

**STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

GARY D. WOODMANSEE,

Petitioner,
v.

FERRY COUNTY,

Respondent

Case No.: 00-1-0012

ORDER ON MOTIONS

Procedural History

On May 30, 2000, Petitioner filed Motion for Default because Respondent Index was filed untimely.

On May 31, 2000, Respondent filed an Omnibus Motion to dismiss all of Petitioner's issues.

On July 6, 2000, the Board held a telephonic motions hearing. All parties participated or were represented.

I. PETITIONER MOTION FOR DEFAULT JUDGMENT

Petitioner asked for a default judgment because of a late filing of the index of the record by Ferry County. The Board finds no injury to Petitioner resulting from this late filing. Respondent's filing was well in advance of scheduled hearings. Motion is denied.

II. PETITIONER MOTION TO SUPPLEMENT THE RECORD

Petitioner submitted additional material which he wished to have considered for this motions hearing. Any items submitted which related to Respondent's motions were accepted by the Board. Motion was granted for those items.

III. RESPONDENT'S MOTIONS

The following issues raised by the Petitioner in his petition were asked by the County to be dismissed.

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Petitioner's 1st Issue: The Respondent failed to comply with the GMA requirement for early and continuous opportunity for public participation when it adopted Ferry County Ordinance 95-06 on February 28, 2000 as required by RCW 3670A.140.

Respondent asked that this issue be dismissed on a number of grounds. After receiving Petitioner's arguments, the County focused the argument principally on lack of Board jurisdiction. The County contends the Board has no jurisdiction to hear this issue.

Petitioner argued in his response, and in oral arguments, a lack of compliance with RCW 36.70A.140 because of a perceived failure to accommodate his hearing impairment, effectively excluding him from participation in the GMA process.

After hearing the arguments, the Board concludes that it has no jurisdiction to hear the issue as presented. Petitioner may have had recourse to file a petition for failure to enact a public participation program, or file a case in the proper venue for hearing issues regarding the Americans with Disability Act. The motion to dismiss this issue is granted.

Petitioner's 2nd Issue: The Respondent failed to comply with the GMA requirement for early and continuous opportunity for public participation when it adopted Second Amended Comprehensive Plan (SACP) dated June 30, 1997, Case No. 95-1-0010, as required by RCW 36.70A.140.

Respondent moved for dismissal of this issue due to a lack of timely filing of the petition. In his oral arguments, the Petitioner conceded that, if Respondent could provide evidence of publication of Notice of Action taken, the issue would be withdrawn. Subsequent to the hearing, Respondent has provided the Board with a photocopy of Notice of Adoption of the amendment to the Comprehensive Plan", dated July 17, 1997, a portion of the published minutes of the Board of Commissioners proceedings. The motion to dismiss the issue is granted.

Petitioner's 3rd Issue: The Respondent failed to comply with the GMA requirement to protect Private Property rights when it adopted Ferry County Ordinance 95-06 pm February 29. 2000 as required by RCW 36.70A.020(6).

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Respondent asks for dismissal of this issue focusing on the lack of specificity and the inability to

determine what action the County has taken to violate private property rights.

Petitioner argues the County has gone “too far” in protecting private property rights, and this is in violation of the goals of the GMA. The Board finds from the arguments of the Petitioner that the issue is beyond the scope of the intent of the Growth Management Act. To argue that Respondent is over-protective of private property rights in violation of RCW 36.70A.040(6), Petitioner must identify the statutes which have been violated as a result of the alleged over-zealous protection of private property rights. The Petition fails to do that, creating a lack of specificity. The motion for dismissal is granted.

Petitioner’s 4th Issue: The Respondent didn’t designate fish and wildlife habitat let alone use Best Available Science when it adopted Ferry County Ordinance 95-06 on February 28, 2000 as required by RCW 36.70A.170(1)(d) and (2), RCW 36.70A.020(9), RCW 36.70A.050, RCW 36.70A.060(2), RCW 36.70A.070(1), and RCW 36.70A.172, WAC 365-190-040(1), WAC 365-190-080(5)(a), WAC 365-190-040(1)(2), and WAC 365-190-030(9)(19).

Respondent argues that this issue is currently being addressed pursuant to the Board’s Order in Case No. 97-1-0018.

Petitioner argues the issue is different, and the Board of Commissioner’s action is subject to a Petition for Review in addition to the Board’s compliance review process. The Board finds all actions taken by Ferry County in response to our Order are currently under review in Case No. 97-1-0018 thus making this issue moot. Motion to dismiss is granted. If Petitioner wishes to participate in this issue, he may apply for participation pursuant to RCW 36.70A.330(2).

The Respondent didn’t designate frequently flood areas let alone use best available science when it adopted Ferry County Ordinance 95-06 on February 28, 2000, as required by RCW 36.70A.170(1)(d), RCW 36.70A.070(1)(d), RCW 36.70A.050, WAC 365-190-030(3)(7) and WAC 365-190-080(2)(3).

Parties had similar arguments as in Petitioner’s 4th Issue, and the Board’s response is the same. The issues raised here are currently being reviewed in the compliance process in Case No. 97-1-0018. The motion to dismiss is granted.

Petitioner’s 5th Issue: The Respondent failed to maintain and enhance natural resource-based industries, including ...fisheries industries when it adopted Ferry County Ordinance 95-06 on February 28, 2000, as required by RCW 36.70A.020(8).

Parties' arguments follow the arguments for Petitioner's Issues 4 and 5. After considering the arguments of parties, the Board finds this issue was not addressed by the Ferry County Board of Commissioners in its amendment to the Comprehensive Plan adopted February 28, 2000. Therefore, the petition is untimely regarding this issue. The motion to dismiss is granted.

Having granted Respondent's motions for dismissal on all the issues in the petition, Case No. 00-1-0012 is dismissed.

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SO ORDERED this 28th day of July, 2000.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

D. E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member