CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

DAVID FRICK and PARK RYKER,	)	**Case No. 97-3-0007**
	)	**ORDER GRANTING**
	)	**DISPOSITIVE MOTION**
Petitioners,	)	
v.	)	
CITY OF MILTON,	)	
Respondent,	)	
and	)	
FIFE SCHOOL DISTRICT,	)	
Intervenor.	)	
	)	
	)	
	)	
	)	
	)	

I. Procedural Background

On February 4, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review **(PFR**) from David Frick and Park Ryker(**Frick**).The matter was assigned Case No. 97-3-0007, and will be referred to hereafter as ***Frick v. Milton.*** Frick challenges the City of Milton's (**Milton** or the **City**) adoption of Ordinance No. 1314 (the **Ordinance**), that imposes impact fees on new residential development for the benefit of Fife School District No. 417.The grounds for the challenge is that the ordinance violates various provisions of the Growth Management Act (**GMA** or the **Act**), Pierce County's County-wide Planning Policies (**CPPs**) and RCW 82.02.050-090.

On March 4, 1997, the Presiding Officer sent a memo to the parties regarding "Proposed Restatement of the Legal Issues and Added Board Issues for Discussion at March 11, 1997 Prehearing Conference."Citing *South Bellevue Partners Limited Partnership and South Bellevue Development, Inc. v. City of Bellevue and Issaquah School District No. 411 [**South Bellevue**]*, CPSGMHB Case No. 95-3-0033, Order of Dismissal (1995), the memo questioned the Board's subject matter jurisdiction in the present case.

On March 7, 1997, the Board received "Respondent City of Milton's Index."

A prehearing conference in the above-captioned matter was held on March 11, 1997.

On March 17, 1997, a Prehearing Order and Order Granting Intervention to the Fife School District was issued.

On March 28, 1997, the Board received "Respondent City of Milton's and Intervenor Fife School District's Motion to Dismiss" (**City Motion**), asserting that the Board lacks subject matter jurisdiction over the City's impact fee ordinance.

On April 7, 1997, the Board received "Petitioners' Response to Motions" (**Frick Response**).

On April 8, 1997, the Board received"Notice of Withdrawal and Substitution of Attorney for Respondent."

On April 10, 1997, the Board received "Respondent's / Intervenor's Reply Re: Motion to Dismiss" (**City 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 and Chapter 36.70A RCW.

ii.<u>findings of fact</u>

1.On December 18, 1995, the City of Milton adopted its Comprehensive Plan; it was amended on December 16, 1996.City Motion, at 2.

2.On December 2, 1996, the City of Milton adopted Ordinance No. 1314; the Ordinance was published on December 6, 1996.City Motion, Exhibit A, at 12.

3.Ordinance No. 1314 is entitled "an ordinance of the milton city council assessing school impact fees on new residential development for fife (milton) school district 417 in the amount of $2,134.35 for new single family residential development, and $1,248.98 for new multi-family development, which ordinance shall be codified as chapter 13.42 of the municipal code."City Motion, Exhibit A, at 1.

4.Ordinance No. 1314 provides as follows:

> WHEREAS, Chapter 17, Sections 43-48 of the 1990 Growth Management Act, RCW 82.02.050-090, specifically authorize the City to impose impact fees for school facilities upon adoption of an implementing ordinance; and

. . .

WHEREAS, this ordinance and the formula for determining fee schedules incorporates the considerations required under RCW 82.02.050-090, now therefore, . . .

5.The Capital Facility Plan Element of the City's Comprehensive Plan incorporates by reference the Fife School District Capital Facility Plan. City Motion, Exhibit A, at 3; and Exhibit C.

III. Motion to dismiss petition for review

Petitioners' Standing:

The Board's prehearing order set forth as Legal Issue No. 1:

1. Do the parties have standing to file the petition for review with the Board for resolution?

Discussion

In their Motion to Dismiss, the City of Milton and Fife School District concede that Petitioner Park Ryker has "participation" standing to file the instant petition for review. Petitioner Ryker participated orally, testifying on Ordinance No. 1314 before the City of Milton at the December 2, 1996 City Council meeting.City Motion, at 3.

Also in their Motion to Dismiss, the City of Milton and Fife School District elect not to challenge the standing of David Frick.The City and School District accept the affirmation in the petition that Petitioner David Frick "is the owner of two residential subdivision [sic] in the process of obtaining approval within the City of Milton."City Motion, at 3-4.

Conclusion

Based upon the Respondent and Intervenor's concession (re: Ryker) and lack of argument (re: Frick), the Board concludes that Petitioners Frick and Ryker have standing to bring the present petition to the Board for resolution.

Board Subject Matter Jurisdiction:

The Board's prehearing order set forth as Legal Issue No. 2:

2.Does the Board have subject matter jurisdiction to decide the issues raised in the petition for review challenging Milton's adoption of Ordinance No. 1314, imposing

impact fees?

discussion

Since the Board's creation, it has held that its subject matter jurisdiction is strictly limited.The Board's authority "must be strictly limited in its operations to those powers granted by the legislature."*South Bellevue*, 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* ***[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):

> [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 . . . ."*Happy Valley*, 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 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 petition, 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.

Petitioners' challenge is clearly directed at Milton's adoption of the school impact fee ordinance, Ordinance No. 1314.*See* PFR, at 2 and 7; *and* Frick Response, at 1.On several occasions, this Board has rejected attempts by petitioners to challenge impact fee ordinances adopted pursuant to Chapter 82.02 RCW.*See South Bellevue, supra; Robison et al. v. City of Bainbridge Island,* CPSGMHB Case No. 94-3-0025, Order Granting BISD's Dispositive Motion (1995), at 6; and *Slatten v. Steilacoom,* CPSGMHB Case No. 94-3-0028, Order Dismissing Legal Issue No. 10 (1995), at 2.This Board has specifically held that:

> [I]f the statutory authority for adoption of a regulation is a source other than Chapter 36.70A RCW, this Board does not have jurisdiction over the regulation.RCW 36.70A.280 binds the Board to determining only whether a city or county has not complied with the requirements of Chapter 36.70A RCW. . . .Although RCW 36.70A.070 is referenced in Chapter 82.02 RCW, that reference does not confer Board jurisdiction over impact fee ordinances.Accordingly, the Board does not have jurisdiction over the ordinance.*South Bellevue,* at 8.

Milton's Ordinance No. 1314 was expressly adopted pursuant to Chapter 82.02 RCW, not RCW 36.70A.Finding of fact 4.Therefore, the Board concludes, consistent with prior decisions of this Board, that it does not have subject matter jurisdiction to review Milton's Ordinance No. 1314.In doing so, the Board rejects Petitioners' invitation to revisit its subject matter jurisdiction over impact fees.

The Board notes that Petitioners, in their response brief, attempt to broaden the scope of the challenge to include RCW 36.70A.100 and .210.Both of these sections address comprehensive plan consistency; neither section is germane to impact fees.

conclusion

The Board concludes that it does not have subject matter jurisdiction to review Milton's Ordinance No. 1314, since it is not a development regulation adopted pursuant to Chapter 36.70A RCW, but an ordinance adopting school impact fees pursuant to Chapter 82.02 RCW.

IV. ORDER

Based upon review of the Petition for Review, Ordinance No. 1314, the briefs of the parties, the Act, and prior Orders of this Board, the Board enters the following Order:

Petitioners Frick and Ryker have standing to bring the Petition for Review.

Respondent City of Milton's and Intervenor Fife School District's motion to dismiss is **granted.** The Board does not have subject matter jurisdiction to review Milton's Ordinance adopting school impact fees pursuant to Chapter 82.02 RCW.

Frick and Ryker's Petition for Review, relating to the City of Milton's adoption of Ordinance No. 1314 (Case No. 97-3-0007) is **dismissed with prejudice.**

The hearing on the merits for Case No. 97-3-0007, scheduled for June 5, 1997, from 10:00 a.m. - 12:30 p.m., is **canceled.**

So ORDERED this 17th 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