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

SOUTHGATE NEIGHBORHOOD COUNCIL,
NEIGHBORHOOD ALLIANCE OF SPOKANE,
GINGER PATANO, AND FUTUREWISE,

Petitioner(s),

v.

CITY OF SPOKANE,

Respondent,

ARTHUR RICHEY/RPDC, INC., BLACK
DEVELOPMENT and DAVE BLACK
PROPERTIES, SPOKANE RADIO, INC., d/b/a
KXLY,

Intervenor(s).

Case No. 08-1-0014

ORDER ON PETITIONERS' MOTION
FOR RECONSIDERATION, REQUEST
FOR OFFICIAL NOTICE, OR IN THE
ALTERNATIVE, MOTION TO
SUPPLEMENT THE RECORD, AND
SECOND MOTION TO SUPPLEMENT
THE RECORD

I. PROCEDURAL HISTORY

On July 25, 2008, SOUTHGATE NEIGHBORHOOD COUNCIL, NEIGHBORHOOD ALLIANCE OF SPOKANE, GINGER PATANO, AND FUTUREWISE, by and through their representatives, Robert Beattey and Rick Eichsteadt, filed a Petition for Review and Motion for Expedited Review.

Between August 4, 2008, and August 7, 2008, the Board received Motions to Intervene from Arthur Richey/RPDC, Inc.; Black Development and Dave Black Properties, and Spokane Radio, Inc., d/b/a/ KXLY.

1 On August 13, 2008, the Board held the telephonic Prehearing Conference. Present
2 were, John Roskelley, Presiding Officer, and Board Members, Joyce Mulliken and Raymond
3 Paolella. Present for the Petitioners were Robert Beattey and Rick Eichstaedt. Present for
4 the Respondent was James Richmond. Present for Intervenor, Arthur Richey was Glen
5 Amster, for Intervenor, Black Development was Stacy Bjordahl, and for Intervenor, Spokane
6 Radio, Inc. was Stanley Schwartz. During the telephonic prehearing conference the Board
7 heard the Motions to Intervene and Motion for Expedited Review filed by the parties. The
8 Board **GRANTED** intervention status to all parties requesting intervenor status and
DENIED Petitioners' Motion for Expedited Review.

9 On August 15, 2008, the Board received Petitioners' First Amended Petition for
10 Review & Notice of Appearance.

11 On August 18, 208, the Board issued its Prehearing Order.

12 During September 2008, the Board received several dispositive motions in this
13 matter.¹ On September 29, 2008, the Board held the telephonic motion hearing. Present
14 were, John Roskelley, Presiding Officer, and Board Members, Joyce Mulliken and Raymond
15 Paolella. Present for the Petitioners were Robert Beattey and Rick Eichstaedt. Present for
16 the Respondent was James Richmond. Present for Intervenor, Arthur Richey was Glen
17 Amster, for Intervenor, Black Development was Stacy Bjordahl, and for Intervenor, Spokane
Radio, Inc. was Stanley Schwartz.

18 On October 6, 2008, the Board issued its Order on Motions and determined the
19 following: (1) **GRANTED** Arthur Richey/RPDC, Inc.'s Motion to Dismiss Petitioners
20 Futurewise and Neighborhood Alliance of Spokane for failure to exhaust administrative
21 remedies; (2) **GRANTED** Spokane Radio, et al. Motion to Dismiss Petitioners Futurewise,
22 Neighborhood Alliance of Spokane, and Southgate Neighborhood Council for failure to
23 exhaust administrative remedies for Futurewise and the Neighborhood Alliance of Spokane
24 and **DENIED** for the Southgate Neighborhood Council and Virginia Patano; (3) **GRANTED**

25 ¹ See Section II for details as to these filings.
26

1 Intervenor-Respondents Motion to Dismiss Issue No. 4; (4) **GRANTED** Intervenor-
2 Respondents Motion to Dismiss Issue No. 5; and (5) **DENIED** Petitioners' Dispositive
3 Motion.

4 On October 16, 2008, the Board received Petitioners' Motion for Reconsideration and
5 Request for Official Notice, or in the Alternative, Motion to Supplement the Record.

6 On October 23, the Board received the City of Spokane's and Intervenor's Answer to
7 Petitioners' Motion for Reconsideration.

8 On October 27, 2008, the Board received Petitioners' Second Motion to Supplement
9 the Record.

10 **II. DISCUSSION**

11 The Petitioners filed a Motion for Reconsideration, a Request for Official Notice, or in
12 the Alternative, Motion to Supplement the Record, and an additional Motion to Supplement
13 the Record and will be addressed separately.

14 **Motion for Reconsideration:**

15 Pursuant to WAC 242-02-832, Petitioners filed a Motion for Reconsideration and
16 argued the following: (1) the Order on Motions incorrectly interpreted the facts and law of
17 the Eastern Washington Growth Management Hearings Board's (Board) decision in *Knapp v.*
18 *City of Spokane*;² (2) the Order on Motions incorrectly concluded that the neighborhood
19 planning requirement of the Comprehensive Plan is inconsistent with the Spokane Municipal
20 Code; (3) and the Order on Motions incorrectly applied the facts of the record to conclude
21 that neighborhood planning occurred because no party argued that neighborhood planning
22 occurred, the record indicates that neighborhood planning did not occur, and the City of
23 Spokane's (City) own neighborhood planning guidance indicates that neighborhood planning
24 did not occur.

25 The City of Spokane and Intervenor's filed a joint motion in Answer to Petitioners'
26 Motion for Reconsideration and claim the following: (1) the City amendments are presumed

² *Knapp v. City of Spokane*, EWGMHB Case No. 97-1-0015c, Order on Motions (Sept. 24, 1997).

1 valid and compliant unless Petitioners demonstrate the amendments in question are clearly
2 erroneous in light of the entire record; (2) Petitioners are collaterally attacking the City's
3 public participation program, which was not challenged upon adoption; (3) Intervenors
4 specifically argued that neighborhood planning had taken place; (4) the Neighborhood
5 Planning Guidebook is merely a guide for the purely neighborhood planning process; (5) the
6 City's public participation program "trumps" guides, including the City's Comprehensive Plan
7 and the Neighborhood Planning Guidebook;³ (6) each of the amendments went through
8 substantial neighborhood notification and participation; and (7) there was not a
9 neighborhood planning process available due to lack of City funding.

9 **Board Discussion:**

10 The Petitioners did not provide an argument for which the Board believes reversal of
11 its October 6, 2008 Order is warranted. After thoroughly examining the submitted
12 documents, including the Petitioners' Motion for Reconsideration and their attachment, the
13 City's and Intervenors' Answer to Petitioners' Motion for Reconsideration, the Board's Order
14 on Motions, and further review of case law listed in the documents, the Board stands by,
15 and incorporates by reference, its original Order on Motions issued October 6, 2008,
16 including all discussion concerning neighborhood planning. However, the Board will address
17 in further detail its decision concerning *Knapp v. Spokane County*.

18 As to misinterpreting the facts and law of its previous decision in *Knapp v. Spokane*
19 *County*, the Board agrees that *Knapp* not only involves standing, but failure to exhaust
20 administrative remedies as well. The Board decided at that time that "the Petitioners are
21 not required to exhaust administrative remedies under the SEPA if a petition is filed under
22 the GMA as authorized by law."

23 Since 1997, when the *Knapp* case was resolved, decisions involving exhaustion of
24 administrative remedies has evolved. In a recent 2007 case, *Wagenman v. Stevens*

25 ³ City of Spokane's and Intervenors' Answer to Petitioners' Motion for Reconsideration at 5.

1 *County*,⁴ this Board held that the petitioners had to exhaust administrative remedies prior
2 to filing an appeal with the Hearings Board. As noted by the Intervenors, the Central Board
3 has consistently held parties must exhaust all administrative remedies prior to filing with the
4 Board. In addition, even the Western Board in *Island County Growth Management Coalition*
5 *v. Island County*⁵ and the Environmental Hearings Board have held exhaustion is required.

6 Rather than re-affirm its holding in Knapp and not require exhaustion, the Board has
7 decided petitioners need to raise State Environmental Policy Act (SEPA) claims following the
8 appeal steps set forth in the jurisdiction's own SEPA code provisions. In other words, the
9 SEPA appeal process is an important step and, rather than jump directly to the Board for
10 resolution and eliminating the jurisdiction's ability to address specific petitioner's concerns,
11 exhaustion of administrative remedies should be followed. If there isn't a jurisdictional
12 avenue of appeal or the appeal procedures are not mandatory, then the Board can hear the
13 appeal. This Board agrees with the Central Board's, Environmental Hearings Board, and
14 even with the Western Board, decisions and believes preserving the integrity of a
15 jurisdiction's adopted administrative process is important within GMA planning, given the
16 public participation nature of the statute.

17 Therefore, the Board **DENIES** Petitioners Motion for Reconsideration.

18 **Request for Official Notice, or in the Alternative, Motion to Supplement the**
19 **Record:**

20 Petitioners filed a Request for Official Notice or in the Alternative, Motion to
21 Supplement the Record to add the City of Spokane's February 21, 2003 Neighborhood
22 Planning Guidebook.

23 The City and Intervenors did not argue against this motion.
24

25 ⁴ *LBN & Wagenman v. Stevens Co.*, EWGMHB Case No. 07-1-0013, FDO (October 6, 2008).

26 ⁵ *Island County Growth Management Coalition v. Island County*, WWGMHB Case No. 98-2-0023c,

1 **Board Discussion:**

2 Pursuant to WAC 242-02-660(4), which allows a board or presiding officer to officially
3 notice ordinances, resolutions, and motions enacted by cities, counties or other municipal
4 subdivisions,⁶ and WAC 242-02-670(2), which allows a board to take official notice of
5 "notorious facts",⁷ and having not received an argument from the City or Intervenors in
6 rebuttal to the Petitioners' request, the Board **GRANTS** the Petitioners' request for the
7 Board to take official notice of the City of Spokane's February 21, 2003 Neighborhood
8 Planning Guidebook.

8 **SECOND MOTION to SUPPLEMENT the RECORD:**

9 Petitioners filed a Second Motion to Supplement the Record with a "relevant
10 newspaper article titled Home Depot Decides Against Store at South Hill Site, which
11 appeared in the Spokesman Review on October 2, 2008.

12 The City and Intervenors did not submit an argument against the motion.

13 **Board Discussion:**

14 RCW 36.70A.290(4) states:

15 The board shall base its decision on the record developed by the city, county,
16 or the state and supplemented with additional evidence if the board
17 determines that such additional evidence would be necessary or of substantial
18 assistance to the board in reaching its decision.

19 In determining whether supplemental evidence should be added to the record in this
20 matter, the Board itself must find that the "additional evidence would be necessary or of
21 substantial assistance to the Board in reaching its decision". RCW 36.70A.290(4). In actual
22 practice, only in extremely limited situations will this Board allow such evidence.

23 In examining proposed supplemental evidence, we look to both the relevance of the
24 proposed evidence and its reliability. The party offering the evidence must be able to show
25 that the evidence will help illuminate the issues before the Board. Second, the evidence

25 ⁶ WAC 242-02-660(4).

26 ⁷ WAC 242-02-670(2).

1 must be of a nature that the Board can rely on to be objective and trustworthy. Even if
2 relevant to an issue before the board, evidence will not be admitted if it is mere opinion or
3 argument.

4 As a general proposition we reject proffered supplemental evidence compiled after
5 the decision of the local government has been made. Hearings Boards have on occasion
6 allowed subsequently developed evidence to be admitted for issues involving invalidity but
7 not for initial compliance determinations. Relevant supplemental evidence of materials
8 available to a jurisdiction, often times developed by the jurisdiction, which were not
9 specifically included in the record of deliberations during a jurisdiction's process, is
sometimes allowed. We do not admit newspaper articles.

10 Petitioners' motion to supplement the record with a newspaper article is **DENIED**.
11 The purported evidence is of limited relevance, cannot be relied upon, and was not part of
12 the original record available to the jurisdiction during its deliberative process.

13 **III. ORDER**

- 14 1. Petitioners' Motion for Reconsideration is **DENIED**.
- 15 2. Petitioners' Request for Official Notice of the Neighborhood Planning
16 Guidebook is **GRANTED**.
- 17 3. Petitioners' Second Motion to Supplement the Record with a
18 Spokesman Review newspaper article is **DENIED**.

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**
review may be instituted by filing a petition in superior court according to the
procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil.

23 **Enforcement:**

24 **The petition for judicial review of this Order shall be filed with the appropriate**
25 **court and served on the Board, the Office of the Attorney General, and all parties**
26 **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
6 mail. RCW 34.05.010(19)

7 SO ORDERED this 4th day of November 2008.

8 EASTERN WASHINGTON GROWTH MANAGEMENT
9 HEARINGS BOARD

10 _____
11 John Roskelley, Board Member

12 _____
13 Joyce Mulliken, Board Member

14 _____
15 Raymond L. Paolella, Board Member