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

DAN HENDERSON, LARRY KUNZ, NEIL
MEMBREY, KASI HARVEY-JARVIS, &
NEIGHBORHOOD ALLIANCE OF SPOKANE,

Petitioners,

v.

SPOKANE COUNTY,

Respondent,

McGLADES, LLC,

Intervenors.

Case No. 08-1-0002

ORDER DENYING MOTIONS TO
DISMISS

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I. PROCEDURAL HISTORY

On February 8, 2008, DAN HENDERSON, LARRY KUNZ, NEIL MEMBREY, KASI HARVEY-JARVIS, & NEIGHBORHOOD ALLIANCE OF SPOKANE, by and through their representative, Rick Eichstaedt, filed a Petition for Review.

On March 10, 2008, the Board held the telephonic Prehearing conference. Present were John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo. Board Member Joyce Mulliken was unavailable. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent was Dave Hubert.

1 On March 13, 2008, the Board received a McGlades LLC's Motion and
2 Memorandum in Support of Motion to Intervene.

3 On March 17, 2008, the Board issued its Prehearing Order.

4 On March 19, 2008, the Board received Petitioner's Response to Motion to
5 Intervene.

6 On March 20, 2008, the Board issued its Order Granting Intervenor's Motion to
7 Intervene.

8 On March 31, 2008, the Board received Intervenors Motion to Dismiss for Lack of
9 Subject Matter Jurisdiction.

10 On April 14, 2008, the Board received Petitioners' Response to Motion to Dismiss
11 and Declaration of Rick Eichstaedt in Support of Petitioners' Response to Motions to
12 Dismiss.

13 Also on April 14, 2008, the Board received Respondent's Response to
14 Intervenor's Motion to Dismiss.

15 On April 18, 2008, the Board received Petitioners' Errata to Response to Motion
16 to Dismiss.

17 On April 21, 2008, the Board received Intervenor's Reply to Petitioners' Response
18 to Motion to Dismiss. The Board also received Respondent's Reply to Petitioners'
19 Objection to Intervenor's Motion to Dismiss and Declaration of John Pederson.

20 On April 24, 2008, the Board received Petitioners' Motion to Strike or, in the
21 Alternative, Limited Motion to Supplement the Record.

22 On April 25, 2008, the Board received County's Response to Petitioners' Motion
23 to Strike.

24 On April 29, 2008, the Board held a telephonic motion hearing. Present were
25 John Roskelley, Presiding Officer, and Board Member, Dennis Dellwo and Joyce
26 Mulliken. Present for the Petitioners was Rick Eichstaedt. Present for the Respondent
was Dave Hubert. Present for Intervenors was F.J. Dullanty, Jr. and Nathan Smith.

1 **II. DISCUSSION**

2 Intervenor, McGlades LLC, filed two timely motions with the Eastern Washington
3 Growth Management Hearings Board (Board): 1.) Motion To Dismiss for Lack of Subject
4 Matter Jurisdiction, and 2.) Motion to Dismiss for Failure to Join Necessary and
5 Indispensable Parties. Respondent, Spokane County, filed a response brief supporting
6 Intervenor's motions and then a reply brief that provided a separate, unaddressed
7 argument for dismissal of Issue 3.3 raised in the Petition for Review. Both the
8 Respondent and Intervenor provided extra-record declaration in support of their reply
9 briefs. Petitioners filed a response objecting to the motions and a separate motion to
10 strike the County's reply brief in its entirety and, specifically, the County's new
11 argument for dismissal of Issue 3.3. Moreover, Petitioners sought to have the extra-
12 record declarations submitted by the County and Intervenor struck or, in the
13 alternative, to allow the record to be supplemented with two emails from Spokane
County Building and Planning Department staff.

14 The Board held a Motion Hearing on April 29, 2008, and heard arguments on
15 both motions from the Intervenor, represented by F.J. Dullanty, Jr., the Respondent
16 (County), represented by David Hubert, and the Petitioners, represented by Rick
17 Eichstaedt. The Board considered all extra-record material submitted by the Parties in
18 this matter and did not specifically rule on Petitioners' Motion to Strike in this regard.

19 In regards to the Motion To Dismiss for Lack of Subject Matter Jurisdiction,
20 Intervenor contended the rezone that occurred concurrent with the County's
21 Comprehensive Plan amendment was a site-specific rezone and, therefore, the Board
22 lacked jurisdiction to review such a rezone as discussed by the Washington Supreme
23 Court in *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169 (2000)
24 and *Woods v. Kittitas County*, 162 Wn. 2d. 597, (2007). Petitioners responded, in part,
25 that the rezone in question was not a site-specific rezone because the County adopted
26 the zoning change pursuant to Spokane County Zoning Code § 14.402.100, which

1 governs zoning map amendments, as opposed to the provisions contained in SCC
2 14.402.060. Petitioners further argued that the rezone did not meet the definition of a
3 site-specific rezone in RCW 36.70B.020(4) because it was adopted concurrently by the
4 same County resolution (07-1096) and, therefore, could not be a site-specific rezone
5 "authorized by a comprehensive plan."

6 The Board agrees with Petitioners. The rezone at issue in this case occurred
7 pursuant to SCC 14.402.100. Those provisions, as well as County Resolution 07-1097,
8 clearly provide for appeal to the Hearings Board. Moreover, the facts presented here
9 are unlike other Hearings Board cases, *Wilma v. City of Colville* and *Chipman v. Chelan*
10 *County*, where this Board found it lacked jurisdiction. In *Wilma*, the Board denied
11 review of a site-specific rezone that had been adopted pursuant to an existing
12 Comprehensive Plan amendment. Here, the rezone that occurred was concurrent with
13 the Comprehensive Plan amendment and did not occur pursuant to any existing
14 Comprehensive Plan provision.

15 In *Chipman*, the Board primarily addressed its jurisdiction to review a denial of a
16 Comprehensive Plan amendment and the denial of a site-specific rezone application.
17 The Board noted in *dicta* that it would also lack jurisdiction to review the site-specific
18 rezone application. Here, all parties agreed that the rezone in question was not
19 adopted pursuant to Spokane County Zoning Code section 14.402.060, but rather was
20 adopted as a zoning map amendment, pursuant to Spokane County Zoning Code
21 section 14.402.100.

22 The Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

23 In regards to the Motion to Dismiss for Failure to Join Necessary and
24 Indispensable Parties, Intervenor argued the Petitioners had a duty under Washington
25 law to specifically name and formally serve the Intervenor and the failure to do so
26 deprived them of an opportunity to protect their property rights. Petitioners responded
that Washington's Growth Management Hearings Boards have consistently rejected

1 requirements to name and join property owners as necessary and indispensable parties.
2 Petitioners further argued the indispensable party rule is based on equitable and
3 constitutional considerations, and the Board does not have jurisdiction over equitable
4 doctrines *or* constitutional provisions.

5 The Board agrees with Petitioners. There is nothing in the Growth Management
6 Act, the Board's Rules of Practice and Procedure, the Washington Administrative Code
7 provisions, or published court decisions, which requires a petition in an appeal to a
8 Growth Management Hearings Board to name or serve any party other than the
9 jurisdiction that took the challenged action. Because the indispensable party rule does
10 not apply to appeals before the Board, the Board must deny Intervenor's Motion to
Dismiss for Failure to Join Necessary and Indispensable Parties.

11 In its reply brief, Spokane County argued for the first time that Issue 3.3
12 presented in the Petition for Review should be dismissed because it raises LUPA issues
13 outside of the Board's jurisdiction. The Board recognizes this issue was raised for the
14 first time in the County's reply and was not previously addressed either in Intervenor's
15 Motion to Dismiss or in Petitioners' response brief. In lieu of granting Petitioners'
16 Motion to Strike, the Board afforded Petitioners one week to provide a supplemental
brief to respond to that one issue.

17 The County argued that Issue 3.3 deals with "the application and compliance
18 with development regulations" and that the issue "is a land use issue under the
19 exclusive jurisdiction of the [LUPA]," as discussed by the Washington Supreme Court in
20 *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169 (2000) and *Woods*
21 *v. Kittitas County*, 130 Wn. App. 573 (2005). Accordingly, the County argued that the
22 issue must be dismissed as outside the Board's jurisdiction. In the supplemental brief,
23 Petitioners responded that Issue 3.3 addresses whether the County's action is internally
24 consistent with and implements its planning documents as required by the Growth
25 Management Act, RCW 36.70A.070, 120, 130(1)(d). Petitioners argued the actions of

1 the County must be consistent with and implement its Comprehensive Plan and other
2 planning documents. Petitioners also argued the Board is empowered by the
3 Legislature, pursuant to RCW 36.70A.280(1), to ensure that these requirements and
4 other requirements of the GMA are followed by the County.

5 Having reviewed the briefs in this matter, the Board finds in favor of the
6 Petitioner and denies the County's additional basis for dismissal of Issue 3.3.

7 **III. ORDER**

8 Based upon review of the Motions submitted by the Intervenor, the Motion
9 hearing, the briefs and additional material submitted by the Parties, and having
deliberated on the matter, the Board Orders:

- 10 1. The Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.
- 11 2. The Motion to Dismiss for Failure to Join Necessary and Indispensable
12 Parties is denied.
- 13 3. Spokane County's additional ground for dismissal of Petitioners' Issue 3.3
14 is denied.

15 **SO ORDERED** this 14th day of May 2008.

16 EASTERN WASHINGTON GROWTH MANAGEMENT
17 HEARINGS BOARD

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John Roskelley, Board Member

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Dennis Dellwo, Board Member

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23 _____
24 Joyce Mulliken, Board Member