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

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THE CITY OF LAKE STEVENS,	)	
	)	<b>CPSGMHB Case No. 09-3-0008</b>
Petitioner,	)	<i>(Lake Stevens)</i>
	)	
v.	)	
	)	<b>ORDER ON MOTIONS</b>
THE CITY OF SNOHOMISH,	)	
	)	
Respondent.	)	
	)	
	)	

**SYNOPSIS**

*On February 3, 2009, the City of Snohomish adopted Resolution No. 1224, which established a North Planning Area (NPA) north of and adjacent to the City of Snohomish Urban Growth Area (UGA). A Petition for Review ( PFR) was filed by the City of Lake Stevens alleging the City of Snohomish had, by its action, amended its Comprehensive Plan without following the proper procedure to meet the requirements of the Growth Management Act. After review of submitted briefs and the record, the Board determined Resolution No. 1224 was not an amendment to the City of Snohomish Comprehensive Plan and dismissed the case. [Subject Matter Jurisdiction; De facto Amendment.] A Motion to Supplement the Record was filed by the City of Lake Stevens. Because the Motion to Dismiss was granted, the Board did not address the Motion To Supplement.*

**I. BACKGROUND**

On April 1, 2009, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the City of Lake Stevens (**Petitioner** or **Lake Stevens**). The matter was assigned Case No. 09-3-0008, and is hereafter referred to as *Lake Stevens v. Snohomish*. Board member David O. Earling is the Presiding Officer (**PO**) for this matter. Petitioner challenges the City of Snohomish’s (**Respondent** or **Snohomish**) adoption of Resolution No. 1224. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**).

On April 7, 2009, the Board issued a “Notice of Hearing” in the above-captioned case.

On May 4, 2009, the Board conducted the Prehearing Conference.

On May 11, 2009, the Board issued its “Prehearing Order” that set the final schedule and legal issues to be decided.

1 On May 4, 2009, the Board received Snohomish’s “Respondent’s Document Index” (**Index**).

2  
3 On June 4, 2009, the Board received the City of Snohomish Motion to Dismiss.

4  
5 On June 15, 2009, the Board received Petitioner's Response to Respondent’s Motion to Dismiss.

6  
7 On June 18, 2009, the Board received the Snohomish Rebuttal to Motion to Dismiss.

8  
9 The Board did not hold a hearing on the dispositive motion.

10  
11 On June 5, 2009, the Board received the City of Lake Stevens Motion to Supplement the Record.

12  
13 On June 15, 2009, the Board received the City of Snohomish Response to Lake Stevens’ Motion  
14 to Supplement the Record.

15  
16 On June 18, 2009, the Board received the City of Lake Stevens Reply In Support of Its Motion to  
17 Supplement the Record.

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19  
20 **II. THE CHALLENGED ACTION**

21 On February 3, 2009, the City of Snohomish passed Resolution No. 1224, a resolution  
22 establishing a “North Planning Area” (NPA) north of and adjacent to the Urban Growth Area  
23 (UGA) of the Snohomish City limits. The contested area, in unincorporated Snohomish County,  
24 is currently identified as rural. While the County has further indentified the land as a Rural  
25 Urban Transition Area (RUTA), it has not been identified as an urban growth area (UGA).

26  
27 The City of Lake Stevens, through the filing of the Petition for Review (PFR) contends that the  
28 City of Snohomish action is a *de facto* amendment to the City’s Comprehensive Plan without  
29 following the process requirements of the Growth Management Act. The City of Snohomish  
30 contends the Resolution directs the staff to prepare for City Council amendments for  
31 consideration through the Comprehensive Plan amendment process.

32  
33  
34 **III. MOTION TO DISMISS**

35  
36 Legal Authority

37  
38 RCW 36.70A.280 Matters subject to board review.

39  
40 (1) A growth management hearings board shall hear and determine only those petitions  
41 alleging either:

42  
43 (a) .....as it relates to plans, development regulations, or amendments....

44  
45 RCW 36.70A.290 Petitions to growth management hearings boards---Evidence.

46  
47 (2) All petitions relating to whether or not an adopted comprehensive plan, development  
48 regulation or permanent amendment thereto.....

1 WAC 242-02-210 (2)  
2

3 The Board Rules of Practice and Procedure provide as follows:  
4

5 Any action may be dismissed by the Board:  
6

- 7 (3) Upon motion of the petitioner or respondent prior to the presentation of the respondent's  
8 case.  
9

10 While the Prehearing Order contains six legal issues for the Board to evaluate<sup>1</sup>, fundamental to  
11 the outcome of the case is Legal Issue No. 1:  
12

13 *Amendment to the Snohomish Comprehensive Plan. Does the adoption of Resolution*  
14 *1224 constitute a de facto amendment to the Snohomish Comprehensive Plan?*  
15

16 Should the Board find agreement with the Petitioner that the City of Snohomish violated the  
17 GMA by passage of Resolution 1224, thus creating a *de facto* amendment to the Snohomish  
18 Comprehensive Plan, then Legal Issues 2-6 would need to be adjudicated. Should the Board find  
19 Resolution 1224 to not be a *de facto* amendment and dismiss the case, the balance of the legal  
20 issues become moot. Should the Board find in favor of Snohomish, Petitioner's Motion to  
21 Supplement the Record would also become moot.  
22

23  
24 *Position of the Parties*  
25

26 The City of Snohomish moves the Board to dismiss the PFR in its entirety, contending the Board  
27 does not have jurisdiction over the matter, as the action taken by Snohomish is not an  
28 amendment to the Comprehensive Plan, *de facto* or otherwise. "Rather, the Resolution  
29 necessarily identifies territory that is to be addressed in the amendments it directs staff to  
30 prepare. This specific direction to staff ensures proposed amendments are appropriately drafted  
31 for Council consideration."<sup>2</sup> Snohomish contends future actions are needed to actually amend the  
32 Comprehensive Plan and it is these actions which would be challengeable.  
33

34 In response, Lake Stevens argues that the express language of Resolution 1224 results in a  
35 determination that it is a *de facto* amendment. Lake Stevens points to Sections Two, Three, Five  
36 and Six of the Resolution as demonstrated evidence supporting that Snohomish has pre-ordained  
37 the nature of the land use action.  
38

39 Both parties argue from different perspectives that *Alexanderson v. Clark County Bd. of*  
40 *Comm'rs, 135 Wn. App. 541, 144 P3rd 1219 (2006)* has bearing on the outcome of the Motion to  
41 Dismiss. Snohomish argues that unlike *Alexanderson*, the Snohomish Resolution is a unilateral  
42 action and not an enforceable agreement between two parties, as was the case with *Alexanderson*  
43 which involved a Memorandum of Understanding (MOU) between the parties.  
44

45 Lake Stevens contends the *Alexanderson* case does not require the creating of an "enforceable  
46 agreement" and, according to Lake Stevens, an MOU does not necessarily create contractual  
47  
48

49  
50 <sup>1</sup> PFR at 6-7

<sup>2</sup> City Motion to Dismiss at 3

1 obligations but merely “understandings” between the parties. Lake Stevens points out that in  
2 *Alexanderson*, the Court of Appeals looked at the actual effect of the MOU, from which it  
3 concluded an amendment to the Comprehensive Plan had resulted.  
4

5 Board Discussion  
6

7 The Board acknowledges Snohomish uses very aggressive “present” language throughout the  
8 Resolution. The very title of the Resolution includes...“*Establishing a North Planning Area*”. In  
9 addition to the title, the THEREFORE section has present action language. Section Two states  
10 the City Council “*hereby adopts a North Planning Area (NPA)*” and Section Three states that  
11 “*the City shall proceed with comprehensive planning for land within the NPA.*” Words used in  
12 the Resolution such as “*establish*”, “*adopt*” and “*proceed*” all denote completion of action.  
13 Needless to say, the language is aggressive and assertive.<sup>3</sup>  
14

15 At the same time, language in the Snohomish Resolution appears to recognize the land in  
16 question is under Snohomish County’s control and not in the City’s UGA. The title of the  
17 Resolution itself recognizes the land is adjacent to the City’s UGA and “*urges*” the Snohomish  
18 County Council to incorporate the NPA boundary into the Snohomish County Comprehensive  
19 Plan. Similar language is found in Section Five of the THEREFORE of the Resolution which  
20 “*urges Snohomish County to incorporate the NPA adopted...and to incorporate this boundary*  
21 *[in the County’s Comprehensive Plan].*” Words such as “*urges*”, “*adopt*” and “*recognize*”  
22 indicate Snohomish acknowledges the process is not completed. This language is clear and does  
23 not presume to assert actual control in the area outside the City of Snohomish UGA.  
24  
25

26 The Board acknowledges the THEREFORE in Section Six can be read two ways. Snohomish  
27 argues the Resolution is merely directing staff to prepare amendments related to the NPA for  
28 further consideration and future vote under proper GMA procedures. As interpreted by Lake  
29 Stevens, the Resolution directs staff to prepare *pro forma* amendments to comply with what  
30 Snohomish has already done, in effect a pre-ordained result.  
31  
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33 This case differs from *Alexanderson* first, in that no MOU or agreement between two  
34 governmental entities is involved and thus there is no enforceable agreement in place. And while  
35 a unilateral action may be seen as an amendment, in this case – while the Board views the  
36 language in the Resolution as overly aggressive – at the same time, the City of Snohomish  
37 acknowledges the land in question is only adjacent to the City UGA and is fully controlled by  
38 Snohomish County as a rural area outside the County’s UGA.  
39

40 The second fact distinguishing this matter from *Alexanderson* is that in *Alexanderson*, the  
41 County had planning jurisdiction over the land that was subject to the MOU, while in this case,  
42 the City of Snohomish does not have planning jurisdiction over the proposed NPA. The proposed  
43 NPA is under County planning jurisdiction and cannot even be included in the County’s UGA  
44 without complying with GMA requirements such as land capacity analysis. There can be no *de*  
45 *facto* amendment by the City of Snohomish.  
46  
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50 <sup>3</sup> The Board is aware of the long standing disagreement between Lake Stevens and Snohomish in this matter. The parties would do well to not use language that is incendiary in nature.

1 The Board does not view the Resolution as an amendment to the City of Snohomish  
2 Comprehensive Plan. Because the Board does not accept the premise of the Resolution as an  
3 amendment to the City of Snohomish Comprehensive Plan, and the land in question lies outside  
4 the City of Snohomish UGA, but within Snohomish County's control, the Board does not have  
5 jurisdiction over the matter.<sup>4</sup> Without jurisdiction in the matter, the City of Snohomish Motion to  
6 Dismiss the PFR is **granted**.  
7

8  
9 When and if the City of Snohomish actually amends its Comprehensive Plan, then the challenges  
10 can come.

11  
12 As noted *supra*, because the Board is dismissing Legal Issue 1, the Board need not and will not,  
13 address Legal Issues 2-6 in the Motion to Dismiss. The Board for the same reason will not  
14 address the Petitioner's Motion to Supplement.

15  
16 **III. ORDER ON MOTION TO DISMISS**  
17

18  
19 Based upon review of the GMA, Board's Rules of Practice and Procedure, briefing and exhibits  
20 submitted by the parties, case law and prior decisions of this Board, and having deliberated on  
21 the matter, the Board enters the following ORDER:  
22

- 23 1. The City of Snohomish's Motion to Dismiss is **granted**.
- 24 2. The Petition for Review in *The City of Lake Stevens v. The City of Snohomish* is  
25 **dismissed**.
- 26 3. CPSGMHB Case No. 09-3-0008 is **closed**.  
27  
28  
29

30 This Order of Dismissal should not be construed as a Board determination as to whether  
31 Resolution No. 1224 substantively complies with the relevant goals and requirements of the  
32 GMA.  
33

34 So ORDERED this 6th day of July, 2009.  
35

36 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD  
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42 David O. Earling  
43 Board Member  
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49 <sup>4</sup> RCW 36.70A.110(7)

50 An Urban Area designated in accordance with this section may include within its boundaries urban areas or potential  
annexation areas designated for specific cities or towns within the county.

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Margaret A. Pageler  
Board Member

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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.