STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

HARVARD VIEW ESTATES Petitioner, vs. SPOKANE COUNTY, Respondent.	Case No.: 02-1-0005 ORDER ON MOTIONS

I. Procedural History

On March 8, 2002, HARVARD VIEW ESTATES, by and through its representative, Gene Cohen, filed a Petition for Review.

On April 8, 2002, the Board held a Prehearing conference. Present for the Petitioner was Gene Cohen. Present for Respondent was Robert Binger, Deputy Prosecuting Attorney. The Petitioner was asked to restate the issues so that they would pose a question to the Board. An Amended Petition was received April 12, 2002.

On April 29, 2002, Spokane County, the Respondent, filed a motion seeking the dismissal of this petition for lack of standing and for lack of jurisdiction due to failure to timely file a Petition and/or allege Development Regulations issues pursuant to RCW 36.70A.290(2).

On May 23, 2002, a hearing on the County's motion was heard in Spokane Washington. Gene Cohen represented the Petitioner, Harvard View Estates. Robert B. Binger, Deputy Prosecuting Attorney, represented the County.

II. Discussion

THE COUNTY SOUGHT THE DISMISSAL OF THE PETITION HEREIN ALLEGING THAT THE PETITIONER LACKED STANDING AND THAT THE BOARD LACKED JURISDICTION TO DECIDE THE ISSUES RAISED HEREIN.

ISSUE OF STANDING:

The County contends that the Petitioner failed to participate orally or through written documentation in any hearings held by the County relative to the Phase I Development Regulations. As such, the Petitioner is alleged to have no standing and the EWGMHB has no jurisdiction to entertain the Petition.

It is undeniable that the Petitioner frequently participated, both orally and in writing throughout the lengthy process developing the Comprehensive Plan (CP) and the Capital Facilities Plan (CFP). Admittedly the Petitioner did not repeat the same arguments in the hearings discussing the Development Regulations to implement such Plans. The issues raised by the Petitioner throughout were the same and the County was well aware of his concerns.

For the Petitioner to have standing, the Growth Management Act (GMA) requires oral or written participation in the matters raised by the Petitioner herein. The reason for such requirement is to allow the County to know the Petitioner's objections and be able to respond to them if they feel it is appropriate. It was clear to the County what the objections of the Petitioner were and he participated actively in the hearings prior to the adoption of the CP and CFP. For us to now find that the Petitioner did not have standing after such participation would be a hyper technical reading of the statute. The Petitioner did participate on the matters raised herein.

Conclusion:

The Petitioner has standing before this Board on the matters raised in the petition herein.

ISSUE JURISDICTION:

The County contends the Petitioner's issues herein, for the most part, challenge the Comprehensive or Capital Facilities Plans and the petition was not timely filed. The

deadline to file for review of these plans had passed prior to the filing of the present petition. The County believes that any challenges to the Comprehensive Plan and Capital Facilities Plan should be dismissed as not being brought within the time provided under the GMA.

The Petitioner's challenges to the Sewering program are asked to be dismissed by the County because that program is not part of the Phase I Development Regulations for which review is sought.

Challenges to the Designation and Protection of Critical Areas are sought by the County to be dismissed as not timely brought. Resolution No. 94-0441 designating and protecting critical areas was adopted March 29, 1994.

Petitioner's challenges to the non-designation of Otis Orchards as a historical area are sought to be dismissed by the County as being outside of the Board's jurisdiction.

Petitioner's challenges to public participation are asked to be dismissed by the County as stating no cause of action and not issues properly before the Board.

The Petitioner responds to the County's challenges with detailed quotes from other reported cases of the three Growth Management Boards of Washington State. The Petitioner points out that the GMA is to further growth and land use decision-making that's comprehensive, coordinated and consistent. The Act further requires an internally consistent document. This Consistency not only must be internally consistent but there must be a consistency of the Comprehensive Plan and Development Regulations.

The Petitioner further contends that Critical Areas are subject to a higher degree of planning than capital facilities. The Petitioner contends that he is seeking specifically for a review of the planning actions related to the protection of the aquifer area of Spokane County. Petitioner contends that there are two different kinds of development regulations: comprehensive plan implementing regulations and critical area regulations. Each type is independent.

The Petitioner contends further that the Supreme Court of Washington has held that "upon a determination that the UGA provision violates the GMA, it should be stricken from both the Comprehensive Plan and the CPPs." (See Bear Creek 3508c, 11/3/00 Order at 11-12).

The Petitioner further contends that the Comprehensive Plan is not a static document and that the GMA requires jurisdictions to adopt development regulations that protect

critical areas. The Petitioner contends the County must justify not protecting Critical Areas.

The Petitioner contends the County needs to look at their county planning policies as a blueprint for what areas need special attention and protection under the GMA. Petitioner points out that the GMA requires the CP to be consistent with the CPPs as a whole.

The Petitioner contends that he is not precluded from challenging development regulations and the comprehensive plan. "A petitioner is not precluded from challenging development regulations that implement a certain comprehensive plan policy, even though the petitioner did not challenge the specific policies in the plan." Peninsula Neighborhood Association II v. Pierce County, CPSGMHB Case No. 95-3-0071, p. 23.

The Petitioner follows with a detailed discussion of the sequencing scheme of the GMA. Petitioner speaks of the process for review of the development of the Comprehensive Plan and regulations.

The final area of discussion by the Petitioner is public notice. Petitioner contends that because the County does not clearly sequence their hearings and clearly state the time of the decisions and ignores the deficiency warnings from citizens, as is their right, the County is violating the most fundamental issue of fairness in the process. The Petitioner contends that the public is not being heard.

Decision:

This Board has reviewed the briefing and arguments of both parties and the Issues raised by the Petitioner. (See exhibit A). The question is whether the Petitioner has raised issues over which this Board has jurisdiction. RCW 36.70A.280(1)(a) provides that a Growth Management Hearings Board has jurisdiction to determine if a county planning under the GMA is not in compliance with the requirements of the GMA. RCW 36.70A.290(2) provides that petitions, requests for review relating to whether or not an adopted comprehensive plan, development regulations, or permanent amendment thereto, is in compliance with the goals and requirements of the GMA, must be filed within sixty-days after publication by the legislative bodies of the County or City.

It is clear that issues challenging the Comprehensive Plan or Capital Facilities Plan of the County are untimely. To challenge those documents the Petitioner is required to file a petition within 60 days of publication of their passage. This was not done.

It is also clear this Board has no jurisdiction to require a County to designate Otis

Orchards as an historical area. The County's failure to so designate Otis Orchards is not a violation of the GMA.

Public participation issues may first be challenged when and if the county adopts a public participation program (PPP). Spokane County's PPP was reviewed in previous cases and found compliant. The only issue that could be now reviewed by this Board is whether the County is following their public participation program. The program itself cannot be challenged, only whether it is being followed. The Petitioner did not challenge whether the public participation was being followed.

The development regulations are adopted by the County to implement the Comprehensive Plan and Capital Facilities Plan. If a person does not feel the two plans comply with the GMA, a petition for review must be filed within 60 days of the publication of the notice of their passage. The only challenge properly raised concerning the development regulations is whether they properly implement the CP or C F P.

After reviewing each of the issues and the legal arguments of the parties, the Board must conclude that issues 1-4 and 6-10 are not challenging whether the development regulation are consistent with and properly implementing the Plans, but rather whether the plans were compliant or correct. Rightly or wrongly, it is too late to seek review of those Plans. Issue 5 appears to raise an issue directly challenging a portion of the Development Regulations and, if so, would be timely. Issue 5 cannot be summarily dismissed.

The Board does not have jurisdiction under Issue 11 to require the County to designate Otis Orchards a historical area.

Upon review of Issue 12, the public participation issue, the Board finds this is not an issue this Board has jurisdiction to decide. The questions involve the design of the GMA, the burdens of proof, the forum to address wrongs, and whether the process is too legal in form and rigid in nature. The Board is required to follow the GMA and not judge the manner it was drafted by the Legislature.

Conclusion:

Except for Issue 5, the Petitioner has not raised issues this Board has jurisdiction to decide. The majority of the Petitioner's issues are challenges to the Comprehensive and Capital Facilities Plans and time for their review has passed. The remaining issues are not within this Board's jurisdiction or do not raise issues this Board is able to decide.

IV Order

1. The challenge to the Petitioner's standing before this Board is denied.

2. Except as to Issue 5, the County's motion to dismiss for lack of jurisdiction, granted.

SO ORDERED this 31st day of May 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Dennis Dellwo, Board Member

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D.E. "Skip" Chilberg, Board Member

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Judy Wall, Board Member