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

JACK and DELAPHINE FEIL, husband and wife; JOHN TONTZ and WANDA TONTZ, husband and wife; and THE RIGHT TO FARM ASSOCIATION OF BAKER FLATS,

Petitioners,

v.

DOUGLAS COUNTY; DOUGLAS COUNTY BOARD OF COUNTY COMMISSIONERS; WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (WSDOT); WASHINGTON STATE PARKS AND RECREATION COMMISSION; and PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, (PUD),

Respondents.

Case No. 08-1-0011

ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION OF THE BOARD'S JUNE 17, 2008, ORDER

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I. PROCEDURAL HISTORY

On April 14, 2008, JACK and DELAPHINE FEIL et al., by and through their representative, Jim Klauser, filed a Petition for Review (PFR). With this PFR, Petitioners challenge Douglas County's adoption of Resolution No. TLS 08-09B.

On April 18, 2008, the Board received Respondent's (County) Motion to Dismiss Petition for Lack of Subject Matter Jurisdiction.

1 On May 1, 2008, the Board received Respondent's (State's) Washington State Parks
2 and Recreation Commission's (WSP&R) and Washington State Department of
3 Transportation's (WSDOT) Joint Response to Douglas County's Motion to Dismiss.

4 On May 5, 2008, the Board received Petitioners' Response/Objection to Douglas
5 County's Dismissal Motion; Motion to Supplement the Record; and Declaration of James
6 Klauser in Support of Petitioners' Response/Objection to Douglas County's Dismissal Motion;
7 and Motion to Supplement the Record; Petitioners' Objection and Motion to Strike the
8 "Response" of WSP&R and WSDOT. The Board also received Douglas County's Respondents
9 Memorandum.

10 On May 6, 2008, the Board received Respondents WSP&R and WSDOT's Joint
11 Response to Petitioner's Motion to Strike.

12 On May 7, 2008, the Board received Respondent's Index of Record.

13 On May 8, 2008, the Board received Petitioners' Objection to, Motion to Strike, and
14 Response to WSDOT & WSP&R "Response" to Petitioners' Motion to Strike and Petitioners'
15 Objections to and Motion to Strike the Douglas County May 1, 2008, "Respondent's
16 Memorandum".

17 On May 13, 2008, the Board held the telephonic Prehearing conference. Present
18 were John Roskelley, Presiding Officer, and Board Members, Dennis Dellwo and Joyce
19 Mulliken. Present for the Petitioners were Robert Rowley and James Klauser. Present for the
20 Respondents were Steve Clem, Douglas County, Steve Klasinski, WSDOT, Jim Swartz,
21 WSP&R, and Matt Kernutt, WSP&R. During the Prehearing conference the Board heard
22 arguments from the parties concerning the Respondents' Motion to Dismiss and Petitioners'
23 Objections and Motion to Strike. The Board provided a briefing schedule for responses to
24 the Respondent's Motion to Dismiss in the prehearing order.

25 On May 27, 2008, the Board received Petitioners' Supplemental Response to Douglas
26 County/State Dismissal Motion; Motion to Supplement the Record; and Motion to Produce
the Record.

1 On May 29, 2008, the Board received Respondent's Reply Memorandum on Motion to
2 Dismiss and Controverting Petitioners' Motion to Produce Record and WSP&R and WSDOT's
3 Reply Regarding Subject Matter Jurisdiction.

4 On June 9, 2008, the Board received Petitioners' Objections to Reply Briefs and
5 Motion to Supplement the Record.

6 On June 17, 2008, the Board issued its Order on Respondent's Motion to Dismiss;
7 Petitioners' Motion to Supplement the Record; and Motion to Produce the Record (Order on
8 Motions). With this Order, the Board concluded that it did not have jurisdiction over the
9 subject matter of the petition, Resolution No. TLS 08-09B, and entered an Order of
Dismissal.

10 On June 27, 2008, the Board received Petitioners' Motion for Reconsideration of the
11 Board's June 17, 2008, Order.

12 II. DISCUSSION

13 A motion for reconsideration must be based on alleged material errors of procedures,
14 misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the
15 hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-
16 832(2)(a)-(c). With the motion presented, Petitioners allege both misinterpretation of facts
17 and/or law and procedural irregularities. In regard to procedural irregularities, Petitioners
18 assert that the Board's conclusion in regard to the audible copy of the Record and the
19 County's preclusion argument was improper.¹ As to the misinterpretation of fact and/or law,
20 Petitioners contend the Board misapplied prior case law and failed to consider the GMA's
mandate for the conservation of agricultural lands.²

21 Having reviewed the Petitioners' Motion for Reconsideration, and the relevant
22 provisions of the GMA and the Board's Rules of Practice and Procedure, the Board finds that
23 the Petitioners have not provided a basis either in error of fact, in error of law, or in
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25 ¹ Petitioners' Motion for Reconsideration, at 2-3

26 ² *Id.* at 4-5

1 procedural irregularity that compels further reconsideration of the Order of Dismissal. The
2 Board notes that Petitioner's argument for reconsideration is both ardent and cogent, with
3 Petitioners simply reaching a different conclusion than the Board in application of the
4 governing statutory and case law to the facts at hand. Therefore, the Board affirms its
5 June 17, 2008, Order on Motions and reiterates that it does not have jurisdiction over the
6 subject matter of this proceeding.

7 **III. ORDER**

8 Based on the Petition for Review, the **County's Motion to Dismiss**, subsequent
9 briefing by all parties, case law, Hearings Board's decisions, the Petitioners' Motion for
10 Reconsideration, prior holdings of the Eastern Washington Growth Management Hearings
11 Board (Board), and the GMA, the Board finds:

- 12 1. There was no irregularity and/or error of procedure;
- 13 2. There was no misinterpretation of fact or law.
- 14 3. The Petitioners' Motion for Reconsideration of the Board's June 17,
15 2008, Order on Respondent's Motion to Dismiss; Order on Petitioners'
16 Motion to Supplement the Record; and Motion to Produce the Record is

DENIED.

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

18 **Reconsideration:**

19 **Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this**
20 **Order to file a petition for reconsideration. Petitions for reconsideration shall**
21 **follow the format set out in WAC 242-02-832. The original and four (4) copies of**
22 **the petition for reconsideration, together with any argument in support thereof,**
23 **should be filed by mailing, faxing or delivering the document directly to the**
24 **Board, with a copy to all other parties of record and their representatives. Filing**
25 **means actual receipt of the document at the Board office. RCW 34.05.010(6),**
26 **WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite**
for filing a petition for judicial review.

1 **Judicial Review:**

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

6 **Enforcement:**

7 The petition for judicial review of this Order shall be filed with the appropriate
8 court and served on the Board, the Office of the Attorney General, and all parties
9 within thirty days after service of the final order, as provided in RCW 34.05.542.
10 Service on the Board may be accomplished in person or by mail. Service on the
11 Board means actual receipt of the document at the Board office within thirty
12 days after service of the final order.

13 **Service:**

14 This Order was served on you the day it was deposited in the United States
15 mail. RCW 34.05.010(19)

16 **SO ORDERED** this 3rd day of July 2008.

17 EASTERN WASHINGTON GROWTH MANAGEMENT
18 HEARINGS BOARD

19 _____
20 John Roskelley, Board Member

21 _____
22 Joyce Mulliken, Board Member