

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

ROBERT CAVE and JOHN COWAN,)	
)	Case No. 07-3-0012
Petitioners,)	
)	
v.)	
)	ORDER ON MOTION
CITY OF RENTON,)	FOR RECONSIDERATION
)	
Respondent.)	
)	

I. PROCEDURAL HISTORY

On April 30, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Order on Motions” (**4/30/07 Order**) in the above-captioned matter. The Order provided, in part and specific, to the Petitioners’ challenge:

In regard to the Petitioners’ request that they should be permitted to amend their PFR, the Board notes that the GMA mandates that a jurisdiction’s actions be challenged within 60 days of publication. RCW 36.70A.290(2). To grant the Petitioners’ request would be in direct violation of .290(2). . . **The Board concludes that the Petitioners’ PFR did not specifically challenge Ordinance No. 5228 within their PFR and, pursuant to [RCW]36.70A.290(2), are time-barred from raising a challenge to that ordinance now. Therefore, the Petitioners’ request to amend their PFR to include this ordinance is DENIED.**

4/30/07 Order, at 8.

On May 10, 2007, the Board received Petitioners’ “Motion for Reconsideration” (**Petitioners’ Motion**) filed pursuant to WAC 242-02-832(2)(a).¹

On May 14, 2007, the Board issued an Order directing the City of Renton to file an Answer to the Petitioners’ Motion (**Board’s Directive**).²

On May 17, 2007, the Board received the City’s “Response to Petitioners’ Motion for Reconsideration” with attachments (**City’s Answer**).

¹ Pursuant to WAC 242-02-832(1), any party may file a Motion for Reconsideration within 10 days of service of the Board’s final decision.

² WAC 242-02-832(1) provides that the Board may require a party to supply an answer.

On May 21, 2007, the Board received the Petitioners' "Reply" to the City's Response.³

On May 23, 2007, the Board received the City's "Objection to Petitioners' Reply."⁴

II. MOTION FOR RECONSIDERATION

Petitioners argue that the Board misinterpreted the law when it determined that a challenge to Ordinance 5228 by the Petitioners was time-barred. According to the Petitioners, the GMA's 60-day appeal period is not triggered until an ordinance has been published "as required" by applicable laws and/or rules. Petitioners' Motion at 6. Specifically, Petitioners assert that the City violated RCW 65.16.160(1)(d), 36.70A.290(2)(a), and City Policy PPD 800-07 when it failed to provide a "section-by-section" summary of the Ordinance, thereby resulting in an Ordinance for which the 60-day time limitation had not yet begun to run. *Id.* at 3-5.

In addition, Petitioners cite to RCW 36.70A.035(1) for the premise that the purpose of publication is to provide notice that is "reasonably calculated to provide notice to property owners." *Id.* at 7. From this language and the "as is required to be published language" of RCW 36.70A.290(2)(a), Petitioners conclude that proper publication in accordance with statutory requirements is necessary to start the 60-day period and agreed that the GMA recognizes that, without such publication, there is no limit on a citizen's right to appeal. *Id.*

In response the City notes that as a non-charter optional Code City, it must publish the text or the summary of each ordinance at least once in the City's official newspaper. City's Response at 2 (citing RCW 35A.12.160). The City asserts that it complied with this requirement (citing Amended Index 342 – Affidavit of Publication and copy of publication).

The City further argues that PPD 800-07 only requires a section-by-section summary of an ordinance when the City is required to publish legal notice containing the full text of any proposed or adopted ordinances, a requirement which was not mandated in this situation. *Id.* at 3. In addition, the City asserts that PPD 800-07 does not repeal nor does it override RCW 35A.12.160 as the Petitioners would suggest. *Id.* at 4.

Lastly, the City argues that RCW 65.16.160 does not apply to the City because the statute is applicable to counties and not cities. *Id.*

³ No provision of WAC 242-02-832 authorizes the filing of a reply by the Petitioners. This section of the Board's Rules provides solely for a Motion for Reconsideration and an Answer to that Motion. The Board merely acknowledges receipt of the Petitioners' Reply.

⁴ The Board acknowledges receipt of the City's Objection.

Board Discussion

As discussed in the 4/30/07 Order, noted *supra*, Petitioners did not challenge Ordinance 5228 in their PFR, and the Board concluded that a challenge of that ordinance was time-barred. On reconsideration, Petitioner essentially asserts that they are not time-barred from a challenge, since publication was defective.

The notice of the adoption of Ordinance 5228, as published on December 1, 2006 in the *King County Journal*, stated:

ORDINANCE NO. 5228

An ordinance of the City of Renton, Washington, adopting the 2006 amendments to the City's 2004 Comprehensive Plan, Maps and Data in conjunction therewith.

Effective: 12/6/2006

Exhibit 12.

Ordinance 5228, with the exception of the "Whereas" recitals, states:

Section I: The "Comprehensive Plan," maps, data and reports in support of the "Comprehensive Plan" are hereby modified, amended and adopted as said "Comprehensive Plan" consisting of the following elements: Capital Facilities, Community Design, Land Use and Land Use Map, and Transportation as shown on Attachments A, B, C, D and E and incorporated herein as if fully set forth.

Section II: The Economic Development, Neighborhoods and Strategic Planning Department Administrator is hereby authorized and directed to make the necessary changes on said City's "Comprehensive Plan" and the maps in conjunction therewith to evidence the aforementioned five amendments.

Section III: The City Clerk is authorized and directed to file this ordinance as provided by law, and a complete copy of said document likewise being on file with the office of the City Clerk of the City of Renton.

Section IV: This ordinance shall be effective upon its passage, approval and five days after publication.

Exhibit 17.

The Petitioners question whether, for the purpose of calculating GMA's 60-day appeal period, Ordinance 5228 was *legally published*, asserting that the notice, as published, was not reasonably calculated to notify affected property owners and failed to comply with certain sections of the RCW and the City's Policies and Procedures.

As noted in the Board's 4/30/07 Order, RCW 36.70A.290(2) requires that petitions challenging whether a jurisdiction's actions are in compliance with the goals and requirements of the GMA must be filed *within sixty days after publication* and that the date for publication is *the date the city publishes the ordinance, or a summary of the ordinance, as is required to be published*. In both their original Response to the City's Motion to Dismiss and their Motion for Reconsideration, Petitioners attach great emphasis to the words – *as is required to be published* – interpreting this to mean that the City was required to publish a section-by-section summary to reasonably notify affected property owners of Ordinance 5228 as provided in RCW 36.70A.035, 65.16.160, and PPD 800-07, rather than merely meeting the requirements set forth in RCW 35A.12.160 as the City argues.

First, the Board notes that the Petitioners' reliance on RCW 36.70A.035 is misplaced. This section speaks to the GMA's public participation notice procedures in regard to *proposed* amendments to comprehensive plans and development regulations (*i.e. pre-action* notice) and not to notice of adoption of the *final* amendments (*i.e. post-action* notice), such as Ordinance 5228. RCW 36.70A.035(1).

Second, unlike the notice procedures set forth in 36.70A.035(1)(a)-(e) for a jurisdiction's actions prior to adoption of an ordinance, RCW 36.70A.290 does not provide specific guidance for what satisfies appropriate publication of the *final adoption* of an ordinance at the conclusion of the public participation process. As the Petitioners correctly point out, the only guidance is contained within .290(2)'s language - "*as is required to be published*." The Board reads this language to simply require that a jurisdiction must publish notice of its final actions (*i.e.* ordinances which amend the comprehensive plan or development regulations) as required by the applicable state law. Here, RCW 35A.12.160 sets forth publication requirements for ordinances adopted by non-charter code cities.

As a non-charter code city, RCW 35A.12.160 requires that the City of Renton publish the *text of each ordinance or a summary of the content of each ordinance* at least once in the City's official newspaper, with *summary* meaning a *brief description which succinctly describes the main points*. The Board has limited jurisdiction, with the Legislature granting the Board no authority to determine whether or not the City of Renton complied with RCW 35A.12. However, the Board notes that the notice published by the City was a *summary* and *succinctly describes the main points* of the ordinance.⁵ Therefore, for

⁵ The City's notice of adoption provided that the amendments to the Comprehensive Plan, maps, and related data had been adopted by the City. This notice is a summary of Section I of Ordinance 5228. As for Sections II through IV, these provisions of the Ordinance simply direct certain city officials to perform

purposes of RCW 36.70A.290's "as is required to be published" language, the Board finds and concludes that the City's notice of adoption **complies** with the Act.

As for RCW 65.16.160 and PPD 800-07, like RCW 35A.12, the Board has no jurisdiction to determine whether or not the City acted in compliance with the specific provisions of these enactments. However, the Board notes that RCW 65.16.160 *only* applies to *counties* and that the only reason it is relevant in this matter is due to PPD 800-07's reference to this statutory provision.⁶ In addition, as the City correctly notes, Section 6.2.2 of PPD 800-07 requires compliance with RCW 65.16.160 only when the *City is required to publish legal notices containing the full text of any ordinance*. The Petitioners provided no evidence to support an allegation that the full text of Ordinance 5228 was required to be published.

Conclusion

RCW 36.70A.290 unambiguously states that any petition for review must be brought before the Board no later than 60 days after publication of the challenged action. The Board strictly adheres to this GMA-mandated time limit. Although the GMA itself does not mandate a procedure for notice of publication of a newly-adopted ordinance, RCW 35A.12.160 requires that all non-charter code cities must promptly publish the text or a summary of an ordinance. The City of Renton passed Ordinance 5228 on November 27, 2006 and published its notice of adoption, in summary format, on December 1, 2006, just three days later. The Board finds and concludes that the City's December 1, 2006 publication triggered the GMA's 60-day appeal period. On April 5, 2007, within their Response to the City's Motion to Dismiss, the Petitioners requested to modify their PFR to include a challenge to Ordinance 5228, a request that occurred well beyond the appeal period deadline of January 31, 2007.

A motion for reconsideration must be based on alleged material errors of procedure, misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-832(2)(a)-(c). With the motion presented, the Petitioners allege a misinterpretation of law. Having reviewed the Petitioners' Motion for Reconsideration, the City's Response, and the relevant provisions of the GMA and the Board's Rules of Practice and Procedure, the Board affirms its previous conclusion – any challenge by the Petitioners to Ordinance 5228 is time barred. Consequently, the Petitioners' Motion is **DENIED**.

the duties necessary to effectuate the amendment and provide for the date that the ordinance becomes effective.

⁶ PPD 800-07's stated purpose is to establish guidelines and procedures for the presentation, preparation, and processing of ordinances and is not limited to GMA-related enacted but to *all* ordinances.

III. ORDER

1. The Petitioners' Motion for Reconsideration is **DENIED**.
2. The Board's April 30, 2007 Order on Motions in the matter of *Cave/Cowan v. City of Renton*, CPSGMHB 07-3-0012 is **AFFIRMED**.

So ORDERED this 24th day of May, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire
Board Member

Margaret A Pageler
Board Member

Note: This order constitutes a final order as specified at WAC 242-02-832(4).