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

ROLAND 'LANCE' CHIPMAN,

Petitioner,

v.

CHELAN COUNTY,

Respondent,

TURTLE ROCK HOMEOWNERS
ASSOCIATION and STEVE and JEANNE
HANSON,

Intervenors.

Case No. 05-1-0002

ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

On March 21, 2005, ROLAND 'LANCE' CHIPMAN, by and through his representative, John Beuhler, Jr., filed a Petition for Review.

On March 28, 2005, the Board received an Amended Petition for Review, filed by Petitioner.

On April 20, 2005, 2005, the Board held a telephonic Prehearing conference. Present were, Judy Wall, Presiding Officer, and Board Members Dennis Dellwo and John Roskelley. Present for Petitioner was John Beuhler, Jr. Present for Respondent was Susan Hinkle.

On April 26, 2005, the Board issued its Prehearing Order.

On May 2, 2005, the Board received a Motion to Intervene from Turtle Rock Homeowners Association and Steve and Jeanne Hanson.

On May 4, 2005, the Board received Respondent's Supplemental Index of the Record.

1 On May 6, 2005, the Board received a Joint Request for Referral to Mediation
2 Services signed by Petitioner and Respondent.

3 On May 13, 2005, the Board received from Petitioner an Objection to Motion to
4 Intervene.

5 On May 19, 2005, the Board advised the parties by letter it would make a decision,
6 without hearing, on the issue of intervention. Any objections to intervention were to be filed
7 with the Board by May 26, 2005.

8 On May 26, 2005, the Board received Petitioner's Memorandum of Authorities in
9 Opposition to Motion to Intervene. Also on May 26, 2005, the Board received Turtle Rock
10 Homeowners and Hanson's Memorandum of Authorities in Support of Motion to Intervene.
11 No pleadings were received from the Respondent.

12 On May 27, 2005, the Board issued its Order on Motion to Intervene.

13 On June 21, 2005, the Board received the parties' Motion to Continue Mediation.

14 On June 24, 2005, the Board issued the Order to Continue Mediation Proceedings an
15 additional 90 days.

16 On August 22, 2005, the Board issued its Order Setting Briefing and Hearing Dates.

17 On October 11, 2005, the Board received Petitioner's Memorandum of Authorities on
18 the Merits.

19 On October 31, 2005, the Board received Respondent Chelan County's Memorandum
20 of Authorities on the Merits.

21 On November 1, 2005, the Board received Intervenors' Memorandum of Points and
22 Authorities, Intervenors' Motion for Order of Dismissal, and Memorandum of Authorities in
23 Support of Motion for Order of Dismissal.

24 On November 4, 2005, the Board received Petitioner's Memorandum of Authorities in
25 Opposition to Motion to Dismiss and Respondent's Memorandum in Opposition to
26 Intervenors' Motion for Order of Dismissal.

On November 7, 2005, the Board held a telephonic conference. Present were, Judy
Wall, Presiding Officer, and Board Members Dennis Dellwo and John Roskelley. Present for

1 Petitioner was John Beuhler, Jr.. Present for Respondent was Susan Hinkle. Present for
2 Intervenors was James Carmody.

3 **II. FACTUAL BACKGROUND**

4 Chelan County has engaged in the planning process under Growth Management Act
5 (GMA). A comprehensive plan was adopted by the County that included specific provisions
6 regarding mineral resource lands (LU-25-28) and included the required designation of
7 mineral lands of long-term commercial significance. No appeal was filed regarding either
8 the mineral resource components of the plan or the resource inventory, designation and/or
9 protection process or provisions. The comprehensive plan process also recognized the rural
10 character of the subject properties and designated the site as "rural residential/resource:
11 one dwelling unit per five acres (RR-5)." Consistent and implementing zoning was adopted
12 for the property.

13 Chelan County allows for consideration of proposed amendments of the
14 comprehensive plan and zoning ordinances on an annual basis. Roland "Lance" Chipman
15 ("Petitioner" or "Chipman") filed an application with Chelan County requesting amendment
16 of both the comprehensive plan land use designation and the site specific zoning of a
17 specific parcel of property. The application sought redesignation of fifty five (55) acres of
18 land as mineral resource (CPA 2004-03) and rezone of the subject property from Rural
19 Residential/Resource-5 (RR-5) to Mineral Commercial (MC) (ZC 2004-003).

20 Chelan County reviewed the consolidated applications. All procedural and notice
21 requirements were satisfied and significant public participation generated regarding the
22 Chipman proposal. Chelan County Planning Commission held public hearings on December
23 6 and 7, 2004. Chelan County Board of County Commissioners ("BOCC") conducted
24 another public hearing on February 1, 2005. After considering all evidence, testimony and
25 argument, BOCC denied both the comprehensive plan land use redesignation and the
26 rezone of property.

1 Chipman filed an Amended Petition for Review seeking review of Chelan County's
2 denial of the two (2) related land use applications. Intervenors Turtle Rock Homeowners
3 Association and Steve and Jeane Hanson filed a Motion to Dismiss Review.

4 III. DISCUSSION

5 Chipman filed an amended Petition for Review seeking review of Chelan County's
6 denial of two (2) related land use applications: (1) an application for site specific
7 amendment of Chelan County comprehensive plan redesignating fifty five (55) acres of land
8 as Mineral Resource (CPA 2004-03); and (2) a site specific application for rezone of the
9 subject property from Rural Residential/Resource-5 (RR-5) to Mineral Commercial (MC) (ZC
2004-003). This board lacks subject matter jurisdiction to review either land use decision.

10 Growth Management Hearings Boards are vested with authority to review specific
11 land use actions and determinations. RCW 36.70A.280(1) sets forth the primary
12 jurisdictional perimeters as follows:

13 A Growth Management Hearings Board shall hear and determine only those
14 petitions alleging either: (a) that a state agency, county or city planning
15 under this chapter is not in compliance with the requirements of this chapter. .
16 . . ; or (b) that the twenty year growth management planning population
projections adopted by the Office of Financial Management pursuant to RCW
43.62.035 should be adjusted.

17 Review based upon a "failure to act" is authorized only where the jurisdiction fails to
18 take an ". . . action by a deadline specified in the act." WAC 242-02-220(5). Jurisdictional
19 requirements are supplemented by RCW 36.70A.290(2) which provides, in pertinent part, as
20 follows:

21 All petitions relating to whether or not an adopted comprehensive plan,
22 development regulation, or permanent amendment thereto, is in compliance
23 with the goals and requirements of this chapter. . . must be filed within sixty
days after publication by the legislative bodies of the county or city.

24 This appeal does not involve a review of "an adopted comprehensive plan,
25 development regulation, or permanent amendment thereto," It seeks review of
26

1 Chelan County's denial of a site specific application for comprehensive plan and zoning
2 amendment.

3 **3.1 GMHB's Lack Subject Matter Jurisdiction Over Planning Jurisdiction's**
4 **Denial of a Comprehensive Plan Amendment.** It is well settled that Growth Boards

5 do not have jurisdiction over decisions which deny an application to amend a
6 comprehensive plan or development regulation. The Central Puget Sound Board stated in
7 *Kent C.A.R.E.S. v. City of Kent*, CPSGMHB Case No. 02-03-0015, Order on Motions
(November 27, 2002) as follows:

8 "It is well established through Board case law and the Washington Courts that
9 the jurisdiction of (GMHBs) is limited to review of Comprehensive Plans and
10 development regulations *adopted, or amended*, pursuant to Chapter 36.70A
RCW, for compliance with the GMA." (Emphasis added).

11 The issue of subject matter jurisdiction and review of a local jurisdiction's "denial" of
12 a proposed plan amendment was addressed by the Central Puget Sound Board in *Cole v.*
13 *Pierce County*, CPSGMHB Case No. 96-3-0009c, Final Decision and Order, (July 31, 1996).

14 Central Puget Sound Board concluded that it did not have jurisdiction to review a
15 local jurisdictions denial of the proposed comprehensive plan amendment.

16 While RCW 36.70A.130 authorizes a local government to amend
17 comprehensive plans annually, it does not *require* amendments. Moreover, it
18 does not dictate that a specific proposed amendment be adopted. Cole did
19 not point out any other statutorily created duty with which the county has
20 failed to comply. At such time as the county *takes* an action pursuant to the
21 authority of RCW 36.70A.130 or fails to meet a duty imposed by some other
provision of the GMA, Cole may have an action that could properly be brought
before the Board. Absent such facts, Cole's recourse is elsewhere.

22 The Board holds that county's failure to act cannot be construed to be an
23 "action" under RCW 36.70A.130. The Board further holds that the actions
24 challenged in Cole's petition were not taken in response to a GMA duty to act
25 by a certain deadline, or in response to any other duty imposed by the Act,
26 and that WAC 242-02-220(5) does not apply to this case. Finally, the Board
holds that the county's failure to adopt proposed amendment 2.3 is not
subject to the Board's jurisdiction under RCW 36.70A.280.

1
2 Growth Board's have consistently held that they lack subject matter
3 jurisdiction to review denials of proposed plan amendments. *Torrance v. King*
4 *County*, CPSGMHB No. 96-3-0038, Order Granting Dispositive Motion (March 31,
5 1997) ("The Board holds that Petitioners cannot now challenge . . . the county's
6 decision not to adopt Petitioner's proposed amendments).

7 Chelan County's denial of the proposed amendments to the comprehensive plan and
8 zoning ordinance are not "actions" reviewable by this Board. Annual amendments to a
9 comprehensive plan are allowed but not "required" by Growth Management Act (GMA). The
10 consistent and uniform decisions of growth board's recognize that GMA does not provide
11 jurisdiction for review of a local jurisdiction's denial of a proposed comprehensive plan
12 amendment.

12 **3.2 Board Does Not Have Jurisdiction to Review Site Specific Rezone**
13 **Applications or Other Land Use Project Decisions.** Chipman has also petitioned for
14 review of Chelan County's denial of a site-specific rezone application. It is well settled that
15 Growth Boards do not have jurisdiction to review land use project permit decisions such as
16 site specific rezone applications. The court in *Wenatchee Sportsmen Assoc'n v. Chelan*
17 *County*, 141 Wn.2d 169, 4 P.3d 123 (2000), reviewed statutory and judicial guidelines for
18 review of site-specific rezone applications. It was held that a site-specific rezone is
19 reviewable under LUPA as "project permit application" and that Growth Boards do not have
20 jurisdiction to review such decisions. The court stated:

21 . . . *The conclusion to be drawn from these provisions is that a site-specific*
22 *rezone is not a development regulation under the GMA, and hence pursuant to*
23 *RCW 36.70A.280 and .290, a GMHB does not have jurisdiction to hear a*
24 *petition that does not involve a comprehensive plan or development regulation*
25 *under the GMA. See, also, Citizens for Mount Vernon v. City of Mount Vernon,*
26 *133 Wn.2d 861, 868, 947 P.2d 1208 (1997).*

Wenatchee Sportsman Assoc. v. Chelan County, 141 Wn.2d at 179.

1 Growth Boards have also recognized the jurisdictional limits related to review of land
2 use project permit decisions. Central Puget Sound Growth Board stated “. . . it is well
3 settled that the Board’s do not have jurisdiction to review land use project permit
4 decisions.” *Kent C.A.R.E.S. v. City of Kent*, CPSGMHB No. 02-3-0015, p.5, Order on Motions
5 (November 27, 2002). This Board adhered to the *Wenatchee Sportsmen* ruling in *Sandra*
6 *Wilma v. City of Colville*, EWGMHB Case No. 02-1-0007, Final Decision and Order on
7 Amended Petition for Review, (December 5, 2002).

8 **Conclusion:**

9 This Board does not have jurisdiction to review matters relative to the proposed site-
10 specific rezone application denominated ZC 2004-003.

11 **IV. FINDINGS OF FACTS**

- 12 1. Chelan County has engaged in a planning process under the Growth
13 Management Act (GMA). A comprehensive plan was adopted that
14 included specific provisions regarding mineral resource lands (LU-25-
15 28) and included the required designation of mineral lands of long-term
16 commercial significance. No appeal was filed regarding either the
17 mineral resource components of the plan or the resource inventory,
18 designation and/or protection process or provisions. The
19 comprehensive plan process also recognized the rural character of the
20 subject properties and designated the site as “rural
21 residential/resource: one dwelling unit per five acres (RR-5).”
22 Consistent and implementing zoning was adopted for the property.
- 23 2. Chelan County allows for consideration of proposed amendments to the
24 comprehensive plan and zoning ordinance on an annual basis. Roland
25 “Lance” Chipman (“Petitioner” or “Chipman”) filed an application with
26 Chelan County requesting amendment of both the comprehensive plan
land use designation and the site specific zoning of a specific parcel of
property. The application sought redesignation of fifty-five (55) acres of

1 land as mineral resource (CPA 2004-03) and rezone of the subject
2 property from Rural Residential/Resource (RR-5) to Mineral Commercial
3 (MC) (ZC 2004-003).

- 4 3. Chelan County reviewed the consolidated applications. All procedural
5 and notice requirements were satisfied and significant public
6 participation generated regarding the site specific proposal. Chelan
7 County Planning Commission held public hearings on December 6 and
8 7, 2004. Chelan County Board of County Commissioners ("BOCC")
9 conducted another public hearing on February 1, 2005. After
10 considering all evidence, testimony and argument, BOCC denied both
11 the comprehensive plan land use redesignation and the rezone of
12 property.
- 13 4. Chipman filed an Amended Petition for Review seeking review of
14 Chelan County's denial of the two related land use applications.
15 Intervenor Turtle Rock Homeowners Association and Steve and Jeanne
16 Hanson filed a Motion to Dismiss Review.

17 **V. CONCLUSIONS OF LAW**

- 18 1. Growth Management Hearings Boards are vested with the authority to
19 review specific land use actions and determinations pursuant to RCW
20 36.70A.280(1).
- 21 2. Review based upon a "failure to act" is authorized only where the
22 jurisdiction fails to take "an action by a deadline specified in the Act."
23 WAC 242-02-220(5). Jurisdictional requirements are supplemented by
24 RCW 36.70A.290(2).
- 25 3. The instant appeal does not involve review of "an adopted
26 comprehensive plan, development regulation, or permanent
amendment thereto," rather it seeks review of Chelan County's denial

1 of a site specific application for comprehensive plan and zoning
2 amendment.

- 3 4. Growth Boards do not have jurisdiction over decisions which deny an
4 application to amend a comprehensive plan or development regulation.
5 5. Chelan County's denial of the proposed amendments to the
6 comprehensive plan and zoning ordinance are not "actions" reviewable
7 by this Board. Annual amendments to a comprehensive plan are
8 allowed but not "required" by the Growth Management Act.
9 6. The Growth Board does not have jurisdiction to review site specific
10 rezone applications or other land use project decisions.
11 7. The Growth Board does not have jurisdiction to review matters relative
12 to the proposed specific rezone application denominated ZC 2004-003.

13 Based on the foregoing Findings of Fact and Conclusions of Law, the Board hereby enters
14 the following:

14 IV. ORDER

15 Based upon review of the Amended Petition for Review, the briefs and exhibits
16 submitted by the parties, and having deliberated on the matter, the Board **ORDERS:**

- 17 1. Intervenor's Motion to Dismiss is **GRANTED**.
18 2. The Petition for Review filed by Roland "Lance" Chipman is
19 **DISMISSED WITH PREJUDICE**.
20 3. The hearing on the merits in EWGMHB Case No. 05-1-0002, scheduled
21 for November 15, 2005 is **CANCELLED**.

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

23 **Reconsideration:** Pursuant to WAC 242-02-832, you have ten (10) days from the
24 mailing of this Order to file a petition for reconsideration. Petitions for
25 reconsideration shall follow the format set out in WAC 242-02-832. The original
26 and four (4) copies of the petition for reconsideration, together with any
argument in support thereof, should be filed by mailing, faxing or delivering the

1 document directly to the Board, with a copy to all other parties of record and
2 their representatives. Filing means actual receipt of the document at the Board
3 office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for
reconsideration is not a prerequisite for filing a petition for judicial review.

4 Judicial Review: Any party aggrieved by a final decision of the Board may appeal
5 the decision to superior court as provided by RCW 36.70A.300(5). Proceedings
6 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.

7
8 Enforcement: The petition for judicial review of this Order shall be filed with the
9 appropriate court and served on the Board, the Office of the Attorney General,
and all parties within thirty days after service of the final order, as provided in
10 RCW 34.05.542. Service on the Board may be accomplished in person or by mail.
11 Service on the Board means actual receipt of the document at the Board office
within thirty days after service of the final order.

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

13
14 **SO ORDERED** this 31st day of January 2006.

15 EASTERN WASHINGTON GROWTH MANAGEMENT
16 HEARINGS BOARD

17 _____
18 Judy Wall, Board Member

19 _____
20 Dennis Dellwo, Board Member

21 _____
22 John Roskelley, Board Member