CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

PHILIP HANSON, ANNE HERFINDAHL, ANNE WOODWARD, JAKE JACOBOVITCH and VASHON-MAURY ISLAND COMMUNITY COUNCIL, Petitioners, v. KING COUNTY, Respondent, and SPRINT PCS, Intervenor.	)	**Case No. 98-3-0015c** ***(Hanson)*** **ORDER GRANTING dispositive MOTIONS**

I. Procedural history

On July 15, 1998, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Philip Hanson, Anne Herfindahl, Anne Woodward, Jake Jacobovitch and Vashon-Maury Island Community Council (**Petitioners**). The matter was assigned Case No. 98-3-0014. Petitioners challenge King County's approval of three Conditional Use Permits (**CUPs**) for wireless telecommunications facilities in a designated rural area. The ground for the challenge is noncompliance with several sections of the Growth Management Act (**GMA or Act**).

On July 15, 1998, the Board also received another PFR from the same Petitioners. The matter was assigned Case No. 98-3-0015. In this PFR Petitioners challenge King County's adoption of Ordinance No. 13129 (**Ordinance**). The ground for the challenge to the Ordinance is noncompliance with several sections of the GMA.

On July 22, 1998, the Board issued an "Order of Consolidation and Notice of Hearing." The case was assigned case number 98-3-0015c and is referred to as *Hanson, et al. v. King County*.

At the August 27, 1998 Prehearing Conference, the question of the Board's jurisdiction over the issuance of CUPs was added to the Legal Issues to be resolved. The parties were directed to brief the issue pursuant to the timeframes set forth for dispositive motions in the Final Schedule.

On September 1, 1998, the Board issued a "Prehearing Order and Order on Intervention" (**PHO**). Among other things, the PHO set forth the Final Schedule and the Legal Issues to be resolved by the Board in this matter, including the Board's jurisdiction over the County's issuance of CUPs.

On September 8, 1998, Petitioners filed, as directed by the Board, a "Restatement of Issues" for the CUP portion of the case (PFR, Case No. 98-3-0014).

On September 11, 1998, the Board received "King County's Dispositive Motion on Legal Issue No. 1" (**Co. Motion**); "Sprint PCS' Motion to Dismiss" (**Sprint Motion**); and Petitioners' "Memorandum in Support of Hearings Board Jurisdiction Over Issues Raised in 98-3-0014" (**Pet. Motion**).

On September 18, 1998, the Board received "Petitioner's Response to Respondent's Motion on Legal Issue #1" (**Pet. Response 1**); "Petitioner's Response to Dispositive Motion from Intervenor Sprint PCS" (**Pet. Response 2**); "King County's Response to Petitioner's Memorandum Regarding Jurisdiction" (**Co. Response**); and "Memorandum of Sprint PCS in Response to Petitioner's Memorandum in Support of Hearings Board Jurisdiction Over Issues Raised in 98-3-0014" (**Sprint Response**).

On September 22, 1998, the Board received "King County's Rebuttal to Petitioner's Response to King County's Dispositive Motion on Legal Issue No. 1" (**Co. Reply**); "Rebuttal Memorandum of Sprint PCS to Petitioner's Response to Dispositive Motion" (**Sprint Reply**); and "Petitioner's Rebuttal to Responses to Motions on Legal Issue #1 and Motion to Dismiss" (**Pet. Reply**).

The Board did not hold a hearing on the motions.

II. Discussion of dispositive motions

The County and Sprint assert that the Board does not have subject matter jurisdiction to review King County's approval of three CUPs for wireless telecommunications facilities in a designated rural area. To support their assertion, Respondent and Intervenor cite to: the GMA; Washington case law; decisions of this Board; and decisions of the Eastern and Western Washington Growth

Management Hearings Boards. Co. Motion, at 6-8; Sprint Motion, at 5-15. Petitioners do not refute the legal basis for the motions to dismiss by the County or Sprint. Instead, Petitioners contend that WAC 242-02-660 (which enables the Board to take official notice of the laws of other states) and the Boards' "GMA Brochure" (which answers frequently asked questions about the Boards) enable the Board to exert jurisdiction over land use permit decisions. Pet. Motion, at 1-5; Pet. Reply, at 1. Additionally, Petitioners now suggest that the action appealed from in CPSGMHB Case No. 98-3-0014 is King County's failure to enact regulations that comply with the GMA, not the County's approval of three conditional use permits.[1] Pet. Response 1, at 2; and Pet. Response 2, at 1 and 3.

The PHO set forth as Legal Issue No. 1:

> ***1. Does the Board have jurisdiction to review the approval of three conditional use permits by the King County Department of Development and Environmental Services, thereby enabling the Board to hear and decide the issues raised in Hanson's PFR in Case No. 98-3-0014[2]?***

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Applicable Law and Discussion

Matters that are subject to Board review are set forth in RCW 36.70A.280, which provides in relevant part:

> (1) A growth management hearings board shall hear and determine *only* those petitions alleging either:
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> (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 (emphasis in original).

This Board has also held that "this chapter" as used in RCW 36.70A.280(1) refers to Chapter 36.70A RCW. *South Bellevue Partners Limited Partnership and South Bellevue Development Inc v. City of Bellevue and Issaquah School District No. 411*, CPSGMHB Case No 95-3-0055, Order of Dismissal, November 30, 1995, at 6.

In short, this Board has stated that its jurisdiction is generally limited to review of comprehensive plans and development regulations adopted, or amended, pursuant to Chapter 36.70A RCW. However, this Board has never directly addressed the question of whether its jurisdiction, as set forth in RCW 36.70A.280(1) extends to review of land use permit decisions, such as the three conditional use permits challenged in Hanson's PFR 98-3-0014.

The Western Washington Growth Management Hearings Board has stated:

> The decision of whether or not to accept, approve or in any other way deal with a "development application" is a decision that rests solely upon the local government. Any question about the authority of the Board to even deal with a permitting decision was resolved in the 1995 amendment to RCW 36.70A.030(7) which states
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> > ". . . A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city."
>
> The clear legislative mandate is that a Board does not have jurisdiction to make a ruling on any individual permit application or otherwise deal with matters set forth in RCW 36.70B. . . .
>
> . . . [The Board has] no authority, no jurisdiction, nor any business in the arena of permits. The Legislature has spoken clearly on the issue. *Achen v. Clark County, et. al.*, WWGMHB Case No. 95-2-0067, Order on Reconsideration, November 30, 1996, at 1-2.

This Board concurs in the analysis and holding of the Western Board in *Achen.* RCW 36.70A.280 (1) does not confer jurisdiction upon this Board to review land use project permit decisions, including but not limited to, conditional use permits. Also, the State Supreme Court observed that the Boards do not have jurisdiction to review the effect of a comprehensive plan on specific

land use decisions such as King County's decision to issue the CUPs. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868 (1997). This Board has no authority or jurisdiction to review land use project permit decisions of a local government.

Finding of Fact

The Board finds that Petitioners' PFR, filed July 15, 1998, and assigned CPSGMHB Case No. 98-3-0014, challenges the approval of three Conditional Use Permits (three project permit decisions) by the King County Department of Development and Environmental Services. PFR 98-3-0014, at 2.

Conclusion

The Board concludes that RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review a land use project permit decision, including but not limited to, conditional use permits. This Board has no authority or jurisdiction to review land use project permit decisions of a local government.

III. ORDER

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the Act, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following Order:

> The County's Dispositive Motion on Legal Issue 1 and Sprint PCS's Motion to Dismiss are **granted.**
>
> That portion of Consolidated Case No. 98-3-0015c dealing with the PFR filed by Petitioners Hanson, et al., challenging King County's approval of three Conditional Use Permits for wireless telecommunications facilities (Case No. 98-3-0014, and all issues raised in PFR 98-3-0014), is **dismissed with prejudice.**
>
> Subsequent briefing in CPSGMHB Case No. 98-3-0015c shall be limited to Legal Issues 2 through 6, as set forth in the September 1, 1998 Prehearing Order. Likewise, the Hearing on the Merits scheduled for 10:00 a.m., Thursday, November 12, 1998, shall be limited to Petitioners' challenge to King County's adoption of Ordinance No. 13129.

So ORDERED this 28th day of September, 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.

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[1] The "Order of Consolidation and Notice of Hearing" and "Prehearing Order and Order on Intervention" characterize CPSGMHB Case No. 98-3-0014 as a "challenge to King County's approval of three Conditional Use Permits." The discussion at the Prehearing Conference regarding 98-3-0014 centered on the Board's jurisdiction over permits and led to the framing of Legal Issue 1. The dispositive motions addressed in this Order deal with the Board's authority to review land use project permit decisions. The question of whether King County's development regulations governing minor telecommunications facilities, specifically enactment of Ordinance No. 13129, comply with the GMA, is the subject matter of CPSGMHB Case No. 98-3-0015c.

[2] Consolidated into Case No. 98-3-0015c (*Hanson v. King County*)