

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

ROBISON et al,)	Case No. 94-3-0025
)	
Petitioners,)	
)	ORDER GRANTING BISD'S
v.)	DISPOSITIVE MOTION re:
)	JURISDICTION
CITY OF BAINBRIDGE ISLAND,)	
)	
Respondent,)	
)	
and)	
)	
BAINBRIDGE ISLAND SCHOOL)	
DISTRICT and SOUTH BAINBRIDGE)	
COMMUNITY ASSOCIATION,)	
)	
Intervenors.)	
_____)	

On February 16, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) entered an Order on Dispositive Motions that addressed five of six dispositive motions that had been filed with the Board in the above-captioned matter.

During oral argument at the hearing on the dispositive motions, held on February 9, 1995, the Board posed questions that had not been briefed by the parties regarding the sixth dispositive motion, filed by the Bainbridge Island School District (**BISD**) and entitled "Intervenor BISD's Motion to Dismiss Claims of Philip Whitener for Lack of Jurisdiction" (**BISD's Jurisdiction Motion**). Subsequently, on February 14, 1995, the Board entered an Order Allowing Filing of (Optional) Supplemental Briefs. As a result, a Board determination on BISD's Jurisdiction Motion was deferred at the time the Board issued its Order on Dispositive Motions.

On February 17, 1995, the Board received "Intervenor Bainbridge Island School District's Supplemental Memorandum in Support of Motion to Dismiss Claims of Philip Whitener for Lack of Jurisdiction" (**BISD's Supplement**). A "Declaration of Jonathan P. Meier in Support of BISD's Supplemental Memorandum in Support of Motion to Dismiss Claims of Philip Whitener for Lack of Jurisdiction" (the **Meier Declaration**) was attached. Three exhibits were attached to

the Meier Declaration:

Exhibit A -- History of HB 1025-S

Exhibit B -- a portion of Engrossed Substitute House Bill (**ESHB**) 1025

Exhibit C -- a December 31, 1990 memorandum from Steven Lundin to Rep. Mary Margaret Haugen

On February 17, 1995, "Petitioner Whitener's Supplemental Memorandum in Opposition to Dispositive Motion" was filed with the Board" (**Whitener's Supplement**). Two documents were attached to Whitener's Supplement:^[1]

Exhibit 1 -- excerpt from 1991 Final Legislative Report re: ESHB 1025

Exhibit 2 -- Final Bill Report for ESHB 1025

I. FINDINGS OF FACT

No facts are disputed by the parties. The Board takes official notice of the following facts:

Substitute House Bill (**SHB**) 2929 (Chapter 17, Laws of 1990, 51st Legislature, First Extraordinary Session), although partially vetoed, was approved by Governor Gardner on April 24, 1990. It became effective on July 1, 1990.

The introductory caption to SHB 2929 describes the bill as: "AN ACT Relating to growth." This act has subsequently been popularly called the Growth Management Act (**GMA** or the **Act**) even though that phrase is not contained in SHB 2929. *See*, for instance, references to the GMA in the following:

September, 1990 Final Report of the Washington State Growth Strategies Commission, *A Growth Strategy for Washington State*, at 2 and throughout.

December 31, 1990 memorandum from Steve Lundin to Rep. Mary Margaret Haugen. Exhibit C to Meier Declaration;

Chapter 365-190 WAC at WAC 365-190-020 and -040, effective April 15, 1991;

Chapter 365-195 WAC throughout (effective December 18, 1992) but particularly at WAC 365-195-210(1) which defines "Act" as "the Growth Management Act as enacted in chapter 17, Laws of 1990, 1st Ex. Sess., and chapter 32, Laws of 1991, 1st Special Sess.;"

Both the 1991 Final Legislative Report and the Final Bill Report for ESHB 1025. Exhibits

1 and 2 to Whitener's Supplement;

Every final decision and order of this Board.

SHB 2929 was subsequently primarily codified by the Code Reviser's Office as a new chapter in Title 36 of the Revised Code of Washington (**RCW**), Chapter 36.70A.^[2] Chapter 36.70A RCW is captioned: "Growth Management -- Planning by Selected Counties and Cities."

SHB 2929 also added new sections to Chapters 43.63A, 35.63, 35A.63, 36.70, 35.22, 35.23, 36.32, 36.77, 35.13, 35A.14, 43.62, 82.46, 82.02, 59.18, 19.27, 43.31, 43.17 43.19, 82.32 RCW, and a new chapter to Title 47 RCW.

Reengrossed Substitute House Bill (**ReESHB**) 1025 (Chapter 32, Laws of 1991, 52nd Legislature, 1991 Special Session) was approved by Governor Gardner on July 16, 1991 with the exception of section 19, which was vetoed. ReESHB 1025 became effective immediately upon approval.

The introductory caption of ReESHB 1025 describes the bill as: "AN ACT Relating to growth strategies." Sections 5, 6 7, 9, 10, 11, 12, 13, and 14 were "new sections"^[3] involving the creation of the growth planning hearings boards.^[4] Subsequently, the Code Reviser codified those sections of ReESHB 1025 dealing with the hearings boards at RCW 36.70A.250 through .330.

II. POSITION OF THE PARTIES

BISD's Position

It is BISD's position that the Board lacks jurisdiction over any petitions contending that Chapter 82.02 RCW has been violated. BISD maintains that the references in RCW 36.70A.280(1) and .300(1) to "this chapter" refer to codified Chapter 36.70A RCW, or Chapter 43.21C RCW as it relates to Chapter 36.70A RCW only, and do not refer to chapter laws (i.e., chapter 17, Laws of 1990, 51st Legislature, First Extraordinary Session) or subsequent amendments.

BISD contends that because the hearings boards were not created until 1991 as a "second phase" of the growth management legislation, when the drafters of ReESHB 1025 used the word "this chapter," they were aware that "the heart" of the growth management legislation was already codified in Chapter 36.70A RCW. BISD's Supplement, at 3.^[5]

BISD therefore asks the Board to dismiss Whitener's Legal Issues Nos. 4 and 5 in their entirety

and that part of Legal Issue No. 2 that challenges the City's compliance with RCW 82.02.050 *et seq.*

Whitener's Position

Whitener contends that the Board does have jurisdiction over all sections of the GMA, including not only those that have been codified in Chapter 36.70A RCW, but also other chapters of the code that SHB 2929 amended or created. Whitener turns to the Final Legislative Report summarizing ESHB 1025 to support his contention. The Final Legislative Report refers to the "GMA" and indicates that the hearings boards have jurisdiction over the GMA. Since the original version of the Act contains sections in chapters besides Chapter 36.70A RCW, Whitener contends that the Board also has jurisdiction over those provisions enacted in 1990 that were not codified in Chapter 36.70A RCW.

III. Discussion

The Board holds that it does not have jurisdiction to determine whether state agencies, cities and counties have complied with Chapter 82.02 RCW. In reaching this determination, the Board had to decide what the phrase "this chapter" in RCW 36.70A.280(1)(a) and .300(1) means.^[6] Does it, on the one hand, refer to *Chapter* 36.70A RCW only or, on the other hand, does it refer to any codified section of the revised code amended or added to by *chapter* 17, Laws of 1990 and subsequent amendments?

RCW 36.70A.280 provides in part:

(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.... (emphasis added)

In turn, the pertinent portion of RCW 36.70A.300(1) provides:

(1) The board shall issue a final order within one hundred eighty days of receipt of the petition for review, or, when multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated. Such a final order shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040. (emphasis added).

Whitener contends that because he and the BISD disagree as to the meaning of the phrase "this chapter," that the statutes are ambiguous and therefore the Final Bill Report can be examined. Whitener's Supplement, at 2. Although the two parties may not agree on the proper interpretation, the Board finds the Act's language clear and unambiguous on its face. Therefore the Board need not turn to extrinsic aids to ascertain legislative intent.^[7]

Nonetheless, even if the Board were to rely on the Final Bill Report for ReESHB 1025, the Board would reach a similar holding as above. First, the Final Bill Report refers presumably to SHB 2929 as being "the 1990 Growth Management Act" and indicates that counties and cities planning under the GMA may impose impact fees. No one disputes that fact. However, the fact that impact fees have been authorized does not mean that this Board has jurisdiction to determine whether the impact fees have been properly imposed.

Second, the Board concedes that the writer of the Final Bill Report replaced the statutory words in contention here, "this chapter", with the acronym "GMA." Consequently, pursuant to the Final Bill Report the Board appears to have jurisdiction over all sections of "the GMA" whether they are within Chapter 36.70A RCW or not. However, the Board holds that when the actual language of the Act conflicts with a Final Bill Report, the former controls. A final bill report by an unknown author cannot control over an act adopted by the legislature and approved by the governor.

Had sections 5, 6 7, 9, 10, 11, 12, 13 and 14 of ReESHB 1025 merely indicated that they were "new sections" but not specified to which chapter, the Code Reviser would have had to employ discretion to determine where to codify those sections. *See* RCW 1.08.015. The Board will not speculate as to what would have happened under such circumstances since the legislature instead, gave clear direction to the Code Reviser as to what "this chapter" meant. Section 41 of ReESHB, entitled "Codification," provides:

Sections 1, 2, 4 through 20, and 26 of this act are each added to chapter 36.70A RCW.
(emphasis added).

Therefore, the reference in Sections 9 through 14 of ReESHB 1025 (codified at RCW 36.70A.280 through .330 respectively) to "this chapter" is clearly referring to Chapter 36.70A RCW.

This Board has repeatedly interpreted its subject matter jurisdiction narrowly as required by the common law. *See City of Tacoma et al. v. Pierce County*, CPSGPHB Case No. 94-3-0001 (1994), Order on Dispositive Motions, at 3-11 and the cases cited therein. Of particular importance are the limiting words "only" and "based exclusively on" emphasized in the quotes above from RCW 36.70A.280(1) and RCW 36.70A.300(1) respectively. Accordingly, the Board

holds that it has jurisdiction only over Chapter 36.70A RCW or Chapter 43.21C RCW as it relates to Chapter 36.70A RCW.^[8] Although cities and counties planning under the Act that elect to impose impact fees pursuant to RCW 82.02.050 must still comply with the requirements of Chapter 82.02 RCW, judicial review to determine whether impact fees were properly imposed must be obtained from the superior courts.

IV. Conclusion

The reference in RCW 36.70A.280, .290, .300, .310, .320, and .330 to "this chapter" is to Chapter 36.70A RCW. Therefore, pursuant to RCW 36.70A.280(1)(a), the Board has jurisdiction to hear and determine only petitions for review alleging that a state agency, county, or city is not in compliance with the requirements of Chapter 36.70A RCW, or Chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto adopted under RCW 36.70A.040. Accordingly, the Board does not have jurisdiction to review petitions for review that allege that a state agency, county or city action fails to comply with Chapter 82.02, or other chapters in the RCW besides Chapters 36.70A or 43.21C RCW.

V. ORDER

Having reviewed the above-referenced documents, having considered the oral arguments of the parties, and having deliberated on the matter, the Board enters the following order.

BISD's Jurisdiction Motion is **granted**. Whitener's Legal Issues Nos. 4 and 5, and that portion of Whitener's Legal Issue No. 2 relating to alleged violations of RCW 82.02.050 *et seq.* are **dismissed with prejudice**.

So ORDERED this 24th day of February, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley

Joseph W. Tovar, AICP

Chris Smith Towne
Presiding Officer

[1] For convenience, the Board refers to these documents as "Exhibit 1 and Exhibit 2." As noted by Whitener, the Final Legislative Report simply incorporates the Final Bill Report for ESHB 1025.

[2] In prior cases, the Board has repeatedly indicated that the GMA is "primarily" codified at Chapter 36.70A RCW. See for instance *Poulsbo et al. v. Kitsap County*, CPSGPHB Case No. 92-3-0009 (1993), Findings of Fact No. 1; *Northgate Mall Partnership*, CPSGPHB Case No. 93-3-0009 (1993) Order Granting Seattle's Motion to Dismiss..., Findings of Fact No. 8; *FOTL I v. King County*, CPSGPHB Case No. 94-3-0003 (1994) Order on Dispositive Motions, Findings of Fact No. 2. The use of the term "primarily" indicates the Board's awareness that chapter 17, Laws of 1990 1st ex. sess. was codified in chapters besides Chapter 36.70A RCW.

[3] Although each of these sections indicated "new section" without specifying "new" to what chapter (*compare* with "new section" 39 which specified that "a new section is added to chapter 36.7A RCW"), pursuant to section 41 of ReESHB 1025, "Sections 1, 2, 4 through 20, and 26 of this act are each added to chapter 36.70A RCW."

[4] The name of the boards was changed in 1994 to "growth *management* hearings boards." See ESSHB 2510 (Chapter 249, Laws of 1994, 53rd Legislature, 1994 Regular Session).

[5] The Board has not summarized all of BISD's arguments because it is not necessary to address them to resolve this issue. Nonetheless, those arguments would be persuasive had the language of ReEHSB not been so clear.

[6] The same phrase is used in RCW 36.70A.290(2), .310(2), .320 and 330(1).

[7] Statutes must be interpreted in a manner that will give effect to the Legislature's intent. Where the meaning of the statute is clear, courts must accept the plain and unambiguous language. However, if the meaning of the statute and the intent of the Legislature are not clear from the words of the statute, a court may resort to extrinsic aids, such as legislative history, including the final legislative reports, to determine legislative intent. *Biggs v. Vail*, 119 Wn.2d 129, 134, 830 P.2d 350 (1992).

[8] The legislature could have used the words "Chapter 36.70A RCW" instead of "this chapter" to remove any uncertainty and the necessity of having to research ReESHB 1025 itself to discover section 41 of that act. However, the fact that the legislature elected not to do this does not mean that "this chapter" referred to a legislative session "chapter" rather than a codified chapter of the RCW. This is particularly clear given the specific reference to "Chapter 43.21C RCW" -- the codified chapter -- following the phrase "this chapter." Had the reference to "Chapter 43.21C RCW" instead been to "chapter 117, Laws of 1983," the Board might have reached a different conclusion.