

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

GENE J. GRIEVE,)	
)	Case No. 02-3-0016
Petitioner,)	<i>(Grieve)</i>
)	
v.)	
)	
SNOHOMISH COUNTY,)	Order of Dismissal
)	
Respondent.)	
)	

I. CASE SYNOPSIS

*Mr. Grieve filed a petition for review questioning Snohomish County’s “pre-application concurrency process” as applied to a specific proposed development. Although the Board had reservations as to its jurisdiction over the matter, the Board conducted a prehearing conference to more fully understand the nature of Mr. Greive’s concerns. After discussion of Mr. Greive’s issues at the prehearing conference, the Board determines that it does not have subject matter jurisdiction to hear the matter. The petition for review is **dismissed with prejudice**.*

II. Background

On November 5, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Gene J. Grieve (**Petitioner** or **Grieve**). The matter was assigned Case No. 02-3-0016, and is hereafter referred to as *Grieve v. Snohomish County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner does not challenge any recent legislative enactment of Snohomish County (**Respondent** or **County**) that amends or revises its comprehensive plan or implementing development regulation.

On November 13, 2002 the Board issued a “Notice of Hearing” (**NOH**) setting the date for a prehearing conference (**PHC**). The NOH indicated, “The Board has serious questions regarding whether it has jurisdiction to review the matter ‘challenged’ in the PFR, and has considered dismissing the matter *sua sponte*; however, in order to fully understand the concern posed in the

Grieve PFR, the Board will schedule a prehearing conference.” NOH, at 1-2.

On December 2, 2002, the Board conducted the PHC at the Board’s Offices in Seattle. Board Member Edward G. McGuire presided. Petitioner Gene J. Grieve appeared *pro se*. Andrew S. Lane represented Respondent Snohomish County. Richard Hill, representing the applicant for the project (Phoenix Development, Inc.) also attended

III. Discussion

RCW 36.70A.280(1) provides:

A growth management hearings board shall hear and determine *only* those petitions alleging either:

(a) That a state agency, county or city planning under this chapter *is not in compliance with the requirements of this chapter*, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW *as it relates to plans, development regulations, or amendments, adopted under 36.70A.040* or chapter 90.58 RCW.

(Emphasis supplied).

It is well established through Board case law and the Washington Courts that the jurisdiction of the Growth Management Hearings Boards to review for GMA compliance, is limited to the review of the legislative actions of local government that adopt or amend Comprehensive Plans and development regulations, adopted pursuant to Chapter 36.70A RCW. ^[1] Likewise, it is equally clear that the Board’s jurisdiction does not extent to review of land use project decisions. ^[2]

At the PHC discussion, the Petitioner could not identify any legislative action Snohomish County had *recently* taken to adopt, or amend, either its comprehensive plan or development regulations. The County indicated it had not done so. Petitioner’s concerns related to application of the provisions of Chapter 36.70B RCW, Chapter 82.02 RCW and a process established by the County in September of 2001.

Regarding these concerns, the Board either does not have jurisdiction to review the matter [i.e. Chapters 36.70B or 82.02 RCW] or the challenge is untimely. Consequently, the Board will dismiss the petition for review. However, the Board notes, as did Petitioner, the County and the applicant, that interjurisdictional coordination on transportation issues could serve to address the concerns raised by the Petitioner. To the extent such coordination would address the issues posed, the Board encourages the parties to pursue it.

After review of the PFR and attached materials, consideration of the discussion at the PHC, the Board finds and concludes:

- 1) The County has not recently taken legislative action to amend its GMA Comprehensive Plan or its Plan implementing development regulations. Consequently, there is no appropriate GMA action for the Board to review.
- 2) Petitioner questions the County's compliance with statutes [Chapter 36.70B and 82.02 RCW] that the Board does not have jurisdiction to review.
- 3) Petitioner's complaint pertains to:
 - a. The application of the County's development regulations^[3], which relate to a land use project decision which is beyond the Board's jurisdiction; and
 - b. The interpretation of the County's development regulations,^[4] which could have been challenged when the new provisions were adopted, however, at this point in time the challenge is untimely.

Consequently, the Board lacks jurisdiction to review the County's actions for compliance with the GMA and the PFR and it must be dismissed.

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IV. ORDER

Based upon review of the PFR and attached materials, discussions at the PHC, the Act, Washington case law, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

- CPSGMHB Case No. 02-3-0016, *Grieve v. Snohomish County*, is **dismissed with prejudice**.

So ORDERED this 2nd day of December 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

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.

^[1] See: *Happy Valley Assoc. v. King County*, CPSGPHB Case No. 93-3-0008, Order Granting Respondent King

County's Motion to Dismiss and Denying Happy Valley's Motion to Amend Its Petition for Review (Oct. 25, 1993), at 13-14; *South Bellevue Partners Limited Partnership and South Bellevue Development Inc. v. City of Bellevue and Issaquah School District No. 411*, CPSGMHB Case No 95-3-0055, Order of Dismissal, November 30, 1995, at 6; *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868 (1997); and *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn. 2d 169, 179 (2000).

[2] *See also: Hanson, et al., v. King County*, CPSGMHB Case No. 98-3-0015, Order Granting Dispositive Motions (Sep. 28, 1998); *Petersville Road Area Residents v. Kitsap County*, CPSGMHB Case No 00-3-0013, Order on Motions, (Oct. 23, 2000); *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 868 (1997); and *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn. 2d 169, 179 (2000).

[3] The County's pre-application concurrency process.

[4] *Id.*