BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Advocates for Responsible Development and John E. Diehl, Petitioners, v. Mason County, Respondent, Shaw Family LLC, Intervenor.	Case No. 07-2-0006 **ORDER ON STANDING**

THIS Matter comes before the Board upon the motions of the Shaw Family LLC (Shaw Family) and Mason County to dismiss the Petition for Review based on the lack of standing of the Petitioners.[1] Mason County also raises other bases for its motion to dismiss certain claims which will be addressed by separate order. Petitioners oppose the motions to dismiss for lack of standing, asserting that they participated before the County in the adoption process and therefore have standing.[2]

DISCUSSION

Positions of the Parties

The Shaw Family LLC, Intervenor in this case, argues that John E. Diehl did not participate as an individual in any proceedings below and that Advocates for Responsible Development

[1] Motion to Dismiss, April 25, 2007 (Intervenor's motion); Respondent Mason County's Motion to Dismiss Petitioners' Petition for Review and Memorandum in Support of Motion to Dismiss, April 25, 2007.
[2] Motion for Order Requiring County to Index the Record in Compliance with Order of March 2 and Response Opposing Motions to Dismiss, May 7, 2007.

Western Washington
Growth Management Hearings Board
515 15th Avenue SE
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-725-3870
Fax: 360-664-8975

is not a bona fide entity.[3] Although admitting that ARD provided written comments prior to adoption of amendments to the County's Resource Ordinance related to Critical Areas, the County argues that neither Petitioner has standing because their written comments were submitted after the comment period was closed.[4]

Petitioners respond with five arguments: (1) that the County does not have the authority to restrict the time for public comments so long as they are given during the adoption process; (2) that there was no legal public notice of any time restrictions on public comments; (3) that there is no basis for restricting written comments when oral comments were allowed; (4) that the County allowed written comments from other sources after the comment period it now asserts; and (5) that the County actually did accept the Petitioners' comments, including them in the record and allowing a response to them prior to taking legislative action.[5]

Board Discussion

Both ARD and John Diehl allege standing on the basis of written comments submitted to the Board of County Commissioners "on the matters for which review is being requested". [6] Such standing, known as "participation standing", is granted to "a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested."[7] A "person", for purposes of GMA standing, means "any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character."[8]

---

[3] Motion to Dismiss at 1.
[4] *Ibid.*
[5] Motion for Order Requiring County to Index the Record in Compliance with Order of March 2 and Response Opposing Motions to Dismiss at 3-5
[6] Petition for Review, Paragraph 4.
[7] RCW 36.70A.280(2)(b)
[8] RCW 36.70A.280(3)

Western Washington
Growth Management Hearings Board
515 15th Avenue SE
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-725-3870
Fax: 360-664-8975

A review of the comment letters submitted (Exhibits 2 and 3 to the County's motion) shows that in both instances Mr. Diehl was the author of the comment letters but that he specifically stated that he was submitting them on behalf of ARD:

> In behalf of Advocates for Responsible Development I am submitting the following comments on the August draft of proposed regulations for Master Development Plans (MDPs):

Exhibit 2, September 11, 2006 comment letter.

> In behalf of Advocates for Responsible Development, I am writing to comment on (1) the proposed Shaw Rezone of land designated as long-term commercial forest land, creating the potential for a multitude of small inholding parcels; and (2) review and update of the Resource Ordinance, as required by RCW 36.70A.130, including proposed revisions.

Exhibit 3, December 19, 2006 comment letter.

Based on these comment letters, John Diehl has not established standing to bring his petition for review as an individual. Examination of the bases for his participation standing under RCW 36.70A.280(2)(b) shows that Mr. Diehl specifically raised his comments "in behalf of Advocates for Responsible Development" only. It was Mr. Diehl himself who limited the attribution of his comments to ARD. Since he expressly did not participate in his individual capacity, he does not have participation standing in his individual capacity.

Advocates for Responsible Development (ARD), on the other hand, did participate in writing "regarding the matter on which review is being requested". Intervenor argues that ARD is not a *bona fide* entity because it is not registered with the Secretary of State or the Department of Revenue.[9] Intervenor states that it cannot find evidence of the existence of ARD.[10] Mr. Diehl responds that ARD has existed as a nonprofit association and participated in cases before the Western Board for a decade.[11] Since the definition of a "person" under the standing provisions of the GMA includes "any… entity of any character",

---

[9] Declaration of Counsel at 2.
[10] *Ibid.*
[11] Declaration of John E. Diehl in Motion for Order Requiring County to Index the Record in Compliance with Order of March 2 and Response Opposing Motions to Dismiss at 2

Western Washington
Growth Management Hearings Board
515 15th Avenue SE
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-725-3870
Fax: 360-664-8975

the Board finds that this is sufficient. ARD is a "person" for purposes of participation standing under RCW 36.70A.280(2)(b). Therefore, ARD has standing to challenge the matters raised in its written comments under RCW 36.70A.280(2)(b).

As to the County's arguments that the Petitioners' comment letters were not timely, Mr. Diehl responds that Petitioners did not submit their comment letters for the November 28, 2006 hearing because they had learned that the hearing would be continued to allow staff to revise drafts of the proposed ordinances.[12] He further states that the revised drafts were not available until December 14th and the comment letter was prepared with all-night effort for the December 19th public hearing.[13] He also notes that the hearing was again continued after Petitioners comments (to December 27th) and that 9 pages of comments were submitted dated December 22 by GeoEngineers.[14]

The Board does not agree with Petitioners' argument that the County lacks authority to set a comment period. However, such a comment period must be well-publicized and calculated to encourage public comment in order to achieve the public participation goal and requirements of the GMA. The public participation goal and requirements of the GMA impose a duty on a local government to provide effective notice and opportunities for early and continuous public participation. [15] In this case, the only evidence that a time limitation had been placed on the comment period comes from the minutes of the Commissioners' Proceedings for November 28, 2006. (Exhibit 1 to County motion). There is no evidence before the Board showing that there was public notice of a limited comment period before the November 28, 2006 public hearing and no evidence that the time limitation on written comments after the November 28th public hearing was published. This is not sufficient notice

---

[12] Declaration of John E. Diehl in Motion for Order Requiring County to Index the Record in Compliance with Order of March 2 and Response Opposing Motions to Dismiss at 2
[13] *Ibid* at 2-3.
[14] *Ibid* at 3.
[15] RCW 36.70A.020(11); 36.70A.035; 36.70A.140.

Western Washington
Growth Management Hearings Board
515 15th Avenue SE
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-725-3870
Fax: 360-664-8975

to apprise the public that written comments will not be accepted at a public hearing on proposed legislation.[16]

Further, the evidence presented is that the County accepted the written comments of ARD and allowed further response to them. Under these circumstances, the Board finds that ARD participated in the proceedings before the County below and has standing to raise the issues in its petition for review.

ORDER

Based on the foregoing, the motion to dismiss John Diehl as a petitioner in this case for lack of standing is hereby GRANTED. The motion to dismiss Advocates for Responsible Development as a petitioner for lack of standing is hereby DENIED.

ENTERED this 21st day of May 2007.

_____
Margery Hite, Board Member

_____
Holly Gadbaw, Board Member

_____
James McNamara, Board Member

[16] See *Dunlap v. Nooksack* WWGMHB Case No.06-2-0001 (Final Decision and Order, July 7, 2006).

Western Washington
Growth Management Hearings Board
515 15th Avenue SE
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-725-3870
Fax: 360-664-8975