

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

MONTLAKE COMMUNITY CLUB,	)	<b>Case No. 99-3-0002c</b>
et al.,	)	
	)	
Petitioners,	)	<i>(Montlake)</i>
	)	
v.	)	
	)	<b>ORDER ON DISPOSITIVE</b>
CITY OF SEATTLE,	)	<b>MOTIONS</b>
	)	
Respondent.	)	
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**I. Procedural Background**

On January 29, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Montlake Community Club (**MCC** or **Montlake**); the matter was assigned Case No. 99-3-0001. On February 1, 1999, the Board received a PFR from the Friends of Brooklyn and the University District (**Friends**); the matter was assigned Case No. 99-3-0002. On February 9, 1999, the Board issued an “Order of Consolidation and Notice of Hearing,” consolidating the two cases as Consolidated Case No. 99-3-0002c, *Montlake Community Club, et al., v. City of Seattle*. Both PFRs challenge the City of Seattle’s Ordinances adopting the University Community Urban Center (**UCUCP**) Plan and development regulations.

On March 8, 1999, the Board held a prehearing conference, and on March 12, 1999<sup>[1]</sup>, issued its “Prehearing Order” (**PHO**) establishing the final schedule for this matter.

On March 31, 1999, the Board received “City of Seattle’s Motion to Dismiss SEPA Claims,” with seven exhibits and attachments. On the same day the Board also received “City of Seattle’s Motion to Dismiss Friends of Brooklyn for Lack of GMA Standing” (**City Motion**).

On April 14, 1999, the Board received Montlake’s “Withdrawal of SEPA Claims by Montlake Community Club” (**Montlake Withdrawal**).

On April 14, 1999, the Board received “Friends of Brooklyn’s Response to City of Seattle’s Motion to Dismiss Based on Standing” (**Friends’ Response**); “Friends of Brooklyn Motion to Substitute Brian Ramey as Plaintiff/Real Party in Interest for Friends of Brooklyn or to Amend”;

“Memorandum in Support of Friends of Brooklyn’s Motion to Substitute Brian Ramey as Plaintiff/Real Party in Interest” (**Friends’ Motion**); and “Declarations of Brian Ramey, Dana Ritter and Clint Sine.”

On April 19, 1999, the Board received “City of Seattle’s Rebuttal to Friends of Brooklyn’s Response and Motion to Substitute Parties” (**City Reply**).

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

## **II. Discussion**

### **A. Friends of Brooklyn -- Standing, Substitution of Petitioner and Amendment of PFR**

#### Seattle’s Motion to Dismiss for Lack of Standing:

The City of Seattle asks the Board to dismiss the PFR filed by Friends of Brooklyn for lack of GMA standing. The City argues that it has no evidence that the organization “Friends of Brooklyn” exists, nor any evidence that Mr. Ramey identified himself as a member of Friends of Brooklyn in any testimony or correspondence to the City. City Motion, at 2. In response, Friends correctly recaps the Board’s cases and holdings regarding participation standing and suggests the Board’s interpretation is an “arbitrary and formalistic interpretation of RCW 36.70A.280(2).” Friends’ Response, at 5-6. The City urges the Board not to abandon its interpretation of the GMA’s standing requirements for organizations. City Reply, at 2-3.

In order to challenge a local government’s compliance with the goals and requirements of the GMA before this Board, an individual or organization must have standing to bring such an appeal. Requirements for standing are provided by the legislature.

RCW 36.70A.280(2) provides in relevant part:

A petition [for review] may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which review is being requested; (c) a person who is certified by the governor within sixty days of filing a request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

RCW 36.70A.280(3) defines “person”:

For purposes of this section “person” means any individual, partnership, corporation,

association, state agency, governmental subdivision or unit thereof, or public or private associations, organizations or entities of any character.

The Board's Rules require that a PFR contain:

a statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2). Petitioners shall distinguish between participant standing under the act, governor certified standing, standing pursuant to the Administrative procedures Act, and standing pursuant to the State Environmental Policy Act, as the case may be;

WAC 242-02-210(2)(d)

The PFR filed on February 1, 1999, by Friends provides:

- 4) Standing  
Petitioner has provided testimony at hearings and written comments in the development of the ordinances and resolutions relating to this issue.

Friends' PFR, at 7.

On March 10, 1999, Friends filed an Amended PFR<sup>[2]</sup> which provides:

- 4) Standing:  
Petitioner has provided testimony at hearings and written comments in the development of the ordinances and resolutions relating to this issue.

Friends' Amended PFR, at 6.

The PFR clearly identifies the type and basis of Petitioner's standing as being participant standing, pursuant to RCW 36.70A.280(2)(b). No other basis for standing is alleged.

Both Friends of Brooklyn and Mr. Ramey are persons, pursuant to RCW 36.70A.280(3). However, the sole petitioner named in the PFR is Friends of Brooklyn; there is no individual petitioner named.<sup>[3]</sup> Friends alleges that the organization participated in the development of the challenged action by providing oral and written comments. The question before the Board, then, is whether Friends participated before the City when it considered the challenged action.

The Board's "organizational standing" rule was first articulated in *Friends of the Law v. King*

*County*: “For an organization to have participation standing, a member of that organization must identify himself or herself as a representative of the organization when that person testifies at a hearing or submits a letter to the county or city.” CPSGMHB Case No. 94-3-0003, Order on Dispositive Motions (Apr. 22, 1994), at 9; *see also*, *McGowan v. Pierce County*, CPSGMHB Case No. 96-3-0027, Order on Motions (Sept. 5, 1996), at 8; and *Friends of Fennel Creek v. Pierce County*, CPSGMHB Case No. 97-3-0005, Order on Motions (Apr. 22, 1997), at 6. As Friends acknowledges, the Board “has consistently applied this rule on appearance [participant] standing to dismiss petitions in the years since 1994.” Friends’ Response, at 5.

In response to the City’s motion to dismiss, Friends never asserts, nor provides any evidence, that the organization exists. Nor does Petitioner suggest that the record shows that Mr. Ramey, or any other member of the organization, ever identified themselves as a member of Friends of Brooklyn when providing comment to the City. Friends’ Response, at 1-7. In essence, Friends concedes it does not have participation standing under the Board’s interpretation of the standing requirements for organizations. Instead, Petitioner questions the Board’s interpretation of participation standing for organizations. Friends’ Response, at 5-7.

Friends argues that the Board’s practice of limiting organizational standing is contrary to the GMA’s policy to encourage public participation. Friends’ Response, at 3. The legislature’s scheme for broad and continuous public participation during the development and adoption of plans and regulations<sup>[4]</sup> is distinct from the legislature’s scheme for appellate review of GMA actions. Any person may participate in the local government’s GMA plan development and adoption process. Persons who participated may file a PFR, but only under the legislature’s statutorily prescribed conditions set out at RCW 36.70A.280(2) and .290(2).

Friends also complains that it was unaware of the Board’s organizational standing rule since the Board’s decisions “are not distributed in hard copy, are not indexed, and apparently only [are] available by computer.” Friends’ Response, at 6. It is unfortunate that Petitioner’s counsel could not find the Board’s decisions until respondent noted them in the dismissal motion,<sup>[5]</sup> but Petitioner’s statements are simply wrong. The Board’s Rules of Practice and Procedure indicate where the Board’s orders are available and published.<sup>[6]</sup>

Friends offers no evidence that the organization participated in the City’s process and offers no persuasive argument, based on GMA policy or otherwise, why the Board should cease applying its interpretation of the GMA’s participation standing requirements for organizations. Therefore, Friends of Brooklyn has not participated, pursuant to RCW 36.70A.280(2), and consequently, Friends of Brooklyn does not have standing to proceed with their appeal. Seattle’s motion to dismiss is **granted**.

## Friends' Motion to Substitute or Amend:

In addition to responding to the City's Motion to Dismiss, Friends filed a separate motion asking the Board to either substitute Mr. Ramey as a real party in interest for Friends, pursuant to Superior Court Civil Rule (CR) 17(a), or to amend the PFR to add Mr. Ramey as a Petitioner with Friends, pursuant to CR 15(c). Friends' Motion, at 1 and 4. In reply, the City suggests that Friends' reliance on the CRs is misplaced, and urges the Board not to substitute Mr. Ramey, nor allow the PFR to be amended to add Mr. Ramey. City Reply, at 4-5.

It is undisputed that Mr. Brian Ramey participated, both orally and in writing, before the City during its consideration and adoption of the UCUCP. City Motion, at 2; and Friends' Response, at 1. However, Mr. Ramey, who verified Friends' PFR and is the contact person for the organization, is not named as a petitioner in the PFR filed on February 1, 1999. Thus, since Friends has no standing, it seeks to resuscitate its PFR by including Mr. Ramey as a petitioner. Friends' efforts fail.

Amendments submitted within 30 days of filing the PFR are allowed as a matter of right. Also, the Board has discretion to allow a PFR to be amended after the 30-day period has lapsed. *See* WAC 242-02-260(1) and (2). Here, Friends filed the PFR on February 1, 1999. Up until March 3, 1999, Friends could have amended the PFR without the approval of the Board. In fact, the Board even allowed the PFR to be amended after March 3. In the March 12, 1999, PHO, the Board explained amendment procedures, treated a March 8, 1999 submittal by Friends as a Motion to Amend, and granted the motion. PHO, at 3. Now, in its April 14, 1999 submittal, Friends seeks to amend its PFR again or in the alternative substitute Mr. Ramey.

Even if the Board allowed the PFR to be amended or allowed Mr. Ramey to be substituted for petitioner Friends, the new petitioner's challenge would fail as untimely. Mr. Ramey did not challenge the City's action within sixty days after publication, as explicitly required by the legislature in RCW 36.70A.290(2). The City published notice of its action on December 3 and 4, 1998. The deadline for filing a petition challenging the City was on February 2, 1999. The filing date for Mr. Ramey would be no earlier than April 14, 1999, the date Friends moved to substitute or amend its petition, or 71 days after the close of the appeal period.

Friends argues that CRs 17(a)<sup>[7]</sup> and 15(c)<sup>[8]</sup> should guide the Board regarding these issues. Friends' Motion, at 1 and 4. Friends also acknowledges that the Board has stated that it is not bound by the CRs, but may refer to them for guidance. Friends' Motion, at 2 (*citing Tacoma, et al. v. Pierce County*, CPSGMHB Case No. 94-3-0001, Order on Dispositive Motions (Mar. 4, 1994), at 17). The Board is not a court; its jurisdiction and authority is prescribed by the legislature. The explicit statutory filing period for a petition is sixty days yet, Friends asks that the Board in effect, extend it to 131 days. To allow the addition of Mr. Ramey as petitioner at

this time and allow this change to relate back to February 1, 1999, the date Friends' PFR was timely filed, would substantially expand the jurisdictional limits the legislature established for the Boards. This the Board cannot do. Friends' motions to substitute or to amend are **denied**.

## **B. SEPA Claims**

On April 14, 1999, Montlake Community Club withdrew its SEPA claim -- Montlake Community Club Legal Issue No. 2. Montlake Withdrawal, at 1. Friends' Legal Issue No. 2 also related to compliance with SEPA (Chapter 43.21C RCW); however, in a separate part of this Order, Friends' PFR is dismissed. Therefore, no SEPA claims remain a part of this case proceeding. Montlake's Legal Issue No. 2 (SEPA Claim) is **dismissed with prejudice**.

## **III. ORDER**

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

1. The City of Seattle's Motion to dismiss Friends of Brooklyn's PFR is **granted**.
2. Friends of Brooklyn's Motions to Substitute Brian Ramey as Plaintiff/Real Party in Interest or to Amend are **denied**.
3. The PFR filed by Friends of Brooklyn, CPSGMHB Case No. 98-3-0002 is **dismissed with prejudice**. Neither Friends of Brooklyn nor Brian Ramey are Petitioners in this consolidated case. All of Friends of Brooklyn's Legal Issues are **dismissed with prejudice**.
4. Montlake Community Club's Legal Issue No. 2, regarding compliance with SEPA, is **dismissed with prejudice**.
5. Montlake Community Club is the sole remaining Petitioner in this consolidated case proceeding. This case will continue to be captioned as *Montlake Community Club v. City of Seattle*, **CPSGMHB Case No. 99-3-0002c**. Only three of Montlake Community Club's Legal Issues remain before the Board -- Legal Issue Nos. 1, 3 and 4, as set forth in the March 12, 1999, PHO, as amended by March 17, 1999 PHO.

So ORDERED this 23rd day of April, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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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.

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[1] The Board's PHO was amended to include citations to Montlake's Legal Issue No. 4 on March 17, 1999.

[2] The March 10, 1999, "Amended PFR" was filed beyond the 30-day period where PFRs may be amended by right. Pursuant to WAC 242-02-260(2), the Board treated Friends' filing as a motion to amend, and subsequently granted the motion in the Prehearing Order. *See* March 12, 1999 PHO, at 4.

[3] Brian Ramey is noted as Petitioner's *contact person and a resident of the "Lower Brooklyn" area*, in the amended PFR, but never identified as a petitioner.

[4] *See* RCW 36.70A.020(11), .035, 130 and 140.

[5] The Board notes that the City indicated at the March 8, 1999 Prehearing Conference that it intended to challenge Friends' standing. *See*, March 12, 1999, PHO, at 3.

[6] Board decisions are published and available. WAC 242-02-834 provides:

Copies of all final decisions and orders are available from the board that entered the decision and order. Code Publishing Company POB 51164, Seattle, WA 98115-1164 is the official publisher of all final decisions and orders entered by the boards. In addition, final decisions and orders are available from CD Law, 1000 2nd Ave., Ste. #1610, Seattle, WA 98104 and Law BBS, Washington St. Bar Association, 2001 Sixth Ave., Ste. 500, Seattle, WA 98121-2599.

[7] This rule allows courts to substitute real parties in interest.

[8] This rule "allows relation back" of amendments changing or adding parties when certain notice and prejudice requirements are met.