

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

CITY OF TACOMA,)	Case No. 06-3-0011c
)	
Petitioners,)	
)	(Tacoma IV)
v.)	
)	
PIERCE COUNTY,)	FINAL DECISION and ORDER
)	
Respondent,)	
)	
and)	
)	
WALLER ENTERPRISES LLC, and)	
SUMMIT WALLER COMMUNITY)	
ASSOCIATION)	
)	
Intervenors.)	
)	

SYNOPSIS

In December of 2005, Pierce County adopted a subarea plan for approximately 14,000 acres in Pierce County generally known as Mid-County. The Mid-County Community Plan (MCCP) and implementing development regulations [Ordinance Nos. 2005-93s and 2005-94s2] were timely challenged by the City of Tacoma. The City of Tacoma objected to the County’s designation and expansion of a Rural Neighborhood Center (RNC) [a limited area of more intensive rural development – LAMIRD]. The expansion consisted of adding a four-acre parcel, yielding a RNC of less than 10 acres. A former, now defunct, poultry processing facility constitutes the property of the expansion area. Environmental hazards are within the site and criminal activity has also been documented as occurring on the property. The RNC is located north of the intersection at 72nd Street and Waller Road and lies approximately 600 feet from the City Limits of Tacoma – an urban growth area.

The City argued that the existing RNC and expansion did not comply with the LAMIRD provisions of the GMA; the RNC and expansion were inconsistent with provisions of the Pierce County Comprehensive Plan regarding RNC spacing and expansion and that the MCCP’s RNC designation was internally inconsistent with MCCP provisions identifying the area for parks or trails. On each point, the Board disagreed and found that the City

of Tacoma had failed to carry the burden of proof in demonstrating noncompliance with the specified provisions of the GMA.

I. BACKGROUND¹

In February 2006, the Board received a petition for review (**PFR**) filed by the City of Tacoma (**Tacoma** or **City**), challenging Pierce County's (**County**) adoption of a Mid-County Community Plan (**MCCP**). The MCCP is a subarea plan for an island of Pierce County's designated Rural lands that are generally bounded by River Road (urban) on the north, Brookdale Road (urban) on the south, the City of Tacoma on the west, and the City of Puyallup on the east. There are approximately 14,000 acres within the MCCP area. The City's challenge was limited to the County's designation of a Rural Neighborhood Center (**RNC**) in the vicinity of Waller Road and 72nd Street. The County added approximately four acres to the RNC designation at the intersection, yielding an RNC of less than 10 acres.

Waller Enterprises LLC (**Waller**) also filed a PFR challenging the County and the City. Waller contended that the area should be included in Tacoma's urban area, or alternatively, Waller supported the County's expansion of the RNC. Waller's PFR was eventually **dismissed** on motions, but Waller was granted status as an intervener in support of the County. The Summit Waller Community Association (**SWCA**) also intervened in support of the County.

The parties sought and received a 90-day settlement extension in order to pursue settlement negotiations with the assistance of a mediator. In May, the Board was notified that the parties had failed to settle their dispute and the case proceeded as previously scheduled. Timely briefing was received by the Board throughout September and October. The briefs submitted are hereafter referenced as follows: **Tacoma PHB, County Response, Waller Response, SWCA Response** and **Tacoma Reply**.

On October 30, 2006, the Board held the hearing on the merits (**HOM**) at the Board's offices at 800 5th Avenue, Seattle. Board members Edward G. McGuire, presiding officer, David O. Earling and Margaret A. Pageler were present for the Board. Julie Taylor, Board Law Clerk, attended. Petitioner City of Tacoma was represented by Cheryl F. Carlson. Pierce County was represented by M. Peter Philley. Intervener Waller Enterprises LLC was represented by J. Richard Aramburu and intervener Summit Waller Community Association was represented by Daniel H. Haire. Also in attendance at the HOM were: Peter Huffman, Brian Boudat, Donna Stenger, Gene and Tony Rosso and Moani Russell. Court reporting services were provided by Katie A. Eskew of Byers and Anderson. The HOM convened at 2:00 p.m. and adjourned at approximately 4:00 p.m. No transcript of the proceeding was ordered.

¹ See Appendix A for the Procedural History in this matter.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the legislature directed the Boards to hear and determine whether the challenged actions were in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). *See Lewis County v. Western Washington Growth Management Hearings Board*, 139 P.3d 1096 (2006) ("The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations").

Petitioner City of Tacoma challenges Pierce County's adoption of the Mid-County Community Plan and implementing regulations, as adopted by Ordinance Nos. 2005-93s and 2005-94s2. Pursuant to RCW 36.70A.320(1), these Ordinances are presumed valid upon adoption.

The burden is on Petitioner to demonstrate that the actions taken by Pierce County are not in compliance with the goals and requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [Pierce County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Pierce County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to Pierce County in how it plans for growth, provided that its planning actions or policy choices are consistent with, and comply with, the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

The *Quadrant* decision is in accord with prior rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). As the Court of Appeals explained, "Consistent with *King County*, and

notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not ‘consistent’ with the requirements and goals of the GMA.” *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15, 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240 (2005). And *see*, most recently, *Lewis County*, 139 P.3d at fn. 16: “[T]he GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds.”

The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PREFATORY NOTE and PRELIMINARY MATTERS

A. BOARD JURISDICTION

The Board finds that the City of Tacoma’s PFR was timely filed, pursuant to RCW 36.70A.290(2); the City of Tacoma has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which adopts Pierce County’s Mid-County Community Plan and implementing development regulations, pursuant to RCW 36.70A.280(1)(a).

B. PRELIMINARY MATTERS

Oral Rulings at the HOM:

Three of the parties submitted “attachments” to their briefs that were not listed in the County’s Index as part of the record. These attachments were offered as “illustrative exhibits” or are documents that the Board may officially notice. Objections were made regarding Tacoma PHB Attachment A and Waller Response Attachments 1 and 2. After hearing argument, the Presiding Officer made the following oral rulings on the submitted attachments.

Tacoma PHB Attachments [A-D]:

- Attachment A – Illustrative map of the RNC including data on tables = **admitted, HOM Ex. 1**, map only for illustrative purposes.
- Attachment B – Narrative noting limitations on construction in City right-of-way = **admitted, HOM Ex. 2**.
- Attachment C – Assessor’s data on tax parcel 0320222132 (hereafter tax parcels will be indicated by the last four digits – *i.e.* **2132**) = **officially noted, HOM Ex. 3**.

- Attachment D – Pierce County Ordinance No. 2004-87s = **officially noted, HOM Ex. 4.**

County Response Attachments [A-F]:

- Attachments A, B and C – Assessor’s data on tax parcels 2039, 2132 and 0320261038 (hereafter **1038**) = **officially noted, HOM Exs. 5, 6 and 7,** respectively.
- Attachments D, E and F – PCC Chapters 18A.27, 18A.33 and 18J.70 – development regulations = **officially noted, HOM Exs. 8, 9 and 10,** respectively.

Waller Response Attachments [1-4]:

- Attachment 1 – Tacoma Land Use Intensity Map from the Tacoma’s Plan = **officially noted, HOM Ex. 11.**
- Attachment 2 – Growth Strategy & Development Concept Element from Tacoma’s Plan = **officially noted, HOM Ex. 12.**
- Attachment 3 – Illustrative map, building on HOM Ex. 1, showing Tacoma proposed UGA = **admitted, HOM Ex. 13.**
- Attachment 4 – Illustrative air photo showing same information as HOM 13 = **admitted, HOM Ex. 14.**

IV. LEGAL ISSUES AND DISCUSSION

THE CHALLENGED ACTION

Ordinance Nos. 2005-93S and 2005-94s2

In December 2005, the County adopted Ordinance No. 2005-93s, adopting the MCCP; and Ordinance No. 2005-94s, adopting implementing development regulations for the MCCP. Prior to adoption of the MCCP, the area was governed by the County’s Comprehensive Plan.² One of the amendments included in the County’s recent 2004 Plan Update provided:

Upon the initiation or update of a community plan in the rural area of the County, all rural centers shall be evaluated and updated as necessary to be consistent with the Growth Management Act provisions in RCW 36.70A.070(5) for Limited Areas of More Intensive Rural Development (LAMIRDs).

Pierce County Code (PCC) Section 19A.110.030.D.

² Pierce County’s County-wide Plan was reviewed and updated in 2004 by Ordinance No. 2004-87s.

The GMA's LAMIRD provisions were adopted in 1997 and were applicable to the 2004 Plan Update. Nonetheless, this Pierce County Plan provision made it clear that the GMA's LAMIRD provisions apply to rural centers in the rural areas (including the MCCP area) and that "rural centers" would be evaluated per the GMA's LAMIRD provisions.

The City of Tacoma challenges the County's designation of the area located at the intersection of 72nd Street East and Waller Road East as a Rural Neighborhood Center (RNC). The City asserts that it is challenging the *entire RNC designation* as found in the MCCP, while the County asserts that the City may *only challenge the expansion of the RNC* accomplished in the challenged ordinances, not the *existing* RNC.

The RNC is north of 72nd Street East, straddling Waller Road on the east and west; it is clearly less than 10 acres in size. One parcel [tax parcel 1038 – approximately two-acres] is in the alleged "existing" RNC and lies to the east of Waller Road. The other parcel in the alleged "existing" RNC is approximately one-acre [tax parcel 2132] and is west of Waller Road and northeast of a right-of-way owned by Tacoma's Water Utility (**Pipeline Road**).

The RNC "expansion" includes a portion of Pipeline Road [tax parcel 2136] and a triangular parcel of approximately four-acres [tax parcel 2039] that lies to the south and west of Pipeline Road and North of 72nd Street East. The four-acre expansion area is the property formerly known as the Pederson Fryer Farms site – a poultry processing facility that ceased operations and filed for bankruptcy in the mid-1990s.

As part of the County's enactment of the two challenged Ordinances, the County included Findings of Fact (**FoF**) – Ordinance No. 2005-93s, Exhibit C, and Ordinance No. 2005-94s2, Ex. F. Finding of Fact 40 to the Plan Ordinance and Finding of Fact 30 to the implementing regulation Ordinance are identical and provide the County's rationale for the RNC expansion at 72nd Street and Waller Road. The County's Findings of Fact state:

The County Council finds that the existing RNC at 72nd and Waller currently comprises 4 acres and includes parcel #0320261038 and a portion of parcel #0320262132. Both parcels contain commercial uses in existence prior to July 1, 1990. Parcel #0320262039, which is adjacent to the current RNC, is being added to the existing RNC. This parcel is approximately 4 acres in size and has a former poultry processing facility located on it. The several decades old processing facility ceased operations in the mid-1990s. Limited other business activity continues on the site. Expansion of the existing RNC is justifiable for the following reasons:

- The action should encourage redevelopment of parcel #0320262039 from its previous use. The abandonment of the poultry processing plant has left large vacant buildings available as

havens for vagrants and a dumping ground for meth labs and drug users. There are underground fuel storage tanks on the parcel, creating potential environmental hazards, as well. Since at least the late 1990's, the property has been held by a Chapter 11 Plan Administrator for the United States Bankruptcy Court. The Plan Administrator has sought to sell the property, but likely because of the limitations of the Rural Separator zone and designation, has not been successful. Demolition of the extensive existing building on the parcel and removal of the underground fuel tanks will be costly. Such costly endeavors are a discouragement to potential buyers.

- Parcel #0320262039 is located across the street from a new high school and presents a safety hazard to the students and faculty there as well as to the general public. The condition of the property is a crime breeding ground. According to a Pierce County Sheriff's Office "call for service" report covering January 1 through October 11, 2005, there have been 15 calls for Sheriff's service to this property during that roughly 9-month period. This is a tremendous drain on Sheriff Department resources. The conditions that currently exist on the property provide a perfect haven for burglary suspects to store and sell items, for drug addicts to make contact with dealers and ingest drugs, and for other criminals to have a place of seclusion for their illegal activities.
- Ensuring development of the poultry processing site is the socially and environmentally responsible thing for the legislative body to do for the community and the County. In balancing the sometimes conflicting goals of the GMA and the County's Comprehensive Plan – addressing prevention of sprawl, economic development, property rights, and environment – the Council has decided that this small expansion of the RNC at 72nd and Waller is in the best interests of the County and its residents.
- Expanding the urban growth boundary to include this site is not appropriate for the following reasons: the urban growth area is already larger than the County needs for 20 years (See Pierce County Buildable Lands Report); the urban growth areas for cities and towns are part of the entire County's urban growth area and so a city or town also cannot expand; the nearby City of Tacoma did not request an expansion in this amendment cycle or in the Compliance Update last year; the extension would be a "finger" sticking into the middle of the Rural Separator creating an irregular boundary; the finger would be the trigger for further extensions of the urban growth area, creating uncertainty for local residents; and local residents have overwhelmingly opposed inclusion in a UGA expansion likely to lead to annexation.
- Public facilities and services are currently available to the site.

- Design standards have been developed to ensure future development is designed to be consistent with the rural character of the surrounding area.
- The area is clearly delineated by the existing built environment and creates a logical outer boundary.

Ordinance No. 2005-93s, Ex. C, FoF 40, at 5; and Ordinance No. 2005-94s2, Ex. F, FoF 30, at 4. Any further reference by the Board to FoF 40 includes FoF 30 to Ordinance No. 2005-94s2.

A. LEGAL ISSUE NO. 1

The Board's PHO set forth Legal Issue No. 1

1. *Did Pierce County (the County) fail to comply with the Limited Areas of More Intensive Rural Development (LAMIRD) requirements of RCW 36.70A.070(5)(d) when it adopted Ordinance Nos. 2005-93s, amending the Mid-County Community Plan (the Subarea Plan) and Ordinance No. 2005-94s, amending its development regulations to designate, zone and expand property in the vicinity of East 72nd Street and Waller Roads (the Area), as a Rural Neighborhood Center (RNC)?*

Applicable Law

RCW 36.70A.070(5)(d) [Limited Areas of More Intensive Rural Development – LAMIRDs] provides in relevant part:

(d) Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

- (i) *Rural development consisting of the infill, development or redevelopment of existing commercial, industrial, residential or mixed-use areas, whether characterized as shoreline development, villages, hamlets or rural activity centers, or crossroad developments*
 - A. *A commercial, industrial, residential, shoreline, or mixed use area shall be subject to the requirements of (d)(iv) of this subsection but shall not be subject to the requirements of (c)(ii) or (iii) of this subsection.*
 - B. *Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or industrial area under this subsection (5)(d)(i)*

must be principally designed to serve the existing and projected rural population.

C. *Any development or redevelopment in terms of building size, scale, use or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of subsection (5)*

...

(iv) A County shall adopt measures to *minimize and contain existing areas or uses* of more intensive rural development, as appropriate, authorized under this subsection. *Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use*, thereby allowing a new pattern of low-density sprawl. *Existing areas are those that are clearly identifiable and contained and where there is a logical outer boundary delineated predominately by the built environment*, but that may also include undeveloped lands if limited as provided in this subsection. *The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and services in a manner that does not permit low-density sprawl.*

(v) *For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:*

A. *On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter.*

(Emphasis supplied).

Discussion

Prefatory Matter:

Will the Board's review extend to the entire RNC or just the 2005 RNC expansion? – The Board's review is limited to the RNC expansion accomplished by Ordinance Nos. 2005-93s and 2005-94s2.

Petitioner challenges Ordinance Nos. 2005-93s and 2005-94s2, adopting the M CCP and implementing regulations in December of 2005. This was the first adoption of a subarea plan for the Mid-County area. Prior to adoption of these Ordinances, the County's County-wide Plan, as recently updated by Ordinance No. 2004-87s, governed land use and development in this portion of the County's rural area. An RNC designation existed prior to the adoption of the M CCP for two parcels [tax parcels 1038 and 2132] north of 72nd Street and straddling Waller Road. See Maps depicting Existing Comprehensive Plan Land Use Designations and Existing Zoning, M CCP following page 23; and Ordinance No. 2005-93s, Exhibit C, Finding of Fact 40; and HOM Ex. 1. Ordinance Nos. 2005-93s and 2005-94s2 basically amended the *existing* RNC at 72nd and Waller Road to include the Pederson Farms parcel [tax parcel 2039].³ See Maps depicting Land Use and Zoning, M CCP following page 23, and Ordinance No. 2005-93s, Exhibit C, Finding of Fact 40; and HOM Ex. 1.

The challenged Ordinances did not create the RNC, but rather expanded it. The "existing RNC" apparently has been depicted in the County's Plan, and zoning, since the mid-1990's. Regardless of when the RNC designation first appeared, it is undisputed that the area was included as an RNC when the County adopted Ordinance No. 2004-87s, updating the County Plan. Therefore, the time for the City of Tacoma to challenge the "existing RNC" designation was following adoption of the Plan Update in 2004, not now in 2006. The Ordinances which the City challenge simply include the 4-acre expansion of the RNC in question. Consequently, **a challenge to the existing RNC is untimely and the Board will only address the expansion of the RNC accomplished by the challenged Ordinances.**

Position of the Parties:

The City correctly asserts that the RNC must comply with the provisions of the GMA governing limited areas of more intensive rural use [LAMIRDs – RCW 36.70A.070(5)(d)]. To demonstrate noncompliance, the City offers three arguments pertaining to Legal Issue 1. First, the boundaries of the LAMIRD created by the expanded RNC are irregular and illogical as drawn. Second, the expanded RNC is not principally designed to serve the existing and projected rural population. Third, uses permitted in the expanded RNC effectively permit urban growth, thereby failing to comply with the GMA's LAMIRD provisions. Tacoma PHB, at 11-22.

The thrust of the City's first argument is that since the RNC expansion includes right-of-way owned by the Tacoma Water Utility [Pipeline Road – tax parcel 2136], which cannot be developed, the parcel acts as a barrier to expansion of the RNC. And any expansion

³ The Board acknowledges that Pipeline Road, the right-of-way owned by Tacoma Water Utility [tax parcel 2136] was included in the RNC mapping. However, all the parties agree that City regulations limit construction, development or use of this parcel. In many ways, it is included in the designation to the same effect that Waller Road and 72nd Street are included in the RNC designation.

beyond this parcel to include the Pederson Farms site yields an irregular boundary, not a logical outer boundary to the RNC. Consequently, the City claims the RNC expansion violates RCW 36.70A.070(5)(d)(iv). *Id.*, at 11-15.

The County responds that,

The RNC boundary is limited to precisely those portions of parcels that had commercial uses located on them since well before 1990. The County cannot minimize and contain these existing uses any less. Moreover, it has not expanded the size of the RNC beyond those sites with pre-1990 uses. Simply put, the County is not allowing a new pattern of low-density sprawl.

County Response, at 4.

The County acknowledges that no structures may be built on Pipeline Road and contends that including non-developable right-of-way in the middle of the expansion does not affect the designated logical “outer” boundary of the RNC. *Id.* at 16. Intervenor Waller also emphasizes that “the County’s RNC zone is limited to only the actual area and boundaries of the former Pederson plant and does not extend the RNC zoning to adjacent properties that may have rural use.” Waller Response, at 11. Waller also argues that the City’s Plan indicates that this area should be urban and developed for commercial purposes. *Id.* Intervenor SWCA concurs with prior responses and adds that “The City’s Pipeline Road easement is also a roadway used by existing businesses and residents. Contrary to Petitioner, it would be illogical to limit RNC development to only one side of Pipeline Road.” SWCA Response, at 4.

The City’s second argument is that redevelopment of the Pederson Farms property will not be principally designed to serve the rural population, but instead will also serve the urban population located 600 feet away in the City of Tacoma and contribute to a pattern of sprawl in an area which would be more appropriately designated as urban. These concerns were clearly expressed by the City in the Mayor’s letter to the County. Ex. 91. Therefore, the City asserts the RNC expansion does not comply with RCW 36.70A.070(5)(d)(i)(B). Tacoma PHB, at 17-18.

In response, the County contends that the RNC is surrounded by rural lands, on paper and on the ground. County Response, at 16. The County acknowledges that Tacoma’s municipal boundary is nearby, and although the City would prefer the area to be designated urban, the County’s Buildable Lands Report indicated that the County’s UGA has excess capacity. *Id.* Therefore, what might have been possible in 2000 [including the area in the UGA], was not possible in 2005. *Id.* and FoF 40.

Intervener SWCA argues that there is no evidence that a commercial use within the expanded RNC would not serve the rural area. Intervener contends that within a mile of

the RNC on 72nd Street, the City of Tacoma has an existing commercial center to serve urban residents. SWCA Response, at 4.

The third LAMIRD argument the City makes is that although LAMIRDs permit the continuance and expansion of uses that existed in 1990, such authorization is not limitless. Tacoma PHB, at 18. The City then refers to prior decisions by this Board, specifically *Tacoma v. Pierce County (Tacoma II)*, CPSGMHB Case No. 99-3-0023c, Final Decision and Order, (Jun. 26, 2000), where the Board found noncompliance for a larger RNC at the same location, but extending closer to Tacoma. *Id.* at 19. The City contends that the range of uses the County permitted in the RNC is expansive and more akin to uses permitted in urban areas. *Id.* The City continues, “A cursory review of the allowed uses for the existing RNC reveals many uses that are not remotely similar to those that existed in 1990 [i.e. service station, grocery store or market].” *Id.* The City also asserts that “[T]he size of the new buildings that would be allowed range from 5,000 to 6,000 square feet as opposed to the less than 1,000 square feet of the existing structures [i.e. service station and convenience store].” *Id.* at 20.

The County responds that the GMA’s LAMIRD provisions do not indicate specific uses to be permitted in a LAMIRD, nor does it limit new uses to only those specific uses in existence in 1990. County Response, at 18. The County also refutes the City’s contention that existing structures on the site were less than 1,000 square feet. Based upon Assessor’s records, the County shows that the 12 structures on the Pederson Farm site range in size from 1,300 to 7,200 square feet. *Id.* at 17-18. Intervenor SWCA suggests the City overlooks existing 1990 uses in the RNC that included a restaurant, lounge, and several convenience stores. SWCA Response, at 5.

Board Discussion:

It is undisputed that the four-acre expansion housed an industrial use prior to July 1, 1990 and that it is easily identified by the many structures remaining on the site – it is a built environment. The western boundary of the LAMIRD expansion coincides with the parcel/property line and includes a portion of Tacoma’s right-of-way [Pipeline Road], which strictly limits development. The Board is not persuaded that the inclusion of Tacoma’ Pipeline Road right-of-way creates an irregular boundary as the City argues. The focus of the expansion is the Pederson Farms property, not the right-of-way. Adding this one parcel adjacent to City right-of-way and bounded by 72nd Street does not create an irregular boundary.

Likewise, the City’s assertion that the RNC is not principally designed to serve the rural population because of its proximity to the City limits is not persuasive. The RNC is located in an area designated as Rural by the County and it is surrounded by rural lands and uses. Redevelopment of the site will clearly provide services to those surrounding rural residents. The type of redevelopment that occurs on the site will affect the “draw” radius or market area. In our mobile society, any redevelopment of the property will likely serve urban residents in close proximity to the site as well. Nonetheless, the City

has not demonstrated that expansion of the RNC for redevelopment is not *principally designed to serve the existing and projected rural population*. Therefore, the County has not run afoul of this LAMIRD provision.

The question of proximity to the corporate boundary of the City of Tacoma is problematic from the Board's point of view. The City would prefer this area (and more) be included in an expanded urban growth area (UGA). Previously, the Board has also commented that, due to its proximity to the City, this area may be more appropriately included in the urban area.⁴ [See footnote 3, *infra*.] However, the County has not seen fit to do so, even though it has modified the configuration of its UGA in other instances. Further, the County indicates that it has adequate capacity within its existing UGA to accommodate projected growth without altering its UGA in this area and notes that the City has not recently pursued adjustment of the UGA in this area. Consequently, the Board defers to the County's current policy decision as to whether this area should be designated as urban or rural.

The City's last argument is that uses permitted in the RNC are more extensive than the 1990 uses and more extensive than previously permitted. The Board notes that the prior Pederson Farms poultry operation would likely fit in an industrial use category; yet the RNC designation does not permit industrial uses.⁵ Such a limitation appears to the Board to be less extensive and intensive than the prior use. Additionally, the City has pointed to nothing in Ordinance No. 2005-94s2 to indicate to the Board that the uses allowed in the RNC designation were changed. The fact that the expansion area is changed from a Rural Separator designation to RNC designation clearly means that *different* uses will be allowed on the site than were permitted by the prior designation. Further, the only distinctions in the *types* of commercial use that the Board can see between the RNC and the Rural Separator classifications are that the RNC allows: bulk fuel dealers, buy-back recycling centers, personal services, pet sales and service and sale of general merchandise. Compare Tables of Use Categories and Use Types, Ordinance No. 2005-94s2, Exhibit B, at 9-10. These uses are appropriate rural uses and none appear out of line with the general commercial uses existing in the RNC, and each are certainly less intensive than a poultry processing facility.

Conclusion

The Board concludes that Petitioner City of Tacoma has **failed to carry the burden of proof** in demonstrating that Pierce County's adoption of Ordinance Nos. 2005-93s or 2005-94s2, expanding the 72nd Street and Waller Road RNC, was clearly erroneous or failed to comply with the provisions of RCW 36.70A.070(5)(d) for LAMIRDs.

⁴ In *Tacoma II*, at 7-8, the Board commented that proximity to the City's municipal limits argued for inclusion in the UGA. Also in *Bonney Lake et al., v. Pierce County*, CPSGMHB Case No. 05-3-0016c, Final Decision and Order, (Aug. 4, 2005), at 44, the Board commented that being surrounded by UGA and bisected by a major state road, the Mid-County area should eventually be ripe for conversion to urban land.

⁵ See Ordinance No. 2005-94s2, Exhibit B Use Tables, at 10-11.

B. LEGAL ISSUE NO. 2

The Board's PHO set forth Legal Issue No. 2

2. *Did the County fail to comply with the requirements of RCW 36.70A.080 for consistency of subarea plans with the comprehensive plan by designating and expanding the Area as an RNC in the Subarea Plan [Ordinance No. 2005-93s] inconsistent with the County's requirements for rural centers in its comprehensive plan?*

Applicable Law

RCW 36.70A.080(2) provides in relevant part:

- (2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

Pierce County's County-wide Comprehensive Plan, as amended and updated by Ordinance No. 2004-87s, amending Pierce County Code (PCC) Section 19A.110.030.D provides in relevant part:

Upon the initiation or update of a community plan in the rural area of the County, all rural centers shall be evaluated and updated as necessary to be consistent with the Growth Management Act provisions in RCW 36.70A.070(5) for Limited Areas of More Intensive Rural Development (LAMIRDs).

Additionally, PCC Section 19A.110.040, Objective 4 provides:

Ensure consistency between the Comprehensive Plan and Community Plans.

The County's Plan, specifically related to Rural Neighborhood Centers [PCC Section 19A.40.060.G], provides:

Locations for Rural Neighborhood Centers should be determined by the following characteristics:

1. Having established commercial uses that provide for limited convenience shopping and services;
2. Having immediate access onto state routes, major or secondary arterials;
3. *New* Rural Neighborhood Centers should be located more than two miles from other Rural Centers. This limitation shall not apply to a community plan prepared or updated after January 1, 1998;

4. *New Rural Neighborhood Centers* should be located no closer than two miles from any satellite city Urban Growth Area or the Comprehensive Urban Growth Area boundary by way of the existing road network due to a significant topographic feature, e.g., body of water, cliff, etc.
5. *The boundaries of a RNC should be expanded only if:*
 - a. Based on evaluation of existing developable lands and unoccupied commercial building square footage, there is a demonstrated need to provide for more land in the area as RNC;
 - b. The RNC is located at least two miles from any satellite city Urban Growth Area or the Comprehensive Urban Growth Area Boundary or is located at least two miles from the applicable Urban Growth Area Boundary by way of the existing road network due to a significant topographic feature, e.g. body of water, cliff, etc;
 - c. The expansion of an existing RNC is compatible with a community plan prepared or updated after January 1, 1998, if applicable; **and**
 - d. Not within an area subject to a community plan prepared or updated after January 1, 1998, one of the following is met:
 - 1) The total area of the expanded RNC does not exceed ten acres; or
 - 2) The area of the existing RNC does not expand by more than 10 percent.

(Emphasis supplied.)

The Board notes that although **not at issue in this case**, the wording of PCC 19A.40.060.G.5 is perplexing and merits clarification by the County. For example, criteria 5a, b, c and d seem to be written in the conjunctive – suggesting that all four criteria are relevant in deciding whether to expand an RNC. However, criterion 5c and d are mutually exclusive – either the expansion area is within a community plan area or it is not; both criterion cannot apply. Applied to the present case, the four-acre expansion is *now* in a community plan area – MCCP – therefore, criterion 5d cannot be applicable in the present case. This leaves adherence to each of the first three criteria. However, criterion 5c appears only to apply to expanding an existing RNC in an *existing* community plan. Again, this is not applicable here since prior to the present action there was no community plan for the Mid-County area. Finally, how do criteria 5a and b interact, if at all, with criteria 5c or d?

Finally, PCC 19A.40.060.H provides, “Rural neighborhood centers should only provide limited convenience shopping and services which meet the daily needs of residents of the surrounding rural area.”

Discussion

Position of the Parties:

The City asserts that in adopting the MCCP, specifically the challenged RNC and expansion, the County did not adhere to explicit direction in the County-wide Plan providing that “all rural center areas shall be evaluated and updated to be consistent with [the GMA’s LAMIRD provisions].” Tacoma PHB, at 22-23. However, the City states,

[T]he majority of the property (54%) and the existing uses on the previously designated RNC are subject to the federal exemption for Native American Reservations. [Reference omitted.] Therefore, the City will not further discuss this portion of the RNC as the County’s designations have no effect on the present or future use of the property. As a result, only two uses within the previously designated RNC are subject to review for the LAMIRD evaluation criteria.

Id. at 23-24.

The City then contends that the portion of the “existing” RNC that is being challenged contains a “small convenience store” housed in a 960 square foot building and a service station, which was in existence on July 1, 1990. The City argues that due to the LAMIRD expansion’s proximity to the City of Tacoma city limits, the uses permitted do not principally serve the surrounding rural residents; therefore, the City contends this parcel does not meet the GMA’s LAMIRD criteria. *Id.* Additionally, the City asserts that the County’s record is devoid of any LAMIRD evaluation to comply with the County’s stated Plan requirement – PCC 19A.110.030.D. *Id.* at 25. As to the four-acre expansion area, the City argues there is no demonstrated need and the expansion is within two miles of the City limits, both contrary to PCC 19A.40.060.G.5(a and b). *Id.* 26-28.

In response, the County argues that only the four-acre expansion is subject to challenge, since the designation of the small convenience store and service station as RNC existed and was not changed by the challenged Ordinance; therefore, a challenge now is untimely. County Response, at 19. The County asserts that it has evaluated the RNC expansion for consistency with the GMA’s LAMIRD criteria. *Id.* The County also contends that the Plan provisions guiding the *expansion* of an RNC [PCC 19A.40.060.G.5] use the auxiliary verb “should,” which the County asserts is not strictly mandatory, nor totally discretionary. To the County, “should” means that the County has “limited discretion to vary from the directive if it justifies the variance in writing.” *Id.* at 21. The County then contends that Ordinance No. 2005-93s’ FoF 40 provides the written justification for varying from the expansion criteria and demonstrates the need to expand the RNC in order to foster [commercial] redevelopment of a problematic site. *Id.* at 25.

Intervenor Waller contends that redevelopment of the site for commercial purposes is not really at issue since the City’s Plan also indicates the site and general area are appropriate

for “Medium Land Use Intensity” uses, including commercial development. Waller Response, at 4-6. Intervenor SWCA questions whether the two-mile RNC spacing criteria has any application in the MCCP area, since the width of the MCCP area, at its widest point, is just over two miles. Consequently, the application of the spacing criteria to the MCCP area would prohibit *any* rural centers in the Mid-County area. SWCA Response, at 6. SWAC also asserts that need for the expansion is demonstrated because the citizens of the MCCP area testified they want additional convenience shopping opportunities. *Id.*

In reply, the City argues the County’s interpretation of the word “should” means the “County could do whatever it desired as long as it provided ‘written justification for the variance.’” Tacoma Reply, at 7. Instead of “varying” from the Plan criteria, the City suggests the County is “ignoring” nearly all of the criteria and substituting new criteria [*i.e.* those found in FoF 40]. *Id.* The City then points to a new Plan provision – PCC 19A.40.040,⁶ describing characteristics of an RNC – and contends that the County’s RNC designation ignores or does not address most. *Id.*, at, 7-9.

Board Discussion:

There is no question that the Mid-County Community Plan is a subarea plan as anticipated in RCW 36.70A.080(2). Therefore, Pierce County’s MCCP must be consistent with the relevant provisions of the Pierce County County-wide Comprehensive Plan.

In arguing its case, Tacoma explicitly excludes two parcels of the existing RNC from its challenge due to the trust-land status of those parcels. Further, as discussed in Legal Issue 1, challenging the remaining adjacent intersection parcel containing the grocery store and service station for compliance with the GMA’s LAMIRD provisions is untimely, since the parcel was previously included in the RNC designation. Likewise, the Board has concluded in Legal Issue 1 that the City did not demonstrate noncompliance with the GMA’s LAMIRD provisions regarding the expansion area. Thus, the RNC “parcel” before the Board is the four-acre former poultry processing facility site; and the question is whether the RNC expansion including that parcel is consistent with the specified County-wide Plan provisions.

Although the GMA sets forth the baseline requirements for the creation [or expansion] of LAMIRDs or rural centers, the County, laudably, has chosen to establish additional criteria in its County-wide Comprehensive Plan to further guide the creation and expansion of LAMIRDs. The County’s Plan includes criteria for creating *new* RNCs and *expanding existing* RNCs. See PCC 19A.40.060.G.3 and 4 for new and PCC 19A.40.060.G.5.(a) through (d) for RNC expansions. Relevant here are the provisions of PCC 19A.40.060.G regarding the expansion of an RNC, set forth *infra*.

⁶ Neither the City of Tacoma’s PFR nor PHB posed the question of compliance with PCC 19A.40.040; therefore, the City may not introduce it in its reply brief or at the HOM. See 3/31/06 PHO, at 7.

The County does not dispute that the RNC expansion is within two-miles of the UGA. However, the County claims that FoF 40 describes special and unique local circumstances and expresses the demonstrated need to expand the RNC in order to foster redevelopment of the parcel in question. FoF 40 expresses the County's characterization of the social and environmental problems associated with the property and the economic barriers experienced by the Bankruptcy Court's Plan Administrator given the site's prior classification as Rural Separator. Interestingly, the City does not dispute these findings. Nor does the City respond to the County's conclusion in FoF 40 that expansion of the RNC to encourage redevelopment is the "socially and environmentally responsible" action to take regarding this parcel. Therefore, the Board acknowledges that the RNC expansion is within two-miles of the UGA and accepts the characterization of the site by the County as posing environmental hazards, criminal/social problems, and facing economic barriers to development since the mid-1990s.

Given these facts, is the County's expansion of the RNC in the MCCP inconsistent with the County's County-wide Plan RNC expansion criteria? Are the criteria of PCC 19A.40.060.G.5 mandatory, discretionary, or somewhere in between?

If the Board construes the expansion criteria as mandatory, the expansion of the RNC is noncompliant since it is clearly contrary to the two-mile spacing criteria. Thus, the expansion parcel remains Rural Separator and the *status quo* is maintained. If the Board construes the expansion criteria as purely discretionary or permissive, the RNC expansion is compliant and redevelopment of the parcel may occur – but the weight and direction assigned to the expansion criteria of PCC 19A.40.060.G.5 is minimal and diluted.

The Board has previously opined that use of the word "should" in a planning document does not reduce the statement to a purely advisory declaration or convey complete discretion. Use of the verb "should" provides a measure of substantive direction and must be given weight; however, the word "should" imparts a lower level of direction than "shall." See *Cities of Poulsbo, Port Orchard and Bremerton v. Kitsap County (Poulsbo)*, CPSGPHB Case No. 92-3-0009, Final Decision and Order, (Apr. 6, 1993), at 27; and *Poulsbo*, Order Granting Kitsap County's Petition for Reconsideration and Modifying Final Decision and Order, (May 17, 1993), at 7.

Does the County's contention that "should" means that the County has "limited discretion to vary from the directive if it justifies the variance in writing" comport with the Board's prior decisions?

The Board finds that, as applied to the unique facts and local circumstances at issue here, it does. The Board's rationale is as follows. First, the GMA's *mandatory* LAMIRD provisions provide a safeguard and constrain unwarranted or excessive RNC creation or expansion. Second, the RNC expansion criteria adopted by the County are self imposed, to provide *additional* guidance for the creation and expansion of RNCs; they are not mandated by the GMA. Third, the County did not make the expansion criteria strictly

mandatory by using the word “shall,” but rather chose to provide a lower level of direction by using “should” to guide application of the criteria. Fourth, the County itself acknowledges it has “limited discretion” to depart from application of the criteria, indicating that generally the criteria provide a measure of substantive direction and are given weight in RNC expansion decisions. Fifth, the County provided a written description of the characteristics and circumstances affecting the site’s past and present use, its expectations for redevelopment, and written justification for its decision to expand the RNC [*i.e.* FoF 40].⁷ If the County had viewed compliance with the criteria as purely discretionary, no such written justification or finding of fact would have been necessary. Sixth, strict application of the two-mile spacing criteria to the MCCP area would have effectively precluded any new commercial uses within the entire 14,000 acre MCCP area. Finally, FoF 40 describes unique site-specific and localized circumstances that clearly merit deference to the County’s approach by this Board. Therefore, the Board finds and concludes that, given the County’s explicit expression of the unique facts and local circumstances [*i.e.* FoF 40], the County’s decision to expand the RNC, while varying from the criteria of PCC 19A.40.060.G.5, was **not clearly erroneous**. The City failed to carry the burden of proof in demonstrating that the County’s action failed to comply with the consistency provisions of RCW 36.70A.080.

Conclusion

The Board finds and concludes that, in this situation, the County’s decision to expand the RNC, while varying from the criteria of PCC 19A.40.060.G.5, was **not clearly erroneous**. The City **failed to carry the burden of proof** in demonstrating that the County’s action failed to comply with the consistency provisions of RCW 36.70A.080.

C. LEGAL ISSUE NO. 3

The Board’s PHO set forth Legal Issue No. 3

3. *Did the County fail to comply with the internal consistency requirements of RCW 36.70A.070 when it adopted the Subarea Plan’s RNC designation in the Area [Ordinance No. 2005-93s]?*

Applicable Law

RCW 36.70A.070(preamble) provides in relevant part:

The comprehensive plan of a county or city that is required to plan or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to

⁷ This site-specific rationale contrasts with broad and generalized “findings” and “recitals” that the Board frequently finds unpersuasive. *Compare DOE/CTED v. City of Kent*, CPSGMHB Case No. 05-3-0034, Final Decision and Order, (Apr. 19, 2006), at 44.

develop the comprehensive plan. *The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. . . .*

(Emphasis supplied). Since the MCCP is part of the County's County-wide Plan, it too must be internally consistent.

Discussion

Here, Petitioners assert that the MCCP is an internally inconsistent document because the RNC designation is inconsistent with numerous provisions of the Facilities and Services Element which each identify and recommend the "Pederson Farm properties at the northwest corner of 72nd Street and Waller Road" as a priority for either a regional, community, or neighborhood park, or as trail head or partial trail site.⁸ Tacoma PHB, at 28-32.

The County responds that the inclusion of the Pederson Farm property in the RNC expansion is not inconsistent with the noted policies for the following reasons: 1) The Pederson Farm properties *include parcels other than the one 4-acre parcel* included in the RNC expansion, *referring to "Proposed Park and Trail Acquisitions Map" MCCP*, following page 96, showing a larger "park" area; 2) Designation as RNC does not preclude the area from the possibility of being acquired as a park or trail; 3) The noted MCCP provisions clearly express the Community Planning Board's desire to establish more parks, but absent funding to actually acquire such lands they remain recommendations; 4) As an RNC, if the site is slated for more intensive development than allowed in a Rural Separator, if the County seeks to acquire it, the cost of acquisition for a park would likely be higher; 5) Current site conditions, dilapidated buildings and environmental hazards, would make County acquisition and development as a park or trailhead very expensive; 6) The County does not consider the City's right-of-way as part of the RNC designation, since development is precluded in such areas; and 7) The cited MCCP Plan provisions address the entire MCCP area and are far broader than the four-acre RNC expansion area. County Response, at 26-30. Intervener SWCA suggests a public trail along Pipeline Road would facilitate walking or biking to the RNC. SWCA Response, at 7.

The Board agrees with the County. Addition of these four acres to the RNC does not preclude development of other adjacent parcels as a park or trail. The MCCP provisions identify a desire and need for more regional, community, and neighborhood parks as well as trails within the MCCP area. The noted provisions identify and recommend numerous locations, sites, and areas where acquisition, dedication or easements should be considered as a means of meeting the community's desires. However, it is the County's

⁸ See MCCP, Facility and Services Element: Narrative text, at 90; Regional Parks Principal 4, Standards 47.4.1 and 47.4.3, at 95-96; Community and Neighborhood Parks Principal 4, Standard 48.4.1, at 98; Trails Principal 1, Standard 49.1.1, at 99; Trails Principal 3, Standard 49.3.4, at 101; and Partnerships, Principal 2, Standard 50.2.1, at 101.

Capital Facilities Element that specifies which parks and trails [capital projects] the County intends to, and is able to, pursue and develop. Such sites and improvements are specified, costs are indicated, and the revenue sources to cover the costs are identified in the six-year financing program. The M CCP makes no similar commitment by the County. The Board is not persuaded that the RNC expansion will preclude the development of a park or trailhead in the vicinity of 72nd Street and Waller Road or even on other properties owned or controlled by Pederson Farms. The Board finds and concludes that the City of Tacoma has **failed to carry the burden of proof** in demonstrating that the RNC expansion is inconsistent with the noted M CCP provisions.

Conclusion

The Board finds and concludes that the City of Tacoma has **failed to carry the burden of proof** in demonstrating that the RNC expansion is inconsistent with the noted M CCP provisions or the consistency provisions of RCW 36.70A.070.

D. INVALIDITY

The Board has not found that the County's adoption of Ordinance Nos. 2005-93s or 2005-94s2 was noncompliant with the challenged provisions of the GMA. Therefore, there is no basis or need for the Board to consider entering a determination of invalidity.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- Petitioner City of Tacoma has **failed to carry the burden of proof** in demonstrating that Pierce County's adoption of Ordinance Nos. 2005-93s and 2005-94s2 [adopting the Mid-County Community Plan and implementing development regulations] failed to comply with provisions of RCW 36.70A.070(5)(d), .070(preamble) or .080. Pierce County's adoption of the challenged provisions of these Ordinances was **not clearly erroneous**.
- The City of Tacoma's PFR is **dismissed** and the matter of *City of Tacoma v. Pierce County (Tacoma IV)*, CPSGMHB Case No. 06-3-0011c is **closed**.

So ORDERED this 27th day of November, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX A

Procedural Background

A. General

On February 23, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Tacoma (**City** or **Tacoma**). The matter was assigned Case No. 06-3-0009. The matter is hereafter referred to as *Tacoma IV v. Pierce County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner challenges Pierce County's (**Respondent** or the **County**) adoption of Ordinance Nos. 2005-93s and 2005-94s2 amending the County's Comprehensive Plan and development regulations regarding a "Rural Neighborhood Center" in the vicinity of E. 72nd Street and Waller Road. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**).

On February 24, 2006, the Board issued a Notice of Hearing in the *Tacoma IV* matter and set the prehearing conference for February 24, 2005, at the Board's office.

On February 27, 2006, the Board received a PFR from Waller Enterprises LLC (**Waller**). The case was assigned CPSGMHB Case No. 06-3-0011. Edward G. McGuire is also the PO in this matter. Waller too challenges Pierce County's adoption of Ordinance Nos. 2005-93s and 2005-94s2 amending the County's Comprehensive Plan and development regulations regarding a "Rural Neighborhood Center" in the vicinity of E. 72nd Street and Waller Road. Again, the basis for the challenge is noncompliance with various provisions of the GMA.

On March 1, 2006, the Board issued a Notice of Hearing and Order of Consolidation in the above-captioned matter. The Order consolidated the Tacoma PFR and the Waller PFR into one consolidated case – *Tacoma IV v. Pierce County*, CPSGMHB Consolidated Case No. 06-3-0011c.

On March 30, 2006, the Board conducted the prehearing conference at the Board's offices; on March 31, 2006, the Board issued the Prehearing Order in this matter.

On April 12, 2006, the Board received "Motion of Waller Enterprises to Become a Party or to Intervene." The County did not respond to the Motion to Intervene.

On May 1, 2006, the Board issued its "Order on Motion to Dismiss and Order on Intervention." The Board **granted** Waller Enterprises LLC intervener status on behalf of the County.

On May 3, 2006, the Board received "Summit-Waller Community Association's [SWCA] Petition to Intervene in City of Tacoma's Petition for Review" and "Declaration of Daniel Haire in Support of Summit-Waller Community Association's Petition to Intervene in City of Tacoma's Petition for Review." SWCA sought to intervene on

behalf of the County in support of the County's action in adopting Ordinance Nos. 2005-93s and 2005-94s.

The Board did not receive any responses to the SWCA Motion.

On May 15, 2006, the Board issued its "Order on Intervention" **granting** SWCA intervener status on behalf of the County.

On May 18, 2006, the Board received "Stipulated Motion for Settlement Extension" signed by representatives of the parties. The parties sought a 90-day settlement extension in order to pursue settlement discussions.

On May 19, 2006, the Board issued its "Order Granting Settlement Extension." The parties were given 90 days to pursue settlement and the case schedule was adjusted accordingly. The Board was informed that settlement negotiations had failed and the parties wished to proceed with the case as scheduled.

B. Motions to Supplement the Record and Amend the Index

On March 30, 2006, the Board received Respondent Pierce County's "Index to the Record" (Index).

On April 11, 2006, the Board received "Respondent Pierce County's Amended Index of the Record" (**Amended Index**).

There were no motions to supplement the record filed in this matter.

C. Dispositive Motions

On March 22, 2006, the Board received "Respondent Pierce County's Motion to Dismiss Petitioner Waller Enterprises" (**Co. Motion to Dismiss**). The County's motion asserts that the County was not served with Petitioner Waller Enterprises' PFR. Co. Motion to Dismiss, at 1-8.

On April 19, 2006, the Board received "Waller Enterprises Opposition to Pierce County's Motion to Dismiss." The Board did not receive any reply from the County regarding the Motion to Dismiss.

The Board did not hold a hearing on the dispositive motions.

On May 1, 2006, the Board issued its "Order on Motion to Dismiss and Order on Intervention." The Board **granted** the County's Motion to Dismiss Petitioner Waller Enterprises LLC for failure to serve the County.

D. Briefing and Hearing on the Merits

On September 25, 2006, the Board received “Prehearing Brief of Petitioner City of Tacoma,” with 4 attachments [A-D] and 21 exhibits from the record. (**Tacoma PHB**).

On October 11, 2006 the Board received “Prehearing Brief of Intervener Summit Waller Community Association;” no exhibits were attached to the brief. (**SWCA Response**).

On October 12, 2006, the Board received “Respondent Pierce County’s Prehearing Brief,” with 6 attachments [A-F] and 7 exhibits from the record. (**County Response**).

On October 13, 2006, the Board received “Hearing Brief of Waller Enterprises, LLC,” with 4 attachments and 2 exhibits from the record. (**Waller Response**).

On October 23, 2006, the Board received “Prehearing Reply Brief of Petitioner City of Tacoma,” with 3 attachments [A-c]. (**Tacoma Reply**).

On October 30, 2006, the Board held a hearing on the merits (**HOM**) at the Board’s offices in Suite 2356, 800 5th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer, David O. Earling and Margaret A. Pageler were present for the Board. Julie Taylor, Board Law Clerk, also attended. Petitioner City of Tacoma was represented by Cheryl F. Carlson. Respondent Pierce County was represented by M. Peter Philley. Intervener Waller Enterprises LLC was represented by J. Richard Aramburu; and Intervener Summit Waller Community Association was represented by Daniel H. Haire. Also in attendance at the HOM were: Peter Huffman, Brian Boudat, Donna Stenger, Gene and Tony Rosso and Moani Russell. Court reporting services were provided by Katie A. Eskew of Byers and Anderson. The hearing convened at 2:00 p.m. and adjourned at approximately 4:00 p.m. A transcript of the proceeding was not ordered.