

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

LARSON BEACH NEIGHBORS and
JEANIE WAGENMAN,

Petitioners,

v.

STEVENS COUNTY,

Respondent

Case No. 00-1-0016

ORDER ON MOTIONS

On July 20, 2000, Larson Beach Neighbors and Jeannie Wagenman filed a Petition for Review relating to the adoption of a revised Steven County Critical Areas Interim Designation and Development Regulations as Resolution No. 75-2000 on July 11, 2000.

On August 18, 2000, Petitioner filed Amendment of Petition including additional Issues 10, 11 and 12.

On August 24, 2000, the Board issued its Prehearing Order setting forth the legal issues and motions and briefing schedule.

The legal issues were established as follows:

1. Did the County fail to properly designate, classify and protect Frequently Flooded Areas? (Section 3.1.010 CA Resolution Frequently Flooded Areas)
2. Did the County fail to properly designate and protect Geologically Hazardous Areas? (Section 33.1.020 CAO Geologically Hazardous Areas)
3. Has the County adequately protected wetlands as critical areas? (Section 3.1.030 Wetlands)
4. Has the County failed to properly designate and protect Critical Aquifer Recharge Areas? (Section 3.1.040 Critical Aquifer Recharge Areas)

5. Has the county failed to properly designate and protect Fish and Wildlife Habitat Conservation Areas as required by the Act?

6. As it is written, does the Reasonable Use Exception, still protect Critical Areas? (Section 3.2 Reasonable Use Exception)

7. Does exempting or waiving the requirements of no wetland delineation, by county staff, violate the intent of GMA and fail to adequately protect the value and function of wetlands? (Section 4.1 Delineation (Wetland Designation))

8. Do the exemptions listed in Section 5.1 , and discussed below, still adequately provide the necessary protection for wetlands in Stevens County? (Chapter 5, Wetland Development Setbacks/Buffers and Exemptions)

9. Has the county failed to properly designate and protect fish and wildlife habitat conservation areas as required by RCW 36.70A.060 and.170? Does the wetland/riparian buffers and setbacks in this section adequately protect wetlands and are these standards based upon the best available science as required by the Act?

10. Does Stevens County's ICAO fail to protect the values and function of wetlands because it fails to define what are buffers and what are setbacks and uses them interchangeably. Does the ambiguous nature of this section and document with regards to setbacks/buffers then fail to protect the wetlands?

11. Does Stevens County's failure to designate and define how habitats and species of local importance are to be given added protection or consideration, make this section in the ICAO vague and unenforceable, therefore giving no added protection?

12. Does Stevens County's lack of an "Enforcement" section in their ICAO, fail then to protect critical areas?

On September 18, 2000, the Petitioner submitted a second amendment to the petition adding the following new issues.

13. Does Stevens County's Interim Critical Areas Ordinance 75-2000 fail to comply with RCW 36.70A.170(2) by failing to consider minimum guidelines in designating critical areas?

14. Does Stevens County's Interim Critical Areas Ordinance 75-2000 fail to comply with

RCW 36.70A.172 by failing to use Best Available Science in designating and protecting critical areas?

15. Does the confusing, conflicting inadequate and lacking language of the Interim Critical Areas Ordinance 75-2000 make the document difficult to understand and therefore difficult to use and enforce also failing to communicate to the public what is expected or required. Does the lack of definitions in the ordinance such as mitigation, restoration, creation or enhancement make the document vague and difficult to understand and then difficult to use, failing then to provide clear and specified guidelines by which the Director may use the document as well as his discretion? Does then the ordinance violate the standards of due process and vagueness?

16. Does the Interim Critical Areas Ordinance also fail to properly designate/classify wetlands as critical areas? (Issue #3 only mentioned protection)

On April 19, 2001 Respondent filed a motion seeking dismissal of the Petitioner's Issues.

On May 9, 2001 a hearing was held in Colville to consider the County's motions to dismiss.

I. Stevens County's Motion to Dismiss Issues 1-12

Stevens County sought the dismissal of Petitioner's Issues 1-12 on the same basis. These issues will be considered together:

a. The County contends the Petitioners failed to establish standing under the GMA.

Discussion: RCW 36.70A.280(2)(b) provides that: "a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; has standing to file a Petition for Review before the Board." The Petitioners contend they have 11 letters listed in the Index regarding the Critical Areas Ordinance. They attached 7 of those letters to the memorandum opposing Stevens County's motion to dismiss. These letters are dated over a period of time from December 28, 1998 through February 8, 2000. The Petitioners also point out the letters do reflect the many meetings they attended and the oral comments given to the County. The Petitioners demonstrated they have participated orally and in writing before the County Commissioners and should be deemed to have standing on Issues #3, 7, 8, 9, 10, 11 and 12. The County conceded the Petitioners had standing on issue #5.

b. Petitioners failed to raise these issues before the Board of County Commissioners.

The Petitioners contend the Growth Management Act does not require issue specific standing.

They believe the specific issue raised in their Petition need not be raised before the County Commissioners.

As the Board stated in *Loon Lake Property Owners, et al. v. Stevens County*, Case No. 01-1-0002c Order on Motions dated April 23, 2001, page 4, “The GMA does not require issue specific standing. The GMA, as interpreted by the Court of Appeals, requires only that the Petitioner’s participation be reasonably related to the issue presented to the Board (*Wells v. Hearings Board*, 100 Wn App. 656 (2000))”.

The Petitioners have given us detailed instances where they have participated through letters to the County Commissioners on matters related to the wetland issues raised by their Petition. They have also asserted that they have participated orally at hearings concerning these issues. Page 3 of Petitioners’ Memorandum. The Petitioners have provided adequate evidence to substantiate their standing on issues 3, 5, 7, 8, 9, 10, 11 and 12. The Petitioner did not provide the evidence necessary to substantiate their standing on issues 1, 2, 4, and 6.

Conclusion: The County’s motion to dismiss Petitioners’ issues 3, 5, 7, 8, 9, 10, 11 and 12 is denied. The County’s motion to dismiss Petitioner’s issues 1, 2, 4 and 6 is granted.

II. Stevens County Motion to Dismiss Issues 13-16:

Stevens County moved to dismiss Issues 13-16 which were added by an amended petition. The motion was made on the following grounds:

- a. Petitioners failed to file this amendment prior to the prehearing conference. It is not addressed in the Prehearing Order. Civil Rule 15 (a) does not allow a second amendment to a pleading “without leave of the Court or written consent of the adverse party.”
- b. Petitioners have failed to establish standing under GMA.
- c. Petitioners failed to raise this issue before the Board of County Commissioners.

Discussion: The Board has already responded to (b) and (c) above and will now address (a) of these grounds.

RCW 36.70A.290(2) provides in part that petitions need to be filed within 60 days after the publication of notice of adoption. At the Prehearing conference on August 23, 2000, the Board indicated they would receive any new petitions through the 60-day timeframe.

The important date to the Petitioner is the July 20, 2000 date as they have the option of making

amendments anytime within the 30 days after that date. After the 30-day time period, the Petitioners must request in writing by motion to amend their petition. If the 60-day time period (time for filing a petition) has not passed, Petitioner has the right to withdraw the original petition and file a new petition including any issues they feel appropriate

WAC 242-02-260(1) states: “(1) A petition for review or answer may be amended as a matter of right until thirty days after its date of file. (2) Thereafter, any amendments shall be requested in writing by motion, and will be made only after approval by a board or presiding officer.

The second amendment was received on September 18, 2000 and shortly afterward the parties were in mediation. The Board will consider the Amended Petition, which was filed with the Board, as a motion seeking permission to amend their Petition. Such motion is granted to the extent provided below. Such amendment will cause no delay or problems for the Board or the parties.

The Petitioners have shown they have participated before the County both through letters and by giving oral testimony at public hearings on wetland issues. Therefore, the Board, after hearing oral argument from the parties and hearing from the County that these issues would not cause an unreasonable or unavoidable hardship, grants standing on issues #14 and #16.

Conclusion: The County’s motion to dismiss issues #13 and #15 is granted. The County’s motion to dismiss issues #14 and #16 is denied.

ORDER

1. Stevens County motion to dismiss issues #1, 2, 4, 6, 13 and 15 is granted.
2. Stevens County conceded issue #5.

SO ORDERED this 16th day of May 2001.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS

BOARD

Judy Wall, Presiding Officer

D. E. "Skip" Chilberg, Board Member

Dennis A. Dellwo, Board Member