

Petitioners respond that the City is named as a party because they are given powers that extend into the unincorporated part of the County as a result of the adoption of the Yakima County Comprehensive Plan. Regarding standing, petitioners claim they have standing under RCW 36.70A.280, through the Yakima County Comprehensive Plan, and the City's involvement with that plan via the previously adopted county-wide planning policies.

Petitioners assert no interest in municipalities other than the two named in the petition and therefore argue against the city's alternative motion to join those entities in the action.

2. City of Yakima Motion for Dismissal:

City of Yakima requests that they be dismissed from this action. They contend the petitioners failed to timely file the petition. City of Yakima contends its adoption of a comprehensive plan, Ordinance 97-22, on April 1, 1997, is the issue, and the petition was filed more than 60 days after publication. In the oral argument, the City argued that petitioners had not established any legal basis for inclusion of the City of Yakima in the petition.

Petitioners respond that the City of Yakima's Comprehensive Plan is not at issue in the petition. As with the City of Union Gap, the petitioners contend that the City of Yakima's rights are impacted by this case and therefore should be included. Further, the City of Yakima has conducted planning for certain areas in unincorporated Yakima County, that power having been delegated to the City by Yakima County in the County Comprehensive Plan.

Discussion: The Board recognizes Petitioners' argument that the cities have interests that may be impacted should this case continue. However, we find no basis in RCW 36.70A. for inclusion of either city. Petitioners lack standing to challenge city's ratification of the county-wide planning policies, or alternatively, have not timely filed the petition. No other action taken by either city is at issue here.

Of the actions listed in their Petition, only the ratification of the county-wide planning policies constitutes action by the cities. As noted previously, this matter is not properly before the Board due to lack of standing of the petitioners, or alternatively, failure to timely file the petition.

The Board finds nothing within the petition or arguments of counsel which would provide a legal basis for inclusion of either the City of Union Gap or the City of Yakima in this case.

The petition, as it relates to the cities of Union Gap and Yakima, is dismissed.

3. Yakima County Motion for Dismissal:

Yakima County seeks dismissal of the Petition upon the following grounds:

- A. This Board does not have jurisdiction to rule on the County's interpretation of RCW 36.70A and RCW 36.115.A.
- B. This Board does not have jurisdiction to rule on the constitutionality of RCW 36.70A and RCW 36.115.A.
- C. Petitioners do not have legal standing to appeal Yakima County's SEPA review of the Yakima County Comprehensive Plan (Plan 2015) and the Urban Area Comprehensive Plan.
- D. This Board does not have jurisdiction to rule on the legality of the inter local agreement approved by the County of Yakima in Resolution 83-1992.
- E. Petitioners do not have standing to appeal Yakima County's adoption of Resolution 322-1993, the Yakima County-Wide Planning Policy; or in the alternative, Petitioners' appeal is untimely.
- F. Petitioner Jim Weaver lacks standing to bring this action.

Yakima County contends the "petition should be dismissed for failing to raise issues over which this Board has jurisdiction, and/or because Petitioners lack standing to raise the issues asserted. If the Board decides that any issues may proceed to final hearing, Jim Weaver should be dismissed as a petitioner for lack of standing".

Petitioners contend the Board cannot adequately review the GMA compliance issues without concurrently considering the use of RCW 36.115 as a compliance mechanism. Restricting the appeal to exclude review of the local service agreement provisions would "render the appeal meaningless" (Responding Brief, p. 3)

Further Petitioners contend the petition does not ask the Board to rule on the facial constitutionality of these statutes. "The Board is being asked to interpret the statutes and in doing so to consider the question of whether or not the interpretation would render the statutes unconstitutional. The Board is also being asked to determine if the Respondent's application of the statutes in constitutional issues which are inextricably tied into the question of the statutes interpretation." (Responding Brief, p. 3)

Respondent Yakima County argues for dismissal on all issues except issue 3.6, SEPA review, for jurisdictional reason. For the SEPA issues, Yakima County alleges a lack of standing by Petitioners, Petitioners fail to show an "injury in fact". Further, Petitioner Jim Weaver lacks standing under RCW 36.70A.280(2)(b) because of his failure to participate orally or in writing before the county regarding the matter under review.

Petitioners respond, “When the SEPA defect is the failure to assess the fiscal impairment of the County, the jeopardy of voting rights of county citizens and simply leaves the unexamined question to future service agreements of politicians, as in this case, then clearly those are the interests that give rise to standing. When cities are given legislative and administrative power over rural voters, that is the issue which gives rise to standing. When cities are given a monopoly over all future development, and citizens such as Petitioner Buchanan denied rights to develop that currently exist, that is the interest which gives rise to standing.” (Responding Brief, p 4.)

Petitioner Weaver defends his claim to standing with a statement that he did attend “multiple meetings held by the County Commissioners relating to both the Urban Area Comprehensive Plan and Plan 2015.”

Discussion: Six of the eight issues listed in the petition are seeking the interpretation of RCW 36.70A and RCW 36.115. Petitioners allege that the statutes are so interrelated that a review of compliance with RCW 36.70A cannot be made in this case without a review of agreements under RCW 36.115, Local Service Agreements. Petitioners admit, however, that no such agreements currently exist. The Board lacks jurisdiction to hear petitions regarding local service agreements. Even if the Board accepted Petitioners’ arguments that the agreements are necessary for a review of compliance with the GMA, we must still dismiss those issues as the agreements have not yet been written.

Issue 3.8 reads in part “If the Respondents have correctly interpreted and implemented RCW 36.70A and RCW 36.115, are those statutes violative of the following constitutional restrictions....” Petitioners are well aware this Board has no jurisdiction to review constitutional issues. We can only wonder at the Petitioners’ motivation to include that issue in a petition for our review.

Issue 3.6, is the final issue remaining, the alleged failures by the County in its SEPA review of the Comprehensive Plan. The County argues a lack of standing, based on a test found in *Trepanier vs. Everett*, 64.Wn. App. 380, at 382 (1992). The second part of the *Trepanier* test requires that “the petitioner must allege an ‘injury in fact’, i.e., that he or she will be specifically and perceptibly harmed by the proposed action.” Petitioners have made no convincing arguments that they will be harmed by the County’s SEPA review. We, therefore, find no basis to establish standing to challenge that action.

Separately, Mr. Weaver has made no claim to meet the enhanced standing requirements to participate in appeals under RCW 36.70A.280(2)(b). Nothing claimed by the Petitioners or found in the record establishes any oral or written participation, as required, to achieve standing.

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ORDER

1. Motion for dismissal of petition against City of Union Gap is granted.
2. Motion for dismissal of petition against City of Yakima is granted.
3. Motion to dismiss Issues 3.1, 3.2, 3.3, 3.4, 3.5, 3.7 and 3.8 is granted for lack of jurisdiction by the Board.
4. Motion to dismiss Issue 3.6 is granted for lack of standing by petitioners.
5. Motion to deny standing to Mr. Jim Weaver for lack of participation in proceedings before the County is granted.

The Board having considered all matters and found for dismissal of all issues hereby dismisses this case.

This Order constitutes a final order under RCW 36.70A.300 for purposes of appeal.

SO ORDERED this 18th day of September, 1997.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS

BOARD

D. E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member