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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

1000 FRIENDS OF WASHINGTON,

Petitioner,

v.

CHELAN COUNTY,

Respondent,

DAVID & ROSEMARY PLUGRATH,

Intervenors.

Case No. 04-1-0002

ORDER ON DISPOSITIVE MOTIONS

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I. PROCEDURAL BACKGROUND

On March 8, 2004, 1000 FRIENDS OF WASHINGTON, by and through its attorney, John Zilavy and Timothy Butler, filed a Petition for Review of the action of Respondent Chelan County in adopting Resolution No. 2003-186 amending the Chelan County Comprehensive Plan and County Zoning Map to change the designation and zoning of approximately 90 acres of land from Agricultural Commercial to Rural Residential Resource 5 and 2.5.¹

On March 12, 2004, the Board received a Motion to Intervene of David and Rosemary Pflugrath, (property owners).

On April 12, 2004, the Board held a telephonic Prehearing conference. Present were Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and D.E. "Skip" Chilberg. Present for Petitioner was John Zilavy and Timothy Butler. Present for Respondent was Billy

¹ At the Pre-Hearing Conference the Petitioner clarified its position that it was actually challenging the redesignation and rezoning of approximately 24 acres from Agricultural Commercial to Rural Residential Resource 2.5

1 Plauche. Present for Intervenors was Robert Dodge. At the Prehearing conference the
2 Board heard the Motion to Intervene and no objections were received. The Board granted
3 Intervenor status to David and Rosemary Pflugrath.

4 On April 19, 2004, the Board issued the Prehearing Order.

5 On May 5, 2004, Respondent and Intervenors filed Motions to Dismiss.

6 Chelan County's motion was premised on two arguments -- first, that Petitioner
7 lacked participatory standing; and second, that the Petition was in fact a challenge to the
8 County's adoption of the Rural Element of the Comprehensive Plan (which included a Rural
9 Residential Resource 2.5 category) adopted in February, 2000, and was therefore untimely.

10 Intervenor's motion was based on the same untimeliness premise raised by the
11 County, and in addition was based on the premise that this Board does not have jurisdiction
12 over site-specific rezoning decisions.

13 Petitioner timely filed its Opposition to Motion to Dismiss, arguing that it had
14 participatory standing within the meaning of RCW 34.70A.280(4), and that this Board has
15 jurisdiction over a timely filed Petition challenging an amendment to the Chelan County
16 Comprehensive Plan. Respondent Chelan County and Intervenors timely filed Reply
17 Memoranda reasserting their arguments in favor of dismissal of the Petition.

18 On June 2, 2004, the Board held a telephonic Motion Hearing. Present were Presiding
19 Officer, Dennis Dellwo and Board Members Judy Wall and D.E. "Skip" Chilberg. Present for
20 Petitioner was John Zilavy and Timothy Butler. Present for Respondent was Billy Plauche.
21 Present for Intervenors was Robert Dodge. At the end of oral argument, the Board, having
22 considered the memoranda and exhibits filed by the parties² and having heard oral
23 argument, entertained a motion to deny the Motions to Dismiss. The Board voted
24 unanimously the Motions to Dismiss should be denied.

25 ² The Board did not consider the supplemental exhibits submitted by the Intervenors
26 which were not part of the record of the County's action submitted by Respondent.

1 **II. DISCUSSION**

2 **A. Petitioner Has The Requisite Participatory Standing**

3 Under RCW 36.70A.280, in order to establish participation standing, a person (which
4 is defined so as to include Petitioner) must show that it participated orally or in writing
5 before the county regarding the matter on which review is requested (RCW 36.70A.280(2)),
6 and that this participation before the county was reasonably related to the issues presented
7 by that person to the Board (RCW 36.70A.280(4)).

8 In this case, there is no dispute that Petitioner participated in writing before Chelan
9 County regarding the redesignation and rezoning of the Pfleugraths' land from Agricultural
10 Commercial to Rural Residential Resource 2.5. Document 23 of the Index to the Record
11 submitted by Respondent includes as item 16C.1 the December 29, 2003 letter from
12 Petitioner to County Commissioner Keith Goehner, which was considered by the
13 Commissioners at their December 30, 2003, meeting.

14 The County argues that the letter differs from the issue statement now before the
15 Board in not specifically mentioning the rezone of the property into the Rural Residential
16 Resource 2.5 category, and therefore the County was not on notice that this issue should
17 be discussed. The letter does, however, inform the County of Petitioner's opposition to a
18 redesignation of the land in question in part on the basis that it would encourage rather
19 than control or prevent sprawl. The Board finds that the issue raised by the Petitioner's
20 letter (denial of the requested re-designation of Intervenor's land so as to avoid sprawl) is
21 reasonably related to the principal issue before this Board (whether the County's
22 redesignation of that property violated the Growth Management Act in part because it
23 allows rather than prevents sprawl). The County's Motion to Dismiss based on lack of
24 standing should therefore be denied.

25 **B. The Petition For Review Was Timely Filed**

26 There is no dispute that the Petition For Review was filed within 60 days of formal
adoption of the amendment to the Chelan County Comprehensive Plan. The Petition is on
its face timely filed. However, Respondent and Intervenor, in order to argue that the

1 Petition is untimely, argue that it is in fact a collateral attack on the decision of the County
2 to adopt a Rural Element in the Comprehensive Plan which would allow one dwelling unit on
3 2.5 acres in those parts of the county designated Rural Residential Resource 2.5. Since that
4 Rural Element was made part of the County's Comprehensive Plan in February, 2000,
5 Respondent and Intervenors argue that the Petition is untimely.³

6 These arguments ignore the fundamental facts apparent in the record. As is evident
7 from the documents in the record, the basic issue before the County was an amendment to
8 the Chelan County Comprehensive Plan. See e.g., Documents 1, 2 to Index of the Record.
9 There is no dispute over the fact that the basic issue decided by the County, and the
10 subject of the Petition, was the change in designation of Intervenors' property from
11 Agricultural Commercial to Rural Residential Resource 2.5. Since jurisdiction over dispute
12 involving amendments to a Comprehensive Plan is specifically given to this Board under
13 RCW 36.70A.280(1)(a), and since the Petition is timely filed under that statute, the Motions
14 to Dismiss should be denied.

15 The Board further notes that much of the argument on the Motions to Dismiss
16 focused on what the Petitioner might or might not argue in the briefing and hearing on the
17 merits. At this stage of the proceedings, it is impossible for the Board to determine how
18 Petitioner will argue its case on the merits. In that regard, the Board does note that it does
19 not have jurisdiction to review Chelan County's 2000 Comprehensive Plan and the Board
20 lacks authority under RCW 36.70A290(1) to opine on issues not presented to the Board in
21 the Prehearing Order issue statement.

22 **III. ORDER**

23 Based on its review of the Petition for Review, the memoranda and oral arguments of
24 the parties and the record before it, this Board hereby orders that:

- 25 1. Respondent Chelan County's Motion to Dismiss shall be and hereby is DENIED.

26 ³ Intevenors also argue that what is really at issue is a site-specific rezone decision
which is only reviewable in a Land Use Petition Act proceeding, so that this Petition is not
only untimely, it is in the wrong forum.

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2. Intervenor's Motion to Dismiss shall be and hereby is DENIED.
SO ORDERED this 10th day of June 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Board Member

Judy Wall, Board Member

D.E. "Skip" Chilberg, Board Member