

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

KENNETH and SHARON GAIN,)	
)	Case No. 99-3-0019
Petitioners,)	
)	
v.)	FINAL DECISION and ORDER
)	
PIERCE COUNTY,)	
)	
Respondent,)	
)	
CASCADIA DEVELOPMENT)	
CORPORATION,)	
)	
Intervenor.)	
)	

i. PROCEDURAL BACKGROUND

On October 22, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Kenneth and Sharon Gain (**Petitioners** or **Gain**). The matter was assigned Case No. 99-3-0019. Petitioners challenge the Pierce County (**County**) Hearing Examiner’s approval of the Cascadia Employment Based Planned Community, the County’s adoption of Ordinance No. 99-93S2 and the County’s actions regarding forestlands. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On November 1, 1999, the Board issued a “Notice of Hearing” in the above-captioned case. The Order set a date for a prehearing conference and established a tentative schedule for the case.

On November 4, 1999, the Board received from Cascadia Development Corporation (**Cascadia**) a “Motion to Dismiss All Claims Regarding Cascadia Employment-Based Planned Community.”

On November 22, 1999, the Board held a Prehearing Conference (the **First Prehearing Conference**) in this case. Board Member Edward G. McGuire presided. Petitioner Sharon Gain represented herself and Kenneth Gain. Representing the County was Jill Guernsey. Margaret Archer appeared for Cascadia Development Corporation. Also in attendance were Kenneth Gain,

Petitioner, and Andrew Lane, Law Clerk to the Board. During the First Prehearing Conference, the legal issues in the case, the record and schedule were discussed.

On November 24, 1999, the Board issued a “Prehearing Order” (the **First Prehearing Order**) signed by presiding officer McGuire.

In response to motions filed by Petitioners, on December 1, 1999, the Board issued its “Order on Motion Requesting Change of Presiding Officer” (the **First Order on Motion Requesting Change of Presiding Officer**). In the First Order on Motion Requesting Change of Presiding Officer, Edward G. McGuire withdrew as presiding officer. Later that same date, the Board issued its “Notice of Second Prehearing Conference and Order on Motion for Joinder” (the **Notice of Second Prehearing Conference**) signed by new presiding officer Joseph W. Tovar. The Notice of Second Prehearing Conference contained a statement of the legal issues to be decided in this case as well as a schedule for the submittal of motions and briefs.

On December 23, 1999, Board Member McGuire issued an “Order Recusing Board Member McGuire.”

Also on December 23, 1999, the Board issued an “Order on Miscellaneous Motions” (the **First Order on Miscellaneous Motions**).

On December 29, 1999, the Board received “Motion to Include Memorandum for the Record of Pierce County’s Failure to Provide Forest Land Ordinances/Legislative History.”

On December 30, 1999, the Board received “Pierce County’s Response to Petitioners’ “Motion to Include Memorandum for the Record of Pierce County’s Failure to Provide Forest Land Ordinances/Legislative History.”

Also on December 30, 1999, the Board received from Gain “Motion to Supplement the Record – Exhibits” and from the County and Intervenor “Respondents’ Motion for Summary Judgment of Dismissal.”

On January 14, 2000, the Board received from Cascadia “Intervenor’s Response to “Motion to Supplement the Record – Exhibits,” and “Respondent Pierce County’s Concurrence with Cascadia’s Response to Gain’s “Motion to Supplement the Record – Exhibits.”

Also on January 14, 2000, the Board received “Petitioners’ Reply to Respondents Motion to Dismiss.”

On January 20, 2000, the Board received “Petitioners’ Rebuttal to Cascadia’s Response to Motion to Supplement the Record – Exhibits.”

Also on January 20, 2000, the Board received “Memorandum of Transcription Error Petitioners’ Reply Brief” and a revised “Petitioners’ Reply to Respondents Motion to Dismiss.”

On January 21, 2000, the Board received “Petitioners’ Motion to Strike Pierce County’s January 21, 2000 Response to Petitioners’ Motion Designate Exhibits from Index Prepared for Ord. No. 99-93S2.”^[1]

On January 24, 2000, the Board received “Pierce County’s Response to Petitioners’ Motion to Designate Exhibits from Index Prepared for Ord. No. 99-93S2.”^[2]

Also on January 24, 2000, the Board received “Pierce County’s Reply Brief in Support of Motion to Dismiss” and “Cascadia’s Reply on Motion to Dismiss.”

On January 25, 2000, the Board received “Pierce County’s Reply Re: Petitioners’ Motion to Designate Index.”

On January 28, 2000, the Board issued its “Order on Dispositive Motions.”

On February 16, 2000, the Board received “Petitioners’ Opening Prehearing Brief” (**Gain PHB**).

On February 23, 2000, the Board received “Pierce County’s Response to Petitioners’ Prehearing Brief” (**County Response**).

On March 3, 2000, the Board received “Petitioners’ Reply Prehearing Brief” (**Gain Reply**).

On March 8, 2000, the Board held a hearing on the merits in this case. Board Members Joseph W. Tovar, Presiding Officer, and Lois H. North appeared for the Board. Petitioner Sharon Gain represented herself and Kenneth Gain. Jill Guernsey represented the County. Cascadia Development Corporation did not appear at the hearing on the merits. Also in attendance was the Board’s Law Clerk, Andrew Lane. Court reporting services were provided by Robert Lewis of Tacoma, Washington. The presiding officer directed the County and Petitioners to file post-hearing briefs on the subject of State or County regulations or policies that prevent the inappropriate sewerage of the rural area.

On March 16, 2000, the Board received “Pierce County’s Post-Hearing Brief.”

On March 24, 2000, the Board received “Petitioner’s Post-Hearing Response Memorandum.”

ii. Findings of fact

1. County Ordinance 99-93S2 amended the Plan’s rural element to allow sewer lines that

transport wastewater from one UGA to a sewer treatment facility located in another UGA to pass through rural areas. The amendments also permit sewer service to rural areas of more intensive development. *See* Ord. 99-93S2, Att. A (19A.40.040), at 21.

2. Ordinance 99-93S2 also amended the Plan's land use map by reclassifying 4,350 acres of designated forest land and approximately 24 acres of rural land to master planned resort. The forest land is managed by the U.S. Forest Service and is included in the Forest Service Special Use Permit for Crystal Mountain Resort. The rural lands are private property located within the boundaries of the Forest Service lands. *See* Ord. 99-93S2, Ex. D, at 10-11 (M-8 Finding).

III. standard of review

Pursuant to RCW 36.70A.320(1), Pierce County's Ordinance 99-93S2 is presumed valid upon adoption. The burden is on Petitioners to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find the County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

iv. discussion

After the Board's Order on Dispositive Motions, two issues remain for resolution. Legal Issue 28 pertains to amendments to the County's comprehensive plan (the **Plan**) policies regarding sewer lines. Legal Issue 32 pertains to amendments to the Plan's land use designation of certain property in the Crystal Mountain area.

Legal Issue 28

Whether 19A.40.040 of Ordinance 99-93S2 (p. 304-305) is inconsistent with the GMA's requirements and the Pierce County County-wide Planning Policies (CPPs) when it allows extension of sanitary sewers outside of urban growth areas (UGAs) to rural areas of more intensive development and extensions of sewer lines between UGAs when the County considers the County Urban Growth Area (CUGA) as a UGA?

The County amended the rural services objective of the rural element of its Plan, as follows:

RUR Objective 4. Preserve the rural way of life by not providing urban levels of services within rural areas.

A. Sanitary sSewers interceptors shall only extend outside of an Urban Growth Area (i.e., into rural areas), where:

- (1) sewer service will remedy groundwater contamination and other health problems, as community on-site sewage systems; or
- (2) a formal binding agreement to serve an approved plan development was made prior to the establishment of an Urban Growth Area; or
- (3) a sanitary sewer will convey wastewater originating within a designated Urban Growth Area to sewerage facilities in another designated Urban Growth Area and, except as provided in this section, no connection to the interceptor line is permitted; or
- (4) sewer service will serve only a rural area of more intensive development in accordance with the County-Wide Planning Policies.

Other principles governing sewers are found in the Utilities Element – Sewer Service and Wastewater Treatment.

Ordinance 99-93S2, Att. A (19A.40.040), at 21 (added language underlined, deleted language shown with strikethrough). The amendments allow sewer lines that transport wastewater from one UGA to a sewer treatment facility located in another UGA to pass through rural areas. The amendments also permit sewer service to rural areas of more intensive development (**RAIDs**). Petitioners' concern is that, by allowing sewer extensions to RAIDs, the County is allowing urban services in rural areas, inconsistent with the provisions of the CPPs, resulting in “an inefficient extension of urban services and contribute[s] to urban sprawl.” Gain PHB, at 4.

Comprehensive plans must be consistent with county-wide planning policies. *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-008c, Final Decision and Order (Oct. 23, 1995), at 34.

Petitioners allege that the amendments are inconsistent with CPPs 2.3.3, 3.6.1^[3], 3.6.2, 3.6.5, and 3.9.3. Although Petitioners cite CPPs 2.3.3 and 3.9.3 they provide no argument explaining how the amendment is inconsistent with these CPPs. Petitioners provided some discussion of CPPs 3.6.1, 3.6.2, and 3.6.5, which provide:

3.6 The County, and each municipality in the County, shall adopt plans and implementation measures to ensure that sprawl and leapfrog development are discouraged in accordance with the following:

3.6.1 urban growth within UGA boundaries is located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development;

3.6.2 urban growth is located next in areas already characterized by urban growth that will be served by a combination of both existing public

facilities and services and any additional needed public facilities and services that are provided by either public or private sources;

3.6.3 . . .

3.6.4 . . .

3.6.5 Urban government services shall be provided primarily by cities and urban government services shall not be provided in rural areas.

County-Wide Planning Policies for Pierce County, at 56-57. CPP 3.6.1, 3.6.2, and 3.6.5 provide direction to the County and its municipalities in “adopt[ing] measures to ensure that growth and development are timed and phased consistent with the provision of adequate public facilities and services” within delineated urban growth areas. *See* County-Wide Planning Policies for Pierce County (CPP 3), at 53. The Board is not persuaded that the challenged amendments are inconsistent with these CPPs.

Petitioners argue that “RAIDs are not within UGAs and should not be served with sewer service.” *Gain PHB*, at 4. The GMA does not support this argument. “Limited areas of more intensive rural development” are permitted by the GMA, “including necessary public facilities and public services to serve the limited area.” RCW 36.70A.070(5)(d). The Legislature explicitly determined that these areas (called RAIDs in the County’s Plan) are “not urban growth.”^[4] RCW 36.70A.030(17) (“A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth”). Providing sewer service to RAIDs does not amount to “an inefficient extension of urban services and contribute[s] to urban sprawl”; providing sewer service to RAIDs is explicitly permitted by the GMA.

Petitioners also argue that “if an area is designated as an UGA, sewer service and urban services should be included within the UGA and the County has failed to address why it would be necessary to connect UGAs with sewer lines.” *Gain PHB*, at 4-5. Petitioners offer no statutory provisions to support their assertion that sewer lines must be confined within the boundaries of UGAs and cannot pass through rural areas.

Conclusion

The County’s amendment of PCC 19A.40.040 is not inconsistent with the CPPS or with the requirements of the GMA.

Legal Issue 32

Whether Amendment M-8-Crystal Mountain and Dana Meeks’ Master Planned Resort (MPR) (p. 368), which reclassifies 4,374 acres of designated forest lands (FLs) and Rural Twenty (R-20) lands to Master Planned Resort (MPR), fails to preserve FLs under the GMA and is invalid

because the County has not enacted development regulations (DRs) precluding suburban or urban densities in MPRs?

The County redesignated approximately 4,374 acres to Master Planned Resort (MPR): 4,350 acres from Forest Land (FL) to MPR and approximately 24 acres from Rural Twenty (R-20) to MPR. The 4,350 acres of FL is managed by the U.S. Forest Service and is included in the Forest Service Special Use Permit for Crystal Mountain Resort; the 24 acres is private property.

Petitioners object to the redesignation because it converts forest lands and allows urban densities. Petitioners argue that “[t]he County does not have criteria for reclassification of Forest Lands and the property clearly qualifies as Forest Lands under the legislature’s definition [RCW 36.70A.030 (8)].” Gain PHB, at 6.

The GMA requires the County to conserve forest lands of long-term commercial significance. *See* RCW 36.70A.060(1). Petitioners’ burden, pursuant to RCW 36.70A.320(2), is to show that the County’s action fails to conserve forest lands of long-term commercial significance. To this end, Petitioners argue: “Converting over 4000 acres of Forests is unreasonable when the proposed MPR will consist of a restaurant and several other facilities. The Gains, therefore, request that the Board find that the conversion of the Crystal Mt. Forest Lands does not comply with the Act’s requirements that FLs be preserved.”^[5] Gain PHB, at 6. Petitioners’ conclusory statement does not explain how the redesignation of these forest lands, already part of a Forest Service Special Use Permit for a ski resort, fails to conserve forest lands in Pierce County.

The GMA’s MPR provisions explicitly allow MPRs to “constitute urban growth outside of urban growth areas” if certain conditions are met. RCW 36.70A.360(1); RCW 36.70A.362. Petitioners’ primary argument is that the MPR does not meet the GMA requirement that the Plan and development regulations “preclude new urban or suburban land uses in the vicinity of the existing resort.” RCW 36.70A.362(2). Petitioners speculate: “If this site is allowed to convert, eventually the entire 4,000 acres+ will consist of approved PUDs.” Gain PHB, at 7.

Petitioner misconstrues the Act’s MPR requirements. As stated above, the legislature recognized that MPRs are urban growth outside of UGAs. The GMA permits the urban growth of an MPR if the County’s regulations do not permit other urban or suburban growth in the vicinity of the MPR. Petitioners’ entire argument is that the County’s MPR designation will impermissibly allow urban growth – urban growth in MPRs is recognized by, not prohibited by, the Act. As to the Act’s requirement to preclude new urban growth in the vicinity of the MPR, Petitioners have offered no argument that the County’s regulations permit urban growth on lands in the vicinity of the designated MPR.

Conclusion

Petitioners have failed to meet their burden to show that the County's actions in redesignating these lands as MPR were clearly erroneous.

v. order

Based upon review of the Petitions for Review, the filings of the parties, including 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 County's amendment of PCC 19A.40.040 is not inconsistent with the CPPS or with the requirements of the GMA.
2. Petitioners have failed to meet their burden to show that the County's actions in redesignating these lands as MPR were clearly erroneous.
3. PFR 99-3-0019 is **dismissed** with prejudice.

So ORDERED this 18th day of April, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

Lois H. North
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] Gains' motion to strike arrived via telefacsimile, three days before the County pleading to which it is directed, because the latter arrived via U.S. mail.

[2] Although the Board did not receive this pleading until January 24, 2000, it was signed on January 21, 2000.

[3] Petitioners' cited to CPP 2.6.1 in their PHB and to 2.6.1 and 3.6.1 in their Reply brief. There is no CPP numbered 2.6.1. The Board assumes, as did the County, that Petitioners' references to 2.6.1 were intended to be

references to 3.6.1.

[4] Whether the County's RAID provisions comply with the GMA is not an issue before the Board in this case.

[5] The Act does not require preservation of forest lands; it requires conservation of forest lands of long-term commercial significance. RCW 36.70A.060(1).