

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

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| MARCIA MORRIS, et al |) | Consolidated |
| Petitioners, |) | Case No. 97-3-0029c |
| v. |) | (Morris) |
| CITY OF LAKE FOREST PARK, a |) | ORDER DENYING |
| Municipal Corporation, |) | DISPOSITIVE MOTION |
| Respondent. |) | re: Standing to Raise Legal Issue No. |
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I. Procedural Background

On October 10, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Marcia Morris (**Morris**). The matter was assigned Case No. 97-3-0028. Morris challenges the City of Lake Forest Park’s (**City**) adoption of Ordinance No. 722 (**Ordinance**), specifically, Section 4. The grounds for the challenge are noncompliance with various sections of the Growth Management Act (**GMA** or **Act**) and the State Environmental Policy Act (**SEPA**).

On October 10, 1997, the Board also received a PFR from Susan Fodor and Margaret Anderson. The matter was assigned Case No. 97-3-0029. Fodor and Anderson also challenge the City’s adoption of Ordinance No. 722, specifically, Section 4. The grounds for the Fodor and Anderson challenge are the same as alleged in the Morris PFR.

On October 17, 1997, the Board issued an “Order of Consolidation and Notice of Hearing.”

On November 21, 1997, the Board issued its “Prehearing Order” setting forth the schedule and issues.

On November 25, 1997, the Board received Petitioners’ revisions to the Legal Issues; and the Board issued an “Order Amending Prehearing Order (Legal Issues)” on November 26, 1997. On December 5, 1997, the Board received Lake Forest Park’s “Motion to Dismiss for Lack of Standing and Memorandum of Law in Support.”

On December 23, 1997, the Board received “Morris’ Fodor’s and Anderson’s Response to City’s Motion to Dismiss.” On the same day, the Board received a letter from Petitioner’s attorney correcting a citation used in the response brief.

On January 5, 1998, the Board received Respondents’ “Reply to Petitioners’ Response to Motion to Dismiss.”

The Board did not hold a hearing on this motion; the Board’s decision is based upon review and consideration of the PFR, the law, and materials submitted with the parties briefs.

II. Discussion

Lake Forest Park challenges Petitioners’ standing to raise Legal Issue No. 5, and requests that Legal Issue No. 5 be dismissed. The City argues Petitioners lack standing because their interests are not within the zone of interests protected or regulated by SEPA and they have not alleged sufficient injury in fact.

Petitioners allege that the City has not performed the procedural step of conducting a threshold determination as required by SEPA. The City has not disputed Petitioners’ claim. Petitioners’ further assert that, as residents and property owners within the City, they have standing to challenge the City’s lack of procedural compliance with SEPA.

The Board’s prehearing order set forth as Legal Issue No. 5:

In adopting Ordinance No. 722, did the City fail to conduct environmental review and issue notice, thus failing to comply with RCW 43.21C.030(2)(c-e), .031, .080; and WAC 197-11-030(2)(c, f), -055(1-2), -060(4)(a, c, d), -070(1-2), -230(1-2), -330(1-5), 340(1), -360(1), -444, -502(3-4), -510, -535(1), -655, -704(1)(c), -704(2)(b)(i), -740, -800, and -960?

This legal issue raises a “failure to act” question. The crucial question presented is quite limited -- whether the City failed to conduct the required environmental review and issue notice? As noted above, the City has not disputed this allegation of Petitioner. It remains a question of fact whether the City performed any SEPA analysis prior to adopting the Ordinance. However, for purposes of deciding this motion, the Board views the facts in the light most favorable to Petitioners; therefore, the Board assumes the City has not performed the environmental analysis required by SEPA.

The cases upon which the City relies to support its lack of standing position have a common fact -- *some* SEPA threshold determination has been made. But the City cites to no case law in which petitioners are found without standing in actions where *no* SEPA threshold determination has been made. Because the City has not adduced case law sufficient to support its motion, the City’s motion to dismiss is denied.

Iii. ORDER

Based upon review of the Petitions for Review, the briefs and materials submitted by the parties, case law, the Act and prior decisions of this Board, the Board enters the following Order: Respondent City of Lake Forest Park's motion to dismiss Legal Issue No. 5 is **denied**. So ORDERED this 9th day of January, 1998.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.