

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

CITY OF SHORELINE,)	
)	Case No. 00-3-0001pdr [PDR]
)	
Petitioner,)	<i>(Shoreline - PDR)</i>
)	
v.)	
)	Coordinated with:
SNOHOMISH COUNTY,)	Case No. 00-3-0010 [PFR]
)	
Respondent,)	
)	ORDER DECLINING TO ISSUE
TOWN OF WOODWAY,)	DECLARATORY RULING
)	
Intervenor.)	
)	

I. Background

The City of Shoreline came to the Board out of frustration. Its concerns are not frivolous. However, because the Board lacks jurisdiction to resolve the dispute as posed in the petition for review (**PFR**) and declines to answer the question posed in the petition for declaratory ruling (**PDR**), Shoreline unfortunately will leave in frustration.

The original PFR was filed by Shoreline in June of 2000.^[1] The PFR challenged the decision of Snohomish County Tomorrow (**SCT**), a multi-jurisdictional advisory body to Snohomish County, establishing a Metropolitan Urban Growth Area (**MUGA**) process. One of the purposes of the MUGA process is to provide a forum for discussing and negotiating how the County’s unincorporated urban growth areas (**UGAs**) should be allocated among Snohomish County cities.

Point Wells, the land area at the center of this dispute, is an unincorporated UGA within Snohomish County. Point Wells lies west of, and is adjacent to, the Snohomish County Town of Woodway.^[2] Point Wells lies north of, and is adjacent to, the *King County* City of Shoreline. SCT chose to exclude the City of Shoreline from the formal MUGA process – Shoreline did not have a place at the MUGA table to discuss the fate of Point Wells. This decision of the SCT

precipitated the PFR.

Since SCT is an advisory body whose actions are not the actions of the County's governing body, and since SCT cannot adopt or amend the County's GMA Plan or development regulations, the County moved to dismiss the PFR. Shoreline recognized the status of the SCT, but noted that Shoreline could ultimately challenge the unincorporated UGA allocation results of the MUGA process *if the County amended* the County Plan. Conversely, *if the County did not amend* its Plan to reflect the results of the MUGA process,^[3] the City's exclusion would result in a lack of inter-jurisdictional consultation, coordination and cooperation – values embodied in the GMA. Consequently, Shoreline urged the Board to shorten the time, lessen the expense, and provide the City relief by directing that Shoreline have a place at the MUGA table. The Board recognized the City's concern but, lacking subject matter jurisdiction over the SCT, or its action, the Board **granted** the County's dispositive motion and **dismissed** the City of Shoreline's PFR.

Perhaps in anticipation of this outcome, Shoreline amended its PFR to include a PDR [Case No. 00-3-0001pdr]. In the PDR, Shoreline posed two questions. The Board set these two questions over for hearing in the same Order that dismissed the PFR.

The first question posed in the PDR was a reiteration of the GMA's inter-jurisdictional consultation, coordination and cooperation issues raised in the PFR. Shoreline ultimately **abandoned**^[4] this question and it is not addressed further in this Order. The second PDR issue asks the following question:

Should the Board issue a declaratory ruling, pursuant to WAC 242-02-910 through WAC 242-02-930, declaring that the City of Shoreline's 1998 Comprehensive Plan, including its Potential Annexation Area, is irrefutably valid and binding on Snohomish County cities?

August 8, 2000, Prehearing Order, at 7. This was the only remaining question for the Board at the time of the November 13, 2000 hearing.

II. DISCUSSION

Shoreline no longer challenges SCT, Snohomish County or even Intervenor Town of Woodway. The PFR has been dismissed and one of two PDR issues has been abandoned. All that remains before the Board is Shoreline's request that the Board, through a declaratory ruling, declare *Shoreline's 1998 Plan*, which is not now challenged before this Board, to be *valid and binding* upon Snohomish County cities.^[5] The Board declines to do so.

The Board does not doubt its authority to issue declaratory rulings. The Washington State Administrative Procedures Act enables state agencies, such as the Growth Management Hearings Boards, to adopt provisions for declaratory rulings in their agency rules. *See*, RCW 34.05.240 (2). The three Growth Management Hearings Boards have done so in their joint rules. The Board's Rules of Practice and Procedure provide:

Any person may petition a board for a declaratory ruling about the *applicability to specific circumstances of a rule, order or statute within the board's jurisdiction.*

WAC 242-02-910(1), (emphasis supplied).

Generally, this provision enables the Boards to provide clarification as to whether the GMA, and related rules, *apply* to a given situation. Although this *discretionary* authority exists, the Boards have seldom been called upon to apply it. ^[6] However, the question posed by Shoreline does not ask about the *applicability* of the GMA to a given situation – it is undisputed that Snohomish County, Shoreline and Woodway are GMA planning jurisdictions subject to the provisions of the GMA. Rather, Shoreline asks the Board to declare that *its* own Plan is not only valid ^[7] but also binding on Snohomish County cities. Answering this question is beyond the scope of what the Board deems an appropriate use of a declaratory ruling – clarifying the *applicability* of laws within the Board's purview to certain circumstances, not determining compliance.

In its briefs on the PFR and the PDR, Shoreline raised some provocative and important questions about how RCW 36.70A.100 and RCW 36.70A.210 might affect planning, both by cities and by counties, for annexations that cross county lines. While the Board clearly has authority to hear and determine *compliance* with the GMA, here we lack the circumstances to do so. Absent a properly framed legal issue, couched in a timely filed PFR, the Board has no means to reach Shoreline's questions. Lacking such a PFR, the Board can not evaluate ^[8] whether Shoreline's 1998 Plan, (or Woodway's 1994 Plan, Snohomish County's Plan or the County's County-wide Planning Policies) comply with the goals and requirements of the Act; nor address the Plan's validity or binding effect, if any, beyond its corporate limits. *See*: RCW 36.70A.280(1). For these reasons, the lack of an appropriate PFR and an inappropriate question for a PDR, Board **declines to issue a declaratory ruling** in this matter.

However, the Board does offer the following observations. The GMA places a premium on interjurisdictional consultation and cooperation. RCW 36.70A.100. The GMA also recognizes counties as regional governments responsible for providing the *framework* for ensuring consistency among city plans. RCW 36.70A.210. While this framework is not required to include a dispute resolution process, a willingness on the part of counties to facilitate resolution of city disputes would go a long way towards interjurisdictional cooperation. Consequently,

when disputes arise between cities over unincorporated territory, counties should not shrink from the spirit of the GMA.

III. ORDER ON DECLARATORY RULING

Based upon review of the PDR, the briefs submitted by the parties, the Board's Rules of Practice and Procedure, the Act, prior Board decisions, and having considered and deliberated on the matter, the Board ORDERS:

The Board **declines** to issue a declaratory ruling; Petitioner's Petition for Declaratory Ruling [CPSGMHB Case No. 00-3-0001pdr as included in Case No. 00-3-0010] is **denied** and **dismissed**.

So ORDERED this 22nd day of February, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member (Board Member Tovar concurs with Board Member McGuire, but also files a separate concurring opinion, following Board Member North's dissent.)

Board Member North's Dissent

I respectfully dissent with my fellow Board members in their Order declining the City of Shoreline's request for a Declaratory Ruling.

In January of 2000, Snohomish County adopted a new Countywide Planning Policy in its General Policy Plan stating that any annexation of property in Snohomish County by a city situated predominantly outside of the County cannot take place without an Interlocal Agreement with Snohomish County. When Shoreline requested an annexation agreement with Snohomish

County to address Point Wells, it was refused and the County directed Shoreline to instead participate in Snohomish County Tomorrow's (SCT) Municipal Urban Growth (MUGA) process. When Shoreline tried to participate in that MUGA process, it was told that the process was closed to non-Snohomish County cities.

RCW 36.70A.100 mandates coordination of comprehensive plans between counties and cities that share "common borders or related issues". The City of Shoreline filed this Petition for Declaratory Ruling in an effort to ensure that interjurisdictional coordination take place before any Potential Annexation Areas or Municipal Urban Growth Areas were designated in Southwest Snohomish County.

Counties are explicitly recognized by the GMA as regional governments with regional responsibilities. RCW 36.70A.210. In my view, Snohomish County has shirked its duty as a regional government by failing to assume a leadership role in the present dispute. For the County to wash its hands of the business and instead rely on a MUGA process that they themselves describe as "entirely city-driven" is irresponsible (County's Motion to Dismiss, p. 3). The County's role should have been to facilitate discussions on the future of the Point Wells area, not to stand by and refuse to encourage a coordinated effort to plan for the future. Shoreline has been rebuffed by Snohomish County in every attempt to "sit at the table" in negotiations regarding the future of Point Wells.

For these reasons, I believe that a non-binding Declaratory Ruling would have better served the facilitation of discussions in this matter.

Lois H. North

Board Member

Board Member tovar's concurring opinion

I concur with Mr. McGuire that it is inappropriate for the Board to issue a declaratory ruling on Issue No. 6 in Shoreline's Petition for Declaratory Ruling. Had the Board been reviewing a properly framed and timely filed challenge to a local legislative action, (e.g., a plan amendment by Woodway, Shoreline or the County, or a CPP adopted by the County), it may have been possible for the Board to resolve certain of the questions raised in the briefing. A Petition for Declaratory Ruling is simply not the vehicle to reach those answers.

I must also concur, however, with the portion of Ms. North's dissent that concludes that by its

actions, as well as its inactions, the County has abdicated its GMA role as a regional government. Rather than take a systematic and proactive approach such as assigning urban growth areas to specific cities (similar to King County’s Potential Annexation Area concept), Snohomish County has instead adopted a piecemeal and reactive CPP that purports to require an interlocal agreement precedent to a cross-county annexation.^[9] As Shoreline correctly points out, the Board has already answered in the negative the question of whether adopted county policies can establish conditions precedent to a city’s annexation of lands within a UGA.^[10]

This outcome is particularly disappointing in view of this County’s laudable history of shouldering regional responsibilities under RCW 36.70A.110 and .210 by assigning population and employment to cities. *See Lynnwood, et al. v. Snohomish County*, CPSGMHB Case No. 93-3-0005, FDO, October 4, 1993, at 28-31.

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APPENDIX A

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 – (**Snohomish County Tomorrow or SCT**) adoption of a Municipal Urban Growth Area

(MUGA) 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 31, 2000, the Board conducted a prehearing conference in the conference room of the Financial center, 1215 Fourth Avenue, Seattle, WA. 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. The Petition for Declaratory Ruling, though coordinated with the PFR, was assigned CPSGMHB Case No. 00-3-0001pdr. (**PDR**). 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.

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” (**County Motion to Dismiss**).

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

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

On September 1, 2000, the Board received “Shoreline’s Surreply Brief” (**Shoreline’s Surreply**).

On September 5, 2000, the Board issued its “Order on County’s Motion to Dismiss, Order on Supplemental Evidence and Notice of Hearing.” The Board **granted** the County’s Motion to Dismiss Legal Issues 1-4 in the PFR; these issues were **dismissed with prejudice**. Legal Issue 5 and 6, which requested a declaratory ruling by the Board [Case No. 00-3-0001pdr] were held

over for hearing. The Board called for additional evidence and additional briefing on Legal Issues 5 and 6. The Board gave Notice of Hearing for the request for declaratory ruling which was scheduled to take place at 10:00 a.m. on Monday, October 23, 2000 in room 1022 of the Financial Center Building, 1215 Fourth Avenue, Seattle, WA.

On September 28, 2000, Snohomish County and the City of Shoreline each filed the supplemental evidence requested by the Board. These exhibits included excerpts from the 1994 Town of Woodway Plan, the 1998 City of Shoreline Plan, and mapping of the Point Wells area.

On October 4, 2000, the Board received Snohomish County's Motion to Strike Items 2 – 5 in Shoreline's Notice of Filing dated 9/28/00. The Board accepted Items 2-5 at the Hearing on the Petition for Declaratory Ruling, on November 13, 2000, as items that would be of substantial assistance to the Board in reaching its decision.

On October 4, 2000, Snohomish County submitted a Revised Map of the Point Wells area to the Board.

On October 9, 2000, Shoreline filed a Supplemental Brief with the Board.

On October 16, 2000, Snohomish County filed a Supplemental Response Brief.

On Monday, October 16, 2000, the Board received the Town of Woodway's Motion to Intervene in Case No. 00-3-0010, *City of Shoreline v. Snohomish County*.

On October 18, 2000, the Board **granted** Woodway's Motion to Intervene. The Board rescheduled the Hearing in this matter to Monday, November 13, 2000.

On October 23, 2000, the Board received Shoreline's Supplemental Reply Brief. On November 13, 2000 at 10:00 a.m., the Board conducted a Hearing on the Petition for Declaratory Ruling in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Edward G. McGuire, Joseph W. Tovar, and Lois H. North, presiding officer. Representing the City of Shoreline was Samuel W. Plauche. Barbara Dykes and Karen Jorgensen-Peters represented Snohomish County, and Scott Missall represented the Intervenor, the Town of Woodway. Brian Norkus, the Board's legal intern, was also present. Court reporting services were provided by Robert Lewis of Tacoma, Washington. No witnesses testified.

[\[1\]](#) The complete procedural history of this case, outlining the sequence of events, filings and hearings is found in Appendix A.

[\[2\]](#) The Town of Woodway was ultimately allowed to intervene in this matter.

[3] The County indicated that it did not intend to amend its GMA plan as a result of the MUGA process. It viewed the process as entirely city-driven. County Motion to Dismiss, at 3-4.

[4] Shoreline Supplemental Reply Brief, fn. 2, at 3-4.

[5] Shoreline's Plan includes the Point Wells area as a "Potential Annexation Area" (PAA) for the City of Shoreline. PAA is a designation used in King County to allocate unincorporated UGA areas to King County's various cities.

[6] The Eastern Washington Growth Management Hearings Board has never had occasion to apply this provision and issue, or not issue, a declaratory ruling. On four prior occasions this Board has been asked to issue a declaratory ruling, but has declined. The Western Washington Growth Management Hearings Board has declined to issue a declaratory ruling on three occasions. However, the Western Board, in one instance, used a declaratory ruling to clarify the date upon which a Board Order on Invalidity became effective. See: *Friends of Skagit County*, WWGMHB 96-2-0009 (Jul. 24, 1996).

[7] The Board notes that the Shoreline, Snohomish County and Woodway plans are all presumed valid upon adoption, and this presumption carries forward in the event of an appeal to the Boards. See: RCW 36.70A.320.

[8] The Board acknowledges that both Shoreline and Woodway provided copies of excerpts of their respective plans.

[9] Snohomish County Amended Ordinance 99-120 provides in part:

An interlocal agreement between Snohomish County and any jurisdiction determined necessary by the County shall be in place for proposed annexation of unincorporated land in Snohomish County by a city . . . situated predominantly outside of Snohomish County . . . Such agreement shall be approved prior to the city . . . submitting a Notice of Intention to Annex to the County Boundary Review Board . . . Shoreline's Response, Attachment 2.

[10] The Board has previously held that ". . . once a UGA has been designated, the provisions of a county plan may not condition or limit the exercise of a city's annexation land use power." *Alpine, et al. v. Kitsap County*, CPSGMHB Case No. 98-3-0032c, Order Rescinding Invalidity in *Bremerton* and Final Decision and Order in *Alpine*, February 8, 1999, at 48.