

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

HARVEY et al,)	
)	Case No. 00-3-0008
Petitioners,)	
)	
v.)	ORDER on DISPOSITIVE MOTION
)	
SNOHOMISH COUNTY,)	
)	
Respondent.)	
)	

i. PROCEDURAL BACKGROUND

On June 15, 2000, the Board received “Respondent Snohomish County’s Motion to Dismiss Petitioners’ Petition for Review” (**Motion to Dismiss**).

Also on June 15, 2000, the Board received Petitioners’ “Motion and Declaration for Order Allowing Supplementation of the Record” (**Motion to Supplement**).

On June 28, 2000, the Board received “Petitioners’ Reply to Respondent’s Motion to Dismiss Petitioners’ Petition for Review.”

On July 10, 2000, the Board received “Snohomish County’s Reply in Support of Motion to Dismiss.”

ii. FINDINGS OF FACT

1. Petitioners own and operate Harvey Airfield, a private airfield in Snohomish County. The Harveys have purchased land near this airport in anticipation of expanding airport operations, including airport industry development.

2. During the County’s 2000 GMA amendment docketing cycle, Petitioners submitted proposed amendments to the County’s comprehensive plan and development regulations. The proposed amendments requested expansion of the Urban Growth Area boundary, changing certain zoning, and changing the County’s shoreline management plan by redesignating “rural” shorelines to “urban” shorelines.

3. The County passed Motion 99-469, establishing the final docket of proposed comprehensive plan amendments that would be considered by the County Council in 2000. Petitioners' amendments were excluded from this docket.

iii. MOTION TO DISMISS

The County moved to dismiss arguing that “the Board does not have the jurisdiction . . . to review a decision of the County Council to not amend its Growth Management Act Comprehensive Plan.” Motion to Dismiss, at 1 (emphasis in original).

Petitioners proposed comprehensive plan amendments to the County and the County declined to docket or adopt their proposed amendments. The County argued that the Board lacks jurisdiction over challenges to the County's failure to docket proposed comprehensive plan amendments. The GMA authorizes a local government to amend comprehensive plans annually; however, it does not require amendments. RCW 36.70A.130. Identical facts were before the Board in *Agriculture for Tomorrow v. Snohomish County*, where the County's Department of Planning and Development Services recommended that AFT's proposal not be processed. The Board granted the County's motion to dismiss in that case, relying on previous Board decisions. CPSGMHB Case No. 99-3-0004, Order on Dispositive Motion (Jun. 18, 1999).

In *Cole v. Pierce County*, a property owner appealed a county's refusal to adopt his proposed amendments that he alleged would “correct” the county's original land use designation of his property. CPSGMHB Case No. 96-3-0009c, Final Decision and Order (Jul. 31, 1996). The Board rejected Cole's argument, holding that “the County's failure to act cannot be construed to be an ‘action’ under RCW 36.70A.130” and further holding that the actions challenged in Cole's petition were not taken in response to a GMA duty to act by a certain deadline, or in response to any other duty imposed by the Act, and that WAC 242-02-220(5) does not apply to this case.” *Cole*, at 10-11. Consequently, the Board concluded that it did not have jurisdiction to resolve Cole's complaint. *Id.* at 11.

Petitioners attempt to distinguish this case from *Agriculture for Tomorrow* and *Cole* by arguing that it is more like *Port of Seattle v. Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997). In *Port of Seattle*, the Puget Sound Regional Council, the regional governmental body for the Puget Sound, adopted a resolution supporting the expansion of Sea-Tac International Airport. The Board determined that, once the regional decision was made to expand the existing Sea-Tac Airport, an essential public facility, the City of Des Moines was required to re-evaluate its comprehensive plan to determine if it still complied with the GMA. *Port of Seattle*, at 8. The duty for Des Moines to amend its comprehensive plan did not derive from the fact that the Port wanted to expand Sea-Tac Airport. The duty derived from the regional decision to support expansion of Sea-Tac. See *Central Puget Sound Regional Transit Authority v. City of Tukwila*, CPSGMHB Case No. 99-3-0003, Final Decision and Order (Sep. 15, 1999)

(“after the regional decision is made, the city then has a duty to accommodate the essential public facility”), at 6-7.

Here, there is no regional decision supporting the expansion of Harvey Airfield. This case is indistinguishable from *Agriculture for Tomorrow* and *Cole*. Snohomish County was under no duty to adopt the amendments proposed by Petitioners. The County’s motion to dismiss PFR 00-3-0008 is **granted**. PFR 00-3-0008 is **dismissed with prejudice**.

Conclusion

Snohomish County was under no GMA duty to adopt the amendments proposed by Petitioners. The County’s motion to dismiss PFR 00-3-0008 is **granted**. PFR 00-3-0008 is **dismissed with prejudice**.

iv. MOTION TO SUPPLEMENT

Because the Board is dismissing this PFR, the Board need not, and will not, rule on Petitioners’ Motion to Supplement.

V. order

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

1. The County’s motion to dismiss PFR 00-3-0008 is **granted**. PFR 00-3-0008 is **dismissed with prejudice**.
2. Because the Board has dismissed PFR 00-3-0008, the Board need not, and will not, rule on Petitioners’ Motion to Supplement.

So ORDERED this 13th day of July, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Lois H. North
Board Member (Board Member North dissents as set forth in the
separate opinion that follows)

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration

Board Member North's Dissenting Opinion

I respectfully disagree with my colleagues. I do believe that RCW 36.70A.200 mandates that the County evaluate the expansion of an essential public facility – an airport open to public use. The record of the Snohomish County Council meeting on January 26, 2000 (proposed supplemental exhibit) and February 9, 2000 (Ex. 57), reveal an unwillingness to study or consider the proposals of the Harvey Airfield owners. The proposed amendments to allow expansion of the airport deserved to be debated and should have been placed on the docket. In the record (Ex. 63), the County Executive expressed dismay at staff's recommendation to "do nothing" with the proposed amendments. The County Executive offered his personal staff's assistance in negotiating a "meeting of the minds" between the City of Snohomish and the owners of the Harvey Airport. It seems to me that section 200 of the GMA calls for more effort on the part of the Snohomish County Council to give adequate consideration to the expansion of an essential public facility.

Lois H. North
Board Member