

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

CITY OF SHORELINE,)	Case No. 01-3-0013
)	
Petitioner,)	<i>(Shoreline II)</i>
)	
v.)	
)	
TOWN OF WOODWAY,)	ORDER ON MOTIONS TO DISMISS
)	
Respondent,)	
)	
and)	
)	
SNOHOMISH COUNTY,)	
)	
Intervenor.)	
_____)	

I. Background

On June 1, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Shoreline challenging whether the Town of Woodway’s adoption of Ordinance No. 01-406 complied with the goals and requirements of the Growth Management Act (**GMA**).

On June 8, 2001, the Board issued a notice of hearing; on July 2, 2001, the Board held a prehearing conference, and issued the prehearing order (**PHO**) setting forth the case schedule and issues to be resolved in this matter.

On July 3, 2001, the Board received Woodway’s Index to the Record.

On July 13, 2001, the Board received a Motion to Intervene from Snohomish County. On July 16, 2001, the Board **granted** Snohomish County’s motion.

On July 18, 2001, the Board received Woodway’s “Motion to Dismiss and Memorandum in Support” (**Woodway Motion**) and “Snohomish County’s Motion to Dismiss” (**Co. Motion**). Both Motions ask the Board to dismiss Legal Issues 1 through 8 as stated in the PHO.

On July 25, 2001, the Board received “City of Shoreline’s Response to Motions to Dismiss” (**Shoreline Response**).

On July 30, 2001, the Board received “Woodway’s Reply to Shoreline’s Response and Joinder in County’s Reply” (**Woodway Reply**) and “Snohomish County’s Reply Brief Supporting Motion to Dismiss” (**Co. Reply**).

The Board did not hold a hearing on the motions.

II. DISCUSSION

Motions to Dismiss

Both Woodway and Snohomish County ask the Board to dismiss Legal Issues 1 through 8^[1] as stated in the PHO, essentially because Woodway has no GMA duty or authority to adopt urban growth areas (**UGAs**); and since Woodway’s adoption of Ordinance No.01-406 did not adopt a UGA, the Board has no jurisdiction to review Woodway’s actions as challenged by the PFR – and restated in the PHO – in Legal Issues 1 thorough 8. Woodway Motion, at 1-4, Co. Motion, at 1-12.

Shoreline argues that Woodway “consistently uses the terms UGA and PAA [potential annexation area] interchangeably. The Board should therefore deny the motions to dismiss.” Shoreline Response, at 3.

In reply, Snohomish County again reiterates that Woodway did not designate a UGA, nor has Shoreline alleged any legal duty that requires or authorizes Woodway to designate a UGA. Co. Reply, at 2-8. Woodway joins the County’s reply and further argues that it expressed its intention regarding the annexation of the Point Wells area when it passed Resolution No. 150, in 1993; and that Woodway does *reference* and *identify* the Point Wells area as either a PAA or UGA in its Plan, but it does not *designate* the area as such. Woodway Reply, at 3-6.

Applicable Law and Discussion

The first eight Legal Issues contain the following common allegation: “*Whether Woodway violated [specified GMA citations, including RCW 36.70A.210, .110, .010, .020, .070 and .100] when it designated Point Wells as a UGA?* (Emphasis supplied).

Legal Issues 9 through 12^[2] contain the following common allegation: “*Whether Woodway violated [specified GMA citations, including RCW 36.70A.070, .120, .140, .035 and .020] when it adopted the plan amendments; or otherwise referencing Plan amendments.*

Had Shoreline intended to simply challenge Woodway's adoption of the plan amendments contained in Ordinance No. 01-406 on all issues it presented in its PFR, it could have done so. However, Petitioner clearly distinguished those actions it was challenging in Woodway's adoption of Ordinance No. 01-406 – a UGA designation [Issues 1-8] and plan amendments [Issues 9-12].

The Board is constrained from answering questions not presented in the PFR, as may be modified in the PHO. “The Board shall not issue advisory opinions on issues not presented to the board in the statement of issues [PFR], as modified by any prehearing order [PHO]. RCW 36.70A.290 (1). The Legal Issues as stated in the PHO are exactly the same as those that were presented to the Board in the statement of issues in the PFR. *Compare:* PFR 01-3-0013, III. Statement of Issues 3.1 through 3.12 and PHO, X. Statement of Legal Issues 1 through 12. Therefore, the Board is limited to answering the issues as posed in the PHO.

Legal Issues 1 through 8 allege that Woodway designated the Point Wells area as a UGA. The Point Wells area was designated by the County, as part of its southwest UGA in 1995. *See:* Snohomish County Amended Ordinance No. 94-123. To the Board's knowledge, it has remained within the County designated UGA since that time. Shoreline does not dispute that the unincorporated Point Wells area falls within the southwest UGA designated by Snohomish County. Shoreline Response, at 1-14. To challenge the *County's* designation of the area as a UGA, at this time, is clearly untimely. The Board also notes that Woodway expressed its annexation intentions regarding the Point Wells area in 1993, which predates the incorporation of Shoreline. *See:* Resolution No. 150.

Additionally, the *Town of Woodway* did not designate the area as a UGA in its enactment. Ordinance No. 01-406 adopts amendments to the Town of Woodway's Comprehensive Plan. *See:* Ordinance No. 01-406. Perusal of the Ordinance and adopted 2000 Plan amendments yields the following references to either the Point Wells UGA or mentions the area for potential annexation: 1) There is *no mention or reference* to either a Point Wells UGA or PAA in the body of the Ordinance; 2) “The Woodway Town Council adopted Resolution No. 150 on November 1, 1993 which expressly identified Point Wells as an area in which ‘[I]t is in the best interest of the Town and the owners of the property. . . to be annexed to the Town.’ During the preparation of the 1994 Comprehensive Plan, the Town surveyed its residents about Point Wells and reported that survey respondents ‘strongly supported designating the Chevron property west of town as an Urban Growth Area’; 3) “The property [Point Wells area] is isolated from the County and is within the Southwest Snohomish County Urban Growth Area”; 4) “LUP-19 - Point Wells is a potential annexation area (PAA) for the Town of Woodway”; and 5) “Point Wells is currently undergoing study by the Point Wells Advisory Committee, made up of Town officials, Town residents and a representative from the Port of Edmonds as an area of potential annexation by the

Town of Woodway.” See: Ordinance No. 01-406, at 1-3; Town of Woodway Comprehensive Plan Year 2000 Update – Land Use Element, at 1, 9; Town of Woodway Comprehensive Plan Year 2000 Update – Capital Facilities Element, at 1; [3] and Woodway Reply, at 4-5. None of these Plan references [4] can be construed as a UGA *designation*, they *mention*, *reference* or *identify* an existing situation or circumstance – Point Wells is within the County’s designated southwest UGA, which is a prerequisite to annexation by any city or town. In addition, Woodway notes its previous annexation intentions regarding the area.

Finally, the Board has previously held [5] that the adoption of UGAs is solely a county duty and requirement under the Act, not a duty or requirement for cities. Notwithstanding Woodway’s choice of GMA jargon [PAAs or UGAs], it has no duty or authority to adopt UGAs. Consequently, the Board agrees with the both Woodway and the County on this established point of GMA law. Woodway has no duty or authority to adopt, nor did it adopt, a UGA [6] for the Point Wells area when it adopted Ordinance No. 01-406. The Motions of Woodway and Snohomish County are **granted**; Legal Issues 1 through 8, as set forth in the PHO, are **dismissed**.

Conclusion

Woodway has no duty or authority to adopt, nor did it adopt, a UGA for the Point Wells area when it adopted Ordinance No. 01-406. The Motions of Woodway and Snohomish County are **granted**; Legal Issues 1 through 8, as set forth in the PHO, are **dismissed**.

III. Order

Based upon review of the PFR, PHO, index, motions, briefs and exhibits submitted by the parties, the Act, and prior decisions of this Board, the Board enters the following ORDER:

The Motions presented by Woodway and Snohomish County to Dismiss Issues 1-8, as stated in the PHO, are **granted**. Legal Issues 1-8 from Shoreline’s Petitioners’ PFR, as stated in the PHO, are **dismissed**. The remaining Legal Issues still pending in this matter are Legal Issues 9-12.

So ORDERED this 9th day of August, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD [7]

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This Order constitutes a final order as specified in RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

[\[1\]](#) The July 2, 2001 PHO lists Legal Issues 1-8, as follows:

1. ***Whether Woodway violated RCW 36.70A.210 when it designated Point Wells as an urban growth area (UGA) despite Shoreline's prior, final designation of the same area as Shoreline's Planned Annexation Area (PAA)? [Woodway's designation prohibits contiguous and orderly development of Shoreline's PAA, contrary to RCW 36.70A.210(3)(b) and contrary to Renton v. Newcastle, CPSGMHB Case No. 97-3-0026, Final Decision and Order, (February 12, 1998).]***
2. ***Whether Woodway violated RCW 36.70A.100 when it designated Point Wells as a UGA despite Shoreline's prior, final adoption of the same area as a Shoreline PAA? [Woodway's designation is neither coordinated with nor consistent with Shoreline's comprehensive plan in violation of RCW 36.70A.100. Woodway's designation runs afoul of the premium GMA places on interjurisdictional consultation and cooperation in violation of RCW 36.70A.100.]***
3. ***Whether Woodway violated RCW 36.70A.110, RCW 36.70A.010, RCW 36.70A.020(1) and (2)***

when it designated Point Wells as a UGA? [Even without Point Wells as its UGA, Woodway includes areas and densities sufficient to accommodate approximately 25 percent more population than permitted based upon the growth management population projection. With Point Wells as its UGA, Woodway is further out of compliance with the planning requirement of RCW 36.70A.110(2), RCW 36.70A.010, RCW 36.70A.020(1) and (2) and *Bremerton et al., v. Kitsap County, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, (October 6, 1995).*)]

4. Whether Woodway violated RCW 36.70A.110 when it designated Point Wells as a UGA? [Woodway failed to show its work documenting the factors and data relied upon and supporting the sizing and designation of Point Wells as its UGA, contrary to RCW 36.70A.110.]

5. Whether Woodway violated RCW 36.70A.110(4) and RCW 36.70A.210(1) when it designated Point Wells as a UGA? [Based on topography, access and capacity, Woodway is not situated to provide urban governmental services to Point Wells, contrary to RCW 36.70A.110(4) and RCW 36.70A.210(1), which mandate that the Cities are the appropriate provider of urban services.]

6. Whether Woodway violated RCW 36.70A.210 and RCW 36.70A.070(3) when it designated Point Wells as a UGA? [RCW 36.70A.070(3) and County-wide Planning Policies (CPPs) OD-6 and OD-7 direct Woodway to develop and coordinate capital facilities construction standards and to ensure capital facility plans provide adequate levels of service for planned growth. Woodway did not develop these plans prior to its UGA designation, and is therefore inconsistent with the CPPs and in violation of RCW 36.70A.210 and RCW 36.70A.070(3).]

7. Whether Woodway violated RCW 36.70A.210 and RCW 36.70A.110(4) when it designated Point Wells as a UGA? [RCW 36.70A.110(4) and CPP OD-9 reiterate the GMA policy of smooth and orderly transitions to urban services being provided by cities. Because Woodway has not planned for a smooth and orderly transition to Woodway providing urban services, the Plan is not consistent with the CPP in violation of RCW 36.70A.210 and RCW 36.70A.110(4).]

8. Whether Woodway violated RCW 36.70A.020(1) and (2) when it designated Point Wells as a UGA? [Woodway's stated land use goal is to preserve the Town's existing character, which includes zoning that permits sprawling low-density residences. Since the UGA designation does not include a discussion of potential future land uses at Point Wells, the only planning for the UGA is maintenance of current land use patterns through preservation of existing character, which violate RCW 36.70A.020 (1) and (2). See *LMI v. Town of Woodway, CPSGMHB Case No. 98-3-0012, Final Decision and Order (January 8, 1999).*]

Section X, at 6-8.

[2] The July 2, 2001 PHO lists Legal Issues 9-12, as follows:

9. Whether Woodway violated RCW 36.70A.070 when it adopted the Plan amendments? [Woodway's Plan, as amended, is inconsistent because the land use element is not consistent with the transportation and capital facilities element and it fails to correctly and clearly discuss access to Point Wells. The land use element discusses access to Point Wells from Heberlein Road (238th). The transportation element and capital facilities elements, however, do not discuss access to Point Wells, or the considerable obstacles to accessing Point Wells from Woodway. This lack of internal consistency violates RCW 36.70A.070. The discussion of access in the transportation element does

present an accurate picture of access to Point Wells in violation of RCW 36.70A.070.]

10. Whether Woodway violated RCW 36.70A.120 when it adopted the Plan amendments? *[The capital budget decisions do not include money for accessing Point Wells or providing the area with urban services in violation of RCW 36.70A.120.]*

11. Whether Woodway violated RCW 36.70A.140, RCW 36.70A.020(11) and RCW 36.70A.035(2) (a) by failing to provide for adequate public participation on the Plan amendments? *[Woodway made substantial changes to its proposed amendments after the close of public comments. Woodway also submitted hundreds of pages of documents into the record without providing an adequate opportunity for the public to review those and other relevant documents and submit additional responsive material into the record.]*

12. Whether Woodway’s Plan amendments substantially interfere with GMA goals RCW 36.70A.020(1), (2), (3), (4), (11) and (12)?

Section X, at 8.

[3] It is not clear from the documents provided by any of the parties whether any of this quoted language was actually changed by the adoption of Ordinance No. 01-406. If it is preexisting language, not altered by the amendments included in Ordinance No. 01-406, challenging it may be untimely.

[4] The Board notes that the references in Shoreline’ Response brief that argue Woodway uses the term “UGA” and “PAA” interchangeably, reference letters or documents dated from 1994, 1996, 1997, 1998 and 1999; they do not reference Ordinance No. 01-406 or any of the recent plan amendments. Shoreline Response, at 4-5.

[5] In addition to cases cited in briefing, *see: McVittie v. Snohomish County*, CPSGMHB Case No. 00-3-0016, Final Decision and Order, (Apr. 12, 2001), at 10-11; *Kitsap Citizens for Rural Preservation v. Kitsap County*, CPSGMHB Case No. 00-3-0019c, Order on Dispositive Motions and Motions to Supplement, (Feb. 16, 2001), at 9-12; *Hensley v. City of Woodinville*, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997), at 5; *Agriculture for Tomorrow v. City of Arlington*, CPSGMHB Case No. 95-3-0056, Final Decision and Order, (Feb. 13, 1996), at 10; *Slatten v. Town of Steilacoom*, CPSGMHB Case No. 94-3-0028, Order on Steilacoom’s Dispositive Motion, (Feb. 21, 1995), at 3; and *City of Tacoma, et al., v. Pierce County*, CPSGMHB Case No. 94-3-0001, Final Decision and Order, (Jul. 5, 1994), at 10, 45-46.

[6] The Board finds no indication from Shoreline that Woodway newly “designated” or otherwise “assigned” Point Wells to Woodway as opposed to Shoreline.

[7] Because of temporary leave for medical reasons, Board Member North did not participate in this decision.