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3 **State of Washington**
4 **GROWTH MANAGEMENT HEARINGS BOARD**
5 **FOR EASTERN WASHINGTON**
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7 KATHY MIOTKE, JULIA McHUGH,
8 NEIGHBORHOOD ALLIANCE OF SPOKANE,
9 and PALISADES NEIGHBORHOOD,

10 Petitioners,

11 v.

12 SPOKANE COUNTY,

13 Respondent.
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Case No. 07-1-0005

ORDER ON MOTIONS

17 This matter comes before the Eastern Washington Growth Management Hearings
18 Board (The Board) upon the motion of Spokane County (County) to dismiss the Petition or
19 strike issues therein which are barred by the doctrine of res judicata, collateral estoppel or
20 where the Board has no subject matter jurisdiction.

21 The Petitioners filed a motion seeking the elimination of portions of the Respondent's
22 index claimed to be extra-record material.

23 **I. PROCEDURAL HISTORY**

24 On March 21, 2007, KATHY MIOTKE, JULIA McHUGH, NEIGHBORHOOD ALLIANCE
25 OF SPOKANE, and PALISADES NEIGHBORHOOD, by and through their representative, Rick
26 Eichstaedt, filed a Petition for Review.

1 On April 17, 2007, the Board issued its Prehearing Order.

2 On May 2, 2007, the Board received Respondent's Motion and Memorandum in
3 Support of Motion to Dismiss Petition or in the Alternative to Strike Issues in Petition for
4 Review.

5 On May 7, 2007, the Board received Petitioners' Motion and Memorandum in
6 Objection to Portions of Respondent's Index of Record and to Strike Extra-Record Materials.

7 On May 31, 2007, the Board received Respondent's Motion to Extend Time for Filing
8 of Reply Memorandum Regarding Dispositive Motions and Reply Memorandum in Support of
9 Motion to Dismiss Petition or in the Alternative to Strike Issues in Petition for Review.

10 On June 5, 2007 the Board held a Motion's Hearings PUT IN PEOPLE ETC HERE.

10 THE PARTIES' MOTIONS

11 Spokane County made a motion to dismiss the Petition claiming it was barred under
12 the doctrines of res judicata or collateral estoppel. As an alternative, the County made a
13 motion to strike issues in the Petition for review over which the County claims the Board
14 has no subject matter jurisdiction or which are barred by the doctrine of res judicata or by
15 statute of limitations.

16 The Petitioners moved the Board to strike extra-record material included in the
17 Respondent's Index of Record.

18 The Respondent also filed a motion to extend time for filing their reply memorandum
19 regarding dispositive motions.

19 Motion For extended time:

20 Having reviewed the Respondent's request for additional time to file their reply
21 memorandums and finding that granting such request will cause no burden upon the parties
22 or the Board, such motion is granted and the additional time requested is allowed.

23 Respondent's Dispositive Motions:

24 POSITION OF THE PARTIES

25 The Respondent asked the Board to dismiss the Petition in this matter. They argue
26 the Petitioners' claim is barred by res judicata or by the operation of collateral estoppel.

1 The Respondent contends that the issues raised by the Petitioners are in fact the same
2 issues raised in previous cases before the Board, Nos. 05-1-0004 and 05-1-0007. The
3 County claims that the subject matter, cause of action, persons and parties and the quality
4 of the persons for or against whom the claim is made are identical. They believe that review
5 of this Petition would be a re-litigation of issues identical to those already adjudicated in a
6 prior action that resulted in a final judgment on the merits.

7 The Petitioners contend that the Petition raises new issues different than the ones
8 raised in the previous two Petitions. They further argue that the County raises factual
9 issues not appropriate for resolution at this stage of the proceeding. The Petitioners cite the
10 April 17, 2007 Prehearing Order in this matter where the Board advised the parties that
11 they will consider only motions that address purely legal issues. The Petitioners believe that
12 these issues are complex and involve mixed questions of law and fact that should be
13 addressed in the context of the finalization of the record and detailed arguments on the
14 merits.

BOARD DISCUSSION

15 The Growth Boards have increasingly refused to consider dispositive motions that
16 raise issues which are the "heart" of the case before the Board, involve issues of significant
17 complexity, and/or involve issues of both law and facts. While this Board in the past has
18 seen fit to rule on some complex dispositive motions, the three Boards have limited what
19 they consider by motion. The Boards consider only those dispositive motions which involve
20 a limited record and limited issues of law. The example given in the regulations adopted by
21 the three Boards is a motion to decide a challenge to compliance with the public
22 participation requirements of the Growth Management Act (GMA). WAC 242-02-530.

23 The Board finds that the issues raised by the Respondents in their Motion are
24 complex and require the use of extensive parts of the record. The Board further finds that
25 these issues are at the heart of the case before it and requires time and consideration,
26 which will be available at the Hearing on the Merits. This case involves an act of the County
different than the actions raised in Case Nos. 05-1-0004 and 05-1-0007.

1 The Board also finds that there are genuine issues of material fact that must await
2 the full hearing for resolution. The motions of the County to dismiss the Petition or issues
3 therein are denied at this time.

4 **Petitioners' Motion:**

5 **Position of the Parties:**

6 The Petitioners sought the removal of certain documents from the Record. They
7 contend the documents were beyond the scope of the record as defined by WAC 242-02-
8 520. The records challenged included documents which are claimed to have nothing to do
9 with the issues before the Board.

10 The County contends that the records are part of the complete record and should not
11 be eliminated.

12 **BOARD DISCUSSION**

13 The County is required to file with the Board an index of all material used in taking
14 the action which is the subject of the Petition for review. WAC 242-02-520. Not all of the
15 documents included in such a Record are relevant to the issues raised in the Petition, yet
16 they are part of the record required to be indexed. It would be difficult and time
17 consuming to review each item in the Record and to determine its relevancy. It is much
18 more efficient in such cases to review their relevancy or the weight of such evidence if and
19 when that particular document is offered as evidence before the Board.

20 The motion of the Petitioners to strike portions of the Record is denied.

21 **VI. ORDER**

22 Based upon review of the Petition for review, prehearing order, the briefing of the
23 parties, the Board's prior cases, the GMA, and having considered the arguments of the
24 parties and deliberated on the matter, the Board ORDERS:

- 25 1. The Respondent's motion to dismiss the Petition or Issues therein is
26 denied.
2. The Respondent's motion for additional time to file a brief is granted.

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3. The Petitioners' motion to strike portions of the Record is denied.

SO ORDERED this 11th day of June 2007.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Board Member

John Roskelley, Board Member

Joyce Mulliken, Board Member