

State of Washington
GROWTH PLANNING HEARINGS BOARD
FOR EASTERN WASHINGTON

NORTH CASCADES CONSERVATION)
 COUNCIL AND WASHINGTON)
 ENVIRONMENTAL COUNCIL,)

Petitioners)

v.)

Case No. 93-1-0001

FINAL DECISION AND ORDER

CHELAN COUNTY BOARD OF ADJUSTMENT,)
 an adjudicatory agency of CHELAN COUNTY, a)
 Municipal Corporation of the State of Washington)
 and WESLEY M. SHERER,)

Respondents)

A) Procedural History of the Case.

On March 5, 1993, the North Cascades Conservation Council and the Washington Environmental Council (Petitioners) filed a Petition for Review with the Eastern Washington Growth Planning Hearings Board (the Board). The petition challenged a decision by the Chelan County Board of Adjustment to approve a shoreline substantial development permit and conditional use permit without complying with the Growth Management Act (the Act) and the State Environmental Policy Act as it relates to the Growth Management Act. The Chelan County Board of Adjustment, an adjudicatory agency of Chelan County (the County) and Wesley M. "Mike" Sherer were named as respondents.

On April 12, 1993, Respondent Chelan County filed a motion to dismiss the Petition for Review.

On April 20, 1993, the Board held a prehearing conference in Wenatchee, Washington. Following the conference, a Prehearing Order was issued. Discussions to resolve the dispute were unsuccessful.

On May 14, 1993, a telephonic hearing on the County's Motion to Dismiss was held at the Eastern Washington Growth Planning Hearings Board office in Yakima, Washington. The Petitioners and Respondent County participated in the hearing.

On May 24, 1993, the Board issued an Order on the County's Motion to Dismiss. A copy of this Order is attached to this decision as Appendix A. The Board found as follows: 1) that Petitioner had put forth a claim that would fall within the Board's jurisdiction under the Growth Management Act; 2) that its jurisdiction extends only to matters specified in RCW 36.70A.280(1) and therefore, the Board lacked jurisdiction to determine whether Respondent County violated other statutes; and 3) that Petitioners had standing under the Growth Management Act. The Board noted that one issue was left for determination, i.e., whether the County is in compliance with the Growth Management Act, and what effect, if any, a finding of non-compliance would have on the Board of Adjustment decision.

On June 1, 1993, Respondent Sherer filed a Motion for Reconsideration of the Board's finding that Petitioners had standing before the Board. This motion was heard at the beginning of the hearing on June 9, 1993.

A hearing on the merits of the Petition for Review was held on June 9, 1993 in the Wenatchee City Hall, Wenatchee, Washington. Those present were the members of the Board: Graham Tollefson, Judy Wall and Tom A. Williams; Louis N. Chernak for the Petitioners, and Respondent Wesley M. "Mike" Sherer. Participating telephonically were Stephan C. Volker and Rodney L. Brown for the Petitioners and Melody B. McCutcheon for the Respondent County. No witnesses testified at the hearing.

B) Motion for Reconsideration of the Board's Finding of Standing for Petitioners.

As the Board discussed in its order on Respondent County's motion to dismiss, RCW 36.70A.280 (2) is the Act's primary provision defining standing. The Board found that Petitioners had met the requirements of this section. Respondent Sherer argues that a second test is required, specifically, that a party must be "aggrieved or adversely affected by the agency action." RCW 34.05.530.

The record indicates that the Petitioners, both the North Cascades Conservation Council and the Washington Environmental Council, have members who recreate on and use the Stehekin River and thus would be impacted by this development. Further, the Petitioners have members who are long-term residents of and who own property in the Stehekin Valley. These facts were brought out at the Chelan County Board of Adjustment hearing.^[1] Ex. 3. There is sufficient evidence in the record to find that the Petitioners have met the "aggrieved party" tests required under RCW 34.05.530. Ex. 3.

After listening to the hearing argument, and reviewing the record, the Board denies Respondent Sherer's Motion for Reconsideration and finds that Petitioners have standing under the Growth Management Act to bring this Petition.

C) Is Chelan County in Compliance with the Requirements of the Growth Management Act as they relate to designation of "Critical Areas" and the adoption of development regulations for their protection?

Chelan County is subject to the Growth Management Act, RCW 36.70A.010 et seq. The Act directs that counties subject to its provisions, must, on or before September 1, 1991, designate certain natural resource lands including agricultural lands, forest lands, and "critical areas." RCW 36.70A.170. The Growth Management Act defines "critical areas" to include "wetlands" and "fish and wildlife habitat conservation areas." RCW 36.70A.030(5). The Growth Management Act directs further that such counties, including Chelan County, shall, on or before September 1, 1991, adopt development regulations that protect "critical areas" that are required to be designated under RCW 36.70A.0170. RCW 36.70A.060.

Pursuant to RCW 36.70A.380, the Washington Department of Community Development extended the deadline for Chelan County's designation of "critical areas" under RCW 36.70A.170, and for its adoption of appropriate development regulations under RCW 36.70A.060, for the maximum extension available, to March 1, 1992.

The County has appointed a Citizen Advisory Committee to develop "critical areas" designations and the regulations to protect them. This committee has held public meetings and worked on drafts of "critical areas" regulations, but the work is not done and, indeed, the County feels that it will need until the end of November, 1993 to complete the work. The Board notes that the County did not appoint the "critical areas" committee until April, 1992, which was after the extended deadline allowed under RCW 36.70A.380. Ex. 7.

The Board finds that the County is not in compliance with the Growth Management Act, specifically that the "critical areas" designations and the development regulations required for their protection have not been completed in a timely manner.

D) Remand to the County for completion of this work.

In the event of a finding that the County is not in compliance with the requirements of the Act, under RCW 36.70A.300, the Board shall remand the matter to the County and shall specify a reasonable time not in excess of 180 days for compliance with the Growth Management Act. Because this section limits the Board's enforcement authority to remanding the matter to the County for correction, the Board's finding that the County is not in compliance with the Act has no effect on the Board of Adjustment decision.

While the Board believes that the County may have been less than diligent in this matter, it views the integrity of the process as the most important concern. The designation of "critical areas" and the development of regulations for their protection should be done with full community involvement, thoughtfully and with the best information available. If the work is completed in this manner, the resulting product will be useful to the citizens of the County, will help retain the livability of the area and will provide guidance well into the future. No one is served by speeding the process if it results in a poor product. The goal should be a vigorous, good faith public review process.

Having said that, the Board is also aware that some citizens are put at a disadvantage by delaying the process because they are unable to make reasoned decisions about the use of their property. It is not fair to put citizens in limbo by governmental nonaction. This is a serious concern of the

Board, but a concern that is overridden in this case by the desire to have the best possible end product.

The Board remands this matter to the County for designation of "critical areas" and the adoption of development regulations for their protection not later than November 30, 1993.

Now, therefore, the Board makes the following

FINAL DECISION AND ORDER:

- 1) The Petitioners have standing under the Growth Management Act to bring this Petition.
- 2) The Board finds the County is not in compliance with the Growth Management Act, specifically that the "critical areas" designations and the development regulations required for their protection have not been completed in a timely manner.
- 3) The Board remands this matter to the County for designation of "critical areas" and the adoption of development regulations for their protection not later than November 30, 1993.
- 4) The Board will hold a post-decision hearing for determination of non-compliance with this final order on December 8, 1993, if requested by one of the parties.

SO ORDERED this 7th day of July, 1993.

/s Tom A. Williams, Presiding Officer

/s Judy M. Wall, Board Member

A SECOND OPINION--CONCURRING IN PART AND DISSENTING IN PART

I concur with the majority opinion in the decision and order, with the exception of the recommended timeline for resolution.

This matter was brought to the attention of the county on or before March 5, 1993, and the Citizen Advisory Committee reported its final draft to the Chelan County Board of Commissioners in March, 1993. A diligent public hearing process of a citizen drafted proposal should have long since commenced. I therefore believe the timeline proposed represents additional unnecessary delay.

DATED this 7th day of July, 1993.

/s Graham Tollefson, Board Member

Note: This Final Decision and Order 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.

^[1]The Board takes official notice that Judge John Bridges in a parallel Superior Court action determined that the Petitioners had standing to raise issues under the GMA. (See June 9, 1993 hearing transcript page 8.)