

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

ROBERT ROSS, d/b/a NORTHWEST GOLF, INC.,)	Case No. 99-3-0014
)	
Petitioners,)	<i>(NW Golf)</i>
)	
v.)	
)	ORDER ON DISPOSITIVE MOTIONS
KITSAP COUNTY,)	
)	
Respondent.)	
)	
)	
)	

I. Procedural Background

On July 16, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Robert Ross, d/b/a Northwest Golf Inc. (**Petitioner** or **NW Golf**); the matter was assigned Case No. 99-3-0014. Petitioner challenges Kitsap County’s adoption of the Suquamish Rural Village Subarea Plan and development regulations (collectively, **SRVSP**). The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On August 23, 1999, the Board held a prehearing conference, and on August 30, 1999, issued its “Prehearing Order”^[1] (**PHO**) establishing the final schedule for this matter.

On September 10, 1999, the Board received “Kitsap County’s Motion to Dismiss for Lack of Standing” (**County Motion**).

On September 17, 1999, the Board received a letter from Petitioner’s attorney opposing the County’s Motion to Dismiss (**NW Golf Letter**).

On September 22, 1999, the Board received “Kitsap County’s Rebuttal Brief” (**County Reply**).

The Board did not hold a hearing on the motions.

II. Kitsap County Motion to Dismiss -- Standing

The sole basis for Petitioner's standing is participation standing, pursuant to RCW 36.70A.280(2) (b); no other basis for standing is alleged in the PFR. The PFR states: "Petitioner attended Kitsap County Board of County Commissioner's public hearings and provided testimony with regard to the SRVSP." PFR, at 2.

The County seeks to have part, or all, of the Legal Issues presented by Petitioner dismissed. The County argues "these issues were not raised by Ross before the County, nor are they even reasonably related to the single issue raised by petitioner Ross below regarding the Comprehensive Plan definition of Limited Areas of More Intensive Rural Development (LAMIRD)." County Motion, at 1. The County first asserts that Petitioner never raised any issues concerning the SRVSP, but rather argued about definitions in the County Comprehensive Plan. County Motion, at 5. Next, the County lists each of the six Legal Issues stated in the PHO and summarizes the nature of Petitioner's participation, or lack thereof. County Motion, at 5-7.

Petitioner responded with a two-page letter that stated: "this letter constitutes his [Ross'] opposition to the Motion to Dismiss filed by Kitsap County on September 9, 1999." NW Golf Letter, at 1. The letter does not address the arguments made in the County Motion, but does object to the Board's decision in *Alpine, et al. v. Kitsap County*, CPSGMHB Case No. 98-3-0032c coordinated with *Bremerton, et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Order on Dispositive Motions (Oct. 7, 1998). The letter states:

Now, as the result of their Order in Alpine, the CPSGMHB has added the qualifier that an appellant's participation must have been "reasonably related" to the issues stated in the PFR in order to confer participation standing.

This change in the standing "threshold" by the CPSGMHB was not known to my client (who was not a participant in previous review processes on Kitsap County

[\[2\]](#) Plans), and therefore did not inform him as to the manner in which his "participation" in the Suquamish Rural Village Subarea Plan must be established in order to protect his rights.

NW Golf Letter, at 1.

Petitioner also object's to the Board's ruling in *Alpine* since it is "different, and more difficult" than in the jurisdiction of the other Growth Boards and it therefore "violates the due process and equal protection rights of the citizens of the CPSGMHB jurisdictional area." NW Golf Letter, at 2.

In response to Petitioner's letter, the County notes, "Ross does not dispute the fact that he failed to raise before the County any of the issues raised in his PFR, or any issue reasonably related to issues raised in his PFR. Thus, Ross does not dispute that he has failed to establish participation standing under RCW 36.70A.280(2)(b), in accordance with this Board's decision in [*Alpine*]." County Reply, at 1. The County then summarizes various rationale in support of its urging for the Board to embrace a more restrictive issue-specific standing requirement. County Reply, at 2-3.

Discussion

As a threshold matter, the Board rejects the County's argument that Petitioner never challenged the SRVSP, but instead questioned an amendment to the Kitsap County Comprehensive Plan. Ordinance No. 232-1999 is entitled:

Relating to Land Use Regulations for the Suquamish Area: Adopting the Suquamish Rural Village Subarea Plan, as part of the Kitsap County Comprehensive Plan, Making Corresponding Changes to the Comprehensive Plan and Land Use Map, and Amending the Zoning Ordinance and Map to Add Regulations to Implement the Suquamish Rural Village Subarea Plan.

Ordinance No. 232-1999. It is undisputed that the Petitioner participated in the County's consideration of Ordinance No. 232-1999, the enactment in question in this case.

The Board will not address Petitioner's contention that the Board's participation standing requirements violate constitutional rights of due process and equal protection. The Board has no jurisdiction to decide constitutional issues. However, the Board will address its participation standing requirement.

What this Board said in the *Alpine* case bears repeating here:

The County seeks to dismiss issues (Legal Issues 22, 31, 56, 63, 65, and 67) it claims were not raised before the County in its adoption of the challenged actions. The County urges the Board to accept an issue-specific standing requirement. To the extent the County urges the Board to require petitioners to have raised before the County the specific issues now before the Board, the Board again rejects the County's urging. See *Bremerton v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Order on Motions (Apr. 22, 1997). Nonetheless, a review of the record and briefing on this issue supports dismissal of several issues for lack of standing.

The GMA provides four different methods to obtain standing before the Board. See

RCW 36.70A.280(2). Three of these methods do not require participation before the local government during its adoption or amendment of its GMA plans or development regulations. Only the method that requires participation is the subject of the present dispositive motion; the Board’s analysis is limited to this “participation standing.” That GMA provision states that:

A petition may be filed only by: . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested RCW 36.70A.280(2)(b).

The authorization for participation standing is consistent with the GMA mandate for “early and continuous public participation,” RCW 36.70A.140, and with the Legislature’s intent that local governments “balance priorities and options . . . in full consideration of local circumstances,” RCW 36.70A.3201^[3]. To have meaningful public participation and avoid “blind-siding” local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA.

Since the County has challenged the participation standing of several petitioners, the Board will determine whether the challenged petitioners have sufficiently participated before the County to raise and argue an issue now before the Board. To do this, the Board will review the issue, as set forth in the Board’s prehearing order, and will examine the PFR, the briefing and the record to ascertain the nature of the petitioner’s participation before the County. If a petitioner’s participation is reasonably related to the petitioner’s issue as presented to the Board, then the petitioner has standing to raise and argue that issue; if the petitioner’s participation is not reasonably related to the petitioner’s issue as presented to the Board, then the petitioner does not have standing to raise and argue that issue.

Alpine, at 7-8.

Once again, the Board rejects a GMA based “issue-specific standing requirement” and reaffirms its reasoning in *Alpine*, which is applied here.

Petitioner raised six Legal Issues, all challenged by the County, which provide:

1. *Did Kitsap County (County) fail to comply with the requirements of RCW 36.70A.070(3)(d) when it adopted the Suquamish Rural Village Subarea Plan and Suquamish Rural Village Subarea Development Regulations (collectively - SRVSP) – Ordinance No. 232-99, because the SRVSP does not contain a realistic 6- year plan to finance the necessary capital facilities?*

2. *Did the County fail to comply with the requirements of RCW 36.70A.070(3) and (6) when it adopted the SRVSP, particularly the storm water section (p. 31) and the transportation section (p. 18), because these sections of the SRVSP do not adequately analyze/portray the actual capacities/deficiencies of existing capital facilities?*
3. *Did the County fail to comply with the requirements of RCW 36.70A.070 (preamble) when it adopted the SRVSP, because the Introduction (p. 1) is inconsistent with the Transportation and Storm water sections (pp. 18 and 31), the Land Use section (p. 6) is inconsistent with the Land Use Element of the Kitsap County Comprehensive Plan, and the Population and Housing section (p. 5) is inconsistent with the public infrastructure – Sewer section (p. 29)?*
4. *Did the County fail to comply with the requirements of RCW 36.70A.070(5) when it adopted the SRVSP, because the densities and uses prescribed by the SRVSP are not appropriate for rural areas and compatible with the rural character of such lands?*
5. *Did the County fail to comply with certain goals of the GMA, specifically RCW 36.70A.020(2), (3), (4), (5), (6), (11) and (12), when it adopted the SRVSP?*
6. *Did the County fail to comply with the requirements of RCW 36.70A.070, .080, .106, .110 and .130 when it adopted the SRVSP?*

PHO, at 6-7.

Of these issues, Petitioner's participation on a portion of Legal Issue 3 and Legal Issue 4 was presented sufficiently before the County to be reasonably related to the issues posed for this Board to resolve.

Attached to the County's Motion is: 1) the Declaration of Jason Rice; 2) Exhibit "A," which includes the Planning Commission minutes from meetings on 1/19/99, 1/26/99, 3/23/99 and 3/30/99, and Board of County Commissioner minutes from meetings on 4/12/99 and 4/19/99; and 3) Exhibit "B," which includes letters from Petitioner dated 1/19/99, ^[4] 1/19/99, 2/15/99, 2/17/99 and 3/23/99. The County's record confirms that Petitioner participated, orally and in writing, regarding Ordinance No. 232-1999 on seven different occasions.

A review of the record provided by the County ^[5] is conclusive evidence that the focus of Petitioner's concern was the County's proposed definition of Limited Areas of More Intensive Rural Development (LAMIRD), as authorized in RCW 36.70A.070(5), and the application of

LAMIRDs not only to the Suquamish area, but county-wide. [\[6\]](#)

The letters and testimony of Petitioner do not raise concerns regarding the adequacy of a six-year financing plan [Legal Issue 1], the adequacy of existing transportation and storm water facilities [Legal Issue 2], the consistency of the SVRSP Introduction with the Transportation and Storm Water sections, or the consistency of the SVRSP Population and Housing sections with the Infrastructure section [portions of Legal Issue 3], the goals of the Act [Legal Issue 5], or any of the provisions of the GMA cited in Legal Issue 6. Therefore, Petitioner's participation before the County, as exhibited by the testimony and letters contained in Exhibits A and B, is not reasonably related to these Legal Issues as presented for the Board. The County's motion to dismiss Legal Issues 1, 2, 5 and 6, in their entirety, and portions of Legal Issue 3 is **granted**.

However, Petitioner's testimony and letters informed the County of his concern with the County's definition of LAMIRDs, as provided in RCW 36.70A.070(5), and its application to the SVRSP. Petitioner's participation before the County is reasonably related to a portion of Legal Issue 3 and Legal Issue 4. The County's motion to dismiss a portion of Legal Issue 3 and Issue 4 is **denied**.

III. ORDER

Based upon review of the Petitions for Review, of the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board enters the following ORDER:

Kitsap County's motion to dismiss Legal Issues 1, 2, 5 and 6, in their entirety, and portions of Legal Issue 3, is **granted**.

Kitsap County's motion to dismiss a portion of Legal Issue 3 and Legal Issue 4 is **denied**.

The Legal Issues remaining before the Board in CPSGMHB Case No. 99-3-0014 are as follows:

3. *Did the County fail to comply with the requirements of RCW 36.70A.070 (preamble) when it adopted the SRVSP, because the Land Use section (p. 6) is inconsistent with the Land Use Element of the Kitsap County Comprehensive Plan?*

4. *Did the County fail to comply with the requirements of RCW 36.70A.070(5) when it adopted the SRVSP, because the densities and uses prescribed by the SRVSP are not appropriate for rural areas and compatible with the rural character of such lands?*

So ORDERED this 1st day of October, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
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] The PHO was amended on September 9, 1999, to correct a reference in Legal Issue No. 1.

^[2] Mr. Robert Ross was not a party to the *Alpine* proceedings. However, the present Petitioner's attorney represented a Mr. Ronald Ross in the *Alpine* case and was served with a copy of the *Alpine* Order on Dispositive Motions.

^[3] The Board has previously identified the reciprocal duty that the local government and members of the public share.

In order for the public participation goal of the Act to be served, both the local governments and the public must engage in an open, clear and active dialogue. Failure to do so by either party may result, as in this case, in an adverse ruling by this Board on appeal.”

1994, at 33.

[4] Submitted by Nadean Ross.

[5] Petitioner did not respond to, nor refute, the record as presented by the County.

[6] *See* four letters from Ross, contained in Exhibit B; minutes of the Planning Commission from 1/19/99 and 3/23/99; and minutes from the 4/12/99 Board of County Commissioner meeting contained in Exhibit A.