

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

CITY OF LAKE FOREST PARK,)
Petitioner,)
v.)
CITY OF SHORELINE, ^[1])
Respondent.)
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_____)

**Case No. 96-3-0036
ORDER GRANTING
DISPOSITIVE MOTIONS**

I. Procedural Background

A prehearing conference in the above-captioned matter was held on January 6, 1997. At that time, the Board's presiding officer indicated that the Board had concerns as to whether the Board had jurisdiction to review Shoreline's action. The question of Board jurisdiction was added to the list of legal issues for the Board to resolve.

On January 10, 1997, the Board issued its Prehearing Order in this case, setting forth the Legal Issues and establishing deadlines for filing dispositive motions and briefs.

On January 28, 1997, Shoreline filed "Respondent City of Shoreline's Motion to Dismiss Lake Forest Park's Petition for Review" (**Shoreline's Motion to Dismiss**). The subject matter jurisdiction of the Board is the basis for the motion to dismiss. This issue is indicated as Legal Issue No. 1 in the Prehearing Order.

On February 4, 1997, Lake Forest Park filed "City of Lake Forest Park Memorandum in Opposition to Shoreline Motion to Dismiss."

On February 10, 1997, Shoreline filed "Shorelines Reply Memorandum in Support of Its Motion to Dismiss Lake Forest Park's Petition for Review."

The Board did not conduct a hearing on the motions in this case; the Board issues this Order upon review of the documents referenced above.

II. Findings of fact

- 1.The City of Shoreline was incorporated on August 31, 1995, and must adopt its GMA comprehensive plan by August 1998.Shoreline’s Motion to Dismiss, at 2.
- 2.On October 14, 1996, the City of Shoreline adopted Resolution No. 113, entitled“**A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, ADOPTING DRAFT INTERIM POLICIES TO GUIDE ANNEXATION EFFORTS.**”^[2] Petition for Review, Attachment.
- 3.The stated purpose of Resolution 113 is “to provide guidance in any annexation efforts occurring prior to the adoption of the comprehensive plan.”Petition for Review, Attachment.
- 4.Resolution 113 does not adopt a GMA comprehensive plan nor a development regulation implementing a GMA comprehensive plan.*See* Petition for Review, Attachment.
- 5.Resolution 113 was not adopted pursuant to Chapter 36.70A RCW.*See* Petition for Review, Attachment.

III. Discussion and conclusions

Legal Issue

The Board’s Prehearing Order states Legal Issue No. 1 as follows:

- 1. Does the Board have jurisdiction to decide the issues raised in Lake Forest Park’s petition for review challenging Resolution 113, as adopted by the City of Shoreline?***

Position of the Parties

Shoreline’s Motion to Dismiss contends that the answer is NO, the Board does not have jurisdiction; and therefore, Lake Forest Park’s petition for review should be dismissed.To support its motion, Shoreline cites to RCW 36.70A.280(1) and several decisions by this Board interpreting its subject matter jurisdiction very narrowly.Also, Shoreline contends that the draft interim annexation policies, adopted by Resolution 113, are not development regulations nor are they required to be adopted by the GMA.

Petitioner Lake Forest Park urges the Board to exercise jurisdiction by arguing that the Board’s jurisdiction is not limited to GMA enactments, but should be liberally construed to include jurisdiction over regulations that may relate to actions taken under GMA.Additionally, Lake Forest Park argues the draft interim annexation policies adopted by Resolution 113 are development regulations under the GMA, and that the Board has jurisdiction over such

development regulations as well as other interim measures.

Discussion

The Board's subject matter jurisdiction derives from RCW 36.70A.280(1), entitled "Matters subject to board review," which provides as follows:

(1) A growth management hearings board shall hear and determine **only** those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW;(Emphasis supplied.)

As this Board stated in *Happy Valley Assoc. v. King County*:

[The Board's] jurisdiction does not apply to all planning documents enacted by a local governmentInstead, the Board's jurisdiction is limited to planning documents, such as comprehensive plans and development regulation, that were adopted in an effort to comply with the requirements of the GMA.As this Board has repeatedly indicated in prior decisions [citations omitted], its subject matter jurisdiction is strictly limited to the matters specified in . . . RCW 36.70A.280(1).This conclusion is bolstered by the legislature's use of the word "only" in the quote above from that statute, and the fact that RCW 36.70A.300(1) indicates that a board's final decision "... 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...."*Happy Valley*, CPSGPHB Case No. 93-3-0008, Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend Its Petition for Review (Oct. 25, 1993), at 13-14.

This Board has also held that "this chapter" as used in RCW 36.70A.280(1) refers to Chapter 36.70A RCW (*see particularly, South Bellevue et al v. City of Bellevue*, CPSGMHB Case No. 95-3-0055 (1995), Order of Dismissal, at 4-6, for a summary of decisions).

Therefore, pursuant to RCW 36.70A.280(1)(a), as it relates to the present case, the Board has jurisdiction to hear and determine only petitions for review alleging that the City of Shoreline is not in compliance with the requirements of Chapter 36.70A RCW.

The question then becomes "Was Shoreline's adoption of Resolution 113 (Draft Interim Annexation Policies) performed to comply with a requirement of Chapter 36.70A RCW?"

It is uncontested that Resolution 113 was not adopted pursuant to RCW 36.70A, nor did Shoreline, by Resolution 113, attempt to adopt a comprehensive plan or development regulation implementing a GMA comprehensive plan (findings of fact 4 and 5). Adoption of a plan and adoption of consistent implementing regulations are clearly requirements of Chapter 36.70A RCW. However, the recently incorporated City of Shoreline is not required to adopt its GMA plan until August 1998 (findings of fact 1).

Additionally, the Board is not persuaded by Lake Forest Park's argument that Shoreline's interim annexation policies are development regulations. First, they were adopted by resolution; second, the geographic areas referenced in the resolution are areas outside of Shoreline's corporate limits. As such, these policies relate to areas that are beyond Shoreline's regulatory jurisdiction, and do not have the force and effect of law. Further, the Board has held it only has jurisdiction over development regulations adopted by ordinance pursuant to Chapter 36.70A RCW (see: *Agriculture for Tomorrow v. City of Arlington*, CPSGMHB No. 95-3-0056 (1996), at 13.) As noted above, the interim annexation policies were not adopted by ordinance, nor were they adopted pursuant to Chapter 36.70A RCW.

Resolution 113 is entitled "A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, ADOPTING DRAFT INTERIM POLICIES TO GUIDE ANNEXATION EFFORTS" (finding of fact 2). The stated purpose of Resolution 113 is "to provide guidance in any annexation efforts occurring prior to the adoption of the comprehensive plan." (finding of fact 3). The City of Shoreline argues that nothing in the GMA requires a jurisdiction to adopt draft interim annexation policies. Shoreline cites to this Board's decision in *Honesty in Environmental Analysis and Legislation (HEAL) v. City of Seattle*, CPSGMHB No. 96-3-0012 (1996) for the proposition that if there is no GMA requirement to adopt annexation policies, this Board is without jurisdiction to review such policies.

The Board agrees with Shoreline and **holds that nothing in the Act requires a jurisdiction to adopt annexation policies.** However, the Board notes that if, for example, a county adopts annexation policies as part of its County-wide Planning Policies (CPPs) (see, e.g., *City of Poulsbo v. Kitsap County*, CPSGPHB Case No. 92-3-0009 (1993), at 26-28), or if annexation policies are included in an adopted GMA comprehensive plan (see, e.g., *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008 (1995), at 23-37), such policies can be subject to Board review, since the adoption of CPPs and comprehensive plans are requirements of the GMA. However, this is not the situation in the present case. The draft interim annexation policies adopted by Shoreline in Resolution 113, were not adopted as an amendment to a CPP nor as part of Shoreline's pending GMA comprehensive plan. **Therefore, the Board holds that it does not have subject matter jurisdiction to review Shoreline's draft interim annexation policies, as adopted by Resolution 113, since they were not adopted to comply with, or in furtherance of, a requirement of Chapter 36.70A RCW.**

Conclusion

The Board concludes that it does not have subject matter jurisdiction to review Shoreline's draft interim annexation policies, as adopted by Resolution 113, since they were not adopted to comply with, or in furtherance of, a requirement of Chapter 36.70A RCW.

IV. ORDER

Based upon a review of the petition for review, Resolution 113, the briefs of the parties, the Act, and prior decisions of this Board, the Board enters the following ORDER:

Respondent City of Shoreline's motion to dismiss is **granted**; Lake Forest Park's petition for review relating to Shoreline's adoption of Resolution 113 (Case No. 96-3-0036), is **dismissed with prejudice**.

The hearing on the merits for Case No. 96-3-0036, scheduled for March 20, 1997, is **anceled**.

So ORDERED this 14th day of February, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

[1] On January 23 and February 12, 1997, respectively, the Board issued Orders Granting Stipulated Dismissals of Respondents King County and State of Washington.

[2] Resolution 113 identifies four geographic areas as "logical annexation areas" for Shoreline: Point Wells, Area A, Area B and Area B-1. The BRB denied Area A but approved Area B as annexation areas for Shoreline. Area B was appealed to King County Superior Court by Lake Forest Park. The Court ruled against Lake Forest Park, allowing the election on the proposed annexation of Area B to Shoreline to proceed. The election was held February 4, 1997, and, apparently, Area B was annexed to Shoreline.