, 113 Wn.2d 912, 926, 784 P.2d 1258 (1990); *Louthan v. King Cy.*, 94 Wn.2d 422, 429, 617 P.2d 977 (1980). The Legislature has amended the GMA each year since its initial adoption in 1990, and in 1994, even amended the Board's jurisdictional statute, RCW 36.70A.280, by changing the Board's name from growth "planning" to growth "management" hearings board. Despite passing this amendment in 1994 and despite the fact that the Legislature obviously knows how to confer Board jurisdiction over a specific state agency as subsection (1)(b) of RCW 36.70A.280 does so over office of financial management population projections, the Legislature did not add a subsection (1)(c) to specifically grant Board jurisdiction over boundary review boards.

The Legislature has also amended the BRB Statute since the GMA was enacted -- adding RCW 36.93.157^[1] in 1992, which specifically refers to the GMA, and even amending RCW 36.93.160 (5) in 1994 by increasing the time for appealing BRB decisions from ten to thirty days. Thus, even though both RCW 36.93.160 and RCW 36.70A.280 were amended in 1994, none of the amendments have otherwise substantively changed either statute. Given the presumption of

legislative awareness of existing statutes, if the Legislature had intended a growth management hearings board to review BRB decisions, it could have repealed RCW 36.93.160(5) or amended it to indicate that growth management hearings boards had jurisdiction to review BRB decisions for consistency with the GMA.

Likewise, just as the Legislature is presumed to be aware of judicial interpretation of its enactments (*see Friends of Snoqualmie Valley v. King County Boundary Review Board*, 118 Wn.2d 488, 496, 825 P.2d 300 (1992) and *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 887, 652 P.2d 948 (1982)), the Board assumes that the Legislature is aware of long-standing rules of statutory construction like the rule relied upon here, that a specific statute controls over a general one. Accordingly, if the Legislature intends the Board to review boundary review board decisions, it must so specify.

Moreover, the Board must comment upon another aspect of Sumner's argument. During questioning about the scope of a Board decision in Sumner's favor, it was pointed out that this Board, a quasi-judicial body, would be reviewing the decision of the BRB, another quasi-judicial body. Although it is common for a quasi-judicial state agency like the Shorelines Hearings Board to review quasi-judicial development permit decisions of local governments, it would be uncommon for a quasi-judicial state agency to review the decisions of another quasi-judicial state agency. Yet, if Sumner's arguments prevailed, that is precisely what would happen since Sumner contends the BRB is a quasi-judicial state agency. When questioned, Sumner argued that the Board also has jurisdiction to review decisions of the Shorelines Hearings Board. The Board disagrees. Appeals of Shorelines Hearings Board decisions are addressed by a specific statute, RCW 90.58.180, just like appeals of BRB decisions are addressed by RCW 36.93.160(5). This Board will not expand its jurisdiction over other quasi-judicial agencies unless given clear direction from the Legislature.

Had RCW 36.93.160(5) not existed, the Board would have been required to determine whether the BRB is a state agency. Without ruling on such questions at this time, the Board notes that instances may exist where Board jurisdiction is appropriate in the absence of a more specific statute. For instance, Sumner cited Chapter 47.06 RCW, the State-wide Transportation Planning statute. Unlike the BRB Statute, Chapter 47.06 does not have a specified appeals mechanism. Therefore, should the case arise, the Board might conclude that it has jurisdiction over a state agency having responsibility for adopting transportation plans, when such plans allegedly fail to comply with the GMA.

V. CONCLUSIONS

RCW 36.93.160(5), regarding filing appeals of boundary review board decisions with superior court, is more specific than RCW 36.70A.280(1)(a) which indicates that the Board has jurisdiction over unspecified state agencies. Therefore, RCW 36.93.160(5) is the controlling statute and supersedes the more general one. Because RCW 36.93.160(5) grants review of boundary review board decisions solely to the superior courts, the Board concludes that it does

not have jurisdiction to review the decision of the Pierce County Boundary Review Board or any other boundary review board.

VI.ORDER

Having reviewed the above-referenced documents, having considered the parties' arguments, and having deliberated on the matter, it is ORDERED that:

The BRB's Motion and Pacific's Motion to dismiss *Legal Issue No. 1* are **granted**. Because the Board has determined that it does not have jurisdiction to review Sumner's Petition for Review, the case is **dismissed with prejudice**.

So ordered this 14th day of December, 1994.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley, Presiding Officer

Joseph W. Tovar, AICP

Chris Smith Towne

Note: This Order Granting Respondents' Motions to Dismiss constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

[\[1\]](#)

The Board has concluded that it does not have jurisdiction to determine violations of equitable doctrines. *Tacoma et al. v. Pierce County*, CPSGPHB Case No. 94-3-0001 (1994), Order on Dispositive Motions, at 4. As the Board indicated in that case:

[T]he Board has concluded in earlier cases that it did not have the authority to determine whether the United States or Washington State Constitutions had been violated. *See Gutschmidt et al v. Mercer Island* CPSGPHB Case No. 92-3-0006 (1993), at 9-10, and Order on Prehearing Motions, at 10-13. In its *Twin Falls* decision, the Board concluded that it lacked the requisite jurisdiction to determine whether statutes other than the GMA or the State Environmental Policy Act (**SEPA**) as it relates to the GMA were violated. *See Twin Falls, Inc. et al v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), Order on Dispositive Motions, at 4-12. (*See also Tracy v. Mercer Island*, CPSGPHB Case No. 92-3-0001 (1993), at 20; *Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (1993), at 16, n. 15; *Gutschmidt*, at 8; and *Happy Valley Associates et. al v. King County*, CPSGPHB Case No. 93-3-0008 (1993), Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend its Petition For Review, at 13-14.) Furthermore, in *Twin Falls* the Board also concluded that it did not have jurisdiction to determine whether the common law had been violated. *See Twins Falls*, Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order, and Order Denying SNOCO PRA's Petition for Reconsideration, at 4-7.

[1]

Pursuant to RCW 36.70A.103, entitled "State agencies required to comply with comprehensive plans":

State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter.

[1]

The hybrid nature of boundary review boards and the sometimes obscure distinction between "the state" and "political subdivisions of the state" is perfectly expressed by the parties' arguments: Sumner argues that the BRB's name itself, "Washington State Boundary Review Board for Pierce County;" the APA's definition of state "agency" (*see* RCW 34.05.010(2)); the language of RCW 36.93.030(1) regarding the creation of certain boundary review boards; the fact that the governor makes some appointments to the King County BRB (*see* RCW 36.93.051(1)) and to other boundary review boards (*see* RCW 36.93.061(1)); and that a state attorney general can provide counsel to boundary review boards (*see* RCW 36.93.070) yet a state attorney general can only represent state agencies and state officials (*see* RCW 4.92.030 and 43.10.030)-- all indicate that the BRB is a state agency.

The BRB alleges that the BRB is not a state agency because the county legislative authority creates boundary review boards in counties with less than 210,000 persons (*see* RCW 36.93.040); the county appointing authority appoints persons to the BRB (*see* RCW 36.93.051(2) and .061(2)); no appointee to the BRB can be an official or employee of the county ((*see* RCW 36.93.061); the BRB is authorized to make its own rules rather than pursuant to the APA (*see* RCW 36.93.070 and .200; compare for instance, with RCW 36.70A.270(7)); the BRB can be and is represented by the county prosecuting attorney (*see* RCW 36.93.070); the county planning department must provide the BRB with information (*see* RCW 36.93.070); each BRB member is compensated from the county current expense fund (*see* RCW 36.93.070); and the county legislative authority has the power to disband the BRB (*see* RCW 36.93.230).

[1]

RCW 36.93.157, entitled " Decisions to be consistent with growth management act," states:

The decisions of a boundary review board located in a county that is required or chooses to plan under RCW 36.70A.040 must be consistent with RCW 36.70A.020, 36.70A.110, and 36.70A.210.