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

FUTUREWISE,

Case No. 05-1-0005

Petitioner,

ORDER ON MOTION FOR RECUSAL

v.

SPOKANE COUNTY,

Respondent.

VALANEOV, L.L.C.,

Intervenors.

12 THIS Matter comes before the Board on the motion filed by Intervener, Valaneov,  
13 L.L.C., requesting that Board Member John Roskelley recuse himself from participating in  
14 the above referenced matter. Normally the Board will hear motions at the date set for such.  
15 However, a request for the recusal of a Board Member or a similar motion to disqualify for  
16 cause does not require such a hearing and must be ruled upon as quickly as possible.

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**I. PROCEDURAL HISTORY**

On June 27, 2005, FUTUREWISE, by and through its representatives, John Zilavy,  
filed a Petition for Review.

On July 11, 2005, the Board received Valaneov, L.L.C.'s Motion to Intervene and  
Brief in support of Motion, filed by its representative Margaret Arpin.

On July 22, 2005, the Board heard the Motion to Intervene filed by Valaneov, LLC,  
before the Prehearing conference. No objections to Intervention were received. The Board  
grants Intervenor status to Valaneov, LLC. The parties are intervening on behalf of the  
Respondent.

On July 22, 2005, the Board held a telephonic Prehearing conference. Present were,  
Judy Wall, Presiding Officer, and Board Members Dennis Dellwo and John Roskelley. Present

1 for Petitioners was John Zilavy. Present for Respondent was Martin Rollins. Present for  
2 Intervenors was Margaret Arpin.

3 On July 22, 2005, the Board issued its Prehearing Order.

4 On August 12, 2005, the Board received Intervenors' Motion seeking the recusal of  
5 Board member John Roskelley.

## 6 **II. MOTION FOR RECUSAL**

7 The Intervenor in this matter requested John Roskelley recuse himself from  
8 participating in the above reference matter. The Intervenor's attorney, Margaret Arpin,  
9 attached a Declaration and stated the motion was brought pursuant to WAC 242-02-533.  
10 The grounds raised by the declaration allege that the present issues raised in this matter  
11 are identical to those presented in a 2002 request that Spokane County amend its  
12 Comprehensive Plan to re-designate 140 acres of its property from Large Tract Agriculture  
to Rural Traditional.

13 The Intervenor contends that John Roskelley voted to deny the re-designation while  
14 he was a member of the Board of County Commissioners and therefore has already  
15 rendered a decision on an identical application.

## 16 **III. DISCUSSION**

17 The basis for the request for recusal is that John Roskelley, as a Spokane County  
18 Commissioner, rendered a decision on an "identical application" submitted by Valaneov,  
19 L.L.C. in 2002, and they feel that "he cannot be impartial in hearing and considering the  
subject appeal."

20 A thorough study of potential disqualification considerations was made. This included  
21 and was not limited to, bias, prejudice, interest, bias or prejudice concerning a party,  
22 personal knowledge of disputed facts, former lawyer or witness in the case, economic  
23 interest in the subject matter, whether he was an officer or trustee of a party, whether he  
24 was a spouse or family member residing in the household, and consideration of the  
25 Appearance of Fairness Doctrine. Mr. Roskelley has determined he has no prejudgment or  
26 bias in this case and can render a fair and impartial decision.

1 The Washington State Supreme Court in *Buell v. City of Bremerton*, 80 Wn.2d 518,  
2 524, 495 P.2d 1358 (1972) held that “A decision-maker may be challenged under this  
3 doctrine (Appearance of Fairness Doctrine) for “prejudgment concerning issues of fact  
4 about parties in a particular case...[or] partiality evidencing a personal bias or personal  
5 prejudice signifying an attitude for or against a party as distinguished from issues of law or  
6 policy...”. Prejudgment and bias are thus to be distinguished from the ideological or policy  
7 leanings of a decision-maker. A challenger must present evidence of actual or potential bias  
8 to support an appearance of fairness claim. *State v. Post*, 118 Wn.2d 596, 619, 826 P.2d  
172, amended, 837 P.2d 599 (1992).

9 Mr. Roskelley’s decision in 2002, concerning an “identical application” was the policy  
10 leanings of a decision-maker, not prejudice or bias concerning issues of fact about parties in  
11 a particular case or partiality evidencing a personal bias or personal prejudice signifying an  
12 attitude for or against a party. Thus, both he and the Board feel confident Mr. Roskelley can  
13 render a fair and impartial decision based on the facts of the case.

#### 14 IV. ORDER

15 The Motion of the Intervenor seeking John Roskelley’s recusal is denied.

16 Pursuant to RCW 36.70A.300 this is a final order of the Board.

17 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the  
18 mailing of this Order to file a petition for reconsideration. The original and four  
19 copies of a motion for reconsideration, together with any argument in support  
20 thereof, should be filed with the Board by mailing, faxing, or otherwise  
21 delivering the original and four copies of the motion for reconsideration directly  
22 to the Board, with a copy served on all other parties of record. **Filing means**  
**actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-  
02-240, WAC 242-02-330. The filing of a motion for reconsideration is not a  
prerequisite for filing a petition for judicial review.

23 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal  
24 the decision to superior court as provided by RCW 36.70A.300(5). Proceedings  
25 for judicial review may be instituted by filing a petition in superior court  
26 according to the procedures specified in chapter 34.05 RCW, Part V, Judicial

1 Review and Civil. The petition for judicial review of this Order shall be filed with  
2 the appropriate court and served on the Board, the Office of the Attorney  
3 General, and all parties within thirty days after service of the final order, as  
4 provided in RCW 34.05.542. Service on the Board may be accomplished in person  
5 or by mail. Service of the Board means actual receipt of the document at the  
6 Board office within thirty (30) days after service of the final order. A petition for  
7 judicial review may not be served on the Board by fax or electronic mail.

8 Service. This Order was served on you the day it was deposited in the United  
9 States mail. RCW 34.05.010(19)

10 SO ORDERED this 6<sup>th</sup> day of September 2005.

11 EASTERN WASHINGTON GROWTH MANAGEMENT  
12 HEARINGS BOARD

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14 Judy Wall, Board Member

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16 Dennis Dellwo, Board Member

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18 John Roskelley, Board Member