

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

CORINNE R. HENSLEY, et al.,)

)Case No. 95-3-0043

Petitioners,)

)
v.)ORDER GRANTING

)HENSLEY'S
SNOHOMISH COUNTY,)DISPOSITIVE MOTION

)
Respondent.)

)

PROCEDURAL HISTORY

On April 17, 1995 the Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Notice of Hearing in the above captioned case. The Notice provided for the filing of a dispositive motion prior to June 7 which, if granted, would dispose of the case, and specified that the Board would hold a hearing on any dispositive motion on June 7, 1995, only if requested by a party. No such request was received by the Board.

On May 9, 1995, the Board received a Dispositive Motion from Corinne R. Hensley, Concerned Citizens for Sky Valley, and 1000 Friends of Snohomish County (hereafter collectively referred to as **Hensley**). A Declaration of Corinne R. Hensley, with three exhibits, was attached. Exhibit A is a partial listing of Snohomish County (the **County**) GMA briefings and hearings through April 25, 1995, and a list of potential dates and topics for the remainder of deliberations. Exhibit B is a letter dated April 29, 1994 from the County Planning Department to the State Department of Community, Trade and Economic Development (**DCTED**), transmitting a copy of the County's draft General Policy Plan. Exhibit C is a copy of DCTED's letter to the County authorizing an extension of the deadline for adoption of development regulations to January 1, 1995.

Hensley's Dispositive Motion asks the Board to respond in the affirmative to Petitioners' Legal Issues Nos. 1, 2 and 3, alleging that the County is required and has failed to adopt by specified dates a comprehensive plan, final urban growth area boundaries, and development regulations to implement the plan, as required by the Growth Management Act (**GMA** or the **Act**).

On May 26, 1995, the Board received Respondent Snohomish County's Response to Petitioners' Dispositive Motion, with two exhibits attached (the **County's Response**). Exhibit A is the

Affidavit of Sheila McCallister, County Council legislative assistant. Exhibit B consists of twelve proposed ordinances, Nos. 94-113 through -24, establishing urban growth areas, and proposed ordinance No. 94-125, adopting the Snohomish County Comprehensive Plan - General Policy Plan.

On June 2, 1995, the Board received a Reply Memorandum of Hensley, et. al. in Support of Dispositive Motion Regarding Legal Issues 1, 2 and 3.

LEGAL ISSUES BEFORE THE BOARD

Since the Board has not yet held a prehearing conference in this case, the only issues before it are those raised in Hensley's Petition for Review, which asks three questions:

1. Does GMA require Snohomish County to adopt a Comprehensive Plan by the statutory deadline of July 1, 1994, and if so, did Snohomish County comply with this statutory deadline required by GMA? RCW 36.70.040(3).

2. Does GMA require Snohomish County to adopt Final Urban Growth Areas by the statutory deadline of July 1, 1994, and if so, did Snohomish County comply with the statutory deadline required by GMA? RCW 36.70A.110.

3. Does GMA require Snohomish County to adopt development regulations consistent with a comprehensive plan by the statutory deadline of July 1, 1994 or an extended deadline of up to 180 days after July 1, 1994, and if so, did Snohomish County comply with the statutory deadline required by GMA? RCW 36.70A.040(4).¹¹

POSITIONS OF THE PARTIES

The Hensley Dispositive Motion repeats the questions listed above in statement form and corrects the statutory citation in the third question to RCW 36.70A.040(3). Hensley asks the Board to find that the County has failed to take the required actions by the dates specified in the GMA, and requests that the Board enter a compliance order requiring the county to adopt a comprehensive plan and final Urban Growth Areas by June 28, 1995, and to adopt development regulations to implement the comprehensive plan within 90 days of that date.

In its Response Brief, the County agrees that:

In their dispositive motion, petitioners correctly set forth the due dates for the adoption by Snohomish County of its comprehensive plan required by RCW 36.70A.040, the adoption of final urban growth areas required by RCW 36.70A.110 and the adoption of development regulations to implement the county's comprehensive plan required by RCW 36.70A.040.

County's Response Brief, at 1.

The County then lists its extensive efforts to date to comply with the above-cited requirements, and states that:

The Snohomish County Council has established a tentative date of June 28, 1995 for its final action on Ordinance 94-125 [proposed ordinance which will adopt the county's

comprehensive plan] and on related measures such as [proposed] Ordinances 94-113 through 94-124 establishing final urban growth areas. Response Brief, at 6.

As to compliance with the requirement to adopt development regulations implementing the Comprehensive Plan, the County argues that it has adopted development regulations which will implement the General Policy Plan, listing four ordinances regulating critical areas, rural subdivisions, forestry and farming. In addition, it lists three interim regulations that will be revised and made final following adoption of the General Policy Plan, governing groundwater protection, forest land conservation, and agricultural land. County's Brief, at 6.

The County concludes that the only question before the Board relating to adoption of development regulations:

... is the **procedural** question of whether the county has adopted any development regulations to implement its comprehensive plan within the deadline provided by law." It is Snohomish County's position that it **did** adopt by the January 1, 1995 deadline, development regulations which will implement its comprehensive plan. ... (Bolding in original; underlining added). County's Brief, at 6, 7.

DISCUSSION

RCW 36.70A.040(3) provides in part:

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:

...

(d) if the county has a population of 50,000 or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994 ... Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

Exhibit C, attached to Hensley's Motion, is a letter from the Department of Community, Trade and Economic Development acknowledging the County's April 29, 1994 request for a six-month extension of the deadline for adoption of development regulations and noting the automatic six-month deadline extension to January 1, 1995.

RCW 36.70A.110(4) provides in part:

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

RCW 36.70A.110(5) provides that:

Each county shall include designations of urban growth areas in its comprehensive plan. In RCW 36.70A.030, the GMA defines the terms at issue in this matter:

(1)“Adopt a comprehensive land use plan” means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

....

(4)“Comprehensive land use plan,” “comprehensive plan,” or “plan” means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter. (Emphasis added.)

The County does not dispute the dates by which comprehensive plans, final urban growth areas and implementing development regulations were to have been adopted. Moreover, it does not dispute the fact that it has not yet adopted them. However, it argues that it has adopted some of development regulations which in unaltered or modified form will serve to implement the comprehensive plan.

In the Final Decision and Order in one of its earliest cases, *City of Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004, the Board observed that:

Under Chapter 36.70 RCW and the case law developed around it, land use policy plans were ‘just’ advisory ‘blueprints that did not bind local governments when they considered adoption of development regulations or the issuance of development permits. The GMA creates a new and critical connection between policy decisions and implementing actions such as land use regulations and capital projects. Under Chapter 36.70A RCW, consistency demands that policy documents now give substantive direction to local government implementing actions. *Snoqualmie*, at 15.

In its decision in *Gutschmidt v. City of Mercer Island*, CPSGPHB Case No. 92-3-0006, in a discussion of the hierarchical nature of planning under the Act, the Board stated that:

... implementing development regulations are not planning documents; they are regulations. As such, they are the final documents in the hierarchy. They cannot exist until after the CPPs and comprehensive plans have been enacted. *Gutschmidt*, at 90.

In its Order Granting Respondent King County’s Motion to Dismiss in *Happy Valley Associates, et. al. v. King County*, CPSGPHB Case No. 93-3-0008 (1993), dealing with the Board’s jurisdiction to hear an appeal of a community or subarea plan enacted in 1992 before a comprehensive plan complying with GMA requirements had been adopted, the Board held that even though that community plan:

... contains an Area Zoning component that would constitute ‘development regulations’ in a GMA context, development regulations that implement a GMA required comprehensive plan cannot exist until a GMA mandated comprehensive plan has been adopted. Since the County has yet to adopt its GMA comprehensive, plan, it cannot have development regulations that implement and are consistent with that plan. RCW 36.70A.040(3). *Happy Valley*, at 7.

The County has not adopted a comprehensive plan pursuant to the requirements of the Growth Management Act. The Board holds, consistent with its prior decisions, that the County cannot adopt development regulations that are consistent with and implement its comprehensive plan until that plan itself is adopted under the GMA.

ORDER

Having considered the documents filed in support of and in opposition to Hensley's dispositive motion, the Board enters the following order.

1. The Motion is **granted**. Snohomish County is required by the GMA to adopt, and has not adopted, a comprehensive plan, final urban growth areas and implementing development regulations by the deadlines set forth in the Act.
2. Pursuant to RCW 36.70A.300(1)(b), the County is given until **Wednesday, July 5, 1995** to adopt by ordinance its comprehensive plan and final urban growth areas, and until **Wednesday, September 6, 1995** to adopt by ordinance development regulations that are consistent with and implement the comprehensive plan.
3. The County shall prepare a statement of the status of its compliance with the Board's Order regarding adoption of its comprehensive plan, and file one original and two copies with the Board, and serve a copy on Hensley, not later than **5:00 p.m. on Monday, July 10, 1995**. The County shall prepare a statement of the status of its compliance with the Board's Order regarding adoption of development regulations, and file one original and two copies with the Board, and serve a copy on Hensley, not later than **5:00 p.m. on Monday, September 11, 1995**. In each instance, pursuant to RCW 36.70A.330(1), the Board on its own motion will promptly schedule a compliance hearing after each of those deadlines.
4. Since this Order resolves the legal issues before it in this case, the Board strikes the remainder of the schedule and tasks set forth in the Prehearing Order. All subsequent hearings and deadlines are canceled.

So ORDERED this 9th day of June, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Chris Smith Towne, Presiding Officer

M. Peter Philley

Joseph W. Tovar, AICP

NOTE: This Order Granting Hensley's Dispositive Motion constitutes the Board's final order in this case as specified by RCW 36.70A.300, unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

^[1] RCW 36.70A.040(4) deals solely with counties that plan under the GMA pursuant to RCW 36.70A.040(2).

Snohomish County plans under the GMA pursuant to RCW 36.70A.040(1), and the requirements for counties, including Snohomish, planning under RCW 36.70A.040(1) are set forth in RCW 36.70A.040(3).