

implementing development regulations adopted by Snohomish County (the **County**) on June 28, 1995.

Prior to this Order, the Board granted intervention in this case to the Association Of Rural Landowners (**ARL**); Snohomish County Association of Realtors (**Realtors**); City Of Gold Bar (**Gold Bar**); Corinne Hensley (**Hensley**); and Snohomish County Fire Protection District No. 7 (**Fire District**).

I. Procedural Background

A prehearing conference in the above-captioned matter was held on October 11, 1995. At that time, the Board's presiding officer established deadlines for filing dispositive motions and briefs on those motions. No hearing on motions was scheduled.

On October 31, 1995, the Board issued a "Prehearing Order" defining the date for a hearing on the merits; granting intervention to five parties; defining the requirements for service by all parties; describing which dispositive motions would be determined in this order and which would be determined at the hearing; requirements for motions to supplement the record; requirements for the filing of exhibits; setting a briefing schedule; setting forth a statement of legal issues; and requiring intervenors to identify issues to be briefed.

Prior to the prehearing conference, the Board received on October 9, 1995 "Snohomish County's Dispositive Motion to Dismiss or For A More Definite Statement."

On October 11, 1995, also prior to the conference, the Board received "County's Statement of Issues," and from Gold Bar, a "Motion for Intervention by City of Gold Bar," and "Affidavit of Theresa Rozzano-Preston in Support of City of Gold Bar's Motion to Intervene."

On October 16, 1995, the Board received from Corinne R. Hensley an untitled motion requesting intervention.

On October 18, 1995, the Board received "Snohomish County's Objection to Re?formulation of Legal Issues by CCSV III and Hensley III."

On October 20, 1995, the Board received "Snohomish County's Dispositive Motion to Dismiss Jensen, Zimmerman, Stillaguamish Flood Control District and Roetcisoender Petitions."

On October 23, 1995, the Board received the following from petitioners: from CCSV III "Dispositive Motion by Concerned Citizens for Sky Valley et al. Regarding Legal Issue No. 5.1 (Partial)" with the following attached: "Memorandum in support of Dispositive Motion by Concerned Citizens et al," "Declaration of Corinne R. Hensley," and two exhibits; and from

Roetcisoender, "Preliminary Exhibit List." The Board also received "Association of Rural Landowners' Motion to Supplement the Record, Memorandum in Support and Preliminary Witness List."

On October 30, 1995, the Board received from petitioners the following: "Response of Petitioner Agriculture for Tomorrow to Dispositive Motions of Snohomish County, City Of Gold Bar, Motions to Supplement the Record by Snohomish County, City of Woodinville, and Ass'n of Rural Landowners;" "Response to Snohomish County's Objection of Legal Issues for Hensley III;" and from Roetcisoender a "Memorandum in Response to Defendant's Motion For A More Definite Statement."

On November 3, 1995, the Board received from the County a list of "Core Documents."

On November 6, 1995 the Board received the following from intervenors: "Association of Rural Landowners' Matrix of Specific Cases and Issues;" from Hensley III "Board Request for Intervenor 'Corinne R. Hensley' List of Issues (Case No. 95-3-0060) and Motion to Extend Exhibit Deadline;" and "Intervenor, Snohomish County Fire Protection District No. 7, Matrix."

On November 8, 1995, the Board received from Roetcisoender "Notice of Availability of Documents" and a second "Preliminary Exhibit List."

On November 13, 1995, the Board received the following from petitioners: "CCSV II's Preliminary Exhibit List and Motion to Supplement the Record" and "CCSV II's Objection to Intervention of Gold Bar;" from Woodinville "Notice of Availability of Documents;" from Agriculture for Tomorrow, "Preliminary Exhibit List of Petitioners for Case No. 95-3-0061;" and from CCSV III "Motion to Supplement the Record and Preliminary Exhibit List of CCSV III" and "CCSV III's Objection to Intervention of Snohomish County Association of Realtors." The Board also received from Corinne R. Hensley and 1000 Friends of Snohomish County a memorandum "Case No. 95-3-0065 and Corinne R. Hensley Intervenor Case No. 95-3-0060 - consolidation of Exhibits with Case No. 95-3-0062" that indicated the exhibits for Cases No. 95-3-0065 and No. 95-3-0062 would be consolidated.

On November 14, 1995, the Board received from intervenor ARL "Notice of Exhibit List" and "Pacific Denkmann Company's Motion to Intervene (Association of Rural Landowners) and Memorandum in Support of Intervention."

On November 15, 1995, the Board received the following: from respondent, "Memorandum of Snohomish County in Opposition to Roetcisoender Motion to Supplement the Record and Reply Memorandum in Support of Dispositive Motion to Dismiss Roetcisoender Petition," and "Response of Snohomish County to Dispositive Motion of CCSV and CCSV III." From petitioners, the Board received the following: CCSV II's Response to Gold Bar's Motion to

Dismiss;” and from intervenors, “Snohomish County Realtors’ Preliminary Exhibit List” to which a copy of the matrix of issues was attached; and from Corinne Hensley, “Response to County’s Dispositive Motion to Dismiss or for more definitive statement 95-3-0061, 95-3-0062, and 95-3-0065, and Woodinville Motion to Supplement dated 10/32/95, and Motions to Intervene.”

On November 17, 1995, the Board received a second “Notice of Availability of Documents,” and “Motion of AFT to Amend Petition for Review.”

On November 20, 1995, the Board received “Snohomish County’s Reply to Response Brief on Dispositive Motions and Rebuttal to Response to Supplement the Record.”

On November 21, 1995, the Board received “CCSV II’s Motion to Dismiss Gold Bar, Reply to County’s Objection to Supplement the Record and Reply to County’s Response on Dispositive Motion;” and “CCSV III’s Objection to SCR’s Exhibit List and Reply to County’s Objection to Supplement the Record.”

On November 22, 1995, the Board received “Response of Petitioner Stillaguamish Flood Control District to Snohomish County’s Dispositive Motion.”

On November 27, 1995, the Board received “Exhibit List of Snohomish County.”

On November 28, 1995, the Board received “Memorandum Of Snohomish County in Opposition to AFT’s Motion to Amend and Response to CCSV II on Its Dispositive Motion.”

On November 29, 1995, the Board received Woodinville’s “Response to CCSV II’s Motion to Dismiss Gold Bar, Presentation of Exhibit Lists, and Identification of Intervention Issues.”

On December 1, 1995, the Board received from Woodinville a third “Notice of Availability of Documents.”

On December 4, 1995, the Board received “Snohomish County Realtors’ Corrected Issue Matrix and Response to CCSV III’s Objection to Exhibit List.”

On December 19, 1995, the Board received “Snohomish County Association of Realtors’ Notice of Withdrawal.”

On January 5, 1996, the Board received a “Stipulated Order of Dismissal of Roetcisoender Investments’ Petition for Review.”

II. County’s Dispositive Motion TO DISMISS OR FOR A MORE DEFINITE

STATEMENT

Prior to the prehearing conference, petitioner CCSV III submitted an Amended Petition for Review, and the County requested several petitioners be dismissed or provide a more definite statement of the legal issues. Subsequent to the prehearing conference, the County objected to a “reformulation of legal issues” by CCSV III and Hensley III in the amended petition. Hensley III responded to the County’s objection. Additionally, petitioner CCSV II responded to the County’s motion to dismiss.

At the prehearing conference, parties discussed at length the legal issues that were described in the Petitions for Review and Amended Petitions for Review. Parties submitted refined issue statements subsequent to the hearing as directed by the Board. As a result of these proceedings, the Board issued a Prehearing Order that included a statement of sixty-nine legal issues.

Through the Prehearing Order, as set forth in the statement of legal issues, the Board resolved the issues stated in the above motions, both those presented at the hearing and those filed subsequent to the hearing. Therefore, the Board concludes that the above motions shall be dismissed.

III. MotionS to INTERVENE AND OBJECTIONS

The Board granted intervention to Rural Landowners, Realtors, Gold Bar, Fire District and Hensley in the Prehearing Order. The Board received objections to the intervention of Gold Bar from CCSV II and AFT; and CCSV III’s objection to the intervention of Realtors. Gold Bar responded to CCSV II’s objection. Separately, CCSV II filed a motion to dismiss Gold Bar and Gold Bar responded.

Discussion

Intervention of Gold Bar

CCSV II asks the Board to reconsider the order granting intervention to Gold Bar, or separately to dismiss Gold Bar upon the Board’s own motion under WAC 242-02-720(4), because Gold Bar has failed to specify the issues on which they intend to intervene. Alternatively, CCSV II asks that the Board limit the evidence Gold Bar is permitted to submit. CCSV II’s argument for the later proposal focuses on WAC 242-02-556 which grants the Board authority to limit receipt of evidence from a party for failure to supply information in a timely manner.

Gold Bar responds to the motion for dismissal by stating WAC 242-02-720 “grants no authority to a petitioner to move for a dismissal for failure of a party to follow a [b]oard order.” Gold Bar asserts that the authority in that section is limited to respondents. Gold Bar asserts that CCSV II was informed at the prehearing conference as to the issues they would be intervening on and that CCSV II has shown no prejudice due to delays. Gold Bar goes on to say that the legal issues that

Gold Bar intends to intervene on are those issues that CCSV II originally identified in their Petition for Review which pertain to the determination of Final UGAs for the City of Gold Bar as stated in the “Prehearing Order - Statement of Legal Issues.”

Gold Bar concedes that WAC 242-02-556 allows the Board to limit its issues for intervention and/or exhibit list. However, again, Gold Bar asserts that CCSV II has not shown prejudice due to delays. Alternatively, should the Board grant CCSV II’s motion, Gold Bar requested that they be permitted to utilize the exhibit list that was provided by the County.

Under WAC 242-02-270, the board may grant intervention to:

[a]ny person whose interest may be substantially affected by a proceeding before a board . . .

WAC 242-02-040 (6) includes “any . . . government subdivision“ in the definition of a person.

Ordinarily, the Board has interpreted this provision broadly and granted intervention to parties affected by GMA proceedings. This is done, in part, in support of the planning goals for coordinated citizen/community involvement as stated in the Act. ^[1] Because the principal focus of CCSV II’s petition is the determination of the Final UGAs surrounding Gold Bar, it is clear that Gold Bar has an interest which may be affected in these proceedings. Therefore, Gold Bar’s intervention, as granted in the Prehearing Order, was proper.

With respect to dismissal of Gold Bar as intervenor, WAC 242-02-720 describes actions or nonactions by a party for which its case may be dismissed. This section requires that requests for dismissal, either by the Board or an opposing party, be made by motion, and thus carry the requirement for service upon the subject party. This results in providing that party with notice of an impending action. An underlying intention of this statutory framework is to provide the offending party an opportunity to respond or cure a defect. It is intended to make the abandonment of a claim a conscious choice. After proper notice, should a party then choose to abandon its case or consciously ignore the motion, the dismissal should be enforced. Because of the severity of this determination, ordinarily, it is implemented only after a conscious lapse in a party’s’ prosecution of issues such as failure to attend a hearing before the Board or in response to a complete defiance of a specific order of the Board.

Conclusion

The interests of Gold Bar are the focus of CCSV II’s petition; Gold Bar was present at the prehearing conference and has not demonstrated any interest in abandoning its status as intervenor. Because both CCSV II and Gold Bar were present at and participated in the prehearing

conference, it is apparent that CCSV II had at least constructive knowledge of those issues on which Gold Bar might wish to intervene: namely the issues listed in CCSV II's petition. While Gold Bar concedes delay in providing a list of issues and exhibits, it appears that CCSV II received the actual notice in advance of the Prehearing Brief deadline. Although this delivery is something short of "on schedule," the delay it is also not up to the standard of "failure . . . to comply with . . . any order of the board." Therefore, the Board concludes that CCSV II's Motion to Dismiss Gold Bar is denied, and Gold Bar will remain an intervenor. Further, because CCSV II has not alleged any actual prejudice, the Board orders Gold Bar may intervene on the issues identified in the matrix submitted and the Exhibit List submitted will also be admitted.

IV. County's dispositive motion to dismiss

The County filed a motion to dismiss four parties, Jensen, Zimmerman, Stillaguamish and Roetcisoender. Stillaguamish and Roetcisoender filed responses. Subsequently, Roetcisoender agreed to a Stipulated Order of Dismissal of its petition. This last motion will be discussed in this order below.

Jensen

The County moves to dismiss Jensen for failure to properly serve its petition for review under RCW 4.28.080(1) and WAC 242-02-230, and for lack of standing under RCW 36.70A.280(2). The Board takes notice that Jensen has not provided a response brief as required by WAC 242-02-570(1).

Under WAC 242-02-230(1), in addition to serving the Board, a party is required to serve a petition for review on the designated agent in charter counties such as Snohomish County. The designated agent for Snohomish County is the County Auditor. A petition may be dismissed for failure to substantially comply with this requirement. WAC 242-02-230(2). Jensen has not provided the Board with proof of service on the Auditor. The County offers the Declaration of Michelle Morgan, an employee of the Snohomish County Auditor, (October 3, 1995) stating in part that there was no record of receipt of service of the petition for review from Jensen.

Under WAC 242-02-570(1), a petitioner or party filing a motion is required to provide a brief on each legal issue it expects the board to determine, and "failure . . . to brief an issue shall constitute abandonment of the unbriefed issue." Because Jensen did not provide its brief to issues raised in its petition for review, the Board determines Jensen has abandoned its petition. Accordingly, the Board orders Jensen dismissed with prejudice. Because the Board dismisses Jensen on other grounds, it does not reach a determination as to standing.

Zimmerman

The County moves to dismiss Zimmerman for failure to properly serve its petition for review under RCW 4.28.080(1) and WAC 242-02-230, for lack of standing under RCW 36.70A.280(2) and for failure to appear at a prehearing conference under WAC 242-02-710(1). The Board takes notice that Zimmerman has not provided a response brief to the County's motion as required by WAC 242-02-570(1).

Zimmerman was mailed Amended Notice of Hearing which finalized the time of the Prehearing Conference. See Declaration of Service, September 20, 1995. Zimmerman did not attend the prehearing conference on October 11, 1995.

As stated above, failure of a party to properly serve may be sufficient reason to dismiss a party's petition. Failure of a party to attend a hearing, including a prehearing conference, after proper notice, may also result in the board's dismissal of a petition. WAC 242-02-710. Prehearing conferences, as described in WAC 242-02-555, are designed to aid in the prompt disposition of the matter before the Board; nonattendance of a key party is contrary to that objective. Failure to provide a brief on one or more legal issues raised in a petition shall constitute abandonment of a legal issue. In the case of a multiple-issue petition, where no brief is filed, the Board will deem all of the issues to have been abandoned. WAC 242-02-570(1). Therefore, the Board concludes that because Zimmerman did not properly serve its initial petition, has ceased to participate in the ongoing proceedings by failure to attend the prehearing conference, and has failed to file a prehearing brief, it is deemed to have abandoned its case. The Board orders Zimmerman's Petition for Review dismissed with prejudice.

Stillaguamish

Initially, Stillaguamish asserts standing in its petition for review under the Administrative Procedure Act, RCW 34.05.530 (**APA standing**.) The County moves to dismiss Stillaguamish for lack of standing. The County argues that Stillaguamish is neither an "aggrieved person" nor will it be "adversely effected" because it has failed to assert facts sufficient to establish either that its interests fall within the zone of interests to be protected, or that it will suffer an injury in fact.

Stillaguamish responds that it has established standing by appearance in two meeting forums, a Snohomish County Council meeting, June 14, 1993, and by ongoing participation in meetings with Snohomish County Surface Water Management and others. ("appearance standing"). On behalf of Stillaguamish, AFT also filed a response motion asserting that Stillaguamish submitted a letter to the County "outlining its concerns regarding the inclusion of flood plain within the County's UGA." AFT asserts this letter was submitted to the County on June 27, 1995 before the adoption of the comprehensive plan.

The Board has previously interpreted the requirement of actions necessary to achieve appearance or GMA standing liberally. "[I]n order to appear . . . before a county or city . . . , an individual or

organization simply has to :

- Attend a public hearing or meeting;
- Participate by testifying at a public hearing; or
 - Submit a letter (which clearly identifies and addresses the matter in question) to the county or city staff or elected official.”

Friends of the Law and Bear Creek for Growth Management v. King County, CPSGMHB Case 94-3-0003, Order On Dispositive Motions (1994), at 17.

For standing to be conferred on an organization, a member of the organization must “appear,” and provide identification as a representative of the organization.Id.

By virtue of its letter of June 27, 1995, Stillaguamish has established standing.Assuming that this letter contained the minimal identification information required above, it appears to address “matters in question” in the comprehensive plan and was presented before the comprehensive plan was adopted. This is sufficient to convey GMA standing on Stillaguamish.Absent such documentation, it appears that Stillaguamish may have achieved GMA standing by attending public meetings with the County.However, the Board need not look into this aspect deeply nor determine if it has fulfilled the requirements of “APA standing” under RCW 34.05.530, because Stillaguamish has already sufficiently established standing, pursuant to the requirements for GMA standing.Accordingly, the Board dismisses the County’s Motion to Dismiss Stillaguamish.

V. PACIFIC DENKMANN CO.’S MOTION TO INTERVENE

Pacific Denkmann Company (**PDC**) moves to join the intervention of the ARL under the provisions of WAC 242-02-270 and Civil Rule 24(a).These statutes provide that intervention may be granted to any person whose interest may be substantially affected by a proceeding before a board and who qualifies under the Civil Rules.To qualify, the applicant must claim an interest relating to the property which is the subject of the action and is so situated that the disposition of the action may impair or impede his ability to protect that interest.However, intervention is not required to be granted if the applicant’s interest is adequately represented by existing parties.CR 24(a)(2).No party filed a responsive brief.In their motion, PDC does not wish to add new issues to the intervention.Rather, PDC states that it wishes to participate in conjunction with the existing intervenor landowners (ARL) on the issues already before the Board.PDC asserts that granting its motion will ensure that the points raised by ARL are considered with respect to its property, an occurrence that is not absolutely guaranteed without its joining the intervention.PDC further asserts that it would have joined the original motion for intervention had it not been for the absence, out of state, of PDC’s representative.PDC asserts this motion only serves to correct that omission.

It is possible that exclusion of PDC from the proceedings before the Board may result in a less

than full consideration of PDC's interest. That is not to say that inclusion of PDC as an intervenor will somehow translate into a shifting of the proceedings to chiefly focus on its interests. Rather, it is an acknowledgment that an individual property owner is likely to be the most ardent and meticulous advocate of its own interests. Therefore, the Board concludes that PDC's motion to join the intervention of ARL should be granted.

VI. AFT'S MOTIONS TO AMEND PETITION FOR REVIEW

AFT seeks to amend the petition for review originally filed under Case No. 95-3-0061 (now referred to as Pilchuck III in the consolidated action). AFT asserts that because of the Board's recent decision in *Vashon-Maury, et al. v. King County*, CPSGMHB Case No. 95-3-0008), Final Decision and Order (1995), new issues have arisen with respect to requirements for consistency between comprehensive plans and Countywide Planning Policies. Thus, AFT argues that a new legal issue should be included in its petition for review for determination by the Board.

The County responds by requesting AFT's motion be dismissed. The County asserts that the true basis of AFT's new legal issue rests in *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (1994.) The County argues that the rulings in that decision were available to AFT before the period for filing a petition for review in this matter was closed. The County further argues that AFT and all other parties have had more than adequate time to refine their legal issues owing to the prehearing conference and subsequent extensions.

Discussion

A petitioner has up to 60 days after adoption of a comprehensive plan to file its initial petition for review. WAC 242-02-220(1). Furthermore, amendments to petitions are granted as a matter of right up to 30 days after filing. WAC 242-02-260(1). Thus, a party, if it takes maximum advantage of the allotted time periods, may have up to 90 days to finalize its petition without impediment. Thereafter, requests for amendment may be made only after approval by the Board. WAC 242-02-260(2). Requests for amendment "shall not be freely granted." Id. In considering the request, the Board may deny the request for any reason including unreasonable and unavoidable harm to the adverse party or an adverse impact on the Board's ability to meet statutory deadlines for issuing a final order. However, the Board is not limited to these reasons. The Board may also deny the request for failure to meet the statutory requirements of filing or for redundant issues.

The reasons for this construction are clear. They provide an incentive for petitioners to fully consider which issues they wish to have reviewed before submitting their petition and then bring those issues to the attention of the Board and respondent promptly. Overall, this structure provides finality to the issues in dispute and, ultimately, closure of a matter.

In the present case, AFT initially cites the recent decision in *Vashon-Maury* as the basis for its request. However, in its supporting argument which frames the proposed new issue, AFT cites *Snoqualmie v. King County*, a final order that was issued in 1992. This appears to be the actual basis for AFT's request; as the County observes, that decision was readily available to AFT within the time frame to properly file a petition in this matter. Additionally, it should be noted that this request for amendment is well outside the time limits whereby a petition amendment may be granted as a matter of right (over two months after AFT's initial petition was filed, and also subsequent to issuance of the Prehearing Order, which included the recitation of legal issues to be argued and decided.) Accordingly, the Board declines to grant AFT's request to Amend Petition for Review.

VII. MOTIONS TO WITHDRAW

Snohomish County Realtors filed a Notice of Withdrawal. The Board orders their motion for intervention dismissed with prejudice. Therefore, CCSV III's objections to Realtors' intervention and exhibit lists are rendered moot.

The County submitted jointly with Roetcisoender a "Stipulated Order of Dismissal of Roetcisoender" requesting that Roetcisoender's petition for review be dismissed with prejudice and without costs or fees to any party. The Board grants this order. The County's motion to dismiss Roetcisoender's petition is rendered moot.

IV. ORDER

1. The County's "Dispositive Motion to Dismiss or For A More Definite Statement" and "Objection to Re-formulation of Legal Issues" have been resolved in the "Statement of Legal Issues" in the Prehearing Order issued October 31, 1995.
2. Gold Bar will remain an intervenor, and its Exhibit List and Matrix of Issues are accepted by the Board
3. Jensen and Zimmerman's petitions for review are dismissed with prejudice.
4. Roetcisoender's petition for review is dismissed with prejudice.
5. Petitioner Stillaguamish has standing and will remain as a party in the consolidated case.
6. Pacific Denkmann is granted intervention in conjunction with ARL.
7. AFT's motion to amend petition is denied.

8.Snohomish County Realtors, an intervenor, is dismissed with prejudice.

So ordered this 8th day of January, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Chris Smith Towne
Presiding Officer

[\[1\]](#) RCW 36.70A.020(11)Citizen participation and coordination.Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to *reconcile conflicts*. (emphasis added.)