

On September 19, 2000, the Board received Petitioners’ “Motion to Supplement the Record” (**Petersville Motion - Supp.**). The Motion requests that eight (8) documents be added to the Record. Copies of the documents subject to the request were not provided to the Board.

On September 20, 2000, the Board received “Kitsap County’s Dispositive Motion to Dismiss for Lack of Jurisdiction” (**Co. Motion - Dismissal**). The Board also received Kitsap County’s Memorandum in Opposition to Petitioners’ Motion to Supplement” (**Co. Response - Supp.**).

On October 10, 2000, the Board received “Petitioner’s Response to Respondent’s Motion to Dismiss for Lack of Jurisdiction” (**Petersville Response - Dismissal**). The Board also received “Petitioner’s Rebuttal to Kitsap County’s Memorandum in Opposition to Petitioners’ Motion to Supplement” (**Petersville Reply - Supp.**).

On October 17, 2000, the Board received “Kitsap County’s Rebuttal on Dispositive Motion to Dismiss for Lack of Jurisdiction” (**Co. Reply - Dismissal**).

The Board did not hold a hearing on the motions.

II. Discussion of dispositive motion

The County asserts that the Board does not have subject matter jurisdiction to review Kitsap County’s approval of a conditional use (land use project) permit for a multi-family mental health facility. To support its assertion, the County cites to: the GMA; Chapter 36.70B RCW; Washington case law; and prior decisions of this Board. Co. Motion - Dismissal, at 2-6. Petitioners’ contend that “[issuance of the permit] was simply the result of many violations of the GMA prior to issuance.” Petersville Response – Dismissal, at 1. Further, Petitioners’ argue “The County appears to believe that the issue is the facility itself – the facility is only the manifestation of the County’s errors in following it’s own policies and the GMA. The real issue is that the County sited a public facility of a County-wide nature without community involvement.” Petersville Response – Dismissal, at 2. In reply the County describes a “hierarchy for planning and permitting” which includes, in descending order: County-wide Planning Policies (CPPs), Comprehensive Plan, Development Regulations, and Project Permit Applications. The County then addresses each GMA section raised in Petitioners’ challenge. The County asserts that the CPPs are not development regulations governing permit review and that Petitioners’ challenge to issuance of the CUP falls outside the scope of the Board’s jurisdiction. Co. Reply – Dismissal, at 2 – 5.

Applicable Law and Discussion

Matters that are subject to Board review are set forth in RCW 36.70A.280, which provides in relevant part:

(1) A growth management hearings board shall hear and determine *only* those petitions alleging either:

(a) That a state agency, county, or city planning under this chapter *is not in compliance with the requirements of this chapter*, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. (Emphasis added.)

The Board noted its limited jurisdiction in *Happy Valley Assoc. v. King County (Happy Valley)*, CPSGPHB Case No. 93-3-0008, Order Granting Respondent King County's Motion to Dismiss and Denying Happy Valley's Motion to Amend Its Petition for Review (1993):

[The Board's] jurisdiction does not apply to all planning documents enacted by a local government. . . . Instead, *the Board's jurisdiction is limited to planning documents, such as comprehensive plans and development regulations, that were adopted in an effort to comply with the requirements of the GMA*. As this Board has repeatedly indicated in prior decisions [citations omitted], its subject matter jurisdiction is strictly limited to the matters specified in . . . RCW 36.70A.280(1). This conclusion is bolstered by the legislature's use of the word "only" in the quote above from the statute, and the fact that RCW 36.70A.300(1) indicates that a board's final decision ". . . shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040 . . ." *Happy Valley*, at 13-14 (emphasis in original).

This Board has also held that "this chapter" as used in RCW 36.70A.280(1) refers to Chapter 36.70A RCW. *South Bellevue Partners Limited Partnership and South Bellevue Development Inc v. City of Bellevue and Issaquah School District No. 411*, CPSGMHB Case No 95-3-0055, Order of Dismissal, November 30, 1995, at 6.

In short, this Board has stated that its jurisdiction is generally limited to review of comprehensive plans and development regulations adopted, or amended, pursuant to Chapter 36.70A RCW.

In *Hanson, et al., v. King County (Hanson)*, CPSGMHB Case No. 98-3-0015, Order Granting Dispositive Motions (Sep. 28, 1998), the Board directly addressed the question of whether its jurisdiction, as set forth in RCW 36.70A.280(1) extends to review of land use permit decisions, such as the approval of the conditional use permit challenged in this action.

As the Board stated in *Hanson*:

The Western Washington Growth Management Hearings Board has stated:

The decision of whether or not to accept, approve or in any other way deal with a “development application” is a decision that rests solely upon the local government. Any question about the authority of the Board to even deal with a permitting decision was resolved in the 1995 amendment to RCW 36.70A.030(7) which states

“ . . . A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.”

The clear legislative mandate is that a Board does not have jurisdiction to make a ruling on any individual permit application or otherwise deal with matters set forth in RCW 36.70B. . . .

. . . [The Board has] no authority, no jurisdiction, nor any business in the arena of permits. The Legislature has spoken clearly on the issue. *Achen v. Clark County, et. al.*, WWGMHB Case No. 95-2-0067, Order on Reconsideration, November 30, 1996, at 1-2.

This Board concurs in the analysis and holding of the Western Board in *Achen*. RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review land use project permit decisions, including but not limited to, conditional use permits. Also, the State Supreme Court observed that the Boards do not have jurisdiction to review the effect of a comprehensive plan on specific land use decisions such as King County’s decision to issue the CUPs. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868 (1997). This Board has no authority or jurisdiction to review land use project permit decisions of a local government.

Hanson, 9/28/98 Order, at 4-5.

Recently, the State Supreme Court, again, addressed the Board’s jurisdiction regarding project permits. After referring to the definitional sections of Chapters 36.70A and 36.70B RCW for “development regulations” and “project permit applications”, the Supreme Court stated:

“The conclusion to be drawn from these provisions is that a site-specific rezone is not a development regulation under the GMA, and hence *pursuant to RCW 36.70A.280 and .290, a GMHB does not have jurisdiction to hear a petition that does not involve*

a comprehensive plan or development regulation under GMA.”

Wenatchee Sportsmen Ass’n v. Chelan County, 141 Wn. 2d 169, 179 (2000), (emphasis supplied). The Board notes that conditional uses are among those permits specifically listed in RCW 36.70B.020(3), which the Court found not to be a development regulation over which the Board had jurisdiction.

The action precipitating Petitioners’ challenge was the County’s approval of the project permit application, not the adoption of an amendment to the County’s Plan or development regulations.

[1] The PFR filed by the Petersville Road Residents challenges Kitsap County’s approval of a project permit application [a conditional use permit authorizing a multi-family mental health housing facility]; the PFR **does not** challenge the County’s adoption of a comprehensive plan or development regulation or amendment thereto. PFR, at 1. Consequently, RCW 36.70A.280(1) does not confer jurisdiction upon this Board to review such land use project permit decisions. This Board has no authority or jurisdiction to review these local land use project permit decisions. The County’s motion to dismiss is **granted**.

Conclusion

Petitioners’ challenge the decision of Kitsap County to approve a project permit application. The Board affirms its decision in *Hanson* and concludes that RCW 36.70A.280(1), in light of the definitions contained in RCW 36.70A.030(7) and RCW 36.70B.020(3), does not confer jurisdiction upon this Board to review a local government’s decision on a land use project permit application. Kitsap County’s motion to dismiss for lack of jurisdiction is **granted**.

III. SUPPLEMENTING THE RECORD

Having granted the County’s Motion to Dismiss, the Board need not, and will not, address Petitioner’s “Motion to Supplement the Record.”

IV. ORDER

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the Act, Washington case law, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following Order:

Kitsap County’s Dispositive Motion to Dismiss for Lack of Jurisdiction is **granted**.

The Hearing on the Merits scheduled for January 4, 2001, is **cancelled**.

CPSGMHB Case No. 00-3-0013 filed by Petersville Road Residents, challenging Kitsap County' approval of a conditional use permit authorizing a multi-family mental health housing facility, is **dismissed with prejudice**.

So ORDERED this 23rd day of October, 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

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.

[\[1\]](#) The PFR, at 1, states: "Date of challenged order: 24 July 2000 – Case No. 000413-014." Case No. 00413-014 is captioned, "Application of Kitsap County Consolidated Housing Authority and Kitsap Mental Health Service Conditional Use Permit – Petersville Road Site." PFR, Exhibit III.