

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

F. ROBERT STRAHM,)	
)	Case No. 06-3-0033
Petitioner,)	<i>(Strahm III)</i>
)	
v.)	ORDER GRANTING
)	DISPOSITIVE MOTION
CITY OF EVERETT,)	
)	
Respondent)	
<hr style="width:45%; margin-left:0;"/>		

I. PROCEDURAL HISTORY

On September 29, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from F. Robert Strahm (**Petitioner** or **Strahm**). The matter was assigned Case No. 06-3-0033, and is hereafter referred to as *Strahm III v. City of Everett*. Petitioner challenges the City of Everett’s (Respondent or Everett) adoption of Ordinance Nos. 2921-06, 2922-06 and 2923-06 adopting the City’s “Downtown Plan” and various zoning regulations to implement the Downtown Plan. The basis for the challenge is noncompliance with several provisions of the Growth Management Act (**GMA** or **Act**).

On October 2, 2006, the Board issued a “Notice of Hearing” setting November 2, 2006, as the date for a prehearing conference (**PHC**).

On November 2, 2006, the Board held the PHC, and on November 6, 2006, the Board issued its “Prehearing Order” (**PHO**). The PHO established the final schedule for this matter and framed the Legal Issues to be decided by the Board. Three Legal Issues were set forth in the PHO.¹

¹ Petitioner lists six Legal Issues in the PFR; three have “sub issues” included. See PFR, at 1-4, Legal Issues A - F. Each issue statement challenges the same provisions of the City’s Downtown Subarea Plan, and development regulations, specifically:

- 1) Downtown Subarea Plan – Land Capacity Analysis, chapter 6
- 2) Policy L-2, c and d – updating provisions of the Downtown Business (B-3) zone;
- 3) Figure 40 – proposed maximum height and floor area ratios for the proposed B-3 zone;

On November 22, 2006, the Board received “Respondent City of Everett’s Motion to Dismiss” (**Everett Motion**), with one attached exhibit.

On December 5, 2006, the Board received “Strahm’s Response to City’s Dispositive Motion” (**Strahm Response**), with three attached exhibits.

On December 11, 2006, the Board received “Respondent City of Everett’s Reply to Strahm’s Response to City’s Motion to Dismiss” (**Everett Reply**).

The Board did not hold a hearing on the motions.

II. DISCUSSION OF DISPOSITIVE MOTION

It is undisputed that the challenged Downtown Plan is a sub-area plan (with accompanying implementing regulations). In its Motion to Dismiss, the City of Everett makes a twofold argument: first, RCW 36.70A.110, .115, .130(3), and Snohomish County County-wide Planning Policy (**CPP**) UG-13 do not apply to sub-areas within a jurisdiction, because these GMA provisions require analysis and action at the citywide or

-
- 4) Everett Municipal Code (**EMC**) 19.22.020 B and C – Development Standards for the B-3 zone, Height of Building or Structure and Floor Area Ratios
 - 5) Map 22-1 – Maximum Building Heights and Floor Area Ratio Standards for B-3 Zone.

The Board will refer to these portions of the Plan and development regulations collectively as the “**Challenged Downtown Plan provisions**.” Additionally, the Board has revised and combined the Legal Issues as stated in the PFR as follows:

The first two issues relate to “Accommodating Growth,” the third relates to “Consistency of Plans and development regulations.”

- 1) Did the City of Everett fail to provide sufficient land to accommodate projected growth as required by RCW 36.70A.110(2), RCW 36.70A.115 and Snohomish County County-wide Planning Policy CPP UG-14 when it adopted the Challenged Downtown Plan provisions – including the supporting land capacity analysis? [*Intended to encompass Issues A, Ai and Aii; Issues B and Bi and Issue F, PFR, at 1-2 and 4.*]
- 2) Did the City of Everett’s failure to accommodate projected growth, also fail to comply with RCW 36.70A.130 requiring internal consistency and regulations to implement the Plan when it adopted the Challenged Downtown Plan provisions? [*Intended to encompass Issues C and Ci and Cii, PFR, at 3.*]
- 3) Did the City of Everett otherwise fail to comply with RCW 36.70A.040, RCW 36.70A.070 and RCW 36.70A.080 re: sub-area plan consistency] also requiring internal consistency and regulations to implement the Plan, when it adopted the Challenged Downtown Plan provisions? [*Intended to encompass Issue D and E, PFR, at 4.*]

See PHO, at 7-8.

countywide [jurisdictional] level; and/or second, the Board's ruling in *Strahm II v. City of Everett*, CPSGMHB Case No. 05-3-0042, Final Decision and Order, (Sep. 15, 2006) provides the relief Petitioner seeks (*i.e.* the remand in *Strahm II* required the City of Everett to demonstrate, on a city-wide basis, whether the City can accommodate the projected and allocated population and employment it has been assigned). Everett Motion, at 1. The City then sets forth the relevant language from the challenged sections of the GMA to support its assertion that these GMA provisions apply at the *jurisdictional*, not *sub-area* level:

RCW 36.70A.110(2): “include areas and densities sufficient to permit the urban growth that is projected to occur in the . . . *city* for the succeeding twenty-year period.”

RCW 36.70A.115: “provide sufficient capacity of land suitable for development *within their jurisdiction* to accommodate their allocated housing and employment growth as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.”

RCW 36.70A.130(3): “review the densities permitted *within its boundaries*.”

CPP UG-13: “use land capacity analysis methods that are consistent among *jurisdictions* to calculate holding capacity as approved by the SCT.”

Everett Motion, at 2-4; underlining in original, *italicized* emphasis supplied.

The City also explains that pursuant to *Strahm II*, it has embarked on a work plan² to respond to the remand and will show its work regarding the City's holding capacity, including that for the Downtown sub-area. The City notes that if its remand analysis indicates that capacity is not being met, it is up to the City to decide how it would provide needed density and that the Downtown or other parts of the City may be the focus of such corrective action. *Id.* at 4-5. Everett further notes that the compliance hearing in *Strahm II* is March 14, 2007, two weeks before the Final Decision and Order is due in this matter. Therefore, the City contends that their compliance action would make this case moot. *Id.* at 5.

Petitioner Strahm responds by asserting that the GMA clearly applies at the sub-area plan level. Strahm Response, at 1-5; *citing* RCW 36.70A.080, prior decisions by this Board and the Courts. Strahm also asserts that more than a city-wide land capacity analysis is being sought as relief by Petitioner in the present proceeding. Namely, Petitioner seeks

² See Attachment to Everett Motion entitled “City of Everett Work Plan for Response to GHB Order on Strahm Appeal.”

to have the Downtown Plan and development regulations found noncompliant and invalid. *Id.* at 6. Additionally, Petitioner notes that the City has not challenged Legal Issue 3 alleging inconsistency between the implementing regulations and the Downtown Plan; consequently, Strahm contends this issue is not part of the motion to dismiss. *Id.*

In reply, Everett acknowledges that Legal Issue 3 should not be included as part of the City's Motion to Dismiss; and that this issue needs to receive briefing on the merits. Everett Reply, at 2 and 6. The City acknowledges that sub-area plans must adhere to the GMA; but reasserts its position that the relevant GMA provisions require analysis or action on a city-wide level, not at the sub-area plan level. *Id.* at 1-4.

The Board agrees with the City. The relevant provisions of the GMA, regarding land capacity analysis or accommodating population and employment projections, bestow duties on jurisdictions as a whole – the city or the county. While sub-area plans are permitted under the GMA, and such plans must be consistent with the jurisdiction-wide plan of the city or county; the relevant provisions of RCW 36.70A.110(2), .115, and .130(3) do not apply to such sub-area plans. Nor does CPP UG-13 apply at the sub-area level. The jurisdictional plan must meet these requirements, and it, in turn, provides an umbrella for local sub-area plans. Therefore, the Board will **grant** the City's Motion. Legal Issues 1 and 2 will be **dismissed**.

The Board also agrees with the parties that the present motion is not applicable to Legal Issue 3. **Legal Issue 3 is the remaining Legal Issue in this proceeding.** It provides:

- 3) Did the City of Everett otherwise fail to comply with RCW 36.70A.040, RCW 36.70A.070 and RCW 36.70A.080 re: sub-area plan consistency] also requiring internal consistency and regulations to implement the Plan, when it adopted the Challenged Downtown Plan provisions? [*Intended to encompass Issues D and E, PFR, at 4.*]

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, and case law, the Board enters the following Order:

- The City of Everett's Motion to dismiss is **granted**.
- Legal Issues 1 and 2 in this matter are **dismissed with prejudice**.
- Legal Issue 3, as noted *infra*, is the remaining Legal Issue in this proceeding.

So ORDERED this 14th day of December, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
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.