

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

JUDY LARSON and HARRY GASNICK)	
Petitioners,)	No. 01-2-0021
)	
v.)	ORDER DENYING
)	DISPOSITIVE
)	MOTIONS
CITY OF SEQUIM)	
)	
Respondent,)	
)	

The amended petition for review was filed in this case on October 12, 2001. At various times the City of Sequim filed memoranda and/or a motion to dismiss which were received on October 16, 2001, October 22, 2001, and October 30, 2001. Petitioners filed a response to the motion on November 7, 2001. A telephonic motions hearing was held on November 15, 2001. At that hearing, the parties agreed that Mr. Eldridge, who was the settlement officer, was free to participate as a Board member in this case.

The City based most of its challenges upon the representation that at the time the comprehensive plan (CP) was amended, the City also adopted a concomitant rezone of the approximately 53 acres of single-ownership property. The CP amendment and rezone changed the designation from single-family residence to a higher residential density. The City contended that “due process” and the fact that the owner now had acquired a “vested” right, mandated that the case be dismissed on constitutional grounds since the owner had not been made a party. The City also contended that under non-constitutional grounds the owner of the 53 acres was an indispensable party, that a failure to challenge the rezone under the Land Use Petition Act (LUPA) rendered the remedy available as to the CP amendment moot, and that the State Environmental Policy Act (SEPA) issue was moot because the initial determination had been challenged and the City upheld the mitigated determination of nonsignificance (MDNS).

We note that the provisions of the Sequim Municipal Code 18.88.070 specifically direct that appeal of an amendment to the CP “shall be filed with ...the Western Washington Growth Management Hearings Board in accordance with the provisions of Chapter 36.70A RCW.” Additionally, the

Growth Management Act (GMA, Act) specifically directs that amendments to the CPs and/or development regulations (DRs) are within the jurisdiction of a GMHB. The Act specifically states in RCW 36.70A.030(7), that a development regulation does not include “a decision to approve a project permit application, as defined in RCW 36.70B.020...”

The original and amended PFR in this case challenge the CP amendment for compliance with the GMA. This is exactly the job the Legislature directed GMHBs to complete. GMHBs are not authorized by the Legislature to decide constitutional issues, vesting, or matters associated with other types of land use challenges. *Skagit Surveyors v. Friends*, 135 Wn.2d 542, 565 (1998). The issue in this case cannot be considered to be moot because it is exactly the decision the GMA requires we make. RCW 36.70A.300. It is for a different forum to determine what, if any, vested rights accumulated with the rezone approval. It is also for a different forum to specifically decide how a finding of noncompliance and/or a determination of invalidity, if issued, might impact a particular owner’s property.

There are no provisions in the GMA for notice to or joinder of the property owner as an indispensable party. Thus, we have no authority to impose such a requirement and no ability to dismiss the case because of a failure to have the property owner a party to this proceeding.

It appears from this record that the MDNS cited by the City was one for a specific permit application which was ultimately denied by the City. That is not a reason to reject the SEPA issue presented by the PFR.

Petitioners are not required to challenge the entire ordinance that encompassed the CP amendment, but only those provisions which petitioners believe did not comply with the GMA. The City is free to argue that based upon a review of the entire action taken, compliance has been achieved.

The City’s motion is denied.

So ORDERED this 3rd day of December, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member