

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

WILDLIFE HABITAT INJUSTICE )  
PREVENTION, BRUCE DELH, ED )  
NICHOLS, BUD SIZEMORE, JOEL and )  
GINAGUDDAT, DEBORAH JACOBSEN, )  
JON OWNES, and PATTI MELTON, )

Petitioners, )

v. )

CITY OF COVINGTON, )  
Respondent, )

LEE J. MOYER, )  
Intervenor )

**CPSGMHB Case No. 01-3-0026**

*(WHIP II)*

**Coordinated with**

\_\_\_\_\_  
WHIP, et al., )  
Petitioners, )

v. )

CITY OF COVINGTON, )  
Respondent. )

**CPSGMHB Case No. 03-3-0004**

*(WHIP III)*

**Consolidated with**

\_\_\_\_\_  
LEE J. MOYER )  
Petitioner, )

v. )

**CPSGMHB Case No. 03-3-0006c**

*(Moyer)*

**ORDER DENYING REQUEST TO**

CITY OF COVINGTON

AMEND PREHEARING ORDER

Respondent.

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**I. Background**

On March 25, 2003, following a continued prehearing conference, the Board issued its “Notice of Consolidation and Revised Prehearing Order” (PHO).

On April 24, 2003 the Board received a letter (*II Letter*) from Petitioner Moyer’s representative. The letter notes that Legal Issue 11 in the PHO combined issues 15.11, 15.12 and 15.13 from Moyer’s petition for review and “omits any mention of the procedural due process issue.” *II Letter*, at 1. The letter continues:

While the Board may not have jurisdiction to decide constitutional issues, it does have jurisdiction to determine compliance with Goal 6 (Property rights). City notices that violate procedural due process requirements do not comply with Goal 6 or the Growth Management Act. Thus the issue of procedural due process is a relevant issue for Board consideration in this case. Accordingly, we request the following addition to the language of Issue 11:

Has the City failed to comply with the notice and public participation requirements of RCW 36.70A.035, .130, .140 and its own public participation procedures embodied in Ordinance Nos. 29-01 and 32-00, and do the City’s notices comply with procedural due process requirements and RCW 36.70A.020 (6)?

This additional language to Issue 11 or a new issue incorporating Mr. Moyer’s Issues 5.11 will fully address our concerns.

*II Letter*, at 1-2; (underlined language in original).

**II. DISCUSSION**

WAC 242-02-558 provides, in relevant part:

[After the conclusion of the prehearing conference. . .] The presiding officer will issue an order reciting the action taken at the conference and any agreements of the parties or decisions of the prehearing officer. . . . *Any objections to such order shall be made in writing within seven days after the date the order is dated. . . .* The order

shall control ensuing proceedings unless modified for good cause by a subsequent order.

(Emphasis supplied).

The Board's PHO was dated and issued on March 25, 2003. Petitioner's letter objecting to the PHO and requesting a revision was received on April 24, 2003 – 30 days after issuance of the PHO. The time to object or request revisions to the PHO lapsed on April 1, 2003. Petitioner's request is untimely. The request to amend Legal Issue 11 in the PHO is **denied**.

However, the Board notes that Petitioner's Goal 6 (Property rights) challenge is reflected in Legal Issue 9. <sup>[1]</sup> Additionally, the *italicized* language following the statement of Legal Issue 11 states, "[Legal Issue 11 is] *Intended to cover Issues 5.11, 5.12 and 5.13, PFR, at 4.*" Thus, any argument Petitioner chooses to make within the confines of PFR issues 5.11, 5.12 or 5.13, should be made in the context of PHO Legal Issue 11.

### III. ORDER

Petitioner's request to amend the prehearing order is **denied**.

The PHO, issued March 25, 2003, continues to control the ensuing proceedings in this matter.

So ORDERED this 25<sup>th</sup> day of April 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G.  
McGuire, AICP Presiding Officer

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<sup>[1]</sup> Legal Issue 9 in the PHO states:

Has the City, in adopting the Ordinances, acted in an arbitrary, capricious and discriminatory manner to Petitioner in violation of Goal 6 (Property rights), RCW 36.70A.020(6)?