

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

LORA PETSO,	)	
	)	<b>Case No. 07-3-0006</b>
Petitioner,	)	
	)	
v.	)	<b>ORDER ON MOTION TO</b>
	)	<b>DISQUALIFY BOARD</b>
SNOHOMISH COUNTY,	)	<b>MEMBER EARLING</b>
	)	
Respondent	)	
	)	
	)	
	)	

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**I. BACKGROUND**

On January 18, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lora Petso (**Petitioner** or **Petso**). With this PFR, Petitioner challenges Snohomish County’s (**County**) adoption of Council Motion 06-546 which authorized the termination of an interlocal agreement between the County, the City of Edmonds (**City** or **Edmonds**), and the Edmonds School District. The basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**). In conjunction with the PFR, Petitioner filed a Motion to Disqualify Board member David O. Earling for cause.

**II. MOTION TO DISQUALIFY**

Pursuant to RCW 36.70A.270(8) and WAC 242-02-533, Petitioner timely filed a motion to disqualify Board member David O. Earling from this matter. Petitioner seeks a “for cause” disqualification because Mr. Earling and Petitioner served together on the Edmonds City Council from 2000 to 2004 and during Petitioner’s campaign for re-election Mr. Earling endorsed the opposing candidate. Petitioner asserts that because of this she believes it would be “unfair to force [her] to present [her] case before a former colleague who actively and publicly supported [her] opponent” and it would potentially give rise to “prejudgment or other inappropriate conduct in handling or deciding the case.”

### Applicable Law

RCW 36.70A.270 provides:

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The joint rules of practice of the boards shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

The Board's joint rules of Practice and Procedure provide:

- (1) A motion to disqualify a board member or hearing examiner acting as the presiding officer, for any reason provided under chapter 34.05 RCW, with supporting affidavit(s), must be filed at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts.
- (2) The board shall promptly rule upon such motion.
- (3) If a motion for disqualification is granted and a presiding officer was disqualified as a result, the board shall promptly designate a new presiding officer.

WAC 242-02-533.

The Administrative Procedures Act (APA) provides:

*(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.*

RCW 34.05.425 (emphasis supplied).

### Discussion

After careful consideration, I do not believe I carry bias toward the Petitioner in regard to the PFR she filed against Snohomish County with the Board. The endorsement in support of her opponent more than 2 years ago has little to do, if any, with the Growth Management Act. As the Petitioner indicated in her closing remarks towards me at her final council meeting:

*“Council President Earling was a model Council President, fair, not manipulative, not critical, just did a great job.”<sup>1</sup>*

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<sup>1</sup> Edmonds City Council minutes of December 16, 2003 at page 5.

I carry that same commitment for fairness to any issue before this Board that I now serve on.

Therefore, in reviewing the Petitioner's Motion to Disqualify, I find no basis for the proposition that I am biased, prejudiced or have an interest in the outcome of the proceeding and should be disqualified for cause. Pursuant to RCW 36.70A.270(8), RCW 34.05.425(5) and WAC242-02-533(2) Petitioner's Motion to Disqualify are **denied**. I will not recuse myself from further participation in this case.

#### **IV. ORDER**

Based upon review of the PFR and the motion submitted by the Petitioner, the GMA, APA, and the Board's Rules of Practice and Procedure, I, David O. Earling, the individual whose disqualification had been requested, enter the following Determination and ORDER:

1. In reviewing the Petitioner's Motion to Disqualify, I find no basis for the proposition that I am biased, prejudiced or have an interest in the outcome of the proceedings and should be disqualified for cause. Therefore, **I have determined that I will not recuse myself from further participation in this case.**

So ORDERED this 22<sup>nd</sup> day of January, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling  
Board member