

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

CORINNE R. HENSLEY,	)	
	)	<b>Case No. 03-3-0015</b>
Petitioner,	)	<i>(Hensley VIII)</i>
	)	
v.	)	
	)	
SNOHOMISH COUNTY,	)	<b>ORDER ON MOTIONS</b>
	)	
Respondent.	)	
	)	

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**I. Procedural history**

On August 6, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Corinne Hensley (**Petitioner**). The matter was assigned Case No. 03-3-0015. Petitioner challenges Snohomish County’s adoption of Ordinance Nos. 03-049, 03-050, 03-051 and 03-052 amending the County’s GMA Plan and implementing regulations. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On August 11, 2003, 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 September 8, 2003, the Board conducted the PHC and issued a “Prehearing Order” (**PHO**) establishing the final schedule and framing the Legal Issues.

On September 19, 2003, the Board received “Snohomish County’s Dispositive Motion Re: GMA & SEPA Claims” (**County Motion**).

On September 26, 2003, the Board received “Hensley’s Response to Snohomish County’s Dispositive Motion Regarding GMA & SEPA Claims” (**Hensley Response**).

On September 29, 2003, the Board received “Reply Re: Snohomish County’s Motion to Dismiss Petitioner’s GMA & SEPA Claims” (**County Reply**).

The Board did not hold a hearing on the motions.

## **II. Discussion of motions**

### **Background**

In August of 2001, the Board issued a Final Decision and Order finding that Snohomish County's expansion of an Urban Growth Area did not comply with the requirements of the GMA and the

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Board invalidated the action. The UGA expansion was not done in accordance with the GMA and the County's own policies. Following issuance of the Board's decision, Maltby Christian Assembly filed a motion to intervene for purposes of reconsideration. The Board denied this motion, but granted intervention status for the compliance phase of the proceeding. The Board's denial was challenged in Superior Court and was remanded to the Board for reconsideration proceedings. The Board established a briefing schedule and conducted a remand and reconsideration hearing.

In December of 2002, the Board issued its Order on Remand and Reconsideration, regarding the

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Maltby UGA expansion. In that Order, the Board upheld and affirmed its finding of noncompliance and determination of invalidity. The Board remanded the challenged ordinances

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to the County with direction to take appropriate legislative action to comply with the GMA.

On June 17, 2003, Snohomish County adopted the following Ordinances, on remand, to comply with the GMA and Board Order: 1) Ordinance No. 03-049, amending the County's Plan, both text and FLUM; 2) Ordinance No. 03-050, amending the boundaries of the Maltby UGA; 3) Ordinance No. 03-051, amending the zoning code to create a public/institutional use designation (P/IU); and 4) Ordinance No. 03-052, amending the zoning map with an area-wide rezone for the Maltby UGA expansion. *See* Snohomish County Statement of Actions Taken to Comply, June 27, 2003.

After review of briefing and the materials submitted, and subsequent to the compliance hearing,

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the Board issued an Order finding that the enacted ordinances complied with the GMA. The Board's Order rescinded the determination of invalidity and entered a finding of compliance.

Petitioner then filed a motion to reconsider, which the Board subsequently denied.

On August 6, 2003, Petitioner Hensley filed the present PFR, challenging Snohomish County's adoption of Ordinance Nos. 03-049, 03-050, 03-051 and 03-052 – the same ordinances that were the subject of the compliance proceedings.

Following the prehearing conference, the Board issued its Prehearing Order (**PHO**) that established the final schedule for this matter and identified 10 Legal Issues to be resolved.

### Discussion

#### Position of the Parties:

In short, the County moves to dismiss the entire case, arguing that virtually all issues from the PFR and PHO have been previously resolved by the Board in the prior proceedings regarding the Maltby UGA. The County also asserts that if any issues remain, Petitioner does not have SEPA standing. County Motion, at 1-10.

In her response to the County's motion, Petitioner Hensley states, "To save this Board and the County time and paper, Petitioner respectfully withdraws Legal Issues One, Two, Three, Five, Six, Eight and Nine." Hensley Response, at 2. However, Petitioner contends that Legal Issues Four, Seven and Ten "deserve far greater discussion than the County gives service to." Hensley Response, at 2.

In reply, the County continues to contend that even these three remaining issues do not merit granting Petitioner a third opportunity to challenge the same ordinances. County Reply, at 4.

In light of Petitioner's withdrawal of numerous issues, which have been previously addressed by the Board, the three remaining Legal Issues in question, as stated in the 9/8/03 PHO, are as follows:

4. Did the County [Snohomish] fail to comply with the transmittal requirements of RCW 36.70A.106, when it adopted the Ordinances [Ordinance Nos. 03-049, 03-050, 03-051, and 03-052]? [*PFR issue III d, at 3.*]
7. Did the County fail to comply with the identification and designation of lands useful for public purpose requirement of RCW 36.70A.150, when it adopted the ordinances? [*PFR issue III g, at 3.*]

10. Did the County fail to comply with the environmental review requirements of Chapter 43.21C RCW, when it adopted the Ordinances? [*PFR issue III j, at 3.*]

Legal Issue 7. RCW 36.70A.150.

This section of the Act requires planning jurisdictions to identify lands useful for public purposes (**LUPP**). Examples of LUPPs include utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation, schools and other public uses. Counties are required to work with the state and cities within its borders to identify areas of shared need for public facilities and prepare a prioritized list of the needed lands and estimated acquisition dates. The jurisdiction's capital facility element must reflect the priority list and time schedule. RCW 36.70A.150.

In its motion, the County notes that none of the challenged ordinances amend or otherwise involve the County's capital facilities element or its capital improvement plan – which would be the proper vehicle for raising this issue. Instead, the challenged ordinances deal with UGA, land use and zoning designations and the text of the Plan and zoning code. In essence, the County contends that Petitioner's challenge is misplaced. County Motion, at 5.

Hensley does not quarrel with the County's procedures for doing facility planning with schools and other taxing districts, noting that schools are within the uses identified in RCW 36.70A.150. However, Petitioner contends that since several of the challenged ordinances identify churches, as well as schools, as Public/Institutional Uses, RCW 36.70A.150 therefore requires the County to identify needed church sites among its other LUPP. She asserts that the County did not identify needed church sites. Hensley Response, at 3-4.

The Board agrees with the County that none of the challenged ordinances provide the appropriate

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vehicle for this challenge. Additionally, in reviewing the list of LUPP examples set forth in the statute, the Board notes that it is unlikely that "church uses" would normally be identified as "other public uses" to be included within RCW 36.70A.150, as Petitioner suggests. The Board finds little merit to this assertion. However, if Petitioner wishes to advocate that the County exercise its discretion and include churches within its categorization of LUPP and map them, she may do so in the context of the County's 2004 Plan review, not in this forum, at this time. Therefore, Petitioner's Legal Issue 7 is **dismissed with prejudice**.

Legal Issue 4. RCW 36.70A.106.

This section of the GMA requires planning jurisdictions to notify the Department of Community, Trade and Economic Development of its intent to adopt plan or development regulation amendments at least sixty-days prior to final action. RCW 36.70A.106(3). It also requires the adopting jurisdiction to transmit a copy of the final action to CTED within 10 days of adoption. RCW 36.70A.106(2).

Hensley asserts that the Index shows that there was no notice or transmittal to CTED of the challenged ordinances prior to adoption. She also contends that the final transmittal of the adopted ordinances was sent to CTED “almost 30-days” after adoption. Hensley Response, at 2-3.

The County acknowledges its “oversight” and admits that “the ordinances were not submitted to CTED prior to their adoption.” County Reply, at 3. However, the County notes that it did ultimately transmit the ordinances, as required by RCW 36.70A.106(2) to CTED; and further argues that this deficiency was not raised by Petitioner during the compliance proceedings. The County urges that its failure to strictly follow RCW 36.70A.106 does not warrant a finding of non-compliance. County Reply, at 3-4.

Providing CTED with notice of pending actions is a critical part of CTED’s GMA coordination function, and it is not one to be dismissed lightly by the Board. It is a rare record presented to this Board that does not have a copy of CTED’s comments and recommendations on any given proposed action. However, in the context of this rather extended case, the Board will **dismiss** Petitioner’s Legal Issue 4 for the following reasons.

First, as Petitioner points out, RCW 36.70A.106 is silent as to whether its provisions include actions taken pursuant to a Board remand. Often, the Board prescribed period for corrective legislative action is compressed, and off the typical and regular annual cycle of review. Here, the challenged ordinances were adopted in the context of a Board Order of remand. During remand, *the Board has continuing jurisdiction over the County to see to it that compliance with the GMA is achieved*. In this matter, the Board concluded that the County’s action did address the basis for noncompliance found in the Board’s prior Orders and therefore complied with the goals and requirements of the Act.

Second, as the County points out, Petitioner did not raise this “deficiency” in the context of the compliance proceedings. A procedural defect or error during the remand proceedings, such as this or lack of notice and opportunity for public comment, is especially appropriate to raise in the context of the Board’s compliance process – before the Board renders its decision. This Petitioner did not do.

Third, the Board has already concluded in its 7/24/03 Order Rescinding Invalidity and Finding Compliance, that the substantive provisions of these Ordinances addressed the basis for finding noncompliance and invalidity as set forth in the Board's 8/15/01 FDO and the Board's 12/19/02 Order on Remand and Reconsideration. There are no substantive GMA compliance issues remaining in this case. If noncompliance with RCW 36.70A.106 is the only GMA issue in *Hensley VIII*, the only remedy available to the Board, is to remand the Ordinances to the County and allow CTED 60-days to comment. In light of the Board's prior conclusions regarding compliance and invalidity, this course merely institutes unwarranted and unnecessary delay.

Consequently, Petitioner's Legal Issue 4 is **dismissed with prejudice**.

Legal Issue 10. Chapter 43.21C RCW – SEPA.

Having dismissed all the GMA related issues posed in *Hensley VIII* (the underlying actions), there is no need for the Board to address whether Petitioner has SEPA standing. Petitioner's Legal Issue 10 is **dismissed with prejudice**.

**Conclusion**

Legal Issue 4, 7 and 10 are **dismissed with prejudice**. The County's motion to dismiss *Hensley v. Snohomish County (Hensley VIII)*, CPSGMHB Case No. 03-3-0015 is **granted**. *Hensley VIII*, CPSGMHB Case No. 03-3-0015 is **dismissed with prejudice**.

**III. ORDER**

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the Act, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following Order:

- The County's motion to dismiss *Hensley v. Snohomish County (Hensley VIII)*, CPSGMHB Case No. 03-3-0015 is **granted**.
- *Hensley VIII*, CPSGMHB Case No. 03-3-0015 is **dismissed with prejudice**.

So ORDERED this 8<sup>th</sup> day of October, 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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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.

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[1]

*See Hensley v. Snohomish County (Hensley IV)*, CPSGMHB Case No. 01-3-0004c, Final Decision and Order, (Aug. 15, 2001).

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*See Hensley IV*, CPSGMHB Case No. 01-3-0004c, Order on Remand and Reconsideration [Maltby UGA Remand], (Dec. 19, 2002).

[3]

The Ordinances involved in the original Maltby UGA expansion challenge were Ordinance Nos. 00-91 and 00-94.

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*See Hensley IV*, CPSGMHB Case No. 01-3-0004c, Order Rescinding Invalidity and Finding Compliance [Maltby UGA], July 24, 2003.

[5]

*See Hensley IV*, CPSGMHB Case No. 01-3-0004c, Order on Reconsideration, (Aug. 12, 2003).

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The Board notes that in *Sky Valley et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Compliance, (Oct. 2, 1997), the Board found that the County had complied with the requirements of RCW 36.70A.150. There is no evidence to suggest that the challenged ordinances alter the County's "Lands Useful for Public Purposes" map as found in its Plan.