

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

CORINNE HENSLEY,)	Case No. 94-3-0029	
)		
Petitioner,)		
)	ORDER GRANTING	
v.)	SNOHOMISH COUNTY'S)
DISPOSITIVE MOTION			
SNOHOMISH COUNTY, CROSS)		
VALLEY WATER DISTRICT and)		
ALDERWOOD WATER DISTRICT,)		
)		
Respondents.)		
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On November 28, 1994, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review, assigned Case Number 94-3-0029, from Corinne Hensley (**Hensley**). The Petition challenges the adoption of two Motions by the Snohomish County Council (the **County**), approving Addendum No. 1 to the Cross Valley Water District Sewer System Comprehensive Plan and the Alderwood Water District Comprehensive Sewer Plan for Portions of the Bear Creek Basin.

On December 8, 1994, the Board entered a Notice of Hearing in the above captioned matter that set a date for a prehearing conference, set forth the legal issues to be decided by the Board, and established a tentative schedule for filing dispositive and other motions.

On January 27, 1995, the Board received "Snohomish County's Dispositive Motion" (the **County's Motion**). Three exhibits were attached: Ex. 1 is County Council Motion 94-334, approving Cross Valley Water District's Sewer Plan Addendum, with two attachments. Ex. 2 is County Council Motion 94-335, approving Alderwood Water District's Sewer Plan for Portions of the Bear Creek Basin, with two attachments. Ex. 3 is an excerpt from Laws of 1990, 1st Ex. Sess., Chapter 17, Sections 18 through 22.

On February 8, 1995, the Board received "Corinne Hensley's Response to Snohomish County's Dispositive Motion" (**Hensley's Response**.)

On February 15, 1995, the Board received "Snohomish County's Reply on Dispositive

Motion" (County's Reply.)

The Board held a hearing on the County's Motion at 10:00 a.m. on Thursday, February 16, 1995 at its Seattle office. Chris Smith Towne, Presiding Officer, M. Peter Philley and Joseph W. Tovar were present from the Board. David S. Mann represented Hensley and Gordon W. Sivley represented the County. Alderwood and Cross Valley Water Districts did not appear. Court reporting services were provided by Pam Weekly of Seattle. No witnesses testified.

I. FINDINGS OF FACT

No material facts are in dispute. The Board enters the following findings of fact:

1. The Board adopts the Findings of Fact made in the February 24, 1995 "Order Granting BISD's Dispositive Motion re: Jurisdiction" entered in *Robison et al. v. Bainbridge Island*, CPSGMHB Case No. 94-3-0025, and incorporates them by reference here.
2. On September 28, 1994, the Snohomish County Council (the **County Council**) approved the Cross Valley Water District Sewer Comprehensive Plan Addendum No. 1 and passed County Council Motion No. 94-334 so indicating. Exhibit 1 to County's Motion.
3. On September 28, 1994, the County Council also approved the Alderwood Water District Comprehensive Plan for portions of the Bear Creek Basin and passed County Council Motion No. 94-335 so indicating. Exhibit 2 to County's Motion.

II. LEGAL ISSUE BEFORE THE BOARD

Legal Issue No. 1 asks:

Does the Board have jurisdiction to review the approval of a sewer district comprehensive plan amendment by a county legislative authority acting pursuant to RCW 56.02 and 56.08.020?

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III. POSITIONS OF THE PARTIES

The County

The County contends that the Board does not have the jurisdiction to review the Cross Valley and Alderwood Water Districts' sewer plans because those plans were adopted under the authority of Chapter 56.08 RCW and not the Growth Management Act (**GMA** or the **Act**). County's Motion, at 2. Because the County Council was required to approve the water district plan pursuant to RCW 56.08.020, such approval did not constitute the adoption of the County's own

comprehensive plan pursuant to RCW 36.70A.040. The County maintains that the Board's jurisdiction is limited to review of legislative actions undertaken pursuant to the requirements of Chapter 36.70A RCW. County's Motion, at 3. The Board has not been granted jurisdiction to determine whether all actions of local governments comply with the GMA. County's Reply, at 1.

Hensley

Hensley contends that the sewer plans in question were "meaningless" without County Council approval. Hensley's Response, at 2. Furthermore, before the County Council could approve the plans, it had to determine that the sewer plans were consistent with the requirements of RCW 36.70A.110. Therefore, the Board has jurisdiction to review whether the County Council's approval of the Cross Valley and Alderwood Water Districts' sewer plans was consistent with the GMA.

IV. DISCUSSION

The Board holds that it does not have jurisdiction to review the approval of a sewer district comprehensive plan amendment by a county legislative authority acting pursuant to RCW 56.02.060 and 56.08.020.

RCW 56.08.020 provides in relevant part:

The sewer commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring indebtedness shall adopt a general comprehensive plan for a system of sewers for the district...

...

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the sewer district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of these county legislative authorities pursuant to the criteria in RCW 56.02.060 for approving the formation, reorganization, annexation, consolidation, or merger of sewer districts, and the resolution, ordinance, or motion of the legislative body which rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110...

Although RCW 56.08.020 requires general comprehensive plans adopted under Title 56 RCW to be consistent with RCW 36.70A.110, it does not grant the Board jurisdiction to determine

whether such consistency was indeed achieved.^[1]

In *Robison et al. v. Bainbridge Island*, CPSGMHB Case No. 94-3-0025, the Board entered an "Order Granting BISD's Dispositive Motion re: Jurisdiction" on February 24, 1995. The order granted the dispositive motion of the Intervenor Bainbridge Island School District requesting the Board to dismiss all issues in that case involving Chapter 82.02 RCW. The issue of first impression was whether the words "this chapter" in RCW 36.70A.280(1)(a) and .300(1) referred solely to codified *Chapter 36.70A RCW*, or to uncodified legislative session law, *chapter 17*, Laws of 1990, 51st Legislature, First Extraordinary Session, and/or *chapter 32*, Laws of 1991, 52nd Legislature, 1991 Special Session.

The Board concluded in *Bainbridge Island* that "this chapter" means only Chapter 36.70A RCW. Thus, the Board's jurisdiction is limited as set forth by RCW 36.70A.280(1)(a):

(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 [i.e., chapter 36.70A RCW] or chapter 43.21C RCW as it relates to plans, regulations, or amendments, adopted under RCW 36.70A.040.... (emphasis added)

In this case, Hensley asks the Board to determine whether the County Council's approval of the water districts' sewer plans pursuant to RCW 56.08.020 complies with RCW 36.70A.110. The Board reaches the same conclusion as that drawn in *Bainbridge Island*: the Board has jurisdiction only over allegations that a state agency, city or county has not complied with the requirements of Chapter 36.70A RCW, or Chapter 43.21C RCW as its relates to Chapter 36.70A RCW. Therefore, the Board does not have jurisdiction over actions taken by the County Council pursuant to authority in Title 56 RCW, and cannot reach a decision on the merits of Hensley's substantive claim.

V. CONCLUSION

The Board does not have jurisdiction to review the approval of a water districts' comprehensive sewer plan amendment by a county legislative authority acting pursuant to requirements in Title 56 RCW. Therefore, the Board cannot determine whether the water districts' sewer plans are consistent with RCW 36.70A.110.

VI. 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.

The County's Motion is **granted**. The Board does not have jurisdiction to determine whether the actions of local jurisdictions comply with Title 56 RCW. Therefore, the entire case is **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

Note: This Order Granting Snohomish County's Dispositive Motion 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.

DIANE - for Declaration of Service

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^[1]The Board's holding does not prevent a party from challenging the County's adoption of its urban growth boundaries, adopted pursuant to RCW 36.70A.110, assuming such an appeal is timely filed and the petitioners have standing, or from bringing an action challenging the County's approval of the water districts' plans in superior court.