

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF
FERRY COUNTY and DAVID L.
ROBINSON

Petitioners,

v.

FERRY COUNTY,

Respondent

Case No. 01-1-0008

ORDER OF DISMISSAL

On April 12, 2001, Concerned Friends of Ferry County and David L. Robinson filed a petition for review with the Eastern Washington Growth Management Hearings Board.

On April 17, 2001, the Board issued its Notice setting a tentative motion and briefing schedule.

On May 15, 2001, the Board issued a Prehearing Order and an Order Setting a Hearing on Dispositive Motions as well as a briefing schedule for the Dispositive Motion.

On June 6, 2001, the Board held a telephonic motion hearing to consider the dispositive motion. All parties were present and their arguments were heard and briefs reviewed. Board members Dennis Dellwo and Skip Chilberg were present.

Dispositive Motion: On May 3, 2001, Ferry County filed Motion to dismiss the petition in this matter on the grounds that it was filed seven days after the running of the 60-day period for filing such petition.

On February 5, 2001, the County Commissioners adopted Resolution 2001 06 Consistency Resolution, which reads as follows:

“Motion was made by Commissioner Blankenship, seconded by Commissioner Hall and unanimously carried to adopt Resolution 2001-06 finding the Ferry County

Critical Areas Ordinance and the Ferry County Comprehensive Plan to be consistent.”

On February 15, 2001, the Consistency Resolution was published in the Republic News Miner under the 'Commissioners Resume' as part of the minutes of the Board of Commissioners proceedings held on February 5, 2001.

On April 12, 2001, sixty-seven days after the passage of the above resolution and fifty-six days after the Republic News Miner published the minutes of the Board of County Commissioners proceedings, Concerned Friends of Ferry County and David L. Robinson filed its Petition for Review, which reads as follows:

“Petitioners seek review of the action by which Ferry County, through Resolution No. 2001-06, adopted on February 5, 2001 and published in the Republic News-Miner on February 15, 2001, asserted that it found its Interim Critical Areas Ordinance (ICAO) consistent with its Comprehensive Plan (CP).”

Ferry County argues that it had no duty to publish a notice of adoption since its Consistency Resolution did not involve the adoption of a comprehensive plan or development regulation. They further assert that the County did not publish the notice and that the newspaper publishes such summaries as their own news item.

The county's brief extensively discussed the different filing requirements between those matters covered by WAC 242-02-220 (1) and RCW 36.70A.290 (2) (adoption of Comprehensive Plans and Development Regulations) and those covered by WAC 242-02-220(4) “For all other matters”. WAC 242-02-220(1) explicitly described publication as that “specified by RCW 36.70A.290(2)” which requires that the date of publication shall be the date the County has published the notice that it has adopted the Comprehensive Plan or Development Regulation or an amendment thereto. RCW 36.70a.290(2)(c).

The county argues that publication is not required for the subject resolution and under WAC 242-02-220(4) the 60-day period begins the day the action was taken, February 5, 2001.

The Petitioners contend that the 60 days should begin from the date the minutes appeared in the newspaper. To do otherwise would mislead the public and allow these matters to escape review. They also contend WAC 242-02-220(4) includes “publication” in the list of occurrences from which the 60 days is calculated. The Petitioners believe the list is not limiting but rather inclusive. And, because a publication occurred, that is the date to use.

Discussion: The Growth Management Act clearly requires publication after the adoption of the comprehensive plan or development regulations, or amendment thereto. RCW 36.70A.290(2)(b).

There is no requirement for publication of the County's review of the Ferry County Critical Areas Ordinance and the County's Comprehensive Plan. Had the County amended the CP or regulations, the result would be different. The publication was not at the request of the County and is not the date at which we calculate the 60-days. The effective date of the action taken, and the start of the 60-day clock for filing a petition for review, is February 5, 2001. The petition in this matter was filed on April 12, 2001, beyond the 60 day allotted time.

After hearing the arguments of the parties and reviewing the briefs, the Board finds that the Petition for Review was not filed timely and should be dismissed.

Motion to dismiss the petition in this matter is granted.

Pursuant to RCW 36.70A.300(5), this is a final order for purposes of appeal.

Pursuant to WAC 242-02-830(1), a motion for reconsideration may be filed within ten days of service of a final decision.

SO ORDERED this 8th day of June 2001.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

D. E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member