

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

In the matter of the Petition of CITY OF)
NORMANDY PARK for a Declaratory) **CPSGMHB Case No. 06-3-0032**
Ruling))
) **Hereafter: CPSGMHB Case No.**
) **06-3-0001pdr**
))
) **NOTICE OF DECISION NOT TO**
) **ISSUE A DECLARATORY**
) **RULING**
)

I. BACKGROUND

On September 22, 2006, the Board received a “Petition for Declaratory Ruling” (**PDR**) from the City of Normandy Park (**Normandy Park**). The matter was erroneously assigned CPSGMHB Case No. 06-3-0033.¹ **Hereafter, this matter is numbered as CPSGMHB Case No. 06-3-0001 pdr.** The City of Normandy Park appears uncertain as to how, or when, it may proceed in considering potential amendments to its Comprehensive Plan and Zoning Map. The City asks the Board to issue a declaratory ruling regarding the applicability of RCW 36.70A.130(2) to the City’s consideration of the potential amendments. Specifically, the City asks the Board to establish a schedule for filing written evidence and briefing to assist the Board in issuing a binding declaratory ruling that answers the following questions:

Can the City initiate review of a Comprehensive Plan amendment request filed by John R. Kaleas under RCW 36.70A.130(2) now, rather than waiting for the annual combined review, when this Board has entered a Finding of Compliance but Kaleas has an appeal pending before the Supreme Court?

Does the doctrine of *res judicata* bar review of Kaleas’s Comprehensive Plan amendment request, when the Supreme Court appeal of the Board’s original decision is pending?

Normandy Park PDR, at 2 and 7.

¹ The Board has traditionally assigned a distinct number to Petitions for Declaratory Rulings; a number different from Petitions for Review. To separate PDRs from PFRs the Board’s assigns a separate PDR case number with reference to the PDR in the notation.

On September 28, 2006, the Board received a Motion to Intervene from Jack Kaleas and Bruce Horst (**Motion**), indicating that although they “have appealed the superior court’s decision reversing the Board’s decision to the Supreme Court. [They] have applied to the City of Normandy Park for a Comprehensive Plan amendment and site-specific rezone of their property within the City.” Motion, at 1-2.

On October 3, 2006, the Board issued a “Notice of Petition for Declaratory Ruling” (**Board Notice**).

II. DISCUSSION

WAC 242-02-910 allows parties to petition the Board for a Declaratory Ruling. “Any person may petition the Board for a declaratory ruling about the applicability to specific circumstances of a rule, order, or statute within the Board’s jurisdiction.” WAC 242-02-910. The Board has discretion in determining whether to issue a declaratory ruling.

In *John R. Kaleas, Bruce W. Horst and Futurewise v. City of Normandy Park*, Order on Remand – King County Superior Court Final Order and Judgment – No. 05-2-27090-0 KNT (Kaleas Remand: CPSGMHB Case No. 05-3-0007c), (Jul. 31, 2006), the Board agreed that *Viking Properties v. Holm*, 155 Wn.2d 112, 118 P.3d 322 (2005) was controlling in the Normandy Park appeal before the Board. Additionally, the majority of the Board determined that it was compelled to defer to Normandy Park’s urban density designations *throughout the City* and found that Normandy Park’s Plan **complied** with the GMA. No further appeal of Normandy Park’s Plan or zoning is pending before this Board. However, Petitioners have sought direct review of the Board’s Order on Remand by the Supreme Court. Normandy Park PDR, Attachment A.

Apparently, one of the Petitioners, Petitioner Kaleas, has filed an application with the City requesting a Comprehensive Plan amendment and companion rezone *of his property* to a different urban density designation. Normandy Park PDR, at 3. Opponents to the potential Plan amendment and rezone for the Kaleas property have argued to the City that the Kaleas application is untimely pursuant to RCW 36.70A.130(2) *and* Normandy Park’s Municipal Code chapter 18.62.020. Kaleas’s representative contends it is not untimely. Normandy Park PDR, at 3-4; Attachments B, C and D. Apparently, the City has taken no action on the Kaleas application. Instead, the City turns to this Board and asks its advice as to when it should process the Kaleas application.

Notwithstanding the Board’s Declaratory Ruling provisions of WAC 242-02-910, RCW 36.70A.290(1) explicitly states, “The board shall not issue advisory opinions on issues not presented to the board in the statement of the issues, [in a petition for review] as modified by any prehearing order.” The City asks the Board to do what the GMA specifically prohibits. Given this statutory directive, especially in the context of the Board’s city-wide decision and one Petitioner’s limited request to alter Plan designations and zoning for his property, the Board **declines** to issue a declaratory ruling. Normandy Park’s request for a declaratory ruling is **denied**.

III. ORDER

Based upon review of the Petition for Declaratory Ruling, the submittals of the parties, the Board's rules of Practice and Procedure, the GMA, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

- The Board **declines** to enter a Declaratory Ruling in the present matter; the City's Petition for a Declaratory Ruling is **denied**.

So ORDERED this 20th day of October, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David A. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member