

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

KENNETH and SHARON GAIN,)	
)	Case No. 99-3-0019
)	
Petitioner,)	<i>(Gain)</i>
)	
v.)	
)	
PIERCE COUNTY,)	SECOND ORDER ON
)	MISCELLANEOUS MOTIONS
Respondent)	
)	
Cascadia Development Corporation,)	
)	
Intervenor.)	
)	
)	

I. PROCEDURAL HISTORY

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 (**Petitioner** or **Gain**). The matter was assigned Case No. 99-3-0019. Petitioner challenges the Pierce County (**County**) Hearing Examiner’s approval of the Cascadia Employment Based Planned Community (**EBPC**), the County’s adoption of Ordinance No. 99-93S2 and the County’s failure to preserve 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” (**NOH**) in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) 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” (the **Cascadia Motion to Dismiss**).

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 Petitioner, 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, 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” (the **Gain Motion re: 12/28/99 memorandum from Jill Guernsey**).

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” (the **Gain Motion to Supplement**).

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.”

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

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” (the **Gain Motion to Strike**).^[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]

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

ii. gain MOTION TO SUPPLEMENT THE RECORD

The parties are cautioned that every exhibit attached to their briefs must be **relevant** to one or more of the specific legal issues before the Board. The mere fact that a party has listed an exhibit in the Index, or in a preliminary exhibit list, or that the Board has submitted it as a supplemental exhibit, does not mean that the Board has judged the relevance or persuasiveness of the exhibit to the issues. The Board will assign the appropriate weight to any supplemental exhibits after considering argument presented by the parties in briefing or at the hearing.

WAC 242-02-540 provides, in part:

Generally, a board will review only the record developed by the city, county or state in taking the action that is the subject of review by the board. A party by motion may request that a board allow such additional evidence as would be *necessary or of substantial assistance* to the board in reaching its decision, and shall state its reasons... (Emphasis added.)

In the summary tables below:

- Proposed Exhibits that indicate, “Denied,” are not admitted as supplemental exhibits. The Board has concluded that these exhibits are not necessary or of substantial assistance in reaching its decision.
- “Board takes Notice” means that the Board takes official notice of the documents or enactments cited.

#	Proposed Exhibit: Documents	Ruling
1.	June 18, 1999 Pierce County Hearing Examiner Decision Approving Cascadia Fully Contained Community(FCC)/Master Planned Community(MPC)/Planned Unit Development(PUD)	Denied

2.	August 24, 1999 Pierce County Hearing Examiner Decision Upon Reconsideration of Cascadia FCC/MPC/PUD	Denied
3.	Cascadia Draft EIS and Final EIS – to be submitted by Pierce County	Denied
4.	Sept. 30, 1999 letter from Tami Kohl, Pierce County Auditor/Assessor’s Office	Denied
5.	Nov. 17, 1999 invoice from Assessor’s Office of Forest Land printouts	Denied
6.	Pages 249A and 249B inadvertently omitted from Exhibit “A”A – March 3, 1999 memo from Michael Brooks to Sam Yekalam, PALS, Cascadia Development Agreement Unresolved Issues Summary	Denied
7.	RCW 35A.63.170 – Hearing Examiner System	Board Takes Notice
8.	Supplement Pierce County Staff Report of Nov. 17, 1998 from Sam Yekalam to Hearing Examiner	Denied
9.	News Articles from archives of the Pierce County News Tribune	Denied
10.	Pierce County Ord. 94-20 – Repealing 7-1-94 Sunset Date for County Critical Areas and Natural Resource Land Regulations	Denied
11.	Pierce County Ord. 94-21 – Repealing 7-1-94 Sunset Date for Critical Areas Area-Wide Rezone for Agricultural Resource and Forestry Resource Lands	Denied
12.	Addendum to Final Environmental Impact Statement for Adoption of the Comprehensive Plan of Pierce County, dated Nov. 29, 1994	Denied
13.	Pierce Co. Ord. No. 98-67S- Title 18H Forest Practices and Timberland Conversion	Denied
14.	Pierce Co. Ord. 92-79S-Rezone of Property to Forest Lands	Denied
15.	List of parcels Rezoned Forest Land Accompanying Ord. 92-79S under RCW 36.70A	Denied
16.	Memo from Legal Counsel Ed McGuire to Pierce County Council dated Aug. 20, 1992 and memo from Debbie Hyde, PALS, with affected owners list	Denied
17.	Pierce Co. Ord. 91-123S2- adopting Forest Lands and Findings of Fact	Denied

18.	Pierce County Planning Commission Minutes for Ord. 91-123S2	Denied
19.	Exhibit "D" to Ord. 94-82S- Findings of Fact (Comp. Plan)- Parts A-E	Denied
20.	CPSGMHB Decision in 1994, <i>Cities of Tacoma, et al., v. Pierce County</i> and accompanying exhibits	Board takes notice

iii. other motions

The Gain Motion to Strike is **granted**.

The Gain Motion re: 12/28/99 memorandum from Jill Guernsey is **denied**.

So ORDERED this 28th day of January, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Presiding Officer

[1] The Gain Motion to Strike arrived via telefacsimile, three days before the County pleading to which it is directed, because the latter arrived via U.S. mails.

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