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(the **Agreement** or **BDUGAA**).The grounds for the challenge is that the Agreement, and its adoption, are not in compliance with the Growth Management Act (**GMA** or the **Act**).

On March 3, 1997, the Board held a prehearing conference in the above-captioned matter.

On March 10, 1997, the Board issued an Order Granting Intervention, Denying Consolidation and Prehearing Order.This Order set the deadlines for filing dispositive motions.

On March 10, 1997, the Board received City of Black Diamond’s “Respondent’s Motion to Dismiss Petitioner’s Petition for Review” (**City’s Motion**), asserting that the Board lacks jurisdiction to hear the matter.

[2]

On March 17, 1997 , the Board received Intervenor’s “Plum Creek Timber Company, L.P.’s Motion to Dismiss Johnson, Et Al.’s Petition for Review” (**Intervenor’s Motion**), also asserting that the Board lacks jurisdiction.

Also on March 17, 1997, the Board received Petitioner’s “Motion to Add to Index and Require Good Faith Index”. On March 24, 1997, the Board received “Petitioner’s Response to Respondent’s Motion to Dismiss” (**Johnson’s Response**).

On March 28, 1997, the Board received “Black Diamond’s Reply Memorandum in Support of Its Motion to Dismiss Petitioner’s Petition for Review” (**City’s Reply**) and “Plum Creek Timber Company, L.P.’s Reply Memorandum in Support of Motion to Dismiss” (**Intervenor’s Reply**).

The Board did not conduct a hearing on the motions in this case; the Board issues this Order based upon review of the documents referenced above, its prior Orders andChapter 36.70A RCW.

II.FINDINGS OF FACT

- 1.On November 21, 1996, the City of Black Diamond adopted Resolution No. 242.PFR, Attachment 1.
- 2.Resolution No. 242 is entitled “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON, APPROVING THE BLACK DIAMOND URBAN GROWTH AREA AGREEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME.”PFR, Attachment 1.
- 3.The Mayor executed the Black Diamond Urban Growth Area Agreement on December 24, 1996.PFR, Attachment 2.

4.The parties to the BDUGAA are King County, the City of Black Diamond, Plum Creek Timber Company L.P., and Palmer Coking Coal Company.PFR, Attachment 2.

5.At the prehearing conference, the City indicated that it would seek a dispositive motion regarding the Board’ jurisdiction.Order Granting Intervention, Denying Consolidation and Prehearing Order, Section I, Procedural Background and Section XI, Statement of Legal Issues.

III. Motion to dismiss petition for review

Legal Issue No. 1 asks:

Does the Board have subject matter jurisdiction to decide whether the City is in compliance with the requirements of the Growth Management Act in adopting Resolution No. 242, and approving the Black Diamond Urban Growth Area Agreement (“BDUGAA”)?

Discussion

The Board has repeatedly and consistently stated that it has limited jurisdiction.The Board’s authority “must be strictly limited in its operations to those powers granted by the legislature.”*South Bellevue Partners Limited Partnership v. City of Bellevue [SouthBellevue]*, CPSGMHB Case No. 95-3-0055, Order of Dismissal (1995), at 4 (citations omitted).

The Board’s subject matter jurisdiction derives from RCW 36.70A.280, which provides in part:

Matters subject to board review.

(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 added.)

The Board noted its limited jurisdiction in *Happy Valley Assoc. v. King County*:

[The Board’s] jurisdiction does not apply to all planning documents enacted by a local government. . . .Instead, the Board’s jurisdiction is limited to planning documents, such as comprehensive plans and development regulations, 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 the 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” 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 South Bellevue*, at 4-6.

Additionally, the Board has held that “the plain language of RCW 36.70A.280 grants the Board jurisdiction over petitions alleging lack of compliance with the requirements of the GMA.” *HEAL v. City of Seattle*, CPSGMHB Case No. 96-3-0012, Final Decision and Order (Aug. 21, 1996), at 14 (emphasis in original).

Therefore, pursuant to RCW 36.70A.280 as it relates to the present case, the Board has jurisdiction to hear and determine only petitions for review alleging that the City is not in compliance with the requirements of Chapter 36.70A RCW. The question then becomes: was the City’s adoption of the Resolution and signing of the Agreement performed to comply with a requirement of Chapter 36.70A RCW?

The purpose of the Resolution is to authorize the City’s Mayor to execute the BDUGAA. *See* Finding of Fact 2. The BDUGAA provides for annexation of certain lands to the City, dedication of open space on certain lands, and planning for development of other lands as commercial, industrial, and residential. *See* PFR, Attachment 2. The agreement specifies certain activities that the City is required to perform over the life of the agreement, including amending its comprehensive plan and development regulations to reflect planning for the areas to be annexed.

Petitioners do not argue that the Resolution or the BDUGAA adopts or amends the City’s comprehensive plan or development regulations, matters over which the Board clearly has jurisdiction. Instead, Petitioners argue that the City’s actions are brought within the Board’s jurisdiction by RCW 36.70A.120. Johnson alleges that the City “performed activities” in adopting the Resolution and signing the Agreement and that those activities are not in conformity with its comprehensive plan. Johnson’s Response, at 4.

RCW 36.70A.120 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan. (Emphasis added.) [1993 sp.s. c 6 sec 3; 1990 1st ex.s. c 17 sec. 12]

As originally enacted, and prior to being amended in 1993, RCW 36.70A.120 provided as follows:

Within one year of the adoption of its comprehensive plan, each county and city that is required or chooses to plan under RCW.36.70A.040 shall enact development regulations that are consistent with and implement the comprehensive plan. Those counties and cities shall perform their activities and make capital budget decisions in conformity with their comprehensive plan. [1990 1st ex.s. c 17 sec. 12]

The consistent message of RCW 36.70A.120 prior to and following the 1993 amendment, is that local governments planning pursuant to the Growth Management Act must implement their adopted comprehensive plans, and that the local governments' implementing activities must be in conformity with their comprehensive plans.

As noted above, Petitioners suggest that the adoption of the BDUGAA, through Resolution No. 242, is not in conformity with its comprehensive plan, as required by RCW 36.70A.120. However, as cited above, the BDUGAA commits the parties to a process whereby the City will ultimately have to consider amending the present plan and amending or adopting new development regulations. The Board notes that there is no provision in the Act that requires a jurisdiction to adopt any particular amendment to its plan or development regulations *Cole v. Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order (July 31, 1996), at 10. However, if, and when, these future actions to amend Black Diamond's comprehensive plan and development regulations occur, and they are appealed, the Board will clearly have subject matter jurisdiction to review them for compliance with the requirements of Chapter 36.70A RCW [3]

The present action of approving the BDUGAA and adopting it through enactment of Resolution No. 242 does not rise to the level of triggering this Board's jurisdiction pursuant to RCW 36.70A.280. **Therefore, the Board holds that it does not have subject matter jurisdiction to review Black Diamond's approval of the Black Diamond Urban Growth Area Agreement as adopted by Resolution No. 242, since it merely contemplates future actions to amend the City's comprehensive plan and development regulations.**

Conclusion

The Board concludes that it does not have subject matter jurisdiction to review the City of Black Diamond's Resolution No. 242, which approves and authorizes the execution of the Black Diamond Urban Growth Area Agreement, since the Resolution merely contemplates future actions that the City of Black Diamond may take to amend its comprehensive plan and development regulations.

IV. ORDER

Based upon review of the Petition for Review, Resolution No. 242, the briefs of the Parties and Intervenors, the Act and prior decisions of this Board, the Board enters the following Order:

Respondent City of Black Diamond's motion to dismiss is **granted**; Johnson, et al's Petition for Review relating to the City of Black Diamond's adoption of Resolution No. 242 (Case No. 97-3-0001) is **dismissed with prejudice**.

The Hearing on the merits for Case No. 97-3-0001 (**Johnson I**), scheduled for May 20, 1997, from 10:00 a.m. - 12:00 noon, is **canceled**.

So ORDERED this 4th day of April, 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] The parties to the Agreement are listed in Finding of Fact # 4.

[2] Intervenor Plum Creek attempted to file its Motion to Dismiss on March 14, 1997, but the legal messenger erroneously delivered the document to King County Superior Court. However, the filing deadline per the Prehearing Order was March 17, 1997.

[3] The Board notes that none of the parties argue otherwise.