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2 **State of Washington**
3 **GROWTH MANAGEMENT HEARINGS BOARD**
4 **FOR EASTERN WASHINGTON**

5
6 JULIA McHUGH, PALISADES
7 NEIGHBORHOOD, and NEIGHBORHOOD
8 ALLIANCE OF SPOKANE,

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Petitioner,

v.

SPOKANE COUNTY,

Respondent,

GREG and KIM JEFFREYS, GJ L.L.C., and
G.J. GENERAL CONTRATORS,

Intervenors.

Case No. 05-1-0004

ORDER ON MOTIONS

I. PROCEDURAL HISTORY

On June 24, 2005, JULIA McHUGH, PALISADES NEIGHBORHOOD, and NEIGHBORHOOD ALLIANCE OF SPOKANE, by and through their representatives, Julia McHugh, Robbi Castleberry, and Bonnie Mager, filed a Petition for Review.

On July 18, 2005, the Board received Greg and Kim Jeffreys, GJ L.L.C. and G.J. General Contractors, Inc.'s Motion and Memorandum in Support of Motion to Intervene.

On July 22, 2005, the Board heard the Motion to Intervene before the Prehearing conference. The Respondent did not object to the intervention. The Petitioner objected, contending Greg and Kim Jeffreys, GJ L.L.C., and G.J. General Contractors, should not be allowed, as they did not own the property in the area. This being deemed by the Board as

1 not a requirement, allowed, the intervention, there being not evidence that it will disrupt
2 the management of the case.

3 On July 22, 2005, the Board held the Prehearing conference. Present were, Dennis
4 Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present for
5 Petitioners were Julia McHugh, Robbi Castleberry, and Bonnie Mager. Present for
6 Respondent was Martin Rollins. Present for Intervenors was Stacy Bjordahl.

7 On July 26, 2005, the Board issued its Prehearing Order.

8 On August 12, 2005, the Board received Petitioner's Motions listing nine motions.

9 On August 12, 2005, the Board received Intervenors' Motion and Memorandum in
10 Support of Motion for Partial Dismissal of Issues.

11 On August 12, 2005, the Board received Respondent Spokane County's Motion to
12 Join Intervenors' Motion for Partial Dismissal of Issues.

13 On August 26, 2005, the Board received Respondent and Intervenors' Response to
14 Petitioners' Motions.

15 On September 2, 2005, the Board received Petitioners' Request for Expedited Review
16 and Rebuttal.

17 On September 9, 2005, the Board held a telephonic Motion Hearing. Present were,
18 Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present
19 for Petitioners were Julia McHugh and Bonnie Mager. Present for Respondent was Martin
20 Rollins. Present for Intervenors was Stacy Bjordahl.

21 **II. MOTIONS OF THE PETITONERS**

22 The Board will consider the motions individually except in cases where several can be
23 handled as one subject area. We will first rule on the motions of the Petitioners. The
24 Petitioners made the following motions:

- 25 1. **Petitioners move to dismiss Greg and Kim Jeffreys, GJ L.L.C.
26 and G.J. General Contractors, Inc., as Intervenors.**

1 by permission. Here the Intervenors could qualify for intervention as of right. They claim an
2 interest in the property or transaction that is the subject of the action and believe their
3 interests will not be adequately represented. They are also so intimately involved in the
4 matter now before the Board. While there will be more parties and lawyers involved, this
5 intervention will not unduly delay or prejudice the adjudication of the rights of the original
6 parties.

7 The Intervenors Sales Agreement to purchase a portion of the subject property and
8 status as applicants for the Comprehensive Plan amendment which is the subject of this
9 action and the more recent purchase of part of the subject property is a sufficient interest
10 in the property for such intervention. The interests of the County are very often different
11 from the property owners or developers. The Intervenors involvement as parties is
12 appropriate.

13 **Motions 2, 3, 4, 5 and 6:** These motions are joined due to their similarity. These
14 five motions seek various government employees and officials be present at the Motions
15 Hearing held September 9, 2005. This was later amended to include presence at the Final
16 Hearing. In each of the motions, the Petitioners ask that we direct the county employee,
17 the Fairchild Air Force Base representative and the City of Spokane Attorney be present to
18 allow the petitioners to ask them questions regarding the issues presented by this Petition.

19 The County and Intervenors oppose this and contend it would be inappropriate to
20 require such people to attend and that it would add new evidence not otherwise included in
21 the record before the Board.

22 WAC 242-02-540 provides that the Board will review only the record developed by
23 the County in taking the action that is the subject of review by the Board. A party by motion
24 may request that a board allow such additional evidence as would be necessary or of
25 substantial assistance to the board in reaching its decision, and shall state its reasons. WAC
26 242-02-610 allows testimony to be considered by a board, however, such testimony is
rarely allowed. We have no motion to allow such testimony or new evidence. There is

1 grave danger that much evidence outside the record will be solicited from the live witnesses
2 that is unknown to the Board and would be disruptive to the hearing.

3 The motions to require these people to attend for examination by the Petitioners are
4 denied. The Petitioners are advised that they can develop the points raised in their briefing.
5 Briefing is where arguments are made and interpretations are argued. Many of the points
6 sought may be addressed in the brief of the parties.

7 **MOTION 7:** The Petitioners sought the dismissal of the submittals of Storhaug Engineering
8 that were prepared after the County's adoption of the subject amendment. The County
9 contends that no such documents are in the index or will be part of the record. If this is
10 not the case, it is ordered that such documents not be made part of the Record without
11 further order of this Board.

12 **MOTION 8:** The Petitioners sought the halt to any vesting of a preliminary or final
13 subdivision plat for the property within the disputed amendment.

14 The Board has no authority to halt the vesting process of an application before the
15 County. The Motion is denied.

16 **MOTION 9:** The Petitioners sought to add Items 75-114 to the Index of the Record. The
17 County and the Intervenors did not object to these additions.
18 The Board orders that the Index be amended to include such items.

19 **IV. INTERVENOR'S AND RESPONDENT'S MOTIONS**

20 The Intervenors filed a motion seeking the striking of all or part of four issues of the
21 Petitioner's issues. The Petitioners did not brief these motions and the Intervenors sought a
22 finding that the Petitioners have abandoned them pursuant to WAC 242-02-570. However,
23 this is not how the Board reads such WAC. Said WAC provides that the "moving party" shall
24 submit a brief on each issue it expects a board to determine. "Failure by such a party to
25 brief an issue shall constitute abandonment of the unbrieffed issue." The moving party must
26 brief the issue or it will be deemed abandoned.

1 **Intervenor's and Respondent's Motion and Memorandum in Support of**
2 **Partial Dismissal of Issues No. 1 and 8 and Striking Legal Issue No. 9 and**
3 **10 in their entirety.**

4 **ISSUE 1:** The Intervenor sought the dismissal of portions of Petitioner's Legal Issue
5 No. 1. The provision sought to be stricken dealt with endangering retention of and
6 expansion of existing businesses by disregarding the Fairchild Air Force Base's consistent
7 input discouraging such amendment. The Petitioner felt that this is very much a part of the
8 case and should be left in.

9 The Intervenor continued to object to the portion of this Issue that dealt with the
10 claimed negligence in upholding the County Critical Areas Ordinance. They contended that
11 the Board had no jurisdiction to consider matters relating to availability of public water,
12 sewer, etc. in a site specific application.

13 The Board does not have jurisdiction to consider the endangerment of businesses or
14 the development of a flight path of the Fairchild Air force Base and their objection to the
15 amendment. This portion of Issue is stricken.

16 The Board does not have jurisdiction to enforce provisions of a County's Plan or
17 Regulations as they apply to a specific project. The Board has the jurisdiction to review the
18 amendment process and determine if the County has complied with the GMA in its adoption
19 of their Plan or amendments thereto. The portion cited by the Intervenor of Issue 1 is
20 stricken.

21 **ISSUE 8:** The Intervenor withdrew this motion recognizing that the RCW was
22 mistakenly cited.

23 **ISSUE 9:** Petitioner's legal issue No. 9 was sought to be stricken in full due to the fact
24 that the cited statute claimed to be violated is not in effect at this time. RCW 36.70A.530
25 requires cities and counties to follow the cited procedures at the time of the updates
26 provided in the act. Spokane's update is set for December 1, 2007. This statute is not in
effect for Spokane at this time.

1 Because the Board has no jurisdiction to enforce a law that is not at this time in
2 effect, this motion will be granted.

3 **ISSUE 10:** The Intervenors seek the striking of Legal Issue No. 10 in its entirety. They
4 contend that the Board has no jurisdiction to review the Administrative actions of the
5 Planning Director and to review constitutional claims relating to equal protection.

6 The Board does not have jurisdiction to review administrative actions of the Planning
7 Director to the extent that it relates to fees or constitutional claims relating to equal
8 protection. The issues raised in Issue 10 are not within the Board's jurisdiction and are
9 therefore dismissed.

10 **V. ORDER**

11 The Board denies Petitioners' Motions 1, 2, 3, 4, 5, 6, and 8. **Motions 7 and 9 are**
12 granted.

13 The Board grants Intervenor's and Respondent's Motions regarding Petitioner's
14 Issues 1, 9, and 10. The Prehearing Conference Order will be amended to restate the
15 Issues that remain before the Board.

16 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

17 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
18 **mailing of this Order to file a petition for reconsideration. The original and four**
19 **copies of a motion for reconsideration, together with any argument in support**
20 **thereof, should be filed with the Board by mailing, faxing, or otherwise**
21 **delivering the original and four copies of the motion for reconsideration directly**
22 **to the Board, with a copy served on all other parties of record. Filing means**
23 **actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-**
24 **02-240, WAC 242-02-330. The filing of a motion for reconsideration is not a**
25 **prerequisite for filing a petition for judicial review.**

26 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal**
the decision to superior court as provided by RCW 36.70A.300(5). Proceedings
for judicial review may be instituted by filing a petition in superior court
according to the procedures specified in chapter 34.05 RCW, Part V, Judicial
Review and Civil. The petition for judicial review of this Order shall be filed with

1 the appropriate court and served on the Board, the Office of the Attorney
2 General, and all parties within thirty days after service of the final order, as
3 provided in RCW 34.05.542. Service on the Board may be accomplished in person
4 or by mail. Service of the Board means actual receipt of the document at the
5 Board office within thirty (30) days after service of the final order. A petition for
6 judicial review may not be served on the Board by fax or electronic mail.

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8 Service. This Order was served on you the day it was deposited in the United
9 States mail. RCW 34.05.010(19)

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12 **SO ORDERED** this 16th day of September 2005.

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15 EASTERN WASHINGTON GROWTH MANAGEMENT
16 HEARINGS BOARD

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18 _____
19 Dennis Dellwo, Board Member

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21 _____
22 John Roskelley, Board Member

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24 _____
25 Judy Wall, Board Member