

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

CITY OF SHORELINE,)	
)	Case No. 00-3-0010
)	
Petitioner,)	<i>(Shoreline)</i>
)	
v.)	ORDER ON COUNTY’S MOTION
)	TO DISMISS, ORDER ON
SNOHOMISH COUNTY,)	SUPPLEMENTAL EVIDENCE AND
)	NOTICE OF HEARING
Respondent.)	
)	
)	
)	
)	

I. Background

On June 26, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Shoreline (**Petitioner** or **Shoreline**). The matter was assigned Case No. 00-3-0010, and is hereafter referred to as *Shoreline v. Snohomish County*. Petitioner challenges Snohomish County’s (**County**) Steering Committee’s (**Steering Committee**) adoption of a Municipal Urban Growth Area Process. The basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**).

On July 6, 2000, the Board issued a Notice of Hearing in this matter.

On July 21, 2000, the Board received a Notice of Withdrawal and Substitution of Counsel for the City of Shoreline. P. Stephen DiJulio and Marc R. Greenough have withdrawn and Samuel W. Plauche will be the counsel for the Petitioner.

On July 26, 2000, the Respondent Snohomish County filed an Index of Record with the Board.

On July 31, 2000, the Board conducted a Prehearing Conference in the conference room of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Joseph W. Tovar and Lois H. North, presiding officer. Shoreline was represented by Samuel W. Plauche and Ian Sievers, City Attorney. Representing the County was Barbara Dykes. Mr. Plauche presented an

Amended Petition for Review and Petition for Declaratory Ruling. There was discussion of the legal issues proposed in the Amended Petition and of the proposed schedule.

The prehearing conference was recessed and continued to August 7, 2000. The presiding officer directed Mr. Plauche to perfect the wording of the legal issues and to submit a final Amended Petition to the Board, with a copy served on the County, by noon on August 3, 2000.

On August 7, 2000, the Prehearing Conference was reconvened in the conference room of the Financial Center, 1215 Fourth Ave., Seattle. Present for the Board were Edward G. McGuire and Lois H. North, presiding officer. Petitioner was represented by Samuel W. Plauche. Respondent was represented by Barbara Dyke and Karen Jorgensen-Peters. The Board reviewed the Board's Rules regarding Declaratory Rulings (WAC 242-02-910 through WAC 242-02-930). The Board noted that it was adding one more deadline to the Final Schedule for Proceedings. September 2, 2000 will be the Board's Decision Date on the Request for a Declaratory Ruling. After a review of the Legal issues, the Schedule and other procedural matters, the presiding officer indicated that the Prehearing Order would be issued by August 9, 2000.

On August 8, 2000 the Board issued its Prehearing Order in this matter.

On August 16, 2000, the Board received "Respondent Snohomish County's Motion to Dismiss Shoreline's Amended Petition for Review and Petition for Declaratory Ruling" (the **County's Motion to Dismiss**.)

On August 23, 2000, the Board received "Shoreline's Response to Snohomish County's Motion to Dismiss" (the **Shoreline's Response**).

On August 30, 2000, the Board received "Snohomish County's Reply in Support of Motion to Dismiss" (the **County's Reply**).

On September 1, 2000, the Board received "Shorelines Surreply Brief" (**Shoreline's Surreply**).

II. FINDINGS OF FACT

1. Prior to the enactment of the GMA, Snohomish County, the cities and towns within the County, together with the Tulalip Tribes, established a joint planning program called Snohomish County Tomorrow ("SCT") to provide an overall vision and framework for effective growth management in the County.

2. On April 26, 2000, the Snohomish County Tomorrow Steering Committee adopted a Municipal Urban Growth Area ("MUGA") process. This is the action challenged in the Petitioner's PFR.

3. The GMA requires coordination and consistency of plans with Snohomish County and the City of Shoreline, because the County and City have common borders and related regional issues. RCW 36.70A.100.

4. On November 23, 1998, the City of Shoreline adopted its Comprehensive Plan in accordance with the GMA. The City, in its Comprehensive Plan, designated a Potential Annexation Area (“PAA”) that includes an approximately 100-acre parcel located immediately north of the northwest corner of the City in Southwest Snohomish County Urban Growth Area. The City’s PAA designation has never been challenged.

5. On January 25, 2000, Snohomish County enacted Ordinance 99-120, a new County-wide Planning Policy that expressly requires an interlocal agreement as a condition precedent to a cross-county annexation. CPP OD-12.

III. COUNTY’S MOTION TO DISMISS

A. Legal Issues 1 through 4

Discussion of the portion dealing with Legal Issues 1 through 4

In its Motion to Dismiss, the County argues: “1) Adoption of the MUGA process is not adoption of a ‘plan, regulation, or amendment thereto, adopted under RCW 36.70A.040’. Second, there is no ‘action’ by Snohomish County, the respondent named in this case. The action appealed is the adoption of a potential planning process by an informal group (Snohomish County Tomorrow) possessing no governmental authority. The Board does not have jurisdiction over SCT’s activities.”^[1] “When a PFR alleges no action by the respondent jurisdiction falling under RCW 36.70A.280(1) or RCW 36.70A.210(6), the Board has no choice but to dismiss the petition.”.

The Petitioner argues that the County believes that “the GMA allows the County to sit idly by while its cities divide up the County’s unincorporated UGA among themselves, without consulting, coordinating, or cooperating with other affected jurisdictions. The County’s absolute failure to live up to its obligation of regional coordination is exacerbated by its affirmative efforts to disadvantage non-Snohomish County cities by prohibiting cross-county annexations without County consent while allowing annexations by Snohomish County cities to proceed without limitation. The Board has clear jurisdiction to review the critical regional issues raised in Shoreline’s petition.”²

From reading the material submitted by the parties, it is clear that the Snohomish County Council has not taken any formal action. The GMA very specifically delineates the jurisdiction of the

Hearing Boards in RCW 36.70A.280(1) and RCW 36.70A.210(6). The Boards shall hear and review only those petitions challenging legislative actions by cities and counties who are required to plan under the GMA – Actions dealing with Comprehensive Plans, County-wide Planning Policies, and Regulations. The Snohomish County Council has taken no such action.

Rather the action has been taken by Snohomish County Tomorrow, an informal planning body with no governmental authority. This Board has previously summarized its own subject matter jurisdiction in *Happy Valley Associates, et al v. King County*, CPSGMHB Case No. 93-3-0008, Final Decision and Order, (Sep. 9, 1993), at 13-14.

Snohomish County Tomorrow is recognized in the County’s Comprehensive Plan and their County-wide Planning Policies as the mechanism on which the County relies to implement the interjurisdictional coordination and consistency requirements of the GMA. RCW 36.70A.100 states that “The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has in part, common borders or related regional issues.”

In its Motion to Dismiss, Snohomish County describes the MUGA process as almost entirely city driven. “The end product of the MUGA process is a joint resolution or individual resolutions from the cities adopting a MUGA boundary for that individual city. Again, the process does not contemplate County Council adoption of the MUGA boundaries as urban growth area boundaries.”³[emphasis added]. It is apparent that the County does not contemplate playing any leadership role in this process, but rather will stand aside and let the cities within the southwest county region decide amongst themselves.

Conclusion Re: the portion dealing with Legal Issues 1 through 4

Pursuant to RCW 36.70A.210(6) and RCW 36.70A.280(1), the Board holds that it does not have jurisdiction to review Legal Issues 1 through 4. The portion of the County’s Motion to Dismiss which is addressed to Legal Issues 1 through 4 is **granted**.

B. Legal Issues 5 and 6

The Board is not prepared at this time to rule on the portion of the Motion to Dismiss, which addresses Legal Issues 5 and 6. As noted below, the Board will call for additional evidence, additional briefing and set a hearing.

IV. NOTICE OF HEARING AND SCHEDULE FOR ADDITIONAL BRIEFING

The Board gives notice of a Hearing to take place at **10:00 am. on Monday, October 23, 2000** in

room 1022 of the Financial Center Building, 1215 Fourth Avenue, Seattle WA. The scope of the hearing, and supplemental briefing described below, is limited to:

1. Explaining how the supplemental evidence described in Section V below illuminates the location and nature of the claims made in GMA enactments of the City of Shoreline, the Town of Woodway and Snohomish County.
2. In view of the fact that the Board has dismissed Legal Issues 1 through 4, the question of whether the Board has jurisdiction to issue a declaratory ruling on Legal Issues 5 and 6.

The City shall file with the Board an original and four copies of its supplemental brief, focused only on the two items enumerated above, and simultaneously serving a copy on the County, by **4:00 p.m. on Monday, October 9, 2000.**

The County shall file with the Board an original and four copies of its supplemental response brief, focused only on the two items enumerated above, and simultaneously serving a copy on the City, by 4:00 p.m. on **Monday, October 16, 2000.**

The City shall file with the Board an original and four copies of its supplemental reply brief, focused only on the two items enumerated above, and simultaneously serving a copy on the County, by 4:00 p.m. on **Thursday, October 19, 2000.**

V. ORDER ON SUPPLEMENTAL EVIDENCE

WAC 242-02-540 provides, in part:

A board may order, at any time, that new or supplemental evidence be provided.

If the Board determines that it has jurisdiction to issue a declaratory ruling, the Board's analysis of the facts in this case and the arguments of the parties would be illuminated by supplementation of the record. The Board finds that the below identified evidence would be necessary or of substantial assistance in reaching a decision. Consequently, the Board orders the supplementation of the record as follows:

- A. Snohomish County shall provide an original and four copies of the 1994 Plan of the Town of Woodway including any maps or graphics adopted as part of that Plan which purport to identify the unincorporated portion of Snohomish County that the Town designates or declares as its urban growth area, future expansion area, future municipal service area or similar designation.

- B. Snohomish County shall utilize its Geographic Information System to produce and provide the Board with one copy of a large map of the Point Wells area, on which it shall show the corporate limits of Shoreline, Woodway and Edmonds, any existing rights-of-way, water and sewer lines (including an indication of which jurisdiction owns said lines), and topography in at least 20 foot intervals. The scale of the map shall be one inch equals fifty feet and shall include all of the unincorporated Point Wells area and adjacent incorporated lands within 300 feet.
- C. Shoreline shall provide the Board with an original and four copies of its 1998 Plan including any maps or graphics adopted as part of that Plan which purport to identify the unincorporated portion of Snohomish County that Shoreline designates or declares as its urban growth area, future expansion area, future municipal service area or similar designation.

The parties shall submit the above indicated items to the Board, with a copy to opposing counsel, by **4:00 p.m. on Thursday, September 28, 2000.**

VI. ORDER

Based upon review of the Amended Petition 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 portion of the County's Motion to Dismiss that deals with Legal Issues 1 through 4, is **granted**. Legal Issues 1 through 4 are **dismissed with prejudice**.
2. The parties shall submit supplemental briefs to the Board, and simultaneously serve opposing counsel, according to the following schedule:
 - a. The City shall file with the Board an original and four copies of its supplemental brief, focused only on the two items enumerated above in Section IV, and simultaneously serving a copy on the County, by **4:00 p.m. on Monday, October 9, 2000.**
 - b. The County shall file with the Board an original and four copies of its supplemental response brief, focused only on the two items enumerated above in Section IV, and simultaneously serving a copy on the City, by **4:00 p.m. on Monday, October 16, 2000.**
 - c. The City shall file with the Board an original and four copies of its supplemental reply brief, focused only on the two items enumerated above in Section IV, and

simultaneously serving a copy on the County, by **4:00 p.m. on Thursday, October 19, 2000.**

3. The parties shall submit the following items to the Board by **4:00 p.m. on September 28, 2000**, and simultaneously serve on opposing counsel:
 - a. Snohomish County shall provide an original and four copies of the 1994 Plan of the Town of Woodway, including any maps or graphics adopted as part of that Plan, which purport to identify the unincorporated portion of Snohomish County that the Town identifies as its urban growth area, future expansion area, future municipal service area or similar designation.
 - b. Snohomish County shall utilize its Geographic Information System to produce and submit to the Board with one copy of a large map of the Point Wells area, on which it shall show the corporate limits of Shoreline, Woodway and Edmonds, any existing rights-of-way, water and sewer lines (including an indication of which jurisdiction owns said lines), and topography in at least 20 foot intervals. The scale of the map shall be one inch equals fifty feet and shall include the unincorporated Point Wells area and adjacent incorporated lands within 300 feet.
 - c. Shoreline shall provide the Board with an original and four copies of its 1998 Plan including any maps or graphics adopted as part of that Plan, which purport to identify the unincorporated portion of Snohomish County that Shoreline identifies as its urban growth area, future expansion area, future municipal service area or similar designation.

So ORDERED this 5th day of September 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North

Board Member

Joseph W. Tovar, AICP,
Board Member

[\[1\]](#) Snohomish County's Motion to Dismiss at pages 4 and 5.

[\[2\]](#) Shoreline's Response to County's Motion to Dismiss at pages 1 and 2.

[\[3\]](#) Snohomish County's Motion to Dismiss at pages 3 and 4.