

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

TERRY and RANDI SLATTEN,) **Case No. 94-3-0028**

)

Petitioners,) **ORDER ON STEILACOOM'S)DISPOSITIVE MOTION**

v.)

)

TOWN OF STEILACOOM,))

)

Respondent.)

)

On November 28, 1994, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from Terry and Randi Slatten (the **Slattens**). The Slattens challenge the Town of Steilacoom's (the **Town** or **Steilacoom**) adoption of its comprehensive plan on September 20, 1994. The Slattens allege that Steilacoom's actions do not comply with the Growth Management Act (**GMA** or the **Act**).

On January 4, 1995, the Board entered a Prehearing Order that listed ten legal issues, and established deadlines for filing dispositive motions and responses and replies to those motions.

On January 19, 1995, the Board received "Respondent Town of Steilacoom's Dispositive Motion" (**Town's Motion**) and "Memorandum in Support of Respondent Town of Steilacoom's Dispositive Motion" (**Town's Memorandum**). Steilacoom asked the Board to dismiss Legal Issues Nos. 1, 2, 9 and 10 as set forth in the Prehearing Order.

On February 5, 1995, "Petitioners' Response to Steilacoom's Dispositive Motion on Issues 1, 2, 9 and 10" (**Slattens' Response**) was filed with the Board. Several pages from the Town Council Draft Comprehensive Plan were attached to Slattens' Response.

Subsequently, the Town elected not to file a reply to the Slattens' Response.

The Board held a hearing on the Town's Motion at 10:00 a.m. on Monday, February 13, 1995 at its Seattle office. M. Peter Philley, presiding, Joseph W. Tovar and Chris Smith Towne appeared for the Board. Terry Slatten, *pro se*, represented the Slattens; Lawrence E. Hoffman represented Steilacoom and Lois Stark, Community Development Director, appeared on behalf of the Town. Court reporting services were provided by Pam Weekly of Seattle. No witnesses testified. In addition, no material facts are in dispute.^[1]

I. FINDINGS OF FACT

1. On September 20, 1994, Steilacoom adopted a comprehensive plan in order to meet the requirements of the GMA.
2. Steilacoom has yet to adopt development regulations that implement its comprehensive plan.

II. LEGAL ISSUE NO. 1

Legal Issue No. 1 asks:

Is the Town required to designate an urban growth area in its comprehensive plan pursuant to RCW 36.70A.070 and .110?

Steilacoom's Position

The Town contends that RCW 36.70A.070 and .110 require only a county to designate urban growth areas (UGAs). The Town acknowledges that cities²¹ are required to propose the location of UGAs but argues that this requirement does not mean that Steilacoom must designate UGAs within its comprehensive plan. Town's Memorandum, at 1-2.

Slattens' Position

The Slattens concede that counties have the ultimate authority to designate UGAs. However, they contend that there are both logical as well as statutory reasons to justify their interpretation that the Act mandates that a city designate UGAs in its comprehensive plan. The Slattens point to the last sentence in RCW 36.70A.110(4) as the statutory basis for their claim. The sentence provides:

Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

Because the language in that sentence does not specifically refer to counties (like other portions of RCW 36.70A.110), the Slattens claim that it applies to both cities and counties. Slattens' Response, at 1, ¶ 5, and 3, ¶ 10. They argue that if this sentence did not apply to both cities and counties, there would be no reason for RCW 36.70A.110(5), which requires counties to include UGA designations in their comprehensive plans. Slattens' Response, at 2, ¶ 5.

The Slattens maintain that in order for cities to meet the Act's first goal, to encourage development in urban areas, cities must provide proposed densities and capital facility requirements for unincorporated areas in their UGAs where they may later annex. Slattens' Response, at 2, ¶ 8. In order to effectively achieve the purposes of UGAs, the Slattens allege that cities must outline their UGAs at the time of adoption of their comprehensive plans. Slattens' Response, at 3, ¶ 10.

Discussion

The Board holds that the Town is not authorized to and therefore not required to designate an urban growth area in its comprehensive plan. Chapter 36.70A is replete with specific references to only counties being required to designate urban growth areas. The Act is clear on this point. RCW 36.70A.110 provides in part:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate

an urban growth area...Each city that is located in such a county shall be included within an urban growth area....

(2)... The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located.If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area.A city may object formally with the department over the designation of the urban growth area within which it is located....

...

(4)On or before October 1, 1993, each county ... shall adopt development regulations designating interim urban growth areas under this chapter....Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280.Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(5)Each county shall include designation of urban growth areas in its comprehensive plan. (emphasis added).

In turn, RCW 36.70A.040(3) indicates the requirements for both cities and counties under the GMA.Although subsection (3)(b) imposes requirements on cities and counties, only counties are charged with the duty to designate UGAs:

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows:(a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110;... (emphasis added).

Finally, the definition of "urban growth area" at RCW 36.70A.030(16) is by itself conclusive:

"Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110. (emphasis added).

The Board rejects the Slattens' contention that the last sentence of RCW 36.70A.110(4) requires both cities and counties to designate UGAs.Although the sentence does not specifically refer to either cities or counties, given the context of RCW 36.70A.110 in general and of subsection (4) in particular, the sentence is referring to counties only.

Having determined that only counties have the responsibility to designate UGAs, the Board notes that nothing in the Act prohibits a city from including the relevant UGA designation, made by a county, in its comprehensive plan.The crucial distinction is that it is solely a county responsibility to make the ultimate designation itself.

Finally, RCW 36.70A.110(5) requires counties to include UGA designations in their comprehensive plans.The fact that cities are not required to do likewise does not prohibit them

from including the designation. Sound planning policy dictates that as much information as practically possible be included in a comprehensive plan. It is logical to show the location of UGA boundaries relevant to a particular city within that city's comprehensive plan; it is not mandatory.

Conclusion

The Town is not authorized to designate an urban growth area, and therefore not required to designate UGAs in its comprehensive plan, or any other planning document. The ultimate obligation to designate UGAs rests solely with counties. Although a city is not required to include the relevant UGA, designated by the county, in its comprehensive plan, nothing in the GMA prohibits cities from showing the location of relevant UGAs within a comprehensive plan.

III. LEGAL ISSUE NO. 2

Legal Issue No. 2 provides:

If the Town is required to designate an urban growth area in its comprehensive plan, does the Town's failure to designate such an area [see pps. 18-20] constitute a failure to provide a land use/housing element or public facility/infrastructure plan for the areas proposed for later annexation, and does a lack of analysis of costs to provide the necessary urban services to this "urban growth study area", fail to meet the requirements of RCW 36.70A.070 and .110?

Since the Board has concluded that the Town was not required to designate an urban growth area in its comprehensive plan, the Board will not address Legal Issue No. 2.

Conclusion

The Board will not address Legal Issue No. 2 because it concluded in Legal Issue No. 1 that the Town is not authorized and therefore not required to designate UGAs.

IV. LEGAL ISSUE NO. 9

Legal Issue No. 9 asks:

Does the comprehensive plan comply with the requirements of RCW 36.70A.020(7), .065 and .440 for efficient, timely and predictable procedures for completing development permit applications?

Steilacoom's Position

The Town contends that there is no requirement that a comprehensive plan itself contain development regulations that implement a comprehensive plan. Furthermore, the Town has recently begun the process of adopting development regulations to implement its comprehensive plan. Therefore, at this time it is premature for the Board to review legal issues that discuss the

Town's development regulations. Town's Memorandum, at 2.

Slattens' Position

The Slattens acknowledge that RCW 36.70A.065 "is linked to the adoption of subsequent development regulations." They contend, however, that RCW 36.70A.440 imposes "an immediate, affirmative duty upon jurisdictions..." Slattens' Response, at 3, ¶12. Because the Town's comprehensive plan is internally inconsistent, the Slattens maintain that it is frequently impossible for the Town to meet the requirements of RCW 36.70A.440. Slattens' Response, at 3, ¶13. Furthermore, this internal inconsistency creates an "administrative nightmare" (Slattens' Response, at 4, ¶14) resulting in a costly, time consuming, highly political and unpredictable permitting process. Slattens' Response, at 4, ¶15.

Discussion

The Board holds that the Town's comprehensive plan does comply with the requirements of RCW 36.70A.020(7), and need not comply with the specific requirements of RCW 36.70A.065 and .440, as those provisions focus on development regulations rather than comprehensive plans. In so holding, the Board is not commenting on any alleged internal inconsistencies in the Town's plan. Whether or not Steilacoom's comprehensive plan is internally consistent is a separate legal issue not before the Board at this time.

It is uncontested that, at this point, Steilacoom has adopted only its comprehensive plan and has yet to adopt development regulations that implement that plan.¹³¹ RCW 36.70A.020(7), one of the thirteen planning goals in the Act, states:

Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

Importantly, RCW 36.70A.020 was adopted to guide the development and adoption of both comprehensive plans and development regulations. The Steilacoom comprehensive plan establishes, as a matter of policy, that the Town will timely and fairly process development permit applications. Policy 2.3, at page 217 of the comprehensive plan, states:

Land use proposals and all related permits shall be processed in a timely, fair, predictable, efficient, and effective manner. (GMA RCW 36.70A.020(7)).

Implementation of this policy of timely and fair processing of development permit applications is left for the Town's development regulations. The Board agrees with Steilacoom that since the Town has yet to adopt such implementing regulations, it cannot yet determine whether this policy will be appropriately implemented. The comprehensive plan policy itself adequately reflects not only explicit consideration of but substantive compliance with planning goal seven at RCW 36.70A.020(7).

Next, RCW 36.70A.065, entitled "Development regulations--Requirements," provides:

Development regulations adopted pursuant to RCW 36.70A.040 shall establish time periods for local government actions on specific development permit applications and provide timely and predictable procedures to determine whether a completed development

permit application meets the requirements of those development regulations. Such development regulations shall specify the contents of a completed development permit application necessary for the application of such time periods and procedures. (emphasis added).

Legal Issue No. 9 focuses on the Town's comprehensive plan while RCW 36.70A.065 concentrates on development regulations. Since the Town has yet to adopt its implementing development regulations, the Board agrees with Steilacoom that it is premature to judge the Town's compliance with RCW 36.70A.065. The Board assumes that, until it adopts its implementing development regulations, Steilacoom's interim development regulations establish the requisite time periods of RCW 36.70A.065. However, the validity of any interim development regulations is not before the Board, nor has an allegation been made that the Town failed to act to comply with RCW 36.70A.065. In any case, the Board holds that Steilacoom's comprehensive plan need not comply with RCW 36.70A.065.

The next relevant provision of the GMA to be examined is RCW 36.70A.440, which (like RCW 36.70A.065) was adopted by the legislature in 1994. It is entitled "Development permit applications--Notice to applicant" and provides:

Each city and county planning pursuant to RCW 36.70A.040 shall, within twenty working days of receiving a development permit application as defined in RCW 36.70A.030(7), mail or provide in person a written notice to the applicant, stating either: That the application is complete; or that the application is incomplete and what is necessary to make the application complete. To the extent known by the city or county, the notice shall identify other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.

As indicated above, Legal Issue No. 9 relates to the Town's comprehensive plan. Yet RCW 36.70A.440 addresses applications for development permits. The Board holds that all cities and towns planning under the Act must comply with RCW 36.70A.440 whether or not they have already adopted their GMA comprehensive plans and implementing development regulations. However, just because RCW 36.70A.440 became binding on cities and counties planning under the Act immediately upon becoming effective,^[4] does not mean that the Town's comprehensive plan must address section .440. The Town is required to comply with RCW 36.70A.440; the Town is not required to implement RCW 36.70A.440 through its comprehensive plan.

Conclusion

Steilacoom's comprehensive plan establishes a policy of processing development permit applications in a fair, timely, efficient manner to ensure predictability. Therefore, Steilacoom's comprehensive plan not only explicitly considers but also substantively complies with the Act's planning goal at RCW 36.70A.020(7).

Because RCW 36.70A.065 refers to development regulations, Steilacoom's comprehensive plan need not comply with it.

Likewise, because RCW 36.70A.440 relates to providing written notice of the status of a development permit application, Steilacoom's comprehensive plan need not address it. Nonetheless, Steilacoom must comply with the requirements of RCW 36.70A.440.

V. LEGAL ISSUE NO. 10

Legal Issue No. 10 provides:

Do the comprehensive plan's impact fee provisions comply with RCW 82.02.050, .060, .070 and .090?

The issue whether the Board has jurisdiction to determine whether cities and counties comply with Chapter 82.02 RCW is presently before the Board in another case. The Board will decide this jurisdictional issue before considering Legal Issue No. 10. Therefore, the Board will defer its ruling on Legal Issue No. 10 for the time being. While the Board will attempt to reach its determination before the parties in this case must file prehearing briefs, due to time constraints, it cannot guarantee that it will meet that schedule.

In the event the Board does not issue an order on the Town's Motion regarding Legal Issue No. 10 prior to the briefing deadlines, the parties need not brief Legal Issue No. 10 any further, but instead can incorporate by reference their existing arguments. However, the parties are entitled in their prehearing briefs, at their discretion, to supplement their arguments regarding Legal Issue No. 10.

VI. ORDER

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

1. The Town's Motion regarding Legal Issues No. 1 and 2 is **granted**. Legal Issues Nos. 1 and 2 are **dismissed with prejudice**.
2. The Town's Motion regarding Legal Issue No. 9 is **granted**. Legal Issue No. 9 is **dismissed with prejudice**.
3. The Town's Motion regarding Legal Issue No. 10 is **deferred**; the Board will attempt to issue an order either granting or denying the Town's Motion regarding this issue prior to the deadline for submitting prehearing briefs.

So ordered this 21st day of February, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley, Presiding Officer

Joseph W. Tovar, AICP

Chris Smith Towne

^[1]The Slattens make the contention that there are material facts in dispute. Slattens' Response, at 1, §I. However, no disputed facts were alleged in the text of the Slattens' Response nor raised during oral argument.

^[2]"City" is defined in the GMA to include both cities and towns. RCW 36.70A.030(3).

^[3]The Slattens have not challenged the Town for failing to act by adopting implementing development regulations by the Town's January 1, 1995 deadline for doing so. *See* RCW 36.70A.040(3).

^[4]Engrossed Substitute Senate Bill 6339 or Chapter 257, Laws of 1994, became effective on June 9, 1994 (except for section 5 which became effective on July 1, 1994). Section 4 of Chapter 257 was codified as RCW 36.70A.440.