

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

)	
MERRILL ROBISON,)	Case No. 02-3-0020
)	
Petitioner,)	<i>(Robison II)</i>
)	
v.)	
)	
CITY OF BAINBRIDGE ISLAND,)	ORDER ON MOTIONS
)	
Respondent.)	
)	

I. Background

A. General

On December 13, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Merrill Robison (**Petitioner** or **Robison**). The matter was assigned Case No. 02-3-0020, and is hereafter referred to as *Robison II v. Bainbridge Island*. Petitioner challenges Bainbridge Island’s adoption of Resolution No. 2002-05, which repealed Resolution No. 2001-47 regarding Ericksen Avenue. The basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**).

On December 20, 2002, the Board issued a Notice of Hearing in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On January 2, 2003, the Board received a Notice of Appearance from Rosemary Larson. Ms. Larson will represent the Respondent, City of Bainbridge Island, in this case.

On January 13, 2003, the Board conducted the PHC at the Financial Center in Seattle. Board member Lois H. North, presiding officer in this matter, conducted the conference. Merrill Robison, the Petitioner, represented himself *pro se*. Rosemary Larson represented the Respondent, City of Bainbridge Island. Sherman Snow, Board Intern, was in attendance. The tentative schedule, the legal issues, and the procedures for the Hearing on the Merits were

discussed.

The City filed the Respondent's Index the afternoon of January 13, 2003.

On January 15, 2003, the Board issued the Prehearing Order setting forth the single Legal Issue for the Board to decide and established the final schedule for motions, briefing and the Hearing on the Merits.

B. Motions to Supplement

On February 13, 2003, the Board received Petitioner's Motion to Amend Respondent's Index and a Motion for Clarification.

On February 24, 2003, the Board received Respondent's Response to Petitioner's Motion to Amend Index and for Clarification.

C. Motions to Dismiss

On February 14, 2003, the Board received the City's Motion to Dismiss Petition along with Declaration of Susan Kasper and Darlene Kordonowy Supporting City's Motion to Dismiss Petition.

On February 24, 2003, the Board received Petitioner's Response to Motion to Dismiss along with four Exhibits.

On February 28, 2003, the Board received City's Reply to Petitioner's Response to City's Motion to Dismiss Petition along with Declarations from Rosemary Larson, Darlene Kordonowy, Stephanie Warren, and Susan Kasper.

II. DISCUSSION OF MOTION TO DISMISS

A. Positions of Parties

The City argues:

“The Petition filed in this matter indicates that Petitioner is challenging the City's adoption of Resolution No. 2002-05, dated March 13, 2002. In Resolution No. 2002-05, the City did not adopt or amend its Comprehensive Plan or development regulations. In Resolution No. 2002-05, the City repealed Resolution No. 2001-47, in which the City Council had adopted a street plan for Ericksen Avenue, to provide direction to the City's Department of Public Works in planning for and carrying out improvements to that street in the near future. The Petitioner did not file the Petition in this matter until December 13, 2002, nine months after the City passed Resolution 2002-5. The Petitioner did not “promptly” serve the Petition on the City, and in fact has never properly served the City. The Petition should be dismissed

for a multitude of reasons, including: (1) the Petitioner failed to properly serve the City with the Petition; (2) the Petitioner failed to commence this action within sixty days of the adoption of Resolution No. 2002-05; (3) the Board lacks jurisdiction over the subject matter of the Petition; (4) the Petitioner lacks GMA standing to challenge Resolution No. 2002-05; and (5) the Petitioner failed to state the issue proposed for the Board's determination with the requisite specificity. At the very least, the Board should dismiss the portion of Petitioner's claim/issue that relates to SEPA, because the Petitioner failed to allege SEPA standing in the Petition, and even if he had, Petitioner could not establish SEPA standing." City's Motion to Dismiss, at 1-2.

In the Petitioner's Response to Motion to Dismiss, the Petitioner argues that:

"No publication was made for Resolution No. 2002-05. A Resolution by City of Bainbridge Island is a policy statement, not an Ordinance or a law. (*see* exhibit 1)." Petitioner's Response, at 1.

The Petitioner continues:

"Notice of my Appeal was given to the City by e-mail on 12/10/03 directed to Randy Witt, Stephanie Warren, Rod Kaseguma and Mayor Darlene Kordonowy. *See* attached copy of that e-mail (exhibit 2)." Petitioner's Response, at 1.

The Petitioner maintains:

"There is no question of the Petitioner's standing. Over 2 years as a participant in the Comprehensive Plan Advisory Committee deliberations, three and a half years as a member of the WMP Citizens Advisory Committee and 5 months of 1998 as a Councilman of COBI." Petitioner's Response, at 2.

B. Applicable Law and Discussion

Matters that are subject to Board review are set forth in RCW 36.70A.280, which provides in relevant part:

(1) 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 RCW 36.70A.040 or chapter 90.58 RCW. (Emphasis added.)

The Board noted its limited jurisdiction in *Happy Valley Assoc. v. King County (Happy Valley)*, 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 (1993):

[The Board's] jurisdiction does not apply to all planning documents enacted by a local government. . . . Instead, *the Board's jurisdiction is limited to planning documents, such as comprehensive plans and development regulations, that were adopted in an effort to comply with the requirements of the GMA*. As this Board has repeatedly indicated in prior decisions [citations omitted], its subject matter jurisdiction is strictly limited to the matters specified in . . . RCW 36.70A.280(1). This conclusion is bolstered by the legislature's use of the word "only" in the quote above from the statute, and the fact that RCW 36.70A.300(1) indicates that a board's final decision ". . . shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto, adopted under RCW 36.70A.040 . . ." *Happy Valley*, at 13-14 (emphasis in original).

This Board has also held that "this chapter" as used in RCW 36.70A.280(1) refers to Chapter 36.70A RCW. *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.

In short, this Board has stated that its jurisdiction is generally limited to review of comprehensive plans and development regulations adopted, or amended, pursuant to Chapter 36.70A.280 RCW. Therefore, the question before this Board is whether Resolution No. 2002-05 adopted or amended the City's GMA Comprehensive Plan or development regulations. The Board concludes it does not.

Resolution 2002-05 simply repealed Resolution No. 2001-47, which was concerned with a street plan for Ericksen Avenue. The City's Resolutions appear to be policy statements and are not Ordinances or binding laws. Clearly, Resolution No. 2002-05 did not amend the City's plan or development regulations and is consequently, not subject to this Board's review.

Petitioner's claim that he properly served notice of the PFR to the City is untenable. The Board's rules do not permit the filing of any documents with the Board or any of the parties by e-mail. WAC 242-02-230 and WAC 242-02-240 specifically detail the conditions under which filings may be made by **electronic telefacsimile** transmission, not e-mail. No City employee or official can verify receipt of any e-mail serving a copy of Petitioner's PFR on the City. The Petitioner did fax a copy of the PFR addressed to the Mayor and received twenty-five (25) days after the PFR was filed with the Board. This does not meet the requirements of WAC 242-02-230 that the PFR shall be served promptly upon all other named parties.

C. Conclusion

Petitioner has failed to demonstrate to the Board that Resolution No. 2002-05 adopted or amended

the City's Comprehensive Plan or development regulations. Therefore, pursuant to RCW 36.70A.280(1) the Board lacks subject matter jurisdiction to review Resolution 2002-05 for compliance with the goals and requirements of the GMA. Additionally, the Petitioner has failed to properly serve notice of the PFR to the City. The Board will **grant** the City's motion and **dismiss with prejudice** the case of *Robison v. City of Bainbridge Island*, CPSMGHB Case No. 02-3-0020.

III. DISCUSSION OF SUPPLEMENTAL MOTIONS

Having granted the City of Bainbridge Island's Motion to Dismiss Petition, the Board need not and will not address Petitioner's Motion to Supplement the Index.

IV. ORDER

Based upon review of the PFR, Motions and supporting briefs and materials submitted by parties, the Act, Washington case law, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

- City of Bainbridge Island's Motion to Dismiss Petition is **granted**.
- CPSGMHB Case No. 02-3-0020, *Robison v. City of Bainbridge Island*, challenging the City's adoption of Resolution No. 2002-05 is **dismissed with prejudice**.
- The April 14, 2003 Hearing on the Merits in this matter is hereby **cancelled**.

So ORDERED this 6th day of March, 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member