

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

GEOFFREY J. BIDWELL,	)	
	)	<b>Case No. 00-3-0009</b>
Petitioner,	)	
	)	<b>ORDER on DISPOSITIVE MOTION</b>
v.	)	
	)	
CITY OF BELLEVUE,	)	
	)	
Respondent.	)	
_____	)	

**I. Procedural Background**

On May 2, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Geoffrey J. Bidwell (**Bidwell** or **Petitioner**). Petitioner alleges that the City of Bellevue (**Bellevue** or the **City**) failed to meet the requirements of the Growth Management Act (**GMA** or the **Act**). The matter was assigned Case No. 00-3-0009, and captioned *Bidwell v. City of Bellevue* (short case title is *Bidwell*). On May 4, 2000 the Board received a “Notice of Appearance” from Lori M. Riordan of the Bellevue City Attorney’s Office.

On June 7, 2000, beginning at 10:00 a.m., the Board conducted a prehearing conference in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle, WA.

On June 13, 2000, the Board received from Mr. Bidwell “Revised Statement of Legal Issues.”

On June 15, 2000, the Board issued the “Prehearing Order” (the **PHO**) in this case. The PHO set forth the Statement of Legal Issues as well as a schedule for the submittal of motions and briefs.

On June 27, 2000, the Board received from the Petitioner a “Motion to Supplement the Record” (the **Petitioners’ Motion to Supplement**).

On June 28, 2000, the Board received the “City of Bellevue’s Dispositive Motion” (the **City’s Dispositive Motion**), together with the “Declaration of Myrna Basich,” the “Declaration of Linda Barton,” and the “Declaration of Lori M. Riordan.”

On July 3, 2000, the Board received from Petitioner a “Motion to Resubmit Petition for Review”

with attached Exhibits 1 through 9.

On July 5, 2000, the Board received “Petitioner’s Response to City of Bellevue’s Dispositive Motion (the **Petitioner’s Response Brief**), together with the “Declaration of Geoffrey J. Bidwell,” and attached Exhibits 1 through 9. Also on this date, the Board received “City’s Response to Motion to Supplement Record.”

On July 10, 2000, the Board received “Correction to Petitioner’s Response to City of Bellevue’s Dispositive Motion.”

On July 11, 2000, the Board received a copy of correspondence from Geoffrey J. Bidwell to Lori M. Riordan regarding “Access to information on delivery of Dispositive Motion dated June 28, 2000.” The reverse side of the correspondence was a copy of the cover sheet of the City’s Dispositive Motion with a handwritten notation “G. Bidwell 6-29-00 @1:35 p.m.” Mr. Bidwell states that this notation was made by the ABC delivery service when a copy of the City’s Dispositive Motion was served at his home.

On July 12, 2000, the Board received from Mr. Bidwell a “Rebuttal to City of Bellevue’s Response to Motion to Supplement Record.” On this same date, the Board received “City’s Reply to Bidwell’s Response to Dispositive Motion,” together with the “Declaration of Kathleen Burgess” and the “Declaration of Michael Tornow.”

## **II. FINDINGS OF FACT**

1. In a February 22, 2000, letter addressed to the City of Bellevue Planning Director and Planning Commission, Geoffrey Bidwell requested that the City amend the Comprehensive Plan, specifically asking for “consideration to redefine the Land Use in the CBD Perimeter Design District per attachment (1) [a map labeled ‘Perimeter Design Districts’]. This proposal asks . . . to extend the A and B Perimeter Design District along Main Street in a manner similar to that existing on the North perimeter of the CBD. . . .” (the **Bidwell proposed Plan amendment**) PFR, Exhibit 7.
2. In an email dated February 25, 2000, from Renay Bennett to Kathleen Burgess of the City staff, Ms. Bennett substantially concurred with the Bidwell proposed Plan amendment, specifically stating “I propose an amendment that would extend the A and B Perimeter Design District along Main Street just like it is on the North and West sides. Subdistrict A would continue from 112<sup>th</sup> Ave N.E. along Main Street to Bellevue Way and Subdistrict B would continue from 112<sup>th</sup> Ave N.E. along Main Street to where it would meet with the western Subdistrict B . . .” PFR, Exhibit 8. Index, pp. 13-14.
3. In an email dated March 1, 2000 to Ms. Burgess, Laura Fox substantially agreed with the

Bidwell proposed Plan amendment. It states in part “To keep whatever buffer or scale we can, I would like to propose an amendment that would extend the A and B perimeter Design District along Main Street as already exists on the North and West Sides.” PFR, Exhibit 9. Index, pp. 13-14.

4. On March 15, 2000, Mr. Bidwell, City staff and others addressed the Bellevue Planning Commission on several subjects, including the Bidwell proposed Plan amendment. Index, pp. 49-50.

5. At the March 15, 2000, Planning Commission study session, the City staff recommended that the Planning Commission decline to initiate the amendment. Index, p. 51.

6. At its March 15, 2000, study session, the Planning Commission voted to recommend that the City Council not initiate the Bidwell proposed Plan amendment, but to have it considered as part of the Downtown Plan update study. Index, p. 52.

7. At a meeting on April 17, 2000, the Bellevue City Council received the Planning Commission’s recommendation, heard from Mr. Bidwell as well as other proponents and opponents, and voted not to initiate the Bidwell proposed Plan amendment. Index, at 23-35.

### **iii. MOTION TO DISMISS**

The City’s Dispositive Motion seeks to have the Board dismiss the Bidwell PFR. The City advances four separate arguments: (1) that the PFR was not properly served; (2) that the PFR is untimely because it presents challenges to City procedures for docketing and processing which were adopted in 1997; (3) that the Board lacks jurisdiction over claims that the City has violated its own procedures for processing changes to its Comprehensive Plan; and (4) that the Board lacks jurisdiction over claims that the City should have adopted a specific plan amendment proposed by an individual. City’s Dispositive Motion, at 6. If the Board finds for the City in any of its four arguments, the PFR must be dismissed.

With respect to the City’s first three arguments, there are material facts in dispute and mixed questions of fact and law. The fourth argument deals purely with a legal issue. Therefore, in the interests of time and judicial economy, the Board takes up the fourth argument.

The undisputed facts here are that Mr. Bidwell proposed a comprehensive plan amendment to the City and that the City declined to docket or adopt the proposed amendment. The City argued that the Board lacks jurisdiction over challenges to its decision not to docket a proposed comprehensive plan amendment. City’s Dispositive Motion, at 13. The City cites to the Board’s holdings in *Agriculture for Tomorrow v. Snohomish County*<sup>[1]</sup> and *Cole v. Pierce County*<sup>[2]</sup> in support for its motion to dismiss. The Petitioner’s Response Brief makes no attempt to

distinguish this case from the facts and holdings in those prior cases. Indeed, the Response Brief makes no mention of the City's legal argument on this point.

The salient facts in the *Bidwell* case are indistinguishable from facts before the Board in the *Agriculture for Tomorrow* case. The petitioner in that case (AFT) proposed that a portion of Snohomish County's urban growth area be re-designated as rural. The County's Department of Planning and Development Services recommended that AFT's proposal not be processed. The County Council agreed with the staff recommendation not to initiate the proposed amendment. AFT filed a PFR with the Board, alleging noncompliance with the GMA. The County filed a motion to dismiss the PFR and the Board granted the motion.

In *Cole v. Pierce County*, a property owner appealed Pierce County's refusal to adopt his proposed amendments that he alleged would "correct" the County's original land use designation of his property. 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.

Even if the Board were to conclude that Mr. Bidwell has substantially complied with the GMA's service requirements, and that it has jurisdiction to review the City's compliance with its locally adopted public participation procedures, the PFR nevertheless must be dismissed. Simply put, the City was under no duty to docket or adopt the Bidwell proposed Plan amendment. The City's Dispositive Motion is therefore **granted** and PFR 00-3-0009 is **dismissed with prejudice**.

### Conclusion

The City of Bellevue was under no GMA duty to adopt the amendments proposed by Petitioner. The City's Dispositive Motion is **granted**. PFR 00-3-0009 is **dismissed with prejudice**. The Board need not and does not rule on the other three arguments presented in support of the City's Dispositive Motion.

### iv. MOTION TO SUPPLEMENT

Because the Board is dismissing this PFR, the Board need not, and will not, rule on Petitioner's 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 City's Dispositive Motion is **granted**. PFR 00-3-0009 is **dismissed with prejudice**.
2. Because the Board has dismissed PFR 00-3-0009, the Board need not, and will not, rule on Petitioner's Motion to Supplement.

So ORDERED this 14<sup>th</sup> day of July, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Lois H. North  
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.

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[\[1\]](#) CPSGMHB Case No. 99-3-0004, Order on Dispositive Motion (Jun. 18, 1999).

[\[2\]](#) CPSGMHB Case No. 96-3-0009c, Final Decision and Order (Jul. 31, 1996).