

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

CITY OF TACOMA, ET AL.,)	
)	Case No. 99-3-0023c
Petitioners,)	
)	(Tacoma II)
v.)	
)	ORDER on DISPOSITIVE MOTIONS
PIERCE COUNTY,)	
)	
Respondent.)	
)	

i. PROCEDURAL BACKGROUND

On December 30, 1999, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a petition for review (**PFR**) from Gary & Carol Racca, Clarence M. & Elizabeth Young, and Kye N. Einor (collectively, **Racca**). This PFR was assigned Case No. 99-3-0022. On that same date, the Board received a PFR from Neil Jaffe, H.C. Harned, Ronald Hellanid, Heinz Weidmann, Heintz G. Ahlman, and Karl Thun (collectively, **Jaffe**). This PFR was assigned Case No. 99-3-0023. These two PFRs were consolidated with Case No. 99-3-0021 and assigned Consolidated Case No. 99-3-0023c.

A prehearing conference in the above-captioned matter was held on January 27, 2000. At that time, the Board's presiding officer established deadlines for filing dispositive motions.

On February 16, 2000, Pierce County filed its Motion to Dismiss and Memorandum in Support of Motion to Dismiss original Case Nos. 99-3-0022 and 99-3-0023. The County moved that the Board dismiss all claims made by Petitioners Racca and Jaffe.

On March 3, 2000, the Board received Petitioners' Response to Pierce County's Motion to Dismiss Case Nos. 99-3-0022 and 99-3-0023. The deadline for filing responses to motions was March 1, 2000. *See* Prehearing Order at 3.

On March 8, 2000, the Board received Pierce County's Reply Memorandum in Support of Motion to Dismiss.

ii. FINDINGS OF FACT

1. On October 5, 1999, the Pierce County Council adopted a number of legislative, area-wide amendments to its existing Comprehensive Plan. These amendments are contained in Ordinance No. 99-93S2.
2. These amendments were considered through a lengthy public process, involving many public hearings.
3. A large number of the proposed amendments were considered first by the Planning Commission and subsequently by the County Council.
4. Racca offered proposed amendment M-21, which would have redesignated approximately 17 acres from Moderate Single Family (MSF) to Mixed Use District (MUD). This proposed amendment was modified to redesignate MSF to Employment Center (EC). Jaffe offered proposed amendment M-18, which would have redesignated 12 parcels from MSF to MUD. The County did not adopt either of these proposed amendments.

iii. discussion

The County moved to dismiss PFRs 99-3-0022 (**Racca**) and 99-3-0023 (**Jaffe**). The deadline for filing Petitioners' response brief was March 1, 2000, as set out in the Board's Prehearing Order. Without explanation, Petitioners filed their response brief with the Board on March 3, 2000, two days after the Board's deadline. The Board may dismiss any action for failure to comply with any order of the Board. WAC 242-02-720. Because Petitioners' brief was filed late and without prior approval of the Board, the Board has not considered Petitioners' response brief.

Racca and Jaffe proposed comprehensive plan amendments to the County and the County declined to adopt their proposed amendments. The County argued that the Board lacks jurisdiction over challenges to the County's failure to adopt proposed comprehensive plan amendments. The GMA authorizes a local government to amend comprehensive plans annually; however, it does not require amendments. RCW 36.70A.130. In *Cole v. Pierce County*, a property owner appealed a county's refusal to adopt his proposed amendments that he alleged would "correct" the county's original land use designation of his property. CPSGMHB Case No. 96-3-0009c, Final Decision and Order (Jul. 31, 1996). 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.

The present case is indistinguishable from *Cole*. Pierce County was under no GMA duty to adopt

the amendments proposed by Racca and Jaffe. Because all of Racca's and Jaffe's Issues are premised on the County's failure to adopt their proposed amendments, all Issues must be dismissed. The County's motion to dismiss PFRs 99-3-0022 (Racca) and 99-3-0023 (Jaffe) is **granted**. PFRs 99-3-0022 and 99-3-0023 are **dismissed with prejudice**.

Conclusion

Pierce County was under no GMA duty to adopt the amendments proposed by Racca and Jaffe. Because all of Racca's and Jaffe's Issues are premised on the County's failure to adopt their proposed amendments, all Issues must be dismissed. The County's motion to dismiss PFRs 99-3-0022 (Racca) and 99-3-0023 (Jaffe) is **granted**. PFRs 99-3-0022 and 99-3-0023 are **dismissed with prejudice**.

iV. 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:

The County's motion to dismiss PFRs 99-3-0022 (Racca) and 99-3-0023 (Jaffe) is **granted**. PFRs 99-3-0022 and 99-3-0023 are **dismissed with prejudice**.

So ORDERED this 10th day of March, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Edward G. McGuire, 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.