

Superior Court of the State of Washington
For Thurston County
Family and Juvenile Court

Paula Casey, Judge
Department No. 1
Thomas McPhee, Judge
Department No. 2
Christine A. Pomeroy, Judge
Department No. 3
Gary R. Tabor, Judge
Department No. 4
Chris Wickham, Judge
Department No. 5
Anne Hirsch, Judge
Department No. 6
Carol Murphy, Judge
Department No. 7
Lisa L. Sutton, Judge
Department No. 8



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February 9, 2012

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Dionne & Rorick

Letter Opinion

RE: *City of Shelton, et al. v. Growth Management Hearings Board, et al.*
Thurston County Cause No. 10-2-02578-0
City of Shelton, et al. v. Growth Management Hearings Board, et al.
Thurston County Consolidated Cause No. 11-2-01722-0

Dear Counsel:

2010 Ordinance and GMHB Decision

In April 2010, the City of Shelton approved Shelton Hills' application to amend the land use designation of 160 acres of land near the airport at Sanderson Field to allow residential development. The Airport Overlay adopted by the City in 2007 placed no restrictions on residential development of most of the area encompassed by the application, that being Zone 6 of the Overlay.

On appeal from the City's decision, the Growth Management Hearings Board invalidated the amendment by Order of October 27, 2010. The City of Shelton and Shelton Hills Investors appealed that GMHB decision here.



Development regulations are presumed valid. RCW 36.70A.320(1) The GMHB may only overturn a local decision if it is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Growth Management Act. RCW 36.70A.320(3) If there is substantial evidence to support a local decision, the decision should not be overturned.

The Growth Management Act requires cities and counties to discourage incompatible land uses adjacent to aviation airports and to formally consult with the Department of Transportation's Aviation Division before adopting regulations. RCW 36.70.547 It is not disputed that the City consulted with the Aviation Division before adopting the 2010 ordinance.

On appeal, the City first argues that the GMHB should not have considered this challenge to development regulation because the City's Airport Overlay development regulation did not prohibit residential development. I find that although the Airport Overlay regulation did not prohibit residential development, at the time of the request for rezoning the City had the obligation to specifically consider of the mandates of RCW 36.70.547 in light of the proposed project. The City was required to determine whether the proposed development would be compatible with the airport.

In reaching its decision, the GMHB did not consider Port noise studies from 1993 or 2008. The GMHB did consider the Parametrix noise study completed in 2010.

It is clear from the record that the City reviewed the Port's noise studies from 1993 (from the Port's 1997 Master Plan) and 2008 (from the Port's 2008 Draft Master Plan). The fact that the Port's 2008 Master Plan was a draft did not detract from the stand-alone 2008 noise study. The noise study was not a draft and was properly considered by the City. The question, however, seems to be whether either study was included in the record before the GMHB. It appears that the studies were not in the GMHB record.

Without the Port's noise studies before it, the GMHB determined that the Parametrix study was the primary evidence supporting the City's determination that the development was compatible with airport noise. The GMHB then determined the Parametrix study was flawed for several reasons. The GMHB's analysis of flaws in the Parametrix study is sufficient to determine that this study alone did not constitute substantial evidence to support the City's noise findings.

2011 Ordinance and GMHB Decision

After the first GMHB decision, on remand the City again considered the request for residential development of the same area. A new noise study by BRC Acoustics was available for the City's consideration. In April 2011, the City adopted a new ordinance allowing the residential development. The action was again appealed to the GMHB for a compliance review. By Order dated July 13, 2011, the new ordinance was declared invalid.

In addition to the BRC Acoustics study the GMHB had the Port's 2008 noise study before it for the second hearing.

On compliance review, the GMHB held that additional consultation was needed with the Aviation Division of the Department of Transportation. Without the consultation, the GMHB held the new ordinance was invalid. I am satisfied that a second consultation with the Aviation Division was not required when this matter was remanded back to the City. The City met every requirement to consult with the Aviation Division before adopting the original ordinance. On remand, the City accepted, considered, and responded to the Aviation Division's comments with respect to the new BRC Acoustics noise study before adopting the new ordinance. The BRC Acoustics study was consistent with the Port's own 2008 noise study. The Board erred in determining that a second formal consultation with the Aviation Division was required.

While the FAA's DNL standards may not control with respect to local determinations of noise compatibility, in this instance the sound levels on the proposed property are consistent with, or below, the FAA's standards for residential development. This factor provides additional support for the City's decision.

The GMHB invalidated the 2011 ordinance on the basis of the City's failure to formally consult with the Aviation Division and so erred. There is substantial evidence to support the City's decision. The GMHB's 2011 decision is reversed.

Yours very truly,



Paula Casey
Judge

cc: Court File