

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

SKAGIT COUNTY GROWTHWATCH,

Petitioner,

v.

SKAGIT COUNTY,

Respondent,

And

DAY CREEK SAND & GRAVEL, LLC,

Intervenor.

NO. 04-02-0004

**ORDER DENYING
MOTION FOR
RECONSIDERATION**

On June 14, 2004 the Board received a motion for reconsideration from Skagit County Growthwatch (SCG) regarding our June 2, 2004 Order on Motion to Dismiss. Petitioner's Motion for Reconsideration asks the Board to correct some typographical errors and presents arguments why Petitioner's issues challenging Resolution R20030195 should not have been dismissed. Petitioner alerted the Board that SCG would be filing a motion for reconsideration in Petitioner's June 10, 2004 Opening Brief and requested if the Motion for Reconsideration were granted, that the Board revise the briefing schedule in this case.

On June 21, 2004, the Board received an Answer to the Motion for Reconsideration from Intervenor Day Creek Sand and Gravel and a Joinder to Intervenor's Answer from Skagit County. Intervenor's answer offers argument to support the Board's Order on Motion to Dismiss.

I. DECISION

Petitioner files its Motion for Reconsideration pursuant to WAC 242-2-832. WAC 242-2-832 states, in part:

Reconsideration. (1) *After issuance of a final decision any party may file a motion for reconsideration with a board in accordance with subsection (2) of this section.... (emphasis added).*

WAC 242-2-832

However, the Board's Order on Motion to Dismiss is not a final decision. A final decision by the Board is one that resolves all the issues in the case pursuant to RCW 36.70A.300(1):

The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

The Board apologizes to the parties for the confusion caused by the inclusion of language in the Order on Motion to Dismiss providing that it was a final order for purposes of appeal:

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Skagit County Growthwatch v. Skagit County, Case No. 04-2-0004 (Order on Motion to Dismiss, June 2, 2004) at 10.

This provision was inserted through a clerical error and understandably led the Petitioner to believe a motion to reconsider was necessary at this time. However, the provision that it was a final order was inadvertently and erroneously included. The order dismissing some of the issues was not a final order and need not be appealed until the final decision and order is entered. Similarly, the Petitioner's motion to reconsider should be filed, if Petitioner still asserts its grounds, after the final decision and order is entered. Until the Board finally decides all the issues in this case, the basis for any motion to reconsider is not fully developed.

Petitioner's request for the Board to revise the briefing schedule in this case if the Board granted this motion for reconsideration also illustrates how difficult it would be for the Board to meet its statutory deadlines for issuing final decisions and orders if they reconsidered decisions on motions prior to the hearing on the merits. *See* RCW 36.70A.36.70A.300 (2)(a).

Therefore, this motion is not ripe for our consideration. When the Board issues a final decision and order in this case, Petitioner can file a motion for reconsideration to raise the same concerns included in SCG's June 14, 2004 Motion for Reconsideration pursuant to WAC 242-2-832.

II. ORDER

Because our Order on Motion to Dismiss (June 2, 2004) is not a final decision, the order is not ripe for reconsideration. Petitioner's Motion for Reconsideration is DENIED without prejudice to Petitioner's right to file a motion for reconsideration after the final decision and order has been issued in this case.

So ORDERED this 28th day of June 2004.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbaw, Board Member

Nan Henriksen, Board Member

Margery Hite, Board Member