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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 RESPONDENT'S MOTION
FOR RECONSIDERATION

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 II. DISCUSSION

4 On February 14, 2007, the Respondent, Stevens County, submitted a Motion to
5 Reconsider Order and Strike Portions of Petitioner's Reply Brief. The Board will address each
6 request separately.

7 As allowed by WAC 242002-522(5), the Presiding Officer may "[R]ule on all
8 procedural matters, objections and motions unless a board determination is required." In
9 addition, WAC 242-02-532(3) states that the Presiding Officer "after taking into
10 consideration when the motion was received and the complexity of the issues raised, may,
11 in its discretion, schedule a hearing for argument of a motion at the time of a prehearing
12 conference or at a separate hearing time, or may defer consideration of the motion until
13 commencement of the hearing on the petition for review." Board emphasis on "may".

14 The Respondent argues that the Order issued by the Hearings Board on February 5,
15 2007, "deprives the County of its right to due process under the law, exceeds the Hearings
16 Board's authority and violates the board's own procedural rules." Respondent Motion at 2.
17 The Respondent agrees that the Board has discretion to set a hearing on the motions or
18 limit argument to the briefs, but fails to include the permissive wording in the statute. The
19 phrase, "...may, in its discretion," after "consideration of when the motion was received and
20 the complexity of the issues raised", gives the Board discretion as to whether to schedule a
21 hearing for argument of a motion.

22 The Board determined from Ms. Wagenman's motions that time was of the essence
23 in dealing with the motions, that the issues were not complex, and a motion hearing and
24 briefs were not necessary under the circumstances. The Board used its discretion under the
25 law to decide the issue.

26 Again, the Respondent agrees that the Presiding Officer, under "WAC 242-02-
522(13)", which should be referenced as WAC 242-02-522(16), can waive any requirement

1 of these rules unless a party shows that it would be prejudiced by such a waiver.
2 Respondents Motion at 2. The Presiding Officer decided the complexity of the issues was
3 simple and waiving the requirements of WAC 242-02-534 would not prejudice any of the
4 parties.

5 The Respondent then argues that he did not have time to respond to the Order and
6 claims he was "surprised and prejudiced" by the order. Respondent Motion at 3. The
7 Respondent also contends that by issuing the Order without allowing a response from the
8 County, the Board has "demonstrated a biased predisposition in favor of petitioner
9 Wagenman". The Respondent's claim of prejudice is not substantiated by any argument and
10 neither is the claim that the Board has demonstrated a bias. Both of the Respondent's
11 contentions fail by lacking substance and facts.

12 The Petitioners' request to file an extended brief was timely and the extra length of
13 their brief was justified by the addition of the two amicus parties. The original length for a
14 response brief was set prior to the pre-hearing conference. With the addition of CTED and
15 the PUD arguing on the same side as the Respondents, an additional fifteen pages of
16 briefing was warranted. The Presiding Officer took into account the Respondent's initial
17 complaint in his HOM brief, which stated, "Ms. Wagenman's brief is excessively long, single-
18 spaced and less than 12-point font." In the Board's Order, Ms. Wagenman was required to
19 resubmit her brief in the accepted font of proper-size, and with 1.5 line-spacing. Knowing
20 that 34 pages of single-spaced lines would increase when changed to 1.5 line spacing, the
21 Board gave the Petitioner an additional six pages. Even then, the Petitioner had to reduce
22 her arguments, which actually achieved one of the purposes, to enhance the Petitioners'
23 "clarity and brevity" in writing their brief. The new version received February 13, 2007, is
24 altered only in format and nothing was added to the brief in terms of wording.

25 The Respondent contends the County is prejudiced by the inclusion of evidence not
26 taken from the County's record and objects as well. The hand-written tabs submitted by the
Petitioner correspond to exhibits found in the Petitioner's Table of Attachments – Exhibits,

1 at the end of the Petitioners' brief and are easy to follow. There doesn't appear to be any
2 documents that are not part of the record, but if the County does find one or two, the
3 Board will have those stricken from the record.

4 The Respondent correctly quotes WAC 242-02-52001 and there is no need for the
5 Board to reiterate that information. As the Respondent recalls, the Board granted the
6 Petitioner the right to supplement the record with documents pertaining to the Loon Lake
7 sub-area. Order on Motion to Supplement, Motion to Dismiss, and Request for Extension to
8 Pursue Settlement at 5 (Dec. 14, 2006). The Board, on November 27, 2006, also requested
9 the Petitioners to provide the Board and the parties with a specific list of the supplemental
10 documents. The Petitioner complied and these documents are listed in the Petitioners' letter
11 dated December 15, 2006. The Petitioners contend that the record on the CD did not
12 include any of the exhibits submitted by the Petitioners resulting in an incomplete Index of
13 Record. The Board agreed in part and ordered that the Respondents "submit a complete
14 copy of the Index of the Record, including the Petitioners' requested exhibits." These should
15 have been part of the record submitted for the case and, if they weren't, the Respondent
16 needs to have them available in the written record. There are not "thousands of pages" in
17 the supplemental documents listed in the Petitioners' letter of December 15, 2006, and
18 most of them, if not all of them, are currently in the record on CD. The evidence requested
19 by the Petitioner is part of the record of this case. The County has a responsibility under
20 WAC 242-02-520 to "file with the board and serve a copy on the parties of an index of all
21 material used in taking the action, which is the subject of the petition for review." (Board
22 emphasis). The Petitioner has requested the supplemental evidence and the Board has
23 ordered it to be part of the record and thus the index provided.

24 III. ORDER

- 25 1. The Respondent's motion to file a motion is granted. The Respondent
26 has made the motions in writing, has stated the grounds, and has set
forth the relief sought.

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- 2. The Motion to Reconsider Order is denied. The Presiding Officer has the legal discretion to move the case forward, especially in light of the timing of the party's request and the complexity of the issues. A motion hearing and/or briefs were not warranted, in the opinion of the Board.
- 3. The Motion to Strike Portions of Petitioner's Reply brief is denied. The Respondent did not support their allegation that the County is prejudiced by the inclusion of evidence that was "not taken from the County's record." Respondents motion at 4.

SO ORDERED this 15th day of February 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

John Roskelley, Board Member

Dennis Dellwo, Board Member

Joyce Mulliken, Board Member