

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

HOOD CANAL, OLYMPIC ENVIRONMENTAL
COUNCIL, JEFFERSON COUNTY GREEN PARTY,
PEOPLE FOR A LIVEABLE COMMUNITY, KITSAP
AUDUBON SOCIETY, HOOD CANAL
ENVIRONMENTAL COUNCIL and PEOPLE FOR
PUGET SOUND

Petitioners,

v.

JEFFERSON COUNTY

Respondent.

No. 03-2-0006

DECISION AND
ORDER ON
MOTIONS TO
DISMISS

This Matter having come on regularly before the Board upon motions of the County and the Intervenor to dismiss issues raised in the Petition for Review as set forth in the Order on Prehearing Conference in this case, the Board having reviewed the briefs and exhibits submitted by the parties, having heard the arguments of counsel at a telephonic hearing on April 29, 2003 and being fully advised in the premises, now enters the following Decision and Order on Motions To Dismiss:

DECISION

Question No. 1: Should the Board dispose on motion of issues in which the record presented to the Board is not complete?

Short Answer: No. The purpose of dispositive motions is to narrow the issues and dispose of claims which require very few (if any) exhibits in order for the Board to make a legal ruling. If the argument of the moving party references

a document that has not been made an exhibit for the Board's review, it is inappropriate for the Board to grant the motion.

The County and the Intervenor move this Board to dismiss Issue 1 as set out in the Order on Prehearing Conference:

Issue 1: Is Jefferson County's SEPA analysis inadequate for this Comprehensive Plan amendment because the County's EIS failed to evaluate a "no action alternative" as required by RCW 43.21C.030(2)(c)(3), WAC 197-11-440(5)(b)(ii), and WAC 197-11-440(5)(c)(v)?

In its brief, the County argues that the consideration of the no-action alternative was sufficient as a matter of law. Petitioner points out that the only discussion of the no-action alternative was the statement "Not significant" in the matrix at pp. 1-8 of the SEIS (Ex. 3-21), under the column entitled "Environmental Impacts: No Action Alternative". At argument, the County asserted that the review of the no-action alternative was undertaken in the 1998 EIS for the Comprehensive Plan overall. However, this argument was not presented in the County's brief, nor was the 1998 EIS made an exhibit for this Board to review. The motion to dismiss Issue 1 is therefore lacking the cited support in the record and shall not be granted.

Question No. 2: Should the Board decide issues on motion rather than at the Hearing on the Merits when the issues presented require review of a substantial record?

Short Answer: No. The GMA already provides parties with a speedy resolution to their claims by requiring that the Boards issue their decisions within 180 days of the filing of the petition. RCW 36.70A.300(2). The only issues that should be decided on the even shorter timeframe of the motions schedule are those which require little if any evidentiary record. To do

otherwise both prejudices the parties' ability to present their claims and hampers the Board's ability to base its decision on well-briefed issues and a thorough review of the record.

The County and Intervenor both move to dismiss Issue 2:

Issue 2: Is Jefferson County's SEPA analysis inadequate for this Comprehensive Plan amendment because the County's EIS failed to evaluate reasonable alternatives, including alternatives that can "feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation" as required by WAC 197-11-440(5)(b)? This issue includes Issue 4.3 from the Petition for Review.

The Intervenor further moves to dismiss all the remaining issues in the case. Dispositive Motions and Memorandum in Support of Dispositive Motions. At the same time, both moving parties refer to extensive exhibits to support their motions. Indeed, the oral argument asserted that the record was "chock full" of evidence in support of the position of the County and Intervenor.

It is precisely the extensive nature of the exhibits and the arguments to be made from them that makes it inappropriate to resolve the issues on motion. Counsel rely upon the analogy of a summary judgment motion or a motion to dismiss in a civil action as a basis for making the motions in this matter. However, motions in Board proceedings must first be based on a limited record. WAC 252-02-530(4). Where the facts or the record supporting the facts are lengthy, then it is inappropriate for the Board to resolve the issue(s) on motion.

The Board's task is always to make a reasoned conclusion about the local jurisdiction's compliance with the applicable statute according to the legal standard imposed by law. This cannot be done without adequate time for counsel

to prepare and present their arguments, for the Board to read and consider the arguments of counsel, and to review the record, to confer, and to research and write the opinion(s). Given the number and complexity of the issues before the Boards, it is often challenging to fit the briefing schedule and decision-making process into the 180 days allotted by statute, let alone to compress the time for briefing, argument and resolution into a matter of a few weeks.

In these motions, the briefing was summary and the record was not fully developed. A hearing on the merits will allow the parties to make their arguments more fully and with citations to legal authority, as well as to a well-prepared evidentiary record. The issues in this case merit the full briefing, argument and Board review that the hearing on the merits is designed to allow.

ORDER

The motions to dismiss are **DENIED** and all the issues will be heard at the Hearing on the Merits.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD.

Entered this 19th day of May, 2003.

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