

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

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

CHRISTINE WYNECOOP and  
NEIGHBORHOOD ALLIANCE OF SPOKANE,

Petitioners,

Case No. 07-1-0007

v.

ORDER ON PETITIONERS' MOTION  
FOR RECONSIDERATION

SPOKANE COUNTY,

Respondent.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**I. PROCEDURAL HISTORY**

On November 14, 2007, the Eastern Washington Growth Management Hearings Board (the **Board**) issued its Final Decision and Order on Dismissal (**Final Order**) in the above-captioned matter. The Final Order dismissed the Petition for Review (**PFR**), concluding the Board lacked "jurisdiction over the PFR based on the Petitioners failure to file the PFR within the 60-day statutory deadline, and to adequately set forth and support their standing."

On November 26, 2007, the Board received "Petitioners' Motion for Reconsideration" (Petitioners' Motion) with one attachment, the Affidavit of Kathy Miotke.<sup>1</sup> On December 3, 2007, the Board received "Respondent's Brief in Opposition to Motion for Reconsideration," and the Petitioners' Reply.

No hearing was held, arguments on the Motion was limited to briefing.

---

<sup>1</sup> The Board finds, pursuant to WAC 242-02-832(1), the Petitioners' motion is timely.

1 **II. MOTION FOR RECONSIDERATION**

2 In this matter, Petitioners challenged an administrative interpretation (AI-0002-2005)  
3 by Spokane County's Director of Building and Planning which, in 2005, had the effect of  
4 rezoning 8.26 acres of land from Low-Density Residential to Mixed Use. The Board  
5 dismissed the matter, finding that (1) the PFR was not timely and (2) the Petitioners failed  
6 to adequately set forth and support standing. Because of this, the Board concluded that it  
7 did not have jurisdiction to review AI-0002-2005. Petitioners' Motion for Reconsideration  
8 alleges that in making this determination, the Board has erred in both fact and in law.  
9 Petitioners' Motion at 2.

10 The Petitioners' argument is two-fold. First, Petitioners argue the Board erred when it  
11 concluded the PFR was untimely because the County did not legislatively adopt nor did it  
12 publish any information regarding AI-0002-2005. In the alternative, Petitioners note the PFR  
13 was filed within 60-days of the Board of County Commissioners' (BOCC) issuance of  
14 Resolution 7-0346 which addressed the whistleblower investigation that occurred as a result  
15 of AI-0002-2005. *Id.* Second, Petitioners assert that they have standing to bring the action  
16 pursuant to RCW 36.70A.280(2)(d) - Administrative Procedures Act (APA), RCW 34.05.  
17 Petitioners then set forth their argument to demonstrate compliance with the APA standing  
18 requirements for injury-in-fact and zone of interest, basing both on the failure of the County  
19 to afford adequate opportunities of public participation. In response, the County concurs  
20 with the Board's Final Order and notes the Petitioners failed to raise any basis for standing  
21 in their original petition nor have they established, via evidence or argument, any injury-in-  
22 fact. The County further contends the Petitioners failed to argue that the method of  
23 publication used for the AI was insufficient to begin the running of the 60-day appeal  
24 period. Lastly, the County asserts that the Petitioners are attempting to inappropriately  
25 supplement the record and briefing with a new argument and evidence which was  
26 previously available to the Petitioners. *Id.*, at 2-3.

In reply, the Petitioners assert their alleged injury-in-fact is the denial of the public participation rights afforded by the GMA and such a denial has been found to be a sufficient

1 injury-in-fact to establish standing. (citing to federal case law). Petitioners further argue  
2 that the County, in order to commence the 60-day appeal period, was required to publish  
3 the AI pursuant to RCW 36.32.120(7) and that "notice to a few surrounding landowners" is  
4 not enough.

5 **Board Discussion:**

6 As was noted in the Final Order, for the Board to have the authority to rule on the  
7 substance of a petition, three things are required: (1) a timely filing of the PFR, (2) a  
8 challenge to a GMA-based action, and (3) standing to assert such claim. If any one of these  
9 are lacking, the Board does not have the authority to render a decision on the substance of  
10 the matter. The Petitioners assert the Board erred with regard to both timeliness and  
11 standing.

12 **Timeliness:**

13 Petitioners argue that the County never published AI-0002-2005 and, therefore, the  
14 60-day appeal limitation was never triggered.<sup>2</sup> In the alternative, Petitioners allege that the  
15 PFR was timely because they did file within 60 days of the BOCC's adoption of Resolution  
16 No. 7-0346.

17 First, it is AI-0002-2005 and not Resolution No. 7-0346 that the Petitioners challenge  
18 and the challenged action is the one which serves as the basis for the appeal period. In  
19 addition, Petitioners' arguments presented in its' briefing on this case boil down to a  
20 challenge to the County's action with regard to the AI itself. As was determined in the Final  
21 Order, the Board concludes that the challenged action was published, *as required for*

---

22 <sup>2</sup> Although Petitioners attempt to argue a distinction between notice and publication, they rely on several  
23 cases in support of their argument which generally pertain to the adequacy of notice provided by a jurisdiction  
24 and the need to publish notice of actions so as to provide certainty for parties relying on these actions. In  
25 addition, the Petitioners cite to *Skagit County Growthwatch v. Skagit County*, WWGMHB Case No. 04-2-0004 –  
26 to support their argument that compliance with county code provisions did not trigger the GMA's timeframe  
for appeal. It should be noted that the facts of the cited case are very different in that, in *Skagit County*, the  
County moved for dismissal not because the PFR was not filed within 60 days but because its was not filed  
within 14-21 days of publication of the AI as was required by county code for appeal of those types of actions.  
The Western Board concluded the GMA appeal was distinct from the county's appeal period and therefore the  
PFR was timely. However, unlike in this matter, the PFR in *Skagit County* was filed on February 26, 2004, just  
17 days after the challenged AI was issued and well within the GMA 60-day time limitation.

1 *administrative interpretations by SCC 14.502.040*, and therefore any potential appeal period  
2 commenced on May 11, 2005.

3 In addition, Petitioners appear to allege a GMA requirement for individual notice with  
4 the statement, "nothing in the record reflects that Petitioners were ever provided with  
5 notification either in advance ... or after [the AI] was adopted." Petitioners' Motion, at 2  
6 (*see also*, "Petitioners never received any notice of the action ... County provided mailed  
7 notice to a small number of individuals, not including Petitioners ..." Petitioners' Motion, at  
8 5). This assertion has no merit for it has previously been held by the Courts that the GMA  
9 does not mandate individualized notice. *See e.g. Chevron v. CPSGMHB*, 156 Wn.2d 131,  
10 124 P.3d 640 (2005); *Holbrook v. Clark County*, 112 Wn.App. 354, 49 P.3d 142 (2003),  
11 *review den'd*.

12 **Standing:**

13 Petitioners assert the Board's ruling that they lacked standing ignores the actual  
14 injury caused to the Petitioners by the lack of public process. However, the point of the  
15 Board's Final Order was that the Petitioners failed to provide any argument in support of the  
16 *type or basis of standing* they alleged permitted them to assert the claim; simply stating  
17 they were impacted by the county's action does not provide a basis. Absent a party with  
18 standing, the Board lacks jurisdiction to consider the challenge. *See e.g., Postema v.*  
19 *Snohomish County*, 83 Wn. App 574, 579, 922 P.2d 175 (1996), *review den'd*. The burden  
20 is on the Petitioners to establish standing. *Allen v. University of Washington*, 92, Wn. App.  
21 31, 959 P.2d 188 (1998), *affirm'd by* 140 Wn.2d 323, 997 P.2d 360 (2000)). Simply  
22 asserting a party has standing to challenge a jurisdiction's actions is insufficient. *Concerned*  
*Olympia Residents for the Environmental et al v. City of Olympia*, 33 Wn. App. 677, 683;  
23 657 P.2d 790 (1983).

24 Requirements for standing are provided in the Board's Rules of Procedures - WAC  
25 242-02. The rules clearly state the PFR must contain "a statement specifying the *type and*  
26 *the basis of the petitioner's standing* before the Board pursuant to RCW 36.70A.280(2)."  
WAC 242-02-210(2)(d) (Emphasis added). Therefore, a petitioner must provide two things

1 within the PFR to demonstrate standing: (1) *Type*<sup>3</sup> – RCW 36.70A.280(2)(a) governmental;  
2 .280(b) participation; .280(c) governor certified; or .280(d) APA; and (2) *Basis*<sup>4</sup> – minimal  
3 facts or assertions that provide a *prima facie* case that the Petitioner has the type of  
4 standing asserted.

5 As noted in the Final Order, the burden is on the Petitioners to establish standing and  
6 this is done by stating within the PFR the *type and basis of standing* – and, if using APA  
7 standing, they must *demonstrate at that time how they satisfy the APA's standing*  
8 *requirements*. This can not be done after the fact; it is a threshold showing which must be  
9 made by the Petitioner before a matter may proceed.

10 It should be further noted that even if the Board were to find the Petitioners  
11 adequately satisfied both injury-in-fact and zone of interest for APA standing at this late  
12 point in time, the ability of the Board to redress the injury by invalidating the AI or  
13 remanding for procedural compliance would be futile because of the GMA's inability to  
14 impact proposals protected by Washington's Vested Rights Doctrine. Therefore, APA  
15 standing could not be satisfied regardless of any underlying impropriety of the action.

16 **Conclusion:**

17 As was noted in the Final Order, the Board does not condone the County's action and  
18 once again reiterates the County should not assume that because it does not label an action  
19 a "GMA action" does not mean it is immune from a timely-filed challenge. The Board looks

---

20 <sup>3</sup> No Eastern Board case has specifically ruled in this regard. However, this Board cites with approval cases  
21 from the Central Puget Sound Growth Management Hearings Board. *See e.g., Hapsmith v. King County*,  
22 CPSGMHB Case No. 95-3-0075c, Final Decision and Order at 16 (Petitioners must specify within their PFR  
23 which method of standing allows them to proceed with a case before the Board); *MBA/Brink v. Pierce County*,  
24 CPSGMHB No. Case 02-3-0010, Order on Motions at 5 (Board's rules require a petitioner to allege and specify  
25 the type of standing being sought).

26 <sup>4</sup> We also cite with approval the Western Washington Growth Management Hearings Board and the Central  
Puget Sound Growth Management Hearings Board. *See e.g., Jefferson County Home Builders Assoc. et. al. v.*  
*City of Port Townsend* (Addressing the necessity for claimants to "allege" injuries and interest and for  
claimants to "prove" standing; with affidavits provided in support of APA standing, rather than relying upon  
the allegations in petitions or briefing); *Pilchuck et al v. Snohomish County*, CPSGMHB Case No. 95-3-0047c,  
Order on Motions at 3 (petitioner must establish a *prima facie* case on standing in the PFR; obligation could be  
met by including a narrative, attaching a declaration or affidavit, or incorporating by reference exhibits from  
the record).

1 at the facts and circumstances presented to determine the effect of the action itself and not  
2 necessarily the label applied to it. However, not only did the challenge action occur over  
3 two years ago, but subsequent decisions have relied on the action and permits have vested  
4 under the zoning established. The Board's available remedy – procedural compliance -  
5 would have no impact on these vested development applications. Although a foundation of  
6 the GMA is public participation (*see McFarland v. 1000 Friends of Washington*, 159 Wn.2d  
7 165; 149 P.3d 616 (2006) noting the extensive provisions for citizen involvement and public  
8 participation in the GMA), the public must be diligent in their efforts to monitor the activities  
9 of the jurisdiction and to timely respond to questionable actions.

### 10 **III. ORDER**

11 Having reviewed the November 14, 2007, Final Decision and Order of Dismissal, the  
12 Petitioners' Motion for Reconsideration and related Reply, the County's Answer, the relevant  
13 provisions of the GMA and the Board's Rules of Practice and Procedure, prior decisions of  
14 the Boards, and having deliberated on the matter, the Board ORDERS:

- 15 1. The Petitioners' Motion for Reconsideration is DENIED.
- 16 2. The Board's November 14, 2007, Final Decision and Order of Dismissal  
17 in the matter of *Wynecoop and Neighborhood Alliance of Spokane v.*  
18 *Spokane County*, EWGMHB Case No. 07-1-0007 is AFFIRMED.

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

#### 20 **Judicial Review:**

21 **Any party aggrieved by a final decision of the Board may appeal the decision to**  
22 **superior court as provided by RCW 36.70A.300(5). Proceedings for judicial**  
23 **review may be instituted by filing a petition in superior court according to the**  
24 **procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.**

#### 25 **Enforcement:**

26 **The petition for judicial review of this Order shall be filed with the 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 RCW 34.05.542.**

1 Service on the Board may be accomplished in person or by mail. Service on the  
2 Board means actual receipt of the document at the Board office within thirty  
3 days after service of the final order.

4 Service:

5 This Order was served on you the day it was deposited in the United States mail.

6 RCW 34.05.010(19)

7 SO ORDERED this 14<sup>th</sup> day of December 2007.

8 EASTERN WASHINGTON GROWTH MANAGEMENT  
9 HEARINGS BOARD

10 \_\_\_\_\_  
11 Joyce Mulliken, Board Member

12 \_\_\_\_\_  
13 Dennis Dellwo, Board Member