

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

MICHAEL L. ACHEN AND CATHERINE	)	
J. ACHEN,	)	
	)	No. 99-2-0040
Petitioners,	)	
	)	ORDER RE:
v.	)	MOTION TO DISMISS
	)	)
CITY OF BATTLE GROUND,	)	
	)	
Respondent.	)	
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On January 14, 2000, Respondent City of Battleground filed a motion to dismiss the petition for review (PFR) on jurisdictional grounds. Petitioners filed a response on January 26, 2000, and we held a telephonic hearing on February 11, 2000. We deny the City’s dispositive motion.

In its motion and argument the City contended that the “subject matter” of the PFR concerned the City’s adoption of amendments to its impact fee ordinance. Citing the recent Court of Appeals decision in *New Castle Invs. v. City of La Center* 98 Wn.App. 224 (1999) (*La Center*) and our earlier case of *Properties Four v. Olympia* , Case #95-2-0069 (FDO 8-22-95) (*Properties Four*) for the proposition that impact fee ordinances do not qualify as development regulations (DRs), the City asserted that no GMHB jurisdiction existed.

The City recognized that the PFR also challenged the City’s amendment to its capital facilities element (CFE) of its comprehensive plan (CP). The City argued that since the impact fee issue was “inextricably related” to the non-jurisdictional impact fee question that no jurisdiction existed even for the CFE amendment. Finally, the City concluded that since the “fire protection” portion of the amended ordinance was not a “requirement” of RCW 36.70A.070, the provisions of RCW 36.70A.280(a) did not allow a GMHB to acquire jurisdiction in this case.

Petitioners noted that RCW 36.70A.280(1)(a) provides jurisdiction to determine whether

compliance with the requirements of RCW 36.70A was achieved. Since a CFE is required by section .070, jurisdiction attaches to any amendment to the CFE. Petitioners also contended that RCW 36.70A.030(7) defining a DR to be “controls placed on development or land use activities,” which Petitioners contended was the situation under this record, jurisdiction over the impact fee amendments would be acquired.

Recently, in *Evergreen Marketplace, LLC., et al., v. City of Washougal*, Case #99-2-0042 (MO 2-17-00), we reiterated the criteria to be used in a dispositive motion determination. Among those criteria were a combination of the facts derived from the limited record available and the uniqueness of the issue presented. In this case we find that the limited record available does not conclusively support the City’s position. Recent Court of Appeals cases including *La Center* case and *Des Moines v. Puget Reg’l Council*, 97 Wn.App. 920 (1999), have given us pause to reexamine our earlier holdings that “this chapter” found in Section .280(a) limits the jurisdiction of a GMHB regardless of how the statutory section in question was codified outside RCW 36.70A. We recognize that the Legislature’s direction to codify impact fees under Chapter 82.02 is a significant one, nonetheless, we are not convinced at this point that jurisdiction over impact fees does not attach.

Additionally, as noted in *Properties Four* and *La Center* the question of whether an impact fee equals a DR is determined by whether the legislative enactment places “controls” on development or land use activities. As we pointed out in *Properties Four* it is possible for an impact fee ordinance to qualify as a DR. In this case we are not willing to make that determination without a full review of the record at the hearing on the merits (HOM).

Finally, the City misreads the provision of RCW 36.70A.280(1)(a) in its claim that impact fees are not “requirements” of the GMA. That jurisdictional section provides that a GMHB determines compliance with the GMA for amendments to the CP. The issue is not whether the amendment to the CFE was required by the GMA, but rather, having adopted an amendment to the CFE, whether the City has complied with the GMA.

The dispositive motion is denied. A denial of the dispositive motion simply reserves the issue for the HOM. The parties are allowed, but not required, to further brief and argue the issue at the

HOM.

So ORDERED this 17<sup>th</sup> day of February, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Board Member

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Board Member

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Board Member