

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

JOHN R. KALEAS, BRUCE W. HORST and FUTUREWISE,)) CPSGMHB Consolidated Case No.
)) 05-3-0007c
Petitioners,)) <i>(Kaleas)</i>
))
v.))
)) ORDER DENYING CERTIFICATE
CITY OF NORMANDY PARK)) OF APPEALABILITY
))
Respondent.)) King County Superior Court (No. 05-
)) 2-27090-0)
))

I. REQUEST FOR CERTIFICATE OF APPEALABILITY

On September 15, 2005, the Board received an “Application for Certificate of Appealability” (**Certification Request**) from the City of Normandy Park regarding the Board’s July 19, 2005 Final Decision and Order (**FDO**).¹ The Certification Request asks the Board to issue a Certificate of Appealability with the Superior Court of Washington for King County certifying this Board’s FDO for direct review by the Court of Appeals pursuant to RCW 34.05.518(6).

II. DISCUSSION

The Board’s authority regarding Certificates of Appealability is set forth in RCW 34.05.518, which provides in relevant part:

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.12B.005 and growth management hearings boards identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of Appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest **and either**:

- (i) Fundamental and urgent state-wide or regional issues are raised;
- or**
- (ii) The proceeding is likely to have significant precedential value.

(Emphasis supplied).

The Board is bound by the criteria established in RCW 34.05.518(3)(b)(i-ii) in determining whether to issue a Certificate of Appealability. In applying these criteria, the Board finds and concludes as follows:

¹ *John R. Kaleas, Bruce W. Horst and Futurewise v. City of Normandy Park (Kaleas)*, CPSGMHB Consolidated Case No. 05-3-0007c, Final Decision and Order, (Jul. 19. 2005).

Delay:

- Any detriment to the City of Normandy Park stemming from a delay in resolving their dispute with the Board's FDO is self-imposed by the City. Unlike Normandy Park, local governments throughout the Central Puget Sound (CPS) region, and the state, acknowledge, accept and do not dispute that 4 dwelling units per acre is an appropriate urban density – and have utilized this urban density in managing growth for over a decade. The issue of appropriate urban density has been accepted and settled since the mid-1990's. Thus, the assertion that these other planning jurisdictions [allegedly the “public interests” affected] will suffer due to Normandy Park's pursuit of this challenge is fallacious. Normandy Park chooses to call this accepted urban density into question as it applies to them.

State-wide or regional issues:

- In the FDO, the Board concluded that the City's low and medium density designations affecting approximately 84% of the land within the City were not appropriate urban densities that did not provide for compact urban development but perpetuated sprawl, contrary to RCW 36.70A.110 and .020(1). *Kaleas*, FDO, at 23. The Board found noncompliance and invalidated those designations as they applied to vacant, undeveloped or underdeveloped lands; invalidation did not affect any existing residential development. *Id.* at 25-26.
- As discussed *supra*, jurisdictions throughout the CPS region have acknowledged and not disputed that 4 dwelling units per acre is an appropriate urban density and have acted in a coordinated manner to incorporate this urban density into their comprehensive land use planning for over a decade.² Doing so has demonstrated coordination and provided predictability and certainty in managing growth and development throughout the region. Likewise, all jurisdictions in the CPS region were required to complete their Plan reviews and “compliance updates” by December 1, 2004. Most CPS jurisdictions have completed, or are completing, this required review. The region is moving on; “appropriate urban densities” is a Normandy Park issue, not an urgent CPS regional issue nor an urgent statewide issue.³
- The City noted the presence of pre-GMA existing covenants in its request for this Certificate of Appealability. The Board had no record on that issue and declined to address it since it was beyond the Board's jurisdiction. *Kaleas*, FDO, at 23. To the extent the City of Normandy Park relies upon such covenants to make its case, the Court should be aware that the Board's record lacks any specific information on this question.⁴ Further, the existence of such covenants, and their geographic coverage, would appear

² For example, King and Pierce Counties have incorporated reference to 4 du/acre as an appropriate urban density for lands within urban growth areas in their respective County-wide Planning Policies (CPPs). See King County CPP Framework Policy FW-1, Step 7 d; and Pierce County CPP on UGAs 6.1.

³ The Board notes that during the 2005 Legislative session a “failed bill” [SSB 5907] that proceeded the farthest through the legislative process would have granted “Rural Counties,” as defined in RCW 82.14.370(5), [no CPS cities or counties meet this definition] discretion to make choices about appropriate urban residential densities. Again, this legislation was not enacted.

⁴ No information was provided to the Board regarding how much of the City's land was affected by pre-GMA covenants. However, a copy of an existing covenant was part of the record.

to be unique to the City. Therefore, the Board concludes that resolution of this issue is not of statewide or regional significance.

Precedential value:

- Resolving Normandy Park's dispute, regarding what it views as appropriate urban densities under its perceived local circumstances [covenants included] for Normandy Park, will resolve the question for Normandy Park, and not have precedential value.

III. ORDER

Based upon review of the Board's prior Order in this matter, the City's Request for Certificate of Appealability, and review of the factors set forth in RCW 34.05.518, the Board ORDERS:

- The City of Normandy Park's Application for Certification of Appealability is **denied**.

So ORDERED this 26th day of September 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member