

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

JODY L. McVITTIE, ET AL.,)	
)	
Petitioners,)	Case No. 99-3-0016c
)	
v.)	<i>(McVittie, et al.)</i>
)	
SNOHOMISH COUNTY,)	ORDER ON DISPOSITIVE
)	MOTIONS
Respondent,)	
)	
and)	
)	
SNOHOMISH COUNTY-CAMANO)	
ASSOCIATION OF REALTORS,)	
)	
Intervenors.)	
_____)	

I. Procedural Background

On September 20, 1999, the Board issued its “Prehearing Order” (**PHO**). The PHO established the schedule for this case, including deadlines for filing dispositive motions.

On October 1, 1999, the Board received “Snohomish County’s Motion to Dismiss Legal Issues,” with three attached exhibits^[1] (**County Motion**) and “Snohomish County-Camano Association of Realtors’ Motion to Dismiss Based on Lack of Subject Matter Jurisdiction,” with one attached exhibit^[2] (**Realtors Motion**).

On October 15, 1999, the Board received “Petitioners’ Response to Dispositive Motions,” with two attached exhibits^[3] (**McVittie Response**); and “Petitioners’ Response to Dispositive Motions (Legal Issues 5 & 6),” with five attached exhibits^[4] (**Bourgault/SSCPA**^[5] **Response**).

On October 22, 1999, the Board received “Snohomish County’s Reply Brief in Support of its

Motion to Dismiss Legal Issues,” with one attached exhibit. ^[6] (**County Reply**). No reply brief was received from Intervenors.

On October 23, 1999, the Board received a copy of a letter dated October 23, 1999, from Petitioner Bourgault to the County’s representative, Ms. Findlay. The letter included a copy of the last page of “Petitioners’ Response to Dispositive Motions” signed by Petitioner Bourgault and SSCPA.

On October 25, 1999, the Board received correspondence from the County indicating that the County had not received “Petitioners’ Response to Dispositive Motions (Legal Issues 5 & 6).” On October 26, 1999, the County notified the Presiding Officer that the County had located the “missing” response brief.

The Board did not hold a hearing on the dispositive motions.

II. MOTIONs TO Dismiss

A. County Motion

The County moves to dismiss several of Petitioners’ issues, asserting that they challenge existing elements of the Snohomish County GMA Comprehensive Plan that are not amended by Ordinance No. 99-027. These claims, therefore, are beyond the Board’s jurisdiction since a challenge to these existing elements is untimely. County Motion, at 1-8; County Reply, at 1-6.

Specifically, the County moves to dismiss “Petitioners’ legal issues ^[7] relating to RCW 36.70A.020(3), (4) and (9); and RCW 36.70A.070(2), (4) and (6).” County Motion, at 9; County Reply, at 7.

The response briefs of McVittie and Bourgault/SSCPA indicate that it is Ordinance No. 99-027 that Petitioners’ challenge. McVittie Response, at 1 and Bourgault/SSCPA Response, at 1. Both Petitioners suggest that the Capital Plan Detail adopted by Ordinance No. 99-027 addresses and “amends” other elements of the County’s plan. McVittie cites the transportation-financing requirement in the transportation element, which is addressed in Ordinance No. 99-027 to support the proposition that the transportation element is amended. McVittie Response, at 2-3 and 6.

Bourgault points to certain public facilities, ^[8] apparently addressed in the County’s utility element, that allegedly should be addressed in the capital facilities element, as the basis for claiming the amendments to the capital facilities element contained in Ordinance No. 99-027 are incomplete. Bourgault/SSCPA Response, at 1 and 3.

Further, McVittie argues: “Several adopted elements including the Transportation Element of the

Comprehensive Plan depend on the financing spelled out in the Capital Plan for implementation. The GMA makes clear that the plan must address financial aspect of both public facilities and transportation facilities. . . . Thus, a party bringing an appeal has no alternative when challenging the *inconsistency* of a financing plan with previously adopted portions of the plan, but to engage in some discussion of those preexisting elements.” McVittie Response, at 4, (emphasis supplied). Additionally, Petitioner Bourgault argues: “The absence of this linkage [between funding and action items in the Comprehensive Plan] prevents anyone from determining whether or not *consistency* and adequacy between funding and planning occurs as required by the GMA.” Bourgault/SSCPA Response, at 1, (emphasis supplied).

The purpose of a dispositive motion is to expedite the process of having a legal issue considered by the Board. *Twin Falls v. Snohomish County*, CPSGMHB Case No. 93-3-0003, Order on Dispositive Motions (Jun. 11, 1993), at 18. In the situation where there are essentially legal issues, a limited record and uncontested facts, a dispositive motion may be an appropriate means of expediting the review process. However, here, the County and Petitioners dispute the implications of Ordinance No. 99-027 and offer reasonable, but differing, interpretations. Their arguments go to the heart of the effects of the financing program adopted by Ordinance No. 99-027, an issue of first impression to this Board. Yet, the record before the Board at this point in these proceedings is limited. Additionally, material facts regarding how the County’s plan is organized and what the challenged ordinance amends are unclear and disputed.

Given these facts and circumstances, it is not appropriate for the Board to dismiss any of the Legal Issues in a dispositive manner. Hence, the Board **denies** the County’s motion. However, in denying the motion, the Board is not taking a position on the merits of the arguments presented by the parties; following the hearing on the merits, the Board will address the issues and arguments presented in its final decision and order.

B. Realtors Motion

Realtors also question the Board’s jurisdiction. Realtors urge the Board to dismiss any claims^[9] challenging whether: 1) the County “completed” projects identified in the plan; 2) the Board has jurisdiction to decide claims that the land use element has not been reassessed; and 3) the PFR is silent on whether the County failed to adopt regulations implementing existing plan policies. Realtors Motion, at 1-6.

Petitioner McVittie suggests that the Realtors “repeatedly mis-characterize the Petitioners’ issues” and “misinterpreted the Petitioners concern.” McVittie Response, at 1 and 7. Petitioner contends that the “Capital Plan Detail itself is incomplete” not projects as suggested by the Realtors. McVittie Response, at 7. McVittie also correctly contends that the GMA requires a reassessment of the land use element in certain circumstances. McVittie Response, at 8. This

provision may, or may not, apply here. Finally, Legal Issue 4, and the PFRs, includes reference to RCW 36.70A.120, which requires the County to “perform its activities and make capital budget decisions in conformity with its comprehensive plan.” The Board agrees that Realtors misinterpreted Petitioners’ issues. Realtors Motion is **denied**.

III. Order

Based upon review of the PFRs, PHO, motions and briefs submitted by the parties, the Act, and prior decisions of this Board, the Board enters the following ORDER:

1. Respondent Snohomish County’s Motion to Dismiss Legal Issue is **denied**.
2. Intervenor Snohomish County-Camano Association of Realtors’ Motion to Dismiss Based on Lack of Subject Matter Jurisdiction is **denied**.

So ORDERED this 26th 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 in RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

[1] The three exhibits are Ordinance No. 99-027; September 20, 1999 PHO (*McVittie*); and Ordinance No. 94-125 (adopting the Snohomish County GMA Comprehensive Plan).

[2] The exhibit is the September 20, 1999 PHO (*McVittie*).

[3] The exhibits are Ordinance No. 99-027 and excerpts from the 1999-2004 Capital Plan Detail.

[4] The exhibits are three excerpts from the Snohomish County GMA Comprehensive Plan; Ordinance No. 99-027 and excerpts from the 1999-2004 Capital Plan Detail.

[5] South Snohomish County Preservation Association.

[6] The exhibit is Motion No. 96-194.

[7] The County identifies portions of Legal Issue 1 and Legal Issues 3, 4, 5 and 6.

[8] Bourgault identifies sewer and water systems.

[9] Specifically, Realtors ask that portions of the “sub issues” referred to in the Legal Issues be dismissed: Legal Issue 1(h), Legal Issue 2(7th sub issue) and Legal Issue 4(2nd sub issue).