

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 SUE SHERMAN,

4 Petitioner,

5
6 v.

7
8 SKAGIT COUNTY,

9 Respondent.
10

Case No. 07-2-0021

**ORDER DENYING
RECONSIDERATION**

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12 This matter comes to the Board on the Petitioner Sue Sherman's motion for reconsideration
13 filed with the Board on December 27, 2007.¹ Petitioner contends that the Deputy
14 Prosecutor alleged that Petitioner did not serve the County Commissioners with her petition
15 by mail and that the Petitioner did not talk to the Auditor's office. Petitioner provides the
16 Board with a copy of a log book that confirms that the petition for review arrived by fax in the
17 County Commissioners office in November 9, 2007 and by mail on November 10, 2007.²
18 Petitioner also confirms that she called the County Auditor's office and had the conversation
19 she described at the December 10, 2007, Motions Hearing.
20

21
22 Skagit County filed its response to Petitioner's motion for reconsideration³ on January 7,
23 2007. The County declares that Skagit County does not dispute that Sue Sherman's petition
24 for review was received by the County Commissioners' office.
25

26 The County maintains that Petitioner still has not demonstrated that she has complied with
27 WAC 242-02-230(1) that requires the County auditor be served in noncharter counties like
28 Skagit County. The County argues that the Petitioner continues to misinterpret the service
29 requirements of WAC 242-02-230(1) and believes that faxing and mailing a copy of a
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31
32 ¹ Motion for Reconsideration and Declaration of Service

² Petitioner Submits Log.Book (sic) and Declaration of Service.

³ Skagit County's Response to Sue Sherman's Motion for Reconsideration.

1 petition to the County Commissioners' office is sufficient to comply with this rule. The
2 County contends that the Board's order makes it clear that failure to serve, or make a good
3 faith attempt to serve, the county auditor is a violation of the express requirements of WAC
4 242-02-340 (sic).⁴

5
6 Board Discussion

7 A motion for reconsideration of a final decision of a board is governed by WAC 242-02-832.
8 It provides that a motion for reconsideration must be based on at least one of the following
9 grounds:
10

- 11 (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking
12 reconsideration;
13 (b) Irregularity in the hearing before the board by which such party was prevented from
14 having a fair hearing; or
15 (c) Clerical mistakes in the final decision and order.

16 WAC 242-02-832(2)

17 The argument contained in the County's dispositive motion does not claim that the
18 Petitioner did not send her petition to the County's Commissioner's office either by fax or
19 mail. In fact, the County attached the same part of the County's log book ⁵ to its motion that
20 Petitioner attaches to her motion for reconsideration. The County argued that there is no
21 evidence that Petitioner served the *Skagit County Auditor* either personally or by mail as
22 required by WAC 242-02-230 (1). ⁶

23
24 WAC 242-02-230 says this about filing petitions for review:

- 25 (1) The original and four copies of the petition for review shall be filed with a board
26 personally, or by first class, certified, or registered mail. Filings may be also made
27 with the board by telefacsimile transmission as provide in WAC 242-02 240. A
28 copy of the petition for review shall be personally served upon all other named
29 parties or deposited in the mail and postmarked on or before the date filed with

30
31 ⁴ Ibid at 2.

32 ⁵ Skagit County's Dispositive Motion to Dismiss for Failure to Comply with the Requirement to Serve the Skagit
County Auditor, Attachment A to Affidavit of Cheri Cook Blodgett in Support of Skagit County's Motion to
Dismiss.

⁶ Ibid at 6..

1 the board. *When the county is a party, the county auditor shall be served in*
2 *noncharter counties and the agent designated by the legislative authority in*
3 *charter counties.* The mayor, city manager or city clerk shall be served when the
4 city is a party. When the state of Washington is a party, the office of the attorney
5 general shall be served at its main office in Olympia, unless service upon the
6 state is otherwise provided by law. Proof of service may be filed with the Board
7 pursuant to WAC 242-02-340.

8 (emphasis added)

9 (2) A board may dismiss a case for failure to substantially comply with subsection (1)
10 of this section.

11 WAC 242-02-230.

12 Neither the Board's order or the County claim that Petitioner did not send a copy of her
13 petition to the County Commissioners' office. The majority of the Board, in its Order
14 Dismissing the Case, found that the reason for dismissing the petition in this case was that
15 the Petitioner presented no evidence that she attempted to serve the Skagit County Auditor
16 as required in noncharter counties like Skagit in accordance with WAC 242-02-230(1).

17 Therefore, the Board concluded Petitioner had not substantially complied with WAC 242-02-
18 230. Also, in that Order the Board found that no evidence existed that any County
19 employee instructed Petitioner incorrectly on the rules of service. The Board concluded that
20 this failure was grounds for dismissal of the petition pursuant to WAC 242-02-230(2).⁷

21 The grounds for dismissal of this case was that Petitioner did not attempt to serve the Skagit
22 County Auditor and therefore did not substantially comply with WAC 242-02-230 (1).

23 Petitioner presents no new evidence that she served the Auditor either personally or by
24 mail. More significantly, she presents no argument that there were material "errors of
25 procedure or misinterpretation of fact or law; nor that there was an "irregularity in the
26 hearing before the board" by which she was prevented from having a fair hearing; nor that
27 there were "clerical mistakes in the final decision and order". At least one of these grounds
28 must be cited, yet Petitioner has not asserted any one of them.
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⁷ Order Dismissing the Case at 7.

1 **Conclusion:** Therefore, the Board finds that there is no evidence that it has made an error
2 in procedure or misinterpreted the facts or the law material to the Petitioner. Further, there
3 is no evidence of an irregularity that prevented Petitioner from receiving a fair hearing. No
4 clerical errors in the Order Dismissing the Case are alleged. For these reasons, pursuant to
5 WAC 242-02-832(2), Petitioner's motion for reconsideration is DENIED.
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7 **ORDER**

8 Based on the foregoing, Petitioner's Motion for Reconsideration is DENIED.
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10 Entered this 15th day of January 2008.
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13 _____
14 Holly Gadbow, Board Member

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16 _____
17 James McNamara, Board Member
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19 Pursuant to RCW 36.70A.300 this is a final order of the Board.
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21 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
22 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
23 judicial review may be instituted by filing a petition in superior court according to the
24 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
25 Enforcement. The petition for judicial review of this Order shall be filed with the
26 appropriate court and served on the Board, the Office of the Attorney General, and all
27 parties within thirty days after service of the final order, as provided in RCW
28 34.05.542. Service on the Board may be accomplished in person or by mail, but
29 service on the Board means actual receipt of the document at the Board office within
thirty days after service of the final order. A petition for judicial review may not be
served on the Board by fax or by electronic mail.

30 **Service.** This Order was served on you the day it was deposited in the United States
31 mail. RCW 34.05.010(19)
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ORDER DENYING RECONSIDERATION
Case No. 07-2-0021
January 15, 2008
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