

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

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| CITY OF FIRCREST, |) | |
| |) | Case No. 98-3-0002 |
| |) | |
| Petitioner, |) | |
| |) | ORDER ON |
| v. |) | DISPOSITIVE MOTION |
| |) | |
| PIERCE COUNTY, |) | |
| |) | |
| Respondent. |) | |
| |) | |

I. Procedural Background

On October 21, 1997, the Pierce County Council passed Ordinance No. 97-87S2. Among other things, Ordinance No. 97-87S2 amended Pierce County’s Comprehensive Plan (**Plan**). On November 21, 1997, Pierce County published notice of adoption of Ordinance No. 97-87S2. Petition for Review (**PFR**), at 1; Ordinance No. 97-87S2, at 10.

On January 9, 1998, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a timely PFR from the City of Fircrest (**City**). The matter was assigned Case No. 98-3-0002. Petitioner challenges Pierce County’s (**County**) failure to amend the Plan to designate a 40-acre area known as “Fircrest Acres” as part of Fircrest’s Urban Growth Area (**UGA**)/Urban Service Area (**USA**).^[1] In 1996, at the request of Fircrest and University Place, the County designated Fircrest Acres as being within University Place’s UGA/USA.^[2] Fircrest’s 1997 proposed amendment (indicated as **U-1**), would have extended Fircrest’s USA to encompass that area, creating overlapping USAs. The ground for the challenge is that the County’s failure to take affirmative action on the proposed amendment is not in compliance with the Growth Management Act (**GMA or Act**), specifically, RCW 36.70A.110 and .210, and Pierce County’s County-wide Planning Policies (**CPPs**).

On January 20, 1998, the Board issued a Notice of Hearing in the above-captioned case.

On February 6, 1998, the Presiding Officer distributed a memo to the parties’ representatives, via FAX, noting possible restatement of the legal issues for discussion at the Prehearing Conference.

The Board held a prehearing conference on February 9, 1998, at the Board's offices in the Financial Center, Seattle. Board member Edward G. McGuire, Presiding Officer in this matter, conducted the conference. Attorney Patrick C. Comfort represented the City of Fircrest. Attorney Eileen McKain represented Pierce County.

On February 12, 1998, the Board received a letter from the Petitioner withdrawing Legal Issues 2 and 3 and clarifying Legal Issue 1.

On February 13, 1998, the Board issued its "Prehearing Order" setting forth the briefing schedule and Legal Issue in the above captioned case.

On February 27, 1998, the Board received "Pierce County's Motion to Dismiss" (**County Motion**).

On March 13, 1998, the Board received "Response of City of Fircrest to Pierce County's Motion to Dismiss" (**Fircrest Response**).

On March 18, 1998, the Board received "Pierce County's Rebuttal to Fircrest's Response" (**County Reply**).

The Board did not hold a hearing on the motion. The Board's decision is based upon review and consideration of the PFR, the County's Motion, the briefs and materials submitted by the parties, case law, the Act and prior decisions of this Board.

II. Respondent's Dispositive Motion

Applicable Law and Discussion - "Duty to Amend"

The action precipitating this dispute is the County's rejection of Fircrest's proposed amendment to the Plan. In April 1997, Fircrest sought to modify the Plan's UGA/USA designation for the City of Fircrest to include the area known as Fircrest Acres. The area is currently designated within the UGA/USA of the City of University Place. The effect of Fircrest's proposed Amendment U-1, if passed, would have created an overlap of UGA/USA designations between the two jurisdictions. Fircrest Response, at 2. In October, when the County amended its plan by adopting Ordinance No. 97-87S2, it did not include amendment U-1. Fircrest subsequently filed this PFR. On February 27, 1998, the County filed this Motion to Dismiss.

The basis for dismissal, as stated in the County's motion, is that as a matter of law, the County had no duty to adopt Fircrest's proposed amendment, and had the authority to reject it. Further, the County asserts that it had complied with the process outlined in the CPPs. Therefore, the PFR should be dismissed. County Motion, at 1 and 8.

The County notes that this Board has determined that “non-amendments” are generally not subject to the Board’s review:

While RCW 36.70A.130 authorizes a local government to amend comprehensive plans annually, it does not require amendments. Moreover, it does not dictate that a specific proposed amendment be adopted. *Cole v. Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order (FDO) (July 31, 1996), at 10.

County Motion, at 8.

Fircrest asserted in its PFR that “the County’s comprehensive plan will continue to be out of compliance with such Act [GMA] until such comprehensive plan is amended by the adoption of Amendment U-1 [Fircrest’s proposed amendment] after fair consideration of the criteria applicable to such adoption.” PFR, at 2. However, now Fircrest agrees with the County’s conclusion considering its duty under the Act:

It is true that Pierce County does not have to amend its Growth Management Comprehensive Plan merely because the City of Fircrest requested it to do so nor is this Board empowered to require the County to adopt a specific amendment to its [Plan] unless such an amendment is mandated in order to bring such plan into compliance with the [GMA]. The City of Fircrest does not seek any such action under its [PFR]. Fircrest Response, at 8.

The parties have correctly read the Board’s decisions in prior cases^[3] regarding whether, and when, the GMA creates a duty for a jurisdiction to amend its comprehensive plan. **Based on the Board’s prior decisions and the assertions of the parties in this case, it is undisputed that Pierce County was not required to adopt Fircrest’s proposed amendment to the County’s Plan, and Pierce County’s rejection of Fircrest’s amendment did not violate any GMA duty to amend its comprehensive plan.**

However, the City contends that the County has a duty to comply with its own CPPs. In particular, the County should comply with those policies that govern the process for considering amendments to the County’s UGA. Fircrest Response, at 9.

Applicable Law and Discussion - CPPs

The Board first addressed the effect of CPPs in *Snoqualmie v. King County*: “CPPs are part of a hierarchy of substantive and directive policy.” CPSGPHB Case No. 92-3-0004c, FDO (March 1, 1993), at 17. Recently, the Court of Appeals, Division I, concluded: “Given the consistency

requirements of the GMA, and the role that county-wide planning policies (CPPs) play in assuring that consistency, we hold that CPPs may constrain a county’s otherwise considerable discretion in formulating its comprehensive plan.” *King County v. Friends of the Law (King County)*, Court of Appeals Division I, Slip Opinion Docket No. 39333-2-I, (3/2/98), at _____. The Court also stated:

When the issue on review involves interpretation of legislation that is not a “model of clarity,” in this case the CPPs enacted by the County, the enacting body’s interpretation is entitled to great weight. We therefore owe deference to the County’s interpretation of its own CPPs and not the Board’s conflicting interpretation. *King County*, at _____.

Thus, if the County’s CPPs set forth a process for amending its UGAs/USAs, the County must adhere to that process. If the CPPs are not a model of clarity, the Board will defer to the County’s reasonable interpretation of its CPPs.

Pierce County’s CPPs provide:

Urban Growth Area Boundaries designated by the County pursuant to the Growth Management Act *may be amended* by Pierce County and accepted by the municipalities in the County *pursuant to the same process by which the Urban Growth Areas were originally adopted and pursuant to subpolicies 1 and 2* of the “County-wide Planning Policy on Urban Growth Areas, Promotion of Contiguous and Orderly Development and Provision of Urban Services to Such Development.” CPP on Amendments and Transition, Policy 2, at 76 (emphasis supplied).

The referenced subpolicy 1, with varying degrees of clarity, outlines a multi-step process (subpolicies 1.1 to 1.8) for designating UGAs. Apparently, this same process applies to the designation of USAs, but such application is less clear. The County asserts that this process for amending the UGAs (and USAs) involves six steps: initiation of the proposed amendment; staff evaluation; Planning Commission review; Pierce County Regional Council (**PCRC**) review; mediation of conflicts, if requested; and County Council review and adoption of the proposed amendments. The County contends it has complied with the process outlined in the CPPs. County Motion, at 8.

Review of the record reveals that during the County’s 1997 amendment cycle, the County undertook review of the latest proposal by Fircrest -- Amendment U-1.^[4] Completion of this process appears to satisfy the multi-step designation process called for in the CPPs. However, Fircrest, relying on subpolicy 1.5, argues that the County failed to “subject the proposed amendment to the required mediation process.” Fircrest Response, at 6.

Subpolicy 1.5 provides:

1.5 County designation and attempt to reach agreement through negotiation with each municipality or, in case of impasse, through a designated mediation process within the

County prior to State Department of Community Development^[5] review;

1.5.1 if no agreement, justification by County in writing for designated urban growth area delineation;

1.5.2 possible formal objection by municipality to State Department of Community Development;

1.5.3 resolution of conflict via mediation by State Department of Community Development.

The crux of the City's argument is that the County:

did not comply with its own policy requirements by attempting to reach agreement through negotiation and, in the absence of such agreement, by further attempting to reach agreement through a designated mediation process within the County itself. The County . . . also failed to justify its refusal to accept the amendment proposed in writing as required by [1.5.1] prior to Fircrest's consideration of processing any objection. . . . The rationale for the rejection failed to address criteria^[6] for inclusion or exclusion of areas within a particular city's [UGA]. The Findings of Fact in Support of Rejection simply stated the proposed Amendment would create an Urban Service Area overlap with the City of University Place Fircrest Response, at 6-7; *see also*, PFR, at 2.

The County contends that negotiations began in 1996 when the County facilitated and accepted the USA boundaries agreed upon by Fircrest and University Place that eliminated the overlap^[7] areas; these negotiations and discussions have continued throughout 1997. In particular, the County points to the Growth Management Coordinating Committee (GMCC), composed of staff from the various jurisdictions within the County, and the PCRC, composed of elected officials from the various jurisdictions, as the interjurisdictional forums for such negotiations and discussions to occur. County Reply, at 1-3.

The Board notes that, since University Place was also affected by Amendment U-1, negotiation was most appropriate between the two cities rather than between Fircrest and the County. The Board also notes that at the August 21, 1997 PCRC meeting, such discussion did occur among the two cities and other city representatives. The PCRC formally offered no recommendation. Fircrest Response, Attachment 7, at 4-7.

It is not clear to the Board from reading CPP subpolicy 1.5 exactly what the "designated

mediation process within the County prior to [DCTED] review” is. However, as the Board noted above, the County states that the PCRC is the forum for resolving interjurisdictional disputes. Additionally, the Board takes official notice of County Plan Policy LU 1.1.2, which suggests conflicting designations (i.e., overlap areas) should be resolved through a public process much like that provided by the PCRC. Absent a clear articulation in the CPPs of what the designated mediation process of the County is, the Board will defer to the County’s interpretation that the “PCRC is Pierce County’s interjurisdictional forum . . . to discuss, negotiate and possibly suggest resolutions to interjurisdictional conflicts.” County Reply, at 3. Because the County directed Amendment U-1 through the process provided by the PCRC, the County has followed the process contemplated by CPP subpolicy 15. The fact that the County ultimately chose to reject Fircrest’s proposed amendment does not mean that the County failed to comply with the GMA.

The City also challenges the County’s adherence to subpolicy 2, which sets forth the factors and criteria that dictate the size and boundaries of the UGA. Fircrest asserts that there is no indication in the record that in considering Amendment U-1, the County considered “the specific factors and criteria which dictate the size and boundaries of Urban Growth Areas under subpolicy 2.” Fircrest Response, at 7-8 However, the Board is not convinced that subpolicy 2 applies to Amendment U-1. The Board agrees with the County’s characterization of this proposed amendment:

[T]his is not an issue of whether the area should be in a UGA, but one of governance. The area met the definition of a UGA and services were available, regardless of which jurisdiction governed. Therefore, the geographical characteristics of the area, including size and boundaries, are irrelevant. County Reply, at 5.

Therefore, the Board holds that the County has complied with the UGA/USA amendment process set forth in subpolicy 1 and 2 of the CPPs.

Findings of Fact

The Board finds:

1. In July 1992, pursuant to RCW 36.70A.210, Pierce County adopted the Pierce County County-wide Planning Policies, including a Policy for Amendments and Transition. County Motion, at 2.
2. In November 1994, pursuant to RCW 36.70A.040(3)(c) and .110(6), Pierce County adopted its GMA Comprehensive Plan, including UGAs and USAs. The area in question is within the County’s Comprehensive Urban Growth Area (*see* footnote 1). County Motion, at

2.

3. The County Plan includes Policy LU 1.1.2 which discourages overlap UGA/USA areas and confirms that the County ultimately designates UGAs. County Motion, at 2.

4. The County-wide Planning Policy on Urban Growth Areas, Promotion of Contiguous and Orderly Development and Provision of Urban Services to Such Development, contains subpolicy 1, which sets forth a multi-step process (1.1 to 1.8) for amending UGAs/USAs. County Motion, Exhibit A, Attachment 1, at 51-52.

5. Subpolicy 1.5 requires County designation of UGAs/USAs and attempted agreement on such areas through negotiation and mediation. County Motion, Exhibit A, Attachment 1, at 52.

6. The County-wide Planning Policy on Urban Growth Areas, Promotion of Contiguous and Orderly Development and Provision of Urban Services to Such Development, contains subpolicy 2, which sets forth factors and criteria for establishing the size and boundaries of UGAs. County Motion, Exhibit A, Attachment 1, at 52-54.

7. In November 1996, at the recommendation of Fircrest and University Place, Pierce County amended its Plan to designate Fircrest Acres as part of University Place's USA. County Motion, Exhibit A, Attachment 4, April 29, 1997 letter to the County from Fircrest, at 1-2.

8. In April 1997, Fircrest applied for an amendment to the County's Plan. Proposed Amendment U-1 sought to modify the UGA/USA of the City of Fircrest to include Fircrest Acres, an area bordered on three sides by the city of Fircrest, and currently designated within the UGA/USA of the City of University Place. The amendment, if passed, would have caused the overlap between the two jurisdictions (Fircrest and University Place) with respect to Fircrest Acres. Fircrest Response, at 2.

9. Amendment U-1 was evaluated by Pierce County's Department of Planning and Land Services, which offered no recommendation. Fircrest Response, at 2.

10. Amendment U-1 was reviewed by the Pierce County Planning Commission which included a recommendation not to approve the Fircrest Acres amendment in the 1997 staff report and DSEIS. Fircrest Response, Attachment 5, at 169; County Motion, Exhibit A, Attachment 5.

11. Amendment U-1 was referred to the Growth Management Coordinating Committee (GMCC), the technical advisors to the Pierce County Regional Council (PCRC). The GMCC made no recommendation to the PCRC. Fircrest Response, at 3.

12. Amendment U-1 was evaluated by the PCRC, the regional coordinating forum for discussing interjurisdictional issues, and forwarded to the County Council with no recommendation. Fircrest Response, at 3.

13. In October 1997, the County Council adopted Ordinance No. 97-87S2 which amended the County's Comprehensive Plan and adopted Findings of Fact. The County rejected Fircrest's proposed Amendment U-1. Fircrest Response, at 4.

14. The County included the following Findings of Fact in Ordinance No. 97-87S2:
U-1, City of Fircrest - Finding

The County Council finds that the proposed Urban Growth Area Amendment U-1, City of Fircrest, expanding its Urban Service Area to include Fircrest Acres, should not be approved because:

- The proposed amendment would create a USA overlap with the City of University Place.
 - In 1996, the Cities of Fircrest and University Place submitted amendment applications to resolve a potential USA overlap for the Fircrest Acres area. As a result, the Fircrest Acres area was designated as part of University Place's USA.
- Fircrest Response, Attachment 7, Ordinance No. 97-87S2 (Exhibit "H", at 14).

15. It is not clear from reading CPP subpolicy 1.5 what the designated mediation process within the County is.

16. Negotiation and discussion regarding Fircrest's proposed Amendment U-1 occurred throughout the 1997 amendment process, particularly at the PCRC. Fircrest Response, at 4-7.

Conclusions of Law

The Board concludes:

1. Based on the Board's prior decisions and the assertions of the parties in this case, it is undisputed that Pierce County was not required to adopt Fircrest's proposed Amendment U-1 to the County Plan and Pierce County's rejection of Fircrest's amendment did not violate any GMA duty to amend its Plan.
2. The County must adhere to the UGA/USA amendment process set forth in its CPPs. If the CPPs are not clear, the Board will defer to the County's reasonable interpretation of its CPPs.

3. The Pierce County Regional Council (PCRC) is Pierce County's interjurisdictional forum to discuss, negotiate and resolve interjurisdictional conflicts.
4. The size and boundaries of the UGA in this case are irrelevant; the dispute involves the question of governance.
5. The County has complied with the UGA/USA amendment process set forth in subpolicy 1 and 2 of the CPPs.

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III. ORDER

Based upon review of the Petition for Review, the County's Motion, 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 Pierce County's Motion to Dismiss is **granted**.

The Petition for Review filed by the City of Fircrest (CPSGMHB Case No. 98-3-0002) is **dismissed with prejudice**.

The hearing on the merits for CPSGMHB Case No. 98-3-0002 scheduled for May 11, 1998 is **canceled**.

So ORDERED this 27th day of March, 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.

[1] Fircrest Acres is contained within the County’s Comprehensive Urban Growth Area. At issue in this case is the disposition of an Urban Service Area. According to the Plan:

“Urban Service Areas” means those areas within the Comprehensive Urban Growth Area (**CUGA**) of Pierce County that are currently receiving or may receive urban services from an individual city or town located within the Comprehensive Urban Service Area. The individual cities and towns within the CUGA, in collaboration with the County, have established Urban Service Areas (USAs). Each USA mapped within the CUGA is based upon the information provided by the individual city or town. These individual city and town USAs, within the CUGA, are incorporated as part of the County’s Comprehensive Plan. Although the County and the cities and towns within the CUGA concur that individual USAs may change as growth management planning and implementation proceed, the affected municipalities and the County agree that USA designations are provided under the terms of the June 30, 1992 County-wide Planning Policies (page 48, 1.1 and 1.3 (page 51 of CPPs as amended in 1996)) and RCW 36.70A.110.

County Plan, Glossary, Appendix B, at B-25.

[2] PFR, at 1; *see also*, April 29, 1997 letter from Fircrest, initiating the proposed 1997 Amendment U-1 to the County. County Motion, Exhibit A, Attachment 4.

[3] *See Cole v. Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order (July 31, 1996) and *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (August 13, 1997), at 8.

[4] *See Findings of Fact 8 - 14.*

[5] Now the State Department of Community, Trade and Economic Development (**DCTED**).

[6] The Board notes that CPP subpolicy 1.3 indicates four factors the County is to review in considering municipal UGA designations: 1.3.1 - GMA criteria and standards; 1.3.2 - coordination with other CPPs, particularly those on agricultural land preservation, natural resources, open space and protection of environmentally sensitive lands; transportation and affordable housing; 1.3.3 - *overlapping municipal urban growth area boundaries*; 1.3.4 - gaps

between urban growth area boundaries. County Motion, Exhibit A, Attachment 1, at 51 (emphasis supplied).

[7] The Board notes the Plan contains a specific policy provision discouraging overlap areas. Plan Policy LU 1.1.2 provides:

Jurisdictions which claim an interest in the overlap areas identified on the Urban Growth Area/Urban Service Area Map are strongly encouraged to resolve the conflicting designations through a public process which results in agreement with the other jurisdictions, and/or cooperative efforts with the County. In the event that jurisdictional conflicts cannot be resolved by agreement, the County shall designate UGAs and USAs through the annual adjustments as deemed necessary by the County. County Motion, at 2.