

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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DANIEL J. EVANS, BOOTH GARDNER, ALBERT  
D. ROSELLINI, RALPH MUNRO, NORMAN J.  
JOHNSTON, THE PORTICO GROUP, MICHAEL S.  
HAMM, OLYMPIA ISTHMUS PARK ASSOCIATION,  
GERALD REILLY, FRIENDS OF THE  
WATERFRONT and ROBERT V. JENSEN,

Petitioners,

v.

CITY OF OLYMPIA,

Respondent,

And

TRIWAY ENTERPRISES, LLC, a Washington  
limited liability company, and CAPITAL SHORES  
INVESTMENTS, LLC, a Washington limited liability  
company,

Intervenors.

Case No. 09-2-0003

**ORDER ON MOTIONS TO STRIKE  
OR FOR MORE DEFINITE  
STATEMENT**

This matter came before the Board on motions to strike and for more definite statements (hereinafter, the "Motions") filed by the City of Olympia (City)<sup>1</sup> and Triway Enterprises, LLC and Capital Shores Investments, LLC (Intervenors).<sup>2</sup>

By way of background, the Petitioners' initial Petition for Review (PFR) was filed February 13, 2009. Requests were submitted by the parties pursuant to RCW 36.70A.300(2)(b) for additional time to explore settlement and the Board has granted four such extensions.

When it became apparent settlement negotiations were not bearing fruit, the Presiding

<sup>1</sup> Motion To Strike Issues filed January 15, 2010.

<sup>2</sup> Intervenors' Joinder In City's Motion To Strike filed January 15, 2010.

1 Officer, on December 22, 2009, issued a memorandum to the Petitioners requesting  
2 submittal of revised, more specific issue statements. The Petitioners complied by  
3 submitting reworded issue statements on January 14, 2010.

4  
5 Thereafter, and prior to the Prehearing Conference (PHC) on January 21, 2010, the City  
6 and the Intervenors filed their Motions. Further revisions of the issue statements were  
7 agreed upon at the PHC and, on January 26, 2010, Petitioners filed those revisions.<sup>3</sup>

8 The Motions address the issue statements set forth in the Petitioners' January 14, 2010  
9 filing.

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11 The City's Motion asks the Board to strike the following issues in their entirety, with the City  
12 asserting, citing *Viking Properties, Inc. v. Holm*, that a GMA goal alone cannot be the basis  
13 of a violation:<sup>4</sup>

- 14  
15 Issue 1: Solely alleges a violation of GMA Goal 9, RCW 36.70A.020(9)  
16 Issue 2: Solely alleges a violation of GMA Goal 11, RCW 36.70A.020(11)  
17 Issue 3: Solely alleges a violation of GMA Goal 13, RCW 36.70A.020(13).

18 Alternatively, the City urges the Board to require a more definite statement of these issues  
19 should the Board elect to require further briefing.<sup>5</sup>

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21 The City's Motion also asks the Board to strike the following issue in its entirety for lack of  
22 jurisdiction.<sup>6</sup>

- 23 Issue 11: Alleges a violation of the Public Trust Doctrine  
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29 <sup>3</sup> These revisions were received after the Board issued its Prehearing Order on January 25, 2010. With these  
30 revisions, the Petitioners further refined Issue 6 to allege a violation of RCW 36.70A.130(1)(d); created a new  
31 issue that was bifurcated from Issue 6 as to unlawful development and a spot zone; and provided case law  
32 citations for the SEPA claims alleged in Issue 10. However, for the purpose of this Order, the Issue Numbers  
referenced are those set forth in the January 25 Order.

<sup>4</sup> City Motion, at 2; *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 128 (2005).

<sup>5</sup> City Motion, at 2

<sup>6</sup> City Motion, at 2

1 Lastly, the City's Motion asks the Board to strike that portion of Issue 9 in regards to a  
2 violation based on a Shorelines Hearings Board decision asserting that it is a specific  
3 project appeal and is not binding:<sup>7</sup>

4 Issue 9: Alleges a violation of the Shoreline Hearings Board holding in *Sato*  
5 *v. Olympia*, SHB No. 81-41

6 Intervenor's join the City's Motion but also request the Board strike Issue 5 in its entirety  
7 because RCW 36.70A.100 imposes no obligation on the City to coordinate its planning  
8 activities with the State.<sup>8</sup>

9  
10 Intervenor's further request Issues 4, 6, 9 and 10 either be stricken or that Petitioner's be  
11 required to provide more definite statements of those issues.<sup>9</sup> Intervenor's state that  
12 Petitioner's have failed to comply with the request of the Presiding Officer set forth in the  
13 December 22, 2009 memorandum to provide a more detailed statement and these four  
14 issues are broadly worded, leaving the City and the Intervenor's to guess as to which  
15 section, if any, of the cited statutory provisions have been violated.<sup>10</sup>

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18 Due to the limited record and briefing presented, the Board is unwilling to strike, in their  
19 entirety, Issues 1, 2, 3, and 5. In addition, for the same reasons, the Board will not strike  
20 that portion of Issue 9 referencing the *Sato* case before the SHB. However, as to Issue 11  
21 which asserts a failure to comply with the Public Trust Doctrine, this Board has consistently  
22 held that we have no jurisdiction over any statute not explicitly cited in RCW 36.70A.280,  
23 nor do we have jurisdiction over constitutionally-based issues. Since the Public Trust  
24 Doctrine is based, in part, on the State Constitution, the Board has no authority to hear  
25 violations of such a doctrine.<sup>11</sup>

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31 <sup>7</sup> City Motion, at 2.

32 <sup>8</sup> Intervenor's Motion, at 2.

<sup>9</sup> Intervenor Motion, at 3.

<sup>10</sup> Intervenor's Motion at 3.

<sup>11</sup> *Caminiti v. Boyle*, 107 Wn.2d 662 (1987).

1 Consequently the City's Motion to Strike Issues 1, 2, 3, and 9 is **DENIED** but the City's  
2 Motion to Strike Issue 11 is **GRANTED**. In addition, Intervenors' Motion to Strike Issue 5, is  
3 **DENIED**.

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5 As stated above, the Intervenors cite the Presiding Officer's December 22, 2009 request for  
6 restatement of the issues in support of their motion for a more detailed statement. At the  
7 PHC, the parties thoroughly discussed the issues and, in the Board's opinion, the needed  
8 specificity as to the Petitioners' claims was provided. For example, Petitioners' counsel  
9 agreed that the alleged violation of RCW 36.70A.070 (Issue 4) was a reference to .070's  
10 preamble and the reference in Issue 9 to RCW 36.70A .480 was intended to be a reference  
11 to RCW 36.70A.480(1). As such, Intervenors' Motion to Strike Issues 4, 6, 9, and 10 is  
12 **DENIED**.

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15 The parties are reminded that the issues which the Board will address in this proceeding are  
16 those set forth in the Board's Prehearing Order.<sup>12</sup> As previously noted, the Board issued a  
17 Prehearing Order on January 25, prior to receiving Petitioner's 2<sup>nd</sup> Restatement of the  
18 Issues and, therefore, an Amended Prehearing Order was issued January 29, 2010.<sup>13</sup>

19  
20 **ORDER**

21 The City of Olympia' Motion to Strike Issue 11 is **GRANTED**. All other motions of the City of  
22 Olympia and Triway Enterprises, LLC and Capital Shores Investments, LLC are **DENIED**.

23 Entered this 1st day of February, 2010.

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William Roehl, Board Member

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James McNamara, Board Member

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Nina Carter, Board Member

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<sup>12</sup> See RCW 36.70A.290(1).

<sup>13</sup> As provided in WAC 242-02-558(10), the parties have 7 days to object to this Order.

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