

STATE OF WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

FOR EASTERN WASHINGTON

LOON LAKE PROPERTY OWNERS ASSOCIATION, LOON LAKE DEFENSE FUND and WILLIAM & JANICE SHAWL, LARSON BEACH NEIGHBORS and JEANIE WAGENMAN
Petitioners,
v.
STEVENS COUNTY,
Respondent

Case No.: 01-1-0002c
ORDER ON MOTIONS

On January 26, 2001, Loon Lake Property Owners Association, Loon Lake Defense Fund and William and Janice Shawl, filed a Petition for Review.

On January 29, 2001 Larson Beach Neighbors and Jeanie Wagenman filed a Petition for Review.

On February 28, 2001, Larson Beach Neighbors and Jeanie Wagenman filed an Amendment of Petition for Review.

The Petitions referenced above were consolidated on the March 13, 2001 Prehearing Order.

On March 15 2001, Respondent Stevens County filed a Motion to Dismiss Issues 1-10 petitioned by Loon Lake Property Owners et al (LLPOA/LLDF and SHAWL) and a Motion to Dismiss Issues 1-20 petitioned by Larson Beach Neighbors et al.

On March 19 2001, LLPOA/LLDF and SHAWL filed a Motion for Partial Summary Judgment.

On March 29, 2001, the Board held a motion hearing in Colville, Washington. All parties were present or represented.

1.Stevens County Motion to Dismiss Issues 1-10 submitted by LLPOA/LLDF and SHAWL.

Respondent's position: Stevens County challenged the standing of Loon Lake Property Owners Association et al. on each issue.The County demanded the Petitioners provide the Hearings Board their grounds for standing.The County contended further that standing for issues challenging SEPA compliance must be determined pursuant to SEPA and not the GMA.Under the SEPA test for standing, the County contended LLPOA does not qualify.The County did not object to allowing additional time for the Petitioners to supplement their briefs and expand the proof of their standing.This additional briefing has been received.

The County addressed each LLPOA issue.They conceded standing on Issues 1, 3, 4, and 5.On Issue 2 the County contended that testimony or other participation by their attorney, Mr. Erickson, is insufficient because he is not a party. Issues 6, 7 and 8 are objected to due to the

Petitioners claimed failure to establish any reference in the record, which is related to the Issue. On Issue 9 the County contended the Petitioners failed to demonstrate standing under the requirements of SEPA. On Issue 10 they contended the Petitioners have failed to demonstrate standing under SEPA or GMA. The County objected further to Issues 2, 5 and 8, contending the issues are speculative.

Petitioner LLPOA/LLDF and SHAWL's position: LLPOA et al. contends standing on SEPA issues before the Growth Board are governed by the GMA and not SEPA. Under that measure, the Petitioners believe they have shown standing to raise the SEPA issues before the Board.

On each of the issues, the Petitioners have shown how they believe they have participated orally or in writing before the County regarding the matters on which a review is being requested.

Specific records and pages were given.

Discussion: In 1995, the Washington State Legislature expanded the Growth Management Hearings Board's jurisdiction to include SEPA actions taken to comply with the GMA.

There is nothing in RCW 36.70A.280(1) that indicates a legislative intent to treat standing requirements for a SEPA challenge different than any other GMA standing requirement. The Hearings Board has no authority in the GMA to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plan language of the statute. The cases cited by the County do not apply to the question of whether a person with "appearance standing" may bring a SEPA challenge under the GMA. We find no reason to change our belief that standing for all issues raised before this Board should be measured by the requirements of the GMA, RCW 36.70A.280(2)(b).

On Issue 2 the County contended the document supporting standing was a letter from the Petitioner's attorney, not a party. Mr. Erickson is the representative of the Petitioners and clearly stated that he was speaking for the parties. This type of representation is so much a part of this country's legal system it would be difficult to believe you are not allowing an attorney to speak for a party. This participation is cognizable for purposes of standing if the attorney states that he or she is representing the parties in that matter.

Issue 5, however, does not raise an issue properly before this Board. This issue contends chapters 4.16 and 5.08 constitute a comprehensive plan and is inconsistent and substantially interfering with the Goals, NRL and CA requirements, CP and Rural Element Requirements and Urban Growth Requirements. Stevens County has not adopted a Comprehensive plan and the problems believed to exist in these matters must be addressed on their own merit.

The Petitioners have demonstrated appearance standing for issues 6 and 7. While the content of their participation is not issue specific, they have reasonably appeared on the matters contained in these issues.

Issue 8 is an allegation of the County's failure to transmit copies of the subdivision codes to the Department of Community, Trade and Economic Development sixty days prior to enactment of the subdivision codes. This is a failure to act and does not require the same measure of standing. The Petitioners have adequate standing. The fact the Petitioners added comments or argument in addition to the issue is not fatal to standing.

Issue 9 raises a SEPA issue and will be reviewed according to GMA requirements for standing. The Petitioners have shown proper GMA standing.

Issue 10 is also a SEPA issue and the Petitioners have shown proper GMA standing.

Issue 5 should be dismissed and the balance of the County's motion to dismiss for lack of standing should be denied. If the County requires a clarification of the party's issues, a motion requesting such clarification may be filed.

Conclusion: The Board finds that Issue 5 is not properly before it and grants the County's motion to dismiss this issue. However, the Board finds these petitioners have shown they do have standing for the matters found in the remaining nine issues raised in their petition.

2. Stevens County Motion to Dismiss Issues 1-20 Larson Beach Neighbors/ Wagenman.

Respondent's position: The County contends that Larson Beach Neighbors et al. do not have SEPA standing or GMA standing on all of the issues they have raised. The County also contends the SEPA issues were previously appealed to the Stevens County Hearing Examiner who upheld the county's threshold determination. The County believes this matter has been adjudicated and is subject to the doctrine of *res judicata*.

The County contends further that the Petitioners' lack of specific citation to the record does not allow the County to respond to the standing allegations raised. They ask for additional time for the Petitioner to provide those cites and for the County to respond.

Petitioner Larson Beach Neighbors and Jeanie Wagenman's Position: Larson Beach Neighbors and Jeanie Wagenman detailed the basis for their standing on each issue. Many of these issues were specifically addressed in their first brief responding to the County's motion to dismiss. The Petitioners filed additional information regarding standing. The Petitioners listed the letters and other methods used to express their concerns before the County on these matters. The information contained in the briefing by these Petitioners was extensive and was to demonstrate that they actively participated in the process and participated orally or in writing concerning each of the matters raised by their Petition.

The Petitioners contend they sought review with the Stevens County Hearing Examiner on the SEPA issue to be sure to exhaust the remedies available. They believed this was necessary to proceed through the GMA process.

Discussion: The Growth Management Act 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 orally or in writing participated on matters related to the issues raised by their Petition. The undersigned was able to find this documentation in the record and review it. This is adequate for a showing of standing under the GMA.

The fact that the Petitioners appealed the SEPA matter to the Hearing Examiner does not render this issue *res judicata*. After such appeal they could have chosen to appeal to the Superior Court or the Growth Management Hearings Board. They chose to seek review before this Board. That is

authorized under the GMA. RCW 36.70A.280(1).

The contention by the County that the failure to provide specific record citation prevented the review of the evidence of standing is unacceptable. This Board was able to adequately review that material. These Petitioners have provided sufficient information to substantiate their standing.

Conclusion: The County's motion to dismiss the 20 issues raised by Larson Beach Neighbors and Jeanie Wagenman is denied.

3.LLPOA, LLDF and SHAWL MOTION for partial summary judgment.

Petitioner LLPOA/LLDF and SHAWL position: These Petitioners asked the Board to enter a partial summary judgment finding that the Minimum Lot Size Regulations of November 14, 2000, Stevens County Code Title 4 and Interim Code Title 4 Chapter 5.09/Design of the November 14, 2000 Stevens County Code Title 5 and the December 26, 2000 Stevens County Interim Code Title 5 are non-compliant. It is argued that this issue has been decided in an other case before this Board, *Wilma et al. v. Stevens County*, Case No. 99-1-0001c and is *res judicata*.

Respondent's position: The County stated that they believe it is *res judicata* and this issue need not be pursued further and a summary judgment is unnecessary.

Discussion: The County has already been found out of compliance on this issue. It is *res judicata* and we need not enter a summary judgment.

Conclusion: The County has already been found in non-compliance on this issue. Summary Judgment need not be entered.

SO ORDERED this 23rd day of April 2001.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

Dennis A. Dellwo, Board Member

D. E. "Skip" Chilberg, Board Member

Judy Wall, Board Member