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

WILMA et al.,

Petitioners,

v.

STEVENS COUNTY,

Respondent,

Case No. 06-1-0009c

ORDER ON MOTION FOR
CLARIFICATION OF THE RECORD

I. PROCEDURAL HISTORY

On September 8, 2006, SAUNDRA WILMA and ROBERT BERGER, filed a Petition for Review.

On September 11, 2006, JAMES DAVIES and LARSON BEACH NEIGHBORS and JEANIE WAGENMAN, filed Petitions for Review.

On October 10, 2006, the Board held a telephonic Prehearing conference for Case Nos. 06-1-0007, 06-1-0008, and 06-1-0009 collectively. Present were, John Roskelley, Acting Presiding Officer, Board Members Judy Wall and Dennis Dellwo were unavailable. Present for Petitioners were Sandra Wilma, Robert Berger, James Davies, and Jeanie Wagenman. Present for Respondent was Peter Scott.

The Board at the Prehearing conference consolidated Case Nos. 06-1-0007-06-1-0009. The new Case Name and Number is as follows and shall be captioned accordingly: WILMA et al. v. STEVENS COUNTY, 06-1-0009c. The acting Presiding Officer instructed the

1 Petitioners to consolidate the issues and provide the Board and Respondent with copies of
2 consolidated issues by October 16, 2006. The Petitioners advised they were unable to meet
3 the October 16, 2006, deadline for submitting the proposed consolidated issues and would
4 provide the Board and Respondent the issues as soon as possible.

5 On October 24, 2006, the Board received the proposed consolidated issues.

6 On October 25, 2006, the Board asked the Respondent to advise the Board if it
7 objected to the rewritten issues. Mr. Scott on October 31, 2006, filed with the Board
8 Respondent's Objection and Motion for Extension.

9 On October 31, 2006, the Board received Petitioners' Motion to Supplement the
10 Record.

11 On November 1, 2006, the Board issued its Prehearing Order.

12 On November 8, the Board received Respondent's Motion to Dismiss Issue Nos. 11,
13 12, and 13, filed by Petitioner James Davies.

14 On November 15, 2006 the Board received from Petitioner James Davies, Response
15 to Motion to Dismiss, Respondent Stevens County's Response to Motion to Supplement the
16 Record, and Request for Extension.

17 On November 20, 2006, the Board received Respondent's Reply in Support of Motion
18 to Dismiss and Response to Petitioners' Request for Extension.

19 On November 27, 2006, the Board received Larson Beach Neighbors & Jeanie
20 Wagenman's Response to Stevens County's Response to Motion to Supplement Record.

21 On November 27, 2006, the Board held the telephonic motion hearing. Present were,
22 John Roskelley, Presiding Officer, and Board Members Dennis Dellwo and Joyce Mulliken.
23 Present for Petitioners were, Sandra Wilma, James Davies, Larson Beach Neighbors, &
24 Jeanie Wagenman. Present for Respondent was Peter Scott, Clay White, and the Stevens
25 County Board of County Commissioners.

26 On December 4, 2006, the Board issued its Order on Motions.

1 On December 18, 2006, the Board received from Stevens County's PUD No. 1 a
2 Request for Permission to File a Motion After the Date Set Forth in the Prehearing Order;
3 and Motion to File Amicus Curiae Brief.

4 On December 20, 2006, the Board issued its Order on Motion to File Amicus Brief.

5 On December 29, 2006, the Board received Petitioners' Wilma et al. Response to
6 Stevens County P.U.D. Request to File Late Motion and Response to PUD Motion to File
7 Amicus Curiae Brief.

8 On January 3, 2007, the Board received CTED's Request for Permission to File a
9 Motion After the Date Set Forth in the Prehearing Order and Motion to File Amicus Brief.

10 On January 4, 2007, the Board issued its Order on Stevens County PUD's Motion to
11 File Amicus Curiae Brief.

12 On January 11, 2007, the Board received Petitioners Larson Beach Neighbors and
13 Jeanie Wagenman's letter expressing concern over CTED's involvement in this matter.

14 On January 12, 2007, the Board issued its Order on CTED's Motion to File Amicus
15 Curiae Brief.

16 On January 31, 2007, the Board received Petitioner Larson Beach Neighbors and
17 Jeanie Wagenman's Motion to File a Motion, a Motion to File an Extended Reply Brief, and
18 Motion Requesting the Eastern Washington Growth Management Hearings Board
19 (EWGMHB) ask for a complete CD record.

20 On February 5, 2007, the Board issued its Order on Petitioners' Motion to File a
21 Motion, Motion to File an Extended Reply Brief, and Motion for Complete CD Record.

22 On February 7, 2007, the Board held the hearing on the merits. Present were, John
23 Roskelley, Presiding Officer, and Board Member Dennis Dellwo. Board Member Joyce
24 Mulliken was unavailable. Present for Petitioners were, Sandra Wilma, Larson Beach
25 Neighbors, & Jeanie Wagenman. Present for Respondent was Peter Scott.

26 On February 12, 2007, the Board received Petitioners Larson Beach Neighbors and
Jeanie Wagenman's Re-Submitted Hearing on the Merits Reply Brief.

1 On February 14, 2007, the Board received Respondent's Motion to Reconsider Order
2 and Strike Portions of Petitioners' Reply Brief.

3 On February 15, 2007, the Board issued its Order on Respondent's Motion for
4 Reconsideration.

5 On March 12, 2007, the Board issued its Final Decision and Order.

6 On March 21, 2007, the Board received Petitioners LBN & Wagenman's Motion for
7 Clarification/Reconsideration of FDO and Petitioner Wilma's Motion and Argument for
8 Reconsideration and Request for Rebuttal Briefing to Respondent's Expected Clarification of
the Record.

9 On March 22, 2007, the Board received Respondent's Motion for Partial
10 Reconsideration.

11 On March 27, 2007, the Board received Petitioner Wagenman's Request for
12 Completed Record of Exhibits.

13 On March 29, 2007, the Board received Respondent's Motion for Clarification and
14 Declaration of Sarah E. Steiner.

15 On April 2, 2007, the Board received Petitioner Wagenman & LBN's Response to
16 Respondent's Motion for Clarification.

17 On April 4, 2007, the Board held a teleconference. Present were, John Roskelley,
18 Presiding Officer, and Board Member Dennis Dellwo and Joyce Mulliken. Present for
19 Petitioners were, Sandra Wilma, Larson Beach Neighbors, & Jeanie Wagenman. Present for
Respondent was Peter Scott.

20 On April 10, 2007, the Board issued its Order on Motion for Reconsideration and
21 Clarification.

22 On April 23, 2007, the Board issued its Order Granting Extension of Time.
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1 **II. DISCUSSION**

2 **Parties Positions:**

3 The Petitioners, Ms. Jeanie Wagenman and Larson Beach Neighbors (LBN), asked the
4 Board for clarification concerning the case record believing there are attachments to letters,
5 excerpts from publications, and other documents missing from the complete record sent to
6 the Eastern Washington Growth Management Hearings Board (Board). The Petitioners
7 contend that the County provided the Board with a CD containing the full Index of Record,
8 with the exclusion of the Larson Beach Neighbors submissions. The Petitioners argue that
9 should the County decide to appeal the Board's Final Decision and Order (FDO) to Superior
10 Court, the certified record sent to the court from the Board would not be complete. The
11 Petitioners contend that the CD contains most, if not all the submitted letters, but not the
12 attachments. A list of those exhibits and documented attachments is provided by the
13 Petitioners.

14 The Respondent, Stevens County, was ordered by the Board on February 5, 2007, to
15 include all of the Petitioner's exhibits, so that the entire record would be included in the
16 complete record. The Respondent contends there are two separate issues: 1) the Board's
17 Order for the County to supplement the record with sub-area planning documents and 2)
18 the Board's Order for the County to produce thousands of pages from the County record in
19 response to a motion filed by Petitioner Wagenman on February 2, 2007. The Respondent
20 contends there is a distinction between "County record", which is the record developed by
21 the County in support of the adopted Comprehensive Land Use Plan, and "record on
22 review", which refers to the record placed before the Board by the Parties. The Respondent
23 argues that there are no outstanding issues related to the first issue concerning the sub-
24 area documents.

25 The Respondent does, however, argue that the outstanding issue concerns the
26 Petitioners' Motion for Clarification dated February 2, 2007, in which the Petitioners request
reproduction of the supplemental documents listed in her letter of December 14, 2006. The

1 Respondent contends that the Petitioners submitted volumes of documents into the
2 County's record and the rules require the Petitioners to produce it, if some portion of that
3 evidence supports their case. The Respondent is required under WAC 242-02-632(1) to
4 produce the record, but the exhibits in question cannot be considered part of the record on
5 review since the Board has already issued its FDO.

6 The Petitioners filed a response on April 2, 2007. They contend the Board was "not
7 confused" concerning the request to supplement the record on November 27, 2006, with
8 the action requested by the Petitioners on January 31, 2007, and granted by the Board on
9 February 5, 2007. The Petitioners contend that the County supplied the Board with a CD of
10 the entire County record, excluding the Petitioners exhibits and attachments. The
11 Petitioners contend that if the County appeals the Board's decision to Superior Court, the
12 record will not contain the Petitioners exhibits because they are not part of the record. The
13 Petitioners argue that the Board should have been allowed to view the entire record, not
14 just the record on the CD that the County wanted the Board to see. The Petitioners contend
15 that their submissions should be considered as part of the record, but were not because the
16 Respondent excluded many of them. The Petitioners argue that everything was viewed and
17 scanned onto the CD except the Petitioners submissions. The Petitioners argue that the
18 burden of completing the entire record should not be on the Petitioners, since it was the
19 County who omitted the submissions.

20 After a teleconference with the Parties, Petitioner Wagenman agreed to examine the
21 CD to determine if documents other than the Petitioners were left off the CD. A letter was
22 received on April 6, 2007, from the Petitioners stating that the CD contained gaps, which
23 were the Petitioners attachments, except certain documents regarding the comprehensive
24 planning surrounding Mr. Stravens employment; Exhibits 120 through 125, Exhibits 127
25 through 133, Exhibits 135 through 139, and Exhibit 1014 from Futurewise. According to the
26 Petitioner, all other files appeared to have the complete index of record with attachments,
with the exception of the Petitioners attachments.

1 **Board Discussion:**

2 The Board agrees with the Respondent concerning its interpretation of the
3 Petitioners' motion of February 2, 2007. The Board erroneously believed that the request by
4 the Petitioners was to again enforce our order of November 27, 2007, to have the County
5 supplement the record with the sub-area planning documents and a few other exhibits Ms.
6 Wagenman contended were not in the record. The exhibit list was supplied to the Board on
7 December 14, 2006, and the County added these documents to the record as requested.

8 The confusion stems from the Petitioners' second request to add letters and
9 attachments the Petitioners say are missing from the entire record to the County's CD
10 and/or paper record. The Board failed to understand what was being requested and
11 ordered the County to include all of the Petitioners documents, including attachments, and
12 asked the Petitioners to provide a specific list for the County to include in the record.

13 The County is responsible for filing with the Board and to serve a copy on the parties
14 an "index of all material used in taking the action, which is the subject of the petition for
15 review." WAC 242-02-520. The entire record contains all documents used in taking the
16 action, which includes the Petitioners letters and voluminous attachments. If requested, this
17 record is available at the County. The record provided to the Board, in this case, are those
18 exhibits cited in the briefs and attached to them. The County contends the CD is not the
19 "entire record", but the exhibits the County presented to the Board with its Hearing on the
20 Merits brief.

21 The Board agrees with the Respondent that the Petitioners should have included any
22 and all documents or portions thereof that were important to their case with their Hearing
23 on the Merits brief. To request the County to include all documents in the record in support
24 of its argument is not required by WAC 242-02-52001, which states, (1) Except as
25 otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in
26 the briefs and attached thereto. A copy of any document cited in a brief shall be served on
the opposing party or parties by the time specified by the board or presiding officer and an

1 original and three copies of the exhibits shall be filed with the board." The Petitioners failed
2 to include the requested documents in their brief and, therefore, cannot require the County
3 to do so.

4 The record provided to the Board is limited to those exhibits attached to the Parties
5 briefs and, therefore, when certified will not contain some of the documents held by the
6 County in the entire record.

7 III. ORDER

- 8 1. The Board revokes its order of January 31, 2007, requiring the County to
9 include exhibits listed in the Petitioners' letter of March 27, 2007.

10 **SO ORDERED** this 30th day of April 2007.

11 EASTERN WASHINGTON GROWTH MANAGEMENT
12 HEARINGS BOARD

13 _____
14 John Roskelley, Board Member

15 _____
16 Dennis Dellwo, Board Member

17 _____
18 Joyce Mulliken, Board Member