

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

CITY OF AUBURN,)	
)	
Petitioner,)	Case No. 97-3-0013
)	
v.)	ORDER GRANTING
)	DISPOSITIVE MOTION
PIERCE COUNTY and CITY OF)	(corrected)
BONNEY LAKE,)	
)	
Respondents.)	
_____)	

I. Procedural Background

On February 14, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Auburn (**Auburn**). The matter was assigned the Case No. 97-3-0013 and will be referred to hereafter as *Auburn v. Pierce County, et al.* Auburn challenges Pierce County’s (the **County**) adoption of Ordinance Nos. 96-91S and 96-93S (the **Ordinances**). Ordinance No. 96-91S adopts the County’s Coordinated Water System Plan and Regional Supplement. Ordinance No. 96-93S amends the County’s Satellite System Management Program and Dispute Resolution Process. Auburn alleges that the Ordinances violate various provisions of the Growth Management Act (**GMA** or the **Act**).

On March 14, 1997, the Board received Respondent County’s “Index of Public Records for Pierce County.”

A prehearing conference in the above-captioned matter was held on March 25, 1997. At that time, the Board’s presiding officer established deadlines for filing dispositive motions. The Prehearing Order was issued on March 28, 1997.

On April 4, 1997, the Board received Petitioner’s “Motion to Supplement the Record,” requesting that 30 items be included in the record; “Petitioner City of Auburn’s Preliminary Exhibit List”; “The County’s Motion to Dismiss,” asserting lack of Board jurisdiction to review the Ordinances (**County Motion**); and “Bonney Lake’s Joinder in Pierce County’s Motion to Dismiss.”

On April 11, 1997, the Board received “The County’s Response to Auburn’s Preliminary Exhibit List and Motion to Supplement,” objecting to many of the items on Petitioner’s Exhibit List and

several of the items in the Motion to Supplement, and “City of Auburn’s Response to Pierce County’s Motion to Dismiss” (**Auburn Response**).

On April 18, 1997, the Board received “City of Auburn’s Reply in Support of Its Preliminary Exhibit List and Motion to Supplement the Record” and “The County’s Rebuttal Brief to the City of Auburn’s Response” (**County Reply**).

On April 30, 1997, the Board received “The County’s Rebuttal to Auburn’s Reply (RE: Record and Exhibits).”

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, the Act and the RCWs.

II. FINDINGS OF FACT

1. Chapter 70.116 RCW, the Public Water System Coordination Act governs the development, adoption, and revision of coordinated water system plans; satellite system management programs; and dispute resolution mechanisms.
2. Pierce County adopted a Coordinated Water System Plan and Water General Plan in Ordinance No. 86-116S4 on August 23, 1988. Ordinance No. 96-91S, fourth Whereas clause, at 1.
3. Pierce County adopted a Satellite System Management System Program and Appeals Panel in Ordinance No. 86-115S3 on August 30, 1988. Ordinance No. 96-93S, third Whereas clause, at 1.
4. Pierce County adopted its GMA Plan, the Comprehensive Plan for Pierce County, Washington in Ordinance No. 94-82S on November 29, 1994. Ordinance No. 96-93S, fourth Whereas clause, at 1.
5. On November 26, 1996, the Pierce County Council passed Ordinance No. 96-91S, adopting an amended Coordinated Water System Plan and Regional Supplement. Auburn Response, Attachment 2.
6. On November 26, 1996, the Pierce County Council passed Ordinance No. 96-93S, adopting an amendment to Pierce County’s Satellite System Management Program and Dispute Resolution Process. Auburn Response, Attachment 3.

III. Discussion of Motions

There are two motions pending before the Board in this case: The County’s Motion to Dismiss

and Petitioner's Motion to Supplement the Record. The Board will address the Motion to Dismiss first.

A. Motion to Dismiss

On April 4, 1997, the Board received Pierce County's Motion to Dismiss, asserting that the Board lacks jurisdiction to review the Ordinances challenged in the PFR. The County's Motion, Auburn's Response and the County Reply, all address Legal Issue No.1.

The Board's Prehearing Order set forth Legal Issue No. 1 as follows:

Does the Board have subject matter jurisdiction to decide the issues raised in the petition for review challenging Pierce County's adoption of Ordinance No. 96-91S (adopting an amended Coordinated Water System Plan and Regional Supplement (CWSP)), and Ordinance N. 96-93S (adopting an amendment to Pierce County's Satellite System Management Program and dispute resolution process (SSMP), as codified in Chapter 19D.140 P.C.C.)?

DISCUSSION

The Board's 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 Partners Limited Partnership and South Bellevue Development, Inc. v. City of Bellevue and Issaquah School District No. 411 [South Bellevue]*, CPSGMHB Case No. 95-3-0055, Order of Dismissal (1995), at 4.

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 (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. *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 (1996), at 14 (emphasis in original).

Therefore, pursuant to RCW 36.70A.280 as it relates to the present petition, the question becomes: Whether Ordinance Nos 96-91S and 96-93S were adopted in an effort to comply with the requirements of the GMA (Chapter 36.70A RCW). If so, the Board has jurisdiction to review and decide the question of whether the Ordinances comply with the requirements of the GMA.

Ordinance No. 96-91S

Petitioner challenges Pierce County's adoption of Ordinance No. 96-91S, which adopts an amended Coordinated Water System Plan and Regional Supplement. PFR, at 2. Petitioner asserts that the Ordinances "were expressly enacted pursuant to the County's GMA Plan." Auburn Response, at 6.

Ordinance No. 96-91S is entitled:

An Ordinance of the Pierce County Council Repealing the 1988 Coordinated Water System Plan and Water General Plan; Adopting the 1995 Coordinated Water System Plan and Regional Supplement as a County General Planning Document; Amending Chapter 19D.120 of the Pierce County Code; Approving the Coordinated Water System Plan and Regional Supplement as Amended *Pursuant to the Washington State Water Coordination Act*; ^[1] and Adopting Findings of Fact. (emphasis supplied.)

Section 4. of the Ordinance 96-91S provides:

The Pierce County Council hereby determines the Coordinated Water System Plan and Regional Supplement as shown in Exhibit “A” to be consistent with *RCW 70.116.050(4)*, and asks the Executive to take the necessary steps to forward the draft to the state Department of Health for final approval. (emphasis supplied.)

Given the Title of Ordinance No. 96-91S and Section 4, which expressly indicate the ordinance is being adopted in compliance with the Water Coordination Act, Chapter 70.116 RCW, not the GMA or Chapter 36.70A RCW; it is difficult to comprehend how petitioner can interpret this language to suggest that the CWSP was “expressly enacted pursuant to the County’s GMA Plan.”

Petitioner also suggests that references in the “Whereas” clauses of the Ordinance give the Board subject matter jurisdiction. Auburn Response, at 4-5. The fifth and eleventh Whereas clauses of Ordinance No. 96-91S, state, respectively:

WHEREAS, Policy UT-Wa 21.1 of the Comprehensive Plan for Pierce County, Washington adopted in Ordinance No. 94-82S on November 29, 1994 states “The Pierce County Coordinated Water System Plan must be updated to ensure that there is a balance between water supply service provision and demand.”; and

...

WHEREAS, the Pierce County Council has determined that adopting the amendments to the Coordinated Water System Plan is in the public interest, protects the public health, safety and welfare, and complies with the Comprehensive Plan for Pierce County, Washington and the Growth Management Act (Chapter 36.70A RCW); NOW THEREFORE, . . .

The first Whereas clause merely indicates that the County must update its CWSP to keep water supply and demand in balance; it does not somehow establish independent authority from Chapter 70.116 RCW for updating or revising the CWSP. However, the latter Whereas indicates that the County Council has determined, among other things, that the amended CWSP complies with the Plan and GMA. This statement merits closer scrutiny.

RCW 70.116.060(6) requires “[t]he process for the update [of a CWSP] to be the one prescribed in RCW 70.116.050.” One of the prescribed steps in the CWSP update process is that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or development policies of the general purpose local government or governments whose jurisdiction the

water system plan affects. RCW 70.116.050(4) (emphasis supplied).

A similar, but more specific to GMA, “consistency” requirement was addressed by this Board in *Hensley v. Snohomish County [Hensley]*, CPSGMHB Case No. 94-3-0029, Order Granting Snohomish County’s Dispositive Motion (1995). There the Board held:

The Board holds that it does not have jurisdiction to review the approval of a sewer district comprehensive plan amendment by a county legislative authority acting pursuant to RCW 56.02.060 and 56.08.020.

RCW 56.08.020 provides in relevant part:

The sewer commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring indebtedness shall adopt a general comprehensive plan for a system of sewers for the district.

...

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the sewer district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of these county legislative authorities pursuant to the criteria in RCW 56.02.060 for approving the formation, reorganization, annexation, consolidation, or merger of sewer districts, and the resolution, ordinance, or motion of the legislative body which rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110....(emphasis in original.)

Although RCW 56.08.020 requires general comprehensive plans adopted under Title 56 RCW to be consistent with RCW 36.70A.110, it does not grant the Board jurisdiction to determine whether such consistency was indeed achieved. Hensley, at 3. (emphasis supplied).

The references in RCW 70.116.050 are analogous to, yet *less specific* to the GMA, than the references in *Hensley* to RCW 56.08.020. The Board will continue to adhere to the reasoning in *Hensley*.

Finally, Petitioner asserts that the CWSP was incorporated by reference into the County’s Comprehensive Plan to implement the GMA Plan. PFR, at 9-10. Petitioner cites to *Kitsap Citizens for Rural Preservation v. Kitsap County [KCRP]*, CPSGMHB Case No. 94-3-0005, Order on Kitsap County’s Dispositive Motion (1994), as support for the notion of the Board

having jurisdiction over an Ordinance adopted pursuant to authority other than the GMA. The Board disagrees. *KCRP* is distinguishable since it involved adoption of a regulation, not a plan like the CWSP, to specifically implement the County's GMA required Interim Urban Growth Areas. *KCRP* does not apply to the facts presented in this case.

Conclusion regarding Ordinance No. 96-91S

The Board concludes that Ordinance No. 96-91S was enacted to comply with, and pursuant to, the requirements of Chapter RCW 70.116 RCW, not the GMA or any of its requirements. Therefore, the Board does not have jurisdiction to review Ordinance No. 96-91S adopting Pierce County's amended Coordinated Water System Plan and Regional Supplement.

Ordinance No. 96-93S

Petitioner also challenged the County's adoption of Ordinance No. 96-93S, which adopts an amendment to the County's Satellite System Management Program and Dispute Resolution Process. PFR, at 2. As indicated above, the PFR indicates that the Ordinances, "were expressly enacted pursuant to the County's GMA Plan." Auburn Response, at 6.

The Title ^[2] and adopting Section ^[3] of Ordinance No. 96-93S indicate that the Ordinance is adopting amendments to Chapter 19D.140 of the Pierce County Code (PCC). This Chapter of the PCC, as amended, is entitled "Satellite System Management Program and Dispute Resolution Process."

19D.140.010 PCC provides:

The purpose of this regulation is to establish the County procedures and guidelines for implementing the Satellite System Management Program (SSMP), outlined in the Pierce County Coordinated Water System Plan (CWSP)

The definitions used in the SSMP regulations rely upon State Department of Health regulations ^[4]. The general applicability of the SSMP regulations is to water systems regulated pursuant to RCW 70.116 and WAC 246-292 and -293. ^[5] It is clear that Ordinance No. 96-93S was not expressly enacted pursuant to the County's GMA Plan, but rather it was enacted to implement the CWSP and to comply with Chapter 70.116 RCW.

Again, in relation to Ordinance No. 96-93S, Petitioner suggests that references in the Ordinance's Whereas clauses give the Board jurisdiction. Auburn Response, at 4-5. The fourth and eleventh Whereas clauses of Ordinance 96-93S, state, respectively:

WHEREAS, Objective UT-Wa 27 and Policy UT-Wa 27.1 of the Comprehensive Plan for Pierce County, Washington adopted in Ordinance No. 94-82S on November 29, 1994, as amended 96-111, direct that Pierce County should review the Pierce County Coordinated Water System Plan, correct deficiencies and inconsistencies which appear, and amend portions of the Plan which are inconsistent with the Comprehensive Plan; and

...

WHEREAS, the Pierce County Council has determined that adopting the amendments to the Satellite System Management and Appeals Panel (Chapter 19D.140 of the Pierce County Code) is in the public interest, protects the public health, safety, and welfare, and complies with the Comprehensive Plan for Pierce County, Washington and the Growth Management Act (Chapter 36.70A RCW); NOW THEREFORE, . . .

Again the Board disagrees with Auburn's assertion. These Whereas clauses cannot be construed to, nor do they, confer Board jurisdiction over the subject ordinances.

Conclusion regarding Ordinance No. 96-93S

The Board concludes that Ordinance No. 96-93S was enacted to comply with, and pursuant to, the requirements of Chapter RCW 70.116 RCW, not the GMA or any of its requirements. Therefore, the Board does not have jurisdiction to review Ordinance No. 96-93S adopting an amendment to Pierce County's Satellite System Management Program and Dispute Resolution Process.

CONCLUSION

Ordinances No. 96-91S and 96-93S were enacted to comply with, and pursuant to, the requirements of Chapter 70.116 RCW, not the GMA (Chapter 36.70A RCW) or any of its requirements. Therefore, the Board does not have jurisdiction to review either Ordinance.

B. Motion to Supplement

Having granted the County's Motion to Dismiss, the Board need not, and will not, address Petitioner's Motion to Supplement.

IV. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the Act, the RCWs, and prior Orders of this Board, the Board enters the following Order:

The County's Motion to Dismiss is **granted**. The Board lacks jurisdiction to review the County's Ordinance adopting a Coordinated Water System Plan and Regional Supplement (Ord. No. 96-91S) or the County's Ordinance adopting amendments to the Satellite System Management Program and Dispute Resolution Process (Ord. No. 96-93S).

The City of Auburn's Petition for Review (CPSGMHB Case No. 97-3-0013), challenging Pierce County's adoption of Ordinances No. 96-91S and 96-93S, is **dismissed with prejudice**.

The hearing on the merits for CPSGMHB Case No. 97-3-0013 (Auburn), scheduled for June 9, 1997 from 10:00 a.m. to 12:30 p.m. is **canceled**.

So ORDERED this 1st day of May, 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] See Finding of Fact 1.

[2] "An Ordinance of the Pierce County Council Amending Chapter 19D.140 of the Pierce County Code, Satellite System Management Program and Dispute Resolution Process; and Adopting Findings of Fact."

[3] "Section 1. Chapter 19D.140 of the Pierce County Code is hereby amended as shown in Exhibit "A" which is

attached hereto and incorporated by reference.”

[\[4\]](#) *See* 19D.140.020 PCC

[\[5\]](#) *See* 19D.140.030 PCC