

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

Peninsula Neighborhood Association,)	Case No. 95-3-0071
Petitioner,)	ORDER DENYING PIERCE
v.)	COUNTY’S MOTION TO DISMISS
Pierce County,)	[PNA II]
Respondent.)	
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I. Procedural Background

On September 22, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from Peninsula Neighborhood Association (**PNA**) in the above-captioned matter. PNA challenged the adoption by Pierce County (the **County**) of Ordinance No. 95-79S, development regulations that implement the County’s Comprehensive Plan (the **Plan**), claiming that the ordinance does not comply with the Growth Management Act (**GMA** or the **Act**).

On November 13, 1995, the Board entered a Prehearing Order in this case. Among other things, it set forth a statement of five legal issues and established deadlines for filing dispositive motions. The Prehearing Order also indicated that the Board would not hold a hearing on any such dispositive motions in the event they were filed.

On November 16, 1995, Pierce County’s Motion to Dismiss was filed with the Board along with Pierce County’s Brief in Support of Motion to Dismiss (**County’s Brief**). An Affidavit of Mark Truckey, Senior Planner, was attached. The County’s Brief contained three components, each asking for dismissal of the case: for lack of State Environmental Policy Act (**SEPA**) standing; pursuant to the doctrines of res judicata and collateral estoppel; and for mootness. Each is discussed separately below.

On November 22, 1995, PNA filed a Response to Pierce County’s Motion to Dismiss (PNA’s Response). Subsequently, the County did not file a reply brief.

II. Discussion

A. PNA’s SEPA Standing

The Board has jurisdiction only over those matters specified in RCW 36.70A.280(1), which includes the

GMA, SEPA and certain provisions in the Shoreline Management Act. The County asks the Board to dismiss PNA's Petition for Review in this case because it claims that PNA lacks SEPA standing to bring this appeal. The County makes a detailed argument to explain why PNA lacks the requisite SEPA standing.

The Board has reviewed both PNA's Petition for Review and the statement of legal issues brought by PNA as set forth in the Prehearing Order. ^[1] PNA has never alleged in this case that the County violated SEPA. Instead, it alleges only that the development regulations to implement the Plan do not comply with the Act. ^[2] Therefore, SEPA is not at issue in this case. Accordingly, this portion of the County's Motion to Dismiss is **denied**.

B. Doctrines of Res Judicata and Collateral Estoppel

Second, the County contends that because the Board has issued a Final Decision and Order in the case *Gig Harbor et al. v. Pierce County*, CPSGMHB Case No. 95-3-0016, remanding portions of the County's Plan, that PNA is now barred by the doctrines of res judicata and collateral estoppel from bringing this petition.

This Board has previously rejected Pierce County's contentions that the growth management hearings boards have jurisdiction over equitable doctrines such as res judicata and collateral estoppel. *See Cities of Tacoma, Milton, Puyallup and Sumner v. Pierce County*, CPSGPHB No. 94-3-0001, Order on Dispositive Motions, (March 4, 1994). The legislature subsequently has not expanded the Board's jurisdiction to include equitable doctrines although it has given the Board jurisdiction over shoreline master programs. Accordingly, nothing has changed to cause the Board to overturn its prior holding: the Board does not have jurisdiction to determine whether equitable doctrines such as the doctrines of res judicata or collateral estoppel have been violated.

The Board further notes that even if it did have such jurisdiction, it could not grant the County's motion here. Although the parties are the same, the issues are completely different. While the *Gig Harbor* case involved a review of the Pierce County Comprehensive Plan, this case pertains to Ordinance 95-79S, development regulations implementing that plan, and whether it complies with the requirements of the GMA. Therefore, this portion of the County's motion is **denied**.

C. Mootness

Third, the County argues that this case is moot because "... PNA has conceded that its appeal before the Pierce County Hearing Examiner which is related to this appeal is 'moot'" ...County's Brief, at 1. In reply, PNA pointed out that it took the position during oral argument before a Pierce County Hearing Examiner that this case:

... would become moot if (and only if) the County substantially modifies the Comprehensive Plan with respect to the Rural Activity Center designation, as ordered by the Hearings Board to be accomplished by April 3, 1996; and the Board issues an Order of Compliance with respect to same....PNA's Response, at 2-3.

The Board agrees that this case could have become moot or may yet become moot. First, if the Board had

declared the County's Plan and all its implementing development regulations invalid in the *Gig Harbor* case, this case would have become moot. However, the Board did not make such a determination of invalidity in the *Gig Harbor* decision.

The case could also become moot in the future if the County amends precisely those provisions of its Plan that PNA challenged in the *Gig Harbor* case. Moreover, if the County amends precisely those implementing development regulations that PNA contends do not comply with the Act, then this case could also become moot. At this time, the Board is unaware of the County having taken either action. Therefore, the case is not now moot and the Board must also **deny** this portion of the County's Motion to Dismiss.

III. ORDER

Having reviewed the above-referenced documents and file in this case, and having deliberated on the matter, the Board enters the following order:

Pierce County's Motion to Dismiss is **denied**. The hearing on the merits will proceed as scheduled on January 30, 1996.

So ORDERED this 9th day of January, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

[1] The five legal issues in this case are as follows:

Legal Issue No. 1

Did the County comply with RCW 36.70A.020(2), .110(2), .210(1) and Pierce County's County-wide Planning Policies (PCCPPs) 2.1.1 and 2.1.2 if the development regulations and zoning adopted by Ordinance 95-79S exceed the Office of Financial Management population projections?

Legal Issue No. 2

Do the County's development regulations and zoning for Rural Activity Centers (RACs), codified at Pierce County Code (PCC) 18A.25.150(A)(2)(a), 18A.25.150(D), 18A.25.180(3), 18A.25.270 and 18A.25.280 comply with RCW 36.70A.070(5), .110(1) and (3)?

Legal Issue No. 3

Do the County's development regulations and zoning for a "shoreline density exception," codified at PCC 18A.35.020 (C)(3), comply with RCW 36.70A.020(1), (2), (8), (9) and (10), .070(5), .110 (1) and (3)?

Legal Issue No. 4

Do the County's development regulations and zoning for the "Rural Five" zone classification, codified at PCC 18A.35.020(B)(2) and .080, comply with RCW 36.70A.020(2), .070(5), and .110(1) and (3)?

Legal Issue No. 5

Do the County's development regulations and zoning, codified at PCC 18A.35.130(D) and 18A.75.070, comply with RCW 36.70A.070(5) and .110(1) and (3) if they expand non-conforming uses, including uses which are urban in nature, within rural areas?

[\[2\]](#)

The County has not challenged PNA's claim that it has GMA standing before the Board. *See* PNA's Petition for Review, at 3 and PNA's Response, at 2.