

In the present case, the City of Everett is the respondent party. The Board's rules for service, as set forth in WAC 242-02-230, require that the Mayor, City Manager or City Clerk be served with the petition for review. However, Petitioners' "Certificate of Service" indicates that only James D. Iles, Assistant City Attorney for Everett, was served with the petition for review. See Finding of Fact above. On its face, the "Certificate of Service" does not satisfy the Board's service requirements.

Petitioner cites WAC 242-02-310(2) for the proposition that service upon the party's attorney is valid service. WAC 242-02-310, in its entirety, provides:

WAC 242-02-310 Service of papers.

(1) Parties filing pleadings, documents, exhibits and other papers with a board shall also promptly serve copies upon all other parties.

(2) Service upon a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

(3) Decisions or orders of the board shall be served upon the parties or their attorney or representative of

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record, if any.

Petitioners' reliance upon WAC 242-02-310(2) is misplaced. WAC 242-02-310 governs the service of pleadings, documents, exhibits, other documents, and Board decisions and orders, not service of the petition for review. Service for the petition for review is governed by WAC 242-02-230.

Petitioners also argues that "the initial Petition for Review in *Wallock I* was served on the City Attorney, rather than on one of the individuals named in WAC 242-02-230(1), and the City did not demur or object to this service. Therefore, this argument is barred to the City by the doctrine of laches." Petitioners' Response Brief, at 5. As the City correctly points out, the Board has explicitly rejected jurisdiction over equitable doctrines. See *Tacoma v. Pierce County*, CPSGMHB Case No. 94-3-0001, Final Decision and Order (July 5, 1994), at 50 (citing Order on Dispositive Motions (March 4, 1994), at 11).

The Board concludes and holds that Petitioners failed to serve the City of Everett as provided in WAC 242-02-230(1).

Finally, Petitioner argues that strict compliance with the Board's service procedures is not required; only substantial compliance is necessary. For this premise, Petitioners rely upon WAC 242-02-230(2), which provides: "(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section." Petitioners also recognize that this WAC section "grants the Board the discretion to dismiss a Petition that is not served in substantial compliance with the requirements -- but does not mandate such dismissal." Petitioners' Response Brief, at 7.

Petitioner suggests substantial compliance with the Board's service procedures has been achieved. "Serving an Assistant City Attorney, who was counsel of record in a previous case between the same two parties, and originally dealing with substantially similar issues, not only constitutes substantial compliance as contemplated by the Code and governing case law, but also comports with the arguably contradictory provisions of WAC 242-02-310. Thus, the Board should find that service was accomplished in substantial compliance with WAC 242-02-230, and deny the Motion to Dismiss as it relates to service." Petitioners' Response Brief, at 9. The Board is not persuaded that substantial compliance has been achieved.

The Court of Appeals, Division I, has stated "the doctrine of substantial compliance is inapplicable when the issue is whether service of process has been valid so as to subject a municipality to the court's jurisdiction." *Meadowdale Neighborhood Committee v. City of Edmonds*, 27 Wn. App. 261, 264 (1980). In *Meadowdale*, the court rejected petitioner's argument that service on the mayor's secretary substantially complied with RCW 4.28.080. Similarly, the

Washington Supreme Court strictly construed this same statute. In *Nitardy v. Snohomish County*, the court found that service on a secretary to the County Executive is not sufficient when the legislature has named the county auditor as the specific person to be served. 105 Wn. 2d 133, 134-35 (1986). The *Nitardy* court said "Service on anyone other than the Auditor is insufficient." *Id.* at 135.

In the present case, the legislature identified specific persons to be served -- the mayor, city manager, their designated agent, or the city clerk. RCW 4.28.080. The Board's rules are more restrictive than the legislature's because WAC 242-02-230(1) does not provide for service of a petition for review on a "designated agent." However, the Board has provided for substantial compliance with the Board's rules for service in WAC 242-02-230(2). In other words, the Board may find substantial compliance if a designated agent were served, because the legislature has specifically identified designated agents; the Board will not find substantial compliance for service on anyone other than those identified by the legislature or in the Board's rules. Here, Petitioners have served none of those persons specified by the legislature or the Board. **Therefore, the Board holds the Petitioners have not substantially complied with WAC 242-02-230(1).**

Conclusion

Petitioners have not properly served the petition for review in Case No. 96-3-0037 upon the City of Everett.

IV. ORDER

Based upon a review of the petition for review, the briefs of the parties, the RCWs, the Board's Rules of Practice and Procedure and prior decisions of this Board and the courts, the Board enters the following ORDER:

Respondent City of Everett's motion to dismiss is **granted**; John Wallock and Deja Vu of Everett Inc.'s petition for review relating to Everett's adoption of Ordinances No. 2177-96 and 2178-96 (Case No. 96-3-0037), is **dismissed with prejudice**.

The hearing on the merits for Case No. 96-3-0037, scheduled for April 15, 1997, is **canceled**.

So ORDERED this 20th day of February, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

Note: This Order Granting Motion to Dismiss constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

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The rules have been amended for 1997 and will require that Board orders be served both on parties and their representatives, if any.