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

KATHY MIOTKE and NEIGHBORHOOD
ALLIANCE OF SPOKANE,

Petitioners,

v.

SPOKANE COUNTY,

Respondent,

RIDGECREST DEVELOPMENTS, L.L.C., FIVE
MILE CORPORATION, NORTH DIVISION
COMPLEX, L.L.C., CANYON INVESTMENTS,
INC., J. DONALD and VALENA CURRAN,
and STEPHEN W. TREFTS d/b/a
NORTHWEST TRUSTEE & MANAGEMENT
SERVICES,

Intervenors.

Case No. 05-1-0007

ORDER ON MOTIONS TO
SUPPLEMENT THE RECORD,
DISMISS PARTICIPATION OF
INTERVENORS, DISMISS
NEIGHBORHOOD ALLIANCE OF
SPOKANE'S PETITION, DISMISS
PETITIONERS' SEPA CLAIMS,
MOTION TO RESTATE ISSUES

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I. PROCEDURAL HISTORY

On August 25, 2005, KATHY MIOTKE and NEIGHBORHOOD ALLIANCE OF SPOKANE,
by and through their representatives, Kathy Miotke and Bonnie Mager, filed a Petition for
Review.

On September 1, 2005, the Board received Ridgecrest Developments, L.L.C., Five
Mile Corporation, North Division Complex, L.L.C., Canyon Investments, INC., J. Donald and
Valena Curran, and Stephen W. Trefts d/b/a Northwest Trustee & Management Services'
Motion and Brief in Support of Motion to Intervene.

1 On September 12, 2005, the Board received Petitioner's Opposition to Motion to
2 Intervene.

3 On September 16, 2005, the Board received Respondent, Spokane County's Motion
4 to Recuse.

5 On September 21, 2005, the Board held the Prehearing conference. Present were,
6 Dennis Dellwo, Presiding Officer, and Board Member Judy Wall. Board Member John
7 Roskelley was unavailable. Present for Petitioners were Kathy Miotke and Bonnie Mager.
8 Present for Respondent was Martin Rollins. Present for Intervenors was Margaret Arpin.

9 On September 21, 2005, the Board heard the CANYON INVESTMENT et al., Motion to
10 Intervene and the COUNTY'S Motion to Recuse. The Respondent did not object to the
11 Motion to Intervene. The Petitioners did object contending that the County adequately
12 represented their interests and the addition of 5 new parties would be disruptive and
13 unnecessary.

14 On September 28, 2005, the Board issued its Prehearing Order and Order on Motions
15 to Intervene and Seeking Recusal.

16 On October 7, 2005, the Board received from attorney Rick Eichstaedt, Petitioners'
17 Notice of Appearance.

18 On October 12, 2005, the Board received Petitioners' Motion to Dismiss Participation
19 of Intervenor and Motion to Supplement the Record. In that request, Petitioners asked for
20 the admission of (1) Letter from the City of Spokane Valley; (2) Excerpts of the City of
21 Spokane's 2003-2008 Six Year Comprehensive Street Program; and (3) Excerpts of the City
22 of Spokane's 2006-2011 Six Year Comprehensive Street Program.

23 On October 12, 2005, the Board received Intervenors' Motion to Dismiss
24 Neighborhood Alliance of Spokane's Petition, Petitioner's State Environmental Policy Act
25 (SEPA) Claims and to Restate Issues. The Board also received Respondent Spokane
26 County's Motion to Join Intervenors' Motion to Dismiss Neighborhood Alliance of Spokane's
Petition, Petitioners' State Environmental Policy Act (SEPA) Claims and to Restate Issues.

1 On October 13, 2005, the Board received from Intervenor a letter in response to
2 Petitioners' Motion to Dismiss Participation of Intervenor.

3 On October 26, 2005, the Board received Petitioners' Response to Intervenor's
4 Motion to Dismiss and Declaration of Lindell Haggin.

5 On October 26, 2005, the Board received Intervenor's Memorandum in Opposition to
6 Petitioners' Motion to Dismiss Participation as Intervenor, Memorandum in Opposition to
7 Petitioners' Motion to Supplement the Record, and Declaration of Margaret L. Arpin in
8 Opposition to Petitioners' Motion to Supplement the Record and Petitioners' Motion to
Dismiss Participation of Intervenor.

9 On November 2, 2005, the Board received Petitioners' Reply in Support of Motion to
10 Dismiss Participation of Intervenor and Reply in Support of Motion to Supplement the
11 Record.

12 On November 9, 2005, the Board held a telephonic motion hearing. Present were,
13 Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present
14 for Petitioners were Rick Eichstaedt and Bonnie Mager. Present for Respondent was Martin
15 Rollins. Present for Intervenor was Margaret Arpin.

16 II. DISCUSSION

17 1. Motion to Supplement the Record:

18 The Petitioners seek to supplement the record with a letter from the City of Spokane
19 Valley and two excerpts of the City of Spokane's Six Year Comprehensive Street Programs
20 for 2003-2008 and 2006 and 2011. The Petitioners argued that these should be part of the
21 record and will substantially help the Hearings Board decide the case before it. They
22 pointed out that their issues include arguments that there are not sufficient facilities to
23 handle the additional growth and that the Respondent did not coordinate with the adjacent
24 jurisdictions in the adoption of the subject amendment. They contend that these exhibits
25 would support those arguments and help the Board decide the case. The Intervenor and
26 the County objected, contending that the letter was written after the closing of the record

1 and dealt with another Comprehensive Plan amendment. They also pointed out that the
2 Petitioners did not offer these documents at the time the record was open.

3 The Board finds that these documents would substantially aid it in making its
4 decision in this matter. If the County or Intervenor believe that additional records would
5 clarify the context of the added letter, a motion could be made at any time prior to the date
6 their brief are due, seeking the admission of such documents as part of the record. The
7 Board hereby grants the Petitioners' motion to supplement the record with the three offered
8 documents.

8 **2. Petitioners' Motion of for Dismissal of Intervenors:**

9 The Petitioners sought the dismissal of the Intervenors as parties, due to their failure
10 to follow the Prehearing Order. That Order required the Intervenors to list the Issues they
11 believed affected them and felt they should participate in. The Intervenors contend that
12 the failure was inadvertent and they believed that they should participate in all issues. The
13 County supported the Intervenors and contended that such a requirement was unusual and
14 the Intervenors' should not be dismissed.

15 The Board finds that the failure of the Intervenors to respond as required by the
16 Prehearing Order, does not support their dismissal from the matter before us. The parties
17 have not been inconvenienced or injured by such unintentional acts of the Intervenor. The
18 Motion to dismiss the Intervenors is denied.

18 **3. Intervenors' Motion to dismiss the Petition of the Neighborhood Alliance of**
19 **Spokane:**

20 The Intervenors moved that the Petition of the Neighborhood Alliance of Spokane be
21 dismissed because the person signing the petition was not an attorney and to allow a lay
22 person to sign a petition for the Alliance would be unauthorized practice of law. The
23 Petitioners contend that the GMA regulations, WAC 242-02-110(1), authorize a layperson to
24 sign documents on behalf of an organization such as the Alliance. They further point out
25 that the regulations allow a layperson or an attorney to represent such an organization
26 before the Hearings Board.

1 The Board recognizes that the regulations found at WAC 242-02-110 allow a lay
2 person or an attorney to represent an organization such as the Alliance. Further, the Board
3 does not believe that it can rule on whether something is the unauthorized practice of law.
4 Such a ruling, is the responsibility of the Washington State Bar Association. The Board
5 denies the Intervenors' motion to dismiss.

6 **4. Intervenors Motion to Dismiss Petitioners' State Environmental Policy Act**
7 **Claims:**

8 The Petitioners do not object to the dismissal of their SEPA Claims, Issue 13. The
9 motion to dismiss SEPA claims is granted.

10 **5. Intervenor request to require the Petitioners to restate Issues 8 and 12:**

11 The Petitioners do not object to the suggested restatement of Issues 8 and 12. The
12 Petitioners do object to any effort to limit their arguments regarding the claimed failure of
13 the County to protect environmental impacts. The Issues will be restated as requested by
14 the Intervenors, however, the requested restatement will not eliminated the issues found in
15 8 and 12 which raise the issue of the County's failure to protect the environment.

16 **III. ORDER**

- 17 1. Petitioners' Motion to Supplement the Record is granted. Documents
18 (1) Letter from the City of Spokane Valley; (2) Excerpts of the City of
19 Spokane's 2003-2008 Six Year Comprehensive Street Program; and (3)
20 Excerpts of the City of Spokane's 2006-2011 Six Year Comprehensive
21 Street Program are part of the Index of Record. The Index of the
22 Record will be amended to reflect the addition.
- 23 2. Petitioners' Motion for Dismissal of Intervenors is denied.
- 24 3. Intervenors' Motion to Dismiss Petition of Neighborhood Alliance of
25 Spokane's Petition is denied.
- 26 4. Intervenors' Motion to Dismiss Petitioners' State Environmental Policy
Act (SEPA) Claims is granted.

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5. Intervenor's Motion to Restate Issues is granted.
Legal Issue No. 8 shall read as follows: Did Spokane County violate RCW 36.70A.020(2) planning goal requiring the reduction of sprawl development, RCW 36.70A.020(9) planning goal requiring the retention of open space and wildlife habitat, RCW 36.70A.070 requiring Comprehensive Plans to be internally consistent, RCW 36.70A.070(5) planning for the rural element, protecting the rural character, RCW 36.70A.020(1) planning requiring protection of the environment, RCW 36.70A.060 protection of critical areas?
Legal Issue No. 12 shall read as follows: Did Spokane County violate their own Comprehensive Plan goals and policies by not considering NE. 10, NE.22.2, NE.22.17, NE.32.3, CF.8, CF.8.1, CRF.8.3, CF.8.4, CF.8.5, CF.8.6, CR.8.9?

SO ORDERED this 14th day of November 2005.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Board Member

John Roskelley, Board Member

Judy Wall, Board Member