

On June 5, 2000, the Board held a telephonic Motions Hearing. Petitioner appeared pro se. Stephen Graham represented Ferry County. Argument was heard from both sides and all briefing was considered.

I. Petitioner's Motion for Change in Location of Hearing.

Petitioner argued he cannot get a fair hearing in the present environment and would not feel comfortable with the county providing protection. The County did not present oral argument.

Conclusion: The Governor has encouraged the hearings boards to hold hearings in the county that is subject to appeal; any security concerns can be handled by the presence of a sheriff's deputy. Motion is denied.

II. Respondent's Motion on Issue A.

Ferry County's position was that the Petitioner did not have standing due to his failure to comment on this issue, or that this action should have been brought as a failure to act claim. Petitioner argued the County failed to make records available and did not accommodate his hearing impairment and that this violated RCW 36.70A.140. The County argued Petitioner's allegations should be brought under the Americans with Disability Act or the State Public Disclosure laws and the Hearings Board lacked jurisdiction. The County argued they did not realize the nature of the Petitioner's claim and requested an extension beyond the 180 days.

Conclusion: The County's motion to dismiss for lack of standing and motion to make more definite and certain are denied. Petitioner's complaints may be a violation of RCW 36.70A.140 and the issue cannot be disposed of by dispositive motion. The County's motion to extend the hearing outside the 180 days is denied. However, the Hearing on the Merits may be continued beyond the August 2, 2000 date as hereinafter set.

III. Respondent's Motion on Issue B.

Petitioner withdrew this issue from consideration.

Conclusion: The County motion to dismiss is granted.

IV. Respondent's Motion to Issue C.

Ferry County's position is that the county's only addition to capital facilities are in an Urban Growth Area and the amendment does not put public services in rural areas. The Petitioner argued the county's addition to the list affected the funding of existing facilities. The County argued Petitioner's petition did not argue findings.

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Conclusion: The addition of the two facilities in February 2000 did not place urban services in rural services contrary to RCW 36.70A.110(4) and 36.70A.030(16)(17). The County's motion to dismiss is granted.

V. Respondent's Motion on Issue D.

The County argues the County did in fact notify CTED, but concedes there was not written notice nor was there 60 days notice. The county argues this defect is not fatal to the enactment. Petitioner argues the defect is fatal.

Conclusion: The County's failure to comply with RCW 36.70A.106 is not fatal to the enactment. The County's Motion to Dismiss is granted.

VI. Respondent's Motion on Issue E.

The County argued Petitioner has not provided adequate notice in his petition of this issue and does not have standing and did not file an appeal within 60 days. The County argues the February 14, 2000 changes do not violate RCW 36.70A.070(3). Petitioner argued the county did not properly inventory, forecast, and set the proposed location of capital facilities. Petitioner further alleged the County did not have a 6-year financial plan, and has not done a funding reassessment.

Conclusion: The Board finds this issue is not ripe for dispositive motion. The County's motions are denied.

VII. Respondent's Motions to Compel Production of Petitioner's proposed exhibits and to strike list of exhibits.

The County argues the indexing system the Petitioner proposes is faulty in that it is unnecessarily complex or misnumbered. The County further argues the documents are irrelevant

and prejudicial and are an effort to bring scandal upon his clients. Petitioner argues the exhibits are necessary to show the whole picture.

Conclusion: The County must specify which documents are objectionable and must provide a list to Petitioner of the documents for which copies are requested. The Petitioner is ordered to resubmit a list of exhibits that is sequentially numbered for the case at hand. The County's motion to compel production of a copy of the exhibits is granted.

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VII. Petitioner's Motion Objecting to Lateness of Respondent's motion, and Motion for Default.

Petitioner argues the lateness of the Respondent's motion means the motion should be rejected and a default judgment should be ordered in his favor. The Respondent did not present oral argument on this point.

Conclusion: While the Board fully expects all parties to comply with the deadlines in the Prehearing order, they are not "drop dead" dates for which noncompliance is fatal. The late filing did not injure the Petitioner. The motion for default is denied.

ORDER

After consideration of the written record and oral arguments, the Board enters the following order:

1. Ferry County's motions on Issue A and E are denied. The County shall be allowed a continuance of the Hearing on the Merits as described below.
2. Ferry County's motion to dismiss on issues B, C and D are granted.
3. Ferry County's motion to compel Petitioner to provide copies of his exhibits is granted.
4. The Petitioner's motions for default and for change of hearing location are denied.
5. Revised Briefing Schedule is as follows:

Aug. 16, 2000 Petitioner's Prehearing Brief and Exhibits due in Board Office.

 Aug. 30, 2000 Respondent's Prehearing Brief and Exhibits due in Board Office.

Sept. 5, 2000

Petitioner’s Reply Brief due in Board Office.

Sept. 6., 2000 **HEARING ON THE MERITS** in Republic, Washington at the Kiwanis Community Hall immediately following the motions hearing in Case No. 00-1-0015 which begins at 11:00 a.m.

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SO ORDERED this 31st day of July, 2000.

**EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS**

BOARD

Dennis A. Dellwo, Presiding Officer

Judy Wall, Board Member

D. E. “Skip” Chilberg, Board Member