

No. 85989-2

Court of Appeals No. 39546-I-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLARK COUNTY, WASHINGTON and CITY OF LA CENTER,

Petitioners for Review,

GM CAMAS, LLC, MacDONALD LIVING TRUST and
RENAISSANCE HOMES,

Respondents Below,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
REVIEW BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL
RESOURCES COUNCIL and FUTUREWISE,

Appellants.

SUPPLEMENTAL BRIEF OF AMICUS CURIAE CITY OF CAMAS

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FILED
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I. INTRODUCTION

The Court of Appeals' Opinion issued in these proceedings leaves unanswered questions concerning the validity of annexations by the City of Camas. The opinion seems to invalidate the annexations by stating that ALLTCS lands should not have been included in Camas's expanded urban growth area, and then citing RCW 36.70A.110 for the proposition that no city may annex territory outside of its urban growth area. *Clark County v. Western Washington Growth Management Hearings Board*, 161 Wn. App. 204, 221 (2011). Later in its opinion, the Court, in addressing Camas's concern about lack of personal jurisdiction, purports to limit its holding to the Growth Management Hearings Board's authority to rule on the county's decisions, thus suggesting that its ruling does not determine the validity of the annexations. *Clark County v. Western Washington Growth Management Hearings Board*, *supra* at 226.

In its Order granting the petitions for discretionary review, the Supreme Court restricted its review to "jurisdictional and parcel CA-1 issues". With respect to the annexations of the City of Camas, the issue the Court needs to resolve is the preliminary matter of whether the Growth Management Board had personal and subject matter jurisdiction to decide annexation issues, and not substantive questions of whether the annexations should be approved or disapproved on their merits. For the

reasons hereinafter stated, the Court should rule that the Growth Management Board did not have personal jurisdiction over the City of Camas, did not have subject matter jurisdiction to determine the validity or invalidity of the Camas annexations, and that the Camas annexations are not nullified by the Court's other rulings.

II. STATEMENT OF THE CASE

On September 25, 2007, Clark County enacted Ordinance No. 2007-09-13. That ordinance de-designated nineteen parcels of land from Agricultural Land of Long Term Commercial Significance (hereinafter ALLTCS) and expanded the urban growth boundaries of various cities located in Clark County. The enlarged urban growth area of Camas included some of the de-designated ALLTCS parcels. Karpinski, Future Wise, and CCNRC (hereinafter Karpinski) thereafter petitioned the Growth Management Hearings Board for review of Clark County's decision to de-designate the ALLTCS parcels. Contrary to the assertion in the supplemental brief of Karpinski,¹ the City of Camas was not named as a party in the appeal to the Growth Management Hearings Board, nor was Camas a party in the subsequent proceedings before the Superior Court and the Court of Appeals. The City was never served with a Notice of

¹ The supplemental brief of Karpinski asserts, "The City of Camas was a party to the then pending litigation before the Board and the subsequent appeal to the Superior Court." Supplemental Brief, at page 2.

Appeal by Karpinski, was never given notice by Karpinski that its urban growth area was being challenged, and was never afforded an opportunity to participate in the proceedings before the Growth Management Hearings Board.

Karpinski further argues in his supplemental brief that Camas engaged in some clever stratagem to circumvent the authority of the Growth Management Hearings Board. That argument might be persuasive had Camas been joined as a party to the appeal, and thus been subject to the authority of the Growth Management Hearings Board. Furthermore, when property owners within the expanded urban growth area of Camas initiated proceedings under the direct petition method (RCW 35A.14.120) to annex their properties to Camas, Camas merely followed the statutory procedures for annexation: public meetings were held with the annexation proponents to determine whether the City would permit annexation petitions to be circulated; after receiving no opposition at the public meetings, the City Council granted permission to circulate the annexation petitions; annexation petitions were then filed with the City, the petitions were checked for legal sufficiency, and verified that they had been signed by 60% of the owners according to assessed valuation; and public hearings were scheduled, advertised as required by statute, and conducted before

the City Council. Adherence to the prescribed statutory procedures for processing an annexation hardly qualifies as "clever".

During this very public process, Karpinski did not inform the City of the pendency of the GMHB proceedings, nor did Karpinski testify in opposition to the annexation or otherwise object to the proceedings. On April 21, 2008, the Camas City Council adopted Ordinances 2510 - 2514 granting the petitions to annex. Thereafter, there were no proceedings filed by Karpinski or any other person to enjoin the City from annexing the properties in question, or to have the annexations reviewed by the Superior Court.

On June 1, 2010, over two years after the annexations became effective, the Court of Appeals entered an Order *sua sponte* that raised questions concerning the validity of the Camas annexations. The City became aware of the Court's Order when a copy was sent by email to the City's attorney. That Order was the first time any notification had been presented to Camas that the Court was examining the validity of the City's annexations. Since April of 2008, the City has invested considerable time and money in planning for the annexed areas, has collected taxes from the annexed areas, and has provided municipal services to the annexed areas.

III. ARGUMENT

A. ~~The City of Camas Was a Necessary and Indispensable~~

Party to Any Proceedings to Invalidate Its Annexations.

A necessary party is a person who has sufficient interest in the litigation that judgment cannot be entered without affecting the interest of that party. An indispensable party is one without whose presence and participation a complete determination of the case may not be made.

Metro Mortgage and Securities Co. v. Cochran, 138 Wn. App. 267, 274-5 (2007). Persons are not necessary parties where no recovery is sought against them, and they would not be prejudiced by the judgment.

Lindberg v. Kitsap County, 133 Wn.2d 729, 744-5 (1997). In short, a necessary and indispensable party is one over whom the Court must acquire personal jurisdiction in order to grant relief. Personal jurisdiction is acquired by naming the person as a party and by serving the person with a summons or other process. *See e.g., Professional Marine Company v. Those Certain Underwriters at Lloyds*, 118 Wn. App. 694, 706 (2003).

In *Kitsap Fire Protection District No. 7 v. Kitsap County Boundary Review Board*, 87 Wn. App. 753 (1997) the City of Bremerton annexed certain real property. In accordance with applicable statutes, the annexation proposal was submitted for review to the Kitsap County Boundary Review Board, which thereafter approved the proposal. The

Fire District objected to the Boundary Review Board decision and appealed to Superior Court. The Notice of Appeal designated the Boundary Review Board as the only party respondent. Neither the property owners of the annexed land nor the City were named as parties or served with the Notice of Appeal. The Court held that the City of Bremerton was a necessary and indispensable party to any challenge to its annexation. *Kitsap Fire District No. 7 v. Kitsap County Boundary Review Board, supra* at 763. The court further ruled that failure to name the City as a party to the appeal and to serve the City with notice of appeal required dismissal of the appeal with prejudice. *Kitsap Fire District No. 7 v. Kitsap County Boundary Review Board, supra* at 764.

Here Camas has a direct and fundamental interest in any proceeding that seeks to alter its urban growth boundary or its corporate limits. Karpinski is seeking affirmative relief against the City, i.e. nullification of its annexations, and the City would be clearly prejudiced by such a ruling. Because Camas satisfies all of the criteria of a necessary and indispensable party, Camas should have been joined as a party in any litigation seeking to invalidate its annexations. Since the City was not joined, and because the relief sought is prejudicial to the City, the question becomes whether the appropriate result is dismissal as in *Kitsap Fire District No. 7 v. Kitsap County Boundary Review Board, supra*, or

whether the decision can be limited in some fashion that does not prejudice Camas.

B. The Growth Management Hearings Board, the Superior Court, the Court of Appeals, and the Supreme Court Have No Subject Matter Jurisdiction in These Proceedings Over the Annexations of the City of Camas.

Subject matter jurisdiction refers to a tribunal's authority to hear and determine a particular type of controversy. *State v. Barnes*, 146 Wn. 2d 74, 85 (2002); *Marley v. Department of Labor and Industries*, 125 Wn. 2d 533, 539 (1994). Whether an administrative tribunal has subject matter jurisdiction is a question of law. *Stafne v. Snohomish County*, 156 Wn. App. 667, 682 (2010). A tribunal lacks subject matter jurisdiction when it attempts to decide a controversy over which it has no adjudicative authority. *Yow v. Department of Health*, 147 Wn. App. 807, 815 (2008); *Marley v. Department of Labor and Industries*, *supra* at 539. A lack of subject matter jurisdiction means that the agency has no authority to decide the claim or to order any particular relief. *Yow v. Department of Health*, *supra* at 815.

In *Davidson Serles v. Central Puget Sound Growth Management Hearings Board*, 159 Wn. App. 148, 155 (2010), the Court had occasion

to discuss the limited nature of the Growth Management Hearings Board's jurisdiction:

An analysis of the Board's authority to "impose or fashion a remedy in any given case begins with the principal that administrative agencies are creatures of the legislature, without inherent or common law powers, and, as such, may exercise only those powers conferred by statute, either expressly or by necessary implication." (Citations omitted) "The power of an administrative tribunal to fashion a remedy is strictly limited by statute." (Citation omitted) Accordingly, we must look to the GMA itself to determine the authority of the Board.

The subject matter jurisdiction of the Growth Management Hearings Board is set forth in RCW 36.70A.280 and WAC 242-03-025. Specifically, a Growth Management Hearings Board shall hear and determine only petitions alleging 1) that a state agency, county or city planning under GMA is not in compliance with the requirements of GMA, with the Shoreline Master Programs or amendments thereto, or with the State Environmental Policy Act as it relates to plans, development regulations or amendments adopted under GMA; 2) that the 20 year Growth Management Planning Population Projections adopted by the Office of Financial Management should be adjusted; 3) that approval of a work plan adopted under RCW 36.70A.735 is not in compliance with the

requirements of the program established under GMA; 4) that regulations adopted under GMA are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or 5) that a department's certification under RCW 36.70A.735 is erroneous.

Because the statute defining the subject matter jurisdiction of the Growth Management Hearings Board does not include the power to review annexations, the Growth Management Hearings Board in this instance lacks subject matter jurisdiction to invalidate the annexations of the City of Camas. The proper method for challenging a city's annexation is to seek Court review under RCW 35A.14.210, or to obtain a Writ of Review under RCW 7.16.040. Karpinski did not pursue either of the avenues of review available to him.

C. The City's Annexations Deprived Clark County of Jurisdiction to Plan Over the Annexed Territories, and As Such, the Challenge to the Designation of the ALLTCS Lands Annexed by the City Is Moot.

A Case is moot when a Court can no longer provide effective relief. *In Re Marriage of Horner*, 151 Wn. 2d 884, 891 (2004); *Spokane Research and Defense Fund v. City of Spokane*, 155 Wn. 2d 89, 98 (2005). In *Panesko v. Lewis County*, 2009 WL29811888 (2009) (Western Washington Growth Management Hearings Board), the Growth

Management Hearings Board entered a Final Determination and Order that the inclusion of rural lands in the Urban Growth Area of Toledo failed to comply with the Growth Management Act requirement to designate and conserve ALLTCS. Toledo, which was a party to the Growth Management Hearings Board litigation, initiated proceedings to annex the land in question. The annexation thereafter became effective when no request was made to invoke the jurisdiction of the Boundary Review Board. In a subsequent Compliance Hearing before the Growth Management Hearings Board, the Board held: "the issue of whether the property should be included as part of the UGA is moot", and "Toledo having annexed the property, the property is no longer subject to the county's jurisdiction." *Panesko v. Lewis County, supra* at page 5.

Here the fact pattern is even more compelling in that Camas was not a party to the Growth Management Hearings Board proceedings, and its annexations were effective before the entry of the Board's Final Determination and Order. In both the *Panesko* case and in the Camas annexations, there was no challenge to the annexations under either RCW 35A.14.210 or the writ of review procures available under RCW 7.16.040.

IV. CONCLUSION

As noted in the introduction, the issues before the Court are jurisdictional: do Growth Management Hearing Boards have subject

matter jurisdiction to rule on annexations, and is personal jurisdiction over a city required for challenges to the city's annexations? When a court lacks personal jurisdiction or subject matter jurisdiction, it has no power to enter a judgment, and any judgment so entered is void. *Marley v. Department of Labor and Industries, supra* at 538-39; *Professional Marine Company v. Those Certain Underwriters at Lloyds, supra* at 703. Here, the court has no subject matter jurisdiction over annexations and no personal jurisdiction over the City of Camas. To the extent the decision of the Court of Appeals purports to invalidate the Camas annexations, that judgment should be declared void.

The Supplemental Brief of Karpinski disregards the limited scope of review established by the Court's Order granting the petitions for discretionary review. Karpinski makes no argument and cites no statute or case to support the position that Growth Management Hearings Boards have subject matter jurisdiction to make rulings on the validity of annexations. He fails to offer any reason why the City of Camas was not joined in the proceedings before the Growth Management Hearings Board, or any legal authority why the City need not have been joined. Instead, Karpinski makes arguments relating to the merits of the annexations, and on unrelated issues such as vesting, thus inviting the Court to ignore the determinative jurisdictional issues. The Court should decline that

invitation, and rule that the Camas annexations are valid because the Growth Management Hearings Board does not have subject matter jurisdiction over annexations, and because a city must be a party to any proceeding that seeks to invalidate its annexations. The substantive issues sought to be adjudicated by Karpinski should be decided in some future case 1) brought under the appropriate process for reviewing annexations 2) before a tribunal authorized to adjudicate annexation challenges, and 3) with notice and an opportunity to participate afforded to the annexing City.

Respectfully submitted this 24th day of February, 2012.



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CERTIFICATE OF SERVICE

The under hereby certifies a true and complete copy of the
foregoing SUPPLEMENTAL BRIEF OF AMICUS CURIAE CITY OF
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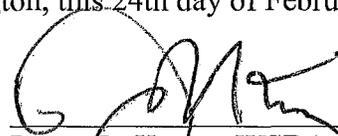
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I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

Executed at Camas, Washington, this 24th day of February, 2012.



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