

**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

1000 FRIENDS OF WASHINGTON

Petitioner,

v.

SPOKANE COUNTY,

Respondent.

Case No. 02-1-0006

MOTION ORDER

I. BACKGROUND

On March 18, 2002, 1000 FRIENDS OF WASHINGTON, by and through its counsel, John Zilavy, filed a Petition for Review.

On April 18, 2002, the Board held a Prehearing conference. Present were D. E. "Skip" Chilberg, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for Petitioner was John Zilavy. Present for Respondent was Robert Binger, Deputy Prosecuting Attorney.

On May 30, 2002, the Board held a Motion Hearing telephonically in the above captioned matter. Present were D. E. "Skip" Chilberg, Presiding Officer, and Board Members Dennis Dellwo and Judy Wall. Present for Petitioner was John Zilavy. Present for Respondent was Robert Binger, Deputy Prosecuting Attorney.

II. Motions of Parties

On May 7, 2002, the Respondent filed a Motion seeking dismissal of the Petition for Review due to lack of standing. Spokane County alleges Petitioners failed to provide timely comment to the County on the issues raised in the petition.

On May 16, 2002, the Board received Petitioners Motion to Correct the Record and the Index of Record submitted by Spokane County to include a letter from the Petitioners to Spokane County dated December 26, 2001, as well as a "Notice of Public Hearing" display ad published in The Spokesman Review announcing a public hearing for comment on the proposed Phase I Development Regulations.

Respondent's Reply Memorandum to Petitioners Motion argues: (1) Petitioners Motion to Correct the Record was not filed within the time established in the Pre-hearing Order, and (2) the letter Petitioners want entered into the record was mailed to the County after the record had been closed by Spokane County (December 7th).

Petitioners cite a display advertisement, which makes no mention of a deadline for

receiving written comments. Further, one of the issues challenged is a change to the development regulations made by the Board of County Commissioners after the announced closing date for receiving comments. The Petitioners contend, if the comments were not timely, it was due to the failure by the County to allow adequate public participation as required by the GMA.

Petitioners also cite previous Board decisions that motion filing dates are not "drop dead" dates, and that no parties have been injured by the delayed filing of their Motion to Correct the Record.

Discussion:

The Board here is asked to decide three questions: (1) Should Petitioners Motion to Correct the Record be granted? (2) Do Petitioners have standing in this matter? (3) Do Petitioners have standing to address issues not before the public at the November 28, hearing?

Question (1): The Board notes the legal advertisement for consideration of the development regulations establishes a deadline of November 28, 2001, for receipt of written and oral comments. At the public hearing on that date, the Board of Commissioners extended the time for receipt of written comments to December 7, 2001. The absence of a deadline within a separate display advertisement does not change the officially established deadline. The Board must therefore conclude that the letter dated December 26, 2001 was submitted after the time for comments was closed, and cannot now be used as a basis for the Petitioners standing. Petitioners have no basis for challenging the substance of the draft development regulations under consideration at the November 28, 2001, hearing.

Question (2): The Board views filing dates on a pre-hearing order as goals. With the Board's consent, they can hear motions after dates set. The objective is to ensure fairness to all parties, and not to exclude participation in a case due to a Board-established filing date. The Board sees no injury to the parties by considering Petitioners Motion to Correct the Record.

Question (3): Petitioners argue they had no opportunity to comment on the changes made to the development regulations subsequent to the November 28, 2001, hearing. If, as Spokane County argues, the record was closed on December 7, 2001, the public had no opportunity to comment on certain changes made. The Petitioners, as well as all citizens, are entitled to an opportunity to comment on amendments adopted by the County.

ORDER

1. Because the Petitioners failed to participate prior to the deadline established by the County, they do not have standing regarding issues, which were available for public comment prior to such cut-off.

2. The Petitioner's Motion to Correct the Record is granted and the December 26, 2001, letter is included therein to the extent it relates to amendments adopted by the County but not properly presented to the public for their comment.

3. The Petitioners have standing to challenge issues relating to amendments adopted by the County upon which the public had no opportunity to comment on prior to the closure of the record December 7, 2001.

SO ORDERED this 7th day of June 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

D.E. "Skip" Chilberg, Board Member

Dennis Dellwo, Board Member

Judy Wall, Board Member