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

FRIENDS OF AGRICULTURE,

Petitioner,

v.

GRANT COUNTY,

Respondent.

Case No. 05-1-0010

ORDER ON MOTION TO DISMISS
PETITION FOR REVIEW

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I. SYNOPSIS

An application to re-designate two parcels totaling 35 acres of land from "Agricultural Resource" to "Master Planned Resort" was submitted by Larry and Preta Laughlin to Grant County during the 2004 annual Comprehensive Plan amendment cycle. After receiving written and oral testimony from the public, Planning Commission, public agencies and Grant County staff, the Board of County Commissioners approved the re-designation under File No. 2004-01 in Grant County Resolution No. 05-267-CC.

The application was opposed by adjoining farmers and property owners throughout the public process. After the application was approved, they formed Friends of Agriculture and filed an appeal to File No. 2004-01 in Grant County Resolution No. 05-267-CC. Those who testified, either in writing or orally during the public participation process, were Ms. Jean Mattson, Ms. Rita Rene', Mr. Jacob Lutz, Mr. Anthony Lutz, Ms. Barbara Lutz and Ms. Vera Walker.

Grant County filed a timely Motion to Dismiss Petition for Review and an Alternative Motion For Dismissal Of Issues on grounds primarily associated with the Petitioners' lack of standing for an association, limitation to issues addressed during the public process, lack of jurisdiction by the Eastern Washington Growth Management Hearings Board (Board) to review a site-specific application, and failure to name an indispensable party.

1 The Board held a Hearing on the Motions for Case Number 05-1-0010, Friends of
2 Agriculture vs. Grant County on December 19, 2005. After reading the briefs submitted by
3 both parties and hearing argument from the Petitioners' and Respondent's attorneys during
4 the Motions Hearing, the Board denied the motions, but limited the participation under the
5 association name, Friends of Agriculture, to four individuals, Ms. Barbara Lutz, Ms. Jean
6 Mattson, Mr. Lee Bode and Ms. Vera Walker.

7 **II. PROCEDURAL HISTORY**

8 On October 3, 2005, FRIEND OF AGRICULTURE, by and through their representative,
9 James Carmody, filed a Petition for Review.

10 On October 31, 2005, the Board held the Prehearing conference. Present were, John
11 Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for
12 Petitioner was James Carmody. Present for Respondent was Stephen Hallstrom.

13 On November 10, 2005, the Board issued its Prehearing Order.

14 On November 21, 2005, the Board received Grant County's Motion to Dismiss Petition
15 for Review and, Alternative Motion for Dismissal of Issues.

16 On December 5, 2005, the Board received Petitioner's Memorandum in Opposition to
17 Motion to Dismiss.

18 On December 12, 2005, the Board received Grant County's Reply Brief in Response
19 to Memorandum in Opposition to Motion to Dismiss.

20 On December 19, 2005, the Board held a telephonic Motion Hearing. Present were,
21 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present
22 for Petitioner was James Carmody. Present for Respondent was Stephen Hallstrom.

23 **III. DISCUSSION**

24 **History:**

25 Grant County has established a procedure for annual amendments to its adopted
26 Comprehensive Plan. Twelve (12) separate applications for annual amendments to the
Comprehensive Plan were submitted for review by Grant County. Included in the

1 applications was a specific proposal for redesignation for agricultural resources lands
2 submitted by Larry and Preta Laughlin (File No. 2004-01) (Laughlin Proposal).

3 The Laughlin Proposal requested the redesignation of two (2) parcels totaling thirty-
4 five (35) acres from "Agricultural Resource" to "Master Planned Resort". The subject
5 property was previously designated as Agricultural Resource Land of Long-Term Commercial
6 Significance. The proposal was opposed by adjoining farmers and property owners.
7 Testimony was provided at public hearings by Terry Mattson (on behalf of his mother –
8 Jean Mattson) and Lee Bode. Jean Mattson also provided direct testimony to the Board of
9 County Commissioners. In addition to public testimony, written comment was provided by
10 Jacob Lutz, Anthony and Barbara Lutz, Reta Renee, and Vera Walker. Grant County
11 Planning Commission conducted a public hearing on the proposed redesignation and project
12 proposal on April 27, and May 4, 2005. Grant County Board of Commissioners approved the
13 redesignation of the subject properties on August 1, 2005. The re-designation was included
14 in Resolution No. 05-267-CC.

15 Four (4) individuals that had provided written and oral comment at public hearings
16 associated themselves for purposes of filing a Petition for Review to this Board. Those
17 individuals were Barbara Lutz, Jean Mattson, Lee Bode and Vera Walker. They named their
18 association "Friends of Agriculture". The association also included various other individuals
19 with identified interests in this matter.

20 **Parties Issues, Positions and Board Decision:**

21 **Issue No. 1:** Is the property owner a necessary and/or indispensable party before
22 this Board?

23 Grant County asserts that the property owner is an indispensable party to this
24 proceeding.

25 No legal authority is cited for this proposition. There are no provisions in the GMA for
26 notice to or joinder of the property owner as an indispensable party. The Board's
jurisdiction is over comprehensive plan amendments. Those amendments are adopted by
local jurisdictions (i.e., counties and cities).

1 The indispensable party rule has been rejected in other hearings board decisions.
2 *Larson v. City of Sequim*, WWGMHB 01-2-0021, Order Denying Dispositive Motions
3 (December 3, 2001) ("There are no provisions in the GMA for notice to or joinder of the
4 property owner as an indispensable party."); *Alberg v. King County*, CPSGMHB No. 95-3-
5 0041, Final Decision and Order (September 13, 1995) ("The indispensable party rule is
6 based on equitable and constitutional considerations. The Board does not have jurisdiction
7 over either equitable doctrines or constitutional provisions."); *Association to Protect*
8 *Anderson Creek v. City of Bremerton*, CPSGMHB No. 95-3-0053, Order on Bremerton's
9 Dispositive Motions (October 18, 1995) ("A Petition for Review will not be dismissed for
10 failure to name an indispensable party. Petitioner's are not required to name parties other
11 than the city, county, or state agency taking the underlying action.").

12 The Board finds that there is no requirement for notice to or joinder of the property
13 as an indispensable party.

14 **Issue No. 2:** Does the Board lack jurisdiction to review site-specific comprehensive
15 plan amendments?

16 Grant County ". . . submits the Board does not have jurisdiction to hear a site-
17 specific challenge to a land use action by the County herein." (Motion to Dismiss Petition for
18 Review – 9).

19 Grant County offers no authority for this jurisdictional challenge. Growth Hearing
20 Boards have jurisdiction to hear all matters that contend a county is not in compliance with
21 the requirements of the Growth Management Act (GMA). Many of those challenges have
22 been to the propriety of site-specific dedesignation of agricultural resource lands. *Wenas*
23 *Citizens Association v. Yakima County*, EWGMHB No. 02-1-0008, Final Decision and Order
24 (November 14, 2002); *City of Redmond v. Central Puget Sound Growth Management*
25 *Hearings Board*, 116 Wn.App. 48, 65 P.3d 337 (2003); *Orton Farms, LLC v. Pierce County*,
26 CPSGMHB No. 04-3-0007c, Final Decision and Order (August 2, 2004).

A change in the comprehensive plan designation for a specific property is a matter
subject to review by a Growth Hearings Board.

1 **Issue No. 3:** Do individuals with participation standing have authority to associate
2 for purposes of filing a Petition for Review with the Growth Hearing Board?

3 Grant County challenges participation standing in this matter. The challenge contains
4 several arguments that will be separately addressed in this Order.

5 **A. Individual Participation Standing.**

6 Friends of Agriculture was formed for the purpose of allowing individuals to associate
7 themselves for purposes of filing a Petition for Review to this Board. Each of the named
8 members (Barbara Lutz, Jean Mattson, Lee Bode, and Vera Walker) provided either written
9 or oral testimony regarding the Laughlin Proposal. The Growth Management Act (GMA)
10 recognizes "participation standing" as a jurisdictional basis for appeals to a Hearings Board.
RCW 36.70A.280 provides, in part, as follows:

- 11 (2) A petition may be filed only by: (a) the state, or a county or city that
12 plans under this chapter; (b) *a person who has participated orally or in*
13 *writing before the county or city regarding the matter* in which a
14 review is being requested; (c) a person who is certified by the governor
within 60 days of filing a request with the board; (d) a person qualified
pursuant to RCW 34.05.530. (Emphasis provided.)

15 There is no question that Barbara Lutz, Jean Mattson, Lee Bode and Vera Walker
16 provided either written or oral testimony during the administrative review of the Laughlin
17 proposal. Each has established "participation standing". Those members were specifically
18 identified in the Petition for Review as members of "Friends of Agriculture".

19 This Board has recognized informal associations of qualified individuals for purposes
20 of presenting matters to this Board. Individuals with a common interest may seek review in
21 any number of forums including an unincorporated association. *Save A Valuable*
22 *Environment v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978). The consolidation
23 and coordination of individuals with established standing promotes judicial economy and
24 efficiency in review of challenges under the Growth Management Act (GMA). Petitioner has
25 established that each of the four (4) identified members possesses "participation standing"
26 in this proceeding. The Board determines, however, that association members with an

1 interest in this appeal shall be limited to those identified in the Petition and shall only
2 include Barbara Lutz, Jean Mattson, Lee Bode and Vera Walker.

3 **B. Are Petitioners Limited in Issues Presented to this Board?**

4 Grant County asserts that Petitioners “. . . should be limited to issues specifically
5 presented during the course of administrative review and decision making.” Both this Board
6 and the courts have rejected the concept of issue related standing.

7 The concept of “issue related standing” was specifically rejected in *Wells v. Western*
8 *Washington Growth Management Hearings Board*, 100 Wn.App. 657, 672, 997 P.2d 405
9 (2000) (“ . . . The legislature did not intend to require Petitioners to raise specific legal
10 issues during the local government planning process.”). This Board notes and adopts the
11 analysis in *Butler v. Lewis County*, WWGMHB No. 99-2-0027c, Final Decision and Order
(June 30, 2000) in which the Board stated:

12 In addressing the issue of what “participation” a petitioner must demonstrate
13 to achieve standing to raise issues before a GMHB, the *Wells* Court specifically
14 rejected the issue specific position of respondent and intervenors. The Court,
15 referencing RCW 36.70A.280(2)(b), noted the statute required that the person
16 have participated during the local government process “regarding the matter
17 on which a review is being requested” to acquire GMHB standing. *Wells*
18 specifically held that the term “matter” was not equivalent to the term “issue.”
The Court also rejected the claim of appellant and amicus that the word
“matter” was equivalent to the term “enactment.” Rather, the legislative intent
led to the conclusion that the word “matter” referred to “a subject or topic of
concern or controversy.”

19 The court in *Wells* also recognized that “. . . each Growth Management Hearings
20 Board [has] considerable discretion to determine whether the facts support the necessary
21 connection in each case.”

22 We find that each of the identified members participated in the hearings and
23 provided written and oral comment on the “matter” including expression of concerns
24 regarding impacts upon adjoining farming operations, propriety of land use redesignation
25 and compliance with state law.
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IV. ORDER

The Board enters the following Order:

1. Grant County's Motion to Dismiss Petition for Review is **DENIED**;
2. Grant County's Motion for Dismissal of Issues is **DENIED**;
3. Participation standing is established for the four (4) individuals designated in the Petition for Review – Barbara Lutz, Jean Mattson, Lee Bode and Vera Walker. Those individuals may proceed under association designated "Friends of Agriculture."

SO ORDERED this 27th day of December 2005.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

John Roskelley, Board Member

Judy Wall, Board Member

Dennis Dellwo, Board Member