

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

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| BENNETT, et al., |) | |
| |) | Consolidated Case No. 01-3-0022c |
| Petitioners, |) | |
| |) | ORDER ON CITY’S DISPOSITIVE |
| v. |) | MOTION |
| |) | |
| CITY OF BELLEVUE, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |

I. BACKGROUND

On November 9, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued an “Order of Consolidation and Prehearing Order” (the **PHO**) in the above named consolidated case. The PHO specified December 3, 2001 as the due date for the filing of motions in this case.

On December 3, 2001, the Board received from Respondent City of Bellevue (**Bellevue** or **the City**) a “Motion to Continue Date for Filing Motions in East Bellevue Community Municipal Corporation v. Bellevue” (the **Motion for Continuance**) together with the “Declaration of Elaine L. Spencer in Support of Motion to Continue” (the **First Declaration of Elaine L. Spencer**).

On December 4, 2001, the Board received from Petitioner East Bellevue Community Municipal Corporation (**EBCMC**) “EBCMC’s Response to City’s Motion to Continue Date for Filing Motions” together with the “Declaration of Carol A. Morris in Support of EBCMC’s Response to Motion for Continuance” (the **Declaration of Carol Morris**.)

On December 10, 2001, the Board received a letter dated Dec. 7, 2001 from counsel for EBCMC regarding the outcome of a proceeding before Judge Richard Eadie in King County Superior Court on December 7, 2001. Also on December 10, 2001, the Board received from the City a “Motion to Dismiss Case No. 01-3-0022” (the **City’s Motion to Dismiss**) together with the “Declaration of Elaine L. Spencer in Support of Motion to Dismiss Case No. 01-3-0022” (the **Second Declaration of Elaine L. Spencer**). The City’s Dispositive Motion and the Second

Declaration of Elaine L. Spencer were transmitted by a cover letter from counsel for the City requesting permission to file the motion pursuant to WAC 242-02-532.

On December 14, 2001, the Board issued an “Order Granting Leave to File Dispositive Motion and Amending Final Schedule” which authorized the late filing of the City’s Dispositive Motion and set a schedule for EBCMC to file a Response to the City’s Dispositive Motion and the City to Reply to the EBCMC Response.

On December 24, 2001, the Board received “East Bellevue Community Municipal Corporation’s Response to City’s Motion to Dismiss” (the **EBCMC’s Response**) together with Exhibits A through E.

On December 31, 2001, the Board received the “Reply of the City of Bellevue” (the **City’s Reply**) together with Exhibits A through D.

II. DISCUSSION

A. **Positions of the Parties**

1. Bellevue

The City presents the following motion for the Board to rule upon:

The City of Bellevue moves this Board to dismiss the appeal filed by the East Bellevue Community Municipal Corporation in Case No. 01-3-0022, on the ground that although the East Bellevue Community Municipal Corporation (“EBCMC”) has “standing” before this Board because it is a “person” which commented on Ordinance 5308 before it was adopted, the EBCMC itself has no power to bring the appeal.

City’s Dispositive Motion, at 1.

Bellevue cites provisions of the statute from which Community Municipal Corporations derive their authority, Chapter 35.14 RCW, and argues that this legislative grant of authority does not include the power to challenge compliance of City ordinances with the GMA or any other City ordinance. City’s Dispositive Motion, at 2-4.

Bellevue cautions the Board not to grant standing to Petitioner without also examining and finding deficient its authority to bring a PFR before the Board. The City argues:

RCW 36.70A.280, giving power to the Board, cannot be construed to have amended

RCW 35.14 by implication, and thereby to have also given power to the community municipal corporations that they otherwise would not have.

City's Dispositive Motion, at 9.

After recounting history of some of the litigation between the City and the EBCMC, the City explains why this matter is presently before the Board as a dispositive motion. The City states that King County Superior Court Judge Richard Eadie has ruled:

. . . that this Board has the power to decide whether the EBCMC is entitled to bring this appeal, and that because that issue is properly before this Board, it also can be resolved in any appeal from this Board's ultimate decision. Therefore, Judge Eadie reasoned, the City has a plain, speedy and adequate remedy before this Board for the fact that the EBCMC has no power to bring this appeal.

City's Dispositive Motion, at 5-6.

Bellevue contends that the issue before the Board is not whether the Board has authority to hear the EBCMC appeal, but whether the EBCMC has the authority to bring the appeal. The City argues:

As described above, unless RCW 36.70A.280 somehow gives the EBCMC the power to bring an appeal to this Board, it has no power to do so, because such a power is neither stated in its enabling statutes nor can it be necessarily implied from those statutes. The issue then is whether RCW 36.70A.280 not only gives this Board the power to hear certain petitioners, but also gives a body power that it otherwise would not have to bring a petition.

City's Dispositive Motion, at 6.

2. EBCMC

The Petitioner succinctly states its position:

. . . the City claims that the EBCMC has no authority to file an appeal of the City's ordinances to the Growth Board because there is no specific provision in chapter 35.14 RCW granting community councils such power. The need for such specific authorization is an argument totally contrived by the City – it is not a legal or statutory requirement. In addition, the City makes this argument even though it has not shown that any other municipal corporation (such as a city) has been granted

specific statutory authorization to file GMA appeals. Nothing supports the City's argument that this Board need examine the "authority" of any petitioner to file an appeal, once standing has been established.

EBCMC's Response, at 2.

Petitioner contends that Bellevue's argument that EBCMC lacks the authority to file the PFR with the Board contradicts the City's recent arguments in King County Superior Court and the State Supreme Court that, in order to pursue a GMA claim in the courts, the EBCMC must first exhaust administrative remedies, such as filing a PFR with the Board. The Petitioner states:

In a lawsuit involving a challenge by the EBCMC to a City ordinance similar to Ordinance No. 5308 (both address exemptions to the City's Traffic Standards Code), the City has argued that the EBCMC could not challenge the City's ordinance because the EBCMC had not filed an appeal before the GMHB. In the City's brief, the City argues that the community councils' claims must be dismissed because they "failed to petition the Growth Management Hearings Board to review City of Bellevue Ordinance 5081 before initiating this action in Superior Court [I]n other words, while the City now argues to the Board that EBCMC's petition must be dismissed because it cannot file this appeal, the City argued to the King County Superior Court (and now the Washington Supreme Court) that a lawsuit filed by EBCMC had to be dismissed because the EBCMC did not first file an appeal before the GMA Board.

EBCMC's Response, at 6-7. Footnotes omitted. Citations omitted.

The Petitioner disputes the City's characterization of Judge Eadie's ruling, stating:

The City has misrepresented Judge Eadie's ruling, and claims that "Judge Eadie reasoned the City has a plain, speedy and adequate remedy before this Board for the fact that the EBCMC has no power to bring this appeal." (Motion to Dismiss, ln. 3, p.6) Judge Eadie simply determined that even if the City's arguments were correct, and even if the Board had no authority to rule whether or not the EBCMC had the power to file an appeal to the Growth Board, there was a sufficient appellate remedy here, because the Board's decision is appealable to court under RCW 34.05.570.

EBCMC's Response, at 9.

B. ANALYSIS

In *Central Puget Sound Regional Transit Authority v. City of Tukwila*, [**Sound Transit**] CPSGMHB Case No. 99-3-0003, Order on Dispositive Motion, issued June 18, 1999, this Board ruled:

The City of Tukwila has moved to dismiss this PFR on the ground that the Executive Director of Sound Transit lacked authority to initiate it. Because the Board is without authority to determine whether the Executive Director acted in conformity with Ch. 81.112 RCW or with the law of the agency, the City's motion is **denied** . . .

. . . .

Nowhere in RCW 36.70A.280 is the Board explicitly or implicitly delegated the authority to determine compliance with Ch. 81.112 RCW or with the law of agency. Tukwila has not identified any authority establishing Board jurisdiction over these matters.

Sound Transit, Order on Dispositive Motion, at 1-2.

Here, Bellevue urges the Board to dismiss the Petitioner's PFR because the City contends that the EBCMC is not authorized by Chapter 35.14 RCW to file such an appeal. The Board declines the City's invitation. The Board finds that its ruling in *Sound Transit* is directly on point. The Board's jurisdiction is properly limited to Chapters 36.70A RCW, 90.58 RCW and 43.21C RCW. It is not for the Board to interpret other statutes, nor to determine whether a petitioner has acted within its authority as described by other statutes (i.e., Chapter 35.14 RCW).

It is undisputed that the EBCMC has established participation standing pursuant to RCW 36.70A.280. City's Dispositive Motion, at 1. In response to Judge Eadie's question, as characterized in the City's Motion, the Board determines that, because EBCMC has established participation standing, it is entitled to bring the present appeal (i.e., the PFR) before this Board. If the City wishes to pursue its argument that EBCMC lacks authority to bring this appeal, its recourse is to the courts.

III. ORDER

The City's Dispositive Motion is **denied**. The dates for the submittal of prehearing briefs and the hearing on the merits remain as set forth in the Prehearing Order.

So ORDERED this 7th day of January 2002.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member